

APPENDIX 3

Risk designation

Giving a risk designation

17.- (1) The Department must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a risk designation.

(2) A risk designation is a designation of the controlled reservoir by the Department as one of the following categories

- (a) a high-risk reservoir,
- (b) a medium-risk reservoir,
- (c) a low-risk reservoir.

(3) In giving a risk designation, the Department must, in so far as it is reasonably practicable to do so, take into account the matters mentioned in section

(4) The Department gives a controlled reservoir a risk designation by notice served on the reservoir manager of the reservoir

- (a) specifying the risk designation it has given the reservoir,
- (b) specifying the reasons for its decision,
- (c) specifying the date on which the designation takes effect,
- (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
- (e) specifying that the risk designation which is the subject of an application continues to have effect pending a decision being made in the review.

Periodic re-assessment of risk designations

18. (1) The Department must carry out periodic re-assessments of risk designations in accordance with this section.

(2) In carrying out a periodic re-assessment of a risk designation in accordance with this section the Department must, having taken into account the matters mentioned in section 22 in so far as it is reasonably practicable to do so, either

- (a) confirm the designation, or

(b) give the controlled reservoir a risk designation as one of the other categories referred to in paragraphs (a) to (c) of section 17(2) (for the purposes of this Act “a different designation”).

(3) A periodic re-assessment of the risk designation of a controlled reservoir must be carried out at the following times□

(a) at any time the Department considers the designation may have ceased to be appropriate,

(b) in any event, not later than 10 years from whichever is the latest of the following□

(i) the date on which notice of the designation was served under section 17(4),

(ii) the date on which notice of the decision in a periodic re-assessment of the designation was served under subsection (4),

(iii) the date on which notice of the decision in a review in respect of the designation was served under section 20(6),

(iv) the date on which notice of the decision in an appeal in respect of the designation was given under section 21.

(4) The Department confirms the designation, or gives the controlled reservoir a different designation, by notice served on the reservoir manager of the reservoir□

(a) specifying whether it confirms the designation or gives the reservoir a different designation,

(b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,

(c) specifying the reasons for its decision,

(d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,

(e) specifying that the risk designation which is the subject of an application continues to have effect pending a decision being made in the review.

Date on which risk designation given under section 17 or given as different designation under section 18 takes effect

19.□(1) A risk designation□

(a) given under section 17,

(b) given as a different designation on a periodic re-assessment under section 18,

subject to subsections (2) and (3), takes effect on the day after the date on which notice of the designation is served by the Department on the reservoir manager under the section concerned.

(2) Where a risk designation is given under section 17 in relation to a controlled reservoir which is being constructed or restored to use (within the meaning of Part 3), the designation takes effect on the day after the date of the final certificate in respect of those works. (Section 46 makes provision about final certificates.)

(3) Where a risk designation is given (as a different designation) under section 18 in relation to a controlled reservoir which is subject to alteration for the purpose of increasing or decreasing the capacity of the reservoir, the different designation takes effect on the day after the date of the final certificate in respect of those works.

Review by Department of its decision under section 17 or 18

20. (1) A reservoir manager of a controlled reservoir on whom notice is served under section 17(4) or 18(4) may apply to the Department for a review by it of its decision under section 17 or 18.

(2) An application must be made in writing before the end of the period of 90 days beginning with the date on which the notice was served.

(3) In considering an application under this section, the Department (a) may commission to make recommendations to it about the risk designation either (or both)

(i) an engineer who is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,

(ii) such other person as the Department considers appropriate,

(b) must take into account

(i) a recommendation by an engineer or other person commissioned by it under paragraph (a),

(ii) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,

(iii) any representations made to it by or on behalf of the reservoir manager in relation to the application.

(4) A risk designation in respect of which an application is made under this section continues to have effect pending a decision being made in the review.

(5) Where as a result of the review the Department gives the controlled reservoir a different designation, the designation which is the subject of the review ceases to have effect from the date on which the Department gives its decision; and the different designation takes effect on the day after the date on

which notice is served under subsection (6).

(6) The Department must notify the reservoir manager of its decision in the review by serving on the reservoir manager notice

(a) specifying whether it confirms the designation or gives the reservoir a different designation,

(b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,

(c) specifying the reasons for its decision,

(d) giving information about the right of appeal under section 21 against its decision, the procedure for making an appeal and the period within which an appeal may be made,

(e) specifying that the designation which is the subject of an appeal continues to have effect pending a decision being made in the appeal.

(7) The Department may by regulations make further provision in relation to applications and reviews under this section.

Appeal against Department's decision in a review under section 20

21. (1) A reservoir manager of a controlled reservoir on whom notice of the Department's decision in a review under section 20 is served may appeal to the Water Appeals Commission for Northern Ireland against the decision on one or more of the grounds mentioned in subsection (3).

(2) Any such appeal must be made in writing before the end of the period of 60 days beginning with the date on which the notice under section 20(6) was served.

(3) The grounds referred to in subsection (1) are that

(a) the decision was based on an error of fact,

(b) the decision was wrong in law,

(c) the decision was unreasonable.

(4) The Commission may confirm the risk designation or give the reservoir a different designation.

(5) A decision in an appeal under this section must take into account

(a) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,

(b) any representations made in relation to the appeal by or on behalf of

(i) the reservoir manager,

(ii) the Department.

(6) A risk designation in respect of which an appeal is made under this section continues to have effect pending a decision being made in the appeal.

(7) Where the decision in the appeal is that the controlled reservoir is given a different designation, the designation which is the subject of the appeal ceases to have effect from the date on which the appeal is determined; and the different designation takes effect on the day after the date on which notice is given under subsection (8).

(8) Notice by the Commission to the reservoir manager and the Department of the Commission's decision in the appeal must specify

(a) whether the Commission confirms the risk designation or gives the reservoir a different designation,

(b) where the Commission gives the reservoir a different designation, the different designation and the date on which it takes effect,

(c) the reasons for the decision.

(9) The Department may by regulations make provision as to the following in relation to appeals under this section

(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,

(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)

22. (1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are

(a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,

(b) the probability of such a release.

(2) For the purposes of subsection (1)(a), potential adverse consequences include

(a) potential damage to any of the following

(i) human life or human health (as the Department considers appropriate in the circumstances),

(ii) the environment,

(iii) economic activity,

(iv) cultural heritage,

(b) such other potential damage as the Department considers relevant.

(3) The matters which may be taken into account in assessing under subsection

(1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following

(a) the purpose for which the reservoir is (or is to be) used,

(b) the materials used to construct the reservoir,

(c) the way in which the reservoir was or is being constructed,

(d) the age and condition of the reservoir and how it has been maintained,

(e) such other matters as the Department may by regulations specify.

(4) The Department may, after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate, by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).