

# RESERVOIRS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### THE ACT – SECTION BY SECTION

#### Part 1 – Reservoirs

#### *Chapter 5 – Construction Or Alteration of Controlled Reservoirs*

#### *Section 32 – Application of Chapter 5*

51. *Chapter 5* regulates the construction of controlled reservoirs by imposing a requirement upon reservoir managers to appoint a construction engineer to supervise the relevant works, and by imposing a system of reporting and certification in respect of the works. Section 32 sets out the works that are to be treated as construction of a controlled reservoir for the purposes of the Act, which include restoration to use, alterations to capacity, discontinuance (i.e. reducing the level of water the reservoir is able to hold below 10,000m<sup>3</sup>) and abandonment (i.e. rendering a reservoir incapable of containing water above the natural level of the surrounding land). Unless such works are being carried out, there is no requirement to appoint a construction engineer.

#### *Section 33 – Notice to SEPA and appointment of construction engineer*

52. This section requires reservoir managers of controlled reservoirs which are to be subject to relevant works to appoint a construction engineer to supervise the construction or alteration. At least 28 days before the works commence the reservoir manager must give SEPA notice of the proposed works and notice of the construction engineer's appointment. A construction engineer is an engineer from the appropriate panel appointed to supervise the relevant works until a final certificate is issued in respect of the works. Subsection (5) disqualifies an engineer employed by the reservoir manager from being appointed as a construction engineer in relation to a particular reservoir.

#### *Section 34 – Inspection, reports, supervision of works etc. by construction engineer*

53. *Section 34* requires the construction engineer to supervise any relevant works until a final certificate is issued in respect of the works. Subsection (2) requires the engineer to inspect the reservoir and design any construction or alteration to the reservoir. Subsection (3) enables the construction engineer to issue a safety report to the reservoir manager prepared in accordance with Section 35. Where the reservoir is to be restored to use or abandoned, subsections (4) and (5) require the construction engineer to issue to the reservoir manager such a report no later than 9 months after appointment. Where a construction engineer has been appointed by SEPA under section 65(2), subsection (6) requires the construction engineer to give the reservoir manager a safety report as soon as practicable after their appointment. Subsection (7) requires the construction engineer who issues the report, to give SEPA a copy of the report within 28 days of issuing it.

### ***Section 35 – Safety reports***

54. **Section 35** sets out the information which must be included in a safety report. Subsection (2) sets out particular information that the safety report must include where the reservoir is being restored to use, discontinued, or abandoned.

### ***Section 36– Safety reports: compliance***

55. This section requires reservoir managers to comply with any direction in a safety report issued to the reservoir manager. Subsection (2) requires the engineer to issue a safety measure certificate to the reservoir manager within 28 days of being satisfied that a measure directed in the safety report has been taken. Subsection (3) requires safety measure certificates to specify the measures taken and any measures which are still to be taken. Subsection (4) requires the construction engineer to give SEPA a copy of the safety measure certificate no later than 28 days after issuing it.

### ***Section 37 – Preliminary certificates***

56. This section requires the construction engineer to issue a preliminary certificate when he or she considers that the reservoir that is subject to relevant works may be safely wholly or partially filled with water or (in the case of a reservoir that already contains water) that the level of water should be reduced. A preliminary certificate must specify a level that the water in the reservoir must not exceed, require the reservoir manager to ensure that the level of water remains below that level, and specify any other requirements the engineer considers appropriate about the manner in which the water level may be increased or decreased. The reservoir manager of a controlled reservoir must (by virtue of section 40) comply with the requirements of any preliminary or final certificate for the time being applicable to the reservoir.
57. Subsection (3) requires the construction engineer to give a copy of the preliminary certificate to SEPA within 28 days of issuing it. Subsection (4) sets out that the most recent preliminary certificate issued supersedes any previous preliminary certificates applicable to the reservoir in respect of those works. Subsection (5) sets out that a final certificate applicable to the reservoir supersedes any preliminary certificates in respect of those works.

### ***Section 38 – Construction certificates***

58. This section requires the issue of construction certificates by the construction engineer as soon as is reasonably practicable, once he or she is satisfied that the construction or alteration has been completed to a satisfactory standard. Subsection (2) requires the construction certificate to be issued before or at the same time as the final certificate. Subsection (3) requires the construction certificate to certify that the construction has been carried out effectively in accordance with the drawings and descriptions included along with the certificate, to include an annex containing detailed drawings and descriptions of the works for the construction or alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works and any other matters specified by the Scottish Ministers in regulations. Subsection (4) requires the construction engineer to give SEPA a copy of the report within 28 days of issuing it.

### ***Section 39 – Final certificates***

59. Where a controlled reservoir is being constructed or altered, except where it is being discontinued or abandoned, subsection (1) requires construction engineers to issue a final certificate to the reservoir manager within 28 days of being satisfied that the reservoir is sound and satisfactory and may be used safely for the collection and storage of water.

60. Where the final certificate relates to a high risk reservoir subsection (2)(b) requires the final certificate to recommend when an early inspection should take place (if the construction engineer considers one should be undertaken). If the reservoir is a high or medium risk reservoir, subsection (2)(c) requires the final certificate to specify any matter that the construction engineer considers should be monitored by the supervising engineer until the first inspection of the reservoir under section 46. Subsection (2)(d) requires the final certificate to impose requirements that the water level must not exceed the level specified in the certificate, that the reservoir manager must ensure that the level does not exceed that level, and that the engineer may set out requirements as to the manner in which water levels may be increased or decreased.
61. Subsection (3) requires the construction engineer of a controlled reservoir which is being discontinued, to issue a final certificate to the reservoir manager within 28 days of being satisfied that the discontinuance has been safely completed, that the resulting structure is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.
62. Subsection (4) requires where a reservoir is being discontinued that the final certificate must state whether the construction engineer considers that the discontinuance has been safely completed and that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.
63. Subsection (5) requires the construction engineer, where a reservoir is being abandoned to issue a final certificate to the reservoir manager within 28 days of being satisfied that the abandonment has been safely completed and that the resulting structure is incapable of filling with water above the natural level of any part of the surrounding land.
64. Subsection (6) requires where a reservoir is being abandoned that the final certificate must state whether the construction engineer considers that the abandonment has been safely completed and that the resulting structure or area is incapable of filling above the natural level of any part of the surrounding land.
65. Subsection (8) requires that a copy of the construction certificate must be attached to the final certificate when the reservoir has been constructed or altered. Subsection (9) requires the construction engineer to give SEPA a copy of the final certificate within 28 days of issuing. If a final certificate has not been issued within 5 years of the issue of the preliminary certificate, subsection (10) requires the construction engineer to give the reservoir manager a written explanation of the reasons why within 28 days of the expiry of the 5 year period. Subsection (10)(b) requires the construction engineer to give the reservoir manager a written explanation of the reasons at 12 months intervals thereafter until the final certificate is issued and subsection (10)(c) requires the construction engineer to send each of the written statements to SEPA within 28 days of being given.

#### ***Section 40 – Preliminary and final certificates: compliance***

66. **Section 40** requires reservoir managers to comply with the requirements of any preliminary and final certificates applicable to the controlled reservoir at that time.

#### ***Section 41 – Termination of supervision by construction engineer***

67. This section makes it clear that the obligation of a reservoir manager to appoint a construction engineer in respect of relevant works to a controlled reservoir comes to an end when the engineer gives a copy of the final certificate to SEPA in accordance with Section 39(9). This step marks the normal end-point for the involvement of a construction engineer in relation to the relevant works.

***Section 42 – Offences: construction, alteration, restoration to use, abandonment***

68. This section makes it an offence to fail to comply with section 33(1), (2)(a) or (2)(b), section 36(1) or section 40. Subsection (2) and (3) set out the penalties for anyone committing an offence under this section.

***Section 43 – Defences: offences under section 42(1)(d) or (e)***

69. Section 43 sets out acceptable defences to offences under section 42.

***Section 44 – Controlled reservoirs subject to relevant works at commencement***

70. Section 44 sets out transitional arrangements for the Act to apply to controlled reservoirs already under construction or alteration when the Act is commenced. Subsection (2) applies the whole of Chapter 5 and sections 65 to 67 to reservoirs which were previously “large raised reservoirs” within the meaning of the Reservoirs Act 1975 and which are subject to relevant works on commencement. Where a reservoir is not a large raised reservoir in terms of the 1975 Act and is subject to relevant works at commencement of the Act, Chapter 5 and sections 65 to 67 apply except that the reservoir manager must notify SEPA of the works, appoint a construction engineer, and notify SEPA of that appointment, all within 28 days of commencement of section 32. The construction engineer must also give the reservoir manager a safety report as soon as reasonably practicable after being appointed and in any event within 9 months of appointment.