

Agriculture and Rural Development Committee

Report on the Reservoirs Bill (Addendum)

Together with the Minutes of Proceedings, Written Submissions
and the Minutes of Evidence relating to the Report

Ordered by the Agriculture and Rural Development Committee to be printed 3 March 2015

Membership and Powers

Powers

The Committee for Agriculture and Rural Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46.

The Committee has power:

- to consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- to approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- to call for persons and papers;
- to initiate inquiries and make reports; and
- to consider and advise on matters brought to the Committee by the Minister of Agriculture and Rural Development.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Mr William Irwin ¹² (Chairperson)
- Mr Joe Byrne ³ (Deputy Chairperson)
- Mr Thomas Buchanan
- Mr Kieran McCarthy ^{9,10,13}
- Mrs Jo-Anne Dobson
- Mr Edwin Poots ¹⁴
- Mr Declan McAleer ^{1,4}
- Mr Sydney Anderson ^{8,15}
- Mr Oliver McMullan
- Mr Ian Milne ^{2,7}
- Mr Tom Elliott ^{5,6,11}

- 1 With effect from 23 January 2012 Ms Michaela Boyle replaced Mr Conor Murphy
- 2 With effect from 08 May 2012 Mr Chris Hazzard replaced Mr Willie Clarke
- 3 With effect from 19 May 2012 Mr Joe Byrne replaced Mrs Dolores Kelly as Deputy Chairperson
- 4 With effect from 10 September 2012 Mr Declan McAleer replaced Ms Michaela Boyle
- 5 With effect from 03 December 2012 Mr Danny Kinahan replaced Mr Robin Swann
- 6 With effect from 21 January 2013 Mr Robin Swann replaced Mr Danny Kinahan
- 7 With effect from 15 April 2013 Mr Ian Milne replaced Mr Chris Hazzard
- 8 With effect from 16 September 2013 Miss Michelle McLveen replaced Mr Trevor Clarke
- 9 With effect from 01 October 2013 Mr Trevor Lunn replaced Mr Kieran McCarthy
- 10 With effect from 27 January 2014 Mrs Judith Cochrane replaced Mr Trevor Lunn
- 11 With effect from 04 July 2014 Mr Tom Elliott replaced Mr Robin Swann
- 12 With effect from 23 September 2014 Mr William Irwin replaced Mr Paul Frew as Chairperson
- 13 With effect from 29 September 2014 Mr Kieran McCarthy replaced Mrs Judith Cochrane
- 14 With effect from 06 October 2014 Mr Edwin Poots was appointed to the Committee
- 15 With effect from 06 October 2014 Mr Sydney Anderson replaced Miss Michelle McLveen

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Executive Summary

1. The Reservoirs Bill (NIA187/11-15) was referred to the Committee on 4th February for the Committee Stage of the Northern Ireland Assembly legislative process. The Committee completed its scrutiny and produced a Committee report on 24th June 2014. During that time the Committee carried out the Committee Stage of the Reservoirs Bill and identified a number of concerns. Rivers Agency brought draft Ministerial amendments to address these concerns and the vast majority of these were agreed by the Committee. The detail on these amendments can be found in the Committee Bill report which can be access at the following <http://www.niassembly.gov.uk/assembly-business/committees/2011-2016/agriculture-and-rural-development/reports/report-on-the-reservoirs-bill/>
2. However, one area which was not addressed to the satisfaction of the Committee was the issue of **Frequency of visits by Supervising Engineer**. As a result the Committee voted not content with the relevant clauses within the Bill namely clause 25 and clause 33.
3. This Committee revisited the issue on 11th November 2014 when it finalised its position on the issue. That position was presented to Rivers Agency with a request that it bring amendments to address the issue. Rivers Agency returned to the Committee with proposed amendments on 10th February and after scrutiny the Committee agreed that it was content with the proposed amendments.

Background

4. The Reservoirs Bill will define and provide a regulatory regime for what will be known as a controlled reservoir. On 10th February 2015, the Department indicated to the Committee that while it was initially anticipated that that 151 reservoirs will fall under the remit of the Bill, as a result of some recent work that figure has been reduced to 137 with the potential for further reductions. The vast majority of reservoirs are in public ownership with the recent reduction taking 10 privately owned reservoirs and 3 council owned reservoirs out of the remit of the Bill. The Committee welcomed this reduction in numbers and looks forward to hearing in due course of further such reductions. The Committee understands that another 21 reservoirs are under review with perhaps 6 or 7 of these potentially coming out from under the remit of the Bill. In oral evidence to the Committee on 10th February 2015 the Department stated (see Appendix 3) :-

“The good news is that we have managed to get the 151 down to 137. Of those that have been eliminated, 10 are owned privately and three by local councils.”

5. The Department subsequently provided further written information on this reduction in the number of reservoirs that will fall under the remit of the Bill and this can be found in Appendix 4. That written information contains the following table which provides further detailed information on ownership of the 137 reservoirs.

Ownership	Total		High Consequence		Medium Consequence		Low Consequence	
	Orig	Revised	Orig	Revised	Orig	Revised	Orig	Revised
Public	78	75	59	57	16	16	3	2
Private	61	50	25	23	10	9	26	18
3rd Sector	9	9	6	6	3	3	0	0
Unknown	2	3	1	2	0	0	1	1
Total	150	137	91	88	29	28	30	21

Frequency of Visits by Supervising Engineers

6. During Committee Stage of the Bill the Committee indicated it was content with the principles of the Bill, but had concerns around the methodology outlined in the Bill for its implementation. The Committee identified a number of concerns and sought a number of amendments to the Bill as presented to the Assembly. The Department brought draft Ministerial amendments which the Committee agreed addressed its concerns on all bar one issue. This is the position which is reflected in its Committee Report on the Reservoirs Bill.
7. However, there was one issue where there was no firm agreement between the Committee and the Department – the frequency of visits by a supervising engineer. Clause 24 requires a high or medium consequence reservoir to be under the supervision of a supervising engineer at all times i.e. on an ongoing basis. Clause 25 sets out the duties of the supervising engineer with clause 25(2)(k) specifying a minimum number of visits by the supervising engineer per year to high and medium consequence reservoirs. Clause 33 requires a high or medium consequence reservoir to be subject to an inspection at specified periods and sets out the duties of the inspection engineer. Clause 33(4)(i) provides that the inspecting engineer can specify visits by a supervising engineer over and above that provided for in C25. The Bill as drafted at C25(2)(k) and C33(4)(i) states the following:-

C25(2)(k)

(2) *The supervising engineer must*

(k) *visit the reservoir—*

(i) *where it is a high-risk reservoir, at least twice in every 12 month period,*

(ii) *where it is a medium-risk reservoir, at least once in every 12 month period,*

C33(4)

(i) *if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—*

(i) *in the case of a high-risk reservoir, twice in every 12 month period,*

(ii) *in the case of a medium-risk reservoir, once in every 12 month period,*

must specify at what intervals, when, or in what circumstances, any additional visit should take place.

8. The Committee felt that these requirements were gold plated particularly as the Department could not prove that this level of supervision was required for reservoirs in Northern Ireland. During the Committee Stage of the Bill the Committee voted not content at Clauses 25(2)(k) and 33(4)(i).
9. Subsequent to this, the Department proposed amendments that would reduce the number of supervised visits at clause 25. The first amendment, rejected by the Committee as not going far enough was :-
- (i) *where it is a high-risk reservoir, at least once in every 12 month period,*
- (ii) *where it is a medium-risk reservoir, at least once in every 24 month period,*
10. The second amendment was received too late for Committee consideration as it was signing off its report and the Committee felt it had not been given adequate time to decide if it was sufficient. That amendment was
- (i) *where it is a high-risk reservoir, at least once in every 12 month period,*
- (ii) *where it is a medium-risk reservoir, at least once in every 36 month period,*

11. On 11th November 2014 the Committee revisited this issue and after a closed session discussion, consideration of various options and an open session oral briefing with the Department, the Committee confirmed its position. It subsequently wrote to the Department confirming this position (see Appendix 4)

“The Committee requests that the Department brings forward an amendment to the Bill to provide that the regime on the number of visits by the supervising engineer to high and medium consequence reservoirs is done by regulation subject to draft affirmative procedure. This would replace the provisions in the Bill at C25(2)(k) and 33(4)(i).

The detail of what is in the regulation will need to be discussed with the Committee in due course but as an early indication the Committee would like to see a regime where the supervising engineer would visit a high consequence reservoir at least once in every 12 month period and for a medium risk reservoir at least once in every 36 month period, until the reservoir is brought to a standard that is acceptable. Thereafter the Committee would like to see the number of visits by a supervising engineer reduced.

The Committee has indicated that its position on this issue is based on the lack of information about the condition of reservoirs in Northern Ireland. This lack of information means it is extremely difficult for it to judge whether the schedule of supervised visits as proposed in the Bill and the amendment is at the correct level. You may also wish to assume that the information from the Reservoir Audit, when available, may influence the thinking of what the Committee would like to see in the proposed regulation.”

The Amendments Proposed by Rivers Agency

12. Rivers Agency agreed to consider the Committee position and, subject to Ministerial Approval, to draft amendments as requested by the Committee. The amendments were made available for the Committee to consider at its meeting on 10th February 2015. The full text of the amendments can be found at Appendix 1.

13. The proposed amendments will introduce a new clause – **clause 25A**. This will make provision for the Department to make regulations regarding the frequency of visits to a high or medium consequence reservoir by a supervising engineer. This proposed amendment provides that the regulation can vary the frequency of visits by a supervising engineer once the reservoir is brought to an acceptable safety standard. In oral evidence on 10th February 2015 the Department confirmed that the standard minimum number and frequency of visits by a supervising engineer will be reviewed when the Department is presented with information that suggests that the reservoir has achieved an acceptable standard of safety. This information will take the form of an inspection report, an inspection compliance certificate, or an annual statement from a supervising engineer. The frequency and number of visits by a supervising engineer in such circumstances has yet to be determined but it would be less than the standard minimum. (see Appendix 3)

“We have not yet decided how that will manifest itself, but the number and frequency of inspections will be reduced at that stage. We imagine that it will move from at least once every 12 months for a high consequence reservoir. I want you to bear with me on that, because we have not absolutely decided. It may move, for example, from an inspection of a high -consequence reservoir at least once every 12 months to at least once every 24 months. For a medium-consequence reservoir, it could move from an inspection at least once every 36 months to once every 60 months, which is five years. That is our thinking at this point.”

14. In oral evidence on 10th February 2015 to the Committee the Department noted that it had not finalised what would be in the new clause 25A regarding a position on the number of supervised visits as this would need to be informed by the results of the audit of reservoirs. The Department also confirmed that the detail will be in the regulations which can only be made after a draft has been laid before, and approved by a resolution of, the Assembly. Therefore, the Committee and the Assembly will have every opportunity to scrutinise, challenge and, where necessary, suggest changes to, the draft regulations before they are made.

15. Members noted that the inspecting engineer can specify additional visits by a supervising engineer over and above that in the regulation are required. But in doing so the inspecting engineer must specify why and how many, and this decision is open to challenge and appeal by the reservoir owner. (see Appendix 3)

When the Department receives information with regard to the condition of the reservoir, hopefully the reservoir owner will have nothing to appeal. If a reservoir is given a clean bill of health and is found to be safe, the Department will readily amend the frequency and number of visits. If we decide not to do that, the reservoir owner would appeal that decision to the Water Appeals Commission. That is the independent body that will hear evidence from the reservoir manager and the Department and will make an independent decision that will hold good. The Department will have no say over that once the appeals mechanism has been engaged by the reservoir manager.”

Summary of Proposed Amendments

16. In summary, the proposed amendments introduces a new clause into the Bill namely at clause 25A. This clause makes provision for the Department to make regulations regarding the frequency of visits to a high or medium consequence reservoir by a supervising engineer.
17. The amendment also removes reference to visits by a supervising engineer to a reservoir by deleting clause 25(2)(k) and by re-drafting clause 33(4)(i).
18. The regulations in the proposed new clause 25A will provide for a reservoir manager to appeal against the Department's decision as to whether or not it considers that a reservoir is of an acceptable standard and, accordingly, the frequency of visits to be made to it by the supervising engineer. As a result, clause 103A and Schedule 3 have been re-drafted to include reference to this appeal procedure. In oral evidence to the Committee on 10th February Department officials explained the appeals mechanism as follows:-
19. Further consequential amendments are required to clause 117 to ensure that the draft regulations are approved by a resolution of the Assembly, and to clause 120 to include the new clause 25A in the arrangements for the phased commencement of the Bill.

Committee Decision

20. **The Committee discussed the amendments with officials from Rivers Agency and voted that it was content. The Committee agreed that its decision should be reflected in an addendum to the Committee Report on Reservoirs Bill to be provided to the Assembly in time for the Consideration Stage Debate.**

Committee Consideration of the Amendments

21. **Clause 25 – Duties etc. in relation to supervision**

The Committee indicated it was content with the clause as amended.

22. **New Clause 25A – Regulations as to visits by supervising engineers**

The Committee indicated it was content with the new clause as amended.

23. **Clause 33 – Duties in relation to inspection**

The Committee indicated it was content with the clause as amended.

24. **New Clause 103A – Power of Water Appeals Commission to award costs in an appeal**

The Committee indicated it was content with the new clause as amended.

25. **Clause 117 – Orders and Regulations**

The Committee indicated it was content with the clause as amended.

26. **Clause 120 – Commencement**

The Committee indicated it was content with the clause as amended.

27. **Schedule 3**

The Committee indicated it was content with the schedule as amended.



Northern Ireland
Assembly

Appendix 1

DARD Amendments

Clauses as introduced - SE visits

Duties etc. in relation to supervision

- 25.**—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.
- (2) The supervising engineer must—
- (a) give notice to the reservoir manager of anything that the engineer considers might affect the safety of the reservoir,
 - (b) monitor compliance by the reservoir manager—
 - (i) subject to section 57, with any direction in the latest inspection report by virtue of section 33(4)(a) as regards any measure that should be taken in the interests of the safety of the reservoir which is a measure for its maintenance (see section 33(4)(f)),
 - (ii) with any recommendation in a pre-commencement inspection report for the time being applicable to the reservoir (see section 31(1)) as to a measure that should be taken for its maintenance,
 - (c) monitor—
 - (i) any matter specified by virtue of section 33(4)(g) in the latest inspection report as a matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
 - (ii) any matter specified in a pre-commencement inspection report for the time being applicable to the reservoir as a matter that should be watched by a civil engineer until the next inspection of the reservoir (and which does not fall within paragraph (b)(ii)),
 - (d) monitor any matter specified in a safety report as a matter the construction engineer giving the report recommends should be monitored by the supervising engineer until a final certificate is issued in respect of relevant works (see section 42(1)(c)),
 - (e) monitor compliance by the reservoir manager with the requirements of—
 - (i) any preliminary certificate for the time being applicable to the reservoir (see section 44),
 - (ii) any final certificate for the time being applicable to the reservoir (see section 46),
 - (f) monitor any matter specified in any such final certificate as a matter that should be monitored by the supervising engineer until the first or next inspection of the reservoir,
 - (g) give notice to the reservoir manager and the Department of any failure to comply with—
 - (i) a direction or recommendation referred to in paragraph (b),
 - (ii) a safety report for the time being applicable to the reservoir,
 - (iii) a preliminary certificate for the time being applicable to the reservoir,
 - (h) give notice to the reservoir manager and the Department of any failure to comply with any requirement of a final certificate for the time being applicable to the reservoir,
 - (i) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,

- (j) monitor compliance by the reservoir manager with the requirements of section 35 (recording of water levels etc. and record keeping),
 - (k) visit the reservoir—
 - (i) where it is a high-risk reservoir, at least twice in every 12 month period,
 - (ii) where it is a medium-risk reservoir, at least once in every 12 month period,
 - (l) undertake, in accordance with the latest inspection report, any additional visit that may be recommended in the report by virtue of section 33(4)(i).
- (3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 33, the engineer must—
- (a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place,
 - (b) not later than 28 days after giving the written recommendation, give the Department a copy of it.
- (4) The supervising engineer—
- (a) may by written direction require the reservoir manager to carry out a visual inspection of the reservoir at intervals specified by the engineer for the purpose of identifying anything that might affect the safety of the reservoir,
 - (b) must give a copy of any direction given under paragraph (a) to the Department.
- (5) The supervising engineer must give the reservoir manager, at least every 12 months, a written statement of—
- (a) the steps taken by the engineer in relation to the matters referred to in subsection (2) (a) to (h) and (j) to (l),
 - (b) any measure taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,
 - (c) any recommendation by the supervising engineer under subsection (3),
 - (d) any direction by the supervising engineer under subsection (4)(a).
- (6) The supervising engineer must, not later than 28 days after giving a written statement under subsection (5), give the Department a copy of the statement.
- (7) The supervising engineer must—
- (a) give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of the supervising engineer being unavailable, a nominated representative of the engineer),
 - (b) not later than 28 days after giving the reservoir manager such information, give the information to the Department.
- (8) Where the reservoir is the subject of a pre-commencement inspection report and inspection of it is not yet due under section 29, the reservoir manager must give the supervising engineer a copy of—
- (a) the report,
 - (b) any pre-commencement inspection report certificate (see section 33(3)),
 - (c) where the reservoir manager is unable to give a copy of a pre-commencement inspection report certificate, any other document dated before the relevant date which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation (see section 32(3)).

(9) In this section—

- (a) “draw-down” means any intentional reduction in the water level except where done in accordance with the routine operation of the reservoir,
- (b) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section,
- (c) “the relevant date” has the same meaning as in section 29(6).

(10) In this section and sections 26 to 29, 33 and 35, references to “the supervising engineer” are references to the engineer duly commissioned for the time being as such under section 24 in relation to the reservoir and are to be construed as including a nominated representative of the supervising engineer under subsection (7)(a) who is acting as such in the event of the supervising engineer being unavailable.

Duties etc. in relation to inspection

33.—(1) An inspecting engineer must—

- (a) inspect the reservoir,
- (b) give the reservoir manager, not later than 6 months after the completion of the inspection, an inspection report prepared in accordance with this section.

(2) The reservoir manager must give the inspecting engineer a copy of—

- (a) the latest report (if any),
- (b) any pre-commencement inspection report certificate, interim inspection compliance certificate or inspection compliance certificate for the time being applicable to the reservoir,
- (c) any final certificate for the time being applicable to the reservoir.

(3) A “pre-commencement inspection report certificate” is a certificate—

- (a) stating that a measure recommended in the pre-commencement report as a measure that should be taken in the interests of the safety of the reservoir has been taken,
- (b) signed and issued before the relevant date by a civil engineer who, at the time of signing, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate.

(4) The inspection report—

- (a) must—
 - (i) specify any measure the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including any such measure for the maintenance of the reservoir),
 - (ii) direct the reservoir manager to ensure that the measure is taken,
- (b) may—
 - (i) specify any matter that the inspecting engineer considers relevant to the maintenance of the reservoir (but in relation to which the engineer does not specify a measure (as to safety) under paragraph (a)),
 - (ii) include any recommendation as regards the matter,
- (c) must specify whether any measure specified in the inspection report was specified in the latest report,

- (d) if any measure specified in the latest report has not been taken and the measure is not specified in the inspection report, must specify why the engineer considers the measure should no longer be taken,
- (e) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is not a measure for its maintenance,is taken under the supervision of the inspecting engineer or, where permitted (by section 34(2)(a)) the other qualified engineer, and within the period of time specified in the inspection report,
- (f) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is a measure for its maintenance,is monitored by the supervising engineer,
- (g) must specify any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection,
- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, twice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every 12 month period,must specify at what intervals, when, or in what circumstances, any additional visit should take place.

(5) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—

- (a) the Department,
- (b) the supervising engineer (if a different person).

(6) In this section and section 34—

- (a) references to “the inspecting engineer” are references to the engineer duly commissioned for the time being as such under section 32 in relation to the reservoir,
- (b) references to “the latest report” are references to the inspection report of the latest inspection (if any) of the reservoir carried out under this section or the pre-commencement inspection report (if any) in relation to the reservoir (whichever is the later),
- (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.

(7) In this Act, references to “the other qualified engineer”, “any other qualified engineer” or “other qualified engineer” are references to any engineer duly commissioned for the time being as such under section 34(2)(a) in relation to the reservoir; and references to “other qualified engineers” are to be construed accordingly.

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

- (a) regulations under any of the following—
 - (i) section 2(3) (structure or area to be treated as controlled reservoir),
 - (ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),
 - (iii) section 52(1) (incident reporting),
 - (iv) section 53(1) (flood plans),
 - (v) section 72(1) (stop notices),
 - (vi) section 76(1) (enforcement undertakings),
 - (vii) section 78(1) (fixed monetary penalties),
 - (viii) section 81(1) (variable monetary penalties),
 - (ix) section 104(1) (extension of time limit for specified summary offences),
 - (x) section 105(1) (grants),
- (b) an order under—
 - (i) section 4(1) (substituting different volume of water in certain sections),
 - (ii) section 110 (amending references to Institution of Civil Engineers and its President),
- (c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

Commencement

120.—(1) The following provisions of this Act come into operation on Royal Assent—

- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
- (b) this section,
- (c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

Schedule 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)

1. The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.
2. In Article 293 (procedure of the Water Appeals Commission for Northern Ireland)—
 - (a) in paragraph (6), for “(9) or (10)” substitute “(9), (10) or (10A)”,
 - (b) after paragraph (10), insert—

“(10A) This paragraph applies to a decision by the Appeals Commission on an appeal falling within any of the following sub-paragraphs—

 - (a) an appeal (under section 21 of the Reservoirs Act (Northern Ireland) 2014) against a decision in a review of a risk designation of a controlled reservoir,
 - (b) an appeal (made by virtue of regulations under section 72(1) of that Act) against any of the following—
 - (i) a decision to serve a stop notice,
 - (ii) a decision not to give a completion certificate,
 - (iii) a decision not to award compensation or as to the amount of compensation,
 - (iv) a decision as to recovery of costs in relation to the serving of the stop notice,
 - (c) an appeal (made by virtue of regulations under section 76(1) of that Act) against any of the following—
 - (i) a decision in a review of refusal to give certification that an enforcement undertaking has been complied with,
 - (ii) a decision as to recovery of costs in relation to the acceptance of the undertaking,
 - (d) an appeal (made by virtue of regulations under section 78(1) of that Act) against a decision to impose a fixed monetary penalty,
 - (e) an appeal (made by virtue of regulations under section 81(1) of that Act) against any of the following—
 - (i) a decision to impose a variable monetary penalty,
 - (ii) a decision as to recovery of costs in relation to the imposition of the penalty,
 - (f) an appeal (made by virtue of regulations under that section) against a notice imposing a non-compliance penalty for failure to comply with an undertaking referred to in section 82(5) of that Act.”.
3. Article 297 (regulations by the Department for Regional Development as to safety of reservoirs) is omitted.
4. In Article 300 (regulations), in paragraph (1)(b), the words “or 297” are omitted.

Proposed Amendments on frequency of visits by supervising engineer

Clause 25, page 14, line 3

Leave out 'section' and insert 'Act'

Clause 25, page 15, line 5

Leave out sub-paragraph (k)

Clause 25, page 16, line 15

Leave out '26' and insert '25A'

New clause

After clause 25 insert—

'Regulations as to visits by supervising engineer

25A.—(1) The Department may by regulations make provision—

- (a) for there to be a standard frequency of visits that must be made by a supervising engineer to a high-consequence or medium-consequence reservoir,
- (b) for the standard frequency to be different according to whether or not the Department considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained,
- (c) for the Department to decide whether it considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained, taking account (as appropriate) of the following —
 - (i) whether or not a pre-commencement inspection report contains a pre-commencement safety recommendation,
 - (ii) whether or not an inspection report specifies any measure that should be taken in the interests of the safety of the reservoir or any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
 - (iii) any inspection compliance certificate,
 - (iv) any written statement by the supervising engineer under section 25(5) currently applicable and copied to the Department by virtue of section 25(6).

(2) Regulations making provision referred to in subsection (1)(c) must—

- (a) require the Department to notify the reservoir manager of a high-consequence or medium-consequence reservoir of its decision as to whether or not it considers that the reservoir is of an acceptable standard as regards how it is being maintained and accordingly the standard frequency of visits that must be made to it by the supervising engineer,
- (b) provide that the reservoir manager may appeal to the Water Appeals Commission against the decision specified in the notice,
- (c) provide that the Commission may confirm or quash the decision,

- (d) provide for the decision in respect of which an appeal is made continues to have effect pending a decision being made in the appeal.

(3) In subsection (1)(c)(ii), “the inspecting engineer” has the same meaning as in sections 33 and 34 (see section 33(6)(a)).’

Clause 33, page 21, line 23

Leave out from ‘—’ to end of line 25 and insert ‘is required of the supervising engineer by virtue of regulations under section 25A(1),’

Clause 117, page 70, line 12

At end insert—

‘(iib) section 25A(1) (regulations as to visits by supervising engineer to high-consequence or medium-consequence reservoir),’

Notes: amendment to clause 120 (phased commencement) contains provision related to this batch – new 120(2A)(c) and (z)

Consequential adjustments to other proposed amendments

A. Omit these from the risk designation amendments

Clause 25, page 15, line 6

Leave out ‘risk’ and insert ‘consequence’

Clause 25, page 15, line 8

Leave out ‘risk’ and insert ‘consequence’

Clause 33, page 21, line 24

Leave out ‘risk’ and insert ‘consequence’

Clause 33, page 21, line 25

Leave out ‘risk’ and insert ‘consequence’

B. Cost recovery in relation to appeals to the Water Appeals Commission

Adjust new clause 103A as follows (new text in blue):

‘Power of Water Appeals Commission to award costs in an appeal

103A.—(1) The Water Appeals Commission may make an order as to the costs of the parties to an appeal mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The appeals are—

- (a) an appeal under section 21 (reservoir designation),
- (b) **an appeal by virtue of regulations under section 25A(1) (decision of Department as to whether high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained: frequency of visits by supervising engineer),**
- (c) an appeal by virtue of regulations under section 53(1) (cost recovery in relation to flood plan),
- (d) an appeal under section 71A (cost recovery under section 65, 67, 69 or 71),

- (e) an appeal by virtue of regulations under section 72(1) (in relation to stop notice),
- (f) an appeal by virtue of regulations under section 76(1) (in relation to enforcement undertaking),
- (g) an appeal by virtue of regulations under section 78(1) (imposition of fixed monetary penalty),
- (h) an appeal by virtue of regulations under section 81(1) (in relation to variable monetary penalty).

C. Add section 25A to phase 2 of the phased commencement approach

Adjust the amendment to clause 120 as follows (the new provisions are in blue):

Clause 120, page 71, line 13

At end insert—

‘(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
 - (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35,
 - (c) sections **25A**, 26 and 27,
-
- (z) sections 103A, 103B and 103C, in relation to—
 - (i) **an appeal by virtue of regulations under section 25A(1)**,
 - (ii) an appeal under section 71A as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69,
 - (iii) an appeal by virtue of regulations under section 76(1), 78(1) or 81(1),

D. Add the new appeal to the list of appeals in new paragraph (10A) of Article 293 of the Water and Sewerage Services (NI) Order 2006

Adjust amendment to Schedule 3 as follows (the new provision is in blue):

Schedule 3, page 74, line 24

At end insert—

- ‘(aa) **an appeal (made by virtue of regulations made under section 25A(1) of that Act) against a decision as to whether a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained: frequency of visits by supervising engineer)**,
- (ab) an appeal (made by virtue of regulations made under section 53(1) of that Act) against a decision as to recovery of costs in relation to a flood plan,
- (ac) an appeal (under section 71A of that Act) against a decision as to recovery of costs under section 65, 67, 69 or 71 of that Act.’

Effect of Proposed Amendments

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this Act.

(2) The supervising engineer must—

- (a) give notice to the reservoir manager of anything that the engineer considers might affect the safety of the reservoir,
- (b) monitor compliance by the reservoir manager—
 - (i) subject to section 57, with any direction in the latest inspection report by virtue of section 33(4)(a) as regards any measure that should be taken in the interests of the safety of the reservoir which is a measure for its maintenance (see section 33(4)(f)),
 - (ii) with any recommendation in a pre-commencement inspection report for the time being applicable to the reservoir (see section 31(1)) as to a measure that should be taken for its maintenance,
- (c) monitor—
 - (i) any matter specified by virtue of section 33(4)(g) in the latest inspection report as a matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
 - (ii) any matter specified in a pre-commencement inspection report for the time being applicable to the reservoir as a matter that should be watched by a civil engineer until the next inspection of the reservoir (and which does not fall within paragraph (b)(ii)),
- (d) monitor any matter specified in a safety report as a matter the construction engineer giving the report recommends should be monitored by the supervising engineer until a final certificate is issued in respect of relevant works (see section 42(1)(c)),
- (e) monitor compliance by the reservoir manager with the requirements of—
 - (i) any preliminary certificate for the time being applicable to the reservoir (see section 44),
 - (ii) any final certificate for the time being applicable to the reservoir (see section 46),
- (f) monitor any matter specified in any such final certificate as a matter that should be monitored by the supervising engineer until the first or next inspection of the reservoir,
- (g) give notice to the reservoir manager and the Department of any failure to comply with—
 - (i) a direction or recommendation referred to in paragraph (b),
 - (ii) a safety report for the time being applicable to the reservoir,
 - (iii) a preliminary certificate for the time being applicable to the reservoir,
- (h) give notice to the reservoir manager and the Department of any failure to comply with any requirement of a final certificate for the time being applicable to the reservoir,
- (i) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,

-
- (j) monitor compliance by the reservoir manager with the requirements of section 35 (recording of water levels etc. and record keeping),
 - (l) undertake, in accordance with the latest inspection report, any additional visit that may be recommended in the report by virtue of section 33(4)(i).

(3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 33, the engineer must—

- (a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place,
- (b) not later than 28 days after giving the written recommendation, give the Department a copy of it.

(4) The supervising engineer—

- (a) may by written direction require the reservoir manager to carry out a visual inspection of the reservoir at intervals specified by the engineer for the purpose of identifying anything that might affect the safety of the reservoir,
- (b) must give a copy of any direction given under paragraph (a) to the Department.

(5) The supervising engineer must give the reservoir manager, at least every 12 months, a written statement of—

- (a) the steps taken by the engineer in relation to the matters referred to in subsection (2) (a) to (h) and (j) to (l),
- (b) any measure taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,
- (c) any recommendation by the supervising engineer under subsection (3),
- (d) any direction by the supervising engineer under subsection (4)(a).

(6) The supervising engineer must, not later than 28 days after giving a written statement under subsection (5), give the Department a copy of the statement.

(7) The supervising engineer must—

- (a) give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of the supervising engineer being unavailable, a nominated representative of the engineer),
- (b) not later than 28 days after giving the reservoir manager such information, give the information to the Department.

(8) Where the reservoir is the subject of a pre-commencement inspection report and inspection of it is not yet due under section 29, the reservoir manager must give the supervising engineer a copy of—

- (a) the report,
- (b) any pre-commencement inspection report certificate (see section 33(3)),
- (c) where the reservoir manager is unable to give a copy of a pre-commencement inspection report certificate, any other document dated before the relevant date which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation (see section 32(3)).

(9) In this section—

- (a) “draw-down” means any intentional reduction in the water level except where done in accordance with the routine operation of the reservoir,
- (b) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section,
- (c) “the relevant date” has the same meaning as in section 29(6).

(10) In this section and sections 25A to 29, 33 and 35, references to “the supervising engineer” are references to the engineer duly commissioned for the time being as such under section 24 in relation to the reservoir and are to be construed as including a nominated representative of the supervising engineer under subsection (7)(a) who is acting as such in the event of the supervising engineer being unavailable.

‘Regulations as to visits by supervising engineer

25A.—(1) The Department may by regulations make provision—

- (a) for there to be a standard frequency of visits that must be made by a supervising engineer to a high-consequence or medium-consequence reservoir,
- (b) for the standard frequency to be different according to whether or not the Department considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained,
- (c) for the Department to decide whether it considers that a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained, taking account (as appropriate) of the following —
 - (i) whether or not a pre-commencement inspection report contains a pre-commencement safety recommendation,
 - (ii) whether or not an inspection report specifies any measure that should be taken in the interests of the safety of the reservoir or any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
 - (iii) any inspection compliance certificate,
 - (iv) any written statement by the supervising engineer under section 25(5) currently applicable and copied to the Department by virtue of section 25(6).

(2) Regulations making provision referred to in subsection (1)(c) must—

- (a) require the Department to notify the reservoir manager of a high-consequence or medium-consequence reservoir of its decision as to whether or not it considers that the reservoir is of an acceptable standard as regards how it is being maintained and accordingly the standard frequency of visits that must be made to it by the supervising engineer,
- (b) provide that the reservoir manager may appeal to the Water Appeals Commission against the decision specified in the notice,
- (c) provide that the Commission may confirm or quash the decision,
- (d) provide for the decision in respect of which an appeal is made continues to have effect pending a decision being made in the appeal.

(3) In subsection (1)(c)(ii), “the inspecting engineer” has the same meaning as in sections 33 and 34 (see section 33(6)(a)).’

Duties etc. in relation to inspection

33.—(1) An inspecting engineer must—

- (a) inspect the reservoir,
 - (b) give the reservoir manager, not later than 6 months after the completion of the inspection, an inspection report prepared in accordance with this section.
- (2) The reservoir manager must give the inspecting engineer a copy of—
- (a) the latest report (if any),
 - (b) any pre-commencement inspection report certificate, interim inspection compliance certificate or inspection compliance certificate for the time being applicable to the reservoir,
 - (c) any final certificate for the time being applicable to the reservoir.
- (3) A “pre-commencement inspection report certificate” is a certificate—
- (a) stating that a measure recommended in the pre-commencement report as a measure that should be taken in the interests of the safety of the reservoir has been taken,
 - (b) signed and issued before the relevant date by a civil engineer who, at the time of signing, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate.

(4) The inspection report—

- (a) must—
 - (i) specify any measure the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including any such measure for the maintenance of the reservoir),
 - (ii) direct the reservoir manager to ensure that the measure is taken,
- (b) may—
 - (i) specify any matter that the inspecting engineer considers relevant to the maintenance of the reservoir (but in relation to which the engineer does not specify a measure (as to safety) under paragraph (a)),
 - (ii) include any recommendation as regards the matter,
- (c) must specify whether any measure specified in the inspection report was specified in the latest report,
- (d) if any measure specified in the latest report has not been taken and the measure is not specified in the inspection report, must specify why the engineer considers the measure should no longer be taken,
- (e) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is not a measure for its maintenance,

is taken under the supervision of the inspecting engineer or, where permitted (by section 34(2)(a)) the other qualified engineer, and within the period of time specified in the inspection report,
- (f) must direct the reservoir manager to ensure that any measure which both—

- (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is a measure for its maintenance,
- is monitored by the supervising engineer,
- (g) must specify any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection,
 - (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
 - (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than is required by the supervising engineer by virtue of regulations under section 25A(1), must specify at what intervals, when, or in what circumstances, any additional visit should take place.
- (5) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—
- (a) the Department,
 - (b) the supervising engineer (if a different person).
- (6) In this section and section 34—
- (a) references to “the inspecting engineer” are references to the engineer duly commissioned for the time being as such under section 32 in relation to the reservoir,
 - (b) references to “the latest report” are references to the inspection report of the latest inspection (if any) of the reservoir carried out under this section or the pre-commencement inspection report (if any) in relation to the reservoir (whichever is the later),
 - (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.
- (7) In this Act, references to “the other qualified engineer”, “any other qualified engineer” or “other qualified engineer” are references to any engineer duly commissioned for the time being as such under section 34(2)(a) in relation to the reservoir; and references to “other qualified engineers” are to be construed accordingly.

‘Power of Water Appeals Commission to award costs in an appeal

103A.—(1) The Water Appeals Commission may make an order as to the costs of the parties to an appeal mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The appeals are—

- (a) an appeal under section 21 (reservoir designation),
- (b) an appeal by virtue of regulations under section 25A(1) (decision of Department as to whether high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained: frequency of visits by supervising engineer),
- (c) an appeal by virtue of regulations under section 53(1) (cost recovery in relation to flood plan),
- (d) an appeal under section 71A (cost recovery under section 65, 67, 69 or 71),

- (e) an appeal by virtue of regulations under section 72(1) (in relation to stop notice),
- (f) an appeal by virtue of regulations under section 76(1) (in relation to enforcement undertaking),
- (g) an appeal by virtue of regulations under section 78(1) (imposition of fixed monetary penalty),
- (h) an appeal by virtue of regulations under section 81(1) (in relation to variable monetary penalty).

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

- (a) regulations under any of the following—
 - (i) section 2(3) (structure or area to be treated as controlled reservoir),
 - (ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),
- (iib) section 25A(1) (regulations as to visits by supervising engineer to high-consequence or medium-consequence reservoir),
 - (iii) section 52(1) (incident reporting),
 - (iv) section 53(1) (flood plans),
 - (v) section 72(1) (stop notices),
 - (vi) section 76(1) (enforcement undertakings),
 - (vii) section 78(1) (fixed monetary penalties),
 - (viii) section 81(1) (variable monetary penalties),
 - (ix) section 104(1) (extension of time limit for specified summary offences),
 - (x) section 105(1) (grants),
- (b) an order under—
 - (i) section 4(1) (substituting different volume of water in certain sections),
 - (ii) section 110 (amending references to Institution of Civil Engineers and its President),
- (c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

Commencement

120.—(1) The following provisions of this Act come into operation on Royal Assent—

- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
- (b) this section,
- (c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

‘(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
- (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35,
- (c) sections 25A, 26 and 27,
- (d) in section 28—
 - (i) subsections (2) to (4),
 - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b),
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—
 - (i) subsections (2) and (3),
 - (ii) in subsection (4), paragraphs (c), (d) and (i),
 - (iii) in subsection (5), paragraph (b),
 - (iv) in subsection (6), paragraph (b),
- (h) sections 34 and 35,
- (i) in section 36(1)—
 - (i) paragraphs (a), (b), (c) and (d),
 - (ii) paragraph (e) (in relation to the requirements of section 32(1)(b)),
 - (iii) paragraph (g),
- (j) in section 36(2), paragraphs (a), (b), (d) and (e),
- (k) section 36(3), in relation to the following offences—
 - (i) an offence under section 36(1)(a), (b), (c) or (d),
 - (ii) an offence under section 36(1)(e) that is attributable to a failure to comply with the requirements of section 32(1)(b)),
 - (iii) an offence under section 36(1)(g),

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- (iv) an offence under section 36(2)(a), (b), (d) or (e),
 - (l) section 36A,
 - (m) section 37,
 - (n) in section 63(1), paragraph (a),
 - (o) sections 64 and 65, in so far as they concern the commissioning of a supervising engineer,
 - (p) in section 66, paragraph (a),
 - (q) sections 67 to 69,
 - (r) section 70, in relation to an offence under section 36A(1),
 - (s) section 71A, as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69,
 - (t) sections 76 to 84,
 - (u) section 85, in relation to the consultation required by sections 76(2), 78(2) and 81(2),
 - (v) section 86, in relation to regulations under sections 76(1) and 81(1),
 - (w) section 87,
 - (x) section 93, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
 - (y) section 95, in relation to failure to comply with the requirements of section 93 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
 - (z) sections 103A, 103B and 103C, in relation to—
 - (i) an appeal by virtue of regulations under section 25A(1),
 - (ii) an appeal under section 71A as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69,
 - (iii) an appeal by virtue of regulations under section 76(1), 78(1) or 81(1),
 - (za) section 105.’

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

Schedule 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)

1. The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.
2. In Article 293 (procedure of the Water Appeals Commission for Northern Ireland)—
 - (a) in paragraph (6), for “(9) or (10)” substitute “(9), (10) or (10A)”,
 - (b) after paragraph (10), insert—

“(10A) This paragraph applies to a decision by the Appeals Commission on an appeal falling within any of the following sub-paragraphs—

 - (a) an appeal (under section 21 of the Reservoirs Act (Northern Ireland) 2014) against a decision in a review of a risk designation of a controlled reservoir,
 - (aa) an appeal (made by virtue of regulations made under section 25A(1) of that Act) against a decision as to whether a high-consequence or medium-consequence reservoir is of an acceptable standard as regards how it is being maintained: frequency of visits by supervising engineer),
 - (ab) an appeal (made by virtue of regulations made under section 53(1) of that Act) against a decision as to recovery of costs in relation to a flood plan,
 - (ac) an appeal (under section 71A of that Act) against a decision as to recovery of costs under section 65, 67, 69 or 71 of that Act,(b) an appeal (made by virtue of regulations under section 72(1) of that Act) against any of the following—
 - (i) a decision to serve a stop notice,
 - (ii) a decision not to give a completion certificate,
 - (iii) a decision not to award compensation or as to the amount of compensation,
 - (iv) a decision as to recovery of costs in relation to the serving of the stop notice,
 - (c) an appeal (made by virtue of regulations under section 76(1) of that Act) against any of the following—
 - (i) a decision in a review of refusal to give certification that an enforcement undertaking has been complied with,
 - (ii) a decision as to recovery of costs in relation to the acceptance of the undertaking,
 - (d) an appeal (made by virtue of regulations under section 78(1) of that Act) against a decision to impose a fixed monetary penalty,
 - (e) an appeal (made by virtue of regulations under section 81(1) of that Act) against any of the following—
 - (i) a decision to impose a variable monetary penalty,
 - (ii) a decision as to recovery of costs in relation to the imposition of the penalty,
 - (f) an appeal (made by virtue of regulations under that section) against a notice imposing a non-compliance penalty for failure to comply with an undertaking referred to in section 82(5) of that Act.”.
3. Article 297 (regulations by the Department for Regional Development as to safety of reservoirs) is omitted.
4. In Article 300 (regulations), in paragraph (1)(b), the words “or 297” are omitted.



Northern Ireland
Assembly

Appendix 2

Minutes of Proceedings Relating to the Report

Agreed: The Committee discussed the proposed amendments by Rivers Agency to Clause 25 and 33; the Committee agreed to hear from Rivers Agency later in the meeting in order to seek clarification on a number of issues.

Agreed: The Committee agreed that at Consideration Stage of the Reservoirs Bill, each Member would take responsibility for a group of amendments.

2.29pm The meeting suspended.

2.38pm The meeting moved into Open Session.

The following Members were in attendance: Mr Anderson, Mr Byrne, Mr Elliott, Mr Milne, Mr McAleer, Mr McCarthy, Mr McMullan and Mr Poots.

7. Reservoirs Bill

Noted: The Committee noted the Departmental amendments to Clause 120.

Noted: The Committee noted the correspondence from the Department outlining the revised number of reservoirs from 151 to 150.

3.32pm The following Departmental officials joined the meeting.

Kieran Brazier, Head of Bill Team

Mary McKeown, Deputy Principal

The officials briefed the Committee and this was followed by a question and answer session.

3.30pm Mr McAleer rejoined the meeting.

3.31pm Mr Byrne rejoined the meeting.

3.34pm Mr Anderson rejoined the meeting.

3.34pm Mr McAleer left the meeting.

3.51pm Mr Milne rejoined the meeting.

4.09pm Mr McMullan left the meeting.

4.17pm Mr McMullan rejoined the meeting.

4.24pm The meeting moved into closed session.

Agreed: The Committee discussed a number of options in respect of clause 25 and 33 and agreed to seek amendments from the Department.

5.05pm The meeting suspended

5.20pm The meeting resumed in closed session.

The following Members were in attendance: Mr Anderson, Mr Buchanan, Mr Irwin, Mr Milne, Mr McCarthy, Mr McMullan and Mr Poots.

5.26pm The meeting moved into open session.

5.26pm The officials rejoined the meeting.

5.29pm Mr Elliott rejoined the meeting.

Agreed: The Committee agreed to seek amendments from the Department to bring forward a supervising regime for visits, brought forward by regulation. The officials agreed to consider and report back to the Committee on the issue.

Agreed: The Committee agreed to ask the Department to bring forward an amendment to provide that the regime on the number of visits by a Supervising Engineer, to a high or medium consequence reservoir, is done by regulation subject to draft affirmative procedure. The Committee indicated that the details of the regulations would be agreed at a later date but should include a reduction in required visits once the reservoir was at the required standard.

Tuesday 3 March 2015

Room 30, Parliament Buildings

Present: Mr William Irwin MLA (Chairperson)
Mr Sydney Anderson MLA
Mr Tom Buchanan MLA
Mrs Jo-Anne Dobson MLA
Mr Tom Elliott MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Mr Kieran McCarthy MLA
Mr Oliver McMullan MLA
Mr Edwin Poots MLA

Apologies: Mr Joe Byrne MLA (Deputy Chairperson)

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Dagmar Walgraeve, Clerical Officer

11. The Reservoirs Bill: Consideration of the Addendum to the Committee

Report on the Reservoirs Bill

Agreed: The Committee agreed the Addendum to the Committee Report on the Reservoirs Bill.

Agreed: Members agreed that an unapproved extract of the Minutes of Proceedings and Hansard transcript from this agenda item will be included in the appendices of the Report.

Agreed: The Committee agreed that its Report on Reservoirs Bill should be laid in the Business Office and that it should be ordered to print.

Tuesday 10 February 2015

Room 30, Parliament Buildings

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

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Dagmar Walgraeve, Clerical Officer

1.52pm The meeting commenced in Open Session.

5. Oral Briefing DARD: The Reservoirs Bill proposed amendments on number of supervised visits.

1.54pm The following Departmental officials joined the meeting.

- David Porter, Grade 6
- Kieran Brazier, Grade 7

The officials briefed the Committee and this was followed by a question and answer session.

2.03pm Mr McCarthy joined the meeting.

2.06pm Mrs Dobson joined the meeting.

2.10pm Mr Elliott left the meeting.

Agreed: The Committee agreed to write to the Department to request information on the twenty one reservoirs Rivers Agency are still considering and to ask if they are privately owned.

Agreed: The Department agreed to provide additional information regarding the number of reservoirs which will fall under the remit of the Reservoirs Bill.

Agreed: The Committee agreed the amendments to Clause 25.

Agreed: The Committee agreed the new Clause 25A.

Agreed: The Committee agreed the amendment to Clause 33.

Agreed: The Committee agreed the amendment to Clause 103A and schedule 3.

Agreed: The Committee agreed the amendment to Clause 117.

Agreed: The Committee agreed the amendment to Clause 120.

2.35pm Mr McMullan left the meeting.

The Chairperson advised the Committee that the accepted amendments will be reflected in an addendum to the Reservoirs Bill Committee Report.

Tuesday 11 November 2014

Room 30, Parliament Buildings

Present: Mr William Irwin MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Sydney Anderson MLA
Mr Thomas Buchanan MLA
Mr Tom Elliott MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Mr Kieran McCarthy MLA
Mr Oliver McMullan MLA
Mr Edwin Poots MLA

Apologies: Mrs Joanne Dobson MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer
Ms Aoibhinn Treanor, Bill Clerk (agenda item 1)
Ms Eilis Haughey, Bill Clerk (agenda item 6)

1.07pm The meeting commenced in Closed Session.

1. Reservoirs Bill

The Committee received a briefing from the Bill Clerk on the process for the Consideration Stage of a Bill.

1.11pm Mr Milne joined the meeting.

1.16pm Mr Buchanan joined the meeting.

1.24pm Mr Poots joined the meeting.

1.25pm Mr Poots left the meeting.

1.26pm Mr McAleer joined the meeting.

1.39pm Mr Buchanan left the meeting.

1.40pm Mr Buchanan rejoined the meeting.

1.42pm Mr McAleer left the meeting.

1.49pm Mr McAleer rejoined the meeting.

1.56pm Mr Poots rejoined the meeting.

1.57pm Mr Elliott left the meeting.

2.00pm Mr Elliott rejoined the meeting.

2.02pm Mr Elliot left the meeting.

2.21pm Mr Buchanan left the meeting.

2.26pm Mr Elliott rejoined the meeting.



Northern Ireland
Assembly

Appendix 3

Minutes of Evidence

11 November 2014

Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
 Mr Joe Byrne (Deputy Chairperson)
 Mr Sydney Anderson
 Mr Thomas Buchanan
 Mr Tom Elliott
 Mr Kieran McCarthy
 Mr Oliver McMullan
 Mr Ian Milne
 Mr Edwin Poots

Witnesses:

Mr Kieran Brazier *Department of*
 Ms Mary McKeown *Agriculture and Rural*
 Development

1. **The Chairperson (Mr Irwin):** I welcome Kieran Brazier and Mary McKeown from Rivers Agency in DARD. Thank you for attending at short notice. I understand that the Clerk has briefed you on why you are here today. The Committee needs to make a decision on how it deals with issues around the number of visits by a supervising engineer. I understand that you have a short presentation to make to us.
2. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** Thank you very much, Chair. We are very pleased to be here and to contribute to your deliberations on the part of the Bill that deals with the number of visits by supervising engineers to controlled reservoirs. We have been briefed on the options that you are considering. If you will allow me, I can go through those options and give you the Department's position on each of them. Then, we can take questions, if you wish.
3. **The Chairperson (Mr Irwin):** OK.
4. **Mr Brazier:** We are happy, by the way, to take questions on any other parts of the Bill, if you wish to take the opportunity.
5. I will go through the options in the order that the Department would prefer

that you take them. That is not to say that that is the choice that you as a Committee will make. The first will come as no surprise to you: the Department would very much welcome the Committee accepting the amendments proposed by the Department: for a high-consequence reservoir, a minimum of one visit in every 12-month period; and, for a medium-consequence reservoir, a minimum of one visit in every 36-month period. I remind the Committee that low-consequence reservoirs are not required to be visited by a supervising engineer. Of the 150 reservoirs, 30 are low-consequence reservoirs. So, when talking about supervising engineer visits, we are talking about the remaining 120. We would prefer that the Committee accepted and supported the Department's proposed amendment, which was made following consultation with the Institution of Civil Engineers. I remind the Committee that, when we introduced the Bill, it stated that there would be two visits to a high-consequence reservoir and one visit to a medium-consequence reservoir in every 12-month period.

6. It is important to understand the role of the supervising engineer. Then, I will explain where the Institution of Civil Engineers was coming from. Supervising engineers are on call at all times for high- and medium-consequence reservoirs. He is the expert eyes and ears for an impoundment or reservoir and gives advice and guidance to reservoir managers. The more familiar a supervising engineer becomes with a reservoir, the fewer visits he or she needs to make to it. More confidence in the reservoir manager's ability to report any concerns about the reservoir would reduce the number of visits. The Institution of Civil Engineers was prepared to reduce the number on a medium-consequence reservoir to one in every three years, but it was reluctant to advise the Department to go any further than that, simply because

it would reduce the familiarity with the reservoir. If a supervising engineer was calling only once every three years, his familiarity with that reservoir would be significantly reduced.

7. We appreciate that there are costs involved in all of this. That is a huge issue for the Committee. However, it is my understanding that the charge made to a reservoir manager is not necessarily based on the number of visits by a supervising engineer. It is based on the size of the reservoir, the complexity of the reservoir, the maintenance regime that occurred before and the condition of the reservoir. It is my understanding that a charge would be given for, say, any 12-month period or 36-month period, and that charge would not increase because there was an increased number of visits to that reservoir, for example.
8. That is why the Department has moved to one in every 12-month period and one in every 36-month period.
9. The second option that we were asked to consider was omitting the reference to the number of visits in the Reservoirs Bill. That can be accommodated. We could, and would, do that. The equivalent Bill in Scotland makes no reference to the number of supervising visits. That is left to the reservoir manager and the supervising engineer to negotiate. However, the Department feels that putting an indicator in the Bill as to the minimum number would help the reservoir manager. There is an onus on the supervising engineer to explain to the reservoir manager why he would be visiting the reservoir more often than the minimum. If you do not have a minimum, you have no baseline for that. So, for example, a supervising engineer who wanted to come to a high-consequence reservoir more than once a year would need to explain that to the reservoir manager and justify that. Similarly, if he wanted to call more than once in every three years to a medium-consequence reservoir, he would have to do the same. We felt that that was a good indicator of that. If that was the Committee's preferred option, the Department would be prepared to draft that amendment

on behalf of the Committee, because almost every clause in the Bill is linked to other clauses; there are other consequential amendments. Due to the technicalities of all of that, we would be best placed to draft those amendments. I am making that offer to the Committee, which it may want to take up. In fact, we would consider any amendment. We want to be as accommodating as we can be in drafting the Bill so that any amendment will not maybe compromise another part of the Bill.

10. The third option that we were asked to consider was the Committee coming up with an alternative to all of this and the number of visits. This one could prove the most problematic, particularly if the Committee was considering placing a limit on the number of visits to a reservoir. We can understand why the Committee might want to do that from a cost perspective, but that might be a false economy. You will remember that this is about keeping people safe from an uncontrolled release of water from a reservoir. The supervising engineer is there to give expert advice and guidance to a reservoir manager and to call for an inspection and maybe for works to happen, if he felt that was appropriate. Placing a limit on that would be difficult and would prove unworkable. If the Committee was to consider extending the period and frequency of visits for a medium-consequence reservoir to one in every five years, that is doable. The Department would draft that amendment on your behalf, but reluctantly so, for the reasons I have given previously — the supervising engineer's familiarity with the reservoir. As has been pointed out, although the primary legislation might say that, it would be very unlikely, in reality, that a reservoir manager would achieve that with a supervising engineer, for the reasons I have stated. So, while the primary legislation might say one in every five years, it is highly unlikely that a supervising engineer would agree to that. It might actually mean that reservoir engineers may not work and may not take up the offer of supervising reservoirs in Northern Ireland. We need to be careful about that as well.

11. The fourth option that we were asked to consider was the Committee not making any decision on the proposed amendment by the Department and leaving it to the House at Consideration Stage to consider it and to vote on it. We would prefer that the Committee took a view on it and that it influenced Members one way or the other. That option is one that we would prefer to avoid, if we could.
12. We were also asked to consider taking out clauses 25 and 33 in their entirety. That would cause us a problem. Those clauses are very important, as are their subsections. Some of them are linked to offences that would apply if the reservoir manager was not to comply with the supervising engineer or inspecting engineer. There is a lot of responsibility on an inspecting engineer, reservoir manager and supervising engineer in both those clauses, particularly clause 33. To remove those in their entirety would mean making a lot more amendments to the Bill, because there are parts of those clauses that we want to see in the Bill and we would propose putting them elsewhere. It is my understanding that you are concerned with the number of supervising visits. We think that you can do this without the need to remove clauses 25 and 33.
13. The last option we were told to consider was the introduction, by regulation, of the number of visits that a supervising engineer would make. That was based on your conversation this afternoon. Again, that is doable; we could do that in the Bill. It would advise that the Department would, by regulations, determine the number of visits by a supervising engineer. We would make that by affirmative resolution, so we would have to bring it to the Committee and to the House for approval. We could consider doing that, but the problem with that is that we would need to understand why that would be the case, because, I imagine, we may end up having this same conversation in a couple of years' time. That is the issue for us around that. However, it is doable; we could do that.
14. **The Chairperson (Mr Irwin):** Members may have questions.
15. On clauses 25 and 33, you say that it is possible for us to leave it the same as in England and Scotland, where no specific inspections are mentioned.
16. **Mr Brazier:** Yes.
17. **The Chairperson (Mr Irwin):** I just wanted to clarify to that.
18. **Mr Elliott:** Thanks for that. I am relatively newly back on the Committee. So, forgive me, I do not have it all. The Clerk has certainly given me as much information as my small head can hold.
19. In relation to the control of visits and the control of whether an engineer will continue to look at and inspect the reservoirs at all, you are indicating to us that, if we do not make those inspections regular, the engineer may just say, "We are not going to cooperate and will not continue to look at them". Is that what you are saying?
20. **Mr Brazier:** I am saying that, if a frequency of, for example, one visit in every five years to a reservoir was outlined in the Bill and the reservoir manager insisted that that was the frequency that he would come to visit the reservoir, the reservoir engineer may decide not to take up that commission.
21. **Mr Elliott:** They could also do that if it was once every three years.
22. **Mr Brazier:** Yes.
23. **Mr Elliott:** So, it is really in their hands. Once you put in any time limit at all, you are handing over control of those inspections entirely to the engineers.
24. **Mr Brazier:** We were hoping that, in putting a minimum number on the reservoir, we would help the reservoir manager by giving him an indication of the number of times that a supervising engineer should visit the reservoir. We are trying to help the reservoir manager in that regard. Ultimately, though —
25. **Mr Elliott:** I will not say that you are not, but I have grave suspicion around all that.

26. **Mr Brazier:** OK. Ultimately, the supervising engineer's job is to make sure that the reservoir is safe. Responsibility for the safety of the reservoir rests with the reservoir manager. We are trying to introduce a management regime where the reservoir manager will call on an expert to guide and advise him on that engineering structure and to help him in that regard. Ultimately, the number of visits that a supervising engineer makes to a reservoir will depend on the condition of the reservoir. If he accepts the commission, and the reservoir is in good condition and well maintained and the reservoir manager is well versed in what to look for in a reservoir, the number of visits will be minimal.
27. **Mr Elliott:** Yes, but that is based on the engineer's assessment of the condition of the reservoir.
28. **Mr Brazier:** That is right. There is no getting away from that. You are absolutely right.
29. **Mr Elliott:** So, a huge amount of control rests with the engineer.
30. **Mr Brazier:** Yes. The number of visits that he makes is based on his professional judgement, depending on the condition of the reservoir.
31. **Mr Elliott:** The manager or the owner has to pay for the engineer.
32. **Mr Brazier:** Yes.
33. **Mr Elliott:** So, if we accept this, it puts that control solely with the engineer.
34. **Mr Brazier:** If the reservoir manager does not agree with the number of supervising visits and thinks that the engineer is arranging to visit the reservoir more often than he should, he can raise that with the Department.
35. **Mr Elliott:** I would caution against that, too. He would probably end up getting a lot more. [Laughter.] Sorry for being cynical.
36. **Mr Brazier:** You are all right. I will not take it personally.
37. **The Chairperson (Mr Irwin):** You say that the reservoir manager can challenge the decision on the number of visits with the Department if he thinks that it is too excessive. I do not know whether that could be where he feels that it is not satisfactory. Put yourself in a reservoir manager's position. I know where the member who spoke previously is coming from in relation to the fact that it is more lucrative for an engineer to visit it fairly often if he is going to get paid. It is difficult. We have grave concerns about the cost.
38. **Mr Poots:** It could always be reversed, so that the supervising engineer had to demonstrate to the Department that he had good cause to revisit.
39. **Mr Brazier:** Yes, and to the reservoir manager. That is why we put in the minimum. In Scotland, England and Wales, the reservoir manager has no indication of how often, at minimum, the supervising engineer should visit. With us putting in one every three years for a medium-consequence reservoir, if the supervising engineer went more often than that, he would have to justify that to the reservoir manager. He would have to accept that, and if he did not accept it, we could challenge it on his behalf.
40. **The Chairperson (Mr Irwin):** I understand. He could refuse to pay if he thought that it was not necessary.
41. **Mr Brazier:** Yes.
42. **The Chairperson (Mr Irwin):** Is it stated in the Bill that there is opportunity for the manager to challenge that?
43. **Mr Brazier:** An amendment is being proposed. We discussed that with the Committee previously. We are proposing an amendment to the Bill at Consideration Stage that will allow us to do that. Currently, with the Bill as introduced, we cannot.
44. **The Chairperson (Mr Irwin):** We would need to see that amendment before it goes to the House.
45. **Mr Brazier:** You have already approved it.

46. **The Chairperson (Mr Irwin):** OK.
47. **Mr Brazier:** You have already seen it. It was about the content. Do you remember that we had the discussion about the quality and content of a reservoir report? We have done that. We are happy to share that with you again if you wish.
48. **Mr Anderson:** Can I just go back to that? The new amendment that you are putting in will allow the reservoir manager to challenge it if there are too many visits, is that what you are saying?
49. **Mr Brazier:** Yes.
50. **Mr Anderson:** What happens if he then refuses another visit, another two visits, or whatever it is? Does it go to you people? At what stage does someone step in and say what the right number of visits is or what a correct visit is?
51. **Mr Brazier:** The Institution of Civil Engineers would have appointed the reservoir engineer. We could raise it with that organisation. There is an ultimate sanction whereby the reservoir engineer would be removed from the panel of engineers that a reservoir manager can call on. The panel of engineers is selected by the Institution of Civil Engineers and recommended to — currently — DEFRA. The DEFRA Secretary of State endorses that and says that a reservoir engineer can visit and examine a reservoir in England, Scotland or Wales. Under the Bill, we will set up a similar panel of engineers, which our Minister will appoint. So, the ultimate sanction would be that that engineer would be removed from that panel and could not work on a reservoir if it was found that he was making more visits to a reservoir than required. The ultimate sanction is that he would be removed from the panel.
52. **Mr Anderson:** That would be after making the visits, would it not?
53. **Mr Brazier:** Not necessarily.
54. **Mr Anderson:** But it could happen.
55. **Mr Brazier:** It could happen, yes, but that would have to be with the agreement of the reservoir manager. I cannot imagine there being an occasion when the supervising engineer would insist on going to visit a reservoir when the reservoir manager did not want him there.
56. **Mr Anderson:** That is where I am coming from. So, if that was the case and there was not agreement, who, at what stage, says that the supervising engineer should go to look at the reservoir or should not?
57. **Mr Brazier:** The reservoir manager decides on whether he accepts the supervising engineer's recommended number of visits. So, a supervising engineer could come out to a reservoir and look at it and say, "I think that I should come here two or three times a year. This is not in good condition, and I really need to keep an eye on this for you". The reservoir manager might say, "Well, it has not moved in the last 50 years, so why would that be the case?". He might not accept that and say, "Sorry, I am going to ring another supervising engineer and get him out for a second opinion on that". He could go on with that.
58. **Mr Anderson:** At a cost.
59. **Mr Brazier:** Not if he was not commissioning the supervising engineer, no, because the supervising engineer would give him a cost at a charge for his services at no cost to the reservoir manager. It is like calling a consultant and saying, "Could you give me an estimate of how much it will cost me for you to advise and guide me on this reservoir over the next 12 or 36 months?". It is my understanding that a supervising engineer can do that from photographs of the reservoir and from any documentation that there might be on the reservoir. He would not necessarily have to come out and visit it, but he probably would. That would just be to give him an estimate of the cost. The reservoir manager would not have to accept that. There will be no obligation on him accepting that. Only after he has accepted that will he be tied into a contract between him and the supervising engineer. There is upwards

- of 180 supervising engineers on the panels. So, there is a large selection to call on.
60. **Mr Anderson:** Only one of the 180 is here.
61. **Mr Brazier:** Yes, but the reason for that is that we do not have any legislation in Northern Ireland governing reservoirs. So, the work is in England, Scotland and Wales.
62. **Mr Anderson:** How quickly would that panel increase here if it was set up and that work was to be done? Can those supervising engineers be set up quite quickly?
63. **Mr Brazier:** Yes. Over the past couple of years, we have been at conferences and events that reservoir engineers attend. We have been explaining to them that legislation is being brought forward and asking them about their willingness to work in Northern Ireland and to be included in the panel for Northern Ireland. Very few have said that they would not be. They make the point that it is probably just as quick to get from London to Belfast as it is from London to Edinburgh or any other part of the United Kingdom. So, travel is not an issue for them. They will be prepared to come and work here. We hope that the number of supervising engineers in Northern Ireland will grow so that there will be local knowledge here.
64. **The Chairperson (Mr Irwin):** You are also saying that, if the number of supervising engineers was 120, it would be up to the reservoir manager to get the best price for doing the job.
65. **Mr Brazier:** Yes, absolutely.
66. **Mr McMullan:** Is there something in the Bill that allows one engineer to go on to the list every year?
67. **Ms Mary McKeown (Department of Agriculture and Rural Development):** They are commissioned for up to five years.
68. **Mr McMullan:** Once the agreement is made and the reservoirs are then checked and tested, be it once a year,
- every three years or whatever, there will be a certificate or whatever with that. Who will then have responsibility for that? Most of the high-risk reservoirs are high-risk because of what is in front of them, such as housing or whatever, and, if anybody is coming in to do some kind of building or economic regeneration, they would need to get a certificate of assurance that that is in order. Who would issue that?
69. **Mr Brazier:** Is that around planning?
70. **Mr McMullan:** Yes. Who would issue that?
71. **Mr Brazier:** We are making an arrangement with the Planning Service that it will receive a certificate from an inspecting engineer —
72. **Ms McKeown:** A qualified engineer.
73. **Mr Brazier:** — to say that the reservoir is in good condition.
74. **Mr McMullan:** On behalf of the reservoir.
75. **Mr Brazier:** Yes, the reservoir manager.
76. **Mr McMullan:** Can the engineer then charge for that certificate?
77. **Ms McKeown:** They could, but the charge would be made against whoever was making the planning application. They would have to advise the Planning Service that they have a certification so that building could take place.
78. **Mr McMullan:** Surely that money should then go back to the reservoir manager rather than the engineer. The reservoir manager could then claim part of that fee.
79. **Mr Brazier:** That arrangement could be made between a developer and a reservoir manager. What we were talking about before was developments downstream that would change the risk designation of a reservoir. If it was proposed that houses would be built downstream from a medium-risk reservoir, it could cause the designation to be changed to high-risk. So, it would move from one visit every three years to one visit every year, and there would be

- increased costs associated with those visits. That is covered, and those costs would be incurred during negotiations between the developer and the reservoir manager. The Planning Service would not give permission to build downstream unless it had received assurances from the reservoir manager that the reservoir was in good condition.
80. **Mr McMullan:** What I am getting at is that the reservoir manager could have some income from that. That would offset his costs.
81. **Mr Brazier:** Yes; absolutely.
82. **Mr McMullan:** That is the point that I am making. He could make the costs of the inspections back.
83. **Mr Brazier:** Yes; that is right. The reservoir manager would be in control of that all the time.
84. **Mr McMullan:** I do not favour the five-year arrangement. An engineer might not have the knowledge of a reservoir if it was not inspected for five years. He would have that degree of knowledge if inspections took place every three years, but not every five years. There will be an ultimate cost to the reservoir manager in maintenance or whatever else if it were to go for the five years rather than the three years, because —
85. **Mr Brazier:** There is an increased risk. We take the point that some reservoirs have never been looked at and have not failed. However, they are man-made engineering structures that are holding back huge amounts of water. Through the legislation, we are trying to ensure that those bodies of water are looked at periodically by engineers. We are not recommending that inspections be moved out to five years. For the safety of the people downstream, we would prefer that reservoirs be looked at regularly. The Department is prepared to keep inspections to a minimum of one every three years on the advice of the Institution of Civil Engineers. Extending that any further would place the people downstream and the reservoir manager at great risk.
86. Some reservoirs have never been examined. There is a great need for that to happen, and that is what the management regime in the Bill is trying to introduce. We are trying to find a happy medium between a belt-and-braces arrangement and one that works for reservoir managers and for those who live downstream of a reservoir.
87. **Mr McMullan:** If, for example, no further planning was to be allowed in an area, would it be possible for there to be movement and for a high-risk reservoir to be downgraded to a medium-risk reservoir.
88. **Mr Brazier:** A high-risk or high-consequence reservoir will have that designation because people live downstream of it in the flood inundation area and their lives would be placed at risk if it failed. The only way to downgrade such a reservoir would be to remove the houses. You could go from a medium-risk reservoir to a high-risk reservoir because planning permission is given for a building in the inundation area and that places people at risk from an uncontrolled release of water.
89. **Mr Poots:** I think that your problem and issue is that you have not entirely convinced the Committee of the need for the legislation. Consequently, it could be even more challenging to convince the Assembly. The reservoirs have been there for a long time and there has not been much demonstration of risk, albeit that legislation applies in other parts of the United Kingdom. It would probably be good practice to legislate in this area, but the problem that most of us have is that we do not know what the problem is. Consequently, we are seeking to identify a cure without identifying the illness and the symptoms.
90. I am massively reluctant to proceed with the legislation, and we all will require convincing of the need for it. Should we go down the route of legislation, in the first instance, it should have a light touch; we should not go in with extensive legislation. It can be added to more easily than it can be taken away.

91. No harm to Mr McMullan, but three years is not a long time, and if something is in excellent condition now it will probably be in excellent condition in three years' time. It may be more appropriate to look at inspections every two years and every five years. We also have to be convinced about that.
92. **Mr Brazier:** We acknowledge that we have to make a case for the legislation. We have formally acknowledged that, and the Minister has acknowledged that, by proposing that the Bill should be introduced in two phases.
93. You have spoken about the need for a light touch. If accepted, the Bill and all the amendments — some 215 amendments have been tabled to date — would be enacted. Only certain parts of the Bill will come in on Royal Assent.
94. To acknowledge the point about the need to make a case for the Bill, phase 1 would be the light touch, if you want to regard it as that. It would be what we call the non-recurring parts of the Bill, whereby we would define what a reservoir is and who the reservoir manager should be. We would also place a responsibility on the Department to give a consequence designation of high-, low-, or medium-risk and, finally, would place a requirement on a reservoir manager to commission an inspection of the reservoir. That would be different from a supervising engineer's inspection and would take place every 10 years. Phase 2 of the Bill would be where the recurring parts, including the part of the Bill that we are talking about, would come into play. The commissioning of a supervising engineer is contained in phase 2, as is the need or requirement to do anything with an inspection report. That part of the Bill would not be commenced on Royal Assent.
95. So, the Bill would be enacted, but only certain parts would be commenced. Phase 2 would be commenced only following a vote in the Assembly, and we would bring it forward for commencement only when we had completed the reservoirs audit so that we can present information on the condition of reservoirs and an estimated cost of repair. We are taking that forward in parallel with the Bill. The Committee has considered that and has accepted that proposal from the Department and the Minister's assurance. If that position were to change, we would like to know that in advance of moving the Bill to Consideration Stage, because it is really on that basis that we are moving the Bill, prepared to move the Bill, or recommending to the Minister that she move the Bill to Consideration Stage.
96. **The Chairperson (Mr Irwin):** You can understand why some of us feel that we are working in the dark to a certain degree.
97. **Mr Brazier:** Absolutely.
98. **The Chairperson (Mr Irwin):** That has been part of the problem from the word go. I, like many other Committee members, have raised concerns over the last year.
99. **Mr Poots:** I do not understand why it was not carried out in the first instance; I just cannot get my head around that. We did not identify the scale of the problem. It could be a big problem, or it could be a very small problem; we do not know.
100. **Mr Brazier:** But this is about prevention. If we came to the Committee with an audit that said that all the reservoirs in Northern Ireland were in good condition, would that mean that we did not need regulation? If we say, "Well, actually, all the reservoirs in Northern Ireland are in very poor condition", does that mean that we definitely need legislation? Because of the nature of these reservoirs —
101. **Mr Elliott:** The point, though, that we, as a Committee and MLAs, would have a much better opportunity to assess it then and see what was required.
102. **Mr Poots:** You are making legislation in the dark, basically.
103. **Mr Brazier:** The Department accepted that, and we are where we are. We have taken on board the comments that

- we should have done that in advance, but we are where we are. The Minister proposed that we move the Bill forward and do the audit in parallel with that and that the recurring parts of the Bill are held until that audit is completed and the Committee considers the content of that and the condition of the reservoirs and decides whether or not to commence phase 2 of the Bill. That is the position that we are in at the moment. If the Committee is considering changing its position on that, the Minister needs to know that.
104. **Mr Byrne:** I am in the same position as most people in that I would have preferred if we had come at it from a position of a realisation of the actual status of the entire stock of reservoirs at the start. However, given where we are, it is now a judgement about whether we allow the Bill to proceed in majority part, so to speak, given the amount of time that has gone into it and the fact that we have embarked on this process. Am I right in saying that we were informed at the start that this related to an EU requirement?
105. **Mr Brazier:** Yes. The EU floods directive recommends that every European state look at and assess its flood risk. When the Department was assessing the flood risk for Northern Ireland, it included reservoirs. It identified that, unlike in England, Wales and Scotland, there was no regulation in Northern Ireland on reservoirs, so it sought the agreement of the Executive to bring forward primary legislation to close that gap. That approval was obtained, and that is why we are here bringing forward this primary legislation. So, yes; in a way, it has its roots in the floods directive.
106. **Mr Byrne:** The point is that what we are all more conscious of is that we have more flexibility; that is a reality of life in the last 10 or 12 years. We have to be careful where there are some reservoirs that are near built-up or urban areas. For example, we have had flash flooding in Derry city at least twice in the last 10 years. Given that there is one reservoir, in particular, operating close to Derry city, we have to be mindful of unforeseen circumstances and consequences. We would be lacking in public responsibility if we did not at least proceed. However, I think that the Department should be a bit more helpful in facilitating the work that we have to do.
107. **The Chairperson (Mr Irwin):** What is the role of the inspecting engineer here regarding the number of visits by a supervising engineer? Does he have a say in how many times visits are made?
108. **Mr Brazier:** Yes, he does. He can recommend that the frequency of supervising visits be increased beyond the minimum.
109. **The Chairperson (Mr Irwin):** I have no idea what the position of the Committee will be at the end of the day, but, if the Committee decided to go with Scotland and Wales and to have no maximum or minimum number of visits, what would be the protection for the reservoir manager? How is that managed? Do they manage the number of visits and when there should be a visit and when there should not?
110. **Mr Brazier:** It would be left to the supervising engineer. If an inspecting engineer recommended to a reservoir manager that the supervising engineer visits should increase in frequency, the reservoir manager, if he did not agree with that, could raise that with the Department in the same way that he could raise the matter of a supervising engineer wanting to come more often. There is also a dispute referral mechanism in the Bill, but that really is asking a reservoir manager to commission another reservoir engineer to have a look at it for him. That is why we made the amendment in the Bill to allow the Department to challenge that if we felt that it was appropriate to do so. In England, Scotland and Wales, they do not have a minimum. It is left to the reservoir manager and the inspecting engineer or supervising engineer to agree on the frequency between them and to the inspecting engineer and supervising engineer to justify to the reservoir manager the number of visits that should be made.

111. **The Chairperson (Mr Irwin):** That is OK. In relation to what the Deputy Chairperson has just said, I am told that there is a reservoir in Camlough in my constituency that could be highly dangerous. It is unfortunate. It would be much easier for us and you if those that are high risk or a threat had been identified much earlier, maybe with some sort of two-tier legislation being brought forward that did not incorporate those that are probably never going to be an issue. However, that is where we are.
112. Does anyone else want to come in before the officials leave? Is everyone happy that we have covered everything?
113. **Mr Poots:** Can we tie down the options? As a compromise, you have offered the Committee one year and three years.
114. **Mr Brazier:** That is the Department's proposed position.
115. **The Chairperson (Mr Irwin):** For medium risk; yes?
116. **Mr Brazier:** Yes. One year and three years.
117. **Mr Poots:** If we are unhappy with that —
118. **Mr Brazier:** No, the Committee was not happy with —
119. **Mr Poots:** However, if the Committee, after today, is not happy with that, what are the options? Will it just be thrown out, or is there another option?
120. **Mr Brazier:** Sorry. The Committee could come up with a different frequency if it wanted. As I said, the Department would make that amendment if the Committee so wished. We, on the Committee's behalf, could amend the Bill to reflect a lesser frequency of visits. However, the point that I made earlier is that, while the primary legislation might say that that is a minimum, in reality, it would be unlikely that a reservoir manager would be able to achieve that minimum unless the reservoir was in really good condition. So, in many instances, he may not be able to secure that.
121. **Mr Poots:** What size is a typical medium reservoir?
122. **Mr Brazier:** The designation is not determined by the size of the reservoir; it is determined by what is downstream. A high-consequence reservoir is determined because there are people who live downstream and close enough to the reservoir for their lives to be at risk from an uncontrolled release of water. A medium-consequence reservoir is one where there is no one living downstream, but economic activity might be disrupted by an uncontrolled release of water or cultural heritage or the environment ruined because of it. A low-consequence reservoir is one where none of those exists, and the reservoir is out in the country and might breach into farmland, for example. Although, it could be argued that that is disrupting economic activity. So, it is not based on the size of the reservoir. The average privately owned reservoir is 100,000 cubic metres of water, which is ten times the limit, with, on average, 500 people living downstream in the inundation area.
123. When we talk about privately owned reservoirs, we are not talking about the big Northern Ireland Water Silent Valley type, but some of them hold huge amounts of water that are held back by earth bank dams that have been there since the beginning of the last century and have not been examined or maintained in any way. The longer they go without being looked at, the more likely it is that something will happen unknown to the reservoir manager. In fact, we know that some reservoir managers do not recognise that they have a reservoir. They think that it is a lake, but it is not, and it is held back by a man-made earth dam that has animals living in it and shrubbery growing in it.
124. Craigavon lakes are a reservoir, for example, and they are called lakes. Camlough is not a lough or a lake; it is a reservoir. I am just trying to paint the picture here that those things were built more than 100 years ago mainly for the mill industry. They have been taken over and inherited by people who do not recognise what they are, but they are holding back huge amounts of water. If they are not looked after, they place at

- risk the people who live downstream. That is our concern. That is why we are trying to legislate to protect life, economic activity, cultural heritage and the environment from an uncontrolled release of water from one of those bodies.
125. **Mr Poots:** If a lake is man-made, it is not a lake; it is a reservoir.
126. **Mr Brazier:** It is not a lake; it is a reservoir.
127. **Mr Poots:** Even if it is in a sump and not liable to escape.
128. **Mr Brazier:** That is right. There are different definitions of a reservoir —
129. **Mr Poots:** They are very low-lying.
130. **Ms McKeown:** It has to be held above the natural level of the surrounding land to be a reservoir.
131. **The Chairperson (Mr Irwin):** We should go into closed session. Will you make yourselves available again?
132. **Mr Brazier:** Yes, of course.
- The Committee went into closed session from 4.23 pm until 5.26 pm.*
133. **The Chairperson (Mr Irwin):** The Committee has agreed that it requires that the Department brings forward a regime on the number of visits by a supervising engineer by regulation, subject to draft affirmative procedure. The Department should prepare to discuss the details of what is in the regulation with the Committee, but, as an early indication, we would like to see that supervising regime as per the amendment until reservoirs are brought up to a standard acceptable to the Department and then push the visits out further, once reservoirs have been subject to that and are repaired. They should be pushed out further to a standard acceptable to the Department. What is your position on that?
134. **Mr Brazier:** First, so that I understand it —
135. **The Chairperson (Mr Irwin):** Sorry, I was reading —
136. **Mr Brazier:** I just want to make sure that I have got it. You are asking the Department to set out the number of supervising visits by regulations rather than in the Bill. That is the first thing. Secondly, in making those regulations, you want flexibility in the regulations to set a standard for the frequency of those visits and you want the regulations to enable the frequency and number to be revised once the standard of the reservoir is established.
137. **The Chairperson (Mr Irwin):** That is right.
138. **Mr Brazier:** OK. We will consider that. I cannot give a commitment now, as it is subject to ministerial approval, but we will take that away, consider it and come back to the Committee as soon as we can. It will be a tricky amendment to the Bill because it is linked into the reservoir designation. The number of visits is determined by the designation of the reservoir, whether it is high, medium or low, so it is linked into that regime. It is doable. We just need to consider whether it is in the interests of the Department to do it.
139. **The Chairperson (Mr Irwin):** One would have thought that, if a reservoir was there for 100 years and was inspected and brought up to standard, why would it need to be inspected every 12 months?
140. **Ms McKeown:** It is not an inspection; it is a visit by a supervising engineer. An inspection is an entirely different regime. It is one in 10 years.
141. **Mr Brazier:** There is that point, but we are trying to bring in a regime where everybody is satisfied that a reservoir is being maintained properly. We take the point about the concern around the costs of that to a reservoir manager. We know that we are trying to reach a happy medium here. In saying that, doing what the Committee is asking is possible, but the Department needs to consider that and come back to the Committee and let you know whether it is prepared to do it.
142. **The Chairperson (Mr Irwin):** Are there any other questions?

143. **Mr Brazier:** It would be helpful if we knew the rationale for it because we need to share that rationale with the Minister. As I said when I mentioned it earlier, it could be that all we are doing is delaying making a decision around this for one or two years, and we will be in the same position when we bring forward the regulations. What is the Committee's rationale for asking the Department to make regulations? We are not asking for that now, but, if that can be put to the Department, we can share it with the Minister.
144. **The Chairperson (Mr Irwin):** The Clerk will write to you on that.
145. **Mr Brazier:** That is great. Thank you very much.
146. **The Chairperson (Mr Irwin):** Thank you very much. Sorry for holding you back.

10 February 2015

Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
 Mr Joe Byrne (Deputy Chairperson)
 Mr Sydney Anderson
 Mrs Jo-Anne Dobson
 Mr Tom Elliott
 Mr Kieran McCarthy
 Mr Oliver McMullan
 Mr Ian Milne

Witnesses:

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

147. **The Chairperson (Mr Irwin):** I welcome David Porter, grade 6, and Kieran Brazier, grade 7. I ask you to take up to 10 minutes to address the Committee and, following the briefing, we will seek Members' questions. You are both very welcome.

148. **Mr David Porter (Department of Agriculture and Rural Development):** Thank you, Mr Chairman, as ever, for inviting us to the Committee to debate what are hopefully the final stages of the Reservoirs Bill. I want to do two things. First, I will give you a brief update on two things: the number of reservoirs, which we have reviewed, and the audit that you had asked for. Secondly, Kieran will take over and talk us through the amendment to the Bill as requested.

149. What are the numbers at this time? If I may refresh your memory, we started by identifying 180-ish reservoirs at the very early stages. By the time we got to public consultation, we had refined that number to 156. That was the number — 156 reservoirs that were going to be subject to the future legislation — that I came with to the Committee and talked about. By refining the definition when we were going through the scrutiny phases, we got that number down to 150 or 151. Again, you are probably familiar with that number, because we have mentioned it

before. Since then we have continued to look at what other reservoirs we can get out at this stage, because we recognise that this is a burden on people and, in some cases, an unwelcome one. It would be very helpful if we could give people the good news, at this early stage, that they will not be subject to the Reservoirs Bill, so that they do not start employing engineers, incurring costs and giving us evidence. The good news is that we have managed to get the 151 down to 137. Of those that have been eliminated, 10 are owned privately and three by local councils. We intend to write out — we have literally just completed this work in that last number of days — to those people and tell them: "You know that we invited you to the consultation sessions on the Reservoirs Bill. We told you about it and had various discussions; but the good news is that you will not be subject to it, for the following reasons."

150. Most have been excluded on the basis of detailed work we have done to determine the size of the embankment. If you recall, we are talking about 10,000 cubic metres of water that could escape. We looked at those that were too small or just on the borderline, such that, with some further work, they could be taken out. We did that work and made sure that we knew those were out. We also carried out a piece of work on a further 21, which are sitting in that 7,500 to 12,500 range, some of which will also, I think, come out of the scope of the Reservoirs Bill. We are probably aiming for a figure of 130 reservoirs that will actually be subject to the legislation. Hopefully, that will be welcome to the Committee; I suspect it will be very welcome to the people who own those reservoirs. It means that we are really focusing in on people who need to know the detail of the Bill and will be subject to the burden of the legislation, while relieving those who do not, at this

- early stage. That is an update on the numbers.
151. The Committee had asked for a reservoir audit to be carried out. We have proposed to deal with that by amending the legislation to provide for a phase 1 and 2. Phase 1 brings in the definitions, makes it clear who is responsible and requires that initial assessment. Phase 2 covers the recurring elements of the Bill. We had to do a business case. The last time we were here we reported that it had been submitted to the economists and that we were at the final stages. We have now cleared all those hurdles and have an approved business case. Very shortly we will write to the reservoir owners to explain the scheme and make that available to them to start the process. That then will inform a report, which can be brought back to the Assembly or to the Committee, and the commencement date if phase 2 has to be commenced. That is a little bit of an update on the work we have done to reduce the number of reservoirs subject to the legislation and on the audit.
152. I now ask Kieran to give you an update on the amendment.
153. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** Good afternoon, Committee members and Chair. I start by going back a bit and setting the context. Forgive me if the Clerk has recently briefed you on this, but I think it is worth going over again. The Bill as introduced sets out the frequency and number of visits by supervising engineers. This was always a contentious issue for the Committee, but the Bill as introduced advises that a high-consequence reservoir would receive a visit at least twice in every 12-month period and a medium-consequence at least once. That was debated long and hard in Committee, and the Department agreed that it would bring forward a proposed amendment to reduce that. The proposed amendment was to reduce visits to a high-consequence reservoir to one every 12 months and to a medium-consequence reservoir to one every 24 months. The Committee was not content with that, and during the formal vote on clauses, it voted that it was not content with that proposed amendment.
154. The Department brought forward a second proposed amendment that moved the number of visits out again. It remained the same for a high-consequence reservoir, at once every 12 months, but for a medium-consequence reservoir it moved out to once every 36 months. In fairness to the Committee, it noted that it was a bit too late for the formal voting stage, and that is the position that was recorded in the Committee's report to the Assembly.
155. That is where it sat until the Committee's meeting on 11 November, when it considered this matter again and deliberated on five options. It decided to ask the Department to amend the Bill to provide that the number of visits by a supervising engineer would be set by regulations subject to draft affirmative procedure. The Department considered and agreed to that request and put forward a proposed amendment that I will take you through. It is set out in the Department's letter to the Committee dated 2 February.
156. The proposed amendment does a number of things. First of all, it removes at clause 25(2)(k) any reference to the number and frequency of visits by a supervising engineer. It also removes the reference to those visits from clause 33(4)(i) and amends it slightly. Those were the two main clauses that were a bone of contention, so from the Bill has been removed the specific reference to the minimum number of visits by a supervising engineer. That is entirely consistent with the request that was made by the Committee to the Department.
157. Secondly, it would introduce a new clause 25A, which makes provision for the making of the regulations regarding the frequency of visits to a medium- and high-consequence reservoir. New clause 25A also allows for an appeal by a reservoir manager against any decision that the Department may make with

- regard to the acceptable standard of a reservoir.
158. It then does a number of other things. It makes reference in clause 103A and schedule 3, which deal with appeals to the Water Appeals Commission, to new clause 25A. Importantly, it also includes reference to clause 25A in clause 117(3). That lists those regulations and makes sure that they are brought forward through draft affirmative resolution procedure. Therefore, the Committee will be given an opportunity to consider the draft regulations before they are put before the Assembly and to challenge them.
159. It also makes reference to new clause 25A in clause 120. That is the clause that introduces the Bill in two phases, so it makes sure that that clause is in the second phase. Supervising visits come in the second phase of the Bill, so it makes sure that that is all done.
160. Those are the technical aspects of the proposed amendment. How this will work is pretty straightforward. Every medium- and high-consequence reservoir will commence with a standard number and frequency of visits. That will reflect the position that the Department put forward as its final proposed amendment, that is, a high-consequence reservoir would receive a visit at least once every 12 months and a medium-consequence reservoir once every 36 months. That is entirely consistent with the Committee's request to the Department.
161. That position will be reviewed when the Department is satisfied that the reservoir is in good condition. We will review it for a number of reasons. If we receive an inspection report that states that there are no concerns with safety, we will review it. If we receive an inspection report that states that works are needed in the interests of safety, and then we receive a certificate that advises that those works have been done by the reservoir manager and the reservoir has therefore been made safe, we will also review it. If we get an annual statement from the supervising engineer that shows that there are no safety issues, we will review it. If we get formal information from inspecting engineers or supervising engineers, the Department will review the frequency and number of inspections.
162. We have not yet decided how that will manifest itself, but the number and frequency of inspections will be reduced at that stage. We imagine that it will move from at least once every 12 months for a high-consequence reservoir. I want you to bear with me on that, because we have not absolutely decided. It may move, for example, from an inspection of a high-consequence reservoir at least once every 12 months to at least once every 24 months. For a medium-consequence reservoir, it could move from an inspection at least once every 36 months to once every 60 months, which is five years. That is our thinking at this point. I am happy to take any questions that you might have on that.
163. **The Chairperson (Mr Irwin):** OK. Thank you very much for your presentation. I welcome the fact that a number of smaller so-called reservoirs have been taken out of the equation. That was a big concern for me and for many Committee members. What is the indicative timescale for the introduction of the new regulations?
164. **Mr Brazier:** As I said earlier, once the Bill is enacted, certain parts of it will be commenced in phase 1. The requirement to engage a supervising engineer will come in phase 2, and that will only be considered when the Assembly receives the audit on the condition and capital costs of fixing the reservoirs. We expect that that report will be before the Assembly in July next year at the latest. Assuming that it comes in July next year and that phase 2 of the Bill is commenced after that, we imagine bringing forward regulations in the autumn of 2016.
165. **The Chairperson (Mr Irwin):** OK. Will you talk us through the appeals process, please? How will a reservoir manager

- appeal a decision on the frequency of visits?
166. **Mr Brazier:** When the Department receives information with regard to the condition of the reservoir, hopefully the reservoir owner will have nothing to appeal. If a reservoir is given a clean bill of health and is found to be safe, the Department will readily amend the frequency and number of visits. If we decide not to do that, the reservoir owner would appeal that decision to the Water Appeals Commission. That is the independent body that will hear evidence from the reservoir manager and the Department and will make an independent decision that will hold good. The Department will have no say over that once the appeals mechanism has been engaged by the reservoir manager.
167. **Mr McMullan:** Thanks for your presentation. I, too, welcome the fact that the smaller reservoirs have been taken out.
168. I do not have a lot to ask you. The one thing that still bugs me is the definition of high- and medium-consequence reservoirs. If a high-consequence reservoir is brought up to standard, when can it be downgraded to a medium-consequence reservoir? I am thinking away ahead and of problems with getting insurance or a block on planning or something like that downstream from the reservoir. I would like to see something in the Bill that shows how a high-consequence reservoir could be downgraded to a medium-consequence reservoir.
169. I would maybe like the inspections to be extended from once every 24 months to once every 36 months. It could maybe even be the same as the five-year one — the 60 months. Those are my concerns.
170. **Mr Porter:** There are a number of items there. You mentioned planning, extending the time and the difference between high- and medium-consequence reservoirs. Planning is dealt with under planning policy statement (PPS) 15, and the new version has been accepted. It does not block development downstream of a reservoir except for very specific types of use. It calls into question whether you want to put critical infrastructure there, for instance, a power station, or whether you want to put dwellings for vulnerable people, an old-people's home or a hospital or something like that, there. It questions whether that is the best use of it.
171. You will not be blocked from development for dwelling houses downstream of a reservoir because, as I have said a number of times, provided that a reservoir is inspected by a competent person, they are safe to live below. A reservoir failure is a highly unlikely event. Our issue with reservoirs is that, if they are allowed to deteriorate and they do collapse or fail, the consequence of that failure, because of the amount of water that they hold, would be so catastrophic. However, the likelihood of that happening is remote, and it is particularly remote if you have an inspection regime and a competent person keeping an eye on it. Planning for dwelling houses will not be blocked downstream of reservoirs, so hopefully that will give you some comfort.
172. As Kieran has outlined, we have not firmed up our thinking on extending the timescale. What Kieran has outlined are just our initial thoughts. We are happy enough, through the process of developing the regulations, to have that debate and possibly even to get some evidence to satisfy ourselves and the Committee that what we propose is correct. However, as Kieran has also outlined, that will be a number of months down the line — it will be 2016 — and we will have time to do that.
173. On the difference between the definitions, high consequence is where we identify that there is potential for a wall of water of a depth and velocity that could potentially cause death, and medium consequence is where it is going to wet the area below, but it will be shallow, slow-moving water. As I said before, it is deep, fast-moving water that kills people. We can model that

- and show how it impacts on people's property. The lower impact is what gets you into the medium-consequence category. We have also introduced, through the more recent amendments that we have taken through, a way in which you can carry out works to the reservoir to change that position.
174. **Mr McMullan:** Can I just quickly follow on from that? On the likes of planning, can we get a guarantee that there will be no charge to anybody who wants to find out about a certificate of competence from a high-consequence reservoir in the area, if it is asked for in their application? It could be in agricultural ground where diversification for tourist need, a hotel, a hospital — you name it — and would include vulnerable people, because we are talking about old-people's homes and things like that if we are talking about public buildings. If we need a certificate, will there be no charge for that?
175. **Mr Porter:** There is no formal certificate. What we have to do through the Bill is produce a register. There will be certain information on that register that a person who is compiling a planning application could seek access to. They would not get all of the information from the register, because, as we have talked about before, there are vulnerabilities surrounding a reservoir. There are certain pieces of information that should not be put out into the public domain. However, the presence of the reservoir, what category it is in and whether it is compliant with the Reservoirs Bill is information that will be readily available through the planning process.
176. **Mr McMullan:** What is the safe ground around a reservoir? What is the clear ground around a reservoir that nothing can happen in?
177. **Mr Porter:** It is not that nothing can happen. As we all know, water flows downhill, so the area that we are concerned about is the area immediately downstream from a reservoir. There are now very sophisticated packages that can model what would happen in the event of a breach. They tell you not only the area that would be flooded but the depth and velocity of the water. As we are going through the process, we will be able to determine the depth and velocity that are triggers for concern. That takes in the high-consequence category. We will also set a threshold below which we are not concerned about the reservoir. You will be able to get access to that information.
178. **Mr Milne:** Thanks for your presentation. We have come a long way since the first time that I heard of the Reservoirs Bill. I was not very comfortable with it, but today I feel that we are in a better place. We now have a situation in which every aspect of it looks more realistic.
179. You say that 13 reservoirs have been taken off the list of 150. Where are those reservoirs? People have talked to us about them, and I would just like to know where they are. Who took the decision that those 13 reservoirs should be downgraded? Was it you and the engineers in the Rivers Agency?
180. My third and final point relates to the 21 reservoirs that you are revisiting. How many of those are in private ownership?
181. **Mr Porter:** There are three questions there: where the reservoirs are; who made the decision; and what the make-up of the 21 reservoirs is.
182. I do not have the details about *[Inaudible.]* but the 10 individuals will get a letter. I am not sure that I would want this in the public domain, but we are certainly happy enough to talk to you privately about where they are. Three are owned by councils. One is in the Ards Borough Council area, another is in Lisburn and the third is in Belfast. They will also get a letter to say that we have done the work.
183. Who decided? We set up a group in the Rivers Agency by pulling together four people who collectively took the decision, having recognised that there was a series of decisions to be taken about impact and designation. Rather than put the burden of hearing some of the informal appeals, as well as deciding what is a reservoir and whether it meets

- the threshold, on one individual, a group of engineers, policy people, and mapping and modelling people debated what we felt collectively was the right answer. Therefore, the group in the Rivers Agency decided.
184. We are going to go through the same process with the 21 reservoirs. The difference is that we needed some further information, because they are so close to the 10,000-cubic-metre threshold that we need to send out a survey team to make sure that we have the height and size of the dam correct. A small change to the assumptions that we made at the early stage, particularly on those that are very close to that threshold, could make a big difference and knock some of those out. We are going to commission that work externally, both because we do not have the survey team in the Rivers Agency and because it brings a level of independence to the work. Somebody will look at the 21, give us the size information and the other information that we require, and then the panel that I mentioned earlier can review it.
185. We do not have the details on the ownership of the 21. It is a different 21.
186. **Mr Brazier:** From memory, the vast majority of those are in private ownership.
187. **Mr Anderson:** Thank you, gentleman, for your presentation. Some of my questions have been answered. You talk about the 21. Do you think you can get the figure down to approximately 130, having started with 180 or so? Will that mean, then, most of the 21 being taken out? If the extra work were done to the 21, what do you think the final figure would be?
188. **Mr Porter:** I think that it is probably in and around 130.
189. **Mr Anderson:** Still only 130.
190. **Mr Porter:** We are sitting at 137. I am fairly sure, from looking at the 21, that we will take seven off the list — perhaps eight or nine — so we may get down below 130. Our gut feeling is that, from looking at the size of the 21, the figure will be in and around 130. We have tended to find that, when we do a little bit of refining work, the size of reservoirs is reduced. Only the size of very, very large ones increased. Some of the assumptions that we made worked quite well for the small reservoirs, as they did not overestimate their size. When we refined the assumptions, that brought their size down a little bit. I cannot think of any small reservoirs that actually got bigger. I am therefore being cautious by saying eight or nine of the 21. It may be a few more, but I do not want to oversell that to you. I am quite happy, once we have finished the work, to write to you with an update, if that will be helpful.
191. **Mr Anderson:** I know that this has been mentioned before, but is the ownership of any of the reservoirs still unclear?
192. **Mr Brazier:** We have two.
193. **Mr Anderson:** You still have two.
194. **Mr Brazier:** Yes, we have two.
195. **Mr Anderson:** What do we do with those?
196. **Mr Brazier:** We hope to find the owners.
197. **Mr Anderson:** What if you do not?
[Laughter.]
198. **Mr Porter:** There is provision in the Bill for the Department to step in to carry out measures in the interests of public safety. We would commission an inspection report, and, if there are matters to be dealt with in the interests of public safety, we would have emergency powers to step in. That case is dealt with in the —
199. **Mr Anderson:** Are the two high-consequence reservoirs or medium-consequence reservoirs? Do we know?
200. **Mr Brazier:** Both are high-consequence reservoirs.
201. **Mr Anderson:** It is in our interests to find out who owns them or to ensure that, if we do not find who owns them, we get those tests carried out.

202. **Mr Brazier:** At the moment, we are looking at that informally. When the Reservoirs Bill becomes law, and people are required to register, at least the Department will then have the power to seek formally the owners of reservoirs that have not been registered, although the two might be registered in the meantime. At the minute, it is very informal, and we have been successful in getting all but two, but those are two that stand out. We cannot put our finger on who owns them.
203. **Mr Anderson:** Would the new councils have a role in working with the Department in whatever area they are in?
204. **Mr Brazier:** That would be helpful if that were the case, but the councils would not have the power to do anything. The provisions in the Bill lie with the Department.
205. **Mr Anderson:** Surely the councils concerned would be very interested were something to go wrong in their area.
206. **Mr Brazier:** Yes, absolutely. The more help that we can get, the better. We would very much welcome that. I am just distinguishing between the powers in the Bill that rest with the Department to require a reservoir manager to register a reservoir with the Department and the powers of a council. Those powers would not rest with the local council.
207. **Mr Anderson:** Would you consult with the councils in that area?
208. **Mr Brazier:** Yes, absolutely.
209. **Mr Porter:** To be clear, there is no requirement on a council to go in. At an early stage, there was a concern, particularly from councils, that we were trying to foist “orphaned reservoirs”, as they were then termed, on to them.
210. **Mr Anderson:** The Department should certainly be in touch and working with a council that has a high-consequence reservoir that could have a detrimental effect on the area.
211. **Mr Brazier:** That is a good suggestion. Thanks.
212. **Mr Anderson:** Who pays for that is another issue. I am not suggesting that ratepayers do so. What I am saying is that it would certainly be very much in the Department’s interests to get everyone on board.
213. **Mr Porter:** The powers are there for the Department to step in and carry out any works that are required in the interests of public safety, just to be clear. The Department, because it has the powers, would cover the cost of dealing with the things that need immediate attention and hold that cost until such times as an owner was found or it was accepted at some point —
214. **Mr Anderson:** Perhaps you will find the owners.
215. **Mr Byrne:** I welcome the update and am glad that you have managed to refine through your survey the number of potentially viable reservoirs in the Bill. The council areas of Belfast, Ards and Lisburn have reservoirs that are no longer in that category. Is that right?
216. **Mr Porter:** Yes, that is correct.
217. **Mr Byrne:** I want to ask you about Camlough lake, which caused some concern at the end of last year. Has its ownership been clearly established yet? What is the situation?
218. **Mr Porter:** As I reported before, the owners of Camlough lake are all deceased, and nobody took up the positions as trustees of the waterworks after those people became deceased. However, under the Reservoirs Bill, it is very clear that, if a water company removes water from a reservoir, it is a reservoir manager. The legislation is also very clear that others who have a responsibility for a reservoir will be reservoir managers.
219. That has enabled us to identify that Northern Ireland Water and Newry and Mourne District Council have a responsibility for that reservoir. When we came before the Committee previously, there was a concern about Camlough lake, and, to be fair to them, those two organisations have

- managed the situation very well. They have drawn down the water and put in works to ensure that the reservoir does not fail. They recognise their future responsibilities under the Reservoirs Bill and their current liabilities when they carry out activities.
220. There continues to be a discussion between Northern Ireland Water, Newry and Mourne District Council and us about the longer-term ownership. That has not been finalised, but it did not stop action being taken to alleviate the potential failure of the reservoir.
221. **Mr Byrne:** Are you satisfied that the necessary remedial action has been taken to safeguard the current operation there?
222. **Mr Porter:** Absolutely. I cannot praise Newry and Mourne District Council and Northern Ireland Water highly enough for the actions that they have taken. However, those are two public bodies that understood their liabilities and responsibilities. If it had been a privately owned reservoir, if it were one for which the ownership was unknown or if we did not have a public body involved, we might not have got the same level of cooperation. That really reinforces the need for the Reservoirs Bill, because, in the case of an imminent failure, we need people to take action. That is what the Bill does. It requires people to take action, not just during the emergency but in the run-up to it to try to alleviate the situation so that we do not get into the position that we faced in November with Camlough lake.
223. **Mr Byrne:** I welcome that. Finally, on those reservoirs that are owned or used by the third sector, what is the status of the Creggan reservoir in Derry? Who is its owner? Has that been determined yet?
224. **Mr Porter:** Evidence was given to the Committee that that reservoir is in the ownership of the association that is behind Creggan Country Park. Representatives of that organisation gave evidence to that effect. That position has not changed.
225. After those representatives gave evidence, we had informal discussions with them, because there are some other users of that water and some landowners who own land in and around the dam. I understand that representatives of the association were to have discussions with some other bodies. I have not had an update on that, and, when it is registered, it will be interesting to note how many other names appear. From listening to their evidence, it was clear that they knew that they were responsible for the dam, but there may be others who should share that ownership.
226. **Mr Byrne:** OK. I welcome the update on proposed new clause 25A. Good progress has been made on that.
227. **The Chairperson (Mr Irwin):** Oliver McMullan, do you want to come back in?
228. **Mr McMullan:** Yes, very quickly.
229. **The Chairperson (Mr Irwin):** Very quickly, please.
230. **Mr McMullan:** You said that councils do not have to inspect reservoirs. Would that duty not become part of councils' emergency plans? Furthermore, councils now have planning powers, so they would need to have a register in building control for applicants. Councils have a big role to play.
231. **Mr Porter:** For clarification, we are making it very clear in the Bill that a council will not become responsible for the ownership or maintenance of a structure. At a very early stage, there was a concern that, if we could not find anybody to look after a reservoir, responsibility would default to the council, and that is not in the Bill.
232. **Mr McMullan:** I do not mean that. Every council has a contingency plan.
233. **Mr Porter:** There are two areas of planning that we need to deal with: one is the emergency planning; and the other is the land-use planning. On the emergency plan, we have made available to the councils information about reservoirs, and we continue to do that

for flooding. I have no concerns about that. Newry and Mourne District Council is a very good example. It was aware of the risks and had flood-inundation maps and a very well-developed flood plan for the reservoir.

234. You are correct about land use. A planner today needs to know that there is a reservoir there and have a flood-inundation map in its system. When that transfers to the council for it to take that decision, it will have access to the same information.
235. **Mr McMullan:** Chair, I am also happy with new clause 25A.
236. **The Chairperson (Mr Irwin):** Thank you very much for your presentation. I ask you to go back to the Public Gallery while I take the Committee through the amendments.
237. I advise Committee members that we need to decide whether we are content with the amendments.
238. Are members content to accept the proposed amendment to create new clause 25A?

Members indicated assent.

239. **The Chairperson (Mr Irwin):** Are members to content to accept the proposed amendment to clause 33(4)(i)?
240. **Mr Byrne:** It is consequential, is that right?
241. **The Committee Clerk:** Clause 33(4)(i) is the one in which the inspecting engineer can specify extra visits by a supervising engineer.
242. **The Chairperson (Mr Irwin):** Are members content?

Members indicated assent.

243. **The Chairperson (Mr Irwin):** Are members content to accept the proposed amendment to create new clause 103A and the proposed amendment to schedule 3?

Members indicated assent.

244. **The Chairperson (Mr Irwin):** Are members content to accept the proposed consequential amendment to clause 117?

Members indicated assent.

245. **The Chairperson (Mr Irwin):** Are members content to accept the proposed consequential amendment to clause 120?

Members indicated assent.

246. **The Chairperson (Mr Irwin):** I advise members that the accepted amendments will be reflected in the addendum to the Committee report, which will be provided in time for Consideration Stage.

3 March 2015

Members present for all or part of the proceedings:

Mr William Irwin (Chairperson)
 Mr Sydney Anderson
 Mr Thomas Buchanan
 Mrs Jo-Anne Dobson
 Mr Tom Elliott
 Mr Kieran McCarthy
 Mr Oliver McMullan
 Mr Ian Milne
 Mr Edwin Poots

247. **The Chairperson (Mr Irwin):** Members will recall that, at the meeting on 10 February, the Committee agreed further amendments to clauses in the Reservoirs Bill. As the report has already been signed off, the accepted amendments need to be added in an addendum. I will now take members through each section and paragraph of the addendum and seek their agreement or otherwise.

248. Before I go into this, do I still have time to do it?

249. **The Committee Clerk:** You have about 10 or 15 minutes.

250. **The Chairperson (Mr Irwin):** Can it be done in that time?

251. **The Committee Clerk:** You can get that done, at least.

252. **The Chairperson (Mr Irwin):** OK. I refer members to the executive summary. Are members content with paragraphs 1 to 20?

Members indicated assent.

253. **The Chairperson (Mr Irwin):** I refer members to the consideration of the recent amendments put forward by the Rivers Agency and the Committee decision. Are members content with that page in total?

Members indicated assent.

254. **The Chairperson (Mr Irwin):** I refer members to the details of the content of

each of the appendices. Are members content?

Members indicated assent.

255. **The Chairperson (Mr Irwin):** I advise members that the report needs to contain the relevant extract from the minutes of today's meeting to outline the agreed content of the report. I seek agreement for the inclusion of today's minutes in the report prior to members having sight of them. Are members content?

Members indicated assent.

256. **The Chairperson (Mr Irwin):** The Committee for Agriculture and Rural Development orders the Reservoirs Bill report NIA 234/11-16. Are members content?

Members indicated assent.



Northern Ireland
Assembly

Appendix 4

Correspondence

Letter from ARD Committee to DARD re Reservoir Bill 111114



Northern Ireland
Assembly

Committee for Agriculture and Rural Development

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Mr Paul Mills
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Rural Development
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12 November 2014

Dear Paul,

Reservoirs Bill

At its meeting on 11th November 2014, in preparation for the Consideration Stage Debate in the Assembly, the Committee reflected on its position on the Reservoirs Bill. As part of that process it also considered the issue of the number of visits by a supervising engineer as per C25(2)(k) and 33(4)(i). The Committee had previously indicated in its Bill Report on the Reservoirs Bill that it was not content with the proposed amendments on this issue from the Department.

The Committee has now formally taken a position and requests that the Department brings forward an amendment to the Bill to provide that the regime on the number of visits by the supervising engineer to high and medium consequence reservoirs is done by regulation subject to draft affirmative procedure. This would replace the provisions in the Bill at C25(2)(k) and 33(4)(i).

The detail of what is in the regulation will need to be discussed with the Committee in due course but as an early indication the Committee would like to see a regime where the supervising engineer would visit a high consequence reservoir at least once in every 12 month period and for a medium risk reservoir at least once in every 36 month period, until the reservoir is brought to a standard that is acceptable. Thereafter the Committee would like to see the number of visits by a supervising engineer reduced.

The Committee has indicated that its position on this issue is based on the lack of information about the condition of reservoirs in Northern Ireland. This lack of information means it is extremely difficult for it to judge whether the schedule of supervised visits as proposed in the Bill and the amendment is at the correct level. You may also wish to assume that the information from the Reservoir Audit, when available, may influence the thinking of what the Committee would like to see in the proposed regulation.

The Hansard of the Committee meeting will be available shortly and you may also find this helpful on the thinking of individual members of the Committee.

Yours sincerely,

Stella McArdle

Clerk, Committee for Agriculture and Rural Development

Letter to Clerk re Reservoirs Bill 12-2-15



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Our Ref:

Your Ref:

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
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Belfast BT4 3XX

Date: 12 February 2015

Dear Stella

Reservoirs Bill

At the ARD Committee meeting on 10 February 2015, Rivers Agency officials updated the Committee on the:

- Reservoirs Review, which has resulted in a reduction in the number of reservoirs likely to fall within the scope of the Bill;
- Reservoirs Audit; and
- Proposed amendment to the Reservoirs Bill on the number and frequency of visits by a supervising engineer.

Details of the proposed amendment are contained in my letter to you dated 2 February 2015.

The purpose in writing is to confirm the position with regard to the reduction in the number of reservoirs and the Reservoirs Audit.

Reservoirs Review

The Department is currently reviewing the number of reservoirs which it considers will come under the scope of the Reservoirs Bill in order to ensure that the list contains only those reservoirs that definitively meet the controlled reservoir criteria.

Previous reviews have resulted in the number reducing from 161 to 156 and, more recently, to 150 reservoirs.

The findings of a recent review were presented on 3 February 2015 to the Reservoirs Authority Engineering Board. The Board, which comprises Rivers Agency officials, decided to remove a further 14 reservoirs, 13 because they are not capable of retaining water at or above 10,000m, and one because it is no longer capable of holding any water.

Eleven of these reservoirs are privately owned, while the remaining 3 are the responsibility of Belfast, Lisburn, and Newtownards Local Councils respectively. The Department is in the process of writing to all relevant reservoir owners to advise them that their reservoirs will not come under the scope of the Reservoirs Bill.

The Board also decided to re-instate one reservoir that had previously been removed, pending more detailed examination.

The current number of reservoirs is 137, see **Annex A**. The review is continuing and will examine a further 21 reservoirs. I will provide the Committee with the results of this work once it has been completed.

Reservoirs Audit

The business case has been approved and the text below outlines the purpose, scope, and methodology of the Audit.

Purpose

The purpose of the Audit is to obtain information on the condition of reservoirs, together with an estimate of the capital cost of making them safe. The information on each reservoir will be collated into a report and presented to the NI Assembly. This will enable consideration to be given to the commencement of the provisions in the Reservoirs Bill as set out in Clause 120 (2A) and more commonly referred to during the Committee Stage as stage 2 of the Bill. These include the requirement on a reservoir manager to commission a supervising engineer and the requirement to comply with any direction contained in an inspection report.

Scope

The Audit will include those reservoirs that are likely to receive a designation of High or Medium Consequence, when the Bill is enacted. Low Consequence reservoirs have been excluded because they are unlikely to pose a risk to people, economic activity, the environment, or cultural heritage, in the event of an uncontrolled release of water due to dam failure.

Methodology

Reservoir managers will be asked to provide the Department with the required information by:

- i. Commissioning an "All Panel Reservoirs Engineer" to extract information on the condition of the reservoir from an existing inspection report and transfer this, together with the capital cost estimate, to a pro-forma developed for this purpose by the Department; or
- ii. Commissioning an "All Panel Reservoirs Engineer" to complete the pro-forma following an examination of the reservoir; or

-
- iii. Permit Rivers Agency to arrange for a reservoir to be examined by a reservoirs engineer.

The Department will reimburse the costs of the audit to the 34 private sector reservoir managers and the 9 charitable organisations that agree to options i or ii up to a limit of £2,500.

Alternatively, for those reservoirs that have never been inspected or have not been inspected for a considerable period of time, the reservoir manager can choose to use the funding to commission a full inspection of the reservoir and to arrange for the engineer to complete the pro-forma (as per option i above). It is envisaged that managers will decide to use the available funding in this way because a full inspection will help meet the initial requirements of the Reservoirs legislation.

The Department has written to the 35 engineers on the DEFRA list of All Panel Reservoirs Engineers to advise them of the Reservoirs Audit and to ask if they would be content for the Department to share their contact details with reservoir managers in Northern Ireland who agree to participate in the Audit. The contact details of those engineers who do not wish to be contacted will be removed from the list that is issued. To date the Department has received responses from 26 reservoirs engineers, 22 of whom have agreed for their details to be included. This should allay any fears the Committee may have that there is a shortage of reservoir engineers willing to work here.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely

Paul Mills

Departmental Assembly Liaison Officer

Annex A

Reservoirs Review

Number of reservoirs	150
*Excluded reservoirs	14 (11 Private/ 3 Local Council) (5 High / 9 Low Consequence) (13 Volume below 10,000m² /1 abandoned)
**Re-instated reservoirs	1 (Private & High Consequence)
Revised number of reservoirs	137

*Excluded Reservoirs

Excluded - volume below threshold:	13
Private	10
Local Council	3

1 Newtownards Council (Leadmines); 1 Lisburn Council (Wallace Park) & 1 Belfast City Council (Halfmoon Lake)

4 High Consequence

9 Low Consequence

Excluded – abandoned ie; not capable of holding any water 1

Private. High Consequence.

**Re-instated reservoirs

Re-instated (pending further examination) 1

Private. High Consequence.

Overview

Ownership	Total		High Consequence		Medium Consequence		Low Consequence	
	Orig	Revised	Orig	Revised	Orig	Revised	Orig	Revised
Public	78	75	59	57	16	16	3	2
Private	61	50	25	23	10	9	26	18
3rd Sector	9	9	6	6	3	3	0	0
Unknown	2	3	1	2	0	0	1	1
Total	150	137	91	88	29	28	30	21



Northern Ireland
Assembly

Appendix 5

List of Witnesses

List of Witnesses

Mr Kieran Brazier	Department of Agriculture and Rural Development
Mr David Porter	Department of Agriculture and Rural Development
Ms Mary McKeown	Department of Agriculture and Rural Development



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