



# Reservoirs (Scotland) Act 2011

## 2011 asp 9

### PART 1

#### RESERVOIRS

#### CHAPTER 6

##### OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

#### **45 Appointment of inspecting engineer etc.**

- (1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—
  - (a) appoint an inspecting engineer to carry out an inspection of the reservoir at each of the times required by section 46,
  - (b) not later than 28 days after the appointment, give notice of it to SEPA.
- (2) An engineer may be appointed as an inspecting engineer if the engineer—
  - (a) is a member of a panel of reservoir engineers established under section 27 who may (by virtue of an order under that section) be appointed under this section,
  - (b) is not disqualified by virtue of subsection (3) from being so appointed in relation to the reservoir.
- (3) An engineer is disqualified from being appointed as an inspecting engineer in relation to the reservoir if the engineer—
  - (a) is employed by any person who is a reservoir manager of the reservoir,
  - (b) has previously been a construction engineer in relation to the reservoir,
  - (c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer in relation to the reservoir.

#### **46 Inspections: timing**

- (1) Subject to subsection (3), inspections of a high-risk reservoir must be carried out—
  - (a) before the end of the period of 2 years beginning with the date of any final certificate for the time being applicable to the reservoir, and

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- (b) at each of the following times—
  - (i) at any time recommended by the supervising engineer under section 50(3),
  - (ii) at any time recommended in an inspection report under section 47,
  - (iii) before the end of the period of 10 years beginning with the date of the latest inspection.
- (2) Subject to subsection (3), inspections of a medium-risk reservoir must be carried out at each time recommended by the supervising engineer under section 50(3).
- (3) Where a construction engineer is appointed to supervise relevant works at a high-risk reservoir or a medium-risk reservoir—
  - (a) each inspection which, at the date of the appointment, is due to be carried out is cancelled, and
  - (b) the next inspection must be carried out—
    - (i) in the case of a high-risk reservoir, in accordance with subsection (1)(a),
    - (ii) in the case of a medium-risk reservoir, at any time recommended by the supervising engineer under section 50(3) which is after the end of the period of 2 years beginning with the date of the final certificate for the relevant works.
- (4) In this section and section 47, references to “the supervising engineer” are references to the engineer appointed for the time being as such under section 49 in relation to the reservoir.

#### **47 Inspections: duties of inspecting engineers etc.**

- (1) The inspecting engineer must—
  - (a) inspect the reservoir,
  - (b) give the reservoir manager, not later than 9 months after the completion of the inspection, an inspection report prepared in accordance with this section,
  - (c) give the reservoir manager certificates in accordance with section 48.
- (2) The reservoir manager must give the inspecting engineer a copy of—
  - (a) any final certificate for the time being applicable to the reservoir,
  - (b) the inspection report of the latest inspection (if any) of the reservoir carried out under this section (“the latest report”).
- (3) The inspection report—
  - (a) must specify any measures the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including measures for the maintenance of the reservoir),
  - (b) must specify whether any measure specified in the inspection report was specified in the latest report,
  - (c) if any measure specified in the latest report has not been taken and the measure is not specified in the inspection report, must specify why the engineer considers the measure should no longer be taken,
  - (d) must direct the reservoir manager to ensure—

- (i) that any measures specified in the inspection report for the maintenance of the reservoir are monitored by the supervising engineer, and
    - (ii) that the other measures specified in the inspection report are taken under the supervision of the inspecting engineer or the other qualified engineer within the period of time specified in the inspection report,
  - (e) must specify when the next inspection of the reservoir should take place,
  - (f) must specify any matters that the inspecting engineer considers should be monitored by the supervising engineer until the next inspection,
  - (g) may include recommendations on other matters which the inspecting engineer considers relevant to the maintenance of the reservoir but in relation to which the engineer does not specify a measure to be taken under paragraph (a).
- (4) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—
- (a) SEPA,
  - (b) the supervising engineer (if a different person).
- (5) In this section and section 48—
- (a) references to “the inspecting engineer” are references to the engineer appointed for the time being as such under section 45 in relation to the reservoir,
  - (b) references to “the other qualified engineer” are references to the engineer appointed for the time being as such under section 48 in relation to the reservoir,
  - (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.

#### **48 Inspection reports: compliance**

- (1) The reservoir manager must (subject to section 59(3)) ensure that any direction in an inspection report issued to the manager is complied with.
- (2) The reservoir manager—
- (a) may appoint any other qualified engineer (being a person eligible to be appointed as an inspecting engineer for the reservoir) to supervise any of the measures specified in the inspection report, and
  - (b) must, as soon as practicable after making any such appointment, give notice of it to SEPA and the inspecting engineer.
- (3) Not later than 28 days after being satisfied that a measure directed in the inspection report has been taken—
- (a) the inspecting engineer, or
  - (b) in relation to any measure for which the other qualified engineer is appointed, the other qualified engineer,
- must give to the reservoir manager an interim inspection compliance certificate.
- (4) An interim inspection compliance certificate must specify—
- (a) the inspection report to which it relates,
  - (b) the measure taken,

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- (c) any measure for which the person giving the certificate is responsible for supervising that has yet to be taken.
- (5) The inspecting engineer or the other qualified engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report have been taken, give the reservoir manager an inspection compliance certificate.
- (6) The engineer giving an inspection compliance certificate must take an interim compliance certificate given by another engineer under this section to be conclusive of that measure having been taken.
- (7) An inspection compliance certificate must specify—
  - (a) the inspection report to which it relates,
  - (b) that all of the measures directed in the report have been taken.
- (8) The inspecting engineer or the other qualified engineer must, not later than 28 days after giving an interim inspection compliance certificate or an inspection compliance certificate under this section, give SEPA a copy of it.
- (9) Where an inspection report directs a measure for the maintenance of the reservoir to be taken in the interests of the safety of the reservoir (specified in accordance with section 47(3)(a))—
  - (a) no interim inspection compliance certificate is required for that measure, and
  - (b) no account of that measure is to be taken for the purposes of subsections (4)(c), (5) and (7)(b).

#### **49 Appointment of supervising engineers etc.**

- (1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—
  - (a) appoint a supervising engineer to supervise the reservoir in accordance with section 50 at all times other than the period mentioned in subsection (2),
  - (b) not later than 28 days after the appointment, give notice of it to SEPA.
- (2) A reservoir manager of a controlled reservoir which is being constructed or restored to use (within the meaning of Chapter 5) need not appoint a supervising engineer before a final certificate is issued in respect of the relevant works (see section 39).
- (3) An engineer may be appointed as a supervising engineer if the engineer is a member of a panel of reservoir engineers established under section 27 who may (by virtue of an order under that section) be appointed under this section.

#### **50 Supervising engineer and monitoring of reservoir**

- (1) The supervising engineer must supervise the reservoir in accordance with this section.
- (2) The supervising engineer must—
  - (a) give notice to the reservoir manager of anything that the engineer considers might affect the safety of the reservoir,
  - (b) monitor any matters specified in a safety report as matters to be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,
  - (c) monitor compliance by the reservoir manager with the requirements of any preliminary certificate for the time being applicable to the reservoir,

- (d) monitor compliance by the reservoir manager with the requirements of any final certificate for the time being applicable to the reservoir,
  - (e) monitor any matters specified in any such final certificate as matters that should be monitored by the supervising engineer until the first inspection of the reservoir required under section 46,
  - (f) monitor compliance by the reservoir manager with the requirements of any direction given in the latest inspection report by virtue of section 47(3)(d)(i),
  - (g) give notice to the reservoir manager and SEPA of any failure to comply with any requirement of—
    - (i) a safety report referred to in paragraph (b),
    - (ii) a preliminary certificate referred to in paragraph (c),
    - (iii) a final certificate referred to in paragraph (d), or
    - (iv) a direction referred to in paragraph (f),
  - (h) monitor any matters specified in the latest inspection report as matters that should be monitored by the supervising engineer until the next inspection of the reservoir required under section 46,
  - (i) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,
  - (j) monitor compliance by the reservoir manager with the requirements of section 51.
- (3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 47, the engineer must—
- (a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place, and
  - (b) not later than 28 days after giving the written recommendation, give SEPA a copy of it.
- (4) The supervising engineer may by written direction require the reservoir manager to carry out a visual inspection of the reservoir at intervals specified by the engineer for the purpose of identifying anything that might affect the safety of the reservoir.
- (5) The reservoir manager must comply with any direction under subsection (4).
- (6) The reservoir manager must—
- (a) maintain a written record of each visual inspection carried out in pursuance of a direction under subsection (4),
  - (b) make that record available on request to the supervising engineer, and
  - (c) give notice to the supervising engineer of anything identified during such an inspection which might affect the safety of the reservoir.
- (7) Notice under subsection (6)(c) must be given as soon as reasonably practicable after the inspection during which the thing was identified.
- (8) The supervising engineer must give the reservoir manager, at least every 12 months, a written statement of—
- (a) the steps taken by the engineer in relation to the matters referred to in subsection (2)(a) to (h),
  - (b) any measures taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,
  - (c) any failure to comply with—

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- (i) a requirement in a safety report referred to in subsection (2)(b),
  - (ii) a requirement in a preliminary certificate referred to in subsection (2)(c),
  - (iii) a requirement in a final certificate referred to in subsection (2)(d),
  - (iv) a direction referred to in subsection (2)(f),
  - (v) a recommendation by the supervising engineer under subsection (3),
  - (vi) a direction by the supervising engineer under subsection (4).
- (9) The supervising engineer must give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of an emergency and the supervising engineer being unavailable, a nominated representative of the engineer).
- (10) The supervising engineer must, not later than 28 days after giving a written statement under subsection (8), give SEPA a copy of the statement.
- (11) The Scottish Ministers may publish guidance about supervision of high-risk reservoirs and medium-risk reservoirs in accordance with this section.
- (12) In this section—
- (a) “draw-down” means any intentional reduction in the water level except where done in accordance with the routine operation of the reservoir,
  - (b) references to “the supervising engineer” are references to the engineer appointed for the time being as such under section 49 in relation to the reservoir,
  - (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section.

## **51 Recording of water levels etc. and record keeping**

- (1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must maintain a record of the following matters in respect of the reservoir (“the recorded matters”) in accordance with this section—
- (a) water levels and depth of water in the reservoir, including the flow of water over any waste weir or overflow,
  - (b) leakages,
  - (c) repairs,
  - (d) settlements of walls or other works,
  - (e) such other matters as the Scottish Ministers by regulations specify.
- (2) The Scottish Ministers may by regulations make provision as to—
- (a) the form of the record to be maintained,
  - (b) the information to be included in relation to the recorded matters.
- (3) A construction engineer, an inspecting engineer or a supervising engineer appointed in relation to the reservoir may give directions to the reservoir manager as to—
- (a) the manner in which the information referred to in subsection (2)(b) is to be recorded,
  - (b) the intervals at which the record is to be updated.
- (4) The reservoir manager must comply with any directions under subsection (3).

- (5) The reservoir manager must install and maintain such instruments as may be necessary to provide the information to be recorded in relation to the recorded matters.
- (6) Sections 56 and 58 make further provision about records to be maintained by the reservoir managers of controlled reservoirs.

## **52 Offences: inspection, supervision, record keeping**

- (1) Failure by the reservoir manager of a high-risk reservoir or medium-risk reservoir to comply with any of the following requirements under this Chapter is an offence—
  - (a) the requirements of section 45(1)(a) and 46 (appointment of inspecting engineer and carrying out of required inspections),
  - (b) the requirements of section 45(1)(b) (notice of appointment to SEPA),
  - (c) the requirements of section 48(1) (compliance with direction as to taking of measure in inspection report),
  - (d) the requirements of section 49(1)(a) (appointment of supervising engineer),
  - (e) the requirements of section 49(1)(b) (notice of appointment to SEPA),
  - (f) the requirements of a direction under section 50(4) (compliance with direction of supervising engineer as to carrying out of visual inspection of reservoir),
  - (g) the requirements of section 50(6)(c) (notice of identification of thing which might affect the safety of the reservoir),
  - (h) the requirements of section 51 (including any direction under subsection (3) of that section) (maintenance of record of water levels etc.).
- (2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with the requirements of section 47(2) (giving inspecting engineer copy of final certificate and latest inspection report) commits an offence.
- (3) A reservoir manager guilty of an offence under subsection (1) or (2)—
  - (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
  - (b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## **53 Defences: offence under section 52(1)(c)**

It is a defence to a charge in proceedings under section 52(1)(c) for the person to show both—

- (a) that the failure to comply with the requirement concerned was as a result of an event which could not reasonably have been foreseen or any natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
- (b) that the person—
  - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
  - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure,

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- (iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.