



Northern Ireland  
Assembly

Committee for Agriculture and Rural  
Development

# OFFICIAL REPORT (Hansard)

Reservoirs Bill Financial Assistance Scheme and  
Consideration Stage: Department of Agriculture  
and Rural Development and Rivers Agency

21 October 2014

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Mr William Irwin (Chairperson)  
Mr Joe Byrne (Deputy Chairperson)  
Mr Sydney Anderson  
Mr Thomas Buchanan  
Mrs Jo-Anne Dobson  
Mr Tom Elliott  
Mr Declan McAleer  
Mr Oliver McMullan  
Mr Ian Milne  
Mr Edwin Poots

**Witnesses:**

Mr Kieran Brazier	Department of Agriculture and Rural Development
Mr David Porter	Department of Agriculture and Rural Development

**The Chairperson (Mr Irwin):** I welcome David Porter and Kieran Brazier. I ask that you take up to 10 minutes to address the Committee. Then, we will ask you a few questions.

**Mr David Porter (Department of Agriculture and Rural Development):** Thank you, Chair. We have only three issues. This is more just an update on where we are. I am conscious that there are a few new faces. Do you want me to spend a minute or two giving you the context or will we just get into today's business? I am easy with either.

**The Chairperson (Mr Irwin):** Maybe a bit of context.

**Mr Porter:** I will keep it to a minute or two, but I am conscious that people may be wondering why we are talking about reservoirs and, in particular, a Reservoirs Bill. We have a well-rehearsed history of reservoirs that tells us how we got to where we are with the legislation. That is useful, because it gives some context as to why we feel that it is a priority and have done the work that we have.

From an engineering point of view, a water-retaining structure is very difficult to build. That was proven in the Industrial Revolution. When they started to construct the mills, they wanted to harness the power of the river. To do that, they built a reservoir. They got the same builder who built the mill structure to build the reservoir. Unfortunately, there were a number of very significant failures and people died. Certainly, in the late 1800s, many hundreds of people died as a result of dam failures. That led to legislation in the early 1930s, the Reservoirs (Safety Provisions) Act, which applied to England, Scotland and Wales. It required an engineer to be in charge of the construction of a

reservoir and for those structures to be inspected on a regular basis to make sure that any early warning signs of changes within the reservoir were picked up and therefore action could be taken so that people living downstream of the reservoir would not be harmed.

All that I have told you applied to England, Scotland and Wales. None of it applied here. That is a gap that has been recognised for a number of years. Recently, through the work that we have done on the EU floods directive, we identified the risk from reservoirs as being an area that we needed to address. Hence, we brought forward the Reservoirs Bill. We have taken it through the initial stages. It has been scrutinised and now we are going to move to Consideration Stage on the Floor of the Assembly. I hope that that has given you a little context of how we got to where we are.

As I said, we want to give the Committee three updates. The first is about the Consideration Stage, so that you can put the date in your diary. Secondly, we want to take you through a number of further amendments; there are only three, and they are relatively short. Finally, I want to talk about information gathering and the assistance to reservoir managers.

First, we have currently pencilled in 25 November for Consideration Stage and 8 December for Further Consideration Stage. At the minute, those dates are pencilled in. We want to clear the Committee today and then go to the Minister to firm up those dates. However, those are the dates that we propose, to allow you to get them in your diary and work programme.

I am going to ask Kieran to quickly go through the further amendments that we have had since we were last here.

**Mr Kieran Brazier (Department of Agriculture and Rural Development):** There are three new proposed amendments. One removes duplication and makes a minor amendment to one of the clauses; another provides clarity and makes a further minor amendment to a clause; and the third one, which is a bit more significant, is around the arrangements for the issue of non-disclosure notices on reservoir managers by the Secretary of State. I will cover all three of those now.

The first amendment relating to duplication impacts on clause 107. That clause places a requirement on the reservoir manager to notify the Department if he were to revoke a contract with an engineer or if an engineer were to resign from a contract with the reservoir manager. He must do so within 28 days of that occurring. The clause refers to that 28-day stipulation on a number of occasions, and we are just tidying up the clause. There is an unnecessary reference to the 28-day stipulation in the clause, so that duplication will be removed.

The second amendment relates to clause 117. Clause 117(3)(c) refers to "statutory provision". The proposed amendment makes it clear that we are referring to Northern Ireland legislation or an Act of Parliament. The Bill, as currently introduced, can amend other legislation, whether that is from here in Northern Ireland or an Act of Parliament. We just want to make it clear that that is what it can do. That is a standard clause in most primary legislation, and we are advised by the Office of the Legislative Counsel that future primary legislation will be written with that clarity in it. Therefore, we propose to amend the Bill to take that on board.

The third amendment is around national security. As currently drafted, the Bill allows for the Secretary of State to issue a non-disclosure notice on a reservoir manager in relation to flood plans or incident reports. If it is drawn to the Secretary of State's attention that the information contained in an incident report or a flood plan would have an adverse impact on national security, the Secretary of State can issue a non-disclosure notice and advise the reservoir manager not to disclose that information on the grounds of national security. In the Bill as currently drafted, the process for that is that the Secretary of State would issue a direction on the Department, and the Department would then issue the non-disclosure notice to the reservoir manager.

Scotland is currently introducing subordinate legislation to its Reservoirs Bill, and it came to our attention during the summer, when staff in Scotland showed us a copy and asked us to comment on an order that they are introducing on the matter, that that legislation allows for the Secretary of State to issue a non-disclosure notice directly on a reservoir manager, rather than coming through the Scottish equivalent of our Department. We asked for advice on this from our solicitor, and we also shared the information with the Northern Ireland Office and asked whether it wanted to adopt the arrangements that Scotland is putting in place. We also noticed that the Reservoirs Act in England allows for the Secretary of State to issue a non-disclosure notice directly on a reservoir manager. During our conversations with staff in the Northern Ireland Office, they advised us that they were

content to move to the revised arrangement where the Secretary of State could issue a non-disclosure notice directly on a reservoir manager. We propose to amend the Bill to allow that to happen.

That amendment does two other things. It allows the Secretary of State to issue a non-disclosure notice on any other person who might be involved in the development or drafting of an incident report or a flood plan; and it allows the Secretary of State to issue a non-disclosure notice on the Department on any other matter that he or she feels might adversely impact on national security with regard to a controlled reservoir. That is the proposed amendment. As I said, at the moment, there is provision in the Bill for the Secretary of State to issue a non-disclosure notice. That takes the route through the Department and on to a reservoir manager. The amendment would mean that the Secretary of State could move directly and issue that on a reservoir manager.

**Mr Porter:** The final point is on information gathering and assistance. There were two big issues during scrutiny. The first was the need for more information, in particular to enable the capital grant scheme or a business case for that to be done. We were not able to provide that. The second was whether we could assist reservoir managers with the initial requirements of the Bill. We took that away and started to develop a business case. I will outline the way that we see it going forward, because we think that we have found a way to resolve both those issues: information gathering and providing assistance to reservoir managers.

Initially, the Department will seek to gather the information that we need to inform a report to allow phase 2 to go forward, namely the condition of the reservoir and the cost of bringing it up to standard. We will go out and ask people. We need to find that information. If a reservoir manager already has that information, we will take it to use in the report. If a reservoir manager can give us that information, we would be happy enough to pay up to £2,000, which is the figure in our business case. We are doing that initially because, if you recall, I said that we wanted to find a way that recognised those who were prudent. If people have that information and can provide it to the Department, we are happy enough to pay up to £2,000. If they do not have that information but undertake to provide it, the same arrangement applies, because we deem that it would cost the Department £2,000 to gather the information.

If that second option is not open to the reservoir manager, or they choose not to take it, the third option is that the Department will, with permission, go in and gather the information. The subtle difference, if we go in to gather the information, is that the purpose is to determine the condition and cost in order to inform the report. The benefit to the reservoir manager of taking one of the first two options — either they have an inspection report or will undertake to have one done — and doing that with our financial assistance is that they will be compliant with the Reservoirs Bill from day one. That is the benefit of them working with us to draw down that money. If they are not happy to do that and want to wait until the Bill comes in, we will still seek permission to enter and gather the base information so that we have as complete a picture as possible of the condition of the reservoir and the cost of bringing it up to standard.

So, those are the three items: Consideration Stage; further amendments; and the information gathering and financial assistance.

**The Chairperson (Mr Irwin):** OK, thank you for your presentation. The Committee, over a period, has been concerned that the Rivers Agency did not know the condition of a lot of reservoirs in Northern Ireland. We are happy to see that an audit is now progressing, but the Rivers Agency has a poor track record of engaging with the private sector owners of reservoirs. How do you intend to address that?

**Mr Porter:** The scheme that I outlined has clear benefits for individual owners. If they engage with us, they will get the financial help for that initial stage. If they are clever about it and engage with us, they will get a clear benefit. So, we have developed a scheme that will encourage them to engage with us. In addition to that, we recognise that we need to do something to make sure that reservoir managers understand what that benefit is. So, we are going to do two things. First, we are going to talk to the industry through the Institution of Civil Engineers to make sure that the engineers who will be doing that work understand how this could be taken forward for the benefit of reservoir managers. Secondly, our staff will engage with reservoir managers to make sure that they understand that there is an opportunity here to draw down some money. It is time-bound, and it is to their benefit to do that. We recognise that we have a bit of work to do in order that reservoir managers recognise that.

**The Chairperson (Mr Irwin):** A concern for many of us from day one is that that should have happened at the start of the process. Rivers Agency would be coming from a position of strength in

knowing exactly how the reservoirs stand. One of the big issues for the Committee is the money that will be available to repair reservoirs. One of the reasons why we want an audit is to see exactly what that repair bill would be. On a small number of reservoirs, that repair bill could be extensive. Given the difficult financial circumstances that Northern Ireland finds itself in, do you feel that it is likely that there will be government funding for it?

**Mr Porter:** The beauty about it is that you are not agreeing to phase 2 at this time. Phase 2 will be on the statute books, but we have a phased commencement. Phase 2 can only commence when we bring back a report that says, "Here is the condition of the reservoirs". So, in essence, by agreeing to the Bill as it stands, we are not committing to phase 2. Phase 2 still needs to be commenced, and it needs to go to the Floor of the House in order to be commenced. So, whilst it is on the statute book, the power to commence phase 2 still rests with the House. We listened to that, and that was the way we felt that we could reasonably address it.

**Mr Byrne:** Has the audit report been concluded? Has any estimate been done on the capital that will be required to bring those that are not up to standard up to a sufficient standard?

**Mr Porter:** What we have been focusing on is the business case to allow us to do the audit and to find a way that meant that the Department got what it needed but that was also the opportunity for reservoir managers to avail themselves of that in order to carry out their inspection reports. At this time, we are not in a position to put forward a capital cost, but we will be able to do that before phase 2 commences at some point in the future. Realistically, it will probably be a year or 18 months from now, to allow the reservoir managers reasonable time to provide us with that information, for us to digest it and to put it into a report, and then to bring it back to you. As I said, phase 2 would commence only after we have been able to say, "Here is the size of the problem". Either it is a small problem, because of the small number of reservoirs that we are concerned about, or it is a huge problem, and we need to sit down and fundamentally rethink how we are going to address that in the capital investment.

**Mr Byrne:** Given the uncertainty that some private reservoir owners have, it would have been better if there had been a comprehensive audit done on all reservoirs, so that people would know what was in front of them, class-wise or otherwise, and they could make decisions.

**Mr McMullan:** Thanks for your presentation. You are saying that you need permission to carry on to the next stage to prepare the audit. In that sense, it is important. Is there anything in there that states that the Department sets the rates, not the engineers?

**Mr Porter:** We brought in amendments to increase our power, so that not only could we look at the quality of the outputs from an engineer but we undertook that there would be some overview of cost as well. That is one of the amendments that will be proposed on the Floor of the House at Consideration Stage.

**The Chairperson (Mr Irwin):** Are there any other questions? There are a number of new members on the Committee who might not be fully up to speed with all the parts of this.

In discussing the risk designation process with the Committee last June, you indicated that the Rivers Agency was commencing new flood maps, which would allow the velocity and depth of water from the reservoir to be more accurately mapped. That in turn would assist with the designation process. Can you bring us up to date on where you are with that?

**Mr Porter:** I can indeed. That contract has been let, and the work has commenced. It is to be delivered in the early part of the new year. The contract has been let, and that work has started.

**Mr Milne:** I want to ask about the six reservoirs for which ownership is unknown. If that stays the case, who takes on responsibility for them? Who takes on their management? Is it the council?

**Mr Porter:** No, it is not the council.

**Mr Milne:** Would it be DARD through the Rivers Agency?

**Mr Porter:** There are two issues there: the overall responsibility or ownership of it, and what we class as matters in the interest of public safety. If we get to the end of the process of trying to work out their

condition and still have not determined who owns them, there are emergency powers in the Bill and powers that allow us to step in to carry out works in the interests of public safety. That does not mean that we take ownership of the reservoir; it just means that we address any of the major concerns about things that could cause harm, so that we can leave the structure in a relatively safe condition. There are some cases where that may well mean that, on a recurring basis, we have to carry out or commission inspections until we have determined who owns the reservoir.

As you heard in my evidence, the term "orphaned reservoirs" is used in England, and that is what we are talking about here: a reservoir that nobody owns. As we are doing it in the interests of public safety, there are provisions to allow us to go in and address emergency or significant issues without necessarily taking ownership.

**Mr Milne:** Are any of the six high-risk?

**Mr Brazier:** Yes. We have reduced the number to two: it is not six any longer. I will get back to you with the detail on that and confirm the risk designation on them.

**Mr Milne:** Is it your belief that maybe their ownership is unknown because of the expense that may be required if they are in a bad state?

**Mr Porter:** No.

**Mr Brazier:** No. The issue predates the Reservoirs Bill. We have been gathering information on ownership for quite a long time. The fact that ownership is unknown does not have any association with the Reservoirs Bill.

**The Chairperson (Mr Irwin):** Do you have a time frame for completing the full audit?

**Mr Porter:** We are writing the business case on the basis that we will have a time-bound scheme, because that will encourage the maximum draw down of that money, either to provide us with information or to allow us to do it. Twelve months, but possibly 18 months, seems to be a reasonable amount of time to do that. That will also fit in with the introduction of phase 1; getting the Bill through the Assembly by the early part of next year and getting a commencement order for phase 1. Those two timescales marry quite nicely, which allows us to come back to you with a report on the justification for phase 2.

**The Chairperson (Mr Irwin):** Is it not a case of putting the cart before the horse? My view is that all of this should have been done earlier. If it had been done at the start, you would know exactly where you stand; but it is the other way around in this case.

**Mr Porter:** There is sufficient information on the impact, and it was the impacts that we took to the Executive to seek approval to start this process. So, the Minister and the Executive were content that the impacts were such that we needed to address the likelihood element, which is the information we need from the reservoir managers. In some respects, we are where we are. I cannot bring us back and restart the process.

**The Chairperson (Mr Irwin):** I understand.

**Mr Porter:** That is why we accepted that there was a difference of opinion. We felt that the best way of dealing with that was by phasing the commencement of the Bill. Phase 1 brings in the requirement for an inspection. It clarifies who the reservoir manager is and defines a reservoir, but it does not commence any of the recurring nature — the bits for which we were concerned about putting the burden on people without being well informed about the potential costs. We are commencing phase 1 only. That allows us to not have to go back to the start. We can take it from here and satisfy the requirements to have a Reservoirs Bill and clarify who is responsible but also get the report on the condition of reservoirs before we start the recurring element of the Bill.

**The Chairperson (Mr Irwin):** I would have thought that it would have been much simpler for the Department to complete the audit; that is a personal view.

**Mr Buchanan:** Refresh our memories: the audit is complete; work that needs to be done at the reservoir is identified; the farmer does not have the money to do it; is there sufficient grant? Is there a grant scheme tied into this? Is there going to be sufficient grant to allow that work to be completed?

**Mr Porter:** There are two aspects to that. Within the Bill is the power for us to bring forward a grant scheme. We are bringing forward primary legislation that makes sure that the powers are there. The power is in the Bill so that a grant scheme is at least a possibility. Whether there is going to be a grant scheme is a question that we can answer only after we get further down the road: when we know what the quantum of it is; when we know whether we can write a business case that says that it is a good idea that is viable, cost beneficial and in the interests of the wider public; and when we know whether it is affordable. We do not have to write that report for another year or 18 months, when we will be informed. You are not curtailing any future decision, because phase 2 does not start until we get that report written and until we bring that back to you and say, "Here's the condition of these reservoirs. Are you therefore content to bring forward a commencement order for phase 2?".

**Mr Brazier:** Importantly though, our emergency powers, which David alluded to, in relation to going in and making sure that a reservoir did not fail and that people were not injured, exists and will be in phase 1. So, we can do that. If the audit tells us that there are some very dangerous reservoirs that people cannot afford to fix, and we feel that emergency work is required, there is provision in the Bill for us to step in and do that; whereas, at the moment, we do not have any legislative powers to do that.

**Mr Buchanan:** Given the financial climate we are living in, the possibility is that the owner will not have the money to do the work that is identified to be done at any of the privately owned reservoirs.

**Mr Anderson:** I am one of the new members. As Tom is saying, if it is identified that major work needs to be carried out at a private reservoir, is there a guarantee that it will be covered by the Department? Or, will the owner be forced to do it? Do we know, at this stage, what the proposals are for down the line?

**Mr Porter:** At this time, we know that a reservoir manager or reservoir owner is responsible for that today. That fundamental responsibility is not changed by this primary legislation. The difficulty that has been identified —

**Mr Anderson:** Can they be forced in phase 1, if it goes through?

**Mr Porter:** No, they cannot be forced in phase 1.

**Mr Brazier:** If a reservoir manager gets his reservoir inspected and the inspection report states that a huge amount of work needs to be done to it to make it safe, enforcing that and requiring him to act on that is in phase 2 of the Bill. The commencement of that would be considered only when the audit report is presented to the House for consideration.

**Mr Anderson:** Would the finance be judged at that stage?

**Mr Brazier:** Yes.

**Mr Anderson:** It will all come into play in relation to the amount of work that needs to be carried out. That will be considered in phase 2.

**Mr Brazier:** Yes, and that is why we have phase 1 and phase 2. It is for that very reason.

**The Chairperson (Mr Irwin):** Thank you very much for your time.