

RESERVOIRS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Reservoirs

Chapter 6 – Other Requirements: High-Risk Reservoirs and Medium Risk Reservoirs

Section 45 – Appointment of inspecting engineer etc

71. This section requires managers of high risk and medium risk reservoirs to appoint an inspecting engineer to carry out an inspection of the reservoir at each of the times specified in section 46. Subsection (1)(b) requires the reservoir manager to notify SEPA of the appointment within 28 days. Subsection (2) sets out who may be appointed and requires the engineer to be a member of a panel of reservoir engineers established under Section 27. Because inspecting engineers are intended to have a degree of independence from the reservoir manager that appoints them, subsection (3) sets out that an engineer is disqualified from being appointed as an inspecting engineer in relation to a particular reservoir if he or she is employed by a reservoir manager of that reservoir or if he or she has previously been (or is connected to) a construction engineer for the reservoir.

Section 46 – Inspections: timing

72. This section requires, except where a construction engineer is appointed to supervise relevant works at a reservoir, inspections of high risk reservoirs to be carried out within 2 years of a final certificate being issued for the reservoir, at any time recommended by the supervising engineer or recommended in an inspection report and within 10 years of the latest inspection. Subsection (2) requires medium risk reservoirs to be inspected at such times as the supervising engineer recommends except where a construction engineer is appointed to supervise relevant works at the reservoir.
73. Subsection (3)(a) cancels inspections which are due to be carried out where a construction engineer is appointed to supervise relevant works. Subsection (3)(b) requires subsequent inspections to be carried out for high risk reservoirs before the end of the period of 2 years beginning with the date of any final certificate applicable to the reservoir. It also requires subsequent inspections to be carried out for medium risk reservoirs at any time recommended by the supervising engineer, although the time recommended must be at least 2 years following the issue of the final certificate for the relevant works. Subsection (4) defines the term “supervising engineer” for the purposes of this section and section 47.

Section 47 – Inspections: duties of inspecting engineers etc.

74. This section requires the inspecting engineer to inspect the reservoir, issue an inspection report to the reservoir manager within 9 months of completing the inspection, and issue inspection compliance certificate in accordance with section 48. Subsection (2) requires the reservoir manager to give the inspecting engineer a copy of the latest inspection

report for the reservoir if they have one. Subsection (3) requires the inspection report to include any measures the inspecting engineer considers should be taken in the interest of safety including any measures for the maintenance of the reservoir. It also requires the inspection report to specify whether any of the measures from the previous report are not included in the current report and why. Subsection (3)(d) requires the report to direct the reservoir manager to ensure that the measures specified in the inspection report for the maintenance of the reservoir are monitored by the supervising engineer and that the other measures specified in the inspection report are undertaken within a specified period of time under the supervision of the inspecting engineer or other qualified engineer (as may be appointed under section 48(2)). Subsections (3)(e) and (f) require inspection reports to specify the timing of the next inspection and any matters that should be monitored by the supervising engineer until that inspection occurs. Subsection (3)(g) enables the inspection report to include recommendations on other matters relevant to the maintenance of the reservoir which do not require measures to be specified under subsection (3)(a).

75. Subsection (4) requires the inspecting engineer to give a copy of the report to SEPA and the supervising engineer within 28 days. Subsection (5) defines the terms “the inspecting engineer”, “the other qualified engineer” and “the reservoir manager” for the purposes of sections 47 and 48.

Section 48 – Inspections reports: compliance

76. This section requires reservoir managers to comply with the directions in the inspection report (either themselves or by ensuring that the measures are taken). Subsection (2) enables the reservoir manager to appoint any “other qualified engineer” who is an engineer eligible to be an inspecting engineer. That “other qualified engineer” can be appointed to supervise any of the measures specified in the inspection report. If an appointment is made the reservoir manager must notify SEPA and the inspecting engineer as soon as practicable after making the appointment. Subsection (3) requires the inspecting engineer or the other qualified engineer to issue interim compliance inspection certificates for completed measures they are responsible for supervising to the reservoir manager within 28 days of being satisfied they have been completed.
77. Subsection (4) lists the things that are to be included in an interim inspection compliance certificate. When the inspecting engineer or other qualified engineer is satisfied all of the measures have been completed, subsection (5) requires him or her to issue the reservoir manager with an inspection compliance certificate within 28 days. Subsection (6) requires the engineer issuing an inspection compliance certificate to take an interim inspection compliance certificate as conclusive of the measure having been taken. Subsection (7) lists the things which must be included in an inspection compliance certificate. Subsection (8) requires the engineer to give a copy of the certificates under this section to SEPA within 28 days of issue. Subsection (9) makes it clear that measures for the maintenance of the reservoir to be taken in the interests of safety do not require interim inspection compliance certificates and do not need to be taken into account in the inspection compliance certificate.

Section 49 – Appointment of supervising engineers etc.

78. If the reservoir is not being constructed or restored to use, this section requires the reservoir manager of high and medium risk controlled reservoirs to appoint a supervising engineer to supervise the reservoir in accordance with section 50 and notify SEPA of the appointment within 28 days. A supervising engineer must be in place at all times unless the reservoir is being constructed or restored to use. Subsection (2) makes it clear that a reservoir manager does not need to appoint a supervising engineer before a final certificate is issued for the reservoir where it is being constructed or restored to use. Subsection (3) requires the supervising engineer to be a member of a panel of reservoir engineers established under section 27 who is eligible to be appointed under this section. Unlike inspecting engineers, there is nothing to prevent a supervising engineer being an

employee of the reservoir manager or having previously been a construction engineer in relation to the reservoir.

Section 50 – Supervising engineer and monitoring of reservoir

79. This section requires the appointed supervising engineer to supervise the reservoir. Subsection (2) lists the things he or she must do including: notify the reservoir manager of any matters which could affect the safety of the reservoir; monitor compliance with any relevant safety report, preliminary certificate, final certificate or direction given in an inspection report; notify the reservoir manager and SEPA of any failure to comply with any relevant safety report, preliminary certificate, final certificate or direction given in an inspection report; monitor any matter specified in certificates or inspection reports; supervise any proposed non-routine draw-down of the reservoir; and monitor the reservoir manager's recording of water levels and record keeping.
80. Subsection (8) requires the supervising engineer to give the reservoir manager an annual written statement of the steps taken by the supervising engineer in relation to his or her responsibilities under subsection (2)(a) to (h), any measures taken by the reservoir manager in the interest of safety or to maintain the reservoir and any failures to comply with the listed requirements, directions and recommendations. Subsection (10) requires the supervising engineer to send a copy of this written statement to SEPA within 28 days.
81. If the supervising engineer considers that a reservoir should be inspected, subsection (3) requires the supervising engineer to give a written recommendation to this effect to the reservoir manager which specifies when the inspection should take place and to give SEPA a copy of the recommendation within 28 days of issuing it. Subsections (4) and (5) require the reservoir manager to carry out physical inspections of the reservoir at specified intervals if directed by the supervising engineer. Subsection (6) requires the reservoir manager to keep a record of these physical inspections to be made available to the supervising engineer on request. Subsections (6) and (7) also require the reservoir manager to notify the supervising engineer of anything that may affect the safety of the reservoir which was identified during the inspections as soon as reasonably practical after the inspection. Under section 52(1)(g) it is an offence not to do so. Subsection (9) requires the supervising engineer to provide the reservoir manager with emergency contact details. Subsection (11) enables the Scottish Ministers to publish guidance on the supervision of high and medium risk reservoirs. Subsection (12) defines the terms "draw-down", "the supervising engineer" and "the reservoir manager" for the purposes of this section.

Section 51 – Recording of water levels etc and record keeping etc

82. This section requires the reservoir manager of high and medium risk reservoirs to record and maintain specific matters in relation to the reservoir. Subsection (1) lists the matters to be recorded under this section. Subsection (2) enables the Scottish Ministers to make further provision in regulations as to the information to be recorded by reservoir managers and the form of the record to be maintained. Subsection (3) enables construction engineers, inspecting engineers or supervising engineers appointed to a reservoir to direct the reservoir manager as to the manner in which the records are to be kept and how often they should be updated. Subsection (4) requires the reservoir manager to comply with any such directions. Subsection (5) requires the reservoir manager to install any instruments necessary to provide the information to be recorded under this section.

Section 52 – Offences: inspections, supervision, record keeping

83. This section makes it an offence to fail to comply with sections 45(1)(a), 46, 45(1)(b), 48(1), 49(1)(a) and 49(1)(b), directions under section 50(4), the requirements of section 50(6)(c) and section 51. Subsection (2) makes it an offence to fail to comply

*These notes relate to the Reservoirs (Scotland) Act 2011
(asp 9) which received Royal Assent on 12 April 2011*

with section 47(2) without reasonable excuse. Subsection (3) sets out the liabilities of anyone committing an offence under this section.

Section 53 – Defences: offence under section 52(1)(c)

84. **Section 53** sets out certain defences to offences under section 52(1)(c).