



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 3

RISK DESIGNATION

18 Provisional risk designation

- (1) SEPA must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a provisional risk designation.
- (2) In giving a provisional risk designation, SEPA must take into account the matters mentioned in section 22.
- (3) A provisional risk designation is a provisional designation of the reservoir as one of the following types—
 - (a) a high-risk reservoir,
 - (b) a medium-risk reservoir,
 - (c) a low-risk reservoir.
- (4) SEPA gives a controlled reservoir a provisional risk designation by giving the reservoir manager notice specifying—
 - (a) the provisional risk designation it has given the reservoir,
 - (b) the reasons for the provisional risk designation,
 - (c) how representations may be made to SEPA,
 - (d) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

19 First risk designation

- (1) SEPA must, as soon as is reasonably practicable after the end of the period referred to in section 18(4)(d) and having taken into account any representations made in that period, give the controlled reservoir a risk designation.
- (2) In giving a risk designation, SEPA must take into account the matters mentioned in section 22.
- (3) A risk designation is a designation of the reservoir as one of the types referred to in paragraphs (a) to (c) of section 18(3).
- (4) SEPA may not give the reservoir a risk designation before the end of the period during which representations may be made under section 18(4).
- (5) SEPA gives the reservoir a risk designation by giving the reservoir manager notice—
 - (a) specifying the risk designation given,
 - (b) specifying the reasons for the risk designation,
 - (c) giving information about the right under section 23 to apply for a review of the risk designation.

20 Periodic review of risk designations

- (1) SEPA must review the risk designation for the time being of a controlled reservoir—
 - (a) at any time SEPA considers the designation may have ceased to be appropriate,
 - (b) where the designation was given under section 19 and has not been reviewed under paragraph (a) during the period of 6 years after it was given (whether or not it has been reviewed under section 23), by the end of that period,
 - (c) by the end of the period of 6 years after each review under this section.
- (2) In reviewing the risk designation, SEPA must, having taken into account the matters mentioned in section 22, either—
 - (a) provisionally confirm the risk designation, or
 - (b) provisionally give the reservoir a risk designation as one of the other types referred to in paragraphs (a) to (c) of section 18(3).
- (3) SEPA does as is specified in paragraphs (a) and (b) of subsection (2) in relation to a controlled reservoir by giving the reservoir manager notice specifying—
 - (a) whether it provisionally confirms the risk designation or provisionally gives the reservoir a different risk designation,
 - (b) where it provisionally gives the reservoir a different risk designation, the different risk designation concerned,
 - (c) the reasons for its decision,
 - (d) how representations may be made to SEPA,
 - (e) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

21 Decision following a periodic review

- (1) SEPA must, having taken into account any representations made in accordance with section 20(3), either—

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- (a) confirm the risk designation the reservoir had immediately before the review, or
 - (b) give the reservoir a risk designation as one of the other types referred to in paragraphs (a) to (c) of section 18(3).
- (2) In doing so, SEPA must take into account the matters mentioned in section 22.
- (3) SEPA may not make a decision under subsection (1) before the end of the period during which representations may be made under section 20(3).
- (4) SEPA does as is specified in paragraph (a) or (b) of subsection (1) by giving the reservoir manager notice—
- (a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,
 - (b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,
 - (c) specifying the reasons for its decision,
 - (d) giving information about the right of review under section 23 against the risk designation.

22 Risk designation and periodic review: matters to be taken into account

- (1) The matters SEPA is required by sections 18(2), 19(2), 20(2) and 21(2) to take into account are—
- (a) the potential adverse consequences of an uncontrolled release of water from the reservoir,
 - (b) the probability of such a release.
- (2) For the purposes of subsection (1)(a), potential adverse consequences include—
- (a) potential damage to—
 - (i) human health,
 - (ii) the environment,
 - (iii) cultural heritage,
 - (iv) medical facilities, power supplies, transport, the supply of water for consumption and anything connected with such matters,
 - (v) other social or economic interests,
 - (b) such other potential damage as SEPA considers relevant.
- (3) The matters which SEPA may take into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a reservoir include—
- (a) the purpose for which the reservoir is (or is to be) used,
 - (b) the materials used to construct the reservoir,
 - (c) the way in which the reservoir was or is being constructed,
 - (d) the maintenance of the reservoir.
- (4) The Scottish Ministers may, after consulting SEPA and the Institution of Civil Engineers, by regulations make further provision about the matters SEPA is to take into account under sections 18(2), 19(2), 20(2) and 21(2).

23 Review of SEPA's decisions giving risk designations

- (1) A reservoir manager of a controlled reservoir who is given notice of a risk designation (under section 19(5) or 21(4)) may apply to SEPA for a review of the designation.
- (2) Any such application must be made before the end of the period of 12 months beginning with the date on which the notice was given.
- (3) Subject to subsection (4), a risk designation in respect of which an application is made under this section continues to have effect despite the application and the review.
- (4) Where as a result of the review SEPA gives the controlled reservoir a different risk designation, the designation which is the subject of the application ceases to have effect from the date on which SEPA gives its decision.
- (5) SEPA gives its decision in the review by giving the reservoir manager notice—
 - (a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,
 - (b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,
 - (c) specifying the reasons for its decision,
 - (d) giving information about the right of appeal under section 24 against the risk designation following the review.
- (6) SEPA may charge a reasonable fee of such amount as it determines in relation to an application for review under this section.
- (7) Any fee charged by SEPA under subsection (6) must be returned by it to the reservoir manager in the following circumstances—
 - (a) where the risk designation which was the subject of the application was as a high-risk reservoir and SEPA's decision in the review is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,
 - (b) where the risk designation which was the subject of the application was as a medium-risk reservoir and SEPA's decision in the review is to give a risk designation as a low-risk reservoir.
- (8) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section.

24 Appeal to the Scottish Ministers following SEPA's review

- (1) A reservoir manager of a controlled reservoir who is given notice of SEPA's decision in a review under section 23 may appeal to the Scottish Ministers against that decision.
- (2) Any such appeal must be made before the end of the period of 12 months beginning with the date on which the notice under section 23(5) was given.
- (3) A risk designation in respect of which an appeal is made under this section continues to have effect while the appeal is pending.
- (4) Before determining an appeal the Scottish Ministers—
 - (a) may, at their own expense, appoint to make recommendations about the risk designation an engineer who is a member of a panel of reservoir engineers established under section 27 who may (by virtue of an order under that section) be appointed under this subsection, and

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- (b) must take into account—
 - (i) a recommendation by any engineer appointed under this subsection, and
 - (ii) the matters mentioned in section 22.
- (5) The Scottish Ministers must notify their determination of the appeal by giving the reservoir manager and SEPA notice—
 - (a) specifying whether they confirm the risk designation or give the reservoir a different risk designation,
 - (b) where they give the reservoir a different risk designation, specifying which one of the other types referred to in paragraphs (a) to (c) of section 18(3) is the different risk designation,
 - (c) specifying the reasons for their decision.
- (6) Any fee charged by SEPA under section 23(6) must be returned by it to the reservoir manager in the following circumstances—
 - (a) where the risk designation which was the subject of the appeal was as a high-risk reservoir and the Scottish Ministers' decision in the appeal is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,
 - (b) where the risk designation which was the subject of the appeal was as a medium-risk reservoir and the Scottish Ministers' decision in the appeal is to give a risk designation as a low-risk reservoir.
- (7) The Scottish Ministers may by regulations make further provision in relation to appeals under this section.

25 Guidance by SEPA: risk designation

- (1) The Scottish Ministers may direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs provisional risk designations and risk designations and in reviewing risk designations.
- (2) Where the Scottish Ministers give a direction under this section SEPA must, before publishing its guidance, consult and have regard to any advice given to it by the Institution of Civil Engineers.

26 High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

- (1) References in this Part to a “high-risk reservoir”, “medium-risk reservoir” or “low-risk reservoir” are references to a controlled reservoir designated as such for the time being under section 19, 21, 23 (subject to subsection (3) of that section) or, as the case may be, 24 (subject to subsection (3) of that section).
- (2) Chapter 6 of this Part makes provision about requirements for inspection, supervision and recording of particular matters in relation to high-risk reservoirs and medium-risk reservoirs.