

EXPLANATORY MEMORANDUM TO
THE RESERVOIRS ACT 1975 (CAPACITY, REGISTRATION, PRESCRIBED FORMS
ETC.), (ENGLAND) REGULATIONS 2013

2013 No. 1677

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make a number of provisions, as to reservoirs in England, in consequence of powers to make secondary legislation provided by the Reservoirs Act 1975 (“the 1975 Act”), as amended by the Flood and Water Management Act 2010 (“the 2010 Act”).

2.2 The Minister is obliged under paragraph 2 of Schedule 4 to the 2010 Act to make regulations setting out requirements for how to calculate capacity for a large raised reservoir. These regulations make such provision.

2.3 The 1975 Act provides powers to make provision for the information that must be kept on the register and the place or places in which the register must be kept.

2.4 The Minister may, under paragraph 4 of Schedule 4 to the 2010 Act, make regulations about registration and this includes provision about when a large raised reservoir must be registered; the information to be registered and notified for the purposes of registration and changes to information in the register. Regulations may also be made requiring an undertaker to notify the relevant authority about proposed alterations to a large raised reservoir and the appointment or termination of the appointment of an engineer.

2.5 Section 3 of the 1975 Act provides powers to make regulations about the timing of, and information to be given, in reports by the Environment Agency to the Secretary of State.

2.6 These regulations make provision for the form of, and information to be given for, the record to be kept by an undertaker for a high risk reservoir and are made using the powers provided by section 11 of the 1975 Act.

2.7 These regulations make provision for reports, certificates or directions of engineers to be made in the prescribed form and are made under section 20 of the 1975 Act.

2.8 These regulations make provision for the information to be provided in a notice to the Environment Agency, by an undertaker, advising that a large raised reservoir is to be constructed.

2.9 The Minister may, under paragraph 33 of Schedule 4 to the 2010 Act require a specified person to make a report to the Environment Agency about any incident of a specified kind which affected or could have affected the safety of a large raised reservoir.

2.10 These regulations also revoke the Reservoirs Act 1975 (Registers, Reports and Records) Regulations 1985, the Reservoirs Act 1975 (Registers, Reports and Records) (Amendments) Regulations 1985, and the Reservoirs Act 1975 (Certificates, Reports and Prescribed Information) Regulations 1986.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Reservoirs Act 1975 (the 1975 Act) seeks to ensure public safety through imposing statutory obligations on large raised reservoir undertakers to have their reservoirs supervised and periodically inspected by qualified civil engineers, with a requirement to carry out any works recommended in the interests of safety in the report of an inspection. Schedule 4 of the Flood and Water Management Act 2010 (the 2010 Act), which mainly amends the 1975 Act to introduce a more risk-based regulatory regime linked to the danger to human life, contains a number of provisions amending the 1975 Act and allowing England and Wales to make further secondary legislation.

4.2 The powers to make the regulations are in the 1975 Act and the powers to make further regulations provided by the 2010 Act have been commenced (SI 2011/2204). The amendments to the 1975 Act will be commenced by S.I. 2013/1590. These regulations address measures to improve clarity (such as in the calculation of capacity), information to be registered, prescribed forms to be used for the production of reports, requirements for the Environment Agency to report to the Secretary of State and incident reporting to the Environment Agency. The regulations also revoke and replace earlier regulations in relation to England.

4.3 All of these provisions have been the subject of consultation and the regulations reflect the responses to that consultation.

4.4 Section A1(4) as inserted by Schedule 4 to the 2010 Act obliges the Minister to set out requirements for how to calculate capacity for a large raised reservoir. This is addressed by regulation 3 of this instrument.

4.5 Section 2(2) and sections 2(2C) to (2E) as inserted by Schedule 4 to the 2010 Act provide for regulations to be made about registration. These Regulations may, in particular include provision about the information to be registered and the time by which information, or changes to information, must be registered. The Regulations may also require an undertaker to notify the relevant authority about proposed alterations to a large raised reservoir and the appointment or termination of appointment of an engineer. This is addressed by regulations 4, 5 and 6 of this instrument, with the transitional arrangements covered in regulation 7.

4.6 Section 3(1) of the 1975 Act provides for regulations containing requirements for information to be reported to the Secretary of State by the Environment Agency and the frequency of the reports. This is addressed by regulation 8 of this instrument.

4.7 Section 11 of the 1975 Act, as amended by the 2010 Act, provides for regulations to set out the form for the record to be kept by the undertaker of water levels etc., and for other matters that are to be included in the record, and at prescribed intervals. This is addressed by regulation 9 of this instrument.

4.8 Section 20(1) of the 1975 Act, as amended by the 2010 Act, provides for regulations to set out the requirements for the forms to be used by engineers for the production of reports, certificates and directions when acting under the Act. This is addressed by regulations 10, 11 and 12 of this instrument.

4.9 Requirements by an undertaker to serve a notice of intention to the relevant authority of their intention to construct a large raised reservoir are currently covered by section 21(1) of the 1975 Act. New regulations under the 2010 Act are needed to update these requirements and this is addressed by regulation 13 of this instrument.

4.10 Section 21(B) as inserted by the 2010 Act require a specified person to make a report to the Environment Agency about any incident of a specified kind which affected or could have affected the safety of a large raised reservoir. This is addressed by regulation 14 of this instrument.

4.11 These Regulations provide for the Secretary of State to review the Regulations. This addressed by regulation 15, see also paragraph 12.

4.12 These regulations also revoke the Reservoirs Act 1975 (Registers, Reports and Records) Regulations 1985, the Reservoirs Act 1975 (Registers, Reports and Records) (Amendments) Regulations 1985, and the Reservoirs Act 1975 (Certificates, Reports and Prescribed Information) Regulations 1986 in relation to England. This is addressed by regulation 16 of this instrument.

5. Territorial Extent and Application

5.1 England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The policy objective of the 1975 Act is to ensure public safety through imposing statutory obligations on undertakers of large raised reservoirs (LRRs) to have their reservoirs supervised and periodically inspected by a qualified civil engineer (QCE). QCEs, which include Supervising and Inspecting Engineers, are appointed under the Act by the Secretary of State who takes advice from the Institution of Civil Engineers as to their suitability for appointment. The 1975 Act provides for construction and alteration of a raised reservoir large enough to fall under the Act as a LRR to be under the supervision of a QCE. Currently, all LRRs must be under the supervision of a Supervising Engineer and inspected periodically by an Inspecting Engineer. Any work needed in the interests of safety identified in an inspection report must be carried out, which minimises the likelihood of an uncontrolled release of water from the reservoir that may endanger human life. The Act was preceded by the Reservoirs (Safety Provisions) Act 1930 enacted following a series of reservoir failures around 1925 that resulted in significant loss of life.

7.2 During the major flooding of 2007, there was a near-miss incident at Ulley Reservoir where complete failure was averted only by emergency action. Sir Michael Pitt carried out a review of the 2007 flood event and included in his report recommendations for improvements to reservoir safety legislation. The recommendations for reservoir safety were addressed through amendments to the 1975 Act made by schedule 4 of the 2010 Act.

7.3 The 1975 Act currently applies to all LRRs. A key recommendation in Sir Michael Pitt's report was to introduce a risk-based approach for the regulation of LRRs. The approach chosen to address this recommendation was to fully regulate only those LRRs that were thought likely to endanger human life in the event of an uncontrolled release of water from the reservoir. Such LRRs will be designated as 'high-risk reservoirs'. Designations of high-risk will be made by the Environment Agency in England. LRRs that are not designated as 'high-risk reservoirs' will not need to be supervised or inspected periodically by a QCE. The Environment Agency has developed a methodology for deciding whether it thinks that a LRR should be designated as 'high-

risk' and this will be publicly available when the amendments to the 1975 Act come into force.

7.4 Other significant amendments to the 1975 Act include the reduction of the capacity of a raised reservoir that will be in scope, various measures to improve clarity (such as in the calculation of capacity), a requirement for an undertaker to register a LRR, the introduction of appeals provisions for offences, the move to strict liability for offences to reduce ambiguity and the possibility of using civil sanctions as an option instead of criminal sanctions, improved clarity of requirements for flood planning and discontinuance, and a requirement to provide reports of incidents that might affect safety at a LRR.

7.5 Commencement will be carried out in two phases, with amendments made by the 2010 Act being commenced and secondary legislation made at Phase 1, but only for those reservoirs that are already covered by the 1975 Act (those LRRs with a capacity greater than 25,000 cubic metres). At phase 2 further secondary legislation will be made and the lower capacity qualification of 10,000 cubic metres or more will apply and further secondary legislation will be made. This phasing allows the Environment Agency to develop experience with the designation process on those reservoirs that they already regulate during phase 1, as well as giving time to engage with the undertakers of those LRRs that will fall under the 1975 Act at phase 2 to explain their new responsibilities in advance of commencement of phase 2.

7.6 There are currently over 2000 LRRs registered under the 1975 Act in England and Wales. 47% are owned by utility companies mostly for water supply, 11% are owned by the Environment Agency or other government agencies mostly for flood risk management (flood storage reservoirs), 10% are used for irrigation or aquaculture mainly by farmers, horticulturalists and golf clubs, 8% are used for industry and transport (canals), and the remainder are used for leisure such as angling and other water sports or are in private hands. A significant number of the reservoirs are over 100 years old and their condition is variable. Since the introduction of reservoir safety legislation in 1930, there has been no loss of life as a result of reservoir breaches, but there are on average about 4 incidents each year at reservoirs of all sizes (not just those that fall under the Act) that require emergency action in the interests of safety.

- Consolidation

7.7 Consolidation of the amended Reservoirs Act 1975 is under consideration at some point in the future after all current amendments have been commenced and their effectiveness assessed. The opportunity will be taken at that time to look at new reservoir safety legislation in both Scotland and Northern Ireland.

7.8 In addition to further regulations being made using the new regulation making powers in the amended 1975 Act, existing 1975 Act regulations will be revoked, replaced and consolidated in new regulations, planned to be made at phase 1.

8. Consultation outcome

8.1 A 12 week full public consultation was held between 23 February and 17 May 2012. 72 responses to the consultation were received from a mix of agricultural bodies (3%), consultants (8%), environmental bodies (8%), individuals (mostly panel engineers) (21%), local authorities and councils (21%), professional and representative bodies (3%, 18%), and utility companies (18%). There have been ongoing discussions with a stakeholder group comprising representatives from the Welsh Government, the Environment Agency, local authorities, the Canal and River Trust, the National Farmers' Union, the Country Land & Business Association, the Angling Trust, England Golf, consultants and utility companies.

8.2 The response to the consultation will be available on www.gov.uk/defra.

9. Guidance

9.1 The existing non-statutory "Guide to the Reservoirs Act 1975" is in the process of being updated to reflect the amendments to the 1975 Act through a contract with the Institution of Civil Engineers. Publication is planned soon after the commencement of phase 1 amendments and the coming into force of the different statutory instruments and will provide for update as necessary at phase 2. The guidance is non-statutory and sets out how the Government and the Institution of Civil Engineers considers that those providing professional services under the Act should interpret the Act, particularly those sections where historically there has been inconsistency of interpretation. It also provides route-maps for particular activities for ease of use.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be an average additional cost of £60 per reservoir for activities associated with registration. Since at phase 1 the amendments to the Act are only being implemented for those reservoirs that are already regulated, there is no increase of current burdens associated with complying with the full inspection regime, the requirement to employ a supervising engineer, and other duties under the Act. For those reservoirs that are not designated as "high-risk reservoirs", there will be no further statutory requirement for supervision or inspection under the Act, but there is recognition in the IA that responsible reservoir undertakers will still have their reservoirs checked and maintained. The estimated average saving for undertakers of these reservoirs is some £4,120 per year per reservoir. The expected overall net benefit is estimated as £4.34 million. There was no assessment of the impact on the engineers (a mix of small and larger businesses) providing supervision, inspection and other services to undertakers. Their workload is expected to reduce overall.

10.2 The impact on the public sector has not been estimated as the information available is too uncertain. There is no reliable information on how many reservoirs will be taken out of the regulatory regime and so it is not possible to assess the reduced

enforcement burden or the possible increase over time of emergency intervention at unregulated reservoirs because of future neglect by undertakers.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to restrict the implementation of the amended legislation only to those large raised reservoirs that are currently regulated. This means there is no increase of the current burden on small business as a result of this safety legislation. Where the Environment Agency does not think that a large raised reservoir could endanger human life in the event of an uncontrolled release of water from the reservoir, the requirement to appoint a Supervising Engineer and to have the reservoir inspected at least every 10 years by a civil engineer qualified under the Act no longer applies. Where a small business is responsible for such a reservoir, they benefit from the deregulation.

11.3 All undertakers of large raised reservoirs registered by the Environment Agency were invited to respond to the consultation on amendments to the Act, which included the deregulatory provisions. This invitation included any small businesses that were registered at that time. There were no consultation responses that made useful suggestions about how small businesses responsible for potentially hazardous reservoirs could be further deregulated without either an increase of risk to those downstream or Government taking over responsibility for the safety of their reservoirs and so providing a subsidy.

12. Monitoring & review

12.1 These regulations should add clarity to the 1975 Act. If there is an increase in emergency intervention, this will indicate the need for review.

12.2 The instrument will be reviewed and a report produced within five years of the regulations coming into force. The report will consider how well stated objectives have been met, whether they remain appropriate, and whether they could be achieved with a system that imposes less regulation. Further reports will be produced at intervals not exceeding five years.

13. Contact

David Lees at the Department for Environment, Food and Rural Affairs Tel: 07920 534782 or email: david.lees@defra.gsi.gov.uk can answer any queries regarding the instrument.