



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Reservoirs Bill:
Informal Clause-by-clause Consideration

13 May 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mr Thomas Buchanan
Mrs Judith Cochrane
Mrs Jo-Anne Dobson
Mr William Irwin
Mr Declan McAleer
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: David and Kieran, you are, as always, very welcome.

Members, you will need the following documents open in front of you: the Bill and the consideration of clauses matrix. At last week's meeting, we considered up to clause 27, so we will commence today at clause 28 and, I hope, reach the end. I will take each clause in turn. I will briefly explain the clause and draw your attention to the evidence we have gathered on it, to any subordinate legislation or regulation contained in the clause and to any offence and related penalties associated with it. You must begin to consider whether the subordinate legislation and the offence and the associated penalties are reasonable and appropriate. The offences in the Bill generally carry the same penalty: a level 5 fine for a high-risk reservoir, which is £5,000, and a level 4 fine for medium- and low-risk reservoirs, which is £2,500. There are a few exceptions to this, and I will draw your attention to them.

Rivers Agency officials are at the meeting today and can provide clarification if necessary. The agency has also provided to members a synopsis of the amendments being considered. Members may wish to take a few minutes now to read the synopsis and consider whether the amendments will address the concerns of the Committee. We will have an opportunity to discuss these potential amendments as we reach the appropriate clause. The amendments considered last week are not on this list. If members are content with this approach, we will begin.

First, I refer members to a tabled paper from Rivers Agency, which shows a new proposal for the number of visits in a year by a supervising engineer. I understand that David Porter will take members through this document now. We are under some time pressure today, so I ask everyone — members and officials — to be concise and to the point, and we will try to get through as many clauses as

possible. David, will you go through the new matrix, and then we will look at your proposed amendments?

Mr David Porter (Department of Agriculture and Rural Development): First, I will take you through the risk matrix and take any questions on that. It may be worthwhile for me to give the Committee a brief update on my discussions with the Minister this morning. That would, I think, be useful in your consideration of some of the amendments. I thought that it would be useful to try to put down on one page a number of the issues.

The first column details the difference between high-risk, medium-risk and low-risk reservoirs. There were some discussions about that differentiation. A high-risk reservoir is where a reservoir failure could endanger one or more lives and result in significant impact on economic activity. A medium-risk reservoir is where failure could impact on people but no loss of life can be foreseen, or it could cause significant damage to the environment and cultural heritage. A low-risk reservoir is where there is no significant impact.

You will see that we have changed the number of visits. The Bill says that, for high-risk structures, supervising engineers should make two visits a year. We have taken on board some of the evidence and discussions that we have had. We have discussed it with the Institution of Civil Engineers — the reservoir engineers — and we are content to ease that back to one supervising visit a year. For medium-risk structures, we have changed the requirement from one inspection a year to one every other year. That will mean a real saving in the routine cost burden for reservoir managers employing a supervising engineer.

A topic that we have been grappling with is the benefit of spending money. As on a normal risk matrix, this one shows impact and likelihood: on the left is low, medium and high impact; and likelihood reads from left to right. So the first column is a reservoir where no matters in the interests of public safety have been identified: a reservoir engineer has inspected it and said that nothing needs to be done. Assurance has been given to the reservoir manager, the reservoir authority and, therefore, the public that the structure is OK and no additional action is required.

Moving from left to right, the likelihood of failure starts to increase. The middle column is where matters in the interests of public safety have been identified and need to be addressed. The benefit in addressing those matters is that you can then move to the left, where everything is OK and assurance can be given. The worst-case scenario is moving to the extreme right, where matters have been identified but the reservoir manager is non-compliant and is not carrying out his duty. Therefore, the enforcement procedures really kick in. That is where we would be most concerned because not only has a matter in the interest of public safety been identified but nobody is addressing it, which means that the likelihood of failure increases.

The benefit of capital investment in your reservoir is not that you move down the table; it is that you move from right to left: from enforcement through to matters in the interest of safety identified through to fully compliant. The benefit of investment relates not only to our enforcement; it may well have a benefit in respect of the supervising or inspecting engineer. A reservoir will be subject to the minimum standard of inspection that we have set out only if it is fully compliant and has no matters in the interest of public safety. If matters in the interest of public safety are identified, engineers will need to look at the reservoir more readily, particularly if the reservoir manager is not doing their duty. The supervising engineer will still want to see that structure to make sure that it is not at the point of failure. We have tried to encompass in the matrix a number of issues that we discussed. It is probably best to pause at this stage, Chairman, for any comments.

The Chairperson: Do any members want to comment on the reservoir risk matrix? Jo-Anne, do you want to raise something?

Mrs Dobson: No, I am happy enough.

The Chairperson: David, we have talked about this before, numerous times. I know that this is probably not a fair comparison, but it is the only one that I can think of at present. This is all about preventing a breach, but some of our reservoirs have been just sitting there for many years. Are we sure that going from complete non-regulation to at least a yearly visit is right and appropriate to the risks? Can the frequency of visits be stretched more? What we are looking at is, basically, an MOT for reservoirs. Although there could well be threats, including a threat to life, there are also many risks

associated with everyday living. Are you sure that one supervising engineer visit a year is as far as you can possibly go?

On the matrix, the only real difference that I can see between the middle and right column is that, in the right column, the Department has to intervene and carry out the work, at which point it is too late for reservoir managers. They should not have been non-compliant. That is the real crime. If they are non-compliant, the full rigours of the law come down on them, with which I have sympathy. However, you have fixed penalties, criminal conviction and the level 5 fine, so, with all that weaponry at your disposal, in what situation do you step in and do the required work?

Mr Porter: We can put down any number of visits. We could change the legislation and think that we have done a good job by setting it at one visit every five years. In reality, however, reservoirs will be tested against what the reservoir engineers are used to in GB. When managing the 2,200 structures across England, they are used to and comfortable with having one visit by a supervised engineer a year and a 10-yearly inspection. They have become accustomed to that, and that is the risk exposure with which their company and their professional liability are comfortable.

We can certainly put one visit every five years in the legislation, but I am not sure that that would help any reservoir manager achieve one in five, because they have a contractual relationship with an engineer. I am not sure that the industry would move to what we had put into legislation. Initially, we had the bar set quite high. We have discussed with the institution how far we can push it out and, on balance, this feels about right and is consistent with what is done elsewhere across the UK. I have no strong feelings. We can push it out, but I genuinely do not think that it will achieve anything. I do not think anybody will be able to negotiate any more than what we have written here about employing an engineer.

The Chairperson: Enforcement entails departmental intervention and cost recovery, but where does that sit? You have all of the weaponry that I described at your disposal, but at what stage do you, as an agency, do the work?

Mr Porter: We will have a judgement to make on when to step in in the interests of public safety, and it will always come back to that issue. Somebody will have to make a judgement on whether the issues are minor and whether the timescales identified in the engineer's report are being kept to. For instance, you very often see that measures have to be completed within the next year or two years. That gives you the sense that the problem is not immediate and that the reservoir is not at the point of failure. That is why we have the range of other powers: to try to encourage compliance. However, if there was a recommendation for a reservoir to be drawn down within the next two weeks and the reservoir manager was non-compliant, we would be much more exercised. We would step in sooner, serve notice and take steps under the emergency powers.

The Chairperson: So are the departmental intervention and cost recovery outlined in clause 69 basically emergency powers?

Mr Porter: There are two things: emergency powers and the enforcement notice. In the event of non-compliance with an enforcement notice, we have powers to step in. The emergency powers are for an emergency situation in which something catastrophic has occurred, so they are not necessarily about non-compliance. There could, for instance, be a completely compliant, pristine structure that gets more water than it can cope with. Alternatively, something unforeseen may happen and an individual cannot deal with the emergency, the consequence of which downstream would be catastrophic. In that case, the Department will step in and help to manage the situation.

Mr Milne: Last week, the Chair used the MOT analogy, and I am inclined to think along those lines, too. A car has a yearly MOT because that is the length of time that brake pads, tyres, brake pipes, ball joints and so on are considered to last. Surely the decision on the interval for inspecting reservoirs must have its basis in the same thinking. As the Chair said, the reservoirs have sat there for over 100 years and done no harm to anybody. I cannot get why you are saying that they must be checked each year. That says to me that the engineers are setting the pace based on their own interests.

Mr Porter: The MOT is not based solely on the failure of components; it is also based on the likely consequence of failure. If, when I am driving home, a part fails on my car, the consequence will be that I crash into somebody or another vehicle. Therefore, my life and that of a relatively small number of others are at risk. Think about some of these reservoirs: the consequence of failure does not affect

only the owner and a small number of others; in many cases, lots and lots of people could be affected. The reservoir that we visited at Kiltonga, for example, has many hundreds of properties downstream. So the consequence of failure has to be taken into account. It is not just the likelihood of components breaking down; it must also be about the consequence of that.

On balance, the industry has accepted that an annual visit by a supervising engineer feels about right for high-risk or high-impact structures. We have set the number of visits for medium-risk reservoirs at two, which seems to be about right. As I said, we can debate this, but there is no absolute answer. We cannot say that we have one piece of evidence that would prove this without a shadow of a doubt. We have to accept that this looks about right. We can push it out a bit further: there is no issue with doing that in the legislation. However, I genuinely do not think that it will be of any benefit to a reservoir manager. The industry is comfortable with a visit by a supervising engineer every year, so a reservoir manager would not be able to negotiate the longer interval contractually.

Mr Milne: That is fair enough. However, it seems, then, that there is very little point in our debating it. That is what follows from what you are saying.

Mr Porter: The purpose of debating it is that we have moved. We have accepted the argument that two visits — seeing a reservoir at two stages in two seasons within one year — was perhaps a wee bit of gold-plating or super-duper. Had everyone been happy with that, we would have gone for it. However, we had the debate, listened to what was said and made that change.

The Chairperson: I take on board what you said about engineers being the people whom we have to employ to look at and supervise structures. However, if, say, we opted for a five-year interval, a reservoir manager would employ a supervising engineer for that visit. The engineer would visit the reservoir, supervise what the manager was doing and give them a report. What is to say that a reservoir manager could not do the work based on that report and then, five years later, employ him or someone else to produce another report? The whole process would still move on.

Mr Porter: The one difference is that a supervising engineer is appointed at all times. A reservoir manager could employ an inspecting engineer for the day or couple of days that it takes to write the report. The minute that the report is signed, the engineer's duty ends. He says to the manager, "I have come and inspected the structure, and here is your inspection report. I have signed it off. As far as I am concerned, I have done my duty." Then, he walks away, and the reservoir manager has his or her inspection report.

The supervising engineer's relationship is very different. In law, supervising engineers are appointed at all times. They are the professional help in the event of something happening, some change occurring or there being a question about the structure. They are at people's beck and call to help to manage that structure. In essence, they get paid while they are on site but do not get a retainer. That is how the contractual relationship has developed. If they were getting paid for one day every five years, they would say, "Sorry; not interested." Contractually, they get paid for that one day in five years; legally, they are responsible at all times. So they would say that what you suggest makes no sense because there would be too little contractual benefit for too much risk. They would simply not entertain it.

Mr Kieran Brazier (Department of Agriculture and Rural Development): When we were talking to the institution about this, one word used was "familiarisation". It is very difficult for an engineer who is not familiar with a reservoir to make a judgement call. So there is a tipping point in how far this can be stretched. If you stretch it too far, the circumstance that David just outlined will occur: the supervising engineer would not take responsibility. We have tried to strike a balance between too many visits in one year and far too few, and we feel that we have got it right.

In practice, although we say that that is the minimum, there could, depending on the condition of a reservoir, be many more visits than that. So, as David said, you could set a low minimum in primary legislation but, in practice, it would probably be more than that anyway, so it becomes meaningless. We are trying to make the primary legislation as realistic as possible and strike a balance between being familiar with and understanding the nature of a reservoir; and not having that understanding and perhaps deterring engineers from wanting to inspect reservoirs in Northern Ireland.

Mr Milne: Are there reservoirs here that have been tested by engineers over many years to date?

Mr Brazier: Yes.

Mr Porter: We will use our own example. The Department has an interest in about seven structures, and we have 10-yearly inspection reports on them.

Mr Milne: So you have reservoirs that have been examined by engineers for the past 10 years.

Mr Porter: Yes.

Mr Milne: What did the reports show about deteriorating circumstances in those reservoirs over a 10-year period? My point is this: if this is based on the facts that you have before you, why, given that there are reservoirs that have done nothing since inspections began, have we come to the conclusion that inspection should be yearly?

Mr Porter: It is a good point. When we looked at some of our inspections, we in the agency had questions. We had somebody looking at this monthly, and, every month, the tick sheet came in and stated that nothing had changed: the spillway was still there, nothing had grown in the past month and so on. So we had the same discussion on the value of more regular inspection. We are trying not to become fixated on a particular reservoir. What worries us is that there are 151 reservoirs, and we do not want any of them to fail. We want to have as light a touch on routine inspection as we can but at a sufficient level to give us an assurance that everything is OK. We think that one visit a year by a supervising engineer feels about right. It is consistent with what is taking place in England, Scotland and Wales.

There are two options. We can push it out further, but I am not sure that that will achieve anything. The other option is to remove the minimum standard from the legislation and leave it up to the engineer and the reservoir manager to determine the inspection regime. I do not believe that they will be able to negotiate anything better than what we have written down here. I think that having something written down is of benefit, most crucially because it provides a differentiation between high and medium risk. That is where the benefit is. If I had a high-impact structure, once a year would feel about right. The benefit for medium-impact structures, which, at the point of failure, will not kill anybody, is that their managers have to get somebody only every other year. They are the people who might benefit from these negotiations. Maybe that is how we need to look at it.

Mr Buchanan: Let us look at the worst-case scenario. The Department steps in and does the necessary work simply because the reservoir owners do not have the finances to do it. If the owners were in that financial position from the outset, how can the Department recover costs? Would those folk be treated as criminals and thrown in jail? What happens in such a case?

Mr Brazier: We have the discretion to determine whether we seek cost recovery. We would look at the individual circumstances. If it was clear to the Department that it would not be worthwhile to seek recovery, or that it would make somebody homeless or take their livelihood away, I imagine that the Department would not be minded to do so.

Mr Buchanan: You would imagine, but it has to be black and white. There is no room for ambiguity. Either the Department would or would not.

Mr Porter: Our difficulty is that we are writing primary legislation as opposed to dealing with an actual case. We need to focus on establishing the powers that we can while leaving some discretion in the text. We agreed that clause 69(6) was too tight and that we would look at that. As you say, we could find ourselves in the position that we "have to" recover costs and the reservoir manager "must" pay. I have no problem with the fact that the reservoir manager must pay, but we are too tight on our having to recover costs.

Let us move away from putting people on the street. In some cases, it would not be financially beneficial to recover costs. Say, for example, that the cost of recovering £2,000 was £20,000: it would not make a whole pile of sense for the Department to decide to spend £20,000 and get back £2,000. Perhaps that is a more realistic scenario or a better example, which takes some of the emotion out of the situation. We have to be pragmatic in how we manage public funds. We cannot be bloody-minded about it in order to follow the rules. There has to be some discretion in our decision-making process.

The Chairperson: OK, there are no other comments on the risk matrix at this stage. Members should turn to pages 92 to 95 of their pack, pages 94 and 95 in particular, and look at the amendments being

considered by the Department. Members saw that last week, and perhaps there are no comments at this stage. When will we see the amendments? We are going to go formal on 27 May.

Mr Porter: I know. Some of the amendments are related to the material on which I need to update the Minister. With some of the amendments, we were unsure how to take it until we got the Minister's mind. I will turn to that next. The draftsman is working on the amendments that we are clear about, and we intend to get those to you in time for the formal clause-by-clause session. That is what we are working to at the moment. I saw the Minister only this morning, and that has cleared the last hurdle for us in working out our direction of travel.

The Chairperson: There are no further comments from members at this stage. Do you want to brief us on your conversation with the Minister? Then we will go into informal consideration.

Mr Porter: We had discussions in the Department; then we went to the Minister this morning to talk about issues in the Reservoirs Bill. I had a page with 14 issues with me, and I discussed a number of them with the Minister. I made it very clear that, for many of those, we have acceptance that what is written is OK or that we have found some way of moderating them. Really, the two issues that it came down to, and on which the Minister needed to give us direction, were the audit of reservoirs and financial assistance. We had a long discussion about how we would take those issues forward and the discussions that we have had. Moreover, I briefed the Minister on the discussion that we had about the proposal for grant-aiding some initial assistance and having a pause in the Bill.

The Minister is very conscious of the impact that this will have on individuals, not-for-profit organisations and on those to whom this has come as a bit of a shock. She was very interested, and encouraged us to find a way of offering that initial assistance. She was not keen to leave it just in the Bill. We discussed whether there was a possibility of the Department doing this sooner rather than waiting to enact clause 105. Therefore we looked to see whether the Department could bring forward a financial assistance scheme under the Budget Act. We are investigating that at the minute. The Bill could continue to go through scrutiny, but you would have a much more rock-solid commitment that grant aid would be made available. There would not just be provision for it to be made available; a scheme would start to be developed. In fact, it may well even be that a grant aid scheme could be offered to people whilst we are still finishing off scrutiny of the Bill. We are looking at that at the minute.

The Chairperson: I am sorry; is that for the initial audit?

Mr Porter: Yes. We also discussed the pause in the Bill. The Minister is quite comfortable with having a phase 1 and a phase 2 commencement.

Interestingly, some of the discussion also went into the area of liability. We discussed that, if we start to know that a structure is at the point of failure in the pause period, it may not necessarily be the case that liability sits with the private individual. Even though the recurring nature of the Bill has not been enacted, as a Department, and as the reservoir authority, we would have information and may feel obliged to offer further assistance in that case. We are thinking particularly of the extreme situations and not necessarily just routine work. If we can get those extremes flushed out, we would do the people who live below them in particular a great service. It would help if we could identify them early and work out a way of starting to address that. That would enable us to understand the quantum and, if that was the case, the Minister could then either allocate money in the Department or go to the Executive, were additional funding required.

The Chairperson: There are a couple of issues with that. There is conflict vis-à-vis whether private landowners should get grant assistance to do the initial audit or whether Rivers Agency should do the initial audit and then quantify the risk, impact, problem and cost. We have discussed liability before and were told by the Rivers Agency that, although there is a liability on you if you know, you have acted on it through the fact that you have brought forward the Reservoirs Bill. It seems that this chicken-and-egg situation keeps recurring, yet we need to do something to prevent a breach.

Mr Porter: I see what I have said as a slight movement on where I was before in that, in our discussions, we have been saying that even if we did bring in grant-aid assistance and helped an owner to get that first inspection and paused the rest of the Bill, it is, in essence, under common law, still the owner's responsibility. Even though we are not going to enforce it, the owner is now in full knowledge of it. The discussion with the Minister went a little bit further than that. We said that if we knew that something was at the point of breach, instead of just saying to the private owner, "There is

your report; get on with it", we, as a Department, may look at it and say that, in the interests of public safety, we will do something or assist in some way in doing something. There is a little bit of movement there. It is not perhaps just as black and white as I have argued in the past. That was purely from the discussion with the Minister today.

Mr Swann: David, can I clarify something? If this grant scheme goes ahead under the Budget Bill, another piece of legislation, and not the floods Bill, will the Department go in to do the assessments?

Mr Porter: The Department will provide financial assistance to reservoir owners to carry it out, and it will be written in a way whereby we use the words from clause 105, which states that it will assist:

"managers to comply with their obligations".

We will add the word "initial" before "obligations". That will be the basis for the scheme. We are writing it loosely like that because, first, it is consistent with what is already there; and, secondly, we want to make sure that conscientious owners who already have some work done are not blocked out of getting further assistance with the scheme.

Mr Swann: There will be grant assistance, everybody will get their assessment done and reported, and that clause can come out of the Bill.

Mr Porter: We will leave it in because — this is why it is so important —

The Chairperson: We will leave clause 105 in because money could well be needed for —

Mr Porter: The capital works. We will bring forward a financial scheme to help with the initial assistance; we have found a way of doing that outside the Bill. That allows us to get there sooner. In parallel, the Bill will go through in exactly the same way that we have discussed, with phase 1 initial requirements and a pause. The pause is there so that we can at least have the time to get in the reports, make an assessment and either bid in the Department or, if it is a big figure, to the Executive. That will remain the same, and, if we find that it is a big problem, and if the Executive agree to it, we will then, under clause 105, say, "Here is the capital works assistance". So we still need clause 105, but we would not use it for the initial grant because we will find an alternative way of getting it more quickly.

Mr Swann: Unfortunately, David, you and I still come at this from different angles: you are looking at the grant scheme to support the Bill; I am looking at a grant scheme that will do away with the need for the Bill altogether. I am trying to find out whether we can get the money for the grant scheme to do the inspections, and everybody buys into it. That will tell us what works need to be done to make sure that all reservoirs are up to standard. Can we do all that before this becomes law?

Mr Porter: We can put conditions on a financial assistance scheme that states that if you meet certain requirements — it has to be done properly by a competent person, it must meet these requirements and include a cost —

Mr Swann: That should be good enough for a grant scheme anyway.

Mr Porter: — to make sure that we could demonstrate that we were managing the grant scheme properly. We can include certain requirements to make the grant scheme work. However, we cannot require them to do anything about what it says in the document. That is the real need for the legislation. It is not, necessarily, the initial inspection, which will be dealt with under the scheme. The requirements are where legislation is needed.

As I have said to the Committee before, it has been shown that self-regulation of reservoirs is not working. There are people who have reports telling them that they need to do something about their structure in the interests of public safety, and they have not done it. It is not just about getting reports; it is about requiring individuals to act on them. If they do not, we must have the powers either to encourage — or force — them to carry out their duty in the interests of public safety.

Mr Swann: That is where we again differ. The idea is that 59 private owners and a number of community and voluntary groups get the initial, Department grant-aided inspection done, and I may be

paraphrasing it, but there may not be that many that need work. If we get that down to a handful of reservoir owners, surely we can find another means rather than this.

Mr Brazier: Rather than the Bill or that clause?

Mr Swann: Rather than the Bill.

Mr Brazier: The important thing —

Mr Swann: I am thinking, Kieran, that by the time we get to this stage, where will we be with the floods Bill? Rather than looking at this legislation, we could include a couple of paragraphs in the floods Bill.

Mr Brazier: If we are given a grant scheme that is conditional on legislation that makes people do something with a reservoir, we need to be careful. Under common law, they are responsible right now. If government were to give people money to do what they are supposed to under common law, without any mention of the Reservoirs Bill, there would not be any justification for giving them the grant in the first place.

The initial grant scheme has to be predicated on legislation, not just the Budget Act but on this piece of legislation. Therefore if we are not putting it in regulation that people look after their reservoirs, you cannot justify a grant scheme at any point. That is because all that you are doing is have government give money to people to do what they were supposed to do anyway.

Mr Swann: I am just clarifying this in my head: in that case, using your argument, your grant scheme could not be implemented until the Bill is passed. You do not know how that will finish after going through the House.

Mr Brazier: That is right.

Mr Swann: So you cannot bring in your grant scheme until the Bill is passed.

Mr Porter: No, you can. Again, it is using the words "to comply with their obligations" arising from the Bill.

Mr Swann: So, if you use that phrase in your grant scheme, you are assuming that the Bill will pass in its entirety.

Mr Brazier: In two phases. We have listened to the evidence, and what we are saying is, "Yes, the agency wants this Bill in its entirety". We are hearing that we need to know the condition of the reservoir and how much it will cost. So, as a compromise, the agency and the Department are willing to say, "Look, we are willing to put in part of this Bill and make it law, under Royal Assent, and bring in orders to that effect in the first instance". That will enable the initial grant scheme to come through and the business case to be made, based on that legislation.

Mr Swann: I thought that you said that the grant scheme was coming in under the Budget Bill

Mr Porter: It is yes, sorry.

Mr Brazier: Yes, but that is parallel with this. You must link this primary legislation with the grant scheme; otherwise, you cannot justify the grant scheme.

Mr Porter: The justification for the scheme is to assist reservoir managers with their initial requirements under the new piece of legislation.

Mr Swann: Under the Budget Bill.

Mr Porter: Yes. That is under the Budget Bill. However, the business case will say, "We are bringing this forward not because of the Budget Bill, which is the mechanism to bring it forward, but because of the requirements of the Reservoirs Bill." If there is no Reservoirs Bill, there is no scheme.

I accept the argument that that does predicate it on the fact that this is going to get through in some shape or form, but I am quite happy to take that and even write it down as one of the risks in the business case. We are working our way through this and need to understand whether reservoirs are at the point of failure. This will help us to understand that. Therefore, I am quite comfortable in saying that we are helping with the future requirements of the Reservoirs Bill, whatever shape it happens to get through the House in, if, indeed, it does.

The Chairperson: OK, Robin?

Mr Swann: No, not really. The Budget Bill coming forward includes a section for a grants scheme for the national inspection of reservoirs. Coming along in tandem is the Reservoirs Bill.

Mr Porter: Correct.

Mr Swann: The first section of the Reservoirs Bill will include what? The ability for a grants scheme under 105?

Mr Porter: Not necessarily.

Mr Swann: Not necessarily.

Mr Porter: It now does not have to be in the first section.

Mr Swann: It does not have to be in there. So what would be in that section?

Mr Porter: The main requirements are that, first, you have to register. In law, it will define the reservoir manager. It will appoint us as the reservoir authority and require the initial inspection. If you already have that, there is provision in there already; if you had a compliant inspection, that will be deemed satisfactory.

We have a question in our minds as to whether we will put the requirement for a supervising engineer into phase 1 or 2 because it is recurring. In essence, we looked at what we need to do initially to get this kicked off, which is phase 1. The recurring requirements are in phase 2. We had a discussion about appointing a supervising engineer and whether that was a recurring requirement. It is those key stages of appointing us as the reservoir authority, getting reservoir managers to register, to define in law who they are, to define the structures that will be brought in, and also to get the initial inspection recognised in law.

It is at that point that we have the pause that allows us to regroup and work out whether this is a big or a small problem. If it is a small problem, it is fair and reasonable that it be shouldered by the individuals; therefore, we will commence the next phase. However, we may have to go to the Department or Executive to say, "Here is the quantum. Here is the proposal on how we take it forward, and we are bringing that under 105". If we can get a business case cleared under the Budget Act, we do not see any requirement for 105 in phase 1.

The Chairperson: When will you know that as regards the Budget Bill?

Mr Porter: As a follow-up to the meeting with the Minister this morning, we have to develop the business case and start to progress it. That has now come close to the top priority, next to getting all the amendments to you as quickly as possible.

The Chairperson: I understand Robin Swann's concerns about the nature and need for a Bill. Will this initial audit — which we have been crying out for to give us some idea of how much of an issue this is — give you and us the opportunity to see and prove that there is a serious problem? Will it also show how much it will cost and the probability and risk associated with that cost?

Mr Porter: It absolutely will for capital works. That is why the pause is important to focus on. Phase 1 appoints us as the authority, makes it clear who is responsible and what structures we are talking about, and getting them registered. It is taking those simple administrative steps and getting the process kicked off. The requirements to do works and to address matters in the interests of public safety, as well as the enforcement associated with that, fall into phase 2 of the Bill. During the pause

we will get that information so that we are better informed about whether we need a grant scheme and at which point we push the "Go" button on phase 2.

The Chairperson: OK. Do any other Members want to ask a question?

Mr Irwin: Chairman, maybe I missed this, but what is the rate of grant aid?

Mr Porter: Again, we will have to work that through the business case and deal with economists and DFP. We have several options. The last time we were here, I think that we mentioned a figure of about £2,000, because it costs us £2,250. There is some discussion in the Department about whether it would be better to pay a percentage of actuals, because, if somebody gets a super-duper deal, at least you will not be pulled in by an audit somewhere for giving out money for no reason or for no benefit. Another benefit of paying actuals up to a percentage is that, if there is a particularly complex structure with no information, and there is lots more information, maybe a little bit more assistance can be given. So, those options will have to be teased out through the —

The Chairperson: Those options would be completely eradicated if Rivers Agency did the work itself, because it would not be grant-aid assistance.

Mr Porter: Absolutely. You are 100% right. However, that would change the responsibility for reservoirs. Under common law, responsibility rests with the owner. As we said, that fundamental principle has been agreed by the Executive, and we are not in a position to change it.

The Chairperson: William, do you want to come in again?

Mr Irwin: No. That is fine.

The Chairperson: OK. We will try to make progress on the clause-by-clause consideration and see how we get on. Is there anything else that officials or members want to bring up at this stage?

Mr Porter: The only question I have is this: do you want the Minister to write to the Committee to give you reassurance? I am just relaying the conversation; what we had was more of a discussion. I am quite happy for the Minister to —

The Chairperson: More engagement between you and us and between the Minister and us would be most welcome before 27 May — before all this is formalised. Once it crystallises into formalities, then —

Mr Brazier: I should have said that our target date is next Thursday, so that you can have as much as possible going into your meeting on Tuesday week. That is paramount in ours and in the team's mind.

The Chairperson: OK. We move to formal clause-by-clause consideration. I ask officials to remain at the table. I remind members that an additional meeting on Monday 19 May at 12.00 noon in Room 30 has been pencilled in if we do not finish our consideration today. I will guillotine this at 5.45 pm. If we need it, we need it; if we do not, we do not. We will go ahead. Of course, if we lose quorum, that is a whole different ball game, but we will see how we go.

If you have your Bill folder and your advisory notes, this will go more quickly.

The concerns raised about clause 28 are outlined from pages 34 to 36 of the matrix, with Rivers Agency's response alongside them. It is an offence, under clause 36, not to comply with all the requirements in this clause. The usual penalties apply. I do not need to remind members of the usual penalties, as I read them out earlier. I seek comments from members. OK; there are no comments.

No comments were received in respect of clause 29. This clause also carries an offence of non-compliance under clause 36. The usual penalties apply. I seek comments from members.

The Committee did not receive any comments on clause 30. Non-compliance with this clause is an offence under clause 36. The usual penalties apply. I seek comments from members.

The Committee did not receive any comments on clause 31. I seek comments from members.

On clause 32, the concern raised is in the matrix, as is the response from Rivers Agency at page 36. It is an offence not to comply with the requirements of clause 32(1)(a) or 32(1)(b) as per clause 36. The usual penalties apply.

Clause 33 deals with duties etc in relation to inspection. The Committee did not receive any comments in relation to the clause. There is an offence at clause 33(2) regarding giving the inspecting engineer copies of various reports. The usual penalties apply. Can I seek comments from members?

Clause 34 deals with inspection reports compliance. The Committee did not receive any comments in relation to the clause. As per clause 36, it is an offence not to comply with clause 34(1). There is also an offence at clause 34(2)(b). The usual penalties apply. Can I seek comments from members?

Clause 35 deals with recording of water levels etc and record keeping. The Committee received a number of comments on the clause, and they are detailed on pages 37 to 38. The regulations in the clause will be subject to negative resolution. It is an offence not to comply with all the requirements of the clause. The usual penalties apply. Can I seek comments from members?

Clause 36 deals with offences, supervising, inspection and record keeping. I inform members that Rivers Agency is considering an amendment to take account of comments made by the Attorney General that there is no provision in the defences at clauses 37 and 50 permitting the reservoir manager to deploy the defence that the direction in the report or certificate was excessive or unnecessary or that it was contrary to the European Convention on Human Rights or EU law. An amendment there for those matters would also bite at clauses 37, 49 and 50. Those are not amendments made at the request of the Committee. Can I seek comments from members?

Clause 37 deals with defences to offences under clause 36(1)(f). The Committee did not receive any comments in relation to the clause. I inform members that Rivers Agency is considering an amendment to take account of comments made by the Attorney General that there is no provision in the defences at clauses 37 and 50 permitting the reservoir manager to deploy the defence that the direction in the report or certificate was excessive or unnecessary or that it was contrary to the European Convention on Human Rights or EU law. An amendment there for those matters would also bite at clauses 37, 49 and 50. Those are not amendments made at the request of the Committee. Can I seek comments from members?

We move to Part 3, which deals with construction or alteration of controlled reservoirs. Clause 38 deals with the application of Part 3 etc. The Committee received concerns in respect of the clause, and they are outlined in pages 39 to 44.

The Committee Clerk: It is page 215 in the pack.

The Chairperson: Sorry, 215 in the pack. When I read out a page number, it is from the matrix that Mark made up. I will start that again. The Committee received concerns in respect of the clause, and they are outlined in pages 39 to 44 along with the Rivers Agency's response. The clause allows for construction of other works by regulation and will be subject to the negative resolution procedure. Can I seek comments from members?

Clause 39 is on the meaning of "relevant works" for the purpose of the Bill. The Committee did not receive any comments in relation to the clause. Can I seek comments from members? With regard to clause 40 — notice to Department and commissioning of construction engineer — the Committee received a comment from a fishing club, which is at pages 44 and 45 of the matrix, page 220 in our pack. It is an offence not to commission a construction engineer as per clause 40(2)(a). The usual penalties apply. I seek comments from members.

With regard to clause 41 — supervision of relevant works and reservoir safety by construction engineer — the Committee received a comment from a fishing club, which is at page 45 of the matrix, page 221 in our pack. I seek comments from members.

There is interference with the recording. I ask members to make sure that their phones are switched off and not in use. We are having a major difficulty with the recording of this session.

The Antrim angling club asked the simple question of who pays for that work, but again, that is very much the reservoir owner or manager.

Clause 42 deals with the safety report. No comments were received on this clause, and it is subject to negative resolution procedures. I seek comments from members.

Clause 43 — safety report: compliance — requires reservoir managers to comply with any direction in a safety report given to the reservoir manager. The Committee did not receive any comments on this clause. It is an offence not to comply with the directions, as stated in clause 43(1), and the offence and the penalty are laid out in clause 49. Unlike other clauses, the offence here could be as severe as two years in prison. I seek comments from members.

This is basically at the point when we know that something is wrong, the engineer has deemed that to be so, and the reservoir manager has the report in his hand but does nothing about it.

Mr Porter: He has failed to act.

The Chairperson: That is basically the most serious offence in the legislation. Is that correct?

Mr Porter: That is correct. Something is written down in black and white that something must be done in the interests of public safety, and there is inaction. That is the worst situation.

The Chairperson: At that point, there are appeals mechanisms in the legislation.

Mr Brazier: Yes. However, there is a more serious penalty where a reservoir manager fails to comply with a stop notice. It results in two years and is the most serious one. We will come to that. It is in the enforcement.

The Chairperson: OK. Sorry. Thank you for that accuracy, Kieran. I appreciate it.

Clause 44 relates to the preliminary certificate. The Committee did not receive any comments on the clause. I seek comments from members.

Clause 45 relates to the construction certificate and will be subject to the negative resolution procedure. The Committee did not receive any comments on the clause. I seek comments from members.

Clause 46 relates to the final certificate. The Committee did not receive any comments on the clause. I seek comments from members.

Clause 47 is "Preliminary and final certificates: compliance". The Committee did not receive any comments on the clause. It is an offence not to comply with the directions in the clause. The usual penalties apply. I seek comments from members.

Clause 48 is "Termination of supervision by construction engineer". The Committee did not receive any comments on the clause. I seek comments from members.

Clause 49 is "Offences: construction or alteration". The Committee did not receive any comments on the clause. The offences and penalties refer back to various clauses in the Bill, and we have, therefore, already discussed all of them. An amendment is being considered by Rivers Agency to take into account the comments made by the Attorney General that there is no provision in the defences at clauses 37 and 50 permitting the reservoir manager to deploy the defence that the direction in the report or certificate was excessive, unnecessary or contrary to the European Convention on Human Rights or EU law. I seek comments from members.

Clause 50 is "Defences: offences under section 49(1)(b) or (c)". The Committee did not receive any comments on the clause. An amendment is being considered by Rivers Agency to take account of comments made by the Attorney General that there is no provision in the defences at clauses 37 and 50 permitting the reservoir manager to deploy the defence that the direction in the report or certificate was excessive, unnecessary or contrary to the European Convention on Human Rights or EU law. I seek comments from members.

Clause 51 deals with controlled reservoirs subject to relevant works on the commencement date. The Committee did not receive any comments on the clause. I seek comments from members.

OK, members. We move to Part 4, which is "Controlled Reservoirs: Other Requirements".

Clause 52 is "Incident reporting". The regulations will be made under the draft affirmative procedures. The Committee did not receive any comments on the clause. The clause also carries an offence at subsection (2). The usual penalties apply. I seek comments from members.

Mr Swann: I would like this clarified. Clause 52(2)(b) allows regulations to define what constitutes an incident. Reading further, am I right in saying that, if an incident is reported according to those regulations, you have to bring your supervising engineer back to inspect? That is paragraph (b) followed by (d).

Mr Porter: No. Paragraph (d) is to:

"provide for a supervising engineer, an inspecting engineer or other person to determine whether an incident has occurred".

Mr Swann: Yes. So, there will be a definition of an incident in the regulations. If the reservoir manager thinks that an incident has happened, does he then have to bring a supervising engineer or other person back to make a secondary judgement?

Mr Porter: It is not necessary that the reservoir manager determines that. He will seek advice from the supervising engineer. All this provision is really doing is making sure that that supervising engineer role is there and is reflected in this. That is what happens in practice. Something occurs, and the supervising engineer is the first person to whom the reservoir manager turns. The question in that situation has been dealt with. The question then is whether that needs to be reported to the reservoir authority. Do we need to say what has happened here? And the supervising engineer will say, "Well, you called me in, but it was actually something completely unrelated, and therefore it is not an incident"; or, "This relates to reservoir safety, and therefore it is an incident and it is reportable".

Let me give you a practical example. I had a phone call about water coming out of a dam. It was within the Belfast City Council area on the Antrim Road. The call came through to me that, "We have a reservoir incident to deal with". We then got an engineer out who looked at that situation. As it turned out, it was a road or path drain that had blocked. It was not actually a reservoir incident. In that case, it is right and proper to put in a supervising engineer to say what has happened. The supervising engineer, if they are comfortable in dealing with the incident, will deal with it but may need to call in the inspecting engineer. When that is all tidied up, the supervising engineer will look at the incident and say, "We thought that this was a reservoir incident, but actually it was not. It was a blocked drain on a path associated with the reservoir. Therefore, we do not need to tell the reservoir authority because this does not come down on the list of enforcements or incidents that we have had".

It will not be reported to the industry because you will see there that we can also publish a report of incidents. There are sensitivities around this, particularly around company-managed structures; it is different here, where we have a single water company. Water companies in England, where there are a number of them, see reservoir incidents and manage them very carefully. They do not want to see that such-and-such a company has had a significant number of reservoir incidents at their structures because stakeholders and owners become uneasy about it. The clause is about determining the nature of the incident and whether it was an incident or not.

Mr Swann: Is clause 52(2)(c) consequential to clause 52(2)(d) or are they non-specific? What happens first? Is it the Department or the supervising engineer or is it a sequence?

Mr Porter: It will be a sequence.

Mr Swann: So would you inform the Department before you would engage an engineer?

Mr Porter: You need to work out whether it is an incident. There is an argument that you could draft clauses 52 (2)(c) and 52(2)(d) round the other way.

Mr Swann: My reading of clause 52(2)(d) is that you are determining whether an incident has occurred before you inform the Department.

Mr Porter: This is a list of things that will be brought forward by regulations as opposed to being an instruction to do things in a defined order. You are right; in practice you would probably speak to your supervising engineer long before you would talk to the Department because you would want to

establish whether you needed to talk to the Department. You do not want to be associated with a reservoir incident if it turns out to be a blocked drain or something such as that.

The Chairperson: Clause 52(2)(c) states that the Department should be provided with a report of an incident. Is it the responsibility of the reservoir manager or the supervising engineer to produce that report?

Mr Porter: It is the reservoir manager.

The Chairperson: It is up to the reservoir manager to provide a report on an incident. Although there may be an area of flooding somewhere near, which may be totally isolated or not in any way connected to the reservoir, somebody will determine that and it will be reported in somewhere. However, what constitutes an incident? Is it a sailing vessel crashing into a pound or a sluice gate? Is it a tree falling onto something?

Mr Porter: It is more the latter rather than flooding happening downstream, unless there was something that clearly said that the flooding was a direct result of a dam breach. That would not be deemed a reservoir incident; that is just the nature of catchment. It will be movement or loss of water; it is those types of things that indicate that some change has occurred and that we run the risk of an uncontrolled release of water.

The Chairperson: OK. Do members have any further comments on clause 52?

Mr Swann: I am sorry, Chairperson. We will not really know what is involved until we see the regulation at the time. A loss of water could be a trickle or it could be something else.

The Chairperson: OK. Are there any further comments? Are there any examples of this that are used already in England?

Mr Porter: Yes. They have an incident report that they produce, which gives examples. We can certainly give you access to that and those examples. We will be doing something very similar.

The Chairperson: OK. We will move onto clause 53, which is to do with flood plans. The comments received by the Committee are detailed on pages 46 to 49 of our matrix, which is at page 222 of the pack, alongside the Rivers Agency response. The regulations will be made under the draft affirmative procedure. As stated in clause 56, it is an offence not to comply with clause 53(5). The usual penalties apply. I seek comments from members.

Clause 54 is on the maintenance of records. The Committee did not receive any comments on this clause. The regulations will be subject to negative resolution. It is an offence not to comply with the whole clause, as is stated in clause 56, and the usual penalties apply. I seek comments from members.

Clause 55 is on the display of emergency response information. The comments received by the Committee are at page 49 of the matrix. The regulations will be subject to negative resolution. It is an offence not to comply with clause 55(1) and 55(6), as is stated in clause 56, and the usual penalties apply. I seek comments from members.

Clause 56 is on offences under Part 4. The Committee did not receive any comments on this clause. The clause makes it an offence to fail to comply with the requirements at clauses 52(4) and 53(5), clause 54, and clauses 55(1) and 55(6). I seek comments from members.

We move to Part 5, which deals with dispute referrals. Clause 57 is "Referral to referee: directions in safety report or inspection report". The comments received by the Committee are detailed in the matrix at pages 49 to 51, alongside the response from Rivers Agency. I seek comments from members.

Clause 58 is "Referral to referee: requirements in preliminary certificate or final certificate". The Committee did not receive any comments on this clause. I seek comments from members.

Clause 59 is "Commissioning of referee". The Committee did not receive any comments on this clause. I seek comments from members.

Clause 60 is "Powers of referee: referral under section 57(2)". The Committee did not receive any comments on this clause. I seek comments from members.

Clause 61 is "Powers of referee: referral under section 58(1)". The Committee did not receive any comments on this clause. I seek comments from members.

Clause 62 is "Procedure etc.". The regulations will be subject to negative resolution. The Committee did not receive any comments on this clause. I seek comments from members.

We move to Part 6, which deals with civil enforcement, emergency powers and further offences. Clause 63 is "Enforcement notice: commissioning of engineers". The comments received by the Committee are detailed in the matrix at pages 52 to 54, alongside the response from Rivers Agency. There is an offence under clause 63(2), failure to comply. The reservoir manager is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both and on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both. I seek comments from members. No comments from members.

Clause 64 is "Offence: failure to comply with notice under section 63(2)". The Committee did not receive any comments on this clause. There is an offence at clause 63 that we have already discussed. I seek comments from members. We are sitting at quorum at the minute. Maybe we could send out a wee message to everyone so that we are not so close to the knuckle.

Clause 65 concerns the commissioning of engineers by the Department. The Committee did not receive any comments about the clause. Rivers Agency is considering an amendment to clause 65(4) regarding the Department's legal position on cost recovery for works done by the Department. I seek comments from members.

Mr McMullan: Chair, where are we now?

The Chairperson: Page 42 of the Bill; clause 65. Are you happy enough, Oliver? If you need more time, I will give you it.

Mr McMullan: Does that take in court costs?

Mr Porter: At that stage, you will not be in court. That is what we have done to rectify the works that a reservoir manager has not completed. It will be engineering works in the interests of public safety. There will be a bill for that. We will seek to recover those costs.

Mr McMullan: Is there the right of appeal there?

The Chairperson: If I am reading that clause right, it enables the Department to commission an engineer.

Mr McMullan: Aye, but is there the right of an appeal for the reservoir manager?

The Chairperson: If you have not complied.

Mr Porter: This is the enforcement of something that is a requirement.

Mr McMullan: OK.

The Chairperson: Any other comments from members?

Clause 66 is "Commissioning by the Department: engineers' reports, certificates, recommendations etc.". The Committee did not receive any comments about the clause. I seek comments from members.

Clause 67 is "Enforcement notice: safety measures". The Committee did not receive any comments about the clause. Rivers Agency is considering an amendment to clause 67(6). I seek comments from members.

Clause 68 is "Offence: failure to comply with notice under section 67(2)". The Committee did not receive any comments about the clause. It states:

"(1) Failure to comply with a notice by the Department under section 67(2) is an offence.

(2) A reservoir manager guilty of an offence under subsection (1) is liable —

(a) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,

(b) on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both."

I seek comments from members.

Clause 69 concerns the Department's power to arrange the taking of safety measures. The Committee received a comment from a fishing club, which is detailed at pages 54 to 55 of the matrix. Rivers Agency is considering an amendment to clause 69(6) regarding the departmental approach to cost recovery. That has been an issue. Members, I will give you time to browse. The question on the lips of the people who presented to us was this: who takes the burden? Who pays for it?

Mr Brazier: The Department will incur the cost in the first instance. We will then consider whether we will seek to recover that cost, as we mentioned previously. The Department has discretion around that. We are trying to reflect that in the Bill.

The Chairperson: OK. Are members content? If so, we will move on.

Clause 70 is "Offence under section 36(1)(f) or 49(1)(b): further remedies". The Committee did not receive any comments about the clause. There is an offence under clauses 36(1)(f) or 49(1)(b). The court may, in addition to or instead of imposing any penalty, order the reservoir manager to take such steps as may be specified in the order. I seek comments from members.

Clause 71 is on emergency powers. The Committee did not receive any comments about the clause, but a response from Rivers Agency is at pages 55 and 56 of the matrix. Rivers Agency is considering an amendment to subsections 7 and 8 regarding the departmental approach to cost recovery. I seek comments from members.

Clause 72 is on stop notices. The Committee did not receive any comments about the clause. The clause carries an offence as stated in clause 75. The regulations will be subject to negative resolution. I seek comments from members.

The Committee received one comment about clause 75 from a fishing club, and it is set out at page 56 of the matrix. The clause contains an offence under clause 72(1), which makes it an offence not to comply with a stop notice. The reservoir manager is liable:

"(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000, or to both,

(b) on conviction on indictment

(i) for a first such offence, to imprisonment for a term not exceeding 12 months, or to a fine, or to both,"

I seek comments from members. That is clause 72 and the offence at clause 75. Again, there is an issue about who pays. Can you explain the stop notice to us again? That is there to prevent someone doing something.

Mr Brazier: Yes.

Mr Porter: An example is where the water level and the structure is designed to work in a certain way and, to get an increased volume of water, they place something in the spillway, for instance, or take an activity to do that and, therefore, the water level increases but also jeopardises the safety of the

structure. We would require them to stop doing something, namely to stop maintaining the water level at that enhanced level because it is jeopardising reservoir safety. That is very serious, and harm could be caused because you are changing the operation of the structure in some way.

The Chairperson: OK. Are there any further comments from members?

Clause 73 is "Stop notices: content and procedure". The Committee did not receive any comments about the clause. I seek comments from members.

Clause 74 is "Stop notices: compensation". The Committee did not receive any comments about the clause. I seek comments from members.

For accuracy, clause 75, which we —

Mr Swann: Sorry, Chair. Who calculates the compensation under clause 74? Is it the Water Appeals Commission?

Mr Porter: Yes. It is in clause 74(1)(c). It goes to the Water Appeals Commission for Northern Ireland, and it then provides the power for the decision of the Department as to the amount of compensation.

Mr Swann: Who calculates the value?

Mr Brazier: The Department in the first instance.

Mr Swann: The Department decides how much the Department will pay.

Mr Brazier: Yes. The Department calculates the amount of compensation. If the reservoir manager is not content, he can appeal to the Water Appeals Commission, and the commission will decide whether the Department's decision was correct.

The Chairperson: Clause 75 is entitled "Stop notices: enforcement. I seek comments from members on this.

Clause 76 is entitled "Enforcement undertakings". The Committee did not receive any comments on the clause. There is a regulation that will be subject to negative resolution. I seek members' comments on this.

Clause 77 is entitled "Regulations as to enforcement undertakings: further provision". The Committee did not receive any comments on this clause, which lists the matters that the Department may provide for in the regulations that are made under clause 76. The clause contains an offence, and the usual penalties apply. I seek comments from members.

Clause 78 is entitled "Fixed monetary penalties". The Committee received a comment from a fishing club, which is in the matrix in your packs alongside the response from Rivers Agency. The regulations will be subject to affirmative resolution and will allow the Department to make provision on the imposition of fixed monetary penalties on reservoir managers for offences under the Bill. I seek comments from members.

Mr McMullan: What happens if it is a company? Do you still have to have a designated name, or can you fine the company?

Mr Brazier: The Department would be looking for the name of an identified reservoir manager.

Mr McMullan: He is protected under company law.

Mr Porter: Clause 115, which is entitled "Offences by bodies corporate and partnerships", deals with that.

Mr Brazier: You referred to previous sanctions and criminal penalties, and it is worth pointing out that this suite of civil sanctions can be applied in place of those. So, if you are talking about level 5 and

level 4, we could apply an enforcement undertaking where there is no penalty, and if the reservoir manager complies, that is it. Alternatively, we can apply a variable or fixed monetary penalty that is much less than the maximum of £5,000 and £2,500. The intention of this clause is that the Department will have that power available to it should it need it. It is not about seeking criminal convictions and taking people to court; it is about trying to get people to comply in the quickest and most suitable fashion.

In fact, before this stage, we would be seeking compliance without any thought of civil or criminal sanctions. We would then move to civil sanctions and on to criminal sanctions. So, that is what this suite is trying to give to the Department.

Mr Porter: It gives us options.

Mr Brazier: Yes, it does.

The Chairperson: Are you happy enough, Oliver?

Mr McMullan: Yes.

The Chairperson: Are there any other comments from members?

Clause 79 is entitled "Fixed monetary penalties: procedure etc." The Committee did not receive any comments on this clause, which sets out the process that must be followed when a fixed monetary penalty is to be imposed. That would have to be provided for in regulations under clause 78. I seek members' comments.

Clause 80 is entitled "Fixed monetary penalties: criminal proceedings and conviction etc." The Committee received a comment from a fishing club, which is in our matrix in our packs. I seek comments from members.

Clause 81 is entitled "Variable monetary penalties". The Committee received a comment from a fishing club, which is in the papers. The regulations that are allowed for in this clause will be subject to affirmative resolution. Are there any comments from members? May I just ask for clarification on these variable monetary penalties? Again, those are there to give you options, rather than just going to the criminal proceedings at that stage.

Mr Brazier: Yes. The variable monetary penalty also allows us to arrange for the reservoir manager to compensate someone whose property might have been damaged by their inaction.

The Chairperson: OK. If members are content, we will move on. There are no further comments.

Clause 82 is called "Variable monetary penalties: procedure etc". The Committee did not receive any comments on this clause. I seek comments from members.

Clause 83 is "Variable monetary penalties: criminal proceedings and conviction". The Committee did not receive any comments on this clause. I seek members' comments.

Clause 84 is entitled "Undertaking referred to in section 82(5): enforcement". The Committee did not receive any comments on this clause. I seek comments from members.

Clause 85 is "Consultation in relation to regulations under sections 72(1), 76(1), 78(1) and 81(1)". The Committee did not receive any comments on this clause. I seek members' comments.

Clause 86 is "Recovery by the Department of certain costs". The Committee received a comment from a fishing club, which is detailed in the pack. Rivers Agency is considering an amendment to clause 86(1) on the departmental approach to cost recovery. I seek comments from members.

Clause 87 is "Publication of enforcement action". The Committee did not receive any comments on this clause. I seek members' comments.

Mr McMullan: What exactly does "publication of enforcement action" mean?

Mr Brazier: My understanding is that the enforcement action would be published in the media, but I would need to come back to you and clarify that point.

The Chairperson: The explanatory and financial memorandum states:

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

Mr McMullan: Why would it not be published if the appeal overturned the decision?

Mr Porter: That would be the case if we got it wrong. You do not want to blacken somebody's name wrongly.

Mr McMullan: You are going to blacken it anyway if he loses the appeal.

Mr Porter: Yes, but that is right and proper. Remember that we are trying to give assurance to the people who live downstream of these structures that they are being managed in a reasonable way. This is telling the people downstream that the reservoir manager is not compliant and that they are dragging their heels on matters that they were supposed to be dealing with.

Mr McMullan: In the case of the action being overturned, would the Department foot the Bill?

Mr Brazier: Yes. The Water Appeals Commission will decide on costs, and it is unlikely to make a successful appellant pay the costs.

Mr McMullan: I do not agree with the enforcement action being published. I think that there is enough of a carrot and stick in the Bill without putting in the publication element. I think that, if somebody is fined in court, that is enough. I would worry that that would be taken a step further. If somebody were put into financial difficulties, for example and ended up in 'Stubbs' Gazette' or something like that, it could have a long-term effect on that person's ability to get back on their feet.

The Chairperson: The question is this: is there a need for this clause?

Mr McMullan: I do not think that there is a need for the publication of the enforcement action, because, if you go to court, it has that discretion anyway by virtue of the fact that there is a report there. Publishing it could lead to that person being financially affected somewhere else in the long term.

Mr Porter: The Bill states that the Department "may" publish, as opposed to "must" or "should". There is a little bit of discretionary power.

The Chairperson: Although there is discretion in the word "may", we are asking — Oliver is questioning, quite reasonably — why there is a need for it. Can you give us some justification for why it is there?

Mr Brazier: If you are asking whether we can remove it, and if we can, should we, we will look at that. If there is a reason why we have to keep it, we will explain that. Is that OK?

The Chairperson: That is good.

Mr Swann: The Department publishes on the Executive's website notification of farmers who are fined for pollution, the non-ear tagging of animals and all the rest of it. So, publication might be something that it does.

Mr Brazier: There may be some fundamental reason why this is in the Bill, so we will look at that.

The Chairperson: That is all that we need — the justification for the need for it. Otherwise, why is it there?

Clause 88 is entitled "Powers of entry". The Committee did not receive any comments on this clause. I seek comments from members. In dealing with the powers of entry, is clause 88 taken from English legislation? Is this matched there? I am not going to ask whether it has been cut and pasted, because that would be disrespectful. Is this standard operating procedure in England? That is probably the best way to put it.

Mr Porter: Yes, it is, but this has not been lifted from that legislation. It is the same standard operating procedure, albeit that this is much wordier than the powers of entry that we have under the drainage order. I think that a thaw has developed since 1973, in that we have powers of entry under that legislation as well.

The Chairperson: OK. Are there any further comments on clause 88, which deals with on the powers of entry?

Mr McMullan: That gives a person the right to enter:

"neighbouring or other land through which access is required in order to enter any land referred to in paragraphs (a) to (d)."

It is basically the same as what happens with the water services at the moment.

Mr Porter: Yes. If you are concerned that land is moving and is going to fall into the reservoir and cause a wave to overtop, you need to be able to get a different view on that, so, yes, there is a requirement to enter neighbouring land. However, you have to be able to defend yourself and prove that it was for the purposes of delivering the requirements of the Bill; it is not a freedom of entry or a right to roam.

Mr Brazier: Clause 92 is about compensating any landowner in that regard, but we are coming to that.

Mr McMullan: Is anybody exempt from that?

Mr Brazier: Such as? *[Laughter.]*

Mr McMullan: I may not be the one to say it. *[Laughter.]*

Mr Brazier: I cannot imagine so, but we can clarify that. We will clarify whether anyone is exempt.

Mr McMullan: In the past, a certain section was exempt from those sorts of statutory goings-on.

Mr Brazier: We will come back to you on that point.

The Chairperson: OK. Are you happy enough, Oliver?

Mr McMullan: Yes, thank you.

The Chairperson: Clause 89 is entitled "Warrants authorising entry". The Committee did not receive any comments on this clause. I seek members' comments. Again, this is tied in to Oliver's question, and information coming forward will probably include all that. Do members have further comments?

The Chairperson: Clause 90 is entitled "Powers of entry: supplementary".

Mr Swann: Sorry, Chair, could I just go back for clarity on something? Clause 89(5) states:

"A warrant granted under this section

(a) does not entitle a person to use force against an individual,"

Clause 88 does not seem to say that. Does that mean that, under clause 88, if you go in without a warrant, you can use force?

Mr Porter: I hope not. *[Laughter.]*

Mr Brazier: Do you mean that Rivers Agency would use force?

Mr Porter: It states that a lay magistrate is:

"entitled to exercise a right of entry under section 88 to do so, if necessary using reasonable force".

The Chairperson: Sorry, what clause is that?

Mr Porter: Clause 89(1).

Mr Swann: I am looking more at clause 89(5)(a), which states:

"does not entitle a person to use force against an individual".

Mr Porter: We are again getting into the depths of legal talk here, but I suspect that this means that, if we have to use bolt cutters to or remove a gate, for instance, that would be deemed reasonable force. I am not sure that we can actually knock somebody down in a situation like that. That is where we would seek the assistance of the police. This does not give us the powers to forcibly remove people who are obstructing us from doing our duty, but we may well be able to take down a fence or a gate or something like that.

The Chairperson: OK. Are you happy enough, Robin, or do you seek further clarification?

Mr Swann: I would like further clarification, maybe. I am just trying to get into my head the difference between powers of entry and warrants authorising entry. In what circumstance would one be used but not the other?

The Chairperson: It might be that one complements the other.

Mr Brazier: Yes, I think that that is it, to be perfectly honest.

The Chairperson: Before you would ever have the power of entry, you would need a warrant.

Mr Brazier: Yes, you would need a warrant.

Mr Swann: Why is a warrant authorising entry not needed for everything?

Mr Porter: We have a general power of entry.

Mr Swann: You have a general power of entry, so the two stand alone.

Mr Porter: Where there is an issue with that, we have to go to a lay magistrate to give us a warrant. We have the right to entry, but where that is refused, it goes up a gear and we seek a warrant.

The Chairperson: Maybe we could have clarification of that in writing.

Clause 90 is entitled "Powers of entry: supplementary". The Committee did not receive any comments on this clause. I seek members' comments.

Clause 91 is entitled "Offence: preventing or obstructing entry". The Committee did not receive any comments on this clause. It carries an offence under subsection 1, and the usual penalties apply. I seek members' comments. Is anyone exempt? That package of clauses is all tied up, of course. Are there any comments, members?

Clause 92 is entitled "Compensation", as Kieran mentioned. The Committee did not receive any comments on this clause. Rivers Agency is considering an amendment to subsection 8 on the departmental approach to cost recovery. I seek members' comments on this.

Mr McMullan: I see that the Lands Tribunal deals with compensation.

Mr Porter: This is about harm to land.

Mr McMullan: Yes, harm to land. Are we talking about agricultural land?

Mr Porter: It can be any type of land. The Lands Tribunal would assess any impact on land.

Mr McMullan: Clause 92(7) refers to payment of compensation, reinstatement or both.

Mr Porter: Yes.

Mr McMullan: Is it down to the Lands Tribunal or yourselves to decide that reinstatement is better than compensation? Who makes that decision?

Mr Porter: Hopefully, that will happen much sooner than the Lands Tribunal stage. This will be an informal agreement.

Mr McMullan: Is that between the owner of the land and yourselves?

Mr Brazier: Yes, in the first instance.

Mr Porter: In the first instance it is. The Lands Tribunal will be involved only if you cannot get agreement, so you can escalate it. Those are similar provisions that we have for our normal drainage works, in that we try to agree accommodation works informally initially. You write those down, and if people are not satisfied with that, it can be escalated.

The Chairperson: OK. Clause 93 is entitled "Affording of reasonable facilities to engineers". The Committee received a comment on this clause from a fishing club, which is detailed in the papers. There is an offence, as per clause 95, and the usual penalties apply. The question that the angling club raised time and time again is this: who pays? For the likes of this clause, the reservoir manager pays. I seek members' comments.

Clause 94 is entitled "Power of the Department to require information and assistance from reservoir managers". The Committee did not receive any comments on this clause. There is an offence, as per clause 95, and the usual penalties apply. I seek members' comments on this.

Clause 95 is entitled "Offences: sections 93 and 94". The Committee received a comment on this clause from a fishing club, which is detailed in the papers. The clause makes it an offence for reservoir managers to fail to comply with sections 93 and 94. The usual penalties apply. I seek members' comments.

Clause 96 is entitled "Power to require information and assistance from others". The Committee did not receive any comments on this clause. I seek members' comments on this.

Mr McMullan: Does that include the Secretary of State, who figures in the Bill?

Mr Porter: We can require assistance from a district council or any other body that has been established or constituted under a statutory provision. That is where we need assistance to carry out these duties. I cannot think of a reservoir incident situation where the Secretary of State —

Mr McMullan: The Secretary of State is already mentioned in the Bill a few times. Why is he in the Bill if we cannot work with him under this clause? That is the point that I made earlier. Is anybody else immune from any of this?

Mr Porter: What we are looking for here is practical assistance in dealing with a reservoir. I am not sure whether the Secretary of State can bring those skills to that. We are better keeping those skills for national security and other aspects in the Bill.

Mr McMullan: I think that we need to find out about that, because if the body is constituted under a statutory provision at any time —

Mr Porter: It is a body that has been established or constituted, as opposed to the Secretary of State.

The Chairperson: Would that body be the Northern Ireland Office or the MoD?

Mr Brazier: Yes.

The Chairperson: We need clarification on that.

Mr Brazier: Yes.

The Chairperson: OK. Are there any further comments on that?

The Chairperson: We will now move to part 7 of the Bill. Clause 97 is entitled "Panels of reservoir engineers". The Committee received comments on this clause that are detailed in the packs alongside the response from Rivers Agency. Clause 97(1)(c) states that the Department must specify by order under the negative resolution procedure. I seek members' comments on that. I suppose that the clause goes to the heart of one issue, which is the over-engineering arguments and how easy it would be to obtain panel engineers, supervising engineers and inspection engineers. Then, of course, there will be what we talked about earlier about timescales for supervising engineers on the ground and inspection reports. There is concern or fear about over-engineering that it will become, for want of a better term, an engineers' charter and be about creating more work for oneself using the Bill.

If there are no comments to be made on the clause, members, I will move on.

Clause 98 is titled "Appointment of members to panels: further provision". The Committee received comments on the clause from the Institution of Civil Engineers (ICE). The regulations are subject to negative resolution. If there are no comments from members, I will move on.

Clause 99 is titled "Removal of panel members". The Committee received comments on the clause from the ICE. I seek comments from members.

Mr McMullan: Do we publish the names of those who are removed for the safety reasons?

Mr Porter: They are removed from the list and therefore cannot be appointed.

Mr McMullan: For how long?

Mr Porter: Until they are reappointed.

Mr McMullan: Is there not a time frame for how long they have to be out before they are reappointed?

The Chairperson: Do they have to prove something to get back on the panel or is it time-bound?

Mr Porter: No, it is not time-bound. They would, however, have to demonstrate that they have been able to rectify the reason that they were taken off the panel, whether that was through lack of knowledge or lack of *[Inaudible.]* I would have thought that any panel member who was removed would not reapply. It would be like when a doctor is struck off: there would be a stigma attached to it. It is highly unlikely that anybody would reapply.

Mr Brazier: The reservoir manager would not be able to reappoint a reservoir engineer who had been struck off, to use that term, because the name would not appear on the list. Only an engineer whose name appeared on the list could be commissioned by a reservoir manager.

Mr McMullan: Could we not put in a minimum time frame in case the engineers came back?

Mr Porter: We have not dealt with that situation. I know that there is a timescale not in legislation but in the guidance. If you apply to the panel — not because you have been struck off, but simply because you have applied — and you do not have the skills, the guidance says that the panel really does not want to see your application for, I think, a minimum of 12 months. What was not wanted was exactly the situation that you describe, which is people continually putting in an application and hoping that they get through. However, I cannot think of any benefit to blocking somebody for a period, because, in essence, removal from the panel can be a very serious situation. I am not sure that people should even be encouraged to reapply.

The Chairperson: Clause 100 is titled "Dissolution or alteration of panels etc." The Committee did not receive any comments on the clause. The regulations in subsection (6) are subject to negative resolution. If there are no comments from members, I will move on.

Clause 101 is titled "Review of decisions not to appoint, or to remove civil engineers from panels etc." The Committee did not receive any comments on the clause. The regulations at subsection (2) are subject to negative resolution. If there are no comments from members, I will move on.

Clause 102 is titled "Consultation with Institution of Civil Engineers". The Committee did not receive any comments on the clause. If there are no comments from members, I will move on.

Clause 103 is titled "Reimbursement of costs incurred by Institution of Civil Engineers". The Committee did not receive any comments on the clause. If there are no comments from members, I will move on.

We now move to Part 8 of the Bill, which deals with miscellaneous provisions.

Clause 104 is titled "Time limit for certain summary offences under Act". The Committee did not receive any comments on the clause. The regulations in subsection (1) are subject to affirmative resolution. The clause carries an offence that will amend the time limit provided under article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981 for summary offences. The limit is currently six months from when the offence was committed or ceased to continue. If there are no comments from members, I will move on.

Clause 105 deals with grants. The Committee received comments from a number of witnesses. The regulations in subsection (1) will be made under affirmative resolution. Rivers Agency is considering how best to make grant payments to cover the initial costs of implementing the Bill. That will require an amendment to the clause.

The Committee Clerk: I have heard differently just today.

The Chairperson: Yes, you will seek to make that provision through the Budget Bill.

Mr Porter: Yes.

Mr Swann: If that clause is to be dealt with in the Budget Bill, will it come in front of this Committee or the Committee for Finance and Personnel?

Mr Porter: I do not think that it will come in front of this Committee, but I would need to double-check that.

Mr Swann: Right. When the grant scheme for this comes forward, the Committee will not have any input.

Mr Porter: If you want to see the business case, I am quite happy to bring you the justification for and the detail of that. I am conscious —

Mr Swann: I appreciate that, but I am talking about the process. Will the Finance and Personnel Committee scrutinise it?

Mr Porter: Yes. The Budget Act will give the Department the power to do something, but the only bit that will be scrutinised is the two or three words — in fact, I think that it is six words, because I wrote them the other day — on the ability to pay grant aid under the provisions of the Reservoirs Bill. That is

the only thing that goes in; the other stuff sits in the background. When we get our thoughts developed on the business case — there are still a number of questions about whether it is all or some or actuals — I will be quite happy to come back and share that detail with you.

The Chairperson: The Finance and Personnel Committee scrutinises the Budget, but it also asks for comment from various Committees about the Department that they scrutinise, so we will have an opportunity to comment at that point.

Mr Porter: But not on the detail. The Committee will be able to comment only on those five or six words, not on the ambit of the Department.

The Chairperson: OK. If you are happy enough, Robin, and members have no other comments, we will move on.

Clause 106 is titled "Assessment of engineers' reports etc." The Committee did not receive any comments on the clause. The regulations will be made under negative resolution. Rivers Agency is considering an amendment to the clause regarding an oversight role to ensure that costs and charges are not out of line and to help prevent over-engineering. If there are no comments from members, I will move on.

Clause 107 is titled "Notice to the Department of revocation of commissioning, or resignation, of engineer". The Committee received a comment from the Institution of Civil Engineers. There is an offence if a reservoir manager fails to comply with subsection (1) or (2)(b) and subsection (4). The usual penalties apply. I seek comments from members.

Mr McMullan: In clause 107(6), it is written:

"It is a defence to a charge in proceedings for an offence under subsection (4) that the reservoir manager did not receive notice of the resignation."

Why is that? Should it be in there? That is a get-out clause.

Mr Porter: It is to provide safety for the reservoir manager. If he did not know that somebody else had —

Mr McMullan: In the case of something serious happening, somebody else has failed and gets away with it. Nobody will be made amenable in that particular case of resignation. If he resigns —

Mr Porter: If the reservoir engineer resigns?

Mr McMullan: Yes.

Mr Porter: But this is protection for the manager.

Mr McMullan: Whomever he resigns to should be compelled to pass that information on immediately, because it is a defence that the reservoir manager did not know, if he is not told. There has to be something else in there. You cannot just leave the clause like that. It is a defence in any possible criminal proceedings.

Mr Porter: This is trying to do is tie up the fact that the reservoir manager, earlier on, must have —

Mr McMullan: He must cross his t's and dot his i's.

Mr Porter: Yes. Something outside his control has happened. The person has said, "That is it. I am not doing this any more", but he has failed to —

Mr McMullan: Whom does he resign to?

Mr Porter: Resign his contract with the reservoir manager?

Mr McMullan: Exactly. His resignation is not an argument. Whom else would he resign to?

Mr Porter: He could have resigned from his job or just—

Mr McMullan: He cannot resign to himself. He cannot use that as an argument. He has to go to somebody to resign. Whom does he go to?

Mr Porter: He may well have resigned from his employment.

Mr McMullan: Why, then, do we have resignation as a defence against a charge or proceedings?

Mr Porter: But it is a charge of proceedings against the reservoir manager. This is a protection. Say that somebody resigns from his job today and one of his roles was to be my reservoir supervising engineer. Say that I did not know that he had resigned and that something had happened to my structure. At least I can say that I did not know that the person had resigned. He did not tell me, and therefore I cannot be held responsible for an action that he took and did not inform me about. The first penalty that I will incur is that I do not have a supervising engineer appointed. I am legally required to have one appointed at all times. However, I did not know that I needed to appoint another one. Had I known that, I would have done so, but not knowing that my supervising engineer has resigned —

Mr McMullan: Forgive me for asking, but whom do you resign to? You do not say to yourself, "I resign", and that is that. You talk about the legal aspect: you have to legally resign. Whom do you legally resign to? You have to legally resign to your line management, which is the reservoir manager. You have not legally resigned unless you tell him. Therefore, it is not a defence in any proceedings. That is my argument.

Mr Porter: OK. We can take that back to our draftsmen.

The Chairperson: We are looking at all the eventualities and trying to cover and protect individuals. That brings something to mind. What happens if a shoddy piece of work is done by an engineer and handed over to a reservoir manager? As a result, the engineer may well move off or do something else. Where does the reservoir manager stand in all of that?

Mr Porter: It is a little bit like a latent defect in construction work. Even though the builder has moved off-site, he is still responsible for that latent defect.

You would still be able to have a claim against the company's indemnity insurance in a situation in which it is clear and in which you can demonstrate that the failure was as a result of the engineer's work.

Mr McMullan: Is that the case in which the engineer has 28 days to make a report?

Mr Porter: No, it is where the engineer resigns. He then has 28 days to let the reservoir manager and the Department know. I suspect that this is really about trying to deal with a situation in which the two fall out and the reservoir supervising engineer stops doing that function but does not tell the reservoir manager. Therefore, the reservoir manager cannot be enforced on to notify about something that he did not know had happened.

Mr McMullan: We are into crystal balls and mind reading.

Mr Porter: That is what the earlier clauses are trying to do. The Bill is putting a requirement on the engineer to give the reservoir manager notice. Therefore, there is a requirement for that to take place. However, in the event that he does not do that, it is not the reservoir manager's fault that he did not get it, and it is about tidying up that quirk.

The Chairperson: It is about trying to give cover and protection to a reservoir manager when his destiny is not his own and when he is waiting for a piece of work that is not forthcoming.

Mr McMullan: It is not a defence in proceedings.

Mr Porter: We are quite happy to take the subsection out, but I think that it would be a bit harsh on the reservoir manager.

Mr McMullan: Nobody else has that luxury, even —

The Chairperson: Are you opposed to the clause, Oliver, or do you want to add to it?

Mr McMullan: We picked up on a similar clause last week, if my tired old mind can go back a bit, and we have the same here today.

Mr Porter: The one last week referred to it being an offence if you did not know that you were the reservoir manager. I suppose that it is in and around the same area. However, this is to give a defence to the reservoir manager if he did not know and was not informed. Even though it is required under the legislation for him to be informed, that did not take place. Therefore, the Department could come in and say, "You do not have a reservoir supervising engineer, and that is a requirement. We are going to enforce on you." He would say, "Hold on a minute, but I did not know that I did not have an engineer. I did not get the notice". That seems fair and reasonable for the reservoir manager. However, we can have a wee look at the clause if you want.

Mr McMullan: I would not like to be standing in front of the oul' judge making that argument.

The Chairperson: We will seek further clarification.

Mr Porter: We will have a wee look at it.

The Chairperson: Clause 108 is titled "Form and content of notices, reports, certificates etc." The Committee did not receive any comments on the clause. The regulations will be made under negative resolution. If there are no comments from members, I will move on.

Clause 109 is titled "Electronic serving or giving of notices or other documents". The Committee did not receive any comments on the clause. If there are no comments from members, I will move on.

Clause 110 is titled "Change to the Institution of Civil Engineers". The Committee did not receive any comments on the clause. The regulations will be made under affirmative resolution. Any comments from members?

Clause 111 deals with civil liability. The Committee received comments on the clause. Are there any comments from members?

We now move to Part 9 of the Bill, which deals with general provisions. Clause 112 deals with Crown application. The Committee did not receive any comments on this clause. I seek comments from members. If there are no comments, we will move on.

Clause 113 is entitled "Enforcement in relation to the Crown". The Committee did not receive any comments on this clause. I seek comments from members. *[Laughter.]*

Mr Milne: Peace be with you.

Mr Brazier: There was silence on clause 112.

Mr McMullan: There was more silence on clause 113.

The Chairperson: Do you want to make any comment, Oliver, or are you happy enough to move on at this stage?

Mr McMullan: I will wait until clause 113.

The Chairperson: We are at clause 113.

Mr McMullan: The top one.

The Chairperson: Are you seeking clarification on what that means?

Mr McMullan: I have an idea of what it means.

The Chairperson: Are you seeking clarification? Can David or Kieran shed any light on it?

Mr Porter: It is just as it reads. It is standard piece of legal drafting.

Mr McMullan: I am referring to subsection 4(c). It is not you but the land belonging to the government Department.

Mr Porter: Are you referring to clause 112 or 113?

The Chairperson: It is clause 113(4)(c).

Mr McMullan: It is still allowing that land.

The Chairperson: Where do Rivers Agency, the Environment Agency, NI Water and all these other government bodies, organisations and Departments sit regarding enforcement in this Bill?

Mr Porter: Application to the Crown is dealt with in clause 112. That binds the Crown, and, in clause 112(4), Crown land and Crown estate are defined. It then states "government department":

"means a department of the Government of the United Kingdom or a Northern Ireland Department."

So, the Bill binds us regarding this. It does not mean that, if we are in contravention, the Crown becomes liable for our actions. We are bound by all this. It is not the Queen going to jail because of the inaction of Rivers Agency.

Mr McMullan: Basically, nobody can be exempt from any of this ground. There is no ground exempt.

Mr Porter: That is correct.

Mr McMullan: I just want to make that very clear.

Mr Porter: The issue that is being clarified here is that of who would be criminally liable, not the issue of what reservoirs are to be inspected, supervised or brought up to standard. Exactly the same standards will be required.

The Chairperson: Clause 114 is entitled "Service or giving of notices or other documents: the Crown". The Committee did not receive any comments on this clause. I seek comments from members. If there are no comments, we will move on.

The title of clause 115 is "Offences by bodies corporate and partnerships". The Committee did not receive any comments on this clause. I seek comments from members. If there are no comments, we will move on.

Clause 116 is entitled "Supplementary, incidental, consequential etc. provision". The Committee did not receive comments on this clause. The regulations here will be made under affirmative resolution. I seek comments from members. If there are no comments, we will move on.

Clause 117 deals with orders and regulations. The Committee did not receive any comments on this clause. Rivers Agency will include a reference to the amended clauses 22(3)(e) and 22(4), as was referred to previously. I seek comments from members. If there are no comments, we will move on.

Clause 118 deals with definitions. The Committee did not receive any comments on this clause. I seek comments from members. If there are no comments, we will move on.

Clause 119 concerns minor and consequential amendments and repeals. The Committee did not receive any comments about this clause. I seek comments from members. If there are no comments, we will move on.

Clause 120 concerns commencement. The Committee did not receive any comments about this clause. There is no Assembly procedure under the clause. Rivers Agency is considering an

amendment to the clause to allow for a pause in the commencement of certain parts of the Bill. That is a major plank of our discussions. I seek comments from members. If there are no comments, we will move on.

Clause 121 is the short title. The Committee did not receive any comments about this clause. I seek comments from members. If there are no comments, we will move on.

Schedule 1 contains a regulation that is subject to negative resolution. I seek comments from members. If there are no comments, we will move on.

I seek comments from members on schedule 2. If there are no comments, we will move on.

I seek comments from members on schedule 3. If there are no comments, we will move on.

I seek comments from members on schedule 4. If there are no comments, we will move on.

If there are no further comments —

Mr McMullan: Chair, could I just very quickly —

The Chairperson: I was just about to say "Well done, members, on getting through that".

Mr McMullan: I will not keep you two minutes. Clause 115(2) talks about an offence by a partnership. Are we talking about the offending partner, or is that offence levied at either of the people in the partnership? I am minded to go back to what I was talking about earlier. It is a defence if you did not know that the person resigned, so is it a defence in a partnership if you did not know that your partner had done something wrong?

Mr Porter: If it is committed by a legal partnership and is proven to have been committed with the consent of a partner. That is saying that there are two, like a partnership. However, if it can be shown that it was a partner, it is trying to clarify that that can be attributable to negligence by that individual.

Mr McMullan: But there is nothing to protect — for want of a better word — the innocent partner.

Mr Brazier: Others.

Mr McMullan: Yes.

Mr Porter: I think that it is by exception.

Mr Brazier: If it is proven that they knew and were involved, they would be liable. If it can be proven that they were not involved and had no knowledge —

Mr McMullan: Is it not a defence if one is taking that —

Mr Porter: You do not need a defence, because your defence is that —

Mr Brazier: It has to be proven.

Mr Porter: The defence is, "It wasn't me; it was my partner".

The Chairperson: Where does neglect come into the partnership? Is it where the partner should have made himself aware? He is neglecting his duties if he did not attend meetings or ask questions when he should have.

Mr McMullan: He can resign without telling anybody, and that is your defence. Everybody is getting protected in here but the poor boy down the line.

The Chairperson: There is still the onus on a reservoir manager.

Mr McMullan: I am thinking of a partnership that maybe owns a bit of ground.

The Chairperson: Someone still has to be a reservoir manager. Is that right?

Mr Porter: Yes.

The Chairperson: That would had to have been detailed and sorted out beforehand.

Mr McMullan: What if you have a dispute on the ground?

Mr Porter: There is a duty to cooperate. This is giving protection to the potentially innocent. An example that was used earlier related to partnerships. If one of a partnership raised the water level, which caused the dam to fail, the other partner would be able to say, "Hold on, I didn't place any of that material. I wasn't involved in that activity, therefore, whilst it is a partnership in law, I had no part in that". Therefore, you can seek redress from one of the partners. That is my understanding of that, but we can seek clarification on it to make sure that we are not misleading you.

The Chairperson: That could well be the case for a reservoir manager if there is an act of terrorism or there is bad blood, or if somebody wants to fix somebody's wagon and do something horrible. They could do something that would raise the water to dangerous levels to cause a breach, thinking that the reservoir manager would be liable, even though he had done nothing and did not know what action caused it. Would that sit well there?

Mr Porter: This is about corporate bodies. It is about clarifying a situation in which a number of people collectively own an organisation and have equal standing. It is not dealing with multiple managers. Multiple managers are covered in clause 8, which is on the duty of multiple reservoir managers to cooperate, and clause 7, which is on multiple managers. They are dealt with there.

The Chairperson: Yes, so we have a provision for partnerships and corporate bodies, and we have multiple reservoir managers. We have gone through that. Now that this has raised its head, I am wondering whether there is anything in the Bill that protects reservoir managers from acts of aggression, terrorism, sour grapes or sabotage.

Mr Brazier: The Department will investigate an incident. If the Department finds evidence that the reservoir manager was not culpable or could not have known, we would not enforce. I am not sure that you can write that into the primary legislation. If it can be proven that they have committed an offence, the Department would need to build that case and seek to apply a civil sanction. If, however, it was seeking to apply a criminal sanction, it would put that case to the Public Prosecution Service, which would test that case. If it found that we had good grounds to take that forward, it would go to the court, and the court would decide.

Mr McMullan: The civil court?

Mr Brazier: Yes, or the Crown Court, depending on the offence.

Mr McMullan: There is no mention of Crown Court in there.

Mr Brazier: Where? In the Bill?

Mr Porter: The criminal sanctions, where there is talk of imprisonment.

Mr Brazier: It talks about summary conviction and conviction on indictment. So, yes.

The Chairperson: We know that this is about prevention, appliance, engineers' reports and regulations, but, if there was a breach, the reservoir manager could hold up his hands and say, "This has happened overnight; something has happened". Would there be a police investigation straight away? Where does it go? If the reservoir manager wakes up in the morning and finds flooding, and he inspects and finds that there has been sabotage, vandalism, terrorism or whatever, where does he go from there, regardless of how serious it is?

Mr Brazier: I will get clarification on that for you. I would only be guessing, so we will go back and clarify that.

Mr Porter: It is probably covered on the defences. It is probably worth going to clause 37, which relates to defences in respect of supervision, inspection and record-keeping. We have covered this in a few places; it is in clauses 36, 37, 49 and 50. If the person took all reasonable steps to prevent an uncontrolled release of water and to rectify the failure, protection is given. If something was not within their gift or control, they would have to be able to demonstrate that they had taken reasonable steps. If it was then shown that it was an action by some third party, it would be part and parcel of it that they were able to demonstrate that we should not be enforcing on them because they took reasonable steps and what happened was not their responsibility. A third party interfering with a structure would not be addressed under this legislation; it would be under some other criminal law that covered interference with property or criminal damage as opposed to reservoir safety legislation.

Mr Brazier: That is what I was thinking. If the reservoir was damaged maliciously, the reservoir manager could report that to the police, who would investigate it. On the other hand, the Department would be looking into the breach and building up evidence and information on it, but that would not stop the reservoir manager involving the police at that stage. He might want to bring criminal proceedings against the person who maliciously damaged the reservoir.

Mr Porter: But not under the Reservoirs Bill.

Mr Brazier: But not under the Reservoirs Bill.

The Chairperson: Would that be the same for someone who damages a structure without realising that they have damaged it? It might be a group of kids who have built a hut or a tree house.

Mr Porter: The reservoir manager still has to be able to demonstrate that all practical steps were taken to prevent that uncontrolled release. That might well involve making sure that kids do not build tree houses, that a structure does not fail because someone put one post in to build a tree house, that material is not routinely being removed or that people are not extending their gardens into the dam structure and removing it to build a patio. That would not be tolerated. In that instance, you could not say that the manager had taken reasonable steps to stop that happening over a period. If that breach happened, I am not sure what a manager's defence would be.

Mr Brazier: The supervising engineer will be there maybe only once a year and will require the reservoir manager to keep an eye on the reservoir, report incidents and make sure that the reservoir is kept safe and that there is nothing that might compromise the reservoir in some way.

The Chairperson: Do members have any further comments? OK.

Thank you very much, members and officials. We have managed to reach the end of the informal clause-by-clause scrutiny. You will be glad to know that we will therefore not need to meet next Monday. We are waiting for amendments and the other pieces of work and clarification from the officials before the formal clause-by-clause scrutiny. We look forward to that work. Thank you very much, David, Kieran and your team for your time; it is appreciated.