



2015 CHAPTER 8

PART 5

DISPUTE REFERRAL

Referral to referee: directions in safety report or inspection report

61.—(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 referred to in—
 - (i) section 35(4)(a)(ii) (to ensure taking of measure in interests of safety of reservoir),
 - (ii) section 35(4)(e) of that section (to ensure supervision by an inspecting engineer or other qualified engineer of taking of certain measures),
 - (iii) section 35(4)(f) of that section (to ensure monitoring by supervising engineer of taking of certain measures),
- (c) an inspection report contains a recommendation by an inspecting engineer as to when the next inspection of the reservoir should take place.

(2) The reservoir manager to whom the report is given may challenge the direction, or recommendation, by referring it to a referee in accordance with regulations made under section 66(1).

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is made under subsection (2), the direction or recommendation is suspended until the reference has been determined or withdrawn.

Referral to referee: requirements in preliminary certificate or final certificate

62.—(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 66(1).

(2) The matters are—

- (a) the level of water specified in the preliminary certificate in accordance with section 47(2)(a),
- (b) any requirement specified in the preliminary certificate in accordance with section 47(2)(c) (manner of increasing or decreasing level of water),
- (c) any recommendation contained in the final certificate in accordance with section 49(2)(b) (as to when next inspection of reservoir should take place),
- (d) any matter specified in the final certificate in accordance with section 49(2)(c) (monitoring of matters by supervising engineer),
- (e) any requirement imposed in the final certificate in accordance with section 49(7)(a) or (c) (maximum level and manner of increasing or decreasing level of water).

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a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.

Commissioning of referee

63.—(1) The referee must be an engineer commissioned under this section either—

- (a) by agreement between the reservoir manager and the relevant engineer, or
- (b) where no agreement is reached, by the Institution of Civil Engineers.

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

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

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

(4) In this section and sections 64 and 65, “the relevant engineer” means the inspecting engineer or construction engineer who gave the direction or recommended, specified or imposed the matter which is the subject of the referral.

Powers of referee: referral under section 61(2)

64.—(1) This section applies where a referral is made under section 61(2).

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

(3) Where the referee makes any such modification, the referee—

- (a) must modify the report which contains the direction or recommendation,
- (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 and the referral was made in respect of a direction in it as to ensuring the taking of a measure in the interests of the safety of the reservoir, 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 the Department 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, recommendation, 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.

Powers of referee: referral under section 62(1)

65.—(1) This section applies where a referral is made under section 62(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 the Department 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.

Procedure etc.

66.—(1) Regulations by the Department may make provision as to—

(a) the time within which a referee may be commissioned under section 63,

(b) the time within which a request to the Institution of Civil Engineers for the commissioning of a referee under that section may be made,

(c) the procedure (including the manner) of the request,

(d) the procedure in a referral before a referee,

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

(2) Subject to the provisions of regulations under subsection (1), the costs of any investigation and proceedings (including the remuneration of the referee) are to be paid by the reservoir manager who makes the referral.