Reservoirs (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 108 Schedule
Section 109 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Richard Lochhead

1 In section 1, page 2, line 20, at end insert—
<( ) Before making an order under subsection (6)(a) the Scottish Ministers must consult the Institution of Civil Engineers about the volume of water which should be specified in the order.>

Section 2

Richard Lochhead

2 In section 2, page 2, leave out line 24

Richard Lochhead

3 In section 2, page 2, line 25, leave out <water out of it> and insert <the water>

Richard Lochhead

4 In section 2, page 2, leave out line 36

Section 3

Richard Lochhead

5 In section 3, page 3, line 9, leave out subsections (2) to (10) and insert—
<(2) Scottish Water is the reservoir manager of a controlled reservoir which is managed or operated by it.

(3) The reservoir manager of a controlled reservoir for which Scottish Water is not the reservoir manager by virtue of subsection (2) is—
(a) any person who manages or operates the reservoir or any part of it (other than the owner of the reservoir or that part of it),
(b) the owner of any part of the reservoir for which no person is reservoir manager by virtue of paragraph (a).>
(4) In this section—
(a) managing or operating a reservoir (without prejudice to the generality of that expression) includes controlling of the flow of water in or out of the reservoir, and
(b) a reference to managing or operating a reservoir is, in relation to a reservoir which is being constructed or restored to use (within the meaning of Chapter 5), to be read as referring to proposing to manage or operate the reservoir.

Section 6

Richard Lochhead

6 In section 6, page 5, line 24, leave out <The Scottish Ministers may direct SEPA to> and insert <SEPA must, by such date as the Scottish Ministers direct,>

Richard Lochhead

7 In section 6, page 5, line 27, at end insert—
< ( ) Before publishing guidance under subsection (1), SEPA must consult—
(a) the Institution of Civil Engineers,
(b) such other persons as it considers appropriate.>

Section 9

Richard Lochhead

8 In section 9, page 6, line 15, after second <engineer> insert <, other qualified engineer>

Richard Lochhead

9 In section 9, page 6, line 25, after <any> insert <written recommendation or>

Richard Lochhead

10 In section 9, page 6, line 25, leave out <48(7)> and insert <48(3) or (7)>

After section 13

Richard Lochhead

11 After section 13, insert—
<Fees: registration and administration

(1) The Scottish Ministers may by regulations make provision allowing SEPA to charge reservoir managers of controlled reservoirs, and requiring reservoir managers to pay—
(a) fees in relation to registration, and
(b) other annual or recurring fees in relation to the performance of functions by SEPA under this Part.
In making regulations under subsection (1) the Scottish Ministers must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.

Regulations made under subsection (1) must include provision—

(a) specifying how SEPA is to determine and charge fees,
(b) requiring SEPA—
   (i) to set out its fees in a published charging scheme,
   (ii) to consult such persons as SEPA considers likely to be affected by the scheme before it publishes (or revises) a scheme.

Regulations made under subsection (1) may include such other matters as the Scottish Ministers consider appropriate, including provision specifying—

(a) the maximum amount of any fee,
(b) the circumstances in which any fee is payable,
(c) different fees to be imposed in respect of different reservoirs or in other different cases or classes of case, and
(d) how fees may be collected and recovered.

Section 14

Richard Lochhead
12 In section 14, page 7, leave out lines 36 and 37

Section 18

Richard Lochhead
13 In section 18, page 9, line 25, leave out from <having> to <17(4)> in line 26 and insert <as soon as is reasonably practicable after the end of the period referred to in section 17(4)(d) and having taken into account any representations made in that period>

Section 20

Richard Lochhead
14 In section 20, page 11, line 1, leave out <appeal> and insert <review>

Section 22

Richard Lochhead
15 In section 22, page 11, line 36, at end insert—

<(4A) SEPA gives its decision in the review by giving the reservoir manager notice—
   (a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,
(b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,

c) specifying the reasons for its decision,

d) giving information about the right of appeal under section (Appeal to the Scottish Ministers following SEPA’s review) against the risk designation following the review.

Richard Lochhead

16 In section 22, page 11, line 37, after <a> insert <reasonable>

After section 22

Richard Lochhead

17 After section 22, insert—

Appeal to the Scottish Ministers following SEPA’s review

(1) A reservoir manager of a controlled reservoir who is given notice of SEPA’s decision in a review under section 22 may appeal to the Scottish Ministers against that decision.

(2) Any such appeal must be made before the end of the period of 12 months beginning with the date on which the notice under section 22(4A) was given.

(3) Subject to subsection (5), a risk designation in respect of which an appeal is made under this section continues to have effect despite the appeal.

(4) Before determining an appeal the Scottish Ministers must—

(a) consult the Institution of Civil Engineers, and

(b) take into account the matters mentioned in section 21.

(5) The Scottish Ministers must notify their determination of the appeal by giving the reservoir manager and SEPA notice—

(a) specifying whether they confirm the risk designation or give the reservoir a different risk designation,

(b) where they give the reservoir a different risk designation, specifying which one of the other types referred to in paragraphs (a) to (c) of section 17(3) is the different risk designation,

(c) specifying the reasons for their decision.

(6) Any fee charged by SEPA under section 22(5) must be returned by it to the reservoir manager in the following circumstances—

(a) where the risk designation which was the subject of the appeal was as a high-risk reservoir and the Scottish Ministers’ decision in the appeal is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,

(b) where the risk designation which was the subject of the appeal was as a medium-risk reservoir and the Scottish Ministers’ decision in the appeal is to give a risk designation as a low-risk reservoir.

(7) The Scottish Ministers may by regulations make further provision in relation to appeals under this section.
Section 23

Richard Lochhead

18 In section 23, page 12, line 14, at end insert—

( ) Where the Scottish Ministers give a direction under this section SEPA must, before publishing its guidance, consult and have regard to any advice given to it by the Institution of Civil Engineers.

Section 24

Richard Lochhead

19 In section 24, page 12, line 19, leave out from <or> to end of line 20 and insert <, 22 (subject to subsection (3) of that section) or, as the case may be, (Appeal to the Scottish Ministers following SEPA’s review) (subject to subsection (3) of that section).>

Section 27

Richard Lochhead

20 In section 27, page 13, line 18, after <engineer> insert <or was the other qualified engineer in relation to a reservoir (see section 45(5))>

Section 30

Richard Lochhead

21 In section 30, page 14, line 15, leave out <the capacity of>

Richard Lochhead

22 In section 30, page 14, line 16, leave out <had the capacity to hold> and insert <been capable of holding>

Richard Lochhead

23 In section 30, page 14, line 17, leave out <to that capacity> and insert <so that it is capable of so holding such amount of water>

Richard Lochhead

24 In section 30, page 14, line 26, leave out from <reducing> to <is> and insert <making the reservoir>

Richard Lochhead

25 In section 30, page 14, line 28, leave out <is>
Richard Lochhead
26 In section 30, page 14, line 31, leave out from <reducing> to <is> in line 32 and insert <making the reservoir>

Section 31

Richard Lochhead
27 In section 31, page 15, line 18, leave out <and the reservoir>

Richard Lochhead
28 In section 31, page 15, leave out lines 27 to 30

Section 32

Richard Lochhead
29 In section 32, page 15, line 37, leave out <and the controlled reservoir>

Section 33

Richard Lochhead
30 In section 33, page 16, line 24, at end insert—

< ( ) where the reservoir manager is required to appoint a supervising engineer (see section 47), specify any matters that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,>

Section 40

Richard Lochhead
31 In section 40, page 20, line 3, after <(1)(a)> insert <, (b)>

Richard Lochhead
32 In section 40, page 20, line 9, leave out from <(1)(b)> to <(i)>, in line 19 and insert <(1)(d) or (e) is liable—

( ) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,

( ) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum,>
Section 43

Richard Lochhead
33 In section 43, page 21, line 25, leave out from <which> to <engineer> in line 26

Richard Lochhead
34 In section 43, page 21, line 27, at end insert <to carry out an inspection of the reservoir at each of the times required by section 44>

Richard Lochhead
35 In section 43, page 21, line 29, leave out subsection (2)

Richard Lochhead
36 In section 43, page 22, leave out lines 2 to 4

Section 44

Richard Lochhead
37 In section 44, page 22, line 6, leave out subsections (1) and (2) and insert—

<(1) Subject to subsection (2A), inspections of a high-risk reservoir must be carried out—
(a) before the end of the period of 2 years beginning with the date of any final certificate for the time being applicable to the reservoir, and
(b) at each of the following times—
(i) at any time recommended by the supervising engineer under section 48(3),
(ii) at any time recommended in an inspection report under section 45,
(iii) before the end of the period of 10 years beginning with the date of the latest inspection.

(2) Subject to subsection (2A), inspections of a medium-risk reservoir must be carried out at each time recommended by the supervising engineer under section 48(3).

(2A) Where a construction engineer is appointed to supervise relevant works at a high-risk reservoir or a medium-risk reservoir—
(a) each inspection which, at the date of the appointment, is due to be carried out is cancelled, and
(b) the next inspection must be carried out—
(i) in the case of a high-risk reservoir, in accordance with subsection (1)(a),
(ii) in the case of a medium-risk reservoir, at any time recommended by the supervising engineer under section 48(3) which is after the end of the period of 2 years beginning with the date of the final certificate for the relevant works.>
Section 45

Richard Lochhead
38 In section 45, page 22, line 31, at end insert "(including measures for the maintenance of the reservoir)"

Richard Lochhead
39 In section 45, page 22, leave out lines 32 and 33

Richard Lochhead
40 In section 45, page 23, line 2, leave out "supervising" and insert "inspecting engineer or the other qualified"

Richard Lochhead
41 In section 45, page 23, line 6, at end insert—

<( ) may include recommendations on other matters which the inspecting engineer considers relevant to the maintenance of the reservoir but in relation to which the engineer does not specify a measure to be taken under paragraph (a).>

Richard Lochhead
42 In section 45, page 23, line 13, at end insert—

<( ) references to “the other qualified engineer” are references to the engineer appointed for the time being as such under section 46 in relation to the reservoir,>

Section 46

Richard Lochhead
43 In section 46, page 23, line 17, leave out "comply with" and insert "ensure that"

Richard Lochhead
44 In section 46, page 23, line 18, at end insert "is complied with"

Richard Lochhead
45 In section 46, page 23, line 18, at end insert—

<(1A) The reservoir manager—

(a) may appoint any other qualified engineer (being a person eligible to be appointed as an inspecting engineer for the reservoir) to supervise any of the measures specified in the inspection report, and

(b) must, as soon as practicable after making any such appointment, give notice of it to SEPA and the inspecting engineer.>
Richard Lochhead

46 In section 46, page 23, line 19, leave out subsection (2) and insert—

<(2) Not later than 28 days after being satisfied that a measure directed in the inspection report has been taken—
   (a) the inspecting engineer, or
   (b) in relation to any measure for which the other qualified engineer is appointed, the other qualified engineer,

must give to the reservoir manager an interim inspection compliance certificate.

(2A) Where the other qualified engineer gives an interim inspection compliance certificate in relation to any measure—

   (a) the other qualified engineer must—
      (i) at the same time as giving the certificate to the reservoir manager, give the inspecting engineer a copy of it, and
      (ii) not later than 28 days after giving the certificate, give SEPA a copy of it, and

   (b) the inspecting engineer must take the certificate to be conclusive of that measure having been taken.>

Richard Lochhead

47 In section 46, page 23, line 25, after <measure> insert <for which the person giving the certificate is responsible for supervising>

Richard Lochhead

48 In section 46, page 23, line 34, at end insert—

<( ) Where an inspection report directs a measure for the maintenance of the reservoir to be taken in the interests of the safety of the reservoir (specified in accordance with section 45(3)(a))—
   (a) no interim inspection compliance certificate is required for that measure, and
   (b) no account of that measure is to be taken for the purposes of subsections (3)(c), (4) and (5)(b).>

Richard Lochhead

49 In section 47, page 23, line 36, leave out from <which> to <engineer> in line 37

Richard Lochhead

50 In section 47, page 23, line 38, at end insert <to supervise the reservoir in accordance with section 48 at all times other than the period mentioned in subsection (2)>

Richard Lochhead

51 In section 47, page 24, line 2, leave out subsection (2) and insert—
A reservoir manager of a controlled reservoir which is being constructed or restored to use (within the meaning of Chapter 5) need not appoint a supervising engineer before a final certificate is issued in respect of the relevant works (see section 37).

Section 48

Richard Lochhead
52 In section 48, page 24, line 9, leave out from <at> to end of line 10

Richard Lochhead
53 In section 48, page 24, line 13, at end insert—

(aa) monitor any matters specified in a safety report as matters to be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,

(ab) monitor compliance by the reservoir manager with the requirements of any preliminary certificate for the time being applicable to the reservoir.

Richard Lochhead
54 In section 48, page 24, leave out line 19

Richard Lochhead
55 In section 48, page 24, line 21, after <of> insert <—

(i) a safety report referred to in paragraph (aa),

(ii) a preliminary certificate referred to in paragraph (ab), or

(iii)>

Richard Lochhead
56 In section 48, page 24, line 21, leave out from <or> to end of line 22

Richard Lochhead
57 In section 48, page 24, line 30, leave out <44(1)(b)> and insert <45>

Richard Lochhead
58 In section 48, page 24, line 31, at end insert <specifying when the inspection should take place, and

( ) not later than 28 days after giving the written recommendation, give SEPA a copy of it.>

Richard Lochhead
59 In section 48, page 24, line 36, leave out from <give> to end of line 37 and insert <—

(a) maintain a written record of each visual inspection carried out in pursuance of a direction under subsection (4),
(b) make that record available on request to the supervising engineer, and
(c) give notice to the supervising engineer of anything identified during such an
inspection which might affect the safety of the reservoir.

Notice under subsection (6)(c) must be given as soon as reasonably practicable after the
inspection during which the thing was identified.

Richard Lochhead
60 In section 48, page 25, line 3, at end insert—
   <(  ) a requirement in a safety report referred to in subsection (2)(aa),
   (  ) a requirement in a preliminary certificate referred to in subsection (2)(ab),>

Richard Lochhead
61 In section 48, page 25, leave out line 5

Richard Lochhead
62 In section 48, page 25, line 16, at end insert <except where done in accordance with the routine
operation of the reservoir>

Section 50

Richard Lochhead
63 In section 50, page 26, line 17, at end insert—
   <(  ) the requirements of section 48(6)(c) (notice of identification of thing which might
   affect the safety of the reservoir),>

Section 53

Richard Lochhead
64 In section 53, page 28, line 18, at end insert—
   <(  ) allowing a single flood plan to be prepared in respect of two or more controlled
   reservoirs between which water does (or could) flow,>

Section 54

Richard Lochhead
65 In section 54, page 30, line 6, at end insert <, and
   (  ) any flood plan produced in respect of the reservoir in pursuance of regulations
   made under section 53.>
Section 55

Richard Lochhead

66 In section 55, page 30, line 18, leave out from second <the> to <engineer> in line 20 and insert <information for the purpose of enabling a person to contact SEPA>

Section 59

Richard Lochhead

67 In section 59, page 32, leave out lines 4 to 6

Section 64

Richard Lochhead

68 In section 64, page 34, line 20, leave out from <is> to end of line 36 and insert <or (b) is liable—

( ) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,

( ) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.>

Section 65

Richard Lochhead

69 In section 65, page 35, line 10, leave out <making an appointment> and insert <pursuance of the exercise of powers>

Section 67

Richard Lochhead

70 In section 67, page 36, line 5, at end insert—

<(7) The Scottish Ministers may by order make provision allowing a reservoir manager to whom notice is given under subsection (2)—

(a) to apply to SEPA for a review of its decision to give the notice,

(b) to appeal to the Scottish Ministers against the decision to give the notice.

(8) Any such order—

(a) must, where it includes provision for—

(i) a right of review, specify the period within which a review may be made,

(ii) a right of appeal, specify the period within which an appeal may be made, and

(b) may make further provision in relation to reviews and appeals in relation to notices given under subsection (2).>
Richard Lochhead

71 In section 68, page 36, line 7, at end insert—

( ) Where a reservoir manager has a right of review in accordance with an order made under section 67(7), non-compliance is an offence only if—

(a) the period within which an application for review may be made has expired, or
(b) where such an application has been made, it has been withdrawn or determined.

( ) Where a reservoir manager has a right of appeal in accordance with an order made under section 67(7), non-compliance is an offence only if—

(a) the period within which an appeal may be made has expired, or
(b) where such an appeal has been made, it has been withdrawn or determined.

Richard Lochhead

72 In section 68, page 36, line 8, leave out from <on> to <(i),> in line 18 and insert <—

( ) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,

( ) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum,

Richard Lochhead

73 In section 71, page 37, line 17, leave out from <each> to end of line 18 and insert <the reservoir manager is carrying on the activity and either—>

Richard Lochhead

74 In section 71, page 37, line 20, at end insert <or>

Richard Lochhead

75 In section 71, page 37, line 23, leave out subsection (5) and insert—

( ) Where provision under subsection (1) confers power to give a stop notice in a case falling within subsection (4)(b)—

(a) SEPA must consult the Institution of Civil Engineers before it exercises the power,
(b) the steps specified in any such stop notice in pursuance of subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(b),
(c) SEPA must give the Scottish Ministers notice of each occasion on which it exercises the power as soon as reasonably practicable after doing so.
Section 72

Richard Lochhead

76 In section 72, page 38, line 4, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

77 In section 72, page 38, leave out line 25

Section 73

Richard Lochhead

78 In section 73, page 38, line 39, after <appeal> insert <to the Scottish Ministers>

Section 76

Richard Lochhead

79 In section 76, page 41, line 13, leave out <for appeals> and insert <allowing an application for a review by SEPA before an appeal to the Scottish Ministers>

Section 78

Richard Lochhead

80 In section 78, page 42, line 36, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

81 In section 78, page 43, leave out line 34

Section 80

Richard Lochhead

82 In section 80, page 44, line 36, at end insert <(but not exceeding the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction)>

Section 81

Richard Lochhead

83 In section 81, page 45, line 21, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

84 In section 81, page 46, leave out line 24
Section 83

Richard Lochhead

85  In section 83, page 47, line 17, at end insert <,
    but may not specify an amount which exceeds, or make provision under which the
    amount may be calculated or determined so as to exceed, the maximum fine for which a
    person convicted of the offence concerned may be made liable on summary conviction.>

Richard Lochhead

86  In section 83, page 47, line 20, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

87  In section 83, page 47, line 30, leave out <enforceable in like manner as> and insert <recoverable
    as if it were payable under>

Section 86

Richard Lochhead

88  In section 86, page 48, line 28, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

89  In section 86, page 48, leave out line 35

After section 86

Richard Lochhead

90  After section 86, insert—
    <Guidance: appeals
    The Scottish Ministers must publish guidance on the process of making appeals in
    pursuance of sections 67, 72, 73, 76, 78, 81, 83 and 86.>

Section 87

Richard Lochhead

91  In section 87, page 49, line 2, leave out from <permit> to second <appropriate>) in line 3 and
    insert <require SEPA to publish such information as may be specified in the order>

Richard Lochhead

92  In section 87, page 49, line 12, leave out from <permit> to second <appropriate>) in line 13 and
    insert <require SEPA to publish such information as may be specified in the order>
Before section 97

Richard Lochhead

93 Before section 97, insert—

<Grants

(1) The Scottish Ministers may pay grants to a reservoir manager for the purposes of enabling or assisting the reservoir manager to comply with any obligation arising under or by virtue of this Part.

(2) Grants are payable only where the reservoir concerned—
   (a) is a high-risk reservoir or a medium-risk reservoir, and
   (b) was not a “large raised reservoir” for the purposes of section 1 of the 1975 Act on the date immediately before that section was repealed.

(3) Grants may be subject to such conditions (including conditions on repayment) as the Scottish Ministers think fit.>

Peter Peacock

101 Before section 97, insert—

<Guidance

(1) SEPA must prepare and publish guidance on this Part.

(2) Guidance under subsection (1) must in particular—
   (a) include guidance on the provision made by any orders or regulations under this Part which have been made, and
   (b) incorporate any guidance required or permitted by any other provision of this Part to be prepared (whether by SEPA or the Scottish Ministers) which has been prepared,

   at the time the guidance under subsection (1) is to be published.

(3) The first guidance under subsection (1) must be prepared and published by such date (not later than 2 years after the day on which the Bill for this Act receives Royal Assent) as the Scottish Ministers direct.

(4) Subsequent guidance under subsection (1) must be prepared and published—
   (a) as soon as reasonably practicable (and in any case not later than one year) after the making of any orders or regulations under this Part,
   (b) at such other times as the Scottish Ministers direct.>

After section 98

Richard Lochhead

94 After section 98, insert—

<SEPA: Ministerial directions

SEPA must, in carrying out its functions under this Part, act subject to and in accordance with such directions as may be given by the Scottish Ministers.>
After section 105

Richard Lochhead

95 After section 105, insert—

<Consequential amendment and repeals>

(1) In section 14(2)(a) of the Local Government and Planning (Scotland) Act 1982 (c.43), for “(within the meaning of the Reservoirs Act 1975)” substitute “(within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00) but irrespective of the volume of water held in the reservoir)”.

(2) Paragraph 98 of schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) is repealed.

(3) Paragraph 7 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3) is repealed.

(4) In section 55(2)(f) of the Building (Scotland) Act 2003 (asp 8), for “large raised reservoir within the meaning of the Reservoirs Act 1975 (c.23)” substitute “controlled reservoir within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00)”.

(5) Part 7 of the Flood Risk Management (Scotland) Act 2009 (asp 6) is repealed.>

Section 107

Richard Lochhead

96 In section 107, page 58, line 23, at end insert—

<( ) section 1(4),>

Richard Lochhead

97 In section 107, page 58, line 26, at end insert—

<( ) section 67(7),>

Schedule

Richard Lochhead

98 In the schedule, page 59, line 24, leave out <43(2)> and insert <43(1)>

Richard Lochhead

99 In the schedule, page 60, line 4, at end insert—

<other qualified engineer section 46(1A) (see also section 45(5))>

Richard Lochhead

100 In the schedule, page 60, line 15, leave out <47(2)> and insert <47(1)>
Section 109

Peter Peacock

In section 109, page 58, line 34, after <7,> insert <(Guidance),>