



## 2015 CHAPTER 8

### **PART 6**

#### **CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES**

##### *Powers of entry*

##### **Powers of entry**

**93.—**(1) Any person duly authorised in writing by the Department may, at any reasonable time for any of the purposes in subsection (2), enter—

- (a) land on which a controlled reservoir is situated,
  - (b) land on which a structure or area, which is to be treated by virtue of section 2(2) for the purposes of this Act as a controlled reservoir, is situated,
  - (c) land on which the Department considers there is a structure or area in relation to which the Department is considering making regulations under section 2(3),
  - (d) land on which a structure or area which previously at any time has been a controlled reservoir is situated,
  - (e) neighbouring or other land through which access is required in order to enter any land referred to in paragraphs (a) to (d).
- (2) The purposes are to carry out an inspection, survey or other operation—
- (a) to determine whether any provision of this Act applies,

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- (b) for the purpose of assisting the Department in giving a reservoir designation or a review, periodic re-assessment or appeal as regards a reservoir designation,
- (c) to determine whether a direction under section 26(4)(a) (supervision: direction to carry out visual inspection) has been complied with,
- (d) to determine—
  - (i) whether a measure directed in an inspection report or a pre-commencement safety recommendation has been taken (whether before or after the giving of an enforcement notice under section 71),
  - (ii) the period to be specified in a notice under that section,
- (e) to determine whether a measure directed in a safety report has been taken,
- (f) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,
- (g) to determine whether the records required by sections 37 or 58 are being maintained,
- (h) to determine whether any incident is being reported in accordance with regulations under section 56,
- (i) to determine whether a flood plan is being prepared in accordance with regulations under section 57,
- (j) for the purposes of section 73 (Department's power to arrange taking of safety measures),
- (k) to determine what (if any) emergency measures should be taken under section 75, or for any purpose connected with taking such measures,
- (l) to determine whether a stop notice should be served,
- (m) to assess whether any offence under this Act may be being, or has been, committed,
- (n) for the purposes of section 97 (assessment of compensation or reinstatement works).

### **Warrants authorising entry**

**94.—**(1) A lay magistrate may by warrant authorise any person entitled to exercise a right of entry under section 93 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under this section only if the lay magistrate is satisfied on a complaint on oath as to both of the following—

- (a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,

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- (b) that any of the following applies—
  - (i) the conditions in subsection (3) are satisfied,
  - (ii) the land is unoccupied,
  - (iii) the case is one of urgency.
- (3) The conditions referred to in subsection (2)(b)(i) are—
  - (a) that the person applying for the warrant has given notice under section 95(2)(a) of the person's intention to exercise the right,
  - (b) that the notice period has expired,
  - (c) that either—
    - (i) permission to exercise the right in relation to the land has been refused, or
    - (ii) such a refusal is reasonably expected.
- (4) For the purposes of subsection subsection (3)(c)(i), permission to exercise the right is to be regarded as having been refused if no reply is received within a reasonable period to a request to exercise the right.
- (5) A warrant granted under this section—
  - (a) does not entitle a person to use force against an individual,
  - (b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

#### **Powers of entry: supplementary**

- 95.—**(1) A right to enter land conferred by section 93 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
- (a) take on to the land such other persons and such materials and equipment (including machinery and vehicles) as may be reasonably required for the purposes of assisting the persons,
  - (b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.
- (2) Except for a purpose referred to in section 93(2)(k), a person may not demand entry to land which is occupied unless either—
- (a) at least 7 days' notice has been served on the occupier, or
  - (b) the entry is authorised by a warrant under section 94.
- (3) Notice under subsection (2)(a) must—
- (a) specify the purpose for which entry is required,
  - (b) specify so far as practicable the nature of any proposed works on the land.

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(4) A person authorised by virtue of section 93 to enter land must on request produce written evidence of the authorisation.

#### **Offence: preventing or obstructing entry**

**96.—**(1) Any person who wilfully prevents or obstructs another person entitled to enter land by virtue of section 93 (whether or not by virtue of a warrant under section 94) commits an offence.

(2) A person guilty of an offence under subsection (1)—

- (a) 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,
- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Compensation**

**97.—**(1) Subject to subsection (7), the Department must pay compensation in accordance with this section where subsection (2) or (4) applies.

(2) This subsection applies where, in the exercise of a right to enter land conferred by section 93 (whether or not under a warrant under section 94) any of the following occurs—

- (a) any land, other than land which is occupied by the reservoir manager, is damaged,
- (b) the enjoyment of any land, other than land which is so occupied, is disturbed.

(3) Compensation under subsection (1) in respect of the damage or disturbance, where subsection (2) applies, is to be paid to—

- (a) a person with an interest in the land,
- (b) a person whose enjoyment of the land is disturbed.

(4) This subsection applies where in the exercise of a right to enter land conferred by section 93 (whether or not under a warrant under section 94), land occupied by the reservoir manager is damaged and the reservoir manager is not disqualified from claiming compensation.

(5) The reservoir manager of a controlled reservoir is disqualified from claiming compensation under subsection (1) in either of the following circumstances—

- (a) the exercise of the right was for the purposes of section 73,
- (b) the exercise of the right was for the purpose of taking measures under section 75 and the reservoir manager had not taken all practicable steps to prevent an escape of water from the reservoir.

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(6) Compensation under subsection (1) in respect of the damage, where subsection (4) applies, is to be paid to the reservoir manager.

(7) The Department may agree to secure the reinstatement or partial reinstatement of the land instead of payment of compensation under subsection (1), or a combination of such reinstatement and compensation; and subject to subsection (10) any such agreement reached with a person referred to in subsection (2), or the reservoir manager, is binding on the parties to it.

(8) If the Department considers it appropriate to do so it may, in the circumstances mentioned in subsection (9), by notice served on the reservoir manager require the manager to pay the Department such amount of the following as is specified in the notice—

- (a) any compensation payable under this section,
- (b) any costs reasonably incurred by the Department in relation to such compensation or an agreement under subsection (7),

(9) The circumstances are where the damage or disturbance concerned occurred in the exercise of a right to enter land in either of the circumstances referred to in paragraph (a) or (b) of subsection (5).

(10) Any dispute as to a right of compensation under this section, the amount of any such compensation or costs incurred by the Department in relation to such compensation, or costs incurred by it in relation to an agreement under subsection (7), is to be determined by the Lands Tribunal.

**Changes to legislation:**

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