



Reservoirs (Scotland) Act 2011

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PART 1

RESERVOIRS

CHAPTER 8

DISPUTE REFERRAL

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

- (1) This section applies where—
 - (a) a safety report contains a direction by a construction engineer,
 - (b) an inspection report contains a direction by an inspecting engineer.
- (2) The reservoir manager to whom the report is given may challenge the direction by referring it to a referee in accordance with regulations made under section 64(1).
- (3) Where a referral is made under subsection (2), the direction is suspended until the reference has been determined or withdrawn.

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

- (1) The reservoir manager to whom a preliminary certificate or final certificate is given may challenge any of the matters mentioned in subsection (2) by referring it to a referee in accordance with regulations made under section 64(1).
- (2) The matters are—
 - (a) the level of water specified in the preliminary certificate in accordance with section 37(2)(a),
 - (b) any requirement specified in the preliminary certificate in accordance with section 37(2)(c),
 - (c) any recommendation contained in the final certificate in accordance with section 39(2)(b),
 - (d) any matter specified in the final certificate in accordance with section 39(2)(c),

- (e) any requirement imposed in the final certificate in accordance with section 39(7)(a) or (c).
- (3) Where a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.

61 Appointment of referee

- (1) The referee must be an engineer appointed under this section either—
 - (a) by agreement between the reservoir manager and the relevant engineer, or
 - (b) where no agreement is reached, by the Scottish Ministers.
- (2) An engineer may be appointed as a referee 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 appointed under this section in relation to the reservoir concerned.
- (3) An engineer is disqualified from being appointed under this section 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 or an inspecting 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 or an inspecting engineer in relation to the reservoir.
- (4) In this section and sections 62 and 63, “the relevant engineer” means the construction engineer or (as the case may be) inspecting engineer who gave the direction or (as the case may be) specified, recommended or imposed the matter which is the subject of the referral.

62 Powers of referee: referral under section 59(2)

- (1) This section applies where a referral is made under section 59(2).
- (2) The referee may make such modifications (if any) as the referee considers appropriate to the direction.
- (3) Where the referee makes any such modification, the referee—
 - (a) must modify the report which contains the direction,
 - (b) where the report is a safety report, must make any necessary modification to any safety measure certificate given in relation to the report,
 - (c) where the report is an inspection report, must make any necessary modification to any interim inspection compliance certificate given in relation to the report.
- (4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).
- (5) The steps are—
 - (a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—

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- (i) whether the referee has modified the report,
 - (ii) any modification made,
 - (b) where the referee has modified the report or any safety measure certificate or interim inspection compliance certificate, to give the reservoir manager and the relevant engineer a copy of the modified report and any such modified certificate,
 - (c) to give SEPA a copy of the referral certificate and any modified report and any such modified safety measure certificate or interim inspection compliance certificate.
- (6) A direction, report, safety measure certificate or interim inspection compliance certificate modified under this section has effect as so modified.
- (7) In subsection (3)(b) and (c), “any necessary modification” means any modification the referee considers is necessary in relation to any measure specified in the certificate as a measure yet to be taken.

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

- (1) This section applies where a referral is made under section 60(1).
- (2) The referee may make such modifications (if any) as the referee considers appropriate to the matter referred.
- (3) Where the referee makes any such modification, the referee must modify the certificate which contains the matter.
- (4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).
- (5) The steps are—
- (a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—
 - (i) whether the referee has modified the certificate,
 - (ii) any modification made,
 - (b) where the referee has modified the certificate, to give the reservoir manager and the relevant engineer a copy of the modified certificate,
 - (c) to give SEPA a copy of the referral certificate and any modified preliminary certificate or final certificate.
- (6) A preliminary certificate or final certificate modified under this section has effect as so modified.

64 Procedure

- (1) Regulations by the Scottish Ministers may make provision as to—
- (a) the time within which a referee may be appointed under section 61,
 - (b) the time within which a request to them for an appointment under that section may be made,
 - (c) the manner of the request,
 - (d) the procedure before the referee,

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- (e) the expenses of the investigation and proceedings (including the remuneration of the referee).
- (2) The expenses of any investigation and proceedings are to be paid by the reservoir manager who makes the referral.