



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Reservoirs Bill: Rivers Agency

8 April 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Thomas Buchanan
Mrs Judith Cochrane
Mrs Jo-Anne Dobson
Mr William Irwin
Miss Michelle McIlveen
Mr Oliver McMullan
Mr Ian Milne
Mr Robin Swann

Witnesses:

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

The Chairperson: I welcome David Porter, director of development, and Kieran Brazier, head of the Bill team, to the Committee. Thank you very much for your attendance.

A total of 14 issues have been identified. I understand that you have been made aware of them. It is my intention to take each issue, one by one, and to seek your response before moving on to the next issue. Any issues that are not covered today will be addressed at the meeting of 29 April. I do not expect that we will get through all 14 issues today or for there to be pressure to get through them all today. I would rather have a good 15-minute discussion on each topic to be thorough and get as much done as possible. Members will of course have read their packs and the information that is available to us.

I want to re-emphasise to members that it is about quick-fire questions to glean as much information from the officials as possible. Then, the officials will also know the mindset of the Committee and can appreciate the strength of feeling, which will inform the work that they will have to do between meetings and as the Bill continues through its processes. I ask officials to be as concise as possible. I will try to be disciplined and allow 15 minutes for each topic, if I can live up to that.

We will go straight into the first issue, which is an audit of reservoirs. Members suggested that Rivers Agency carry out an initial audit of reservoirs to ascertain their condition and the likely costs associated with fixing them before any risk designation is undertaken. Members saw the main focus as being the private and third sector reservoirs. Consideration could be given to a clause in the Bill to defer the start of the Bill until the audit has taken place. I will come to you first, David and Kieran, after

what I have just said. That is the mindset of the Committee at present. Do you want to address that now? Then, I will hand over to Joe to ask questions.

Mr David Porter (Department of Agriculture and Rural Development): Thank you, Mr Chairman, for the opportunity to come and address the issues. We certainly welcome the opportunity to sit down informally and go through them because it allows us to come prepared to debate them. It is a very positive way of dealing with this.

With regard to the audit of reservoirs, it is useful to set out the policy journey that we were on and how we have developed that policy, because the policy position is absolutely at the crux of why we find it difficult to carry out an audit. To start, we had a blank sheet of paper. We put out the call to key stakeholders and people who we knew owned reservoirs and said, "Come in and talk to us because we are developing a reservoir policy." That allowed us to develop the draft reservoir policy, which was then put to the Executive. They gave us permission to go out to public consultation. It was subject to public consultation, and we took on board the observations or comments made by the public. That allowed us then to confirm the policy, which was subsequently approved by the Executive.

I am putting it in that context because we, as officials, deliver policy. The policy position is very important in this. I want to draw your attention to two elements of it. The first is that DARD's Rivers Agency would act as the reservoir authority. The position that we have is one step removed from the manager. Our role is to be the reservoir authority to enforce the regulations to require people to do certain actions. So, that defines what we do. The second thing that was confirmed in the policy was who is actually responsible. It states that reservoir managers would be responsible for reservoir safety. That was the second policy position that was confirmed and approved by the Executive subject to public consultation and subsequently approved by the Executive again.

Those two policies — first, that we would be the reservoir authority and, secondly, that the person responsible for reservoir safety is the reservoir manager — have driven the work that we were enabled to undertake in developing the Bill. That does not mean that we are completely oblivious to the condition of reservoirs out there. The team and I have a very good understanding of the condition of reservoirs, and we have got an even better understanding of that through this process, particularly from dealing with some of the private individuals.

We have been quite guarded in our language, because we have been trying to make sure that we get the appropriate Bill without causing panic out there about the condition of particular reservoirs. We have talked about being a little bit concerned and having "anecdotal evidence", which is a term that we use in the policy document. Anecdotal evidence indicates that reservoirs may be in bad condition, but we have more than anecdotal evidence of that. However, we need to be careful, because we are in public view. We need to be careful that we do not cause complete panic or concern about those reservoirs. Hopefully, that gives you the context of why it is difficult for us to produce a single document that is entitled, "Audit of Reservoirs".

The Chairperson: I understand.

Mr Byrne: I welcome the presentation, David, and the fact that you are pointing out that there are two policy issues: the reservoirs authority, which you are as the Rivers Agency, and the distinction between that and the managers/owners of reservoirs. Given that we are embarking on something that is quite radical and given that there is quite a lot of uncertainty among the third sector and the private owners, could it be that that was overlooked in relation to doing a full-scale audit? If it was overlooked, can it be revisited? For example, £200,000 would probably cover the cost of a comprehensive audit, and maybe DARD, as the responsible Department, could give that serious consideration?

Mr Porter: It absolutely was not overlooked; we considered it. As I said, we know a lot about the condition of many, many reservoirs. Our knowledge is not exhaustive, but we know the condition of many, many of them. It is interesting that you say £200,000, because we have had discussions about how much an audit would cost and what we can do, as a Department, to help the process move on.

I still have a difficulty with removing or moving the fundamental responsibility for reservoir safety from the manager to the Department. If we stepped in and carried out an audit, it would change that role. However, that is not to say that it is impossible to have a first inspection carried out that is in some way assisted. That may well be something that we can explore a bit more.

I do not want to jump down your list too far, Mr Chairman, but, in relation to grant aid, there may well be something that we need to think about. Our thinking on the grant aid has always been about the works. Maybe we are too focused on the works, and maybe there is something that we need to explore with the Committee and possibly take to the Minister and say, "Is there something that we can do to assist reservoir managers with the early stages of this Bill?" That may be a better way of getting an audit of the structures because it answers the questions that we need answered without removing responsibility from the individuals and giving it to the Department. So, it keeps the responsibility clear. That is something that I am happy enough to explore.

Mr Byrne: I can see the get-out clause that you are looking for. However, given that this is being visited purely on the private owners and the third sector, and given that it has come as quite a shock to them, surely it would make sense to have a single benchmark audit report done by the Department to make sure that everybody is on the same page and has a clear understanding of their roles and responsibilities subsequent to the initial report.

Mr Porter: Again, I have difficulty accepting that this just affects private sector owners. I accept that they feel that the Bill disproportionately impacts upon them, but there are many public sector reservoirs that are not up to standard. Camlough reservoir is the obvious example that we have talked about at length. Northern Ireland Water talked about it, and Newry and Mourne District Council talked about it. That is not a private reservoir, but it needs £2.5 million spent on it to bring it up to standard. So, I do not accept that only private owners are affected, but I accept that they feel that the impact may be disproportionate.

I agree that it would be good to get that wider view or understanding. I am happy to explore how we can do that and to take that to the Minister if we can agree some sort of proposal that could move this forward. I will not, however, change the responsibility of reservoir managers for reservoir safety. That is what the Executive agreed, what was subject to public consultation and what I have been told to do. I cannot change that fundamental policy; we are past the post on that one. However, I am open to exploring how we can assist reservoir owners, particularly the private and third sector owners, to understand the condition of their structures.

I told you that I know quite a lot about the condition of reservoirs. There are some cases where, if people would just get an engineer to talk to them, I know that they would get some comfort. There are people who are concerned and they do not need to be concerned. If, instead of objecting to this, they would get half a day with an engineer, I know that they would get comfort as opposed to being alarmed. There are some people for whom there will be bad news, but there are others who are annoyed about this and do not need to be. If they got professional advice, it would help them. I cannot stress that enough.

Mr Byrne: That is fine. I want to make one wee comment about the Camlough reservoir. Am I right in saying that it was owned by trustees, none of whom now seem to exist? Newry and Mourne District Council is almost the managing authority rather than the owners.

Mr Porter: You are absolutely correct that Newry and Mourne District Council is not the owner of the bed and soil of that reservoir. The owners of the reservoir or the dam structure were brought in by legislation, and you are correct that there was a water board or a board of trustees, all of whom are now deceased. I do not see that Newry and Mourne District Council has stepped in, in their absence. The council has water rights from that structure and uses water from it to control the water levels on Newry canal. Northern Ireland Water also extracts water from that reservoir. So, irrespective of the problem of the deceased trustees, Northern Ireland Water and Newry and Mourne District Council are reservoir managers because of their activities on that structure. That has formed part of the discussions that we have had with them.

The Chairperson: There seems to be a fundamental question on this issue. The Committee does not know and cannot see how, by you doing an initial audit, with a body of engineers or one engineer doing all the work — you would probably get that for a more efficient price — of all 151 reservoirs, finding out exactly what state they are in and, by doing so, giving comfort to those you talked about who are fearful or, at the very least, getting the bad news to people who need to hear it, that shifts responsibility on to the Rivers Agency when, through the common law and everything else, it is clearly the responsibility of the reservoir owners. How do you get to the fact that your doing an audit of reservoirs will shift responsibility from the reservoir owners to you?

Mr Porter: Let us consider a structure that is in poor condition. We are the employing authority to the engineer under a contract, and the report then belongs to us. The report might say that the reservoir is at the point of failure — you see it clearly when you push it to extremes. As a professional agency in central government with highly qualified people who understand what that means, we could not then pass that to the reservoir manager for information. We would have to react to that, and that would change the fundamental principle of who was responsible. We need the Reservoirs Bill to be passed to get that information and to say that the reservoir manager who owns the structure needs to do something about it.

The Chairperson: So, you are tiptoeing the Bill in to be able to do something. This is a fundamental point. There are three paragraphs that deal with the Bill's financial aspects. When you look at the information that is presented on the Scottish legislation, you see that there is a glaring blind spot. It is as if you are going to the Executive with a blank cheque and saying, "Please fill this in, and we will add the noughts as we see fit".

Mr Porter: We are not asking the Executive for any money. Fundamentally, there is a responsibility on private owners today, and they are not doing it. We are going to make them do it through the Bill. This is true regulation. This is not about bringing in a new duty; they are failing in their duty. I know of reservoir owners who have an engineer's report outlining defects and are not acting on it. They need compelled to do that. We also know that, on average, about 500 people live below the private reservoirs. So, an owner may have a report signed off by an engineer saying that something needs done and is still happy enough to say, "That is for another day". There are 500 people, on average, who are potentially at peril downstream of that reservoir. That is the fundamental that we are trying to bring in. It is not that we are tiptoeing round to get this in, and it is not that we are trying to avoid it. There is a responsibility on owners today, and I believe that they are failing in that. They are not managing their structures in a way that is reasonable. Thankfully we have had no failures, and thankfully we have had no fatalities. However, if we do, I do not know what their defence will be.

The Chairperson: That is the same today as it will be on the first day that the Bill is enacted. The difference is that you will then have the power to do something.

Mr Porter: Correct.

The Chairperson: If you were to do a reservoir audit and basically lay it on the line to those people, surely the onus will still be on them whether we have the Bill or not.

Mr Porter: If we can get a situation where I can help them to do that, that keeps us, as a Department, still acting as a reservoir authority. They may be having difficulty getting their head around the fact that they have to spend money on a reservoir and on an engineer. Maybe that is the bit that we need to help with, so that we get the level playing field, as Joe put it, and get that uniform understanding. Maybe it will get everybody to sit up and pay attention.

The Chairperson: Surely, if the responsibility is on the reservoir manager to make sure that his structure is safe, the onus is on the Department to find out the detail of what is safe and what is not.

Mr Porter: As I say, we have much of that, but I have been very careful in the examples that we have used so that we do not cause unnecessary alarm.

The Chairperson: How did you get that information?

Mr Porter: We got it through a number of different means. We got some information through our involvement with planning decisions and planning issues, such as something being identified under PPS 15's flood risk assessment. In some of the structures that we are involved in, there are designated watercourses over or adjacent to a private reservoir and dam that we have had historical dealings with. We have also been out and talked to lots of people. People came to the stakeholder groups, and we asked them questions. Have you had an engineer look at this? Do you know anything about the condition? Who has inspected it? How long is it there? What is it made of? Is it overgrown or is it in good condition? We have gleaned information from a lot of that. We also did the work on the reservoir community asset report. That required one of the team to find some reservoirs, and, where we could find no published information, we went out and looked at them. So, we also gleaned some information from that. It came from a whole myriad of sources as well as from the institution itself.

Mr Byrne: I am picking up, David, that you have quite a bit of information on a lot of the reservoirs. Is there a file marked "secret" in which you have gathered the intelligence? That would lead to concerns and alarm among those who may feel that they are a reservoir manager and are very concerned about what you know and what they do not know.

Mr Porter: There is no file marked "secret". A lot of it is probably in our heads because a lot of it is gleaned from conversations that we have had with people. I can give one bit of comfort to people. At the event that took place here, plus at our own stakeholder events, when people talk about being alarmed about the structure, we keep giving the advice, "Go and get an engineer". Now, that is not given just because that is the general advice. That is given because I know that there are some people out there who are unnecessarily frightening themselves. If they got some professional advice, they might well be in a better-informed position. That does not make the problem go away, but I think that it will make the size of the problem that they are facing a little bit more realistic.

The Chairperson: Ian, I am going to bring you in. We are only talking about the audit of reservoirs.

Mr Milne: I understand, Chair. I just want to follow up on the point that you were making. To clarify, David, are you saying that you have knowledge of a private reservoir with problems? If you are saying that, surely, if something happened tomorrow morning or tonight, you as a Department would be implicated in that whole inquiry, because you have the knowledge and are doing nothing about it.

Mr Porter: That is right. It is a very good point, and that is why, for the last two and a half years, I have been working at Camlough. I chaired the meetings between Northern Ireland Water, Newry and Mourne District Council and the Richardson estate. It was me who called for that meeting and brought those people together, because it was drawn to my attention personally. I received a letter from Alan Cooper, a panel engineer, saying that, in his opinion, that was the worst-condition reservoir in the UK. As an engineer, I received that letter personally and thought, "I need to do something about this". We started that informal process with those groups to try to work out who the actual owner/manager is. My whole focus in that is to get those parties to get a civil engineer. They commissioned an inspecting engineers report, cleared the bank, put in monitors and put in a system, not me. It was not for me to go in and do that. My job is to get others to do their duty. That is what the regulation is all about.

Mr Kieran Brazier (Department of Agriculture and Rural Development): Setting aside what David is saying and thinking about the practicalities of it, a lot of the powers that would enable us to do the survey are only contained in the Reservoirs Bill. We would not have a power of entry. We could not go to a private reservoir owner and insist that we inspect the reservoir or send a panel engineer to inspect it. The powers of entry that we have, from my understanding, are under the Drainage Order, and that is where there is an emergency. This is a survey to gather information. Some owners may resist and may not want to be involved. We have heard that. Some owners would not want an engineer on their property looking at their reservoir, probably for fear of what the reservoir panel engineer would say. A lot of them have nothing or little to fear, as David has alluded to, but others might have.

Once we were in possession of that information, we would be obliged to share that, of course, with the reservoir owner. We could not make that reservoir owner do anything with that information, whereas, with the Reservoirs Bill, we could enforce the outcome of an inspection report. So, we would be in a limbo situation if something was known and the reservoir owner or manager did not feel that he wanted to do anything with the reservoir. We would not be in a position to enforce that either.

Mr McMullan: You mentioned 100 houses or 500 houses downstream. Where does that put the Planning Service? God forbid, if something happened — you talked about the reservoir owner's view — what would the Planning Service's view be?

The Chairperson: Oliver, I am trying to keep focused on the audit of reservoirs. There is a planning section coming up. We may well get to it today, if you can just hold off.

Mr Swann: David, I am trying to get my head round whether the information that you know is reliable. You said that you, as an agency, could not go in to do the audits because you might receive information that you would then be forced to take action on. Latterly, you said that you have in your head an idea of the condition of the reservoirs. Are you admitting that you know that there are more reservoirs than Camlough that need action taken now?

Mr Porter: I think that I said previously to the Committee that I do not believe that there is another problem of the size and scale of Camlough.

Mr Swann: I am not talking about the size and scale of Camlough; the very specific question is whether you are aware of another reservoir, apart from Camlough, that is in a dangerous condition.

Mr Porter: I am aware of reservoirs in need of attention.

Mr Swann: What action are you taking on those at the minute?

Mr Porter: We are bringing forward a Reservoirs Bill to address those.

Mr Swann: So, if they fail in the meantime —

Mr Porter: Individuals are responsible.

Mr Swann: But you are not, even though you are aware.

Mr Porter: We are bringing forward a Reservoirs Bill to address that. It is a known gap. We have been working for the past three years to bring forward a Reservoirs Bill to address the issue. We do not have the powers to address the issue today.

Mr Swann: In the instance of Camlough, you intervened on behalf of the agency; I assume that it was your responsibility. What makes that case different from the other ones?

Mr Porter: In that particular case, it was because it was so stark and because of the groups involved. We knew that we could work with Northern Ireland Water, that it understood the hazards that dams and reservoirs pose, and that it has a reservoir stock in very good condition. By taking on that issue, we knew that we could try to improve that situation in the absence of powers. If we try to do that with a private individual, they may choose not to talk to us, and we cannot compel them to. We knew that we did not need to compel Northern Ireland Water or Newry and Mourne District Council.

We also purposely took that as an issue to test some of the issues that we knew we would be facing. For instance, Joe mentioned ownership earlier. It took us about 12 months to work out who the owners were. We, as an agency, welcomed the opportunity to do that before the Reservoirs Bill, because at least it informed us of some of the types of issues that we were going to have to address. That, for example, is why there is no time limit on us giving a designation. You have six months to register, but there is no time limit for us to make the initial designation. That was purely and simply because of the work that we did in Camlough. We recognised that, if we had said that DARD would give a designation within two months, we would not have been ready. There may be other complicated cases of land law and historical legislation. We tackled the question of who owned Camlough for about 12 months before we got an answer. There will be other complex cases in trying to find who is responsible. A lot of them have passed down through trusts, wills or companies that have closed and have been wound up and then somebody else has taken those assets. It is a very complex picture out there. Camlough was a good one for us to see what we were taking on and how we could solve some of the problems.

Mr Swann: I think that we established in previous meetings that a total of 51 reservoirs are going to be in public ownership, partnership ownership or orphaned.

Mr Porter: We now have just six unknown.

Mr Swann: Aye, but, in total, I think that 51 reservoirs are not in public sector money.

Mr Porter: In public, there are 77. There are 59 private or not public. We think that nine are owned by the third sector or not-for-profit organisations.

Mr Swann: Right, so let us say 59. You said that you have to take forward legislation because some owners may resist.

Mr Porter: Yes.

Mr Swann: How many of them have resisted to date? Have you sampled those 59?

Mr Porter: None of them has resisted, because we do not have a Reservoirs Bill.

Mr Swann: Have you approached them in the same way as you did Camlough?

Mr Porter: None has been drawn to my attention that requires work as urgently as Camlough. As I have said to the Committee before, Camlough is the worst example, and I do not expect to find another like it, purely because of the size of the lake, the condition of the structure and the number of houses downstream. I hope that that gives you a little comfort. I know for a fact that there are reservoir managers and owners who have an engineer's report and have not actioned matters in the interests of public safety.

Mr Swann: I will not labour this any further, but I have a concern. If the agency has knowledge of reservoirs that are in any state of disrepair, surely it is its duty, whether or not there is legislation, somehow to inform the owners.

The Chairperson: Point taken, but David would say that the agency is acting by putting forward the Bill. However, there seems to be an immediate issue there.

Mr Porter: If someone were to draw another Camlough to my attention, I do not think that I would sleep easily in my bed at night. Take from that that Camlough is the worst. I could not wait for the Reservoirs Bill to act on Camlough. To date, nothing else has been drawn to my attention that required me to act as quickly as I felt I had to on Camlough. However, there are other reservoirs that need attention.

Mr Byrne: David, irrespective of who commissions an audit or pays for it, if there were a comprehensive audit of every reservoir, we could apply a traffic light system: red for danger; amber for moderate risk; and green for OK. In that way, everyone would start with a clear picture.

Mr Porter: That is correct.

The Chairperson: This is still on the question of why the Rivers Agency cannot do a complete audit. You stated that 59 reservoirs are in the hands of private individuals, bodies with charitable status or not-for-profit organisations, and all the rest are owned by the public sector. Surely there should be no issue with getting engineers' reports on and, if need be, entry to, those reservoirs.

Mr Porter: I would not say that there was "no issue" with that, but, as you have also heard, a lot of them are compliant with the spirit of the 1975 Act. For instance, the 48 reservoirs that Northern Ireland Water owns are compliant, so there is no need to get entry to them. They are compliant, not with our legislation but with the spirit of our legislation, because they are compliant with the spirit of the English legislation.

The Chairperson: So does it come down to the other 59?

Mr Porter: The 59 privately held reservoirs, and we know that some other public reservoirs have had no recent inspection, and there may well be some minor defects.

The Chairperson: So we are talking about maybe 60 or 70 reservoirs. At £2,000 a pop for an inspection, you can do the maths. It is not a great amount, but it would encapsulate all the detail needed for you to make informed choices on the Bill and for MLAs to scrutinise that when it comes forward. That is the catch-22 situation that we are in.

Mr Porter: Yes, it is.

The Chairperson: You said that you know that people are turning a blind eye to reports. Surely that is even more reason for the Rivers Agency to audit. Then, you would have the knowledge of exactly what had to happen so that, when the legislation was enacted, you could enforce it. At present, if engineers are writing reports that just sit on the shelf, there is a problem. So this has to be dealt with: how it will be dealt with is the issue.

Mr Porter: Absolutely, but those owners are not currently non-compliant. So a reservoir owner can take a report and say, "Thank you very much. That is very interesting. My risk management strategy is to place it neatly on a shelf."

The Chairperson: Yes, but you would have the information.

Mr Porter: Yes, but I can do nothing with it.

The Chairperson: Until the Reservoirs Bill is enacted.

Mr Porter: I have no powers to do anything with that information.

The Chairperson: Until the Bill is enacted.

Mr Porter: We need the Bill in order to keep the responsibility for appointing an engineer and carrying out that inspection in the right place. I agree 100% with you, and I would love to know the condition of all these structures and have an inspecting engineer visit all of them. That would mean that I could write a much more definitive case to the Minister on the big grant scheme needed so that she could take it to the Executive and get it approved. If that was the case, we could take that decision now. If it turns out to be a relatively small figure, from a public safety point of view, this is not worth fighting and arguing about — let us get on and do it.

The fundamental question of where responsibility for reservoir safety sits cannot be compromised. Currently, in common law, the responsibility rests with the owner. We are formalising that position, and I will not compromise on that at all. If that means that we cannot go forward with the Reservoirs Bill, I have no issue with that. I want to be clear about this: all those private owners are on notice. No reservoir owner in Northern Ireland can say that they do not know that their reservoir is unsafe. If the Bill falls, it is not that the problem will go away; they are all on notice. The only reasonable thing that any private owner can do is to get an engineer. The big difference is that, at least under the Reservoirs Bill, they have the prospect of grant aid. If the Reservoirs Bill falls, there is no grant aid. You fix your reservoir and are on notice that you hold something that is a hazard —

The Chairperson: Yes, but if the Reservoirs Bill falls, the Committee will still expect the Rivers Agency to deal with this issue.

Mr Porter: We have no powers.

The Chairperson: So you will have to put forward a Bill.

Mr Porter: The powers that we put forward would be the Reservoirs Bill. So we get back to the same point because, no matter how you look at it, what is set out for us to do — appoint a supervising engineer to be there at all times, have routine inspections every year and an expert inspecting engineer coming in periodically — is fundamentally correct. If we are asked to bring forward something different, we will bring back those same fundamentals. That is the problem; we will get back to the same point of having this discussion.

The Chairperson: I want to ask you about the power of entry to reservoirs in private ownership. I imagine that some of them feed designated watercourses.

Mr Porter: Yes.

The Chairperson: Surely you have the power to walk designated waterways.

Mr Porter: Yes, but some of them are not designated.

The Chairperson: If the information that you have gleaned, either by tripping up on it or finding it from other sources, was compiled, what would it look like? If you shared that with us, how would that affect —

Mr Porter: I am sharing much of that with you. Camlough is number one, and, when I was chairing the informal sessions with Northern Ireland Water and Newry and Mourne District Council, I said so.

This was the encouragement to get them to do what they did. I told them that, as soon as I had a Reservoirs Bill, it would be number one on the enforcement list because I was really concerned about it. Thankfully, things have been done, works are ongoing and there is an inspection report. That is why I am comfortable talking about it. However, the things that are in place are exactly the things that we have written into the Bill — this is what needs done. I know that it has an impact on people, and I know that, at the moment, people cannot see how they will deal with it, but the fundamentals in this are the right thing to do to ensure reservoir safety. Then, we need to think about the ability to pay, or a grant scheme or assistance, but that is not about compromising what is the right thing to do. We start from the basis that this is the right thing to do, and then we will worry about who pays and how we can assist people to get it done. We need to separate that into two distinct issues.

The Chairperson: Yes, but if we are to scrutinise a Bill that has a blind spot, we have to invade that blind spot. We have to try to get as much information as we possibly can to allow us to make an informed decision.

Mr Porter: I take that on board absolutely. We have given a commitment to provide a supplementary financial memorandum, and we will. I will explain why Scotland has one: it is supplementary because, as the name suggests, it was brought in after the main explanatory and financial memorandum. It was brought in through the legislative process — I am not sure whether it was at Committee Stage — because Scotland did not have a grant scheme in its Bill. Therefore, when an amendment was made that a grant scheme was needed, a supplementary financial memorandum was required to justify that amendment. The figures are very loose. You quoted between £1,000 and £1.2 million for each reservoir. That is not sufficiently robust to take a bid to the Minister or the Executive. The question would be which figure should be multiplied by 50: £1,000 or £1.2 million? I know that, if I took that to the Minister, she would show me the door because she could not make an informed decision. That is why we need some way of finding out whether we need to assist owners to carry out their first inspection. We could take that information and work on the bigger grant scheme because we would have an actual figure based on the information. However, because of the responsibility and the potential shift in liability, we cannot do that before the Bill is enacted.

The Chairperson: A fundamental issue for me is that I cannot see how the responsibility would shift by doing an audit. Maybe you could address that. I doubt that we will get a meeting of minds today.

Mr Porter: Is it worth exploring — maybe we will do this more in the grant scheme — the potential assistance that we might give? If you take my argument that the fundamentals and process of this are right — independent engineers have looked at this and given proper informed professional advice as opposed to layman's hearsay — the issue is then how we fund and pay for it. Is it fair that, for example, individuals or community groups should pay? When we get on to the grant scheme — what it looks like and whether there is anything that we can do at the early stages — that may be the mechanism for finding a way round this. We need to focus on the assistance to do what is right as opposed to whether it is the right thing to do. I have heard no argument that this is not the right thing to do.

The Chairperson: This has to be dealt with and managed, but it is a question of the cost and how it looks in the Bill. We know that there is an issue and that there has to be some sort of bridging.

I am struggling for time, so we will move on and take issues 2 and 3 together. Issue 2 is the adverse financial impact on the private and third sector. Members expressed concerns that, because the private and third sector will not have the means to raise the finances, the Bill will have a disproportionately adverse effect on it.

Issue 3 is the availability of information on likely costs associated with the Bill, which is similar to what we just delved into. The lack of financial information in the Bill will place those in the private and third sector at a disadvantage because they will have no indication of potential costs. The Rivers Agency could, perhaps, address that omission by way of a supplementary to the explanatory memorandum. The agency needs to address the pros and cons of identifying the cost of an engineer. It also needs to take on an oversight role on costs and include that in clause 106. That is similar to what we have already debated. I will let Jo-Anne in before asking you to respond.

Mrs Dobson: I apologise for missing the start of your briefing. What is your response to the concerns raised with us by private sector farmers and landowners that they do not have the resources to comply with the legislation? From what I hear, it would be virtually impossible for a farmer to get a loan from a bank to fix a reservoir. The bank would not support that because it would not see the benefit. As the

Chair outlined, we know that the public sector will be able to source the finance, through their tax, rates or whatever, so there is a disproportionate effect on the private sector. Do you have an estimate of how much it will cost public sector bodies to inspect, supervise and maintain the reservoirs?

Mr Porter: You will be pleased to hear that I have no opposition to any of that. I put up a lot of barriers to the first one, but I could not agree more with this one. It was the biggest issue raised in our engagement with the stakeholders and the public consultation. It has also been the biggest issue that I have heard in all the evidence provided to you. The concerns raised have had nothing to do with the technicalities; they were all about people's ability to pay. As I said, we need to find a way forward on that and present a case.

The Minister, at Second Stage, said that she was keen to explore the assistance to third sector organisations because that was the issue. However, in the evidence provided to you, it is clear that private individuals are concerned about their ability to pay, so we will have to explore that. Maybe that relates more to what an initial grant would look like and what the potential is for the bigger grant. I have some difficulty in trying to put a quantum on it because we come back to the audit issue and getting actual figures for the works required. I agree with you 100% on the finance. I understand that a bank would not view the repair of a reservoir as an asset, unless it was being used as a public water supply or for irrigation or hydropower. If it simply sits on your land, it is a liability, and I can understand why it is not an asset that you could borrow against.

Mrs Dobson: Farmers are under enough pressure as it is without that added burden and worry. Are you going to touch on that in the grant scheme?

Mr Porter: We need a bit more discussion about what the Committee feels is reasonable and what I feel is reasonable. If we can reach a point where we have some sort of meeting of minds, and I can then tell the Minister that I think that that is what needs to happen to assist with the bringing in of the Bill, I am happy enough to have that discussion.

Mrs Dobson: It is the disproportionate effect on the private sector that is, as you said, the single biggest issue. It was top of the list at the stakeholder event. The possibility of a grant scheme, but without any hard evidence of one, does not help farmers who think that this is coming down the line

Mr Porter: I reiterate what I said earlier. A number of people are scaring the life out of themselves over this. We could tell them to get an engineer for half a day so that they are better informed, rather than being frightened, and go into this with their eyes open. If private owners, farmers or third sector organisations just took half a day to get informal advice from an engineer, it would give a number of them some comfort. It does not have to be an inspection or supervision; it could be from a panel engineer.

Mrs Dobson: That leads me to my second point. There are massive concerns, particularly among farmers and some reservoir owners, that engineers could over-engineer the solutions, which would mean that they faced higher specifications and increased costs. They worry what they might face should they get an engineer. How do you alleviate that concern? It is a catch-22 situation: they need an engineer to alleviate their concern but are very fearful that over-engineering will leave them with a larger bill that they have no way of paying.

Mr Porter: There are a couple of points to make. The evidence from the Institution of Civil Engineers demonstrated that they are a group of very conscientious people. In fact, Alan Cooper has been doing reservoir inspections almost as long as I have been on the planet. I thought that he came across as a very reasonable individual who worked with people, tried to give them some assistance and, perhaps, to come up with other solutions to some of the problems that they faced. I thought that the evidence from them should have given you some comfort that those guys are not in this for a quick buck. These guys are serious: they live and breathe reservoirs.

Mrs Dobson: It is not us you have to convince.

Mr Porter: Absolutely, I know that. Under clause 106, we will carry out checks on the quality of submissions. That is a safeguard for people who feel that they have not got the service required. The Department has a role to view reports and ensure that particular issues are not being over-egged. The fallback position is that the institution also has disciplinary powers. If an engineer is found to be wanting, he can be referred to the president of the institution, which has very strong disciplinary

procedures to deal with that. I am not sure how I can convince people by saying that. All that I can say to them is that they should try it and see because it might not be as bad as they think.

Mrs Dobson: The fear of the cost leads to the fear of the report, so it is about overcoming that.

Finally, what could be done to ensure that suggested alterations to reservoirs in the reports are proportionate in order to protect against over-engineering and alleviate the fear about cost? How could you ensure that they are proportionate and thereby give people some comfort?

Mr Porter: Again, I will use Camlough as an example. Camlough was given one report on the condition of the structure and another setting out its options. That second report had a range of options and detailed the timescale, the construction cost and what each would mean for the reservoir. One option was to reduce the size of the reservoir, and that was also costed.

So people can choose one of a range of options. They might decide on the basis of reducing risk or go for a short-term option, knowing that they will have to spend some more in years to come. That is what the engineers will do; they will not simply tell someone to rebuild their structure. The oversight role for the Department is set out in clause 106 so that we can comment on the quality of the reports, written statements and certificates given under the Act to ensure that there are some checks and balances.

Mrs Dobson: You really need to get that message out because there is concern about over-engineering and, as far as the cost is concerned, a fear of the unknown.

Mr Brazier: We gave our colleagues in the Environment Agency across the water a picture of a typical private sector reservoir in Northern Ireland and asked whether it could, based on many years' experience, give us the costs associated with that. The agency's costs are very similar to those that the Institution of Civil Engineers outlined to the Committee: for example, a 10-year inspection is between £2,000 and £3,500; and the annual cost of a supervising engineer is between £500 and £1,500. They are also the average of the costs that we are picking up through the information that we are gathering and that the Committee Clerk has shared with us.

Mrs Dobson: There was some concern at the stakeholder event about the shortage of engineers and the fact that they were coming from England. Alarm bells were going off when people thought about the cost of accommodation and flights as well as the cost of the report. The stakeholders whom I spoke to seemed to think that they will be held to ransom. They need to get a report because of the legislation, but they think that the way that they are charged could be a free-for-all.

Mr Brazier: I know. We are happy to share that information on typical costs with reservoir owners and managers.

Mrs Dobson: That would be useful because they are very alarmed and concerned. They do not know the exact cost implications and, therefore, think that the cost could be much higher.

Mr Brazier: Exactly. If I were a reservoir manager and expected a bill of £1,500, but it came in at £5,000, I would question that. Through the Bill, we could look at the reservoir's authority and satisfy ourselves that the costs were justified in its particular circumstances.

The Chairperson: Where is that in the Bill?

Mr Porter: That is the point that I was going to make when I was asked about cost. Under clause 106:

"The Department may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Act by

- (a) supervising engineers,*
- (b) inspecting engineers,*
- (c) other qualified engineers,*
- (d) construction engineers."*

What is not included in that is cost. If you think that there is some value in having an oversight role on cost, I have no real strong opposition to that. I do not mind —

Mrs Dobson: I think that there should be, Chair.

Mr Porter: We need to be careful. We are not going to make it a regulated market. We do not want to become a cost regulator. However, I would have no difficulty with doing a survey, publishing figures of typical costs or asking the institution to give us the typical costs on an annual basis and publishing those. If you want that added to the Bill as an amendment, I have no issue.

The Chairperson: Surely you could do that only on the inspection reports and not on the actual quantitative work that needs to be done.

Mr Brazier: No.

Mr Porter: It is when you put in average costs for works that you get the sky-high figures; that is what skews it. If, for all your reservoirs, you are told, "We need £5,000 spent here, £10,000 spent here and £10,000 spent here", and then you have Camlough at £2.5 million, the average will be about £1 million or £1.5 million.

The Chairperson: Are we sure that an inspection engineer will not come out and charge double because it takes him twice as long to walk around a reservoir because of its capacity or scale?

Mr Porter: There will be other issues. With more complex structures and concrete structures where there are confined spaces — there are not that many of them over here — you might need more than one person to go out and look at them from a health and safety point of view. That is where the range is useful. Do not just expect every reservoir to be the same. If you want us to publish a range and add that as an amendment to the Bill, as long as it is not that we will regulate, we can do that so that people have guidance and can at least look at theirs and say, "Actually, I got good value", or "I did not get good value, and I am going to negotiate a bit harder next year".

The Chairperson: The only difficulty that I would have around regulation is that, if you have a wide range, by default, everyone will go to the top of the range and that will be made the norm.

Mr Porter: No. The figure that Jack gave when he was over from the institution was, I think, 341. So, if you do not like the price that you are getting, you have 340 other people to get a price off. You will have a sufficient pool to get a competitive tender — to use civil servant talk — and a competitive price.

The Chairperson: You could really only assess a spike.

Mr Porter: Yes, an outlier. You would question why one was very dear. We would have no issue with asking the questions to see what the issue was. Was it bundled? Were there two or three reservoirs? Was it a particularly complex one? Was it in particularly bad condition? Did they have lots of work to do because no one knew the hydrology or how it worked? Were there no record drawings? Those are the issues that will affect the price of the first inspection. After that first inspection, I would expect costs to be much of a muchness, certainly for the 10-year inspections.

The Chairperson: Do you think that clause 106 is the place for that sort of —

Mr Porter: It certainly strikes me as the closest fit for it. If you want, we can have a look at it. It is probably best if we take that on as a recommendation and do it as a departmental amendment to the Bill.

The Chairperson: Even if you assess it in the meantime. You could then come back and tell us what it would look like in the Bill.

Mr Porter: Yes. We could see where it would fit, whether that is the right place and what the pros and cons of it are. We are happy enough to take that away.

The Chairperson: If there are no other questions on the adverse financial impact and the availability of information linked to cost, I will move to the issue of low-risk designation. Is there merit in making it

that low-risk reservoirs do not have to comply with the legislation? That would remove 26 private sector reservoirs and leave 33 under the remit of the Bill. How many of the remaining reservoirs could be considered low risk? William, do you want to come in now?

Mr Irwin: You have asked the question; have you not? *[Laughter.]*

The Chairperson: That is OK.

Mr Porter: Again, I have no strong feelings about low-risk reservoirs. I think that we need a low-risk category. I do not like the system of "high risk" and "no risk" that England has. "No risk" is an odd designation, so they just have "high risk". I am much more comfortable with these bands. We will leave the low-risk band so that you can get your reservoir designated as low risk. We are certainly happy to look at what the requirements would be for the owner of a low-risk reservoir. We think that they are very light, but, if they have to be lighter, I have no strong feelings about that.

From memory, the only requirements are for them to register, which has no cost, to put up an information board or some information at the location and, if we bring in regulation on flood plans, to develop a flood plan. The only cost would come from the latter requirement. Do you really need a flood plan for a low-impact reservoir? To be perfectly honest with you, probably not. Maybe we should go back through the Bill, check out what the requirements are and discuss which ones we would feel comfortably dropping.

The Chairperson: How would you ever have sight of low-risk reservoirs if, for instance, you lose the scrutiny and inspection of them? A small hamlet could be built downstream, or something could happen to the structure — well, no, I suppose that the risk designation is all about the impact. Let us say that a hamlet is built in 10 years' time.

Mr Porter: That gets us on to the planning issue. It does not matter what the designation is, PPS 15 will deal with that. As long as they are controlled reservoirs, we will have a flood inundation map, and that will be a material consideration under the older version of PPS 15. It is not an issue, and we will still be able to deal with that, not through the Reservoirs Bill but through PPS 15. I would keep them in as low-risk reservoirs, but I would be happy to check and to compromise on the requirements. In essence, we were trying to keep them as light as we could. If we can make them even lighter, we would have no issue with that.

The Chairperson: Will you explain to us again — I have not checked it in the Bill — whether you are talking about a 10-year inspection for low-risk reservoirs?

Mr Porter: No. There will be no inspection and no supervising engineer. How a reservoir manager manages that will be a matter for them.

The Chairperson: At the present time.

Mr Brazier: And after the Bill.

Mr Porter: One requirement will be to register, which will involve them filling out a form to give us details of who they are, what the reservoir is, where it is and what its capacity is. They will also have to put up an information board about who the owner is and who to contact in an emergency.

The flood plans are not differentiated between low-, medium- and high-risk, but, if we were to bring those in by regulation, we could do that. There is no requirement to have a supervising engineer, to have routine inspections or to have 10-yearly inspections. We have kept it as light touch as we could, but making it lighter would not be a show-stopper as far as we are concerned because they are low impact. That brings me back to the fundamental point. We want to focus on the ones that will cause the harm. For those that will not cause harm, the private owners or whoever else owns them can manage them themselves and manage that risk in whatever way they are comfortable with.

Mr Milne: It is just on this low-risk issue. You said that, in England, they do not have that category but just have high or low —

Mr Brazier: They have high or nothing.

Mr Porter: They just designate high-risk reservoirs.

Mr Milne: Why would you want to be any different if it works there? Would it be fair to say that England has hundreds or maybe thousands of reservoirs? Is it because there are 151 here that you feel that you have to keep as many in as possible to justify some kind of operation like this?

Mr Porter: There are about 2,200 reservoirs in England. They had a volume threshold, which related to large raised reservoirs, and have only recently moved to high and no.

Our first public consultation position was to have high- and low-risk reservoirs, and we got a very strong response that people like the middle band. That was why we introduced it. We are asked to do that in the responses to the public consultation. We did not put it in at the start as the on/off switch seems to be an easy enough way because of the small numbers. However, people wanted the differentiation between high- and medium-risk reservoirs.

Now that we have developed it and developed our thinking, I do not think that that is a bad thing. It allows us to recognise that harm could be caused but not as much harm. Therefore, we can be proportionate in our management and there can be a difference between two inspections and one inspection a year. So, there is £500 of difference purely on the supervising engineers' costs, a one-off inspection engineer and then at an interval to be determined. That is as opposed to saying that it must be done within 10 years. There will be a cost differential between high and medium, so I think that that is not a bad thing because it recognises the different level of impacts.

The Chairperson: If there are no further questions on low-risk designation, we will move to issue number 5, which is public interest and the value of reservoirs for environmental and social/recreational uses.

Mr Irwin: Some concerns have been expressed about the impact of drawdown or decommissioning. Can Rivers Agency assure us that sufficient weight has been given to the value of reservoirs for environmental, social and recreational uses?

Mr Porter: I think that it has within the Bill, but we are in a difficult position at this minute in time in that managers and owners of structures may well take rash decisions or wish to avoid the requirements of the Bill and do something that would have an environmental impact. It was something that we were very clear on with the stakeholder groups that we met. Again, we give the same bit of advice: before you take a decision, please go and get some professional help and advice on this. An engineer may well be able to come in and say that you do not have as much to worry about as you think that you do and that drawing down or removing this structure may not necessarily be the best option. It may well be, but it may not be. The only way that you are going to know that is by getting the engineer in to give you some help and assistance.

When the Bill comes in, we are quite comfortable with the provisions in it because we have included environment as one of the impact designations, but, to be honest with you, we are in a tricky position at the minute in that there is no restriction on people doing something to their reservoir now. We would implore them not to without at least getting some professional advice. We also have to remind people that they may well need other consents and approvals, whether that is from planning, a schedule 6 from us or something else. There may well be other consents and approvals that you need and there may well be constraints on that activity, so our advice is not to take rash decisions without getting some help and assistance on it.

Mr Irwin: You understand the concerns. Some of these groups may not be financially strong or able to finance any major works that need to be done. I think that the Chairman touched on it earlier. We need grant aid running in tandem to allay people's fears.

Mr Porter: Yes, and that is something that we can get into whenever we are talking about the grant aid. It is starting to become clear in my mind that we cannot bring in the big grant, the grant for works, because we cannot take that to the Executive. We cannot take that to the Minister. Maybe there is something that we need to do in between that could be brought in to at least get the first inspection or some of the initial works done. If that is something that will help bring this forward, I can take it the Minister to seek approval on it. Because of the quantum that we are talking about, it has potential. I would be comfortable enough taking that to the Minister.

Mr Irwin: I think that there is merit in that. I think that it would help.

The Chairperson: You talked about the impact and the environmental aspect. The "personality" of a reservoir may be a better word to describe it. Where do we see that personality in the Bill? If you understand my question. Where does the environmental rating —

Mr Brazier: It probably is not that obvious. I think that one of the perceptions during the workshop was that the Bill is about decommissioning reservoirs or will lead to the decommissioning of reservoirs. What this is about is protecting reservoirs as they are. OK, that entails a management regime in order to make sure that it is protected, so that the on average 500-odd people living downstream from a private reservoir are safe in their houses knowing that that structure upstream is being well looked after. In so doing, that will mean that the environment is protected. The last thing that we would want to see are reservoirs being abandoned, discontinued or decommissioned simply to avoid the management regime that is in this Bill.

That is why David was saying earlier that this is about having a regime that manages reservoirs well, and the ability to pay is separate from that. Let us ensure that we are putting in place something that ensures that the reservoir is maintained and stays as it is rather than breaching and harming it when emptying the reservoir and destroying the environment downstream as it goes. I do not think that it is obvious, apart from the environmental aspect that comes into the risk designation. It does not appear that much because this is about safety. However, in looking after the safety of the reservoir, you are looking after the environment as well and all the social benefits that come with that reservoir. If you do not look after it, there is a risk that the reservoir will breach and it will all be lost. We are trying to prevent people downstream being harmed or killed from an uncontrolled release of water. For us, the environment is a side issue.

The Chairperson: I take that point, and I know that is the whole basis of the Bill. However, indirectly, because of it and because of the discussion and scrutiny, you could then have a run on reservoirs. I do not mean that as a pun; it is the only way I can describe it.

Mr Brazier: You could.

Mr Porter: That is another challenge. Let us use Northern Ireland Water's reservoirs that it is trying to sell off as an example. Some of those are drawn down for works not connected to the Reservoirs Bill but are a good example. You can see a picture of a full reservoir and a picture of the mess that is left when you drawdown. That is not just grass and something tidy. When you draw it down, you are left with muck and stuff that you have to fix and put back to normal. We need to think about whether that is the right place for the reservoir to be managed if it is no longer a benefit. We are picking on Northern Ireland Water here. Other things that happen on those reservoirs, such as people canoeing on them, walking round them and fishing on them are not core functions for Northern Ireland Water. So, I can understand why it is trying to offload those and get somebody else to look after them. However, maybe the issue is not about trying to give it to somebody else but recognising it as a community asset and managing it in a different way.

There may well be some challenging situations such as with Camlough where the council has to say, "We recognise that this is a benefit for the wider community". It may say to the private owner, "You do not own that anymore. We are going to take that over. You are going to agree to give us that. We are going to fix that up because we do not want it to disappear because of its value to other people". I cannot see how I can put that in the Bill, but, as the reservoir authority and as people in government, we can have that discussion with people and say, "Do not take that option. Do not remove your dam, because it has a wider value. Let us introduce you to other people who you need to talk to to see whether collectively you can manage this in a different way". It may well be that it is no longer their asset and that, because of the liability, they are not capable of dealing with it. As a community asset, somebody else needs to step in and take that.

Mr Brazier: That type of discussion happened with Creggan reservoir and its relationship with Derry City Council. The suggestion was to go back to the owners and see what relationship you can build with them based on the new understanding of what it is to manage the reservoir. People have to have that type of discussion about their reservoirs.

The Chairperson: I will bring in Michelle. Michelle, issue 12 deals with the decommissioning.

Miss M McIlveen: I was going to follow on from that.

The Chairperson: I am going to deal with two more issues. The first is decommissioning, and then I will ask members to talk about the risk assessment. That is a fundamental issue. I will hand over to Michelle on decommissioning.

Miss M McIlveen: It has been covered in some ways by your response to the Chair. A number of Northern Ireland Water's reservoirs have been designated surplus to requirements and will be put on the open market very shortly. It may feel that the Bill, as it is coming through, may then devalue its asset. Not everyone is going to want to take that on as an asset, because, although they will have brought it up to a standard, there may be a concern for its future and any associated costs. Lough Cowey in my constituency is under lease with DCAL. It is something that could maybe be looked at for a community asset, such as a hatchery. However, the issues there would be about whether DRD would be content to take that with a lease and still do the work associated with it. I suppose that it can be quite complicated, even among Departments or within government bodies about who is going to take responsibility for it moving forward. I suppose that that all needs to be —

Mr Brazier: NI Water said that its first option is to pass on responsibility or ownership to the public sector and to have it maintained there rather than to sell it off to the private sector. However, I do not think that it would find too many people queuing up for it.

Miss M McIlveen: There may be issues around access with a number of the reservoirs.

Mr Porter: There certainly are. We cannot find a way of writing that in. I do not know how you can write that in, because it is so site specific. If they are community assets, I think that there is an onus on government to try to work and not make them go away. It may well be that an individual owner loses that asset, but that might be a blessing to them, because, as we heard, they are not viewed as assets when they have a big liability associated with the potential failure and the requirements of the Bill. I could not agree more with the comments. The difficulty is trying to find a way of putting that into legislation in any meaningful way.

Miss M McIlveen: I understand the issues around decommissioning, discontinuance or whatever way you want to look at it. Is there any way that Rivers Agency will be able to stop this happening? Or will it be very much dependent on legislation through DOE, be it through the NIEA or planning?

Mr Porter: In the Reservoirs Bill, there will be no ability to stop whatever risk management strategy an individual wants to take.

The Chairperson: You have a stop notice. Can that be —

Mr Porter: That would be a stop notice regarding work. If the option is to discontinue a reservoir, we will not have the ability to tell them to stop that. We can tell them to stop managing their reservoir in the way that they are doing it because of the harm that it is causing, but, if they take the decision and say, "I have weighed up the pros and cons. I can manage the risk under the terms of the Reservoirs Bill, or I can draw it down in order to minimise the risk, or I can make it go away in its entirety", we cannot say that that is a better option under the Reservoirs Bill. That is what I was saying. I think there is still a piece of work for government to do to look at that. I do not know how you legislate for it, but there is a piece of work to be done to enable government to say, for example, that a fishing club is using the reservoir. Instead of a private owner having that responsibility, maybe it needs to be transferred to a council, DCAL or wherever to manage the asset because of the wider benefit that it offers.

Mr Brazier: I want to give some clarification on the stop notice. If someone was discontinuing or abandoning the reservoir in a dangerous way, we could stop them and go in and do it properly, or we would try to force them to do it properly. However, if he decided that that is what he wanted to do and was doing it safely —

The Chairperson: Through a business case.

Mr Brazier: We could not stop him doing that.

Mr Porter: Not under the powers of the Reservoirs Bill.

Miss M McIlveen: My concern, from what you have said throughout the conversation here today, is that the principle of the Bill is about protecting reservoirs, but an unintended consequence of it could be that we could lose reservoirs.

Mr Porter: This is about the risk that reservoirs pose, and it is about managing the risk that reservoirs pose. If the right thing to do is to make that risk go away, in some circumstances, we have to accept that that may well be the most economically viable way of dealing with it. That gives assurance to the people downstream that they are no longer at risk, because the reservoir has gone away.

Miss M McIlveen: Some of the reservoirs may not be discontinued or abandoned because there is a risk to broader safety; it could be more to do with the fact that there is a risk to their pocket.

Mr Porter: Yes, and that is the ability-to-pay bit.

Miss M McIlveen: Which, again, is an unintended consequence of all this.

Mr Porter: Absolutely, and we recognise that.

Miss M McIlveen: You are losing a resource, which is much greater to the community and the environment and so forth.

Mr Porter: The message to owners is: please do not remove your dams without at least considering all the options. One of the options may be for you no longer to be the owner: somebody else could take it over and release you from the liability associated with it because it is a community asset. A council could develop it into a park, a hydro-electric person could make electricity from it, or DCAL could promote fishing in it. However, some of them may be lost.

Miss M McIlveen: I appreciate that, David. We could sit all day and discuss the options for reservoirs. In an ideal world, we would have the funding to do what we want. However, if someone thinks that the quickest and cheapest option is to drain a reservoir, they will do it. They will not sit around and wait for a council to come through with a bid through Europe or whatever to build a dam. They will not do that; they will drain it. As a result, the greater loss will be to —

Mr Porter: I agree. That is a consequence of the Reservoirs Bill. We are entirely focused on the risk-management of potential failure for those downstream. In some cases, the best management strategy is to make the risk go away, so there may be cases of reservoirs being drained. However, people should not take that decision lightly. People have time to think about it: the Bill is not on the statute book. There is at least a year's lead-in before we even think about a commencement date — perhaps even longer. There is time for people to think about this now; they should not wait until we have an Act and they are facing associated costs. This should be on everybody's radar now. Start to think about your options.

Miss M McIlveen: I appreciate what you are saying, but I go back to comments at the very beginning in relation to an audit allaying fears in relation to costs.

Mr Porter: Those points were accepted. We accept that we have some difficulty in addressing that purely because of the shift in responsibility. Again, spending half a day with an engineer may be the best money somebody spends because they will get a night's sleep as opposed to worrying about their structure and the consequences of the Bill.

Mr Brazier: Forgive me if I have not got this right, but you talked about the protection of reservoirs. The Bill is not about the protection of reservoirs; it is about the protection of people who live downstream from reservoirs; it is about making sure that public safety is at the centre of the Reservoirs Bill rather than the protection of reservoirs. We hope that they are protected.

Miss M McIlveen: I picked up on a comment that you made earlier about protecting reservoirs as they are.

Mr Brazier: I want to clarify that. The consequence of looking after a reservoir and protecting people downstream is that the reservoir remains where it is, does what it is doing and everybody enjoys it.

Miss M McIlveen: I recognise that and appreciate that that is a main principle of the Bill.

Mr Brazier: The Bill is about safety.

The Chairperson: On the issue of decommissioning, I understand that there is nothing in the Bill to prevent someone from decommissioning a reservoir if it is part of a business case. However, if you are in an ASSI or an area of outstanding natural beauty, would there be stipulations?

Mr Porter: Oh, aye. Absolutely. We are answering that question in the context of the Reservoirs Bill; other legislation may constrain actions. You heard the Environment Agency talking about the natural and built environments, and other legislation may say, "I know you want to do that, but you are not allowed to do it because of whoever has taken up residence or because of the downstream consequences to habitat or to the environment".

Potentially, through the Drainage Order, we may constrain you: you may not get schedule-6 approval to decommission a reservoir, because that is a change to a water course. If, by removing a dam, you cause a flood problem downstream, we will say no to schedule-6 approval. There are other checks and balances and approvals that you have to have in place.

This Bill does not stop that action: it facilitates it if it is the right thing to do to manage the downstream impact of a reservoir failing.

Mr Milne: If someone was going to decommission or abandon a reservoir, the Rivers Agency would not take it on because you are the authority and will not take on the responsibility of a manager. However, to protect or maintain reservoirs, is it not possible for local councils or the future super-councils to take on the responsibility? Surely, they should be investigated or something should be put in to ensure the protection of reservoirs and to avoid them being abandoned without somebody looking to see who might take them on.

Mr Porter: I agree with the principle, but I do not see how we could write that into the Bill. Whether it may be something that the Minister agrees to and speaks to other Departments about and we actively look at is one thing, but it is not a legislative requirement. It sounds like a sensible idea that councils look after some reservoirs if that is for the greater good. Although the Rivers Agency is the reservoir authority, it also manages some structures. Therefore I would not necessarily discount the fact that we may be one of the players that you have to consider as well. That is not me putting my hand up for all reservoirs. We are another Department that should at least be considered if that is the right thing to do. So I would not discount that.

Mr Milne: In presentations, we have been told that some reservoir owners have inherited them or see the dams or reservoirs as being of no value to them at all. If they tell you that through consultation or negotiation, surely the onus falls on somebody to find something to protect that reservoir.

Mr Porter: I agree wholeheartedly. I would love to see that situation. However, I cannot give a commitment to put it in as a clause in the Bill, because I cannot see how it would work. However, as a principle, it is absolutely sensible. I would hate to see reservoirs that benefit the wider community done away with because of the requirements of this, where somebody else could manage them, accept liability and further develop them. It is a matter of finding a way forward. The Minister might be asked to take this to her Executive colleagues or to other Departments, or it may be something for the Committee to explore. However, I do not see it as a clause in the Bill, although we are happy to take that away and discuss among ourselves. I do not see it as a natural fit in the Bill, but I cannot argue against the principle, which is absolutely spot-on.

The Chairperson: I want to talk about risk assessment, because it is a fundamental fault line. I know that we are pushed for time, but I want to — sorry, Oliver, did you want to come in?

Mr McMullan: I just want to ask this quickly: have you taken into consideration the community plans that councils have to draw up?

The Chairperson: No, we will deal with that next, Oliver.

Mr McMullan: For frig's sake. *[Laughter.]*

The Chairperson: It is an important issue that needs tackling.

Mr McMullan: These reservoirs will be empty by the time we get the answers. *[Laughter.]*

The Chairperson: It will be discussed next time. One of the fundamental issues — to the Committee it is as fundamental as the audit of reservoirs — is risk assessment. Although there was a good body of work done, more should have been carried out before the Bill was produced. Risk assessment is as big and as fundamental an issue —

Mr Porter: Aye, the risk designation.

The Chairperson: Not even the risk designation but the risk assessment. If an inspector says that he needs to do a range of work that, even when completed, does not change the designation. Even though a reservoir may be state of the art, and a breach nigh impossible, its high-risk designation does not change. I cannot get round that there should be no onus on inspection reports.

Mr Byrne: For clarification: is that because the risk assessment is based on the number of houses downstream, irrespective of the state of the dam or reservoir?

The Chairperson: Clause 22.

Mr Porter: We have high, medium and low. In order to explain this, we need to think about high, medium and low in reasonable condition and then high, medium and low subject to enforcement. That is the differentiation. If you have a risk designation, you are the owner of a high-impact, high-risk reservoir and outstanding issues were identified by the inspecting engineer, you are subject to enforcement to get those done. If you do those, the enforcement issue goes away. That is the benefit of keeping your reservoir in good condition. It makes the enforcement bit go away.

The other thing that I picked up through the evidence given to you was what the terminology or understanding of "high risk" is. People were concerned that this badge that we have put on means that something is in imminent danger. That is not what we mean because you can use "risk" as a relative term. What we are saying is, "Here is a list of 150-odd reservoirs. Which of those, if they failed, would cause the greatest impact?" That is the first batch, and we chose to give them the name "high risk".

Whether it is the term "risk" that people are balking at, that is what we are trying to do. We are trying to say that those are the ones that, in the event of failure, could cause most harm, but that is too long a title, so we have called them high risk. It does not mean that they are in imminent danger of failing because we have control: getting an engineer in and doing some works is the control that means that it is in reasonable condition, and, therefore, the likelihood of failure is very low. It is the same for medium, high and however you intend to manage your low. It is the same across the board.

I heard you use the example of this new reservoir and the impression is that it cannot fail. Malpasset, in France, was brand new. If we showed you pictures of it before it failed, it was nice, shining white concrete. It was not like the old clay core stuff that we have here. It was a pristine reservoir, but it failed one night and killed 424 people. That is when you heard the engineers say that there is no agreed method of working out likelihood. That is what they meant; that is what is driving them. What they mean by that is that there is no numerical way. They cannot add two things together and say, "The answer is: "

Engineers manage them by becoming experienced in looking for potential defects: how a structure will fail. The inspection report gives you the benefit of their experience. What manages the risk is their experience. We do not change the risk designation because it is purely to say which ones we are most concerned about and which ones we are not so concerned about if they happen to fail. Rightly or wrongly, we are getting hung up on the word "risk". We might have been better with a different word, but it is not saying that a structure is high risk and, therefore, at the point of failure. It is at very low likelihood of failure, but if it fails, the consequence is —

The Chairperson: Whatever you call it, the burden is the same —

Mr Porter: Correct.

The Chairperson: — with regard to the regulatory behaviour.

Mr Porter: Between high and medium it would be, yes.

The Chairperson: If we remove "low" completely, do we need another layer to say, "These were our high risks, but they have had works done."?

Mr Porter: That is why I think of the non-compliant. High and medium are what we are focused on here. Across here, you have the non-compliant, the naughty list — the ones that we have outstanding issues that we are going to enforce on. The benefit of doing those works is that you move from the enforcement side of the page over to the, "Actually, we are quite comfortable; the risk is dealt with. Just keep doing the routine stuff and that will be OK." It is finding terminology that explains that to people.

The Chairperson: Let me use an example: an engineer does an inspection report that says that £50,000 should be spent. The £50,000 is spent and a supervising engineer does all the work. The inspector comes out again and says, "Right, OK, that was great. Another £5,000 spent on that and £5,000 spent again" — and it goes on and on.

Mr Porter: And it will, yes.

The Chairperson: Surely an onus should be placed on the engineers qualified to inspect to say, "Yeah, I'm content that the work has been done. All the work's been done, and we asked for it to be done. A very high range. I'm going to be coming out here every" — what is it for a high or medium risk?

Mr Porter: For high, at the moment, it is two supervisions a year and 10-yearly inspections.

The Chairperson: So, a supervisor comes out every six months and looks at the same thing. It has not moved, and it has no intention of moving. It is a waste of time. I hear what you say about the Malpasset reservoir. If that reservoir just went in a bang, six-monthly inspections would not have picked it up.

Mr Porter: Six-monthly inspections pick up the significant changes to a reservoir, but they are not the whole story or package. David McKillen, who is a supervising engineer, said that it is about collaborative working. It is about the owner doing some work, which may well be walking the dam crest once a week and writing down, "I don't see any dips", looking down the face and saying, "I don't see any water", and ticking the sheet to say, "I'm comfortable with that." If they are not comfortable, they should call the supervising engineer. It is not just a case of our dropping in a supervising engineer twice a year and that is the risk dealt with. It is not as simple as that. The owner has a responsibility. The amount that an owner is prepared to do will influence how comfortable the supervising engineer is with a structure.

We have put in two years as the minimum standard. There may be others that the inspecting engineer looks at and says, "This is a 100-year-old structure in complete disrepair. It's high impact, and we require it to be inspected more often". An example is Camlough. An inspecting engineer report in October of last year recommended, "You're not going 10 years until I see this again. I'm going to see this structure in 12 months' time because I am so concerned about it". That was one of the recommendations by the inspecting engineer; he was not prepared to say, "This is OK for 10 years". He gave it an OK for a year, provided that things are done. He will go back to do an inspection. It is not that you would reduce the requirement; you increase it for the ones that you are concerned about. If you do certain works in the first year, you may be able to get down to the minimum standard, but I do not see a situation in which I would agree to do less than the minimum standard. The minimum standard is set because we feel that it is the reasonable minimum; others will require much more, particularly in the first couple of years.

Mr Swann: Risk, or whatever you want to call it, is about any buildings or damage to life or property downstream from the reservoir. Theoretically, if a reservoir containing 100,000 cubic litres had no housing or people and had no risk on the flood plain, would that not need to come under this legislation?

Mr Porter: That would be a low-impact reservoir. The requirement, as we said earlier, is to register. You do not have to appoint a supervising engineer, and you do not have to have a 10-year inspection.

Mr Swann: You just have to be registered.

Mr Porter: Yes. If we bring in flood plans, you might have to have one, but, again, we can discuss whether that is reasonable. It is a very light touch. In the exact situation that you set out, how an individual manages that themselves is a matter for them.

Mr Swann: Theoretically, say that the owner of a reservoir owns two houses below it that he rents or leases. If he removes the lease and puts the people out of the houses, they are only structures. Is that a low-risk reservoir?

Mr Porter: He could potentially have a low-risk reservoir.

Mr Swann: Potentially. What would be the restrictions making it not?

Mr Porter: We would need to check the flood inundation map to make sure that there are not others —

Mr Swann: What if there is nothing else?

Mr Porter: If I owned a reservoir with a building downstream, I would try to buy it to knock it down. That would be cheapest, because the burden of this goes on for ever. I would buy that house — assuming that I could afford it — knock it down and argue that I am not a medium- or high-risk reservoir any more, and that is the end. I become low risk, and how I manage that is a matter for me. That is an entirely reasonable way of doing things.

Mr Milne: I do not have my tablet with me, and there is a chart in it showing different designations. If it were raised to 25,000 cubic metres, would that change the category to high, low or medium?

Mr Porter: It would change the numbers of reservoirs in total. It does not change any of the designation criteria that we use; it is just a volume threshold.

The Chairperson: That is on page 85.

Mr Byrne: Twice, David mentioned Camlough lake, and he has put the flashing lights of warning on. I want to test the authenticity of what he is saying. Since the trustees are deceased or disappeared, I accept that NIW extracts some water from it and pays £4,800 or £4,900 a year. Therefore it has some legitimate responsibility. Newry and Mourne District Council operates it for leisure and other activities. Have the chief executives of NIW and Newry and Mourne District Council been warned about the risk that you have assessed vis-à-vis the engineer's report that you have?

Mr Porter: The chief executive of Newry and Mourne District Council sat in on the meetings, and Northern Ireland Water was represented by its head of asset management and its solicitor. To agree to the suggested requirements, it had to take that back and get approval from an executive director in Northern Ireland Water for the spend. The organisations are well aware of —

Mr Byrne: They are fully apprised and are taking remedial action.

Mr Porter: Correct, yes.

Mr McMullan: Following on from what Robin said, you said that you would buy the house if it were sitting down in the —

Mr Porter: If I did not own it, but it was my reservoir, I would attempt to buy it if that would remove it from medium or high. That may be a cheaper management option to avoid the burden of the Bill.

Mr McMullan: How would you keep planning off that ground?

Mr Porter: Planning is dealt with under PPS 15; therefore to get planning permission, the applicant has to give an assurance that the dam structure is in good condition. The only way that they can do that is with my co-operation to do an inspection on my dam. If you wanted to build downstream, I would be very clear: if I did not want it, you would not be inspecting my dam; or, if I could come to some arrangement, I would be making sure that there was a legally binding document that ensured that the developer was paying any additional costs as part of the development cost. In the same way, if you needed a right of way across someone's ground or if you needed sight lines or if you needed a water main across something, you would have to negotiate something with a third-party landowner to permit that development. There may be costs associated with that.

Mr McMullan: That could hold up the whole planning system.

The Chairperson: I will stop it there, because we are going to talk about planning next week. We have another half hour's business to go through today.

Mr McMullan: Chairman, I have put up with you today, now. I am leading into another question, and twice you have jumped in on me.

The Chairperson: Yes, and I will tell you why: planning is a topic all on its own.

Mr McMullan: You will not do it a third time.

The Chairperson: It deserves time for proper scrutiny.

Mr McMullan: Yes, but then wait until I have finished.

The Chairperson: I was going to bring you in on question 6 after question 5, but you walked out of the room.

Mr McMullan: You did not let me finish my question, Chairman.

The Chairperson: When you walked out of the room, I brought in Michelle, so you missed your turn. We will return to this. Planning is a very important issue.

Mr McMullan: People have missed their turns in here before, and you have brought them in, Chair. So, do not go down that line.

The Chairperson: We have run out of time. You will be brought in first next time, on 29 April.

Mr McMullan: Do not be going down the line that I missed my turn.

The Chairperson: Unfortunately, you did, because I am the one managing and controlling it. Unfortunately, just as I was about to call you, you walked out of the room, so I had to call Michelle.

Mr McMullan: Just wait until I have finished my question first. I was not going to dwell on planning.

The Chairperson: No. I am moving on now, Oliver, because we have had a good lot of time on this. David and Kieran can take away what they have heard. We can come back on 29 April and finish the other seven points. We have gone through 50% of the scrutiny here today. Your issue will be picked up, and you will be the first to ask questions on it if you are in the room.

OK, gentlemen, thank you very much for your time. There were some very important issues there and some not so important issues, but, nonetheless, issues that we have. There are some fundamentals such as designation, the audit, and the work that we believe could have been done before now. I know that you are telling us that you have scary stories and secrets —

Mr Byrne: Chairman, I have to do something to get noticed here. *[Laughter.]*

The Chairperson: That is information that we could do with to assess and scrutinise the Bill right. We will leave it at that for today. Thank you very much for your time and your solid, informed answers.