

2015 No. 90

FLOOD RISK MANAGEMENT

WATER SUPPLY

The Reservoirs (Scotland) Regulations 2015

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1(6)(b), 2(3), 9(3)(a), 10(2), 14(1), (3) and (4), 28(7) and (8), 30(2) and 114(2)(b) of the Reservoirs (Scotland) Act 2011(a) and of all other powers enabling them to do so.

In making these Regulations, the Scottish Ministers have had regard to the reasonable cost of the exercise of the functions in respect of which fees are to be charged by SEPA.

PART 1
INTRODUCTORY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Reservoirs (Scotland) Regulations 2015 and come into force on 1st April 2015.

(2) In these Regulations—

“the Act” means the Reservoirs (Scotland) Act 2011;

“the 1975 Act” means the Reservoirs Act 1975(b);

“1975 Act panel” means any of the following (established under section 4 of the 1975 Act)—

- (a) all reservoirs panel;
- (b) non-impounding reservoirs panel;
- (c) service reservoirs panel; and
- (d) supervising engineers panel;

“2011 Act panel” means any of the following (established under section 27(a) of the Act)—

- (a) All Reservoirs (Scotland) Panel;
- (b) Non-Impounding Reservoirs (Scotland) Panel;
- (c) Service Reservoirs (Scotland) Panel; and
- (d) Supervising Engineers (Scotland) Panel;

(a) 2011 asp 9.

(b) 1975 c.23; section 2(2) of the 1975 Act was relevantly amended by the Water Act 2003 (c.37), section 74(1)(b).

“adjacent” includes below;

“annual subsistence fee” means a fee that SEPA may charge under regulation 15(1);

“cessation fee” means a fee that SEPA may charge under regulation 17(1)(a);

“charging scheme” means a scheme of charges prepared by SEPA under regulation 19;

“eligible person” means a person who—

(a) has been a member of a 1975 Act panel throughout the transitional period; and

(b) wishes to be appointed to the corresponding 2011 Act panel;

“financial year” means a period of 12 months ending with 31st March;

“new manager fee” means a fee that SEPA may charge under regulation 17(1)(b);

“registration fee” means a fee that SEPA may charge under regulation 13(1); and

“transitional period” means the period beginning with 1st April 2015 and ending with the date on which the statement referred to in paragraph 5 of Schedule 3 was signed and dated.

(3) In these Regulations, a reference to any panel in one of the following sub-paragraphs is to be construed as corresponding only to the other panel in that sub-paragraph—

(a) all reservoirs panel and All Reservoirs (Scotland) Panel;

(b) non-impounding reservoirs panel and Non-Impounding Reservoirs (Scotland) Panel;

(c) service reservoirs panel and Service Reservoirs (Scotland) Panel; and

(d) supervising engineers panel and Supervising Engineers (Scotland) Panel.

PART 2

CONTROLLED RESERVOIRS

Lochs and other areas to be considered artificial or partly artificial

2. For the purposes of section 1(2) of the Act, a loch or other area is to be considered artificial (or partly artificial) if it was created or enlarged as a result of human activity.

Calculation of volume of water that a structure or area is capable of holding

3.—(1) For the purposes of Part 1 of the Act, the volume of water that a structure, loch or other area referred to in paragraph (a) or (b) of section 1(2) of the Act (“the reservoir”) is capable of holding above the natural level of any part of the surrounding land is to be calculated by measuring the maximum volume of water (in cubic metres) which is capable of being held in the reservoir—

(a) above the bed of the reservoir; and

(b) between the toe of the reservoir and its top water level.

(2) Water not capable of flowing out of the reservoir over natural ground in the event of an uncontrolled release (of water from the reservoir) must not be included in the calculation.

(3) In paragraph (1)—

“bed”, in relation to a reservoir, includes any silt or other material that is incapable of flowing out of the reservoir over natural ground in the event of an uncontrolled release of water from the reservoir;

“toe” means the point on the downstream side of a dam, reservoir wall or embankment forming part of the reservoir where the base of the dam, reservoir wall or, as the case may be, embankment meets the lowest level of the natural ground (which remains after the construction, or any alteration, of the reservoir) of any part of the land adjacent to the reservoir, including the lowest bed level of any watercourse; and

“top water level” means—

- (a) in the case of a reservoir with a fixed overflow sill, the lowest crest level of that sill;
- (b) in the case of a reservoir the overflow from which is controlled wholly or partly by moveable gates, syphons or otherwise, the maximum level to which water may be held exclusive of any provision for flood storage; or
- (c) in the case of a reservoir designed for the purposes of holding back floodwater, the maximum level to which floodwater may be held during any flood event exclusive of any provision for overflow.

Calculation of volume of water that a structure or area is capable of releasing

4. For the purposes of subsection (3) of section 1 of the Act, the volume of water that is capable of being released from a combination of structures or areas referred to in that subsection (“the combination”) is to be calculated by measuring the maximum volume of water (in cubic metres) which is capable of flowing out of the combination over natural ground in the event of an uncontrolled release of water from the combination.

Meaning of “natural level” and “surrounding land”

5.—(1) For the purposes of Part 1 of the Act—

“natural level”—

- (a) in relation to any part of surrounding land which would remain covered with residual water after an uncontrolled release of water from the structure, loch or other area (to which the land relates), means the level of the surface of the residual water; and
- (b) in relation to any other part of that surrounding land, means the level of the natural ground remaining after the construction, or any alteration, of the reservoir; and

“surrounding land”, in relation to a structure, loch or other area referred to in paragraph (a) or (b) of section 1(2) of the Act (“the reservoir”), means the land adjacent to the reservoir (including any land which would be adjacent to water held by the reservoir when the reservoir is holding the maximum volume of water that it is capable of holding).

(2) In the definition of “natural level” in paragraph (1), a reference to “residual water” is a reference to water which would not be capable of flowing out of the structure, loch or other area in question over natural ground in the event of an uncontrolled release of water from the reservoir.

Structures or areas which are not controlled reservoirs

6.—(1) Ponds within extractive waste areas or waste facilities constitute the structures or areas referred to in paragraph (a) of section 2(2) of the Act.

(2) In paragraph (1), references to “ponds”, “extractive waste areas” and “waste facilities” are to be construed in accordance with the meaning given to the corresponding word or expression in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010(a).

7. Weirs which are not capable of holding water above the natural banks of any part of a watercourse constitute the structures or areas in paragraph (c) of section 2(2) of the Act.

8.—(1) Roads and railway embankments which are designed to drain water (including from any upstream areas) through the embankment, subject to paragraph (2), constitute the structures or areas referred to in paragraph (f) of section 2(2) of the Act.

(a) S.S.I. 2010/60; to which there are amendments which are not relevant for the purposes of these Regulations.

(2) The roads and railway embankments referred to in paragraph (1) do not constitute the structures or areas referred to in paragraph (f) of section 2(2) of the Act if drains which are designed to drain water (including from any upstream areas) through the embankment are—

- (a) artificially blocked for the purposes of using areas upstream to hold water; or
- (b) constructed so that water is held above natural ground level.

9. A structure or area created as a result of the construction of dams by beavers is not a controlled reservoir (and is not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4) of the Act).

PART 3

REGISTRATION

Controlled reservoirs register: additional information

10.—(1) From the date on which a controlled reservoir is required to be registered under the Act, the controlled reservoirs register must contain the business address of any construction engineer, inspecting engineer, other qualified civil engineer or supervising engineer appointed at any time in relation to the reservoir (and the period of any such appointment).

(2) From the date on which a 1975 Act reservoir is required to be registered under the Act, the controlled reservoirs register must contain the name and business address of any construction engineer, inspecting engineer or supervising engineer appointed immediately before that date (or, if any such engineer was not appointed at that point, the last such engineer appointed) under the 1975 Act in relation to the reservoir (and the period of any such appointment).

(3) In paragraph (2)—

“1975 Act reservoir” means—

- (a) a controlled reservoir which was, immediately before 1st April 2015, required to be registered in a register maintained under section 2(2) of the 1975 Act; or
- (b) a controlled reservoir which—
 - (i) was not, immediately before 1st April 2015, required to be registered in a register maintained under section 2(2) of the 1975 Act; and
 - (ii) is, on or after that date, required to be registered in a register maintained under section 2(2) of the 1975 Act;

“construction engineer” has the meaning it has in section 6(1) of the 1975 Act;

“inspecting engineer” has the meaning it has in section 10(1) of the 1975 Act; and

“supervising engineer” has the meaning it has in section 12(1) of the 1975 Act.

Information that a reservoir manager must register with SEPA

11. The reservoir manager of a controlled reservoir must, under section 10(1) of the Act, register—

- (a) the information and documents (in relation to the reservoir) specified in Schedule 1;
- (b) if the reservoir is a reservoir to which section 11(2) of the Act applies—
 - (i) a copy of the most recent report of an inspection under section 10 of the 1975 Act in relation to that reservoir;
 - (ii) the name and business address, email and telephone number(s) of the inspecting engineer who carried out the inspection to which the report relates; and

- (iii) to the extent known or readily obtainable by the reservoir manager, the name and business address, email and telephone number(s) (including a telephone number for making contact outside normal working hours or in an emergency) of any—
 - (aa) construction engineer;
 - (bb) inspecting engineer; or
 - (cc) supervising engineer,appointed immediately before the date on which the reservoir is registered (or, if any such engineer was not appointed at that point, the last such engineer appointed) under the 1975 Act in relation to the reservoir (and the period of any such appointment); and
- (c) if the reservoir is required to be registered in accordance with section 13 of the Act, a map showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded.

Time by which changes to information must be registered

12. Where there is a change to information referred to in regulation 11, the change to the information must be registered by the reservoir manager under section 10(1) of the Act within 28 days beginning with the date on which information changed.

Registration fees: general

13.—(1) Subject to regulation 14, SEPA may charge the reservoir manager of each controlled reservoir a fee in relation to the registration by that manager of the controlled reservoir under section 10(1) of the Act.

- (2) The reservoir manager must pay the registration fee to SEPA.
- (3) The registration fee is recoverable as a civil debt.

Registration fees: determination and charging

14.—(1) SEPA must determine the registration fee to be included in its charging scheme having regard to the likely average cost to SEPA of registering a controlled reservoir.

(2) The registration fee must accompany the information to be registered under section 10(1) of the Act.

(3) SEPA must not charge a registration fee in connection with any registration under section 10(1) of the Act where the information to be registered is received by SEPA before 1st October 2015.

Annual subsistence fee: general

15.—(1) Subject to regulation 16, SEPA may charge the reservoir manager of each controlled reservoir which has been given a risk designation under the Act an annual fee in relation to the performance by SEPA of its functions under Part 1 of the Act.

- (2) The reservoir manager must pay the annual subsistence fee to SEPA.
- (3) The annual subsistence fee is recoverable as a civil debt.

Annual subsistence fee: determination and charging

16.—(1) SEPA must determine the amounts of the annual subsistence fee to be included in its charging scheme having regard to—

- (a) its functions under Part 1 of the Act;
- (b) the likely cost to SEPA of carrying out those functions;

- (c) the number of controlled reservoirs that have been or are likely to be registered; and
 - (d) the categories of risk designation.
- (2) Different amounts of annual subsistence fee may be set for controlled reservoirs with different risk designations.
- (3) The annual subsistence fee is chargeable in respect of each financial year.
- (4) The annual subsistence fee is payable at the beginning of the financial year in respect of which it is chargeable.
- (5) Where a controlled reservoir is given a first risk designation under section 19 of the Act during any financial year, the annual subsistence fee for that financial year must be such proportion of the annual subsistence fee which would otherwise be payable under these Regulations as relates to the period of that year for which the reservoir had a risk designation.
- (6) Where a different risk designation is given following a review under Chapter 3 of Part 1 of the Act, the risk designation for the purposes of determining the amount of the annual subsistence fee in any given financial year is the risk designation that applied on 1st April of that year.
- (7) Where a controlled reservoir has more than one reservoir manager and one or more nominations are made under section 4(3) of the Act such that a single reservoir manager (“the point of contact manager”) has been nominated by the other managers to fulfil the following functions under Part 1 of the Act—
- (a) making representations to SEPA within the meaning of section 18(4) of the Act;
 - (b) applying for a review of a risk designation under section 23(1) of the Act;
 - (c) giving notice to SEPA of proposed works under section 33(1) of the Act;
 - (d) giving notice to SEPA of the appointment of a construction engineer under section 33(2)(b) of the Act;
 - (e) giving notice to SEPA of the appointment of an inspecting engineer under section 45(1)(b) of the Act;
 - (f) giving notice to SEPA of the appointment of any other qualified engineer under section 48(2)(b) of the Act;
 - (g) giving notice to SEPA of the appointment of a supervising engineer under section 49(1)(b) of the Act;
 - (h) submitting flood plans to SEPA under section 55(3)(f) of the Act;
 - (i) giving notice to SEPA of any relevant appointments under section 65(2)(b) of the Act;
 - (j) giving SEPA notice of revocation of appointment of an engineer under section 103(1) of the Act; and
 - (k) giving SEPA a copy of a notice of resignation by an engineer under section 103(2) of the Act,

SEPA may only charge the point of contact manager the annual subsistence fee in respect of that controlled reservoir.

(8) SEPA must not charge an annual subsistence fee for the financial year ending 31st March 2016.

Transfer fees: general

17.—(1) Subject to regulation 18, SEPA may charge the reservoir manager of each controlled reservoir a fee in relation to—

- (a) a notice given to SEPA by that manager under section 15(1) of the Act; and
 - (b) a notice given to SEPA by that manager under section 15(2) of the Act.
- (2) The reservoir manager must pay a cessation fee or a new manager fee to SEPA.
- (3) Any cessation fee or new manager fee is recoverable as a civil debt.

Transfer fees: determination and charging

18.—(1) SEPA must determine the amount of the cessation fee and the new manager fee to be included in its charging scheme having regard to the likely cost to SEPA of performing SEPA’s functions under section 15 of the Act.

(2) A notice under section 15(1) or (2) of the Act must be accompanied by the cessation fee or, as the case may be, the new manager fee.

(3) SEPA must not charge a cessation fee or a new manager fee in respect of any notice under section 15(1) or (2) of the Act which is given to SEPA before 1st October 2015.

Charging schemes

19.—(1) SEPA must—

- (a) set out its fees to be charged under this Part in a published charging scheme; and
- (b) consult such persons as SEPA considers likely to be affected by the scheme before it publishes or revises a scheme.

(2) SEPA must review the scheme at least once in every three year period beginning with 1st April 2016.

(3) Following a review, SEPA may revise the scheme.

PART 4

PANELS OF RESERVOIR ENGINEERS

Applications for appointment: general

20.—(1) An application for appointment (including re-appointment) to a panel under section 28(1) of the Act must be made in writing to the Scottish Ministers.

(2) Except where the application is made in accordance with regulation 21(1), the application must—

- (a) contain the information specified in Schedule 2; and
- (b) if a fee is charged to the applicant under regulation 22 in connection with the application, be accompanied by the fee.

Applications for appointment: eligible persons

21.—(1) Where an application for appointment to a panel under section 28(1) of the Act is made by an eligible person, the application must contain the information specified in Schedule 3.

(2) Where an application is made by an eligible person in accordance with paragraph (1), the application for appointment must be only in respect of a period which does not exceed the period which remains of the term of the person’s appointment to the corresponding 1975 Act panel.

Fees in connection with applications for membership of panels

22.—(1) Subject to paragraph (2), the Scottish Ministers may charge a fee of £385 in connection with an application for membership of (including re-appointment to) a 2011 Act panel (“membership fee”).

(2) The Scottish Ministers must not charge a membership fee if the application referred to in paragraph (1) is made by a person who—

- (a) at or around the same time, applies in substantially the same terms to the Secretary of State under the 1975 Act to be placed on a corresponding 1975 Act panel; and

- (b) the application to be placed on the corresponding 1975 Act panel is accompanied by the prescribed fee under that Act.

Applications for review of decisions to appoint or remove civil engineers from panels etc.

23.—(1) An application for a review of a decision under section 30(1) of the Act must be made in writing to the Scottish Ministers.

(2) The application must contain the information specified in Schedule 4.

St Andrew's House,
Edinburgh
26th February 2015

AILEEN McLEOD
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 11(a)

CONTROLLED RESERVOIRS: INFORMATION TO BE REGISTERED

1. The name (if any) and location of the reservoir.
2. The maximum volume of water capable of being held in the reservoir.
3. The reservoir manager's name and business address, email and telephone number(s) (including a telephone number for making contact outside normal working hours or in an emergency).
4. If the reservoir manager is not an individual, the name of an individual who is authorised by the reservoir manager to carry out any action required of the reservoir manager under the Act, together with the individual's business address, email and telephone number(s) (including a telephone number for making contact outside normal working hours or in an emergency).
5. The reservoir owner's name and business address, email and telephone number(s) (including a telephone number for making contact outside normal working hours or in an emergency).
6. To the extent known or readily obtainable by the reservoir manager, any risk designation the reservoir may have had immediately before the date on which it was required to be registered (and the date on which any such designation was given).
7. To the extent known or readily obtainable by the reservoir manager, the name and business address, email and telephone number(s) (including a telephone number making contact outside normal working hours or in an emergency) of each (if any)—
 - (a) construction engineer;
 - (b) inspecting engineer;
 - (c) other qualified engineer; or
 - (d) supervising engineer,appointed at any time in relation to the reservoir (and the period of any such appointment).
8. Where applicable—
 - (a) the date on which the reservoir was last inspected under section 10 of the 1975 Act;
 - (b) details of any measure recommended (in the report of that inspection) to be taken in the interests of safety which has not been carried into effect, including the date recommended (in the report) by which the measure is (or was) to be taken; and
 - (c) the date by which the next inspection is required under that section.
9. For each structure or area referred to in section 1(2) of the Act (or, as the case may be, each structure or area in a combination referred to in section 1(3)) comprising the reservoir, the—
 - (a) name (if any);
 - (b) national grid reference;
 - (c) status (in use, discontinued, abandoned or under construction);
 - (d) top water level (in metres above ordnance datum);
 - (e) surface water area (in square metres) at top water level;
 - (f) surface water area (in square metres) at dam crest level (if known);
 - (g) capacity (in cubic metres) at top water level;
 - (h) capacity (in cubic metres) at dam crest level (if known);

- (i) type (impounding, non-impounding or service reservoir); and
- (j) purpose(s) for which the reservoir is (or is to be) used.

10. For each part of a structure or area referred to in section 1(2) of the Act (or, as the case may be, for each structure or area in a combination referred to in section 1(3)) comprising a dam, reservoir wall or embankment, the—

- (a) name (if any);
- (b) national grid reference;
- (c) materials used to construct it (earth, concrete, masonry, rock fill, other);
- (d) type (buttress, embankment, gravity arch, non-gravity arch, service);
- (e) maximum height (in metres);
- (f) bottom level (in metres above ordnance datum) at ground level;
- (g) crest level (in metres above ordnance datum);
- (h) crest length (in metres);
- (i) escapable volume of water (in cubic metres) at top water level (if available);
- (j) escapable volume of water (in cubic metres) at dam crest level (if available);
- (k) fetch (namely the effective length of the controlled reservoir, of which the structure or area forms part, over which wind can build up waves) and direction (if available);
- (l) year completed; and
- (m) maintenance arrangements.

SCHEDULE 2

Regulation 20(2)

PANEL APPLICATIONS: GENERAL

1. The applicant's full name, date of birth and business address, email and telephone number.
2. The 2011 Act panel(s) to which the applicant wishes to be appointed.
3. Where the application is for re-appointment to a 2011 Act panel—
 - (a) the 2011 Act panel to which the applicant wishes to be re-appointed; and
 - (b) the date on which the previous appointment ended, or is due to end.
4. The relevant qualifications of the applicant.
5. The applicant's membership of professional institutions.
6. Particulars of the applicant's present employment.
7. Particulars of—
 - (a) all work carried out by the applicant in relation to reservoirs, with details of the reservoirs in connection with whose design, construction, maintenance or repair the applicant has been employed, including their type, capacity and main dimensions; or
 - (b) where the application is for re-appointment, all such work since the start of the applicant's previous appointment to the 2011 Act panel.

SCHEDULE 3

Regulation 21(1)

PANEL APPLICATIONS: ELIGIBLE PERSONS

1. The applicant's full name, date of birth and business address, email and telephone number.
2. The 2011 Act panel(s) to which the applicant wishes to be appointed.
3. The corresponding 1975 Act panel(s) which the applicant is, and has for a continuous period since 31st March 2015 been, a member of.
4. For each corresponding 1975 panel referred to in paragraph 3, the date on which the applicant's term of appointment began and the date on which it is due to expire.
5. A statement, signed and dated by the applicant—
 - (a) that the information given in the application is complete and correct; and
 - (b) that, for the purposes of determining the application, the applicant consents to the Scottish Ministers having access to and using—
 - (i) any information that the applicant provided with any application for appointment as a member of a panel under the 1975 Act; and
 - (ii) any relevant information held or advice provided by the Institution of Civil Engineers as to whether the applicant is fit and qualified for the appointment.

REVIEW APPLICATIONS: INFORMATION

1. The applicant's full name, date of birth and business address, email and telephone number.
2. The decision to which the application relates including, as the case may be, details of—
 - (a) the application for appointment to a 2011 Act panel which was rejected;
 - (b) the 2011 panel from which the applicant was removed under section 28(4) of the Act; or
 - (c) the direction given under section 29(4) of the Act.
3. The decision letter and the date of that decision.
4. Particulars of the grounds for appeal.
5. The relevant qualifications of the applicant.
6. The applicant's membership of professional institutions.
7. Particulars of the applicant's present employment.
8. Particulars of—
 - (a) all work carried out by the applicant in relation to reservoirs, with details of the reservoirs in connection with whose design, construction, maintenance or repair the applicant has been employed, including their type, capacity and main dimensions; or
 - (b) where the application relates to a review of a decision to reject an application for re-appointment, all such work since the start of the applicant's previous appointment to the 2011 Act panel.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning reservoirs under Part 1 of the Reservoirs (Scotland) Act 2011 (“the Act”).

Part 2 makes further provision under Chapter 1 (controlled reservoirs) of Part 1 of the Act as to—

- how lochs and other areas are to be considered artificial or partly artificial;
- calculation of volume of water that a structure or area is capable of holding;
- calculation of volume of water that a structure or area is capable of releasing;
- meaning of “natural level” and “surrounding land”; and
- structures or areas which are not controlled reservoirs.

Part 3 makes further provision under Chapter 2 (registration) of Part 1 of the Act as to—

- controlled reservoirs register: additional information;
- information that a reservoir manager must register with SEPA;
- time by which changes to information must be registered; and
- determination and charging of fees.

Part 4 makes provision under Chapter 4 (panels of engineers) of Part 1 of the Act as to—

- applications for appointment;
- fees in connection with applications for membership of panels; and
- applications for review of decisions to appoint or remove panel members etc.

A business and regulatory impact assessment was carried out for these Regulations. The findings indicate that any impact upon business, charities or voluntary bodies is not likely to be significant. Copies can be obtained from the Scottish Government, Victoria Quay, Edinburgh, EH6 6QQ.

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