

RESERVOIRS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Reservoirs

Chapter 1 – Controlled Reservoirs, Reservoir Managers Etc.

Section 1 – Controlled Reservoirs

7. The regulatory regime provided for in the Act only applies to “controlled reservoirs” as defined by the Act. The definition of a “controlled reservoir” is set out in sections 1 and 2 and includes structures designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Subsection (3) provides that combinations of such structures are to be treated as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can or does flow between them and there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity and flow. This is intended to ensure that cascades or series of interlinked reservoirs are subject to control. Such combinations have the potential to cause a similar degree of risk to public safety as larger individual reservoirs, notwithstanding that the individual structures that comprise the combination might only hold a relatively small volume of water.
8. Subsection (4) enables the Scottish Ministers to provide by order that a particular structure or combination of structures is to be treated as a controlled reservoir notwithstanding that it may not meet the criteria set out in subsection (2) or (3). When doing so the Scottish Ministers must take into account the potential adverse consequences of an uncontrolled release of water from the structure or combination and the probability of such a release. This provision enables the Scottish Ministers to treat a smaller reservoir as a controlled reservoir if it is thought that, despite its smaller capacity, the risk that it poses is nevertheless a serious one.
9. Subsection (6)(a) enables the Scottish Ministers to make provision by order for a different volume of water to be substituted for the volume currently specified in sections 1(2), (3)(b) and (4)(b)(ii), sections 32(3) and (5), and sections 35(2)(b) and 39(3)(b). This enables the Scottish Ministers to alter the threshold above which reservoirs are deemed to be controlled reservoirs and therefore subject to the regulatory regime of the Act. Subsection (6)(b) enables the Scottish Ministers to determine in regulations when a loch or area is considered to be artificial or partly artificial, how the volume of water capable of being held is calculated, and the meaning of “natural level” and “surrounding land” for the purposes of this Part of the Act. Subsection (7) requires the Scottish Ministers to consult the Institution of Civil Engineers about the volume of water which should be specified in an order under subsection (6)(a) before making the order.

Section 2 – Controlled reservoirs: supplementary

10. **Section 2(1)** sets out some of the elements that comprise a “controlled reservoir” to avoid any doubt about whether these elements are covered by the Act. Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Act. Subsection (3) enables the Scottish Ministers to define with more precision what structures are not controlled reservoirs and enables them to exclude other things from being (or being treated as) controlled reservoirs.

Section 3 – Reservoir Managers

11. Responsibility for complying with most of the requirements of the Act is placed upon individuals referred to in the Act as “reservoir managers”. Section 3 sets out who the reservoir manager of a controlled reservoir is for the purposes of the Act.
12. Subsection (2) provides that Scottish Water is the reservoir manager for all controlled reservoirs that are managed or operated by it. Where Scottish Water is the reservoir manager on this basis, there can be no other reservoir managers of that reservoir.
13. Taken together, subsections (3) and (4) determine who the reservoir manager is where Scottish Water do not manage or operate the reservoir. Where the reservoir or any part of the reservoir is managed or operated by a particular person who is not the owner of the reservoir or that part of it, that person is the reservoir manager. If no person other than the owner manages or operates the reservoir, or any part of it, the responsibility of being reservoir manager falls to the owner (or owners) of the reservoir or parts of the reservoir.
14. Where there is more than one person managing or operating the reservoir, each will be a reservoir manager (i.e. there will be more than one reservoir manager).
15. Where part only of the reservoir is managed or operated by a person other than an owner, both that person and the owner of the other part will be the reservoir managers.
16. Subsection (4)(a) sets out that managing or operating a reservoir includes controlling the flow of water in or out of the reservoir. Subsection (4)(b) provides that references to managing or operating a reservoir in relation to a reservoir which is being constructed or restored to use are to be read as references to proposing to manage or operate the reservoir.

Section 4 – Multiple reservoir managers: supplementary

17. **Section 4** makes provision about the situation where there is more than one reservoir manager in relation to a controlled reservoir. Section 4(2) provides that the requirements of Part 1 of the Act apply to each and every reservoir manager separately and any duties of the reservoir manager set out under the Act have to be complied with by each of them. To avoid the duplication that this may cause and reduce the administrative burden placed on reservoir managers by the Act; subsection (3) enables reservoir managers to nominate one of their number to fulfil any requirements of Part 1 to which they are all subject. Where such a nomination is made, subsection (4) requires the nominating managers to give notice of the nomination to SEPA and to any engineer appointed in relation to the reservoir. Where such a nomination is made, SEPA may (if it so chooses) notify and consult only the nominated reservoir manager (to the exclusion of other reservoir managers of that reservoir) when required to consult the reservoir manager of that reservoir under the Act. Similarly, engineers appointed under the Act may give certificates and other documents that they are required to issue under the Act to the nominated reservoir manager only.

Section 5 – Duty of multiple reservoir managers to cooperate

18. **Section 5** requires reservoir managers, where there are 2 or more of them in respect of a controlled reservoir, to cooperate with each other as far as is necessary to enable

*These notes relate to the Reservoirs (Scotland) Act 2011
(asp 9) which received Royal Assent on 12 April 2011*

all of the reservoir managers for the reservoir to comply with the provisions listed in subsection (1). Subsection (2) makes it an offence not to cooperate under subsection (1). Subsections (3) and (4) set out the maximum penalties associated with that offence.

Section 6 – Guidance by SEPA: management of reservoirs

19. **Section 6** requires SEPA to publish guidance regarding the management of controlled reservoirs by reservoir managers and cooperation among multiple reservoir managers by such date as the Scottish Ministers direct. Subsection (2) requires SEPA to consult the Institution of Civil Engineers and any other persons it considers appropriate before publishing such guidance.

Section 8 – The 1975 Act and its repeal

20. The Act replaces the safety regime for reservoirs in Scotland that was provided by the Reservoirs Act 1975 and so section 8(2) repeals the Reservoirs Act 1975 for Scotland.