Northern Ireland Assembly

Committee for Agriculture and Rural Development

OFFICIAL REPORT (Hansard)

Reservoirs Bill: Informal Clause-by-clause Consideration

6 May 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 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 advise members that the next agenda item is a critical stage for the Committee in respect of the Reservoirs Bill. This is the point where we finalise all the issues raised before formally voting as a Committee. This is the last chance for you, as members, to air your opinions, concerns and thoughts, so it is extremely important that you try to remain in the room for this discussion as much as possible. If any member feels that a clause is contentious or gives cause for concern, they will need to state what they do not like about it and what would be a solution, if they have one.

You will need to have the following documents open: the consideration of Bill clauses matrix, which is at pages 37 to 130 in your packs, and the Reservoirs Bill, which is at pages 131 to 211.

We have two meetings in which to complete the informal clause-by-clause process before moving into the formal clause-by-clause process. I will take each clause in turn, and I will explain it briefly and draw your attention to the evidence we have gathered on the clause, any subordinate legislation or regulation contained in the clause and any offence and related penalties associated with the clause. You must begin to consider whether the subordinate legislation, and the offence and associated penalties, are reasonable and appropriate.

Regarding offences and penalties, members may also refer to the table in the Bill pack at tab 10, which contextualises all the offences and penalties on one or two pages.

Rivers Agency officials are in the Public Gallery and are available to come to the table if required. Rivers Agency has also provided a synopsis of the amendments being considered, and that has been tabled for members' information. Members may wish to take a few minutes now to read that synopsis

and see whether they consider that the amendments will address the concerns of the Committee. We will have an opportunity to discuss these potential amendments at the appropriate clauses in the Bill.

Members, we are looking at the paper that has been tabled today containing the thoughts of Rivers Agency and the Department on the amendments that are being considered by them out of the discussions with us and also based on the officials having sat in on the sessions that we have had. I will give you time to read the paper and go through it before we even start the informal clause-by-clause consideration.

Members, I will ask you for any initial thoughts on the amendments being considered. I know that it might be hard, without reading it with the Bill, to know exactly what clauses are being talked about. We will pick that up as we go through the clause-by-clause consideration, so there will be times when we will relate to this piece of paper and the amendments that are being considered as we go through the Bill. Again, these are not concrete and have not been finalised. What is in front of us is only for our consideration, and we must be mindful of that as we go through them.

I will ask for any comments at this stage. The text that accompanies the first proposed amendment to clause 17(2) reads:

> *"To take account of comments made by the ARD Committee that the term "risk" may not be the most appropriate."*

I agree with that and that "risk" is not the most appropriate term. The proposed amendment deals with the terminology and instead of "high risk" it will be something else; either "high impact" or "high consequence". However, there is a fundamental point. If a reservoir manager invests in his reservoir and spends a lot of money making it safer, his reservoir will still be of "high consequence" or "high impact" if it is breached. What the proposed amendment does not deal with is the fact that, in all probability, the breaching of that reservoir may have been lessened by the investment the reservoir manager or owner made. It is important that we are mindful of that. That amendment will change the terminology. It will not amend the fundamental issue of the unfairness of a reservoir manager investing in his reservoir and compound and making it to a safer standard, yet having the same burden of regulation as he had before he started.

As there are no comments from Committee members, I ask whether members are content to proceed to the informal clause-by-clause consideration of the Bill?

Members indicated assent.

The Chairperson: We will now begin. Part 1 of the Bill deals with controlled reservoirs, registration and risk designation. Is everyone happy that they have the Bill and the matrix that deals with the schedules of offences and penalties before them?

Clauses 1 to 5 deal with controlled reservoirs, and clause 1 is entitled "Controlled reservoirs". The Bill provides a regulatory regime for reservoirs that will be known as controlled reservoirs. A controlled reservoir is a structure or area capable of holding 10,000 cubic metres or more of water. From the evidence taken, it would appear that changing the capacity to 15,000 cubic meters or 25,000 cubic metres will have little impact. I seek comments from members.

As there are no comments from members, I want to add that, from what I can see, it is still not clear how that will be measured. I recognise that having capacities of 10,000 cubic meters, 15,000 cubic meters or 25,000 cubic metres will not have a massive impact on the number of reservoirs that are controlled and that there is a clause whereby they can bring in reservoirs of a smaller capacity. However, we still do not know how they will measure the compound of water compared to a natural lake and what would be there naturally. Members should consider that. There are no comments on clause 1, so we will move on.

Clause 2 deals with the structure or area which is to be treated as a controlled reservoir. Under this clause, certain structures or areas that individually are not a controlled reservoir under clause 1 will be regulated by the Bill as if they were controlled reservoirs. There is a regulation in this clause and regulations made under this provision will be subject to Assembly scrutiny under the affirmative procedure.

I will ask the Committee Clerk to explain the affirmative procedure.

The Committee Clerk: There are three Assembly procedures for subordinate legislation. The first is negative resolution, and rules made under this have the effect of becoming law as soon as they come into operation. They can be annulled by the Assembly during a statutory period, and there is a technical way of calculating that. A Member, or the Committee, must table a prayer of annulment. That is negative resolution and we will come across that.

The next procedure is affirmative resolution. Under this a statutory rule is made, printed and laid before the Assembly but will not come into effect unless affirmed by the Assembly. Normally, the Minister responsible for the rule will table a motion in the Business Office and the rule will be affirmed in the Assembly. The level of control, oversight or scrutiny is a little bit higher under affirmative resolution.

Under confirmatory resolution, a statutory rule is printed, made and laid before the Assembly, but ceases to have effect unless approved by a resolution of the Assembly within a specified period, which is normally something like six months. The Minister — and it is normally the Minister again — will table a motion in the Business Office to propose that the rule be confirmed by the Assembly. There is a little bit more freedom for the Department and Minister with this one.

Those are three main types of statutory rules that will be referred to in the Bill as we go through it.

The Chairperson: No issues have been identified with this clause. I seek comments from members. As there are no comments from members we will move on.

Clause 3 is entitled, "Matters to be taken into account under section 2(3)". This requires the Department to take into account the probability and consequence of an uncontrolled release of water when making a structure or area a controlled reservoir by regulation under clause 2(3). No concerns were raised in the evidence from witnesses.

There is a regulation at subsection 4 requiring DARD to consult with the Institution of Civil Engineers (ICE) and other such organisations if research indicates a need to consider additional matters. The regulation could amend the provisions in clause 3 of the Bill; therefore, it will be subject to Assembly scrutiny under the affirmative procedure. I seek comments from members. Again, as there are no comments from members on that clause we will move on.

Clause 4 is entitled, "Controlled reservoirs: further provision". Subsection 1 allows the Department to substitute a different volume of water for the volume threshold of the reservoir. This is to allow the Department the power to specify a different threshold and respond to new evidence in respect of a reservoir. No concerns have been raised via the evidence of the Examiner of Statutory Rules. Should the need arise to amend the primary legislation, it will be subject to Assembly scrutiny under the affirmative procedure.

Subsection 2 allows the Department, by regulation, to make provision for how a reservoir's capacity is calculated and how "natural level" and "surrounding land" are to be defined. Negative procedure is considered appropriate, as subsection 3 deals with the consultation process in making the order and the regulations. I seek comments from members. As there are no comments from members we will move on.

Clause 5 is entitled, "Controlled reservoirs: supplementary". Subsection 1 details anything that is integral to the functioning or operation of a controlled reservoir. Subsection 2 details structures or areas that will not be taken into account in relation to what is treated as a controlled reservoir. Subsection 3 enables the Department, by regulation, to define, with more precision, the things listed in subsection 2 and exclude other things from being, or being treated as, controlled reservoirs. No concerns have been raised about the clause. Subsection 3 will be subject to the negative resolution procedure as it is felt that the Department will need the flexibility to amend the legislation if necessary. I seek comments from Members. There are no comments.

Clauses 6 to 8 deal with reservoir managers. Clause 6 determines who the reservoir manager is. It may be possible that there could be more than one manager. The Committee received a number of comments from witnesses, particularly from fishing organisations and community groups outlined in pages 42 to 46 of the matrix alongside the response from Rivers Agency. I seek comments from members?

Mr McMullan: Sorry, Chair; are we at number 6?

The Chairperson: Yes, clause 6.

Mr McMullan: Number 8 —

The Chairperson: Say again, Oliver?

Mr McMullan: Number 8.

The Chairperson: Clause 6(8)?

Mr McMullan: Yes, sorry. Who would be regarded as the reservoir manager under clause 6(8)? Is it still the owner?

The Chairperson: Are you asking who is regarded as being the reservoir manager?

Mr McMullan: Yes.

The Chairperson: There would be a reservoir manager, and, if they could not identify a reservoir manager, it would go to the owner, as far as I know. We have Rivers Agency officials here if you want to ask that specific question.

Mr David Porter (Department of Agriculture and Rural Development): We put this clause in because we do not want there to be a grey area regarding the work that Rivers Agency does with respect to the free flow of water under the Drainage Order.

We want to make it clear that maintaining the watercourse in order to allow the free flow of water does not mean that the Department becomes a reservoir manager. The removal of bushes, silt, or carrying out some very minor maintenance-type function on the watercourse does not mean that we will become enjoined or own the structure. We do not have any responsibility for the structure and we do not control water levels. We recognise this as an issue that people might be confused about, knowing that our diggers and our direct labour have been working on the watercourse and whether that means that we have some responsibility for the dam structure.

We felt that this was the best way of making it clear that, for the avoidance of doubt, if maintenance works have been done on a watercourse historically and it is still designated so that we will be doing this work in the future, that does not change the responsibility; the responsibility for the structure remains with the cascade of people in the top elements of the clause. If there is a water undertaker, it would be them. If there is a sewerage undertaker, it would be them. There might be some other business involved, and then there is the default position of the owner. We do not take over responsibility because of the Drainage Order.

The Chairperson: From time to time, you would do work through your various guises and responsibilities in regulations. What would be the case if works that you completed, as Rivers Agency, caused the structure to breach or prevented the reservoir manager from doing works that would stop it from breaching because of the works that you had done? What is the legal aspect of that?

Mr Porter: I cannot think of a situation in which we would carry out works that would cause it to breach, but I can think of situations in which we have done works that have changed the flow pattern through the dam structure. We are examining a couple of them to see whether that is more than maintenance. For instance, where a drainage scheme was carried out — where the spillway might have been be too small, and, in order to reduce flood risk, we have changed the spillway significantly — we may well be a reservoir manager. We have a small number where we actually have done works and we are examining them at the minute to see whether we have responsibility under the Reservoirs Bill.
This clause is really just in terms of routine maintenance and not any capital works that we have done.

Mr McMullan: There is a relevant word there — the "routine" maintenance. Something like that needs to be built in there, so that there is no confusion when people read that. We are talking about routine maintenance here.

The Chairperson: Sorry, that is clause 6(8).

Mr McMullan: Yes, clause 6(8), so that anybody who reads it will know that it is routine maintenance rather than enlarging the waterway or anything like that. That is because, I take it that if you do that you could then charge the owner of the reservoir.

Mr Porter: No, we would not charge for that because it would be part of a drainage scheme that we did for the greater good, and that scheme had to have an economic justification. We had to be able to demonstrate that it was for the greater good and was cost beneficial. So, we do not recharge the likes of those schemes back to the individual, but we have found a number where schemes have been done through what are impoundments. We are asking the questions, because of the works that we have done historically: does that mean that we are a reservoir manager or what is the extent of our responsibilities?

This will clear up the issue of maintaining any works, and it will make clear to people that they are not absolved of their responsibility and that it does not automatically default to us in that case.

The Chairperson: What happens if the work that you have done in the past led to either the holding back of water or increasing the capacity of a reservoir to the point that it has had a direct effect on inundation maps, which then has a direct effect on risk? In other words, what you have done to either compound more water or prevent the running away of water.

Mr Porter: If there are any examples of that, we are certainly happy to talk to people to see whether the works that we did made us a reservoir manager or whether it was just purely maintenance or routine functions that we carried out. I suppose we are trying to tidy up what we have done in the past, because we did not have this legislation to test what we were doing, to see whether we became a reservoir manager.

We will obviously be wise to it now, going forward, so that each time we have a situation we will be able to check it out before it happens. That is why we know that there is a small number of cases where we have carried out a drainage scheme and we are asking ourselves: does that mean that we are part-reservoir manager because of what we have carried out?

The Chairperson: Do you have that detail to hand?

Mr Porter: Not to hand, and, again, we are into specific locations. However, if there are cases that you know of, where works had been carried out by us, and there is a question as to whether we are part-manager, we are quite happy to deal with them on a case-by-case basis.

The Chairperson: Even if you could furnish the Committee with a letter of clarification on the points that Oliver and I have raised. Will you also get to hand information on the number of reservoirs where it may well be the case that the works that you have done have increased the levels, maybe from the natural level?

Mr Porter: I am not sure that we have increased reservoirs from a natural level, because the works that we tended to do were on the reservoir. So, they were pre-existing structures that we increased the flow through. Certainly, on that specific question, we are happy to look at the examples that we know of to see if any of them fit that particular example.

We are quite conscious that, with some of these, we are dealing with people to try to work out who the reservoir managers are. So, I am not sure that we would like the whole list to be published. We can certainly give you a number of examples, if that would be helpful.

The Chairperson: OK. Thank you very much. Are there any further questions for David before I relieve him of his post on clause 6? We are not going to open up another debate on clause 6. OK, David, thank you very much. Sorry, you may end up jumping back and forth, but that is a necessary evil. Are there any further comments on clause 6, which makes provision for the reservoir manager?

Moving forward to clause 7, which is "Multiple reservoir managers: supplementary". This clause applies where there is more than one reservoir manager. Subsection 2 provides that the requirements of the Bill apply to each of the reservoir managers separately. Subsection 3 enables reservoir

managers to nominate one of the managers to fulfil any requirements of the Bill. Subsection 4 requires details of the nomination, and subsection 5 that the details are forwarded to the Department or any qualified engineer commissioned in relation to the reservoir.

Creggan Country Park raised an issue with this clause. It is in your pack at page 46, alongside the Rivers Agency's response. The clause is clause 7. I seek comments from members.

Mr McMullan: Under subsection 5, why do we wait 28 days after the date of nomination to give notice of it?

The Chairperson: Yes:

> *"The nominating manager must, not later than 28 days after the date of the nomination, give notice of the nomination and of what it contains to—*
> *(a) the Department,*
> *(b) each other reservoir manager of the controlled reservoir,*
> *(c) any supervising engineer, inspecting engineer, other qualified engineer or construction engineer commissioned in relation to the reservoir (see Parts 2 and 3)."*

You are asking why they should wait 28 days?

Mr McMullan: Yes. That is a month, and there is the possibility of having to wait another month before any nomination is made, and,

> *"the Department may notify and consult the nominee in accordance with the nomination".*

Why is it a month, and then it could take another month? Why is it not done as soon as the nomination is made?

The Chairperson: David, do you want to comment on clause 7 with regard to the 28-day period?

Mr Porter: That little bit of flexibility was built in because we recognise that some reservoir managers will be clubs. People who engaged with us during the consultation with stakeholders, before we started to draft the Bill, said that they needed a little bit of flexibility because they needed to get approval from others before they were happy to release information. So, there are a number of places in the Bill where we have built in a little bit of flexibility, but without being so flexible that people can then use it as a loophole. That is why the 28-day period is there.

Mr McMullan: Would there be any problem with 14 days?

Mr Porter: We have no issue with that, but I suspect that the stakeholders may well think that it is a little tight. I am not sure that an additional 14 days of notification is actually really a benefit when we are managing the structures. What we intend to do — what the Bill intends to do — is to manage these structures for evermore. So, giving 14 days, in view of the long period of time that we will be managing them, is neither here nor there. I have no argument for or against it; if you want it to be 14 days, I am happy to make it 14. I suspect it may well —

The Chairperson: I am sorry David. Let me pose a scenario, Oliver: If a council owns a reservoir, there may well be procedures to be followed within a council committee, whereby they go to a subcommittee and then to a full council meeting. That may well be a monthly cycle. There will be other occasions when there will be multiple reservoir managers, and an ultimate reservoir manager who will be responsible for gathering all the information. Some of it may not even be within their own gift, and it may come from other agencies, such as NI Water or Rivers Agency and others like that. It may be the case that they need time to try to get that information, or allow agencies to locate it, and pass it back to the reservoir managers again. Are you happy on that specific time period?

Mr McMullan: Yes.

The Chairperson: Are there any other comments on clause 7? Thank you for that, David. There are no other comments.

We move to clause 8, which is entitled, "Duty of multiple reservoir managers to co-operate". This clause applies where there are two or more reservoir managers. They must cooperate with one another as far as necessary to enable all the requirements of the Bill to be complied with. No issues were raised with this clause. Subsection 2 makes it an offence for them not to cooperate, and for high-risk reservoirs, the penalty is a fine of up to level 5.The scale for level 5 is currently £5,000.

The second offence is for medium- and low-risk reservoir managers and carries a penalty of up to level 4. The scale for level 4 is currently £2,500. I refer members to the offences and penalties table in their Bill pack and also to the standard scale fines on the back page of the pack. That gives you the context of the level of the scale and the level of fine for each scale. Are there any questions or comments on clause 8?

David — ably assisted by Kieran, I understand — why do you think that that specific scale is appropriate to that offence for multiple reservoir managers, who may not be able to garner and glean information? Also, although they might be the most understanding people in the world, other reservoir managers may not be. How will that offence be proven and investigated? Do you think that the scale of penalty is correct?

Mr Kieran Brazier (Department of Agriculture and Rural Development): In the first instance, incidents such as that will come to our attention via a reservoir manager, we imagine, if he finds that other reservoir managers are not assisting him in the fulfilment of his duties. The Department has taken legal advice on the level of penalties associated with any offence in the Bill. It has been advised that that level of penalty is commensurate with that level of offence.

The Chairperson: Are there any other comments or questions for David or Kieran?

In the grand scheme of things, and in the context of the whole Bill and the other levels of penalty, apart from imprisonment, this is the top of the range. Can that be justified, given that it is not a breach or something that would lead to a breach of a reservoir? It may lead to that indirectly, but it is basically a failure to cooperate between two, three or four people.

Mr Porter: We are trying to encourage people to do their quite straightforward duties. It does not matter what the size of the penalty is. If they cooperate and do what is required, we will never get to that stage. We want a penalty that means that people will not dawdle or play games with the legislation and the Department. We want the fundamentals: tell us who is involved with the reservoir, appoint somebody who will act on your behalf, and let us get the easy things done and dusted, knowing that we will get to more difficult issues about works and breaches. The penalty is there to encourage people not to dawdle at those early stages.

Mr Brazier: We will do our utmost to try to encourage reservoir managers to work together. The reservoirs authority will do that. If we received a complaint that it was not working and reservoir managers were not cooperating, we would go out and talk to them to try to encourage that. As with any of the penalties, this would be a last resort. We would try to encourage as much working together as possible. We would seek to enforce only if it brought the safety of the reservoir into question. The penalty is there because we want to use it as a deterrent against lack of cooperation, as with the other penalties.

The Chairperson: Remind us: although you may move in to try to resolve a situation, what are you actually asking of the reservoir manager or managers at that time?

Mr Brazier: We are asking them to work together to agree who the reservoir manager is and who will take responsibility for liaising with the reservoirs authority on reservoir issues and making sure that the requirements of the Bill are met. We are also asking that a supervising engineer and an inspection engineer are commissioned at the appropriate times and that works that are expected to be done to the reservoir are undertaken. If works were required to be done, for example, to a section of a reservoir that was not owned by or was not the responsibility of the nominated reservoir manager and required the cooperation of another reservoir manager who did not play ball, resulting in the safety of that reservoir coming into question, that would be a rather serious issue.

Although we cannot state this, we would expect that the nominated reservoir manager will be responsible for the important parts of a reservoir. However, that may not be the case, and someone else may take on that responsibility. If a reservoir manager who had responsibility for, say, the spillway was not cooperating with the nominated reservoir manager or any other reservoir manager,

we would consider that quite a serious issue and would want to be able to stop that and deter it as much as possible.

Mr Buchanan: I was listening to what you outlined and, since a fine is in place and should the Bill be passed, will a set of guidelines be issued to clear up any ambiguity? It appears to me that there is ambiguity about who should be doing what and what reporting they should do.

Mr Porter: I think that we will leave that as a matter for individuals to determine. We do not want to be too prescriptive. We can envisage a situation in which there may be multiple managers, but many of them will have little or no responsibility. We have used the following example a couple of times: if you happen to own land that is under the wetted area of a reservoir, there is very little that you can do that influences water level and the safety of the dam structure — the impoundment. We are really focused on the safety of that, because it keeps the water in its place. Rather than being too prescriptive, we would leave that up to individuals to determine whether they have little or no influence and should, therefore, carry little or none of the burden. They can agree that between themselves.

Equally, as Kieran said, somebody who is a landowner may be an engineer and may say that, although he has little responsibility, he will take the lead on behalf of the group. He is best placed to do that because he understands engineering and the dam structure and can bring something more to the table than someone who just happens to own land that the dam structure sits on. That is why we purposely tried not to be too prescriptive, but we are happy enough to provide informal advice. I am not sure whether we can write down formal, strict guidelines or anything like that.

The Chairperson: What happens if one of the people who, I suspect, could be deemed to be a reservoir manager but may not have the ultimate responsibility for it is a council or a Crown agency? Is there is an issue with the Rivers Agency penalising those Crown agencies by taking them to court? That cannot happen at present.

Mr Porter: There is no Crown immunity under the Bill; it also applies to the Crown. We will come to that issue towards the end of the Bill. We recognise that we had to identify who the owners were and who the Bill had to apply to. It applies to the Crown.

The Chairperson: Say, for instance, you own a reservoir, and a public road runs across it or a council owns part of it. If you asked that council to comply and give you information that is not forthcoming, does the clause still apply?

Mr Porter: The clause still applies. Those agencies have a duty to cooperate. The duty is mentioned at the start of the Bill, and it lays out its stall. We said that we wanted to try to get the easy things out of the way — cooperation between two organisations or two people — and the Bill sets that out early on. Clause 8 applies throughout the Bill, in that there is a duty to cooperate. The first agreement should apply to everything that reservoir managers do. If work is subsequently required, for instance, reservoir managers still have a duty to comply or to cooperate with one another. It is important to work out the responsibility for a dam structure and reservoir, and to negotiate that well with the other bodies. You have to do that. The law requires agreement among parties.

The Chairperson: Are there any further questions on clause 8? Oliver, are you happy enough?

Mr McMullan: I will wait until we get to clause 16.

The Chairperson: Clauses 9 to16 deal with registration. Clause 9 requires the Department to establish and maintain a register of controlled reservoirs. Subsection (2) allows the Department to specify what information and documents are required to be in the register. Concerns were raised by fishing clubs, community groups and Creggan Country Park. The Department needs to establish what information is available and appropriate for the register. That will be done by regulations, which are subject to negative resolution. Do members feel that negative resolution is appropriate?

Mr McMullan: In clause 16(5) —

The Chairperson: No, sorry, we are at clause 9.

Mr McMullan: Sorry. I am getting mixed up.

The Chairperson: Are you OK to wait, Oliver?

Mr McMullan: Yes, I will wait.

The Chairperson: I will ask Stella to remind us what negative resolution means.

The Committee Clerk: A statutory rule made under negative resolution procedure has the effect of law as soon as its "comes into operation" date is reached. Such a statutory rule can be annulled by the Assembly within the statutory period. For it to be annulled, a Member or Committee must table a motion known as a prayer of annulment in the Business Office. Basically, negative resolution means that it would normally come to the Committee as an SL1, when the Committee would agree the policy. It would then come as a statutory rule. If the Committee did not agree with it at that stage, it would have to put a prayer of annulment down in the Assembly. The Committee has looked at that a couple of times.

The Chairperson: Can I seek comments from members?

Mr McMullan: Is that clause 9?

The Chairperson: It is clause 9.

Mr McMullan: Can I ask about clause 9(4)? When we talk about Crown immunity, can the Secretary of State step in?

The Chairperson: Yes. Subsection (4) enables the Secretary of State to direct the Department to withhold information.

Mr McMullan: Who assumes responsibility for anything that is asked not to be registered?

The Chairperson: We can ask David and Kieran.

Mr Porter: This is not about allowing people not to register. If there is information that is in the interest of national security, the Secretary of State can say that that information should not be released. I can give you a very real example. We have flood inundation maps that do not show depth and velocity. If we have maps that show depth and velocity, a DEFRA protocol agreed in Whitehall states that depth and velocity are in the interest of national security, and you are not allowed to release that information to the public. It concerns those types of issues, when somebody could misuse or use that information to do something that could cause a problem.

Mr McMullan: Is that not a form of Crown immunity?

Mr Porter: No. The Crown would still have to register.

Mr McMullan: Who would be responsible for that?

Mr Porter: This is information about any reservoir, not just Crown reservoirs. If we had the depth and velocity of any reservoir, whether it is public, private, owned by an individual, a company, and so on, the Secretary of State would say that that information could be used against national security, so it could not be released.

Mr McMullan: Who is party to that information? Are reservoir managers party to it?

Mr Porter: Reservoir managers could be party to it, but we would not put it on the register, and the register would be in the public domain.

The Chairperson: The Rivers Agency would have sight of that information.

Mr Porter: Yes, we would have it, because we generate it. I will keep to this example. We could share it, in a controlled way, with reservoir managers to allow them, for instance, to produce their flood plan. We would not put that element on the public register because of its sensitivity.

Mr McMullan: Would the Planning Service be allowed sight of it?

Mr Porter: Do you mean for a development application?

Mr McMullan: Yes.

Mr Porter: We are probably getting caught up in the example that I used. We may use a version of depth and velocity to show at-risk areas. I will use a slightly different example. Let us say that there is a very large reservoir in the middle of Belfast: the Secretary of State could say that no information about it should be released and be available in the public domain because people could use that information adversely in understanding how and where it would be released. It does not take away from the registration, but it means that the information is sensitive. The names of the owner or the person who has keys, for instance, would not be made public because people could use that information for other purposes.

Mr McMullan: I cannot see the benefit of that. There are low-, medium- and high-risk reservoirs, and I take it that high-risk reservoirs would be part of this.

Mr Porter: It may not necessarily be all of them.

Mr McMullan: No, not all of them, but some of them.

Mr Porter: For national security, certain categories of infrastructure are more important.

Mr McMullan: I am not being disrespectful, but I think that that needs to be explained more fully because it does not make sense. It definitely does not make sense to take it forward on that basis.

The Chairperson: I can understand and grasp the example that you used, Oliver. If the Planning Service were concerned, it would write to the Rivers Agency anyway as a consultee, which could then decide what information to give or give its opinion on the information that it has. It is not as though it would be hidden away and not used, but, in the public interest, it would not be on a public register.

Mr McMullan: I cannot see how that would affect national security.

Mr Porter: Let us think about two reservoirs in Belfast that are exactly the same size: one is used for the public water supply, and the other is not. There will be greater sensitivity and security about the reservoir that is used for the public water supply because someone could poison that. The name of the man who has the keys to access that reservoir should not really be put on the public record, because someone could take that information and use it to do wrong. The second reservoir is exactly the same size and has exactly the same flood risk, but it does not supply public water, and it, therefore, poses less of a national security risk.

The Chairperson: We can seek clarification from the Rivers Agency.

Mr McMullan: With respect, that could refer to anyone who has the keys for a lot of places. It could pertain to anything, but we can get more information on that.

The Chairperson: There are no further comments from members on clause 9 and the controlled reservoirs register.

We move on to clause 10, which 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 the regulations. The regulations requiring provision of information are not thought to be contentious, and, therefore, the negative procedure is considered appropriate. The Committee did not receive any comments about this clause, and there are no comments from members.

Clause 11 concerns the structures or areas that are controlled reservoirs on the relevant date. The clause requires a reservoir manager to register a controlled reservoir not later than six months after the commencement date of clause 10. The Committee did not receive any comments on this clause, and there are no comments from members?

Clause 12 deals with structures or areas that become controlled reservoirs after the relevant date. The clause requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. The Committee did not receive any comments on this clause, and there are no comments from members.

Clause 13 deals with the registration time frame for a structure or area that is to be treated as a controlled reservoir because of the regulations under clause 2(3). The Committee did not receive any comments on the clause, and there are no comments from members.

Clause 14 deals with fees and their registration and administration. The clause enables the Department, by regulations, to introduce the requirement to set, charge, collect and recover fees from reservoir managers in order to recoup costs reasonably incurred by the Department for registration and other departmental functions in respect of the reservoirs register. Armagh and Antrim fishing clubs expressed concern that the word "may" really means "will". The regulations will be subject to negative procedure so would need a prayer of annulment at that point.

I have a few questions, David and Kieran. In government, we always talk about cost recovery. I suppose that the question is: why should the Rivers Agency not bear the costs of registration, considering that reservoir managers may have to invest heavily in capital works for their reservoir and take on the burden of the regulations for inspections? Is it necessary that they be asked to foot the bill for the cost of government regulations and requirements, for which they will have no gift as regards efficiency? How much would that cost? Have we any costings? How would that be distributed among reservoir managers or owners?

Mr Porter: We do not intend to bring in fees for registration. We are making sure that we write primary legislation that allows us to charge a fee if the economic situation continues to change. Government policy is for all cost recovery, so, at present, we do not have a fee or a plan to bring in a registration fee. At this stage, I do not see this clause being used. It is there in case it takes some time to get the Bill through. When the legislation becomes live, the policy may be that the Government charge for all their functions. However, they are not doing that at present.

The Chairperson: Have you not done any initial work on the cost of registration or any similar scheme in the Rivers Agency or the Department?

Mr Porter: No, the reason being that we do not wish to introduce fees. We want people to register their structures, because we want to understand the risk that those pose. We see fees as potentially being an impediment to that. All we are doing through the Bill is making sure that we do not have a gap, because, at the point at which the legislation goes live, it may not be compliant with government policy. At present, we do not plan to bring it in, so we do not know what the fee would be. We have no intention of introducing fees, so, in our view, that would be nugatory work.

The Chairperson: I am sure that there have been in-house calculations on how much it would cost the Department or on the size of the bid to DFP.

Mr Porter: We know how much we have bid for to staff up a reservoir enforcement team. We have a recurrent cost of about £200,000 a year, which is met within the current CSR. It was a new bid within the current CSR. It will then become part of our baseline as we go into the next CSR. At the minute, we have no reason to think that that would not be funded or that it would not be a function that would be important enough to be funded out of any allocation that we get. However, we do not know that. We are told that we continue to be in hard times, and, in the next CSR period, there will be a lot of demands for money, certainly on the resource side. However, we are relatively confident that we are OK as an agency if we are funded, and we see this as a necessary function that we would fund.

The Chairperson: How do you counter the argument about the words "may" and "will"? How would you get round that fear and perception?

Mr Porter: There was a fear from one individual. However, I spoke to him after he gave his evidence and tried to reassure him that we do not plan to do that. There was a suspicion that we had ulterior

motives. I am not sure how we convince somebody that we do not have such motives. We have said that we do not plan to bring fees forward, and we are on record here as saying that we do not plan to do that. That may change if government policy changes, but, at the minute, we do not plan to bring fees forward.

The Chairperson: Are there any further questions for David or Kieran on the registration and administration of fees? Members have no further comments on clause 14 and are happy enough.

We move on to clause 15, which requires a person to notify the Department within 28 days of the date that they cease to be a reservoir manager and to provide the name of the new reservoir manager. The Committee received no comments about this clause.

Clause 16 makes it an offence not to register. The offence carries a fine of up £5,000 for high-risk reservoirs and up to £2,500 for low- and medium-risk reservoirs.

I have another question, David and Kieran, for which I apologise. In clause 15, a person has to notify the Department within 28 days of the date on which they cease to be a reservoir manager. That is all well and good, but they then have to provide the name of the new reservoir manager, which may not be within their gift. If a reservoir manager were to retire, leave on bad terms with his employer, or were deceased, how would that work? How can you put the onus and responsibility on a former reservoir manager, who may then have no responsibility or outworkings on appointing a new reservoir manager or who may simply not even know?

Mr Porter: In this case, we were thinking about a reservoir being transferred to somebody. It would be similar to saying that you had disposed of your car, sold it to a dealer or sold it privately to an individual. That was what was in our mind's eye. We can take that back and have another look at it to see whether there would be other situations that may not be the norm and whether we are a little bit too tight on that one. We can take that on board.

The Chairperson: That may work, because in a used car scenario, you can simply say that you got rid of the car, scrapped the car or sold it on to Mr A. Some sort of registration may be required where you could put, "I do not know" or "not applicable" on a form. I do not know how that would work in registration terms and how the Department would seek to find out who the new reservoir manager is and whom you would hold responsible.

Mr Brazier: I suppose that it would be in much the same way as we are trying to find out the names of unknown reservoir owners. We would probably be in that situation. It would involve a bit of detective work, if nothing else. That scenario might arise. I wonder whether it is a matter of extending the timescale or putting in something more specific to cover the scenario that you suggest.

The Chairperson: If someone has no knowledge of the new reservoir manager or of a decision taken by a committee that he is no longer part of, it will be very hard, even with a longer timescale.

Mr Brazier: Yes, it would not matter how long he had.

The Chairperson: The onus and responsibility is no longer his.

Mr Porter: It may well be a case of adding "if known" at the end. We can have a look at that.

The Chairperson: You do not want somebody who does not have the responsibility getting slapped with a £5,000 or £2,500 fine.

Mr Brazier: So the issue is about placing the onus on the outgoing reservoir manager to give us the name of the incoming reservoir manager.

The Chairperson: Yes, it is about the onus being placed on the ex-reservoir manager to come up with the goods when he may not know or have any means of knowing who the new manager is.

Mr Porter: OK. We can have a look at it.

The Chairperson: What about deceased reservoir managers?

Mr Porter: If there is a club and somebody just walks away, the club corporate is the owner. However, it then has to appoint an individual to carry out that duty. We may well need to have a little look at that.

The Chairperson: What about issues involving probate? Can responsibility fall on family members or somebody who has no inclination towards, or even any sight of, the deceased's work? You would not want that to happen to a family member or dependant.

Mr Brazier: If a family member took over a farm and the land was falling down on to the reservoir, that would be part of the reservoir. That person may decide that they do not want to have anything to do with the reservoir, and, in those circumstances, it is about nominating a reservoir manager. If the father, for example, was a reservoir manager and the person who inherited the land did not want to take on that role, he would have to go to the others, agree which of them would take on that responsibility and let us know. That is one scenario; there may be others. We will have a look at that clause. Placing the onus on an outgoing reservoir manager to give us the name of the incoming reservoir manager is the concern.

The Chairperson: There is a grey area when a disaster happens in a family or an organisation. We cannot always legislate for the worst-case scenario, and there could be loopholes or even grey areas that would make it very difficult. If there has been a family tragedy, for example, the last thing on people's minds will be the reservoir.

Mr Brazier: Yes, or telling us who their new reservoir manager is.

Mr Porter: We will have a look at that.

Mr McMullan: You mentioned farming. The reservoir would be marked on the farm map. Therefore, if it came to the son, it would be his responsibility. Do you not have powers under the Bill to appoint a manager if need be? In a case of not knowing who the manager is, can you not appoint one to oversee the reservoir until a new one is in place?

Mr Porter: No. This goes back to clause 6: people are managers in law. If there is no water undertaker, sewerage undertaker or any other person managing or operating a reservoir, the owner is the manager. It is not for us to appoint someone. There will always be such situations unless we get to a point at which there are orphaned reservoirs, when the Department may need, in the interests of public safety, to step in. It is not for us to say, "You own that. Therefore, you are the manager". The legislation places that burden on the owner.

Mr McMullan: Somewhere in the legislation, the line of succession of ownership needs to be explained: if the father owns a farm and there is a dam on that farm, it is the responsibility of whoever takes over.

The Chairperson: It certainly is a grey area. Will you have a wee look at it?

Mr Brazier: Are we going back to clause 6 and reservoir managers? Is it about that or is it about the transfer of responsibility from one reservoir manager to another?

The Chairperson: A bit of both. That may well need to be tied up in other parts of the Bill.

Mr Porter: We will have a look at that.

The Chairperson: When looking at one clause, we need to see how that, indirectly, affects other clauses. It seems to be a grey area or a blind spot.

Members have no further comments on clause 15, so we move on to clause 16, which 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. The Antrim angling club commented that no one in a fishing club would be able to manage that requirement. An offence at clause 16(2) carries the penalty of a fine up to level 5, which is currently £5,000 for high-risk

reservoirs. The second offence for medium- and low-risk reservoirs carries a fine of a penalty of up to level 4, which is £2,500.

Mr McMullan: Earlier, we talked about the transfer of ownership and who the next manager might be. In clause 16(5), however, we have built in a defence to a charge in proceedings:

> *"that the person did not know and could not reasonably be expected to have known that the person was the reservoir manager".*

We had this argument about clause 15, and here is the defence that the person did not know. One contradicts the other.

The Chairperson: Very good, Oliver. I am surprised that you were able to keep your powder dry. *[Laughter.]* I commend you for that.

Could something similar be added, if necessary, to the other clause? Is that necessary, considering that it is already in clause 16?

Mr Porter: The two are interrelated. We tend to think through these issues using scenarios. If an estate was willed to somebody who lived in America, and nobody had contacted them and they had no reasonable way of knowing that they had become a reservoir manager, it would be entirely reasonable and proper for them to be able to say, "Sorry, I couldn't have committed an offence because I had no possible way of knowing that I was the manager." I suspect that such a person would use clause 16 as their defence.

Mr McMullan: He could say that his daddy never told him.

Mr Brazier: Let us work that through: the Department charges him with that offence, and he uses clause 16(5) as his defence. Previously, it was suggested that amending clause 15(2) might take account of that. It might negate the need for that defence because we would never have charged him in the first place. That is the scenario. It is a point well made.

The Chairperson: Do members have any more comments? Good man, Oliver, that is why you are here.

Mr McMullan: I am useful.

The Chairperson: Clauses 17 to 23 deal with risk designation, which is another fundamental issue for the Committee. These clauses, particularly clause 22, have caused some concern among members.

Clause 17 deals with the requirement for the Department to give a risk designation as soon as is reasonably practicable after the registration of a controlled reservoir. Clause 17(2) establishes that the risk designation is high, medium or low. A number of concerns were raised, particularly about the understanding of the word "risk". They are detailed at pages 50 and 54 of our matrix, alongside the Rivers Agency response.

I refer members to the tabled paper from the Rivers Agency, which states that it has considered the Committee's comments that the word "risk" may not be appropriate. The Department is considering an amendment to clause 17(2):

> *"To take account of comments made by the ARD Committee that the term "risk" may not be the most appropriate."*

You are right that "risk" may not be the right terminology. We are interested in public perception and in not alarming people, which you have echoed throughout our scrutiny. Having something that is high risk is not good. However, simply changing the terminology to "high impact" or "high consequence" will not change the fundamental designation. If designated "high", the regulatory burden will be placed on you. No matter what you do or how much you invest to improve the safety of your structure, you will be left with the burden of regulation that will apply to a reservoir deemed to be "high risk", "high impact" or "high consequence". There is, to me, some unfairness there. If a responsible owner is prepared to invest in his reservoir, there is no real recognition or reward for that: he will still have to satisfy the minimum requirements. I know that you will say that he does not have to go to the

maximum requirements, but that still seems unfair. That is especially the case given that changes downstream can affect the designation, but he or she cannot do anything that changes the designation.

Mr Porter: I will jump forward and refer you to clause 22(1)(b), which allows for matters to be taken into account. Clause 22 (1)(a) mentions "potential adverse consequences" and clause 22(1)(b):

"the probability of such a release."

So we have built into the Bill that we can take that into account. The issue, as you heard from the Institution of Civil Engineers, comes back to the fact that there is no agreed numerical method of coming up with the probability of failure. So we have purposely built in that, should such a method be agreed, we will be able to take that in the Bill as written. However, there is no agreed way in the United Kingdom of doing that. It is about coming up with a system that determines the probability of a release. The probability of failure is, technically, nigh on impossible to determine in any numerical way. It will be a difficult one for us.

I cannot put forward a winning argument on this because it is a discussion that we have had quite a number of times. Clearly, you are not hearing an argument that sits well in your mind. I am not sure that I have anything else to give, other than to say that it is built into the Bill. If the industry comes up with a way of numerically determining the probability of release, the Bill can accommodate that. The engineers told the Committee that they could not do that, so the best that we can do now is accept that the probability of reservoir failure, if all reservoirs are in reasonably good condition, is very low. All we are then dealing with is the consequence, which is what we have tried to say. If the consequence of failure is very low, you have a "low impact", "low consequence" or "low risk" reservoir, and you will get the lightest touch regulation. If the consequence would have slightly more impact, the requirements are slightly greater. Those in the top band will get most regulation. We have tried to differentiate between the three.

The best that I can offer is that we look at the minimum standards under clause 25(2)(k) and try to keep them as low as possible. That would differentiate between structures in poor condition and those in good condition. An engineer will look at one in poor condition every month. If the reservoir manager then puts in capital investment and gets his reservoir into good condition, it can then be looked at based on a minimum standard. Unfortunately, that is the best that I can offer at present.

The Chairperson: So you will do something on clause — sorry, what clause was it again?

Mr Porter: We mentioned two. First, you picked up on the terminology in clause 17(2), and we accept that living downstream of a reservoir deemed "high risk" may have a negative connotation to the people concerned. We are not saying that a reservoir is "high risk" to mean that it is at the point of failure; we are using "risk" in relative terms. Here is a bunch of 150 reservoirs: these are the ones that we consider of lowest consequence; these are the ones in the middle; and these are the ones in a higher risk group. The point is that they are designated relative to one other; not to what we might consider to be the risk of, for example, an aeroplane crashing.

Secondly, in clause 25(2)(k), we will take account of the ARD Committee's view on the number of supervised engineer's visits.

The Chairperson: So, under clause 25(2)(k) is:

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

Mr Porter: We will lower the minimum standard to as low as we are comfortable with, but without making it unattractive to the industry.

The Chairperson: Is it possible to have some sort of certificate from an engineer? I heard what you said about engineers not having come up with a probability matrix. However, within the designation of "high risk", could there not be broad subsections of low, medium and high probability, which would allow the differentiation of minimum regulatory requirements?

Mr Porter: That is in the Bill, although not, perhaps, in the terms that you have used. There will be high-risk reservoirs that an engineer identifies require work in the interests of public safety. Some

high-risk reservoirs will have a clean bill of health, but an engineer will say that others do not and that there are outstanding issues. A third step would be our taking enforcement action on the work that has been identified as being required.

Whether that is as clear as it needs to be, and whether we have articulated it as clearly as it needs to be, is another question. Under the Bill, all high-risk reservoirs will not be the same because of what is identified in the inspecting engineer's report and whether we do anything about it as a result of a manager's action. It is a matter of whether that gives you that differentiation and whether we need to try to write that down in some way.

Mr Buchanan: You could have a high-risk reservoir on which a lot of work has been done and a lot of money spent to make it safe. However, that reservoir, which remains high risk, is much safer than a medium-risk reservoir on which no work has been done. Is that the case?

Mr Porter: The whole thrust of the Bill is to require owners to bring all structures up to a reasonable condition so that the probability of failure is equal across all of them. Therefore, the differentiation in risk terms is purely of the impact. We are talking about the same thing and the same matrix. If all the required works are done, whether the risk is high, medium or low, that levels the playing field for the likelihood of failure. So we are dealing purely with the vertical axis of that matrix. We do not want to allow structures to be maintained in a slightly worse condition because we are happy enough that fewer people live below them. I am not sure that I would like to get to, or could envisage getting to, that situation. That said, you could argue that we are doing that for low-risk reservoirs, in that how a reservoir manager deals with their structure is up to them, and, if they want to ignore their structure, that is a matter for them. We are comfortable with that only when there is nothing below a reservoir. You have to remember that, with medium- and high-risk reservoirs, there are things and people below them. The only differences are the speed of inundation and the depth of water. The differentiator is whether somebody could die, not whether somebody will be impacted on. With high- and medium-risk reservoirs, somebody will get wet. What makes the risk high is that somebody may well get wet and die.

Mr McMullan: People below a high-risk reservoir could get wet and die. However, if a multinational is coming in to do some construction there, it could have the designation reviewed. It could win that review and get the designation changed from high to medium. Leaving a designation open to review means that there is a possibility of getting the designated risk downgraded. Otherwise, the word "review" would not be there.

Mr Porter: I was stuck on the term "multinational" and trying to work out why you used it. It would not matter whether it was a multinational. If anybody, not just a multinational, has different information, wants to have a discussion with us or does not believe that a reservoir has the depth and velocity to kill, we are quite happy for them to have that review.

Mr McMullan: How does the review work?

Mr Porter: The review of the risk designation?

Mr McMullan: Yes.

Mr Porter: We will give an initial risk designation, which will be based on our flood inundation maps. People may well come along and say, "We have had somebody look at your flood inundation maps, and we interpret this slightly differently." We can have that discussion. For instance, they could demonstrate that our assumptions on the basic topography — the shape of the ground — were wrong because somebody had come in and done something to the ground so that the water went a different way, making our predictive model wrong. If they were able to provide us with that information and demonstrate that with a high degree of certainty, we would accept that and change our designation through that review process. If there is different information, we have no issue, irrespective of whether it is a multinational, a company or a private individual. If we got it wrong and somebody shows us that we got it wrong, we are quite happy to change our risk designation.

Mr McMullan: As Tom said, you could do a lot of work on a high-risk reservoir, and it could end up being more secure than a medium-risk reservoir. So, when it comes down to it, is the risk designation of high, medium or low predicated on volume?

Mr Porter: A number of things, such as the volume of water and speed of inundation, will vary between a designation of high and a designation of low. At Kiltonga, houses sit right below the dam, and anybody could work out that, in the event of its failing, a wall of water would impact on them. Everybody accepts that that would be a high consequence situation.

If the same reservoir with the same volume was up on a hill and the houses were four or five miles downstream, our flood map would still show that they were in the catchment area, but it would take 20 minutes for the water to go down the hill and reach them. As water goes along the ground, its energy lessens, so that wall of water will have dissipated and become a trickle. The houses will still get wet, but the likelihood of their being damaged or the people in them dying is clearly much lower because of their position relative to the dam. So the designation of a reservoir is not just about the volume of water; it is about what could be harmed because of its relative location.

The Chairperson: The current inundation maps do not show that.

Mr Porter: That is correct. We have undertaken that we will have depth and velocity maps. Currently, we have a very coarse set of maps to allow us to see the overall impact, which was based on a number of assumptions. Even through the work that we have done, we have seen a number of quirks in the maps. That is why I used the example of the topography. For instance, one of the maps that we looked at shows a dead straight line of water, but that line is, in fact, made up of trees. The computer worked out that there was a difference in level, and it knows that water does not jump steps, but it did not know that there were trees there. So we need to revisit the likes of that map and make sure that they show that such lines are permeable: water goes through trees rather than running down the edge of them. That is what we get when we have a very coarse opening set of maps. They will be refined and have much more detail, which will give us the depth, velocity and lots of other information.

The Chairperson: So a current inundation map may show a house or dwelling on a blue footprint, but it may be that the water is nothing more than a trickle.

Mr Porter: Yes, that is correct.

The Chairperson: So that house is then at medium risk.

Mr Porter: Yes, or we may look at some of those when we get the more detailed maps and take them out. If, when we run the more sophisticated map, there is one house at the very low end of an inundation, it may not end up in the blue area. If a dam has a house directly below it, it does not matter how we change the flood inundation characteristics; it will still be within a flood inundation zone. In that case, the best you can hope for is the classification going from high to medium. There may well be some cases of houses being at the very edge of a flood inundation zone, and the more detailed maps may remove some of those properties when we get more detailed information on their location or the ground profile.

Mr Buchanan: Someone with a high-risk reservoir spends thousands of pounds on improving and securing it so that it will not bust, leak or send a flow of water down on top of people. The construction is carried out by an engineer who knows what he is doing, and everything is secure for 100 years or more — it is almost impossible that it will leak. Your saying, "Spend money on doing it up, but, sorry, you will still be high risk", defeats your argument

Mr Porter: No engineer will ever say, "Don't worry about that one ever again". These are structures with huge forces, especially those that are very deep and have very high walls or embankments. The pressure on them is considerable.

An engineer will recognise that a reservoir manager has taken all reasonable steps to tidy up any obvious defects or that a spillway is the correct size to deal with extreme rainfall events, which will ensure that such events will not take the dam away. He will recognise that a manager has a system in place to keep an eye on the reservoir regularly so that we can catch any change at the earliest point. If all those things are in place, your structure is as reasonably safe as we can make it, and that is what the Bill is trying to do. It is not saying that its provisions mean that dams will not be breached or fail; it is trying to ensure that as many reasonable steps as possible are taken. If those steps are not being taken, that is when we start to be concerned and enforcement comes in.

Mr Brazier: We sat in on the current live risk-designation process in England to see what the Environment Agency there does. We posed the type of scenarios that have been posed in evidence sessions here and asked specifically about probability, about reservoirs being improved and so on. We do not expect this to sort out the issue, but the Environment Agency does not take probability into account at all. When looking at its risk designations, it has the figures for the volume and speed of the water. Its officials err on the side of caution every time. If there is any chance whatsoever that somebody might be hurt, they will designate a reservoir as high risk. They do not have medium or low risk, so it is either high risk or not high risk. They do not have the same leeway that we do. That is their position. If they think that there is a chance that somebody might be injured as a result of the uncontrolled release of water from the reservoir, the reservoir is designated as high risk and the associated management regime is introduced.

The Chairperson: Members have no comments. We will move on this, away from clause 17. Thank you, Kieran and David.

Clause 18 is entitled:

"Periodic re-assessment of risk designations".

This clause states that the Department must undertake a periodic reassessment of controlled reservoirs' risk designation, taking into account matters mentioned in clause 22, and must either confirm or give the reservoir a different risk designation. The Committee received a comment from the DOE, which is on pages 55 to 56 of the matrix, along with the Rivers Agency's response. Members have no comments.

Clause 19 is:

"Date on which risk designation given under section 17 or given as different designation under section 18 takes effect".

This clause requires that the notice given of risk designation for the first time under clause 17, or notice given giving a different designation under clause 18, takes effect on the day after the notice is served. The Committee did not receive any comments on this clause, and members have no comments on it.

Let us move on to clause 20:

"Review by Department of its decision under section 17 or 18".

This clause enables reservoir owners to apply for review of the Department's decision on risk designations given by the Department under clauses 17 or 18. It also allows the Department to commission a reservoirs' panel engineer to provide expert opinion that the Department is required to consider when determining a review decision. The only comment received was from NI Water, which stated that the appeal system appeared to be robust. Subsection (7) provides the power to make further provision in relation to applications for reviews of decisions on risk designation of a controlled reservoir. That will be subject to negative resolution procedure. I seek comments from members.

Mr McMullan: I take it that there is nothing in the Bill whereby the Department may claw back any —

The Chairperson: I am sorry. Face this way first so that I can hear you, Oliver. Do you want to ask a question of the —

Mr McMullan: Under that section, are financial outgoings borne by the Department or can they be levied against the person who has asked for the review?

The Chairperson: I will have to call in the officials to answer that question. On clause 20, with regard to reviews by the Department of its decision under clauses 17 and 18, who bears the cost of reviews?

Mr Porter: We wanted to put in somewhere that there is a low-cost or no-cost review, so there will be no charge for the Department to hear that. It would just be whatever cost it takes to generate the information. The individual manager would have to bear that, but it would be a low-cost review because we can hear it informally. That is what the first review is, but then with the appeal, there is a

ramping-up, and there starts to be a cost associated with it. However, for the first review, we will not be recovering costs, and we are happy to do it at no or low cost.

Mr McMullan: What happens if it goes to court? Do you envisage going to the County Court or the Crown Court?

Mr Brazier: Reviews under clause 20 do not go to court; they will go to the Water Appeals Commission. That is in the next clause.

The Chairperson: This is about who bears the cost. If it is a review such as one under clause 20, that is fine. However, if it is under clause 21, which is the appeal, there are definite costs.

Mr Brazier: It is for the Water Appeals Commission to decide.

Mr Porter: There is an issue around that clause, Chair. It is mentioned in the list of 'Amendments Being Considered' document that we gave you, clause 21(9).

The Chairperson: Yes, sorry.

Mr Brazier: So that you understand it, the issue — it relates to all the other clauses in which the Water Appeals Commission is mentioned — is that the Bill allows for the Department to make regulations on what the Water Appeals Commission may or may not do. The Examiner of Statutory Rules has drawn the Committee's attention to the fact that those regulations should perhaps be made by the Office of the First Minister and deputy First Minister as the oversight Department for the Water Appeals Commission, in the same way as it does for the Planning Appeals Commission under the Planning Act. We are considering that. We have written to the Department about that and are awaiting its response. Once we receive it, we will consider it and come back to the Committee.

That permeates the Bill wherever the Water Appeals Commission is mentioned. The examiner's concern was that the Department would be a party to the appeal; therefore, it needed to distance itself from that. We agree, but it is whether OFMDFM agrees. We are consulting on that.

The Chairperson: So it would be very similar to the Planning Appeals Commission —

Mr Brazier: It is exactly the same.

The Chairperson: — where the Planning Service would be a party and the applicant would be the —

Mr Brazier: Yes.

The Chairperson: OK.

Mr Brazier: I think that it was for that reason that the Planning Appeals Commission was moved under the auspices of OFMDFM. Our intention was to make sure that the Water Appeals Commission could charge a fee and award costs. We assumed that responsibility, but the Examiner of Statutory Rules has corrected us on that. We hope that OFMDFM will do that.

The Chairperson: Regarding Oliver's point about costs, I cannot see a cost in the review.

Mr Porter: No, that is because there are no costs in the review.

The Chairperson: I know that we are jumping ahead, but in the appeal —

Mr Porter: There is a cost, yes.

Mr Brazier: That is dealt with in clause 21(9)(b).

The Chairperson: Clause 21(9) states:

"The Department may by regulations make provision ...

the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs)."

What is that saying? That the Department will charge a fee if it went to appeal?

Mr Brazier: As it is written, the Department would make a regulation to enable the Water Appeals Commission to award costs or charge a fee.

The Chairperson: OK.

Mr Brazier: The Examiner of Statutory Rules said that the Department, as a party to that appeal, should not be in the position of making that regulation.

The Chairperson: It should be OFMDFM.

Mr Brazier: Yes. So that clause and others will be amended if OFMDFM agrees to make regulations that would enable the Water Appeals Commission to do that.

The Chairperson: What if it does not agree?

Mr Brazier: We are very keen that the Water Appeals Commission can do that for appeals against the Bill. We would have to think about that, but we would encourage it in the first instance to try to comply with the concerns of the Examiner of Statutory Rules. If the Examiner of Statutory Rules could set that aside and allow the Water Appeals Commission to be enabled to do that by our Department, we would be happy with that.

The Chairperson: Someone has to be in charge, and that should not really be the Department that may be a party to it.

Mr Porter: No; that is right.

Mr Brazier: No; that is right.

Mr Porter: We considered another couple of options and ended up with the Water Appeals Commission. We had thought about the Institution of Civil Engineers, because of the technical nature, and the reservoirs panel or its president could appoint someone to hear an appeal. The issue with that was not that they are engineers and are all part of it through the Bill and the engineers' charter, but because they could not give us a scale of fees. The Water Appeals Commission has that. Not having a scale of fees could be a dissuading factor in someone taking an appeal as they would not know what they are entering into —

The Chairperson: How much it would cost them?

Mr Porter: Whereas at least if the Water Appeals Commission has a scale of fees they will know how much it will cost them and that, win or lose, it will cost them at least that. They can then take an informed decision on whether it is worth making an appeal. They will have had the review informally, and the scale of fees will allow them to decide whether they are prepared to take it to the next stage and at least they will know what the financial burden, penalty or cost will be of doing that. The institution could not give that scale of fees, and that might have been off-putting for people as they would enter into an appeal not knowing what costs they might end up with.

The Chairperson: OK. Are there any other questions on that or comments on clause 20? OK, thank you, David and Kieran.

I move on to clause 21, which we have been discussing and which refers to appeal against the Department's decision in a review under section 2. The clause deals with the rights of a reservoir manager to appeal against the decision in a review of a risk designation given by the Department. Subsection (9) makes the power for the Department, by regulation, to determine the fee for such an appeal and the awarding of costs of the parties to an appeal, including the amount of costs. That will be a negative resolution procedure. The appeal is made to the Water Appeals Commission. The

Examiner of Statutory Rules advised that it might be preferable to consider conferring that power on the Office of the First Minister and deputy First Minister, which has similar functions in respect of appeals to both the Water Appeals Commission and the Planning Appeals Commission for Northern Ireland under other broadly similar legislation.

The Rivers Agency has been asked to consider an amendment to that to confer the power on the Office of the First Minister and deputy First Minister. That amendment would also affect, or have consequential amendments at, clauses 73(6), 74(2), 77(2), 79(7), 82(8), 84(6) and 86(4). I seek comments from members. It is one that we have already discussed.

Clause 22 relates to matters to be taken into account under clauses 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a). The clause is one that has given the Committee considerable concern. It details the matters that must be taken into account in making a risk designation for the first time, in undertaking a periodic reassessment, and in reviewing a risk designation. Concerns raised during the evidence sessions are detailed at page 58 of the matrix, alongside the Rivers Agency's response. The main concerns are that, although the clause notes that probability and impact are part of a risk assessment, in reality the risk designation will be based on impact only. The Examiner of Statutory Rules has suggested amendments to take account of the fact that there are two distinct rules when perhaps there should be one. The Rivers Agency is considering that. Clauses 22(3)(a) and 22(4) are both subject to negative resolution. Again, we have discussed that with regard to:

"the probability of such a release."

It is in clause 22(1)(b). There is no point in going over old ground. There seems to be an issue with the Rivers Agency not being able to calculate probability at the present time. I seek comments from members.

Mr Swann: On further reading and further thought, I saw in clause 22(2)(a)(iv) "cultural heritage". What definition have Departments applied to cultural heritage? Do they look to archaeology and potential sites? We could be looking to a reservoir that has absolutely nothing downstream of it, but somebody has said that there might be something there.

The Chairperson: OK, David.

Mr Porter: That is a straight lift from the floods directive. Those are the four criteria in the EU floods directive. The way we interpreted cultural heritage in the preliminary flood risk assessment (PFRA), where we had to assess the impact on cultural heritage, was on the built heritage predominantly. It is hard to work out what the impact of our culture is on flood risk, so we had to take it as something that was tangible. In our assessment of the PFRA we took it as built heritage. I suspect that we will do the same under this — something of significant heritage value. We got that information on the PFRA from consulting the Northern Ireland Environment Agency (NIEA). On the other items, human health or people and economic activity, we were able to do runs about where building and particular pieces of infrastructure were. On both environment and cultural heritage, we consulted NIEA to see whether there was anything additional that had to be brought into the assessment.

Mr Byrne: Does that mean that, for example, a fort would be regarded as cultural heritage.

Mr Porter: Yes, it was scheduled monuments in the built environment, so, yes, it could be.

Mr Swann: What about a moat or bailey?

Mr Porter: If it was a scheduled monument on the built environment section in NIEA, we would have taken it into account.

Mr Swann: Chair, I would like to see a stronger definition.

The Chairperson: Of cultural heritage?

Mr Swann: Yes.

Mr McMullan: Is human habitation in there?

Mr Porter: "Human life" is the term used in the EU directive. Again, in the PFRA, we took the places where humans inhabit in order to assess the impact on human life, so the data set was dwelling houses. The economic activity covered the workplace element of humans. That is how we assess those through the PFRA, so the proxy of property is quite good to demonstrate impact on human life.

The Chairperson: Are the values of these for human life, human health, environment, economic activity and culture all the same when it comes to designation?

Mr Porter: No, they are not. That was set out. We had an initial indication of how we would assess this in the public consultation document that we put out. That, again, set out where we intend to go back to "human life". If there is a possibility that one or more human lives were likely to be lost, that would get you into high-risk designation. A medium risk is where there would be impact on human life but death was unlikely and there would be a significant impact on the environment, cultural heritage or economic activity. Low risk is where no life would be likely to be affected and there would be no long-term detrimental effect on the environment, cultural heritage and economic activity.

We can provide that table again if you think that it would be useful.

The Chairperson: Yes, please.

Are there any further comments on clause 22? No. Ok, thank you, David.

Clause 23 is on further provision for high-, medium-, and low-risk reservoirs. The clause clarifies that the terms "high-, medium- and low-risk" in relation to a controlled reservoir refer to its risk designation. Concerns have been raised and are detailed on pages 25 to 29 of the matrix alongside the Rivers Agency response. I see that members have no further comments.

Part 2 deals with the requirements for high- and medium-risk reservoirs. Clauses 24 to 27 deal with supervision for supervising engineers. Clause 24 deals with supervision requirements and commissioning of supervising engineer etc. This clause requires a high- or medium-risk controlled reservoir to be under the supervision of a supervising engineer at all times. A supervising engineer must be commissioned within six months of the risk designation taking effect and a reservoir manager is required to give notice to the Department within 28 days of the commissioning.

A number of concerns were raised, including the lack of competition in respect of engineers and the availability of suitably qualified engineers here. There is an offence at clause 24(2) regarding commissioning a supervising engineer. The offence carries the penalty of a fine up to level 5, which is at £5,000 for high-risk reservoirs. The second offence for medium- and low-risk reservoirs carries a fine of a penalty of up to level 4, which is £2,500.

There is an offence at clause 24(4) regarding notifying the Department about commissioning a supervising engineer. The offence carries the penalty of a level-5 fine, which is £5,000, and for medium and low risk a level 4 fine, which is £2,500. Any comments? Sorry, it is clause 36 that gives the offence. We will have to go to clause 36 in order to come back to clause 24. Are there any comments?

Mr Byrne: Can I ask a general question about these engineers? The penalty fees seem quite high. What is the function or otherwise of the professional liability cover as well with the reservoir manager in relation to *[Inaudible.]* by him or her in relation to the advice or otherwise that the engineer might give?

The Chairperson: I will ask David to come up. I do not know if you got all that, David and Kieran. Do you want to ask again, Joe?

Mr Byrne: It is about the engineers who are relevant to this clause. What is the function or otherwise of the professional liability insurance cover that would pertain to the advice or otherwise that would be given by him or her to the reservoir manager?

Mr Porter: If the advice was shown to be negligent, a claim could be taken against their professional indemnity insurance. That situation would not be blocked out by the Bill and would be very real, but it is not a case then where the engineer has proven to be negligent in carrying out their duty.

Mr Byrne: Would an engineer also have to notify the Rivers Agency when they have completed the assessment of a reservoir?

Mr Brazier: I think that it is in clause 24(4). It is covered; we just cannot remember the clause number off the top of our heads. We will check it for you.

The Chairperson: We can get that.

Mr Byrne: Can I query that further? Clause 24(4) states:

> *"A reservoir manager who commissions a supervising engineer in accordance with subsection (2) must, not later than 28 days after the commissioning, give notice of it to the Department."*

Therefore the onus is on the reservoir manager to pass the report to the Department. Would it not make sense for the engineer also to send a copy of his report to the Department so that there would be no negligence by anybody?

Mr Porter: I would not like to put that in as a direct reporting line. The contractual responsibility is between the reservoir manager and the supervising engineer. The situation may not happen, but let us assume that it could. If the reservoir manager did not particularly like what the report said, they could at least have that conversation under the contractual relationship that they have, and the supervising engineer's role would be to convince the reservoir manager that what they said was right and proper. The report would then be agreed and sent to us. In coming straight to us with a recommendation, I would be concerned that the contractual conversation that should rightly and properly take place may be stymied somewhat and that we might have a report that a reservoir manager may not be content with or that there may need to be further discussion on.

Mr Byrne: Given that there is a wider public interest issue at stake and that there is an onus on the reservoir manager to carry out his duty subsequent to receiving the report from the engineer, I feel that it would be relevant for the Department also to get sight of the engineer's report when he sends it to the reservoir manager.

The Chairperson: OK.

Mr Porter: Clause 25(3)(b) covers that situation but again gives you some time. We do not want the supervising engineer to sign it off and for it then to have to come straight to us. In this case, we have to get a copy of it not later than 28 days after giving the written recommendation.

The Chairperson: Play that in real terms. A reservoir manager employs a supervising engineer and commissions a reservoir supervisor to do the work. He produces the report, which is given to the reservoir manager. The supervising engineer, on handing that over to the reservoir manager, then —

Mr Porter: So they have up to 28 days before we get it.

The Chairperson: Where did I see it? I have lost it. No later than 28 days after giving the written recommendation, give the Department a copy of it. What does clause 33 say?

Mr Porter: Clause 33 is about inspecting engineers . This is the 10-yearly inspection, as opposed to the routine supervising.

The Chairperson: Yes. Is that only the 10-yearly inspection? What about the two-year?

Mr Porter: Yes, that is this first bit that we are talking about. The supervising engineer provides an annual statement giving the information from the reservoir manager about water levels, about the routine maintenance that they have carried out and about the routine observations that they had — the walk-over inspections to make sure that things are not moving and all the record keeping. The supervising engineer then provides the annual statement, which assures the reservoir manager that everything seems OK. That assurance is then provided to us under clause 25(6).

The Chairperson: Clause 25(6) states:

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

Mr Porter: Yes. That is the annual statement. We are looking at that as well, because, if we go back to the discussion about what the minimum standard is — if it is not one a year, you cannot give an annual statement. Or can you? Do you just give a different sort of annual statement? Can you give a desk-based assessment of the written records, the water levels and the routine maintenance? Would that be sufficient? Or, for medium structures for which we could potentially take it from the current one a year to less than one a year, do we consequently need to look at this as well for medium-risk structures? That is, again, caught up in the mix of some of the other changes that we are looking at.

The Chairperson: Joe, are you happy enough?

Mr Byrne: Yes, that clarifies it.

The Chairperson: Are there any other comments on clause 24? We move to clause 25, "Duties etc. in relation to supervision". Some of these might have been covered already.

This clause sets out the key aspects of supervision by commissioned supervising engineers. Concerns raised are detailed at page 65 of the matrix, alongside the response from the Rivers Agency.

These concerns are outlined at pages 65 to 67 of the matrix, alongside the response from the Rivers Agency. One of the main concerns of the Committee is clause 25(2)(k), which outlines the minimum number of visits by a supervising engineer for high-and medium-risk reservoirs. Members felt that that may be excessive, and the Rivers Agency indicated last week that it would consider an amendment to reduce the operational requirements.

There is an offence at clause 25(8)(a) or (b) regarding giving copies of various reports to the supervising engineer. That is what we have just covered. The offence carries the penalty of a fine up to level 5, which is £5,000 for high-risk reservoirs. The second offence for medium- and low-risk reservoirs carries a fine of a penalty of up to level 4. The scale for level 4 is £2,500.

Do members have any comments? This is a clause that the Rivers Agency has looked at, and it is prepared to consider amendments. Clause 25(2) states:

"(k) visit the reservoir

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

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

Are there any comments from members?

Mr McMullan: When we go through all those supervising engineers' reports and come down to high risk, are properties round that reservoir notified of that category?

The Chairperson: We can ask —

Mr McMullan: Or should they be notified of that category?

The Chairperson: Again, this is another fundamental that the Committee has looked at — whether the burden of regulation is excessive. David, do you want to answer the specific question from Oliver about knowledge?

Mr Porter: We would not write directly to all those people, but because we have a public register, if these people want to know, the information is available to them.

Mr McMullan: So they will be made aware of that register?

Mr Porter: A public register will be set out in the legislation. We are not going to write to all those people to say that there is a register, but if somebody wanted to know whether they were at risk, they would be able to find that. That information will be publicly available.

Mr McMullan: How would they know that?

Mr Porter: In the same way that, if you are buying a house and want to know whether you were under the flight path of an airport, you can find that information. If you want to know about the flight paths of aeroplanes, somebody will be able to tell you that. That information will be freely available. If one of my concerns is flood risk, I look at the various sources of flood risk. Am I within a flood inundation area? I want to know whether it is high, medium or low — if I am living in it, it will be high or medium. The public register information is there, and I will be able to access that.

Mr McMullan: That will be something that all solicitors would come back with in their property searches for potential buyers.

Mr Porter: It is not a requirement of the legislation that solicitors must come back to them, but it would seem to be a very wise thing to include that in the surveys.

Mr McMullan: Would they not be negligent by not coming back with that and —

Mr Porter: I cannot possibly answer that question.

Mr McMullan: That is what I would like to know. We are talking about people getting wet and damaged. If somebody is negligent in telling the potential buyer that they could get wet or that their house could float away, there has to be somebody to take responsibility for that.

Mr Porter: There is no requirement in the Bill for the legal profession to include the requirements of the Bill in any property search. I am not sure how they come up with a list of what is included in a standard property search. There are certainly no requirements in the Bill for them to do that.

Mr McMullan: That may be something that we should look at for the protection of the people who live in that area. If there is no requirement for the legal profession to check that, it leaves those people very exposed.

The Chairperson: I am keen to always keep the onus on Rivers Agency, Oliver, as opposed to the Committee.

Mr Porter: I would understand that if there were a negative issue. As I have said before, provided that reservoirs are kept in a reasonable condition, it is perfectly safe to live below them — absolutely perfectly safe. Our difficulty at the minute is that we cannot give assurances that all structures are in a safe condition. We are bringing in the legislation to require owners to get a professional to look at the structure, to carry out some routine, rudimentary checks on it and to keep them in reasonably good condition. It is perfectly safe to live below a reservoir, provided that somebody manages it in a reasonable way. That is the thrust of the Bill. Saying, "Well, here's something else to keep you up at night" would unnecessarily alarm people. If we get this in, they should not be worrying about the reservoir above them unduly, because of the requirements of the Bill. It should not affect their household insurance or their property values.

Mr McMullan: But can we give a guarantee that that will not happen? Will the insurance companies not find any loophole at all to put the prices up? They know the Bill is going through. It is really down to Rivers Agency now to be very robust in the Bill to state that fact.

Mr Porter: The last time I gave evidence, I said that I had spoken to the Association of British Insurers (ABI). It gave assurance that there was no issue with the Bill. In fact, it is quite keen to see this come in, because this gives it the assurance that the risk is low. All we are dealing with is consequence, and it understands the risk. It is quite prepared to keep it as a standard part of household insurance. I do not see that being withdrawn. The ABI represents the UK market, and the situation in England, Scotland and Wales is that there is no issue about living below a reservoir and getting insurance. It is not a material issue that we are aware of.

The Chairperson: With regard to the detail of the clause and the subsections thereof, a high-risk reservoir must be visited at least twice every 12 months and a medium-risk reservoir at least once every 12 months. I know that, after talking to the Committee, you are considering amendments to that. Can you shed any more light on where those amendments will lead us?

Mr Porter: Yes. We in the Department have our own thoughts, and we want to double-check those thoughts with the institution. We said that, if we push it too far, there may be a consequence in actually getting engineers to carry out the work. Our thoughts for high risk are to take it down to one in a 12-month period. We are still undecided about how comfortable we are with pushing it out for medium-risk reservoirs. It will certainly go to an inspection every other year. The discussion that we really want to have with the institution is about whether we are prepared, as a minimum standard, to push it out to once every three years. We do not want to get to a situation where we, through legislation, develop a service that cannot be delivered because of the risk and the professional indemnity that Joe mentioned earlier. Engineers would not bother touching it if they thought that all that would be paid for, or that all that people were prepared to do or price on the basis of, was the absolute bare minimum as set out by the Bill.

The Chairperson: OK. Are there any comments from members, even in light of what David just told us about reducing it from at least twice every 12 months to once every 12 months for high-risk reservoirs? So it will basically be at least an annual inspection. Any comments or questions?

Mr Byrne: It seems reasonable, Chairman.

The Chairperson: Again, if I could put one thing in it, I suppose I would compare it with an annual MOT. If you have a car that has moving parts and everything else, and it is being driven every day, doing different things every day and travelling different distances every day, the cost of maintenance would surely be higher. Maintaining a car would be more of a burden than maintaining a reservoir, I imagine, yet we equate an annual MOT with an annual inspection of a reservoir. I am not 100% convinced that that is comparable.

Mr Byrne: Chairman, the only point that I would make is that, in a very severe winter with a very deep frost, sometimes concrete structures can be affected.

Mr Milne: At the last meeting, I think that you made the point that these reservoirs have been in place for quite a long time and that inspecting them every year is just a wee bit too much. I go along with that. Something that is low risk — what we are talking about? I am sorry, but I missed —.

The Chairperson: Sorry, this is for high risk.

Mr Milne: I know that you said that it will be reduced from twice to once a year. That is fair enough. However, I would imagine that, for medium- and low-risk reservoirs, surely you should be talking about five years.

The Chairperson: Sorry; for low risk, there is nothing.

Mr Porter: There are no requirements for low risk.

Mr Milne: But even for medium risk.

The Chairperson: At the minute, medium risk is sitting at at least once every 12 months, and high risk is sitting at at least twice every 12 months. However, an engineer could come along and say, "No, you need to inspect it quarterly."

Mr Milne: I understand that.

Mr Irwin: Many of these reservoirs have not had an engineer looking at them for 50 years. Now, all of a sudden, they need to be visited twice a year. In my eyes, that seems way over the top, and I am not so sure about it. For 50 years or maybe more, they have never been inspected or regulated, and now, all of a sudden, they need to be inspected twice a year. I am not so sure that that is totally necessary.

Mr Milne: The point is, who comes up with the idea of whether it should be a year, two years or five years, and what is that based on?

Mr Porter: I outlined the rationale the last time. The reason why I am comfortable with going down to one per year is that, in essence, that is the situation in England and Wales. Their structures have been inspected on that basis since 1930. So there is evidence, taken over a long period, that says that that seems to be a reasonable level, balancing the cost to the individual owner and the approach that the engineer wants to take so that they understand and know their structure. That is why I think that it is reasonable to change the requirement from twice in 12 months to once in 12 months for a high-risk or high-impact structure.

For medium, as I said, we are undecided. It will certainly move from one in one. If we are quite comfortable with every other year, we will have the discussion with the institution to see whether going out to one in three is acceptable. We have the slight concern that we may well be writing it into the legislation and that it will have no effect because the engineer will say that, despite what the legislation says, for you to not over-expose their professional indemnity insurance, they will need to look at every year or every other year. The engineer may well say that they will not touch it if it is any less than that. So, we can push this out to whatever we want, but we are kidding ourselves that we are saving anybody any cost, because the engineers' exposure to their professional indemnity insurance probably will not let them do this. It is about balancing it and putting in something that is representative of what will happen in reality. We accept that what is written is too high a standard.

Mr McMullan: Could it be that, as we go through this Bill, we are becoming more and more at the mercy of the engineers? Everything that we look at shows that. That is hypothetical, but it seems to be more and more that we are. Nowhere in this do I see regulation of engineers. That is missing from the Bill, and that is becoming more and more apparent. The other question is: if an inspection of a high-risk reservoir takes place every year, when can that high-risk become medium? It must, at some stage, become medium if you are doing it every year.

Mr Porter: The first element was about engineers and the regulation of engineers. We have some elements of that in clause 106, under which we will assess their reports. We have also taken into consideration the Committee's views that you want costs included in that, and we are looking to see how we will include that, not as a regulated activity — I must stress that again — but just as an oversight role that we may well have on that. I do not see a situation where this is just a charter for engineers. I do not accept that, because these are the professionals. These are the people who have been recommended, and their experience and knowledge is such that they can give this advice. The reservoir managers, in the main, do not have that same experience and must buy it in. This is not something to be toyed with. It is not something that a layperson can nearly do OK and get away with. This needs professionals to look at it, so, in drafting the Bill, we have tried to make sure that the responsibility rests with the reservoir manager but that the assistance of an engineer and the services that they offer is clearly set out without trying to give a charter or too much for engineers. I feel that we have achieved that, and it is really a matter for the Committee to determine whether you agree with that or whether you wish to push it harder. I think that there is balance in it.

Mr McMullan: I raised that because engineers are coming from a very small pool of engineers. I say that based on their own presentation to us. The fact that they are coming from a small pool means that we are limited in our choices. As you said, they will not go over their public indemnity. So, I think that you need to look at something in there that does not allow the engineers to, in a way, dictate the pace of the Bill.

The Chairperson: There is a commitment to look at considering an amendment to clause 106 to take account of the comments made by the Committee that the Department should monitor charges being made by reservoir panel engineers and the over-engineering of reservoirs in Northern Ireland. Members, are there any other comments?

Mr Byrne: I have one point for clarification. If we had a situation where there was a high-risk reservoir and there was an annual inspection and a recommendation that work should be done, and those remedial capital works were done, could the designation of the reservoir change from high risk to medium or low risk?

Mr Porter: No. The designation does not change, because the designation is based predominantly on impact, because there is no agreed way of determining probability. What changes is that that is no

longer a non-compliant high-impact or high-risk structure with outstanding matters in the interest of public safety, and the consequence of enforcement being taken to get those issues resolved.

Mr Byrne: Thanks for the clarification.

The Chairperson: Any further comments? OK, moving on to clause 26. We will do clauses 26 and 27, which leads us to a natural break. That will do us today — over two hours, there.

Clause 26, entitled "Visual inspection directed under section 25(4)(a): further provision", states that the reservoir manager must comply with any direction in relation to a visual inspection directed by the supervising engineer and requires the manager to maintain and provide written records to the supervising engineer on request and give notice to the supervising engineer and the Department of anything identified during the visual inspection that might affect the safety of the reservoir. It is an offence not to comply with this clause at 26(1), (2)(a) and (2)(c). The offence and penalty are set out at clause 36. The same penalties apply as previously discussed: level 5 for high risk or level 4 for medium and low risk. The Committee did not receive any comments in relation to this clause. Can I seek comments from members?

OK, moving on to clause 27, "Nominated representative under section 25(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 the supervising engineer when the supervising engineer is unavailable. The Committee did not receive any comments in relation to this clause. Can I seek comments from members?

OK, no comments. I am going to leave it there and draw a line at that point, members. We will pick this up again at clause 28. I remind members that there are 120 clauses, which works out at about another 10 hours of scrutiny. It could well mean an additional meeting.

I thank David, Kieran and the rest of the team who were backup for you today. I am appreciative of you being here, answering our questions and jumping up and down when needed, so thank you very much for your attendance.