



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

## PART 7

### RESERVOIRS

*SEPA to be enforcement authority under the Reservoirs Act 1975*

#### **84 SEPA to be enforcement authority under the Reservoirs Act 1975**

- (1) The Reservoirs Act 1975 (c. 23) (referred to in this Part as “the 1975 Act”) is amended as follows.
- (2) In section 1 (ambit and interpretation), after subsection (4A) insert—

“(4B) The “area” of the Scottish Environment Protection Agency (referred to in this Act as “SEPA”), in its capacity as a relevant authority for the purposes of this Act, is the whole of Scotland.”
- (3) In section 2(1) (relevant authorities), for the words from “councils” to “1994” substitute “SEPA”.
- (4) In Schedule 1 (index of definitions), after the entry for “Area (in relation to the Environment Agency)” insert—

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“Area (in relation to SEPA)

Section 1(4B)”.

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#### **85 Transitional arrangements**

- (1) An existing relevant authority is a body which, immediately before the date of commencement of section 84 (“the commencement date”), is a relevant authority in Scotland for the purposes of the 1975 Act.
- (2) Each existing relevant authority must, no later than 28 days after the commencement date, give to SEPA—

- (a) the register maintained by the authority under section 2(2) of that Act, and
  - (b) any other documents, records or other information in its possession which relate to the exercise of the authority's functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its "enforcement functions").
- (3) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority's enforcement functions.
- (4) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the commencement date.
- (5) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority's enforcement functions and is in the process of being done by or in relation to the authority immediately before the commencement date.
- (6) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date has effect as if done by SEPA.

## **86 Service of documents**

- (1) In section 15(4) of the 1975 Act (reserve powers of enforcement authorities)—
- (a) after "section 22A" insert "or 22B",
  - (b) the words "or section 192 of the Local Government (Scotland) Act 1973" are repealed.
- (2) After section 22A of that Act insert—

### **"22B Service of notices by SEPA**

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by SEPA as if it were authorised or required to be served or given by or under that Act."

### *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,
  - (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 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,

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- (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,
  - (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.”.

#### *Crown application*

### **90 Reservoirs Act 1975: Crown application**

After section 27A of the 1975 Act, insert—

#### **“27B Crown application in Scotland**

- (1) This Act binds the Crown.
- (2) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.
- (3) But the Court of Session may, on the application of SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Despite subsection (2), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.

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- (5) The power conferred by section 17 is exercisable in relation to Crown land only with the consent of the appropriate authority.
- (6) In subsection (5)—
- (a) “Crown land” means land, an interest in which—
    - (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
    - (ii) belongs to an office-holder in the Scottish Administration or to a government department, or
    - (iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
  - (b) “appropriate authority”, in relation to any land—
    - (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
    - (ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
    - (iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
    - (iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means that office-holder or government department.
- (7) In subsection (6), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).
- (8) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.”.