
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 161

The Reservoirs (Enforcement etc.) (Scotland) Order 2016

PART 1

INTRODUCTORY

Citation and commencement

1. This Order may be cited as the Reservoirs (Enforcement etc.) (Scotland) Order 2016 and comes into force on 1st April 2016.

Interpretation

2.—(1) In this Order—

“the 2015 Order” means the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015⁽¹⁾;

“the Act” means the Reservoirs (Scotland) Act 2011;

“by notice” means by notice in writing;

“expenses recovery notice” is to be construed in accordance with paragraph 1 of Schedule 3;

“FEM undertaking” is to be construed in accordance with paragraph 4(1) of Schedule 2;

“further enforcement measure” has the meaning given in paragraph 1(4) of Schedule 2;

“non-compliance penalty” has the meaning given in paragraph 9(2) of Schedule 2;

“non-compliance penalty notice” is to be construed in accordance with paragraph 9(4) of Schedule 2;

“notice of intent” is to be construed in accordance with paragraph 2 of Schedule 2;

“restoration notice” has the meaning given in paragraph 1(4) of Schedule 2;

“restraint notice” has the meaning given in paragraph 1(4) of Schedule 2; and

“stop notice” is to be construed in accordance with paragraph 1(1) of Schedule 1.

(2) Where anything under this Order is to be done “in writing” that includes an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000⁽²⁾, which is capable of being reproduced (and “written” is to be construed accordingly).

(1) [S.S.I. 2015/383](#).

(2) [2000 c.7](#). Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

PART 2

ENFORCEMENT MEASURES

Stop notices

3. Schedule 1 makes provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.

Further enforcement measures

4. Schedule 2 makes provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures.

Recovery of expenses

5. Schedule 3 makes 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.

Monetary penalties and undertakings

6. Schedule 4 makes provision which amends the 2015 Order so that the powers conferred by that Order to impose fixed and variable monetary penalties and to accept enforcement undertakings may be exercised in relation to the offence created by paragraph 6 of Schedule 1.

PART 3

REVIEWS AND APPEALS

Enforcement notices: reviews and appeals

7. Schedule 5 makes provision allowing a reservoir manager to whom notice is given under section 69(2) of the Act (enforcement notice: safety and other measures)—

- (a) to apply to SEPA for a review of its decision to give the notice; and
- (b) to appeal to the Scottish Ministers against the decision to give the notice.

Appeals: further provision

8. Schedule 6 makes further provision in relation to appeals in connection with the following provisions of the Act—

- (a) section 69 (enforcement notice: safety and other measures);
- (b) section 74 (stop notices: procedure);
- (c) section 75 (stop notices: compensation);
- (d) section 83 (further enforcement measures: procedure);
- (e) section 85 (further enforcement measures: enforcement); and
- (f) section 88 (recovery by SEPA of expenses).

PART 4 MISCELLANEOUS

Notices: supplementary provision

9.—(1) SEPA may, at any time, by notice given to the reservoir manager—

- (a) withdraw (in whole or in part)—
 - (i) a stop notice;
 - (ii) a restraint notice;
 - (iii) a restoration notice;
 - (iv) a non-compliance penalty notice; or
 - (v) an expenses recovery notice; or
- (b) with the consent of the reservoir manager, amend the steps specified in—
 - (i) a stop notice;
 - (ii) a restraint notice; or
 - (iii) a restoration notice,

so as to reduce the amount of work necessary to comply with the notice or, where applicable, to extend a period specified in the notice for the taking of any such step; or

- (c) reduce the amount specified in—
 - (i) a non-compliance penalty notice; or
 - (ii) an expenses recovery notice.

(2) In paragraph (1), “the reservoir manager” means a reservoir manager who was given the stop notice, restraint notice, restoration notice, non-compliance penalty notice or expenses recovery notice in question.

Guidance about the use of powers

10. SEPA must publish guidance about the use of the powers conferred on it by this Order.

Recovery of payments

11. SEPA may recover as a civil debt any—

- (a) non-compliance penalty; or
- (b) expenses required to be paid under an expenses recovery notice.

Payment of penalties

12. Where, by virtue of this Order, SEPA receives any sum in respect of a non-compliance penalty, SEPA must pay it to the Scottish Ministers.

St Andrew’s House,
Edinburgh
21st March 2016

AILEEN McLEOD
Authorised to sign by the Scottish Ministers