



## 2015 CHAPTER 8

### **PART 1**

#### **CONTROLLED RESERVOIRS, REGISTRATION AND RESERVOIR DESIGNATION**

##### *Controlled reservoirs*

##### **Controlled reservoirs**

**1** For the purposes of this Act, a controlled reservoir is any of the following structures or areas which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land—

- (a) a structure designed or used for collecting and storing water,
- (b) a lake or other area created or enlarged by artificial means, the artificial creation or enlargement having been designed, or the lake or other area so created or enlarged being used, for collecting and storing water.

##### **Structure or area which is to be treated as a controlled reservoir**

**2.—(1)** This section determines when a section 1(a) or (b) structure or area which is not a controlled reservoir is to be treated as a controlled reservoir for the purposes of this Act.

**(2)** Where both of the following apply—

- (a) water does (or could) flow from a section 1(a) or (b) structure or area to any other section 1(a) or (b) structure or area, and

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- (b) any 2 or more such structures or areas (taken together) are capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land,

each of the section 1(a) or (b) structures or areas is to be treated for the purposes of this Act as a controlled reservoir.

(3) The Department, having taken into account the matters mentioned in section 3, may by regulations provide that a section 1(a) or (b) structure or area which neither is a controlled reservoir, nor falls to be treated as a controlled reservoir under subsection (2), is to be treated for the purposes of this Act as a controlled reservoir.

(4) The Department must serve notice of the making of regulations under subsection (3) on the person who will, as at the date of the making of them, be the reservoir manager of any section 1(a) or (b) structure or area which will, by virtue of the regulations, be treated as a controlled reservoir for the purposes of this Act; and such notice must advise the person of—

- (a) the requirement for the reservoir manager to register the controlled reservoir with the Department in accordance with sections 10 and 13,
- (b) the period within which the reservoir manager must do so.

(5) In this section and section 3, a “section 1(a) or (b) structure or area” means a structure, lake or other area referred to in paragraph (a) or (b) of section 1.

#### PROSPECTIVE

#### **Matters to be taken into account under section 2(3)**

**3.—**(1) The matters the Department is required by section 2(3) to take into account are—

- (a) in so far as it is reasonably practicable to do so, as respects the section 1(a) or (b) structure or area alone or, where water does or could flow between it and any other section 1(a) or (b) structure or area, also any such other structure or area—
  - (i) the potential adverse consequences of an uncontrolled release of water from the structure or area,
  - (ii) the probability of an uncontrolled release of water from the structure or area,
- (b) such other matters as the Department may, by regulations, provide.

(2) For the purposes of subsection (1)(a)(i), potential adverse consequences include the matters specified in paragraphs (a) and (b) of section 22(2) (for the purposes of reservoir designation).

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(3) The issues the Department may take into account in assessing under subsection (1)(a) the potential adverse consequences or probability of an uncontrolled release of water from a section 1(a) or (b) structure or area include, as regards the structure or area, the issues specified in paragraphs (a) to (e) of section 22(3) and in regulations under section 23 (for the purposes of reservoir designation); and for that purpose the references in those paragraphs of section 22(3) to “the reservoir” are to be construed as references to the section 1(a) or (b) structure or area.

(4) Before making regulations under subsection (1)(b), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

#### PROSPECTIVE

#### **Controlled reservoirs: further provision**

4.—(1) The Department may by order substitute a different volume of water for the volume for the time being specified in sections 1, 2(2)(b), 41(3) and (5), 45(3)(a) and 49(3)(b).

(2) The Department may by regulations make provision for the purposes of sections 1, 2, 41, 45 and 49 as to—

- (a) how the volume of water capable of being held above the natural level of the surrounding land is to be calculated,
- (b) how “natural level” and “surrounding land” are to be construed.

(3) Before making an order under subsection (1) or regulations under subsection (2), the Department must consult—

- (a) the Institution of Civil Engineers,
- (b) such other organisations representing engineering or concerned with the practice of water and environmental management as it considers appropriate.

#### **Controlled reservoirs: supplementary**

5.—(1) A controlled reservoir includes any basin, spillway, valve, dam, pumping station, weir, sluice, pipe and other thing which is integral to the functioning or operation of the reservoir.

(2) The following structures or areas are not a controlled reservoir (and are not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 2(2) or (3))—

- (a) a canal or other inland waterway,

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- (b) an embanked watercourse,
  - (c) a road or railway embankment which is not integral to the functioning or operation of a controlled reservoir,
  - (d) a weir which does not serve a functional or operational purpose as regards a controlled reservoir,
  - (e) a structure or area of water which protects land from the sea,
  - (f) a pond within an extractive waste site or other waste facility,
  - (g) a sewage sludge lagoon or other waste water treatment lagoon,
  - (h) an ash, silt or sludge lagoon used for the purpose of a mine or power generation,
  - (i) a lagoon for the storage of chemical materials or their waste products,
  - (j) a slurry tank.
- (3) The Department may by regulations make provision as to—
- (a) what constitutes any of the structures or areas referred to in subsection (2),
  - (b) what other thing (if any) described in the regulations is not a controlled reservoir (and is not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 2(2) or (3)).

### *Reservoir managers*

#### **Reservoir managers**

**6.—**(1) This section determines who is the reservoir manager of a controlled reservoir for the purposes of this Act.

(2) A water undertaker is the reservoir manager of a controlled reservoir, or any part of a controlled reservoir, which is managed or operated by it.

(3) A sewerage undertaker is the reservoir manager of a controlled reservoir which is managed or operated by it.

(4) Subsections (5) and (6) apply where—

- (a) a water undertaker is not, by virtue of subsection (2), the reservoir manager of all or part of a controlled reservoir,
- (b) a sewerage undertaker is not, by virtue of subsection (3), the reservoir manager of a controlled reservoir.

(5) Any person who manages or operates the reservoir or any part of it, but is not the owner of the reservoir (or the part), is the reservoir manager of the reservoir (or the part).

(6) The owner of any part of the reservoir for which no person is reservoir manager by virtue of subsection (5) is the reservoir manager of the part.

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(7) In this section, a reference to managing or operating a reservoir is, in relation to a reservoir which is being constructed or restored to use (within the meaning of Part 3), to be read as referring to proposing to manage or operate the reservoir.

(8) For the avoidance of doubt the Department, in carrying out or maintaining any works or taking any other action in relation to a controlled reservoir (or any part of a controlled reservoir) by virtue of its powers under the Drainage (Northern Ireland) Order 1973, is not to be regarded as managing or operating the reservoir (or part).

#### PROSPECTIVE

##### **Multiple reservoir managers: supplementary**

7.—(1) This section applies where by virtue of section 6 there is more than one reservoir manager of a controlled reservoir.

(2) The requirements of this Act apply in relation to each of the reservoir managers (whether or not they make a nomination under subsection (3)).

(3) Any of the reservoir managers (“the nominating manager”) may nominate another of the reservoir managers (“the nominee”) to do any of the following on behalf of the nominating manager—

- (a) fulfil any requirements of this Act to which the nominating manager is subject and which are specified in the nomination,
- (b) exercise any rights the nominating manager has under this Act and which are so specified.

(4) A nomination made under subsection (3) must in addition specify the name, postal address and telephone contact details of the nominee.

(5) The nominating manager must, not later than 28 days after the date of the nomination, give notice of the nomination and of what it contains to—

- (a) the Department,
  - (b) each other reservoir manager of the controlled reservoir,
  - (c) any supervising engineer, inspecting engineer, other qualified engineer or construction engineer commissioned in relation to the reservoir (see Parts 2 and 3).
- (6) Where a nomination is duly made and notice of it is duly given—
- (a) the Department may notify and consult the nominee in accordance with the nomination,
  - (b) any supervising engineer, inspecting engineer, other qualified engineer or construction engineer commissioned for the time being in relation to the reservoir may give any notice, report, certificate or other document

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(required by this Act to be given to the nominating manager) to the nominee in accordance with the nomination.

(7) In subsection (6)(b), reference to the “supervising engineer” is to be construed as including the nominated representative of the supervising engineer under section 26(7)(a) who is acting as such in the event of the supervising engineer being unavailable.

#### PROSPECTIVE

### **Duty of multiple reservoir managers to co-operate**

8.—(1) Where by virtue of section 6 there is more than one reservoir manager of a controlled reservoir, each of the reservoir managers must co-operate with any other reservoir manager of the reservoir (including a nominee under section 7) so far as is necessary to enable the reservoir manager concerned to comply with the requirements to which the manager is subject under this Act.

(2) A reservoir manager who fails to comply with subsection (1) commits an offence.

(3) A reservoir manager guilty of an offence under subsection (2) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A reservoir manager guilty of an offence under that subsection in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### PROSPECTIVE

### *Registration*

### **Controlled reservoirs register**

9.—(1) The Department must establish and maintain a controlled reservoirs register.

(2) The controlled reservoirs register is a register containing (subject to subsection (4)), such information and documents in relation to each controlled reservoir as the Department may by regulations specify.

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(3) The Department must make arrangements for the controlled reservoirs register (or a copy of it) to be available for inspection by any person at all reasonable times.

(4) If it appears to the Secretary of State that the inclusion of any information or document in the register would adversely affect national security, the Secretary of State may direct the Department not to include the information or document in the register.

### **Reservoir managers' duty to register with the Department**

**10.—**(1) The reservoir manager of each controlled reservoir must register the reservoir with the Department in accordance with sections 11 to 13.

(2) A reservoir manager of a controlled reservoir registers the reservoir under subsection (1) by providing to the Department such information and documents as the Department may by regulations specify.

(3) Regulations under subsection (2) may, in particular, include provision as to—

- (a) the further information or documents that a reservoir manager of a controlled reservoir must provide to the Department for the purpose of maintenance by it of the controlled reservoirs register,
- (b) the time by which any such information or document must be provided.

### **Structures or areas which are controlled reservoirs on the relevant date**

**11.—**(1) Registration under section 10 of a structure or area which is a controlled reservoir on the relevant date must, subject to subsection (2), take place not later than 6 months after that date.

(2) The Department may, in relation to information or a document where it considers it appropriate to do so, extend the period of 6 months specified in subsection (1) to such other period as it may, by notice served on the reservoir manager, specify; and different periods may be specified in relation to different information or documents.

(3) In this section, and section 12, “the relevant date” means the date of commencement of section 10.

### **Structures or areas which become controlled reservoirs after the relevant date**

**12.—**(1) Registration under section 10 of a structure or area which becomes a controlled reservoir after the relevant date must, subject to subsection (2), take place not later than 28 days after the date on which a preliminary certificate is given in relation to it for the first time (see section 47).

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(2) The Department may, in relation to information or a document where it considers it appropriate to do so, extend the period of 28 days specified in subsection (1) to such other period as it may, by notice served on the reservoir manager, specify; and different periods may be specified in relation to different information or documents.

### **Structures or areas which are the subject of regulations under section 2(3)**

**13.—**(1) Registration under section 10 of a structure or area which is to be treated as a controlled reservoir by virtue of regulations made under subsection (3) of section 2 must, subject to subsection (2), take place not later than 28 days after the day on which notice of the making of the regulations is served by the Department under subsection (4) of that section.

(2) The Department may, in relation to information or a document where it considers it appropriate to do so, extend the period of 28 days specified in subsection (1) to such other period as it may, by notice served on the reservoir manager, specify; and different periods may be specified in relation to different information or documents.

### **Fees: registration and administration**

**14.—**(1) The Department may by regulations make provision as to—

- (a) payment to it by reservoir managers of controlled reservoirs of fees to cover costs reasonably incurred by it in relation to registration,
- (b) payment to it of other reasonable annual or recurring fees in relation to the performance by it of its functions as respects the controlled reservoirs register and registration of controlled reservoirs in the register,
- (c) the amount of such fees.

(2) In making regulations under subsection (1) the Department must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.

(3) Regulations under subsection (1) may include such other matters as the Department considers appropriate, including in particular provision specifying—

- (a) the maximum amount of any fee,
- (b) the circumstances in which any fee is payable,
- (c) different fees to be imposed in respect of different reservoirs or in other different cases or categories of case,
- (d) how fees may be collected and recovered.



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### **Registration: supplementary**

**15.—**(1) Where a person ceases to be a reservoir manager of a controlled reservoir, the person must, not later than 28 days after ceasing to be such, give notice to the Department stating—

- (a) that fact,
- (b) the date on which the person ceased to be reservoir manager,
- (c) the name of any person who has (or will) become a reservoir manager of the controlled reservoir in place of the person,
- (d) such other information as the Department may specify.

(2) A person who becomes a reservoir manager of a controlled reservoir must, not later than 28 days after becoming reservoir manager, give notice to the Department stating—

- (a) that fact,
- (b) the date on which the person became reservoir manager,
- (c) such other information as the Department may specify.

(3) Where the Department receives notice under subsection (1) or (2), it must take such steps as it considers are reasonably required to inform the new reservoir manager, as soon as is reasonably practicable, of the duties of reservoir managers of controlled reservoirs under this Act.

### **Offences: registration**

**16.—**(1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements relating to registration is an offence—

- (a) the requirements of section 10 (including those of regulations made under subsection (2) of that section) (registering controlled reservoir with Department in accordance with sections 11 to 13),
- (b) the requirements of section 15(1) or (2) (notice of change of reservoir manager).

(2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives any information or document which is false or misleading in a material respect commits an offence.

(3) A reservoir manager guilty of an offence under subsection (1) or (2) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A reservoir manager guilty of an offence under either of those subsections in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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(5) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and could not reasonably be expected to have known that the person was the reservoir manager of a controlled reservoir to whom the requirement concerned applied.

(6) References in this section to a reservoir manager or the reservoir manager are to be construed, in relation to an offence of failing to comply with the requirements of section 15(1), as including a person who has ceased to be a reservoir manager.

## PROSPECTIVE

### *Reservoir designation*

#### **Giving a reservoir designation**

**17.—**(1) The Department must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a reservoir designation.

(2) A reservoir designation is a designation of the controlled reservoir by the Department as one of the following categories—

- (a) a high-consequence reservoir,
- (b) a medium-consequence reservoir,
- (c) a low-consequence reservoir.

(3) In giving a reservoir designation, the Department must, in so far as it is reasonably practicable to do so, take into account the matters mentioned in section 22.

(4) The Department gives a controlled reservoir a reservoir designation by notice served on the reservoir manager of the reservoir—

- (a) specifying the reservoir designation it has given the reservoir,
- (b) specifying the reasons for its decision,
- (c) specifying the date on which the designation takes effect,
- (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
- (e) specifying that the reservoir designation which is the subject of an application continues to have effect pending a decision being made in the review.

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### **Periodic re-assessment of reservoir designations**

**18.—(1)** The Department must carry out periodic re-assessments of reservoir designations in accordance with this section.

(2) In carrying out a periodic re-assessment of a reservoir designation in accordance with this section the Department must, having taken into account the matters mentioned in section 22 in so far as it is reasonably practicable to do so, either—

- (a) confirm the designation, or
- (b) give the controlled reservoir a reservoir designation as one of the other categories referred to in paragraphs (a) to (c) of section 17(2) (for the purposes of this Act “a different designation”).

(3) A periodic re-assessment of the reservoir designation of a controlled reservoir must be carried out at the following times—

- (a) at any time the Department considers the designation may have ceased to be appropriate,
- (b) in any event, not later than 10 years from whichever is the latest of the following—
  - (i) the date on which notice of the designation was served under section 17(4),
  - (ii) the date on which notice of the decision in a periodic re-assessment of the designation was served under subsection (4),
  - (iii) the date on which notice of the decision in a review in respect of the designation was served under section 20(6),
  - (iv) the date on which notice of the decision in an appeal in respect of the designation was given under section 21.

(4) The Department confirms the designation, or gives the controlled reservoir a different designation, by notice served on the reservoir manager of the reservoir—

- (a) specifying whether it confirms the designation or gives the reservoir a different designation,
- (b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,
- (c) specifying the reasons for its decision,
- (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
- (e) specifying that the reservoir designation which is the subject of an application continues to have effect pending a decision being made in the review.

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**Date on which reservoir designation given under section 17 or given as different designation under section 18 takes effect**

**19.—**(1) A reservoir designation—

- (a) given under section 17,
- (b) given as a different designation on a periodic re-assessment under section 18,

subject to subsections (2) and (3), takes effect on the day after the date on which notice of the designation is served by the Department on the reservoir manager under the section concerned.

(2) Where a reservoir designation is given under section 17 in relation to a controlled reservoir which is being constructed or restored to use (within the meaning of Part 3), the designation takes effect on the day after the date of the final certificate in respect of those works. (Section 49 makes provision about final certificates.)

(3) Where a reservoir designation is given (as a different designation) under section 18 in relation to a controlled reservoir which is subject to alteration for the purpose of increasing or decreasing the capacity of the reservoir, the different designation takes effect on the day after the date of the final certificate in respect of those works.

**Review by Department of its decision under section 17 or 18**

**20.—**(1) A reservoir manager of a controlled reservoir on whom notice is served under section 17(4) or 18(4) may apply to the Department for a review by it of its decision under section 17 or 18.

(2) An application must be made in writing before the end of the period of 90 days beginning with the date on which the notice was served.

(3) In considering an application under this section, the Department—

- (a) may commission to make recommendations to it about the reservoir designation either (or both)—
  - (i) an engineer who is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
  - (ii) such other person as the Department considers appropriate,
- (b) must take into account—
  - (i) a recommendation by an engineer or other person commissioned by it under paragraph (a),
  - (ii) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,

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(iii) any representations made to it by or on behalf of the reservoir manager in relation to the application.

(4) A reservoir designation in respect of which an application is made under this section continues to have effect pending a decision being made in the review.

(5) Where as a result of the review the Department gives the controlled reservoir a different designation, the designation which is the subject of the review ceases to have effect from the date on which the Department gives its decision; and the different designation takes effect on the day after the date on which notice is served under subsection (6).

(6) The Department must notify the reservoir manager of its decision in the review by serving on the reservoir manager notice—

- (a) specifying whether it confirms the designation or gives the reservoir a different designation,
- (b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,
- (c) specifying the reasons for its decision,
- (d) giving information about the right of appeal under section 21 against its decision, the procedure for making an appeal and the period within which an appeal may be made,
- (e) specifying that the designation which is the subject of an appeal continues to have effect pending a decision being made in the appeal.

(7) The Department may by regulations make further provision in relation to applications and reviews under this section.

### **Appeal against Department's decision in a review under section 20**

**21.—**(1) A reservoir manager of a controlled reservoir on whom notice of the Department's decision in a review under section 20 is served may appeal to the Water Appeals Commission against the decision on one or more of the grounds mentioned in subsection (3).

(2) Any such appeal must be made in writing before the end of the period of 60 days beginning with the date on which the notice under section 20(6) was served.

(3) The grounds referred to in subsection (1) are that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(4) The Commission may confirm the reservoir designation or give the reservoir a different designation.

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- (5) A decision in an appeal under this section must take into account—
- (a) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
  - (b) any representations made in relation to the appeal by or on behalf of—
    - (i) the reservoir manager,
    - (ii) the Department.

(6) A reservoir designation in respect of which an appeal is made under this section continues to have effect pending a decision being made in the appeal.

(7) Where the decision in the appeal is that the controlled reservoir is given a different designation, the designation which is the subject of the appeal ceases to have effect from the date on which the appeal is determined; and the different designation takes effect on the day after the date on which notice is given under subsection (8).

(8) Notice by the Commission to the reservoir manager and the Department of the Commission's decision in the appeal must specify—

- (a) whether the Commission confirms the reservoir designation or gives the reservoir a different designation,
- (b) where the Commission gives the reservoir a different designation, the different designation and the date on which it takes effect,
- (c) the reasons for the decision.

**Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)**

**22.—**(1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
- (b) the probability of such a release.

(2) The potential adverse consequences of an uncontrolled release of water from a controlled reservoir include—

- (a) potential damage to any of the following—
  - (i) human life or human health (as the Department considers appropriate in the circumstances),
  - (ii) the environment,
  - (iii) economic activity,
  - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.

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(3) Issues that may be taken into account in assessing under subsection (1) the potential adverse consequences or probability of an uncontrolled release of water from a controlled reservoir include any of the following—

- (a) the purpose for which the reservoir is (or is to be) used,
- (b) the materials used to construct the reservoir,
- (c) the way in which the reservoir was or is being constructed,
- (d) the age and condition of the reservoir and how it has been maintained,
- (e) such other issues as the Department considers relevant.

**Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a): further provision**

**23.**—(1) The Department may by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

(2) Without prejudice to the generality of subsection (1), the regulations may—

- (a) make further provision in relation to the matters in section 22(1),
- (b) in particular, when the Department is satisfied that an appropriate methodology exists for assessing the probability of an uncontrolled release of water from a controlled reservoir, include provision as regards the methodology that is to be taken into account in assessing such probability,
- (c) amend references in this Act to “reservoir designation”, “high-consequence reservoir”, “medium-consequence reservoir” and “low-consequence reservoir” in pursuance of the regulations,
- (d) include adaptations for the purposes of section 3(3).

(3) Before making regulations under subsection (1), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

**High-consequence reservoirs, medium-consequence reservoirs and low-consequence reservoirs: further provision**

**24** References in this Act to a “high-consequence reservoir”, “medium-consequence reservoir” or “low-consequence reservoir” are references to a controlled reservoir designated as such for the time being under section 17, 18, 20 or 21.

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