



## 2015 CHAPTER 8

### PART 6

#### CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

PROSPECTIVE

#### *Stop notices*

##### **Stop notices**

77.—(1) The Department may by regulations make provision as to the serving by it of stop notices on reservoir managers of controlled reservoirs.

(2) Before making regulations under subsection (1), the Department must consult in accordance with section 90.

(3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from doing any of the following until the manager has taken the steps specified in the notice—

- (a) carrying on an activity specified in the notice,
- (b) permitting the carrying on by another of an activity so specified.

(4) Regulations under subsection (1) may confer power to serve a stop notice only in relation to a case where either—

- (a) the reservoir manager is carrying on the activity, or the activity is being carried on by another with the permission of the manager, and the Department reasonably considers that the activity as so carried on either—

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*Changes to legislation: There are currently no known outstanding effects for the Reservoirs Act (Northern Ireland) 2015, Cross Heading: Stop notices. (See end of Document for details)*

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- (i) presents a risk to the safety of the reservoir that may result in an uncontrolled release of water from it, or
- (ii) involves or is likely to involve the commission of an offence under this Act,

or

- (b) the Department considers that the reservoir manager is likely to carry on, or permit the carrying on of, the activity and that the activity as likely to be so carried on either—
  - (i) will present a risk to the safety of the reservoir that may result in an uncontrolled release of water from it, or
  - (ii) will involve, or is likely to involve, the commission of an offence under this Act.

(5) Where the regulations confer power to serve a stop notice in a case where the Department reasonably considers as is specified in subsection (4)(a)(i) or (b)(i) (risk to safety)—

- (a) the Department must, before it exercises the power—
  - (i) at its own expense commission an engineer who 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,
  - (ii) take into account any recommendation made by the 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)(i) or (b)(i).

(6) For the purposes of this section, permission includes acquiescence; and references to “permitting” and “permit” are to be construed accordingly.

### **Stop notices: content and procedure**

**78.**—(1) Regulations made under section 77(1) must secure the results in subsection (2) in a case where a stop notice is served.

- (2) The results are that—
  - (a) the stop notice must include information as to the matters specified in subsection (3),
  - (b) the reservoir manager on whom the notice is served may appeal to the Water Appeals Commission against the decision to serve it,
  - (c) where, after serving the stop notice, the Department is satisfied that the manager has taken the steps specified in the notice, the Department must give a certificate to that effect (a “completion certificate”),

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- (d) the stop notice ceases to have effect on the giving of a completion certificate,
  - (e) the reservoir manager on whom the stop notice is served may at any time apply for a completion certificate,
  - (f) the Department 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 is made,
  - (g) the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission against a decision not to give a completion certificate,
  - (h) a stop notice in respect of which an appeal referred to in paragraph (b) or (g) is made continues to have effect pending a decision being made in the appeal.
- (3) The matters referred to in subsection (2)(a) are—
- (a) the grounds for serving the stop notice,
  - (b) rights of appeal,
  - (c) the consequences of non-compliance with the stop notice.
- (4) Provision pursuant to subsection (2)(b) must—
- (a) secure that the grounds on which a reservoir manager may appeal against a decision of the Department to serve a stop notice include that—
    - (i) the decision was based on an error of fact,
    - (ii) the decision was wrong in law,
    - (iii) the decision was unreasonable,
    - (iv) any step specified in the notice is unreasonable,
  - (b) secure that the Commission may confirm, quash or vary the decision.
- (5) Provision pursuant to subsection (2)(g) must—
- (a) secure that the grounds on which a reservoir manager may appeal against a decision of the Department not to give a completion certificate include that—
    - (i) the decision was based on an error of fact,
    - (ii) the decision was wrong in law,
    - (iii) the decision was unreasonable,
  - (b) secure that the Commission may confirm or quash the decision.

### **Stop notices: compensation**

- 79** Provision under section 77(1)—

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- (a) must include provision for the Department to compensate the reservoir manager for loss suffered as the result of the serving of the stop notice,
- (b) may provide for compensation only—
  - (i) in cases specified by the regulations,
  - (ii) in relation to descriptions of loss so specified,
- (c) must secure that the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission against the following—
  - (i) a decision of the Department not to award compensation,
  - (ii) a decision of the Department as to the amount of the compensation,
- (d) must secure that the Commission may confirm, quash or vary the decision.

#### **Stop notices: enforcement**

**80.**—(1) Regulations under section 77(1) may provide that, where a reservoir manager on whom a stop notice is served does not comply with it, the manager commits an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000, or to both,
- (b) on conviction on indictment—
  - (i) for a first such offence, to imprisonment for a term not exceeding 12 months, or to a fine, or to both,
  - (ii) for any subsequent such offence, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(2) Regulations made under section 77(1) must provide that it is a defence to a charge in proceedings for an offence created by the regulations 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,
  - (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

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