
EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers additional powers on the Scottish Environment Protection Agency (“SEPA”) to enable it to enforce the requirements of the Reservoirs (Scotland) Act 2011 (“the Act”) and makes connected provision.

Part 1 makes general provision in relation to citation, commencement and interpretation.

Part 2 makes provision in relation to stop notices, further enforcement measures, recovery of expenses, fixed monetary penalties, variable monetary penalties and enforcement undertakings as follows—

- article 3 and Schedule 1 make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs. In particular, paragraph 1 of Schedule 1 empowers SEPA to, by notice (a “stop notice”), prohibit a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the reservoir manager has taken steps specified in the notice. A stop notice may only be given if SEPA reasonably believes that the activity presents a significant risk of causing an uncontrolled release of water from the reservoir or that it involves or is likely to involve the commission of certain specified offences under sections 42(1) and 52(1) of the Act;
- article 4 and Schedule 2 make provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures. In particular, paragraph 1 of Schedule 2 empowers SEPA to, by notice (a “restoration” or “restraint” notice), impose on a reservoir manager of a controlled reservoir one or more further enforcement measures in relation to an offence under section 42(1)(e) of the Act (failure to comply with a preliminary certificate or a final certificate). A restoration or restraint notice may only be given if SEPA is satisfied beyond a reasonable doubt that the reservoir manager had committed that particular offence. A restoration notice is a notice which requires particular steps to be taken within a set period to secure that the position is so far as possible restored to what it would have been if the offence under section 42(1)(e) of the Act had not been committed. A restraint notice is a notice which requires particular steps to be taken within a set period to secure that this offence does not continue or recur;
- article 5 and Schedule 3 make provision for the recovery of expenses reasonably incurred by SEPA in relation to the giving of a stop notice or the imposition of further enforcement measures by means of a restoration notice or a restraint notice; and
- article 6 and Schedule 4 amend the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (“the 2015 Order”) so that, where a reservoir manager fails to comply with a stop notice, SEPA may also exercise its powers under the 2015 Order to impose fixed or variable monetary penalty, or to accept an enforcement undertaking.

Part 3 and Schedules 5 and 6 make further provision in relation to reviews and appeals under the Act, and Part 4 makes ancillary provision in relation to notices, guidance, recovery of payments and the payment of penalties.