

Regulating the Reservoirs Act 1975 in England following Government Advice on COVID-19

Environment Agency guidance on the impact of COVID-19 causing potential breaches of the Reservoirs Act 1975

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Background

This guidance is intended for reservoir Undertakers (Owners and Operators) and Government appointed Reservoir Panel Engineers (Engineers) to understand how the Environment Agency proposes dealing with requests by them to consider adjusting its enforcement of the Reservoirs Act 1975 (the Act) because of circumstances arising out of COVID-19.

The Environment Agency recognises the potentially difficult circumstances faced by Undertakers and Engineers because of current restrictions and Government advice.

Undertakers have ultimate responsibility for the safety of the reservoir under the Act. We expect Undertakers to fully comply with the legal requirements, which are enforced by the Environment Agency's National Reservoir Safety Team (RST). We also expect Undertakers to have contingency plans to help them comply with regulatory requirements and minimise the risks of any non-compliance that unavoidably results as a consequence of COVID-19.

It is the Environment Agency's role to make sure all Undertakers comply with the legal requirements of the Act.

How we will regulate reservoir safety following Government advice relating to COVID-19

The Act's overarching priority is to ensure the structural stability of reservoirs and the protection of the public located in downstream areas, so we do expect that Undertakers and Engineers will continue to undertake the required steps to ensure compliance with the Act.

As an Undertaker for a Large Raised Reservoir that falls under the Act you are required to comply with all the legal requirements specified in the Act. These include:

- The appointment of construction, supervising (SE) and inspecting (IE) engineers.
- Instigating inspections under section 8, 10 and 12 of the Act for all High Risk reservoirs.
- Submitting reports that detail the findings of the above inspections.

- Ensuring the recommendations of the above reports are carried out. These include:
 - Ensuring Measures in the Interests Of Safety (MIOS) are completed within the specified time period
 - Ensuring maintenance measures are undertaken
 - Providing information to us as required by the Act
 - Responding to and informing us of any reservoir incident.

We consider that at “High Risk” reservoirs inspections and works relating to construction, MIOS, maintenance measures and managing incidents are essential works. As such they are exempt from any COVID-19 related restrictions put in place by Government on traveling and the construction industry.

We recognise, however, that during a significant outbreak of COVID-19 the ability of Undertakers and reservoir Panel Engineers to operate or comply with the Act may be temporarily compromised by a lack of available staff to undertake monitoring, measurements, safety and maintenance works, respond to incidents, or to complete supervisory visits or inspections. In these circumstances, it is important that you contact us immediately using the contact details below. We will take a reasonable and proportionate approach to our compliance assessment and enforcement, taking into account the current exceptional circumstances.

What we expect you to do if there is a risk that you may not be able to comply with your statutory obligations

You must tell the Environment Agency’s Reservoir Safety Team immediately if you are likely to breach any of your statutory obligations under the Act.

Dial: 020 302 58322 (Office Hours)
 Dial: 0800 807060 (Incident hotline - 24hrs)
 Email: reservoirs@environment-agency.gov.uk
 By post to:

Reservoir Safety Team
 Manley House
 Kestrel Way
 Exeter
 Devon
 EX2 7LQ

What the Environment Agency will do

We will consider notifications that you are likely to breach any of your obligations under the Act on a case by case basis and where appropriate adopt a Temporary Local Enforcement Position (RS COVID-19 LEP) to set out the conditions upon

which we will not normally take enforcement action for a specific breach of the Act.

The conditions of the RS COVID-19 LEP may include:

- Producing an on-site flood plan, including emergency response planning to minimise the impact and duration of not complying with the Act, if one does not already exist.
- Your Supervising Engineer (SE) certifying that in his/her absence an alternative engineer is available.
- Calling for a new section 10 inspection if your SE is unable to certify an alternative replacement, as above.
- Drawing down your reservoir water levels, if you are unable to instigate a new section 10 inspection. **The level of draw down to be determined by agreement with your SE.**
- Producing a revised surveillance programme, if you are facing staff shortages and you are unable to maintain the frequency of surveillance visits recommended by your SE. Repeating this step if further staff shortages make the revised programme unachievable.
- Drawing down your reservoir water levels, if the point is reached where your SE is unable to agree to reductions in visit frequency. **The level of draw down to be determined by agreement with your SE.**
- Drawing down your reservoir water levels, if your Inspecting Engineer (IE) is unable to attend and carry out a section 10 inspection by the required date and you are unable to instruct an alternative IE. **The level of draw down to be determined by agreement with your SE.**
- If your IE cannot attend site for a section 10 inspection, he/she must consult with your SE and carry out a desktop assessment of the last report and certify that an inspection can be delayed by up to 3 months.
- If your IE is unable to certify a delay, as above, then he/she must state what measures are required to ensure the reservoir is kept safe and you must carry out those measures.
- Calling for a new section 10 inspection or consulting with your IE to determine whether or not the Measures in the Interest of Safety (MIOS) can safely be delayed by up to 3 months, if one or more MIOS will fail to be completed within the specified time due to construction staff becoming unavailable.
- Drawing down your reservoir water levels, if your IE is unable to extend the period for the MIOS or is unable to inspect to assess the urgency of the works and so cannot determine the impact or risk caused by the delay in completing a MIOS. **The level of draw down to be determined by agreement with your SE.**
- Drawing down your reservoir water level, if one or more maintenance measures will fail to be completed within the specified time due to construction staff becoming unavailable, particularly in relation to spillways

that require maintenance. **The level of draw down to be determined by agreement with your SE.**

- Implementing your on-site flood plan, under the supervision of an IE, in the event of a reservoir incident and your SE is unable to attend. Your flood plan should include emergency draw down procedures.

We will determine each case according to its individual circumstances and will refuse a request if we do not consider the circumstances justify us adopting a RS COVID-19 LEP.

You must make requests by letter or by email to the National Reservoir Safety Team (RST) using the contact details set out above. You should accompany your letter/email with all the information necessary for the RST to make a decision on your request for a RS COVID-19 LEP. This should include, as a minimum, information demonstrating the existence of the circumstances indicated in the bullet points above as well as:

- reason for the request and the implications of refusal;
- anticipated duration of non-compliance;
- details of any anticipated non-compliances;
- sign-off by your SE or IE on any change to the statutory requirements of the Act.

We will be unable to consider and make a decision on your request until we receive all the required supporting information.

We will adopt a risk-based approach to the prioritisation of the consideration of any requests that we receive for a RS COVID-19 LEP.

A RS COVID-19 LEP is a temporary position which means that the Environment Agency will not normally take enforcement action against you for a specific non-compliance. This is provided that you comply with the limitations and conditions set out in the RS COVID-19 LEP and that compliance with it can be demonstrated through the records you keep.

Any RS COVID-19 LEP would be time limited and have specific conditions. We can withdraw a RS COVID-19 LEP at any time subject to giving you reasonable notice in writing.

The RS COVID-19 LEP would no longer apply if you failed to comply with it.

A RS COVID-19 LEP does not apply to regulatory requirements other than those in the Act. It is your responsibility to ensure that all other regulatory requirements are complied with.

Expiry date

Individual RS COVID-19 LEPs would be given individual expiry dates. After this date you must comply with the Act. If we adopt a RS COVID-19 LEP and there is a risk that you may not be able to comply with its conditions, you must tell the RST immediately.