

*These notes refer to the Reservoirs Act (Northern Ireland)
2015 (c.8) which received Royal Assent on 24 July 2015*

Reservoirs Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Construction or alteration of controlled reservoirs

Section 41 – Application of part 3 etc.

Part 3 regulates the construction or alteration of controlled reservoirs by imposing a requirement upon reservoir managers to appoint a construction engineer to supervise the relevant works and by imposing a system of reporting and certification in respect of the works. This part applies to all controlled reservoirs regardless of their consequence category.

Section 41 sets out the works that are to be treated as construction or alteration of a controlled reservoir for the purposes of the Act. These include new construction, restoration to use, alteration to capacity, discontinuance (i.e. reducing the capacity to below 10,000 cubic metres above the natural level of any part of the surrounding land) and abandonment (i.e. rendering a reservoir incapable of holding water above the natural level of any part of the surrounding land). There is no requirement to commission a construction engineer unless such works are being undertaken at a reservoir.

Section 43 – Notice to Department and commission of construction engineer

This section requires reservoir managers of controlled reservoirs which are to be subject to relevant works to commission a construction engineer to supervise the relevant works and the safety of the reservoir. Not later than 28 days before the works commence the reservoir manager must give the Department notice of the proposed works and notice of the construction engineer's commission. A construction engineer must be an appropriate panel engineer, and is required to supervise the relevant works and the safety of the reservoir until a copy of the final certificate issued in respect of the works is given to the reservoir manager and copied to the Department in respect of the works. The persons listed in subsection (5) are disqualified from being commissioned as a construction engineer in relation to a particular reservoir.

Section 44 – Supervision of relevant works and reservoir safety by construction engineer

Section 44 requires the construction engineer to supervise the relevant works and the safety of the reservoir until a copy of the final certificate issued in respect of the works is given to the Department. Subsection (2) requires the engineer to inspect the reservoir, design the construction or alteration and prepare and provide the reservoir manager with safety reports, as appropriate. Subsection (4) requires the construction engineer to provide the Department with a copy of a safety report within 28 days of issuing it.

Section 45 – Safety report

Section 44 sets out the information which must be included in a safety report. In particular the safety report must include such measures to secure the safety of the reservoir, depending on the nature of the construction or alteration being undertaken as the construction engineer considers necessary.

Section 46 – Safety report: compliance

This section requires reservoir managers to comply with any direction in a safety report given to the reservoir manager. Subsection (2) requires the engineer to issue a safety measure certificate to the reservoir manager within 28 days of being satisfied that a measure directed in the safety report has been taken.

Subsection (3) specifies the requirements of a safety measure certificate. Subsection (4) requires the construction engineer to give the Department a copy of the safety measure certificate no later than 28 days after issuing it.

Section 47 – Preliminary certificate

This section requires the construction engineer to issue a preliminary certificate when the engineer considers that the reservoir that is subject to relevant works may be safely wholly or partially filled with water or (in the case of a reservoir which already contains water) that the level of water should be reduced. A preliminary certificate must specify a level that the water in the reservoir must not exceed, require the reservoir manager to ensure that the level of the water remains below that level and specify any other requirements that the engineer considers appropriate about the manner in which the water level may be increased or decreased. The reservoir manager of a controlled reservoir must comply with the requirements of any preliminary certificate for the time being applicable to the reservoir.

Subsection (3) requires the construction engineer to give a copy of the preliminary certificate to the Department within 28 days of issuing it. Subsection (4) sets out that the most recent preliminary certificate issued supersedes any previous preliminary certificates applicable to the reservoir in respect of those works. Subsection (5) sets out that a preliminary certificate ceases to have effect when the final certificate applicable to the reservoir in respect of the works is issued.

Section 48 – Construction certificates

This section requires the issue of a construction certificate by the construction engineer as soon as reasonably practicable, after he or she is satisfied that the relevant works have been completed to a satisfactory standard. Subsection (2) requires the construction certificate to be issued before or not later than the final certificate. Subsection (3) requires the construction certificate to certify that the relevant works have been undertaken satisfactorily in accordance with the drawings and other specified information included along with the certificate. Subsection (4) requires the construction engineer to give the Department a copy of the certificate within 28 days of issuing it.

Section 49 – Final certificate

Where a controlled reservoir is being constructed or altered, except where it is being discontinued or abandoned, subsection (1) requires the construction engineer to issue a final certificate within 28 days of being satisfied that the reservoir is sound and satisfactory and may be used safely for the collection and storage of water.

Where the final certificate relates to a high or medium consequence reservoir and the construction engineer considers that an early inspection is required, subsection (2)(b) requires the final certificate to state when an early inspection should take place. Subsection (2)(c) requires the final certificate to specify any matter that the construction engineer considers should be monitored by the supervising engineer until the first or next inspection of the reservoir is undertaken. Subsection (2)(d) requires the final certificate to impose requirements (as specified in subsection (7)) that the water level must not exceed the level specified in the certificate, that the reservoir manager must ensure that the specified level is not exceeded and any other requirements the engineer considers appropriate as to the manner in which water levels may be increased or decreased.

Subsection (3) requires the construction engineer of a controlled reservoir which is being discontinued, to issue a final certificate to the reservoir manager within 28 days of being satisfied that the discontinuance has been safely completed, that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water.

A final certificate, on discontinuance, must state that the construction engineer is satisfied as to all these matters and must also specify any requirements the construction engineer considers appropriate as regards water levels in the reservoir.

Subsection (5) deals with a reservoir being abandoned; the construction engineer must issue a final certificate to the reservoir manager within 28 days of being satisfied that the abandonment has been safely completed and that the resulting

structure or area is incapable of filling with water above the natural level of any part of the surrounding land.

Subsection (6) requires that the final certificate must state that the construction engineer is satisfied as to all of these matters.

Subsection (8) requires the construction engineer to give the Department a copy of the final certificate within 28 days of issuing it. If a final certificate has not been issued within 5 years of the issue of the preliminary certificate, subsection (9) requires the construction engineer to give the reservoir manager a written explanation of the reasons why within 28 days of the expiry of the 5 year period. Subsection (9)(b) requires the construction engineer to give the reservoir manager a written explanation of the reasons at 12 months intervals thereafter, until the final certificate is issued. Subsection (9)(c) requires the construction engineer to send each of the written statements to the Department within 28 days of giving them.

Section 50 – Preliminary and final certificates: compliance

Section 50 requires reservoir managers to comply with the requirements of any preliminary and final certificates applicable to the controlled reservoir at the time.

Section 51 – Termination of supervision by construction engineer

This section specifies that the obligation of a reservoir manager to have a construction engineer on commission in respect of the relevant works and the safety of a reservoir comes to an end when the engineer gives a copy of the final certificate to the Department in accordance with section 49(8).

Section 52 – Offences: construction and alteration

Section 52 subsection (1) makes it an offence to fail to comply with sections 43(2)(a), (commissioning of a construction engineer).. Subsections 2 makes it an offence without reasonable excuse to fail to comply with sections 43(1) (notice of proposed works to the Department) and 43(2)(b) (notice of commissioning a construction engineer to the Department). Subsection (3) set out the maximum criminal sanctions of anyone committing an offence under subsection (1) or (2).

Section 53 – Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate

Section 53 makes it an offence to fail to comply without lawful excuse with section 45(1) (ensure compliance with direction in safety report as to taking of safety measure) and section 49 (ensuring compliance with preliminary or final certificate). Subsection (2) sets out the maximum criminal sanctions for anyone committing an offence under subsection (1). Subsection (3) advises that section 74 makes further remedies available on conviction of an offence in relation to non compliance with a direction in a safety report.

Section 54 – Defences: offences under section 53(1)

Section 54 sets out certain defences to the offences of failure to comply with a direction in a safety report or non compliance with a preliminary or final certificate.

Section 55 – Controlled reservoirs subject to relevant works on the commencement date

Section 55 sets out transitional arrangements for the Act to apply to controlled reservoirs already under construction or alteration when the Act is commenced. Part 3 and sections 67 to 69 (related enforcement powers of the Department) apply except that the reservoir manager must notify the Department of the relevant works, appoint a construction engineer, and notify the Department of that appointment all within 28 days of the commencement of section 43. Subsection (3) enables the Department to extend the periods for notifying the Department of the relevant works and the commissioning of a construction engineer.