

*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 6 – Civil enforcement, emergency powers and further offences

Section 67 – Enforcement notice: commissioning of engineers

This section enables the Department to serve an enforcement notice requiring the reservoir manager to commission a supervising, inspecting or construction engineer within 28 days and to notify the Department of that commission.

Section 68 – Offence: failure to comply with notice under section 67(2)

This section makes it an offence not to comply with such an enforcement notice. Subsection (2) sets out the maximum criminal sanctions of anyone committing an offence under this section.

Section 69 – Commissioning of engineer by Department

When a reservoir manager has not complied with a notice served under section 67 (requiring the commissioning of an engineer), this section enables the Department to commission the engineer. Subsection (4) enables the Department, if it considers it appropriate, by notice, to require the reservoir manager to pay the Department such amount of associated costs reasonably incurred. Subject to right of appeal (section 76) the reservoir manager must pay any costs so incurred and specified in the notice (subsection (5)).

Section 70 – Commissioning by the Department: engineers' reports, certificates, recommendations etc.

This section applies when the Department has commissioned a relevant engineer under section 69. Any notices, reports, recommendations, statements, or certificates are to be first given to the Department by the relevant engineer and subsequently copied to the reservoir manager within 28 days.

Section 71 – Enforcement notice: safety measures

This section enables the Department to serve an enforcement notice where a reservoir manager has failed to comply with a direction in an inspection report, a pre-commencement safety recommendation or a direction in a safety report.

The Department's enforcement notice must specify a timeframe within which the reservoir manager must comply, specify the measure to be taken, the reasons for considering that this section applies and specify any particular steps that must be taken in relation to the measure. Subsection (3) requires consultation with an appropriate panel engineer regarding the timeframe specified in the notice. Subsection (6) enables the Department, if it considers it appropriate, by notice to require the reservoir manager to pay the Department such amount of associated costs reasonably incurred. Subject to right of appeal (section 76) the reservoir manager must pay any costs so incurred and specified in the notice (subsection (7)).

Section 72 – Failure to comply with notice under section 71(2)

This section makes it an offence not to comply with such an enforcement notice. Subsection (2) sets out the maximum criminal sanctions of anyone committing an offence under this section.

Section 73 – Department's power to arrange taking of safety measures

Where a reservoir manager fails to comply with such an enforcement notice, the department may commission a relevant engineer to supervise the taking of the measure. Subsection (3) requires the engineer commissioned to provide the Department with a certificate when the engineer is satisfied that the measure has been taken. The engineer's certificate has the same effect as if it were an interim inspection compliance certificate or an inspection compliance certificate or a safety measure certificate as appropriate. Subsection (6) enables the Department, if it considers it appropriate, by notice require the reservoir manager to pay the Department such amount of associated costs reasonably incurred. Subject to right of appeal (section 76) the reservoir manager must pay any costs so incurred and specified in the notice (subsection (7)).

Section 74 – Offence under section 39(1) or 53(1): further remedies

This section applies where a manager has committed an offence through failure to comply with a direction in an inspection report, a pre-commencement safety recommendation or a direction in a safety report. The court may, in addition to or instead of imposing any penalty under section 39, or 53, order the reservoir manager to comply with the steps specified in the order and within such timeframe. Subsection (3) enables the court to extend the period for undertaking such work.

Section 75 – Emergency powers

This section enables the Department to take emergency action to protect people or property against an escape of water from a controlled reservoir that may cause harm. Subsection (2) enables the Department to take any emergency action to prevent such an event or to limit its effects. Subsection (3) requires the Department to commission an appropriate panel engineer to make recommendations regarding measures to be taken and to supervise the

taking of the measures. The Department must notify the reservoir manager of the measures to be taken, or which have been taken. Subsections (7) enables the Department, if it considers it appropriate, by notice require the reservoir manager to pay the Department all or part of any associated costs reasonably incurred in the exercise of its powers under this section. Subject to right of appeal (section 76) the reservoir manager must pay any costs so incurred and specified in the notice.

Section 76 – Recovery of costs under section 69, 71, 73 or 75: appeal

This section provides a reservoir manager with a right of appeal regarding the Department's decision to recover costs that it has incurred when; commissioning an engineer, issuing an enforcement notice, the taking of safety measures, or taking emergency powers action. The reservoir manager may appeal to the Water Appeals Commission against the Department's decision to require the manager to pay the costs and the decision as to the amount of costs. Subsection (2) provides the Commission with power to confirm quash or vary the Department's decision.

Section 77 – Stop Notices

This section gives the Department the powers to make regulations to permit the serving of a stop notice on a reservoir manager. Subsection (2) requires the Department to consult in accordance with section 90 prior to making regulations. Subsection (3) defines a stop notice as a notice prohibiting the carrying on of an activity, or permitting the carrying on of an activity by another until such steps as specified in the notice have been taken. Subsection (4) indicates the circumstances in which a stop notice may be issued and subsection (5) lists the conditions the Department must meet before exercising its power under the regulations.

Section 78 – Stop Notices: content and procedure

This section provides that regulations made under section 77(1) must secure the results in subsection (2) as to the content and procedure in relation to stop notices. Subsection (3) specifies what information must be provided in any stop notice. Subsection (4) and (5) specify circumstances in which the reservoir manager is entitled to appeal to the Water Appeals Commission against a stop notice and a completion certificate respectively as well as a power securing that the Commission may confirm, quash or vary the Department's decision to issue a stop notice. .

Section 79 – Stop notices: compensation

This section provides that regulations made under section 77(1) must make provision for financial compensation to be paid to a reservoir manager for loss suffered as a result of the serving of a stop notice. Regulations must specify the circumstances in which compensation must be paid and a right of appeal as to the Department's decision not to pay compensation and the amount of

compensation to the Water Appeals Commission as well as a power securing that the Commission may confirm, quash or vary the Department's decision. .

Section 80– Stop notices: enforcement

Regulations made under section 77(1) may make it an offence to fail to comply with a stop notice. A defence must be as set out in subsection (2). The maximum penalty that the regulations may create is set out in subsection (1).

Section 81– Enforcement undertakings

This section enables the Department to make provision by regulations allowing the Department to accept an enforcement undertaking from a reservoir manager. Enforcement undertakings would allow a reservoir manager who may have committed an offence under the Act to agree with the Department that the reservoir manager would take such steps to rectify the situation as may be agreed, in exchange for immunity from prosecution for the offence that gave rise to the undertaking. Subsection (2) requires the Department to consult in accordance with section 90 prior to making regulations. Subsection (4) specifies what would be the necessary contents of such an undertaking. Subsection (5) specifies the subsequent immunity from sanctions that a reservoir manager would receive, unless the reservoir manager did not deliver the actions specified in the enforcement undertaking.

Section 82 – Regulations as to enforcement undertakings: further provision

This section lists the matters which, in particular, the Department may provide for in regulations made under section 81. This includes a right of appeal to the Water Appeals Commission against a decision in a review by the Department not to issue a certificate that the undertaking has been complied with, the grounds for appeal as well as a power for the Commission to confirm or quash the Department's decision. .

Section 83 – Fixed Monetary Penalties

This section allows the Department to make provision by regulations regarding the imposition of fixed monetary penalties on reservoir managers in relation to offences under the Act. Subsection (2) requires the Department to consult in accordance with section 90 prior to making regulations. Subsection (4) lists the conditions relating to fixed monetary penalties to be included in any regulations made under subsection (1).

Section 84 – Fixed monetary penalties: procedure etc.

This section sets out the process that must be followed when a fixed monetary penalty was to be imposed and that would have to be provided for in regulations made under section 83. A reservoir manager would be able initially to pay a lesser amount of money to prevent a fixed monetary penalty from subsequently being issued. A fixed monetary penalty would not be able to be issued if the Department was satisfied that the reservoir manager would have a successful

defence and so would not be liable to be convicted of the related offence. The regulations could include provision as to other circumstances when a fixed monetary penalty was not able to be imposed. A reservoir manager would have to be given a right of appeal to the Water Appeals Commission against the issue of the fixed penalty. The regulations would include provision as to the grounds for appeal as well as securing that the Commission may confirm or quash the Department's decision. .

The regulations may also enable the Department to reclaim directly from the reservoir manager the amount of any unpaid fixed monetary penalty (Subsection (7)).

Section 85 – Fixed monetary penalties: criminal proceedings and conviction etc.

This section sets out what must be included in regulations made under section 83(1) regarding criminal proceedings and convictions. In certain circumstances a reservoir manager would have immunity from further proceedings; for example by paying in time the reduced amount specified in the notice of intent to issue the fixed monetary penalty notice or by paying a fixed monetary penalty in time.

Section 86 – Variable monetary penalties

Subsection (1) enables the Department to make provision in regulations for imposing variable monetary penalties in relation to offences committed under the Act. Subsection (2) requires the Department to consult in accordance with section 90 prior to making regulations. Variable monetary penalties would be set at levels determined by the Department, but in each case would not exceed the maximum fine for the offence. Subsection (4) specifies the conditions relating to the imposition of variable monetary penalties to be included in any regulations made under subsection (1).

Section 87 – Variable monetary penalties: procedures etc.

This section sets out the process that would have to be followed when a variable monetary penalty was to be imposed and that would have to be provided for in regulations made under section 86. A variable monetary penalty would not be able to be issued if the Department was satisfied that the reservoir manager would have a successful defence and so would not be liable to be convicted of the related offence. As would be the case in relation to fixed monetary penalties, the regulations could include provision as to other circumstances when a variable monetary penalty could not be imposed. A reservoir manager would have to be given a right of appeal to the Water Appeals Commission. The grounds of appeal that would apply are as set out in subsection (7) as well as a power to secure that the Commission may confirm, or quash the decision.

The regulations may enable the Department to accept or reject an enforcement undertaking from a reservoir manager in relation to an offence instead of

imposing the variable monetary penalty or while imposing a reduced amount of monetary penalty.

The regulations may also enable the Department to reclaim directly from the reservoir manager the amount of any unpaid variable monetary penalty (subsection (8)).

Section 88 – Variable monetary penalties: criminal proceedings and conviction

This section sets out that regulations made under section 86(1) must provide for a reservoir manager's immunity from further proceedings when a variable monetary penalty is imposed or when the Department accepts an undertaking under section 87(5). This immunity would not apply to an undertaking in the circumstances where an undertaking was accepted, and the reservoir manager did not comply with the undertaking (whether or not a variable monetary penalty was also imposed). The regulations as to variable monetary penalties may extend the period in which criminal proceedings may be instituted against the reservoir manager where an undertaking was accepted and the reservoir manager did not comply with it.

Section 89 – Undertakings referred to in section 87(5): enforcement

Regulations as to variable monetary penalties may also provide for the payment of a monetary penalty ('a non-compliance penalty') to the Department if a reservoir manager fails to comply with an undertaking under section 87(5). The amount of non-compliance penalty may not exceed the maximum amount of fine that would be imposed on summary conviction of the related offence. Subsection (3) requires the non compliance penalty to be imposed by serving a notice and for the reservoir manager to be given the opportunity to appeal to the Water Appeals Commission against the notice and subsection (5) provides the grounds for appeal as well as a power securing that the Commission may confirm or quash the decision.

The regulations may also enable the Department to reclaim directly from the reservoir manager the amount of any unpaid non-compliance penalty.

Section 90 – Consultation in relation to regulations under section 77(1), 81(1), 83(1) and 86(1)

This section requires the Department to consult relevant bodies before invoking its powers to provide, by regulations, for stop notices, enforcement undertakings, fixed monetary penalties and variable monetary penalties. Subsection (2) sets out the organisations and persons that must be consulted.

Section 91 – Recovery by the Department of certain costs

Regulations made under section 77(1) (stop notices) section 81(1) (enforcement undertakings) and section 86(1) (variable monetary penalties) may make provision for the Department to reclaim from the reservoir manager concerned

costs reasonably incurred. Subsection (2) clarifies what kind of costs these may be. The regulations would have to give the reservoir manager a right of appeal to the Water Appeals Commission against the Department's decision to reclaim costs and the amount of costs as well as provide a power to secure the Commission may confirm, quash or vary the Department's decision.

Section 92 – Publication of enforcement action

This section enables the Department to publish information regarding enforcement action, including the commissioning of engineers by the Department, failure to take measures in the interests of safety, the issuing of stop notices, the imposition of fixed monetary penalties and the imposition of variable monetary penalties. The information may not be published where a stop notice, fixed monetary penalty or variable monetary penalty has been successfully appealed (subsection (2)).

Section 93 – Powers of entry

This section creates powers for any person authorised by the Department to enter land for the purposes of carrying out its functions under the Act. The power to enter land includes a power to enter buildings and other structures, integral to the functioning of the reservoir, by virtue of the definition of 'land' in the Interpretation Act (Northern Ireland) 1954. Subsection (1) specifies the land which may be entered and subsection (2) specifies the purposes for entry on to such land.

Section 94 – Warrants authorising entry

Section 94 provides for a lay magistrate to grant a warrant to any person entitled to exercise power of entry under section 93. It is in usual terms for such a power. A warrant permits the person authorised to exercise the power of entry if necessary using reasonable force.

Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the lay magistrate to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land and where one of the following apply; that the land is unoccupied or the case is one of urgency or that the conditions in subsection (3) have been met (i.e. notice of entry was given, the notice had expired and that either permission was refused or refusal was reasonably expected).

Subsection (4) provides that permission to enter is to be regarded as refused if no reply is received within a reasonable period to a request to exercise the right.

Subsection (5) specifies that a warrant granted does not entitle a person to use force against an individual and makes provision as to the duration of a warrant.

Section 95 – Powers of entry: supplementary

The power to enter land conferred in section 93 includes a right for such persons and, additional materials and equipment, (including vehicles, machinery or plant) to be taken onto the land in question or to do anything which is reasonably required to fulfil the purpose for which entry is taken (subsection (1)). A person may not demand entry to occupied land unless a period of notice is given or the entry is authorised by warrant except in the case where emergency powers are being exercised (subsection (2)). Subsection (3) specifies what must be included in any notice of intention to enter land. Subsection (4) requires any authorised person to produce written evidence of authorisation on request.

Section 96 – Offence: preventing or obstructing entry

This section provides that impeding the entrance to land of a person authorised by the Department under section 93 constitutes an offence. Subsection (2) sets out the maximum criminal sanctions for such an offence.

Section 97 - Compensation

This section sets out the circumstances where the Department must pay compensation to landowners or occupiers of land and/or undertake reinstatement of land where the Department has exercised the right to enter land under section 93 and there is consequential damage to the land or disturbance of the right to occupy. Subsection (2) describes the scenarios which would render the Department liable to pay compensation to persons other than reservoir managers, who meet the criteria in subsection (3). Subsections (4) and (6) provide for compensation to be payable for damage to land occupied by reservoir managers provided they are not disqualified under Subsection (5). Reservoir managers are disqualified from claiming compensation in two scenarios. The first is where entry was for the purpose of enforcing the taking of safety measures (under section 73). The second is where it was for the purpose of exercising the Department's emergency powers (under section 75) and the reservoir manager had not taken all practicable steps to prevent an escape of water from the reservoir. Subsection (7) permits the Department to enter into agreement to reinstate land instead of compensation or a combination of the partial reinstatement of land and compensation payment.

Where the reservoir manager is disqualified from claiming compensation subsection (8) enables the Department, if it considers it appropriate, to recover the amount of compensation paid to a third party, and/or costs incurred, from the disqualified reservoir manager. Subsection (10) provides that any dispute regarding compensation under this section or costs incurred by the Department in relation to compensation or an agreement to reinstate (wholly or partially) is to be determined by the Lands Tribunal.

Section 98 – Affording of reasonable facilities to engineers

This section requires the reservoir manager to provide any relevant engineer with reasonable facilities in connection with the engineer's functions under this Act. Subsection (2) requires reservoir managers to make their records and other information or particulars available in the form, manner or timing specified by the engineer. Subsection (3) lists the types of engineers who are 'relevant engineers'.

Section 99 – Power of the Department to require information and assistance from reservoir managers

This section requires the reservoir manager of a controlled reservoir to provide the Department with such information and assistance reasonably sought in connection with the Department's functions under the Act. Subsection (2) requires the reservoir manager to make records available on request or such further information or particulars to be provided to the Department in such form, manner or timing as specified by notice.

Section 100 – Offences: sections 98 and 99

This section makes it an offence for a reservoir manager to fail to comply with section 98 and 99. Subsection (2) makes it an offence to intentionally alter, suppress or destroy any document, information or particulars, or knowingly or recklessly provide any document, information or particulars which is false or misleading, required under these sections. Subsection (3) sets out the maximum criminal sanctions of a reservoir manager committing an offence under this section.

Section 101 – Power to require information and assistance from others

This section enables the Department to require information or assistance from others for the purposes specified and in exercise of its functions under this Act.