

RESERVOIRS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department of Agriculture and Rural Development in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Reservoirs are structures and areas that have been artificially created to hold and store water above the natural level of the surrounding land. They have been created for a variety of purposes including public water supply, transportation, energy production, flood risk management and recreation. It is estimated that 137 impounding reservoirs will come within the scope of the Reservoirs Bill. The majority of impounding structures are considered to be in excess of 100 years old.
4. The safety of reservoirs in Great Britain (GB) has been regulated since 1930. In the South of Ireland there is no legislative provision for reservoir safety and, as in Northern Ireland currently, common law applies. Under common law the owner or the reservoir manager is responsible for reservoir safety.
5. No fatalities have been reported due to dam failure in Northern Ireland unlike in England, Scotland and Wales. The Department is aware of the following flooding incidents due to dam failure. In December 1876 a newspaper reported that Wilson's Dam in Carrickfergus "as usual after heavy rain overflowed its banks" flooding many houses and injuring property. In 1902 it was reported that a dam burst on the Springfield Road, Belfast and discharged into the Blackstaff River causing the river to burst its banks. In the 1980s Church Dam in Hillsborough failed and it was reported that the flood water caused erosion. A breach in the bank of Wolfhill Millrace, North Belfast in 1995 resulted in a number of dwellings being flooded. Flooding in the Doagh area in 1998 was attributed to the collapse of a spill weir at Tildarg Dam and a number of houses were flooded.
6. The European Community Floods Directive¹ requires member states to identify, assess, and manage potential significant flood risks. The preliminary flood risk assessment² to

¹ Directive 2007/60/EC of the European parliament and of the Council of 23 October 2007 on the assessment and management of flood risks.

comply with the Floods Directive identified a potential risk from total dam failure of 156 impounding reservoirs having a capacity of greater than 10,000 cubic metres of water above the natural level of any part of the surrounding land to 66,000 people. The 10,000 cubic metre capacity threshold was used in the preliminary flood risk assessment as it is generally agreed by reservoir engineers that an uncontrolled release of that amount or more of water due to dam failure has the potential to result in loss of life and significant damage to property. The number of impounding reservoirs which would fall within the scope of the legislation has since been revised to 137.

7. The Floods and Water Management Act 2010 which applies to England and Wales and the Reservoirs (Scotland) Act 2011 have made provision for the threshold at which reservoirs are regulated to be reduced from 25,000 cubic metres to 10,000 cubic metres.
8. The findings from the preliminary flood risk assessment were presented to the Executive which at its meeting on the 11 December 2011 agreed that the Minister for Agriculture and Rural Development should bring forward primary legislation to regulate reservoirs in Northern Ireland.
9. The policy objective of the Bill is to introduce a regime for the management and regulation of reservoirs to protect the public from the risk of flooding. It is proposed that reservoirs should be managed and operated to minimise the risk of flooding due to an uncontrolled release of water resulting from dam failure thereby protecting people, the environment, cultural heritage and economic activity. The Department would be responsible for administering and enforcing the legislation.
10. The policy has been developed to comply with industry best practice for the management of reservoirs.
11. Key stakeholders, including known reservoir owners, were contacted directly by the Department and invited to stakeholder events³ during the policy development process.

CONSULTATION

12. The formal public consultation on the draft Reservoir Safety Policy proposals commenced on 12 March 2012 and ended on the 1 June 2012. The consultation sought views on policy proposals to introduce a regime for the regulation and management of reservoir safety in Northern Ireland to ensure that the potential risk of flooding from reservoirs is managed appropriately.
13. The consultation document outlined the need for the introduction of a management and regulatory framework for reservoir safety and set out the implementation options.
14. During the formal consultation period six information events were held in Antrim, Belfast, Cookstown, Craigavon, Hillsborough and Newry to provide stakeholders with the opportunity to discuss the proposals and obtain answers to issues raised.

² The preliminary flood risk assessment is available at <http://www.dardni.gov.uk/final-pfra-report.pdf>

³ Policy Development Stakeholder events were held in Greenmount College, Antrim during July and November 2011 and at the Agri-food and Biosciences Institute, Hillsborough during September 2011

OPTIONS CONSIDERED

15. Three implementation options were considered during the consultation include:

Option 1: Do Nothing, Self Regulation
Option 2: Reservoir Licensing System
Option 3: Panel Engineer System

16. Option 1: Do Nothing, Self Regulation

Under this Option reservoir safety would continue to be left to the discretion of reservoir owners and managers. The legal basis for the safety of reservoirs under self regulation would remain common law (that is law developed by judges as the outcome of legal cases) or the Health and Safety at Work Order 1978 where it applies.

17. Option 2: Reservoir Licensing System

Under this Option all reservoirs would be registered, usually for a fee, an inspection by a qualified engineer would be undertaken and then a formal licence agreement setting out the conditions to be met would be provided. Licenses would be issued for fixed period of time and would be renewed or periodically reviewed to update the licence conditions or to reflect legal and policy changes. A license system for both Northern Ireland Environment Agency water abstraction and impoundment purposes, and reservoir safety regulation was considered.

18. Option 3: Panel Engineer System

The Panel Engineer System would introduce a management regime where the reservoir manager, as the person(s) with responsibility for reservoir safety would commission qualified reservoir engineers to provide advice on the safety of reservoirs, and to inspect, supervise and construct 'controlled reservoirs'. The proposal would introduce an approach to management where the level of inspection and supervision would increase with the higher level of potential consequences.

19. Reservoirs would be assessed and then designated by the Department as high, medium or low consequence. The reservoir designation would be directly proportionate to the adverse consequence of total failure of the reservoir on people, the environment, cultural heritage and economic activity. Stakeholders that attended the policy development events and consultees that responded during the formal consultation period preferred the more tailored management regime afforded by this approach.

OVERVIEW

20. The Bill contains 9 Parts, 132 Clauses and 4 Schedules. The Bill makes provision for the regulation of the management, construction and alteration of certain reservoirs, in particular, in relation to their safety to collect and store water; and for connected purposes.

21. The Department will commence the Bill in two phases. Phase 1 will include the parts of the Bill required to set the legislative foundation in place, for example, what is a controlled reservoir, who is reservoir manager, reservoir registration, reservoir designation, requirement for an initial inspection of a reservoir, and associated clauses or part clauses. Phase 1 will commence either on the day after Royal Assent or on such day or days as the Department may by order appoints. Phase 2 will include all other parts of the Bill, such as the requirement to commission a supervising engineer, the requirement to undertake works directed in inspection reports, further inspections, and associated clauses or part clauses. Phase 2 clauses can only be commenced after a draft order has been laid before, and approved by a resolution of, the Assembly.

COMMENTARY ON CLAUSES

Part 1 – Controlled Reservoirs, Registration and Reservoir Designation

Clause 1 – Controlled reservoirs

The Bill provides a regulatory regime for reservoirs that will be known as ‘controlled reservoirs’ as defined by the legislation. The definition of a ‘controlled reservoir’ is set out in principal in clause 1 and includes structures or areas designed or used for collecting and storing water, artificial or partly artificially lakes or other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Further detail both in relation to what is, and what is not, a controlled reservoir for the purposes of the Bill is contained in clause 5; and under clause 2 certain structures or areas which are not in themselves controlled reservoirs will fall to be regulated by the Bill as if they were controlled reservoirs.

Clause 2 – Structure or area which is to be treated as a controlled reservoir

Under this clause, certain structures or areas which individually are not a controlled reservoir under clause 1 will be regulated by the Bill as if they were controlled reservoirs.

The first scenario involves combinations of smaller structures or areas. Combinations have the potential to cause a similar degree of risk to public safety as individual reservoirs of a comparable releasable capacity, even though the individual structures or areas that comprise the combinations may each hold less than 10,000 cubic metres of water above the natural level of the surrounding land. Subsection (2) provides that combinations of such structures or areas are to be treated for the purposes of the Bill as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can flow or does flow between them and that there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity which is above the natural level of any part of the surrounding land. This is intended to ensure that combinations of reservoirs are subject to regulation.

Subsection (3) enables the Department by regulations, to provide that a smaller reservoir is to be subject to the Bill in the same way as if it were a controlled reservoir, if the Department determines that, despite the smaller capacity, reservoir failure has the potential to result in loss of life or certain other harm.

Subsection (4) requires the Department to notify the reservoir manager of the structure or area that by regulations is to be treated as a controlled reservoir. The notice must provide advice about registration requirements and timescales.

Clause 3 – Matters to be taken into account under clause 2(3)

This clause requires the Department to take the adverse consequence and probability of an uncontrolled release of water into account when considering making a structure or area a controlled reservoir by regulation under clause 2(3). The process and criteria to be used are the same as that to determine the reservoir designation for a controlled reservoir and detailed in clause 22. Subsection (4) requires consultation when making any regulations specifying other matters to be taken into account.

Clause 4 – Controlled reservoirs: further provisions

Subsection (1) enables the Department to make provision by order for a different volume of water to be substituted for the volume threshold for a controlled reservoir, currently specified in the Bill. This enables the Department to alter the threshold above which reservoirs are controlled reservoirs and therefore subject to the regulatory regime of the Bill.

Subsection (2) enables the Department to make provision by regulations to determine how the volume of water capable of being held above the natural level of the surrounding land is to be calculated and the meaning of ‘natural level’ and ‘surrounding land’ for the purposes of the Bill.

Subsection (3) deals with the consultation process in making the order and the regulations.

Clause 5 – Controlled reservoirs: supplementary

Subsection (1) clarifies that anything which is integral to the functioning or operation of a controlled reservoir forms part of it and would be subject to regulations under the Bill and gives some specific examples.

Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Bill.

Subsection (3) enables the Department, by regulations, to define with more precision the things that are listed in subsection (2) and to exclude other things from being ‘or being treated as’ controlled reservoirs.

Clause 6 – Reservoir managers

Responsibility for managing or operating a controlled reservoir is placed upon persons or organisations referred to in the Bill as ‘the reservoir manager’. It is possible that a controlled reservoir may be managed by one reservoir manager or by more than one (multiple) reservoir managers. Clause 6 specifies who the reservoir manager of a controlled reservoir is for the purposes of the Bill.

Subsection (2) provides that a water undertaker that manages or operates a controlled reservoir, or any part of a controlled reservoir, is a reservoir manager for all of the reservoir or the reservoir manager for the part which is managed or operated by it.

Subsection (3) provides that a sewerage undertaker that manages or operates a controlled reservoir is a reservoir manager. Therefore, the sewerage undertaker will be the sole reservoir manager of a controlled reservoir managed or operated by it, as generally this would be tanks dealing with effluent and therefore it would be inappropriate to have another manager.

Where there is no sewerage undertaker involved in the management or operation of a reservoir, the water undertaker or the person(s) or organisation(s) that manages or operates the controlled reservoir, or any part of the controlled reservoir, would be the reservoir manager for all or part of the reservoir that they manage or operate.

The owner of all or part of a controlled reservoir would be the reservoir manager for the entire reservoir, or the reservoir manager for the part of a controlled reservoir which they own, where there is no sewerage undertaker, or water undertaker, or person(s) or organisation(s) managing or operating all of a controlled reservoir or any part of it.

Subsection (7) determines that the reservoir manager for a reservoir which is being constructed or restored to use would be the person who is proposing to manage or operate the reservoir.

Subsection (8) clarifies, for the avoidance of doubt that, in carrying out or maintaining any works or taking any other action in relation to a controlled reservoir or any part of it in exercise of powers under the Drainage (Northern Ireland) Order 1973, the Department is not to be regarded as a reservoir manager. Any such works or actions by the Department will only be undertaken pursuant to the Department's functions under that Order.

Clause 7 - Multiple reservoir managers: supplementary

This clause applies where there is more than one reservoir manager for a controlled reservoir. Subsection (2) provides that the requirements of the Bill apply to each of the reservoir managers separately and any duties of the reservoir manager set out in the Bill must be complied with by each of the reservoir managers for a reservoir.

To avoid duplication of duties and reduce the administrative burden on reservoir managers, subsection (3) enables reservoir managers to nominate one of the managers to fulfil any requirements of the Bill to which they are subject. Subsection (4) provides that a nomination must specify the name, address and contact details of the nominee.

Subsection (5) requires that where such a nomination is made, the nominating manager must give notice of the nomination and what it contains to the Department, to any qualified engineer commissioned in relation to the reservoir and to the other reservoir managers for the controlled reservoir. The Department may notify and consult with the nominee (rather than the reservoir manager who made the nomination) when required to notify or consult the reservoir managers under the Bill.

Similarly, engineers commissioned in relation to the reservoir may give certificates and other documents that they are required to issue under the Bill to the nominee. Subsection (7) ensures that the nominated representative of the supervising engineer who, if the supervising engineer is unavailable is acting in the place of that engineer, may do the same.

Clause 8 – Duty of multiple managers to co-operate

Clause 8 requires reservoir managers, where there are two or more of them in respect of a controlled reservoir, to co-operate with each other as far as is necessary to enable all of the reservoir managers for a controlled reservoir to comply with the provisions of this Bill. Subsection (2) makes it an offence not to co-operate. Subsection (3) and (4) set out the maximum criminal sanctions associated with that offence. This clause applies whether or not a nominee is appointed under clause 7.

Clause 9 – Controlled reservoirs register

This clause requires the Department to establish and maintain a register of controlled reservoirs. The Department will make regulations regarding the information and documents which will be held in the register and it is envisaged that these may include such information as name and location of the reservoir, its maximum capacity, the name and address of the reservoir manager as well as copies of any reports, certificates etc., relating to the reservoir. Subsection (3) requires the Department to make the register or a copy of it available for public inspection. Subsection (4) enables the Secretary of State to direct the Department to withhold information or documents from the register if inclusion would adversely affect national security.

Clause 10 – Reservoir managers’ duties to register with the Department

This clause requires the reservoir managers of controlled reservoirs to register their reservoirs by providing the Department with information and documents that are to be detailed in regulations. Subsection (3) enables the Department to bring forward regulations to require further information or documents from reservoir managers for maintaining the register.

Clause 11 – Structures or areas which are controlled reservoirs on the relevant date

This clause requires the reservoir manager to register a controlled reservoir not later than 6 months after the commencement date of clause 10 of the Bill. Subsection (2) enables the Department, by notice to extend the period of 6 months to such time as it considers appropriate.

Clause 12 – Structures or areas which become controlled reservoirs after the relevant date.

This clause requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. Preliminary certificates are issued under clause 44 of the Bill when the construction engineer supervising the construction of the reservoir considers that the reservoir may safely be filled (either wholly or partly) with water. Subsection (2) again enables the Department by notice to extend the period of 28 days to such time as it considers appropriate.

Clause 13 – Structures or areas which are the subject of regulations under clause 2(3)

This clause deals with the registration timeframe for a structure or area which is to be treated as a controlled reservoir due to regulations under clause 2(3). The reservoir manager must register the reservoir not later than 28 days after the date of notice (under clause 2(4)) by the

Department of the making of the regulations. Subsection (2) again enables the Department by notice to extend the period of 28 days to such time as it considers appropriate.

Clause 14 – Fees: registration and administration

Clause 14 enables the Department by regulations to introduce the requirement for reservoir managers to pay a fee in relation to registration or other such reasonable annual fees in relation to the Department exercising its functions in respect to the controlled reservoirs register and registration of controlled reservoirs in the register.

Clause 15 – Registration: supplementary

This clause requires a person to notify the Department within 28 days of the date that they cease to be a reservoir manager for a controlled reservoir and provide the name of the person who will be the new reservoir manager. Subsection (2) requires a new reservoir manager to notify the Department and to provide the date of the change. Subsection (3) requires the Department, as soon as reasonably practicable, to inform the new reservoir manager of the duties of a reservoir manager under the Bill.

Clause 16 – Offences: registration

This clause provides that it is an offence for a reservoir manager to fail to comply with the specified requirements for the registration of a controlled reservoir and in relation to the change of a reservoir manager. Under subsection (2), it is an offence to knowingly or recklessly give false information or document in relation to registration. Subsections (3), and (4), set out the maximum penalties for anyone found guilty of an offence under this clause and subsection (5) provides for a defence in relation to an offence in certain circumstances. Subsection (6) ensures that a person does not avoid prosecution merely by ceasing to be a reservoir manager.

Clause 17 – Giving a reservoir designation

The Bill introduces a consequence-based approach to the management of controlled reservoirs with different regulatory requirements for reservoirs with different consequence categories. Clause 17 requires the Department to give a reservoir designation as soon as reasonably practicable after the registration of a controlled reservoir.

Subsection (2) establishes the reservoir designation categories for a controlled reservoir as high, medium or low consequence. Subsection (3) requires the Department to take into account the matters mentioned in clause 22 when giving a reservoir designation. The matters are the potential consequences of an uncontrolled release of water from the reservoir and the probability of such a release.

Subsection (4) provides for the Department to give notice of the reservoir designation to a reservoir manager and details the information to be provided in the notice.

Clause 18 – Periodic re-assessment of reservoir designations

The Department must undertake a periodic re-assessment of the reservoir designation, taking into account the matters mentioned in clause 22 and must either confirm or give the reservoir a different designation. Subsection (3) details the timeframes within which a periodic re-

assessment must be undertaken. Generally a periodic re-assessment would be undertaken not later than 10 years from the date of the first designation or the latest periodic re-assessment.

Subsection (4) requires the Department to give notice to the reservoir manager of its decision - either it confirms the designation or gives a different reservoir designation. The information to be specified in the notice is listed. The notice must provide the reservoir manager with the reason for the Department's decision, information about the right to seek review of the decision; and it must advise that the designation continues to have effect pending a decision being reached in a review.

Clause 19 – Date on which reservoir designation given under clause 17 or given as a different designation under clause 18 takes effect

The notice giving a reservoir designation for the first time under clause 17 or a notice giving a different designation under clause 18 takes effect on the day after the notice is served. Subsection (2) provides that the first reservoir designation for a controlled reservoir being constructed or restored to use takes effect the day after the date of the final certificate in respect of the works. Subsection (3) provides that where a different designation is given after a periodic reassessment for a controlled reservoir being increased or decreased in capacity, the different designation notice takes effect on the day after the date of the final certificate in respect of the works.

Clause 20 - Review by Department of its decision under clause 17 or 18

Clause 20 enables reservoir managers to apply for a review of the Department's decision on reservoir designations made under clause 17 or 18. Subsection (2) requires an application for review to be in writing and to be made within 90 days beginning with the date on which the notice of the reservoir designation was served. Subsection (3) details the information that the Department must take into account when considering a review and enables the Department to commission a civil engineer who is a member of a panel established under clause 102 who in accordance with an order made under that clause may be commissioned under clause 20 in relation to the reservoir concerned ("an appropriate panel engineer") or other person, to make recommendations regarding the designation.

Subsection (4) makes it explicit that the reservoir designation continues to apply until the review is complete and subsection (5) provides that, if the review results in the designation being changed, then the previous designation ceases to apply from the date of the Department's decision and the different designation takes effect on the day after the date of the notice of the decision.

Subsection (6) requires the Department to notify the reservoir manager of its decision in a review and details the content of the notice. Subsection (7) provides a power to make regulations which would contain more detailed provision in relation to applications and reviews, for example as to the information to be provided by an applicant, the procedure in a review.

Clause 21 - Appeal against Department's decision in review under clause 20

Reservoir managers have a right of appeal against the decision in a review of a reservoir designation given by the Department. The appeal must be made to the Water Appeals

Commission within 60 days of the date on which the notice specifying the decision in a review was served.

Subsection (3) specifies the grounds for appeal and subsection (4) provides that the Commission may confirm the reservoir designation or give the reservoir a different designation. Subsection (5) details the matters and the representations the Commission must take into account when considering an appeal.

Subsection (6) makes it explicit that the reservoir designation continues to apply until the appeal is decided and subsection (7) provides that, if an appeal results in the designation being changed, then the previous designation ceases to apply from the date of the appeal decision and the new reservoir designation takes effect on the day after the date of the notice of the Commission's decision.

Clause 22 – Matters to be taken into account under clause 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)

Clause 22 details the matters that must be taken into account in making a reservoir designation for the first time, in undertaking a periodic re-assessment and in reviewing a reservoir designation. These matters must also be considered in an appeal of the reservoir designation.

The matters to be taken into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release of water. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out the issues that may be taken into account when assessing the adverse consequences or the probability of an uncontrolled release of water from a controlled reservoir. These issues include the purpose for which the reservoir is used, the materials used and how the reservoir was constructed, the age, condition and maintenance of the reservoir.

Clause 23 – Matters to be taken into account under sections 17(3), 18(2), 20(3)(b)(i) and 21(5)(a): further provision

This clause enables the Department, following consultation with the Institution of Civil Engineers and others, by regulations to make further provision as to the matters that may be taken into account when giving a reservoir designation, re-assessment of a designation, review of a designation and appeal against a designation. The regulations may, in particular, make provision as regards a methodology for assessing the probability of an uncontrolled release of water from a reservoir, when the Department is satisfied that an appropriate methodology exists. The regulations may also make further provisions as regards the matters to be taken into account under clause 22(1) and amend references in this Act to high consequence, medium consequence and low consequence reservoir designation.

Clause 24 – High consequence reservoirs, medium consequence reservoirs low consequence reservoirs: further provision

This clause makes it clear that the terms high consequence, medium consequence and low consequence, in relation to a controlled reservoir, refer to the designation of a reservoir. The reader is alerted to the significance of a controlled reservoir's reservoir designation as this determines the management and maintenance requirements.

Part 2 – Requirements for high consequence and medium consequence reservoirs

Supervision by supervising engineer

Clause 25 - Supervision requirements and commissioning of supervising engineer etc

Clause 25 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. A supervising engineer must be commissioned within 6 months of the reservoir designation taking effect and a reservoir manager is required to give notice to the Department within 28 days of the commissioning. A supervising engineer must be an appropriate panel engineer. Unlike other reservoir engineers under the Bill, there is nothing to prevent a supervising engineer being an employee of the reservoir manager or having previously been a construction engineer or inspecting engineer in relation to the reservoir.

A supervising engineer remains in place alongside the construction engineer when a high or medium consequence reservoir is undergoing alteration (work for which provision is made in part 3). This is to ensure that the safety of the reservoir continues to be monitored where appropriate and in particular the matters included in a safety report, prepared by the construction engineer, are monitored until a final certificate is issued.

Clause 26 – Duties etc. in relation to supervision

This clause sets out the key aspects of supervision by commissioned supervising engineers. Subsection (2) lists the engineer's duties; they include notifying the reservoir manager of anything which could affect the safety of the reservoir, monitor compliance with any direction in latest inspection report or recommendation in a pre-commencement inspection report as regards measures to be taken in the interests of safety which is a measure for its maintenance and, monitoring any other matters to be supervised as detailed in an inspection or pre-commencement report, safety report, preliminary certificate or final certificate. The supervising engineer is also required to notify the reservoir manager and the Department of any failure to comply with any requirement of a direction or recommendation in the latest inspection or pre-commencement report, safety report, preliminary or final certificate, supervise any proposed drawdown of the reservoir and monitor the reservoir manager's recording of water levels and record keeping. The supervising engineer is required to physically visit the controlled reservoir at certain intervals depending on the reservoir designation of the reservoir and in accordance with regulations made under Clause 27, or undertake additional visits, if recommended in the latest inspection report.

If a supervising engineer considers that a controlled reservoir should be inspected, by an inspecting engineer, subsection (3) requires the supervising engineer to give the reservoir manager a written recommendation to this effect and copy to the Department. Subsection (4) requires the reservoir manager to carry out visual inspections of the reservoir at specified intervals if directed in writing by the supervising engineer for the purposes of identifying anything which may affect the safety of the reservoir.

Subsection (5) requires the supervising engineer to give the reservoir manager an annual written statement of the steps taken by the supervising engineer in relation to his or her responsibilities and any measure taken by the reservoir manager in the interests of safety or to

maintain the reservoir. The supervising engineer must send a copy of the written statement to the Department within 28 days (subsection (6)).

Under subsection (7) the supervising engineer must provide the reservoir manager with emergency contact details and in the event of him or her not being available, the contact details of a nominated representative. The supervising engineer is required to provide the Department with such information within 28 days.

Subsection (8) requires a reservoir manager of a high or medium consequence reservoir which is the subject of a pre-commencement inspection report (clause 31 refers) to give a copy of the report to the supervising engineer along with any pre-commencement report certificate or other document which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation.

Subsection (10) provides that references to the term ‘the supervising engineer’ in this clause and clauses 27 to 31, 35 and 37 are to be construed as including a nominated representative who is acting in place of the supervising engineer if that engineer is unavailable. This ensures that, while the nominated representative is acting in place of the supervising engineer, the Bill’s provisions in relation to a supervising engineer are to be read as if they referred to the nominated representative.

Clause 27 - Regulations as to visits by supervising engineers

This Clause allows the Department to make provision, by regulation, for a standard number and frequency of visits that must be made to a high or medium consequence reservoir by a supervising engineer. The regulations will provide for the frequency of visits to be different if the Department considers that a reservoir is of an acceptable standard. The regulations will also place a requirement on the Department to notify the reservoir manager of the number and frequency of visits required as well as providing the reservoir manager with a right of appeal to the Water Appeals Commission against the Department’s decision on whether a reservoir is of an acceptable standard and the standard number and frequency of visits to the reservoir.

Clause 28 - Visual inspection directed under clause 26(4)(a)

The reservoir manager must comply with any direction in relation to a visual inspection directed by the supervising engineer. Subsections (2) & (3) require the manager to maintain and provide written records to the supervising engineer on request and give notice as soon as reasonably practicable to the supervising engineer and the Department of anything identified during the visual inspection which might affect the safety of the reservoir.

Clause 29 – Nominated representative under clause 26(7)(a): further provision

This clause requires a nominated representative to be eligible to be commissioned as a supervising engineer and provides that a nominated representative has the same powers and obligations as a supervising engineer when the supervising engineer is unavailable.

Clause 30 – Inspection timing: general requirements

Subsection (1) requires the reservoir manager of a high or medium consequence reservoir to have an inspection of the reservoir carried out before the end of one year from the date on

which its first reservoir designation takes effect, (“the relevant date” defined in subsection (6) of clause 31). There is an exception in subsection (2); an inspection is not required under subsection (1) when a high consequence reservoir becomes designated as a medium consequence reservoir (following a periodic re-assessment under clause 18 or a review or appeal).

Subsections (3) and (4) then require inspections at other times. The reservoir manager must have an inspection carried out at any time recommended by the supervising engineer or at any time recommended in an inspection report; and there must be no more than 10 years between inspections of a high consequence reservoir.

The general rule therefore is that a high consequence reservoir will be inspected within one year of being designated as high consequence for the first time and every 10 years thereafter unless an earlier inspection is recommended by the supervising engineer or directed in an inspection report. A medium consequence reservoir will require to be inspected within one year from being designated as medium consequence for the first time and thereafter an inspection will only be required if recommended by the supervising engineer or a further inspection is recommended in an inspection report. No inspection is required for reservoirs designated as low consequence. Where a reservoir was medium consequence and was designated as high consequence following a periodic re-assessment, the date of the latest inspection would determine the timing for the next inspection, or as recommend by the supervising engineer.

There are other exceptions from the requirement of inspection within one year of the first designation as high or medium consequence (in subsection (1)), to deal with special cases. These exceptions, alongside alternative requirements, are set out in clauses 31 and 32.

It should be noted that subsection 1 will come into operation in Phase 1 while the requirement for further inspections will not come into operation until Phase 2 has been approved by a resolution of the Assembly.

Clause 31 – Inspection timing: reservoir subject to pre-commencement inspection report

The first special case is where a reservoir manager of a high or medium consequence reservoir has had an inspection of the reservoir undertaken prior to the Bill being commenced and the Department is satisfied that the report is a pre-commencement inspection report.

Where the report recommends inspection within 10 years of the inspection to which it relates, the reservoir manager must have an inspection carried out at the time recommended in the report, (Subsection (2)).

Where the report does not contain a recommendation as to when the next inspection is to be undertaken, subsection (4) requires the reservoir manager to have the inspection carried out within 10 years of the inspection to which the report relates.

Where a supervising engineer recommends an earlier inspection of the reservoir, however, (clause 26(3) refers) this would supersede any inspection due under subsection (2) or (4).

Clause 32 – Inspection timing: other qualifications

The second special case is where a construction engineer is to be commissioned to supervise relevant works for the construction or alteration of a high or medium consequence reservoir. The construction engineer also supervises the safety of the reservoir (clause 43(3)).

Where a reservoir is being discontinued or abandoned, any inspection which is due under clause 30 or 31 is not required as it ceases to be a controlled reservoir on completion of the works i.e. when the final certificate is issued (subsection (1)).

Where a controlled reservoir is being constructed or altered (without being discontinued or abandoned), any inspection due under clause 30 or 31 is not required; and instead inspection must be within 2 years from the date of the final certificate or at an earlier time, if recommended in the final certificate (subsection (2)).

Clause 33 – Pre-commencement inspection report

A reservoir manager who has had an inspection of a high or medium consequence reservoir undertaken prior to the commencement of the Reservoirs Bill may give the document relating to the inspection to the Department, for the Department to consider whether it is ‘a pre-commencement inspection report’. This would give it status under the Bill, some aspects of which have been covered in clause 31. Subsection (1) details the matters about which the Department must be satisfied for a document to be considered by it as a pre-commencement inspection report. The matters are that the inspection must have been undertaken and the document prepared by a civil engineer who was a member of a panel of civil engineers established under section 4(1) of the Reservoirs Act 1975, that the report was prepared sufficiently in accordance with criteria applied in relation to an inspection under section 10 of the 1975 Act and that, the inspection was carried out not more than 8 years before the relevant date. (The definition of “the relevant date” in clause 31(6) applies, namely the date on which the reservoir concerned was first designated as high or medium consequence).

Subsection (2) requires the Department as soon as reasonably practicable to decide whether or not it is satisfied a document is a pre-commencement inspection report. Where the Department considers it appropriate it may consult an appropriate panel engineer to assist in the decision making process.

Subsection (4) sets out the criteria which disqualify an engineer from being consulted by the Department in relation to making its decision.

Subsection (5) requires the Department to give notice to the reservoir manager of its decision and sets out the contents of the notice. Subsection (6) introduces Schedule 1, which makes provision in relation to a review of the Department’s decision.

Clause 34 – commissioning of inspecting engineer etc.

This clause requires reservoir managers of high or medium consequence reservoirs (which are not being supervised by a construction engineer) to commission an inspecting engineer to undertake an inspection as required by clauses 30, 31 or 32 and to supervise the taking of any measure in the interests of safety as directed in an inspection report or recommended as a pre-commencement safety recommendation (that is, a recommendation in a pre-commencement inspection report as a measure required in the interests of safety of the reservoir – subsection

(3)). Subsection (2) requires the reservoir manager to notify the Department within 28 days of the commission of an inspecting engineer.

Phase 1 of the Bill requires an initial inspection to be undertaken by an inspecting engineer and an inspection report to be provided to the reservoir manager. The requirement to undertake any measures identified in an inspection report does not come into operation until Phase 2 of the Bill is commenced.

Subsection (4) requires an inspecting engineer to be an appropriate panel engineer. Inspecting engineers are intended to have a degree of independence from the commissioning reservoir manager. Subsection (5) sets out the criteria disqualifying an engineer from being commissioned in relation to a particular reservoir; these include that the engineer is employed by the reservoir manager or has previously been a construction engineer for the reservoir.

Clause 35 – Duties etc. in relation to inspection

This clause requires the inspecting engineer commissioned by the reservoir manager to inspect the reservoir and to give the reservoir manager an inspection report not later than 6 months from the date of the inspection. Subsection (2) requires the reservoir manager to give the inspecting engineer a copy of the latest inspection report or any certificates for the time being applicable to the reservoir.

The certificate may include a ‘pre-commencement inspection report certificate’ - a certificate signed and issued by a civil engineer who was a member of a reservoir panel established under section 4(1) of the Reservoirs Act 1975 stating that a measure recommended in a pre-commencement inspection report as a measure in the interests of safety has been taken.

Subsection (4)(a) requires the inspection report to specify any measures including maintenance measures the inspecting engineer considers should be taken in the interests of safety and direct that the measures be taken. Subsection (4)(b) allows for the inclusion of matters the inspecting engineer considers relevant to the maintenance of the reservoir be included as recommendations. The inspection report should include any of the measures which were not undertaken from the previous report or the reason why they are not included in the current report.

Subsection (4)(e) requires the inspecting engineer to direct the reservoir manager in the inspection report as regards any measure to be undertaken in the interest of safety, whether an inspecting or other qualified engineer should supervise the taking of the measure and the timescale for completing the directions.

Subsection (4)(f) requires the report to direct measures in relation to maintenance to be supervised by a supervising engineer. Subsection (4)(g) and (h) require inspection reports to specify any matters that should be monitored by the supervising engineer and the timing of the next inspection. Subsection (4)(i) requires the report to detail any more frequent visits to the reservoir by a supervising engineer, than is required by virtue of regulations under Clause 27.

Subsection (5) requires the inspecting engineer to give a copy of the report to the Department and the supervising engineer within 28 days of giving it to the reservoir manager.

Clause 36 - Inspection reports: compliance

This clause requires reservoir managers to comply with the directions in an inspection report or any pre-commencement safety recommendation. Subsection (2) permits the reservoir manager to commission another appropriate panel engineer (who is eligible to be an inspecting engineer) to supervise the taking of measures directed or recommended. The other appropriate panel engineer if commissioned is referred to in the Bill as the “other qualified engineer”. When measures or recommendations have been completed subsection (3) requires the inspecting engineer (or other qualified engineer) to issue an interim inspection compliance certificate. Subsection (4) specifies the detail to be included in an interim inspection compliance certificate.

When the inspecting engineer (or other qualified engineer) is satisfied that all of the measures (directed or recommended) have been completed, the engineer is required by subsection (5) to issue the reservoir manager with an inspection compliance certificate within 28 days. Subsection (6) requires the engineer giving an inspection compliance certificate to accept any interim inspection compliance certificates or any pre-commencement inspection report certificates given by another engineer. Subsection (7) lists the detail that must be specified in the inspection compliance certificate. Subsection (8) requires the engineer to give a copy of the certificates under this clause to the Department.

Clause 37 – Recording of water levels etc. and record keeping

This clause requires reservoir managers of high or medium consequence reservoirs to record and maintain specific matters in relation to the reservoirs. Subsection (1) lists the matters to be recorded. Subsection (2) enables the Department to make regulations as to the information to be recorded in relation to the listed matters and the form of the record to be maintained. Subsection (3) enables supervising engineers, inspecting engineers or construction engineers commissioned to the reservoir to direct the reservoir manager as to the manner in which the records are to be kept and how frequently they should be updated.

Subsection (4) requires the reservoir manager to comply with any such directions and subsection (5) requires the directions to be copied to the Department by the relevant engineer. Subsection (6) requires the reservoir manager to install any instruments necessary to provide information to be recorded under this clause.

Clause 38 – Offences: supervision, inspection, record keeping.

Subsection (1) makes it an offence to fail to comply with clauses 25(2), 27(1), 27(2)(a), 27(2)(c), 29, 30, 31, 33(1)(a) or (b), and 35 in regard to supervision, inspection and record keeping. Subsection (2) makes it an offence without a reasonable excuse, to fail to comply with Clauses 25(4), 26(8)(a) or (b), 33(2), 34(2) and 35(2)(b) in regard to supplying engineers appointed with various reports or informing the Department of their commission. Subsection (3) sets out the maximum criminal sanctions of anyone committing an offence under this Clause.

Clause 39 – Offence in connection with inspection: failure to secure compliance with safety direction or recommendation

This clause makes it an offence for a reservoir manager of a high or medium consequence reservoir, who fails to comply with the requirements of clause 36(1) without lawful excuse.

Subsection (2) sets out the maximum criminal sanctions for anyone committing an offence under this Clause.

Clause 40 – Defences: offence under clause 39(1)

Clause 40 sets out certain defences to offences under clause 39(1) (failure to comply with direction in an inspection report or pre-commencement safety recommendation as to the taking of measure).

Part 3 – Construction or alteration of controlled reservoirs

Clause 41 – Application of part 3 etc.

Part 3 regulates the construction or alteration of controlled reservoirs by imposing a requirement upon reservoir managers to appoint a construction engineer to supervise the relevant works and by imposing a system of reporting and certification in respect of the works. This part applies to all controlled reservoirs regardless of their consequence category.

Clause 41 sets out the works that are to be treated as construction or alteration of a controlled reservoir for the purposes of the Bill. These include new construction, restoration to use, alteration to capacity, discontinuance (i.e. reducing the capacity to below 10,000 cubic metres above the natural level of any part of the surrounding land) and abandonment (i.e. rendering a reservoir incapable of holding water above the natural level of any part of the surrounding land). There is no requirement to commission a construction engineer unless such works are being undertaken at a reservoir.

Clause 43 – Notice to Department and commission of construction engineer

This clause requires reservoir managers of controlled reservoirs which are to be subject to relevant works to commission a construction engineer to supervise the relevant works and the safety of the reservoir. Not later than 28 days before the works commence the reservoir manager must give the Department notice of the proposed works and notice of the construction engineer's commission. A construction engineer must be an appropriate panel engineer, and is required to supervise the relevant works and the safety of the reservoir until a copy of the final certificate issued in respect of the works is given to the reservoir manager and copied to the Department in respect of the works. The persons listed in subsection (5) are disqualified from being commissioned as a construction engineer in relation to a particular reservoir.

Clause 44 – Supervision of relevant works and reservoir safety by construction engineer

Clause 44 requires the construction engineer to supervise the relevant works and the safety of the reservoir until a copy of the final certificate issued in respect of the works is given to the Department. Subsection (2) requires the engineer to inspect the reservoir, design the construction or alteration and prepare and provide the reservoir manager with safety reports, as appropriate. Subsection (4) requires the construction engineer to provide the Department with a copy of a safety report within 28 days of issuing it.

Clause 45 – Safety report

Clause 44 sets out the information which must be included in a safety report. In particular the safety report must include such measures to secure the safety of the reservoir, depending on the nature of the construction or alteration being undertaken as the construction engineer considers necessary.

Clause 46 – Safety report: compliance

This clause requires reservoir managers to comply with any direction in a safety report given to the reservoir manager. Subsection (2) requires the engineer to issue a safety measure certificate to the reservoir manager within 28 days of being satisfied that a measure directed in the safety report has been taken.

Subsection (3) specifies the requirements of a safety measure certificate. Subsection (4) requires the construction engineer to give the Department a copy of the safety measure certificate no later than 28 days after issuing it.

Clause 47 – Preliminary certificate

This clause requires the construction engineer to issue a preliminary certificate when the engineer considers that the reservoir that is subject to relevant works may be safely wholly or partially filled with water or (in the case of a reservoir which already contains water) that the level of water should be reduced. A preliminary certificate must specify a level that the water in the reservoir must not exceed, require the reservoir manager to ensure that the level of the water remains below that level and specify any other requirements that the engineer considers appropriate about the manner in which the water level may be increased or decreased. The reservoir manager of a controlled reservoir must comply with the requirements of any preliminary certificate for the time being applicable to the reservoir.

Subsection (3) requires the construction engineer to give a copy of the preliminary certificate to the Department within 28 days of issuing it. Subsection (4) sets out that the most recent preliminary certificate issued supersedes any previous preliminary certificates applicable to the reservoir in respect of those works. Subsection (5) sets out that a preliminary certificate ceases to have effect when the final certificate applicable to the reservoir in respect of the works is issued.

Clause 48 – Construction certificates

This clause requires the issue of a construction certificate by the construction engineer as soon as reasonably practicable, after he or she is satisfied that the relevant works have been completed to a satisfactory standard. Subsection (2) requires the construction certificate to be issued before or not later than the final certificate. Subsection (3) requires the construction certificate to certify that the relevant works have been undertaken satisfactorily in accordance with the drawings and other specified information included along with the certificate. Subsection (4) requires the construction engineer to give the Department a copy of the certificate within 28 days of issuing it.

Clause 49 – Final certificate

Where a controlled reservoir is being constructed or altered, except where it is being discontinued or abandoned, subsection (1) requires the construction engineer to issue a final certificate within 28 days of being satisfied that the reservoir is sound and satisfactory and may be used safely for the collection and storage of water.

Where the final certificate relates to a high or medium consequence reservoir and the construction engineer considers that an early inspection is required, subsection (2)(b) requires the final certificate to state when an early inspection should take place. Subsection (2)(c) requires the final certificate to specify any matter that the construction engineer considers should be monitored by the supervising engineer until the first or next inspection of the reservoir is undertaken. Subsection (2)(d) requires the final certificate to impose requirements (as specified in subsection (7)) that the water level must not exceed the level specified in the certificate, that the reservoir manager must ensure that the specified level is not exceeded and any other requirements the engineer considers appropriate as to the manner in which water levels may be increased or decreased.

Subsection (3) requires the construction engineer of a controlled reservoir which is being discontinued, to issue a final certificate to the reservoir manager within 28 days of being satisfied that the discontinuance has been safely completed, that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water.

A final certificate, on discontinuance, must state that the construction engineer is satisfied as to all these matters and must also specify any requirements the construction engineer considers appropriate as regards water levels in the reservoir.

Subsection (5) deals with a reservoir being abandoned; the construction engineer must issue a final certificate to the reservoir manager within 28 days of being satisfied that the abandonment has been safely completed and that the resulting structure or area is incapable of filling with water above the natural level of any part of the surrounding land.

Subsection (6) requires that the final certificate must state that the construction engineer is satisfied as to all of these matters.

Subsection (8) requires the construction engineer to give the Department a copy of the final certificate within 28 days of issuing it. If a final certificate has not been issued within 5 years of the issue of the preliminary certificate, subsection (9) requires the construction engineer to give the reservoir manager a written explanation of the reasons why within 28 days of the expiry of the 5 year period. Subsection (9)(b) requires the construction engineer to give the reservoir manager a written explanation of the reasons at 12 months intervals thereafter, until the final certificate is issued. Subsection (9)(c) requires the construction engineer to send each of the written statements to the Department within 28 days of giving them.

Clause 50 – Preliminary and final certificates: compliance

Clause 50 requires reservoir managers to comply with the requirements of any preliminary and final certificates applicable to the controlled reservoir at the time.

Clause 51 – Termination of supervision by construction engineer

This clause specifies that the obligation of a reservoir manager to have a construction engineer on commission in respect of the relevant works and the safety of a reservoir comes to an end when the engineer gives a copy of the final certificate to the Department in accordance with clause 49(8).

Clause 52 – Offences: construction and alteration

Clause 51 subsection (1) makes it an offence to fail to comply with Clauses 43(2)(a), (commissioning of a construction engineer).. Subsections 2 makes it an offence without reasonable excuse to fail to comply with Clauses 43(1) (notice of proposed works to the Department) and 43(2)(b) (notice of commissioning a construction engineer to the Department). Subsection (3) set out the maximum criminal sanctions of anyone committing an offence under subsection (1) or (2).

Clause 53 – Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate

Clause 53 makes it an offence to fail to comply without lawful excuse with Clause 45(1) (ensure compliance with direction in safety report as to taking of safety measure) and Clause 49 (ensuring compliance with preliminary or final certificate). Subsection (2) sets out the maximum criminal sanctions for anyone committing an offence under subsection (1). Subsection (3) advises that Clause 74 makes further remedies available on conviction of an offence in relation to non compliance with a direction in a safety report.

Clause 54 – Defences: offences under clause 53(1)

Clause 54 sets out certain defences to the offences of failure to comply with a direction in a safety report or non compliance with a preliminary or final certificate.

Clause 55 – Controlled reservoirs subject to relevant works on the commencement date

Clause 55 sets out transitional arrangements for the Bill to apply to controlled reservoirs already under construction or alteration when the Bill is commenced. Part 3 and clauses 67 to 69 (related enforcement powers of the Department) apply except that the reservoir manager must notify the Department of the relevant works, appoint a construction engineer, and notify the Department of that appointment all within 28 days of the commencement of clause 43. Subsection (3) enables the Department to extend the periods for notifying the Department of the relevant works and the commissioning of a construction engineer.

Part 4 – Controlled Reservoirs: Other requirements

Clause 56 – Incident reporting

This clause enables the Department to make provision in regulations for reporting incidents which may affect the safety of controlled reservoirs. Subsection (2) provides an indicative list of the contents of the regulations.

Subsection (3) provides that, where it appears to the Secretary of State that information in relation to an incident would adversely affect national security, the Secretary of State may by

notice direct the reservoir manager or other person who has prepared the incident report as regards the withholding or disclosing information, publication or storage of the incident report or copies of it. The notice may also require the person on whom it is served not to give anyone any indication of the existence of the information as it specifies..

Before making regulations for incident reporting the Department must comply with the consultation requirements specified in subsection (6).

Clause 57 – Flood plans

This clause enables the Department to make provision in regulations for the preparation of flood plans for controlled reservoirs. These plans would set out the action which the reservoir manager would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir. Subsection (3) provides an indicative list of the contents of the regulations. Subsections (3) and (4) provide that regulations under subsection (1) which contain provision entitling the Department to recover costs must provide a right of appeal to the Water Appeals Commission against the Department's decision to recover costs, the decision as to the amount of costs, and a power for the Commission to confirm, quash or vary the decision.

Subsection (6) provides that, where it appears to the Secretary of State that information in a flood plan would adversely affect national security, the Secretary of State may by notice direct the reservoir manager or other relevant person as regards the withholding or disclosing of information in or relating to a flood plan, publication, access or storage of the flood plan, or copies of it. The notice may also require the person on whom the notice is served not give to anyone any indication of the existence of the information as it specifies. Other relevant persons include anyone other than the reservoir manager who may be required to prepare or update a flood plan or do certain things in relation to it (e.g. publish or distribute copies).

The Department must comply with the consultation requirements specified in subsection (11).

Clause 58 – Maintenance of records

This clause requires reservoir managers of controlled reservoirs to maintain a record of relevant documents. Subsection (4) lists the documents which must be kept. For low consequence reservoirs in particular, information regarding repairs is to be included in the record and regulations will provide for the form in which such information is to be recorded (subsection (3)).

Clause 59 – Display of emergency response information

This clause requires reservoir managers of controlled reservoirs to ensure that emergency response information is displayed at or near the reservoir. Subsection (2) enables the Department to make provision in regulations about the information which must be displayed. Subsection (3) lists the information, which in particular, may be specified in the regulations under subsection (2). Subsection (4) enables the Department to give directions to reservoir managers of controlled reservoirs as to the manner and location of the information to be displayed. Subsection (6) requires the reservoir manager to comply with any such directions from the Department.

Clause 60 – Offences under Part 4

Subsection (1) makes it an offence, without reasonable excuse, to fail to comply with the requirements of a notice that is issued under clauses 56(3) and 57(6) regarding the publication of incident reports or flood plans, and clauses 58 (maintenance of records) and 59(1) or (6) regarding the location and display of emergency response information. A person does not commit an offence under subsection (1) in relation to the publication of incident reports or flood plans where he or she had did so to comply with a legal obligation listed in subsection (2). Subsection (3) sets out the maximum criminal sanctions of anyone committing an offence under this clause.

Part 5 – Dispute referral

Clause 61 – Referral to referee: directions in safety report or inspection report

Part 5 provides for a form of arbitration between reservoir managers and construction or inspecting engineers. If a reservoir manager disagrees with a direction in a safety report or inspection report or the recommendation as to the next inspection the manager can challenge the direction or recommendation by referring it to a referee. Subsection (3) suspends any direction or recommendation which is challenged until the reference is determined by the referee or withdrawn by the reservoir manager.

Clause 62 – Referral to referee: requirements in preliminary certificate or final certificate

This clause enables reservoir managers to challenge certain matters in preliminary or final certificates. Subsection (2) lists the matters which may be challenged under this clause. Subsection (3) suspends any matter challenged under this clause until the reference is determined by the referee or withdrawn by the reservoir manager.

Clause 63 – Commissioning of referee

This clause requires referees to be commissioned by agreement between the reservoir manager and the relevant engineer or, where no agreement can be reached, by the Institution of Civil Engineers. Subsection (2) enables engineers to be commissioned as referees if they are appropriate panel members and are not disqualified from being commissioned under this clause in relation to the reservoir concerned. Subsection (3) lists the circumstances where an engineer would be disqualified.

Clause 64 – Powers of referee: referral under clause 61(2)

This clause enables the referee to modify the direction or recommendation subject to a referral under clause 61(2). If the referee does so, subsection (3) requires the referee also to modify the report, any safety measure certificate or interim inspection compliance certificate which contains the direction or recommendation. Subsections (4) and (5) requires the referee to give the reservoir manager and the relevant engineer a referral certificate containing his or her decision, along with any modified report or certificate within 28 days of making the decision. Subsection (5)(c) requires the referee to give a copy of the referral certificate and any modified report or certificate to the Department within 28 days of the decision. Any direction, recommendation, report or certificate has the effect as modified by the referee (subsection (6)).

Clause 65 – Powers of referee: referral under clause 62(1)

This clause enables the referee to modify the matters subject to a referral under clause 62(1) (certain matters in a preliminary or final certificate). Subsection (3) requires the referee to modify the certificate if any modifications to the matters are considered appropriate. Again the referee must give the reservoir manager and the relevant engineer a referral certificate containing his or her decision, along with any modified preliminary or final certificate within 28 days of making the decision. The referee must also give a copy of the referral certificate and any modified certificate to the Department within 28 days of the decision. A preliminary or final certificate modified by a referee has effect in its modified form.

Clause 66 – Procedure etc.

Clause 65 enables the Department to make provision by regulations as to the time, manner and procedure of referrals and costs of the proceedings and investigations (including the remuneration of the referee). The default position is that the costs are to be paid by the reservoir manager who makes the referral subject to the provisions of regulations under subsection (1).

Part 6 – Civil enforcement, emergency powers and further offences

Clause 67 – Enforcement notice: commissioning of engineers

This clause enables the Department to serve an enforcement notice requiring the reservoir manager to commission a supervising, inspecting or construction engineer within 28 days and to notify the Department of that commission.

Clause 68 – Offence: failure to comply with notice under clause 67(2)

This clause makes it an offence not to comply with such an enforcement notice. Subsection (2) sets out the maximum criminal sanctions of anyone committing an offence under this clause.

Clause 69 – Commissioning of engineer by Department

When a reservoir manager has not complied with a notice served under clause 67 (requiring the commissioning of an engineer), this clause enables the Department to commission the engineer. Subsection (4) enables the Department, if it considers it appropriate, by notice, to require the reservoir manager to pay the Department such amount of associated costs reasonably incurred. Subject to right of appeal (clause 76) the reservoir manager must pay any costs so incurred and specified in the notice (subsection (5)).

Clause 70 – Commissioning by the Department: engineers' reports, certificates, recommendations etc.

This clause applies when the Department has commissioned a relevant engineer under clause 69. Any notices, reports, recommendations, statements, or certificates are to be first given to the Department by the relevant engineer and subsequently copied to the reservoir manager within 28 days.

Clause 71 – Enforcement notice: safety measures

This clause enables the Department to serve an enforcement notice where a reservoir manager has failed to comply with a direction in an inspection report, a pre-commencement safety recommendation or a direction in a safety report. The Department's enforcement notice must specify a timeframe within which the reservoir manager must comply, specify the measure to be taken, the reasons for considering that this clause applies and specify any particular steps that must be taken in relation to the measure. Subsection (3) requires consultation with an appropriate panel engineer regarding the timeframe specified in the notice. Subsection (6) enables the Department, if it considers it appropriate, by notice to require the reservoir manager to pay the Department such amount of associated costs reasonably incurred. Subject to right of appeal (clause 76) the reservoir manager must pay any costs so incurred and specified in the notice (subsection (7)).

Clause 72 – Failure to comply with notice under clause 71(2)

This clause makes it an offence not to comply with such an enforcement notice. Subsection (2) sets out the maximum criminal sanctions of anyone committing an offence under this clause.

Clause 73 – Department's power to arrange taking of safety measures

Where a reservoir manager fails to comply with such an enforcement notice, the department may commission a relevant engineer to supervise the taking of the measure. Subsection (3) requires the engineer commissioned to provide the Department with a certificate when the engineer is satisfied that the measure has been taken. The engineer's certificate has the same effect as if it were an interim inspection compliance certificate or an inspection compliance certificate or a safety measure certificate as appropriate. Subsection (6) enables the Department, if it considers it appropriate, by notice require the reservoir manager to pay the Department such amount of associated costs reasonably incurred. Subject to right of appeal (clause 76) the reservoir manager must pay any costs so incurred and specified in the notice (subsection (7)).

Clause 74 – Offence under clause 39(1) or 53(1): further remedies

This clause applies where a manager has committed an offence through failure to comply with a direction in an inspection report, a pre-commencement safety recommendation or a direction in a safety report. The court may, in addition to or instead of imposing any penalty under clause 39, or 53, order the reservoir manager to comply with the steps specified in the order and within such timeframe. Subsection (3) enables the court to extend the period for undertaking such work.

Clause 75 – Emergency powers

This clause enables the Department to take emergency action to protect people or property against an escape of water from a controlled reservoir that may cause harm. Subsection (2) enables the Department to take any emergency action to prevent such an event or to limit its effects. Subsection (3) requires the Department to commission an appropriate panel engineer to make recommendations regarding measures to be taken and to supervise the taking of the measures. The Department must notify the reservoir manager of the measures to be taken, or which have been taken. Subsections (7) enables the Department, if it considers it appropriate,

by notice require the reservoir manager to pay the Department all or part of any associated costs reasonably incurred in the exercise of its powers under this clause. Subject to right of appeal (clause 76) the reservoir manager must pay any costs so incurred and specified in the notice.

Clause 76 – Recovery of costs under section 69, 71, 73 or 75: appeal

This clause provides a reservoir manager with a right of appeal regarding the Department's decision to recover costs that it has incurred when; commissioning an engineer, issuing an enforcement notice, the taking of safety measures, or taking emergency powers action. The reservoir manager may appeal to the Water Appeals Commission against the Department's decision to require the manager to pay the costs and the decision as to the amount of costs. Subsection (2) provides the Commission with power to confirm quash or vary the Department's decision.

Clause 77 – Stop Notices

This clause gives the Department the powers to make regulations to permit the serving of a stop notice on a reservoir manager. Subsection (2) requires the Department to consult in accordance with clause 90 prior to making regulations. Subsection (3) defines a stop notice as a notice prohibiting the carrying on of an activity, or permitting the carrying on of an activity by another until such steps as specified in the notice have been taken. Subsection (4) indicates the circumstances in which a stop notice may be issued and subsection (5) lists the conditions the Department must meet before exercising its power under the regulations.

Clause 78 – Stop Notices: content and procedure

This clause provides that regulations made under clause 77(1) must secure the results in subsection (2) as to the content and procedure in relation to stop notices. Subsection (3) specifies what information must be provided in any stop notice. Subsection (4) and (5) specify circumstances in which the reservoir manager is entitled to appeal to the Water Appeals Commission against a stop notice and a completion certificate respectively as well as a power securing that the Commission may confirm, quash or vary the Department's decision to issue a stop notice. .

Clause 79 – Stop notices: compensation

This clause provides that regulations made under clause 77(1) must make provision for financial compensation to be paid to a reservoir manager for loss suffered as a result of the serving of a stop notice. Regulations must specify the circumstances in which compensation must be paid and a right of appeal as to the Department's decision not to pay compensation and the amount of compensation to the Water Appeals Commission as well as a power securing that the Commission may confirm, quash or vary the Department's decision. .

Clause 80 – Stop notices: enforcement

Regulations made under clause 77(1) may make it an offence to fail to comply with a stop notice. A defence must be as set out in subsection (2). The maximum penalty that the regulations may create is set out in subsection (1).

Clause 81 – Enforcement undertakings

This clause enables the Department to make provision by regulations allowing the Department to accept an enforcement undertaking from a reservoir manager. Enforcement undertakings would allow a reservoir manager who may have committed an offence under the Bill to agree with the Department that the reservoir manager would take such steps to rectify the situation as may be agreed, in exchange for immunity from prosecution for the offence that gave rise to the undertaking. Subsection (2) requires the Department to consult in accordance with clause 90 prior to making regulations. Subsection (4) specifies what would be the necessary contents of such an undertaking. Subsection (5) specifies the subsequent immunity from sanctions that a reservoir manager would receive, unless the reservoir manager did not deliver the actions specified in the enforcement undertaking.

Clause 82 – Regulations as to enforcement undertakings: further provision

This clause lists the matters which, in particular, the Department may provide for in regulations made under clause 81. This includes a right of appeal to the Water Appeals Commission against a decision in a review by the Department not to issue a certificate that the undertaking has been complied with, the grounds for appeal as well as a power for the Commission to confirm or quash the Department's decision. .

Clause 83 – Fixed Monetary Penalties

This clause allows the Department to make provision by regulations regarding the imposition of fixed monetary penalties on reservoir managers in relation to offences under the Bill. Subsection (2) requires the Department to consult in accordance with clause 90 prior to making regulations. Subsection (4) lists the conditions relating to fixed monetary penalties to be included in any regulations made under subsection (1).

Clause 84 – Fixed monetary penalties: procedure etc.

This clause sets out the process that must be followed when a fixed monetary penalty was to be imposed and that would have to be provided for in regulations made under clause 83. A reservoir manager would be able initially to pay a lesser amount of money to prevent a fixed monetary penalty from subsequently being issued. A fixed monetary penalty would not be able to be issued if the Department was satisfied that the reservoir manager would have a successful defence and so would not be liable to be convicted of the related offence. The regulations could include provision as to other circumstances when a fixed monetary penalty was not able to be imposed. A reservoir manager would have to be given a right of appeal to the Water Appeals Commission against the issue of the fixed penalty. The regulations would include provision as to the grounds for appeal as well as securing that the Commission may confirm or quash the Department's decision. .

The regulations may also enable the Department to reclaim directly from the reservoir manager the amount of any unpaid fixed monetary penalty (Subsection (7)).

Clause 85 – Fixed monetary penalties: criminal proceedings and conviction etc.

This clause sets out what must be included in regulations made under clause 83(1) regarding criminal proceedings and convictions. In certain circumstances a reservoir manager would have immunity from further proceedings; for example by paying in time the reduced amount

specified in the notice of intent to issue the fixed monetary penalty notice or by paying a fixed monetary penalty in time.

Clause 86 – Variable monetary penalties

Subsection (1) enables the Department to make provision in regulations for imposing variable monetary penalties in relation to offences committed under the Bill. Subsection (2) requires the Department to consult in accordance with clause 90 prior to making regulations. Variable monetary penalties would be set at levels determined by the Department, but in each case would not exceed the maximum fine for the offence. Subsection (4) specifies the conditions relating to the imposition of variable monetary penalties to be included in any regulations made under subsection (1).

Clause 87 – Variable monetary penalties: procedures etc.

This clause sets out the process that would have to be followed when a variable monetary penalty was to be imposed and that would have to be provided for in regulations made under clause 86. A variable monetary penalty would not be able to be issued if the Department was satisfied that the reservoir manager would have a successful defence and so would not be liable to be convicted of the related offence. As would be the case in relation to fixed monetary penalties, the regulations could include provision as to other circumstances when a variable monetary penalty could not be imposed. A reservoir manager would have to be given a right of appeal to the Water Appeals Commission. The grounds of appeal that would apply are as set out in subsection (7) as well as a power to secure that the Commission may confirm, or quash the decision.

The regulations may enable the Department to accept or reject an enforcement undertaking from a reservoir manager in relation to an offence instead of imposing the variable monetary penalty or while imposing a reduced amount of monetary penalty.

The regulations may also enable the Department to reclaim directly from the reservoir manager the amount of any unpaid variable monetary penalty (subsection (8)). **Clause 88 – Variable monetary penalties: criminal proceedings and conviction**

This clause sets out that regulations made under clause 86(1) must provide for a reservoir manager's immunity from further proceedings when a variable monetary penalty is imposed or when the Department accepts an undertaking under clause 87(5). This immunity would not apply to an undertaking in the circumstances where an undertaking was accepted, and the reservoir manager did not comply with the undertaking (whether or not a variable monetary penalty was also imposed). The regulations as to variable monetary penalties may extend the period in which criminal proceedings may be instituted against the reservoir manager where an undertaking was accepted and the reservoir manager did not comply with it.

Clause 89 – Undertakings referred to in clause 87(5): enforcement

Regulations as to variable monetary penalties may also provide for the payment of a monetary penalty ('a non-compliance penalty') to the Department if a reservoir manager fails to comply with an undertaking under clause 87(5). The amount of non-compliance penalty may not exceed the maximum amount of fine that would be imposed on summary conviction of the related offence. Subsection (3) requires the non compliance penalty to be imposed by serving a notice and for the reservoir manager to be given the opportunity to appeal to the

Water Appeals Commission against the notice and subsection (5) provides the grounds for appeal as well as a power securing that the Commission may confirm or quash the decision.

The regulations may also enable the Department to reclaim directly from the reservoir manager the amount of any unpaid non-compliance penalty.

Clause 90 – Consultation in relation to regulations under clauses 77(1), 81(1), 83(1) and 86(1)

This clause requires the Department to consult relevant bodies before invoking its powers to provide, by regulations, for stop notices, enforcement undertakings, fixed monetary penalties and variable monetary penalties. Subsection (2) sets out the organisations and persons that must be consulted.

Clause 91 – Recovery by the Department of certain costs

Regulations made under clause 77(1) (stop notices) clause 81(1) (enforcement undertakings) and clause 86(1) (variable monetary penalties) may make provision for the Department to reclaim from the reservoir manager concerned costs reasonably incurred. Subsection (2) clarifies what kind of costs these may be. The regulations would have to give the reservoir manager a right of appeal to the Water Appeals Commission against the Department's decision to reclaim costs and the amount of costs as well as provide a power to secure the Commission may confirm, quash or vary the Department's decision.

Clause 92 – Publication of enforcement action

This clause enables the Department to publish information regarding enforcement action, including the commissioning of engineers by the Department, failure to take measures in the interests of safety, the issuing of stop notices, the imposition of fixed monetary penalties and the imposition of variable monetary penalties. The information may not be published where a stop notice, fixed monetary penalty or variable monetary penalty has been successfully appealed (subsection (2)).

Clause 93 – Powers of entry

This clause creates powers for any person authorised by the Department to enter land for the purposes of carrying out its functions under the Bill. The power to enter land includes a power to enter buildings and other structures, integral to the functioning of the reservoir, by virtue of the definition of 'land' in the Interpretation Act (Northern Ireland) 1954. Subsection (1) specifies the land which may be entered and subsection (2) specifies the purposes for entry on to such land.

Clause 94 – Warrants authorising entry

Clause 94 provides for a lay magistrate to grant a warrant to any person entitled to exercise power of entry under clause 93. It is in usual terms for such a power. A warrant permits the person authorised to exercise the power of entry if necessary using reasonable force.

Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the lay magistrate to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land and where one of the following apply; that the land is

unoccupied or the case is one of urgency or that the conditions in subsection (3) have been met (i.e. notice of entry was given, the notice had expired and that either permission was refused or refusal was reasonably expected).

Subsection (4) provides that permission to enter is to be regarded as refused if no reply is received within a reasonable period to a request to exercise the right.

Subsection (5) specifies that a warrant granted does not entitle a person to use force against an individual and makes provision as to the duration of a warrant.

Clause 95 – Powers of entry: supplementary

The power to enter land conferred in clause 93 includes a right for such persons and, additional materials and equipment, (including vehicles, machinery or plant) to be taken onto the land in question or to do anything which is reasonably required to fulfil the purpose for which entry is taken (subsection (1)). A person may not demand entry to occupied land unless a period of notice is given or the entry is authorised by warrant except in the case where emergency powers are being exercised (subsection (2)). Subsection (3) specifies what must be included in any notice of intention to enter land. Subsection (4) requires any authorised person to produce written evidence of authorisation on request.

Clause 96 – Offence: preventing or obstructing entry

This clause provides that impeding the entrance to land of a person authorised by the Department under clause 93 constitutes an offence. Subsection (2) sets out the maximum criminal sanctions for such an offence.

Clause 97 - Compensation

This clause sets out the circumstances where the Department must pay compensation to landowners or occupiers of land and/or undertake reinstatement of land where the Department has exercised the right to enter land under clause 93 and there is consequential damage to the land or disturbance of the right to occupy. Subsection (2) describes the scenarios which would render the Department liable to pay compensation to persons other than reservoir managers, who meet the criteria in subsection (3). Subsections (4) and (6) provide for compensation to be payable for damage to land occupied by reservoir managers provided they are not disqualified under Subsection (5). Reservoir managers are disqualified from claiming compensation in two scenarios. The first is where entry was for the purpose of enforcing the taking of safety measures (under clause 73). The second is where it was for the purpose of exercising the Department's emergency powers (under clause 75) and the reservoir manager had not taken all practicable steps to prevent an escape of water from the reservoir. Subsection (7) permits the Department to enter into agreement to reinstate land instead of compensation or a combination of the partial reinstatement of land and compensation payment.

Where the reservoir manager is disqualified from claiming compensation subsection (8) enables the Department, if it considers it appropriate, to recover the amount of compensation paid to a third party, and/or costs incurred, from the disqualified reservoir manager. Subsection (10) provides that any dispute regarding compensation under this clause or costs incurred by the Department in relation to compensation or an agreement to reinstate (wholly or partially) is to be determined by the Lands Tribunal.

Clause 98 – Affording of reasonable facilities to engineers

This clause requires the reservoir manager to provide any relevant engineer with reasonable facilities in connection with the engineer's functions under this Bill. Subsection (2) requires reservoir managers to make their records and other information or particulars available in the form, manner or timing specified by the engineer. Subsection (3) lists the types of engineers who are 'relevant engineers'.

Clause 99 – Power of the Department to require information and assistance from reservoir managers

This clause requires the reservoir manager of a controlled reservoir to provide the Department with such information and assistance reasonably sought in connection with the Department's functions under the Bill. Subsection (2) requires the reservoir manager to make records available on request or such further information or particulars to be provided to the Department in such form, manner or timing as specified by notice.

Clause 100 – Offences: clauses 98 and 99

This clause makes it an offence for a reservoir manager to fail to comply with clause 98 and 99. Subsection (2) makes it an offence to intentionally alter, suppress or destroy any document, information or particulars, or knowingly or recklessly provide any document, information or particulars which is false or misleading, required under these clauses. Subsection (3) sets out the maximum criminal sanctions of a reservoir manager committing an offence under this clause.

Clause 101 – Power to require information and assistance from others

This clause enables the Department to require information or assistance from others for the purposes specified and in exercise of its functions under this Bill.

Part 7 – Panels of Reservoir Engineers

Clause 102 – Panels of reservoir engineers

Civil engineers will play an important role in the supervision, inspection, and construction of controlled reservoirs under the Bill. Clause 102 enables the Department to establish one or more panels of reservoir engineers and to appoint suitable engineers to be members of such panels. The Department must by order specify the various clauses within the Bill and the types of reservoir in relation to which members of such reservoir panels may be commissioned by reservoir managers to undertake various roles. For example an 'all reservoir panel' may be established and engineers who are members of this panel may be commissioned to carry out the role of supervising engineer, inspecting engineer or construction engineer for any type of reservoir (e.g. impounding or service reservoir). Members of the 'supervising panel' would only be able to be commissioned to undertake the supervising role under the Bill. Subsection (2) defines the term 'suitable' as including fit, and appropriately qualified and experienced.

Clause 103 – Appointment of members to panels: further provision

Subsection (1) requires civil engineers who wish to be appointed to a panel to make an appropriate application and subsection (2) enables the Department to make regulations specifying the information to be provided in the application. Subsections (3) and (4) provides for transitional arrangements for the appointment of engineers, utilising appointments made under the Reservoirs Act 1975. Subsection (5) allows the Department to determine the period for any appointment of a civil engineer to a panel and Subsection (6) provides that a civil engineer appointed is eligible for re-appointment.

Clause 104 - Removal of panel members

This clause enables the Department to remove a civil engineer from a panel where it is satisfied that the engineer is not suitable to continue to be a member of it. The Department must serve notice on the civil engineer removed from the panel and state the grounds for its decision.

Clause 105- Dissolution or alteration of panels etc.

Subsection (1) permits the Department to dissolve or alter a reservoir panel and subsection (2) specifies that the Department must give reasonable notice to members of the panel before doing so. The Department may permit a civil engineer commissioned from the panel in relation to a controlled reservoir to continue in his role for a period of up to 4 years, but may; by notice direct that an engineer is no longer entitled to do so during the 4 year period due to unsuitability. Subsection (6) provides the Department with the power by order to amend the time period (4 years) specified in subsection (3) for an engineer commissioned to be permitted by the Department to continue in the role.

Clause 106 – Review of decisions not to appoint, or to remove, civil engineers from panels etc.

This clause allows a civil engineer who has applied to be appointed to a reservoir panel and been unsuccessful, has been removed from a reservoir panel or has been given a direction under clause 105(4) (as no longer suitable to continue in his commission) to apply to the Department for a review of its decision. Subsection (2) enables the Department by regulations to make further provision regarding applications and reviews under this clause including provision as to charging fees.

Clause 107 – Consultation with Institution of Civil Engineers

This clause places a duty on the Department to consult with the President of the Institution of Civil Engineers before establishing a panel, making an appointment to a panel, making an order under clause 102, (specifying the various sections within the Bill and the types of reservoir in relation to which members of such reservoir panels may be commissioned by reservoir managers to undertake various roles), removing an engineer from a panel, dissolving a panel, directing that an engineer is no longer entitled to act under clause 105(4) or making a decision in a review under clause 106.

Clause 108 – Reimbursement of costs incurred by Institution of Civil Engineers

This clause enables the Department to reimburse the Institution of Civil Engineers any costs reasonably incurred by virtue of the appointment process of civil engineers to reservoir panels and consultation under clause 107.

Part 8 – Miscellaneous

Clause 109 – Power of Water Appeals Commission to award costs in an appeal

This clause provides the Water Appeals Commission with the power by order to award costs to the parties to an appeal against a decision by the Department in respect of the matters listed at subsection (2). Any order made has the effect of a court order (subsection (3)) and the Taxing Master has the powers in relation to such an order as it would to an order of the high court (subsection (4)).

Clause 110 – Orders as to costs: supplementary

In the circumstances where criteria at subsection (1) applies this clause provides the Water Appeals Commission with the power to make an order to award costs even if a hearing is arranged and the hearing does not take place.

Clause 111 – Fees in relation to appeals

This clause gives the Office of the First Minister and deputy First Minister the power to make regulations to specify the fees to be paid to the Water Appeals Commission for all appeals that it hears under the Reservoirs Bill.

Clause 112 – Time limit for certain summary offences under Act

This clause enables the Department to make provision by regulation to extend the time limit for prosecution of summary only offences provided in the Bill. This would amend the time limit provided under Article 19(1)(a) of the Magistrates Courts (NI) Order 1981 for summary offences, (currently 6 months from when the offence was committed or ceased to continue).

Clause 113 – National security: further provision

This clause makes provision for the Secretary of State to issue a non-disclosure notice to the Department if it appears that disclosure by any other means of any information which the Department may hold or receive in relation to controlled reservoirs, would adversely affect national security. This is in addition to the Secretary of State's power in clause 9(4) to direct the Department not to include in the controlled reservoirs register any information which would adversely affect national security. The non disclosure notice may also require the Department not to give to any person any indication of the existence of such information. This clause does not prevent the Department from complying with any other legal obligation to which it is subject and as listed in subsection (4).

Clause 114 - Grants

This clause provides powers for the Department to make provision in regulations to enable the payment of grant to reservoir managers of controlled reservoirs to assist them in

complying with their obligations under this Bill. Subsection (2) requires the regulations to specify the terms and conditions relating to the payment of a grant.

Clause 115 – Assessment of engineers’ report

This clause enables the Department to make provision in regulations for the assessment of reports, written statements, recommendations and certificates prepared by reservoir engineers’ as part of their duties under the Bill. Subsection (2) enables the regulations to make provision for a committee consisting of members of the Institution of Civil Engineers to make this assessment and the conditions of membership of such a committee. The matters which the regulations in particular may provide for are specified in subsection (3).

Clause 116 – Publication of information as regards ranges of costs of engineers’ services

This Clause makes provision for the Department to publish information on a range of costs for services undertaken by a qualified engineer under the Reservoirs Bill. This will provide reservoir managers with an indication of costs to be incurred for services such as an inspection of a reservoir by an inspecting engineer or the costs of a supervising engineer.

Clause 117 – Notice to the Department of revocation of commissioning, or resignation, of engineer

Subsection (1) requires reservoir managers to notify the Department when they have revoked the commissioning of an engineer specifying the effective date of revocation. Notice of the revocation is to be given within 28 days of the revocation. An engineer commissioned by a reservoir manager may give notice of resignation to the reservoir manager specifying the effective date (subsection (2)) not later than 28 days after the resignation. The reservoir manager must give a copy of the notice to the Department within 28 days of receipt of the notice. Subsection (3) makes it an offence for a reservoir manager to fail to give the Department a notice of revocation or a copy of a resignation notice and subsection (4) sets out the maximum criminal sanctions of a reservoir manager committing an offence under this clause. Subsection (5) provides a defence to a charge in the case where a reservoir manager did not receive a notice of resignation from an engineer.

Clause 118 – Form and content of notices, reports, certificates etc

This clause enables the Department to make further provision in regulations about the form and content of any notice or the form of any written statement, report or certificate under the Bill.

Clause 119 – Electronic serving or giving of notices or other documents

This clause provides for the conditions relating to the use of electronic communications for the sending of notices or other documents required under the Bill. Subsection (2) requires agreement regarding the use of electronic communications and subsection (3) specifies the conditions relating to the notice or other document. Electronic communications cannot be used for the serving of a notice of the intention to enter land which is occupied (subsection (4)). Subsection (5) specifies the time and day of receipt for electronic communication. Subsection (6) requires notice to be given regarding the withdrawal of electronic communications.

Clause 120 – Change to the Institution of Civil Engineers

If the Institution of Civil Engineers ceases to exist, the Department may by order amend references in the Bill to the Institution and to its President.

Clause 121 – Civil liability

The Reservoirs Bill does not confer a right to claim damages in respect of a breach of an obligation imposed by this legislation.

Part 9 - General

Clause 122 – Crown application

This clause makes provision to apply to the Crown in Northern Ireland. Subsection (2) provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

Subsections (3) and (4) define a reference to the Crown, Crown land, Crown estate and Government Department.

Clause 123 – Enforcement in relation to the Crown

Subsections (1) and (2) provide that the Crown in Northern Ireland will not be criminally liable to any contravention of the Bill's provisions but allows the High Court to declare any act of the Crown in contravention of the Bill's provisions unlawful, upon application by the Department.

Subsection (3) limits powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers of entry can be exercised. Subsection (4) defines the term 'the appropriate authority' in relation to any land. Subsection (5) provides for the Department of Finance and Personnel or the Treasury, as appropriate, to determine any question which arises as to who is the appropriate authority in relation to any land and the determination is final.

Clause 124 – Service or giving of notices or other documents: the Crown

This clause provides that any notice to be served on the Crown or document given to the Crown must be served on or given to the appropriate authority. Subsection (2) states that clause 24 of the Interpretation Act (Northern Ireland) 1954 does not apply to service of this notice.

Clause 125 – Offences by bodies corporate and partnerships

This clause provides that where an offence under the Bill has been committed by a corporate body section 20(2) of the Interpretation Act (Northern Ireland) 1954 is amended as specified and the company officials or members may be liable. Subsection (2) deals with liability in the case of a partnership.

Clause 126 – Supplementary, incidental, consequential etc. provision

This clause enables the Department by order to amend, repeal, revoke or modify any statutory provisions made by or under this Bill.

Clause 127 – Orders and regulations

This clause provides for the procedures or Assembly control for making orders and regulations under the Bill. Subsection (3) details the orders or regulations that require a draft to be laid before and approved by a resolution of the Assembly prior to making. All other regulations made under the Bill are subject to negative resolution. Subsection (4) is in usual terms and specifies that any power to make an order or regulation under this Bill includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

Clause 128 - Definitions

Subsection (2) introduces Schedule 2, which sets out in a table, key terms used in the Bill where they are given their meaning.

Clause 129 – Minor and consequential amendments and repeals

This introduces Schedule 3 and Schedule 4 in which amendments of the Water and Sewerage Services (Northern Ireland) Order 2006, in relation to the Water Appeals Commission, and a repeal of Article 297 are set out.

Clause 130 – Commencement

Subsection (1) sets out the clauses within the Bill which would come into operation on the day after Royal Assent. Subsection (2) enables the Department by commencement order to commence the other provisions of the Bill on appointed days. Subsection (3) provides that no order may be made under subsection (2) for the provisions listed unless a draft of the order has been laid before and approved by a resolution of, the Assembly. A commencement order may contain such transitional, transitory or saving provision as considered necessary by the Department including such transitional or transitory modifications to this Act as required to ensure that commencement of provisions are possible under subsection (3).

Clause 131 – Duty to report on operation of this Act

This Clause places a duty on the Department to publish a report on the operation of this Act within three years of Royal Assent and to lay the report before the Assembly.

Schedule 1 – Pre-commencement inspection reports – review of decision under clause 32(2)

This Schedule sets out the procedure to be used by the reservoir manager when seeking a review of the Department's decision regarding a document being a pre-commencement inspection report. Paragraph 3 provides that the Department may commission an appropriate panel engineer when undertaking a review and specifies the matters that the Department must take into account when considering an application for review. Paragraph 5 requires the Department to notify the reservoir manager of its decision and specifies what is to be

included in any notice. Paragraph 6 provides powers for the Department to make further provision by regulations in relation to applications for reviews, and reviews, under this Schedule.

FINANCIAL EFFECTS OF THE BILL

22. Policy and legislation development is costing approximately £200,000 per annum in staff costs, and when the policy is embedded enforcement staff should cost approximately £140,000 per annum.
23. Budget cover of £200,000 has been identified to undertake an audit of reservoirs to obtain information on the condition and estimated capital cost of returning reservoirs to an acceptable standard of safety. A Business Case to consider the best way to obtain this information has been approved. Reservoir managers, who agree to obtain and provide this information to the Department, will have costs would be reimbursed up to a limit of £2,500. Reservoir managers will be able to use this financial assistance to help meet the costs of a full inspection of their reservoir if they wish to do so. Such an inspection report would contain all the information that the Department requires to assist in the audit and will be recognised as a pre-commencement report under the Reservoirs Bill when enacted.
24. The Bill includes the powers to introduce a Grant Scheme (Clause 114) to assist reservoir managers to improve the condition of their structures. Currently no decision has been taken to introduce such a scheme as these costs would fall outside the current budget period. Information obtained by the audit of reservoirs will assist the Department in its policy decision as to the need for a grant scheme.
25. The Bill also enables the Department to take emergency action to prevent an escape of water from a controlled reservoir that may cause harm to persons or property (Clause 75). The costs associated with such emergency action are currently unknown as the condition of the reservoirs, and the amount of work required to ensure reservoir safety, cannot be determined until after registration and initial inspection. Cost recovery may not always be possible.

HUMAN RIGHTS ISSUES

26. A potential Human Rights issue (Protocol 1, Article 1: Protection of Property – European Convention of Human Rights) regarding a development in the flood inundation area of a reservoir, which would otherwise be designated as low or medium consequence, was identified at policy development stage. The concern related to a development taking place causing the reservoir designation of a reservoir to be required to change to either medium or high consequence. The effect would be additional management and operational costs for a reservoir manager, as a manager would be subject to additional requirements under the Bill. It is considered that this may affect a reservoir manager's human rights as the result of a development would be that a manager could incur additional costs with little or no commensurate benefit. A developer, in this scenario, would not incur the additional reservoir management costs resulting from increased regulation of a reservoir, but would benefit from potentially enhanced flood management and the reduced flood risk to the development.

27. The review of Planning Policy Statement 15 (PPS 15) by the Department of Environment brings forward proposals for the introduction of a new planning policy to manage development in the downstream inundation area of reservoirs. Policy FLD 5 'Development in Proximity to Reservoirs' places an onus on the developer to ensure that the flood risk to any proposed development in the downstream inundation area of a reservoir has been assessed and that there are suitable measures to manage and mitigate the identified flood risk. All applications for development would be accompanied by a flood risk assessment, prepared by a suitably qualified engineer. This assessment would take account of any necessary upgrading to the reservoir and its management regime. The funding of any associated costs would have to be a private matter between the developer and the reservoir manager.
28. Policy FLD 15 is primarily directed towards managing new development in proximity to reservoirs so as to reduce flood risk from this particular source. The onus that this policy will place upon the developer will have the effect of addressing the human rights issues of the reservoir manager.

EQUALITY IMPACT ASSESSMENT

29. Equality screening of the policies proposed in the Bill was carried out and it was not considered necessary to carry out an Equality Impact Assessment.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

30. An integrated impact assessment to determine regulatory, social, economic, and environmental impacts was undertaken on the reservoir safety policy proposals included in the Bill. A rural issues statement was also prepared.
31. The overarching objective of the reservoir safety policy is to introduce a consequence-based approach to the management and regulation of reservoir safety to protect the public from flooding as a result of an uncontrolled release of water due to reservoir failure. The policy would not directly impact upon the public living and working in the potential flood inundation area of a reservoir but it would provide assurance that the risk of flooding is being managed.
32. The legislation sets out a management regime for reservoirs that takes into account industry best practice for reservoir safety thereby providing greater protection for people and communities in reservoir inundation areas which would have a positive contribution to their health and well being.
33. The legislation would impact mostly on reservoir managers of reservoirs who would be required to implement management regimes for their reservoirs. The legislation would clarify who is the reservoir manager of a controlled reservoir and although reservoir managers are currently responsible under common law for reservoir safety, evidence would suggest that many managers are unaware of their common law responsibility. The legislation does not impose new liabilities on reservoir managers but seeks to establish a reservoir safety regime that is defensible as reasonable in law and also limit liability for compliant reservoir managers.

34. Reservoir safety legislation has been implemented in England, Scotland and Wales since 1975 and the experience in these countries is that there have only been a small number of legal cases for failure of the ‘water undertakers’ to fulfil the requirements. This legislation may, therefore, have a slight impact on requirement of legal aid.
35. Information that is currently available suggests approx 77 of the 156 impounding reservoirs identified under the preliminary flood risk assessment are managed by the public sector such as Government Departments, non-Departmental Public Bodies or Councils etc,. Approximately 9 are managed by third sector organisations such as angling clubs or community trusts. Approximately 61 are managed by private owners. Management information on 9 reservoirs is currently unknown.
36. The impact on the public sector with the introduction of this legislation would be minimal as Rivers Agency understands that the majority of these 77 reservoirs are being managed in the spirit of the Reservoirs Act 1975 with supervision, inspections and any necessary works identified being undertaken.
37. The impact of this legislation would be greatest on reservoir managers of privately owned reservoirs and third sector reservoirs. These reservoirs may not have had any maintenance, supervision, or inspections undertaken since their construction. Thus the condition and safety of these reservoirs is unknown. The legislation includes a power for the Department to bring forward a grant scheme, (clause 113 refers). It is likely that any scheme would only contribute to the financing of works to be undertaken in the interests of safety.
38. The management regime being proposed is linked to the potential consequences of an uncontrolled release of water from the reservoir. The level of supervision and inspection by independent qualified engineers and associated costs are, therefore, dependent on the reservoir designation of a reservoir. Those reservoirs designated as high consequence have the potential for reservoir failure to result in loss of life. These reservoirs would require higher levels of management, supervision and inspection. Reservoirs designated as low consequence would not have the same potential for reservoir failure to result in injury to people, the environment, cultural heritage or economic activity and reservoir managers would only be required to register their reservoirs, provided emergency contact information boards and prepare on-site flood plans.
39. After the introduction of this legislation in Northern Ireland there would be a need for specialist reservoir engineers to be commissioned to undertake the roles of supervising, inspection and construction engineers. There is an opportunity for civil engineers to obtain the appropriate training and experience to fulfil these specialist roles and to be appointed to the reservoir panels. This would enable qualified engineers to undertake these roles not only in Northern Ireland but elsewhere in the United Kingdom.
40. The legislation would require reservoirs to be maintained with duties such as grass cutting on embankments, weeding or fencing to be undertaken. This may lead to a small increase in employment.
41. The legislation would be implemented and applied consistently across rural and urban areas. It will impact rural and urban dwellers located in the inundation areas of

reservoirs in the same way by providing assurance that reservoirs is being managed in an appropriate manner to reduce the risk of flooding due to reservoir failure.

42. In line with the principles of “Better Regulation” provision is included in the legislation to recognise any inspection reports relating to inspection of reservoirs that have been undertaken within a certain timeframe prior to the legislation commencing and that meet the criteria of the Reservoir Act 1975. Also, in line with Better Regulation the management regime would be proportionate and determined by the level of consequence or impact of an uncontrolled release of water resulting from reservoir failure. Following the public consultation the reservoir designation categories have been changed to High, Medium and Low instead of High and Low. These changes would reduce the administrative and financial burden for reservoir managers.
43. It is considered that the reservoir safety requirements would protect the environment as the risk of flooding from reservoirs will be reduced. The Department will be liaising with the Northern Ireland Environment Agency on procedures in relation to the reservoir designation of reservoirs to ensure that appropriate consideration to the environment and cultural heritage aspects are included in the decision making process.

LEGISLATIVE COMPETENCE

44. The Minister of Agriculture and Rural Development had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Reservoirs Bill would be within the legislative competence of the Northern Ireland Assembly.”

SECRETARY OF STATE CONSENT

45. The Secretary of State had consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.