

FLOOD RISK MANAGEMENT (SCOTLAND) ACT

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 7 – Reservoirs

236. Part 7 amends the Reservoirs Act 1975, which sets safety requirements to prevent escapes of water from reservoirs. The 1975 Act imposes duties on persons (referred to as “undertakers”) who own, operate or use large raised reservoirs. These duties regulate maintenance and inspection as well as structural changes to large raised reservoirs and, in most cases, they require the appointment of qualified civil engineers to inspect and supervise works on reservoirs and recommend safety measures. Where an engineer recommends measures under the 1975 Act, the undertaker generally has a duty to implement those measures. “Relevant authorities” (also referred to in the Act as “enforcement authorities”) then have duties to maintain registers of information about large raised reservoirs, powers and duties to secure that undertakers comply with their duties under the Act and duties to report to the Scottish Ministers. Enforcement action involves service of written notices on undertakers who have failed to appoint engineers or implement measures recommended by engineers. Failure to comply with a notice is a criminal offence and also triggers a power for the enforcement authority to carry out the work itself and recover the costs from the undertaker.

Section 84 – SEPA to be enforcement authority under the Reservoirs Act 1975

237. Sections 84 to 86 make provision for SEPA to take over from local authorities as the relevant authority and enforcement authority under the 1975 Act. Section 84 appoints SEPA as the relevant authority for the whole of Scotland.

Section 85 – Transitional arrangements

238. This section contains detailed provision about the transfer of responsibility from local authorities to SEPA. Subsection (2) requires local authorities to hand over relevant registers, records and other relevant information to SEPA within 28 days of the transfer of responsibility. Subsection (3) requires each local authority to give SEPA any assistance it may reasonably require for the purposes of taking over as enforcement authority.
239. Subsections (4) to (6) contain transitional arrangements to ensure that acts by local authorities when they were enforcement authorities remain valid and to allow SEPA to take over responsibility for ongoing legal proceedings and other work.

Section 86 – Service of documents

240. This section amends section 15 of the 1975 Act and inserts a new section 22B to provide for service of documents by SEPA in its new role as the relevant authority and enforcement authority for Scotland.

Section 87 – Extension of enforcement authority’s reserve powers

241. This section extends to Scotland amendments made to sections 8, 15 and 17 of the 1975 Act by section 75 of the Water Act 2003, which amended the 1975 Act for England and Wales. The effect of the amendments is to allow the enforcement authority to enter land under section 17 to determine whether measures recommended by engineers who were appointed by the enforcement authority under section 8 have been carried out. The enforcement authority can serve enforcement notices on undertakers who fail to implement such measures and if an undertaker fails to comply with an enforcement notice, the enforcement authority can also carry out the work itself and recover the costs under section 15.

Section 88 – Incident reporting

242. This section inserts a new section 12ZA into the 1975 Act. This enables the Scottish Ministers to make provision in regulations for reporting incidents which may affect the safety of reservoirs. The power is not limited to large raised reservoirs under the 1975 Act and instead regulations can set criteria for determining which reservoirs will fall within the incident reporting regime.
243. Subsections 12ZA(2) and (4) set out what regulations may cover.
244. Section 12ZA(3) sets consultation requirements which the Scottish Ministers must comply with before making regulations and section 12ZA(5) provides for regulations to be subject to affirmative procedure in the Scottish Parliament.

Section 89 - Flood Plans

245. This section inserts a new section 12C into the 1975 Act. This enables the Scottish Ministers to make provision in regulations for the preparation of reservoir flood plans. These plans would set out the action which the reservoir undertaker would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir. As with the new incident reporting power, this power is not limited to large raised reservoirs and instead the regulations can set criteria for determining which reservoirs will require flood plans.
246. Subsections 12C(3) and (5) set out what regulations may cover.
247. Section 12C(4) sets consultation requirements which the Scottish Ministers must comply with before making regulations and section 12C(6) provides for regulations to be subject to affirmative procedure in the Scottish Parliament.

Section 90 – Reservoirs Act 1975: Crown application

248. This section inserts a new section 27B into the 1975 Act. This makes provision for the 1975 Act to apply to the Crown in Scotland. The new section is similar to section 27A which was inserted into the 1975 Act by the Water Act 2003 and which makes provision for the Act to apply to the Crown in England and Wales.
249. Subsection (1) of section 27B provides that the 1975 Act binds the Crown.
250. Subsection (2) and (3) of section 27B provide that the Crown will not be criminally liable for any contravention of the 1975 Act but allows SEPA to apply to the Court of Session for a declaration that any act of the Crown is in contravention of the Act.
251. Subsection (4) of section 27B provides that any provision made by or under this Act applies to persons in the service of the Crown as it applies to other persons.
252. Subsection (5) and (6) of section 27B limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (6) defines “Crown land” and “appropriate authority” and

*These notes relate to the Flood Risk Management (Scotland)
Act (asp 6) which received Royal Assent on 16 June 2009*

subsection (8) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.