



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Stop notices

73 Stop notices

- (1) The Scottish Ministers may by order make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the manager has taken the steps specified in the notice.
- (4) Provision under subsection (1) may confer power to give a stop notice only in relation to a case where the reservoir manager is carrying on the activity and either—
 - (a) SEPA reasonably believes that the activity as carried on by the manager presents a significant risk of causing an uncontrolled release of water from the reservoir, or
 - (b) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under this Part.
- (5) Where provision under subsection (1) confers power to give a stop notice in a case falling within subsection (4)(a)—
 - (a) SEPA must, before it exercises the power—

Changes to legislation: There are currently no known outstanding effects for the Reservoirs (Scotland) Act 2011, Cross Heading: Stop notices. (See end of Document for details)

- (i) at its own expense appoint an engineer who is a member of a panel of reservoir engineers established under section 27 who may (by virtue of an order under that section) be appointed under this subsection, and
- (ii) take into account recommendations made by that engineer about the stop notice,
- (b) the steps specified in any such stop notice in pursuance of subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(a),
- (c) SEPA must give the Scottish Ministers notice of each occasion on which it exercises the power as soon as reasonably practicable after doing so.

Commencement Information

II S. 73 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

74 Stop notices: procedure

- (1) Provision under section 73(1) must secure the results in subsection (2) in a case where a stop notice is given.
- (2) The results are that—
 - (a) the stop notice must comply with subsection (3),
 - (b) the reservoir manager to whom it is given may appeal to the Scottish Ministers against the decision to issue it,
 - (c) where, after giving of the notice, SEPA is satisfied that the manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a “completion certificate”),
 - (d) the notice ceases to have effect on the giving of a completion certificate,
 - (e) the reservoir manager to whom the notice is given may at any time apply for a completion certificate,
 - (f) SEPA must make a decision as to whether to give a completion certificate before the end of the period of 14 days beginning with the day on which the application for the certificate was made,
 - (g) the reservoir manager to whom the notice is given may appeal to the Scottish Ministers against a decision not to give a completion certificate.
- (3) To comply with this subsection a stop notice must include information as to—
 - (a) the grounds for giving the notice,
 - (b) rights of appeal,
 - (c) the consequences of non-compliance.
- (4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA to give a stop notice include that—
 - (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unreasonable,
 - (d) any step specified in the notice is unreasonable,
 - (e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given,

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- (f) the manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.
- (5) 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.
- (6) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA not to give a completion certificate include that—
 - (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unfair or unreasonable.

Commencement Information

I2 S. 74 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

75 Stop notices: compensation

- (1) Provision under section 73(1) must include provision for SEPA to compensate the reservoir manager for loss suffered as the result of the issue of the stop notice.
- (2) Provision pursuant to subsection (1) may provide for compensation—
 - (a) only in cases specified (by the order under section 73(1)),
 - (b) only in relation to descriptions of loss so specified.
- (3) Provision pursuant to subsection (1) must secure that the reservoir manager to whom the stop notice is given may appeal to the Scottish Ministers against—
 - (a) a decision of SEPA not to award compensation,
 - (b) a decision of SEPA as to the amount of the compensation.

Commencement Information

I3 S. 75 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

76 Stop notices: enforcement

- (1) Provision under section 73(1) may provide that where a reservoir manager to whom a stop notice is given does not comply with it, the manager commits an offence and is liable on summary conviction—
 - (a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,
 - (b) in the sheriff court—
 - (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,

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- (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.
- (2) Provision under section 73(1) must provide that it is a defence to a charge in proceedings for an offence created by the order for the person to show both—
- (a) that the failure to comply with the stop notice was as a result of either an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
 - (b) that the person—
 - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
 - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure, and
 - (iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

Commencement Information

I4 S. 76 in force at 1.1.2015 by S.S.I. 2014/348, art. 2, Sch.

Changes to legislation:

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