

RESERVOIRS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Reservoirs

Chapter 8 – Dispute Referral

Section 59 – Referral to referee: directions in safety report or inspection report

93. Chapter 8 provides for a form of arbitration between reservoir managers and construction or inspecting engineers. If a reservoir manager disagrees with a direction in safety report or an inspection report, they can challenge that direction by referring it to a referee. Section 59(3) suspends any direction thus challenged until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 60 – Referral to referee: requirements in preliminary certificate or final certificate

94. This section enables reservoir managers to challenge requirements in preliminary and final certificates. Subsection (2) lists the matters which can be challenged under this section. Subsection (3) suspends any direction challenged under this section until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 61 – Appointment of referee

95. This section requires referees appointed under this section to be appointed by agreement between the reservoir manager and the relevant engineer or, where no agreement can be reached by the Scottish Ministers. Subsection (2) enables engineers to be appointed as referees if they are a member of a panel established under section 27 and is not disqualified from being appointed under this section in relation to the reservoir concerned. Subsection (3) lists the situations where an engineer would be disqualified from being appointed under this section. Subsection (4) defines “the relevant engineer” for the purposes of this section, section 62 and section 63.

Section 61 – Powers of referee: referral under section 59(2)

96. This section enables the referee to modify the directions subject to referrals under section 59. Subsection (3) requires the referee to modify the report, any relevant safety measure certificates or interim inspection compliance certificates if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified reports if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision. Subsection (7) defines “any necessary modification”.

Section 63 – Powers of referee: referral under section 60(1)

97. This section enables the referee to modify the directions subject to referrals under section 60(1). Subsection (3) requires the referee to modify the certificate if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified certificates if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision.

Section 64 – Procedure

98. This section enables the Scottish Ministers to make provision in regulations as to the time, manner and procedure of referrals and expenses of the proceedings and investigations including the remuneration of the referee. Subsection (2) provides for the expenses of the referee to be paid by the reservoir manager.