

*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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Requirements for high consequence and medium consequence reservoirs

Supervision by supervising engineer

Section 25 - Supervision requirements and commissioning of supervising engineer etc

Section 25 requires a high or medium consequence reservoir to be under the supervision of a supervising engineer at all times i.e. on an ongoing basis. A supervising engineer must be commissioned within 6 months of the reservoir designation taking effect and a reservoir manager is required to give notice to the Department within 28 days of the commissioning. A supervising engineer must be an appropriate panel engineer. Unlike other reservoir engineers under the Act, there is nothing to prevent a supervising engineer being an employee of the reservoir manager or having previously been a construction engineer or inspecting engineer in relation to the reservoir.

A supervising engineer remains in place alongside the construction engineer when a high or medium consequence reservoir is undergoing alteration (work for which provision is made in part 3). This is to ensure that the safety of the reservoir continues to be monitored where appropriate and in particular the matters included in a safety report, prepared by the construction engineer, are monitored until a final certificate is issued.

Section 26 – Duties etc. in relation to supervision

This section sets out the key aspects of supervision by commissioned supervising engineers. Subsection (2) lists the engineer's duties; they include notifying the reservoir manager of anything which could affect the safety of the reservoir, monitor compliance with any direction in latest inspection report or recommendation in a pre-commencement inspection report as regards measures to be taken in the interests of safety which is a measure for its maintenance and, monitoring any other matters to be supervised as detailed in an inspection or pre-commencement report, safety report, preliminary certificate or final certificate. The supervising engineer is also required to notify the reservoir manager and

the Department of any failure to comply with any requirement of a direction or recommendation in the latest inspection or pre-commencement report, safety report, preliminary or final certificate, supervise any proposed drawdown of the reservoir and monitor the reservoir manager's recording of water levels and record keeping. The supervising engineer is required to physically visit the controlled reservoir at certain intervals depending on the reservoir designation of the reservoir and in accordance with regulations made under section 27, or undertake additional visits, if recommended in the latest inspection report.

If a supervising engineer considers that a controlled reservoir should be inspected, by an inspecting engineer, subsection (3) requires the supervising engineer to give the reservoir manager a written recommendation to this effect and copy to the Department. Subsection (4) requires the reservoir manager to carry out visual inspections of the reservoir at specified intervals if directed in writing by the supervising engineer for the purposes of identifying anything which may affect the safety of the reservoir.

Subsection (5) requires the supervising engineer to give the reservoir manager an annual written statement of the steps taken by the supervising engineer in relation to his or her responsibilities and any measure taken by the reservoir manager in the interests of safety or to maintain the reservoir. The supervising engineer must send a copy of the written statement to the Department within 28 days (subsection (6)).

Under subsection (7) the supervising engineer must provide the reservoir manager with emergency contact details and in the event of him or her not being available, the contact details of a nominated representative. The supervising engineer is required to provide the Department with such information within 28 days.

Subsection (8) requires a reservoir manager of a high or medium consequence reservoir which is the subject of a pre-commencement inspection report (section 31 refers) to give a copy of the report to the supervising engineer along with any pre-commencement report certificate or other document which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation.

Subsection (10) provides that references to the term 'the supervising engineer' in this section and sections 27 to 31, 35 and 37 are to be construed as including a nominated representative who is acting in place of the supervising engineer if that engineer is unavailable. This ensures that, while the nominated representative is acting in place of the supervising engineer, the Act's provisions in relation to a supervising engineer are to be read as if they referred to the nominated representative.

Section 27 - Regulations as to visits by supervising engineers

This section allows the Department to make provision, by regulation, for a standard number and frequency of visits that must be made to a high or medium

consequence reservoir by a supervising engineer. The regulations will provide for the frequency of visits to be different if the Department considers that a reservoir is of an acceptable standard. The regulations will also place a requirement on the Department to notify the reservoir manager of the number and frequency of visits required as well as providing the reservoir manager with a right of appeal to the Water Appeals Commission against the Department's decision on whether a reservoir is of an acceptable standard and the standard number and frequency of visits to the reservoir.

Section 28 - Visual inspection directed under section 26(4)(a)

The reservoir manager must comply with any direction in relation to a visual inspection directed by the supervising engineer. Subsections (2) & (3) require the manager to maintain and provide written records to the supervising engineer on request and give notice as soon as reasonably practicable to the supervising engineer and the Department of anything identified during the visual inspection which might affect the safety of the reservoir.

Section 29 – Nominated representative under section 26(7)(a): further provision

This section requires a nominated representative to be eligible to be commissioned as a supervising engineer and provides that a nominated representative has the same powers and obligations as a supervising engineer when the supervising engineer is unavailable.

Section 30 – Inspection timing: general requirements

Subsection (1) requires the reservoir manager of a high or medium consequence reservoir to have an inspection of the reservoir carried out before the end of one year from the date on which its first reservoir designation takes effect, ("the relevant date" defined in subsection (6) of section 31). There is an exception in subsection (2); an inspection is not required under subsection (1) when a high consequence reservoir becomes designated as a medium consequence reservoir (following a periodic re-assessment under section 18 or a review or appeal).

Subsections (3) and (4) then require inspections at other times. The reservoir manager must have an inspection carried out at any time recommended by the supervising engineer or at any time recommended in an inspection report; and there must be no more than 10 years between inspections of a high consequence reservoir.

The general rule therefore is that a high consequence reservoir will be inspected within one year of being designated as high consequence for the first time and every 10 years thereafter unless an earlier inspection is recommended by the supervising engineer or directed in an inspection report. A medium consequence reservoir will require to be inspected within one year from being designated as medium consequence for the first time and thereafter an inspection will only be required if recommended by the supervising engineer or a further inspection is

recommended in an inspection report. No inspection is required for reservoirs designated as low consequence. Where a reservoir was medium consequence and was designated as high consequence following a periodic re-assessment, the date of the latest inspection would determine the timing for the next inspection, or as recommend by the supervising engineer.

There are other exceptions from the requirement of inspection within one year of the first designation as high or medium consequence (in subsection (1)), to deal with special cases. These exceptions, alongside alternative requirements, are set out in sections 31 and 32.

It should be noted that subsection 1 will come into operation in Phase 1 while the requirement for further inspections will not come into operation until Phase 2 has been approved by a resolution of the Assembly.

Section 31 – Inspection timing: reservoir subject to pre-commencement inspection report

The first special case is where a reservoir manager of a high or medium consequence reservoir has had an inspection of the reservoir undertaken prior to the Act being commenced and the Department is satisfied that the report is a pre-commencement inspection report.

Where the report recommends inspection within 10 years of the inspection to which it relates, the reservoir manager must have an inspection carried out at the time recommended in the report, (Subsection (2)).

Where the report does not contain a recommendation as to when the next inspection is to be undertaken, subsection (4) requires the reservoir manager to have the inspection carried out within 10 years of the inspection to which the report relates.

Where a supervising engineer recommends an earlier inspection of the reservoir, however, (section 26(3) refers) this would supersede any inspection due under subsection (2) or (4).

Section 32 – Inspection timing: other qualifications

The second special case is where a construction engineer is to be commissioned to supervise relevant works for the construction or alteration of a high or medium consequence reservoir. The construction engineer also supervises the safety of the reservoir (section 43(3)).

Where a reservoir is being discontinued or abandoned, any inspection which is due under section 30 or 31 is not required as it ceases to be a controlled reservoir on completion of the works i.e. when the final certificate is issued (subsection (1)).

Where a controlled reservoir is being constructed or altered (without being discontinued or abandoned), any inspection due under section 30 or 31 is not required; and instead inspection must be within 2 years from the date of the

final certificate or at an earlier time, if recommended in the final certificate (subsection (2)).

Section 33 – Pre-commencement inspection report

A reservoir manager who has had an inspection of a high or medium consequence reservoir undertaken prior to the commencement of the Reservoirs Act may give the document relating to the inspection to the Department, for the Department to consider whether it is ‘a pre-commencement inspection report’. This would give it status under the Act, some aspects of which have been covered in section 31. Subsection (1) details the matters about which the Department must be satisfied for a document to be considered by it as a pre-commencement inspection report. The matters are that the inspection must have been undertaken and the document prepared by a civil engineer who was a member of a panel of civil engineers established under section 4(1) of the Reservoirs Act 1975, that the report was prepared sufficiently in accordance with criteria applied in relation to an inspection under section 10 of the 1975 Act and that, the inspection was carried out not more than 8 years before the relevant date. (The definition of “the relevant date” in section 31(6) applies, namely the date on which the reservoir concerned was first designated as high or medium consequence).

Subsection (2) requires the Department as soon as reasonably practicable to decide whether or not it is satisfied a document is a pre-commencement inspection report. Where the Department considers it appropriate it may consult an appropriate panel engineer to assist in the decision making process.

Subsection (4) sets out the criteria which disqualify an engineer from being consulted by the Department in relation to making its decision.

Subsection (5) requires the Department to give notice to the reservoir manager of its decision and sets out the contents of the notice. Subsection (6) introduces Schedule 1, which makes provision in relation to a review of the Department’s decision.

Section 34 – commissioning of inspecting engineer etc.

This section requires reservoir managers of high or medium consequence reservoirs (which are not being supervised by a construction engineer) to commission an inspecting engineer to undertake an inspection as required by sections 30, 31 or 32 and to supervise the taking of any measure in the interests of safety as directed in an inspection report or recommended as a pre-commencement safety recommendation (that is, a recommendation in a pre-commencement inspection report as a measure required in the interests of safety of the reservoir – subsection (3)). Subsection (2) requires the reservoir manager to notify the Department within 28 days of the commission of an inspecting engineer.

Phase 1 of the Act requires an initial inspection to be undertaken by an inspecting engineer and an inspection report to be provided to the reservoir manager. The

requirement to undertake any measures identified in an inspection report does not come into operation until Phase 2 of the Act is commenced.

Subsection (4) requires an inspecting engineer to be an appropriate panel engineer. Inspecting engineers are intended to have a degree of independence from the commissioning reservoir manager. Subsection (5) sets out the criteria disqualifying an engineer from being commissioned in relation to a particular reservoir; these include that the engineer is employed by the reservoir manager or has previously been a construction engineer for the reservoir.

Section 35 – Duties etc. in relation to inspection

This section requires the inspecting engineer commissioned by the reservoir manager to inspect the reservoir and to give the reservoir manager an inspection report not later than 6 months from the date of the inspection. Subsection (2) requires the reservoir manager to give the inspecting engineer a copy of the latest inspection report or any certificates for the time being applicable to the reservoir.

The certificate may include a ‘pre-commencement inspection report certificate’ - a certificate signed and issued by a civil engineer who was a member of a reservoir panel established under section 4(1) of the Reservoirs Act 1975 stating that a measure recommended in a pre-commencement inspection report as a measure in the interests of safety has been taken.

Subsection (4)(a) requires the inspection report to specify any measures including maintenance measures the inspecting engineer considers should be taken in the interests of safety and direct that the measures be taken. Subsection (4)(b) allows for the inclusion of matters the inspecting engineer considers relevant to the maintenance of the reservoir be included as recommendations. The inspection report should include any of the measures which were not undertaken from the previous report or the reason why they are not included in the current report.

Subsection (4)(e) requires the inspecting engineer to direct the reservoir manager in the inspection report as regards any measure to be undertaken in the interest of safety, whether an inspecting or other qualified engineer should supervise the taking of the measure and the timescale for completing the directions.

Subsection (4)(f) requires the report to direct measures in relation to maintenance to be supervised by a supervising engineer. Subsection (4)(g) and (h) require inspection reports to specify any matters that should be monitored by the supervising engineer and the timing of the next inspection. Subsection (4)(i) requires the report to detail any more frequent visits to the reservoir by a supervising engineer, than is required by virtue of regulations under section 27.

Subsection (5) requires the inspecting engineer to give a copy of the report to the Department and the supervising engineer within 28 days of giving it to the reservoir manager.

Section 36 - Inspection reports: compliance

This section requires reservoir managers to comply with the directions in an inspection report or any pre-commencement safety recommendation. Subsection (2) permits the reservoir manager to commission another appropriate panel engineer (who is eligible to be an inspecting engineer) to supervise the taking of measures directed or recommended. The other appropriate panel engineer if commissioned is referred to in the Act as the “other qualified engineer”. When measures or recommendations have been completed subsection (3) requires the inspecting engineer (or other qualified engineer) to issue an interim inspection compliance certificate. Subsection (4) specifies the detail to be included in an interim inspection compliance certificate.

When the inspecting engineer (or other qualified engineer) is satisfied that all of the measures (directed or recommended) have been completed, the engineer is required by subsection (5) to issue the reservoir manager with an inspection compliance certificate within 28 days. Subsection (6) requires the engineer giving an inspection compliance certificate to accept any interim inspection compliance certificates or any pre-commencement inspection report certificates given by another engineer. Subsection (7) lists the detail that must be specified in the inspection compliance certificate. Subsection (8) requires the engineer to give a copy of the certificates under this section to the Department.

Section 37 – Recording of water levels etc. and record keeping

This section requires reservoir managers of high or medium consequence reservoirs to record and maintain specific matters in relation to the reservoirs. Subsection (1) lists the matters to be recorded. Subsection (2) enables the Department to make regulations as to the information to be recorded in relation to the listed matters and the form of the record to be maintained. Subsection (3) enables supervising engineers, inspecting engineers or construction engineers commissioned to the reservoir to direct the reservoir manager as to the manner in which the records are to be kept and how frequently they should be updated.

Subsection (4) requires the reservoir manager to comply with any such directions and subsection (5) requires the directions to be copied to the Department by the relevant engineer. Subsection (6) requires the reservoir manager to install any instruments necessary to provide information to be recorded under this section.

Section 38 – Offences: supervision, inspection, record keeping.

Subsection (1) makes it an offence to fail to comply with sections 25(2), 27(1), 27(2)(a), 27(2)(c), 29, 30, 31, 33(1)(a) or (b), and 35 in regard to supervision, inspection and record keeping. Subsection (2) makes it an offence without a reasonable excuse, to fail to comply with sections 25(4), 26(8)(a) or (b), 33(2), 34(2) and 35(2)(b) in regard to supplying engineers appointed with various reports or informing the Department of their commission. Subsection (3) sets out the maximum criminal sanctions of anyone committing an offence under this section.

Section 39 – Offence in connection with inspection: failure to secure compliance with safety direction or recommendation

This section makes it an offence for a reservoir manager of a high or medium consequence reservoir, who fails to comply with the requirements of section 36(1) without lawful excuse. Subsection (2) sets out the maximum criminal sanctions for anyone committing an offence under this section.

Section 40 – Defences: offence under section 39(1)

Section 40 sets out certain defences to offences under section 39(1) (failure to comply with direction in an inspection report or pre-commencement safety recommendation as to the taking of measure).