



Northern Ireland  
Assembly

Committee for Agriculture and Rural  
Development

# OFFICIAL REPORT (Hansard)

Reservoirs Bill: Committee Report

17 June 2014

# NORTHERN IRELAND ASSEMBLY

## Committee for Agriculture and Rural Development

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**Members present for all or part of the proceedings:**

Mr Paul Frew (Chairperson)  
Mr Joe Byrne (Deputy Chairperson)  
Mr Thomas Buchanan  
Mrs Jo-Anne Dobson  
Mr William Irwin  
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:** Members will recall that, at last week's meeting, Rivers Agency officials presented amendments to clauses that we as a Committee have already voted on. Those amendments, which are around the risk designation process, are at pages 23 to 57. Members will have had time to reflect on the proposals made by Rivers Agency. The Hansard report of last week's meeting, at which this issue was discussed, is in the tabled papers. If members are content to accept the amendments, the report, which we will consider later, will be amended to reflect that decision. If members are still not content with the amendments, the report will reflect that.

I welcome David Porter and Kieran Brazier to the Committee. David and Kieran are here to provide clarification on clause 25(2)(k). However, should members need further clarification on clauses 17 to 23, they can address that also. The Hansard report from the meeting of 10 June has been provided for members' information. It is at page 2 of your tabled papers.

Without further ado, David and Kieran, do you want to brief us on the amendments?

**Mr David Porter (Department of Agriculture and Rural Development):** Yes. As you pointed out, we are here to provide clarification on clause 25(2)(k); in essence, the minimum standard that we have included in the Bill for the supervising engineer's visits. Two issues arose from last week's discussion: the first is that the clause includes a minimum standard but does not have a maximum; and the second is about whether the number of minimum visits is correct. If you are content, I will treat those separately, because they are two separate issues.

**The Chairperson:** Yes.

**Mr Porter:** The Bill indicates only a minimum standard because it is absolutely impossible to determine what the maximum number of visits should be. For instance, if your reservoir is in very poor condition or at the point of failure, we would not want to have set a maximum number of visits for an engineer, as it would mean that the legislation stops you getting a visit by a supervising engineer in that emergency situation. The supervising engineer is the competent person who stands alongside you and helps you to manage that risk. I encourage the Committee not to try to put in a maximum. It will not help people. I will use an analogy: it is almost like trying to save money for the NHS by saying that the maximum number of times you can visit your doctor is six times a year. If you are very sick, six visits a year is not good enough. If you have a very sick reservoir, you should not have a maximum number of visits by a supervising engineer. Hopefully, that has provided some clarity on that.

The Department has looked at the numbers that we have included in the clause. We are content that one visit each year is correct for high consequence and that one visit every other year is correct for medium consequence. We have not provided you with an alternative or amended clause. I have said on a number of occasions that, if the Committee feels that it wants to push that out further, I am quite content to make an amendment to that. However, I have said that we need to be careful that we do not merely satisfy our own needs in being seen to be changing the legislation. We already have moved from two visits a year for high-risk reservoirs and once every 12 months for medium risk.

I am imploring you on that one because of the exposure of public indemnity insurance by the engineer. We do not want to say that we have managed to push it out to one in five, or something like that, and then nobody actually gets it on the ground. That offer remains. I am content to make a change to that if you feel that it is absolutely necessary in order to help with the process of the Bill, but I stress that I feel that these are right. A very minor modification may well be possible, if you feel that it is absolutely necessary, but I would be cautious about changing it significantly because of the professional indemnity issue and the service that a supervising engineer offers. They are the competence. They are the expert who stands beside the reservoir manager.

There was also a discussion about limiting this because it is an inspection. This is not an inspection. An inspection is what happens every 10 years. This is a visit by a competent person who is working alongside the reservoir manager to make sure that their liability is being controlled in a reasonable way. That is the expertise. It is a partnership, with the supervising engineer and the reservoir manager working together to provide assurance. It is not that one visit every 10 years by the inspecting engineer who does the MOT. This is a process of working together.

That is all I really had to say on those two issues: the maximum number of visits; and the actual numbers that are presented in the Bill.

**The Chairperson:** OK. Do any members want to comment before I come in? Are members content? Oliver, do you want to come in?

**Mr McMullan:** Just very quickly. I see where you are coming from on that, David. Can we give a specific time frame or something to aim at for the downgrading of a high-risk reservoir after so many visits or inspections every 12 months?

**Mr Porter:** Again, I would really encourage you not to do that. The inspecting engineer identifies the obvious defects. That gets the reservoir knocked into shape, and then there is a process of keeping an eye on it forever more. That is what the annual visit by a supervising engineer does. I can understand why you would limit the number of supervising engineer's visits until it was got into shape, but, in essence, that is the process anyway and we do not need to put that into legislation.

The routine visit that keeps an eye on the structure, so that you can give assurance that your liability is being controlled and to give assurance to the people downstream, is very important. You do not get to a point where the supervising engineer can say that he saw the reservoir last year and does not need to see it this year. It is that very simple task of visiting a reservoir every year and checking that the paperwork has been kept right and that there has been no significant change that gives us the ability to give you the assurance that it is not at the point of failure.

The visit will typically be for half a day. Particularly if the supervising engineer has a good working relationship with the reservoir manager, he or she will understand the system that is in place for checking the water levels and any significant changes. There will be a dialogue about whether

anything has changed. That visit each year is very important. You will not get to a point where you can say that we can back off on that further.

**The Chairperson:** Oliver, are you happy with that?

**Mr McMullan:** Yes, but there is something that concerns me. All of that is being done to protect those downstream. I am still a wee bit worried in case there is any building work or development downstream. The onus for that development work and the extra legislative responsibility will fall on the reservoir owner when a lot of that should fall on the developer. I am scared that developers may offload that problem onto the reservoir owners. I think that there is a line there that will have to be separated in the future.

**Mr Porter:** We totally agree. That is why that is set out very clearly in FLD 5 of the new Planning Policy Statement 15 (PPS 15). In the absence of someone being able to give assurance, as part of their flood risk assessment, that the reservoir is in good condition, there will be a requirement for works to be done. Those works will be a condition of the planning application. Therefore, if the developer wants the planning application to go through, they will have to talk to the reservoir manager and come to an agreement so that those works can be carried out. We do not intend to put into legislation or planning policy what that relationship should be. That is a private matter, but the fact that it has to exist in order to get the planning permission is in FLD 5.

**Mr McMullan:** As long as the developer cannot force the reservoir owner to do that —

**Mr Porter:** No, he cannot.

**Mr McMullan:** There would be a little bit of work in there to agree the shared costs.

**Mr Porter:** Yes, that is absolutely right.

**The Chairperson:** I want to tease that out. There are two issues here. There is the issue of high consequence, medium consequence and the change that affects. There is also the worry about overengineering, which is the ethos of the minimum/maximum argument. Let us play that out. I get the point about FLD 5, where a developer buys land for development, pursues a planning application and meets with the reservoir owner. They then come up with a scheme or plan that could channel some flood water from a breach of a dam and that is incorporated in the planning. What mechanism will see that through to the other side and make everyone content that those measures are appropriate and will mean that that reservoir remains as a medium consequence and not high?

**Mr Porter:** In the same way as when you have to do work on a sight line, for instance, that becomes the condition of the planning application. In the absence of that being carried out, there is a planning enforcement process. You can have your views on how good, bad or indifferent that is, but that is the process that we have, so it would be a condition of planning approval. In some cases, it may not be — very minor things do not become a condition — but, if it is a significant reservoir and significant works are required, we would be pushing very hard to make sure that that was a condition on the planning application form or the approval.

**The Chairperson:** You could get to the position where you have a high consequence reservoir at the minute and, due to development work downstream, could make it a medium, if you get to the point where you are diverting water away from an area that is already developed.

**Mr Porter:** Yes, you could. You could do that only with the amendments that we have suggested, which you are about to go on to. You cannot do that with the Bill as written at the minute, but with the amendment that we have proposed, you could move from a high to medium consequence. I would encourage people to do that from a technical point of view. Do not just accept your initial designation. It may well be worth looking to see what you can do to reduce your burden, particularly at this early stage. We now have the pause built into the Bill, so whenever they get their initial designation, and that first inspection and grant aid assistance to do that, I would be including in the scope of works, "What else can I do to reduce the consequence of this, because I want to minimise the burden of this right from day one?". I would encourage people to do that.

**The Chairperson:** The issue about the minimum/maximum number of visits stems from the fear of overengineering and trying to implant some sort of safeguard into the legislation so that, in practice,

people are protected to that degree. The problem that the Committee and I have had is that we are not technical experts, so it is hard for us. Whilst we are not content — there is unease here with the whole concept of overengineering — I struggle to see how I can amend this with no expertise at my disposal with regards to what I know. That is probably where we are struggling in grappling with this issue. That is basically why I threw in the maximum/minimum argument last week.

**Mr Porter:** We have accepted the argument about overengineering. We have included in the clause not just the quality but the content of the report. We have accepted that the Department has a role in managing the whole process of reservoir enforcement and it is not just administrative. There is a technical expertise that we need to bring to this as well. It is on that point that I am telling you that I have the expertise to judge on this, and I strongly recommend to the Committee that this is right.

**The Chairperson:** OK.

**Mr McMullan:** On the issue of development downstream, what happens if the owner of the reservoir is a council? Councils are to get planning powers. Could a councillor be surcharged, being an employee of a council that would employ the engineer to do the works? It could come back to the councillors; they could be surcharged. There is nothing in there to tell me that they cannot be. Do you know where I am coming from?

**Mr Porter:** I am not sure what you mean by "surcharged".

**Mr McMullan:** The reservoir manager will be an employee of the council; the council will be the employer. If something goes wrong and it was proved that the councillor was not diligent in what they were doing, they could be surcharged.

**Mr Porter:** I follow what you mean. There is a very simple answer to that. If people follow what the legislation says when it is on the statute books, that will give them protection. They are more vulnerable today because it is under common law. In the event of a failure, under common law, if a civil case is taken, you go in front of a judge, and the judge works out what the penalty is. When this is brought in, the first piece of evidence that a council or any reservoir manager will present is, "Here is the legislation, and here is the evidence that I am compliant with it. I have done everything that could possibly be reasonably expected of me under the law in order to ensure reservoir safety". That limits people's liability, because they will have a defence in law that government required a certain standard. We accept that there may well be reservoir failures, even when this is in. The legislation does not stop every failure, but it puts in as many reasonable checks and balances as we can at a reasonable cost with reasonable competence and a reasonable inspection regime to try to give assurance that the reservoir stock out there is OK. I cannot tell you that at the moment; we do not know. When this is in, it will at least answer that question. That will protect the individual reservoir managers.

**Mr Swann:** I am going through the consequences and directing water away, and I am trying to remember the volumes of the existing reservoirs we have. How much water do you have to direct away?

**Mr Porter:** We will develop a methodology to determine the difference between a medium and a high. We will be able to give a depth and velocity, because, as I have said, deep, fast-flowing water is what kills people. There will be a threshold below which we are comfortable enough. Therefore, those reservoirs will fall into medium consequence. It would be relatively straightforward for an engineer to model that reservoir on the computer and work out what physical works they need to do to get the flow, in terms of velocity and the speed and depth of the water, below that threshold. Whenever it is below that threshold, that will be the evidence that we need to say, "That's moving from a high to a medium". The easiest way of doing it is to remove that water altogether. For instance, if there is a house sitting on the edge of a riverbank where the water is going to run down through, and you reposition that riverbank so that that house cannot get wet, that is the easy way. You do not necessarily have to go as far as that, because we will be able to have a threshold at which we are comfortable that no death is likely.

**Mr Swann:** I understand the point about flows and volumes. Will that modelling be on the complete volume of the reservoir or the volume that classifies it as a man-made reservoir? Is it going to be the full calculation or just that additional one?

**Mr Porter:** It is only the escapable volume. If you have a natural lake, which you then raise the water level of, it is only the difference between the natural lake to that raised level. Again, we will define that in guidance to reservoir managers, so that it is absolutely crystal clear that it is only the escapable volume of water that we are concerned about. Whenever the man-made structure fails, it is only the bit held back by the wall that can actually escape. Water cannot jump out of a natural depression in the ground.

**Mr Swann:** In your calculations for flow and velocity, I take it that they consider the position of the house or structure —

**Mr Porter:** It does. At this time, the reservoir inundation maps that I have shown you are very cursory and basic; fairly basic assumptions have been made to just start the ball rolling. We will produce a much more detailed model for each of the reservoirs. Again, that is something that we are happy enough with. We have programmed that in and have funding to do that. It is something that reservoir managers or their consultants will be able to use. If they wanted to, they could take that information and then, if they are high consequence, could model to see what physical works could be done to change the consequence.

**Mr Swann:** You are going to do that modelling for all reservoirs.

**Mr Porter:** Yes.

**Mr Kieran Brazier (Department of Agriculture and Rural Development):** Yes.

**Mr Swann:** Do you have access to all reservoirs to enable that modelling to be accurate?

**Mr Porter:** You do not need physical access at this minute.

**Mr Swann:** Sorry, Kieran said yes, David, and you said that you did not need access.

**Mr Brazier:** We know where all the reservoirs are.

**Mr Porter:** The main thing that is limiting our model is the shape of the ground — the topography — so we have used a very coarse model. We will get lidar, which will be flown, and we will get a much more detailed ground model. That will make the significant change.

**Mr Swann:** Do you need access to be able to do that accurately?

**Mr Porter:** You can gain lidar without getting access, because it is a flown survey. If you think that the impoundment is the wrong size in the model, you obviously need to go in and measure it. If access were given through that process, that would help to even further refine the model that we have.

**The Chairperson:** Let me get this clear. Surely all the work that you are doing on velocity and density cannot be done by the initial audit report.

**Mr Porter:** No, that is something that we are doing in parallel. We already have that programmed, because we recognised that our first maps were coarse. As we speak, that is going through the secondary procurement process, with a view to start that before the end of the summer.

**The Chairperson:** How will that run in parallel with the initial audit report, which is the first phase of the legislation?

**Mr Porter:** The initial audit report and the more detailed maps are pretty much independent. It would be useful on those reservoirs where there is a question mark about whether they should be medium, because if they were to go into the low, there is no requirement to have an inspection. We are quite content that we are talking about one or two reservoirs that we will grant aid something that might turn out not to be necessary in the longer term. We are talking about very insignificant costs in terms of the overall package.

**The Chairperson:** Kieran and David, if you can, will you hang about, because there may well be more questions on the clauses around risk designation? It would be useful to have you for that. You will probably go up to the Lobby anyway for Question Time.

*The Committee suspended at 1.58 pm and resumed at 3.08 pm.*

*On resuming —*

**The Chairperson:** Members, are there any further comments? We were cut off in the middle of discussions. Do members have any comments on the amendments that we were discussing? We sought and received clarification on clause 25(2)(k), which was around the periods for supervising engineers' visits. David explained that it was not so much the inspection every 10 years. Do members have any comments on that?

Although the difficulty for me has always been about knowing technically where, if, how and why this clause should be amended, it is difficult for us to factor in just how many visits we need and what they will look like. Remember, of course, that the supervising engineer could also be reporting on more visits, because that will happen at least once in 24 months for a medium-risk or medium-consequence reservoir. Are there no further comments?

OK. We will move on. Members, we need to consider proposed amendments to risk designation. Can I have members' comments?

In summary, there have been gains here for the Committee and its concerns. They include the change in name, with regard to designation, from "risk" to "consequence". That is threaded throughout the Bill and means that there are changes and amendments throughout it. There are also discussions on how a reservoir owner or manager can change the consequence from "high" to "medium", and also the factors that would produce a change from "medium" to "high".

Are there any comments?

Although I welcome the amendments on the issues that we have just talked about and although there is more flexibility in the system for a reservoir manager or owner to change their destiny, it still seems to be, when you look at the enforcement measures, that there is not much change from the first risk matrix. To me, it is still very much "Do this or else", as opposed to "Do this and you will receive that." To put it more bluntly, there is still more stick than carrot and, whilst the goal in all this is to prevent a breach, we should try to get the balance right on incentivisation.

**Mr Byrne:** Do you mean grant aid, Chairman?

**The Chairperson:** That is a very good point, Joe. We are discussing the Bill without knowing the context or real size of the problem. That will come with the initial audit. Whilst we know that there is grant aid for that audit, we also have to be concerned about —

**Mr Byrne:** Grant aid for capital improvements?

**The Chairperson:** — what grant aid, if any, there will be for capital improvements to help to prevent a breach. It is in that context that we are looking at the minutiae of each clause. There is a massive elephant in the room, for want of a better phrase, with regard to what grant assistance will be available — if it will be available — and how it would work.

**Mr Milne:** Chair, it might have been better if this process were delayed until all that work is done first, and then we could be presented with the assessment of all that has to be done. That would have left us in a very clear position, would it not?

**The Chairperson:** I agree. However, that is why the amendments were made whereby it is broken into two stages and it is still in the Assembly's gift as to how, or whether, we proceed with the second part.

**Mr Byrne:** Let us say that there was an alarming report that required extensive capital improvements and investment. Could we not have a subsection in one of the clauses to allow us at least to identify a cost quantification of the capital works, and a review or examination of that cost, with a view to having

an assessment done by the Department so that, if it were an excessive amount, some consideration could be given to grant aid?

**The Chairperson:** A lot of that will come with the initial audit, Joe. A lot will come with the work that Rivers Agency is doing concurrently with its aerial stuff.

**Mr Byrne:** That means that we are still blindsided. The initial audit report is the most critical benchmarking exercise that is needed. The question is whether we continue to work blind. Say that a reservoir owner had to spend £1 million, whether in the voluntary and community sector or as a private individual or farmer, it would be very —

**The Chairperson:** We have had letters of assurance from the Minister that, were there an imminent breach or danger, she would consider stepping in, if my memory serves me right.

**Mr Milne:** Where would the money come from?

**The Chairperson:** I do not mind bringing the officials up gain to clarify those points if that is in order. You heard my spiel on my concerns, the audit, the context of the problem, grant aid and the information that we gleaned from the audit and the work that Rivers Agency is conducting. I know that we are well past the point of clarification.

**Mr Porter:** I am happy to continue the discussion. The pause in the Bill is significant as it allows us to gather information to the bid either in the Department or to the Executive to quantify the problem. I hope that including a pause in the legislation allows us to ask whether this is the right thing to do on reservoir safety. Set aside that there are problems, because the mechanism for dealing with those problems is the pause. Irrespective of the condition, is having somebody alongside a reservoir manager to help them to deal with the risks the right thing to do on reservoir safety? I think that it is.

The scary bit is the quantum, but the pause deals with that because the recurring issues do not come in on Royal Assent. It is for the Assembly to vote on them. If we come back here and say that we now know the condition of all 151 reservoirs and that there are some horrendous cases, we know that, as a Department, we are going to have an awful problem when we try to get part 2 of this to go forward in the absence of some capital assistance. So I encourage you to separate the two issues. Let us scrutinise whether this is the right thing to do in legislation, and you have the assurance that, because of the pause that we have built in, the recurring bits will not then kick in. So, hopefully that gives you comfort that this is not a hostage to fortune. When the Committee finishes with its decisions and its scrutiny and you start to see this implemented because of the pause that is built into it, you will not have that pang of guilt that you have let something through.

The other thing that I said is on the public record. When I was talking to the Minister about grant aid, the discussion arose about what would happen if we were to find something that was in particularly bad condition. Irrespective of the pause, even though the recurring bits of the Bill were not started, if the Department knew that there was something very seriously wrong, we would not just acknowledge that information but would have to do work on it. We may have to step in either under emergency powers or by working with the individual to find a way to at least control or manage the risk. That commitment has already been given. I do not think that it was clarified in the Minister's letter, but it certainly was in my account of the discussions that I had with the Minister. That is on the public record already.

**Mr McMullan:** Those reassurances are helpful. I see your point about having engineers and so on sitting round with the owner and you saying, "This is what you have to do etc". You may want to look through that. There is a safeguard as well. Maybe if there was not somebody there pushing the owner a little bit, the work may not get done. That is a bigger problem, and the more we go through this report every week, the more I can see that, even though there are some things in it that I am not over the moon about. I can see that if that push were not made, the problem would only get bigger. The cost would then get bigger, and it would be a no-win situation for anybody. I think that that has to be in there somewhere. I think that there are safeguards in there. I am pretty happy with what is in there at the minute.

**Mr Byrne:** I welcome the clarification. However, I will throw in the red herring: Camlough. We are told that somewhere between £2 million and £3 million would need to be spent there. Given that it is an Omagh-type ownership exercise, the trustees are dead and gone. Newry and Mourne District



Council seems to have some remit or function over it. Water service takes water from it and pays £4,500 a year in rent for it. The issue around the fact that capital works and all the rest will have to be done at the outset seems fuzzy. That is an upfront example of something that has to be addressed pretty soon. Whether there is a pause or no pause in the Bill has to be addressed.

**Mr Porter:** It is a good example of where we have brought people into the room, outlined what their risks are and encouraged them to face up to them and address them. That is the sort of approach that we would try to take if we found any other cases like that.

You are absolutely right: the enforcement in the legislation is all about the stick. The reason for that is that we are self-regulated but have no legislation on reservoir safety. There are many examples of where reservoir managers are not carrying out inspections or maintenance. Therefore, the stick, unfortunately, is required. You are right, Oliver, in what you say. It may be painful, but it is the only way to get reservoir managers to carry out the inspection. There will be an initial period of pain until we get the reservoirs knocked into shape. Hopefully the assistance will help with the initial inspection; then we will be able to take stock and see what we have to do after that.

**The Chairperson:** We cannot seek any more clarification; we are at the limit of the limit on that. We really do have to push on with the report.

My point was that there is more stick than carrot in the way that the matrix is set out. I am still not content, but something in me says that I need to be positive. So, whilst I am not content, that is more to do with the fact that we have not really had time in the process to fully consider the amendment and all its consequences. However, I recognise the massive gains that the amendment brings. That has to be illustrated somehow in the report, if that is OK. If members agree with me, that is fine; if you do not, you have your own voice.

**Mr Byrne:** The good thing, Chairman, is that the issues that were raised today will be reported and our concerns will be on the record.

**The Chairperson:** There are some massive amendments to the Bill that are brilliant and provide good safeguards. For example, the pause, and the "high" consequence and "medium" consequence, as opposed to risk. That is all very good. There are some gains in the amendments. However, procedurally, we have not had enough time, and I am still not sure in my mind how it will play out in practical terms.

**Mr McMullan:** We are happy enough with where we are at the minute. On what you said, I think that there are now enough checks and balances in the report. If somebody did feel that they were being overly pushed into doing reports or work, they could appeal that. There is a mechanism for appeal. Knowing that that safety valve is there gives people a bit of comfort. I appreciate what you are saying, but I think that we are happy enough with it.

**The Chairperson:** I can certainly put the question. Is the Committee content that the proposed amendments on the risk designation process address the concerns of the Committee?

*Members indicated assent.*

**The Chairperson:** I will just record that I am not content, but I am happy enough if the mind of the Committee is reflected in the report. I am still not content because of the length of time to consider the process and everything else. However, I am still not 100% convinced that the matrix is right.

**Mr Byrne:** Is that you speaking as Chairman, as an individual or as a representative of a group? Is your group not content? You need to clarify these things at this stage.

**The Chairperson:** Well, I would say that I am not here to speak for them, but I imagine that the group or the majority of it would not be content. However, it is who is here.

**Mr McMullan:** I do not mind your not being content as a group, so long as it is not going back as a stick to beat any of the rest of us at a later stage. We have gone through this and have been most critical of it ourselves —

**The Chairperson:** I know —

**Mr McMullan:** — but we have got to a stage now where, really, there are checks and balances. We are not happy with a few things in there, but I think that we have to go ahead with them.

**The Chairperson:** This is only clauses 17 to 23; the principle of the Bill and everything else stands. I am much more comfortable than I was a couple of weeks ago. However, I am not convinced that I am content, which I suppose is the best way to put it, although I am content if the mind of the Committee is content. That sounds like a riddle.

**Mrs Dobson:** I share your concerns. I would not be content either, but how could we — it is the Committee's will, but I would certainly have concerns, as you have outlined, about clauses 17 to 23. So, I would not be —

**The Committee Clerk:** You have taken your formal vote on it, so the formal position of the Committee is that it is not content with those clauses. The amendments that came late in the day are not part of the formal vote. I will add paragraphs to the report to reflect the Committee's thoughts and decisions on those amendments to help to inform the House when those decisions are taken on the Floor. I can reflect, in a paragraph, that, overall, at this moment, there is a feeling that the Committee is content but that there are still some concerns.

**Mrs Dobson:** Certainly, yes —

**The Committee Clerk:** That is the best that I can do. I can reflect that there are still reservations, but because there is to be a vote here now, that vote will be that the Committee is content with the proposed amendments, although with reservations. Is that OK?

**The Chairperson:** Are members content?

**Mr Milne:** I would like to see unity following on through here, you know, the way that it has been. I am a wee bit hesitant there to say that we are content with it if, at this junction, there are members who are not.

**The Chairperson:** To reassure you on this, whilst, when we go into plenary, it will be a political game, a political decision and political debate, in this, the calibre of scrutiny, discussion and debate has always been of very good form. A lot of decisions and votes have been taken on good will, so there is no question, in my eyes, of people trying to jockey against another party for position. That is not what I am here for. It is just that I cannot honestly sit here and say that I have enough understanding of this amendment to say that I am content. I would not be content to say that.

**Mrs Dobson:** Yes. The same here, likewise.

**The Chairperson:** However, because I am a positive sort of person, I feel that I need to acknowledge the gains that the amendments have made. That is where I sit. I believe that this needs further scrutiny and that may or should happen in the debate and that fact should be reflected in our report. Everything that we are ironing out should be manifested in the report.

**The Committee Clerk:** I can bring the report actions back next week.

**The Chairperson:** Bring them specifically on clauses 17 to 23.

**The Committee Clerk:** We will leave paragraphs 46 to 58 out, and I will bring them back next week. I will have to reflect the position of the Committee, which is that four members have voted that they are content with the amendments and two members have voted that they are not content with the amendments. Is that a correct assessment of the position?

**The Chairperson:** OK. I do not want to prolong things any further, but now that we are going to consider the report I would like to acknowledge the work and the commitment of David, Kieran and all the team, who are here religiously every week and who have assisted us through this process, not only with amendments but with the clarification that we have sought, week in, week out. Thank you very much. If credit is to be given, it is certainly to be given to these people, because they are on top of their game with their knowledge of this and the ins and outs of the Bill.

Before I get all emotional, we will move on to the consideration of the report. *[Laughter.]* I refer members to the draft report on the Reservoirs Bill. I will take members through each section and paragraph of the report and seek agreement or otherwise. The main body of the report is at pages 58 to 124 of members' packs. I refer members to the introduction, which is at pages 58 and 59. Are members content with the introduction?

*Members indicated assent.*

**The Chairperson:** I refer members to the section on consideration of the Bill at pages 60 to 112. It addresses the key issues through the report, including the cost of compliance and all the big issues.

**Mr Byrne:** At paragraph 14 —

**The Committee Clerk:** We are going to go through the report paragraph by paragraph.

**The Chairperson:** We will now deal with the paragraphs on the background of the Bill. What page is that?

**The Committee Clerk:** It is at page 60.

**Mr Byrne:** I want to check that those are the definitive numbers: 77 reservoirs in the public sector, 59 in the private sector, nine in the third sector and six with ownership unknown. I want to be absolutely clear that those are OK.

**The Committee Clerk:** That is the evidence that we have been given.

**The Chairperson:** OK. We will now deal with the paragraphs on the background of the Bill. Are members content with paragraphs 11 to 14?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 15 on key issues?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraphs on the issue of the audit of reservoirs. Are members content with paragraph 16? I think that we need to make it a bit stronger. It states:

*"The Committee examined the evidence provided to it and had concerns that the Department had not proved the need for the Bill. The Committee is strongly of the opinion that before the Bill was introduced to the Assembly, the Department should have carried out an audit of the 151 reservoirs which will fall under the remit of the Bill. This audit could have ascertained the condition and the likely cost of bringing the 151 reservoirs up to an acceptable standard for public safety. An audit would have provided the proof that the Bill was required and that the policy approach within the Bill, the Panel Engineer System, was the correct approach. With the exception of the evidence provided on Camlough Lake (as discussed below), the Department has in the opinion of the Committee only been able to provide anecdotal evidence that the legislative approach suggested in the Bill is required."*

I think that we need to say that the lack of information and the blindness has made our clause-by-clause scrutiny very difficult. We need to be stronger on that.

**The Committee Clerk:** I will add a line.

**The Chairperson:** Is it OK for you to add a line and then bring it back? It has been a handicap for us.

**The Committee Clerk:** Yes.

**The Chairperson:** Are members content with paragraph 17 of the report?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 18?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 19?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 20?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 21?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 22?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 23?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 24?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 25?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraphs on the costs of compliance.

Are members content with paragraph 26?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 27?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 28?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 29?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 30?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 31?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 32?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 33?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 34?

**Mr McMullan:** I want to go back to paragraph 33. Why would the Institution of Civil Engineers (ICE) think that it would be a great pity if dams were taken out of service and abandoned? Somebody might want to know that.

**The Chairperson:** Sorry, say again, Oliver? I could not hear.

**Mr McMullan:** The ICE stated in paragraph 33:

*""repairs is a serious issue if we are to avoid many dams being taken out of service and abandoned, which would be a great pity.""*

**The Chairperson:** Yes, that is in speech marks. That is just what has been reported. It is not —

**Mr McMullan:** It may take issue with that.

**The Chairperson:** That is not from our Committee. It is from the committee of the Institution of Civil Engineers. That is just a quotation.

**Mr McMullan:** OK.

**The Chairperson:** The ICE is basically reinforcing the issue of abandonment and what happens if a dam is out of service. It is saying that that would be a great pity and that something needs to be done. Are you happy enough?

**Mr McMullan:** Yes.

**The Chairperson:** Are members content, then, with paragraph 34?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 35?

*Members indicated assent.*

**The Chairperson:** We will check the spelling and punctuation.

Are members content with paragraph 36?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 37?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 38?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraphs on cost recovery, which was another big issue for the Committee.

Are members content with paragraph 39?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 40? That is a very important paragraph.

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 41?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 42?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraphs on grant aid.

Are members content with paragraph 43?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 44?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 45?

*Members indicated assent.*

**The Chairperson:** We are going to leave paragraphs 46 to 58 until next week, as we have just debated the risk designation process. That will allow the Committee Clerk to write up what was discussed.

That takes us on to paragraph 59. Are members content with that paragraph, which is the first of those that deal with the reservoirs panel engineer system?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 60?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 61?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 62?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 63?

**The Committee Clerk:** There is a spelling mistake in there that I will correct.

**The Chairperson:** OK. Are members content with paragraph 63?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 64?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraphs on the operating regime. Are members content with paragraph 65?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 66?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 67?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 68?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 69?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 70?

Members, the paragraph sets out the opinion of the Committee. Are you content, or do you wish to discuss the paragraph or amend it in any way?

**Mr Byrne:** Did David signal earlier that there could still be some movement on that? If we are being offered a gift horse, we should not refuse it. We might as well go for some notable advances or changes.

**The Chairperson:** OK. How would you amend that? That is the only —

**The Committee Clerk:** We could ask Rivers Agency to bring forward an amendment by September.

**The Chairperson:** We could ask Rivers Agency to squeeze out something more.

**Mr Byrne:** That is where there is still a wee bit of reservation about the power and control of the engineer.

**The Chairperson:** Obviously, it states in the previous paragraph that we do not have the expertise to amend.

**The Committee Clerk:** I will amend paragraph 70 to reflect that.

**Mr Byrne:** OK. Thanks.

**The Chairperson:** We will now deal with the paragraphs on decommissioning reservoirs and the potential impact.

Are members content with paragraph 71?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 72?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 73?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 74?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 75?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 76?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 77?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 78?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 79?

*Members indicated assent.*

**Mr McMullan:** We have just gone through paragraphs 73 to 79, and I think that there are some important issues in those paragraphs that raise questions about planning law.

**The Committee Clerk:** There is a section dealing with planning.

**The Chairperson:** There is a section on planning.

**The Committee Clerk:** That is coming up at paragraph 86. If you feel that what is in the report is not strong enough, you can let me know when we get there. We will be there shortly. Is that OK?

**Mr McMullan:** On decommissioning, I think that it clearly states there, especially in paragraph 73, that reservoir managers are not sure what the planning law states. There could be a debate on that.

**The Committee Clerk:** I will add in a paragraph to reflect that.

**The Chairperson:** We will bring that back next week.

**The Committee Clerk:** Yes.

**The Chairperson:** That is paragraph 73.

**Mr McMullan:** It is paragraphs 73 to 79, which refer to the Environment Agency and the planning authority's position on decommissioning and planning.

**The Chairperson:** OK. We will now deal with the paragraph on the delegated powers around the appeals mechanism.

Are members content with paragraph 80?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraphs on the definition of a controlled reservoir.

Are members content with paragraph 81?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 82?

*Members indicated assent.*



**The Chairperson:** Are members content with paragraph 83?

*Members indicated assent.*

**The Chairperson:** Are members content with paragraph 84?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraph on the removal of low-risk reservoirs from the operating requirements of the Bill?

Are members content with paragraph 85?

*Members indicated assent.*

**The Chairperson:** We will now deal with the paragraph on the removal of low-risk reservoirs from the operating requirements of the Bill.

Are members content with paragraph 85?

*Members indicated assent.*

**The Chairperson:** OK, we will now deal with the paragraph on reservoirs and planning issues.

Are members content with paragraph 86? I address you specifically on that, Oliver.

**The Committee Clerk:** Are you happy enough with paragraph 86?

**Mr McMullan:** Yes, that is all the stuff downstream, which is different from the paragraphs that I mentioned. Paragraphs 73 to 79 are different.

**The Chairperson:** OK. Are members content?

*Members indicated assent.*

**The Chairperson:** The next part of the report deals with the summary of evidence. If members are content, we will consider it on a page-by-page basis as opposed to by paragraph. The page numbers referred to are the pages of members' packs, not the pages of the report, if that is OK.

We start at page 92. Are members content with page 92?

*Members indicated assent.*

**The Chairperson:** Are members content with page 93?

*Members indicated assent.*

**The Chairperson:** Are members content with page 94?

*Members indicated assent.*

**The Chairperson:** Are members content with page 95?

*Members indicated assent.*

**The Chairperson:** Are members content with page 96?

*Members indicated assent.*

**The Chairperson:** Are members content with page 97?

*Members indicated assent.*

**The Chairperson:** Are members content with page 98?

*Members indicated assent.*

**The Chairperson:** Are members content with page 99?

*Members indicated assent.*

**The Chairperson:** Are members content with page 100?

*Members indicated assent.*

**The Chairperson:** Are members content with page 101?

*Members indicated assent.*

**The Chairperson:** Are members content with page 102?

*Members indicated assent.*

**The Chairperson:** Are members content with page 103?

*Members indicated assent.*

**The Chairperson:** Are members content with page 104?

*Members indicated assent.*

**The Chairperson:** Are members content with page 105?

*Members indicated assent.*

**The Chairperson:** Are members content with page 106?

*Members indicated assent.*

**The Chairperson:** Are members content with page 107?

*Members indicated assent.*

**The Chairperson:** Are members content with page 108?

*Members indicated assent.*

**The Chairperson:** Are members content with page 109?

*Members indicated assent.*

**The Chairperson:** Are members content with page 110?

*Members indicated assent.*

**The Chairperson:** Are members content with page 111?

*Members indicated assent.*

**The Chairperson:** Are members content with page 112?

*Members indicated assent.*

**The Chairperson:** OK. Pages 113 to 124 deal with the Committee's clause-by-clause consideration. If members are content, we will go through it page by page.

Are members content with page 113?

*Members indicated assent.*

**The Chairperson:** Are members content with page 114?

*Members indicated assent.*

**The Chairperson:** Are members content with page 115?

*Members indicated assent.*

**The Chairperson:** Are members content with page 116?

*Members indicated assent.*

**The Chairperson:** Are members content with page 117?

*Members indicated assent.*

**The Chairperson:** Are members content with page 118?

*Members indicated assent.*

**The Chairperson:** Are members content with page 119?

*Members indicated assent.*

**The Chairperson:** Are members content with page 120?

*Members indicated assent.*

**The Chairperson:** Are members content with page 121?

*Members indicated assent.*

**The Chairperson:** Are members content with page 122?

*Members indicated assent.*

**The Chairperson:** Are members content with page 123?

*Members indicated assent.*

**The Chairperson:** Are members content with page 124?

*Members indicated assent.*

**The Chairperson:** We will now consider appendices 1 to 7.

**Mr Byrne:** On page 114, does that section relate to a further note that the Committee Clerk will take on — ?

**The Committee Clerk:** That is a record of the formal vote.

**Mr Byrne:** OK. Thanks.

**The Committee Clerk:** For the paragraphs that I have that I am going to bring back next week.

**The Chairperson:** Yes, that will all be recorded.

**Mr Byrne:** That is OK.

**The Chairperson:** We need to consider appendices 1 to 7, which are on pages 125 to 132. The content of each appendix has not been included; rather, each appendix lists what it will contain. One full copy of appendices 1 to 7 is available to view, if anyone wishes to see it.

Are members content with appendix 1, which is the minutes of proceedings?

*Members indicated assent.*

**The Chairperson:** Are members content with appendix 2, which is the minutes of evidence as listed?

*Members indicated assent.*

**The Chairperson:** Are members content with appendix 3, which is the written submissions?

*Members indicated assent.*

**The Chairperson:** Are members content with appendix 4, which is the stakeholder event?

*Members indicated assent.*

**The Chairperson:** Are members content with appendix 5, which is the list of witnesses?

*Members indicated assent.*

**The Chairperson:** Are members content with appendix 6, which is the research paper?

*Members indicated assent.*

**The Chairperson:** The Committee Clerk wants to come in on appendix 7, which is correspondence.

**The Committee Clerk:** I just want to say that, because there was so much there, I am dividing it into two appendices, one for correspondence from DARD and one for correspondence from other people, to make it clearer and easier to read. It is nothing for you to worry about. It is just presentational.

**The Chairperson:** Having heard that, members, are you content?

*Members indicated assent.*

**Mr Byrne:** Is it the same list as in appendix 7 divided up?

**The Committee Clerk:** More or less, yes.

**The Chairperson:** So, DARD makes up the bulk of the correspondence. It covers from five to 38 on the list of correspondence, and there will be another appendix for the other correspondence.

**The Committee Clerk:** I will bring you a list next week.

**The Chairperson:** At next week's meeting, we will consider the executive summary and any amendments made today before formally ordering the report to be printed.

Are members happy enough with the process? Any questions? OK, members are happy enough.

*Members indicated assent.*