
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 43

The Reservoirs (Scotland) Regulations 2016

PART 2

CONTROLLED RESERVOIRS

Lochs and other areas to be considered artificial or partly artificial

2. For the purposes of section 1(2) of the Act, a loch or other area is to be considered artificial (or partly artificial) if it was created or enlarged as a result of human activity.

Calculation of volume of water that a structure or area is capable of holding

3.—(1) For the purposes of Part 1 of the Act, the volume of water that a structure, loch or other area referred to in paragraph (a) or (b) of section 1(2) of the Act (“the reservoir”) is capable of holding above the natural level of any part of the surrounding land is to be calculated by measuring the maximum volume of water (in cubic metres) which is capable of being held in the reservoir—

- (a) above the bed of the reservoir; and
- (b) between the toe of the reservoir and its top water level.

(2) Water not capable of flowing out of the reservoir over natural ground in the event of an uncontrolled release of water from the reservoir must not be included in the calculation.

(3) In paragraph (1)—

“bed”, in relation to a reservoir, includes any silt or other material that is incapable of flowing out of the reservoir over natural ground in the event of an uncontrolled release of water from the reservoir;

“toe” means the point on the downstream side of a dam, reservoir wall or embankment forming part of the reservoir where the base of the dam, reservoir wall or embankment, as the case may be, meets the lowest level of the natural ground (which remains after the construction, or any alteration, of the reservoir) of any part of the land adjacent to the reservoir, including the lowest bed level of any watercourse; and

“top water level” means—

- (a) in the case of a reservoir with a fixed overflow sill, the lowest crest level of that sill;
- (b) in the case of a reservoir the overflow from which is controlled wholly or partly by moveable gates, syphons or otherwise, the maximum level to which water may be held exclusive of any provision for flood storage; or
- (c) in the case of a reservoir designed for the purposes of holding back floodwater, the maximum level to which floodwater may be held during any flood event exclusive of any provision for overflow.

Calculation of volume of water that a structure or area is capable of releasing

4. For the purposes of subsection (3) of section 1 of the Act, the volume of water that is capable of being released from a combination of structures or areas referred to in that subsection (“the combination”) is to be calculated by measuring the maximum volume of water (in cubic metres) which is capable of flowing out of the combination over natural ground in the event of an uncontrolled release of water from the combination.

Meaning of “natural level” and “surrounding land”

5.—(1) For the purposes of Part 1 of the Act—

“natural level”—

- (a) in relation to any part of surrounding land which would remain covered with residual water after an uncontrolled release of water from the structure, loch or other area (to which the land relates), means the level of the surface of the residual water; and
- (b) in relation to any other part of that surrounding land, means the level of the natural ground remaining after the construction, or any alteration, of the reservoir; and

“surrounding land”, in relation to a structure, loch or other area referred to in paragraph (a) or (b) of section 1(2) of the Act (“the reservoir”), means the land adjacent to the reservoir (including any land which would be adjacent to water held by the reservoir when the reservoir is holding the maximum volume of water that it is capable of holding).

(2) In the definition of “natural level” in paragraph (1), a reference to “residual water” is a reference to water which would not be capable of flowing out of the structure, loch or other area in question over natural ground in the event of an uncontrolled release of water from the reservoir.

Structures or areas which are not controlled reservoirs

6.—(1) Ponds within extractive waste areas or waste facilities constitute the structures or areas referred to in paragraph (a) of section 2(2) of the Act.

(2) In paragraph (1), references to “ponds”, “extractive waste areas” and “waste facilities” are to be construed in accordance with the meaning given to the corresponding word or expression in regulation 2(1) of the Management of Extractive Waste (Scotland) Regulations 2010⁽¹⁾.

7. Weirs which are not capable of holding water above the natural banks of any part of a watercourse constitute the structures or areas in paragraph (c) of section 2(2) of the Act.

8.—(1) Road and railway embankments which are designed to drain water (including from any upstream areas) through the embankment, subject to paragraph (2), constitute the structures or areas referred to in paragraph (f) of section 2(2) of the Act.

(2) The road and railway embankments referred to in paragraph (1) do not constitute the structures or areas referred to in paragraph (f) of section 2(2) of the Act if drains which are designed to drain water (including from any upstream areas) through the embankment are—

- (a) artificially blocked for the purposes of using areas upstream to hold water; or
- (b) constructed so that water is held above natural ground level.

9. A structure or area created as a result of the construction of dams by beavers is not a controlled reservoir⁽²⁾ (and is not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4) of the Act).

(1) *S.S.I. 2010/60*; to which there are amendments which are not relevant for the purposes of these Regulations.

(2) Sections 1 and 2 of the Reservoirs (Scotland) Act 2011 determine what is a “controlled reservoir”.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
