



Reservoirs (Scotland) Act 2011

2011 asp 9

PART 1

RESERVOIRS

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Stop notices

73 Stop notices

- (1) The Scottish Ministers may by order make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.
- (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 86.
- (3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the manager has taken the steps specified in the notice.
- (4) Provision under subsection (1) may confer power to give a stop notice only in relation to a case where the reservoir manager is carrying on the activity and either—
 - (a) SEPA reasonably believes that the activity as carried on by the manager presents a significant risk of causing an uncontrolled release of water from the reservoir, or
 - (b) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under this Part.
- (5) Where provision under subsection (1) confers power to give a stop notice in a case falling within subsection (4)(a)—
 - (a) SEPA must, before it exercises the power—

Status: This is the original version (as it was originally enacted).

- (i) at its own expense appoint an engineer who 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 subsection, and
- (ii) take into account recommendations made by that engineer about the stop notice,
- (b) the steps specified in any such stop notice in pursuance of subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(a),
- (c) SEPA must give the Scottish Ministers notice of each occasion on which it exercises the power as soon as reasonably practicable after doing so.

74 Stop notices: procedure

- (1) Provision under section 73(1) must secure the results in subsection (2) in a case where a stop notice is given.
- (2) The results are that—
 - (a) the stop notice must comply with subsection (3),
 - (b) the reservoir manager to whom it is given may appeal to the Scottish Ministers against the decision to issue it,
 - (c) where, after giving of the notice, SEPA is satisfied that the manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a “completion certificate”),
 - (d) the notice ceases to have effect on the giving of a completion certificate,
 - (e) the reservoir manager to whom the notice is given may at any time apply for a completion certificate,
 - (f) SEPA must make a decision as to whether to give a completion certificate before the end of the period of 14 days beginning with the day on which the application for the certificate was made,
 - (g) the reservoir manager to whom the notice is given may appeal to the Scottish Ministers against a decision not to give a completion certificate.
- (3) To comply with this subsection a stop notice must include information as to—
 - (a) the grounds for giving the notice,
 - (b) rights of appeal,
 - (c) the consequences of non-compliance.
- (4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA to give a stop notice include that—
 - (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unreasonable,
 - (d) any step specified in the notice is unreasonable,
 - (e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given,
 - (f) the manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.
- (5) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection

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

with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

- (6) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA not to give a completion certificate include that—
- (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unfair or unreasonable.

75 Stop notices: compensation

- (1) Provision under section 73(1) must include provision for SEPA to compensate the reservoir manager for loss suffered as the result of the issue of the stop notice.
- (2) Provision pursuant to subsection (1) may provide for compensation—
- (a) only in cases specified (by the order under section 73(1)),
 - (b) only in relation to descriptions of loss so specified.
- (3) Provision pursuant to subsection (1) must secure that the reservoir manager to whom the stop notice is given may appeal to the Scottish Ministers against—
- (a) a decision of SEPA not to award compensation,
 - (b) a decision of SEPA as to the amount of the compensation.

76 Stop notices: enforcement

- (1) Provision under section 73(1) may provide that where a reservoir manager to whom a stop notice is given does not comply with it, the manager commits an offence and is liable on summary conviction—
- (a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,
 - (b) in the sheriff court—
 - (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,
 - (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.
- (2) Provision under section 73(1) must provide that it is a defence to a charge in proceedings for an offence created by the order for the person to show both—
- (a) that the failure to comply with the stop notice was as a result of either an accident which could not reasonably have been foreseen or 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, and

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

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