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

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(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)).

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.

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 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.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

Commencement Information

I1 S. 4 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

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.

Commencement Information

I2 S. 5(1) in force at 1.4.2015 for specified purposes by S.S.I. 2015/63, art. 2, **Sch.**

I3 S. 5(1) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I4 S. 5(2)-(4) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

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.

Commencement Information
I5 S. 6 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

7 SEPA

In this Act "SEPA" means the Scottish Environment Protection Agency.

8 The 1975 Act and its repeal

(1) "The 1975 Act" means the Reservoirs Act 1975 (c.23).

(2) The 1975 Act is repealed.

Commencement Information
I6 S. 8 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

CHAPTER 2

REGISTRATION

9 Controlled reservoirs register

(1) SEPA must establish and maintain a controlled reservoirs register.

(2) The controlled reservoirs register is a register containing the following information and documents in relation to each controlled reservoir—
- (a) the name (if any) and location of the reservoir,
- (b) the maximum volume of water capable of being held in the reservoir,
- (c) the name and address of the reservoir manager,
- (d) the risk designation for the time being of the reservoir (and the date on which the designation was given) (see sections 19 and 21),
- (e) any different risk designation the reservoir may have had in the past (and where it has had a different risk designation, the dates on which such designation was given and changed),

(f) the name of any construction engineer, inspecting engineer, other qualified engineer or supervising engineer appointed at any time in relation to the reservoir (and the period of any such appointment),

(g) a copy of—

(i) any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate in relation to a controlled reservoir which is copied to SEPA (or given to it pursuant to section 68),

(ii) any inspection report, interim inspection compliance certificate or inspection compliance certificate in relation to a controlled reservoir which is so copied (or given),

(iii) any written recommendation or written statement by a supervising engineer under section 50(3) or (8) in relation to a controlled reservoir which is so copied (or given),

(h) a map showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded.

(3) The Scottish Ministers may by regulations—

(a) require further information or documents specified in the regulations to be contained in the register,

(b) make provision as to the manner in which the information to be contained in the register is to be recorded there.

(4) SEPA must make arrangements for the controlled reservoirs register (or a copy of it) to be available for inspection by any person at all reasonable times.

(5) The Scottish Ministers may by order make provision as to the place (or places) in which the register is (or copies of it are) to be kept.

Modifications etc. (not altering text)

C1 S. 9(1) excluded (1.4.2015) by The Reservoirs (Scotland) Act 2011 (Restrictions on Disclosure of Information in relation to National Security etc.) Order 2015 (S.I. 2015/48), arts. 1(2), **14** (with arts. 13, 16)

Commencement Information

I7 S. 9 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.** (with arts. 3-6)

10 Reservoir managers' duty to register with SEPA

(1) The reservoir manager of each controlled reservoir must register the reservoir with SEPA in accordance with sections 11 to 13.

(2) The Scottish Ministers may by regulations make provision as to—

(a) the information to be registered,

(b) the time by which information, or any change to information, must be registered.

Commencement Information

I8 S. 10(1) in force at 1.4.2015 for specified purposes by S.S.I. 2015/63, art. 2, **Sch.**

I9 S. 10(1) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)
I10 S. 10(2) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

11 Controlled reservoirs required to be registered under the 1975 Act

(1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place before the end of the period of 6 months beginning with the relevant date.

(2) This subsection applies to controlled reservoirs which were, immediately before the relevant date, required to be registered in a large raised reservoirs register.

(3) In this section and sections 12, 13 and 16—

a "large raised reservoirs register" means a register maintained under section 2(2) of the 1975 Act,

"the relevant date" means the date of commencement of section 9.

Commencement Information
I11 S. 11(1)(2) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**
I12 S. 11(3) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

12 Controlled reservoirs not required to be registered under the 1975 Act

(1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place by such time as the Scottish Ministers by order specify.

(2) This subsection applies to controlled reservoirs which are controlled reservoirs on the relevant date but which were not, immediately before that date, required to be registered in the large raised reservoirs register.

Commencement Information
I13 S. 12 in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

13 Structures or areas which become controlled reservoirs after the relevant date

Registration of a controlled reservoir which becomes a controlled reservoir after the relevant date must take place not later than 28 days after the day on which a preliminary certificate is given in relation to it for the first time.

Commencement Information
I14 S. 13 in force at 1.4.2015 for specified purposes by S.S.I. 2015/63, art. 2, **Sch.** (with art. 7)
I15 S. 13 in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

14 Fees: registration and administration

(1) The Scottish Ministers may by regulations make provision allowing SEPA to charge reservoir managers of controlled reservoirs, and requiring reservoir managers to pay—

(a) fees in relation to registration, and

(b) other annual or recurring fees in relation to the performance of functions by SEPA under this Part.

(2) In making regulations under subsection (1) the Scottish Ministers must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.

(3) Regulations made under subsection (1) must include provision—

(a) specifying how SEPA is to determine and charge fees,

(b) requiring SEPA—

(i) to set out its fees in a published charging scheme,

(ii) to consult such persons as SEPA considers likely to be affected by the scheme before it publishes (or revises) a scheme.

(4) Regulations made under subsection (1) may include such other matters as the Scottish Ministers consider appropriate, including provision specifying—

(a) the maximum amount of any fee,

(b) the circumstances in which any fee is payable,

(c) different fees to be imposed in respect of different reservoirs or in other different cases or classes of case, and

(d) how fees may be collected and recovered.

Commencement Information

I16 S. 14 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

15 Registration: supplementary

(1) Where a person ceases to be a reservoir manager of a controlled reservoir, the person must, not later than 28 days after ceasing to be reservoir manager, give notice to SEPA of that fact and the date on which the person ceased to be reservoir manager.

(2) A person who becomes a reservoir manager of a controlled reservoir must, not later than 28 days after becoming reservoir manager, give notice to SEPA of that fact and the date on which the person became reservoir manager.

(3) Where SEPA receives notice under subsection (1) or (2), it must take such steps as it considers are reasonably required to inform the new reservoir manager, as soon as is reasonably practicable, of the duties of reservoir managers of controlled reservoirs under this Part.

(4) The Scottish Ministers may by regulations make provision requiring SEPA—

(a) to prepare and publish guidance on registration,

(b) to consult the Institution of Civil Engineers in relation to the preparation of such guidance.

Commencement Information

I17 S. 15(1)-(3) in force at 1.4.2015 for specified purposes by S.S.I. 2015/63, art. 2, **Sch.**

I18 S. 15(1)-(3) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I19 S. 15(4) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

16 Transfer of information from existing relevant authorities

(1) Each existing relevant authority must, as soon as practicable after the relevant date, give to SEPA—

(a) the large raised reservoirs register maintained by the authority,

(b) any other documents, records or other information in its possession which relate to the exercise of the authority's functions as an enforcement authority within the meaning of section 2(6) of the 1975 Act (referred to in this section as its "enforcement functions").

(2) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority's enforcement functions.

(3) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the relevant date.

(4) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority's enforcement functions and is in the process of being done by or in relation to the authority immediately before the relevant date.

(5) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the relevant date has effect as if done by SEPA.

(6) An existing relevant authority is a body which, immediately before the relevant date, is a relevant authority in Scotland for the purposes of the 1975 Act.

Commencement Information

I20 S. 16(1)(3)-(5) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I21 S. 16(2)(6) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

17 Offences: registration

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter relating to registration is an offence—

(a) the requirements of section 10(1) or of regulations made under section 10(2),

(b) the requirements of section 11(1), 12(1) or 13,

(c) the requirements of section 15(1) or (2).

(2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives information which is false or misleading in a material respect commits an offence.

(3) A reservoir manager guilty of an offence under subsection (1) or (2) 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.

(4) A reservoir manager guilty of an offence under either of those subsections in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and could not reasonably be expected to have known that the person was the reservoir manager of a controlled reservoir to whom the requirement concerned applied.

Commencement Information
I22 S. 17 in force at 1.4.2015 for specified purposes by S.S.I. 2015/63, art. 2, **Sch.**

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.

Commencement Information
I23 S. 18 in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(a)**

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.

Commencement Information
I24 S. 19 in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(b)**

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.

Commencement Information
I25 S. 20 in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(c)**

21 Decision following a periodic review

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

(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.

Commencement Information

I26 S. 21 in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(d)**

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).

Commencement Information

I27 S. 22(1)-(3) in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(e)**

I28 S. 22(4) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

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.

Commencement Information

I29 S. 23(1)-(7) in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(f)**

I30 S. 23(8) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

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

(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.

Commencement Information

I31 S. 24(1)-(6) in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(g)**

I32 S. 24(7) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

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.

Commencement Information
I33 S. 25 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

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.

Commencement Information
I34 S. 26(1) in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(h)**
I35 S. 26(2) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

CHAPTER 4

PANELS OF RESERVOIR ENGINEERS

27 Panels of reservoir engineers

The Scottish Ministers must—

(a) establish one or more panels of reservoir engineers for the purposes of this Part and specify by order the sections of this Part under which the members of any such panel may be appointed,

(b) appoint civil engineers who they consider to be fit and qualified for appointment to such panels to be members of such of the panels as they consider appropriate.

Commencement Information
I36 S. 27(a) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**
I37 S. 27(a) in force at 20.2.2015 in so far as not already in force by S.S.I. 2015/43, **art. 2**
I38 S. 27(b) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

28 Appointment and removal of panel members

(1) A civil engineer who wishes to be appointed to a panel under section 27 must make an appropriate application.

(2) An appointment is for such period as the Scottish Ministers determine.

(3) A civil engineer appointed to a panel is eligible for re-appointment.

(4) The Scottish Ministers may remove an engineer from a panel where they are satisfied that the engineer is not fit or qualified to remain on it.

(5) The Scottish Ministers must give an engineer removed from a panel under subsection (4) notice of the removal.

(6) Notice under subsection (5) must specify the grounds on which the engineer has been removed from the panel.

(7) In this section, "an appropriate application" is an application made in accordance with regulations made by the Scottish Ministers.

(8) The Scottish Ministers may by regulations make provision for the determining and charging of fees in connection with applications for membership of panels established by them under section 27.

Commencement Information

I39 S. 28(1)-(6) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

I40 S. 28(7)(8) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

29 Dissolution of panels etc.

(1) The Scottish Ministers may dissolve a panel established under section 27.

(2) Before doing so, the Ministers must give reasonable notice to the members of the panel.

(3) Where the Scottish Ministers dissolve a panel whose members might, by virtue of an order under section 27, (if not for the dissolution) still be appointed as construction engineers or inspecting engineers, the Scottish Ministers may allow an engineer who immediately before the dissolution was such an engineer or was the other qualified engineer in relation to a reservoir (see section 47(5)), to continue to act as such in relation to the controlled reservoir concerned for a period of 4 years.

(4) The Scottish Ministers may, by notice, direct that an engineer is no longer entitled to act under subsection (3) where they are satisfied that the engineer is not fit or qualified to do so.

(5) Notice under subsection (4) must specify the grounds on which the engineer has been removed under that subsection.

Commencement Information

I41 S. 29 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

30 Review of decisions to appoint or remove civil engineers from panels etc.

(1) A civil engineer—

(a) whose application for appointment to a panel established under section 27 is rejected,

(b) who is removed from a panel under section 28(4),

(c) who is given a direction under section 29(4),

may apply to the Scottish Ministers for a review of their decision.

(2) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section, including provision as to determining and charging fees in connection with applications for review under this section.

Commencement Information

I42 S. 30(1) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

I43 S. 30(2) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

31 Consultation with Institution of Civil Engineers

(1) The Scottish Ministers must consult the President of the Institution of Civil Engineers (or, if that Institution appoints a committee for the purpose, that committee), before—

(a) establishing a panel under section 27,

(b) making an order under that section,

(c) making an appointment to a panel under that section,

(d) removing an engineer from a panel under section 28(4),

(e) dissolving a panel under section 29(1),

(f) directing that an engineer is no longer entitled to act under section 29(4),

(g) making a decision in a review under section 30.

(2) The Scottish Ministers may reimburse the Institution of Civil Engineers for any expenses incurred by it by virtue of this section.

Commencement Information

I44 S. 31(1)(a) in force at 20.2.2015 by S.S.I. 2015/43, **art. 2**

I45 S. 31(1)(b)(2) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

I46 S. 31(1)(c)-(g) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

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.

Commencement Information

I47 S. 32(1)-(3)(4)(a)(5)-(7) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I48 S. 32(4)(b) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

I49 S. 32(4)(b) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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.

Commencement Information

I50 S. 33 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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,

(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.

Commencement Information

I51 S. 34 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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.

Commencement Information

I52 S. 35(1)(a)-(c)(2) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I53 S. 35(1)(d) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

I54 S. 35(1)(d) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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.

(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.

Commencement Information
I55 S. 36 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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.

Commencement Information
I56 S. 37 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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 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.

Commencement Information

I57 S. 38(1)(2)(3)(a)(3)(b)(4) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I58 S. 38(3)(c) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

I59 S. 38(3)(c) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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"),

(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.

Commencement Information

I60 S. 39 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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.

Commencement Information

I61 S. 40 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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).

Commencement Information

I62 S. 41 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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,

(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.

Commencement Information

I63 S. 42 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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.

Commencement Information

I64 S. 43 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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,

(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.

Commencement Information

I65 S. 44(1)(2)(6) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

CHAPTER 6

OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

45 Appointment of inspecting engineer etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—
- (a) appoint an inspecting engineer to carry out an inspection of the reservoir at each of the times required by section 46,
- (b) not later than 28 days after the appointment, give notice of it to SEPA.

(2) An engineer may be appointed as an inspecting 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 (3) from being so appointed in relation to the reservoir.

(3) An engineer is disqualified from being appointed as an inspecting engineer in relation to the reservoir if the engineer—
- (a) is employed by any person who is a reservoir manager of the reservoir,
- (b) has previously been a construction engineer in relation to the reservoir,
- (c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer in relation to the reservoir.

Commencement Information
I66 S. 45 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

46 Inspections: timing

(1) Subject to subsection (3), inspections of a high-risk reservoir must be carried out—
- (a) before the end of the period of 2 years beginning with the date of any final certificate for the time being applicable to the reservoir, and
- (b) at each of the following times—
  - (i) at any time recommended by the supervising engineer under section 50(3),
  - (ii) at any time recommended in an inspection report under section 47,
  - (iii) before the end of the period of 10 years beginning with the date of the latest inspection.

(2) Subject to subsection (3), inspections of a medium-risk reservoir must be carried out at each time recommended by the supervising engineer under section 50(3).

(3) Where a construction engineer is appointed to supervise relevant works at a high-risk reservoir or a medium-risk reservoir—
- (a) each inspection which, at the date of the appointment, is due to be carried out is cancelled, and
- (b) the next inspection must be carried out—

(i) in the case of a high-risk reservoir, in accordance with subsection (1)(a),

(ii) in the case of a medium-risk reservoir, at any time recommended by the supervising engineer under section 50(3) which is after the end of the period of 2 years beginning with the date of the final certificate for the relevant works.

(4) In this section and section 47, references to "the supervising engineer" are references to the engineer appointed for the time being as such under section 49 in relation to the reservoir.

Commencement Information

I67 S. 46 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

47 Inspections: duties of inspecting engineers etc.

(1) The inspecting engineer must—

(a) inspect the reservoir,

(b) give the reservoir manager, not later than 9 months after the completion of the inspection, an inspection report prepared in accordance with this section,

(c) give the reservoir manager certificates in accordance with section 48.

(2) The reservoir manager must give the inspecting engineer a copy of—

(a) any final certificate for the time being applicable to the reservoir,

(b) the inspection report of the latest inspection (if any) of the reservoir carried out under this section ("the latest report").

(3) The inspection report—

(a) must specify any measures the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including measures for the maintenance of the reservoir),

(b) must specify whether any measure specified in the inspection report was specified in the latest report,

(c) if any measure specified in the latest report has not been taken and the measure is not specified in the inspection report, must specify why the engineer considers the measure should no longer be taken,

(d) must direct the reservoir manager to ensure—

(i) that any measures specified in the inspection report for the maintenance of the reservoir are monitored by the supervising engineer, and

(ii) that the other measures specified in the inspection report are taken under the supervision of the inspecting engineer or the other qualified engineer within the period of time specified in the inspection report,

(e) must specify when the next inspection of the reservoir should take place,

(f) must specify any matters that the inspecting engineer considers should be monitored by the supervising engineer until the next inspection,

(g) may include recommendations on other matters which the inspecting engineer considers relevant to the maintenance of the reservoir but in relation to which the engineer does not specify a measure to be taken under paragraph (a).

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(4) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—
  (a) SEPA,
  (b) the supervising engineer (if a different person).

(5) In this section and section 48—
  (a) references to "the inspecting engineer" are references to the engineer appointed for the time being as such under section 45 in relation to the reservoir,
  (b) references to "the other qualified engineer" are references to the engineer appointed for the time being as such under section 48 in relation to the reservoir,
  (c) references to "the reservoir manager" are references to the reservoir manager of the reservoir which is being inspected.

Commencement Information
I68 S. 47 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

48 Inspection reports: compliance

(1) The reservoir manager must (subject to section 59(3)) ensure that any direction in an inspection report issued to the manager is complied with.

(2) The reservoir manager—
  (a) may appoint any other qualified engineer (being a person eligible to be appointed as an inspecting engineer for the reservoir) to supervise any of the measures specified in the inspection report, and
  (b) must, as soon as practicable after making any such appointment, give notice of it to SEPA and the inspecting engineer.

(3) Not later than 28 days after being satisfied that a measure directed in the inspection report has been taken—
  (a) the inspecting engineer, or
  (b) in relation to any measure for which the other qualified engineer is appointed, the other qualified engineer,

  must give to the reservoir manager an interim inspection compliance certificate.

(4) An interim inspection compliance certificate must specify—
  (a) the inspection report to which it relates,
  (b) the measure taken,
  (c) any measure for which the person giving the certificate is responsible for supervising that has yet to be taken.

(5) The inspecting engineer or the other qualified engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report have been taken, give the reservoir manager an inspection compliance certificate.

(6) The engineer giving an inspection compliance certificate must take an interim compliance certificate given by another engineer under this section to be conclusive of that measure having been taken.

(7) An inspection compliance certificate must specify—

(a) the inspection report to which it relates,

(b) that all of the measures directed in the report have been taken.

(8) The inspecting engineer or the other qualified engineer must, not later than 28 days after giving an interim inspection compliance certificate or an inspection compliance certificate under this section, give SEPA a copy of it.

(9) Where an inspection report directs a measure for the maintenance of the reservoir to be taken in the interests of the safety of the reservoir (specified in accordance with section 47(3)(a))—

(a) no interim inspection compliance certificate is required for that measure, and

(b) no account of that measure is to be taken for the purposes of subsections (4)(c), (5) and (7)(b).

Commencement Information

I69 S. 48 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

49 Appointment of supervising engineers etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—

(a) appoint a supervising engineer to supervise the reservoir in accordance with section 50 at all times other than the period mentioned in subsection (2),

(b) not later than 28 days after the appointment, give notice of it to SEPA.

(2) A reservoir manager of a controlled reservoir which is being constructed or restored to use (within the meaning of Chapter 5) need not appoint a supervising engineer before a final certificate is issued in respect of the relevant works (see section 39).

(3) An engineer may be appointed as a supervising engineer if the engineer 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.

Commencement Information

I70 S. 49 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

50 Supervising engineer and monitoring of reservoir

(1) The supervising engineer must supervise the reservoir in accordance with this section.

(2) The supervising engineer must—

(a) give notice to the reservoir manager of anything that the engineer considers might affect the safety of the reservoir,

(b) monitor any matters specified in a safety report as matters to be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,

(c) monitor compliance by the reservoir manager with the requirements of any preliminary certificate for the time being applicable to the reservoir,

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(d) monitor compliance by the reservoir manager with the requirements of any final certificate for the time being applicable to the reservoir,

(e) monitor any matters specified in any such final certificate as matters that should be monitored by the supervising engineer until the first inspection of the reservoir required under section 46,

(f) monitor compliance by the reservoir manager with the requirements of any direction given in the latest inspection report by virtue of section 47(3)(d)(i),

(g) give notice to the reservoir manager and SEPA of any failure to comply with any requirement of—

(i) a safety report referred to in paragraph (b),

(ii) a preliminary certificate referred to in paragraph (c),

(iii) a final certificate referred to in paragraph (d), or

(iv) a direction referred to in paragraph (f),

(h) monitor any matters specified in the latest inspection report as matters that should be monitored by the supervising engineer until the next inspection of the reservoir required under section 46,

(i) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,

(j) monitor compliance by the reservoir manager with the requirements of section 51.

(3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 47, the engineer must—

(a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place, and

(b) not later than 28 days after giving the written recommendation, give SEPA a copy of it.

(4) The supervising engineer may by written direction require the reservoir manager to carry out a visual inspection of the reservoir at intervals specified by the engineer for the purpose of identifying anything that might affect the safety of the reservoir.

(5) The reservoir manager must comply with any direction under subsection (4).

(6) The reservoir manager must—

(a) maintain a written record of each visual inspection carried out in pursuance of a direction under subsection (4),

(b) make that record available on request to the supervising engineer, and

(c) give notice to the supervising engineer of anything identified during such an inspection which might affect the safety of the reservoir.

(7) Notice under subsection (6)(c) must be given as soon as reasonably practicable after the inspection during which the thing was identified.

(8) The supervising engineer must give the reservoir manager, at least every 12 months, a written statement of—

(a) the steps taken by the engineer in relation to the matters referred to in subsection (2)(a) to (h),

(b) any measures taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,

(c) any failure to comply with—

(i) a requirement in a safety report referred to in subsection (2)(b),
(ii) a requirement in a preliminary certificate referred to in subsection (2)(c),
(iii) a requirement in a final certificate referred to in subsection (2)(d),
(iv) a direction referred to in subsection (2)(f),
(v) a recommendation by the supervising engineer under subsection (3),
(vi) a direction by the supervising engineer under subsection (4).

(9) The supervising engineer must give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of an emergency and the supervising engineer being unavailable, a nominated representative of the engineer).

(10) The supervising engineer must, not later than 28 days after giving a written statement under subsection (8), give SEPA a copy of the statement.

(11) The Scottish Ministers may publish guidance about supervision of high-risk reservoirs and medium-risk reservoirs in accordance with this section.

(12) In this section—
(a) "draw-down" means any intentional reduction in the water level except where done in accordance with the routine operation of the reservoir,
(b) references to "the supervising engineer" are references to the engineer appointed for the time being as such under section 49 in relation to the reservoir,
(c) references to "the reservoir manager" are references to the reservoir manager of the reservoir which is being supervised in accordance with this section.

Commencement Information
I71 S. 50 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

51 Recording of water levels etc. and record keeping

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must maintain a record of the following matters in respect of the reservoir ("the recorded matters") in accordance with this section—
(a) water levels and depth of water in the reservoir, including the flow of water over any waste weir or overflow,
(b) leakages,
(c) repairs,
(d) settlements of walls or other works,
(e) such other matters as the Scottish Ministers by regulations specify.

(2) The Scottish Ministers may by regulations make provision as to—
(a) the form of the record to be maintained,
(b) the information to be included in relation to the recorded matters.

(3) A construction engineer, an inspecting engineer or a supervising engineer appointed in relation to the reservoir may give directions to the reservoir manager as to—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(a) the manner in which the information referred to in subsection (2)(b) is to be recorded,
(b) the intervals at which the record is to be updated.

(4) The reservoir manager must comply with any directions under subsection (3).

(5) The reservoir manager must install and maintain such instruments as may be necessary to provide the information to be recorded in relation to the recorded matters.

(6) Sections 56 and 58 make further provision about records to be maintained by the reservoir managers of controlled reservoirs.

Commencement Information

I72 S. 51(1)(a)-(d)(3)-(6) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)
I73 S. 51(1)(e) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**
I74 S. 51(1)(e) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)
I75 S. 51(2) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

52 Offences: inspection, supervision, record keeping

(1) Failure by the reservoir manager of a high-risk reservoir or medium-risk reservoir to comply with any of the following requirements under this Chapter is an offence—
(a) the requirements of section 45(1)(a) and 46 (appointment of inspecting engineer and carrying out of required inspections),
(b) the requirements of section 45(1)(b) (notice of appointment to SEPA),
(c) the requirements of section 48(1) (compliance with direction as to taking of measure in inspection report),
(d) the requirements of section 49(1)(a) (appointment of supervising engineer),
(e) the requirements of section 49(1)(b) (notice of appointment to SEPA),
(f) the requirements of a direction under section 50(4) (compliance with direction of supervising engineer as to carrying out of visual inspection of reservoir),
(g) the requirements of section 50(6)(c) (notice of identification of thing which might affect the safety of the reservoir),
(h) the requirements of section 51 (including any direction under subsection (3) of that section) (maintenance of record of water levels etc.).

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with the requirements of section 47(2) (giving inspecting engineer copy of final certificate and latest inspection report) commits an offence.

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—
(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,
(b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information
I76 S. 52 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

53 Defences: offence under section 52(1)(c)

It is a defence to a charge in proceedings under section 52(1)(c) for the person to show both—

(a) that the failure to comply with the requirement concerned was as a result of an event which could not reasonably have been foreseen or any 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,

(iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

Commencement Information
I77 S. 53 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

CHAPTER 7

OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

54 Incident reporting

(1) The Scottish Ministers may by regulations make provision for the reporting to SEPA of incidents occurring at controlled reservoirs which meet criteria specified in, or otherwise determined in accordance with, the regulations.

(2) The regulations may, in particular—

(a) provide that SEPA or another person—

(i) may specify the criteria,

(ii) is to determine whether a controlled reservoir meets the criteria,

(b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a controlled reservoir,

(c) require the reservoir manager of a controlled reservoir or other specified person to report incidents occurring at the reservoir,

(d) provide for an inspecting engineer, a supervising engineer or other person to determine whether an incident has occurred,

(e) require reservoir managers of controlled reservoirs, supervising engineers, inspecting engineers and any other person of a specified description to have regard to guidance issued by SEPA or the Scottish Ministers,

(f) make provision for the publishing of incident reports,

(g) confer powers of entry on SEPA in connection with its functions under the regulations,

(h) create offences,

(i) provide that any offence created is triable only summarily,

(j) provide for any offence created—

(i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,

(k) make provision in connection with ensuring remedial action is taken following an incident report including provision amending this Act (other than this section) or applying this Act with modifications.

(3) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) the reservoir managers of controlled reservoirs to which they consider the regulations will apply,

(c) the Institution of Civil Engineers,

(d) such other persons as they consider appropriate.

Commencement Information

I78 S. 54 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

55 Flood plans

(1) The Scottish Ministers may by regulations make provision as to—

(a) the preparation of flood plans for controlled reservoirs,

(b) such other matters in relation to such flood plans as they consider appropriate.

(2) A "flood plan" for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) Regulations under subsection (1) may include provision—

(a) as regards who is to prepare a flood plan,

(b) requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories as may be determined by the Scottish Ministers or SEPA,

(c) allowing a single flood plan to be prepared in respect of two or more controlled reservoirs between which water does (or could) flow,

(d) specifying—

(i) the form in which a flood plan is to be prepared,

(ii) what is to be included in a flood plan,

(e) requiring the person preparing a flood plan to have regard to any guidance that may be issued by SEPA or the Scottish Ministers as regards flood plans,

(f) requiring flood plans to be produced or submitted to SEPA (whether or not for approval) by such time as either—
  (i) the regulations specify, or
  (ii) the Scottish Ministers or SEPA may direct,
(g) as regards the approval of flood plans (whether by the Scottish Ministers, SEPA, inspecting engineers or supervising engineers),
(h) as regards the review and updating of flood plans,
(i) as regards the publication or distribution of copies of—
  (i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
  (ii) flood plans,
(j) in connection with the testing of flood plans,
(k) in connection with the referral of matters to a referee,
(l) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is practicable to do so, to take action set out in the plan relating to the reservoir in the event of an emergency,
(m) providing that SEPA may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the expenses of doing so from the person,
(n) conferring powers of entry on SEPA in connection with its functions under the regulations,
(o) making provision in connection with paragraphs (k), (m) and (n) amending this Act (other than this section) or applying this Act with modifications,
(p) creating offences,
(q) providing that any offence created is triable only summarily,
(r) providing for any offence created—
  (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
  (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale.

(4) Before making regulations under subsection (1), the Scottish Ministers must consult—
(a) SEPA,
(b) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
(c) the Institution of Civil Engineers,
(d) such other persons as they consider appropriate.

Commencement Information
I79 S. 55 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

56 Maintenance of records

(1) The reservoir manager of a controlled reservoir must maintain a record of relevant documents.

(2) The record must include all of the relevant documents.

(3) Where the reservoir is a low-risk reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Scottish Ministers may require by regulations.

(4) The relevant documents are—

(a) any of the following which is given to the reservoir manager (or copied to the manager pursuant to section 68)—

(i) a safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate,

(ii) an inspection report, interim inspection compliance certificate or inspection compliance certificate,

(iii) a notice under section 50(2)(a) or (g), recommendation under section 50(3) or statement under section 50(8) (by a supervising engineer),

(b) any drawings and descriptions of works annexed to construction certificates given in respect of the reservoir under the 1975 Act, drawings and descriptions annexed to certificates given under the Reservoirs (Safety Provisions) Act 1930 (c.51), charts, graphs and plans, and

(c) any flood plan produced in respect of the reservoir in pursuance of regulations made under section 55.

Commencement Information

I80 S. 56(1)(2)(4) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I81 S. 56(3) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

I82 S. 56(3) in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

57 Display of emergency response information

(1) The reservoir manager of a controlled reservoir must ensure that emergency response information is displayed at or near the reservoir.

(2) Emergency response information is such information about the reservoir and the reservoir manager as may be specified by order by the Scottish Ministers.

(3) The information that may be specified under subsection (2) includes in particular—

(a) the name of the reservoir (if any),

(b) any registration number in the controlled reservoirs register relating to the reservoir,

(c) the reservoir manager's name and address and information for the purpose of enabling a person to contact the reservoir manager in the event of an emergency,

(d) where the reservoir is a high-risk reservoir or medium-risk reservoir, information for the purpose of enabling a person to contact SEPA in the event of an emergency.

(4) SEPA may give directions to reservoir managers of controlled reservoirs as to—

(a) the manner in which emergency response information is to be displayed,

(b) the location at which it is to be displayed.

(5) Directions under subsection (4) may be general or specific.

(6) The reservoir manager must comply with any directions by SEPA under subsection (4).

Commencement Information

I83 S. 57(2)(3) in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

I84 S. 57(4)-(6) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

58 Offences: record keeping, display of emergency response information

(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 of section 56 (maintenance of records),

(b) the requirements of section 57(1) and (6) (display of emergency response information).

(2) A reservoir manager guilty of an offence under subsection (1)—

(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,

(b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information

I85 S. 58 in force at 1.4.2016 for specified purposes by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

CHAPTER 8

DISPUTE REFERRAL

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

(1) This section applies where—

(a) a safety report contains a direction by a construction engineer,

(b) an inspection report contains a direction by an inspecting engineer.

(2) The reservoir manager to whom the report is given may challenge the direction by referring it to a referee in accordance with regulations made under section 64(1).

(3) Where a referral is made under subsection (2), the direction is suspended until the reference has been determined or withdrawn.

Commencement Information

I86 S. 59 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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

(1) The reservoir manager to whom a preliminary certificate or final certificate is given may challenge any of the matters mentioned in subsection (2) by referring it to a referee in accordance with regulations made under section 64(1).

(2) The matters are—

(a) the level of water specified in the preliminary certificate in accordance with section 37(2)(a),

(b) any requirement specified in the preliminary certificate in accordance with section 37(2)(c),

(c) any recommendation contained in the final certificate in accordance with section 39(2)(b),

(d) any matter specified in the final certificate in accordance with section 39(2)(c),

(e) any requirement imposed in the final certificate in accordance with section 39(7)(a) or (c).

(3) Where a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.

Commencement Information

I87 S. 60 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

61 Appointment of referee

(1) The referee must be an engineer appointed under this section either—

(a) by agreement between the reservoir manager and the relevant engineer, or

(b) where no agreement is reached, by the Scottish Ministers.

(2) An engineer may be appointed as a referee 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 (3) from being appointed under this section in relation to the reservoir concerned.

(3) An engineer is disqualified from being appointed under this section in relation to the reservoir if the engineer—

(a) is employed by any person who is a reservoir manager of the reservoir,

(b) has previously been a construction engineer or an inspecting engineer in relation to the reservoir,

(c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer or an inspecting engineer in relation to the reservoir.

(4) In this section and sections 62 and 63, "the relevant engineer" means the construction engineer or (as the case may be) inspecting engineer who gave the direction or (as the case may be) specified, recommended or imposed the matter which is the subject of the referral.

Commencement Information
I88 S. 61 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

62 Powers of referee: referral under section 59(2)

(1) This section applies where a referral is made under section 59(2).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the direction.

(3) Where the referee makes any such modification, the referee—
- (a) must modify the report which contains the direction,
- (b) where the report is a safety report, must make any necessary modification to any safety measure certificate given in relation to the report,
- (c) where the report is an inspection report, must make any necessary modification to any interim inspection compliance certificate given in relation to the report.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—
- (a) to give the reservoir manager and the relevant engineer a certificate (a "referral certificate") stating—
  - (i) whether the referee has modified the report,
  - (ii) any modification made,
- (b) where the referee has modified the report or any safety measure certificate or interim inspection compliance certificate, to give the reservoir manager and the relevant engineer a copy of the modified report and any such modified certificate,
- (c) to give SEPA a copy of the referral certificate and any modified report and any such modified safety measure certificate or interim inspection compliance certificate.

(6) A direction, report, safety measure certificate or interim inspection compliance certificate modified under this section has effect as so modified.

(7) In subsection (3)(b) and (c), "any necessary modification" means any modification the referee considers is necessary in relation to any measure specified in the certificate as a measure yet to be taken.

Commencement Information
I89 S. 62 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

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

(1) This section applies where a referral is made under section 60(1).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the matter referred.

(3) Where the referee makes any such modification, the referee must modify the certificate which contains the matter.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—

(a) to give the reservoir manager and the relevant engineer a certificate (a "referral certificate") stating—

(i) whether the referee has modified the certificate,

(ii) any modification made,

(b) where the referee has modified the certificate, to give the reservoir manager and the relevant engineer a copy of the modified certificate,

(c) to give SEPA a copy of the referral certificate and any modified preliminary certificate or final certificate.

(6) A preliminary certificate or final certificate modified under this section has effect as so modified.

Commencement Information

I90 S. 63 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

64 Procedure

(1) Regulations by the Scottish Ministers may make provision as to—

(a) the time within which a referee may be appointed under section 61,

(b) the time within which a request to them for an appointment under that section may be made,

(c) the manner of the request,

(d) the procedure before the referee,

(e) the expenses of the investigation and proceedings (including the remuneration of the referee).

(2) The expenses of any investigation and proceedings are to be paid by the reservoir manager who makes the referral.

Commencement Information

I91 S. 64(1) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

I92 S. 64(2) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Appointment of engineers

65 Enforcement notice: appointment of engineer

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that—

(a) the reservoir manager is required by section 33(2)(a) to appoint a construction engineer, but no construction engineer is for the time being appointed,

(b) the reservoir manager is required by section 45(1)(a) to appoint an inspecting engineer, but no inspecting engineer is for the time being appointed,

(c) the reservoir manager is required by section 49(1)(a) to appoint a supervising engineer, but no supervising engineer is for the time being appointed.

(2) SEPA may by notice require the reservoir manager of the reservoir—

(a) to make the relevant appointment before the end of the period of 28 days beginning with the day on which the notice is given (unless the reservoir manager has already made the relevant appointment),

(b) to give notice to SEPA of the appointment (whether it was made before or after the notice was given).

(3) In subsection (2)(a) and sections 67 and 68, "the relevant appointment" is the appointment of a construction engineer, an inspecting engineer or (as the case may be) a supervising engineer.

Commencement Information

I93 S. 65 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

66 Offence: failure to comply with notice under section 65(2)

(1) Failure to comply with the requirements of a notice by SEPA under the following sections is an offence—

(a) section 65(2)(a) (requirement to appoint construction engineer, inspecting engineer or supervising engineer),

(b) section 65(2)(b) (notice of appointment to SEPA).

(2) A reservoir manager guilty of an offence under subsection (1)(a) or (b) 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.

Commencement Information

I94 S. 66 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

67 Appointment of engineer by SEPA

(1) SEPA may make the relevant appointment where—

(a) it has by notice under section 65(2) required a reservoir manager to make the appointment, and

(b) the reservoir manager has failed to make the appointment.

(2) An appointment by SEPA under this section is to be treated for the purposes of this Part as if the appointment were by the reservoir manager under section 33(2)(a), 45(1)(a) or (as the case may be) 49(1)(a).

(3) An appointment under this section has no effect if the reservoir manager has already made the relevant appointment.

(4) An appointment under this section terminates with effect from the date of a subsequent relevant appointment made by the reservoir manager.

(5) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in pursuance of the exercise of powers under this section.

Commencement Information

I95 S. 67 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

68 Appointment by SEPA: engineers' reports, certificates, recommendations etc.

Where SEPA makes a relevant appointment under section 67, the following are to be given to SEPA (instead of being given to the reservoir manager) and copied to the reservoir manager not later than 28 days after being given to SEPA—

(a) where the relevant appointment is that of a construction engineer, any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate by the construction engineer,

(b) where the relevant appointment is that of an inspecting engineer, any inspection report, interim inspection compliance certificate or inspection compliance certificate by the inspecting engineer,

(c) where the relevant appointment is that of a supervising engineer, any notice under section 50(2)(a) or (g), recommendation under section 50(3) or statement under section 50(8).

Commencement Information

I96 S. 68 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

Taking of safety and other measures

69 Enforcement notice: safety and other measures

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that the reservoir manager has failed to comply with—

(a) the manager's duty under section 36(1) (to comply with a direction in a safety report),

(b) the manager's duty under section 48(1) (to comply with a direction in an inspection report).

(2) SEPA may by notice require the reservoir manager to comply with the duty before the end of the period specified in the notice.

(3) SEPA must consult an engineer appointed by it under this section about the period to be specified in the notice.

(4) An engineer may be appointed under this section, or section 71, if the engineer 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 or (as the case may be) section 71.

(5) Notice under subsection (2) must—
(a) specify the measure that SEPA requires to be taken,
(b) state SEPA's reasons for considering that this section applies,
(c) specify any particular steps SEPA considers must be taken to take the measure.

(6) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in connection with consultation under this section.

(7) The Scottish Ministers may by order make provision allowing a reservoir manager to whom notice is given under subsection (2)—
(a) to apply to SEPA for a review of its decision to give the notice,
(b) to appeal to the Scottish Ministers against the decision to give the notice.

(8) Any such order—
(a) must, where it includes provision for—
(i) a right of review, specify the period within which a review may be made,
(ii) a right of appeal, specify the period within which an appeal may be made, and
(b) may make further provision in relation to reviews and appeals in relation to notices given under subsection (2).

Commencement Information
I97 S. 69(1)-(6) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)
I98 S. 69(7)(8) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

70 Offence: failure to comply with notice under section 69(2)

(1) Failure to comply with a notice by SEPA under section 69(2) is an offence.

(2) Where a reservoir manager has a right of review in accordance with an order made under section 69(7), non-compliance is an offence only if—
(a) the period within which an application for review may be made has expired, or
(b) where such an application has been made, it has been withdrawn or determined.

(3) Where a reservoir manager has a right of appeal in accordance with an order made under section 69(7), non-compliance is an offence only if—

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(a) the period within which an appeal may be made has expired, or
(b) where such an appeal has been made, it has been withdrawn or determined.

(4) A reservoir manager guilty of an offence under subsection (1) 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.

Commencement Information
I99 S. 70 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

71 SEPA's power to arrange taking of safety and other measures

(1) This section applies where SEPA has by notice under section 69(2) required a reservoir manager to take a measure and the reservoir manager has failed to do so.

(2) SEPA may arrange for the taking of the measure under the supervision of an engineer appointed by it under this section.

(3) Where the engineer is satisfied that the measure has been taken, the engineer must give a certificate to that effect to SEPA.

(4) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in making arrangements under this section.

Commencement Information
I100 S. 71 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

72 Offences under sections 42(1)(d) and 52(1)(c): further remedies

(1) This section applies where a reservoir manager is convicted of an offence under—
(a) section 42(1)(d) (failure to comply with direction in safety report),
(b) section 52(1)(c) (failure to comply with direction in inspection report).

(2) The court may, in addition to or instead of imposing any penalty competent under section 42(3) or (as the case may be) 52(3), order the reservoir manager to take such steps as are specified in the order, within such period as is so specified—
(a) to secure compliance with the direction concerned,
(b) to secure the remedying or mitigating of the effects of the failure to comply with the direction.

(3) The court may—
(a) on an application made before the end of the period specified under subsection (2), by order extend the period to such extended period as is specified in the order,
(b) on an application made before the end of the extended period, by order further extend the period to such further extended period as is specified in the order,

(c) by order grant further extensions of the latest period specified by it by order under paragraph (b), on an application made before the end of the latest period.

Commencement Information
I101 S. 72 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

Stop notices

73 Stop notices

(1) The Scottish Ministers may by order make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.

(3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the manager has taken the steps specified in the notice.

(4) Provision under subsection (1) may confer power to give a stop notice only in relation to a case where the reservoir manager is carrying on the activity and either—

(a) SEPA reasonably believes that the activity as carried on by the manager presents a significant risk of causing an uncontrolled release of water from the reservoir, or

(b) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under this Part.

(5) Where provision under subsection (1) confers power to give a stop notice in a case falling within subsection (4)(a)—

(a) SEPA must, before it exercises the power—

(i) at its own expense appoint 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

(ii) take into account recommendations made by that engineer about the stop notice,

(b) the steps specified in any such stop notice in pursuance of subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(a),

(c) SEPA must give the Scottish Ministers notice of each occasion on which it exercises the power as soon as reasonably practicable after doing so.

Commencement Information
I102 S. 73 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

74 Stop notices: procedure

(1) Provision under section 73(1) must secure the results in subsection (2) in a case where a stop notice is given.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(2) The results are that—

(a) the stop notice must comply with subsection (3),

(b) the reservoir manager to whom it is given may appeal to the Scottish Ministers against the decision to issue it,

(c) where, after giving of the notice, SEPA is satisfied that the manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a "completion certificate"),

(d) the notice ceases to have effect on the giving of a completion certificate,

(e) the reservoir manager to whom the notice is given may at any time apply for a completion certificate,

(f) SEPA must make a decision as to whether to give a completion certificate before the end of the period of 14 days beginning with the day on which the application for the certificate was made,

(g) the reservoir manager to whom the notice is given may appeal to the Scottish Ministers against a decision not to give a completion certificate.

(3) To comply with this subsection a stop notice must include information as to—

(a) the grounds for giving the notice,

(b) rights of appeal,

(c) the consequences of non-compliance.

(4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA to give a stop notice include that—

(a) the decision was based on an error of fact,

(b) the decision was wrong in law,

(c) the decision was unreasonable,

(d) any step specified in the notice is unreasonable,

(e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given,

(f) the manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.

(5) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

(6) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA not to give a completion certificate include that—

(a) the decision was based on an error of fact,

(b) the decision was wrong in law,

(c) the decision was unfair or unreasonable.

Commencement Information

I103 S. 74 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

75 Stop notices: compensation

(1) Provision under section 73(1) must include provision for SEPA to compensate the reservoir manager for loss suffered as the result of the issue of the stop notice.

(2) Provision pursuant to subsection (1) may provide for compensation—
- (a) only in cases specified (by the order under section 73(1)),
- (b) only in relation to descriptions of loss so specified.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager to whom the stop notice is given may appeal to the Scottish Ministers against—
- (a) a decision of SEPA not to award compensation,
- (b) a decision of SEPA as to the amount of the compensation.

Commencement Information
I104 S. 75 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

76 Stop notices: enforcement

(1) Provision under section 73(1) may provide that where a reservoir manager to whom a stop notice is given does not comply with it, the manager commits an offence and is liable on summary conviction—
- (a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,
- (b) in the sheriff court—
  - (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,
  - (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

(2) Provision under section 73(1) must provide that it is a defence to a charge in proceedings for an offence created by the order for the person to show both—
- (a) that the failure to comply with the stop notice was as a result of either 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.

Commencement Information

I105 S. 76 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

Emergency powers

77 Emergency powers

(1) This section applies where it appears to SEPA that immediate action is needed to protect persons or property against an escape of water from a controlled reservoir (whether or not the reservoir is in use).

(2) SEPA may take any measures that it considers necessary—

(a) to remove or reduce the risk to persons or property,

(b) to mitigate the effect of an escape of water.

(3) SEPA must—

(a) appoint an engineer to make recommendations about any measures to be taken under this section,

(b) arrange for the measures to be taken under the supervision of the appointed engineer.

(4) An engineer may be appointed under this section if the engineer 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.

(5) SEPA must give notice to the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)—

(a) must be given as soon as practicable (which may be after any works have begun), but

(b) is not required if SEPA is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in the exercise of powers under this section.

Commencement Information

I106 S. 77 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

Other civil enforcement measures

PROSPECTIVE

[F1]78 Enforcement undertakings

. . . . . .

Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(2)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

PROSPECTIVE

[F1]79 Fixed monetary penalties

. . . . . .

Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(2)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

PROSPECTIVE

[F1]80 Fixed monetary penalties: procedure

. . . . . .

Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(2)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

PROSPECTIVE

[F1]81 Fixed monetary penalties: criminal proceedings and conviction etc.

. . . . . .

Textual Amendments

F1 Ss. 78-81 repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(2)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

82 Further enforcement measures

(1) The Scottish Ministers may by order make provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures in relation to offences under this Part.

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Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.

(3) Provision under subsection (1)—

(a) must provide that further enforcement measures—

(i) may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,

(ii) may not be imposed on a reservoir manager on more than one occasion in relation to the same act or omission,

(iii) are to be imposed by notice,

(b) may provide that further enforcement measures may be imposed in addition to any requirement referred to in section 65(2) or 69(2).

(4) A further enforcement measure is **[**[F2]either**]** of the following—

[F3](a) . . . . . .

(b) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the offence does not continue or recur,

(c) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the position is so far as possible restored to what it would have been if the offence had not been committed.

(5) For the purposes of this Part—

[F4]… [F4]… [F4]…

a "restraint notice" means a requirement referred to in subsection (4)(b),

a "restoration notice" means a requirement referred to in subsection (4)(c).

Textual Amendments

F2 Word in s. 82(4) substituted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(3)(a)(i)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F3 S. 82(4)(a) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(3)(a)(ii)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F4 Words in s. 82(5) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(3)(b)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I107 S. 82 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

83 Further enforcement measures: procedure

(1) Provision under section 82(1) must secure the results in subsection (2).

(2) The results are that—

(a) where SEPA proposes to impose a further enforcement measure on a reservoir manager, it must give the manager a notice of what is proposed (a "notice of intent") which complies with subsection (3),

(b) the reservoir manager may make written representations and objections to SEPA in relation to the proposed imposition,

(c) after the end of the period for making such representations and objections, SEPA must decide whether to—

(i) impose the further enforcement measure (with or without modifications),

(ii) impose any other further enforcement measure which SEPA may impose,

(d) where SEPA decides to impose a further enforcement measure, the notice (the "final notice") complies with subsection (6),

(e) the reservoir manager on whom a further enforcement measure is imposed may appeal to the Scottish Ministers against the decision to impose it.

(3) To comply with this subsection, the notice of intent must include information as to—

(a) the grounds for the proposal to impose the further enforcement measure,

(b) the right to make representations and objections,

(c) the circumstances in which SEPA may not impose the further enforcement measures,

(d) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent is given.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that SEPA may not decide to impose a further enforcement measure on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,

(b) may include provision for other circumstances in which SEPA may not decide to impose a further enforcement measure.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

(a) the reservoir manager to whom the notice of intent is given to be able to offer an undertaking as to action to be taken by the manager (including the payment of a sum of money) to benefit any person affected by the offence,

(b) SEPA to be able to accept or reject such an undertaking,

(c) SEPA to take any undertaking so accepted into account in its decision.

(6) To comply with this subsection the final notice must include information as to—

(a) the grounds for imposing the further enforcement measure,

[F5](b) . . . . . .

(c) rights of appeal,

(d) the consequences of non-compliance.

(7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA include the following—

(a) that the decision was based on an error of fact,

(b) that the decision was wrong in law,

[F6](c) . . . . . .

(d) in the case of a restraint notice or a restoration notice, that the nature of the requirement is unreasonable,

(e) that the decision was unreasonable for any other reason.

(8) Provision to secure the result in that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

Textual Amendments

F5 S. 83(6)(b) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(4)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F6 S. 83(7)(c) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(4)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I108 S. 83 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

84 Further enforcement measures: criminal proceedings and conviction

(1) Provision under section 82(1) must secure the result in subsection (2) in any of the following cases—

(a) where a further enforcement measure is imposed on a reservoir manager,

(b) where an undertaking referred to in section 83(5) is accepted from a reservoir manager.

(2) The result is that the reservoir manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the further enforcement measure or undertaking except in a case mentioned in subsection (3).

(3) The case is where each of the following applies—

(a) a restraint notice or restoration notice is imposed on the manager, or an undertaking referred to in section 83(5) is accepted from the manager,

[F7](b) . . . . . .

(c) the manager fails to comply with the restraint notice, restoration notice or undertaking.

(4) Provision under section 82(1) may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the reservoir manager.

Textual Amendments

F7 S. 84(3)(b) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(5)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I109 S. 84 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

85 Further enforcement measures: enforcement

(1) Provision under section 82(1) may include provision for a reservoir manager to pay a monetary penalty (a "non-compliance penalty") to SEPA if the manager fails to comply with any of the following—

(a) a restraint notice or restoration notice imposed on the manager,

(b) an undertaking referred to in section 83(5).

(2) Provision pursuant to subsection (1) may—

(a) specify the amount of the non-compliance penalty,

(b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,

(c) provide for the amount to be determined by SEPA,

(d) provide for the amount to be determined in any other way,

but may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction.

(3) Provision pursuant to subsection (1) must secure that—

(a) the non-compliance penalty is imposed by notice given by SEPA,

(b) the reservoir manager on whom it is imposed may appeal to the Scottish Ministers against the notice.

(4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection include the following—

(a) that the decision to give the notice was based on an error of fact,

(b) that the decision was wrong in law,

(c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).

(5) An order under section 82(1) may provide that where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Commencement Information

I110 S. 85 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

Miscellaneous

86 Consultation in relation to orders under sections 73(1)[F8]... and 82(1)

(1) The consultation required by sections—

(a) 73(2) (stop notices),

[F9](b) . . . . . .

[F9](c) . . . . . .

(d) 82(2) (further enforcement measures),

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is consultation with the persons and organisations mentioned in subsection (2).

(2) The persons are—

(a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the making of the proposed order,

(b) such other persons as the Scottish Ministers consider appropriate.

Textual Amendments

F8 Words in s. 86 title omitted (30.6.2014) by virtue of Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(7)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F9 S. 86(1)(b)(c) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(6)**; S.S.I. 2014/160, art. 2(1)(2), Sch.; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I111 S. 86 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

87 Guidance as to use of stop notices[F10]... or further enforcement measures

Where the Scottish Ministers make provision—

(a) by order under section 73(1) (giving by SEPA of stop notices),

[F11](b) . . . . . .

[F11](c) . . . . . .

(d) by order under section 82(1) (imposition by SEPA of further enforcement measures),

the order concerned must require SEPA to publish guidance about the use of the powers conferred on it by the order.

Textual Amendments

F10 Words in s. 87 title omitted (30.6.2014) by virtue of Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(9)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F11 S. 87(b)(c) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(8)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I112 S. 87 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

88 Recovery by SEPA of expenses

(1) Provision under section 73(1) or 82(1) may include provision for SEPA, by notice, to require a reservoir manager to whom a stop notice is given or on whom a further enforcement measure is imposed, to pay the amount of any expenses reasonably incurred by SEPA in relation to (and up to the time of) the giving of the notice or (as the case may be) imposition of the measure.

(2) In subsection (1), the reference to "expenses" includes in particular—

(a) investigation expenses,

(b) administration expenses,

(c) expenses of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager required to pay the expenses may appeal to the Scottish Ministers against—

(a) the decision of SEPA to impose the requirement to pay expenses,

(b) the decision of SEPA as to the amount of the expenses.

(4) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

Commencement Information

I113 S. 88 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

89 Guidance: appeals

The Scottish Ministers must publish guidance on the process of making appeals in pursuance of sections 69, 74, 75[F12]... 83, 85 and 88.

Textual Amendments

F12 Words in s. 89 repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(10)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I114 S. 89 in force at 1.1.2015 for specified purposes by S.S.I. 2014/348, art. 2, **Sch.**

I115 S. 89 in force at 1.4.2016 in so far as not already in force by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

90 Publication of enforcement action

(1) The Scottish Ministers may by order require SEPA to publish such information as may be specified in the order as regards cases in which it has—

(a) appointed a construction engineer, an inspecting engineer or a supervising engineer under section 67,

(b) arranged for the taking of any measure under section 71.

(2) Where the Scottish Ministers make provision by order under—

(a) section 73(1) as to the issuing by SEPA of stop notices,

[F13](b) . . . . . .

(c) section 82(1) as to the imposition by SEPA of further enforcement measures,

the order concerned may require SEPA to publish such information as may be specified in the order as regards cases in which it has done what the order permits it to do.

(3) In subsection (2), the reference to cases in which SEPA has done what the order permits it to do does not include cases where the stop notice[F14]... or (as the case may be) further enforcement measure has been imposed but overturned on appeal.

Textual Amendments

F13 S. 90(2)(b) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(11)(a)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F14 Words in s. 90(3) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(11)(b)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Commencement Information

I116 S. 90 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

91 Powers of entry

(1) A person authorised by SEPA is entitled, at any reasonable time for any of the purposes in subsection (2), to enter—

(a) land on which a controlled reservoir is situated,

(b) land on which SEPA considers there is situated a structure or area (or combination) referred to in section 1(4) in relation to which SEPA is considering requesting the making an order under that subsection,

(c) land on which a structure or area which previously at any time has been a controlled reservoir is situated.

(2) The purposes are to carry out an inspection, survey or other operation—

(a) to determine whether any provision of this Part applies,

(b) for the purpose of assisting SEPA in giving the reservoir a provisional risk designation or risk designation, or reviewing its risk designation,

(c) to determine whether a measure directed in a safety report has been taken,

(d) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,

(e) to determine—

(i) whether a measure directed in an inspection report has been taken (whether before or after the giving of a notice under section 69),

(ii) the period to be specified in a notice under that section,

(f) to determine whether a direction by a supervising engineer under section 50(4) has been complied with,

(g) to determine whether the records required by sections 51 and 56 are being maintained,

(h) to determine whether incidents are being reported in accordance with regulations under section 54(1),

(i) to determine whether a flood plan is being prepared in accordance with regulations under section 55(1),

(j) for the purposes of section 71,

(k) to determine what (if any) emergency measures should be taken under section 77, or for any purpose connected with taking such measures,

(l) to assess whether any offence under this Part may be being committed.

Commencement Information

I117 S. 91(1)(2)(a)(l) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

I118 S. 91(2)(b) in force at 1.10.2015 by S.S.I. 2015/314, **art. 2(i)**
I119 S. 91(2)(c)-(k) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

92 Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right of entry under section 91 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath as to both of the following—
- (a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,
- (b) that any of the following applies—
  - (i) the conditions in subsection (3) are satisfied,
  - (ii) the land is unoccupied, or
  - (iii) the case is one of urgency.

(3) The conditions referred to in subsection (2)(b)(i) are—
- (a) that the person applying for the warrant has given notice under section 93(3)(a) of the person's intention to exercise the right,
- (b) that the notice period has expired,
- (c) that either—
  - (i) permission to exercise the right in relation to the land has been refused, or
  - (ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—
- (a) does not entitle a person to use force against an individual,
- (b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

Commencement Information
I120 S. 92 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

93 Powers of entry: supplementary

(1) Where entry under section 91 is for a purpose in subsection (2)(k) of that section the right to enter extends to any neighbouring land.

(2) A right to enter land conferred by section 91 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
- (a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person,
- (b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

(3) Except for a purpose referred to in section 91(2)(k), a person may not demand entry to land which is occupied unless either—
  (a) at least 7 days' notice has been given to the occupier, or
  (b) the entry is authorised by a warrant under section 92.

(4) Notice under subsection (3)(a) must—
  (a) specify the purpose for which entry is required,
  (b) specify so far as practicable the nature of the proposed works on the land.

(5) A person authorised by virtue of section 91 to enter land must on request produce written evidence of the authorisation.

Commencement Information
I121 S. 93(1) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)
I122 S. 93(2)-(5) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

94 Offence: preventing or obstructing entry

(1) Any person who intentionally prevents or obstructs another person entitled to enter land by virtue of section 91 (whether or not by virtue of a warrant under section 92) commits an offence.

(2) A person guilty of an offence under subsection (1)—
  (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,
  (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information
I123 S. 94 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

95 Compensation

(1) SEPA must pay compensation in accordance with this section where, in the exercise of a right to enter land conferred by section 91 (whether or not under a warrant under section 92) any of the following occurs—
  (a) any land, other than land which is occupied by the reservoir manager, is damaged,
  (b) the enjoyment of any land, other than land which is so occupied, is disturbed.

(2) Compensation is to be paid in respect of the damage or disturbance to—
  (a) a person with an interest in the land,
  (b) a person whose enjoyment of the land is disturbed.

(3) Any dispute about compensation under this section is to be determined by the Lands Tribunal for Scotland.

(4) Compensation payable under this section is to be treated, for the purposes of recovery from the reservoir manager, as expense incurred by SEPA in the exercise of its powers under section 77.

Commencement Information
I124 S. 95(1)-(3) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**
I125 S. 95(4) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

96 Reports by SEPA to the Scottish Ministers

(1) SEPA must report to the Scottish Ministers about the steps it has taken to secure the compliance by reservoir managers of controlled reservoirs with the requirements of this Part.

(2) Reports under subsection (1) must—
- (a) be at such intervals and times as the Scottish Ministers direct,
- (b) contain such information as they direct.

Commencement Information
I126 S. 96 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

97 Affording of reasonable facilities to engineers

(1) The reservoir manager of a controlled reservoir must, on being requested by a relevant engineer, provide the engineer with all reasonable facilities the engineer may seek in connection with the exercise of the engineer's functions under this Part.

(2) The reservoir manager—
- (a) must, on being requested by a relevant engineer, make available to the engineer—
  - (i) where the reservoir is a high-risk reservoir or a medium-risk reservoir, the record maintained by the manager under section 51,
  - (ii) the record maintained by the manager under section 56,
- (b) must on being so requested, provide a relevant engineer with such further information or particulars as the engineer may require, in such form and manner and by such time as the engineer may by notice require.

(3) For the purposes of this section, a “relevant engineer” is a construction engineer, an inspecting engineer, an other qualified engineer or a supervising engineer appointed for the time being in relation to the reservoir.

Commencement Information
I127 S. 97 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

98 Power of SEPA to require information and assistance

(1) The reservoir manager of a controlled reservoir must, on being requested by SEPA, provide SEPA with such information and assistance as it may reasonably seek in connection with the exercise of its powers and duties under this Part.

(2) The reservoir manager in particular—

(a) must, on being requested by SEPA, make available to it the records referred to in section 97(2)(a),

(b) must, on being so requested, provide SEPA with such further information or particulars as SEPA may require, in such form and manner as SEPA may by notice require.

Commencement Information

I128 S. 98(1)(2)(b) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

I129 S. 98(2)(a) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

99 Offences: sections 97 and 98

(1) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements commits an offence—

(a) the requirements of section 97 (affording of reasonable facilities to engineers),

(b) the requirements of section 98 (provision of information and assistance to SEPA).

(2) A reservoir manager of a controlled reservoir who intentionally alters, suppresses or destroys a document which the person has been required by virtue of either of those sections to produce commits an offence.

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—

(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,

(b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Commencement Information

I130 S. 99(1)(a) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I131 S. 99(1)(b)(2)(3) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

CHAPTER 10

MISCELLANEOUS

100 Guidance

(1) The Scottish Ministers must publish guidance on the operation of this Part.

(2) Guidance under subsection (1) must in particular—
- (a) include guidance on any orders or regulations which have been made under this Act and which affect the operation of this Part, and
- (b) incorporate any guidance which has been issued or published under any other provision of this Part (whether by SEPA or the Scottish Ministers).

(3) The Scottish Ministers must keep the guidance under this section under review with a view to revising and re-publishing the guidance with such revisions as they think appropriate.

(4) Before publishing or re-publishing any guidance under this section, the Scottish Ministers must consult—
- (a) SEPA,
- (b) the Institution of Civil Engineers,
- (c) such other persons as they consider appropriate.

Commencement Information
I132 S. 100 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

101 Grants

(1) The Scottish Ministers may pay grants to a reservoir manager for the purposes of enabling or assisting the reservoir manager to comply with any obligation arising under or by virtue of this Part.

(2) Grants are payable only where the reservoir concerned—
- (a) is a high-risk reservoir or a medium-risk reservoir, and
- (b) was not a "large raised reservoir" for the purposes of section 1 of the 1975 Act on the date immediately before that section was repealed.

(3) Grants may be subject to such conditions (including conditions on repayment) as the Scottish Ministers think fit.

Commencement Information
I133 S. 101 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

102 Assessment of engineers' reports etc.

(1) The Scottish Ministers may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Part by—
- (a) construction engineers,
- (b) inspecting engineers,
- (c) other qualified engineers,
- (d) supervising engineers.

(2) The regulations may—
- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,

(b) specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision as to—

(a) the criteria for assessment,

(b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,

(c) the assessment procedure (including whether oral as well as written representations are to be permitted),

(d) timing,

(e) reporting by the committee to SEPA and the Scottish Ministers,

(f) the steps that may be taken by SEPA or the Scottish Ministers following an assessment.

Commencement Information

I134 S. 102 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

103 Notice to SEPA of revocation of appointment or resignation of engineer

(1) Where the reservoir manager of a controlled reservoir revokes the appointment of a construction engineer, an inspecting engineer, an other qualified engineer or a supervising engineer appointed in relation to the reservoir, the manager must give SEPA notice of the revocation and of the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns such appointment—

(a) the engineer must give the reservoir manager notice of the resignation and the date on which it took, or is to take, effect,

(b) the reservoir manager who receives notice under paragraph (a) must, not later than 28 days after the receipt, give SEPA a copy of the notice.

(3) Notice under subsection (1) or (2)(a) must be given not later than 28 days after the revocation or (as the case may be) resignation.

(4) Failure by a reservoir manager to comply with the requirements of subsection (1) or (2)(b) is an offence.

(5) A reservoir manager guilty of an offence under subsection (4)—

(a) 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,

(b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) It is a defence to a charge in proceedings for an offence under subsection (4) that the reservoir manager did not receive notice of the engineer's resignation.

Commencement Information

I135 S. 103 in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

104 SEPA: Ministerial directions

SEPA must, in carrying out its functions under this Part, act subject to and in accordance with such directions as may be given by the Scottish Ministers.

Commencement Information
I136 S. 104 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

105 Form and content of notices, reports, certificates etc.

The Scottish Ministers may by regulations make provision as to—

(a) the form and content of any notice required under this Part,

(b) the form of any report or certificate by a construction engineer or an inspecting engineer or of any notice, written statement or recommendation by a supervising engineer under this Part.

Commencement Information
I137 S. 105 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

106 Notices by SEPA

(1) Section 123 of the Environment Act 1995 (c.25) (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be given by SEPA as if it were authorised or required to be given (or served) under that Act.

(2) Where SEPA is unable after reasonable enquiry to ascertain the name or address of a reservoir manager of a controlled reservoir, a notice by SEPA under this Part is to be treated as given to the manager if either—

(a) it is left in the hands of a person who is or appears to be resident or employed at the site of the reservoir, or

(b) it is conspicuously affixed to a building or object at the site of the reservoir.

Commencement Information
I138 S. 106 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

107 Change to the Institution of Civil Engineers

If the Institution of Civil Engineers ceases to exist, the Scottish Ministers may by order amend references in this Part to the Institution and to its President.

Commencement Information
I139 S. 107 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

Status: *This version of this Act contains provisions that are prospective.*
Changes to legislation: *There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011. (See end of Document for details)*

108 Civil liability

This Part does not confer a right to claim damages in respect of a breach of an obligation imposed by the Part.

Commencement Information
I140 S. 108 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

PART 2

PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

109 Remedial and restoration measures regulations

(1) In section 22 (remedial and restoration measures) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3), in subsection (3), after paragraph (b) insert—

"(c) for any of the purposes specified in paragraphs 1 to 3 of schedule 2A.

(4) Paragraphs 4 and 5 of that schedule have effect for supplementing paragraphs 1 to 3.".

(2) After schedule 2 to that Act insert—

"SCHEDULE 2A
(introduced by section 22)

REMEDIAL AND RESTORATION MEASURES REGULATIONS: OFFENCES

Offences

1 Creating offences and dealing with matters relating to such offences, including—
(a) the provision of defences, and
(b) evidentiary matters.

2 Enabling, where a person has been convicted of an offence under the regulations, a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment).

3 Making provision which, subject to any modification that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by section 157 or 158 of the Environmental Protection Act 1990 (c.43).

Supplementary

4 (1) The regulations may provide for any such offence as is mentioned in paragraph 1 to be triable—
(a) only summarily,
(b) either summarily or on indictment.

(2) The regulations may provide for such an offence which is triable only summarily to be punishable on conviction by—

(a) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or

(b) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale),

or both.

(3) The regulations may provide for any such offence which is triable either summarily or on indictment to be punishable—

(a) on summary conviction, by—

(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or

(ii) a fine not exceeding such amount as is specified (which must not exceed the statutory maximum),

or both,

(b) on conviction on indictment by—

(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years), or

(ii) a fine,

or both.

Interpretation

5 In this schedule—

"the regulations" means regulations under section 22,

"specified" means specified in the regulations.".

Commencement Information

I141 S. 109 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

PART 3

GENERAL

110 Crown application

(1) Part 1 of this Act binds the Crown and applies to any Crown land as it applies in relation to any other land.

(2) The modifications made by Part 2 bind the Crown to the extent that the enactment modified binds the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of SEPA or a person authorised by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 91 (whether those specified in that section or the ancillary powers referred to in section 93(1) or (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—

(a) "Crown land" means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department,

(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) "appropriate authority", in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land **[**[F15]or the relevant person**]** ,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means the office-holder or government department.

[[F16](7A) In subsection (7), "relevant person", in relation to any land to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that land.**]**

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

Textual Amendments

F15 Words in s. 110(7)(b)(ii) inserted (1.4.2017) by The Crown Estate Transfer Scheme 2017 (S.I. 2017/524), art. 1(2), **Sch. 5 para. 44(a)**

F16 S. 110(7A) inserted (1.4.2017) by The Crown Estate Transfer Scheme 2017 (S.I. 2017/524), art. 1(2), **Sch. 5 para. 44(b)**

Commencement Information

I142 S. 110(1)(3)-(9) in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

I143 S. 110(2) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

111 Offences by bodies corporate

(1) Where—

(a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association,

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), "relevant individual" means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Commencement Information

I144 S. 111 in force at 1.4.2015 by S.S.I. 2015/63, art. 2, **Sch.**

112 Consequential amendment and repeals

(1) In section 14(2)(a) of the Local Government and Planning (Scotland) Act 1982 (c.43), for "(within the meaning of the Reservoirs Act 1975)" substitute " (within the meaning of the Reservoirs (Scotland) Act 2011 (asp 9) but irrespective of the volume of water held in the reservoir) ".

(2) Paragraph 98 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) is repealed.

(3) Paragraph 7 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3) is repealed.

(4) In section 55(2)(f) of the Building (Scotland) Act 2003 (asp 8), for "large raised reservoir within the meaning of the Reservoirs Act 1975 (c.23)" substitute " controlled reservoir within the meaning of the Reservoirs (Scotland) Act 2011 (asp 9) ".

(5) Part 7 of the Flood Risk Management (Scotland) Act 2009 (asp 6) is repealed.

Commencement Information

I145 S. 112(1)-(4) in force at 1.4.2016 by S.S.I. 2016/42, art. 2, **Sch.** (with art. 3)

I146 S. 112(5) in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

113 Ancillary provision

(1) The Scottish Ministers may by order make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provisions of this Act.

(2) An order under subsection (1) may modify any enactment, instrument or document.

Commencement Information

I147 S. 113 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, **Sch.**

114 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.

(2) Any such power includes power to make—

(a) in the case of an order under section 116(1) (commencement orders), such transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(b) in the case of any other order or any regulations—

(i) such supplemental, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(ii) different provision for different purposes.

(3) Unless subsection (4) provides otherwise, a statutory instrument containing an order (other than an order made under section 116(1)) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Parliament.

(4) An order or regulations must not be made under any of the following provisions unless a draft of the statutory instrument containing the order or (as the case may be) the regulations has been laid before, and approved by a resolution of, the Parliament—

(a) section 1(4),

(b) section 1(6)(a),

(c) section 22(4),

(d) section 54(1) or 55(1),

(e) section 69(7),

(f) section 73(1)[F17]..., 82(1) or 107,

(g) section 113(1) (if the order contains supplemental provision or provision which adds to, replaces or omits any part of the text of an Act).

Textual Amendments

F17 Words in s. 114(4)(f) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 13(12)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

115 Defined expressions

The expressions listed in the schedule are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

116 Commencement and short title

(1) The provisions of this Act, except this section and sections 1, 2, 3, 7, 114 and 115, come into force on such day as the Scottish Minsters by order appoint.

(2) This Act may be cited as the Reservoirs (Scotland) Act 2011.

Status:
This version of this Act contains provisions that are prospective.

Changes to legislation:
There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011.