

**Changes to legislation:** Flood and Water Management Act 2010, SCHEDULE 4 is up to date with all changes known to be in force on or before 13 June 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### SCHEDULE 4

Section 33

#### RESERVOIRS

##### *Introduction*

1 The Reservoirs Act 1975 is amended as follows.

#### **Annotations:**

#### **Commencement Information**

**II** Sch. 4 para. 1 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(d)

#### *“Large raised reservoir”*

2 Before section 1 insert—

#### **“A1 Large raised reservoir”: England and Wales**

- (1) In this Act “large raised reservoir” means—
  - (a) a large, raised structure designed or used for collecting and storing water, and
  - (b) a large, raised lake or other area capable of storing water which was created or enlarged by artificial means.
- (2) A structure or area is “raised” if it is capable of holding water above the natural level of any part of the surrounding land.
- (3) A raised structure or area is “large” if it is capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land.
- (4) The Minister must make regulations about how to calculate capacity for the purpose of subsection (3) (and “natural level” and “surrounding land” are to be construed in accordance with the regulations).
- (5) The Minister may by regulations provide for a structure or area to be treated as “large” by reason of proximity to, or actual or potential communication with, another structure or area.
- (6) In making regulations under subsection (5) the Minister shall aim to ensure that a structure or area is treated as large under the regulations only if 10,000 or more cubic metres of water might be released as a result of the proximity or communication mentioned in that subsection.
- (7) The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (6).

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- (8) The Minister may by regulations provide for specified things not to be treated as large raised reservoirs for the purposes of this Act.
- (9) A reference to a large raised reservoir includes a reference to anything used or designed to contain the water or control its flow.”

**Annotations:**

**Commencement Information**

- I2** Sch. 4 para. 2 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)
- I3** Sch. 4 para. 2 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)
- I4** Sch. 4 para. 2 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(b)

- 3 (1) Omit section 1(1) to (3) (meaning of “reservoir”).
- (2) In section 6 (construction and alteration) in subsection (1) for “existing reservoir” substitute “ existing structure or area ”.
- (3) In section 6(3) for “existing reservoir” substitute “ existing structure or area ”.
- (4) In section 8 (failure to comply with construction or alteration requirements) in subsection (1) for “existing reservoir” substitute “ existing structure or area ”.
- (5) In section 12B (flood plans and national security) in subsection (2) for “a large raised reservoir” substitute “ large or raised ”.

**Annotations:**

**Commencement Information**

- I5** Sch. 4 para. 3 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)
- I6** Sch. 4 para. 3 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

*Registration*

- 4 After section 2(2A) (registration) insert—
- “(2B) The undertaker must register a large raised reservoir with the relevant authority.
- (2C) The Minister may make regulations about registration under this section.
- (2D) Regulations under subsection (2C) may, in particular, include provision about—
- (a) the information to be registered, and
- (b) the time by which information, or changes to information, must be registered.
- (2E) The regulations may require an undertaker to notify the relevant authority about—
- (a) proposed alterations to which section 6 applies;
- (b) a proposal to abandon a large raised reservoir under section 14;
- (c) the appointment, or termination of appointment, of an engineer for a purpose of this Act.”

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**Annotations:**

**Commencement Information**

- I7** Sch. 4 para. 4 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)  
**I8** Sch. 4 para. 4 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)  
**I9** Sch. 4 para. 4 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(b)

- 5 In section 21 (duty to provide information)—  
(a) in subsection (1)(a) omit the words from “(whether” to “capacity”, and  
(b) omit subsections (2) to (4).

**Annotations:**

**Commencement Information**

- I10** Sch. 4 para. 5 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)  
**I11** Sch. 4 para. 5 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

- 6 In section 22 (criminal liability) before subsection (1) insert—  
“(A1) It is an offence for an undertaker to fail to comply with either of the following  
—  
(a) the requirement to register a large raised reservoir imposed by section 2(2B);  
(b) a requirement of regulations made under section 2(2C).  
(A2) A person guilty of an offence under subsection (A1) is liable—  
(a) on conviction on indictment, to a fine;  
(b) on summary conviction, to a fine not exceeding the statutory maximum.”

**Annotations:**

**Commencement Information**

- I12** Sch. 4 para. 6 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)  
**I13** Sch. 4 para. 6 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

*High-risk reservoirs*

- 7 After section 2 (registration) insert—  
“**2A Consideration of risk and provisional designation: England and Wales**  
(1) As soon as is reasonably practicable after the registration of a large raised reservoir under section 2 <sup>[F1the appropriate agency]</sup> shall consider whether the reservoir is to be designated as a high-risk reservoir (applying the criteria set out in section 2C).  
(2) <sup>[F1The appropriate agency]</sup> may—  
(a) make a provisional designation by giving notice to the undertaker, or

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- (b) notify the undertaker that the reservoir is not designated as a high-risk reservoir.
- (3) A provisional designation notice must specify—
  - (a) the reasons for the provisional designation,
  - (b) how representations to <sup>F1</sup>the appropriate agency] may be made, and
  - (c) the period within which those representations may be made.
- (4) The Minister may by order specify a minimum period within which representations may be made under subsection (3)(c).

## 2B Designation

- (1) <sup>F1</sup>The appropriate agency] may designate a large raised reservoir as a high-risk reservoir by giving notice confirming a provisional designation to the undertaker.
- (2) In deciding whether to confirm a provisional designation <sup>F1</sup>the appropriate agency] must have regard to the representations made in accordance with section 2A.
- (3) A notice under subsection (1) may not be given before the end of the period within which representations may be made under section 2A(3)(c).
- (4) The notice must—
  - (a) specify the provisional notice to which it relates,
  - (b) specify the reasons for the designation,
  - (c) give information about the procedure for bringing an appeal under regulations under section 2E,
  - (d) specify the period within which an appeal may be brought, and
  - (e) specify the date on which the designation takes effect, which must be after the end of the period specified under paragraph (d).

## 2C Meaning of “high-risk reservoir”

- (1) <sup>F1</sup>The appropriate agency] may designate a large raised reservoir as a high-risk reservoir if—
  - (a) <sup>F1</sup>the appropriate agency] thinks that, in the event of an uncontrolled release of water from the reservoir, human life could be endangered, and
  - (b) the reservoir does not satisfy the conditions (if any) specified in regulations made by the Minister.
- (2) The conditions specified in regulations under subsection (1)(b) may, in particular, include conditions as to—
  - (a) the purpose for which the reservoir is used,
  - (b) the materials used to construct the reservoir,
  - (c) the way in which the reservoir is constructed, and
  - (d) the maintenance of the reservoir.
- (3) Sections 10 to 12 make provision about requirements for inspection, monitoring and supervision of high-risk reservoirs.

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- (4) References in this Act to a “high-risk reservoir” are references to a large raised reservoir that has been designated under section 2B as a high-risk reservoir.

## 2D Review

- (1) [<sup>F1</sup>The appropriate agency] must carry out a review if it thinks that—
- (a) the designation of a large raised reservoir as a high-risk reservoir may have ceased to be appropriate, or
  - (b) it may be appropriate to designate a large raised reservoir as a high-risk reservoir.
- (2) Sections 2A to 2C apply following a review as they apply following the registration of a reservoir.

## 2E Appeals

- (1) The Minister must by regulations provide a right of appeal against designations under section 2B.
- (2) The regulations must—
- (a) confer jurisdiction on the Minister, a court or a tribunal, and
  - (b) make provision about procedure.
- (3) Where an appeal against a designation is brought—
- (a) the designation is suspended while the appeal is pending;
  - (b) the person or body hearing the appeal may cancel the designation.”

### Annotations:

#### Amendments (Textual)

- F1** Words in Sch. 4 para. 7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(a\)](#) (with Sch. 7)

#### Commencement Information

- I14** Sch. 4 para. 7 in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), [art. 3\(1\)\(e\)](#)
- I15** Sch. 4 para. 7 in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), [art. 3\(b\)](#)
- I16** [Sch. 4 para. 7](#) in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), [art. 2\(b\)](#)

- 8 In section 7 (certificates of construction engineers) in subsection (5) after “a reservoir” insert “ which is designated, or in the opinion of the engineer is likely to be designated, as a high-risk reservoir ”.

### Annotations:

#### Commencement Information

- I17** [Sch. 4 para. 8](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)
- I18** [Sch. 4 para. 8](#) in force at 1.4.2016 for W. by [S.I. 2016/79](#), [art. 2\(b\)](#)

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### *Panels of engineers*

- 9 At the end of section 4 (panel of civil engineers) add—
- “(10) The Secretary of State and the Welsh Ministers acting jointly may establish one or more panels of engineers under this section (“joint panels”).
- (11) For the purposes of anything done in relation to a joint panel, a reference in this section to the Secretary of State is a reference to the Secretary of State and the Welsh Ministers acting jointly.”

#### **Annotations:**

#### **Commencement Information**

**I19** Sch. 4 para. 9 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

**I20** Sch. 4 para. 9 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

### *Construction and alteration*

- 10 (1) Section 6 (construction and alteration) is amended as follows.
- (2) In subsection (1) after “increase”, in both places, insert “ or decrease ”.
- (3) In subsection (3) omit “addition to the”.
- (4) In subsection (4) after “increase” insert “ or decrease ”.
- (5) Omit subsection (6).
- (6) At the end add—
- “(6A) This section and sections 7 and 8 do not apply in relation to alterations, or proposed alterations, to decrease the capacity of a large raised reservoir so that it is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (in which case section 13 applies instead).
- (6B) The Minister may by order substitute a different volume of water for the volume specified in subsection (6A).”

#### **Annotations:**

#### **Commencement Information**

**I21** Sch. 4 para. 10 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

**I22** Sch. 4 para. 10 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)

**I23** Sch. 4 para. 10 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(b)

- 11 (1) In section 7 (certificates of construction engineers) in subsection (1)—
- (a) for “addition”, in the first and second places it occurs, substitute “ alteration ”, and
- (b) omit “or addition” in the last place it occurs.
- (2) In section 7(2) for “addition” substitute “ alteration ”.
- (3) In section 7(3)—

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- (a) for “addition”, in the first place it occurs, substitute “ alteration ”, and
  - (b) omit “or, as the case may be, the reservoir with the addition”.
- (4) In section 7(4) and (6) for “addition” substitute “ alteration ”.
- (5) In section 8 (failure to comply with construction or alteration requirements) in subsection (1)—
- (a) in paragraph (a) after “increase” insert “ or decrease ”, and
  - (b) for “addition” substitute “ alteration ”.
- (6) At the end of section 8(3) add “ within the period which the report must specify in respect of each recommendation. ”
- (7) In section 8(4) for “addition” substitute “ alteration ”.
- (8) In section 8(5)—
- (a) omit “or addition”, and
  - (b) omit “or, as the case may be, the reservoir with the addition”.
- (9) In section 8(6) omit “or, as the case may be, the reservoir with the addition”.
- (10) In section 10 (inspections) in subsection (9)(b) for “addition” substitute “ alteration ”.

**Annotations:**

**Commencement Information**

- I24** Sch. 4 para. 11 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)  
**I25** Sch. 4 para. 11 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(b)

*High-risk reservoirs: inspections*

- 12 (1) Section 10 (inspections) is amended as follows.
- (2) In subsection (1) for “large raised reservoir” substitute “ high-risk reservoir ”.
- (3) In subsection (2) for the words from “large raised reservoir” to the end substitute “ high-risk reservoir must be inspected under this section at the times specified by regulations made by the Minister. ”
- (4) In subsection (3) for the words from “the time” to the end substitute—
- “(a) the time of the next inspection;
  - (b) the maintenance of the reservoir;
  - (c) any measures required in the interests of safety and the period within which those measures must be taken.”
- (5) After subsection (3) insert—
- “(3A) If the inspecting engineer has not provided a report before the end of the period of 6 months beginning with the date of completion of the inspection, the engineer must—
- (a) notify [<sup>F2</sup>the appropriate agency], and
  - (b) provide a written statement of the reasons.”
- (6) In subsection (5) after “safety” insert “ or as to the maintenance of the reservoir ”.

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(7) After subsection (5) insert—

“(5A) The undertaker must comply with a recommendation made under subsection (3)(b), unless the recommendation is the subject of a reference under section 19 and the reference has not been determined.”

(8) In subsection (6) for “as soon as practicable” substitute “, within the period specified in the report,”.

(9) After subsection (6) insert—

“(6A) The inspecting engineer must include in the report of the inspection—

- (a) a statement as to whether all of the safety measures recommended in the previous report under subsection (3)(c) have been taken, and
- (b) either (i) recommendations to take any safety measure that has not yet been taken or (ii) an explanation of why it is no longer required.”

(10) In subsection (7) for “large raised reservoir” substitute “ high-risk reservoir ”.

**Annotations:**

**Amendments (Textual)**

- F2** Words in [Sch. 4 para. 12\(5\)](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(b\)](#) (with [Sch. 7](#))

**Commencement Information**

- I26** [Sch. 4 para. 12](#) in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), [art. 3\(1\)\(e\)](#)
- I27** [Sch. 4 para. 12](#) in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), [art. 3\(b\)](#)
- I28** [Sch. 4 para. 12](#) in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by [S.I. 2016/79](#), [arts. 2\(c\)](#), 3

13 In section 17 (powers of entry) in subsection (1)(b) after “safety” insert “, or as to the maintenance of the reservoir,”.

**Annotations:**

**Commencement Information**

- I29** [Sch. 4 para. 13](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)
- I30** [Sch. 4 para. 13](#) in force at 1.4.2016 for W. by [S.I. 2016/79](#), [art. 2\(b\)](#)

14 In section 19(1)(a) after “safety” insert “, or as to the maintenance of the reservoir”.

**Annotations:**

**Commencement Information**

- I31** [Sch. 4 para. 14](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)
- I32** [Sch. 4 para. 14](#) in force at 1.4.2016 for W. by [S.I. 2016/79](#), [art. 2\(b\)](#)

15 In section 22 (criminal liability) after subsection (1) insert—

“(1AA) An undertaker who fails to comply with section 10(5A) is guilty of an offence.



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- (1AB) A person guilty of an offence under subsection (1A) is liable—
- (a) on conviction on indictment, to a fine;
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.”

**Annotations:**

**Commencement Information**

- I33** Sch. 4 para. 15 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)  
**I34** Sch. 4 para. 15 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

*High-risk reservoirs: monitoring and supervision*

- 16 In section 11 (records) in subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.

**Annotations:**

**Commencement Information**

- I35** Sch. 4 para. 16 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b) (with art. 4(2)-(5))  
**I36** Sch. 4 para. 16 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

- 17 (1) Section 12 (supervision) is amended as follows.
- (2) In subsection (1) for “large raised reservoir” substitute “high-risk reservoir”.
  - (3) After subsection (2) insert—
    - “(2A) The supervising engineer must provide the undertaker with a written statement of any steps taken to maintain the reservoir in accordance with the recommendations of the inspecting engineer under section 10(3)(b).
    - (2B) The engineer must provide a statement under subsection (2A) at least once every 12 months.”
  - (4) In subsection (4) for “large raised reservoir” substitute “high-risk reservoir”.
  - (5) At the end add—
    - “(6) The supervising engineer may direct the undertaker to carry out a visual inspection of the reservoir at specified intervals for the purpose of identifying anything that might affect the safety of the reservoir.
    - (7) The undertaker must notify the supervising engineer of—
      - (a) each visual inspection that is carried out, and
      - (b) anything noticed in the course of it.
    - (8) The Minister may issue guidance about supervision in accordance with this section (and may take compliance into account when making decisions under section 4).”
- (6) In section 20(4) (reports, certificates etc.) after paragraph (e) add—

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- “(f) any written statement given under section 12(2) or (2A);  
 (g) any direction given under section 12(6);”

**Annotations:**

**Commencement Information**

- I37** Sch. 4 para. 17 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b) (with art. 4(2)-(5))  
**I38** Sch. 4 para. 17 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

- 18 In section 21(5) (information) for “large raised reservoir” substitute “ high-risk reservoir ”.

**Annotations:**

**Commencement Information**

- I39** Sch. 4 para. 18 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b) (with art. 4(2)-(5))  
**I40** Sch. 4 para. 18 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

- 19 In section 22 (criminal liability) after subsection (1AB) (inserted by paragraph 15) insert—

“(1AC) An undertaker who, without reasonable excuse, fails to comply with a direction to carry out a visual inspection under section 12(6) or with the notification requirement under section 12(7) is guilty of an offence.

(1AD) A person guilty of an offence under subsection (1AC) is liable—

- (a) on conviction on indictment, to a fine;  
 (b) on summary conviction, to a fine not exceeding the statutory maximum.”

**Annotations:**

**Commencement Information**

- I41** Sch. 4 para. 19 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)  
**I42** Sch. 4 para. 19 in force at 1.4.2016 for W. for specified purposes, otherwise on "the applicable day" in so far as not already in force by S.I. 2016/79, arts. 2(c), 3

*Flood plans*

- 20 (1) Section 12A (flood plans) is amended as follows.

(2) In subsection (1) omit the words from “setting” to the end.

(3) After section 12A(1) insert—

“(1A) A flood plan is a document—

- (a) giving information about the areas that may be flooded in the event of an uncontrolled escape of water from the large raised reservoir,  
 (b) specifying the action that the undertaker would take in order to prevent an uncontrolled escape of water, and

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- (c) specifying the action that the undertaker would take in order to control or mitigate the effects of a flood.”

**Annotations:**

**Commencement Information**

**I43** Sch. 4 para. 20 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

**I44** Sch. 4 para. 20 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

21 After section 12A insert—

**“12AA Flood plans: preparation**

- (1) This section applies where an undertaker is directed to prepare a flood plan under section 12A.
- (2) The undertaker must prepare a flood plan in consultation with the appointed engineer.
- (3) The undertaker may not provide a copy of, or publish, a flood plan in accordance with a direction under section 12A(2)(d) or (e) unless the appointed engineer has certified that the requirements of a direction under section 12A(2)(a) and (b) are satisfied.
- (4) The undertaker must test a flood plan at such times and in such manner as may be directed by the appointed engineer.
- (5) In the event of flooding, or if flooding is reasonably expected to occur, the undertaker must implement the flood plan without delay.
- (6) The undertaker—
  - (a) must keep a flood plan under review, and
  - (b) may revise a flood plan.
- (7) The undertaker must revise the flood plan in accordance with the directions of the appointed engineer.
- (8) The following apply to a revision of a flood plan as they apply to a flood plan—
  - (a) subsections (2) to (7), and
  - (b) any requirements of a direction under section 12A.
- (9) In this section “appointed engineer” means—
  - (a) in the case of a high-risk reservoir, the supervising engineer, and
  - (b) in any other case, the engineer appointed for the purposes of this section.”

**Annotations:**

**Commencement Information**

**I45** Sch. 4 para. 21 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

**I46** Sch. 4 para. 21 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

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22 (1) Section 19 (references) is amended as follows.

(2) After subsection (1) insert—

“(1A) If an engineer determines that the requirements of a direction under section 12A(2)(a) and (b) are not satisfied for the purposes of section 12AA(3), the undertaker may refer the matter to a referee in accordance with rules under this section.”

(3) In subsection (2) after “recommendation” insert “ or determination ”.

(4) In subsections (3) and (4) for “this section” substitute “ subsection (1) ”.

(5) After subsection (4) insert—

“(4A) A referee under subsection (1A) may direct the engineer to issue a certificate for the purposes of section 12AA(3).”

**Annotations:**

**Commencement Information**

**I47** Sch. 4 para. 22 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(f)

**I48** Sch. 4 para. 22 in force at 30.7.2013 for E. so far as not already in force by S.I. 2013/1590, art. 3(b)

**I49** Sch. 4 para. 22 in force at 1.4.2016 for W. in so far as not already in force by S.I. 2016/79, art. 2(d)

23 (1) Section 20 (reports, certificates etc.) is amended as follows.

(2) In subsection (4)(c) omit “modifying any such report as is mentioned in paragraph (b) above”.

(3) After subsection (4)(g) (inserted by paragraph 17(6)) add—

“(h) any direction given under section 12AA(4) or (7).”

**Annotations:**

**Commencement Information**

**I50** Sch. 4 para. 23 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

**I51** Sch. 4 para. 23 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

24 In section 22 (criminal liability) after subsection (1AD) (inserted by paragraph 19) insert—

“(1AE) An undertaker who fails to comply with section 12AA(4), (6)(a) or (7) is guilty of an offence and liable—

(a) on conviction on indictment, to a fine, or

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(1AF) An undertaker who fails to comply with section 12AA(5) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

**Changes to legislation:** Flood and Water Management Act 2010, SCHEDULE 4 is up to date with all changes known to be in force on or before 13 June 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**Annotations:**

**Commencement Information**

**I52** Sch. 4 para. 24 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

**I53** Sch. 4 para. 24 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

*Discontinuance*

- 25 (1) Section 13 (discontinuance) is amended as follows.
- (2) In subsection (1) for the words from “more than 25,000” to “adjoining the reservoir” substitute “ 10,000 cubic metres of water above the natural level of any part of the surrounding land ”.
- (3) After subsection (1) insert—
- “(1A) An engineer employed for the purposes of subsection (1) may issue a certificate (the “interim certificate”) if the engineer thinks that the level of water in the reservoir should be reduced before the alteration is completed.
- (1B) The interim certificate must specify—
- (a) the reduced water level,
- (b) the time by which it must be reduced, and
- (c) the conditions (if any) on which the reservoir may be filled to the reduced level.
- (1C) The undertaker must ensure that the reservoir does not contain water except in accordance with the interim certificate.
- (1D) The engineer employed for the purposes of subsection (1) may vary an interim certificate by giving written notice to the undertaker.
- (1E) An interim certificate ceases to have effect on the issue of a certificate under subsection (2).”
- (4) In subsection (3) for the words from “more than 25,000” to “adjoining the reservoir” substitute “ 10,000 cubic metres of water above the natural level of any part of the surrounding land ”.
- (5) At the end add—
- “(4) The Minister may by order substitute a different volume of water for the volume specified in subsection (1) or (3).
- (5) Where it appears to [<sup>F3</sup>the appropriate agency] that a qualified civil engineer has not been employed as required by subsection (1) the Agency may by notice require the undertaker—
- (a) to appoint a qualified civil engineer for the purposes of this section before the end of the period of 28 days beginning with the day on which the notice is given, unless the appointment has already been made, and
- (b) to notify [<sup>F3</sup>the appropriate agency] of the appointment (whether it was made before or after the notice was given).”

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**Annotations:**

**Amendments (Textual)**

- F3** Words in Sch. 4 para. 25(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(c\)](#) (with Sch. 7)

**Commencement Information**

- I54** Sch. 4 para. 25 in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), [art. 3\(1\)\(e\)](#)  
**I55** [Sch. 4 para. 25](#) in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), [art. 3\(b\)](#)  
**I56** [Sch. 4 para. 25](#) in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), [art. 2\(d\)](#)

- 26 (1) In section 15 (reserve powers) in subsection (1) after “12” insert “, 13”.
- (2) In section 21 (duty to provide information) in subsection (5) after “10(6)” insert “, 13”.
- (3) In section 22 (criminal liability) in subsection (1)(b) after “12” insert “, 13”.

**Annotations:**

**Commencement Information**

- I57** [Sch. 4 para. 26](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)  
**I58** [Sch. 4 para. 26](#) in force at 1.4.2016 for W. by [S.I. 2016/79](#), [art. 2\(d\)](#)

*Abandonment*

- 27 (1) Section 14 (abandonment) is amended as follows.
- (2) In subsection (2) for the words from “before” to “afterwards” substitute “ within the period specified in the report ”.
- (3) At the end add—
- “(6) The Minister may by regulations make provision about what is and is not to be treated for the purposes of this Act as—
- (a) abandonment of use of a large raised reservoir as a reservoir, and
- (b) bringing a large raised reservoir back into use as a reservoir.”

**Annotations:**

**Commencement Information**

- I59** [Sch. 4 para. 27](#) in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), [art. 3\(1\)\(e\)](#)  
**I60** [Sch. 4 para. 27](#) in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), [art. 3\(b\)](#)  
**I61** [Sch. 4 para. 27](#) in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), [art. 2\(d\)](#)

- 28 In section 20 (reports, certificates etc.) in subsection (4)(b) omit from “and stated” to “safety”.

**Annotations:**

**Commencement Information**

- I62** [Sch. 4 para. 28](#) in force at 30.7.2013 for E. by [S.I. 2013/1590](#), [art. 3\(b\)](#)

**Changes to legislation:** Flood and Water Management Act 2010, SCHEDULE 4 is up to date with all changes known to be in force on or before 13 June 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**I63** Sch. 4 para. 28 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

#### *Powers of entry*

- 29 In section 17 (powers of entry) for subsection (1)(a) substitute—  
“(a) for the purpose of carrying out an inspection, survey or other operation to determine whether any provision of this Act applies;”.

#### **Annotations:**

#### **Commencement Information**

- I64** Sch. 4 para. 29 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)  
**I65** Sch. 4 para. 29 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

#### *Appeals*

- 30 After section 19 (references) insert—

#### **“19A Appeals**

- (1) The Minister must by regulations provide a right of appeal against—  
(a) a requirement to appoint an engineer under sections 8(1), 9(7), 10(7), 12(4), 13(5) and 14(4), and  
(b) a requirement to carry a recommendation of an engineer into effect under sections 8(3A), 9(7), 10(7) and 14(4).  
(2) The regulations must—  
(a) confer jurisdiction on the Minister, a court or a tribunal, and  
(b) make provision about procedure (including the effect of pending appeals).”

#### **Annotations:**

#### **Commencement Information**

- I66** Sch. 4 para. 30 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

#### *Directions of engineers*

- 31 In section 20(1) (general provision about documents: prescribed form) for “or certificate” substitute “, certificate or directions ”.

#### **Annotations:**

#### **Commencement Information**

- I67** Sch. 4 para. 31 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(f)

#### *Assessment of reports and statements*

- 32 After section 20 insert—

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### “20A Assessment of reports and statements

- (1) The Minister may by regulations make provision for the assessment of the quality of reports and written statements prepared by—
  - (a) inspecting engineers, and
  - (b) supervising engineers.
- (2) The regulations may make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers; and the regulations may specify the conditions for membership of the committee.
- (3) The regulations may, in particular, make provision about—
  - (a) the criteria for assessment,
  - (b) the documents, or categories of documents, that are to be assessed,
  - (c) the assessment procedure, which may include provision about oral or written representations, and
  - (d) timing.”

#### Annotations:

#### Commencement Information

**I68** Sch. 4 para. 32 in force at 1.10.2011 for specified purposes by S.I. 2011/2204, art. 3(1)(e)

### *Information and reports*

33 After section 21 (duty to provide information) insert—

### “21A Power to require information

- (1) For the purposes of carrying out its functions under this Act, [<sup>F4</sup>the appropriate agency] may by notice require an undertaker to provide information specified in the notice.
- (2) The notice may require the information to be provided—
  - (a) within a specified period;
  - (b) in a specified manner or form.
- (3) The period specified under subsection (2)(a) must be a period of at least 28 days beginning with the day on which the notice is issued.

### 21B Reports

- (1) The Minister may by regulations require a specified person to make a report to the Environment Agency about any incident of a specified kind which affected, or could have affected, the safety of a large raised reservoir.
- (2) The regulations may, in particular, provide that the duty to report applies to—
  - (a) an undertaker, and
  - (b) an engineer appointed for any purpose of this Act.
- (3) The regulations may make provision about—



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- (a) the form and manner of a report,
- (b) the timing of a report.”

**Annotations:**

**Amendments (Textual)**

- F4** Words in Sch. 4 para. 33 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), **Sch. 2 para. 468(2)(d)** (with Sch. 7)

**Commencement Information**

- I69** Sch. 4 para. 33 in force at 1.10.2011 for specified purposes by [S.I. 2011/2204](#), art. 3(1)(e)  
**I70** Sch. 4 para. 33 in force at 30.7.2013 for E. so far as not already in force by [S.I. 2013/1590](#), art. 3(b)  
**I71** Sch. 4 para. 33 in force at 1.4.2016 for W. in so far as not already in force by [S.I. 2016/79](#), art. 2(d)

- 34 In section 22 (criminal liability) after subsection (4) insert—
- “(4A) An undertaker who fails to comply with a requirement of a notice given under section 21A is guilty of an offence.
  - (4B) An undertaker who fails to comply with a requirement to make a report under regulations made under section 21B is guilty of an offence.
  - (4C) A person guilty of an offence under subsection (4A) or (4B) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

**Annotations:**

**Commencement Information**

- I72** Sch. 4 para. 34 in force at 30.7.2013 for E. by [S.I. 2013/1590](#), art. 3(b)  
**I73** Sch. 4 para. 34 in force at 1.4.2016 for W. by [S.I. 2016/79](#), art. 2(d)

*Enforcement: supplementary*

- 35 In section 22 (criminal liability) in subsection (1)—
- (a) omit “by the wilful default of the undertakers”, and
  - (b) omit “unless there is reasonable excuse for the default or failure”.

**Annotations:**

**Commencement Information**

- I74** Sch. 4 para. 35 in force at 30.7.2013 for E. by [S.I. 2013/1590](#), art. 3(b)  
**I75** Sch. 4 para. 35 in force at 1.4.2016 for W. by [S.I. 2016/79](#), art. 2(d)

- 36 After section 22B insert—

**“22C Expenses**

The undertaker must pay to [<sup>F5</sup>the appropriate agency] the amount of expenses reasonably incurred by the Agency in connection with the consultation of an engineer under—

- (a) section 8(3B),

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- (b) section 9(8),
- (c) section 10(8), and
- (d) section 14(5).”

**Annotations:**

**Amendments (Textual)**

- F5** Words in Sch. 4 para. 36 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(No. 755\)](#), art. 1(2), [Sch. 2 para. 468\(2\)\(e\)](#) (with Sch. 7)

**Commencement Information**

- I76** [Sch. 4 para. 36](#) in force at 30.7.2013 for E. by S.I. 2013/1590, [art. 3\(b\)](#)  
**I77** [Sch. 4 para. 36](#) in force at 1.4.2016 for W. by S.I. 2016/79, [art. 2\(d\)](#)

*Arrangements for civil protection: charges*

37 After section 22C (inserted by paragraph 36) insert—

**“22D Arrangements for civil protection: charges**

- (1) A person who is listed in Part 1 of Schedule 1 to the Civil Contingencies Act 2004 (a “Category 1 responder”) may charge an undertaker a fee in accordance with a scheme prescribed by regulations made by the Minister.
- (2) The purpose of the scheme must be to enable Category 1 responders to charge fees to undertakers in respect of costs incurred in carrying out functions under section 2 of the 2004 Act in connection with their reservoirs.”

**Annotations:**

**Commencement Information**

- I78** [Sch. 4 para. 37](#) in force at 1.10.2011 for specified purposes by S.I. 2011/2204, [art. 3\(1\)\(e\)](#)

*Regulations and orders*

38 (1) Section 5 (power to prescribe by regulations) is amended as follows.

(2) The existing provision becomes subsection (1).

(3) At the end add—

“(2) A statutory instrument under this Act—

- (a) may make provision that applies generally or only for specified purposes,
  - (b) may make different provision for different purposes, and
  - (c) may include incidental, consequential or transitional provision.
- (3) Regulations or an order made under any provision listed in subsection (5) or (7) shall be made by statutory instrument.
- (4) A statutory instrument containing regulations, rules or an order made under any provision listed in subsection (5)—

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- (a) shall be subject to annulment in pursuance of a resolution of either House of Parliament, in the case of an instrument made by the Secretary of State, or
  - (b) shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales, in the case of an instrument made by the Welsh Ministers.
- (5) The provisions are—
- (a) section A1(4) and (5),
  - (b) section 2(2) or (2C),
  - (c) section 2A(4),
  - (d) section 2E(1),
  - (e) section 3(1) or (3),
  - (f) section 4(9),
  - (g) section 11(1),
  - (h) section 14(6),
  - (i) section 19(5),
  - (j) section 19A(1),
  - (k) section 20(1),
  - (l) section 20A(1),
  - (m) section 21(1),
  - (n) section 21B(1), and
  - (o) section 22D(1).
- (6) A statutory instrument containing regulations or an order made under any provision listed in subsection (7) may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of regulations or an order made by the Secretary of State, or
  - (b) the National Assembly for Wales, in the case of regulations or an order made by the Welsh Ministers.
- (7) The provisions are—
- (a) section A1(7) and (8),
  - (b) section 2C(1)(b),
  - (c) section 6(6B),
  - (d) section 10(2), and
  - (e) section 13(4).
- (8) The first sets of regulations under section 2E or 19A may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of the first regulations made by the Secretary of State under either section, and
  - (b) the National Assembly for Wales, in the case of the first regulations made by the Welsh Ministers under either section.”

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**Annotations:**

**Commencement Information**

**179** Sch. 4 para. 38 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(g)

*Charges*

- 39 In section 41(1) of the Environment Act 1995 (power to make schemes imposing charges), after paragraph (b) insert—
- “(ba) as a means of recovering costs incurred by it in performing functions conferred by the Reservoirs Act 1975 the Agency may require the payment to it of such charges as may from time to time be prescribed;”.

**Annotations:**

**Commencement Information**

**180** Sch. 4 para. 39 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(h)

*Power to make further provision*

- 40 (1) The Minister may by order make such further amendments to the Reservoirs Act 1975 as appear necessary or desirable in consequence of the amendments made by this Schedule.
- (2) An order under sub-paragraph (1) may not be made unless a draft has been laid before and approved by resolution of—
- (a) each House of Parliament, in the case of an order made by the Secretary of State, or
  - (b) the National Assembly for Wales, in the case of an order made by the Welsh Ministers.

**Annotations:**

**Commencement Information**

**181** Sch. 4 para. 40 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(i)

*Regulatory impact assessment*

- 41 (1) The Minister must carry out a review of the burden on undertakers in relation to large raised reservoirs of complying with the Reservoirs Act 1975 as amended by this Schedule.
- (2) The review must be carried out at the end of the period of 12 months beginning with the operative date.
- (3) In sub-paragraph (2) the “operative date” means the first date on which all of the following have come into force—
- (a) section A1 of the Reservoirs Act 1975 (inserted by paragraph 2 of this Schedule), and

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(b) regulations under sections 2(2C), 2C(1)(b) and 10(2) of that Act as amended by this Schedule.

(4) The Minister must prepare and publish a report of the review.

**Annotations:**

**Commencement Information**

**I82** Sch. 4 para. 41 in force at 30.7.2013 for E. by S.I. 2013/1590, art. 3(b)

**I83** Sch. 4 para. 41 in force at 1.4.2016 for W. by S.I. 2016/79, art. 2(d)

*Ministerial responsibility*

42 (1) In this Schedule, and the amendments of the Reservoirs Act 1975 made by this Schedule, a reference to the Minister is a reference to—

- (a) the Secretary of State, in relation to England, and
- (b) the Welsh Ministers, in relation to Wales.

(2) After section 27B of the Reservoirs Act 1975 insert—

**“27C Ministerial responsibility**

References to “the Minister” in this Act are to be construed in accordance with paragraph 42 of Schedule 4 to the Flood and Water Management Act 2010.”

**Annotations:**

**Commencement Information**

**I84** Sch. 4 para. 42 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(j)

*Cross-border England-Scotland reservoirs*

43 (1) In this paragraph—

- (a) a “cross-border reservoir” means a large-raised reservoir which is partly in England and partly in Scotland,
- (b) for that purpose “large-raised reservoir” has the meaning given by section A1 of the Reservoirs Act 1975 as inserted by paragraph 2,
- (c) “the English regime” means the Reservoirs Act 1975 as amended by this Schedule, and
- (d) “the Scottish regime” means the 1975 Act as amended by the Flood Risk Management (Scotland) Act 2009 and regulations made by virtue of the 2009 Act.

(2) The Secretary of State, with the consent of the Scottish Ministers, may by order provide that in relation to cross-border reservoirs—

- (a) the Scottish regime shall apply and the English regime shall not apply, or
- (b) the English regime shall apply and the Scottish regime shall not apply.

(3) An order may relate to—

- (a) a specified reservoir, or

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(b) a class of reservoir.

(4) An order may provide—

- (a) for any modifications of the English regime that appear necessary or desirable to the Secretary of State in its application to a cross-border reservoir, or
- (b) for any modifications of the Scottish regime that appear necessary or desirable to the Secretary of State in its application to a cross-border reservoir.

(5) An order under this paragraph may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**Annotations:**

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**Commencement Information**

**185** Sch. 4 para. 43 in force at 1.10.2011 by S.I. 2011/2204, art. 3(1)(k)

**Changes to legislation:**

Flood and Water Management Act 2010, SCHEDULE 4 is up to date with all changes known to be in force on or before 13 June 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

**Changes and effects yet to be applied to :**

- Sch. 4 para. 43(1)(d) words substituted by [S.I. 2015/48 art. 15](#)