



# Reservoirs (Scotland) Act 2011

## 2011 asp 9

### PART 1

#### RESERVOIRS

#### CHAPTER 9

##### CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

##### *Miscellaneous*

#### **86 Consultation in relation to orders under sections 73(1), 78(1), 79(1) and 82(1)**

(1) The consultation required by sections—

- (a) 73(2) (stop notices),
- (b) 78(2) (enforcement undertakings),
- (c) 79(2) (fixed monetary penalties),
- (d) 82(2) (further enforcement measures),

is consultation with the persons and organisations mentioned in subsection (2).

(2) The persons are—

- (a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the making of the proposed order,
- (b) such other persons as the Scottish Ministers consider appropriate.

#### **87 Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures**

Where the Scottish Ministers make provision—

- (a) by order under section 73(1) (giving by SEPA of stop notices),
- (b) by order under section 78(1) (acceptance of enforcement undertakings by SEPA),
- (c) by order under section 79(1) (imposition by SEPA of fixed monetary penalties),

(d) by order under section 82(1) (imposition by SEPA of further enforcement measures),

the order concerned must require SEPA to publish guidance about the use of the powers conferred on it by the order.

## **88 Recovery by SEPA of expenses**

- (1) Provision under section 73(1) or 82(1) may include provision for SEPA, by notice, to require a reservoir manager to whom a stop notice is given or on whom a further enforcement measure is imposed, to pay the amount of any expenses reasonably incurred by SEPA in relation to (and up to the time of) the giving of the notice or (as the case may be) imposition of the measure.
- (2) In subsection (1), the reference to “expenses” includes in particular—
  - (a) investigation expenses,
  - (b) administration expenses,
  - (c) expenses of obtaining expert advice, including legal advice.
- (3) Provision pursuant to subsection (1) must secure that the reservoir manager required to pay the expenses may appeal to the Scottish Ministers against—
  - (a) the decision of SEPA to impose the requirement to pay expenses,
  - (b) the decision of SEPA as to the amount of the expenses.
- (4) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

## **89 Guidance: appeals**

The Scottish Ministers must publish guidance on the process of making appeals in pursuance of sections 69, 74, 75, 78, 80, 83, 85 and 88.

## **90 Publication of enforcement action**

- (1) The Scottish Ministers may by order require SEPA to publish such information as may be specified in the order as regards cases in which it has—
  - (a) appointed a construction engineer, an inspecting engineer or a supervising engineer under section 67,
  - (b) arranged for the taking of any measure under section 71.
- (2) Where the Scottish Ministers make provision by order under—
  - (a) section 73(1) as to the issuing by SEPA of stop notices,
  - (b) section 79(1) as to the imposition by SEPA of fixed monetary penalties,
  - (c) section 82(1) as to the imposition by SEPA of further enforcement measures,
 the order concerned may require SEPA to publish such information as may be specified in the order as regards cases in which it has done what the order permits it to do.
- (3) In subsection (2), the reference to cases in which SEPA has done what the order permits it to do does not include cases where the stop notice, fixed monetary penalty or (as the case may be) further enforcement measure has been imposed but overturned on appeal.

## **91 Powers of entry**

- (1) A person authorised by SEPA is entitled, at any reasonable time for any of the purposes in subsection (2), to enter—
  - (a) land on which a controlled reservoir is situated,
  - (b) land on which SEPA considers there is situated a structure or area (or combination) referred to in section 1(4) in relation to which SEPA is considering requesting the making an order under that subsection,
  - (c) land on which a structure or area which previously at any time has been a controlled reservoir is situated.
  
- (2) The purposes are to carry out an inspection, survey or other operation—
  - (a) to determine whether any provision of this Part applies,
  - (b) for the purpose of assisting SEPA in giving the reservoir a provisional risk designation or risk designation, or reviewing its risk designation,
  - (c) to determine whether a measure directed in a safety report has been taken,
  - (d) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,
  - (e) to determine—
    - (i) whether a measure directed in an inspection report has been taken (whether before or after the giving of a notice under section 69),
    - (ii) the period to be specified in a notice under that section,
  - (f) to determine whether a direction by a supervising engineer under section 50(4) has been complied with,
  - (g) to determine whether the records required by sections 51 and 56 are being maintained,
  - (h) to determine whether incidents are being reported in accordance with regulations under section 54(1),
  - (i) to determine whether a flood plan is being prepared in accordance with regulations under section 55(1),
  - (j) for the purposes of section 71,
  - (k) to determine what (if any) emergency measures should be taken under section 77, or for any purpose connected with taking such measures,
  - (l) to assess whether any offence under this Part may be being committed.

## **92 Warrants authorising entry**

- (1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right of entry under section 91 to do so, if necessary using reasonable force, in accordance with the warrant.
  
- (2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath as to both of the following—
  - (a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,
  - (b) that any of the following applies—
    - (i) the conditions in subsection (3) are satisfied,
    - (ii) the land is unoccupied, or
    - (iii) the case is one of urgency.

- (3) The conditions referred to in subsection (2)(b)(i) are—
- (a) that the person applying for the warrant has given notice under section 93(3) (a) of the person's intention to exercise the right,
  - (b) that the notice period has expired,
  - (c) that either—
    - (i) permission to exercise the right in relation to the land has been refused, or
    - (ii) such a refusal is reasonably expected.
- (4) A warrant granted under this section—
- (a) does not entitle a person to use force against an individual,
  - (b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

### **93 Powers of entry: supplementary**

- (1) Where entry under section 91 is for a purpose in subsection (2)(k) of that section the right to enter extends to any neighbouring land.
- (2) A right to enter land conferred by section 91 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
- (a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person,
  - (b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.
- (3) Except for a purpose referred to in section 91(2)(k), a person may not demand entry to land which is occupied unless either—
- (a) at least 7 days' notice has been given to the occupier, or
  - (b) the entry is authorised by a warrant under section 92.
- (4) Notice under subsection (3)(a) must—
- (a) specify the purpose for which entry is required,
  - (b) specify so far as practicable the nature of the proposed works on the land.
- (5) A person authorised by virtue of section 91 to enter land must on request produce written evidence of the authorisation.

### **94 Offence: preventing or obstructing entry**

- (1) Any person who intentionally prevents or obstructs another person entitled to enter land by virtue of section 91 (whether or not by virtue of a warrant under section 92) commits an offence.
- (2) 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-risk 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.

## **95 Compensation**

- (1) SEPA must pay compensation in accordance with this section where, in the exercise of a right to enter land conferred by section 91 (whether or not under a warrant under section 92) any of the following occurs—
  - (a) any land, other than land which is occupied by the reservoir manager, is damaged,
  - (b) the enjoyment of any land, other than land which is so occupied, is disturbed.
- (2) Compensation is to be paid in respect of the damage or disturbance to—
  - (a) a person with an interest in the land,
  - (b) a person whose enjoyment of the land is disturbed.
- (3) Any dispute about compensation under this section is to be determined by the Lands Tribunal for Scotland.
- (4) Compensation payable under this section is to be treated, for the purposes of recovery from the reservoir manager, as expense incurred by SEPA in the exercise of its powers under section 77.

## **96 Reports by SEPA to the Scottish Ministers**

- (1) SEPA must report to the Scottish Ministers about the steps it has taken to secure the compliance by reservoir managers of controlled reservoirs with the requirements of this Part.
- (2) Reports under subsection (1) must—
  - (a) be at such intervals and times as the Scottish Ministers direct,
  - (b) contain such information as they direct.

## **97 Affording of reasonable facilities to engineers**

- (1) The reservoir manager of a controlled reservoir must, on being requested by a relevant engineer, provide the engineer with all reasonable facilities the engineer may seek in connection with the exercise of the engineer's functions under this Part.
- (2) The reservoir manager—
  - (a) must, on being requested by a relevant engineer, make available to the engineer—
    - (i) where the reservoir is a high-risk reservoir or a medium-risk reservoir, the record maintained by the manager under section 51,
    - (ii) the record maintained by the manager under section 56,
  - (b) must on being so requested, provide a relevant engineer with such further information or particulars as the engineer may require, in such form and manner and by such time as the engineer may by notice require.
- (3) For the purposes of this section, a “relevant engineer” is a construction engineer, an inspecting engineer, an other qualified engineer or a supervising engineer appointed for the time being in relation to the reservoir.

**98 Power of SEPA to require information and assistance**

- (1) The reservoir manager of a controlled reservoir must, on being requested by SEPA, provide SEPA with such information and assistance as it may reasonably seek in connection with the exercise of its powers and duties under this Part.
- (2) The reservoir manager in particular—
  - (a) must, on being requested by SEPA, make available to it the records referred to in section 97(2)(a),
  - (b) must, on being so requested, provide SEPA with such further information or particulars as SEPA may require, in such form and manner as SEPA may by notice require.

**99 Offences: sections 97 and 98**

- (1) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements commits an offence—
  - (a) the requirements of section 97 (affording of reasonable facilities to engineers),
  - (b) the requirements of section 98 (provision of information and assistance to SEPA).
- (2) A reservoir manager of a controlled reservoir who intentionally alters, suppresses or destroys a document which the person has been required by virtue of either of those sections to produce commits an offence.
- (3) A reservoir manager guilty of an offence under subsection (1) or (2)—
  - (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk 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.