



Northern Ireland  
Assembly

**Committee for Agriculture and Rural  
Development**

**OFFICIAL REPORT  
(Hansard)**

**Reservoirs Bill: Policy Proposals**

**07 February 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Agriculture and Rural Development

### Reservoirs Bill: Policy Proposals

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

Mr Paul Frew (Chairperson)  
Mrs Dolores Kelly (Deputy Chairperson)  
Ms Michaela Boyle  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Mr Willie Clarke  
Mrs Jo-Anne Dobson  
Mr William Irwin  
Mr Oliver McMullan  
Mr Robin Swann

**Witnesses:**

Mr Philip Mehaffey	Department of Agriculture and Rural Development
Mr David Porter	Department of Agriculture and Rural Development

**The Chairperson:** I welcome David Porter, director of development at the Rivers Agency, and Philip Mehaffey, its operations director. The Committee received presentations on 7 June and 29 November last year. We are now in a position where the Department will seek approval from the Executive to go out to formal consultation on proposed legislation. I am sure that we will seek a presentation on the findings of that consultation. No pun intended, but I do not want to go too deep today on the procedure or content of the consultation.

**Mr David Porter (Department of Agriculture and Rural Development):** Thank you very much, Chairman and Committee. To put Philip's being here into context, we have also been asked to talk about the Pat Doherty report. Philip is operations director, so he is not involved with the evidence session on reservoirs. However, it is easier for both of us to appear before the Committee rather than chop and change.

The first item is procedural. We are here to give the Committee the draft consultation, because it is now in the process of getting Executive approval before it goes out to the public. This is just a step in the process.

I will quickly remind the Committee of the context: a number of deaths occurred in 1925 in north Wales and Scotland because of reservoirs. Those deaths led in the 1930s to the first legislation to

regulate reservoirs. The legislation was updated in 1975. The current regime applies in England, Scotland and Wales, but none of it applies in Northern Ireland. It has been known for quite some time that that gap needed to be addressed. It was identified most recently in the policy review on flood risk management, titled 'Living with Rivers and the Sea'. The impact was also quantified in the preliminary flood risk assessment (PFRA), which we will talk about shortly. That at least gave us an insight into the potential impact.

With all that background information, we went to the previous Executive and said that if there was significant risk, we needed to introduce legislation. That gave us cover, and they approved our developing a policy, which we presented at the last meeting, and then our developing the public consultation document.

I want to draw to your attention two or three things in the document. The vast majority of it — the first eight or 10 pages — is exactly the same as was presented to you previously. You will notice that the document is considerably longer than the previous one. That is because of the detail that is required in some areas and to make sure that all policy areas are well enough covered. All the procedural things, such as right to entry, record keeping and everything associated with reservoir safety are included but are not really the main policy development issues.

Nothing has changed in the procedures or the framework that we discussed previously in some detail. There was no issue in that regard. At the previous Committee meeting that we attended, we had some discussion about the potential costs. We have made two changes on the back of the discussions that we had. We have added, on page 45, a section on grant aid. We have included a consultation question on whether government should consider grant-aiding the improvement of structures. Its inclusion came about as a direct result of the discussions that we had previously. There was also some discussion about the likely cost that an individual owner would be faced with, and we have included those on page 46 of the document. Again, that was as a direct result of the comments that we received from the Committee.

I also draw your attention to annex K. Members do not need to go to the page, because I just want to read out a couple of dates. Perhaps we can have any Committee feedback on the document by the end of this week. We are not asking for answers to the questions but for comments on the document. Perhaps there is something that does not quite make sense, perhaps we have not answered something well enough or perhaps there is something that needs more clarification. Perhaps some of the consultation questions that we have chosen to put in do not cover all the areas. That is the sort of feedback that we are seeking at this stage.

We require a fairly tight timescale because we need to issue Executive paper 2. Our target is to issue it on 29 February, which will allow us to hit the agenda of the Executive meeting of 8 March and keep the process moving fairly quickly. That then allows us to start the public consultation, hopefully, on 12 March through to 1 June. We have three public information sessions pencilled in: one in Hillsborough; one at Greenmount campus; and one at Loughry campus. We are starting to put in place the arrangements for those. After that, we will come back to the Committee with a consultation report. Our aim, at this stage, is to try to hit the last meeting in the current session so that we get in just before the summer recess. However, that is entirely dependent on the level of consultation that we get and the issues that are raised. If some very fundamental issues are raised, we may seek to consider them over the summer recess and come before you at the first or second meeting of the new session. That is the timescale at the minute. This is more procedural and is for you to have the opportunity to give us some feedback so that we can start the Executive stage and public consultation.

**The Chairperson:** Members, are there any questions?

**Mr W Clarke:** On the appeals mechanism, which is question 12 in the consultation questions, who will handle appeals? Will they be done independently?

**Mr Porter:** There are two sets of appeals. There is an appeal during the process, where you can come to the Department and provide additional information. That is an informal appeal. We have included that because it will be, essentially, a low-cost or no-cost appeal initially. If you are still not satisfied with the decision, there is an independent appeal that will be chaired by the Institution of Civil

Engineers (ICE). We have that two-stage approach because, generally, we should be able to deal with most of the queries at no real additional cost. If we cannot deal with something, it is only then that we will have to bring in somebody independent because of the associated costs. The ICE is best placed to deal with that.

**Mr McMullan:** You talked about introducing a possible grant system. Do we know any information about that, or is it at a stage now at which you are not sure about the level of grant, and so on?

**Mr Porter:** We are trying to gauge the public's idea of what they want. We are writing primary legislation to take the powers to do various things. What we are trying to gauge is whether there is an appetite among the public for repairs to those structures to be grant-aided, and if not, we will take the power but will not develop a scheme. However, we know for a fact, because we have already had informal stakeholder engagement, that grant-aiding and improvements to structures is a very big issue. Therefore, we expect it to be the main issue that will come out of the public consultation. We have no scheme in mind at present.

**Mr McMullan:** Is there any grant aid in England or other jurisdictions?

**Mr Porter:** There is no grant aid in England and Wales. Scotland is considering whether to grant-aid. We are in a slightly different position because the 1930s legislation, and that of 1975, applied to England and Wales, so in that jurisdiction there is a long history of maintaining structures in a reasonably good condition. The reason that there is a need for grant aid here is because there has not been a history of maintaining structures, and, therefore, we anticipate some problems because people have not been maintaining the structures and do not have the means to bring them up to a reasonable standard. Therefore, we are asking whether government should step in and offer some assistance to owners if we encounter such a situation.

**Mr McMullan:** Is that not the case with other structures? Does government not step in in the case of dangerous buildings, and so on? That legislation is there at the minute. Should it not be rolled out to cover reservoirs?

**Mr Porter:** It is similar legislation. One difference is that we will be requiring owners to carry out the work, so the question is whether government should be grant-aiding. We will also be taking the powers to require owners to carry out works, as they do under dangerous buildings legislation, so that government can require works to be carried out. The issue arises where it is very expensive and the person does not have the means to do it. That is where the grant aid scheme may work.

All that we are trying to do at this early stage is see whether there is an appetite for it. If we get a blanket no, and the feeling is that those reservoirs are owned by individuals who really should be looking after their own structures, we can at least include that view in the recommendations. However, we expect there to be a call for some form of grant aiding to help some of the owners.

**Mr McMullan:** If we step in to make a reservoir safe because it is too costly for the owner to do so, can we recover the cost?

**Mr Porter:** There are two types of situation. In one, we require the owners to do the works. In cases in which they do not do those works, we will have the powers to step in, do them and recover the costs. Therefore, we will be able to recover costs in that situation.

A slightly different situation arises where the owner does not have the means to do the works and to repair the structure is just too costly. In some of the examples that we have looked at in England and Wales, structures have needed a quarter of a million pounds worth of works carried out because they had not been looked at over time. If the structures are held in a trust that has no assets other than the reservoir, clearly owners cannot carry out those works. That is the type of situation that we are trying to anticipate. We are seeking the public's opinion as to whether we should introduce a grant scheme.

**Mr McMullan:** It is interesting that some of the reservoirs are held in trust. It is very unfair for a man who, under the dangerous buildings legislation, cannot afford to fix that building. If the powers that be

step in and fix it, he and generations after him are liable for that debt. Do we make a distinction between assets held by individuals and those held by a trust?

**Mr Porter:** We are absolutely not making a difference. What we are trying to do at present is gauge public opinion. If public opinion is that this situation is exactly the same as that for a dangerous building, that it should be a burden on the property for generations to come and that is the way in which it needs to go, we will not be taking forward a grant scheme. All that we want to know is what the public appetite is. Should we be considering a grant scheme at this early stage? Should we make sure, when we are writing the primary legislation, that we at least have the powers to bring forward a grant scheme? That is the question that is being asked.

**Mr Irwin:** Reservoirs may be owned by individuals. However, I would have thought that, without some kind of aid, many of the owners of reservoirs will not be able to do the repairs. It is very important that that be taken on board if we want the legislation to work. Without some help, I cannot see it working. I would have thought that help would be vital.

**The Chairperson:** Any other questions, members? I did not want to go in too deep today, because we will have opportunities after the consultation. Hopefully the discussions will be more meaningful for us when we know the mind of the population through the people who respond to the consultation. Thank you very much for your attendance.

David, you said that you want responses in for Friday and talked about a strict timeline. We meet on Tuesdays. Is it possible for members to bring their responses on Tuesday? That would give us an extra couple of days.

**Mr Porter:** Yes, that is not an issue.

**The Chairperson:** I assume that members read their packs, but they will not necessarily have focused on that specific task. Nothing may come out of it, and we may think that the document is fine, but an extra couple of days will give members more opportunity to come back with any issues that they have and bring them to the Committee's attention so that we can all assess them.

**Mr Porter:** Tuesday is fine.

**The Chairperson:** Thank you very much for your attendance.