

Reservoirs Act 1975

Next inspection date after a section 8 report

July 2018

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 recently become apparent that there is a 'lacuna' or unintended gap in the regulations about the timing of the next section 10 inspection following a section 8 inspection. This note clarifies the Environment Agency's interpretation of the situation.

Reservoirs Act requirements

Section 10(2) of the Reservoirs Act 1975 (as amended) states that 'Unless it is at the time under the supervision of a construction engineer ... a high-risk reservoir must be inspected under this section at the time specified by regulations made by the Minister.'

Regulation 6(1)(a) of SI 2013 No.1896 provides that an inspection is required within 2 years of the date of a final certificate issued under section 7(3) of the Act.

Regulation 6(2) provides that an inspection is required within 10 years of the date of the last inspection.

Section 8 inspection

A section 8 inspection is due if a large raised reservoir has been constructed or altered so as to increase or decrease its capacity, but without being designed and supervised by a construction engineer under section 6 of the Act. Although section 8(1) of the Act allows the enforcement authority to serve notice on the undertaker, requiring the appointment of a construction engineer to inspect the reservoir and supervise it until issue of the final certificate, undertakers often make the appointment without a notice being served. The possibility of appointing a construction engineer under section 8 without the service of a notice by the enforcement authority is allowed for under section 25(4) of the Act.

Section 10 inspection due date after a section 8 inspection

If a reservoir has been newly registered by the undertaker, the Environment Agency will have to consider whether or not the reservoir is to be designated as a high-risk reservoir, under section 2A(1) of the Act. If the Environment Agency has designated the reservoir 'high-risk', either historically or following the section 8 inspection, then the due date for the next inspection under section 10 of the Act will be 10 years from the date of the section 8 inspection, under regulation 6(2) of SI 2013 No. 1896.

This is different from the due date for the next inspection under section 10 of the Act following the issue of a final certificate under section 7(3) of the Act, which is 2 years from the date of the certificate under regulation 6(1)(a).

Note that the section 10 inspecting engineer must be independent (as defined by section 10(9) of the Act) of the section 8 construction engineer.

Implications for construction engineers

When issuing an inspection report under section 8, it would be helpful if the construction engineer could make a recommendation in the report as to the timing of the next inspection under section 10 of the Act. If they recommended that the next inspection should be carried out in less than 10 years, and an undertaker were to dispute that next inspection date requirement, an option would be for the supervising engineer in due course to call for an early inspection under section 12(3) of the Act.

Implications for the Reservoirs Act

The (probably unintended) consequence of the current wording of the Act and its regulations is that when a construction engineer is appointed under section 8 of the Act, the due date for the next inspection is later than if the construction engineer had been appointed under section 6, in the more normal way. In due course, a small change in the law to address this point would be helpful.