



# Reservoirs (Scotland) Act 2011

## 2011 asp 9

### PART 1

#### RESERVOIRS

#### CHAPTER 9

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

##### *Taking of safety and other measures*

#### **69 Enforcement notice: safety and other measures**

- (1) This section applies in relation to a controlled reservoir where it appears to SEPA that the reservoir manager has failed to comply with—
  - (a) the manager's duty under section 36(1) (to comply with a direction in a safety report),
  - (b) the manager's duty under section 48(1) (to comply with a direction in an inspection report).
- (2) SEPA may by notice require the reservoir manager to comply with the duty before the end of the period specified in the notice.
- (3) SEPA must consult an engineer appointed by it under this section about the period to be specified in the notice.
- (4) An engineer may be appointed under this section, or section 71, if the engineer 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 section or (as the case may be) section 71.
- (5) Notice under subsection (2) must—
  - (a) specify the measure that SEPA requires to be taken,
  - (b) state SEPA's reasons for considering that this section applies,
  - (c) specify any particular steps SEPA considers must be taken to take the measure.

- (6) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in connection with consultation under this section.
- (7) The Scottish Ministers may by order make provision allowing a reservoir manager to whom notice is given under subsection (2)—
  - (a) to apply to SEPA for a review of its decision to give the notice,
  - (b) to appeal to the Scottish Ministers against the decision to give the notice.
- (8) Any such order—
  - (a) must, where it includes provision for—
    - (i) a right of review, specify the period within which a review may be made,
    - (ii) a right of appeal, specify the period within which an appeal may be made, and
  - (b) may make further provision in relation to reviews and appeals in relation to notices given under subsection (2).

## **70      Offence: failure to comply with notice under section 69(2)**

- (1) Failure to comply with a notice by SEPA under section 69(2) is an offence.
- (2) Where a reservoir manager has a right of review in accordance with an order made under section 69(7), non-compliance is an offence only if—
  - (a) the period within which an application for review may be made has expired, or
  - (b) where such an application has been made, it has been withdrawn or determined.
- (3) Where a reservoir manager has a right of appeal in accordance with an order made under section 69(7), non-compliance is an offence only if—
  - (a) the period within which an appeal may be made has expired, or
  - (b) where such an appeal has been made, it has been withdrawn or determined.
- (4) A reservoir manager guilty of an offence under subsection (1) is liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
  - (b) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

## **71      SEPA's power to arrange taking of safety and other measures**

- (1) This section applies where SEPA has by notice under section 69(2) required a reservoir manager to take a measure and the reservoir manager has failed to do so.
- (2) SEPA may arrange for the taking of the measure under the supervision of an engineer appointed by it under this section.
- (3) Where the engineer is satisfied that the measure has been taken, the engineer must give a certificate to that effect to SEPA.
- (4) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in making arrangements under this section.

**72 Offences under sections 42(1)(d) and 52(1)(c): further remedies**

- (1) This section applies where a reservoir manager is convicted of an offence under—
  - (a) section 42(1)(d) (failure to comply with direction in safety report),
  - (b) section 52(1)(c) (failure to comply with direction in inspection report).
- (2) The court may, in addition to or instead of imposing any penalty competent under section 42(3) or (as the case may be) 52(3), order the reservoir manager to take such steps as are specified in the order, within such period as is so specified—
  - (a) to secure compliance with the direction concerned,
  - (b) to secure the remedying or mitigating of the effects of the failure to comply with the direction.
- (3) The court may—
  - (a) on an application made before the end of the period specified under subsection (2), by order extend the period to such extended period as is specified in the order,
  - (b) on an application made before the end of the extended period, by order further extend the period to such further extended period as is specified in the order,
  - (c) by order grant further extensions of the latest period specified by it by order under paragraph (b), on an application made before the end of the latest period.