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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 43**

**The Reservoirs (Scotland) Regulations 2016**

**PART 9**

**DISPUTE REFERRAL**

**Time within which a referee may be appointed by agreement**

**39.** The time within which a referee (“the referee”) may be appointed under section 61(1)(a) (appointment of referee) of the Act by agreement between a reservoir manager and the relevant engineer, is a period of 60 days beginning with, as the case may be—

- (a) the day on which the safety report or the inspection report, which contains the direction which is to be referred to the referee by the reservoir manager under section 59(2) of the Act, was given to the reservoir manager; or
- (b) the day on which the preliminary certificate or the final certificate, which mentions the matters which are to be referred to the referee by the reservoir manager under section 60(1) of the Act, was given to the reservoir manager.

**Time within which a request may be made for an appointment**

**40.** The time within which a request to the Scottish Ministers for the appointment of a referee (“the referee”) under section 61(1)(b) of the Act may be made, is a period of 70 days beginning with, as the case may be—

- (a) the day on which the safety report or the inspection report, which contains the direction which is to be referred to the referee by the reservoir manager under section 59(2) of the Act, was given to the reservoir manager; or
- (b) the day on which the preliminary certificate or the final certificate, which mentions any matter which is to be referred to the referee by the reservoir manager under section 60(1) of the Act, was given to the reservoir manager.

**Manner of the request for an appointment**

**41.—(1)** Any request to the Scottish Ministers for the appointment of a referee (“the referee”) under section 61(1)(b) of the Act must be made in writing.

(2) Where the subject of the referral to be made to the referee is a direction contained in a safety report or an inspection report, the request must be accompanied by—

- (a) the safety report or the inspection report containing the direction;
- (b) a statement specifying the terms of the direction in the safety report or, as the case may be, the inspection report for which the appointment is requested;
- (c) where the report containing the direction is a safety report, any safety measure certificate given in relation to the report; and

- (d) where the report containing the direction is an inspection report, any interim inspection compliance certificate given in relation to the report.
- (3) Where the subject of the referral to be made to the referee is a matter mentioned in a preliminary certificate or a final certificate, the request must be accompanied by—
  - (a) the preliminary certificate or the final certificate which mentions the matter; and
  - (b) a statement specifying the matter in the preliminary certificate or, as the case may be, the final certificate for which the appointment is requested.

### **Procedure before the referee**

**42.**—(1) A referee appointed under section 61(1) of the Act must, within a period of 28 days beginning with the day on which the referee was appointed, invite the reservoir manager in question to give to the referee a statement in writing of the grounds of challenge under, as the case may be—

- (a) section 59(2) (referral to referee: directions in safety report or inspection report) of the Act; or
- (b) section 60(1) (referral to referee: requirements in preliminary certificate or final certificate) of the Act.

(2) Where a reservoir manager is invited to give a statement under paragraph (1), the reservoir manager must give the statement in writing to the referee within a period of 28 days beginning with the day on which the reservoir manager was invited to do so.

(3) Where a referee is given a statement in accordance with paragraph (2), the referee must give a copy of the statement to the relevant engineer and invite the engineer to give to the referee observations in writing in relation to the statement within a period of 28 days beginning with the day on which the engineer was given the copy of the statement.

(4) Where a referee is given observations in accordance with paragraph (3), the referee—

- (a) must give a copy of the observations to the reservoir manager and invite the manager to give to the referee comments in writing in relation to the observations within a period of 21 days beginning with the day on which the manager was given the copy of the observations; and
- (b) may arrange to meet the reservoir manager and the relevant engineer, or their representatives, to hear any observations that either party may wish to make orally.

(5) The referee may carry out an investigation and this may include an inspection of the reservoir in question (with or without the reservoir manager and the relevant engineer, or their representatives) before making a decision under, as the case may be—

- (a) section 62(2) (powers of referee: referral under section 59(2)) of the Act; or
- (b) section 63(2) (powers of referee: referral under section 60(1)) of the Act.

### **Investigation and proceedings: expenses**

**43.** The cost of any investigation and proceedings (including the referee's remuneration) arising in consequence of a referral made under section 59(2) or section 60(1) of the Act are expenses for the purposes of section 64(2) of the Act (expenses of the investigation and proceedings to be paid by the reservoir manager who makes the referral).