

Creggan Country Park Enterprises Limited is a not-for-profit organisation based in Creggan in Derry, which promotes a range of adventurous sports and green space provision which combine to provide a platform for innovative training and employment initiatives.

Located within a 100 acre green space site on the site of 3 disused reservoirs, we provide a range of adventurous sports, angling and outdoor pursuits activities unique to the Derry City Council area, and indeed the wider North West area.

The primary aim of Creggan Country Park is;

“to improve the quality of life of those living in the North-West”

And this is to be achieved through the provision of:

### 1 Creating a healthy society by

- providing access to attractive green spaces
- creating new opportunities for sport and recreation

### 2 Promoting inclusion and cohesion by:

- ensuring access to new jobs and services
- tackling social exclusion by targeting disadvantaged communities and minority groups

### 3. Promoting sustainable development through:

- supporting sustainable economic growth
- developing renewable energy projects

The 100 acre site which is in the ownership of Creggan Country Park Enterprises ranges from the lower reservoir at Forest Park/Creggan Road to Bligh's Lane a distance of approximately 1400 metres and is bounded to the North by the Holyhall Road (formerly "Holywell") and to the Northeast by Westway. Within this area the land varies from a plateau comprising species rich grassland at the upper end to steeply banked grassland surrounding the middle reservoir. There are substantial stands of Scots pine in the area surrounding the top reservoir, which itself, being partially drained forms a valuable wetland area which provides a home to wildfowl including moorhens, wild mallard and grebes. The NW corner of the middle reservoir provides a spectacular viewing platform. Its location 1000 feet above sea-level presents a panoramic view of the hills of Donegal to the North, in the foreground is the North East of the city punctuated by the spire of St Eugene's Cathedral and in the distance can be seen the Lough Foyle estuary with Binevenagh mountain visible almost thirty miles away.

The three reservoirs on the site were built during the 19<sup>th</sup> century. These are the upper, middle and lower reservoirs. It is believed that the reservoirs were constructed in the mid 1800's under an Unemployed Relief Scheme. The upper reservoir was breached during the early 1970's and was never repaired. The middle 9.5 acre reservoir, reaches a depth in excess of fifty feet in places. The lower reservoir, in the region of 14 acres is around 40 feet at the deepest point. The upper reservoir has little water in it and is currently unused.

Our involvement with the site began in 1992 with the development of an angling project delivered by Glenowen Fisheries Cooperative. Having lobbied Stormont and Derry City Council we got the green light to enter the middle reservoirs site and with an IFI grant of £17000 and employment grants amounting to £25k from we LEDU we set about establishing an angling business, known colloquially as a "put and take" rainbow trout fishery.

We began plans to develop the wider (almost 100 acre site) and put together a major funding package combining funds from the EU Urban Community Initiative programme, Derry City Council, Landfill Tax Credit Scheme, PEACE 1 and 2, Lottery and sundry other funders.

We have developed an activity centre and a green space for public recreation utilising the reservoirs for water sports and angling.

Having taken on the site from the local authority, and accepted the liabilities, we were promised an annual management grant which, unfortunately, ended when we signed a formal lease for 99 years. This management grant was to be dealt with as an appendix to that lease, but this was never honoured.

We understand that the issue of reservoir safety is a matter of concern to the public and legislators alike, and there is a drive to deliver conformity with the situation across the water.

We take the issue of public safety seriously, and we have maintained the site to the best of our ability. Unlike the case when operated previously by DOE Water Service, we have enclosed all three bodies of water with fences. We are constantly upgrading/replacing/improving fencing and gates to keep the place safe. Essentially we are working to keep the public safe when we are not here by denying them access. Despite this we did have a tragic drowning in the early hours of July 12 2012, when a number of young people climbed two fences and entered the water to swim.

We insure the site and carry out maintenance to paths and perimeter regularly. We clear sluices and waterways and have from time to time carried out small scale repairs to the dam wall of the middle reservoir.

Historically our approach to public safety reflects the persistent and regular attempts by young people to breach the fences and gain access to deep and dangerous water bodies, which is not of course the purpose of the reservoirs bill. But this does of course impact on resources.

The reservoirs bill will focus on the wider issue of the danger to the public from potential dam failure, and we recognise that the passage of the bill would seem inevitable, and thus a new management regime for all dams will be ushered in. Like many who find themselves responsible for dams, and who will come under the purview of the proposed bill, Creggan Country Park management acknowledge that the way we manage risk will inevitably change, and compliance with the new bill will have resource implications.

We generate income to cover all running costs and overheads, by selling services to the public, including outdoor pursuit activities, room hire/rental etc. From this we pay wages, insurance, heat light and power, repairs, maintenance etc. Some years our income will exceed expenditure, some years the reverse occurs, so that in the long run we tend to just about break even.

Some of the comments regarding the implications of the new bill are interesting. For example, the suggestion that in some cases all that will be required is to cut the grass. Cutting the grass on the lower slope of a dam embankment is an interesting and challenging activity, and I would imagine that those penning the report have never attempted it. It is a serious piece of work (at least in our case) and requires a great deal of time, and therefore money.

Similarly there is a suggestion that dam operators could install hydro-electric schemes as a way of generating additional income to defray the likely financial costs associated with the implementation of the bill. Micro hydro electric schemes (or at least the one we have) are by no means the money spinners they are touted to be. The one we have hardly covers the line rental and broadband we installed to enable us to monitor it remotely. It cost around £300000. A recent repair cost £32000.

But I digress.

I am aware that this legislation is likely to be enacted, and I can accept the inevitability that it will involve additional regulation and responsibilities. We will have to adapt to the new situation, but we welcome any offers of assistance in the event that remedial works are prescribed.

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B I L L  
T O

Make provision about the regulation of the management, construction and alteration of certain reservoirs, in particular in relation to their safety to collect and store water; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1  
CONTROLLED RESERVOIRS, REGISTRATION AND RISK DESIGNATION  
*Controlled reservoirs*

**Controlled reservoirs**

1. For the purposes of this Act, a controlled reservoir is any of the following structures or areas which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land

- (a) a structure designed or used for collecting and storing water,
- (b) a lake or other area created or enlarged by artificial means, the artificial creation or enlargement having been designed, or the lake or other area so created or enlarged being used, for collecting and storing water.

**Structure or area which is to be treated as a controlled reservoir**

2. (1) This section determines when a section 1(a) or (b) structure or area which is not a controlled reservoir is to be treated as a controlled reservoir for the purposes of this Act.

(2) Where both of the following apply

- (a) water does (or could) flow from a section 1(a) or (b) structure or area to any other section 1(a) or (b) structure or area, and
- (b) any 2 or more such structures or areas (taken together) are capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land, each of the section 1(a) or (b) structures or areas is to be treated for the purposes of this Act as a controlled reservoir.

(3) The Department, having taken into account the matters mentioned in section 3, may by regulations provide that a section 1(a) or (b) structure or area which neither is a controlled reservoir, nor falls to be treated as a controlled reservoir under subsection (2), is to be treated for the purposes of this Act as a controlled reservoir.

(4) The Department must serve notice of the making of regulations under subsection (3) on the person who will, as at the date of the making of them, be the reservoir manager of any section 1(a) or (b) structure or area which will, by virtue of the regulations, be treated as a controlled reservoir for the purposes of this Act; and such notice must advise the person of

- (a) the requirement for the reservoir manager to register the controlled reservoir with the Department in accordance with sections 10 and 13,
- (b) the period within which the reservoir manager must do so.

(5) In this section and section 3, a "section 1(a) or (b) structure or area" means a structure, lake or other area referred to in paragraph (a) or (b) of section 1.

**Matters to be taken into account under section 2(3)**

3. (1) The matters the Department is required by section 2(3) to take into account are

(a) in so far as it is reasonably practicable to do so, as respects the section 1(a) or (b) structure or area alone or, where water does or could flow between it and any other section 1(a) or (b) structure or area, also any such other structure or area

- (i) the potential adverse consequences of an uncontrolled release of water from the structure or area,
- (ii) the probability of an uncontrolled release of water from the structure or area,

(b) such other matters as the Department may, by regulations, provide.

(2) For the purposes of subsection (1)(a)(i), potential adverse consequences include the matters specified in paragraphs (a) and (b) of section 22(2) (for the purposes of risk designation).

(3) The matters the Department may take into account in assessing under subsection (1)(a)(ii) the probability of an uncontrolled release of water from a section 1(a) or (b) structure or area include, as regards the structure or area, the matters specified in paragraphs (a) to (e) of section 22(3) (for the purposes

of risk designation); and for that purpose the references in those paragraphs, or in regulations made under paragraph (e) of that section, to “the reservoir” are to be construed as references to the section 1(a) or (b) structure or area.

(4) Before making regulations under subsection (1)(b), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

#### **Controlled reservoirs: further provision**

4. (1) The Department may by order substitute a different volume of water for the volume for the time being specified in sections 1, 2(2)(b), 38(3) and (5), 42(3)(a) and 46(3)(b). (2) The Department may by regulations make provision for the purposes of sections 1, 2, 38, 42 and 46 as to—(a) how the volume of water capable of being held above the natural level of the surrounding land is to be calculated, (b) how “natural level” and “surrounding land” are to be construed. (3) Before making an order under subsection (1) or regulations under subsection (2), the Department must consult—(a) the Institution of Civil Engineers, (b) such other organisations representing engineering or concerned with the practice of water and environmental management as it considers appropriate.

#### **Controlled reservoirs: supplementary**

5. (1) A controlled reservoir includes any basin, spillway, valve, dam, pumping station, weir, sluice, pipe and other thing which is integral to the functioning or operation of the reservoir.

(2) The following structures or areas are not a controlled reservoir (and are not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 2(2) or (3))

- (a) a canal or other inland waterway,
- (b) an embanked watercourse,
- (c) a road or railway embankment which is not integral to the functioning or operation of a controlled reservoir,
- (d) a weir which does not serve a functional or operational purpose as regards a controlled reservoir,
- (e) a structure or area of water which protects land from the sea,
- (f) a pond within an extractive waste site or other waste facility,
- (g) a sewage sludge lagoon or other waste water treatment lagoon,
- (h) an ash, silt or sludge lagoon used for the purpose of a mine or power generation,
- (i) a lagoon for the storage of chemical materials or their waste products,
- (j) a slurry tank.

(3) The Department may by regulations make provision as to

(a) what constitutes any of the structures or areas referred to in subsection (2),

(b) what other thing (if any) described in the regulations 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 2(2) or (3)).

#### *Reservoir managers*

#### **Reservoir managers**

6. (1) This section determines who is the reservoir manager of a controlled reservoir for the purposes of this Act.

(2) A water undertaker is the reservoir manager of a controlled reservoir, or any part of a controlled reservoir, which is managed or operated by it.

(3) A sewerage undertaker is the reservoir manager of a controlled reservoir which is managed or operated by it.

(4) Subsections (5) and (6) apply where

(a) a water undertaker is not, by virtue of subsection (2), the reservoir manager of all or part of a controlled reservoir,

(b) a sewerage undertaker is not, by virtue of subsection (3), the reservoir manager of a controlled reservoir.

(5) Any person who manages or operates the reservoir or any part of it, but is not the owner of the reservoir (or the part), is the reservoir manager of the reservoir (or the part).

(6) The owner of any part of the reservoir for which no person is reservoir manager by virtue of subsection (5) is the reservoir manager of the part.

(7) In this section, a reference to managing or operating a reservoir is, in relation to a reservoir which is being constructed or restored to use (within the meaning of Part 3), to be read as referring to proposing to manage or operate the reservoir.

(8) For the avoidance of doubt the Department, in carrying out or maintaining any works or taking any other action in relation to a controlled reservoir (or any part of a controlled reservoir) by virtue of its powers under the Drainage (Northern Ireland) Order 1973, is not to be regarded as managing or operating the reservoir (or part).

#### **Multiple reservoir managers: supplementary**

7. (1) This section applies where by virtue of section 6 there is more than one reservoir manager of a controlled reservoir.

(2) The requirements of this Act apply in relation to each of the reservoir managers (whether or not they make a nomination under subsection (3)).

(3) Any of the reservoir managers (“the nominating manager”) may nominate another of the reservoir managers (“the nominee”) to do any of the following on behalf of the nominating manager

(a) fulfil any requirements of this Act to which the nominating manager is subject and which are specified in the nomination,

(b) exercise any rights the nominating manager has under this Act and which are so specified.

(4) A nomination made under subsection (3) must in addition specify the name, postal address and telephone contact details of the nominee.

(5) The nominating manager must, not later than 28 days after the date of the nomination, give notice of the nomination and of what it contains to

(a) the Department,

(b) each other reservoir manager of the controlled reservoir,

(c) any supervising engineer, inspecting engineer, other qualified engineer or construction engineer commissioned in relation to the reservoir (see Parts 2 and 3).

(6) Where a nomination is duly made and notice of it is duly given

(a) the Department may notify and consult the nominee in accordance with the nomination,

(b) any supervising engineer, inspecting engineer, other qualified engineer or construction engineer commissioned for the time being in relation to the reservoir may give any notice, report, certificate or other document (required by this Act to be given to the nominating manager) to the nominee in accordance with the nomination.

(7) In subsection (6)(b), reference to the “supervising engineer” is to be construed as including the nominated representative of the supervising engineer under clause 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable.

#### **Duty of multiple reservoir managers to co-operate**

8. (1) Where by virtue of section 6 there is more than one reservoir manager of a controlled reservoir, each of the reservoir managers must co-operate with any other reservoir manager of the reservoir (including a nominee under section 7) so far as is necessary to enable the reservoir manager concerned to comply with the requirements to which the manager is subject under this Act.

(2) A reservoir manager who fails to comply with subsection (1) commits an offence.

(3) A reservoir manager guilty of an offence under subsection (2) 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.

(4) A reservoir manager guilty of an offence under that subsection in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Registration*

#### **Controlled reservoirs register**

9. (1) The Department must establish and maintain a controlled reservoirs register.
- (2) The controlled reservoirs register is a register containing (subject to subsection (4)), such information and documents in relation to each controlled reservoir as the Department may by regulations specify.
- (3) The Department must make arrangements for the controlled reservoirs register (or a copy of it) to be available for inspection by any person at all reasonable times.
- (4) If it appears to the Secretary of State that the inclusion of any information or document in the register would adversely affect national security, the Secretary of State may direct the Department not to include the information or document in the register.

**Reservoir managers' duty to register with the Department**

10. (1) The reservoir manager of each controlled reservoir must register the reservoir with the Department in accordance with sections 11 to 13.
- (2) A reservoir manager of a controlled reservoir registers the reservoir under subsection (1) by providing to the Department such information and documents as the Department may by regulations specify.
- (3) Regulations under subsection (2) may, in particular, include provision as to
- (a) the further information or documents that a reservoir manager of a controlled reservoir must provide to the Department for the purpose of maintenance by it of the controlled reservoirs register,
- (b) the time by which any such information or document must be provided.

**Structures or areas which are controlled reservoirs on the relevant date**

11. (1) Registration under section 10 of a structure or area which is a controlled reservoir on the relevant date must, subject to subsection (2), take place not later than 6 months after that date.
- (2) The Department may, in relation to information or a document where it considers it appropriate to do so, extend the period of 6 months specified in subsection (1) to such other period as it may, by notice served on the reservoir manager, specify; and different periods may be specified in relation to different information or documents.
- (3) In this section, and section 12, "the relevant date" means the date of commencement of section 10.

**Structures or areas which become controlled reservoirs after the relevant date**

12. (1) Registration under section 10 of a structure or area which becomes a controlled reservoir after the relevant date must, subject to subsection (2), take place not later than 28 days after the date on which a preliminary certificate is given in relation to it for the first time (see section 44).
- (2) The Department may, in relation to information or a document where it considers it appropriate to do so, extend the period of 28 days specified in subsection (1) to such other period as it may, by notice served on the reservoir manager, specify; and different periods may be specified in relation to different information or documents.

**Structures or areas which are the subject of regulations under section 2(3)**

13. (1) Registration under section 10 of a structure or area which is to be treated as a controlled reservoir by virtue of regulations made under subsection (3) of section 2 must, subject to subsection (2), take place not later than 28 days after the day on which notice of the making of the regulations is served by the Department under subsection (4) of that section.
- (2) The Department may, in relation to information or a document where it considers it appropriate to do so, extend the period of 28 days specified in subsection (1) to such other period as it may, by notice served on the reservoir manager, specify; and different periods may be specified in relation to different information or documents.

**Fees: registration and administration**

14. (1) The Department may by regulations make provision as to
- (a) payment to it by reservoir managers of controlled reservoirs of fees to cover costs reasonably incurred by it in relation to registration,
- (b) payment to it of other reasonable annual or recurring fees in relation to the performance by it of its functions as respects the controlled reservoirs register and registration of controlled reservoirs in the register,
- (c) the amount of such fees.
- (2) In making regulations under subsection (1) the Department must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.
- (3) Regulations under subsection (1) may include such other matters as the Department considers appropriate, including in particular provision specifying
- (a) the maximum amount of any fee,
- (b) the circumstances in which any fee is payable,
- (c) different fees to be imposed in respect of different reservoirs or in other different cases or categories of case,
- (d) how fees may be collected and recovered.

**Registration: supplementary**

15. (1) Where a person ceases to be a reservoir manager of a controlled reservoir, the person must, not later than 28 days after ceasing to be such, give notice to the Department stating
- (a) that fact,
- (b) the date on which the person ceased to be reservoir manager,
- (c) the name of any person who has (or will) become a reservoir manager of the controlled reservoir in place of the person,
- (d) such other information as the Department may specify.
- (2) A person who becomes a reservoir manager of a controlled reservoir must, not later than 28 days after becoming reservoir manager, give notice to the Department stating
- (a) that fact,
- (b) the date on which the person became reservoir manager,
- (c) such other information as the Department may specify.
- (3) Where the Department receives notice under subsection (1) or (2), it must take such steps as it considers are reasonably required to inform the new reservoir manager, as soon as is reasonably practicable, of the duties of reservoir managers of controlled reservoirs under this Act.

**Offences: registration**

16. (1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements relating to registration is an offence
- (a) the requirements of section 10 (including those of regulations made under subsection (2) of that section) (registering controlled reservoir with Department in accordance with sections 11 to 13),
- (b) the requirements of section 15(1) or (2) (notice of change of reservoir manager).
- (2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives any information or document which is false or misleading in a material respect commits an offence.
- (3) A reservoir manager guilty of an offence under subsection (1) or (2) 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.
- (4) A reservoir manager guilty of an offence under either of those subsections in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and could not reasonably be expected to have known that the person was the reservoir manager of a controlled reservoir to whom the requirement concerned applied.
- (6) References in this section to a reservoir manager or the reservoir manager are to be construed, in relation to an offence of failing to comply with the requirements of section 15(1), as including a person who has ceased to be a reservoir manager.



## *Risk designation*

### **Giving a risk designation**

17. (1) The Department must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a risk designation.
- (2) A risk designation is a designation of the controlled reservoir by the Department as one of the following categories
- (a) a high-risk reservoir,
  - (b) a medium-risk reservoir,
  - (c) a low-risk reservoir.
- (3) In giving a risk designation, the Department must, in so far as it is reasonably practicable to do so, take into account the matters mentioned in section 22.
- (4) The Department gives a controlled reservoir a risk designation by notice served on the reservoir manager of the reservoir
- (a) specifying the risk designation it has given the reservoir,
  - (b) specifying the reasons for its decision,
  - (c) specifying the date on which the designation takes effect,
  - (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
  - (e) specifying that the risk designation which is the subject of an application continues to have effect pending a decision being made in the review.

### **Periodic re-assessment of risk designations**

18. (1) The Department must carry out periodic re-assessments of risk designations in accordance with this section.
- (2) In carrying out a periodic re-assessment of a risk designation in accordance with this section the Department must, having taken into account the matters mentioned in section 22 in so far as it is reasonably practicable to do so, either
- (a) confirm the designation, or
  - (b) give the controlled reservoir a risk designation as one of the other categories referred to in paragraphs (a) to (c) of section 17(2) (for the purposes of this Act "a different designation").
- (3) A periodic re-assessment of the risk designation of a controlled reservoir must be carried out at the following times
- (a) at any time the Department considers the designation may have ceased to be appropriate,
  - (b) in any event, not later than 10 years from whichever is the latest of the following
    - (i) the date on which notice of the designation was served under section 17(4),
    - (ii) the date on which notice of the decision in a periodic re-assessment of the designation was served under subsection (4),
    - (iii) the date on which notice of the decision in a review in respect of the designation was served under section 20(6),
    - (iv) the date on which notice of the decision in an appeal in respect of the designation was given under section 21.
- (4) The Department confirms the designation, or gives the controlled reservoir a different designation, by notice served on the reservoir manager of the reservoir
- (a) specifying whether it confirms the designation or gives the reservoir a different designation,
  - (b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,
  - (c) specifying the reasons for its decision,
  - (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
  - (e) specifying that the risk designation which is the subject of an application continues to have effect pending a decision being made in the review.

### **Date on which risk designation given under section 17 or given as different designation under section 18 takes effect**

19. (1) A risk designation
- (a) given under section 17,
  - (b) given as a different designation on a periodic re-assessment under section 18, subject to subsections (2) and (3), takes effect on the day after the date on which notice of the designation is served by the Department on the reservoir manager under the section concerned.
- (2) Where a risk designation is given under section 17 in relation to a controlled reservoir which is being constructed or restored to use (within the meaning of Part 3), the designation takes effect on the day after the date of the final certificate in respect of those works. (Section 46 makes provision about final certificates.)
- (3) Where a risk designation is given (as a different designation) under section 18 in relation to a controlled reservoir which is subject to alteration for the purpose of increasing or decreasing the capacity of the reservoir, the different designation takes effect on the day after the date of the final certificate in respect of those works.

### **Review by Department of its decision under section 17 or 18**

20. (1) A reservoir manager of a controlled reservoir on whom notice is served under section 17(4) or 18(4) may apply to the Department for a review by it of its decision under section 17 or 18.
- (2) An application must be made in writing before the end of the period of 90 days beginning with the date on which the notice was served.
- (3) In considering an application under this section, the Department
- (a) may commission to make recommendations to it about the risk designation either (or both)
    - (i) an engineer who is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
    - (ii) such other person as the Department considers appropriate,
  - (b) must take into account
    - (i) a recommendation by an engineer or other person commissioned by it under paragraph (a),
    - (ii) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
    - (iii) any representations made to it by or on behalf of the reservoir manager in relation to the application.
- (4) A risk designation in respect of which an application is made under this section continues to have effect pending a decision being made in the review.
- (5) Where as a result of the review the Department gives the controlled reservoir a different designation, the designation which is the subject of the review ceases to have effect from the date on which the Department gives its decision; and the different designation takes effect on the day after the date on which notice is served under subsection (6).
- (6) The Department must notify the reservoir manager of its decision in the review by serving on the reservoir manager notice
- (a) specifying whether it confirms the designation or gives the reservoir a different designation,
  - (b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,
  - (c) specifying the reasons for its decision,
  - (d) giving information about the right of appeal under section 21 against its decision, the procedure for making an appeal and the period within which an appeal may be made,
  - (e) specifying that the designation which is the subject of an appeal continues to have effect pending a decision being made in the appeal.
- (7) The Department may by regulations make further provision in relation to applications and reviews under this section.

### **Appeal against Department's decision in a review under section 20**

21. (1) A reservoir manager of a controlled reservoir on whom notice of the Department's decision in a review under section 20 is served may appeal to the Water Appeals Commission for Northern Ireland against the decision on one or more of the grounds mentioned in subsection (3).

- (2) Any such appeal must be made in writing before the end of the period of 60 days beginning with the date on which the notice under section 20(6) was served.
- (3) The grounds referred to in subsection (1) are that
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,
  - (c) the decision was unreasonable.
- (4) The Commission may confirm the risk designation or give the reservoir a different designation.
- (5) A decision in an appeal under this section must take into account
- (a) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
  - (b) any representations made in relation to the appeal by or on behalf of
    - (i) the reservoir manager,
    - (ii) the Department.
- (6) A risk designation in respect of which an appeal is made under this section continues to have effect pending a decision being made in the appeal.
- (7) Where the decision in the appeal is that the controlled reservoir is given a different designation, the designation which is the subject of the appeal ceases to have effect from the date on which the appeal is determined; and the different designation takes effect on the day after the date on which notice is given under subsection (8).
- (8) Notice by the Commission to the reservoir manager and the Department of the Commission's decision in the appeal must specify
- (a) whether the Commission confirms the risk designation or gives the reservoir a different designation,
  - (b) where the Commission gives the reservoir a different designation, the different designation and the date on which it takes effect,
  - (c) the reasons for the decision.
- (9) The Department may by regulations make provision as to the following in relation to appeals under this section
- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
  - (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

**Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)**

22. (1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are
- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
  - (b) the probability of such a release.
- (2) For the purposes of subsection (1)(a), potential adverse consequences include
- (a) potential damage to any of the following
    - (i) human life or human health (as the Department considers appropriate in the circumstances),
    - (ii) the environment,
    - (iii) economic activity,
    - (iv) cultural heritage,
  - (b) such other potential damage as the Department considers relevant.
- (3) The matters which may be taken into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following
- (a) the purpose for which the reservoir is (or is to be) used,
  - (b) the materials used to construct the reservoir,
  - (c) the way in which the reservoir was or is being constructed,
  - (d) the age and condition of the reservoir and how it has been maintained,
  - (e) such other matters as the Department may by regulations specify.
- (4) The Department may, after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate, by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

**High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision**

23. References in this Act to a "high-risk reservoir", "medium-risk reservoir" or "low-risk reservoir" are references to a controlled reservoir designated as such for the time being under section 17, 18, 20 or 21.

PART 2

REQUIREMENTS FOR HIGH-RISK AND MEDIUM-RISK RESERVOIRS

*Supervision by supervising engineer*

**Supervision requirement and commissioning of supervising engineer etc.**

24. (1) A high-risk or medium-risk reservoir must, at all times, be under the supervision of a supervising engineer.
- (2) The reservoir manager of a high-risk or medium-risk reservoir must, not later than 6 months after the date on which the designation of the reservoir as such takes effect (see sections 19, 20(5) and 21(7)), commission a supervising engineer.
- (3) A "supervising engineer" is an engineer duly commissioned under subsection (2) to supervise the reservoir, at all times, in accordance with section 25.
- (4) A reservoir manager who commissions a supervising engineer in accordance with subsection (2) must, not later than 28 days after the commissioning, give notice of it to the Department.
- (5) An engineer may be commissioned as a supervising engineer if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section as a supervising engineer in relation to the reservoir.

**Duties etc. in relation to supervision**

25. (1) The supervising engineer must supervise the reservoir, at all times, 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 compliance by the reservoir manager
    - (i) subject to section 57, with any direction in the latest inspection report by virtue of section 33(4)(a) as regards any measure that should be taken in the interests of the safety of the reservoir which is a measure for its maintenance (see section 33(4)(f)),
    - (ii) with any recommendation in a pre-commencement inspection report for the time being applicable to the reservoir (see section 31(1)) as to a measure that should be taken for its maintenance,
  - (c) monitor
    - (i) any matter specified by virtue of section 33(4)(g) in the latest inspection report as a matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
    - (ii) any matter specified in a pre-commencement inspection report for the time being applicable to the reservoir as a matter that should be watched by a civil engineer until the next inspection of the reservoir (and which does not fall within paragraph (b)(ii)),
  - (d) monitor any matter specified in a safety report as a matter the construction engineer giving the report recommends should be monitored by the supervising engineer until a final certificate is issued in respect of relevant works (see section 42(1)(c)),
  - (e) monitor compliance by the reservoir manager with the requirements of
    - (i) any preliminary certificate for the time being applicable to the reservoir (see section 44),
    - (ii) any final certificate for the time being applicable to the reservoir (see section 46),

- (f) monitor any matter specified in any such final certificate as a matter that should be monitored by the supervising engineer until the first or next inspection of the reservoir,
- (g) give notice to the reservoir manager and the Department of any failure to comply with
  - (i) a direction or recommendation referred to in paragraph (b),
  - (ii) a safety report for the time being applicable to the reservoir,
  - (iii) a preliminary certificate for the time being applicable to the reservoir,
- (h) give notice to the reservoir manager and the Department of any failure to comply with any requirement of a final certificate for the time being applicable to the reservoir,
- (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 35 (recording of water levels etc. and record keeping),
- (k) visit the reservoir
  - (i) where it is a high-risk reservoir, at least twice in every 12 month period,
  - (ii) where it is a medium-risk reservoir, at least once in every 12 month period,
- (l) undertake, in accordance with the latest inspection report, any additional visit that may be recommended in the report by virtue of section 33(4)(i).
- (3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 33, the engineer must
  - (a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place,
  - (b) not later than 28 days after giving the written recommendation, give the Department a copy of it.
- (4) The supervising engineer
  - (a) 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,
  - (b) must give a copy of any direction given under paragraph (a) to the Department.
- (5) 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) and (j) to (l),
  - (b) any measure taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,
  - (c) any recommendation by the supervising engineer under subsection (3),
  - (d) any direction by the supervising engineer under subsection (4)(a).
- (6) The supervising engineer must, not later than 28 days after giving a written statement under subsection (5), give the Department a copy of the statement.
- (7) The supervising engineer must
  - (a) give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of the supervising engineer being unavailable, a nominated representative of the engineer),
  - (b) not later than 28 days after giving the reservoir manager such information, give the information to the Department.
- (8) Where the reservoir is the subject of a pre-commencement inspection report and inspection of it is not yet due under section 29, the reservoir manager must give the supervising engineer a copy of
  - (a) the report,
  - (b) any pre-commencement inspection report certificate (see section 33(3)),
  - (c) where the reservoir manager is unable to give a copy of a pre-commencement inspection report certificate, any other document dated before the relevant date which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation (see section 32(3)).
- (9) 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 reservoir manager" are references to the reservoir manager of the reservoir which is being supervised in accordance with this section,
  - (c) "the relevant date" has the same meaning as in section 29(6).
- (10) In this section and sections 26 to 29, 33 and 35, references to "the supervising engineer" are references to the engineer duly commissioned for the time being as such under section 24 in relation to the reservoir and are to be construed as including a nominated representative of the supervising engineer under subsection (7)(a) who is acting as such in the event of the supervising engineer being unavailable.

**Visual inspection directed under section 25(4)(a): further provision**

26. (1) The reservoir manager must comply with any direction under section 25(4)(a).
- (2) The reservoir manager must
  - (a) maintain a written record of each visual inspection carried out in pursuance of a direction under section 25(4)(a),
  - (b) make the record available on request to the supervising engineer,
  - (c) give notice to the supervising engineer and the Department of anything identified during any such visual inspection which might affect the safety of the reservoir.
- (3) Notice under subsection (2)(c) must be given as soon as is reasonably practicable after the visual inspection during which the thing was identified.

**Nominated representative under section 25(7)(a): further provision**

27. A nominated representative of the supervising engineer under section 25(7)(a)
  - (a) must be eligible to be commissioned as a supervising engineer for the reservoir,
  - (b) while acting as the nominated representative of the engineer in the event of the supervising engineer being unavailable, has the powers of and is subject to the obligations of the supervising engineer.

*Inspections etc. by inspecting engineer*

**Inspection timing: general requirements**

28. (1) Subject to subsection (2) and sections 29 and 30, the reservoir manager of a high-risk or medium-risk reservoir must secure that it is inspected by an inspecting engineer before the end of the period of one year beginning with the date on which the designation of the reservoir as such takes effect (see sections 19, 20(5) and 21(7)).
- (2) Subsection (1) does not apply where the controlled reservoir was, immediately before the designation of it as a medium-risk reservoir took effect, designated as a high-risk reservoir.
- (3) The reservoir manager of a high-risk or medium-risk reservoir must secure that it is inspected by an inspecting engineer at each of the following times
  - (a) at any time recommended by the supervising engineer by virtue of section 25(3),
  - (b) subject to section 57, at any time recommended in an inspection report under section 33 (in accordance with section 33(4)(h)).
- (4) The reservoir manager of a high-risk reservoir must in any event secure that it is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the latest inspection.
- (5) An "inspecting engineer" is an engineer duly commissioned under section 32 to inspect a high-risk or medium-risk reservoir when required by this section or section 29 or 30 or to supervise the taking of a measure referred to in section 32(1)(b).

**Inspection timing: reservoir subject to pre-commencement inspection report**

29. (1) Subject to subsection (5) and section 30, subsection (2) applies instead of section 28(1) where
  - (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
  - (b) the Department is satisfied that
    - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,

(ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.

(2) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.

(3) Subject to subsection (5) and section 30, subsection (4) applies instead of section 28(1) where

(a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,

(b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.

(4) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, "the relevant date" means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

#### **Inspection timing: other qualifications**

30. (1) Where a construction engineer is required by section 40 to be commissioned to supervise relevant works for the purpose of a high-risk or medium-risk reservoir being discontinued or abandoned (within the meaning of Part 3) (see sections 38 and 39), any inspection which at the date of the commissioning is due by virtue of section 28 or 29 is not required.

(2) Where a construction engineer is required by section 40 to be commissioned to supervise relevant works for the purpose of a high-risk or medium-risk reservoir being constructed or subject to alteration (but not for the purpose of it being discontinued or abandoned) (within the meaning of Part 3)

(a) any inspection which at the date of the commissioning is due by virtue of section 28 or 29 is not required,

(b) the reservoir manager must secure instead that the reservoir is inspected by an inspecting engineer either

(i) before the end of the period of 2 years beginning with the date of the final certificate for the relevant works, or

(ii) at such earlier time as may be recommended in the final certificate (in accordance with section 46(2)(b)).

#### **Pre-commencement inspection report**

31. (1) A "pre-commencement inspection report" is a document, provided to the Department by the reservoir manager of a high-risk or medium-risk reservoir and in respect of which the Department is satisfied as to the following matters

(a) that it was prepared by a civil engineer who, at the time of the inspection to which it relates and throughout the preparation and completion of the document, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate,

(b) that it was prepared sufficiently in accordance with criteria that would have fallen to be applied in relation to an inspection under section 10 of that Act of a reservoir that was subject to that section,

(c) that it is about an inspection of the reservoir which was carried out before the relevant date, but not more than 8 years before that date.

(2) The Department must, as soon as is reasonably practicable after receiving a document under subsection (1) and, where it considers it appropriate to do so after consulting an engineer commissioned by it under this subsection, decide whether or not it is satisfied that the document is a pre-commencement inspection report.

(3) An engineer may be commissioned under subsection (2) if the engineer

(a) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,

(b) is not disqualified by virtue of subsection (4) from being so commissioned in relation to the reservoir.

(4) An engineer is disqualified from being commissioned under subsection (2) in relation to a high-risk or medium-risk reservoir if the engineer

(a) is an employee of any person who is a reservoir manager of the reservoir,

(b) prepared the document provided in pursuance of subsection (1).

(5) The Department must serve on the reservoir manager notice

(a) specifying its decision under subsection (2),

(b) where its decision is that the document is not a pre-commencement inspection report, specifying the reasons for the decision,

(c) giving information about the right under Schedule 1 to apply for a review by the Department of its decision under subsection (2), the procedure for making such an application and the period within which an application may be made.

(6) Schedule 1 makes provision in relation to review of a decision under subsection (2).

#### **Commissioning of inspecting engineer etc.**

32. (1) The reservoir manager of a high-risk or medium-risk reservoir must commission an inspecting engineer

(a) to inspect the reservoir when inspection of it is required by section 28, 29 or 30,

(b) to supervise the taking of any measure as mentioned in section 33(4)(e) or the taking of a pre-commencement safety recommendation.

(2) The reservoir manager must, not later than 28 days after the commissioning, give notice of it to the Department.

(3) A "pre-commencement safety recommendation" is a recommendation in a pre-commencement inspection report as to a measure the civil engineer who prepared the report considered to be required in the interests of the safety of the reservoir.

(4) An engineer may be commissioned as an inspecting engineer if the engineer

(a) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section as an inspecting engineer in relation to the reservoir,

(b) is not disqualified by virtue of subsection (5) from being so commissioned in relation to the reservoir.

(5) An engineer is disqualified from being commissioned as an inspecting engineer in relation to a high-risk or medium-risk reservoir if the engineer

(a) is an employee of any person who is a reservoir manager of the reservoir,

(b) has previously been a construction engineer in relation to the reservoir.

#### **Duties etc. in relation to inspection**

33. (1) An inspecting engineer must

(a) inspect the reservoir,

(b) give the reservoir manager, not later than 6 months after the completion of the inspection, an inspection report prepared in accordance with this section.

(2) The reservoir manager must give the inspecting engineer a copy of

(a) the latest report (if any),

(b) any pre-commencement inspection report certificate, interim inspection compliance certificate or inspection compliance certificate for the time being applicable to the reservoir,

(c) any final certificate for the time being applicable to the reservoir.

(3) A "pre-commencement inspection report certificate" is a certificate

(a) stating that a measure recommended in the pre-commencement report as a measure that should be taken in the interests of the safety of the reservoir has been taken,

(b) signed and issued before the relevant date by a civil engineer who, at the time of signing, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate.

(4) The inspection report

- (a) must
  - (i) specify any measure the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including any such measure for the maintenance of the reservoir),
  - (ii) direct the reservoir manager to ensure that the measure is taken,
- (b) may
  - (i) specify any matter that the inspecting engineer considers relevant to the maintenance of the reservoir (but in relation to which the engineer does not specify a measure (as to safety) under paragraph (a)),
  - (ii) include any recommendation as regards the matter,
- (c) must specify whether any measure specified in the inspection report was specified in the latest report,
- (d) 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,
- (e) must direct the reservoir manager to ensure that any measure which both
  - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
  - (ii) is not a measure for its maintenance, is taken under the supervision of the inspecting engineer or, where permitted (by section 34(2)(a)) the other qualified engineer, and within the period of time specified in the inspection report,
- (f) must direct the reservoir manager to ensure that any measure which both
  - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
  - (ii) is a measure for its maintenance, is monitored by the supervising engineer,
- (g) must specify any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection,
- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than
  - (i) in the case of a high-risk reservoir, twice in every 12 month period,
  - (ii) in the case of a medium-risk reservoir, once in every 12 month period, must specify at what intervals, when, or in what circumstances, any additional visit should take place.
- (5) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to
  - (a) the Department,
  - (b) the supervising engineer (if a different person).
- (6) In this section and section 34
  - (a) references to “the inspecting engineer” are references to the engineer duly commissioned for the time being as such under section 32 in relation to the reservoir,
  - (b) references to “the latest report” are references to the inspection report of the latest inspection (if any) of the reservoir carried out under this section or the pre-commencement inspection report (if any) in relation to the reservoir (whichever is the later),
  - (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.
- (7) In this Act, references to “the other qualified engineer”, “any other qualified engineer” or “other qualified engineer” are references to any engineer duly commissioned for the time being as such under section 34(2)(a) in relation to the reservoir; and references to “other qualified engineers” are to be construed accordingly.

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

34. (1) The reservoir manager must ensure that the following are complied with
- (a) (subject to section 57) any direction in an inspection report given to the manager under section 33,
  - (b) any pre-commencement safety recommendation.
- (2) The reservoir manager
- (a) may commission any other qualified engineer (being a person eligible to be commissioned as an inspecting engineer for the reservoir) to supervise the taking of
    - (i) any measure specified in the inspection report prepared in accordance with section 33 as a measure that should be taken in the interests of the safety of the reservoir and which is not a measure for its maintenance,
    - (ii) any pre-commencement safety recommendation.
  - (b) must, as soon as is reasonably practicable after such commissioning, give notice of it to the Department.
- (3) Not later than 28 days after being satisfied that a measure which is directed (or recommended) as mentioned in subsection (1) has been taken
- (a) the inspecting engineer, or
  - (b) in relation to any such measure which the other qualified engineer is (and may be) commissioned to supervise, 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 (or pre-commencement inspection report) to which it relates,
  - (b) the measure taken,
  - (c) any measure that has yet to be taken.
- (5) The inspecting engineer or (as appropriate) the other qualified engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report (or all pre-commencement safety recommendations) 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 Act or a pre-commencement inspection report certificate a copy of which is given to the engineer under section 33(2), to be conclusive of the measure specified in it (as a measure taken) as having been taken.
- (7) An inspection compliance certificate must specify
- (a) the inspection report (or pre-commencement inspection report) to which it relates,
  - (b) that all of the measures directed in the inspection report (or all pre-commencement safety recommendations) have been taken.
- (8) The inspecting engineer or (as appropriate) the other qualified engineer must, not later than 28 days after giving the reservoir manager an interim inspection compliance certificate or an inspection compliance certificate under this section, give the Department a copy of it.

*Record keeping etc.*

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

35. (1) The reservoir manager of a high-risk 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) any leakage,
  - (c) any repair,
  - (d) any settlement of walls or other works,
  - (e) such other matters as the Department may by regulations specify.
- (2) The Department 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 supervising engineer, an inspecting engineer or a construction engineer commissioned 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) A copy of a direction given under subsection (3) must be given by the engineer concerned to the Department.
- (6) 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.
- (Sections 54 and 56 make further provision in relation to records (to be maintained by the reservoir managers of all controlled reservoirs) and associated offences.)

*Offences: supervision, inspection, record keeping*

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

36. (1) Failure by a reservoir manager of a high-risk or medium-risk reservoir to comply with any of the following requirements under this Part is an offence
- (a) the requirements of section 24(2) (commissioning of supervising engineer),
- (b) the requirements of section 26(1) (compliance with direction of supervising engineer under section 25(4)(a) as to carrying out of visual inspection of reservoir),
- (c) the requirements of section 26(2)(a) (maintenance of written record of each such visual inspection),
- (d) the requirements of section 26(2)(c) (notice to supervising engineer and Department of anything that might affect the safety of the reservoir identified during visual inspection directed under section 25(4)(a)),
- (e) the requirements of section 28, 29, 30 or 32(1)(a) or (b) (securing required inspections and supervision by inspecting engineer and commissioning of inspecting engineer),
- (f) the requirements of section 34(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure),
- (g) the requirements of section 35 (including those of regulations under subsection (2) of that section) (recording of water levels and other matters).
- (2) A reservoir manager of a high-risk or medium-risk reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence
- (a) the requirements of section 24(4) (notice to Department of commissioning of supervising engineer),
- (b) the requirements of section 25(8)(a) or (b) (giving supervising engineer copy of pre-commencement inspection report and any pre-commencement inspection report certificate),
- (c) the requirements of section 32(2) (notice to Department of commissioning of inspecting engineer),
- (d) the requirements of section 33(2) (giving inspecting engineer copy of latest report, any pre-commencement inspection report certificate, interim inspection compliance certificate, inspection compliance certificate and final certificate), (e) the requirements of section 34(2)(b) (notice to Department of commissioning of any other qualified engineer).
- (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.
- (4) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(f).

**Defences: offence under section 36(1)(f)**

37. It is a defence to a charge in proceedings under section 36(1)(f) 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,
- (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

**PART 3**

**CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS**

*Construction or alteration*

**Application of Part 3 etc.**

38. (1) This Part applies where a controlled reservoir is to be constructed or subject to alteration.
- (2) Subsections (3) to (7) have effect for the purposes of this Part.
- (3) Any work for the purpose of restoring an existing structure or area (which has previously at any time been capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land) so that it is capable of so holding such amount of water is to be treated as construction of a controlled reservoir.
- (4) Alteration of a controlled reservoir includes
- (a) any work for the purpose of increasing or decreasing the capacity of a controlled reservoir,
- (b) any other work in relation to a controlled reservoir (including work which the Department is satisfied might affect its safety) which the Department may by regulations specify.
- (5) Alteration of a controlled reservoir amounts to discontinuance of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (but still capable of holding water above the natural level of any part of that land).
- (6) Alteration of a controlled reservoir amounts to abandonment of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of filling with water above the natural level of any part of the surrounding land.
- (7) Any reference to
- (a) a controlled reservoir being constructed or subject to alteration is to be construed in accordance with this section,
- (b) a controlled reservoir being restored to use is to be construed as a reference to a controlled reservoir being constructed as mentioned in subsection (3),
- (c) a controlled reservoir being discontinued is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (5),
- (d) a controlled reservoir being abandoned is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (6).

**Meaning of "relevant works" for purposes of Act**

39. Any reference in this Act to "relevant works" is a reference to any works carried out for the purpose of the construction or alteration of a controlled reservoir.

*Supervision by construction engineer*

**Notice to Department and commissioning of construction engineer**

40. (1) The reservoir manager of a controlled reservoir which is to be subject to relevant works must, not later than 28 days before the proposed relevant works begin, give notice to the Department of the proposed works.
- (2) The reservoir manager must, not later than 28 days before the proposed relevant works begin
- (a) commission a construction engineer,
- (b) give notice to the Department of the commissioning.
- (3) A "construction engineer" is an engineer duly commissioned under this section to supervise the relevant works and the safety of the reservoir until a copy of the final certificate issued in respect of the works is given to the Department in accordance with section 46(8).
- (4) An engineer may be commissioned as a construction engineer if the engineer
- (a) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
- (b) is not disqualified by virtue of subsection (5) from being commissioned as a construction engineer in relation to the reservoir.
- (5) An engineer is disqualified from being commissioned as a construction engineer in relation to the reservoir if the engineer
- (a) is an employee of any person who is a reservoir manager of the reservoir,
- (b) has previously been an inspecting engineer in relation to the reservoir.
- (6) In sections 41 to 48
- (a) references to "the construction engineer" are references to the engineer duly commissioned for the time being as such under this section in respect of the relevant works,
- (b) references to "the reservoir manager" are references to the reservoir manager of the controlled reservoir which is the subject of the relevant works.

**Supervision of relevant works and reservoir safety by construction engineer**

41. (1) The construction engineer must supervise the relevant works and the safety of the controlled reservoir in accordance with this section until a copy of the final certificate issued in respect of the works is given to the Department in accordance with section 46(8).
- (2) The engineer must
- (a) inspect the reservoir,
- (b) design any construction or alteration,
- (c) give the reservoir manager a safety report prepared in accordance with section 42,
- (d) give the reservoir manager such further safety reports prepared in accordance with that section as the engineer considers appropriate.
- (3) A safety report
- (a) given under subsection (2)(c) must be given as soon as is reasonably practicable after the construction engineer is commissioned,
- (b) given under subsection (2)(d) must be given as soon as is reasonably practicable after the construction engineer considers it appropriate to give the report.
- (4) A construction engineer must, not later than 28 days after giving a safety report under this section, give the Department a copy of it.

**Safety report**

42. (1) A safety report must
- (a) specify any measure the construction engineer considers is necessary in the interests of the safety of the controlled reservoir,
- (b) direct the reservoir manager to ensure that any measure specified in the report is taken under the supervision of the construction engineer and within the period of time specified in the report,
- (c) where the reservoir manager is required to commission a supervising engineer, specify any matter that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,
- (d) include such other matters as the Department may by regulations specify.
- (2) Where a controlled reservoir
- (a) is being constructed or restored to use,
- (b) is subject to alteration other than for the purposes of discontinuance or abandonment, the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water.
- (3) Where a controlled reservoir is being discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure both
- (a) that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land, and
- (b) since the resulting structure or area will still be capable of holding water above that natural level, that it may safely be used for the collection and storage of water.
- (4) Where a controlled reservoir is being abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.

**Safety report: compliance**

43. (1) The reservoir manager of a controlled reservoir must (subject to section 57) ensure that any direction in a safety report given to the manager under section 41 is complied with.
- (2) The construction engineer must, not later than 28 days after being satisfied that each measure directed in the safety report has been taken, give the reservoir manager a safety measure certificate.
- (3) A safety measure certificate must specify
- (a) the safety report to which it relates,
- (b) the measure taken,
- (c) any measure that has yet to be taken,
- (d) any measure that the construction engineer considers need no longer be taken.
- (4) A construction engineer must, not later than 28 days after giving a safety measure certificate under subsection (2), give the Department a copy of it.

**Preliminary certificate**

44. (1) Where the construction engineer is satisfied that the reservoir may safely be filled (wholly or partially) with water or that the level of water should be reduced, the engineer must, as soon as is reasonably practicable after being so satisfied, give the reservoir manager a preliminary certificate.
- (2) A preliminary certificate must
- (a) specify a level (the "specified level") that water in the reservoir must not exceed,
- (b) require the reservoir manager to ensure that the level of water does not exceed the specified level,
- (c) specify any requirement the engineer considers is appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.
- (3) A construction engineer must, not later than 28 days after giving a preliminary certificate, give the Department a copy of it.
- (4) A subsequent preliminary certificate applicable to the reservoir replaces any previous preliminary certificate applicable to the reservoir in respect of the relevant works.
- (5) A preliminary certificate ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of those works.

**Construction certificate**

45. (1) The construction engineer must give the reservoir manager a construction certificate as soon as is reasonably practicable after being satisfied that the relevant works have been completed to a satisfactory standard.

- (2) The construction certificate must in any event be issued not later than the final certificate in respect of the relevant works.
- (3) A construction certificate must
- (a) include an annex containing detailed drawings and descriptions giving full information about the relevant works, including the dimensions, water levels and details of the geological strata or deposits encountered in bore holes, trial holes or excavations made in connection with the works,
- (b) include such other information as the Department may by regulations specify,
- (c) certify that the relevant works have been executed satisfactorily in accordance with the drawings and descriptions included in the annex to the certificate.
- (4) The construction engineer must, not later than 28 days after giving a construction certificate, give the Department a copy of it (including any annex to it).

**Final certificate**

46. (1) Where the relevant works have involved the controlled reservoir being constructed or subject to alteration but not discontinued or abandoned, the construction engineer must give the reservoir manager a final certificate not later than 28 days after being satisfied that the reservoir is sound and satisfactory and may safely be used for the collection and storage of water.
- (2) A final certificate given under subsection (1)
- (a) must state that the engineer considers the reservoir is sound and satisfactory and may safely be used for the collection and storage of water,
- (b) where the reservoir is a high-risk or medium-risk reservoir and the construction engineer considers that there should be an early inspection of the reservoir, must state when the engineer recommends the inspection should take place,
- (c) where the reservoir is a high-risk or medium-risk reservoir, must specify any matter the construction engineer considers should be monitored, until the first or next inspection of the reservoir under this Act, by the supervising engineer for the time being commissioned in relation to the reservoir under section 24,
- (d) must impose the requirements mentioned in subsection (7).
- (3) Where the relevant works have involved the controlled reservoir being discontinued, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied
- (a) that the discontinuance has been safely completed,
- (b) that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land,
- (c) that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water.
- (4) A final certificate given under subsection (3) must
- (a) state that the construction engineer is satisfied as to the matters referred to in paragraphs (a) to (c) of that subsection,
- (b) impose the requirements mentioned in subsection (7).
- (5) Where the relevant works have involved the controlled reservoir being abandoned, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied
- (a) that the abandonment has been safely completed,
- (b) that the resulting structure or area is incapable of filling with water above the natural level of any part of the surrounding land.
- (6) A final certificate issued under subsection (5) must state that the engineer is satisfied as to the matters referred to in paragraphs (a) and (b) of that subsection.
- (7) The requirements referred to in subsection (2)(d) and (4)(b) are
- (a) that water in the reservoir must not exceed a level specified in the certificate (the "specified level"),
- (b) that the reservoir manager must ensure that the level of water does not exceed the specified level,
- (c) any requirements the construction engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.
- (8) The construction engineer must, not later than 28 days after issuing a final certificate, give the Department a copy of the certificate.
- (9) If a final certificate is not issued by the end of the period of 5 years beginning with the date of the first preliminary certificate, the construction engineer must
- (a) not later than 28 days after the expiry of the 5 year period, give the reservoir manager a written statement of the reasons,
- (b) at intervals of not more than 12 months thereafter until the final certificate is issued, give the reservoir manager subsequent written statements of the reasons,
- (c) not later than 28 days after any such statement is given, give the Department a copy of the statement.

**Preliminary and final certificates: compliance**

47. The reservoir manager of a controlled reservoir must (subject to section 58) ensure that the requirements of any preliminary certificate or final certificate for the time being applicable to the reservoir are complied with.

**Termination of supervision by construction engineer**

48. The obligation of the reservoir manager to commission a construction engineer to supervise the relevant works and the safety of the controlled reservoir terminates when the construction engineer gives a copy of the final certificate issued by the engineer in respect of the works to the Department in accordance with section 46(8).

*Offences: construction or alteration*

**Offences: construction or alteration**

49. (1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements under this Part is an offence
- (a) the requirements in section 40(2)(a) (commissioning of construction engineer),
- (b) the requirements in section 43(1) (ensuring compliance with direction in safety report as to taking of safety measure),
- (c) the requirements in section 47 (ensuring compliance with preliminary certificate or final certificate).
- (2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence
- (a) the requirements in section 40(1) (notice to the Department of proposed relevant works),
- (b) the requirements in section 40(2)(b) (notice to Department of commissioning of construction engineer).
- (3) A reservoir manager guilty of an offence under subsection (1)(a) 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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) A reservoir manager guilty of an offence under subsection (1)(b) or (c) is liable
- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
- (b) on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- (5) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(b).

**Defences: offences under section 49(1)(b) or (c)**

50. It is a defence to a charge in proceedings under section 49(1)(b) or (c) for the person to show both
- (a) that the failure to comply with the requirements concerned was as a result of 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,
- (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.



*Relevant works underway at commencement*

**Controlled reservoirs subject to relevant works on the commencement date**

51. (1) This section applies in relation to a controlled reservoir which is, on the commencement date, subject to relevant works.
- (2) This Part, and sections 63 to 65 (in Part 6), apply on and after the commencement date in relation to any such controlled reservoir subject to the following modifications
- (a) notice to the Department under section 40(1) of the relevant works must be given not later than 28 days after the commencement date,
- (b) a construction engineer must be commissioned under section 40(2)(a) not later than 28 days after the commencement date,
- (c) notice to the Department under section 40(2)(b) of the commissioning must be given not later than 28 days after the commissioning.
- (3) The Department may, in relation to any such controlled reservoir where it considers it appropriate to do so, extend the period of 28 days specified in subsection (2)(a) and (b) to such other period as it may, by notice served on the reservoir manager, specify.
- (4) In this section, "the commencement date" means the date of commencement of section 40.

PART 4

CONTROLLED RESERVOIRS: OTHER REQUIREMENTS

**Incident reporting**

52. (1) The Department may by regulations make provision for the reporting to it of incidents occurring at controlled reservoirs which meet criteria specified in, or otherwise determined in accordance with, the regulations.
- (2) The regulations may, in particular
- (a) provide that the Department or another person
- (i) may specify the criteria,
- (ii) is to determine whether a controlled reservoir meets the criteria,
- (b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a controlled reservoir,
- (c) require the reservoir manager of a controlled reservoir or other person to notify the Department of any incident occurring at the reservoir and to provide the Department with a report on the incident,
- (d) provide for a supervising engineer, an inspecting engineer or other person to determine whether an incident has occurred,
- (e) require reservoir managers of controlled reservoirs, supervising engineers, inspecting engineers and any other person of a specified description to have regard to guidance issued by the Department,
- (f) make provision as to the publishing of incident reports,
- (g) confer powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (h) make provision as to offences,
- (i) provide that any offence created is triable only summarily,
- (j) provide for any offence created
- (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
- (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
- (k) make provision in connection with ensuring remedial action is taken following an incident report, including provision amending this Act (other than this section) or applying this Act with modifications.
- (3) If it appears to the Secretary of State that the publication of, or giving access to, any incident report or any information in an incident report would adversely affect national security, the Secretary of State may by notice direct the Department to direct the reservoir manager concerned in accordance with subsection (4).
- (4) The Department on receiving notice under subsection (3) must, by notice served on the reservoir manager concerned, direct the manager
- (a) not to publish, or not to publish except as specified in the notice, a copy of an incident report prepared by the reservoir manager in pursuance of regulations made under subsection (1),
- (b) not to give access to a copy of such an incident report except as specified in the notice.
- (5) Before making regulations under subsection (1), the Department must consult
- (a) the reservoir managers of controlled reservoirs to which they consider the regulations will apply,
- (b) the Institution of Civil Engineers,
- (c) such other persons as it considers appropriate.

**Flood plans**

53. (1) The Department may by regulations make provision as to—
- (a) the preparation of flood plans for controlled reservoirs,
- (b) such other matters in relation to such flood plans as it considers appropriate.
- (2) A "flood plan" for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.
- (3) Regulations under subsection (1) may include provision
- (a) as regards who is to prepare a flood plan,
- (b) requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories or types as may be determined by the Department,
- (c) allowing a single flood plan to be prepared in respect of 2 or more controlled reservoirs between which water does (or could) flow,
- (d) specifying
- (i) the form in which a flood plan is to be prepared,
- (ii) what is to be included in a flood plan,
- (e) requiring the person preparing a flood plan to have regard to any guidance that may be issued by the Department as regards flood plans,
- (f) requiring flood plans to be produced or submitted to the Department (whether or not for approval) by such time as either
- (i) the regulations specify, or
- (ii) the Department may direct,
- (g) as regards the approval of flood plans (whether by the Department, supervising engineers or inspecting engineers),
- (h) as regards the review and updating of flood plans,
- (i) as regards the publication or distribution of copies of
- (i) a list of controlled reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
- (ii) flood plans,
- (j) in connection with the testing of flood plans,
- (k) in connection with the referral of matters to a referee,
- (l) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is reasonably practicable to do so, to take action set out in the plan relating to the reservoir in the event of an incident or emergency,
- (m) providing that the Department may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from the person,
- (n) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (o) making provision in connection with paragraphs (k), (m) and (n) amending this Act (other than this section) or applying this Act with modifications,

- (p) as to offences,
- (q) providing that any offence created is triable only summarily,
- (r) providing for any offence created
- (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
- (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale.
- (4) If it appears to the Secretary of State that the publication or distribution of, or giving access to, any flood plans or any information in flood plans would adversely affect national security, the Secretary of State may by notice direct the Department to direct reservoir managers in accordance with subsection (5).
- (5) The Department on receiving notice under subsection (4) must, by notice served on each reservoir manager concerned, direct the manager
  - (a) not to publish, or not to publish except as specified in the notice, a copy of a flood plan prepared by the reservoir manager in pursuance of regulations made under subsection (1),
  - (b) not to distribute, or not to give access to, a copy of such a flood plan except as specified in the notice.
- (6) Before making regulations under subsection (1), the Department must consult
  - (a) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
  - (b) the Institution of Civil Engineers,
  - (c) such other persons as it considers appropriate.

#### **Maintenance of records**

54. (1) The reservoir manager of a controlled reservoir must maintain a record of relevant documents.
- (2) The record must include all of the relevant documents. (Sections 35 and 36 make provision as regards other records to be maintained by the reservoir managers of high-risk and medium-risk reservoirs and associated offences.)
- (3) Where the reservoir is a low-risk reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Department may by regulations require.
- (4) The relevant documents are
  - (a) any of the following which is given to the reservoir manager (or copied to the manager pursuant to section 66)
    - (i) a safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate,
    - (ii) a pre-commencement inspection report or an inspection report, interim inspection compliance certificate or inspection compliance certificate,
    - (iii) a notice under section 25(2)(a) or (g), recommendation under section 25(3) or statement under section 25(5) (by a supervising engineer),
  - (b) any flood plan currently applicable in respect of the reservoir which has been produced in respect of it in pursuance of regulations made under section 53.

#### **Display of emergency response information**

55. (1) The reservoir manager of a controlled reservoir must ensure that emergency response information is displayed at or near the reservoir.
- (2) Emergency response information is such information about the reservoir and the reservoir manager as may be specified by regulations by the Department.
- (3) The information that may be specified under subsection (2) includes in particular
  - (a) the name of the reservoir (if any),
  - (b) any registration number in the controlled reservoirs register in respect of the reservoir,
  - (c) the reservoir manager's name and address and information for the purpose of enabling a person to contact the reservoir manager in the event of an emergency,
  - (d) where the reservoir is a high-risk reservoir or medium-risk reservoir, information for the purpose of enabling a person to contact the Department in the event of an emergency.
- (4) The Department may by notice served on reservoir managers of controlled reservoirs give them directions to as to
  - (a) the manner in which emergency response information is to be displayed,
  - (b) each location at which it is to be displayed.
- (5) Directions under subsection (4) may be general or specific.
- (6) The reservoir manager of a controlled reservoir must comply with any direction by the Department under subsection (4).

#### **Offences under Part 4**

56. (1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements under this Part is an offence
  - (a) a direction under section 52(4) (publication etc. of incident reports and national security),
  - (b) a direction under section 53(5) (publication etc. of flood plans and national security).
- (2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence
  - (a) the requirements of section 54 (maintenance of records),
  - (b) the requirements of section 55(1) or (6) (display of emergency response information).
- (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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### PART 5

#### DISPUTE REFERRAL

#### **Referral to referee: directions in safety report or inspection report**

57. (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 referred to in
  - (i) section 33(4)(a)(ii) (to ensure taking of measure in interests of safety of reservoir),
  - (ii) section 33(4)(e) of that section (to ensure supervision by an inspecting engineer or other qualified engineer of taking of certain measures),
  - (iii) section 33(4)(f) of that section (to ensure monitoring by supervising engineer of taking of certain measures),
- (c) an inspection report contains a recommendation by an inspecting engineer as to when the next inspection of the reservoir should take place.

(2) The reservoir manager to whom the report is given may challenge the direction, or recommendation, by referring it to a referee in accordance with regulations made under section 62(1).

(3) Where a referral is made under subsection (2), the direction or recommendation is suspended until the reference has been determined or withdrawn.

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

58. (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 62(1).

(2) The matters are

- (a) the level of water specified in the preliminary certificate in accordance with section 44(2)(a),
- (b) any requirement specified in the preliminary certificate in accordance with section 44(2)(c) (manner of increasing or decreasing level of water),
- (c) any recommendation contained in the final certificate in accordance with section 46(2)(b) (as to when next inspection of reservoir should take place),
- (d) any matter specified in the final certificate in accordance with section 46(2)(c) (monitoring of matters by supervising engineer),
- (e) any requirement imposed in the final certificate in accordance with section 46(7)(a) or (c) (maximum level and manner of increasing or decreasing level of water).

(3) Where a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.

**Commissioning of referee**

59. (1) The referee must be an engineer commissioned under this section either

- (a) by agreement between the reservoir manager and the relevant engineer, or
- (b) where no agreement is reached, by the Institution of Civil Engineers.

(2) An engineer may be commissioned as a referee if the engineer

- (a) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
- (b) is not disqualified by virtue of subsection (3) from being commissioned under this section in relation to the reservoir concerned.

(3) An engineer is disqualified from being commissioned under this section in relation to the reservoir if the engineer

- (a) is, or has previously been, an employee of any person who is, or has previously been, a reservoir manager of the reservoir,
- (b) has previously been an inspecting engineer or 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 an inspecting engineer or a construction engineer in relation to the reservoir.

(4) In this section and sections 60 and 61, "the relevant engineer" means the inspecting engineer or construction engineer who gave the direction or recommended, specified or imposed the matter which is the subject of the referral.

**Powers of referee: referral under section 57(2)**

60. (1) This section applies where a referral is made under section 57(2).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the direction or recommendation.

(3) Where the referee makes any such modification, the referee

- (a) must modify the report which contains the direction or recommendation,
- (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 and the referral was made in respect of a direction in it as to ensuring the taking of a measure in the interests of the safety of the reservoir, 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

- (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 the Department 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, recommendation, 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.

**Powers of referee: referral under section 58(1)**

61. (1) This section applies where a referral is made under section 58(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 the Department 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.

**Procedure etc.**

62. (1) Regulations by the Department may make provision as to

(a) the time within which a referee may be commissioned under section 59,

(b) the time within which a request to the Institution of Civil Engineers for the commissioning of a referee under that section may be made,

(c) the procedure (including the manner) of the request,

(d) the procedure in a referral before a referee,

(e) the costs of the investigation and proceedings (including the remuneration of the referee).

(2) Subject to the provisions of regulations under subsection (1), the costs of any investigation and proceedings (including the remuneration of the referee) are to be paid by the reservoir manager who makes the referral.

PART 6

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

*Enforcement of commissioning of engineers*

**Enforcement notice: commissioning of engineers**

63. (1) This section applies in relation to a controlled reservoir where it appears to the Department that

(a) the reservoir manager is required by section 24(2) to commission a supervising engineer, but no supervising engineer is for the time being commissioned,

(b) the reservoir manager is required by section 32(1) to commission an inspecting engineer, but no inspecting engineer is for the time being commissioned,

(c) the reservoir manager is required by section 40(2)(a) to commission a construction engineer, but no construction engineer is for the time being commissioned.

(2) The Department may by notice ("the notice") served on the reservoir manager of the reservoir require the manager

(a) to commission the relevant engineer before the end of the period of 28 days beginning with the day on which the notice is given (unless the reservoir manager has already commissioned the relevant engineer),

(b) before the expiry of such period as is specified in the notice, to give notice to the Department of the commissioning (whether it was made before or after the notice was given).

(3) In subsection (2)(a) and sections 65 and 66, "the relevant engineer" is a supervising engineer, an inspecting engineer or (as appropriate) a construction engineer.

**Offence: failure to comply with notice under section 63(2)**

64. (1) Failure to comply with the requirements of a notice by the Department under the following sections is an offence

(a) section 63(2)(a) (requirement to commission supervising engineer, inspecting engineer or construction engineer),

(b) section 63(2)(b) (notice to Department of commissioning).

(2) A reservoir manager guilty of an offence under subsection (1)(a) or (b) is liable

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,

(b) on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

**Commissioning of engineer by Department**

65. (1) The Department may commission a relevant engineer where

(a) it has by notice under section 63(2) required a reservoir manager to do so,

(b) the reservoir manager has failed to do so.

(2) Any commissioning of a relevant engineer under this section is to be treated for the purposes of this Act as if the commissioning were by the reservoir manager under section 24(2), 32(1) or 40(2)(a).

(3) The commissioning of a relevant engineer under this section

- (a) has no effect if the reservoir manager has already commissioned a relevant engineer,
  - (b) terminates with effect from the date of the subsequent commissioning of a relevant engineer by the reservoir manager.
- (4) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in pursuance of the exercise of its powers under this section.

**Commissioning by the Department: engineers' reports, certificates, recommendations etc.**

66. Where the Department commissions a relevant engineer under section 65, the following are to be given to the Department (instead of being given to the reservoir manager) and copied to the reservoir manager, not later than 28 days after being given to the Department

- (a) where the relevant engineer is a supervising engineer, any notice under section 25(2)(a) or (g), recommendation under section 25(3) or statement under section 25(5) by the supervising engineer,
- (b) where the relevant engineer is an inspecting engineer, any inspection report, interim inspection compliance certificate or inspection compliance certificate by the inspecting engineer,
- (c) where the relevant engineer is a construction engineer, any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate by the construction engineer.

*Enforcement of taking of safety measures*

**Enforcement notice: safety measures**

67. (1) This section applies in relation to a controlled reservoir where it appears to the Department that the reservoir manager has failed to comply with

- (a) the manager's duty under section 34(1) (to ensure compliance with a direction in an inspection report or a pre-commencement safety recommendation),
- (b) the manager's duty under section 43(1) (to ensure compliance with a direction in a safety report).

(2) The Department may by notice served on the reservoir manager require the manager to comply with the duty before the end of the period specified in the notice.

(3) The Department must consult an engineer commissioned by it under this section about the period to be specified in the notice.

(4) An engineer may be commissioned under this section, or section 69, if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section or section 69 in relation to the reservoir.

(5) Notice under subsection (2) must

- (a) specify the measure that the Department requires to be taken,
- (b) state the Department's reasons for considering that this section applies,
- (c) specify any particular steps the Department considers must be taken as respects the measures.

(6) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in connection with consultation under this section.

**Offence: failure to comply with notice under section 67(2)**

68. (1) Failure to comply with a notice by the Department under section 67(2) is an offence.

(2) A reservoir manager guilty of an offence under subsection (1) is liable

- (a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
- (b) on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

*Department arranging taking of safety measures*

**Department's power to arrange taking of safety measures**

69. (1) This section applies where the Department has by notice under section 67(2) required a reservoir manager to take a measure and the reservoir manager has failed to do so.

(2) The Department may arrange for the taking of the measure under the supervision of an engineer commissioned by it under this section.

(3) Where the engineer is satisfied that the measure has been taken, the engineer must give a certificate to that effect to the Department.

(4) A certificate given under subsection (3) in respect of a measure which is the subject of a direction referred to in section 33(4)(a)(ii) (direction in inspection report to ensure taking of measure in interests of safety of reservoir), or in respect of a pre-commencement safety recommendation, has effect as if it were an interim inspection compliance certificate or (as appropriate) an inspection compliance certificate.

(5) A certificate given under subsection (3) in respect of a direction in a safety report as to a measure referred to in section 42(1)(a) (measure in interests of safety of reservoir) has effect as if it were a safety measure certificate.

(6) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in making arrangements under this section.

*Conviction of certain offences involving safety matters: further remedies*

**Offence under section 36(1)(f) or 49(1)(b): further remedies**

70. (1) This section applies where a reservoir manager is convicted of an offence under

- (a) section 36(1)(f) (failure to ensure compliance with direction in inspection report or pre-commencement safety recommendation),
- (b) section 49(1)(b) (failure to comply with direction in safety report).

(2) The court may, in addition to or instead of imposing any penalty that may be imposed under section 36(3) or 49(4), order the reservoir manager to take such steps as may be specified in the order, before the expiry of such period as is so specified

- (a) to secure compliance with the direction or recommendation concerned,
- (b) to secure the remedying or mitigating of the effects of the failure to comply with the direction or recommendation.

(3) The court may

(a) on an application made before the end of the period specified under subsection (2), by order extend the period to such extended period as is specified in the order,

(b) on an application made before the end of the extended period, by order further extend the period to such further extended period as is specified in the order,

(c) by order grant further extensions of the latest period specified by it by order under paragraph (b), on an application made before the end of the latest period.

#### *Department's powers in emergency*

##### **Emergency powers**

71. (1) This section applies where it appears to the Department that immediate action is needed to protect persons or property against an escape of water from a controlled reservoir (whether or not the reservoir is in use).

(2) The Department may take any measures that it considers necessary

(a) to remove or reduce the risk to persons or property,

(b) to mitigate the effect of an escape of water.

(3) The Department must

(a) commission an engineer to make recommendations about any measures to be taken under this section,

(b) arrange for the measures to be taken under the supervision of the commissioned engineer.

(4) An engineer may be commissioned under this section if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir.

(5) The Department must serve notice on the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)

(a) must be served as soon as is reasonably practicable (which may be after any works have begun), but

(b) is not required if the Department is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in relation to the exercise of its powers under this section as is specified in the notice.

(8) The reservoir manager must pay the Department the amount of any costs so incurred and specified in such notice.

#### *Stop notices*

##### **Stop notices**

72. (1) The Department may by regulations make provision as to the serving by it of stop notices on reservoir managers of controlled reservoirs.

(2) Before making regulations under subsection (1), the Department must consult in accordance with section 85.

(3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from doing any of the following until the manager has taken the steps specified in the notice

(a) carrying on an activity specified in the notice,

(b) permitting the carrying on by another of an activity so specified.

(4) Regulations under subsection (1) may confer power to serve a stop notice only in relation to a case where either

(a) the reservoir manager is carrying on the activity, or the activity is being carried on by another with the permission of the manager, and the Department reasonably considers that the activity as so carried on either

(i) presents a risk to the safety of the reservoir that may result in an uncontrolled release of water from it, or

(ii) involves or is likely to involve the commission of an offence under this Act,

or

(b) the Department considers that the reservoir manager is likely to carry on, or permit the carrying on of, the activity and that the activity as likely to be so carried on either

(i) will present a risk to the safety of the reservoir that may result in an uncontrolled release of water from it, or

(ii) will involve, or is likely to involve, the commission of an offence under this Act.

(5) Where the regulations confer power to serve a stop notice in a case where the Department reasonably considers as is specified in subsection (4)(a)(i) or (b)(i) (risk to safety)

(a) the Department must, before it exercises the power

(i) at its own expense commission an engineer who is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,

(ii) take into account any recommendation made by the 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)(i) or (b)(i).

(6) For the purposes of this section, permission includes acquiescence; and references to "permitting" and "permit" are to be construed accordingly.

##### **Stop notices: content and procedure**

73. (1) Regulations made under section 72(1) must secure the results in subsection (2) in a case where a stop notice is served.

(2) The results are that

(a) the stop notice must include information as to the matters specified in subsection (3),

(b) the reservoir manager on whom the notice is served may appeal to the Water Appeals Commission for Northern Ireland against the decision to serve it,

(c) where, after serving the stop notice, the Department is satisfied that the manager has taken the steps specified in the notice, the Department must give a certificate to that effect (a "completion certificate"),

(d) the stop notice ceases to have effect on the giving of a completion certificate,

(e) the reservoir manager on whom the stop notice is served may at any time apply for a completion certificate,

(f) the Department 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 is made,

(g) the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission for Northern Ireland against a decision not to give a completion certificate,

(h) a stop notice in respect of which an appeal referred to in paragraph (b) or (g) is made continues to have effect pending a decision being made in the appeal.

(3) The matters referred to in subsection (2)(a) are

(a) the grounds for serving the stop notice,

(b) rights of appeal,

(c) the consequences of non-compliance with the stop notice.

(4) Provision pursuant to subsection (2)(b) must include provision as to the powers of the Commission in an appeal and secure that the grounds on which a reservoir manager may appeal against a decision of the Department to serve 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.

(5) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of the Department 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 unreasonable.

(6) Provision pursuant to subsection (2)(b) or (g) may include provision about

(a) the determining by or under the regulations of a fee and the charging of any fee so determined in connection with an appeal,

(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

#### **Stop notices: compensation**

74. (1) Provision under section 72(1)

(a) must include provision for the Department to compensate the reservoir manager for loss suffered as the result of the serving of the stop notice,

(b) may provide for compensation only

(i) in cases specified by the regulations,

(ii) in relation to descriptions of loss so specified,

(c) must secure that the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission for Northern Ireland against the following and provide for the powers of the Commission in an appeal

(i) a decision of the Department not to award compensation,

(ii) a decision of the Department as to the amount of the compensation.

(2) Provision under that section may include provision as to

(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,

(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

#### **Stop notices: enforcement**

75. (1) Regulations under section 72(1) may provide that, where a reservoir manager on whom a stop notice is served does not comply with it, the manager commits an offence and is liable

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000, or to both,

(b) on conviction on indictment

(i) for a first such offence, to imprisonment for a term not exceeding 12 months, or to a fine, or to both,

(ii) for any subsequent such offence, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(2) Regulations made under section 72(1) must provide that it is a defence to a charge in proceedings for an offence created by the regulations 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,
- (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

*Other civil enforcement measures*

**Enforcement undertakings**

76. (1) The Department may by regulations make provision

- (a) as to the acceptance by it of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where the Department has reasonable grounds to suspect that the manager has committed an offence under this Act,
  - (b) for the acceptance by it of the undertaking to have the required consequences of acceptance (see subsection (5)).
- (2) Before making regulations under subsection (1), the Department must consult in accordance with section 85.
- (3) An "enforcement undertaking" is a written undertaking to take such action as may be specified in the undertaking before the end of such period as may be so specified.
- (4) The action specified in an enforcement undertaking must be one or more of the following
- (a) action to secure that the offence does not continue or recur,
  - (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
  - (c) action (including the payment of a sum of money) to benefit any person adversely affected by the offence,
  - (d) such other action as may be described in the regulations.
- (5) The "required consequences of acceptance" are that, unless the reservoir manager from whom the undertaking is accepted has failed to comply with the undertaking or any part of it
- (a) the reservoir manager may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,
  - (b) the Department may not impose on the manager any fixed monetary penalty in respect of the act or omission which it would otherwise have power to impose by virtue of section 78(1),
  - (c) the Department may not impose on the manager any variable monetary penalty in respect of the act or omission which it would otherwise have power to impose by virtue of section 81(1).

**Regulations as to enforcement undertakings: further provision**

77. (1) Regulations under section 76(1) may in particular include provision

- (a) as to the procedure for entering into an undertaking,
- (b) as to the terms and conditions of an undertaking,
- (c) as to the publication by the Department of an undertaking,
- (d) as to the variation of an undertaking,
- (e) as to the circumstances in which a reservoir manager may be regarded as having complied with an undertaking,
- (f) as to the monitoring by the Department of compliance with an undertaking,
- (g) as to the certification by the Department that an undertaking has been complied with,
- (h) allowing an application for a review by the Department against refusal by it to give such certification,
- (i) as to a right of appeal to the Water Appeals Commission for Northern Ireland against a decision in a review and the powers of the Commission in an appeal,
- (j) for the grounds of any such appeal to include that
  - (i) the decision was based on an error of fact,
  - (ii) the decision was wrong in law,
  - (iii) the decision was unreasonable,
- (k) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (l) in a case where a reservoir manager has given inaccurate, misleading or incomplete information in relation to the undertaking, for the manager to be regarded as not having complied with it,
- (m) in a case where a reservoir manager has complied partly but not fully with an undertaking, for the part-compliance to be taken into account in the imposition on the manager of any criminal or other sanction,
- (n) extending any period within which criminal proceedings may be instituted against a reservoir manager in respect of the offence in the event of breach of an undertaking or any part of it,
- (o) as to the creation of offences,
- (p) for any offence created to be triable only summarily,
- (q) for any offence created
  - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
  - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
- (r) for any defences to a charge in proceedings for such an offence to include in particular a defence for the person to show both
  - (i) that the failure to comply with the requirement concerned 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



(ii) that the person took all practicable steps to prevent an uncontrolled release of water from the reservoir, took all practicable steps as soon as was reasonably practicable to rectify the failure and provided particulars of the failure to the Department as soon as practicable after the failure arose.

(2) Provision as to a right of appeal referred to in paragraph (i) of subsection (1) may include provision about

(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,

(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

#### **Fixed monetary penalties**

78. (1) The Department may by regulations make provision about the imposition by it of fixed monetary penalties on reservoir managers of controlled reservoirs in relation to offences under this Act.

(2) Before making regulations under subsection (1), the Department must consult in accordance with section 85.

(3) A "fixed monetary penalty" is a requirement to pay to the Department a penalty of a specified amount (with payment attracting the results mentioned in paragraphs (a) and (b) of section 80(2)).

(4) Regulations made under subsection (1) must provide that

(a) a fixed monetary penalty may be imposed only where the Department is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Act,

(b) a fixed monetary penalty is to be imposed by notice served on the reservoir manager concerned,

(c) the amount of the penalty which may be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for the offence.

(5) For the purposes of this section, and section 79, "specified" means specified in regulations made under subsection (1).

#### **Fixed monetary penalties: procedure etc.**

79. (1) Regulations made under section 78(1) must secure the results mentioned in subsection (2).

(2) The results are that

(a) where the Department proposes to impose a fixed monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a "notice of intent") which complies with subsection (3),

(b) the notice of intent must also offer the manager the opportunity to discharge the manager's liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),

(c) if the manager does not so discharge liability

(i) the manager may make written representations and objections to the Department in relation to the proposed imposition of the fixed monetary penalty,

(ii) the Department must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where the Department decides to impose the fixed monetary penalty, the notice imposing it ("the final notice") must be served on the reservoir manager and comply with subsection (5),

(e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Water Appeals Commission for Northern Ireland against the decision to impose it.

(3) To comply with this subsection, the notice of intent must include information as to

(a) the grounds for the proposal to impose the fixed monetary penalty,

(b) how payment to discharge the liability for a fixed monetary penalty may be made,

(c) the effect of payment of the specified sum,

(d) the right to make written representations and objections,

(e) the circumstances in which the Department may not impose the fixed monetary penalty,

(f) the period within which liability for the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served,

(g) the period within which representations and objections may be made, which must not exceed that period of 28 days.

(4) Provision to secure the result referred to in subsection (2)(c)(ii)

(a) must secure that the Department may not decide to impose a fixed monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,

(b) may include provision for other circumstances in which the Department may not decide to impose a fixed monetary penalty.

(5) To comply with this subsection, the final notice must include information as to

(a) the grounds for imposing the penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,

(f) the consequences of non-payment.

(6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that

(a) the decision was based on an error of fact,

- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(7) Provision to secure the result in that subsection must include provision as to the powers of the Commission in an appeal and may include provision as to

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

(8) Regulations under section 78(1) may provide that, where a fixed monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

**Fixed monetary penalties: criminal proceedings and conviction etc.**

80. (1) Regulations made under section 78(1) must secure that, in a case where a notice of intent referred to in section 79(2)(a) is served on a reservoir manager

(a) no criminal proceedings for the offence to which the notice relates may be instituted against the manager in respect of the act or omission to which the notice relates before the end of the period in which the manager may discharge liability for the fixed monetary penalty pursuant to section 79(2)(b),

(b) the Department may not, before the end of that period, serve a stop notice or impose a variable monetary penalty on the manager in respect of that act or omission,

(c) if the manager so discharges liability

(i) the manager may not at any time be convicted of the offence in respect of that act or omission,

(ii) the Department may not serve a stop notice on the manager in respect of the act or omission.

(2) Regulations made under section 78(1) must also secure that, in a case where a fixed monetary penalty is imposed on a reservoir manager

(a) the manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty,

(b) the Department may not serve a stop notice or impose a variable monetary penalty on the manager in respect of the act or omission giving rise to the penalty.

**Variable monetary penalties**

81. (1) The Department may by regulations make provision about the imposition by it of variable monetary penalties on reservoir managers of controlled reservoirs in relation to offences under this Act.

(2) Before making regulations under subsection (1), the Department must consult in accordance with section 85.

(3) A "variable monetary penalty" is a requirement to pay to the Department a penalty of such amount as it may in each case determine (but not exceeding the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction).

(4) Regulations made under subsection (1)

(a) must provide that variable monetary penalties

(i) may be imposed only where the Department is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Act,

(ii) may not be imposed on a reservoir manager on more than one occasion in relation to the same act or omission,

(iii) are to be imposed by notice served on the reservoir manager concerned,

(b) may provide that variable monetary penalties may be imposed in addition to any requirement referred to in section 63(2) or 67(2).

**Variable monetary penalties: procedure etc.**

82. (1) Regulations made under section 81(1) must secure the results mentioned in subsection (2).

(2) The results are that

(a) where the Department proposes to impose a variable monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a "notice of intent") which complies with subsection (3),

(b) the reservoir manager may make written representations and objections to the Department in relation to the proposed imposition,

(c) after the end of the period for making such representations and objections, the Department must decide whether to impose the variable monetary penalty (with or without modifications),

(d) where the Department decides to impose a variable monetary penalty, the notice (the "final notice") must be served on the reservoir manager and comply with subsection (6),

(e) the reservoir manager on whom a variable monetary penalty is imposed may appeal to the Water Appeals Commission for Northern Ireland against the decision to impose it.

(3) To comply with this subsection, the notice of intent must include information as to

(a) the grounds for the proposal to impose the variable monetary penalty,

(b) the right to make representations and objections,

(c) the circumstances in which the Department may not impose the variable monetary penalty,

(d) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served.

(4) Provision to secure the result in subsection (2)(c)

(a) must secure that the Department may not decide to impose a variable monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,

(b) may include provision for other circumstances in which the Department may not decide to impose a variable monetary penalty.

(5) Provision to secure the result in subsection (2)(c) must also include provision for

(a) the reservoir manager on whom the notice of intent is served to be able to offer a written undertaking as to action to be taken by the manager (including the payment of a sum of money) to benefit any person affected by the offence,

(b) the Department to be able to accept or reject such an undertaking,

(c) the Department to take any undertaking so accepted into account in its decision.

(6) To comply with this subsection, the final notice must include information as to

(a) the grounds for imposing the variable monetary penalty,

(b) how payment may be made,

(c) the period within which payment must be made,

(d) any early payment discounts or late payment penalties,

(e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,

(f) the consequences of non-payment.

(7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that

(a) the decision was based on an error of fact,

(b) the decision was wrong in law,

(c) the amount of the variable monetary penalty was unreasonable,

(d) the decision was unreasonable for any other reason.

(8) Provision to secure the result in that subsection must include provision as to the powers of the Commission in an appeal and may include provision as to

(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,

(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

(9) Regulations under section 81(1) may provide that, where a variable monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

**Variable monetary penalties: criminal proceedings and conviction**

83. (1) Regulations made under section 81(1) must secure the result mentioned in subsection (2) where

(a) a variable monetary penalty is imposed on a reservoir manager,

(b) an undertaking referred to in section 82(5) is accepted from a reservoir manager (whether or not a variable monetary penalty is also imposed).

(2) The result is that the reservoir manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the variable monetary penalty or undertaking, except where the following applies

(a) an undertaking referred to in section 82(5) is accepted from the manager,

(b) the manager fails to comply with the undertaking.

(3) Regulations under section 81(1) may, for the purposes of the circumstances referred to in paragraphs (a) and (b) of subsection (2), extend any period within which criminal proceedings may be instituted against the reservoir manager.

**Undertaking referred to in section 82(5): enforcement**

84. (1) Regulations under section 81(1) may include provision for a reservoir manager to pay a monetary penalty (a "non-compliance penalty") to the Department if the manager fails to comply with an undertaking referred to in section 82(5).

(2) The regulations

(a) may specify the amount of the non-compliance penalty and provide for the amount to be

(i) determined by the Department or determined in any other way,

(ii) calculated by reference to criteria specified in the regulations, but

(b) may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence may be made liable on summary conviction.

(3) Provision pursuant to subsection (1) must secure that

(a) the non-compliance penalty is imposed by notice complying with subsection (4), served by the Department on the reservoir manager,

(b) the reservoir manager on whom it is imposed may appeal to the Water Appeals Commission for Northern Ireland against the notice.

(4) To comply with this subsection, the notice must include information as to

(a) the amount of the penalty,

(b) how the amount is determined or calculated,

(c) the undertaking that has not been complied with,

(d) how payment of the penalty may be made,

(e) the right of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,

(f) the consequences of non-payment.

(5) Provision conferring a right of appeal must secure that the grounds on which a reservoir manager may appeal against a notice referred to in subsection (3)(a) include the following

- (a) that the decision to give the notice was based on an error of fact,
- (b) that the decision was wrong in law,
- (c) that the decision was unreasonable (including that the amount was unreasonable).

(6) Regulations made under section 81(1) must include provision as to the powers of the Commission in an appeal and may include provision as to

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

(7) Regulations under section 81(1) may provide that, where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under a court order.

#### *Miscellaneous*

#### **Consultation in relation to regulations under sections 72(1), 76(1), 78(1) and 81(1)**

85. (1) The consultation required by sections

- (a) 72(2) (stop notices),
- (b) 76(2) (enforcement undertakings),
- (c) 78(2) (fixed monetary penalties),
- (d) 81(2) (variable monetary penalties),

is consultation with the organisations and persons mentioned in subsection (2).

(2) The persons are

- (a) such organisations as appear to the Department to be representative of persons substantially affected by the making of the proposed regulations,
- (b) such other persons as the Department considers appropriate.

#### **Recovery by the Department of certain costs**

86. (1) Regulations under section 72(1), 76(1) or 81(1) may include provision for the Department, by notice served on a reservoir manager on whom a stop notice is served, from whom an enforcement undertaking is accepted or on whom a variable monetary penalty is imposed, to require the reservoir manager to pay the amount of any costs reasonably incurred by the Department in relation to (and up to the time of) the service of the notice, acceptance of the undertaking or imposition of the penalty.

(2) In subsection (1), the reference to "costs" includes in particular

- (a) investigation costs,
- (b) administration costs,
- (c) costs of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager required to pay the costs may appeal to the Water Appeals Commission for Northern Ireland against the following and provide for the powers of the Commission in an appeal

- (a) the Department's decision to impose the requirement to pay costs,
- (b) the Department's decision as to the amount of the costs.

(4) Provision pursuant to that subsection may include provision as to

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

#### **Publication of enforcement action**

87. (1) Except as provided in subsection (2), the Department may publish such information as it considers appropriate as regards cases in which it has

- (a) commissioned a supervising engineer, an inspecting engineer or a construction engineer under section 65,
- (b) arranged for the taking of any measure under section 69,
- (c) served a stop notice by virtue of section 72(1),
- (d) imposed a fixed monetary penalty by virtue of section 78(1),
- (e) imposed a variable monetary penalty by virtue of section 81(1).

(2) The Department may not publish information as regards a case falling within paragraph (c), (d) or (e) of subsection (1) where the stop notice, fixed monetary penalty or variable monetary penalty has been imposed but overturned on appeal.

#### *Powers of entry*

#### **Powers of entry**

88. (1) Any person duly authorised in writing by the Department may, at any reasonable time for any of the purposes in subsection (2), enter

- (a) land on which a controlled reservoir is situated,
- (b) land on which a structure or area, which is to be treated by virtue of section 2(2) for the purposes of this Act as a controlled reservoir, is situated,
- (c) land on which the Department considers there is a structure or area in relation to which the Department is considering making regulations under section 2(3),
- (d) land on which a structure or area which previously at any time has been a controlled reservoir is situated,
- (e) neighbouring or other land through which access is required in order to enter any land referred to in paragraphs (a) to (d).

- (2) The purposes are to carry out an inspection, survey or other operation
  - (a) to determine whether any provision of this Act applies,
  - (b) for the purpose of assisting the Department in giving a risk designation or a review, periodic re-assessment or appeal as regards a risk designation,
  - (c) to determine whether a direction under section 25(4)(a) (supervision: direction to carry out visual inspection) has been complied with,
  - (d) to determine
    - (i) whether a measure directed in an inspection report or a pre-commencement safety recommendation has been taken (whether before or after the giving of an enforcement notice under section 67),
    - (ii) the period to be specified in a notice under that section,
  - (e) to determine whether a measure directed in a safety report has been taken,
  - (f) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,
  - (g) to determine whether the records required by sections 35 or 54 are being maintained,
  - (h) to determine whether any incident is being reported in accordance with regulations under section 52,
  - (i) to determine whether a flood plan is being prepared in accordance with regulations under section 53,
  - (j) for the purposes of section 69 (Department's power to arrange taking of safety measures),
  - (k) to determine what (if any) emergency measures should be taken under section 71, or for any purpose connected with taking such measures,
  - (l) to determine whether a stop notice should be served,
  - (m) to assess whether any offence under this Act may be being, or has been, committed,
  - (n) for the purposes of section 92 (assessment of compensation or reinstatement works).

#### **Warrants authorising entry**

89. (1) A lay magistrate may by warrant authorise any person entitled to exercise a right of entry under section 88 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under this section only if the lay magistrate is satisfied on a complaint on oath as to both of the following

- (a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,
- (b) that any of the following applies

- (i) the conditions in subsection (3) are satisfied,
- (ii) the land is unoccupied,
- (iii) the case is one of urgency.

(3) The conditions referred to in subsection (2)(b)(i) are

- (a) that the person applying for the warrant has given notice under section 90(2)(a) of the person's intention to exercise the right,
- (b) that the notice period has expired,

(c) that either

- (i) permission to exercise the right in relation to the land has been refused, or
- (ii) such a refusal is reasonably expected.

(4) For the purposes of subsection (3)(c)(i), permission to exercise the right is to be regarded as having been refused if no reply is received within a reasonable period to a request to exercise the right.

(5) A warrant granted under this section

- (a) does not entitle a person to use force against an individual,
- (b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

#### **Powers of entry: supplementary**

90. (1) A right to enter land conferred by section 88 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to

(a) take on to the land such other persons and such materials and equipment (including machinery and vehicles) as may be reasonably required for the purposes of assisting the persons,

(b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(2) Except for a purpose referred to in section 88(2)(k), a person may not demand entry to land which is occupied unless either

(a) at least 7 days' notice has been served on the occupier, or

(b) the entry is authorised by a warrant under section 89.

(3) Notice under subsection (2)(a) must

(a) specify the purpose for which entry is required,

(b) specify so far as practicable the nature of any proposed works on the land.

(4) A person authorised by virtue of section 88 to enter land must on request produce written evidence of the authorisation.

#### **Offence: preventing or obstructing entry**

91. (1) Any person who wilfully prevents or obstructs another person entitled to enter land by virtue of section 88 (whether or not by virtue of a warrant under section 89) commits an offence.

(2) A person guilty of an offence under subsection (1)

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Compensation**

92. (1) Subject to subsection (7), the Department must pay compensation in accordance with this section where subsection (2) or (4) applies.

(2) This subsection applies where, in the exercise of a right to enter land conferred by section 88 (whether or not under a warrant under section 89) any of the following occurs

- (a) any land, other than land which is occupied by the reservoir manager, is damaged,
- (b) the enjoyment of any land, other than land which is so occupied, is disturbed.

(3) Compensation under subsection (1) in respect of the damage or disturbance, where subsection (2) applies, is to be paid to

- (a) a person with an interest in the land,
- (b) a person whose enjoyment of the land is disturbed.

(4) This subsection applies where in the exercise of a right to enter land conferred by section 88 (whether or not under a warrant under section 89), land occupied by the reservoir manager is damaged and the reservoir manager is not disqualified from claiming compensation.

(5) The reservoir manager of a controlled reservoir is disqualified from claiming compensation under subsection (1) in either of the following circumstances

- (a) the exercise of the right was for the purposes of section 69,
- (b) the exercise of the right was for the purpose of taking measures under section 71 and the reservoir manager had not taken all practicable steps to prevent an escape of water from the reservoir.

(6) Compensation under subsection (1) in respect of the damage, where subsection (4) applies, is to be paid to the reservoir manager.

(7) The Department may agree to secure the reinstatement or partial reinstatement of the land instead of payment of compensation under subsection (1), or a combination of such reinstatement and compensation; and subject to subsection (9) any such agreement reached with a person referred to in subsection (2), or the reservoir manager, is binding on the parties to it.

(8) The reservoir manager must pay the Department the amount of

- (a) any compensation payable under this section,
- (b) any costs reasonably incurred by the Department in relation to such compensation or an agreement under subsection (7),

where the damage or disturbance concerned occurred in the exercise of a right to enter land in either of the circumstances referred to in paragraph (a) or (b) of subsection (5).

(9) Any dispute as to a right of compensation under this section, the amount of any such compensation or costs incurred by the Department in relation to such compensation, or costs incurred by it in relation to an agreement under subsection (7), is to be determined by the Lands Tribunal.

#### *Reasonable facilities, information and assistance*

#### **Affording of reasonable facilities to engineers**

93. (1) The reservoir manager of a controlled reservoir must, on being requested by a relevant engineer, provide the engineer with all reasonable facilities the engineer may seek in connection with the exercise of the engineer's powers and duties under this Act.

(2) The reservoir manager

(a) must, on being requested by a relevant engineer, make available to the engineer

- (i) where the reservoir is a high-risk reservoir or a medium-risk reservoir, the record maintained by the manager under section 35,
- (ii) the record maintained by the manager under section 54,

(b) must on being so requested provide a relevant engineer with such further information or particulars as the engineer may require, in such form and manner and by such time as the engineer may by notice require.

(3) For the purposes of this section, a "relevant engineer" is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable), an inspecting engineer, any other qualified engineer or a construction engineer commissioned for the time being in relation to the reservoir.

#### **Power of the Department to require information and assistance from reservoir managers**

94. (1) The reservoir manager of a controlled reservoir must, on being requested by the Department, provide the Department with such information and assistance as it may reasonably seek in connection with the exercise of its powers and duties under this Act.

(2) The reservoir manager in particular

(a) must, on being requested by the Department, make available to it the records referred to in section 93(2)(a),

(b) must, on being so requested, provide the Department with such further information or particulars as the Department may require, in such form and manner and within such period of time, as the Department may by notice served on the reservoir manager require.

#### **Offences: sections 93 and 94**

95. (1) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements commits an offence

- (a) the requirements of section 93 (affording of reasonable facilities to engineers),
- (b) the requirements of section 94 (provision of information and assistance to the Department).

(2) A reservoir manager of a controlled reservoir who does any of the following commits an offence

(a) intentionally alters, suppresses or destroys any document, information or particulars which the person has been required by virtue of either of those sections to produce,

(b) for the purposes of either of those sections knowingly or recklessly provides any document which is, or any information or particulars which are, false or misleading in a material respect.

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**Power to require information and assistance from others**

96. The Department may by notice require a district council, any other body established or constituted under a statutory provision or any other person to provide it, within such period of time as may be so specified, with such information and assistance as it reasonably considers it needs in connection with any of the following purposes

- (a) enabling the Department to serve or give any notice which it is authorised or required by this Act to serve or give,
- (b) enabling the Department to exercise its powers and duties under this Act,
- (c) enabling the Department to assess who is, or has been, the reservoir manager of a controlled reservoir.

PART 7

PANELS OF RESERVOIR ENGINEERS

**Panels of reservoir engineers**

97. (1) The Department must

- (a) establish one or more panels of reservoir engineers for the purposes of this Act,
  - (b) appoint civil engineers who it considers to be suitable for appointment as members of such of the panels as it considers appropriate,
  - (c) specify by order, as regards each panel, the sections of this Act under which, and the type of controlled reservoir in relation to which, a member of the panel may be commissioned.
- (2) For the purposes of subsection (1)(b), and sections 99(1) and 100(4), "suitable" includes fit and appropriately qualified and experienced.

**Appointment of members to panels: further provision**

98. (1) Subject to subsections (3) and (4), a civil engineer who wishes to be appointed to a panel under section 97(1)(b) must make an appropriate application.

- (2) The Department may by regulations make provision as to the information to be provided by a civil engineer making an appropriate application.
- (3) The first appointment under paragraph (b) of section 97(1) of members of the panels established under paragraph (a) of that section are to be made (without a requirement of an appropriate application) in accordance with subsection (4).
- (4) The Department may appoint such civil engineers who are (as at the date of commencement of section 97) members of the panels constituted under section 4 of the 1975 Act, as it considers appropriate.
- (5) An appointment under this section is for such period as the Department determines.
- (6) A civil engineer appointed to a panel is eligible for re-appointment.
- (7) In this section
  - (a) "an appropriate application" is an application made in accordance with arrangements made by the Department and accompanied by payment of the appropriate fee,
  - (b) "the appropriate fee" is a fee of such amount as may be determined in accordance with arrangements made by the Department.

**Removal of panel members**

99. (1) The Department may remove a civil engineer from a panel where it is satisfied that the engineer is not suitable to continue to be a member of it.

- (2) The Department must serve on a civil engineer removed from a panel under subsection (1) notice of the engineer's removal from the panel.
- (3) Notice under subsection (2) must specify the grounds on which the engineer has been removed from the panel.

**Dissolution or alteration of panels etc.**

100. (1) The Department may dissolve or alter a panel established under section 97(1)(a).

- (2) Before doing so, the Department must serve reasonable notice on the members of the panel.
- (3) The Department may allow a civil engineer who, immediately before the dissolution or alteration was commissioned under this Act in relation to a controlled reservoir, to continue to act for a period of up to 4 years for the purpose for which the engineer was commissioned; and the engineer is to be regarded as continuing to be commissioned under this Act for the purpose.
- (4) But the Department may, by notice, direct that a civil engineer is no longer entitled to act under subsection (3) where it is satisfied that the engineer is no longer suitable to do so.
- (5) Notice under subsection (4) must specify the grounds for the direction under that subsection.
- (6) The Department may by order amend the period specified for the time being in subsection (3).

**Review of decisions not to appoint, or to remove civil engineers from panels etc.**

101. (1) A civil engineer

- (a) whose application for appointment to a panel established under section 97(1)(a) is unsuccessful,
- (b) who is removed from a panel under section 99(1),
- (c) who is given a direction under section 100(4),

may apply to the Department for a review of its decision.

(2) The Department may by regulations make further provision in relation to applications and reviews under this section, including provision as to determining and charging fees in connection with such applications.

**Consultation with Institution of Civil Engineers**

102. The Department must consult the President of the Institution of Civil Engineers (or, if that Institution appoints a committee for the purpose, that committee), before

- (a) establishing a panel under section 97(1)(a),
- (b) making an appointment to a panel under section 97(1)(b) (but not a first appointment in accordance with section 98(3) and (4)),
- (c) making an order under section 97(1)(c),
- (d) removing an engineer from a panel under section 99(1),
- (e) dissolving a panel under section 100(1),
- (f) directing under section 100(4) that an engineer is no longer entitled to act under section 100(3),
- (g) making a decision in a review under section 101.

**Reimbursement of costs incurred by Institution of Civil Engineers**

103. The Department may reimburse the Institution of Civil Engineers the amount of any costs reasonably incurred by the Institution by virtue of

- (a) arrangements entered into (whether directly or indirectly) between the Department and the Institution for the purposes of section 97(1)(b),
- (b) section 102.

PART 8

MISCELLANEOUS

**Time limit for certain summary offences under Act**

104. (1) The Department may by regulations provide that, notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, a magistrates' court has jurisdiction to hear and determine a complaint charging the commission of a specified offence if the complaint is made before the end of the specified period.

(2) In subsection (1)

- (a) "specified offence" means an offence under this Act specified in the regulations,
- (b) "the specified period", in relation to a specified offence, means such period after the time when the offence was committed or ceased to continue as is specified in the regulations in relation to the offence or category of offences within which the specified offence falls; and different periods may be specified as respects different offences or categories of offence.

**Grants**

105. (1) The Department may by regulations make provision as to the payment of grants to reservoir managers of controlled reservoirs for the purpose of enabling or assisting the managers to comply with their obligations arising by virtue of this Act.

(2) Regulations made under subsection (1) must require such grants to be subject to such terms and conditions as the Department may determine (including conditions as to repayment in the event of contravention of the other terms or conditions on which the grant is made).

**Assessment of engineers' reports etc.**

106. (1) The Department may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Act by

- (a) supervising engineers,
- (b) inspecting engineers,
- (c) other qualified engineers,
- (d) construction engineers.

(2) The regulations may

- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,
  - (b) specify the conditions for membership of the committee.
- (3) The regulations may, in particular, make provision as to
- (a) the criteria for assessment,
  - (b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,
  - (c) the assessment procedure (including whether oral as well as written representations are to be permitted),
  - (d) timing,
  - (e) reporting by the committee to the Department,
  - (f) the steps that may be taken by the Department following an assessment.

**Notice to the Department of revocation of commissioning, or resignation, of engineer**

107. (1) Where the reservoir manager of a controlled reservoir revokes the commissioning of a supervising engineer, an inspecting engineer, other qualified engineer or a construction engineer commissioned in relation to the reservoir, the manager must, not later than 28 days after doing so, give the Department notice of the revocation and of the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns

- (a) the engineer must give the reservoir manager notice of the resignation and the date on which it took, or is to take, effect,
  - (b) the reservoir manager who receives notice under paragraph (a) must, not later than 28 days after the receipt, give the Department a copy of the notice.
- (3) Notice under subsection (1) or (2)(a) must be given not later than 28 days after the revocation or resignation.
- (4) Failure by a reservoir manager to comply with the requirements of subsection (1) or (2)(b) is an offence.
- (5) A reservoir manager guilty of an offence under subsection (4)



(a) in relation to a controlled reservoir which is, at the time the offence is committed, designated as a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,

(b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) It is a defence to a charge in proceedings for an offence under subsection (4) that the reservoir manager did not receive notice of the resignation.

#### **Form and content of notices, reports, certificates etc.**

108. The Department may by regulations make provision as to

(a) the form and content of any notice required under this Act,

(b) the form of any written statement by a supervising engineer, or any report or certificate by an inspecting engineer or other qualified engineer or a construction engineer, under this Act.

#### **Electronic serving or giving of notices or other documents**

109. (1) Where subsection (2) applies, except as provided in subsection (4), any notice or other document required or authorised to be served on or sent or given to any person under this Act may be served, sent or given by sending it using electronic communications, in accordance with the condition in subsection (3), to the person at the person's electronic address.

(2) This subsection applies where the person has given an address for service using electronic communications ("the person's electronic address") and has agreed to the sending of such notices or other documents to the person at that address.

(3) The condition referred to in subsection (1) is that the notice or other document is

(a) capable of being accessed by the recipient,

(b) legible in all material respects,

(c) in a form sufficiently permanent to be used for subsequent reference;

and for this purpose "legible in all material respects" means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if served, sent or given by means of a notice or document in printed form.

(4) Subsection (1) does not apply to notice under section 90(2)(a) (notice of intention to enter land that is occupied).

(5) Any notice or other document duly served, sent or given by virtue of this section using electronic communications is, unless the contrary is proved, to be taken to have been delivered at 9am on the working day immediately following the day on which it was transmitted.

(6) Where a person is no longer willing to accept the use of electronic communications for any purpose of this Act which is capable of being carried out electronically and gives notice withdrawing the person's electronic address to the Department, a supervising engineer, inspecting engineer, other qualified engineer or construction engineer, the Institution of Civil Engineers or a referee commissioned under section 59, such withdrawal is final and takes effect on a date specified by the person in the notice (but not less than 7 days after the date on which the notice is given).

(7) This section is without prejudice to section 24(2) of the Interpretation Act (Northern Ireland) 1954 (service of documents); and in the application of that section to serving, sending or giving any notice or other document by virtue of this section using electronic communications, in paragraph (e) the references to "premises" are to be construed as references to land or premises on the land.

(8) In this section

(a) "electronic communication" has the same meaning as in the Electronic Communications Act (Northern Ireland) 2001,

(b) reference to the "supervising engineer" is to be construed as including the nominated representative of the supervising engineer under clause 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable,

(c) "working day" means a day which is not a Saturday, Sunday or a public holiday.

#### **Change to the Institution of Civil Engineers**

110. If the Institution of Civil Engineers ceases to exist, the Department may by order amend references in this Act to the Institution and to its President.

#### **Civil liability**

111. This Act does not confer a right to claim damages in respect of a breach of an obligation imposed by the Act.

### PART 9

#### GENERAL

#### **Application to the Crown**

112. (1) This Act binds the Crown and applies to any Crown land to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) Notwithstanding subsection (1), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(3) In this section and sections 113 and 114, reference to the Crown includes a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(4) In this section and section 113

(a) "Crown land" means land in which there is a Crown estate,

(b) "Crown estate" means either

(i) an estate belonging to Her Majesty in right of the Crown,

(ii) an estate belonging to a government department or held in trust for Her Majesty for the purposes of a government department,

(c) "government department" means a department of the Government of the United Kingdom or a Northern Ireland Department.

#### **Enforcement in relation to the Crown**

113. (1) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(2) But the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) The powers conferred by section 88 (whether those specified in that section or the ancillary powers referred to in section 90(1)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(4) In this section and section 114

"the appropriate authority" in relation to any land, means

(a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners,

(b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of the land,

(c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the government department.

(5) If any question arises as to what authority is the appropriate authority in relation to any land, the question must be referred to the Department of Finance and Personnel or (as appropriate) the Treasury, whose decision is final.

#### **Service or giving of notices or other documents: the Crown**

114. (1) Any

(a) notice required under this Act to be served on or given to the Crown,

(b) other document required by this Act to be given to the Crown,

is to be served on, or given to, the appropriate authority.

(2) Section 24 of the Interpretation Act (Northern Ireland) 1954 does not apply for the purposes of the service of such a notice.

#### **Offences by bodies corporate and partnerships**

115. (1) For the purposes of an offence under this Act, section 20(2) of the Interpretation Act (Northern Ireland) 1954

(a) applies with the omission of the words "the liability of whose members is limited",

(b) in a case where the affairs of a body corporate are managed by its members, applies in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(2) If an offence under this Act is committed by a partnership (whether or not a limited partnership) and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of any of the following—

(a) a partner,

(b) a person purporting to act as a partner,

that person (as well as the partnership) commits the offence.

#### **Supplementary, incidental, consequential etc. provision**

116. (1) The Department may by order make

(a) such supplementary, incidental or consequential provision,

(b) such transitional, transitory or saving provision,

as it considers appropriate for the purposes of, or in consequence of, or for giving full effect to, this Act or any provision made by or under it.

(2) An order under subsection (1) may amend, repeal, revoke or otherwise modify any statutory provision (including this Act).

(3) In subsection (2), "modify" includes the making of additions, omissions and exceptions.

#### **Orders and regulations**

117. (1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly

(a) regulations under any of the following

(i) section 2(3) (structure or area to be treated as controlled reservoir),

(ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),

(iii) section 52(1) (incident reporting),

(iv) section 53(1) (flood plans),

(v) section 72(1) (stop notices),

(vi) section 76(1) (enforcement undertakings),

(vii) section 78(1) (fixed monetary penalties),

(viii) section 81(1) (variable monetary penalties),

(ix) section 104(1) (extension of time limit for specified summary offences),

(x) section 105(1) (grants),

(b) an order under

(i) section 4(1) (substituting different volume of water in certain sections),

(ii) section 110 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

#### **Definitions**

118. (1) In this Act

"the Department" means the Department of Agriculture and Rural Development,

"notice" means notice in writing,

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954,

"the 1975 Act" means the Reservoirs Act 1975.

(2) The expressions listed in Schedule 2 are defined or otherwise explained for the purposes of this Act by the provisions indicated in the Schedule.

#### **Minor and consequential amendments and repeals**

119. (1) The statutory provisions set out in Schedule 3 have effect subject to the minor and consequential amendments specified in the Schedule.

(2) The provisions set out in the first column of Schedule 4 are repealed to the extent specified in the second column of that Schedule.

#### **Commencement**

120. (1) The following provisions of this Act come into operation on Royal Assent

(a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,

(b) this section,

(c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

#### **Short title**

121. This Act may be cited as the Reservoirs Act (Northern Ireland) 2014.

### SCHEDULES

#### SCHEDULE 1

##### PRE-COMMENCEMENT INSPECTION REPORTS: REVIEW OF DECISION UNDER SECTION 31(2)

1. A reservoir manager of a high-risk or medium-risk reservoir on whom notice is served under subsection (5) of section 31 may apply to the Department for a review by it of its decision under subsection (2) of that section (that it is satisfied that a document provided in pursuance of subsection (1) is not a pre-commencement inspection report).

2. Any such application must be made in writing before the end of the period of 90 days beginning with the date on which the notice was served.

3. In considering an application under paragraph 1, the Department

(a) may commission to make recommendations to it about the document which was the subject of the decision ("the document") an engineer who

(i) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this paragraph in relation to the reservoir,

(ii) is not disqualified by virtue of paragraph 4 from being so commissioned in relation to the reservoir,

(b) must take into account

(i) a recommendation by an engineer commissioned by it under paragraph (a),

(ii) any representations made to it by or on behalf of the reservoir manager in relation to the application.

4. An engineer is disqualified from being commissioned under paragraph 3 in relation to a high-risk or medium-risk reservoir if the engineer

(a) was commissioned under section 31(2) in relation to the making of the decision which is the subject of the review,

(b) prepared the document,

(c) is, or has previously been an employee of any person who is, or has previously been, a reservoir manager of the reservoir.

5. The Department must notify the reservoir manager of its decision in the review by serving on the reservoir manager notice

(a) specifying whether it confirms the decision or has decided that the document is a pre-commencement inspection report,

(b) where it has confirmed its decision, specifying the reasons for doing so.

6. The Department may by regulations make further provision in relation to applications for review, and reviews, under this Schedule.

#### SCHEDULE 2

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#### **Expression**

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construction engineer

controlled reservoir

controlled reservoir being abandoned

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controlled reservoir being constructed

controlled reservoir being discontinued

controlled reservoir being restored to use

controlled reservoirs register

the Department

enforcement undertaking

final certificate

fixed monetary penalty

flood plan

high-risk reservoir

#### **Interpretation provision**

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sections 1, 2 and 5

section 38(7)(d) (see also section 38(6))

section 38(7)(a) (see also section 38(4) to (6))

section 38(7)(a) (see also section 38(3))

section 38(7)(c) (see also section 38(5))

section 38(7)(b) (see also section 38(3))

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section 118(1)

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section 46

section 78(1) and (3)

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section 23

**Expression**

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other qualified engineer  
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periodic re-assessment of risk designation  
pre-commencement inspection report  
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relevant works  
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risk designation  
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section 24(3) (see also section 25(7)(a) and (10) in relation to nominated representative of supervising engineer)  
section 118(1)  
section 81(1) and (3)

SCHEDULE 3  
MINOR AND CONSEQUENTIAL AMENDMENTS

*The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)*

1. The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.
2. In Article 293 (procedure of the Water Appeals Commission for Northern Ireland)<sup>4</sup>
  - (a) in paragraph (6), for "(9) or (10)" substitute "(9), (10) or (10A)",
  - (b) after paragraph (10), insert<sup>4</sup>

"(10A) This paragraph applies to a decision by the Appeals Commission on an appeal falling within any of the following sub-paragraphs<sup>4</sup>

    - (a) an appeal (under section 21 of the Reservoirs Act (Northern Ireland) 2014) against a decision in a review of a risk designation of a controlled reservoir,
    - (b) an appeal (made by virtue of regulations under section 72(1) of that Act) against any of the following<sup>4</sup>
      - (i) a decision to serve a stop notice,
      - (ii) a decision not to give a completion certificate,
      - (iii) a decision not to award compensation or as to the amount of compensation,
      - (iv) a decision as to recovery of costs in relation to the serving of the stop notice,
    - (c) an appeal (made by virtue of regulations under section 76(1) of that Act) against any of the following<sup>4</sup>
      - (i) a decision in a review of refusal to give certification that an enforcement undertaking has been complied with,
      - (ii) a decision as to recovery of costs in relation to the acceptance of the undertaking,
    - (d) an appeal (made by virtue of regulations under section 78(1) of that Act) against a decision to impose a fixed monetary penalty,
    - (e) an appeal (made by virtue of regulations under section 81(1) of that Act) against any of the following<sup>4</sup>
      - (i) a decision to impose a variable monetary penalty,
      - (ii) a decision as to recovery of costs in relation to the imposition of the penalty,
    - (f) an appeal (made by virtue of regulations under that section) against a notice imposing a non-compliance penalty for failure to comply with an undertaking referred to in section 82(5) of that Act."
3. Article 297 (regulations by the Department for Regional Development as to safety of reservoirs) is omitted.
4. In Article 300 (regulations), in paragraph (1)(b), the words "or 297" are omitted.

SCHEDULE 4  
REPEALS

Short Title	Extent of repeal
The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)	Article 297. In Article 300(1)(b), the words "or 297".