

RESERVOIRS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Reservoirs

Chapter 3 – Risk Designation

Section 18 – Provisional risk designation

- 32. The Act is intended to create a risk-based regulatory regime with differing regulatory requirements for controlled reservoirs designated as being of different risk categories. The risk designation process is set out in sections 18 to 26.
- 33. [Section 18](#) requires SEPA to give controlled reservoirs a provisional risk designation as soon as reasonably practicable after it has registered the reservoir.
- 34. The categories of risk provided for in the Act are high, medium and low risk. Subsection (2) requires SEPA to take account of the matters in section 22 when giving the risk designation, which are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release.
- 35. Reservoir managers will have the opportunity to make representations to SEPA regarding the provisional designation. Subsection (4) provides for the giving of a notice by SEPA to the reservoir manager specifying the provisional risk designation, the reasons for it, how representations may be made in respect of it, and the time limit for making any such representations.

Section 19 – First risk designation

- 36. Following the giving of a provisional risk designation, SEPA must give the controlled reservoir a risk designation. Section 19 requires SEPA to do this as soon as is reasonably practicable after taking into account any representations made by the reservoir manager in response to the provisional risk designation within the period specified in section 18(4)(d). SEPA may not give a risk designation under this section earlier than 2 months after notice of the provisional risk designation was given to allow the reservoir manager to make representations within this period.
- 37. Reservoir managers have a right of review under section 23 against the risk designation and the notice issued by SEPA notifying the reservoir manager of the risk designation must inform the reservoir manager of that right. Following a review there is a right of appeal under section 24.

Section 20 – Periodic review of risk designation

- 38. [Section 20](#) requires SEPA to review the risk designation of a controlled reservoir should SEPA have reason to believe that the risk designation is no longer appropriate or, in any event, at least every 6 years. As with the initial risk designation, SEPA must provisionally determine the risk designation that is under periodic review and

the reservoir manager will have 2 months to make representations regarding the risk designation given as a result of the periodic review.

Section 21 – Decision following a periodic review

39. **Section 21** requires SEPA after taking into account any representations made by the reservoir manager in response to the notice given under Section 20(3) to either confirm the reservoir's designation has not changed or give the reservoir a new risk designation. Subsection (3) ensures that the reservoir manager has the full 2 months to make any representations in response to notice given under section 20(3) by preventing SEPA from making a decision about a risk designation before the end of the 2 month period. Subsection (4) requires SEPA to give the reservoir manager a notice specifying the risk designation, the reasons for the risk designation and giving information about the right to review under section 23.

Section 22 – Risk designation and periodic review: matters to be taken into account

40. **Section 22** details the matters that SEPA is to take into account when making a provisional risk designation or a risk designation under sections 18(2), 19(2), 20(2) and 21(2). The matters SEPA must take into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out examples of the matters SEPA may take into account when assessing the probability of an uncontrolled release. Subsection (4) enables the Scottish Ministers after consultation with SEPA and the Institution of Civil Engineers (ICE) to make regulations about any other matters SEPA should take into account when making a risk designation.

Section 23 – Review of SEPA's decisions relating to risk designations

41. **Section 23** enables reservoir managers to seek review of risk designations given by SEPA under sections 19(5) and 21(4). Subsection (2) requires applications for review to be made within 12 months of the date the notice of designation was given. Subsection (3) makes it explicit that the risk designations continue to apply until the review is completed. Subsection (4) provides that if the application for review is upheld then the original designation ceases to apply from the date of SEPA's decision. Subsection (5) sets out how SEPA gives its decision on a review of a risk designation. Subsections (6) and (7) enable SEPA to charge a reasonable fee in relation to applications for review, provided the fee is returnable if the review results in the appeal being upheld.

Section 24 – Appeal to the Scottish Ministers following SEPA's review

42. **Section 24** enables reservoir managers to make an appeal to the Scottish Ministers following a review by SEPA under section 23. Subsection (2) requires appeals to be made within 12 months of SEPA's decision. Subsection (3) makes it explicit that the risk designation continues to apply until the appeal is completed. Subsection (4) enables the Scottish Ministers to appoint at their own expense an engineer from a panel established under section 27 to make recommendations about the risk designation. If they appoint an engineer in these circumstances, subsection (4)(b) requires the Scottish Ministers to take the engineer's recommendations into account before determining an appeal. Subsection (4)(b) also requires the Scottish Ministers to take into account the matters set out in section 22 before determining an appeal. Subsection (5) requires the Scottish Ministers to notify the reservoir manager and SEPA of the outcome of the appeal against a decision made by SEPA in a review of a risk designation and lists the matters that must be specified in the notice.
43. Subsection (6) sets out the circumstances under which the fees charged by SEPA for a review of a decision on a risk designation must be returned to the reservoir manager if the Scottish Ministers give a reservoir a different risk designation. Subsection (7)

enables the Scottish Ministers to make further provision relating to appeals under this section in regulations.

Section 25 – Guidance by SEPA on risk designation

44. Subsection (1) enables the Scottish Ministers to direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs risk designations and reviewing risk designations. Subsection (2) requires SEPA to consult and have regard to advice from the Institution of Civil Engineers before publishing guidance on the matters it takes into account in giving controlled reservoirs risk designations.

Section 26 – High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

45. This section sets out that references in Part 1 to high-risk, medium risk and low risk reservoirs are references to controlled reservoirs designated as such under sections 19, 21, 23 (subject to subsection (3) of that section) or 24 (subject to subsection (3) of that section). Subsection (2) sets out that Chapter 6 makes provision about the requirements related to high and medium risk reservoirs.