



2015 CHAPTER 8

PART 2

REQUIREMENTS FOR HIGH-CONSEQUENCE AND MEDIUM-CONSEQUENCE RESERVOIRS

PROSPECTIVE

Offences: supervision, inspection, record keeping

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38.—(1) Failure by a reservoir manager of a high-consequence or medium-consequence reservoir to comply with any of the following requirements under this Part is an offence—

- (a) the requirements of section 25(2) (commissioning of supervising engineer),
- (b) the requirements of section 28(1) (compliance with direction of supervising engineer under section 26(4)(a) as to carrying out of visual inspection of reservoir),
- (c) the requirements of section section 28(2)(a) (maintenance of written record of each such visual inspection),
- (d) the requirements of section 28(2)(c) (notice to supervising engineer and Department of anything that might affect the safety of the reservoir identified during visual inspection directed under section 26(4)(a)),

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- (e) the requirements of section 30, 31, 32 or 34(1)(a) or (b) (securing required inspections and supervision by inspecting engineer and commissioning of inspecting engineer),
- (f) the requirements of section 37 (including those of regulations under subsection (2) of that section) (recording of water levels and other matters).

(2) A reservoir manager of a high-consequence or medium-consequence reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements of section 25(4) (notice to Department of commissioning of supervising engineer),
- (b) the requirements of section 26(8)(a) or (b) (giving supervising engineer copy of pre-commencement inspection report and any pre-commencement inspection report certificate),
- (c) the requirements of section 34(2) (notice to Department of commissioning of inspecting engineer),
- (d) the requirements of section 35(2) (giving inspecting engineer copy of latest report, any pre-commencement inspection report certificate, interim inspection compliance certificate, inspection compliance certificate and final certificate),
- (e) the requirements of section 36(2)(b) (notice to Department of commissioning of any other qualified engineer).

(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-consequence 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-consequence reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Offence in connection with inspection: failure to secure compliance with safety direction or recommendation

39.—(1) Failure by a reservoir manager of a high-consequence or medium-consequence reservoir without lawful excuse to comply with the requirements of section 36(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure) is an offence.

(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-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,

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(b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-consequence reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Section 74 makes provision as to further remedies available on conviction of an offence referred to in subsection (1).

Defences: offence under section 39(1)

40 It is a defence to a charge in proceedings under section 39(1) 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 the Department as soon as practicable after the failure arose.

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