Draft Regulations laid before Parliament under section 5 of the Reservoirs Act 1975, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

WATER, ENGLAND

The Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (England) Regulations 2013

Made - - - - ***

Coming into force in accordance with regulation 1(b)

The Secretary of State in exercise of the powers conferred by sections A1(8), 2E(1), 5, 10(2) and 19A(1) of the Reservoirs Act 1975(**a**) makes the following Regulations.

A draft of these Regulations has been laid before and approved by a resolution of each House of Parliament pursuant to section 5(6), (7) and (8) of the Reservoirs Act 1975.

The Administrative Justice and Tribunals Council has been consulted in accordance with section 44 of, and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007(**b**).

Title, commencement, extent and application

1. These Regulations—

(a) may be cited as the Reservoirs Act 1975 (Exemptions, Appeals and Inspections)(England) Regulations 2013;

(b) come into force on the day after the day on which they are made;

(c) extend to England and Wales; and

(d) apply in relation to reservoirs in England.

Interpretation

2. In these Regulations "the 1975 Act" means the Reservoirs Act 1975.

Specified things not to be treated as large raised reservoirs

3.—(1) For the purposes of section A1(8) of the 1975 Act the following are not to be treated as a large raised reservoir—

(**a**) 1975 c.23. Sections A1, 2E and 19A were inserted by paragraphs 2, 7 and 30 of Schedule 4 to the Flood and Water Management Act 2010 c.29. Section 10(2) was amended by paragraph 12(3) of Schedule 4 to the Flood and Water Management Act 2010. There are other amendments but none is relevant.

(**b**) 2007 c.15, to which there are amendments not relevant to these Regulations.

(a) a mine lagoon which is a tip within the meaning of Part I of the Mines and Quarries (Tips) Act 1969(**a**);

(b) a quarry lagoon which is—

(i) a tip within the meaning of the Quarries Regulations 1999(**b**); or

(ii) a disused tip within the meaning of Part II of the Mines and Quarries (Tips) Act 1969;

(c) a canal or other inland navigation;

(d) a road or railway embankment except where—

(i) the drain or drains through it are artificially blocked for the purposes of using areas upstream to store water; or

(ii) the drain or drains through it are constructed so that water is stored above natural ground level.

(2) Paragraph (1)(c) does not include a reservoir which forms part of a canal or other inland navigation.

Right to appeal a designation of a large raised reservoir as a high-risk reservoir

4.—(1) An undertaker who has been given a notice under section 2B(1)(**c**) of the 1975 Act may appeal on any ground to the First-tier Tribunal against the designation confirmed in that notice.

(2) On deciding an appeal under paragraph (1), the First-tier Tribunal must confirm or cancel the designation.

Right to appeal a requirement in a notice

5.—(1) An undertaker who has been given an enforcement notice may appeal on any ground to the First-tier Tribunal against a requirement in the notice to appoint an engineer or carry a recommendation of an engineer into effect.

(2) On deciding an appeal under paragraph (1), the First-tier Tribunal must—

(a) confirm the requirement;

(b) modify the requirement; or

(c) determine that the requirement is to cease to have effect.

(3) Where an appeal is brought, the requirement is suspended while the appeal is pending.

(4) In this regulation "enforcement notice" means a notice given under section 8(1) or (3A)(**d**), 9(7), 10(7), 12(4), 13(5), or 14(4) of the 1975 Act.

Periodical inspection of high-risk reservoirs

6.—(1) An undertaker must have a high-risk reservoir to which section 10(2) of the 1975 Act applies inspected at each of the following times—

(a) before the end of the period of two years beginning on the date on which a final certificate is given by the construction engineer in relation to the reservoir under section 7(3) of the 1975 Act;

(b) before the end of the period of six months beginning on the date of completion of any alteration to the reservoir which—

(i) does not increase or decrease its capacity;

(ii) is such as might affect its safety; and

(**a**) 1969 c.10; section 2(1) was amended by S.I. 1999/2024. There are other amendments but none is relevant.
(**b**) S.I. 1999/2024, to which there are amendments not relevant to these Regulations.
(**c**) Section 2B was inserted by paragraph 7 of Schedule 4 to the Flood and Water Management Act 2010.
(**d**) Subsection (3A) was inserted by section 75 of the Water Act 2003 c.37.

(iii) has not been designed and supervised by a qualified civil engineer;

(c) at any time recommended by the supervising engineer under section 12(3) of the 1975 Act;

(d) at any time recommended in the report of the inspecting engineer made under section 10(3) of the 1975 Act;

(e) within two years of the designation of the reservoir as high-risk where there is no requirement to inspect the reservoir under sub-paragraph (a).

(2) An undertaker must have a high-risk reservoir to which section 10(2) of the 1975 Act applies inspected before the end of the period of ten years beginning on the date on which the last inspection of the reservoir was completed.

(3) The requirement to have a reservoir inspected under this regulation is not fulfilled where the inspection is limited to part of the reservoir.

Inspections: savings and transitional provisions

7.—(1) This regulation applies in relation to a large raised reservoir to which section 10(2) of the 1975 Act applied immediately before the commencement date.

(2) For the relevant period the requirements of section 10 of the 1975 Act shall continue to apply in relation to a large raised reservoir as though paragraph 12 of Schedule 4 to the 2010 Act had not been brought fully into force in relation to England.

(3) Paragraph (4) applies if—

(a) either—

(i) the circumstances requiring an inspection of the reservoir have arisen before or during the relevant period but the inspection has not been commenced by the end of the relevant period; or

(ii) an inspection of the reservoir has commenced before or during the relevant period but has not been completed by the end of the relevant period; and

(b) the relevant period has ended because—

(i) the Environment Agency has given notice to the undertaker that it has designated the reservoir as high-risk under section 2B of the 1975 Act and no appeal against that designation has been brought; or

(ii) where an appeal has been brought against that designation of the reservoir as high-risk, the First-tier Tribunal has confirmed that designation.

(4) Where this paragraph applies section 10(2)(a) to (d) of the 1975 Act shall continue to apply in relation to the reservoir until the inspection is completed, as though paragraph 12 of Schedule 4 to the 2010 Act had not been brought fully into force in relation to England.

(5) For the purposes of regulation 6(2) "last inspection of the reservoir" includes—

(a) an inspection carried out pursuant to section 10(2)(a) to (d) of the 1975 Act before the commencement date;

(b) an inspection carried out after the commencement date, or an inspection commenced before but completed after the commencement date, to which section 10(2)(a) to (d) of the 1975 Act applies by virtue of paragraphs (1) to (4).

(6) In this regulation—

"the 2010 Act" means the Flood and Water Management Act 2010(**a**);

"commencement date" means the date on which paragraph 12 of Schedule 4 to the 2010 Act is brought fully into force in relation to England; and

(**a**) 2010 c.29. There are amendments not relevant to these Regulations.

"the relevant period" means, subject to paragraph (7), the period beginning on the commencement date and ending on the first date on which the Environment Agency—

(a) gives notice to the undertaker that it has designated the reservoir as high-risk under section 2B of the 1975 Act; or

(b) gives notice to the undertaker that it has not designated the reservoir as high-risk (whether or not having made a provisional designation under section 2A(**a**) of the 1975 Act).

(7) Where an appeal is brought against a designation of the reservoir as high-risk, the "relevant period" ends on the date on which the First-tier Tribunal either confirms or cancels the designation.

Review

8.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) The first report under this regulation must be published before the end of the period of 5 years beginning on the day on which these Regulations come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

For the purposes of the Reservoirs Act 1975 (c.23)("the Act"), these Regulations provide for—

(a) specified things not to be treated as large raised reservoirs (regulation 3);

(b) rights of appeal against designations of large raised reservoirs as high-risk (regulation 4);

(c) rights of appeal against notices given by the Environment Agency either to appoint an engineer or to carry out a recommendation of an engineer (regulation 5);

(d) the timings of inspections (regulation 6);

(e) savings and transitional arrangements for inspections (regulation 7); and

(f) a review of the Regulations (regulation 8).

Section 2E of the Act requires the Minister to provide the right of appeal against the designation of a large raised reservoir as high-risk. Section 19A of the Act requires the Minister to provide the right of appeal against a requirement to appoint an engineer and a requirement to carry a recommendation of an engineer into effect under various sections of the Act.

(**a**) Section 2A was inserted by paragraph 7 of Schedule 4 to the Flood and Water Management Act 2010.

These Regulations confer jurisdiction on the First-tier Tribunal to consider appeals made under these Regulations. They make provision for procedure and for the powers of the First-tier Tribunal in determining the appeal.

Appeals under these Regulations and the process for bringing an appeal are also governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976).

Regulation 7 provides for savings and transitional arrangements in relation to the inspection provisions in regulation 6. According to these arrangements until such time as it is designated as high-risk, a large raised reservoir must be inspected in accordance with section 10(2) of the Act as it applied immediately before its amendment by paragraph 12 of Schedule 4 to the Flood and Water Management Act 2010 (c.29).

Regulation 8 requires the Secretary of State to review the operation and effect of these Regulations and to publish a report within 5 years after these Regulations come into force.

A partial impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the Reservoirs Safety Team, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

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