

SCHEDULE 1

Article 3

STOP NOTICES

Stop notices

1.—(1) SEPA may by notice (a “stop notice”) prohibit a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the reservoir manager has taken the steps specified in the notice.

(2) The stop notice must be given by SEPA to the reservoir manager.

(3) A stop notice may only be given in relation to a case where the reservoir manager is carrying on the activity and either—

- (a) SEPA reasonably believes that the activity as carried on by the reservoir manager presents a significant risk of causing an uncontrolled release of water from the reservoir; or
- (b) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under one or more of the following provisions of the Act—
 - (i) section 42(1)(a) (failure to give notice of proposed relevant works);
 - (ii) section 42(1)(b) (failure to appoint construction engineer);
 - (iii) section 42(1)(d) (failure to comply with direction as to taking of safety measure in safety report);
 - (iv) section 42(1)(e) (failure to comply with preliminary certificate or final certificate); or
 - (v) section 52(1)(c) (failure to comply with direction as to taking of measure in inspection report).

Information to be included

2. A stop notice must include information as to—

- (a) the grounds for giving the notice;
- (b) rights of appeal; and
- (c) the consequences of non-compliance.

Appeals

3.—(1) A reservoir manager to whom a stop notice is given may appeal to the Scottish Ministers against the decision of SEPA to issue it.

(2) The appeal must be made within a period of 21 days beginning with the day on which the stop notice (to which the appeal relates) was given to the reservoir manager under paragraph 1.

(3) The appeal may be made on any ground including that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unreasonable;
- (d) any step specified in the notice is unreasonable;
- (e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given; or
- (f) the reservoir manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.

- (4) An appeal under this paragraph does not suspend the stop notice to which it relates.

Completion certificates

4.—(1) Where, after giving a stop notice to a reservoir manager, SEPA is satisfied that the reservoir manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a “completion certificate”).

- (2) The stop notice ceases to have effect on the giving of a completion certificate.

(3) The reservoir manager to whom the stop notice is given may at any time apply for a completion certificate.

(4) SEPA must make a decision as to whether to give a completion certificate before the end of a period of 14 days beginning with the day on which the application for the certificate was made.

(5) Where SEPA decides to give a completion certificate, it must give the completion certificate to the reservoir manager within a period of 14 days beginning with the day of that decision.

(6) Where SEPA decides not to give a completion certificate, it must give the reservoir manager notice in writing of that decision within a period of 14 days beginning with the day of that decision.

(7) The reservoir manager to whom the stop notice is given may appeal to the Scottish Ministers against a decision not to give a completion certificate.

- (8) The appeal must be made within a period of 14 days beginning with the relevant day.

(9) The appeal may be made on any ground including that—

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

(10) For the purposes of sub-paragraph (7), a failure by SEPA, before the end of a period of 28 days beginning with the day on which the application for the certificate was made, to—

- (a) make a decision as to whether to give the certificate; and
- (b) comply with, as the case may be, sub-paragraph (5) or (6),

is to be treated as a decision not to give the completion certificate in question.

(11) In sub-paragraph (8), “the relevant day”—

- (a) in a case where sub-paragraph (10) applies, is the first day on which the failure in question is treated as a decision not to give the completion certificate; and
- (b) in other cases, is the day on which the reservoir manager is, in accordance with sub-paragraph (6), given notice of the decision not to give a completion certificate.

Compensation

5.—(1) Subject to sub-paragraph (2), where a reservoir manager suffers loss as the result of the issue of a stop notice, the reservoir manager may make a claim for compensation.

(2) Sub-paragraph (1) applies only in the case where the loss suffered by the reservoir manager as the result of the issue of a stop notice is attributable to a requirement imposed by the stop notice which is either subsequently—

- (a) withdrawn because SEPA decides that the requirement should not have been imposed when the notice was given; or
- (b) quashed by the Scottish Ministers, on determining an appeal under paragraph 3(1).

(3) The claim for compensation must—

- (a) be made in writing to SEPA;
- (b) detail the loss suffered by the reservoir manager as the result of the issue of the stop notice;
- (c) specify the amount of compensation claimed in respect of that loss; and
- (d) be made within a period of 2 months beginning with the date on which the loss was suffered.

(4) Where a reservoir manager makes a claim for compensation, SEPA must, within a period of 28 days beginning with the day on which the claim is made, make a decision—

- (a) as to whether or not to award compensation; and
- (b) if the decision is to award compensation, as to the amount of the compensation.

(5) SEPA must, within a period of 14 days beginning with the day on which it makes a decision under sub-paragraph (4), give the reservoir manager notice of the decision in writing and where the decision is not to award compensation or, as the case may be, to award an amount of compensation which is less than the amount claimed, it must give reasons for that decision.

(6) The reservoir manager may appeal to the Scottish Ministers against—

- (a) a decision of SEPA not to award compensation; or
- (b) a decision of SEPA as to the amount of the compensation.

(7) The appeal must be made within a period (“the appeal period”) of 2 months beginning with the relevant day.

(8) Where the reservoir manager is, in accordance with sub-paragraph (5), informed of a decision of SEPA to award an amount of compensation and—

- (a) no appeal is made under sub-paragraph (6) within the appeal period; or
- (b) any such appeal is withdrawn before the end of the appeal period,

SEPA must pay to the reservoir manager the amount within a period of 28 days beginning with the day after the last day of the appeal period.

(9) Where—

- (a) an appeal is made under sub-paragraph (6) within the appeal period; and
- (b) on determining the appeal, the Scottish Ministers—
 - (i) affirm a decision of SEPA to award an amount of compensation (“the affirmed amount”); or
 - (ii) otherwise direct SEPA to award an amount of compensation (or an alternative amount) (“the directed amount”),

SEPA must pay to the reservoir manager the affirmed amount or, as the case may be, the directed amount, within a period of 28 days beginning with the day after the day on which the Scottish Ministers affirm the decision to award the affirmed amount or, as the case may be, otherwise direct SEPA to award the directed amount.

(10) For the purposes of sub-paragraph (6), a failure by SEPA, before the end of the period of 42 days beginning with the day on which the claim (to which the appeal relates) is made, to—

- (a) make a decision—
 - (i) as to whether or not to award compensation; and
 - (ii) if the decision is to award compensation, as to the amount of the compensation; and
- (b) comply with sub-paragraph (5),

is to be treated as a decision of SEPA not to award compensation.

(11) In sub-paragraph (7), “the relevant day”—

Status: This is the original version (as it was originally made).

- (a) in a case where sub-paragraph (10) applies, is the first day on which the failure in question is treated as a decision of SEPA not to award compensation; and
- (b) in other cases, is the day on which SEPA, in accordance with sub-paragraph (5), gives the reservoir manager notice of the decision in question.

Offence and penalties

6. Where a reservoir manager to whom a stop notice is given does not comply with it, the reservoir manager commits an offence and is liable on summary conviction—

- (a) in the justice of the peace court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both; or
- (b) in the sheriff court—
 - (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995⁽¹⁾), or to both; and
 - (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-head (i), or to both.

Defence

7. It is a defence to a charge in proceedings for an offence under paragraph 6 for the reservoir manager to show both—

- (a) that the failure to comply with the stop notice was as a result of either an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen; and
- (b) that the reservoir manager—
 - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir; and
 - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure; and
 - (iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

(1) 1995 c.46.