

*These notes refer to the Reservoirs Act (Northern Ireland)  
2015 (c.8) which received Royal Assent on 24 July 2015*

# Reservoirs Act (Northern Ireland) 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Controlled Reservoirs, Registration and Reservoir Designation**

##### *Section 1 – Controlled reservoirs*

The Act provides a regulatory regime for reservoirs that will be known as ‘controlled reservoirs’ as defined by the legislation. The definition of a ‘controlled reservoir’ is set out in principal in section 1 and includes structures or areas designed or used for collecting and storing water, artificial or partly artificially lakes or other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Further detail both in relation to what is, and what is not, a controlled reservoir for the purposes of the Act is contained in section 5; and under section 2 certain structures or areas which are not in themselves controlled reservoirs will fall to be regulated by the Act as if they were controlled reservoirs.

##### *Section 2 – Structure or area which is to be treated as a controlled reservoir*

Under this section, certain structures or areas which individually are not a controlled reservoir under section 1 will be regulated by the Act as if they were controlled reservoirs.

The first scenario involves combinations of smaller structures or areas. Combinations have the potential to cause a similar degree of risk to public safety as individual reservoirs of a comparable releasable capacity, even though the individual structures or areas that comprise the combinations may each hold less than 10,000 cubic metres of water above the natural level of the surrounding land. Subsection (2) provides that combinations of such structures or areas are to be treated for the purposes of the Act as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can flow or does flow between them and that there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity which is above the natural level of any part of the surrounding land. This is intended to ensure that combinations of reservoirs are subject to regulation.

Subsection (3) enables the Department by regulations, to provide that a smaller reservoir is to be subject to the Act in the same way as if it were a controlled

reservoir, if the Department determines that, despite the smaller capacity, reservoir failure has the potential to result in loss of life or certain other harm.

Subsection (4) requires the Department to notify the reservoir manager of the structure or area that by regulations is to be treated as a controlled reservoir. The notice must provide advice about registration requirements and timescales.

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

This section requires the Department to take the adverse consequence and probability of an uncontrolled release of water into account when considering making a structure or area a controlled reservoir by regulation under section 2(3). The process and criteria to be used are the same as that to determine the reservoir designation for a controlled reservoir and detailed in section 22. Subsection (4) requires consultation when making any regulations specifying other matters to be taken into account.

### ***Section 4 – Controlled reservoirs: further provisions***

Subsection (1) enables the Department to make provision by order for a different volume of water to be substituted for the volume threshold for a controlled reservoir, currently specified in the Act. This enables the Department to alter the threshold above which reservoirs are controlled reservoirs and therefore subject to the regulatory regime of the Act.

Subsection (2) enables the Department to make provision by regulations to determine how the volume of water capable of being held above the natural level of the surrounding land is to be calculated and the meaning of ‘natural level’ and ‘surrounding land’ for the purposes of the Act.

Subsection (3) deals with the consultation process in making the order and the regulations.

### ***Section 5 – Controlled reservoirs: supplementary***

Subsection (1) clarifies that anything which is integral to the functioning or operation of a controlled reservoir forms part of it and would be subject to regulation under the Act and gives some specific examples.

Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Act.

Subsection (3) enables the Department, by regulations, to define with more precision the things that are listed in subsection (2) and to exclude other things from being ‘or being treated as’ controlled reservoirs.

### ***Section 6 – Reservoir managers***

Responsibility for managing or operating a controlled reservoir is placed upon persons or organisations referred to in the Act as ‘the reservoir manager’. It is possible that a controlled reservoir may be managed by one reservoir manager

or by more than one (multiple) reservoir managers. Section 6 specifies who the reservoir manager of a controlled reservoir is for the purposes of the Act.

Subsection (2) provides that a water undertaker that manages or operates a controlled reservoir, or any part of a controlled reservoir, is a reservoir manager for all of the reservoir or the reservoir manager for the part which is managed or operated by it.

Subsection (3) provides that a sewerage undertaker that manages or operates a controlled reservoir is a reservoir manager. Therefore, the sewerage undertaker will be the sole reservoir manager of a controlled reservoir managed or operated by it, as generally this would be tanks dealing with effluent and therefore it would be inappropriate to have another manager.

Where there is no sewerage undertaker involved in the management or operation of a reservoir, the water undertaker or the person(s) or organisation(s) that manages or operates the controlled reservoir, or any part of the controlled reservoir, would be the reservoir manager for all or part of the reservoir that they manage or operate.

The owner of all or part of a controlled reservoir would be the reservoir manager for the entire reservoir, or the reservoir manager for the part of a controlled reservoir which they own, where there is no sewerage undertaker, or water undertaker, or person(s) or organisation(s) managing or operating all of a controlled reservoir or any part of it.

Subsection (7) determines that the reservoir manager for a reservoir which is being constructed or restored to use would be the person who is proposing to manage or operate the reservoir.

Subsection (8) clarifies, for the avoidance of doubt that, in carrying out or maintaining any works or taking any other action in relation to a controlled reservoir or any part of it in exercise of powers under the Drainage (Northern Ireland) Order 1973, the Department is not to be regarded as a reservoir manager. Any such works or actions by the Department will only be undertaken pursuant to the Department's functions under that Order.

### ***Section 7 - Multiple reservoir managers: supplementary***

This section applies where there is more than one reservoir manager for a controlled reservoir. Subsection (2) provides that the requirements of the Act apply to each of the reservoir managers separately and any duties of the reservoir manager set out in the Act must be complied with by each of the reservoir managers for a reservoir.

To avoid duplication of duties and reduce the administrative burden on reservoir managers, subsection (3) enables reservoir managers to nominate one of the managers to fulfil any requirements of the Act to which they are subject. Subsection (4) provides that a nomination must specify the name, address and contact details of the nominee.

Subsection (5) requires that where such a nomination is made, the nominating manager must give notice of the nomination and what it contains to the Department, to any qualified engineer commissioned in relation to the reservoir and to the other reservoir managers for the controlled reservoir. The Department may notify and consult with the nominee (rather than the reservoir manager who made the nomination) when required to notify or consult the reservoir managers under the Act.

Similarly, engineers commissioned in relation to the reservoir may give certificates and other documents that they are required to issue under the Act to the nominee. Subsection (7) ensures that the nominated representative of the supervising engineer who, if the supervising engineer is unavailable is acting in the place of that engineer, may do the same.

### ***Section 8 – Duty of multiple managers to co-operate***

Section 8 requires reservoir managers, where there are two or more of them in respect of a controlled reservoir, to co-operate with each other as far as is necessary to enable all of the reservoir managers for a controlled reservoir to comply with the provisions of this Act. Subsection (2) makes it an offence not to co-operate. Subsection (3) and (4) set out the maximum criminal sanctions associated with that offence. This section applies whether or not a nominee is appointed under section 7.

### ***Section 9 – Controlled reservoirs register***

This section requires the Department to establish and maintain a register of controlled reservoirs. The Department will make regulations regarding the information and documents which will be held in the register and it is envisaged that these may include such information as name and location of the reservoir, its maximum capacity, the name and address of the reservoir manager as well as copies of any reports, certificates etc., relating to the reservoir. Subsection (3) requires the Department to make the register or a copy of it available for public inspection. Subsection (4) enables the Secretary of State to direct the Department to withhold information or documents from the register if inclusion would adversely affect national security.

### ***Section 10 – Reservoir managers' duty to register with the Department***

This section requires the reservoir managers of controlled reservoirs to register their reservoirs by providing the Department with information and documents that are to be detailed in regulations. Subsection (3) enables the Department to bring forward regulations to require further information or documents from reservoir managers for maintaining the register.

***Section 11 – Structures or areas which are controlled reservoirs on the relevant date***

This section requires the reservoir manager to register a controlled reservoir not later than 6 months after the commencement date of section 10 of the Act. Subsection (2) enables the Department, by notice to extend the period of 6 months to such time as it considers appropriate.

***Section 12 – Structures or areas which become controlled reservoirs after the relevant date.***

This section requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. Preliminary certificates are issued under section 44 of the Act when the construction engineer supervising the construction of the reservoir considers that the reservoir may safely be filled (either wholly or partly) with water. Subsection (2) again enables the Department by notice to extend the period of 28 days to such time as it considers appropriate.

***Section 13 – Structures or areas which are the subject of regulations under section 2(3)***

This section deals with the registration timeframe for a structure or area which is to be treated as a controlled reservoir due to regulations under section 2(3). The reservoir manager must register the reservoir not later than 28 days after the date of notice (under section 2(4)) by the Department of the making of the regulations. Subsection (2) again enables the Department by notice to extend the period of 28 days to such time as it considers appropriate.

***Section 14 – Fees: registration and administration***

Section 14 enables the Department by regulations to introduce the requirement for reservoir managers to pay a fee in relation to registration or other such reasonable annual fees in relation to the Department exercising its functions in respect to the controlled reservoirs register and registration of controlled reservoirs in the register.

***Section 15 – Registration: supplementary***

This section requires a person to notify the Department within 28 days of the date that they cease to be a reservoir manager for a controlled reservoir and provide the name of the person who will be the new reservoir manager. Subsection (2) requires a new reservoir manager to notify the Department and to provide the date of the change. Subsection (3) requires the Department, as soon as reasonably practicable, to inform the new reservoir manager of the duties of a reservoir manager under the Act.

### ***Section 16 – Offences: registration***

This section provides that it is an offence for a reservoir manager to fail to comply with the specified requirements for the registration of a controlled reservoir and in relation to the change of a reservoir manager. Under subsection (2), it is an offence to knowingly or recklessly give false information or document in relation to registration. Subsections (3), and (4), set out the maximum penalties for anyone found guilty of an offence under this section and subsection (5) provides for a defence in relation to an offence in certain circumstances. Subsection (6) ensures that a person does not avoid prosecution merely by ceasing to be a reservoir manager.

### ***Section 17 – Giving a reservoir designation***

The Act introduces a consequence-based approach to the management of controlled reservoirs with different regulatory requirements for reservoirs with different consequence categories. Section 17 requires the Department to give a reservoir designation as soon as reasonably practicable after the registration of a controlled reservoir.

Subsection (2) establishes the reservoir designation categories for a controlled reservoir as high, medium or low consequence. Subsection (3) requires the Department to take into account the matters mentioned in section 22 when giving a reservoir designation. The matters are the potential consequences of an uncontrolled release of water from the reservoir and the probability of such a release.

Subsection (4) provides for the Department to give notice of the reservoir designation to a reservoir manager and details the information to be provided in the notice.

### ***Section 18 – Periodic re-assessment of reservoir designations***

The Department must undertake a periodic re-assessment of the reservoir designation, taking into account the matters mentioned in section 22 and must either confirm or give the reservoir a different designation. Subsection (3) details the timeframes within which a periodic re-assessment must be undertaken. Generally a periodic re-assessment would be undertaken not later than 10 years from the date of the first designation or the latest periodic re-assessment.

Subsection (4) requires the Department to give notice to the reservoir manager of its decision - either it confirms the designation or gives a different reservoir designation. The information to be specified in the notice is listed. The notice must provide the reservoir manager with the reason for the Department's decision, information about the right to seek review of the decision; and it must advise that the designation continues to have effect pending a decision being reached in a review.

***Section 19 – Date on which reservoir designation given under section 17 or given as a different designation under section 18 takes effect***

The notice giving a reservoir designation for the first time under section 17 or a notice giving a different designation under section 18 takes effect on the day after the notice is served. Subsection (2) provides that the first reservoir designation for a controlled reservoir being constructed or restored to use takes effect the day after the date of the final certificate in respect of the works. Subsection (3) provides that where a different designation is given after a periodic reassessment for a controlled reservoir being increased or decreased in capacity, the different designation notice takes effect on the day after the date of the final certificate in respect of the works.

***Section 20 - Review by Department of its decision under section 17 or 18***

Section 20 enables reservoir managers to apply for a review of the Department's decision on reservoir designations made under section 17 or 18. Subsection (2) requires an application for review to be in writing and to be made within 90 days beginning with the date on which the notice of the reservoir designation was served. Subsection (3) details the information that the Department must take into account when considering a review and enables the Department to commission a civil engineer who is a member of a panel established under section 102 who in accordance with an order made under that section may be commissioned under section 20 in relation to the reservoir concerned ("an appropriate panel engineer") or other person, to make recommendations regarding the designation.

Subsection (4) makes it explicit that the reservoir designation continues to apply until the review is complete and subsection (5) provides that, if the review results in the designation being changed, then the previous designation ceases to apply from the date of the Department's decision and the different designation takes effect on the day after the date of the notice of the decision.

Subsection (6) requires the Department to notify the reservoir manager of its decision in a review and details the content of the notice. Subsection (7) provides a power to make regulations which would contain more detailed provision in relation to applications and reviews, for example as to the information to be provided by an applicant, the procedure in a review.

***Section 21 - Appeal against Department's decision in review under section 20***

Reservoir managers have a right of appeal against the decision in a review of a reservoir designation given by the Department. The appeal must be made to the Water Appeals Commission within 60 days of the date on which the notice specifying the decision in a review was served.

Subsection (3) specifies the grounds for appeal and subsection (4) provides that the Commission may confirm the reservoir designation or give the reservoir a different designation. Subsection (5) details the matters and the representations the Commission must take into account when considering an appeal.

Subsection (6) makes it explicit that the reservoir designation continues to apply until the appeal is decided and subsection (7) provides that, if an appeal results in the designation being changed, then the previous designation ceases to apply from the date of the appeal decision and the new reservoir designation takes effect on the day after the date of the notice of the Commission's decision.

***Section 22 – Matters to be taken into account under section 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)***

Section 22 details the matters that must be taken into account in making a reservoir designation for the first time, in undertaking a periodic re-assessment and in reviewing a reservoir designation. These matters must also be considered in an appeal of the reservoir designation.

The matters to be taken into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release of water. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out the issues that may be taken into account when assessing the adverse consequences or the probability of an uncontrolled release of water from a controlled reservoir. These issues include the purpose for which the reservoir is used, the materials used and how the reservoir was constructed, the age, condition and maintenance of the reservoir.

***Section 23 – Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(i) and 21(5)(a): further provision***

This section enables the Department, following consultation with the Institution of Civil Engineers and others, by regulations to make further provision as to the matters that may be taken into account when giving a reservoir designation, re-assessment of a designation, review of a designation and appeal against a designation. The regulations may, in particular, make provision as regards a methodology for assessing the probability of an uncontrolled release of water from a reservoir, when the Department is satisfied that an appropriate methodology exists. The regulations may also make further provisions as regards the matters to be taken into account under section 22(1) and amend references in this Act to high consequence, medium consequence and low consequence reservoir designation.

***Section 24 – High consequence reservoirs, medium consequence reservoirs low consequence reservoirs: further provision***

This section makes it clear that the terms high consequence, medium consequence and low consequence, in relation to a controlled reservoir, refer to the designation of a reservoir. The reader is alerted to the significance of a controlled reservoir's reservoir designation as this determines the management and maintenance requirements.