

RESERVOIRS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Reservoirs

Chapter 1 – Controlled Reservoirs, Reservoir Managers Etc.

Section 1 – Controlled Reservoirs

7. The regulatory regime provided for in the Act only applies to “controlled reservoirs” as defined by the Act. The definition of a “controlled reservoir” is set out in sections 1 and 2 and includes structures designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Subsection (3) provides that combinations of such structures are to be treated as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can or does flow between them and there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity and flow. This is intended to ensure that cascades or series of interlinked reservoirs are subject to control. Such combinations have the potential to cause a similar degree of risk to public safety as larger individual reservoirs, notwithstanding that the individual structures that comprise the combination might only hold a relatively small volume of water.
8. Subsection (4) enables the Scottish Ministers to provide by order that a particular structure or combination of structures is to be treated as a controlled reservoir notwithstanding that it may not meet the criteria set out in subsection (2) or (3). When doing so the Scottish Ministers must take into account the potential adverse consequences of an uncontrolled release of water from the structure or combination and the probability of such a release. This provision enables the Scottish Ministers to treat a smaller reservoir as a controlled reservoir if it is thought that, despite its smaller capacity, the risk that it poses is nevertheless a serious one.
9. Subsection (6)(a) enables the Scottish Ministers to make provision by order for a different volume of water to be substituted for the volume currently specified in sections 1(2), (3)(b) and (4)(b)(ii), sections 32(3) and (5), and sections 35(2)(b) and 39(3)(b). This enables the Scottish Ministers to alter the threshold above which reservoirs are deemed to be controlled reservoirs and therefore subject to the regulatory regime of the Act. Subsection (6)(b) enables the Scottish Ministers to determine in regulations when a loch or area is considered to be artificial or partly artificial, how the volume of water capable of being held is calculated, and the meaning of “natural level” and “surrounding land” for the purposes of this Part of the Act. Subsection (7) requires the Scottish Ministers to consult the Institution of Civil Engineers about the volume of water which should be specified in an order under subsection (6)(a) before making the order.

Section 2 – Controlled reservoirs: supplementary

10. **Section 2(1)** sets out some of the elements that comprise a “controlled reservoir” to avoid any doubt about whether these elements are covered by the Act. Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Act. Subsection (3) enables the Scottish Ministers to define with more precision what structures are not controlled reservoirs and enables them to exclude other things from being (or being treated as) controlled reservoirs.

Section 3 – Reservoir Managers

11. Responsibility for complying with most of the requirements of the Act is placed upon individuals referred to in the Act as “reservoir managers”. Section 3 sets out who the reservoir manager of a controlled reservoir is for the purposes of the Act.
12. Subsection (2) provides that Scottish Water is the reservoir manager for all controlled reservoirs that are managed or operated by it. Where Scottish Water is the reservoir manager on this basis, there can be no other reservoir managers of that reservoir.
13. Taken together, subsections (3) and (4) determine who the reservoir manager is where Scottish Water do not manage or operate the reservoir. Where the reservoir or any part of the reservoir is managed or operated by a particular person who is not the owner of the reservoir or that part of it, that person is the reservoir manager. If no person other than the owner manages or operates the reservoir, or any part of it, the responsibility of being reservoir manager falls to the owner (or owners) of the reservoir or parts of the reservoir.
14. Where there is more than one person managing or operating the reservoir, each will be a reservoir manager (i.e. there will be more than one reservoir manager).
15. Where part only of the reservoir is managed or operated by a person other than an owner, both that person and the owner of the other part will be the reservoir managers.
16. Subsection (4)(a) sets out that managing or operating a reservoir includes controlling the flow of water in or out of the reservoir. Subsection (4)(b) provides that references to managing or operating a reservoir in relation to a reservoir which is being constructed or restored to use are to be read as references to proposing to manage or operate the reservoir.

Section 4 – Multiple reservoir managers: supplementary

17. **Section 4** makes provision about the situation where there is more than one reservoir manager in relation to a controlled reservoir. Section 4(2) provides that the requirements of Part 1 of the Act apply to each and every reservoir manager separately and any duties of the reservoir manager set out under the Act have to be complied with by each of them. To avoid the duplication that this may cause and reduce the administrative burden placed on reservoir managers by the Act; subsection (3) enables reservoir managers to nominate one of their number to fulfil any requirements of Part 1 to which they are all subject. Where such a nomination is made, subsection (4) requires the nominating managers to give notice of the nomination to SEPA and to any engineer appointed in relation to the reservoir. Where such a nomination is made, SEPA may (if it so chooses) notify and consult only the nominated reservoir manager (to the exclusion of other reservoir managers of that reservoir) when required to consult the reservoir manager of that reservoir under the Act. Similarly, engineers appointed under the Act may give certificates and other documents that they are required to issue under the Act to the nominated reservoir manager only.

Section 5 – Duty of multiple reservoir managers to cooperate

18. **Section 5** requires reservoir managers, where there are 2 or more of them in respect of a controlled reservoir, to cooperate with each other as far as is necessary to enable

all of the reservoir managers for the reservoir to comply with the provisions listed in subsection (1). Subsection (2) makes it an offence not to cooperate under subsection (1). Subsections (3) and (4) set out the maximum penalties associated with that offence.

Section 6 – Guidance by SEPA: management of reservoirs

19. **Section 6** requires SEPA to publish guidance regarding the management of controlled reservoirs by reservoir managers and cooperation among multiple reservoir managers by such date as the Scottish Ministers direct. Subsection (2) requires SEPA to consult the Institution of Civil Engineers and any other persons it considers appropriate before publishing such guidance.

Section 8 – The 1975 Act and its repeal

20. The Act replaces the safety regime for reservoirs in Scotland that was provided by the Reservoirs Act 1975 and so section 8(2) repeals the Reservoirs Act 1975 for Scotland.

Chapter 2 – Registration

Section 9 – Controlled reservoirs register

21. **Section 9** requires SEPA to establish and maintain a register of controlled reservoirs.
22. Subsection (2) lists the information which must be included in the register for each controlled reservoir, which includes information such as the name and location of the reservoir, its maximum capacity, and the name and address of the reservoir manager, as well as copies of any reports, certificates and written statements relating to the reservoir, and a map showing where the water would be likely go in the event of an uncontrolled release of water from the reservoir. Subsection (3) enables the Scottish Ministers to make further provision in regulations to require further information to be contained in the register and make provision about the manner in which information in the register is to be recorded in the register.
23. Subsection (4) requires SEPA to make the register available for public inspection and subsection (5) enables the Scottish Ministers by order to stipulate where it is to be kept.

Section 10 – Reservoir managers’ duty to register

24. This section requires the reservoir managers of controlled reservoirs to register their reservoirs with SEPA. Subsection (2) enables the Scottish Ministers to make further provision in regulations about the information to be registered and the timing by which information, or any change to information has to be registered.

Section 11 – Controlled reservoirs required to be registered under the 1975 Act

25. This section requires controlled reservoirs which were previously “large raised reservoirs” under the 1975 Act (and therefore already registered under that Act) to be registered by SEPA within 6 months of the date of commencement of section 9 of the Act.

Section 12 – Controlled reservoirs not required to be registered under the 1975 Act

26. This section enables the Scottish Ministers to specify by order the date by which reservoirs which were not required to be registered under the 1975 Act have to be registered. Subsection (1) requires reservoir managers of these reservoirs to register the reservoir by the time specified in the order.

Section 13 – Controlled reservoirs which become controlled reservoirs after the relevant date

27. This section requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. Preliminary certificates are issued under section 37 when the construction engineer overseeing the construction of the reservoir considers that the reservoir may safely be filled (either wholly or partly) with water.

Section 14 – Fees: registration and administration

28. **Section 14** enables the Scottish Ministers to make regulations enabling SEPA to charge reservoir managers fees in relation to registration and other annual or recurring fees in relation to the performance of SEPA's functions under Part 1 of the Act. Subsection (2) requires the Scottish Ministers, when making any such regulations, to have regard to the reasonable cost of exercising the functions in relation to which the fees are to be charged. Subsection (3) requires the regulations to specify how SEPA is to determine and charge fees and to require SEPA to set out its fees in a charging scheme and consult persons affected by the fees before it publishes or revises the charging scheme. Subsection (4) enables the Scottish Ministers to include such other matters in the regulations as they deem appropriate and sets out examples of what those matters may be.

Section 15 – Registration: supplementary

29. **Section 15(1)** and (2) require reservoir managers to notify SEPA within 28 days of any change in the reservoir manager of a controlled reservoir and the date of that change. Where SEPA has been informed of a change in management of a reservoir under subsection (1) or (2), subsection (3) requires SEPA, as soon as reasonably practicable, to inform the new reservoir manager of the duties incumbent upon them under the Act. Subsection (4) enables the Scottish Ministers to make regulations requiring SEPA to prepare and publish guidance on registration and to consult the Institution of Civil Engineers before preparing such guidance.

Section 16 – Transfer of information from existing relevant authorities

30. This section contains detailed provision about the transfer of information from local authorities (who were the enforcement authority under the 1975 Act) to SEPA (who must enforce the new regime under the Act). Subsection (1) requires local authorities to hand over relevant registers, records and other relevant information to SEPA. Subsection (2) requires each local authority to give SEPA any assistance it may reasonably require for the purposes of taking over as enforcement authority. Subsections (3) to (6) contain transitional arrangements to ensure that acts by local authorities when they were enforcement authorities remain valid and to allow SEPA to take over responsibility for ongoing legal proceedings and other work.

Section 17 – Offences: registration

31. **Section 17(1)** provides that it is an offence for a reservoir manager to fail to comply with the specified registration requirements. Subsection (2) sets out that it is an offence to knowingly or recklessly give false information in relation to registration or changes of reservoir managers. Subsections (3) and (4) set out the maximum penalties for anyone found guilty of an offence under this section. Subsection (5) sets out a defence for the subsection (1) offence.

Chapter 3 – Risk Designation

Section 18 – Provisional risk designation

32. The Act is intended to create a risk-based regulatory regime with differing regulatory requirements for controlled reservoirs designated as being of different risk categories. The risk designation process is set out in sections 18 to 26.
33. **Section 18** requires SEPA to give controlled reservoirs a provisional risk designation as soon as reasonably practicable after it has registered the reservoir.
34. The categories of risk provided for in the Act are high, medium and low risk. Subsection (2) requires SEPA to take account of the matters in section 22 when giving the risk designation, which are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release.
35. Reservoir managers will have the opportunity to make representations to SEPA regarding the provisional designation. Subsection (4) provides for the giving of a notice by SEPA to the reservoir manager specifying the provisional risk designation, the reasons for it, how representations may be made in respect of it, and the time limit for making any such representations.

Section 19 – First risk designation

36. Following the giving of a provisional risk designation, SEPA must give the controlled reservoir a risk designation. Section 19 requires SEPA to do this as soon as is reasonably practicable after taking into account any representations made by the reservoir manager in response to the provisional risk designation within the period specified in section 18(4)(d). SEPA may not give a risk designation under this section earlier than 2 months after notice of the provisional risk designation was given to allow the reservoir manager to make representations within this period.
37. Reservoir managers have a right of review under section 23 against the risk designation and the notice issued by SEPA notifying the reservoir manager of the risk designation must inform the reservoir manager of that right. Following a review there is a right of appeal under section 24.

Section 20 – Periodic review of risk designation

38. **Section 20** requires SEPA to review the risk designation of a controlled reservoir should SEPA have reason to believe that the risk designation is no longer appropriate or, in any event, at least every 6 years. As with the initial risk designation, SEPA must provisionally determine the risk designation that is under periodic review and the reservoir manager will have 2 months to make representations regarding the risk designation given as a result of the periodic review.

Section 21 – Decision following a periodic review

39. **Section 21** requires SEPA after taking into account any representations made by the reservoir manager in response to the notice given under Section 20(3) to either confirm the reservoir's designation has not changed or give the reservoir a new risk designation. Subsection (3) ensures that the reservoir manager has the full 2 months to make any representations in response to notice given under section 20(3) by preventing SEPA from making a decision about a risk designation before the end of the 2 month period. Subsection (4) requires SEPA to give the reservoir manager a notice specifying the risk designation, the reasons for the risk designation and giving information about the right to review under section 23.

Section 22 – Risk designation and periodic review: matters to be taken into account

40. **Section 22** details the matters that SEPA is to take into account when making a provisional risk designation or a risk designation under sections 18(2), 19(2), 20(2) and 21(2). The matters SEPA must take into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out examples of the matters SEPA may take into account when assessing the probability of an uncontrolled release. Subsection (4) enables the Scottish Ministers after consultation with SEPA and the Institution of Civil Engineers (ICE) to make regulations about any other matters SEPA should take into account when making a risk designation.

Section 23 – Review of SEPA’s decisions relating to risk designations

41. **Section 23** enables reservoir managers to seek review of risk designations given by SEPA under sections 19(5) and 21(4). Subsection (2) requires applications for review to be made within 12 months of the date the notice of designation was given. Subsection (3) makes it explicit that the risk designations continue to apply until the review is completed. Subsection (4) provides that if the application for review is upheld then the original designation ceases to apply from the date of SEPA’s decision. Subsection (5) sets out how SEPA gives its decision on a review of a risk designation. Subsections (6) and (7) enable SEPA to charge a reasonable fee in relation to applications for review, provided the fee is returnable if the review results in the appeal being upheld.

Section 24 – Appeal to the Scottish Ministers following SEPA’s review

42. **Section 24** enables reservoir managers to make an appeal to the Scottish Ministers following a review by SEPA under section 23. Subsection (2) requires appeals to be made within 12 months of SEPA’s decision. Subsection (3) makes it explicit that the risk designation continues to apply until the appeal is completed. Subsection (4) enables the Scottish Ministers to appoint at their own expense an engineer from a panel established under section 27 to make recommendations about the risk designation. If they appoint an engineer in these circumstances, subsection (4)(b) requires the Scottish Ministers to take the engineer’s recommendations into account before determining an appeal. Subsection (4)(b) also requires the Scottish Ministers to take into account the matters set out in section 22 before determining an appeal. Subsection (5) requires the Scottish Ministers to notify the reservoir manager and SEPA of the outcome of the appeal against a decision made by SEPA in a review of a risk designation and lists the matters that must be specified in the notice.
43. Subsection (6) sets out the circumstances under which the fees charged by SEPA for a review of a decision on a risk designation must be returned to the reservoir manager if the Scottish Ministers give a reservoir a different risk designation. Subsection (7) enables the Scottish Ministers to make further provision relating to appeals under this section in regulations.

Section 25 – Guidance by SEPA on risk designation

44. Subsection (1) enables the Scottish Ministers to direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs risk designations and reviewing risk designations. Subsection (2) requires SEPA to consult and have regard to advice from the Institution of Civil Engineers before publishing guidance on the matters it takes into account in giving controlled reservoirs risk designations.

Section 26 – High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

45. This section sets out that references in Part 1 to high-risk, medium risk and low risk reservoirs are references to controlled reservoirs designated as such under sections 19,

21, 23 (subject to subsection (3) of that section) or 24 (subject to subsection (3) of that section). Subsection (2) sets out that Chapter 6 makes provision about the requirements related to high and medium risk reservoirs.

Chapter 4 – Panels of Reservoir Engineers

Section 27 – Panels of Engineers

46. Engineers play an important role in the system of supervision, inspection, certification and reporting established by the Act. Section 27 obliges the Scottish Ministers to establish one or more panels of reservoir engineers for the purposes of the Act and to appoint civil engineers who they consider fit and appropriately qualified to be members of those panels. Only engineers who are members of the appropriate panel may be appointed as engineers under the Act.

Section 28 – Appointments and removal of panel members

47. Section 28 sets out detailed provisions for the appointment of engineers to (and their removal from) panels established under section 27.

Section 29 – Dissolution of panels etc.

48. Section 29 enables the Scottish Ministers to dissolve a panel established under section 27.

Section 30 – Review of decisions to appoint or remove civil engineers from panels etc

49. Section 30 enables civil engineers who have applied to the panel or been removed from a panel to apply to the Scottish Ministers for a review of their decision.

Section 31 – Consultation with Institution of Civil Engineers

50. This section places a duty on the Scottish Ministers to consult the President of the Institution of Civil Engineers before establishing a panel, making an appointment to a panel, or taking other specified steps in relation to panels. Subsection (2) enables the Scottish Ministers to reimburse the Institution of Civil Engineers for any expenses they incur under this section.

Chapter 5 – Construction Or Alteration of Controlled Reservoirs

Section 32 – Application of Chapter 5

51. Chapter 5 regulates the construction of controlled reservoirs by imposing a requirement upon reservoir managers to appoint a construction engineer to supervise the relevant works, and by imposing a system of reporting and certification in respect of the works. Section 32 sets out the works that are to be treated as construction of a controlled reservoir for the purposes of the Act, which include restoration to use, alterations to capacity, discontinuance (i.e. reducing the level of water the reservoir is able to hold below 10,000m³) and abandonment (i.e. rendering a reservoir incapable of containing water above the natural level of the surrounding land). Unless such works are being carried out, there is no requirement to appoint a construction engineer.

Section 33 – Notice to SEPA and appointment of construction engineer

52. This section requires reservoir managers of controlled reservoirs which are to be subject to relevant works to appoint a construction engineer to supervise the construction or alteration. At least 28 days before the works commence the reservoir manager must give SEPA notice of the proposed works and notice of the construction engineer's appointment. A construction engineer is an engineer from the appropriate panel

appointed to supervise the relevant works until a final certificate is issued in respect of the works. Subsection (5) disqualifies an engineer employed by the reservoir manager from being appointed as a construction engineer in relation to a particular reservoir.

Section 34 – Inspection, reports, supervision of works etc. by construction engineer

53. **Section 34** requires the construction engineer to supervise any relevant works until a final certificate is issued in respect of the works. Subsection (2) requires the engineer to inspect the reservoir and design any construction or alteration to the reservoir. Subsection (3) enables the construction engineer to issue a safety report to the reservoir manager prepared in accordance with Section 35. Where the reservoir is to be restored to use or abandoned, subsections (4) and (5) require the construction engineer to issue to the reservoir manager such a report no later than 9 months after appointment. Where a construction engineer has been appointed by SEPA under section 65(2), subsection (6) requires the construction engineer to give the reservoir manager a safety report as soon as practicable after their appointment. Subsection (7) requires the construction engineer who issues the report, to give SEPA a copy of the report within 28 days of issuing it.

Section 35 – Safety reports

54. **Section 35** sets out the information which must be included in a safety report. Subsection (2) sets out particular information that the safety report must include where the reservoir is being restored to use, discontinued, or abandoned.

Section 36– Safety reports: compliance

55. This section requires reservoir managers to comply with any direction in a safety report issued to the reservoir manager. Subsection (2) requires the engineer to issue a safety measure certificate to the reservoir manager within 28 days of being satisfied that a measure directed in the safety report has been taken. Subsection (3) requires safety measure certificates to specify the measures taken and any measures which are still to be taken. Subsection (4) requires the construction engineer to give SEPA a copy of the safety measure certificate no later than 28 days after issuing it.

Section 37 – Preliminary certificates

56. This section requires the construction engineer to issue a preliminary certificate when he or she considers that the reservoir that is subject to relevant works may be safely wholly or partially filled with water or (in the case of a reservoir that already contains water) that the level of water should be reduced. A preliminary certificate must specify a level that the water in the reservoir must not exceed, require the reservoir manager to ensure that the level of water remains below that level, and specify any other requirements the engineer considers appropriate about the manner in which the water level may be increased or decreased. The reservoir manager of a controlled reservoir must (by virtue of section 40) comply with the requirements of any preliminary or final certificate for the time being applicable to the reservoir.
57. Subsection (3) requires the construction engineer to give a copy of the preliminary certificate to SEPA within 28 days of issuing it. Subsection (4) sets out that the most recent preliminary certificate issued supersedes any previous preliminary certificates applicable to the reservoir in respect of those works. Subsection (5) sets out that a final certificate applicable to the reservoir supersedes any preliminary certificates in respect of those works.

Section 38 – Construction certificates

58. This section requires the issue of construction certificates by the construction engineer as soon as is reasonably practicable, once he or she is satisfied that the construction or alteration has been completed to a satisfactory standard. Subsection (2) requires the construction certificate to be issued before or at the same time as the final certificate.

Subsection (3) requires the construction certificate to certify that the construction has been carried out effectively in accordance with the drawings and descriptions included along with the certificate, to include an annex containing detailed drawings and descriptions of the works for the construction or alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works and any other matters specified by the Scottish Ministers in regulations. Subsection (4) requires the construction engineer to give SEPA a copy of the report within 28 days of issuing it.

Section 39 – Final certificates

59. Where a controlled reservoir is being constructed or altered, except where it is being discontinued or abandoned, subsection (1) requires construction engineers to issue a final certificate to the reservoir manager within 28 days of being satisfied that the reservoir is sound and satisfactory and may be used safely for the collection and storage of water.
60. Where the final certificate relates to a high risk reservoir subsection (2)(b) requires the final certificate to recommend when an early inspection should take place (if the construction engineer considers one should be undertaken). If the reservoir is a high or medium risk reservoir, subsection (2)(c) requires the final certificate to specify any matter that the construction engineer considers should be monitored by the supervising engineer until the first inspection of the reservoir under section 46. Subsection (2)(d) requires the final certificate to impose requirements that the water level must not exceed the level specified in the certificate, that the reservoir manager must ensure that the level does not exceed that level, and that the engineer may set out requirements as to the manner in which water levels may be increased or decreased.
61. Subsection (3) requires the construction engineer of a controlled reservoir which is being discontinued, to issue a final certificate to the reservoir manager within 28 days of being satisfied that the discontinuance has been safely completed, that the resulting structure is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.
62. Subsection (4) requires where a reservoir is being discontinued that the final certificate must state whether the construction engineer considers that the discontinuance has been safely completed and that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.
63. Subsection (5) requires the construction engineer, where a reservoir is being abandoned to issue a final certificate to the reservoir manager within 28 days of being satisfied that the abandonment has been safely completed and that the resulting structure is incapable of filling with water above the natural level of any part of the surrounding land.
64. Subsection (6) requires where a reservoir is being abandoned that the final certificate must state whether the construction engineer considers that the abandonment has been safely completed and that the resulting structure or area is incapable of filling above the natural level of any part of the surrounding land.
65. Subsection (8) requires that a copy of the construction certificate must be attached to the final certificate when the reservoir has been constructed or altered. Subsection (9) requires the construction engineer to give SEPA a copy of the final certificate within 28 days of issuing. If a final certificate has not been issued within 5 years of the issue of the preliminary certificate, subsection (10) requires the construction engineer to give the reservoir manager a written explanation of the reasons why within 28 days of the expiry of the 5 year period. Subsection (10)(b) requires the construction engineer to give the reservoir manager a written explanation of the reasons at 12 months intervals thereafter

until the final certificate is issued and subsection (10)(c) requires the construction engineer to send each of the written statements to SEPA within 28 days of being given.

Section 40 – Preliminary and final certificates: compliance

66. Section 40 requires reservoir managers to comply with the requirements of any preliminary and final certificates applicable to the controlled reservoir at that time.

Section 41 – Termination of supervision by construction engineer

67. This section makes it clear that the obligation of a reservoir manager to appoint a construction engineer in respect of relevant works to a controlled reservoir comes to an end when the engineer gives a copy of the final certificate to SEPA in accordance with Section 39(9). This step marks the normal end-point for the involvement of a construction engineer in relation to the relevant works.

Section 42 – Offences: construction, alteration, restoration to use, abandonment

68. This section makes it an offence to fail to comply with section 33(1), (2)(a) or (2)(b), section 36(1) or section 40. Subsection (2) and (3) set out the penalties for anyone committing an offence under this section.

Section 43 – Defences: offences under section 42(1)(d) or (e)

69. Section 43 sets out acceptable defences to offences under section 42.

Section 44 – Controlled reservoirs subject to relevant works at commencement

70. Section 44 sets out transitional arrangements for the Act to apply to controlled reservoirs already under construction or alteration when the Act is commenced. Subsection (2) applies the whole of Chapter 5 and sections 65 to 67 to reservoirs which were previously “large raised reservoirs” within the meaning of the Reservoirs Act 1975 and which are subject to relevant works on commencement. Where a reservoir is not a large raised reservoir in terms of the 1975 Act and is subject to relevant works at commencement of the Act, Chapter 5 and sections 65 to 67 apply except that the reservoir manager must notify SEPA of the works, appoint a construction engineer, and notify SEPA of that appointment, all within 28 days of commencement of section 32. The construction engineer must also give the reservoir manager a safety report as soon as reasonably practicable after being appointed and in any event within 9 months of appointment.

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 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).

Chapter 7 – Other Requirements: Controlled Reservoirs

Section 54 – Incident reporting

85. This section enables the Scottish Ministers to make provision in regulations for reporting incidents which may affect the safety of controlled reservoirs.
86. Subsection (2) provides an indicative list of what regulations may cover.
87. Subsection (3) sets consultation requirements which the Scottish Ministers must comply with before making regulations.

Section 55 – Flood plans

88. This section enables the Scottish Ministers to make provision in regulations for the preparation of flood plans for controlled reservoirs. These plans would set out the action which the reservoir undertaker would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.
89. Subsection (3) provides an indicative list of what the regulations may cover. Subsection (4) sets consultation requirements which the Scottish Ministers must comply with before making regulations.

Section 56 – Maintenance of records

90. This section requires reservoir managers of controlled reservoirs to maintain a record of relevant documents. Subsection (4) lists the documents which must be kept.

Section 57 – Display of emergency response information

91. This section requires reservoir managers of controlled reservoirs to ensure that emergency response information is displayed at or near the reservoir. Subsection (2)

enables the Scottish Ministers to make further provision about the information which must be displayed in regulations. Subsection (3) lists the matters which, in particular, may be specified in the regulations under subsection (2). Subsection (4) enables SEPA to give directions to reservoir managers of controlled reservoirs as to the manner and location of the information to be displayed. Subsection (6) requires the reservoir manager to comply with any such directions from SEPA.

Section 58 – Offences: record keeping, display of emergency response information

92. This section makes it an offence to fail to comply with the requirements of section 56 and 57. Subsection (2) sets out the liabilities of anyone committing an offence under this section.

Chapter 8 – Dispute Referral

Section 59 – Referral to referee: directions in safety report or inspection report

93. Chapter 8 provides for a form of arbitration between reservoir managers and construction or inspecting engineers. If a reservoir manager disagrees with a direction in safety report or an inspection report, they can challenge that direction by referring it to a referee. Section 59(3) suspends any direction thus challenged until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 60 – Referral to referee: requirements in preliminary certificate or final certificate

94. This section enables reservoir managers to challenge requirements in preliminary and final certificates. Subsection (2) lists the matters which can be challenged under this section. Subsection (3) suspends any direction challenged under this section until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 61 – Appointment of referee

95. This section requires referees appointed under this section to be appointed by agreement between the reservoir manager and the relevant engineer or, where no agreement can be reached by the Scottish Ministers. Subsection (2) enables engineers to be appointed as referees if they are a member of a panel established under section 27 and is not disqualified from being appointed under this section in relation to the reservoir concerned. Subsection (3) lists the situations where an engineer would be disqualified from being appointed under this section. Subsection (4) defines “the relevant engineer” for the purposes of this section, section 62 and section 63.

Section 61 – Powers of referee: referral under section 59(2)

96. This section enables the referee to modify the directions subject to referrals under section 59. Subsection (3) requires the referee to modify the report, any relevant safety measure certificates or interim inspection compliance certificates if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified reports if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision. Subsection (7) defines “any necessary modification”.

Section 63 – Powers of referee: referral under section 60(1)

97. This section enables the referee to modify the directions subject to referrals under section 60(1). Subsection (3) requires the referee to modify the certificate if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified certificates if required within 28 days of making a decision on the direction. Subsection

(5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision.

Section 64 – Procedure

98. This section enables the Scottish Ministers to make provision in regulations as to the time, manner and procedure of referrals and expenses of the proceedings and investigations including the remuneration of the referee. Subsection (2) provides for the expenses of the referee to be paid by the reservoir manager.

Chapter 9 – Civil Enforcement, Emergency Powers and Further Offences

Section 65 – Enforcement notice: appointment of engineer

99. This section enables SEPA to serve an enforcement notice requiring the reservoir manager to appoint a construction, inspecting or supervising engineer, and notify SEPA of that appointment. Subsection (3) defines “the relevant appointment” for the purposes of sections 67 and 68.

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

100. This section makes it an offence not to comply with notices under section 65(2). Subsection (2) sets out the penalties for anyone committing an offence under this section.

Section 67 – Appointment of engineer by SEPA

101. This section enables SEPA to appoint a relevant engineer where the reservoir manager has failed to do so. This section applies when a notice served under Section 65 has not been complied with. SEPA will be able to reclaim any expenses directly from the reservoir manager.

Section 68 – Appointment by SEPA: engineer’s report, certificates, recommendations etc

102. This section applies when SEPA have made an appointment under Section 67. Any reports, statements or certificates are to be first given to SEPA by the relevant engineer, and subsequently copied to the reservoir manager no more than 28 days later. Paragraph (a) allows for the safety measure certificate to be provided by the construction engineer to SEPA where SEPA has appointed the construction engineer.

Section 69 – Enforcement notice: safety and other measures

103. This section enables SEPA to serve an enforcement notice where a reservoir manager has failed to comply with the direction in either a safety report (under section 36(1)) or an inspection report (under section 48(1)). SEPA’s enforcement notice should specify a timeframe within which the reservoir manager must comply, the reasons for considering that this section applies and any steps SEPA consider must be taken to take the measure. A timeframe specified under subsection (2) should only be specified after consultation with a panel engineer under subsection (3).
104. Subsection (7) enables the Scottish Ministers by order to provide for reservoir managers to apply to SEPA for a review of its decision to give an enforcement notice and to appeal to the Scottish Ministers against a decision by SEPA to give an enforcement notice. Subsection (8) requires any order to specify the time period within which any review or appeal may be made where the order gives the right of review or appeal. It also enables the Scottish Ministers to make further provision in relation to reviews and appeals under this section.

Section 70 – Offence: failure to comply with notice under section 69(2)

105. This section makes it an offence not to comply with a notice under section 69(2) except where the reservoir manager has a right of review or appeal under an order under section 69 and the period for making an application for a review or an appeal has not yet expired or a request for a review or appeal has been made but it has not yet been withdrawn or determined. Subsection (4) sets out the penalties for anyone committing an offence under this section.

Section 71 – SEPA’s power to arrange taking of safety and other measures

106. This section creates powers for SEPA to appoint a relevant engineer to oversee compliance with a measure previously specified in a report. This section applies when a notice served under section 69(2) has not been complied with. Subsection (4) requires the reservoir manager to pay any reasonably incurred expenses incurred by SEPA under this section.

Section 72 – Offences under section 42(1)(d) and 52(1)(c): further remedies

107. **Section 72** enables the court, where a manager has committed an offence through failure to comply with directions in either a safety or inspection report, to order the reservoir manager to comply with the direction and to undertake any mitigating or remedial work deemed appropriate. Subsection (3) enables the court to extend the period for undertaking such work.

Section 73 – Stop notices

108. This section enables the Scottish Ministers by order to allow SEPA to issue a stop notice to a reservoir manager. Subsection (3) defines a stop notice as a notice which contains instructions to a reservoir manager to stop an activity which SEPA believes could cause damage to the structure, or could cause any other kind of infringement. Subsection (4) lists the circumstances in which a stop notice can be issued. Before SEPA can issue a stop notice to someone carrying out an activity which SEPA believes presents a significant risk of causing an uncontrolled release of water from the reservoir but which is not an offence, subsection (5) requires SEPA to appoint an engineer from a panel established under section 27 at its own expense and take into account any recommendations made by the engineer appointed. It also requires SEPA to specify only steps to remove or reduce the risk of an uncontrolled release of water in any such stop notice and to notify the Scottish Ministers as soon as reasonably practicable of each occasion on which such a notice is given.

Section 74 – Stop notices: procedure

109. This section specifies the procedural conditions which a Ministerial order under section 73 establishing stop notices must include. Subsection (2) covers appeals and completion certificates following the issue of a stop notice. Subsection (3) specifies what information must be provided in any stop notice. Subsections (4) and (6) specify circumstances in which the reservoir manager is entitled to appeal to the Scottish Ministers against a stop notice and a completion certificate respectively. Subsection (5) enables the Scottish Ministers to provide for SEPA to charge a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 75 – Stop notices: compensation

110. This section requires a Ministerial order under section 73 establishing stop notices to allow SEPA to provide financial compensation to a reservoir manager who has been negatively affected by a stop notice. Subsection (2) specifies that this must be ordered by the Scottish Ministers. Subsection (3) allows a reservoir manager to appeal to the Scottish Ministers against either a negative decision to compensate, or against how much money is awarded.

Section 76 – Stop notices: enforcement

111. This section allows a Ministerial order under section 73 establishing stop notices to create an offence not to comply with a stop notice and sets out the corresponding liabilities of anyone committing such an offence.

Section 77 – Emergency powers

112. This section enables SEPA to take emergency action to prevent an uncontrolled release of water that would cause harm to people or property. Subsection (2) enables SEPA to take any necessary action to prevent such an event, or to limit the effects. Subsection (3) requires SEPA to take any such measures in consultation with a panel engineer. Subsection (5) requires SEPA to notify the reservoir manager of any measures deemed necessary under this section.

Section 78 – Enforcement undertakings

113. This section enables the Scottish Ministers to make provision by order allowing SEPA to receive an enforcement undertaking from a reservoir manager. Enforcement undertakings allow reservoir managers who may have committed an offence under the Act to agree with SEPA that the reservoir manager will take such steps to rectify the situation as may be agreed in exchange for immunity from prosecution. Subsection (3) defines “enforcement undertaking” for the purposes of the Act. Subsection (4) specifies the necessary contents of such an undertaking. Subsection (5) specifies the subsequent immunity from sanctions that a reservoir manager would receive, unless the reservoir manager does not deliver the promises specified in the undertaking. Subsection (6) lists the matters which in particular the Scottish Ministers may provide for in an order under subsection (1).

Section 79 – Fixed monetary penalties

114. This section allows the Scottish Ministers to make provision by order about the imposition of fixed monetary penalties on reservoir managers in relation to offences under Part 1. Subsection (2) requires the Scottish Ministers to consult with representative organisations and such other persons the Scottish Ministers consider appropriate under section 86 before making an order under this section. Subsection (3) lists the conditions required by provisions in any order made under subsection (1).

Section 80 – Fixed monetary penalties: procedure

115. This section sets out the process that must be followed when a fixed monetary penalty is issued. Subsection (2) allows a reservoir manager to initially pay a lesser amount of money to prevent a fixed monetary penalty from subsequently being issued. Subsection (3) specifies what information must be included in any notification to the reservoir manager. Subsection (4) requires the order under section 79(1) to include provision for SEPA not to impose a fixed monetary penalty if SEPA are either satisfied that the reservoir manager would not by reason of defence be liable to be convicted of the related offence or due to other circumstances. Subsection (5) lists the required contents of any final notice under this section. Subsection (6) sets out the circumstances under which a reservoir manager can appeal to the Scottish Ministers against a decision under this section. Subsection (7) enables the Scottish Ministers to provide for the charging of a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 81 – Fixed monetary penalties: criminal proceedings and conviction etc

116. This section sets out a reservoir owner’s immunity from further proceedings upon payment of a fixed penalty. Subsection (2) specifies that this includes the issuing of stop notices or further enforcement measures.

Section 82 – Further enforcement measures

117. Subsection (1) enables the Scottish Ministers to make provisions in an order in relation to offences under this Part regarding the imposition of any further enforcement measures in the event of non-compliance. Further enforcement measures may include variable monetary penalties (which will be punitive), restraint notices (which may require a reservoir manager to take steps to avoid recurrence of an offence), and restoration notices (which may require reservoir managers to take restorative action to rectify the consequences of an offence). Subsection (2) requires the Scottish Ministers to consult with relevant organisations and other bodies it considers appropriate before making an order under this section. Subsection (3) specifies the conditions which further enforcement measures may be taken. Subsection (4) and (5) define what is meant by further enforcement measures.

Section 83 – Further enforcement measures: procedure

118. This section details steps that SEPA must take when taking further enforcement measures, which must be provided for in an order under section 81(1). Subsection (2) sets out a reservoir manager's right to appeal on receipt of a notice of SEPA's intent to take further measures. Subsection (3) specifies what information must be included in any notification of further action. Subsection (4) sets out the circumstances where SEPA may decide not to impose further enforcement measures. Subsection (5) requires provision in the order under section 81(1) to enable SEPA to accept or reject enforcement undertakings from the reservoir manager in relation to the offence. Subsection (6) specifies what information must be included in any final judgement. Subsection (7) sets out a reservoir manager's right to appeal to the Scottish Ministers on receipt of a final notice. Subsection (8) enables the Scottish Ministers to provide for the charging of a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 84 – Further enforcement measures: criminal proceedings and conviction

119. This section sets out a reservoir manager's immunity from further proceedings upon acceptance and completion of an enforcement undertaking. Subsection (3) sets out cases which are the exception to this condition.

Section 85 – Further enforcement measures: enforcement

120. This section enables an order under section 81(1) to allow SEPA to charge a reservoir manager a financial penalty if there is a case of non-compliance with a restraint notice, restoration notice or further enforcement undertaking. Subsection (2) details the conditions under which such a penalty may be issued. Subsection (3) requires the non-compliance penalty to be imposed by notice and that the reservoir manager can appeal to the Scottish Ministers against the notice and subsection (4) sets out the grounds for appeal against such a penalty by a reservoir manager.

Section 86 – Consultation in relation to orders under sections 73(1), 78(1), 79(1) and 82(1)

121. This section requires SEPA to consult relevant bodies before invoking provisions to issue stop notices, enforcement undertakings, fixed monetary penalties or further enforcement measures. Subsection (2) sets out the people and organisations that should be consulted.

Section 87 – Guidance on the use of stop notices, fixed monetary penalties or further enforcement measures

122. This section requires the Scottish Ministers to ensure the orders providing for the use of stop notices, enforcement undertakings, fixed monetary penalties and further

enforcement measures by SEPA require SEPA to publish guidance about the use of these powers in each order.

Section 88 – Recovery by SEPA of expenses

123. This section allows SEPA to reclaim costs incurred in issuing stop notices or imposing further enforcement measures. Subsection (2) defines what can be included in these expenses. Subsection (3) sets out the reservoir manager’s right to appeal to the Scottish Ministers against SEPA’s decision to reclaim costs. Subsection (4) enables the Scottish Ministers to provide for the charging of a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 89 – Guidance: appeals

124. This section requires the Scottish Ministers to publish guidance on the process of making appeals under sections 69, 74, 75, 78, 80, 83, 85 and 88.

Section 90 – Publication of enforcement action

125. This section enables the Scottish Ministers by order to require SEPA to publish specified information regarding enforcement action including the non-appointment of engineers, the failure to take measures in the interests of safety, the issuing of stop notices, the issuing of fixed monetary penalties or the issue of further enforcement notices. Subsection (3) specifies that information must not be published where a stop notice, fixed monetary penalty or further enforcement notice has been successfully appealed.

Section 91 – Powers of entry

126. This section creates powers for SEPA to enter land for the purposes of carrying out some of their functions under the Act. The power to enter land includes a power to enter buildings by virtue of the definition of “land” in the Interpretation and Legislative Reform (Scotland) Act 2010, which includes buildings and other structures. Subsection (2) lists SEPA’s activities to which this power of entry applies.

Section 92 – Warrants authorising entry

127. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 91 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (4)(a)).
128. Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the sheriff or justice of the peace to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent. Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant, SEPA must first have given notice that they intend to enter the land and the notice period must have expired. The notice periods are set out in section 92(3) and 93(3)(a).

Section 93 – Powers of entry: supplementary

129. This section sets out additional scenarios when entry to land may be required. Subsection (1) applies the right to enter land in an emergency to any surrounding land as well. Subsection (2) sets out what additional materials and equipment can be taken onto the land in question. Subsection (3) details the approval that must be granted in cases other than when there is emergency work involved. Subsection (4) sets out what details must be included in any notice of entry.

Section 94 – Offence: preventing or obstructing entry

130. This section sets out that impeding entrance of a person appointed by SEPA under section 91 to land constitutes an offence. Subsection (2) sets out the maximum applicable penalty for such an offence.

Section 95 – Compensation

131. This section sets out scenarios where SEPA must pay compensation to landowners where SEPA has exercised the right to enter land under section 91 and damages subsequently occur. Subsection (1) describes the scenarios which would render SEPA liable to pay compensation. Subsection (2) details who is entitled to compensation from SEPA in such circumstances. Subsection (3) determines that the Lands Tribunal for Scotland is responsible for ordering compensation. Subsection (4) sets out how such expenditure is to be treated from the SEPA point of view.

Section 96 – Reports by SEPA to the Scottish Ministers

132. This section requires SEPA to report to the Scottish Ministers about the steps it has taken to secure compliance with Part 1 of the Act. Subsection (2) gives the Scottish Ministers the power to direct SEPA as to the timing and content of the reports.

Section 97 – Affording of reasonable facilities to engineers

133. This section requires reservoir managers of controlled reservoirs to provide any relevant engineer with reasonable facilities in connection with the engineers functions under Part 1 of the Act. Subsection (2) requires the reservoir manager to make their records and other information available in the form, manner and timing specified by the engineer to the relevant engineer when requested.

Section 98 – Power of SEPA to require information and assistance

134. This section requires the reservoir manager of controlled reservoirs to provide SEPA with any information and assistance reasonably sought in connection with SEPA's functions under Part 1 of the Act. Subsection (2) requires the reservoir manager to make their records available to SEPA when requested. Subsection (3) requires the reservoir manager to provide any further information reasonably requested by SEPA in the manner and form specified by SEPA.

Section 99 – Offences: sections 97 and 98

135. This section makes it an offence for a reservoir manager to fail to comply with sections 97 and 98. Subsection (2) sets out the liabilities of anyone committing an offence under this section.

Chapter 10 – Miscellaneous

Section 100 – Guidance

136. This section requires the Scottish Ministers to publish guidance on Part 1 of the Act. Subsection (2) requires the guidance to include guidance on orders and regulations made under the Act which affects the operation of Part 1 and incorporate any other guidance issued either by the Scottish Ministers or SEPA under Part 1 of the Act. Subsection (3) requires the Scottish Ministers to keep the guidance under review and to revise and republish the guidance with such revisions as they think appropriate. Subsection (4) requires the Scottish Ministers to consult with SEPA, the Institution of Civil Engineers and any such other persons they consider appropriate before publishing or republishing any guidance under this section.

Section 101 – Grants

137. This section enables the Scottish Ministers to pay grants to reservoir managers for the purposes of enabling or assisting them to comply with any obligation under Part 1 of the Act. Subsection (2) sets out the circumstances in which such grants can be made. Subsection (3) enables the Scottish Ministers to impose such conditions to the grants as they see fit.

Section 102 – Assessment of engineers’ reports etc.

138. This section enables the Scottish Ministers to make provision in regulations for the assessment of reports, written statements and certificates prepared by engineers as part of their functions under Part 1 of the Act. Subsection (2) enables the regulations to make provision for a committee of members of the Institution of Civil Engineers to undertake this assessment and the conditions of membership for such a committee. Subsection (3) lists the things which the regulations may in particular provide for.

Section 103 – Notice to SEPA of revocation of appointment or resignation of engineer

139. This section requires reservoir managers to notify to SEPA when they have revoked the appointment of an engineer or when an engineer appointed by him or her notifies them of their resignation from appointment in relation to a controlled reservoir and the date it took effect. Subsection (2) requires engineers to notify the reservoir manager in writing when they have resigned from an appointment for a controlled reservoir and the date the resignation is effective from. Subsection (3) and (4) require the reservoir manager to notify SEPA within 28 days of the revocation or of being informed of the resignation. Subsection (5) makes it an offence for the reservoir manager to fail to comply with the requirements of this section. Subsection (6) sets out the liabilities of anyone committing an offence under this section.

Section 104 – SEPA: Ministerial directions

140. This section requires SEPA to act in accordance with any directions given to it by the Scottish Ministers when carrying out its functions under Part 1 of the Act.

Section 105 – Form and content of notices, reports, certificates etc

141. This section enables the Scottish Ministers to make further provision in regulations in relation to the form and content of any notices, and the form of any report, certificate, written statement or recommendation under Part 1 of the Act.

Section 106 – Notices by SEPA

142. This section applies section 123 of the [Environment Act 1995 \(c.25\)](#) to any documents authorised or required to be given by SEPA under this Act. Section 123 of the Environment Act 1995 concerns methods of service of documents and provides that any notice or document to be given or served may be given or served by delivering it to the person, leaving it at their last known address, or by sending it by post to their last known address. It also makes provision regarding service on companies and partnerships and provides for service on unoccupied premises or premises occupied by persons who cannot be identified.

Section 107 – Change to the Institution of Civil Engineers

143. [Section 107](#) enables the Scottish Ministers to amend references to the Institution of Civil Engineers and its President if the institution ceases to exist.

Section 108 – Civil liability

144. **Section 108** prevents civil proceedings for damages being pursued in respect of failures to comply with the duties imposed by Part 1.

Part 2 – Protection of the Water Environment - Remedial and Restoration Measures

Section 109 – Remedial and restoration measures regulations

145. This section extends the powers conferred by section 22 of the Water Environment and Water Services (Scotland) Act 2003 (“the 2003 Act”) to enable the creation of offences in connection with remedial and restoration measures to help achieve the environmental objectives of directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy (“the Water Framework Directive”). This inclusion is required as section 22 of the 2003 Act failed to include provision for criminal offences relating to restoration measures.
146. **Section 22** is amended and a new schedule 2A is inserted into the 2003 Act. New schedule 2A is modelled on paragraphs 12, 13 and 20 of schedule 2 to the 2003 Act, which enable the creation of offences in regulations made under section 20 of that Act. In paragraph 4 of new schedule 2A, provision equivalent to paragraph 13(b) of schedule 2 is not required, however, given that section 22(3)(b)(ii) already provides for this.
147. **Paragraph 4** of Schedule 2A makes provision concerning modes of trial and maximum sentences, in a similar manner to paragraph 20 of schedule 2. The level of the maximum penalties permitted is modelled on the requirements of the 2003 Act, and intended to reflect the potential seriousness of the offences.
148. In the absence of such provisions, SEPA would have difficulty enforcing the terms of regulations made under section 22 of the 2003 Act about remedial and restoration measures, which could affect the achievement of the water environment quality objectives of the Water Framework Directive.

Part 3 – General

Section 110 – Crown application

149. This section makes provision for the Act to apply to the Crown in Scotland.
150. Subsections (3) and (4) provide that the Crown in Scotland will not be criminally liable for any contravention of the Act’s provisions but allows the Court of Session to declare any act of the Crown in contravention of the Act’s provisions unlawful, upon application by SEPA or office holder responsible for enforcing the provision in question.
151. Subsection (5) provides that any provision made by or under this Act applies to persons in the service of the Crown as it applies to other persons.
152. Subsection (6) and (7) limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (7) defines “Crown land” and “appropriate authority” and subsection (9) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.

Section 111 – Offences by bodies corporate

153. This section provides that where an offence under the Act has been committed by a corporate body, Scottish partnership or other unincorporated association and the offence was committed with the consent or connivance of a “relevant individual”, both the body and the individual can be prosecuted.

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

154. Subsection (2) defines “relevant individual” and includes directors and other officers of companies, partners and individuals who manage or control other unincorporated associations.

Section 112 – Consequential amendment and repeals

155. This section contains consequential amendments and repeals to other Acts.

Section 113 – Ancillary provision

156. This section enables the Scottish Ministers by order to make incidental, supplementary, consequential, transitional, transitory or saving provision, if appropriate.

Section 114 – Orders and regulations

157. This section provides the procedure for making of orders and regulations under the Act.
158. Subsection (3) provides that all orders and regulations, except a commencement order, made under the Act are subject to negative procedure unless they are listed in subsection (4). Orders and regulations which fall under subsection (4) are subject to affirmative procedure.

Section 115 – Defined expressions

159. This section introduces the Schedule, which contains an index of terms defined in the Act.

Section 116 – Commencement and short title

160. This section provides that the provisions of the Act, except those that merely contain definitions or stipulate Parliamentary procedures, are to come into force on a day set by the Scottish Ministers by order. The section also provides for the short title of the Act.

Schedule – Index of defined expressions

161. The Schedule sets out the location within the Act of defined expressions.