

*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 1 – Controlled Reservoirs, Registration and Reservoir Designation

Section 1 – Controlled reservoirs

The Act provides a regulatory regime for reservoirs that will be known as ‘controlled reservoirs’ as defined by the legislation. The definition of a ‘controlled reservoir’ is set out in principal in section 1 and includes structures or areas designed or used for collecting and storing water, artificial or partly artificially lakes or other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Further detail both in relation to what is, and what is not, a controlled reservoir for the purposes of the Act is contained in section 5; and under section 2 certain structures or areas which are not in themselves controlled reservoirs will fall to be regulated by the Act as if they were controlled reservoirs.

Section 2 – Structure or area which is to be treated as a controlled reservoir

Under this section, certain structures or areas which individually are not a controlled reservoir under section 1 will be regulated by the Act as if they were controlled reservoirs.

The first scenario involves combinations of smaller structures or areas. Combinations have the potential to cause a similar degree of risk to public safety as individual reservoirs of a comparable releasable capacity, even though the individual structures or areas that comprise the combinations may each hold less than 10,000 cubic metres of water above the natural level of the surrounding land. Subsection (2) provides that combinations of such structures or areas are to be treated for the purposes of the Act as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can flow or does flow between them and that there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity which is above the natural level of any part of the surrounding land. This is intended to ensure that combinations of reservoirs are subject to regulation.

Subsection (3) enables the Department by regulations, to provide that a smaller reservoir is to be subject to the Act in the same way as if it were a controlled

reservoir, if the Department determines that, despite the smaller capacity, reservoir failure has the potential to result in loss of life or certain other harm.

Subsection (4) requires the Department to notify the reservoir manager of the structure or area that by regulations is to be treated as a controlled reservoir. The notice must provide advice about registration requirements and timescales.

Section 3 – Matters to be taken into account under section 2(3)

This section requires the Department to take the adverse consequence and probability of an uncontrolled release of water into account when considering making a structure or area a controlled reservoir by regulation under section 2(3). The process and criteria to be used are the same as that to determine the reservoir designation for a controlled reservoir and detailed in section 22. Subsection (4) requires consultation when making any regulations specifying other matters to be taken into account.

Section 4 – Controlled reservoirs: further provisions

Subsection (1) enables the Department to make provision by order for a different volume of water to be substituted for the volume threshold for a controlled reservoir, currently specified in the Act. This enables the Department to alter the threshold above which reservoirs are controlled reservoirs and therefore subject to the regulatory regime of the Act.

Subsection (2) enables the Department to make provision by regulations to determine how the volume of water capable of being held above the natural level of the surrounding land is to be calculated and the meaning of ‘natural level’ and ‘surrounding land’ for the purposes of the Act.

Subsection (3) deals with the consultation process in making the order and the regulations.

Section 5 – Controlled reservoirs: supplementary

Subsection (1) clarifies that anything which is integral to the functioning or operation of a controlled reservoir forms part of it and would be subject to regulation under the Act and gives some specific examples.

Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Act.

Subsection (3) enables the Department, by regulations, to define with more precision the things that are listed in subsection (2) and to exclude other things from being ‘or being treated as’ controlled reservoirs.

Section 6 – Reservoir managers

Responsibility for managing or operating a controlled reservoir is placed upon persons or organisations referred to in the Act as ‘the reservoir manager’. It is possible that a controlled reservoir may be managed by one reservoir manager

or by more than one (multiple) reservoir managers. Section 6 specifies who the reservoir manager of a controlled reservoir is for the purposes of the Act.

Subsection (2) provides that a water undertaker that manages or operates a controlled reservoir, or any part of a controlled reservoir, is a reservoir manager for all of the reservoir or the reservoir manager for the part which is managed or operated by it.

Subsection (3) provides that a sewerage undertaker that manages or operates a controlled reservoir is a reservoir manager. Therefore, the sewerage undertaker will be the sole reservoir manager of a controlled reservoir managed or operated by it, as generally this would be tanks dealing with effluent and therefore it would be inappropriate to have another manager.

Where there is no sewerage undertaker involved in the management or operation of a reservoir, the water undertaker or the person(s) or organisation(s) that manages or operates the controlled reservoir, or any part of the controlled reservoir, would be the reservoir manager for all or part of the reservoir that they manage or operate.

The owner of all or part of a controlled reservoir would be the reservoir manager for the entire reservoir, or the reservoir manager for the part of a controlled reservoir which they own, where there is no sewerage undertaker, or water undertaker, or person(s) or organisation(s) managing or operating all of a controlled reservoir or any part of it.

Subsection (7) determines that the reservoir manager for a reservoir which is being constructed or restored to use would be the person who is proposing to manage or operate the reservoir.

Subsection (8) clarifies, for the avoidance of doubt that, in carrying out or maintaining any works or taking any other action in relation to a controlled reservoir or any part of it in exercise of powers under the Drainage (Northern Ireland) Order 1973, the Department is not to be regarded as a reservoir manager. Any such works or actions by the Department will only be undertaken pursuant to the Department's functions under that Order.

Section 7 - Multiple reservoir managers: supplementary

This section applies where there is more than one reservoir manager for a controlled reservoir. Subsection (2) provides that the requirements of the Act apply to each of the reservoir managers separately and any duties of the reservoir manager set out in the Act must be complied with by each of the reservoir managers for a reservoir.

To avoid duplication of duties and reduce the administrative burden on reservoir managers, subsection (3) enables reservoir managers to nominate one of the managers to fulfil any requirements of the Act to which they are subject. Subsection (4) provides that a nomination must specify the name, address and contact details of the nominee.

Subsection (5) requires that where such a nomination is made, the nominating manager must give notice of the nomination and what it contains to the Department, to any qualified engineer commissioned in relation to the reservoir and to the other reservoir managers for the controlled reservoir. The Department may notify and consult with the nominee (rather than the reservoir manager who made the nomination) when required to notify or consult the reservoir managers under the Act.

Similarly, engineers commissioned in relation to the reservoir may give certificates and other documents that they are required to issue under the Act to the nominee. Subsection (7) ensures that the nominated representative of the supervising engineer who, if the supervising engineer is unavailable is acting in the place of that engineer, may do the same.

Section 8 – Duty of multiple managers to co-operate

Section 8 requires reservoir managers, where there are two or more of them in respect of a controlled reservoir, to co-operate with each other as far as is necessary to enable all of the reservoir managers for a controlled reservoir to comply with the provisions of this Act. Subsection (2) makes it an offence not to co-operate. Subsection (3) and (4) set out the maximum criminal sanctions associated with that offence. This section applies whether or not a nominee is appointed under section 7.

Section 9 – Controlled reservoirs register

This section requires the Department to establish and maintain a register of controlled reservoirs. The Department will make regulations regarding the information and documents which will be held in the register and it is envisaged that these may include such information as name and location of the reservoir, its maximum capacity, the name and address of the reservoir manager as well as copies of any reports, certificates etc., relating to the reservoir. Subsection (3) requires the Department to make the register or a copy of it available for public inspection. Subsection (4) enables the Secretary of State to direct the Department to withhold information or documents from the register if inclusion would adversely affect national security.

Section 10 – Reservoir managers' duty to register with the Department

This section requires the reservoir managers of controlled reservoirs to register their reservoirs by providing the Department with information and documents that are to be detailed in regulations. Subsection (3) enables the Department to bring forward regulations to require further information or documents from reservoir managers for maintaining the register.

Section 11 – Structures or areas which are controlled reservoirs on the relevant date

This section requires the reservoir manager to register a controlled reservoir not later than 6 months after the commencement date of section 10 of the Act. Subsection (2) enables the Department, by notice to extend the period of 6 months to such time as it considers appropriate.

Section 12 – Structures or areas which become controlled reservoirs after the relevant date.

This section requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. Preliminary certificates are issued under section 44 of the Act when the construction engineer supervising the construction of the reservoir considers that the reservoir may safely be filled (either wholly or partly) with water. Subsection (2) again enables the Department by notice to extend the period of 28 days to such time as it considers appropriate.

Section 13 – Structures or areas which are the subject of regulations under section 2(3)

This section deals with the registration timeframe for a structure or area which is to be treated as a controlled reservoir due to regulations under section 2(3). The reservoir manager must register the reservoir not later than 28 days after the date of notice (under section 2(4)) by the Department of the making of the regulations. Subsection (2) again enables the Department by notice to extend the period of 28 days to such time as it considers appropriate.

Section 14 – Fees: registration and administration

Section 14 enables the Department by regulations to introduce the requirement for reservoir managers to pay a fee in relation to registration or other such reasonable annual fees in relation to the Department exercising its functions in respect to the controlled reservoirs register and registration of controlled reservoirs in the register.

Section 15 – Registration: supplementary

This section requires a person to notify the Department within 28 days of the date that they cease to be a reservoir manager for a controlled reservoir and provide the name of the person who will be the new reservoir manager. Subsection (2) requires a new reservoir manager to notify the Department and to provide the date of the change. Subsection (3) requires the Department, as soon as reasonably practicable, to inform the new reservoir manager of the duties of a reservoir manager under the Act.

Section 16 – Offences: registration

This section provides that it is an offence for a reservoir manager to fail to comply with the specified requirements for the registration of a controlled reservoir and in relation to the change of a reservoir manager. Under subsection (2), it is an offence to knowingly or recklessly give false information or document in relation to registration. Subsections (3), and (4), set out the maximum penalties for anyone found guilty of an offence under this section and subsection (5) provides for a defence in relation to an offence in certain circumstances. Subsection (6) ensures that a person does not avoid prosecution merely by ceasing to be a reservoir manager.

Section 17 – Giving a reservoir designation

The Act introduces a consequence-based approach to the management of controlled reservoirs with different regulatory requirements for reservoirs with different consequence categories. Section 17 requires the Department to give a reservoir designation as soon as reasonably practicable after the registration of a controlled reservoir.

Subsection (2) establishes the reservoir designation categories for a controlled reservoir as high, medium or low consequence. Subsection (3) requires the Department to take into account the matters mentioned in section 22 when giving a reservoir designation. The matters are the potential consequences of an uncontrolled release of water from the reservoir and the probability of such a release.

Subsection (4) provides for the Department to give notice of the reservoir designation to a reservoir manager and details the information to be provided in the notice.

Section 18 – Periodic re-assessment of reservoir designations

The Department must undertake a periodic re-assessment of the reservoir designation, taking into account the matters mentioned in section 22 and must either confirm or give the reservoir a different designation. Subsection (3) details the timeframes within which a periodic re-assessment must be undertaken. Generally a periodic re-assessment would be undertaken not later than 10 years from the date of the first designation or the latest periodic re-assessment.

Subsection (4) requires the Department to give notice to the reservoir manager of its decision - either it confirms the designation or gives a different reservoir designation. The information to be specified in the notice is listed. The notice must provide the reservoir manager with the reason for the Department's decision, information about the right to seek review of the decision; and it must advise that the designation continues to have effect pending a decision being reached in a review.

Section 19 – Date on which reservoir designation given under section 17 or given as a different designation under section 18 takes effect

The notice giving a reservoir designation for the first time under section 17 or a notice giving a different designation under section 18 takes effect on the day after the notice is served. Subsection (2) provides that the first reservoir designation for a controlled reservoir being constructed or restored to use takes effect the day after the date of the final certificate in respect of the works. Subsection (3) provides that where a different designation is given after a periodic reassessment for a controlled reservoir being increased or decreased in capacity, the different designation notice takes effect on the day after the date of the final certificate in respect of the works.

Section 20 - Review by Department of its decision under section 17 or 18

Section 20 enables reservoir managers to apply for a review of the Department's decision on reservoir designations made under section 17 or 18. Subsection (2) requires an application for review to be in writing and to be made within 90 days beginning with the date on which the notice of the reservoir designation was served. Subsection (3) details the information that the Department must take into account when considering a review and enables the Department to commission a civil engineer who is a member of a panel established under section 102 who in accordance with an order made under that section may be commissioned under section 20 in relation to the reservoir concerned ("an appropriate panel engineer") or other person, to make recommendations regarding the designation.

Subsection (4) makes it explicit that the reservoir designation continues to apply until the review is complete and subsection (5) provides that, if the review results in the designation being changed, then the previous designation ceases to apply from the date of the Department's decision and the different designation takes effect on the day after the date of the notice of the decision.

Subsection (6) requires the Department to notify the reservoir manager of its decision in a review and details the content of the notice. Subsection (7) provides a power to make regulations which would contain more detailed provision in relation to applications and reviews, for example as to the information to be provided by an applicant, the procedure in a review.

Section 21 - Appeal against Department's decision in review under section 20

Reservoir managers have a right of appeal against the decision in a review of a reservoir designation given by the Department. The appeal must be made to the Water Appeals Commission within 60 days of the date on which the notice specifying the decision in a review was served.

Subsection (3) specifies the grounds for appeal and subsection (4) provides that the Commission may confirm the reservoir designation or give the reservoir a different designation. Subsection (5) details the matters and the representations the Commission must take into account when considering an appeal.

Subsection (6) makes it explicit that the reservoir designation continues to apply until the appeal is decided and subsection (7) provides that, if an appeal results in the designation being changed, then the previous designation ceases to apply from the date of the appeal decision and the new reservoir designation takes effect on the day after the date of the notice of the Commission's decision.

Section 22 – Matters to be taken into account under section 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)

Section 22 details the matters that must be taken into account in making a reservoir designation for the first time, in undertaking a periodic re-assessment and in reviewing a reservoir designation. These matters must also be considered in an appeal of the reservoir designation.

The matters to be taken into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release of water. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out the issues that may be taken into account when assessing the adverse consequences or the probability of an uncontrolled release of water from a controlled reservoir. These issues include the purpose for which the reservoir is used, the materials used and how the reservoir was constructed, the age, condition and maintenance of the reservoir.

Section 23 – Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(i) and 21(5)(a): further provision

This section enables the Department, following consultation with the Institution of Civil Engineers and others, by regulations to make further provision as to the matters that may be taken into account when giving a reservoir designation, re-assessment of a designation, review of a designation and appeal against a designation. The regulations may, in particular, make provision as regards a methodology for assessing the probability of an uncontrolled release of water from a reservoir, when the Department is satisfied that an appropriate methodology exists. The regulations may also make further provisions as regards the matters to be taken into account under section 22(1) and amend references in this Act to high consequence, medium consequence and low consequence reservoir designation.

Section 24 – High consequence reservoirs, medium consequence reservoirs low consequence reservoirs: further provision

This section makes it clear that the terms high consequence, medium consequence and low consequence, in relation to a controlled reservoir, refer to the designation of a reservoir. The reader is alerted to the significance of a controlled reservoir's reservoir designation as this determines the management and maintenance requirements.

Part 2 – Requirements for high consequence and medium consequence reservoirs

Supervision by supervising engineer

Section 25 - Supervision requirements and commissioning of supervising engineer etc

Section 25 requires a high or medium consequence reservoir to be under the supervision of a supervising engineer at all times i.e. on an ongoing basis. A supervising engineer must be commissioned within 6 months of the reservoir designation taking effect and a reservoir manager is required to give notice to the Department within 28 days of the commissioning. A supervising engineer must be an appropriate panel engineer. Unlike other reservoir engineers under the Act, there is nothing to prevent a supervising engineer being an employee of the reservoir manager or having previously been a construction engineer or inspecting engineer in relation to the reservoir.

A supervising engineer remains in place alongside the construction engineer when a high or medium consequence reservoir is undergoing alteration (work for which provision is made in part 3). This is to ensure that the safety of the reservoir continues to be monitored where appropriate and in particular the matters included in a safety report, prepared by the construction engineer, are monitored until a final certificate is issued.

Section 26 – Duties etc. in relation to supervision

This section sets out the key aspects of supervision by commissioned supervising engineers. Subsection (2) lists the engineer's duties; they include notifying the reservoir manager of anything which could affect the safety of the reservoir, monitor compliance with any direction in latest inspection report or recommendation in a pre-commencement inspection report as regards measures to be taken in the interests of safety which is a measure for its maintenance and, monitoring any other matters to be supervised as detailed in an inspection or pre-commencement report, safety report, preliminary certificate or final certificate. The supervising engineer is also required to notify the reservoir manager and the Department of any failure to comply with any requirement of a direction or recommendation in the latest inspection or pre-commencement report, safety report, preliminary or final certificate, supervise any proposed drawdown of the reservoir and monitor the reservoir manager's recording of water levels and record keeping. The supervising engineer is required to physically visit the controlled reservoir at certain intervals depending on the reservoir designation of the reservoir and in accordance with regulations made under section 27, or undertake additional visits, if recommended in the latest inspection report.

If a supervising engineer considers that a controlled reservoir should be inspected, by an inspecting engineer, subsection (3) requires the supervising engineer to give the reservoir manager a written recommendation to this effect and copy to the Department. Subsection (4) requires the reservoir manager to

carry out visual inspections of the reservoir at specified intervals if directed in writing by the supervising engineer for the purposes of identifying anything which may affect the safety of the reservoir.

Subsection (5) requires the supervising engineer to give the reservoir manager an annual written statement of the steps taken by the supervising engineer in relation to his or her responsibilities and any measure taken by the reservoir manager in the interests of safety or to maintain the reservoir. The supervising engineer must send a copy of the written statement to the Department within 28 days (subsection (6)).

Under subsection (7) the supervising engineer must provide the reservoir manager with emergency contact details and in the event of him or her not being available, the contact details of a nominated representative. The supervising engineer is required to provide the Department with such information within 28 days.

Subsection (8) requires a reservoir manager of a high or medium consequence reservoir which is the subject of a pre-commencement inspection report (section 31 refers) to give a copy of the report to the supervising engineer along with any pre-commencement report certificate or other document which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation.

Subsection (10) provides that references to the term ‘the supervising engineer’ in this section and sections 27 to 31, 35 and 37 are to be construed as including a nominated representative who is acting in place of the supervising engineer if that engineer is unavailable. This ensures that, while the nominated representative is acting in place of the supervising engineer, the Act’s provisions in relation to a supervising engineer are to be read as if they referred to the nominated representative.

Section 27 - Regulations as to visits by supervising engineers

This section allows the Department to make provision, by regulation, for a standard number and frequency of visits that must be made to a high or medium consequence reservoir by a supervising engineer. The regulations will provide for the frequency of visits to be different if the Department considers that a reservoir is of an acceptable standard. The regulations will also place a requirement on the Department to notify the reservoir manager of the number and frequency of visits required as well as providing the reservoir manager with a right of appeal to the Water Appeals Commission against the Department’s decision on whether a reservoir is of an acceptable standard and the standard number and frequency of visits to the reservoir.

Section 28 - Visual inspection directed under section 26(4)(a)

The reservoir manager must comply with any direction in relation to a visual inspection directed by the supervising engineer. Subsections (2) & (3) require the manager to maintain and provide written records to the supervising engineer

on request and give notice as soon as reasonably practicable to the supervising engineer and the Department of anything identified during the visual inspection which might affect the safety of the reservoir.

Section 29 – Nominated representative under section 26(7)(a): further provision

This section requires a nominated representative to be eligible to be commissioned as a supervising engineer and provides that a nominated representative has the same powers and obligations as a supervising engineer when the supervising engineer is unavailable.

Section 30 – Inspection timing: general requirements

Subsection (1) requires the reservoir manager of a high or medium consequence reservoir to have an inspection of the reservoir carried out before the end of one year from the date on which its first reservoir designation takes effect, (“the relevant date” defined in subsection (6) of section 31). There is an exception in subsection (2); an inspection is not required under subsection (1) when a high consequence reservoir becomes designated as a medium consequence reservoir (following a periodic re-assessment under section 18 or a review or appeal).

Subsections (3) and (4) then require inspections at other times. The reservoir manager must have an inspection carried out at any time recommended by the supervising engineer or at any time recommended in an inspection report; and there must be no more than 10 years between inspections of a high consequence reservoir.

The general rule therefore is that a high consequence reservoir will be inspected within one year of being designated as high consequence for the first time and every 10 years thereafter unless an earlier inspection is recommended by the supervising engineer or directed in an inspection report. A medium consequence reservoir will require to be inspected within one year from being designated as medium consequence for the first time and thereafter an inspection will only be required if recommended by the supervising engineer or a further inspection is recommended in an inspection report. No inspection is required for reservoirs designated as low consequence. Where a reservoir was medium consequence and was designated as high consequence following a periodic re-assessment, the date of the latest inspection would determine the timing for the next inspection, or as recommend by the supervising engineer.

There are other exceptions from the requirement of inspection within one year of the first designation as high or medium consequence (in subsection (1)), to deal with special cases. These exceptions, alongside alternative requirements, are set out in sections 31 and 32.

It should be noted that subsection 1 will come into operation in Phase 1 while the requirement for further inspections will not come into operation until Phase 2 has been approved by a resolution of the Assembly.

Section 31 – Inspection timing: reservoir subject to pre-commencement inspection report

The first special case is where a reservoir manager of a high or medium consequence reservoir has had an inspection of the reservoir undertaken prior to the Act being commenced and the Department is satisfied that the report is a pre-commencement inspection report.

Where the report recommends inspection within 10 years of the inspection to which it relates, the reservoir manager must have an inspection carried out at the time recommended in the report, (Subsection (2)).

Where the report does not contain a recommendation as to when the next inspection is to be undertaken, subsection (4) requires the reservoir manager to have the inspection carried out within 10 years of the inspection to which the report relates.

Where a supervising engineer recommends an earlier inspection of the reservoir, however, (section 26(3) refers) this would supersede any inspection due under subsection (2) or (4).

Section 32 – Inspection timing: other qualifications

The second special case is where a construction engineer is to be commissioned to supervise relevant works for the construction or alteration of a high or medium consequence reservoir. The construction engineer also supervises the safety of the reservoir (section 43(3)).

Where a reservoir is being discontinued or abandoned, any inspection which is due under section 30 or 31 is not required as it ceases to be a controlled reservoir on completion of the works i.e. when the final certificate is issued (subsection (1)).

Where a controlled reservoir is being constructed or altered (without being discontinued or abandoned), any inspection due under section 30 or 31 is not required; and instead inspection must be within 2 years from the date of the final certificate or at an earlier time, if recommended in the final certificate (subsection (2)).

Section 33 – Pre-commencement inspection report

A reservoir manager who has had an inspection of a high or medium consequence reservoir undertaken prior to the commencement of the Reservoirs Act may give the document relating to the inspection to the Department, for the Department to consider whether it is ‘a pre-commencement inspection report’. This would give it status under the Act, some aspects of which have been covered in section 31. Subsection (1) details the matters about which the Department must be satisfied for a document to be considered by it as a pre-commencement inspection report. The matters are that the inspection must have been undertaken and the document prepared by a civil engineer who was a member of a panel

of civil engineers established under section 4(1) of the Reservoirs Act 1975, that the report was prepared sufficiently in accordance with criteria applied in relation to an inspection under section 10 of the 1975 Act and that, the inspection was carried out not more than 8 years before the relevant date. (The definition of “the relevant date” in section 31(6) applies, namely the date on which the reservoir concerned was first designated as high or medium consequence).

Subsection (2) requires the Department as soon as reasonably practicable to decide whether or not it is satisfied a document is a pre-commencement inspection report. Where the Department considers it appropriate it may consult an appropriate panel engineer to assist in the decision making process.

Subsection (4) sets out the criteria which disqualify an engineer from being consulted by the Department in relation to making its decision.

Subsection (5) requires the Department to give notice to the reservoir manager of its decision and sets out the contents of the notice. Subsection (6) introduces Schedule 1, which makes provision in relation to a review of the Department’s decision.

Section 34 – commissioning of inspecting engineer etc.

This section requires reservoir managers of high or medium consequence reservoirs (which are not being supervised by a construction engineer) to commission an inspecting engineer to undertake an inspection as required by sections 30, 31 or 32 and to supervise the taking of any measure in the interests of safety as directed in an inspection report or recommended as a pre-commencement safety recommendation (that is, a recommendation in a pre-commencement inspection report as a measure required in the interests of safety of the reservoir – subsection (3)). Subsection (2) requires the reservoir manager to notify the Department within 28 days of the commissioning of an inspecting engineer.

Phase 1 of the Act requires an initial inspection to be undertaken by an inspecting engineer and an inspection report to be provided to the reservoir manager. The requirement to undertake any measures identified in an inspection report does not come into operation until Phase 2 of the Act is commenced.

Subsection (4) requires an inspecting engineer to be an appropriate panel engineer. Inspecting engineers are intended to have a degree of independence from the commissioning reservoir manager. Subsection (5) sets out the criteria disqualifying an engineer from being commissioned in relation to a particular reservoir; these include that the engineer is employed by the reservoir manager or has previously been a construction engineer for the reservoir.

Section 35 – Duties etc. in relation to inspection

This section requires the inspecting engineer commissioned by the reservoir manager to inspect the reservoir and to give the reservoir manager an inspection report not later than 6 months from the date of the inspection. Subsection (2)

requires the reservoir manager to give the inspecting engineer a copy of the latest inspection report or any certificates for the time being applicable to the reservoir.

The certificate may include a ‘pre-commencement inspection report certificate’ - a certificate signed and issued by a civil engineer who was a member of a reservoir panel established under section 4(1) of the Reservoirs Act 1975 stating that a measure recommended in a pre-commencement inspection report as a measure in the interests of safety has been taken.

Subsection (4)(a) requires the inspection report to specify any measures including maintenance measures the inspecting engineer considers should be taken in the interests of safety and direct that the measures be taken. Subsection (4)(b) allows for the inclusion of matters the inspecting engineer considers relevant to the maintenance of the reservoir be included as recommendations. The inspection report should include any of the measures which were not undertaken from the previous report or the reason why they are not included in the current report.

Subsection (4)(e) requires the inspecting engineer to direct the reservoir manager in the inspection report as regards any measure to be undertaken in the interest of safety, whether an inspecting or other qualified engineer should supervise the taking of the measure and the timescale for completing the directions.

Subsection (4)(f) requires the report to direct measures in relation to maintenance to be supervised by a supervising engineer. Subsection (4)(g) and (h) require inspection reports to specify any matters that should be monitored by the supervising engineer and the timing of the next inspection. Subsection (4)(i) requires the report to detail any more frequent visits to the reservoir by a supervising engineer, than is required by virtue of regulations under section 27.

Subsection (5) requires the inspecting engineer to give a copy of the report to the Department and the supervising engineer within 28 days of giving it to the reservoir manager.

Section 36 - Inspection reports: compliance

This section requires reservoir managers to comply with the directions in an inspection report or any pre-commencement safety recommendation. Subsection (2) permits the reservoir manager to commission another appropriate panel engineer (who is eligible to be an inspecting engineer) to supervise the taking of measures directed or recommended. The other appropriate panel engineer if commissioned is referred to in the Act as the “other qualified engineer”. When measures or recommendations have been completed subsection (3) requires the inspecting engineer (or other qualified engineer) to issue an interim inspection compliance certificate. Subsection (4) specifies the detail to be included in an interim inspection compliance certificate.

When the inspecting engineer (or other qualified engineer) is satisfied that all of the measures (directed or recommended) have been completed, the engineer is required by subsection (5) to issue the reservoir manager with an inspection

compliance certificate within 28 days. Subsection (6) requires the engineer giving an inspection compliance certificate to accept any interim inspection compliance certificates or any pre-commencement inspection report certificates given by another engineer. Subsection (7) lists the detail that must be specified in the inspection compliance certificate. Subsection (8) requires the engineer to give a copy of the certificates under this section to the Department.

Section 37 – Recording of water levels etc. and record keeping

This section requires reservoir managers of high or medium consequence reservoirs to record and maintain specific matters in relation to the reservoirs. Subsection (1) lists the matters to be recorded. Subsection (2) enables the Department to make regulations as to the information to be recorded in relation to the listed matters and the form of the record to be maintained. Subsection (3) enables supervising engineers, inspecting engineers or construction engineers commissioned to the reservoir to direct the reservoir manager as to the manner in which the records are to be kept and how frequently they should be updated.

Subsection (4) requires the reservoir manager to comply with any such directions and subsection (5) requires the directions to be copied to the Department by the relevant engineer. Subsection (6) requires the reservoir manager to install any instruments necessary to provide information to be recorded under this section.

Section 38 – Offences: supervision, inspection, record keeping.

Subsection (1) makes it an offence to fail to comply with sections 25(2), 27(1), 27(2)(a), 27(2)(c), 29, 30, 31, 33(1)(a) or (b), and 35 in regard to supervision, inspection and record keeping. Subsection (2) makes it an offence without a reasonable excuse, to fail to comply with sections 25(4), 26(8)(a) or (b), 33(2), 34(2) and 35(2)(b) in regard to supplying engineers appointed with various reports or informing the Department of their commission. Subsection (3) sets out the maximum criminal sanctions of anyone committing an offence under this section.

Section 39 – Offence in connection with inspection: failure to secure compliance with safety direction or recommendation

This section makes it an offence for a reservoir manager of a high or medium consequence reservoir, who fails to comply with the requirements of section 36(1) without lawful excuse. Subsection (2) sets out the maximum criminal sanctions for anyone committing an offence under this section.

Section 40 – Defences: offence under section 39(1)

Section 40 sets out certain defences to offences under section 39(1) (failure to comply with direction in an inspection report or pre-commencement safety recommendation as to the taking of measure).

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.

Part 4 – Controlled Reservoirs: Other requirements

Section 56 – Incident reporting

This section enables the Department to make provision in regulations for reporting incidents which may affect the safety of controlled reservoirs. Subsection (2) provides an indicative list of the contents of the regulations.

Subsection (3) provides that, where it appears to the Secretary of State that information in relation to an incident would adversely affect national security, the Secretary of State may by notice direct the reservoir manager or other person who has prepared the incident report as regards the withholding or disclosing information, publication or storage of the incident report or copies of it. The notice may also require the person on whom it is served not to give anyone any indication of the existence of the information as it specifies..

Before making regulations for incident reporting the Department must comply with the consultation requirements specified in subsection (6).

Section 57 – Flood plans

This section enables the Department to make provision in regulations for the preparation of flood plans for controlled reservoirs. These plans would set out the action which the reservoir manager would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir. Subsection (3) provides an indicative list of the contents of the regulations. Subsections (3) and (4) provide that regulations under subsection (1) which contain provision entitling the Department to recover costs must provide a right of appeal to the Water Appeals Commission against the Department's decision to recover costs, the decision as to the amount of costs, and a power for the Commission to confirm, quash or vary the decision.

Subsection (6) provides that, where it appears to the Secretary of State that information in a flood plan would adversely affect national security, the Secretary of State may by notice direct the reservoir manager or other relevant person as regards the withholding or disclosing of information in or relating to a flood plan, publication, access or storage of the flood plan, or copies of it. The notice may also require the person on whom the notice is served not give to anyone any indication of the existence of the information as it specifies. Other relevant persons include anyone other than the reservoir manager who may be required to prepare or update a flood plan or do certain things in relation to it (e.g. publish or distribute copies).

The Department must comply with the consultation requirements specified in subsection (11).

Section 58 – Maintenance of records

This section requires reservoir managers of controlled reservoirs to maintain a record of relevant documents. Subsection (4) lists the documents which must be kept. For low consequence reservoirs in particular, information regarding repairs is to be included in the record and regulations will provide for the form in which such information is to be recorded (subsection (3)).

Section 59 – Display of emergency response information

This section requires reservoir managers of controlled reservoirs to ensure that emergency response information is displayed at or near the reservoir. Subsection (2) enables the Department to make provision in regulations about the information which must be displayed. Subsection (3) lists the information, which in particular, may be specified in the regulations under subsection (2). Subsection (4) enables the Department to give directions to reservoir managers of controlled reservoirs as to the manner and location of the information to be displayed. Subsection (6) requires the reservoir manager to comply with any such directions from the Department.

Section 60 – Offences under Part 4

Subsection (1) makes it an offence, without reasonable excuse, to fail to comply with the requirements of a notice that is issued under sections 56(3) and 57(6) regarding the publication of incident reports or flood plans, and sections 58 (maintenance of records) and 59(1) or (6) regarding the location and display of emergency response information. A person does not commit an offence under subsection (1) in relation to the publication of incident reports or flood plans where he or she had done so to comply with a legal obligation listed in subsection (2). Subsection (3) sets out the maximum criminal sanctions of anyone committing an offence under this section.

Part 5 – Dispute referral

Section 61 – Referral to referee: directions in safety report or inspection report

Part 5 provides for a form of arbitration between reservoir managers and construction or inspecting engineers. If a reservoir manager disagrees with a direction in a safety report or inspection report or the recommendation as to the next inspection the manager can challenge the direction or recommendation by referring it to a referee. Subsection (3) suspends any direction or recommendation which is challenged until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 62 – Referral to referee: requirements in preliminary certificate or final certificate

This section enables reservoir managers to challenge certain matters in preliminary or final certificates. Subsection (2) lists the matters which may be challenged under this section. Subsection (3) suspends any matter challenged under this section until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 63 – Commissioning of referee

This section requires referees to be commissioned by agreement between the reservoir manager and the relevant engineer or, where no agreement can be reached, by the Institution of Civil Engineers. Subsection (2) enables engineers to be commissioned as referees if they are appropriate panel members and are not disqualified from being commissioned under this section in relation to the reservoir concerned. Subsection (3) lists the circumstances where an engineer would be disqualified.

Section 64 – Powers of referee: referral under section 61(2)

This section enables the referee to modify the direction or recommendation subject to a referral under section 61(2). If the referee does so, subsection (3) requires the referee also to modify the report, any safety measure certificate or interim inspection compliance certificate which contains the direction or recommendation. Subsections (4) and (5) requires the referee to give the reservoir manager and the relevant engineer a referral certificate containing his or her decision, along with any modified report or certificate within 28 days of making the decision. Subsection (5)(c) requires the referee to give a copy of the referral certificate and any modified report or certificate to the Department within 28 days of the decision. Any direction, recommendation, report or certificate has the effect as modified by the referee (subsection (6)).

Section 65 – Powers of referee: referral under section 62(1)

This section enables the referee to modify the matters subject to a referral under section 62(1) (certain matters in a preliminary or final certificate). Subsection (3) requires the referee to modify the certificate if any modifications to the matters are considered appropriate. Again the referee must give the reservoir manager and the relevant engineer a referral certificate containing his or her decision, along with any modified preliminary or final certificate within 28 days of making the decision. The referee must also give a copy of the referral certificate and any modified certificate to the Department within 28 days of the decision. A preliminary or final certificate modified by a referee has effect in its modified form.

Section 66 – Procedure etc.

Section 65 enables the Department to make provision by regulations as to the time, manner and procedure of referrals and costs of the proceedings and investigations (including the remuneration of the referee). The default position is that the costs are to be paid by the reservoir manager who makes the referral subject to the provisions of regulations under subsection (1).

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.

Part 7 – Panels of Reservoir Engineers

Section 102 – Panels of reservoir engineers

Civil engineers will play an important role in the supervision, inspection, and construction of controlled reservoirs under the Act. Section 102 enables the Department to establish one or more panels of reservoir engineers and to appoint suitable engineers to be members of such panels. The Department must by order specify the various sections within the Act and the types of reservoir in relation to which members of such reservoir panels may be commissioned by reservoir managers to undertake various roles. For example an 'all reservoir panel' may be established and engineers who are members of this panel may be commissioned to carry out the role of supervising engineer, inspecting engineer or construction engineer for any type of reservoir (e.g. impounding or service reservoir). Members of the 'supervising panel' would only be able to be commissioned to undertake the supervising role under the Act. Subsection (2) defines the term 'suitable' as including fit, and appropriately qualified and experienced.

Section 103 – Appointment of members to panels: further provision

Subsection (1) requires civil engineers who wish to be appointed to a panel to make an appropriate application and subsection (2) enables the Department to make regulations specifying the information to be provided in the application. Subsections (3) and (4) provides for transitional arrangements for

the appointment of engineers, utilising appointments made under the Reservoirs Act 1975. Subsection (5) allows the Department to determine the period for any appointment of a civil engineer to a panel and Subsection (6) provides that a civil engineer appointed is eligible for re-appointment.

Section 104 - Removal of panel members

This section enables the Department to remove a civil engineer from a panel where it is satisfied that the engineer is not suitable to continue to be a member of it. The Department must serve notice on the civil engineer removed from the panel and state the grounds for its decision.

Section 105- Dissolution or alteration of panels etc.

Subsection (1) permits the Department to dissolve or alter a reservoir panel and subsection (2) specifies that the Department must give reasonable notice to members of the panel before doing so. The Department may permit a civil engineer commissioned from the panel in relation to a controlled reservoir to continue in his role for a period of up to 4 years, but may; by notice direct that an engineer is no longer entitled to do so during the 4 year period due to unsuitability. Subsection (6) provides the Department with the power by order to amend the time period (4 years) specified in subsection (3) for an engineer commissioned to be permitted by the Department to continue in the role.

Section 106 – Review of decisions not to appoint, or to remove, civil engineers from panels etc.

This section allows a civil engineer who has applied to be appointed to a reservoir panel and been unsuccessful, has been removed from a reservoir panel or has been given a direction under section 105(4) (as no longer suitable to continue in his commission) to apply to the Department for a review of its decision. Subsection (2) enables the Department by regulations to make further provision regarding applications and reviews under this section including provision as to charging fees.

Section 107 – Consultation with Institution of Civil Engineers

This section places a duty on the Department to consult with the President of the Institution of Civil Engineers before establishing a panel, making an appointment to a panel, making an order under section 102, (specifying the various sections within the Act and the types of reservoir in relation to which members of such reservoir panels may be commissioned by reservoir managers to undertake various roles), removing an engineer from a panel, dissolving a panel, directing that a engineer is no longer entitled to act under section 105(4) or making a decision in a review under section 106.

Section 108 – Reimbursement of costs incurred by Institution of Civil Engineers

This section enables the Department to reimburse the Institution of Civil Engineers any costs reasonably incurred by virtue of the appointment process of civil engineers to reservoir panels and consultation under section 107.

Part 8 – Miscellaneous

Section 109 – Power of Water Appeals Commission to award costs in an appeal

This section provides the Water Appeals Commission with the power by order to award costs to the parties to an appeal against a decision by the Department in respect of the matters listed at subsection (2). Any order made has the effect of a court order (subsection (3)) and the Taxing Master has the powers in relation to such an order as it would to an order of the high court (subsection (4)).

Section 110 – Orders as to costs: supplementary

In the circumstances where criteria at subsection (1) applies this section provides the Water Appeals Commission with the power to make an order to award costs even if a hearing is arranged and the hearing does not take place.

Section 111 – Fees in relation to appeals

This section gives the Office of the First Minister and deputy First Minister the power to make regulations to specify the fees to be paid to the Water Appeals Commission for all appeals that it hears under the Reservoirs Act.

Section 112 – Time limit for certain summary offences under Act

This section enables the Department to make provision by regulation to extend the time limit for prosecution of summary only offences provided in the Act. This would amend the time limit provided under Article 19(1)(a) of the Magistrates Courts (NI) Order 1981 for summary offences, (currently 6 months from when the offence was committed or ceased to continue).

Section 113 – National security: further provision

This section makes provision for the Secretary of State to issue a non-disclosure notice to the Department if it appears that disclosure by any other means of any information which the Department may hold or receive in relation to controlled reservoirs, would adversely affect national security. This is in addition to the Secretary of State's power in section 9(4) to direct the Department not to include in the controlled reservoirs register any information which would adversely affect national security. The non disclosure notice may also require the Department not to give to any person any indication of the existence of such information. This section does not prevent the Department from complying with any other legal obligation to which it is subject and as listed in subsection (4).

Section 114 - Grants

This section provides powers for the Department to make provision in regulations to enable the payment of grant to reservoir managers of controlled reservoirs to assist them in complying with their obligations under this Act. Subsection (2) requires the regulations to specify the terms and conditions relating to the payment of a grant.

Section 115 – Assessment of engineers’ report

This section enables the Department to make provision in regulations for the assessment of reports, written statements, recommendations and certificates prepared by reservoir engineers’ as part of their duties under the Act. Subsection (2) enables the regulations to make provision for a committee consisting of members of the Institution of Civil Engineers to make this assessment and the conditions of membership of such a committee. The matters which the regulations in particular may provide for are specified in subsection (3).

Section 116 – Publication of information as regards ranges of costs of engineers’ services

This section makes provision for the Department to publish information on a range of costs for services undertaken by a qualified engineer under the Reservoirs Act. This will provide reservoir managers with an indication of costs to be incurred for services such as an inspection of a reservoir by an inspecting engineer or the costs of a supervising engineer.

Section 117 – Notice to the Department of revocation of commissioning, or resignation, of engineer

Subsection (1) requires reservoir managers to notify the Department when they have revoked the commissioning of an engineer specifying the effective date of revocation. Notice of the revocation is to be given within 28 days of the revocation. An engineer commissioned by a reservoir manager may give notice of resignation to the reservoir manager specifying the effective date (subsection (2)) not later than 28 days after the resignation. The reservoir manager must give a copy of the notice to the Department within 28 days of receipt of the notice. Subsection (3) makes it an offence for a reservoir manager to fail to give the Department a notice of revocation or a copy of a resignation notice and subsection (4) sets out the maximum criminal sanctions of a reservoir manager committing an offence under this section. Subsection (5) provides a defence to a charge in the case where a reservoir manager did not receive a notice of resignation from an engineer.

Section 118 – Form and content of notices, reports, certificates etc

This section enables the Department to make further provision in regulations about the form and content of any notice or the form of any written statement, report or certificate under the Act.

Section 119 – Electronic serving or giving of notices or other documents

This section provides for the conditions relating to the use of electronic communications for the sending of notices or other documents required under the Act. Subsection (2) requires agreement regarding the use of electronic communications and subsection (3) specifies the conditions relating to the notice or other document. Electronic communications cannot be used for the serving of a notice of the intention to enter land which is occupied (subsection (4)). Subsection (5) specifies the time and day of receipt for electronic communication. Subsection (6) requires notice to be given regarding the withdrawal of electronic communications.

Section 120 – Change to the Institution of Civil Engineers

If the Institution of Civil Engineers ceases to exist, the Department may by order amend references in the Act to the Institution and to its President.

Section 121 – Civil liability

The Reservoirs Act does not confer a right to claim damages in respect of a breach of an obligation imposed by this legislation.

Part 9 - General

Section 122 – Crown application

This section makes provision to apply to the Crown in Northern Ireland. Subsection (2) provides that any provision made by or under this Act applies to persons in the service of the Crown as it applies to other persons.

Subsections (3) and (4) define a reference to the Crown, Crown land, Crown estate and Government Department.

Section 123 – Enforcement in relation to the Crown

Subsections (1) and (2) provide that the Crown in Northern Ireland will not be criminally liable to any contravention of the Act's provisions but allows the High Court to declare any act of the Crown in contravention of the Act's provisions unlawful, upon application by the Department.

Subsection (3) limits powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers of entry can be exercised. Subsection (4) defines the term 'the appropriate authority' in relation to any land. Subsection (5) provides for the Department of Finance and Personnel or the Treasury, as appropriate, to determine any question which arises as to who is the appropriate authority in relation to any land and the determination is final.

Section 124 – Service or giving of notices or other documents: the Crown

This section provides that any notice to be served on the Crown or document given to the Crown must be served on or given to the appropriate authority. Subsection (2) states that section 24 of the Interpretation Act (Northern Ireland) 1954 does not apply to service of this notice.

Section 125 – Offences by bodies corporate and partnerships

This section provides that where an offence under the Act has been committed by a corporate body section 20(2) of the Interpretation Act (Northern Ireland) 1954 is amended as specified and the company officials or members may be liable. Subsection (2) deals with liability in the case of a partnership.

Section 126 – Supplementary, incidental, consequential etc. provision

This section enables the Department by order to amend, repeal, revoke or modify any statutory provisions made by or under this Act.

Section 127 – Orders and regulations

This section provides for the procedures or Assembly control for making orders and regulations under the Act. Subsection (3) details the orders or regulations that require a draft to be laid before and approved by a resolution of the Assembly prior to making. All other regulations made under the Act are subject to negative resolution. Subsection (4) is in usual terms and specifies that any power to make an order or regulation under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

Section 128 - Definitions

Subsection (2) introduces Schedule 2, which sets out in a table, key terms used in the Act where they are given their meaning.

Section 129 – Minor and consequential amendments and repeals

This introduces Schedule 3 and Schedule 4 in which amendments of the Water and Sewerage Services (Northern Ireland) Order 2006, in relation to the Water Appeals Commission, and a repeal of Article 297 are set out.

Section 130 – Commencement

Subsection (1) sets out the sections within the Act which would come into operation on the day after Royal Assent. Subsection (2) enables the Department by commencement order to commence the other provisions of the Act on appointed days. Subsection (3) provides that no order may be made under subsection (2) for the provisions listed unless a draft of the order has been laid before and approved by a resolution of, the Assembly. A commencement order may contain such transitional, transitory or saving provision as considered necessary by the Department including such transitional

or transitory modifications to this Act as required to ensure that commencement of provisions are possible under subsection (3).

Section 131 – Duty to report on operation of this Act

This section places a duty on the Department to publish a report on the operation of this Act within three years of Royal Assent and to lay the report before the Assembly.

Schedule 1 – Pre-commencement inspection reports – review of decision under section 33(2)

This Schedule sets out the procedure to be used by the reservoir manager when seeking a review of the Department's decision regarding a document being a pre-commencement inspection report. Paragraph 3 provides that the Department may commission an appropriate panel engineer when undertaking a review and specifies the matters that the Department must take into account when considering an application for review. Paragraph 5 requires the Department to notify the reservoir manager of its decision and specifies what is to be included in any notice. Paragraph 6 provides powers for the Department to make further provision by regulations in relation to applications for reviews, and reviews, under this Schedule.