



# Flood Risk Management (Scotland) Act 2009

2009 asp 6

## PART 7

### RESERVOIRS

#### *Enforcement powers and incident reporting*

#### **88 Incident reporting**

After section 12 of the 1975 Act, insert—

#### **“12ZA Incident reporting: Scotland**

- (1) The Scottish Ministers may by regulations made by statutory instrument make provision for the reporting to the enforcement authority of incidents occurring at reservoirs in Scotland which meet criteria specified in, or otherwise determined in accordance with, the regulations.
- (2) The regulations may, in particular—
  - (a) provide that the enforcement authority or another person—
    - (i) may specify the criteria, and
    - (ii) is to determine whether a reservoir meets the criteria,
  - (b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a reservoir,
  - (c) provide for a supervising engineer or other person to determine whether an incident has occurred,
  - (d) require, in relation to a reservoir, the undertakers or other specified person to report incidents occurring at that reservoir,
  - (e) require undertakers, supervising engineers and any other person of a specified description to have regard to guidance issued by the enforcement authority or the Scottish Ministers,
  - (f) make provision for the publishing of reports,

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*Status: This is the original version (as it was originally enacted).*

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- (g) confer powers of entry on the enforcement authority in connection with its functions under the regulations,
  - (h) create offences,
  - (i) provide that any offence created is triable—
    - (i) only summarily, or
    - (ii) either summarily or on indictment,
  - (j) provide for any offence created which is triable only summarily to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
  - (k) provide for any offence created which is triable either summarily or on indictment to be punishable—
    - (i) on summary conviction, by a fine not exceeding the statutory maximum,
    - (ii) on conviction on indictment, by a fine,
  - (l) 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) Before making regulations under subsection (1), the Scottish Ministers must consult—
- (a) SEPA,
  - (b) undertakers of reservoirs to which they consider the regulations will apply,
  - (c) the Institution of Civil Engineers, and
  - (d) any other person as they consider appropriate.
- (4) The power to make regulations under subsection (1) may be exercised so as to make different provision for different purposes.
- (5) A statutory instrument made under subsection (1) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.