



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Appointment of engineers

65 Enforcement notice: appointment of engineer

- (1) This section applies in relation to a controlled reservoir where it appears to SEPA that—
- (a) the reservoir manager is required by section 33(2)(a) to appoint a construction engineer, but no construction engineer is for the time being appointed,
 - (b) the reservoir manager is required by section 45(1)(a) to appoint an inspecting engineer, but no inspecting engineer is for the time being appointed,
 - (c) the reservoir manager is required by section 49(1)(a) to appoint a supervising engineer, but no supervising engineer is for the time being appointed.
- (2) SEPA may by notice require the reservoir manager of the reservoir—
- (a) to make the relevant appointment before the end of the period of 28 days beginning with the day on which the notice is given (unless the reservoir manager has already made the relevant appointment),
 - (b) to give notice to SEPA of the appointment (whether it was made before or after the notice was given).
- (3) In subsection (2)(a) and sections 67 and 68, “the relevant appointment” is the appointment of a construction engineer, an inspecting engineer or (as the case may be) a supervising engineer.

66 Offence: failure to comply with notice under section 65(2)

- (1) Failure to comply with the requirements of a notice by SEPA under the following sections is an offence—
 - (a) section 65(2)(a) (requirement to appoint construction engineer, inspecting engineer or supervising engineer),
 - (b) section 65(2)(b) (notice of appointment to SEPA).
- (2) A reservoir manager guilty of an offence under subsection (1)(a) or (b) 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.

67 Appointment of engineer by SEPA

- (1) SEPA may make the relevant appointment where—
 - (a) it has by notice under section 65(2) required a reservoir manager to make the appointment, and
 - (b) the reservoir manager has failed to make the appointment.
- (2) An appointment by SEPA under this section is to be treated for the purposes of this Part as if the appointment were by the reservoir manager under section 33(2)(a), 45(1)(a) or (as the case may be) 49(1)(a).
- (3) An appointment under this section has no effect if the reservoir manager has already made the relevant appointment.
- (4) An appointment under this section terminates with effect from the date of a subsequent relevant appointment made by the reservoir manager.
- (5) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in pursuance of the exercise of powers under this section.

68 Appointment by SEPA: engineers' reports, certificates, recommendations etc.

Where SEPA makes a relevant appointment under section 67, the following are to be given to SEPA (instead of being given to the reservoir manager) and copied to the reservoir manager not later than 28 days after being given to SEPA—

- (a) where the relevant appointment is that of a construction engineer, any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate by the construction engineer,
- (b) where the relevant appointment is that of an inspecting engineer, any inspection report, interim inspection compliance certificate or inspection compliance certificate by the inspecting engineer,
- (c) where the relevant appointment is that of a supervising engineer, any notice under section 50(2)(a) or (g), recommendation under section 50(3) or statement under section 50(8).

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.

*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—
 - (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.

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,

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- (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,
 - (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.

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.

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,
 - (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.

Emergency powers

77 Emergency powers

- (1) This section applies where it appears to SEPA that immediate action is needed to protect persons or property against an escape of water from a controlled reservoir (whether or not the reservoir is in use).
- (2) SEPA may take any measures that it considers necessary—
 - (a) to remove or reduce the risk to persons or property,
 - (b) to mitigate the effect of an escape of water.
- (3) SEPA must—
 - (a) appoint an engineer to make recommendations about any measures to be taken under this section,
 - (b) arrange for the measures to be taken under the supervision of the appointed engineer.
- (4) An engineer may be appointed under this section 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.

- (5) SEPA must give notice to the reservoir manager of the measures to be taken under this section.
- (6) Notice under subsection (5)—
 - (a) must be given as soon as practicable (which may be after any works have begun), but
 - (b) is not required if SEPA is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.
- (7) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in the exercise of powers under this section.

Other civil enforcement measures

78 Enforcement undertakings

- (1) The Scottish Ministers may by order make provision—
 - (a) as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where SEPA has reasonable grounds to suspect that the manager has committed an offence under this Part,
 - (b) for the acceptance of the undertaking to have the consequences in subsection (5).
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) An “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking before the end of such period as may be so specified.
- (4) The action specified in an enforcement undertaking must be—
 - (a) action to secure that the offence does not continue or recur,
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
 - (c) action (including the payment of a sum of money) to benefit any person adversely affected by the offence,
 - (d) action of a description specified in the order.
- (5) The consequences in this subsection are that, unless the reservoir manager from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
 - (a) the reservoir manager may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,
 - (b) SEPA may not impose on the manager any fixed monetary penalty which it would otherwise have power to impose by virtue of section 79(1) in respect of the act or omission,
 - (c) SEPA may not impose on the manager any further enforcement measure which it would otherwise have power to impose by virtue of section 82(1) in respect of the act or omission.
- (6) Provision under subsection (1) may in particular include provision—
 - (a) as to the procedure for entering into an undertaking,
 - (b) as to the terms of an undertaking,

- (c) as to the publication of an undertaking by SEPA,
- (d) as to the variation of an undertaking,
- (e) as to the circumstances in which a reservoir manager may be regarded as having complied with an undertaking,
- (f) as to the monitoring by SEPA of compliance with an undertaking,
- (g) as to the certification by SEPA that an undertaking has been complied with,
- (h) allowing an application for a review by SEPA before an appeal to the Scottish Ministers against refusal to give such certification,
- (i) in a case where a reservoir manager has given inaccurate, misleading or incomplete information in relation to the undertaking, for the manager to be regarded as not having complied with it,
- (j) in a case where a reservoir manager has complied partly but not fully with an undertaking, for the part-compliance to be taken into account in the imposition of any criminal or other sanction on the manager,
- (k) extending any period within which criminal proceedings may be instituted against a reservoir manager in respect of the offence in the event of breach of an undertaking or any part of it,
- (l) for the creation of offences,
- (m) for any offence created to be triable only summarily,
- (n) for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
- (o) for it to be a defence to a charge in proceedings for an offence created by the order for a person to show both—
 - (i) that the failure to comply with the requirements concerned 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
 - (ii) that the person took all practicable steps to prevent an uncontrolled release of water from the reservoir, took all practicable steps as soon as was reasonably practicable to rectify the failure and provided particulars of the failure to SEPA as soon as practicable after the failure arose.

79 Fixed monetary penalties

- (1) The Scottish Ministers may by order make provision about the imposition by SEPA of fixed monetary penalties on reservoir managers of controlled reservoirs in relation to offences under this Part.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) Provision under subsection (1) must provide that—

- (a) fixed monetary penalties may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,
 - (b) fixed monetary penalties are to be imposed by notice,
 - (c) the amount of the penalty which can be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for the offence.
- (4) A fixed monetary penalty is a requirement to pay to SEPA a penalty of a specified amount (with payment attracting the results mentioned in paragraphs (a) and (b) of section 81(2)).
- (5) For the purposes of this section and section 80 “specified” means specified in an order made under subsection (1).

80 Fixed monetary penalties: procedure

- (1) Provision under section 79(1) must secure the results in subsection (2).
- (2) The results are that—
- (a) where SEPA proposes to impose a fixed monetary penalty on a reservoir manager, it must give the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
 - (b) the notice of intent also offers the manager the opportunity to discharge the manager’s liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
 - (c) if the manager does not so discharge liability—
 - (i) the manager may make written representations and objections to SEPA in relation to the proposed imposition of the fixed monetary penalty,
 - (ii) SEPA must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where SEPA decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5),
 - (e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Scottish Ministers against the decision to impose it.
- (3) To comply with this subsection, the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
 - (b) how payment to discharge the liability for a fixed monetary payment may be made,
 - (c) the effect of payment of the sum referred to in subsection (2)(b),
 - (d) the right to make written representations and objections,
 - (e) the circumstances in which SEPA may not impose the fixed monetary penalty,
 - (f) the period within which liability for the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was given,
 - (g) the period within which representations and objections may be made, which must not exceed that period of 28 days.
- (4) Provision to secure the result in subsection (2)(c)(ii)—

- (a) must secure that SEPA may not decide to impose a fixed monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
 - (b) may include provision for other circumstances in which SEPA may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection the final notice must include information as to—
 - (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal,
 - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA include that—
 - (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unreasonable.
- (7) Provision to secure the result in 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.

81 Fixed monetary penalties: criminal proceedings and conviction etc.

- (1) Provision under section 79(1) must secure that, in a case where a notice of intent referred to in section 80(2)(a) is given to a reservoir manager—
 - (a) no criminal proceedings for the offence to which the notice relates may be instituted against the manager in respect of the act or omission to which the notice relates before the end of the period in which the manager may discharge liability for the fixed monetary penalty pursuant to section 80(2)(b),
 - (b) SEPA may not before the end of that period give a stop notice to or impose a further enforcement measure on the manager in respect of the act or omission giving rise to the notice,
 - (c) if the manager so discharges liability—
 - (i) the manager may not at any time be convicted of the offence to which the notice relates in relation to that act or omission,
 - (ii) SEPA may not give a stop notice to or impose a further enforcement measure on the manager in respect of that act or omission.
- (2) Provision under section 79(1) must also secure that, in a case where a fixed monetary penalty is imposed on a reservoir manager—
 - (a) the manager may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,
 - (b) SEPA may not give a stop notice to or impose a further enforcement measure on the manager in respect of the act or omission giving rise to the penalty.

82 Further enforcement measures

- (1) The Scottish Ministers may by order make provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures in relation to offences under this Part.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) Provision under subsection (1)—
 - (a) must provide that further enforcement measures—
 - (i) may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,
 - (ii) may not be imposed on a reservoir manager on more than one occasion in relation to the same act or omission,
 - (iii) are to be imposed by notice,
 - (b) may provide that further enforcement measures may be imposed in addition to any requirement referred to in section 65(2) or 69(2).
- (4) A further enforcement measure is any of the following—
 - (a) a requirement to pay to SEPA a penalty of such amount as SEPA may in each case determine (but not exceeding the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction),
 - (b) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the offence does not continue or recur,
 - (c) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the position is so far as possible restored to what it would have been if the offence had not been committed.
- (5) For the purposes of this Part—
 - a “variable monetary penalty” means a requirement referred to in subsection (4)(a),
 - a “restraint notice” means a requirement referred to in subsection (4)(b),
 - a “restoration notice” means a requirement referred to in subsection (4)(c).

83 Further enforcement measures: procedure

- (1) Provision under section 82(1) must secure the results in subsection (2).
- (2) The results are that—
 - (a) where SEPA proposes to impose a further enforcement measure on a reservoir manager, it must give the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
 - (b) the reservoir manager may make written representations and objections to SEPA in relation to the proposed imposition,
 - (c) after the end of the period for making such representations and objections, SEPA must decide whether to—
 - (i) impose the further enforcement measure (with or without modifications),

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- (ii) impose any other further enforcement measure which SEPA may impose,
 - (d) where SEPA decides to impose a further enforcement measure, the notice (the “final notice”) complies with subsection (6),
 - (e) the reservoir manager on whom a further enforcement measure is imposed may appeal to the Scottish Ministers against the decision to impose it.
- (3) To comply with this subsection, the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the further enforcement measure,
 - (b) the right to make representations and objections,
 - (c) the circumstances in which SEPA may not impose the further enforcement measures,
 - (d) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent is given.
- (4) Provision to secure the result in subsection (2)(c)—
- (a) must secure that SEPA may not decide to impose a further enforcement measure on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
 - (b) may include provision for other circumstances in which SEPA may not decide to impose a further enforcement measure.
- (5) Provision to secure the result in subsection (2)(c) must also include provision for—
- (a) the reservoir manager to whom the notice of intent is given to be able to offer an undertaking as to action to be taken by the manager (including the payment of a sum of money) to benefit any person affected by the offence,
 - (b) SEPA to be able to accept or reject such an undertaking,
 - (c) SEPA to take any undertaking so accepted into account in its decision.
- (6) To comply with this subsection the final notice must include information as to—
- (a) the grounds for imposing the further enforcement measure,
 - (b) where the further enforcement measure is a variable monetary penalty—
 - (i) how payment may be made,
 - (ii) the period within which payment must be made,
 - (iii) any early payment discounts or late payment penalties,
 - (c) rights of appeal,
 - (d) the consequences of non-compliance.
- (7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA include the following—
- (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (d) in the case of a restraint notice or a restoration notice, that the nature of the requirement is unreasonable,
 - (e) that the decision was unreasonable for any other reason.

- (8) Provision to secure the result in 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.

84 Further enforcement measures: criminal proceedings and conviction

- (1) Provision under section 82(1) must secure the result in subsection (2) in any of the following cases—
- (a) where a further enforcement measure is imposed on a reservoir manager,
 - (b) where an undertaking referred to in section 83(5) is accepted from a reservoir manager.
- (2) The result is that the reservoir manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the further enforcement measure or undertaking except in a case mentioned in subsection (3).
- (3) The case is where each of the following applies—
- (a) a restraint notice or restoration notice is imposed on the manager, or an undertaking referred to in section 83(5) is accepted from the manager,
 - (b) no variable monetary penalty is imposed,
 - (c) the manager fails to comply with the restraint notice, restoration notice or undertaking.
- (4) Provision under section 82(1) may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the reservoir manager.

85 Further enforcement measures: enforcement

- (1) Provision under section 82(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to SEPA if the manager fails to comply with any of the following—
- (a) a restraint notice or restoration notice imposed on the manager,
 - (b) an undertaking referred to in section 83(5).
- (2) Provision pursuant to subsection (1) may—
- (a) specify the amount of the non-compliance penalty,
 - (b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,
 - (c) provide for the amount to be determined by SEPA,
 - (d) provide for the amount to be determined in any other way,
- but may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction.
- (3) Provision pursuant to subsection (1) must secure that—
- (a) the non-compliance penalty is imposed by notice given by SEPA,
 - (b) the reservoir manager on whom it is imposed may appeal to the Scottish Ministers against the notice.

- (4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection include the following—
- (a) that the decision to give the notice was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) that the decision was unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).
- (5) An order under section 82(1) may provide that where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

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.