



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

78 Enforcement undertakings

- (1) The Scottish Ministers may by order make provision—
 - (a) as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where SEPA has reasonable grounds to suspect that the manager has committed an offence under this Part,
 - (b) for the acceptance of the undertaking to have the consequences in subsection (5).
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) An “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking before the end of such period as may be so specified.
- (4) The action specified in an enforcement undertaking must be—
 - (a) action to secure that the offence does not continue or recur,
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
 - (c) action (including the payment of a sum of money) to benefit any person adversely affected by the offence,
 - (d) action of a description specified in the order.

Status: This is the original version (as it was originally enacted).

- (5) The consequences in this subsection are that, unless the reservoir manager from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) the reservoir manager may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,
 - (b) SEPA may not impose on the manager any fixed monetary penalty which it would otherwise have power to impose by virtue of section 79(1) in respect of the act or omission,
 - (c) SEPA may not impose on the manager any further enforcement measure which it would otherwise have power to impose by virtue of section 82(1) in respect of the act or omission.
- (6) Provision under subsection (1) may in particular include provision—
- (a) as to the procedure for entering into an undertaking,
 - (b) as to the terms of an undertaking,
 - (c) as to the publication of an undertaking by SEPA,
 - (d) as to the variation of an undertaking,
 - (e) as to the circumstances in which a reservoir manager may be regarded as having complied with an undertaking,
 - (f) as to the monitoring by SEPA of compliance with an undertaking,
 - (g) as to the certification by SEPA that an undertaking has been complied with,
 - (h) allowing an application for a review by SEPA before an appeal to the Scottish Ministers against refusal to give such certification,
 - (i) in a case where a reservoir manager has given inaccurate, misleading or incomplete information in relation to the undertaking, for the manager to be regarded as not having complied with it,
 - (j) in a case where a reservoir manager has complied partly but not fully with an undertaking, for the part-compliance to be taken into account in the imposition of any criminal or other sanction on the manager,
 - (k) extending any period within which criminal proceedings may be instituted against a reservoir manager in respect of the offence in the event of breach of an undertaking or any part of it,
 - (l) for the creation of offences,
 - (m) for any offence created to be triable only summarily,
 - (n) 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,
 - (o) for it to be a defence to a charge in proceedings for an offence created by the order for a person to show both—
 - (i) that the failure to comply with the requirements concerned 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
 - (ii) that the person took all practicable steps to prevent an uncontrolled release of water from the reservoir, took all practicable steps as soon

as was reasonably practicable to rectify the failure and provided particulars of the failure to SEPA as soon as practicable after the failure arose.