



2015 CHAPTER 8

PART 2

REQUIREMENTS FOR HIGH-CONSEQUENCE AND MEDIUM-CONSEQUENCE RESERVOIRS

Supervision by supervising engineer

Supervision requirement and commissioning of supervising engineer etc.

25.—(1) A high-consequence or medium-consequence reservoir must, at all times, be under the supervision of a supervising engineer.

(2) The reservoir manager of a high-consequence or medium-consequence reservoir must, not later than 6 months after the date on which the designation of the reservoir as such takes effect (see sections 19, 20(5) and 21(7)), commission a supervising engineer.

(3) A “supervising engineer” is an engineer duly commissioned under subsection (2) to supervise the reservoir, at all times, in accordance with section 26.

(4) A reservoir manager who commissions a supervising engineer in accordance with subsection (2) must, not later than 28 days after the commissioning, give notice of it to the Department.

(5) An engineer may be commissioned as a supervising engineer if the engineer is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an order under that section) be commissioned under this section as a supervising engineer in relation to the reservoir.

Duties etc. in relation to supervision

26.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this Act.

(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 compliance by the reservoir manager—
 - (i) subject to section 61, with any direction in the latest inspection report by virtue of section 35(4)(a) as regards any measure that should be taken in the interests of the safety of the reservoir which is a measure for its maintenance (see section 35(4)(f)),
 - (ii) with any recommendation in a pre-commencement inspection report for the time being applicable to the reservoir (see section 33(1)) as to a measure that should be taken for its maintenance,
- (c) monitor—
 - (i) any matter specified by virtue of section 35(4)(g) in the latest inspection report as a matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
 - (ii) any matter specified in a pre-commencement inspection report for the time being applicable to the reservoir as a matter that should be watched by a civil engineer until the next inspection of the reservoir (and which does not fall within paragraph (b)(ii)),
- (d) monitor any matter specified in a safety report as a matter the construction engineer giving the report recommends should be monitored by the supervising engineer until a final certificate is issued in respect of relevant works (see section 45(1)(c)),
- (e) monitor compliance by the reservoir manager with the requirements of—
 - (i) any preliminary certificate for the time being applicable to the reservoir (see section 47),
 - (ii) any final certificate for the time being applicable to the reservoir (see section 49),
- (f) monitor any matter specified in any such final certificate as a matter that should be monitored by the supervising engineer until the first or next inspection of the reservoir,
- (g) give notice to the reservoir manager and the Department of any failure to comply with—
 - (i) a direction or recommendation referred to in paragraph (b),
 - (ii) a safety report for the time being applicable to the reservoir,

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

- (iii) a preliminary certificate for the time being applicable to the reservoir,
 - (h) give notice to the reservoir manager and the Department of any failure to comply with any requirement of a final certificate for the time being applicable to the reservoir,
 - (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 37 (recording of water levels etc. and record keeping),
 - (k) undertake, in accordance with the latest inspection report, any additional visit that may be recommended in the report by virtue of section 35(4)(i).
- (3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 35, the engineer must—
- (a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place,
 - (b) not later than 28 days after giving the written recommendation, give the Department a copy of it.
- (4) The supervising engineer—
- (a) 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,
 - (b) must give a copy of any direction given under paragraph (a) to the Department.
- (5) 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) and (j) and (k),
 - (b) any measure taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,
 - (c) any recommendation by the supervising engineer under subsection (3),
 - (d) any direction by the supervising engineer under subsection (4)(a).
- (6) The supervising engineer must, not later than 28 days after giving a written statement under subsection (5), give the Department a copy of the statement.
- (7) The supervising engineer must—
- (a) give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of the supervising engineer being unavailable, a nominated representative of the engineer),
 - (b) not later than 28 days after giving the reservoir manager such information, give the information to the Department.

(8) Where the reservoir is the subject of a pre-commencement inspection report and inspection of it is not yet due under section 31, the reservoir manager must give the supervising engineer a copy of—

- (a) the report,
- (b) any pre-commencement inspection report certificate (see section 35(3)),
- (c) where the reservoir manager is unable to give a copy of a pre-commencement inspection report certificate, any other document dated before the relevant date which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation (see section 34(3)).

(9) 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 reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section,
- (c) “the relevant date” has the same meaning as in section 31(6).

(10) In this section and sections 27 to 31, 35 and 37, references to “the supervising engineer” are references to the engineer duly commissioned for the time being as such under section 25 in relation to the reservoir and are to be construed as including a nominated representative of the supervising engineer under subsection (7)(a) who is acting as such in the event of the supervising engineer being unavailable.

Regulations as to visits by supervising engineer

27.—(1) The Department may by regulations make provision—

- (a) for there to be a standard frequency of visits that must be made by a supervising engineer to a high-consequence or medium-consequence reservoir,
- (b) for the standard frequency to be different according to whether or not the Department considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained,
- (c) for the Department to decide whether it considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained, taking account (as appropriate) of the following—
 - (i) whether or not a pre-commencement inspection report contains a pre-commencement safety recommendation,
 - (ii) whether or not an inspection report specifies any measure that should be taken in the interests of the safety of the reservoir or any other

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

matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,

- (iii) any inspection compliance certificate,
- (iv) any written statement by the supervising engineer under section 26(5) currently applicable and copied to the Department by virtue of section 26(6).

(2) Regulations making provision referred to in subsection (1)(c) must—

- (a) require the Department to notify the reservoir manager of a high-consequence or medium-consequence reservoir of its decision as to whether or not it considers that the reservoir is of an acceptable standard as regards how it is being maintained and accordingly the standard frequency of visits that must be made to it by the supervising engineer,
- (b) provide that the reservoir manager may appeal to the Water Appeals Commission against the decision specified in the notice,
- (c) provide that the Commission may confirm or quash the decision,
- (d) provide that the decision in respect of which an appeal is made continues to have effect pending a decision being made in the appeal.

(3) In subsection (1)(c)(ii), “the inspecting engineer” has the same meaning as in sections 35 and 36 (see section 35(6)(a)).

Visual inspection directed under section 26(4)(a): further provision

28.—(1) The reservoir manager must comply with any direction under section 26(4)(a).

(2) The reservoir manager must—

- (a) maintain a written record of each visual inspection carried out in pursuance of a direction under section 26(4)(a),
- (b) make the record available on request to the supervising engineer,
- (c) give notice to the supervising engineer and the Department of anything identified during any such visual inspection which might affect the safety of the reservoir.

(3) Notice under subsection (2)(c) must be given as soon as is reasonably practicable after the visual inspection during which the thing was identified.

Nominated representative under section 26(7)(a): further provision

29. A nominated representative of the supervising engineer under section 26(7)(a)—

- (a) must be eligible to be commissioned as a supervising engineer for the reservoir,

- (b) while acting as the nominated representative of the engineer in the event of the supervising engineer being unavailable, has the powers of and is subject to the obligations of the supervising engineer.

Inspections etc. by inspecting engineer

Inspection timing: general requirements

30.—(1) Subject to subsection (2) and sections 31 and 32, the reservoir manager of a high-consequence or medium-consequence reservoir must secure that it is inspected by an inspecting engineer before the end of the period of one year beginning with the date on which the designation of the reservoir as such takes effect (see sections 19, 20(5) and 21(7)).

(2) Subsection (1) does not apply where the controlled reservoir was, immediately before the designation of it as a medium-consequence reservoir took effect, designated as a high-consequence reservoir.

(3) The reservoir manager of a high-consequence or medium-consequence reservoir must secure that it is inspected by an inspecting engineer at each of the following times—

- (a) at any time recommended by the supervising engineer by virtue of section 26(3),
- (b) subject to section 61, at any time recommended in an inspection report under section 35 (in accordance with section 35(4)(h)).

(4) The reservoir manager of a high-consequence reservoir must in any event secure that it is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the latest inspection.

(5) An “inspecting engineer” is an engineer duly commissioned under section 34 to inspect a high-consequence or medium-consequence reservoir when required by this section or section 31 or 32 or to supervise the taking of a measure referred to in section 34(1)(b).

Inspection timing: reservoir subject to pre-commencement inspection report

31.—(1) Subject to subsection (5) and section 32, section 30(1) does not apply where—

- (a) a high-consequence or medium-consequence reservoir is the subject of a pre-commencement inspection report (see section 33(1)),
- (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,

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

(ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.

(2) Where section 30(1) does not apply by virtue of subsection (1), the reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.

(3) Subject to subsection (5) and section 32, section 30(1) does not apply where—

- (a) a high-consequence or medium-consequence reservoir is the subject of a pre-commencement inspection report,
- (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.

(4) Where section 30(1) does not apply by virtue of subsection (3), the reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 26(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 33 and 35, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-consequence or medium-consequence reservoir takes effect.

Inspection timing: other qualifications

32.—(1) Where a construction engineer is required by section 43 to be commissioned to supervise relevant works for the purpose of a high-consequence or medium-consequence reservoir being discontinued or abandoned (within the meaning of Part 3) (see sections 41 and 42), any inspection which at the date of the commissioning is due by virtue of section 30 or 31 is not required.

(2) Where a construction engineer is required by section 43 to be commissioned to supervise relevant works for the purpose of a high-consequence or medium-consequence reservoir being constructed or subject to alteration (but not for the purpose of it being discontinued or abandoned) (within the meaning of Part 3)—

- (a) any inspection which at the date of the commissioning is due by virtue of section 30 or 31 is not required,

- (b) the reservoir manager must secure instead that the reservoir is inspected by an inspecting engineer either—
 - (i) before the end of the period of 2 years beginning with the date of the final certificate for the relevant works, or
 - (ii) at such earlier time as may be recommended in the final certificate (in accordance with section 49(2)(b)).

Pre-commencement inspection report

33.—(1) A “pre-commencement inspection report” is a document, provided to the Department by the reservoir manager of a high-consequence or medium-consequence reservoir and in respect of which the Department is satisfied as to the following matters—

- (a) that it was prepared by a civil engineer who, at the time of the inspection to which it relates and throughout the preparation and completion of the document, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate,
- (b) that it was prepared sufficiently in accordance with criteria that would have fallen to be applied in relation to an inspection under section 10 of that Act of a reservoir that was subject to that section,
- (c) that it is about an inspection of the reservoir which was carried out before the relevant date, but not more than 8 years before that date.

(2) The Department must, as soon as is reasonably practicable after receiving a document under subsection (1) and, where it considers it appropriate to do so after consulting an engineer commissioned by it under this subsection, decide whether or not it is satisfied that the document is a pre-commencement inspection report.

(3) An engineer may be commissioned under subsection (2) if the engineer—

- (a) is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
- (b) is not disqualified by virtue of subsection (4) from being so commissioned in relation to the reservoir.

(4) An engineer is disqualified from being commissioned under subsection (2) in relation to a high-consequence or medium-consequence reservoir if the engineer—

- (a) is an employee of any person who is a reservoir manager of the reservoir,
- (b) prepared the document provided in pursuance of subsection (1).

(5) The Department must serve on the reservoir manager notice—

- (a) specifying its decision under subsection (2),

- (b) where its decision is that the document is not a pre-commencement inspection report, specifying the reasons for the decision,
- (c) giving information about the right under Schedule 1 to apply for a review by the Department of its decision under subsection (2), the procedure for making such an application and the period within which an application may be made.

(6) Schedule 1 makes provision in relation to review of a decision under subsection (2).

Commissioning of inspecting engineer etc.

34.—(1) The reservoir manager of a high-consequence or medium-consequence reservoir must commission an inspecting engineer—

- (a) to inspect the reservoir when inspection of it is required by section 30, 31 or 32,
- (b) to supervise the taking of any measure as mentioned in section 35(4)(e) or the taking of a pre-commencement safety recommendation.

(2) The reservoir manager must, not later than 28 days after the commissioning, give notice of it to the Department.

(3) A “pre-commencement safety recommendation” is a recommendation in a pre-commencement inspection report as to a measure the civil engineer who prepared the report considered to be required in the interests of the safety of the reservoir.

(4) An engineer may be commissioned as an inspecting engineer if the engineer—

- (a) is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an order under that section) be commissioned under this section as an inspecting engineer in relation to the reservoir,
- (b) is not disqualified by virtue of subsection (5) from being so commissioned in relation to the reservoir.

(5) An engineer is disqualified from being commissioned as an inspecting engineer in relation to a high-consequence or medium-consequence reservoir if the engineer—

- (a) is an employee of any person who is a reservoir manager of the reservoir,
- (b) has previously been a construction engineer in relation to the reservoir.

Duties etc. in relation to inspection

35.—(1) An inspecting engineer must—

- (a) inspect the reservoir,

- (b) give the reservoir manager, not later than 6 months after the completion of the inspection, an inspection report prepared in accordance with this section.
- (2) The reservoir manager must give the inspecting engineer a copy of—
- (a) the latest report (if any),
 - (b) any pre-commencement inspection report certificate, interim inspection compliance certificate or inspection compliance certificate for the time being applicable to the reservoir,
 - (c) any final certificate for the time being applicable to the reservoir.
- (3) A “pre-commencement inspection report certificate” is a certificate—
- (a) stating that a measure recommended in the pre-commencement report as a measure that should be taken in the interests of the safety of the reservoir has been taken,
 - (b) signed and issued before the relevant date by a civil engineer who, at the time of signing, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate.
- (4) The inspection report—
- (a) must—
 - (i) specify any measure the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including any such measure for the maintenance of the reservoir),
 - (ii) direct the reservoir manager to ensure that the measure is taken,
 - (b) may—
 - (i) specify any matter that the inspecting engineer considers relevant to the maintenance of the reservoir (but in relation to which the engineer does not specify a measure (as to safety) under paragraph (a)),
 - (ii) include any recommendation as regards the matter,
 - (c) must specify whether any measure specified in the inspection report was specified in the latest report,
 - (d) 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,
 - (e) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is not a measure for its maintenance,

is taken under the supervision of the inspecting engineer or, where permitted (by section 36(2)(a)) the other qualified engineer, and within the period of time specified in the inspection report,

- (f) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is a measure for its maintenance,
 is monitored by the supervising engineer,
- (g) must specify any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection,
- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than is required of the supervising engineer by virtue of regulations made under section 27(1), must specify at what intervals, when, or in what circumstances, any additional visit should take place.

(5) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—

- (a) the Department,
- (b) the supervising engineer (if a different person).

(6) In this section and section 36—

- (a) references to “the inspecting engineer” are references to the engineer duly commissioned for the time being as such under section 34 in relation to the reservoir,
- (b) references to “the latest report” are references to the inspection report of the latest inspection (if any) of the reservoir carried out under this section or the pre-commencement inspection report (if any) in relation to the reservoir (whichever is the later),
- (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.

(7) In this Act, references to “the other qualified engineer”, “any other qualified engineer” or “other qualified engineer” are references to any engineer duly commissioned for the time being as such under section 36(2)(a) in relation to the reservoir; and references to “other qualified engineers” are to be construed accordingly.

Inspection reports: compliance

36.—(1) The reservoir manager must ensure that the following are complied with—

- (a) (subject to section 61) any direction in an inspection report given to the manager under section 35,
- (b) any pre-commencement safety recommendation.

(2) The reservoir manager—

- (a) may commission any other qualified engineer (being a person eligible to be commissioned as an inspecting engineer for the reservoir) to supervise the taking of—
 - (i) any measure specified in the inspection report prepared in accordance with section 35 as a measure that should be taken in the interests of the safety of the reservoir and which is not a measure for its maintenance,
 - (ii) any pre-commencement safety recommendation.
- (b) must, as soon as is reasonably practicable after such commissioning, give notice of it to the Department.

(3) Not later than 28 days after being satisfied that a measure which is directed (or recommended) as mentioned in subsection (1) has been taken—

- (a) the inspecting engineer, or
- (b) in relation to any such measure which the other qualified engineer is (and may be) commissioned to supervise, 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 (or pre-commencement inspection report) to which it relates,
- (b) the measure taken,
- (c) any measure that has yet to be taken.

(5) The inspecting engineer or (as appropriate) the other qualified engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report (or all pre-commencement safety recommendations) 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 Act or a pre-commencement inspection report certificate a copy of which is given to the engineer under section 35(2), to be conclusive of the measure specified in it (as a measure taken) as having been taken.

(7) An inspection compliance certificate must specify—

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

- (a) the inspection report (or pre-commencement inspection report) to which it relates,
 - (b) that all of the measures directed in the inspection report (or all pre-commencement safety recommendations) have been taken.
- (8) The inspecting engineer or (as appropriate) the other qualified engineer must, not later than 28 days after giving the reservoir manager an interim inspection compliance certificate or an inspection compliance certificate under this section, give the Department a copy of it.

Record keeping etc.

Recording of water levels etc. and record keeping

37.—(1) The reservoir manager of a high-consequence or medium-consequence 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) any leakage,
 - (c) any repair,
 - (d) any settlement of walls or other works,
 - (e) such other matters as the Department may by regulations specify.
- (2) The Department 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 supervising engineer, an inspecting engineer or a construction engineer commissioned in relation to the reservoir may give directions to the reservoir manager as to—
- (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) A copy of a direction given under subsection (3) must be given by the engineer concerned to the Department.
- (6) 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.

(Sections 58 and 60 make further provision in relation to records (to be maintained by the reservoir managers of all controlled reservoirs) and associated offences.)

Offences: supervision, inspection, record keeping

Offences: supervision, inspection, record keeping

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)),
- (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,
 - (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.