

The Reservoirs (Visits by Supervising Engineers, Stop Notices and Grants) Regulations (Northern Ireland) 20**

The Statutory Rule is made under Sections 27(1), 77(1), 114 and 127(4) of the Act.

The Statutory Rule is subject to the draft affirmative resolution procedure.

The purpose of these Regulations is to introduce further provisions under the Act in relation to visits by supervising engineers, stop notices and payment of grants.

Further information on each Regulation is provided below.

Regulation 1

Summary

Regulation 1 sets out how the Regulations may be cited, when they will come into operation, as well as interpretation of key phrases.

Wording of Regulations as drafted

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Reservoirs (Visits by Supervising Engineers, Stop Notices and Grants) Regulations (Northern Ireland) 2024 and shall come into operation on <Date>.

(2) In these Regulations—

- (a) “annual written statement” is a statement prepared by a supervising engineer under section 26(5); and
- (b) a reference to a section is a reference to a section of the Reservoirs Act (Northern Ireland) 2015(a).

Regulations 2 to 4

Summary

Regulations 2 to 4 provides for the frequency of visits by a supervising engineer to a controlled reservoir. The regulations provide for a standard frequency of visits which will apply initially to a controlled reservoir and a different standard frequency of visits which will apply should the Department decide that a controlled reservoir is of an acceptable standard as to how it is being maintained. The documents to be considered and what needs to be contained in the documents for the Department to decide that a reservoir is of an acceptable standard of how it is being maintained is specified in the regulations. It also provides for a right of appeal against the Department's decision and the procedures for an appeal.

Wording of Regulations as drafted

Visits by a supervising engineer

2.—(1) Subject to paragraph (3) a supervising engineer must visit a high-consequence or medium-consequence reservoir in accordance with the standard frequency of visits as specified in paragraph (2).

(2) The standard frequency of visits which will apply to a high or medium consequence controlled reservoir is—

- (a) High Consequence: a supervising engineer must visit the reservoir at least once in every 12 month period;
- (b) Medium Consequence: a supervising engineer must visit the reservoir at least once in every 36 month period.

(3) If the Department considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained a supervising engineer must visit the reservoir in accordance with the different standard frequency of visits as specified in paragraph (4).

(4) The different standard frequency of visits by a supervising engineer that will apply to a high-consequence or medium-consequence controlled reservoir is—

- (a) High Consequence: a supervising engineer must visit the reservoir at least once in every 24 month period;
- (b) Medium Consequence: a supervising engineer must visit the reservoir at least once in every 60 month period.

(5) The Department will notify a reservoir manager of the standard frequency of visits or the different standard frequency of visits which applies to their controlled reservoir and accordingly the visits that must be made to it by the supervising engineer.

(6) Nothing in this regulation shall affect the power of an inspecting engineer under section 35(4)(i) to require a supervising engineer to visit a reservoir more frequently and to specify in the inspection report what intervals, when, and in what circumstances, any additional visit should take place.

Acceptable standard as regards how a controlled reservoir is being maintained

3.—(1) The Department will decide whether a controlled reservoir is of an acceptable standard as regards how it is being maintained, and therefore for a reservoir to be of a different standard frequency of visits, taking account of, as appropriate, the following in relation to a reservoir—

- (a) a pre-commencement inspection report which does not contain any measures that should be taken in the interests of safety; or
- (b) a pre-commencement inspection report certificate(s) which specifies that each or all of the measures that should be taken in the interests of safety contained in a pre-commencement inspection report have been taken; or
- (c) an inspection report which does not contain any directions for measures in the interests of safety or does not include any matters that the inspecting engineer recommends should be monitored by a supervising engineer until the next inspection of the reservoir; or
- (d) an inspection compliance certificate which specifies that all of the measures directed in an inspection report, or the pre-commencement inspection report, have been taken; and

(e) an annual written statement which—

- (i) does not contain anything that the supervising engineer considers might affect the safety of the reservoir;
- (ii) specifies that anything that the supervising engineer considers might affect the safety of the reservoir, previously notified to the reservoir manager under section 26(2)(a), has been resolved;
- (iii) specifies that the reservoir manager has complied with any direction in the latest inspection report as regards any measure that should be taken in the interests of safety which is a measure for its maintenance;
- (iv) specifies that the reservoir manager has complied with any recommendation in a pre-commencement inspection report as to a measure that should be taken for its maintenance;
- (v) specifies that the supervising engineer has monitored any matters that the inspecting engineer recommends should be monitored in the latest inspection report;
- (vi) specifies any notice given to the reservoir manager as to failure to comply with—
 - (aa) any direction or recommendation in the latest inspection report as to measures in the interests of safety as regards the maintenance of a reservoir;
 - (bb) a safety report;
 - (cc) a preliminary or final certificate;
- (vii) specifies that the reservoir manager has complied with a recommendation as to the next inspection of a reservoir;
- (viii) specifies that the reservoir manager has complied with a direction to undertake a visual inspection.

(2) The Department must review the standard frequency of visits by a supervising engineer to a controlled reservoir every time that it receives one of the documents mentioned in paragraph (1) in relation to a reservoir and decide whether or not it considers that the reservoir is of an acceptable standard as to how it is being maintained.

(3) The Department must notify a reservoir manager within 14 days of making its decision, as to—

- (a) whether or not it considers that the reservoir is of an acceptable standard as regards how it is being maintained and accordingly the standard frequency of visits that must be made to it by a supervising engineer;
- (b) the reasons why it is considered, or is not considered, to be of an acceptable standard as to how it is maintained; and
- (c) that the reservoir manager has a right of appeal against the decision of the Department.

Right of appeal against the decision of the Department

4.—(1) A reservoir manager may appeal to the Water Appeals Commission against the decision of the Department. Any appeal must be made in writing within 14 days from the date of the notice which contains the decision.

(2) The decision in respect of which an appeal is made continues to have effect pending a decision by the Water Appeals Commission.

(3) The Water Appeals Commission has the power to confirm or quash the decision of the Department and it must notify the reservoir manager and the Department of its determination.

(4) Where the Water Appeals Commission determines to quash the decision of the Department the Department must issue a notice, within 14 days from the date on which it receives the determination of Water Appeals Commission, to the reservoir manager specifying the frequency of visits that is to be made by a supervising engineer to the reservoir.

Regulations 5 to 14

Summary

Regulations 5 to 14 make provision for the Department to serve a stop notice and specifies the circumstances when a stop notice may be served and the information to be contained in a stop notice. They also provide for the issue of a completion certificate, the circumstances when a reservoir manager may claim compensation as a result of a stop notice being served, the procedures for payment of compensation and right of appeal. Information on offences and penalties for non-compliance, defence for a reservoir manager against proceedings for an offence as well as the recovery of costs by the Department and the procedures for payment of costs is also provided.

Wording of Regulations as drafted

Stop notices

5.—(1) The Department may, by notice (a stop notice) served on a reservoir manager, prohibit 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; or
- (b) permitting the carrying on by another of an activity so specified.

(2) A stop notice may only be served in relation to a case where either—

- (a) a 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 the Act as specified under paragraph (4); or
- (b) The Department considers that a reservoir manager is likely to carry on, or permit the carrying on of, the activity and that the activity as likely to be 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 the Act as specified under paragraph (4).

(3) Where the Department proposes to exercise its power to serve a stop notice in a case mentioned in paragraph (2)(a)(i) or (2)(b)(i) (risk to the safety of the reservoir)—

- (a) the Department must, before it exercises its power—
 - (i) at its own expense commission an engineer who is a member of a panel of reservoir engineers established under section 102 who may (by virtue of an Order under that section) be commissioned in respect of section 77 in relation to the reservoir; and
 - (ii) take into account any recommendation made by the engineer about the steps to be taken by the reservoir manager to remove or reduce the risk to the safety of the reservoir;
- (b) the steps specified in any such stop notice must be steps which will remove or reduce the risk to the safety of the reservoir referred to in paragraphs (2)(a)(i) or (2)(b)(i).

(4) The Department may only issue a stop notice to a reservoir manager in the case of paragraphs (2)(a)(ii) or (2)(b)(ii) where it reasonably considers that the activity as carried on, or as likely to be carried on, involves, will involve or is likely to involve the commission of an offence under one or more of the following provisions—

- (a) section 38(1)(e) in relation to 34(1)(b) (failure to commission an inspecting engineer to supervise any measure in the interests of safety);
- (b) section 52(1) (failure to commission a construction engineer to supervise works to construct or alter a controlled reservoir);
- (c) section 52(2)(a) (failure to give notice to the Department of proposed works to construct or alter a controlled reservoir);
- (d) section 53(1)(a) (failure to take safety measures as directed in a safety report issued by a construction engineer); and
- (e) section 53(1)(b) (failure to undertake any requirements in the manner specified in a preliminary or final certificate issued by a construction engineer).

Information to be included in a stop notice

6. A stop notice must include information as to—

- (a) the grounds for serving the stop notice;
- (b) the steps to be taken by the reservoir manager and the timeframe within which such steps are to be taken;
- (c) the consequences for non-compliance with the stop notice; and
- (d) the details for an appeal to the Water Appeals Commission.

Appeal as to the serving of a stop notice

7.—(1) A reservoir manager on whom a stop notice has been served may appeal to the Water Appeals Commission against the decision of the Department to issue it.

(2) The appeal must be made in writing within 14 days beginning with the day on which the Department served the stop notice on the reservoir manager.

(3) The appeal may be made on any of the following grounds—

- (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.

(4) The Water Appeals Commission may confirm, quash or vary the decision and it must notify the reservoir manager and the Department of its determination.

(5) Where the Water Appeals Commission determines to quash or vary the decision, the Department must withdraw the stop notice or, as the case may be, amend the stop notice, within 14 days of the date on which it receives the determination of the Water Appeals Commission.

(6) A stop notice continues to have effect pending the determination of an appeal by the Water Appeals Commission.

Completion certificate

8.—(1) Where, after serving a stop notice, the Department is satisfied that a reservoir manager has taken all the steps specified in the stop notice, the Department must give the reservoir manager a certificate to that effect (a completion certificate).

(2) A stop notice ceases to have effect when the Department gives the reservoir manager a completion certificate.

(3) A reservoir manager on whom a stop notice is served may at any time apply for a completion certificate.

(4) The Department must make a decision as to whether, or not, to give a completion certificate within 14 days from the date an application for a completion certificate is made by a reservoir manager.

(5) Where the Department decides to give a completion certificate, it must give the completion certificate to the reservoir manager within 14 days of making its decision.

(6) Where the Department decides not to give a completion certificate it must, within 14 days of making its decision, give the reservoir manager notice in writing of that decision and advise the reservoir manager of the right of appeal to the Water Appeals Commission against the decision.

(7) The appeal may be made on any of the following grounds—

- (a) based on an error of fact;
- (b) wrong in law;
- (c) unreasonable.

(8) An appeal to the Water Appeals Commission against the decision of the Department must be made in writing within 14 days from the date of the notice which contains the decision.

(9) The Water Appeals Commission may confirm or quash the decision of the Department not to give a completion certificate and it must notify the reservoir manager and the Department of its determination.

(10) Where the Water Appeals Commission determines that the decision should be quashed, the Department must give a completion certificate within 14 days from the receipt of the Water Appeals Commission determination.

Claim for compensation

9.—(1) A reservoir manager may make a claim for compensation from the Department for loss suffered as a result of a stop notice being served in the circumstances where the loss was attributed to—

- (a) a stop notice the issue of which is quashed on appeal by the Water Appeals Commission under regulation 7;

- (b) any step in the notice which is varied on appeal by the Water Appeals Commission under regulation 7.
- (2) The claim for compensation must—
 - (a) be made in writing to the Department;
 - (b) detail the loss suffered as a result of the serving of the stop notice and contain supporting evidence of such loss;
 - (c) specify the amount of compensation claimed in respect of the loss;
 - (d) be made within 60 days from the date of the determination of the Water Appeals Commission to quash the issue of the stop notice or vary the stop notice.
- (3) Where a reservoir manager makes a claim for compensation, the Department must, within a period of 28 days beginning with the day that the claim is received, make a decision—
 - (a) as to whether or not to pay compensation; and
 - (b) if the decision is to award compensation, the amount of the compensation.
- (4) The Department must, within 14 days of making a decision under paragraph (3), give the reservoir manager notice in writing of its decision. Where the decision is not to award compensation, or as the case may be, to award an amount of compensation which is less than the amount claimed, it must specify the reasons for that decision in the notice and that the reservoir manager has a right of appeal to the Water Appeals Commission against the decision.
- (5) A reservoir manager may appeal, within 14 days beginning with the date of the notice, to the Water Appeals Commission against the decision of the Department—
 - (a) not to award compensation; or
 - (b) as to the amount of compensation payable.
- (6) The Water Appeals Commission has the power to confirm, quash or vary the decision of the Department and it must notify the reservoir manager and the Department of its determination.

Payment of compensation

- 10.—**(1) Where the Department decides to award the amount of compensation claimed it must make the payment to the reservoir manager—
- (a) within a period of 14 days from the date of making its decision where the Department is in possession of the required information to process the payment; or
 - (b) within a period of 14 days from the date of receiving the required information to process the payment from the reservoir manager.
- (2) Where the Department has decided to award compensation less than the amount claimed and no appeal has been made by the reservoir manager under regulation 9(3), or any such appeal has been withdrawn, it must make the payment to the reservoir manager—
- (a) within a period of 14 days of the expiry date for a reservoir manager to make an appeal to the Water Appeals Commission, or as the case may be, within a period of 14 days from the receipt of confirmation that the appeal has been withdrawn where the Department is in possession of the required information to process payment to the reservoir manager; or
 - (b) within a period of 14 days from the date of receiving the required information to process the payment from the reservoir manager.
- (3) Where a reservoir manager appeals against the decision of the Department not to award compensation or the amount of compensation payable, the Department must make any such payment in accordance with the determination of the Water Appeals Commission—

- (a) within a period of 14 days of the receipt of the determination of the Water Appeals Commission where the Department is in possession of the required information to process the payment; or
- (b) within a period of 14 days from the date of receiving the required information to process the payment from the reservoir manager.

Offences and penalties

11. Where a reservoir manager on whom a stop notice is served fails to comply with it, the reservoir 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.

Defence

12. It is a defence to a charge in proceedings for an offence under regulation 11 for the reservoir manager 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 reservoir manager—
 - (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.

Recovery of costs by the Department

13.—(1) The Department may, by notice served, require a reservoir manager on whom a stop notice is served 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 stop notice.

(2) The costs to be recovered may include—

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

(3) A notice served on a reservoir manager to recover costs must include—

- (a) a breakdown of the costs;
- (b) the total amount to be paid;
- (c) how payment is to be made;
- (d) the period within which the payment is to be made;
- (e) the right of appeal and the timeframe within which an appeal may be made.

(4) A reservoir manager on whom a notice is served may appeal to the Water Appeals Commission against the following—

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

(5) An appeal to the Water Appeals Commission must be made in writing and within 14 days from the date of the notice specifying the costs to be recovered.

(6) The Water Appeals Commission may confirm, quash or vary the decision of the Department and it must notify the reservoir manager and the Department of its determination.

(7) Where a reservoir manager makes an appeal under paragraph (4) to the Water Appeals Commission, the notice specifying the costs is suspended until the Water Appeals Commission makes its determination or the reservoir manager withdraws the appeal.

Payment of costs

14.—(1) Subject to paragraph (2) and (3), a reservoir manager on whom a notice is served must pay the costs specified in the notice within 30 days from the date of the notice.

(2) Where a reservoir manager makes an appeal under regulation 13(4) and the Water Appeals Commission confirms or varies the decision, the reservoir manager must pay the amount specified in the notice, or as the case may be, the amount determined by the Water Appeals Commission, within 30 days from the date of the receipt of the determination of the appeal.

(3) Where a reservoir manager withdraws an appeal, the amount specified in the notice must be paid within 30 days from the date of the confirmation that the appeal has been withdrawn.

Regulation 15

Summary

Regulation 15 provides for the Department to introduce a grant for the purposes of assisting reservoir managers to comply with their obligations under the Act. It provides that such a grant must be subject to such terms and conditions as the Department will determine and may include conditions for the repayment in the event of contravention of the terms and conditions.

Wording of Regulation as drafted

Grants

15.—(1) The Department may pay such grants as it considers appropriate to reservoir managers of controlled reservoirs to enable or assist the managers to comply with their obligations under the Act.

(2) The payment of any such grant to reservoir managers of controlled reservoirs shall be subject to such terms and conditions as the Department determines and may include conditions for the repayment of such grant in the event of contravention of the other terms or conditions on which the grant is made.