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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 43**

**The Reservoirs (Scotland) Regulations 2016**

**PART 1**

**INTRODUCTORY**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Reservoirs (Scotland) Regulations 2016 and come into force on 1st April 2016.

(2) In these Regulations—

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

“the 1930 Act” means the Reservoirs (Safety Provisions) Act 1930<sup>(1)</sup>;

“the 1975 Act” means the Reservoirs Act 1975<sup>(2)</sup>;

“1975 Act panel” means any of the following (established under section 4 of the 1975 Act)—

- (a) all reservoirs panel;
- (b) non-impounding reservoirs panel;
- (c) service reservoirs panel; and
- (d) supervising engineers panel;

“2011 Act panel” means any of the following (established under section 27(a) of the Act)—

- (a) All Reservoirs (Scotland) Panel;
- (b) Non-Impounding Reservoirs (Scotland) Panel;
- (c) Service Reservoirs (Scotland) Panel; and
- (d) Supervising Engineers (Scotland) Panel;

“adjacent” includes below;

“annual subsistence fee” means a fee that SEPA may charge under regulation 15(1);

“charging scheme” means a scheme of charges prepared by SEPA under regulation 19;

“eligible person” means a person who—

- (a) would have been a member of a 1975 Act panel throughout the transitional period if the term of that membership (so far as it extended to Scotland) had not ceased by virtue of the repeal of the 1975 Act; and
- (b) wishes to be appointed to the corresponding 2011 Act panel;

“fetch”, in relation to a reservoir, means the effective length of the reservoir over which wind can build up waves;

“financial year” means a period of 12 months ending with 31st March;

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(1) 1930 c.51.

(2) 1975 c.23; section 2(2) of the 1975 Act was relevantly amended by the Water Act 2003 (c.37), section 74(1)(b).

“natural level” has the meaning it has in regulation 5;

“new manager fee” means a fee that SEPA may charge under regulation 17(1);

“registration fee” means a fee that SEPA may charge under regulation 13(1);

“the relevant engineer” has the meaning it has in section 61(4) (appointment of referee) of the Act;

“surrounding land” has the meaning it has in regulation 5;

“top water level” has the meaning it has in regulation 3(3); and

“transitional period” means the period beginning with 1st April 2015 and ending with the date on which the statement referred to in paragraph 5 of Schedule 3 was signed and dated.

(3) In these Regulations, a reference to any panel in one of the following sub-paragraphs is to be construed as corresponding only to the other panel in that sub-paragraph—

- (a) all reservoirs panel and All Reservoirs (Scotland) Panel;
- (b) non-impounding reservoirs panel and Non-Impounding Reservoirs (Scotland) Panel;
- (c) service reservoirs panel and Service Reservoirs (Scotland) Panel; and
- (d) supervising engineers panel and Supervising Engineers (Scotland) Panel.

(4) In these Regulations—

- (a) where a form in a Schedule contains italicised words in round brackets or a Note, those words and brackets and any such Note may be omitted from the completed form;
- (b) where a form in a Schedule contains italicised words in square brackets, those words and brackets are, in the completed form, to be substituted with the information specified by those words; and
- (c) where anything is to be done “in writing” that includes an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000<sup>(3)</sup>, which is capable of being reproduced.

## PART 2

### CONTROLLED RESERVOIRS

#### **Lochs and other areas to be considered artificial or partly artificial**

**2.** For the purposes of section 1(2) of the Act, a loch or other area is to be considered artificial (or partly artificial) if it was created or enlarged as a result of human activity.

#### **Calculation of volume of water that a structure or area is capable of holding**

**3.—(1)** For the purposes of Part 1 of the Act, the volume of water that a structure, loch or other area referred to in paragraph (a) or (b) of section 1(2) of the Act (“the reservoir”) is capable of holding above the natural level of any part of the surrounding land is to be calculated by measuring the maximum volume of water (in cubic metres) which is capable of being held in the reservoir—

- (a) above the bed of the reservoir; and
- (b) between the toe of the reservoir and its top water level.

(2) Water not capable of flowing out of the reservoir over natural ground in the event of an uncontrolled release of water from the reservoir must not be included in the calculation.

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(3) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(3) In paragraph (1)—

“bed”, in relation to a reservoir, includes any silt or other material that is incapable of flowing out of the reservoir over natural ground in the event of an uncontrolled release of water from the reservoir;

“toe” means the point on the downstream side of a dam, reservoir wall or embankment forming part of the reservoir where the base of the dam, reservoir wall or embankment, as the case may be, meets the lowest level of the natural ground (which remains after the construction, or any alteration, of the reservoir) of any part of the land adjacent to the reservoir, including the lowest bed level of any watercourse; and

“top water level” means—

- (a) in the case of a reservoir with a fixed overflow sill, the lowest crest level of that sill;
- (b) in the case of a reservoir the overflow from which is controlled wholly or partly by moveable gates, syphons or otherwise, the maximum level to which water may be held exclusive of any provision for flood storage; or
- (c) in the case of a reservoir designed for the purposes of holding back floodwater, the maximum level to which floodwater may be held during any flood event exclusive of any provision for overflow.

**Calculation of volume of water that a structure or area is capable of releasing**

4. For the purposes of subsection (3) of section 1 of the Act, the volume of water that is capable of being released from a combination of structures or areas referred to in that subsection (“the combination”) is to be calculated by measuring the maximum volume of water (in cubic metres) which is capable of flowing out of the combination over natural ground in the event of an uncontrolled release of water from the combination.

**Meaning of “natural level” and “surrounding land”**

5.—(1) For the purposes of Part 1 of the Act—

“natural level”—

- (a) in relation to any part of surrounding land which would remain covered with residual water after an uncontrolled release of water from the structure, loch or other area (to which the land relates), means the level of the surface of the residual water; and
- (b) in relation to any other part of that surrounding land, means the level of the natural ground remaining after the construction, or any alteration, of the reservoir; and

“surrounding land”, in relation to a structure, loch or other area referred to in paragraph (a) or (b) of section 1(2) of the Act (“the reservoir”), means the land adjacent to the reservoir (including any land which would be adjacent to water held by the reservoir when the reservoir is holding the maximum volume of water that it is capable of holding).

(2) In the definition of “natural level” in paragraph (1), a reference to “residual water” is a reference to water which would not be capable of flowing out of the structure, loch or other area in question over natural ground in the event of an uncontrolled release of water from the reservoir.

**Structures or areas which are not controlled reservoirs**

6.—(1) Ponds within extractive waste areas or waste facilities constitute the structures or areas referred to in paragraph (a) of section 2(2) of the Act.

(2) In paragraph (1), references to “ponds”, “extractive waste areas” and “waste facilities” are to be construed in accordance with the meaning given to the corresponding word or expression in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010<sup>(4)</sup>.

7. Weirs which are not capable of holding water above the natural banks of any part of a watercourse constitute the structures or areas in paragraph (c) of section 2(2) of the Act.

8.—(1) Road and railway embankments which are designed to drain water (including from any upstream areas) through the embankment, subject to paragraph (2), constitute the structures or areas referred to in paragraph (f) of section 2(2) of the Act.

(2) The road and railway embankments referred to in paragraph (1) do not constitute the structures or areas referred to in paragraph (f) of section 2(2) of the Act if drains which are designed to drain water (including from any upstream areas) through the embankment are—

- (a) artificially blocked for the purposes of using areas upstream to hold water; or
- (b) constructed so that water is held above natural ground level.

9. A structure or area created as a result of the construction of dams by beavers is not a controlled reservoir<sup>(5)</sup> (and is not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4) of the Act).

## PART 3

### REGISTRATION

#### **Controlled reservoirs register: additional information**

10.—(1) From the date on which a controlled reservoir is required to be registered under the Act, the controlled reservoirs register must contain the business address of any construction engineer, inspecting engineer, other qualified civil engineer or supervising engineer appointed at any time in relation to the reservoir.

(2) From the date on which a 1975 Act reservoir is required to be registered under the Act, the controlled reservoirs register must contain the name and business address of any construction engineer, inspecting engineer or supervising engineer appointed immediately before that date (or, if any such engineer was not appointed at that point, the last such engineer appointed) under the 1975 Act in relation to the reservoir, and the period of any such appointment.

(3) In paragraph (2)—

“1975 Act reservoir” means—

- (a) a controlled reservoir which was, immediately before 1st April 2015, required to be registered in a register maintained under section 2(2) of the 1975 Act; or
- (b) a controlled reservoir which—
  - (i) was not, immediately before 1st April 2015, required to be registered in a register maintained under section 2(2) of the 1975 Act; and
  - (ii) was, on or after that date, required to be registered in a register maintained under section 2(2) of the 1975 Act;

“construction engineer” has the meaning it had in section 6(1) of the 1975 Act;

“inspecting engineer” has the meaning it had in section 10(1) of the 1975 Act; and

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(4) *S.S.I. 2010/60*; to which there are amendments which are not relevant for the purposes of these Regulations.

(5) Sections 1 and 2 of the Reservoirs (Scotland) Act 2011 determine what is a “controlled reservoir”.

“supervising engineer” has the meaning it had in section 12(1) of the 1975 Act.

**Information that a reservoir manager must register with SEPA**

**11.** The reservoir manager of a controlled reservoir must, under section 10(1) of the Act, register—

- (a) the information and documents (in relation to the reservoir) specified in Schedule 1;
- (b) if the reservoir is a reservoir to which section 11(2) of the Act applies—
  - (i) a copy of the most recent report of an inspection under section 10 of the 1975 Act in relation to that reservoir;
  - (ii) the name, business address, email address and telephone number(s) of the inspecting engineer who carried out the inspection to which the report relates; and
  - (iii) to the extent known or readily obtainable by the reservoir manager, the name, business address, email address and telephone number(s) (including a telephone number for making contact outside normal working hours or in an emergency) of any—
    - (aa) construction engineer;
    - (bb) inspecting engineer; or
    - (cc) supervising engineer,appointed immediately before the date on which the reservoir was registered (or, if any such engineer was not appointed at that point, the last such engineer appointed) under the 1975 Act in relation to the reservoir (and the period of any such appointment); and
- (c) if the reservoir is required to be registered in accordance with section 13 of the Act, a map showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded.

**Time by which changes to information must be registered**

**12.** Where there is a change to information referred to in regulation 11, the change to the information must be registered by the reservoir manager under section 10(1) of the Act within 28 days beginning with the date on which the information changed.

**Registration fees: general**

**13.—(1)** Subject to regulation 14, SEPA may charge the reservoir manager of each controlled reservoir a fee in relation to the registration by that manager of the controlled reservoir under section 10(1) of the Act.

- (2) The reservoir manager must pay the registration fee to SEPA.
- (3) The registration fee is recoverable as a civil debt.

**Registration fees: determination and charging**

**14.—(1)** SEPA must determine the registration fee to be included in its charging scheme having regard to the likely average cost to SEPA of registering a controlled reservoir.

(2) The registration fee must accompany the information to be registered under section 10(1) of the Act.

(3) SEPA must not charge a registration fee in connection with any registration under section 10(1) of the Act where the information to be registered was received by SEPA before 1st October 2015.

**Annual subsistence fee: general**

**15.**—(1) Subject to regulation 16, SEPA may charge the reservoir manager of each controlled reservoir which has been given a risk designation under the Act an annual fee in relation to the performance by SEPA of its functions under Part 1 of the Act.

(2) The reservoir manager must pay the annual subsistence fee to SEPA.

(3) The annual subsistence fee is recoverable as a civil debt.

**Annual subsistence fee: determination and charging**

**16.**—(1) SEPA must determine the amounts of the annual subsistence fee to be included in its charging scheme having regard to—

- (a) its functions under Part 1 of the Act;
- (b) the likely cost to SEPA of carrying out those functions;
- (c) the number of controlled reservoirs that have been or are likely to be registered; and
- (d) the categories of risk designation.

(2) Different amounts of annual subsistence fee may be set for controlled reservoirs with different risk designations.

(3) The annual subsistence fee is chargeable in respect of each financial year.

(4) The annual subsistence fee is payable at the beginning of the financial year in respect of which it is chargeable.

(5) Where a controlled reservoir is given a first risk designation under section 19 of the Act during any financial year, the annual subsistence fee for that financial year must be such proportion of the annual subsistence fee which would otherwise be payable under these Regulations as relates to the period of that year for which the reservoir had a risk designation.

(6) Where a different risk designation is given following a review under Chapter 3 of Part 1 of the Act, the risk designation for the purposes of determining the amount of the annual subsistence fee in any given financial year is the risk designation that applied on 1st April of that year.

(7) Where a controlled reservoir has more than one reservoir manager and one or more nominations are made under section 4(3) of the Act such that a single reservoir manager (“the point of contact manager”) has been nominated by the other managers to fulfil the following functions under Part 1 of the Act—

- (a) making representations to SEPA within the meaning of section 18(4) of the Act;
- (b) applying for a review of a risk designation under section 23(1) of the Act;
- (c) giving notice to SEPA of proposed works under section 33(1) of the Act;
- (d) giving notice to SEPA of the appointment of a construction engineer under section 33(2) (b) of the Act;
- (e) giving notice to SEPA of the appointment of an inspecting engineer under section 45(1) (b) of the Act;
- (f) giving notice to SEPA of the appointment of any other qualified engineer under section 48(2)(b) of the Act;
- (g) giving notice to SEPA of the appointment of a supervising engineer under section 49(1) (b) of the Act;

- (h) submitting flood plans to SEPA under section 55(3)(f) of the Act;
- (i) giving notice to SEPA of any relevant appointments under section 65(2)(b) of the Act;
- (j) giving SEPA notice of revocation of appointment of an engineer under section 103(1) of the Act; and
- (k) giving SEPA a copy of a notice of resignation by an engineer under section 103(2) of the Act,

SEPA may only charge the point of contact manager the annual subsistence fee in respect of that controlled reservoir.

(8) SEPA must not charge an annual subsistence fee for the financial year ending 31st March 2016.

#### **Transfer fees: general**

17.—(1) Subject to regulation 18, SEPA may charge the reservoir manager of a controlled reservoir a fee in relation to a notice given to SEPA by that manager under section 15(2) of the Act.

- (2) The reservoir manager must pay the new manager fee to SEPA.
- (3) The new manager fee is recoverable as a civil debt.

#### **Transfer fees: determination and charging**

18.—(1) SEPA must determine the amount of any new manager fee to be included in its charging scheme having regard to the likely cost to SEPA of performing SEPA's functions under section 15 of the Act.

(2) A notice under section 15(2) of the Act must be accompanied by any new manager fee.

(3) SEPA must not charge a new manager fee in respect of any notice under section 15(2) of the Act which was given to SEPA before 1st October 2015.

#### **Charging schemes**

19.—(1) SEPA must—

- (a) set out its fees to be charged under this Part in a published charging scheme; and
- (b) consult such persons as SEPA considers likely to be affected by the scheme before it publishes or revises a scheme.

(2) SEPA must, at least once in every three year period beginning with 1st April 2016, review the scheme.

(3) Following a review, SEPA may revise the scheme.

## **PART 4**

### **RISK DESIGNATION**

#### **Applications for review of risk designations under section 23 of the Act**

20.—(1) An application to SEPA under section 23(1) (review of SEPA's decisions giving risk designations) of the Act must—

- (a) be made in writing; and

- (b) if a fee is charged in relation to the application under section 23(6) of the Act, be accompanied by the fee.
- (2) When giving notice to a reservoir manager of a controlled reservoir of a risk designation under section 19(5) or 21(4) of the Act, SEPA must inform the reservoir manager as to—
  - (a) where to send an application for a review under section 23(1) of the Act; and
  - (b) the information to be provided with any such application.

### **Appeals to the Scottish Ministers following a review by SEPA of risk designation**

**21.**—(1) An appeal to the Scottish Ministers under section 24(1) (appeal to the Scottish Ministers following SEPA’s review) of the Act must be made by notice in writing (“notice of appeal”).

- (2) The notice of appeal must contain—
  - (a) a statement of the grounds of appeal;
  - (b) a copy of the notice of the decision given by SEPA under section 23(5) of the Act to which the appeal relates; and
  - (c) a copy of any relevant correspondence between the person making the appeal (“the appellant”) and SEPA.
- (3) The appellant must, at the same time as making any such appeal to the Scottish Ministers, send a copy of the notice of appeal to SEPA.
- (4) SEPA may, within a period of 28 days beginning with the day on which it receives a copy of the notice of appeal, make representations in writing to the Scottish Ministers.
- (5) SEPA must, at the same time as making representations under paragraph (4), send a copy of those representations to the appellant.
- (6) The appellant may, within a period of 21 days beginning with the day on which the appellant receives a copy of any representations made by SEPA under paragraph (4), make representations in writing to the Scottish Ministers in respect of SEPA’s representations.
- (7) The appellant must, at the same time as making any representations to the Scottish Ministers under paragraph (6), send a copy of those representations to SEPA.
- (8) The appellant may withdraw an appeal by notice in writing to the Scottish Ministers.
- (9) The appellant must, at the same time as sending a withdrawal notice under paragraph (8), send a copy of the notice to SEPA.
- (10) Before determining an appeal, the Scottish Ministers may give the appellant and SEPA an opportunity to appear before, and be heard by, any engineer appointed under section 24(4) of the Act to make recommendations to the Scottish Ministers about the risk designation to which the appeal relates.

## **PART 5**

### **PANELS OF RESERVOIR ENGINEERS**

#### **Applications for appointment: general**

**22.**—(1) An application for appointment (including re-appointment) to a panel under section 28(1) of the Act must be made in writing to the Scottish Ministers.

- (2) Except where the application is made in accordance with regulation 23(1), the application must—



- (a) contain the information specified in Schedule 2; and
- (b) if a fee is charged to the applicant under regulation 24 in connection with the application, be accompanied by the fee.

#### **Applications for appointment: eligible persons**

**23.**—(1) Where an application for appointment to a panel under section 28(1) of the Act is made by an eligible person, the application must contain the information specified in Schedule 3.

(2) Where an application is made by an eligible person in accordance with paragraph (1), the application for appointment must be only in respect of a period which does not exceed the period which would have remained of the term of the person’s appointment to the corresponding 1975 Act panel if the term of that appointment (so far as it extended to Scotland) had not ceased by virtue of the repeal of the 1975 Act.

#### **Fees in connection with applications for membership of panels**

**24.**—(1) Subject to paragraph (2), the Scottish Ministers may charge a fee of £385 in connection with an application for membership of (including re-appointment to) a 2011 Act panel (“membership fee”).

(2) The Scottish Ministers must not charge a membership fee if the application referred to in paragraph (1) is made by a person who—

- (a) at or around the same time, applies in substantially the same terms to the Secretary of State under the 1975 Act to be placed on a corresponding 1975 Act panel; and
- (b) the application to be placed on the corresponding 1975 Act panel is accompanied by the prescribed fee under that Act.

#### **Applications for review of decisions to appoint or remove civil engineers from panels etc.**

**25.**—(1) An application for a review of a decision under section 30(1) of the Act must be made in writing to the Scottish Ministers.

(2) The application must contain the information specified in Schedule 4.

## **PART 6**

### **CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS**

#### **Notice of relevant works**

**26.** A notice of proposed relevant works by a reservoir manager under section 33(1) (notice to SEPA and appointment of construction engineer) of the Act must contain the information specified in Schedule 5.

#### **Safety report**

**27.** A safety report by a construction engineer under section 34 (inspection, reports, supervision of works etc. by construction engineer) of the Act must—

- (a) in addition to the matters required by section 35(1)(a) to (c) (safety reports) of the Act, include the other matters specified in the form (as read with the Note to the form) in Schedule 6; and
- (b) be in the form set out in Schedule 6.

### **Safety measure certificate**

**28.** A safety measure certificate by a construction engineer under section 36(2) (safety reports: compliance) of the Act must be in the form set out in Schedule 7.

### **Preliminary certificate**

**29.** A preliminary certificate by a construction engineer under section 37 (preliminary certificates) of the Act must be in the form set out in Schedule 8.

### **Construction certificate**

**30.** A construction certificate by a construction engineer under section 38 (construction certificates) of the Act must—

- (a) in addition to the information required by subsection (3)(a) and (b) of that section, contain the other information specified in the form (as read with the Note to the form) in Schedule 9; and
- (b) be in the form set out in Schedule 9.

### **Final certificates**

**31.—(1)** A final certificate by a construction engineer under section 39(1) (final certificates) of the Act must be in the form set out in Part 1 of Schedule 10.

(2) A final certificate by a construction engineer under section 39(3) (final certificates) of the Act must be in the form set out in Part 2 of Schedule 10.

(3) A final certificate by a construction engineer under section 39(5) (final certificates) of the Act must be in the form set out in Part 3 of Schedule 10.

## **PART 7**

### **OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS**

#### **Notice of appointment of inspecting engineer**

**32.** A notice by a reservoir manager under section 45(1) (appointment of inspecting engineer etc.) of the Act must—

- (a) include the content specified in the form in Schedule 11; and
- (b) be in the form set out in Schedule 11.

#### **Inspection report**

**33.** An inspection report by an inspecting engineer under section 47(1)(b) (inspections: duties of inspecting engineers etc.) of the Act must be in the form set out in Schedule 12.

#### **Inspection report: compliance certificates**

**34.—(1)** An interim inspection compliance certificate by an inspecting engineer under section 48(3) (inspection reports: compliance) of the Act must be in the form set out in Part 1 of Schedule 13.

(2) An inspection compliance certificate by an inspecting engineer under section 48(5) (inspection reports: compliance) of the Act must be in the form set out in Part 2 of Schedule 13.

#### **Notice of appointment of supervising engineer**

**35.** A notice by a reservoir manager under section 49(1) (appointment of supervising engineers etc.) of the Act must—

- (a) include the content specified in the form in Schedule 14; and
- (b) be in the form set out in Schedule 14.

#### **Statement by supervising engineer**

**36.** A statement by a supervising engineer under section 50(8) (supervising engineer and monitoring of reservoir) of the Act must be in the form set out in Schedule 15.

#### **Recording of water levels etc. and record keeping**

**37.—**(1) The record of matters (“the recorded matters”) to be maintained under section 51(1) (recording of water levels etc. and record keeping) of the Act must, in addition to the matters required by subsection (1)(a) to (d) of that section, include the other matters specified in Schedule 16.

(2) The information specified in the form (as read with the Notes to the form) in Schedule 17 is to be included in relation to the recorded matters.

(3) The record to be maintained under section 51(1) of the Act must be in the form set out in Schedule 17.

## **PART 8**

### **OTHER REQUIREMENTS: CONTROLLED RESERVOIRS**

#### **Information about repairs**

**38.** The information about repairs to be contained in a record of relevant documents pursuant to section 56(3) (maintenance of records) of the Act must be in the form set out in Schedule 18.

## **PART 9**

### **DISPUTE REFERRAL**

#### **Time within which a referee may be appointed by agreement**

**39.** The time within which a referee (“the referee”) may be appointed under section 61(1)(a) (appointment of referee) of the Act by agreement between a reservoir manager and the relevant engineer, is a period of 60 days beginning with, as the case may be—

- (a) the day on which the safety report or the inspection report, which contains the direction which is to be referred to the referee by the reservoir manager under section 59(2) of the Act, was given to the reservoir manager; or
- (b) the day on which the preliminary certificate or the final certificate, which mentions the matters which are to be referred to the referee by the reservoir manager under section 60(1) of the Act, was given to the reservoir manager.

### **Time within which a request may be made for an appointment**

**40.** The time within which a request to the Scottish Ministers for the appointment of a referee (“the referee”) under section 61(1)(b) of the Act may be made, is a period of 70 days beginning with, as the case may be—

- (a) the day on which the safety report or the inspection report, which contains the direction which is to be referred to the referee by the reservoir manager under section 59(2) of the Act, was given to the reservoir manager; or
- (b) the day on which the preliminary certificate or the final certificate, which mentions any matter which is to be referred to the referee by the reservoir manager under section 60(1) of the Act, was given to the reservoir manager.

### **Manner of the request for an appointment**

**41.—**(1) Any request to the Scottish Ministers for the appointment of a referee (“the referee”) under section 61(1)(b) of the Act must be made in writing.

(2) Where the subject of the referral to be made to the referee is a direction contained in a safety report or an inspection report, the request must be accompanied by—

- (a) the safety report or the inspection report containing the direction;
- (b) a statement specifying the terms of the direction in the safety report or, as the case may be, the inspection report for which the appointment is requested;
- (c) where the report containing the direction is a safety report, any safety measure certificate given in relation to the report; and
- (d) where the report containing the direction is an inspection report, any interim inspection compliance certificate given in relation to the report.

(3) Where the subject of the referral to be made to the referee is a matter mentioned in a preliminary certificate or a final certificate, the request must be accompanied by—

- (a) the preliminary certificate or the final certificate which mentions the matter; and
- (b) a statement specifying the matter in the preliminary certificate or, as the case may be, the final certificate for which the appointment is requested.

### **Procedure before the referee**

**42.—**(1) A referee appointed under section 61(1) of the Act must, within a period of 28 days beginning with the day on which the referee was appointed, invite the reservoir manager in question to give to the referee a statement in writing of the grounds of challenge under, as the case may be—

- (a) section 59(2) (referral to referee: directions in safety report or inspection report) of the Act; or
- (b) section 60(1) (referral to referee: requirements in preliminary certificate or final certificate) of the Act.

(2) Where a reservoir manager is invited to give a statement under paragraph (1), the reservoir manager must give the statement in writing to the referee within a period of 28 days beginning with the day on which the reservoir manager was invited to do so.

(3) Where a referee is given a statement in accordance with paragraph (2), the referee must give a copy of the statement to the relevant engineer and invite the engineer to give to the referee observations in writing in relation to the statement within a period of 28 days beginning with the day on which the engineer was given the copy of the statement.

(4) Where a referee is given observations in accordance with paragraph (3), the referee—

- (a) must give a copy of the observations to the reservoir manager and invite the manager to give to the referee comments in writing in relation to the observations within a period of 21 days beginning with the day on which the manager was given the copy of the observations; and
  - (b) may arrange to meet the reservoir manager and the relevant engineer, or their representatives, to hear any observations that either party may wish to make orally.
- (5) The referee may carry out an investigation and this may include an inspection of the reservoir in question (with or without the reservoir manager and the relevant engineer, or their representatives) before making a decision under, as the case may be—
- (a) section 62(2) (powers of referee: referral under section 59(2)) of the Act; or
  - (b) section 63(2) (powers of referee: referral under section 60(1)) of the Act.

#### **Investigation and proceedings: expenses**

**43.** The cost of any investigation and proceedings (including the referee's remuneration) arising in consequence of a referral made under section 59(2) or section 60(1) of the Act are expenses for the purposes of section 64(2) of the Act (expenses of the investigation and proceedings to be paid by the reservoir manager who makes the referral).

## **PART 10**

### **REVOCATIONS**

#### **Revocations**

**44.** The instruments specified in Schedule 19 are, so far as they extend to Scotland, revoked.

St Andrew's House,  
Edinburgh  
26th January 2016

*AILEEN McLEOD*  
Authorised to sign by the Scottish Ministers