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WELSH STATUTORY INSTRUMENTS

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**2016 No. 78 (W. 35)**

**FLOOD RISK MANAGEMENT, WALES**

**The Reservoirs Act 1975 (Exemptions, Appeals  
and Inspections) (Wales) Regulations 2016**

*Made - - - - 27 January 2016*

*Coming into force in accordance with regulation 1(2)*

The Welsh Ministers, in exercise of the powers conferred by sections A1(8), 2E(1), 5, 10(2) and 19A(1) of the Reservoirs Act 1975<sup>(1)</sup> make the following Regulations.

A draft of these Regulations has been laid before and approved by a resolution of the National Assembly for Wales pursuant to section 5(6), (7) and (8) of the Reservoirs Act 1975.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (Wales) Regulations 2016.

(2) These Regulations come into force on the 1 April 2016.

(3) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations—

“the 1975 Act” (“*Deddf 1975*”) means the Reservoirs Act 1975;

“high-risk reservoir” (“*cronfa ddŵr risg uchel*”) has the meaning given to it in section 2C of the Reservoirs Act 1975;

“large raised reservoir” (“*cyforgronfa ddŵr fawr*”) has the meaning given to it in section A1 of the Reservoirs Act 1975;

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(1) [1975 \(c.23\)](#). Sections A1, 2E, 19A were inserted by section 33 of, and paragraphs 2, 7 and 30 of Schedule 4 to, the Flood and Water Management Act [2010 \(c.29\)](#). Functions under these sections are conferred on “the Minister”. Section 33 of, and paragraph 42 of Schedule 4 to, the Flood and Water Management Act 2010 provides that a reference to the Minister is a reference to the Welsh Ministers, in relation to Wales. Section 10(2) was amended by section 33 of, and paragraph 12(3) of Schedule 4 to, the Flood and Water Management Act 2010. There are other amendments but none is relevant. Functions of the Secretary of State under section 5, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, [SI 1999/672](#). Those functions are exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act [2006 \(c.32\)](#).

“NRBW” (“*CANC*”) means the Natural Resources Body for Wales;

“undertaker” (*ymgymerwr*) has the meaning given to ‘undertakers’ in section 1(4) of the Reservoirs Act 1975.

### **Specified things not to be treated as large raised reservoirs**

3.—(1) Pursuant to section A1(8) of the 1975 Act the following things are not to be treated as large raised reservoirs for the purpose of that Act—

- (a) a mine lagoon which is a tip within the meaning of the Mines Regulations 2014<sup>(2)</sup>;
- (b) a quarry lagoon which is—
  - (i) a tip within the meaning of the Quarries Regulations 1999<sup>(3)</sup>; or
  - (ii) a disused tip within the meaning of Part 2 of the Mines and Quarries (Tips) Act 1969<sup>(4)</sup>;
- (c) a canal or other inland navigation;
- (d) structures designed and constructed with the primary purpose of protecting land from the sea: or
- (e) a road embankment or railway embankment except where—
  - (i) the drain or drains through it are artificially blocked for the purposes of using areas upstream to store water; or
  - (ii) the drain or drains through it are constructed so that water is stored above natural ground level.

(2) Paragraph (1)(c) does not include a reservoir which forms part of a canal or other inland navigation.

### **Right to appeal a designation of a large raised reservoir as a high-risk reservoir**

4.—(1) An undertaker who has been served with a notice under section 2B(1) of the 1975 Act<sup>(5)</sup> may appeal the designation on any ground to the Welsh Ministers.

(2) On deciding an appeal under paragraph (1), the Welsh Ministers must either confirm or cancel the designation.

### **Right to appeal a requirement in a notice**

5.—(1) An undertaker who has been served with an enforcement notice may appeal to the Welsh Ministers on any ground against a requirement in the notice to appoint an engineer or carry a recommendation of an engineer into effect.

- (2) On deciding an appeal under paragraph (1), the Welsh Ministers must—
  - (a) confirm the requirement;
  - (b) modify the requirement; or
  - (c) determine that the requirement is to cease to have effect.
- (3) Where an appeal is brought, the requirement is suspended while the appeal is pending.

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(2) S.I. 2014/3248.

(3) S.I. 1999/2024, to which there are amendments not relevant to these Regulations.

(4) 1969 c.10

(5) Section 2B was inserted by section 33 of, and paragraph 7 of Schedule 4 to, the Flood and Water Management Act 2010 (c.29)

(4) In this regulation “enforcement notice” means a notice given under section 8(1), 8(3A)(6), 9(7), 10(7), 12(4), 13(5) or 14(4) of the 1975 Act.

### **Appeals**

6.—(1) An appeal under regulation 4 or 5 must—

- (a) be made in writing;
- (b) state the grounds of the appeal; and
- (c) must be received by the Welsh Ministers no more than 28 days after the date on which the undertaker is served with an enforcement notice or a notice served under section 2B of the Act.

(2) The Welsh Ministers must remit the appeal to an appointed person for consideration and determination.

(3) As soon as reasonably practicable after receiving an appeal the Welsh Ministers must send a copy of the appeal and supporting evidence to NRW.

### **Proceedings before the appointed person**

7.—(1) If the appointed person is satisfied that an appeal is filed in accordance with regulation 6 the appointed person must determine the application.

(2) Subject to paragraphs (3) to (10), the procedure for determining the appeal is to be decided by the appointed person.

(3) Before determining the appeal the appointed person must—

- (a) allow the appellant and NRW 21 days to submit representations and supporting documents in relation to the appeal;
- (b) as soon as reasonably practicable send to the NRW a copy of any representations and supporting documents submitted by the appellant under sub paragraph (a);
- (c) as soon as reasonably practicable send to the appellant a copy of any representations and supporting documents submitted by the NRW under sub paragraph (a);
- (d) allow the appellant and NRW a further 14 days to submit comments on each other’s representations and supporting documents to the appointed person.

(4) The appointed person may at any time request further information from the appellant or NRW.

(5) After consideration of the representations and documents submitted under paragraph (3) the appointed person must decide whether the appeal will be conducted by written representations or by hearing and must inform the parties of the decision.

(6) If an appeal is to be determined by a hearing the the appointed person must fix the date and allow the appellant and NRW at least 28 days notice.

(7) If either party intend to call or give witness evidence at the hearing they must, at least 14 days before the date fixed for the hearing send a proof of the evidence intended to be given to the appointed person.

(8) The appointed person must ensure both parties have copies of all proofs of evidence submitted under paragraph (7).

(9) An appeal may be withdrawn by the appellant by notice in writing to the appointed person at any time before it is determined by the appointed person.

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(6) Section 8(3A) was inserted by section 75 of the Water Act 2003 c.37.

(10) All parties to the appeal are to bear their own costs.

**Effect of a determination made by the appointed person**

8. The Welsh Ministers are bound by a determination by the appointed person.

**Periodical inspection of high-risk reservoirs**

9.—(1) For the purposes of section 10(2) of the 1975 Act, a high-risk reservoir is to be inspected at each of the following times—

- (a) before the end of the period of six months beginning on the date of completion of any alteration to the reservoir which—
  - (i) does not increase or decrease its capacity;
  - (ii) is such as might affect its safety; and
  - (iii) has not been designed and supervised by a qualified civil engineer;
- (b) at any time recommended by the supervising engineer under section 12(3) of the 1975 Act;
- (c) at any time recommended in the report of the inspecting engineer made under section 10(3) of the 1975 Act;
- (d) within one year of designation under section 2B of the 1975 Act.
- (e) no later than 10 years after the date of the most recent inspection made under section 10 of the 1975 Act and once every 10 years thereafter.

(2) Paragraph (1)(d) does not apply to any reservoir previously registered as a large raised reservoir under the Reservoirs Act 1975 (Registers, Reports and Records) Regulations 1985(7).

(3) The requirement to have a high-risk reservoir inspected under section 10(2) of the 1975 Act is not fulfilled where the inspection is limited to part of the reservoir.

(4) Paragraph (3) does not apply in any case where an inspecting engineer acting under section 12(3) of the 1975 Act or a supervising engineer acting under section 10(3) of that Act recommends that an inspection is limited to part of the reservoir.

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh  
Minister

27 January 2016

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

For the purposes of the Reservoirs Act 1975 (c.23) (“the 1975 Act”), these Regulations provide for—

- (a) specified things not to be treated as large raised reservoirs (regulation 3);
- (b) a right of appeal against designations of large raised reservoirs as high-risk reservoirs (regulation 4);
- (c) a right of appeal against notices given by the Natural Resources Body for Wales either to appoint an engineer or to carry a recommendation of an engineer into effect (regulation 5); and
- (d) the timings of inspections (regulation 9).

Section 2E of the 1975 Act requires the Welsh Ministers to provide a right of appeal against the designation of a large raised reservoir as a high-risk reservoir. Section 19A of the 1975 Act requires the Welsh Ministers to provide a right of appeal against a requirement to appoint an engineer and a requirement to carry a recommendation of an engineer into effect under various sections of the 1975 Act.

These Regulations confer jurisdiction on the Welsh Ministers to consider appeals made under these Regulations and make provision for the appeals process.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Flood and Coastal Erosion Risk Management Team of the Energy, Water and Flood Division, the Welsh Government, Crown Buildings, Cathays Park, Cardiff CF10 3NQ.