



# Reservoirs (Scotland) Act 2011

## 2011 asp 9

### PART 1

#### RESERVOIRS

#### CHAPTER 5

##### CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

### 32 Application of Chapter 5

- (1) This Chapter applies where a controlled reservoir is to be constructed or subject to alteration.
- (2) Subsections (3) to (7) have effect for the purposes of this Chapter.
- (3) Any work for the purpose of restoring an existing structure or area (which has previously at any time been capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land) so that it is capable of so holding such amount of water is to be treated as construction of a controlled reservoir.
- (4) Alteration of a controlled reservoir includes—
  - (a) any work for the purpose of increasing or decreasing the capacity of a controlled reservoir,
  - (b) any other work in relation to the reservoir (including work which the Scottish Ministers are satisfied might affect its safety) which the Scottish Ministers by regulations specify.
- (5) Alteration of a controlled reservoir amounts to discontinuance of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (but still capable of holding water above the natural level of any part of that land).
- (6) Alteration of a controlled reservoir amounts to abandonment of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of filling with water above the natural level of any part of the surrounding land.

## (7) Any reference to—

- (a) a controlled reservoir being constructed or subject to alteration is to be construed in accordance with this section,
- (b) a controlled reservoir being restored to use is to be construed as a reference to a controlled reservoir being constructed as mentioned in subsection (3),
- (c) a controlled reservoir being discontinued is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (5),
- (d) a controlled reservoir being abandoned is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (6),
- (e) “relevant works” is a reference to any works carried out for the purpose of the construction or alteration of a controlled reservoir.

**33 Notice to SEPA and appointment of construction engineer**

- (1) The reservoir manager of a controlled reservoir which is to be subject to relevant works must, not later than 28 days before the proposed relevant works begin, give notice to SEPA of the proposed works.
- (2) The reservoir manager must, not later than 28 days before the proposed relevant works begin—
  - (a) appoint a construction engineer,
  - (b) give notice to SEPA of the appointment.
- (3) “A construction engineer” is an engineer appointed under this section to supervise the relevant works until a final certificate is issued in respect of the works.
- (4) An engineer may be appointed as a construction engineer if the engineer—
  - (a) 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 section,
  - (b) is not disqualified by virtue of subsection (5) from being appointed as a construction engineer in relation to the reservoir.
- (5) An engineer is disqualified from being appointed as a construction engineer in relation to the reservoir if the engineer is employed by any person who is a reservoir manager of the reservoir.
- (6) In sections 34 to 41—
  - (a) references to “the construction engineer” are references to the engineer appointed for the time being as such under this section in respect of the relevant works,
  - (b) references to “the reservoir manager” are references to the reservoir manager of the controlled reservoir which is the subject of the relevant works.

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

- (1) The construction engineer must supervise the relevant works in accordance with this section until a final certificate is issued in respect of the works.
- (2) The engineer must—
  - (a) inspect the reservoir,

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- (b) design any construction or alteration.
- (3) Where the reservoir is being constructed or is subject to alteration but is not being discontinued or abandoned, the construction engineer (subject to subsection (6)) may give the reservoir manager a safety report prepared in accordance with section 35.
- (4) Where the reservoir is being restored to use, discontinued or abandoned, the construction engineer must give the reservoir manager a safety report.
- (5) A safety report given under subsection (4) must (subject to subsection (6)) be given not later than 9 months after the construction engineer is appointed.
- (6) Where the appointment of the construction engineer was required by notice from SEPA under section 65(2) (or is to be treated by virtue of section 67(2) as being an appointment by the reservoir manager), the construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed.
- (7) A construction engineer must, not later than 28 days after giving a safety report under this section, give SEPA a copy of it.

### **35 Safety reports**

- (1) A safety report must—
  - (a) specify any measures the construction engineer considers are necessary in the interests of the safety of the controlled reservoir,
  - (b) direct the reservoir manager to ensure that any measures specified in the report are taken under the supervision of the construction engineer and within the period of time specified in the report,
  - (c) where the reservoir manager is required to appoint a supervising engineer (see section 49), specify any matters that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,
  - (d) include such other matters as the Scottish Ministers by regulations specify.
- (2) Where a controlled reservoir—
  - (a) is being restored to use, the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water,
  - (b) is being discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure 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,
  - (c) is being abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.

### **36 Safety reports: compliance**

- (1) The reservoir manager of a controlled reservoir must (subject to section 59(3)) comply with any direction in a safety report issued to the manager.

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- (2) The construction engineer must, not later than 28 days after being satisfied that each measure directed in the safety report has been taken, give the reservoir manager a safety measure certificate.
- (3) A safety measure certificate must specify—
  - (a) the safety report to which it relates,
  - (b) the measure taken,
  - (c) any measure that has yet to be taken.
- (4) A construction engineer must, not later than 28 days after giving a safety measure certificate under subsection (2), give SEPA a copy of it.

### **37 Preliminary certificates**

- (1) Where the construction engineer considers that the reservoir may safely be filled (wholly or partially) with water or that the level of water should be reduced, the engineer must, as soon as is reasonably practicable after being so satisfied, give the reservoir manager a preliminary certificate.
- (2) A preliminary certificate must—
  - (a) specify a level (the “specified level”) that water in the reservoir must not exceed,
  - (b) require the reservoir manager to ensure that the level of water does not exceed the specified level,
  - (c) specify any requirements the engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.
- (3) A construction engineer must, not later than 28 days after giving a preliminary certificate, give SEPA a copy of it.
- (4) A subsequent preliminary certificate applicable to the reservoir replaces any previous preliminary certificate applicable to the reservoir in respect of the relevant works.
- (5) A preliminary certificate ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of those works.

### **38 Construction certificates**

- (1) The construction engineer must give the reservoir manager a construction certificate as soon as is reasonably practicable after being satisfied that the construction or (as the case may be) alteration has been completed to a satisfactory standard.
- (2) The construction certificate must in any event be issued not later than the final certificate in respect of the works.
- (3) A construction certificate must—
  - (a) certify that the construction or (as the case may be) alteration has been executed effectively in accordance with the drawings and descriptions included in the annex to the certificate,
  - (b) include an annex containing detailed drawings and descriptions giving full information about the works for the construction or (as the case may be) the alteration, including the dimensions, water levels and details of the geological

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strata or deposits encountered in trial holes or excavations made in connection with the works,

- (c) include such other information as the Scottish Ministers by regulations require.
- (4) The construction engineer must, not later than 28 days after giving a construction certificate, give SEPA a copy of it.

### **39 Final certificates**

- (1) Where the controlled reservoir is being constructed or is subject to alteration but is not being discontinued or abandoned, the construction engineer must give the reservoir manager a final certificate not later than 28 days after being satisfied that the reservoir is sound and satisfactory and may safely be used for the collection and storage of water.
- (2) A final certificate given under subsection (1)—
- (a) must state that the engineer considers the reservoir is sound and satisfactory and may safely be used for the collection and storage of water,
  - (b) where the reservoir is a high-risk reservoir and the construction engineer considers that there should be an early inspection of the reservoir, must state when the engineer recommends the inspection should take place,
  - (c) where the reservoir is a high-risk reservoir or medium-risk reservoir, must specify any matter the construction engineer considers should be monitored, until the first inspection of the reservoir under section 46, by the supervising engineer appointed in relation to the reservoir under section 49,
  - (d) impose the requirements mentioned in subsection (7).
- (3) Where the reservoir is being discontinued, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—
- (a) that the discontinuance has been safely completed,
  - (b) 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,
  - (c) that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water.
- (4) A final certificate given under subsection (3) must—
- (a) state that the construction engineer is satisfied as to the matters referred to in paragraphs (a) to (c) of that subsection,
  - (b) impose the requirements mentioned in subsection (7).
- (5) Where the reservoir is being abandoned, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—
- (a) that the abandonment has been safely completed,
  - (b) that the resulting structure or area is incapable of filling with water above the natural level of any part of the surrounding land.
- (6) A final certificate issued under subsection (5) must state that the engineer is satisfied as to the matters referred to in paragraphs (a) and (b) of that subsection.
- (7) The requirements referred to in subsection (2)(d) and (4)(b) are—
- (a) that water in the reservoir must not exceed a level specified in the certificate (the “specified level”),

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- (b) that the reservoir manager must ensure that the level of water does not exceed the specified level,
  - (c) any requirements the construction engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.
- (8) A copy of the construction certificate issued in respect of the construction or (as the case may be) alteration must be attached to the final certificate.
- (9) The construction engineer must, not later than 28 days after issuing a final certificate, give SEPA a copy of the certificate.
- (10) If a final certificate is not issued by the end of the period of 5 years beginning with the date of the first preliminary certificate, the construction engineer must—
- (a) not later than 28 days after the expiry of the 5 year period, give the reservoir manager a written statement of the reasons,
  - (b) at intervals of not more than 12 months thereafter until the final certificate is issued, give the reservoir manager subsequent written statements of the reasons,
  - (c) not later than 28 days after any such statement is given, give SEPA a copy of the statement.

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

The reservoir manager of a controlled reservoir must (subject to section 60(3)) comply with the requirements of any preliminary certificate or final certificate for the time being applicable to the reservoir.

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

The obligation of the reservoir manager to appoint a construction engineer in respect of the relevant works terminates when the construction engineer gives a copy of the final certificate issued by the engineer in respect of the works to SEPA in accordance with section 39(9).

#### **42 Offences: construction or alteration**

- (1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—
- (a) the requirements in section 33(1) (notice to SEPA of proposed relevant works),
  - (b) the requirements in section 33(2)(a) (appointment of construction engineer),
  - (c) the requirements in section 33(2)(b) (notice to SEPA of the appointment),
  - (d) the requirements in section 36(1) (compliance with direction as to taking of safety measure in safety report),
  - (e) the requirements in section 40 (compliance with preliminary certificate or final certificate).
- (2) A reservoir manager guilty of an offence under subsection (1)(a), (b) or (c)—
- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,

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- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) A reservoir manager guilty of an offence under subsection (1)(d) or (e) is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
  - (b) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

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

It is a defence to a charge in proceedings under section 42(1)(d) or (e) for the person to show both—

- (a) that the failure to comply with the requirements concerned was as a result of an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
- (b) that the person—
  - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
  - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure, and
  - (iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

#### **44 Controlled reservoirs subject to relevant works on commencement**

- (1) Subsection (2) applies in relation to controlled reservoirs—
- (a) which were, immediately before the commencement date, large raised reservoirs,
  - (b) which are, on that date, subject to relevant works.
- (2) This Chapter, and sections 65 to 67, apply in relation to such controlled reservoirs on and after the commencement date as they apply in relation to controlled reservoirs which are subject to relevant works wholly on or after that date.
- (3) Subsection (4) applies in relation to controlled reservoirs—
- (a) which were not, immediately before the commencement date, large raised reservoirs,
  - (b) which are, on that date, subject to relevant works.
- (4) This Chapter, and sections 65 to 67, apply on and after the commencement date in relation to such controlled reservoirs subject to the modifications mentioned in subsection (5).
- (5) The modifications are—
- (a) notice under section 33(1) of the relevant works must be given not later than 28 days after the commencement date,
  - (b) a construction engineer must be appointed under section 33(2)(a) not later than 28 days after the commencement date,
  - (c) notice under section 33(2)(b) of the appointment must be given not later than 28 days after the appointment,

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(d) for section 34(3) to (6) substitute—

“(3) The construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed and in any event not later than 9 months after being appointed.”.

(6) In this section—

“the commencement date” means the date on which section 32 is commenced,

“large raised reservoir” has the same meaning as in section 1(1) of the 1975 Act.