



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

## <sup>F1</sup>PART 7

### RESERVOIRS

PROSPECTIVE

#### *Enforcement powers and incident reporting*

#### **87 Extension of enforcement authority's reserve powers**

The amendments to the 1975 Act made by section 75 of the Water Act 2003 (c. 37) (which enable enforcement authorities to serve and enforce notices requiring undertakers to take measures in the interests of safety) extend to Scotland.

#### **88 Incident reporting**

After section 12 of the 1975 Act, insert—

##### **“12ZA Incident reporting: Scotland**

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision for the reporting to the enforcement authority of incidents occurring at reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations.
- (2) The regulations may, in particular—
  - (a) provide that the enforcement authority or another person—
    - (i) may specify the criteria, and
    - (ii) is to determine whether a reservoir meets the criteria,
  - (b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a reservoir,

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- (c) provide for a supervising engineer or other person to determine whether an incident has occurred,
  - (d) require, in relation to a reservoir, the undertakers or other specified person to report incidents occurring at that reservoir,
  - (e) require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by the enforcement authority or the Scottish Ministers,
  - (f) make provision for the publishing of reports,
  - (g) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
  - (h) create offences,
  - (i) provide that any offence created is triable—
    - (i) only summarily, or
    - (ii) either summarily or on indictment,
  - (j) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
  - (k) provide for any offence created which is triable either summarily or on indictment to be punishable—
    - (i) on summary conviction, by a fine not exceeding the statutory maximum,
    - (ii) on conviction on indictment, by a fine,
  - (l) make provision in connection with ensuring remedial action is taken following an incident report including provision amending this Act (other than this section) or applying this Act with modifications.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) SEPA,
  - (b) undertakers of reservoirs to which they consider the regulations will apply,
  - (c) the Institution of Civil Engineers, and
  - (d) any other person as they consider appropriate.
- (4) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.
- (5) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

## **89 Flood plans**

After section 12B of the 1975 Act, insert—

### **“12C Flood plans: Scotland**

- (1) The Scottish Ministers may by regulations made by statutory instrument provide that a flood plan is to be prepared for each reservoir in Scotland which

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meets criteria specified in, or otherwise determined in accordance with, the regulations.

- (2) A “flood plan” is a plan setting out the action to be taken by the undertaker of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.
- (3) The regulations may, in particular—
- (a) provide that the enforcement authority or another person—
    - (i) may specify the criteria, and
    - (ii) is to determine whether a reservoir meets the criteria,
  - (b) specify what is to be included in a flood plan and may, in particular, provide that a plan must include a map,
  - (c) specify the form in which a flood plan is to be prepared,
  - (d) provide that it is for the undertaker of a reservoir or other person to prepare a flood plan in relation to the reservoir,
  - (e) require the person preparing a flood plan to have regard to guidance issued by the enforcement authority or the Scottish Ministers,
  - (f) require the flood plan to be produced or submitted to the enforcement authority by such time as—
    - (i) the regulations specify, or
    - (ii) the authority or Scottish Ministers may direct,
  - (g) make provision about the approval of flood plans,
  - (h) make provision for the review and updating of flood plans,
  - (i) provide for a register of flood plans to be established and maintained,
  - (j) make provision for the publication, or distribution of copies, of—
    - (i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
    - (ii) flood plans, and
    - (iii) reports,
  - (k) make provision in connection with the testing of flood plans,
  - (l) require the undertaker of a reservoir to take action set out in the flood plan relating to the reservoir in the event of an emergency,
  - (m) provide that the enforcement authority may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from that person,
  - (n) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
  - (o) make provision in connection with paragraphs (m) and (n) amending this Act (other than this section) or applying this Act with modifications,
  - (p) create offences,
  - (q) provide that any offence created is triable—
    - (i) only summarily, or
    - (ii) either summarily or on indictment,
  - (r) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

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- (s) provide for any offence created which is triable either summarily or on indictment to be punishable—
  - (i) on summary conviction, by a fine not exceeding the statutory maximum,
  - (ii) on conviction on indictment, by a fine.
- (4) Before making regulations under subsection (1), the Scottish Ministers must consult—
  - (a) SEPA,
  - (b) undertakers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
  - (c) the Institution of Civil Engineers, and
  - (d) such other persons as they consider appropriate.
- (5) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.
- (6) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

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