

Reservoirs Act 1975

Supervising engineer statements

August 2017

Introduction

The Environment Agency is the enforcement authority for the Reservoirs Act 1975 (the Act) in England. We have a legal duty to secure that reservoir undertakers observe and comply with the requirements of the Act.

It has become apparent that some supervising engineers are unclear about the correct application of the Act in regard to the required frequency of their visits to high-risk reservoirs and both the timing and content of their statements. This note clarifies the Environment Agency's interpretation of the legal requirements.

Reservoirs Act requirements

Section 12 is reproduced in full below:

12 Supervision of large raised reservoirs

- (1) At all times when a high-risk reservoir is not under the supervision of a construction engineer, a qualified civil engineer ("the supervising engineer") shall be employed to supervise the reservoir and keep the undertakers advised of its behaviour in any respect that might affect safety, and to watch that the provisions of section 6(2) to (4) or section 9(2) above and of section 11 are observed and complied with and draw the attention of the undertakers to any breach of those provisions.
- (2) It shall be the duty of the supervising engineer, so long as any matters are noted as matters that need to be watched by him in any annex to the final certificate for the reservoir or in the latest report of an inspecting engineer, to pay attention in particular to those matters and to give the undertakers not less often than once a year a written statement of the action he has taken to do so.
- (2A) The supervising engineer must provide the undertaker with a written statement of any steps taken to maintain the reservoir in accordance with the recommendations of the inspecting engineer under section 10(3)(b).
- (2B) The engineer must provide a statement under subsection (2A) at least once every 12 months.
- (3) The supervising engineer shall recommend to the undertakers that the reservoir be inspected under section 10 above, if at any time he thinks that such an inspection is called for.
- (4) Where it appears to the enforcement authority that a high-risk reservoir is not for the time being under the supervision either of a construction engineer or of a supervising engineer, the authority may by written notice served on the undertakers require them within twenty-eight days after the date the notice is served to appoint a supervising engineer and to notify the authority of the appointment or, if the reservoir is at that date under the supervision of a construction engineer or of a supervising engineer, to notify the authority of that fact.
- (5) References in this section to a construction engineer include an engineer acting under section 8 or 9 above.
- (6) The supervising engineer may direct the undertaker to carry out a visual inspection of the reservoir at specified intervals for the purpose of identifying anything that might affect the safety of the reservoir.
- (7) The undertaker must notify the supervising engineer of--
 - (a) each visual inspection that is carried out, and

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(b) anything noticed in the course of it.

(8) The Minister may issue guidance about supervision in accordance with this section (and may take compliance into account when making decisions under section 4).

Frequency of reservoir visits

The Act does not mention the required frequency of supervising engineer visits. It might seem appropriate to link the frequency of visits to the required frequency of statements, but this is not a legal requirement. The Department of Environment (now Defra) has advised Supervising Engineers that 'The number of times that you will visit the reservoir during the year is a matter for you and you will wish to satisfy yourself that that number is sufficient. The Inspecting or Construction Engineer may suggest a frequency and times of the year (though they are under no obligation to do so).' (WS 970/8 August 1985, reproduced on page 183 of the 2000 ICE Guide to the Reservoirs Act 1975). Further practical (non-statutory) guidance on the frequency of reservoir visits is given in the 2014 (second edition) of the ICE Guide to the Reservoirs Act 1975.

Frequency and content of statements

There are 2 separate and distinct requirements for the frequency of statements:

- Section 12(2) requires the supervising engineer to pay particular attention to any **'matters that need to be watched'** in the annex to the final certificate or in the latest inspecting engineer's report. **At least once a year**, the supervising engineer must give the undertakers a written statement of the action taken to do so. The reservoir industry has historically interpreted this to mean that a section 12(2) statement must be provided at least once in any calendar year. We see no reason to disagree with this interpretation.
- Section 12(2A) and 12(2B) require the supervising engineer **at least once every 12 months**, to provide the undertaker with a written statement of **any steps taken to maintain the reservoir** in accordance with the last inspecting engineer's **maintenance recommendations made in his inspection report under section 10(3)(b)** of the Act. Such statements must be provided at least once every 12 months.

In Part D5 of the 2014 second edition of the ICE Guide to the Reservoirs Act, there is a recommended format for supervising engineers' statements. Although good practice, it is not a legal requirement to follow that format. The Guide states that supervising engineers may find it convenient to combine section 12(2) and section 12(2A) statements in a single document. Again, it is not a legal requirement to do so. The 2 statement types may either be provided separately or combined into a single document.

The required timing and content of statements is not necessarily linked to the timing of site visits. This gives supervising engineers flexibility in deciding the frequency and timing of their visits. It is a matter for the supervising engineer's professional judgment to decide how often they need to visit the reservoir, in order to fulfil their legal duties. Section 12(6) provides that the supervising engineer may direct the undertaker to carry out safety related visual inspections, if the supervising engineer deems it appropriate to do so. Section 12(7) provides that the undertaker must report anything noticed in the course of each such visual inspection that is carried out.

Section 20(4)(f) requires supervising engineers within 28 days after delivering it to the undertakers to send a copy of any statement given under section 12(2) or section 12(2A) to the enforcement authority, which in England is the Environment Agency. Please send it by email to reservoirs@environment-agency.gov.uk.

2014 ICE Guide to the Reservoirs Act 1975 (second edition)

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This is an excellent publication and provides a wealth of good advice for supervising engineers. However, only the Reservoirs Act 1975 (as amended) and the regulations made under its related Statutory Instruments have the force of law. The commentary and guidance on the Act do not place statutory requirements on supervising engineers. In particular, the first sentence in the guidance under the heading 'Statements of supervising engineers' on page 60 of the second edition appears to be potentially inconsistent with the statement frequency requirements of section 12(2) and may have led to some confusion. The Environment Agency has asked the ICE to correct this in future editions of the Guide.

Criminal liability

Sections 22(1), 22(1AC) and 22(3) provide that reservoir undertakers shall be guilty of an offence if they fail to:

- comply with the requirement to employ a supervising engineer
- comply with a supervising engineer's direction to carry out a visual inspection
- notify the supervising engineer of anything noticed in the course of a visual inspection
- without reasonable excuse, refuse or knowingly fail to afford facilities or provide information for the effective performance of the supervising engineer's functions.

The supervising engineer does not commit an offence by failing to provide a section 12(2) or a section 12(2A) statement at the due time. However, a supervising engineer has a legal obligation to comply with all of the requirements of the Act that relate to the supervising engineer's duties. The Environment Agency provides feedback to the ICE regarding compliance, which may be considered when assessing a supervising engineer's suitability for re-appointment to a panel constituted under section 4 of the Act. Furthermore, supervising engineers will wish to avoid putting their undertakers at risk of non-compliance with the Act by failing to advise them of the reservoir's behaviour in any respect that might affect safety.