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2015 CHAPTER 8

PROSPECTIVE

PART 4

CONTROLLED RESERVOIRS: OTHER REQUIREMENTS

Incident reporting

56.—(1) The Department may by regulations make provision for the reporting to it of incidents occurring at controlled reservoirs which meet criteria specified in, or otherwise determined in accordance with, the regulations.

(2) The regulations may, in particular—

- (a) provide that the Department or another person—
 - (i) may specify the criteria,
 - (ii) is to determine whether a controlled reservoir meets the criteria,
- (b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a controlled reservoir,
- (c) require the reservoir manager of a controlled reservoir or other person to notify the Department of any incident occurring at the reservoir and to provide the Department with a report on the incident,
- (d) provide for a supervising engineer, an inspecting engineer or other person to determine whether an incident has occurred,
- (e) require reservoir managers of controlled reservoirs, supervising engineers, inspecting engineers and any other person of a specified description to have regard to guidance issued by the Department,

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- (f) make provision as to the publishing of incident reports,
- (g) confer powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (h) make provision as to offences,
- (i) provide that any offence created is triable only summarily,
- (j) provide for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
- (k) make provision in connection with ensuring remedial action is taken following an incident report, including provision amending this Act (other than this section) or applying this Act with modifications.

(3) If it appears to the Secretary of State that the publication of, or giving access to, any incident report or any information in or relating to an incident report would adversely affect national security, the Secretary of State may by notice served on the reservoir manager concerned and any other person who has prepared the incident report, direct the manager and (as appropriate) the other person—

- (a) not to publish, or not to publish except as specified in the notice, the incident report, a copy of it or any information in or relating to it,
- (b) not to permit access to the incident report, a copy of it or any information in or relating to it, except as specified in the notice.

(4) Notice under subsection (3) may also specify requirements as to the storage of the incident report and copies of it in the interests of national security.

(5) Where notice under subsection (3) states that this subsection applies to any of the information specified in the notice (“the specified information”), the person on whom the notice is served must not give to any other person any indication of the existence of the specified information.

(6) Any duty of a person under regulations made under subsection (1) to publish an incident report, a copy of such a report or any information in or relating to such a report does not apply to the extent that notice served on the person under subsection (3) requires the person not to do so.

(7) Before making regulations under subsection (1), the Department must consult—

- (a) the reservoir managers of controlled reservoirs to which they consider the regulations will apply,

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- (b) the Institution of Civil Engineers,
- (c) such other persons as it considers appropriate.

Flood plans

57.—(1) The Department may by regulations make provision as to—

- (a) the preparation of flood plans for controlled reservoirs,
- (b) such other matters in relation to such flood plans as it considers appropriate.

(2) A “flood plan” for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) Regulations under subsection (1) may include provision—

- (a) as regards who is to prepare a flood plan,
- (b) requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories or types as may be determined by the Department,
- (c) allowing a single flood plan to be prepared in respect of 2 or more controlled reservoirs between which water does (or could) flow,
- (d) specifying—
 - (i) the form in which a flood plan is to be prepared,
 - (ii) what is to be included in a flood plan,
- (e) requiring the person preparing a flood plan to have regard to any guidance that may be issued by the Department as regards flood plans,
- (f) requiring flood plans to be produced or submitted to the Department (whether or not for approval) by such time as either—
 - (i) the regulations specify, or
 - (ii) the Department may direct,
- (g) as regards the approval of flood plans (whether by the Department, supervising engineers or inspecting engineers),
- (h) as regards the review and updating of flood plans,
- (i) as regards the publication or distribution of copies of—
 - (i) a list of controlled reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
 - (ii) flood plans,
- (j) in connection with the testing of flood plans,
- (k) in connection with the referral of matters to a referee,

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- (l) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is reasonably practicable to do so, to take action set out in the plan relating to the reservoir in the event of an incident or emergency,
 - (m) providing that the Department may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from the person,
 - (n) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
 - (o) making provision in connection with paragraphs (k), (m) and (n) and subsection (4) amending this Act (other than this section) or applying this Act with modifications,
 - (p) as to offences,
 - (q) providing that any offence created is triable only summarily,
 - (r) providing for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale.
- (4) Regulations under subsection (1) containing provision entitling the Department to recover costs as referred to in subsection (3)(m) must provide for a right of appeal to the Water Appeals Commission against—
- (a) the Department's decision to require the person to pay the costs,
 - (b) the Department's decision as to the amount of the costs.
- (5) The Commission may confirm, quash or vary the decision.
- (6) If it appears to the Secretary of State that the publication or distribution of, or giving access to, any flood plans or any information in or relating to flood plans would adversely affect national security, the Secretary of State may by notice served on each reservoir manager concerned and each other relevant person, direct the manager and other relevant person—
- (a) not to publish, or not to publish except as specified in the notice, the flood plan, a copy of it or any information in or relating to it,
 - (b) not to distribute and not to permit access to the flood plan, a copy of it or any information in or relating to it, except as specified in the notice.
- (7) Notice under subsection (6) may also specify requirements as to the storage of the flood plan and copies of it in the interests of national security.

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(8) Where notice under subsection (6) states that this subsection applies to any of the information specified in the notice (“the specified information”), the person on whom the notice is served must not give to any other person any indication of the existence of the specified information.

(9) For the purposes of subsection (6), a relevant person is a person (other than the Department)—

- (a) who is required, by virtue of regulations under subsection (1), to prepare, review or update the flood plan, provide, produce or submit it or publish or distribute copies of it,
- (b) who receives or may receive the flood plan or information in or relating to it.

(10) Any duty of a person under regulations made under subsection (1) to publish a flood plan, a copy of such a plan or any information in or relating to such a plan does not apply to the extent that notice served on the person under subsection (6) requires the person not to do so.

(11) Before making regulations under subsection (1), the Department must consult—

- (a) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
- (b) the Institution of Civil Engineers,
- (c) such other persons as it considers appropriate.

Maintenance of records

58.—(1) The reservoir manager of a controlled reservoir must maintain a record of relevant documents.

(2) The record must include all of the relevant documents. (Sections 37 and 38 make provision as regards other records to be maintained by the reservoir managers of high-consequence and medium-consequence reservoirs and associated offences.)

(3) Where the reservoir is a low-consequence reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Department may by regulations require.

(4) The relevant documents are—

- (a) any of the following which is given to the reservoir manager (or copied to the manager pursuant to section 70)—
 - (i) a safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate,

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- (ii) a pre-commencement inspection report or an inspection report, interim inspection compliance certificate or inspection compliance certificate,
 - (iii) a notice under section 26(2)(a) or (g), recommendation under section 26(3) or statement under section 26(5) (by a supervising engineer),
- (b) any flood plan currently applicable in respect of the reservoir which has been produced in respect of it in pursuance of regulations made under section 57.

Display of emergency response information

59.—(1) The reservoir manager of a controlled reservoir must ensure that emergency response information is displayed at or near the reservoir.

(2) Emergency response information is such information about the reservoir and the reservoir manager as may be specified by regulations by the Department.

(3) The information that may be specified under subsection (2) includes in particular—

- (a) the name of the reservoir (if any),
- (b) any registration number in the controlled reservoirs register in respect of the reservoir,
- (c) the reservoir manager's name and address and information for the purpose of enabling a person to contact the reservoir manager in the event of an emergency,
- (d) where the reservoir is a high-consequence reservoir or medium-consequence reservoir, information for the purpose of enabling a person to contact the Department in the event of an emergency.

(4) The Department may by notice served on reservoir managers of controlled reservoirs give them directions to as to—

- (a) the manner in which emergency response information is to be displayed,
- (b) each location at which it is to be displayed.

(5) Directions under subsection (4) may be general or specific.

(6) The reservoir manager of a controlled reservoir must comply with any direction by the Department under subsection (4).

Offences under Part 4

60.—(1) A person who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

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- (a) the requirements of a notice under subsection (3) of section 56 (publication etc. of incident reports and national security) or subsection (5) of that section in so far as subsection (5) applies in relation to the notice,
- (b) the requirements of a notice under subsection (6) of section 57 (publication etc. of flood plans and national security) or subsection (8) of that section in so far as subsection (8) applies in relation to the notice,
- (c) the requirements of section 58 (maintenance of records),
- (d) the requirements of section 59(1) or (6) (display of emergency response information).

(2) A person does not commit an offence under subsection (1) where the person fails to comply with the requirements referred to in paragraph (a) or (b) of that subsection in order to comply with any other duty imposed on the person by virtue of any of the following—

- (a) the Environmental Information Regulations 2004,
- (b) the Freedom of Information Act 2000,
- (c) a constable acting in the course of the constable's duties,
- (d) an order of a court of competent jurisdiction.

(3) A person guilty of an offence under subsection (1)—

- (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.

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