



## 2015 CHAPTER 8

### PART 3

#### CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

##### *Construction or alteration*

##### **Application of Part 3 etc.**

**41.—**(1) This Part applies where a controlled reservoir is to be constructed or subject to alteration.

(2) Subsections (3) to (7) have effect for the purposes of this Part.

(3) Any work for the purpose of restoring an existing structure or area (which has previously at any time been capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land) so that it is capable of so holding such amount of water is to be treated as construction of a controlled reservoir.

(4) Alteration of a controlled reservoir includes—

- (a) any work for the purpose of increasing or decreasing the capacity of a controlled reservoir,
- (b) any other work in relation to a controlled reservoir (including work which the Department is satisfied might affect its safety) which the Department may by regulations specify.

(5) Alteration of a controlled reservoir amounts to discontinuance of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of holding 10,000 cubic metres of water above the natural

level of any part of the surrounding land (but still capable of holding water above the natural level of any part of that land).

(6) Alteration of a controlled reservoir amounts to abandonment of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of filling with water above the natural level of any part of the surrounding land.

(7) Any reference to—

- (a) a controlled reservoir being constructed or subject to alteration is to be construed in accordance with this section,
- (b) a controlled reservoir being restored to use is to be construed as a reference to a controlled reservoir being constructed as mentioned in subsection (3),
- (c) a controlled reservoir being discontinued is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (5),
- (d) a controlled reservoir being abandoned is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (6).

### **Meaning of “relevant works” for purposes of Act**

**42.** Any reference in this Act to “relevant works” is a reference to any work carried out for the purpose of the construction or alteration of a controlled reservoir.

#### *Supervision by construction engineer*

### **Notice to Department and commissioning of construction engineer**

**43.—(1)** The reservoir manager of a controlled reservoir which is to be subject to relevant works must, not later than 28 days before the proposed relevant works begin, give notice to the Department of the proposed works.

(2) The reservoir manager must, not later than 28 days before the proposed relevant works begin—

- (a) commission a construction engineer,
- (b) give notice to the Department of the commissioning.

(3) A “construction engineer” is an engineer duly commissioned under this section 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 in accordance with section 49(8).

(4) An engineer may be commissioned as a construction engineer if the engineer—

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- (a) is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
  - (b) is not disqualified by virtue of subsection (5) from being commissioned as a construction engineer in relation to the reservoir.
- (5) An engineer is disqualified from being commissioned as a construction engineer in relation to the reservoir if the engineer—
- (a) is an employee of any person who is a reservoir manager of the reservoir,
  - (b) has previously been an inspecting engineer in relation to the reservoir.
- (6) In sections 44 to 51—
- (a) references to “the construction engineer” are references to the engineer duly commissioned for the time being as such under this section in respect of the relevant works,
  - (b) references to “the reservoir manager” are references to the reservoir manager of the controlled reservoir which is the subject of the relevant works.

#### **Supervision of relevant works and reservoir safety by construction engineer**

**44.—**(1) The construction engineer must supervise the relevant works and the safety of the controlled reservoir in accordance with this section until a copy of the final certificate issued in respect of the works is given to the Department in accordance with section 49(8).

- (2) The engineer must—
  - (a) inspect the reservoir,
  - (b) design any construction or alteration,
  - (c) give the reservoir manager a safety report prepared in accordance with section 45,
  - (d) give the reservoir manager such further safety reports prepared in accordance with that section as the engineer considers appropriate.
- (3) A safety report—
  - (a) given under subsection (2)(c) must be given as soon as is reasonably practicable after the construction engineer is commissioned,
  - (b) given under subsection (2)(d) must be given as soon as is reasonably practicable after the construction engineer considers it appropriate to give the report.
- (4) A construction engineer must, not later than 28 days after giving a safety report under this section, give the Department a copy of it.

**Safety report**

**45.—**(1) A safety report must—

- (a) specify any measure the construction engineer considers is necessary in the interests of the safety of the controlled reservoir,
- (b) direct the reservoir manager to ensure that any measure specified in the report is taken under the supervision of the construction engineer and within the period of time specified in the report,
- (c) where the reservoir manager is required to commission a supervising engineer, specify any matter that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,
- (d) include such other matters as the Department may by regulations specify.

(2) Where a controlled reservoir—

- (a) is being constructed or restored to use,
- (b) is subject to alteration other than for the purposes of discontinuance or abandonment,

the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water.

(3) Where a controlled reservoir is being discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure both—

- (a) 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
- (b) since the resulting structure or area will still be capable of holding water above that natural level, that it may safely be used for the collection and storage of water.

(4) Where a controlled reservoir is being abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.

**Safety report: compliance**

**46.—**(1) The reservoir manager of a controlled reservoir must (subject to section 61) ensure that any direction in a safety report given to the manager under section 44 is complied with.

(2) The construction engineer must, not later than 28 days after being satisfied that each measure directed in the safety report has been taken, give the reservoir manager a safety measure certificate.

(3) A safety measure certificate must specify—

- (a) the safety report to which it relates,
- (b) the measure taken,
- (c) any measure that has yet to be taken,
- (d) any measure that the construction engineer considers need no longer be taken.

(4) A construction engineer must, not later than 28 days after giving a safety measure certificate under subsection (2), give the Department a copy of it.

### **Preliminary certificate**

**47.—**(1) Where the construction engineer is satisfied that the reservoir may safely be filled (wholly or partially) with water or that the level of water should be reduced, the engineer must, as soon as is reasonably practicable after being so satisfied, give the reservoir manager a preliminary certificate.

(2) A preliminary certificate must—

- (a) specify a level (the “specified level”) that water in the reservoir must not exceed,
- (b) require the reservoir manager to ensure that the level of water does not exceed the specified level,
- (c) specify any requirement the engineer considers is appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.

(3) A construction engineer must, not later than 28 days after giving a preliminary certificate, give the Department a copy of it.

(4) A subsequent preliminary certificate applicable to the reservoir replaces any previous preliminary certificate applicable to the reservoir in respect of the relevant works.

(5) A preliminary certificate ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of those works.

### **Construction certificate**

**48.—**(1) The construction engineer must give the reservoir manager a construction certificate as soon as is reasonably practicable after being satisfied that the relevant works have been completed to a satisfactory standard.

(2) The construction certificate must in any event be issued not later than the final certificate in respect of the relevant works.

- (3) A construction certificate must—
- (a) include an annex containing detailed drawings and descriptions giving full information about the relevant works, including the dimensions, water levels and details of the geological strata or deposits encountered in bore holes, trial holes or excavations made in connection with the works,
  - (b) include such other information as the Department may by regulations specify,
  - (c) certify that the relevant works have been executed satisfactorily in accordance with the drawings and descriptions included in the annex to the certificate.
- (4) The construction engineer must, not later than 28 days after giving a construction certificate, give the Department a copy of it (including any annex to it).

#### **Final certificate**

**49.—**(1) Where the relevant works have involved the controlled reservoir being constructed or subject to alteration but not discontinued or abandoned, the construction engineer must give the reservoir manager a final certificate not later than 28 days after being satisfied that the reservoir is sound and satisfactory and may safely be used for the collection and storage of water.

- (2) A final certificate given under subsection (1)—
- (a) must state that the engineer considers the reservoir is sound and satisfactory and may safely be used for the collection and storage of water,
  - (b) where the reservoir is a high-consequence or medium-consequence reservoir and the construction engineer considers that there should be an early inspection of the reservoir, must state when the engineer recommends the inspection should take place,
  - (c) where the reservoir is a high-consequence or medium-consequence reservoir, must specify any matter the construction engineer considers should be monitored, until the first or next inspection of the reservoir under this Act, by the supervising engineer for the time being commissioned in relation to the reservoir under section 25,
  - (d) must impose the requirements mentioned in subsection (7).
- (3) Where the relevant works have involved the controlled reservoir being discontinued, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—
- (a) that the discontinuance has been safely completed,
  - (b) 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,

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- (c) that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water.
- (4) A final certificate given under subsection (3) must—
  - (a) state that the construction engineer is satisfied as to the matters referred to in paragraphs (a) to (c) of that subsection,
  - (b) impose the requirements mentioned in subsection (7).
- (5) Where the relevant works have involved the controlled reservoir being abandoned, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—
  - (a) that the abandonment has been safely completed,
  - (b) that the resulting structure or area is incapable of filling with water above the natural level of any part of the surrounding land.
- (6) A final certificate issued under subsection (5) must state that the engineer is satisfied as to the matters referred to in paragraphs (a) and (b) of that subsection.
- (7) The requirements referred to in subsection (2)(d) and (4)(b) are—
  - (a) that water in the reservoir must not exceed a level specified in the certificate (the “specified level”),
  - (b) that the reservoir manager must ensure that the level of water does not exceed the specified level,
  - (c) any requirements the construction engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.
- (8) The construction engineer must, not later than 28 days after issuing a final certificate, give the Department a copy of the certificate.
- (9) If a final certificate is not issued by the end of the period of 5 years beginning with the date of the first preliminary certificate, the construction engineer must—
  - (a) not later than 28 days after the expiry of the 5 year period, give the reservoir manager a written statement of the reasons,
  - (b) at intervals of not more than 12 months thereafter until the final certificate is issued, give the reservoir manager subsequent written statements of the reasons,
  - (c) not later than 28 days after any such statement is given, give the Department a copy of the statement.

**Preliminary and final certificates: compliance**

**50.** The reservoir manager of a controlled reservoir must (subject to section 62) ensure that the requirements of any preliminary certificate or final certificate for the time being applicable to the reservoir are complied with.

**Termination of supervision by construction engineer**

**51.** The obligation of the reservoir manager to commission a construction engineer to supervise the relevant works and the safety of the controlled reservoir terminates when the construction engineer gives a copy of the final certificate issued by the engineer in respect of the works to the Department in accordance with section 49(8).

*Offences: construction or alteration*

**Offences: construction or alteration**

**52.—(1)** Failure by a reservoir manager of a controlled reservoir to comply with the requirements in section 43(2)(a) (commissioning of construction engineer) is an offence.

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements in section 43(1) (notice to the Department of proposed relevant works),
  - (b) the requirements in section 43(2)(b) (notice to Department of commissioning of construction engineer).
- (3) A reservoir manager guilty of an offence under subsection (1) or (2)—
- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
  - (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate**

**53.—(1)** Failure by a reservoir manager of a controlled reservoir without lawful excuse to comply with any of the following requirements under this Part is an offence—

- (a) the requirements in section 46(1) (ensuring compliance with direction in safety report as to taking of safety measure),



- (b) the requirements in section 50 (ensuring compliance with preliminary certificate or final certificate).
- (2) A reservoir manager guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
  - (b) on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (3) Section 74 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(a).

**Defences: offences under section 53(1)**

**54.** It is a defence to a charge in proceedings under section 53(1) for the person to show both—

- (a) that the failure to comply with the requirements concerned was as a result of an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
- (b) that the person—
  - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
  - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure,
  - (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

*Relevant works underway at commencement*

**Controlled reservoirs subject to relevant works on the commencement date**

**55.—**(1) This section applies in relation to a controlled reservoir which is, on the commencement date, subject to relevant works.

(2) This Part, and sections 67 to 69 (in Part 6), apply on and after the commencement date in relation to any such controlled reservoir subject to the following modifications—

- (a) notice to the Department under section 43(1) of the relevant works must be given not later than 28 days after the commencement date,
- (b) a construction engineer must be commissioned under section 43(2)(a) not later than 28 days after the commencement date,
- (c) notice to the Department under section 43(2)(b) of the commissioning must be given not later than 28 days after the commissioning.

(3) The Department may, in relation to any such controlled reservoir where it considers it appropriate to do so, extend the period of 28 days specified in subsection (2)(a) and (b) to such other period as it may, by notice served on the reservoir manager, specify.

(4) In this section, “the commencement date” means the date of commencement of section 43.