



# Water Act 2003

## 2003 CHAPTER 37

### PART 3

#### MISCELLANEOUS

##### *Reservoirs*

#### **74 Environment Agency to be enforcement authority under the Reservoirs Act 1975**

- (1) The Reservoirs Act 1975 (c. 23) is amended as follows—
- (a) in subsection (1) of section 2 (registration of certain reservoirs and enforcement of Act, etc), for the words from “The local authorities” to “county boroughs” there is substituted “ The relevant authorities for purposes of this Act shall be, in England and Wales, the Environment Agency ”,
  - (b) in the following provisions of the Act, for “local authority”, in each place where it appears, there is substituted “ relevant authority ”
    - sections 2 and 3,
    - section 13,
    - sections 20 and 21,
    - sections 24 and 25,
    - section 27,
  - (c) in section 1 (ambit of Act, and interpretation), after subsection (4) there is inserted—
    - “(4A) The “area” of the Environment Agency, in its capacity as a relevant authority for purposes of this Act, is the whole of England and Wales.”,
  - (d) in section 22(6) (institution of proceedings for an offence under the Act), for the words from “by any local authority” to “except by” there is substituted “ only by the Environment Agency or ”,
  - (e) in Schedule 1 (index of definitions), at the appropriate places there are inserted the following entries—

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“Area (in relation to the Environment Agency)..... Section 1(4A)”

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“Relevant authority..... Section 2(1)”.

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- (2) Each body which immediately before the date of commencement of subsection (1) (referred to in this section as the “commencement date”) is a local authority in England or Wales for the purposes of the Reservoirs Act 1975 (c. 23) shall, as soon as practicable after that date, give to the Environment Agency—
- (a) the register maintained by the body under section 2(2) of that Act, and
  - (b) any other documents, records or other information in its possession which relate to the exercise of the body’s functions as an enforcement authority within the meaning of section 2(6) of that Act (referred to in this section as its “enforcement functions”).
- (3) It shall be the duty of a body falling within subsection (2) to give to the Environment Agency all such assistance as the Environment Agency may reasonably require for the purposes of facilitating the taking over by the Environment Agency of the body’s enforcement functions.
- (4) Nothing in this section affects the validity of anything done by or in relation to such a body in the exercise of its enforcement functions before the commencement date.
- (5) There may be continued by or in relation to the Environment Agency anything (including legal proceedings) which relates to any of such a body’s enforcement functions and is in the process of being done by or in relation to the body immediately before the commencement date.
- (6) Anything which was done by such a body for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the commencement date shall have effect as if done by the Environment Agency.

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**Commencement Information**

**II** S. 74 in force at 1.10.2004 by S.I. 2004/2528, art. 2(k) (with Sch. para. 8)

**75 Extension of enforcement authority’s reserve powers**

- (1) The Reservoirs Act 1975 is amended as follows.
- (2) In section 8 (powers of enforcement authority in event of non-compliance with certain requirements), after subsection (3) there is inserted—
- “(3A) Where it appears to the enforcement authority that the report of an engineer acting under this section includes a recommendation as to measures to be taken in the interests of safety that has not been carried into effect as required by this section, the authority may by written notice served on the undertakers require them to carry the recommendation into effect within a time specified in the notice.

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(3B) Where an enforcement authority propose to serve such a notice, the authority shall consult as to the time to be specified in the notice a civil engineer, being a qualified civil engineer for the purpose of inspecting and supervising the reservoir under this section.”

(3) In section 15 (reserve powers), in subsection (2), after “section” there is inserted “ 8, ”.

(4) In section 17 (powers of entry), in subsection (1)(b), after “section”, in both places, there is inserted “ 8, ”.

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**Commencement Information**

**I2** S. 75 in force at 1.4.2004 for E. by S.I. 2004/641, art. 3(t) (with Sch. 3 para. 7)

**I3** S. 75 in force at 1.4.2004 for W. by S.I. 2004/910, art. 2(1)(e)

## 76 Service of documents

(1) In section 15(4) of the Reservoirs Act 1975 (c. 23) (reserve powers of enforcement authorities) for “section 233 of the Local Government Act 1972” there is substituted “ section 123 of the Environment Act 1995 as it is applied by section 22A of this Act ”.

(2) After section 22 of that Act there is inserted—

**“22A Service of notices by the Environment Agency**

Section 123 of the Environment Act 1995 (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be served or given by the Environment Agency as if it were authorised or required to be served or given by or under that Act.”

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**Commencement Information**

**I4** S. 76 in force at 1.10.2004 by S.I. 2004/2528, art. 2(l) (with Sch. para. 8)

## 77 Flood plans: large raised reservoirs

After section 12 of the Reservoirs Act 1975 there is inserted—

*“Flooding*

**12A Flood plans: large raised reservoirs**

(1) The Secretary of State may, by written notice served on the undertakers in relation to a large raised reservoir, direct them to prepare a plan (a “flood plan”) setting out the action they would take in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(2) A direction may in particular—

(a) specify the matters to be included in the flood plan;

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- (b) require the flood plan to be prepared in accordance with such methods of technical or other analysis as may be specified by the Environment Agency;
  - (c) require the flood plan, or any information about the matters contained in it, to be given to the Environment Agency at such time or times as may be directed by that Agency or by the Secretary of State;
  - (d) require a copy of the flood plan to be sent to such persons as may be specified in the direction;
  - (e) require publication of the flood plan, in such manner as may be specified in the direction, for the purpose of bringing the matters contained in the flood plan to the attention of persons likely to be interested.
- (3) Before giving a direction under this section the Secretary of State shall consult—
- (a) the undertakers concerned;
  - (b) the Environment Agency;
  - (c) if the reservoir concerned is in England, the county council, metropolitan district council or London borough council in whose area the reservoir is situated;
  - (d) if the reservoir concerned is in Wales, the county council or county borough council in whose area the reservoir is situated;
  - (e) such persons appearing to the Secretary of State to represent the emergency services in the area where the reservoir is situated; and
  - (f) such other persons (if any) as the Secretary of State considers appropriate.
- (4) If—
- (a) the functions of the Secretary of State under the preceding provisions of this section are transferred to the National Assembly for Wales so far as exercisable in relation to Wales;
  - (b) no direction has been given by the Assembly under subsection (1) above in relation to a reservoir in Wales; and
  - (c) it appears to the Secretary of State that it is necessary or expedient in the interests of public safety in England that such a direction be given,
- he may give a direction under that subsection in relation to that reservoir.
- (5) This section is subject to section 12B below.”

#### Commencement Information

- I5** S. 77 in force at 1.10.2004 for E. by S.I. 2004/2528, art. 2(m) (with Sch. para. 8)
- I6** S. 77 in force at 11.11.2004 for W. by S.I. 2004/2916, art. 2(a)

## 78 National security

- (1) In section 2 of the Reservoirs Act 1975 (c. 23) (registration of reservoirs and enforcement of Act, etc), after subsection (2) there is inserted—

“(2A) If it appears to the Secretary of State that the inclusion of any information in the register maintained under subsection (2) above by the Environment

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Agency would be contrary to the interests of national security, he may direct the Agency not to include that information in the register.”

- (2) After section 12A of that Act (which is inserted by section 77 of this Act) there is inserted—

**“12B Flood plans and national security**

- (1) If it appears to the Secretary of State that in the interests of national security any person or class of persons referred to in any one or more of paragraphs (a) to (e) of section 12A(3) above should not be consulted about a proposed direction, he may treat that subsection as not referring to that person or to that class of person.
- (2) In relation to any reservoir (whether a large raised reservoir or not, as the case may be) the Secretary of State may, by written notice served on the undertakers, require them not to publish, or not to publish except as specified in the notice—
- (a) a flood plan prepared by them pursuant to a notice given under section 12A above;
  - (b) any corresponding plan prepared by them other than pursuant to such a notice,
- and a notice under this subsection may also require the undertakers to withhold access to any such plan from any person except as specified in the notice.”

**Commencement Information**

- I7** S. 78 in force at 1.10.2004 for E. by S.I. 2004/2528, art. 2(n) (with Sch. para. 8)  
**I8** S. 78 in force at 11.11.2004 for W. by S.I. 2004/2916, art. 2(b)

**79 Offences**

- (1) Section 22 of the Reservoirs Act 1975 (c. 23) (criminal liability of undertakers and their employees) is amended as follows.
- (2) In subsection (1), the word “or” at the end of paragraph (a) is omitted, and at the end of paragraph (b) there is inserted “or
- (c) the undertakers fail to comply with a direction under section 12A above;”.
- (3) After subsection (1) there is inserted—
- “(1A) If the undertakers fail without reasonable excuse to comply with a notice under section 12B above, they shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.”

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**Commencement Information**

**19** S. 79 in force at 1.10.2004 by S.I. 2004/2528, art. 2(o) (with Sch. para. 8)

**80 Crown application**

After section 27 of the Reservoirs Act 1975 there is inserted—

*“Crown application*

**27A Crown application**

- (1) Subject to the provisions of this section, this Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the Environment Agency, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, the provisions of this Act shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any power of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.
- (5) Subject to subsection (4) above, the power conferred by section 17 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in Her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references to Her Majesty in Her private capacity) were contained in this Act.
- (7) In this section—
  - “the appropriate authority” has the same meaning as it has in Part 13 of the Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;
  - “Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
  - “Crown premises” means premises held by or on behalf of the Crown.
- (8) The provisions of subsection (3) of section 293 of the Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.”

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#### **Commencement Information**

**I10** S. 80 in force at 1.10.2004 for E. by S.I. 2004/2528, **art. 2(p)** (with Sch. para. 8)

**I11** S. 80 in force at 11.11.2004 for W. by S.I. 2004/2916, **art. 2(c)**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 52(9) inserted by [2014 c. 21 Sch. 7 para. 133\(3\)](#)