



# Reservoirs (Scotland) Act 2011

## 2011 asp 9

### PART 3

#### GENERAL

#### **110 Crown application**

- (1) Part 1 of this Act binds the Crown and applies to any Crown land as it applies in relation to any other land.
- (2) The modifications made by Part 2 bind the Crown to the extent that the enactment modified binds the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.
- (4) But the Court of Session may, on the application of SEPA or a person authorised by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.
- (6) The powers conferred by section 91 (whether those specified in that section or the ancillary powers referred to in section 93(1) or (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.
- (7) In subsection (6)—
  - (a) “Crown land” means land, an interest in which—
    - (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
    - (ii) belongs to an office-holder in the Scottish Administration or to a government department,
    - (iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
  - (b) “appropriate authority”, in relation to any land—

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*Status: This is the original version (as it was originally enacted).*

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- (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
  - (ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
  - (iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
  - (iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means the office-holder or government department.
- (8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty's private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).
- (9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

## **111 Offences by bodies corporate**

- (1) Where—
- (a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association,
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,
 the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, the members,
  - (b) in relation to a Scottish partnership, a partner,
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

## **112 Consequential amendment and repeals**

- (1) In section 14(2)(a) of the Local Government and Planning (Scotland) Act 1982 (c.43), for “(within the meaning of the Reservoirs Act 1975)” substitute “(within the meaning

of the Reservoirs (Scotland) Act 2011 (asp 9) but irrespective of the volume of water held in the reservoir)”.

- (2) Paragraph 98 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) is repealed.
- (3) Paragraph 7 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3) is repealed.
- (4) In section 55(2)(f) of the Building (Scotland) Act 2003 (asp 8), for “large raised reservoir within the meaning of the Reservoirs Act 1975 (c.23)” substitute “controlled reservoir within the meaning of the Reservoirs (Scotland) Act 2011 (asp 9)”.
- (5) Part 7 of the Flood Risk Management (Scotland) Act 2009 (asp 6) is repealed.

### **113 Ancillary provision**

- (1) The Scottish Ministers may by order make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provisions of this Act.
- (2) An order under subsection (1) may modify any enactment, instrument or document.

### **114 Orders and regulations**

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.
- (2) Any such power includes power to make—
  - (a) in the case of an order under section 116(1) (commencement orders), such transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
  - (b) in the case of any other order or any regulations—
    - (i) such supplemental, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
    - (ii) different provision for different purposes.
- (3) Unless subsection (4) provides otherwise, a statutory instrument containing an order (other than an order made under section 116(1)) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Parliament.
- (4) An order or regulations must not be made under any of the following provisions unless a draft of the statutory instrument containing the order or (as the case may be) the regulations has been laid before, and approved by a resolution of, the Parliament—
  - (a) section 1(4),
  - (b) section 1(6)(a),
  - (c) section 22(4),
  - (d) section 54(1) or 55(1),
  - (e) section 69(7),
  - (f) section 73(1), 78(1), 79(1), 82(1) or 107,
  - (g) section 113(1) (if the order contains supplemental provision or provision which adds to, replaces or omits any part of the text of an Act).

**115      Defined expressions**

The expressions listed in the schedule are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

**116      Commencement and short title**

- (1) The provisions of this Act, except this section and sections 1, 2, 3, 7, 114 and 115, come into force on such day as the Scottish Ministers by order appoint.
- (2) This Act may be cited as the Reservoirs (Scotland) Act 2011.