



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 1

CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs

- (1) This section (and section 2) determine what is a “controlled reservoir” for the purposes of this Part.
- (2) A controlled reservoir is any of the following structures or areas which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land—
 - (a) a structure designed or used for collecting and storing water,
 - (b) an artificial (or partly artificial) loch or other artificial (or partly artificial) area.
- (3) A combination of more than one of the structures or areas referred to in paragraph (a) or (b) of subsection (2) is to be treated as a controlled reservoir where none of the individual structures or areas is a controlled reservoir under that subsection but—
 - (a) water does (or could) flow between them, and
 - (b) there could be an uncontrolled release of 10,000 cubic metres or more of water from the combination.
- (4) The Scottish Ministers, having taken into account the matters mentioned in subsection (5), may by order provide that any of the following is to be treated as a controlled reservoir—
 - (a) a structure or area referred to in paragraph (a) or (b) of subsection (2) which is not a controlled reservoir,
 - (b) a combination of more than one such structure or area—
 - (i) between which water does (or could) flow, but

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- (ii) which does not fall within subsection (3) because there could not be an uncontrolled release of 10,000 cubic metres or more of water from the combination.
- (5) The matters are—
 - (a) the potential adverse consequences of an uncontrolled release of water from the structure or area or (as the case may be) the combination,
 - (b) the probability of such a release.
- (6) The Scottish Ministers may—
 - (a) by order substitute a different volume of water for the volume for the time being specified in subsections (2), (3)(b) and (4)(b)(ii) and sections 32(3) and (5), 35(2)(b) and 39(3)(b),
 - (b) by regulations make provision for the purposes of this Part as to—
 - (i) when a loch or other area is considered to be artificial or partly artificial,
 - (ii) how the volume of water capable of being held or released is to be calculated,
 - (iii) the meaning of “natural level” and “surrounding land”.
- (7) Before making an order under subsection (6)(a) the Scottish Ministers must consult the Institution of Civil Engineers about the volume of water which should be specified in the order.

2 **Controlled reservoirs: supplementary**

- (1) A controlled reservoir includes its basin, spillways, valves, pipes and any other thing which—
 - (a) controls the flow of the water,
 - (b) facilitates the storage of water in it,
 - (c) supports such control or storage.
- (2) The following structures or areas are not controlled reservoirs (and are not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4))—
 - (a) ponds within extractive waste sites or waste facilities,
 - (b) canals or other inland waterways,
 - (c) weirs,
 - (d) structures or areas of water designed to protect land from the sea,
 - (e) sewage sludge lagoons,
 - (f) road and railway embankments,
 - (g) embanked watercourses.
- (3) Regulations by the Scottish Ministers may make provision as to—
 - (a) what constitutes any of the structures or areas referred to in subsection (2),
 - (b) what other thing (if any) described in the regulations is not a controlled reservoir (and is not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4)).

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3 Reservoir managers

- (1) This section determines who is the reservoir manager of a controlled reservoir for the purposes of this Part.
- (2) Scottish Water is the reservoir manager of a controlled reservoir which is managed or operated by it.
- (3) The reservoir manager of a controlled reservoir for which Scottish Water is not the reservoir manager by virtue of subsection (2) is—
 - (a) any person who manages or operates the reservoir or any part of it (other than the owner of the reservoir or that part of it),
 - (b) the owner of any part of the reservoir for which no person is reservoir manager by virtue of paragraph (a).
- (4) In this section—
 - (a) managing or operating a reservoir (without prejudice to the generality of that expression) includes controlling of the flow of water in or out of the reservoir, and
 - (b) a reference to managing or operating a reservoir is, in relation to a reservoir which is being constructed or restored to use (within the meaning of Chapter 5), to be read as referring to proposing to manage or operate the reservoir.

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4 Multiple reservoir managers: supplementary

- (1) This section applies where by virtue of section 3 there is more than one reservoir manager of a controlled reservoir.
- (2) The requirements of this Part apply in relation to each of the reservoir managers (whether or not they make a nomination under subsection (3)).
- (3) Any of the reservoir managers (“the nominating manager”) may nominate another of the reservoir managers (“the nominee”) to do any of the following—
 - (a) fulfil on behalf of the nominating manager any requirements of this Part to which the nominating manager is subject and which are specified in the nomination,
 - (b) exercise any rights the nominating manager has under this Part and which are so specified.
- (4) Where a nomination is made under subsection (3)—
 - (a) the nominating manager must give notice of the nomination to—
 - (i) SEPA,
 - (ii) any construction engineer, inspecting engineer or supervising engineer appointed in relation to the reservoir,
 - (b) SEPA may notify and consult the nominee in accordance with the nomination,
 - (c) any construction engineer, inspecting engineer or supervising engineer appointed in relation to the reservoir may give any notice, report, certificate

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or other document (required by this Part to be given to the reservoir manager of the reservoir) to the nominee in accordance with the nomination.

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5 Duty of multiple reservoir managers to co-operate

- (1) Where, by virtue of section 3, there is more than one reservoir manager of a controlled reservoir, each of the reservoir managers must co-operate with the other reservoir manager (or managers) of the reservoir so far as is necessary to enable all of the reservoir managers to comply with the requirements to which they are subject under—
 - (a) section 33(2)(a) or 65(2)(a) (appointment etc. of construction engineer),
 - (b) section 36(1) or 69(2) (directions of construction engineer as to taking of measures in safety report),
 - (c) section 40 (compliance with preliminary certificate or final certificate),
 - (d) section 45(1)(a) or 65(2)(a) (appointment etc. of inspecting engineer to carry out inspections in accordance with section 46),
 - (e) section 47(2) (giving inspecting engineer copy of final certificate and latest inspection report),
 - (f) section 48(1) or 69(2) (directions of inspecting engineer as to taking of measures in inspection report),
 - (g) section 49(1)(a) or 65(2)(a) (appointment etc. of supervising engineer),
 - (h) section 50(4) (direction by supervising engineer as to carrying out visual inspection of reservoir),
 - (i) section 51 (recording of certain matters),
 - (j) regulations under section 54(1) (reporting of incidents),
 - (k) regulations under section 55(1) (preparation of flood plans),
 - (l) section 56 (maintenance of records for controlled reservoirs),
 - (m) section 57 (display of safety information),
 - (n) section 97 (affording reasonable facilities to engineers),
 - (o) section 98 (providing information or assistance to SEPA).
- (2) A reservoir manager who fails to comply with subsection (1) commits an offence.
- (3) A reservoir manager guilty of an offence under subsection (2) in relation to a controlled reservoir which is, at the time the offence is committed, designated as a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A reservoir manager guilty of an offence under that subsection in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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6 Guidance by SEPA: management of reservoirs

- (1) SEPA must, by such date as the Scottish Ministers direct, publish guidance on—
 - (a) the management of controlled reservoirs by reservoir managers,
 - (b) co-operation among reservoir managers of controlled reservoirs where a controlled reservoir has more than one reservoir manager.
- (2) Before publishing guidance under subsection (1), SEPA must consult—
 - (a) the Institution of Civil Engineers,
 - (b) such other persons as it considers appropriate.

7 SEPA

In this Act “SEPA” means the Scottish Environment Protection Agency.

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8 The 1975 Act and its repeal

- (1) “The 1975 Act” means the Reservoirs Act 1975 (c.23).
- (2) The 1975 Act is repealed.

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