POLICY NOTE

RESERVOIRS (SCOTLAND) REGULATIONS 2016

S.S.I. 2016/43

The above instrument was made in exercise of the powers conferred by sections 1(6)(b), 2(3), 9(3)(a), 10(2), 14(1), (3) and (4), 23(8), 24(7), 28(7) and (8), 30(2), 35(1)(d), 38(3)(c), 51(1)(e) and (2), 56(3), 64(1), 105 and 114(2)(b) of the Reservoirs (Scotland) Act 2011. The instrument is subject to the negative procedure.

Policy Objectives

1. The Reservoirs (Scotland) Regulations 2016 ("the 2016 Regulations") make provision in connection with Part 1 of the Reservoirs (Scotland) Act 2011 ("the 2011 Act").

2. From 1 April 2016, reservoirs in Scotland with a capacity of 25,000 or more cubic metres will be regulated by SEPA under a new regime provided for in Part 1 of the 2011 Act. For a transitional period, the new regime will apply only to reservoirs with a capacity of 25,000 or more cubic metres. At some point, the new regime will be extended so that it also applies to reservoirs with a capacity of between 10,000 and 25,000 cubic metres.

3. Under the new regime, SEPA will regulate each reservoir having regard to the risk that each reservoir poses to public safety. In particular, SEPA will be responsible for ensuring that reservoir managers comply with the duties imposed on them under the new regime.

4. Parts 2 to 5 of the 2016 Regulations consolidate and replace (with some modifications for consistency) the provisions of the Reservoirs (Scotland) Regulations 2015 (as amended).

5. Parts 6 to 10 of the 2016 Regulation make new provision in relation to the form and content of notices, reports, certificates and records under the 2011 Act, dispute resolution, and connected matters. In particular:

    - Part 6 makes provision in connection with Chapter 5 (construction or alteration of controlled reservoirs) of Part 1 of the 2011 Act, including as to matters to be included in safety reports and information to be included in construction certificates,

    - Part 7 makes provision in connection with Chapter 6 (other requirements: high-risk reservoirs and medium-risk reservoirs) of Part 1 of the 2011 Act, including as to matters of which a record must be maintained under section 51 of the Act,

    - Part 8 makes provision in connection with Chapter 7 (other requirements: controlled reservoirs) of Part 1 of the Act as to the form of information about repairs to be maintained under section 56 of the Act,

    - Part 9 makes provision under Chapter 8 (dispute referral) of Part 1 of the Act as to the time within which a referee may be appointed under section 61 of the Act, the expenses of the investigation and proceedings, and related matters,

    - Part 10 consequentially revokes various instruments.

Consultation

6. Proposals for the new provision in Parts 6 to 10 of the 2016 Regulations were discussed with key stakeholders before the 2016 Regulations were drafted. A public consultation was then undertaken on a proposed draft set of amending regulations, which were originally intended to insert the 'new provision' in Parts 6 to 9 into the existing Reservoirs (Scotland) Regulations 2015. All reservoir managers affected by the proposals were consulted. SEPA, the Institution of Civil Engineers, Scottish Water and other industry representatives were also separately consulted.

7. 14 responses were received and most respondents were content with the proposals. Two consultees commented that they would prefer to have the form of records, notices and certificates set out in guidance rather than in regulations. However, the majority of respondents (including the Institution of Civil Engineers and SEPA) were of the view that regulations were the appropriate place for such matters as it would ensure a common approach across the industry.

8. A number of drafting changes were made to the proposed regulations in light of the comments received from SEPA and other consultees. In particular, a form for the notice of appointment of an engineer was inserted at the request of SEPA. It was also decided that it would be helpful to take the opportunity to consolidate and replace the provisions of the Reservoirs (Scotland) Regulations 2015 so that all of the provisions which (by regulations) supplement the 2011 Act can be found in a single set of fresh regulations.

Impact Assessments

9. An Equality Impact Assessment (EQIA) was carried out prior to introduction of the Reservoirs (Scotland) Bill. No equality impacts were identified. A copy of the EQIA is available on the Scottish Government website.

Financial Effects

10. No business and regulatory impact assessment was prepared for the 2016 Regulations as no significant impact upon business, charities or voluntary bodies is foreseen.

Environmental Quality Division
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