



2015 CHAPTER 8

PART 3

CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Offences: construction or alteration

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52.—(1) Failure by a reservoir manager of a controlled reservoir to comply with the requirements in section 43(2)(a) (commissioning of construction engineer) is an offence.

(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 43(1) (notice to the Department of proposed relevant works),
 - (b) the requirements in section 43(2)(b) (notice to Department of commissioning of construction 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-consequence 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.

Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate

53.—(1) Failure by a reservoir manager of a controlled reservoir without lawful excuse to comply with any of the following requirements under this Part is an offence—

- (a) the requirements in section 46(1) (ensuring compliance with direction in safety report as to taking of safety measure),
 - (b) the requirements in section 50 (ensuring compliance with preliminary certificate or final certificate).
- (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.

(3) Section 74 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(a).

Defences: offences under section 53(1)

54. It is a defence to a charge in proceedings under section 53(1) 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.