

Stella McArdle
Clerk to the Committee for
Agriculture and Rural Development
Room 243
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX



Dundonald House
Ballymiscaw
Upper Newtownards Road
Belfast BT4 3SB

Tel: 028 9052 4799
Fax: 028 9052 4884
E-mail: paul.mills@dardni.gov.uk

Our Ref:
Your Ref:
Date: 2 April 2014

Dear Stella

RESERVOIR BILL COMMITTEE MEETING 11 & 18 MARCH 2014

Briefing from representatives of Armagh & Antrim District fishing clubs and the Ulster Angling Federation.

Issues raised

Most of the issues raised by the angling clubs and the UAF focused on the costs of implementation of the legislation, the need for a grant scheme, identifying a reservoir manager, and designation of risk. The Department has provided comments of these issues in its response to the ARD Committee dated 25 February 2014.

The Department's comments on the other issues raised are as follows:

Human Rights

It was suggested that the proposed legislation will impact on the human rights of reservoir managers. The Bill has been scrutinised by Departmental Solicitors' Office and the Attorney General, both of whom have concluded that the Bill is compliant with the European Convention on Human Rights.



Decommissioning

The “decommissioning” of a reservoir and whether planning permission was required prior to this activity taking place was discussed. It was also suggested that the Bill precludes this as an option.

The term decommissioning is not used in the Reservoirs Bill, rather the terms used are:

- Discontinuance – making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of the surrounding land (but may still hold water); or
- Abandonment – making the reservoir incapable of holding any water above the natural level of the surrounding land.

The Bill requires that actions to discontinue or abandon a reservoir be supervised by a construction engineer. The legislation does not prevent a reservoir manager from taking either of these actions in order to avoid the requirements of the management regime. However, it is worth noting that other consents and approvals will be required prior to such works being commenced.

DOE Planning advises that the Planning (NI) Order 1991 defines development as ‘the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land’. As the nature of the works associated with the discontinuance or abandonment of a reservoir may constitute engineering operations, and/or a change of material use of the land, DOE Planning advises that reservoir managers/owners should engage with their local planning office to determine if planning permission would be required in advance of any works being commenced.

In addition, there is a requirement under a number of pieces of environmental legislation for reservoir managers/owners to consult with the NI Environment Agency (NIEA) about any plans to alter a reservoir. The Committee heard evidence from NIEA on this matter. Consent from the Department of Agriculture and Rural Development, under Schedule 6 of the Drainage (NI) Order 1973, would also be required if alterations were to impact on a watercourse.

Regulation making powers

The Delegated Powers Memorandum outlines the regulations which the Department has the power to introduce. The Reservoirs Bill provides the framework for the regulations. Therefore, the Department’s powers are limited to what is included in the Bill.

There are a number of regulations which must be brought forward prior to the legislation being implemented. For example, the methodology for calculating reservoir volume, registration, panels of reservoir engineers. There are other regulations which the Department may bring forward, for example civil sanctions or registration fees. These will be introduced only if considered appropriate.

All proposed regulations will be subject to stakeholder engagement and consultation before they are presented to the ARD Committee for consideration.

Liability of an angling club in circumstances where they could not afford to pay, go bankrupt or close.

The Department has sought legal advice on the liability of an angling club that holds a freehold interest in the property on which a reservoir is situated where it:

- Disclaims an interest in the property on which a reservoir is situated; or
- It is declared insolvent.

This advice applies equally to any reservoir owner who holds a freehold interest in the property on which the reservoir is situated.

Disclaiming an Interest

In principle, where a freeholder disclaims its interest in a property, ownership reverts to the Crown. This is known as “escheat”. Any property which is subject to escheat, passes to the Crown to do with as it wishes. Escheat does not impose any obligation on the Crown, therefore the Crown does not automatically acquire any liabilities which accompany the property. This means that the Crown would not automatically become reservoir manager, unless the Crown took active possession of the property and committed an act of management over it which it is not likely to do. Rather, the Crown would aim to dispose of the property, if possible with any sale proceeds going to the State.

A situation where a freeholder could successfully disclaim interest in property in order to avoid liabilities imposed by the Reservoirs Bill is not envisaged. If a freeholder attempted to do so and ignored the duties imposed by the Bill, the Department would proceed to enforcement.

If, however, interest in the property were somehow disclaimed, this would result in the club (and its members/users) losing the property on a permanent basis. There would, therefore, be no reservoir manager to carry out the duties under the Reservoirs Bill and it would be a matter for the Department to exercise Emergency Powers under Section 71 of the Reservoirs Bill as and when required in order to protect the public or property from an escape of water from the reservoir.

Insolvency

An owner who cannot afford to pay debts becomes bankrupt and a club, company or partnership is liquidated, after which it ceases to exist. This is commonly known as insolvency. Liquidation of a company’s assets could be either compulsory or voluntary and both are instigated by a winding-up petition being presented to the Court for a winding-up order to be made. Once an order is made, a liquidator is appointed by the Court to deal with the company’s assets, including paying outstanding debts, disposing of assets usually by sale, and taking on legal responsibilities in order to discharge the liabilities.

In the case of an angling club which is registered as a limited company, this would include the liquidator taking responsibility to act as the reservoir manager for the reservoir. If the Club has insufficient funds to pay the cost of duties imposed by the Bill, the liquidator has the power to disclaim “onerous property”, which is defined as ‘*unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act*’.

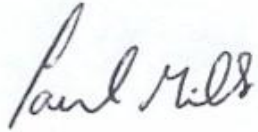
In such circumstances the Department would exercise Emergency Powers under Section 71 of the Reservoirs Bill, as and when required in order to protect the public or property from an escape of water from the reservoir.

Correspondence from the Department of Social Development and NI Water.

Officials are considering the request from the Committee and will provide a response as soon as possible.

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

Yours sincerely

A handwritten signature in black ink that reads "Paul Mills". The signature is written in a cursive style with a large initial 'P'.

Paul Mills
Departmental Assembly Liaison Officer