

Agriculture and Rural Development Committee

Report on the Reservoirs Bill

**Together with the Minutes of Proceedings, Minutes of Evidence, Memoranda
and Written Submissions relating to the Report**

Ordered by the Agriculture and Rural Development Committee to be printed 24 June 2014

Membership and Powers

Powers

The Committee for Agriculture and Rural Development is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46.

The Committee has power:

- to consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- to approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
- to call for persons and papers;
- to initiate inquiries and make reports; and
- to consider and advise on matters brought to the Committee by the Minister of Agriculture and Rural Development.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

Mr Paul Frew (Chairperson)
 Mr Joe Byrne³ (Deputy Chairperson)
 Mr Thomas Buchanan
 Mrs Judith Cochrane^{9, 10}
 Mrs Jo-Anne Dobson
 Mr William Irwin
 Mr Declan McAleer^{1, 4}
 Ms Michell Mcilveen⁸
 Mr Oliver McMullan
 Mr Ian Milne^{2, 7}
 Mr Robin Swann^{5, 6}

1 With effect from 23 January 2012 Ms Michaela Boyle replaced Mr Conor Murphy
 2 With effect from 08 May 2012 Mr Chris Hazzard replaced Mr Willie Clarke
 3 With effect from 19 May 2012 Mr Joe Byrne replaced Mrs Dolores Kelly as Deputy Chairperson
 4 With effect from 10 September 2012 Mr Declan McAleer replaced Ms Michaela Boyle
 5 With effect from 03 December 2012 Mr Danny Kinahan replaced Mr Robin Swann
 6 With effect from 21 January 2013 Mr Robin Swann replaced Mr Danny Kinahan
 7 With effect from 15 April 2013 Mr Ian Milne replaced Mr Chris Hazzard
 8 With effect from 16 September 2013 Miss Michelle McIlveen replaced Mr Trevor Clarke
 9 With effect from 01 October 2013 Trevor Lunn replaced Mr Kieran McCarthy
 10 With effect from 27 January 2014 Mrs Judith Cochrane replaced Mr Trevor Lunn

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List of Abbreviations and Acronyms used in the Report

DARD	Department of Agriculture & Regional Development
DOE	Department of the Environment
ICE	Institution of Civil Engineers
NIW	Northern Ireland Water
RA	Rivers Agency

Executive Summary

1. The Reservoirs Bill will define and provide a regulatory regime for what will be known as a controlled reservoir. It is anticipated that 151 reservoirs will fall under the remit of the Bill with the majority – around 50% being in public ownership. Approximately another 40% are in private ownership, 6% are owned by the third sector and there are still 4% reservoirs where the ownership is still unclear.
2. The Committee indicated that it had no concerns with the major principle of the Bill in that it is designed to protect people, the environment, economic and cultural assets from the consequences of a dam failure and the reservoir flooding. However, the Committee did have a number of concerns around how the Bill proposed to offer this protection.
3. The Department had some information on the 151 reservoirs such as ownership, capacity and preliminary risk designation. But it was unable to inform the Committee of the physical condition of the reservoirs and it could not quantify how much it might cost to bring them to an acceptable safety standard to protect people, the environment, economic and cultural assets. While the Committee accepted amendments proposed by the Department that would, in effect, allow the opportunity for this information to be collected and presented to the Assembly before large sections of the Bill are commenced, it was very strongly of the opinion that this work should have been done before the Bill was introduced to the Assembly. The lack of concrete information made decision making on aspects of the Bill very difficult.
4. The risk designation process as provided for at clauses 17 to 23 was an area of major concern for the Committee. It is the risk designation that ultimately decided the operating regime that the reservoir manager must adhere to. It was concerned that the use of terminology i.e. risk, suggested that reservoirs would be designated as high, medium or low risk using an assessment process based on consequence and probability. This is not the case as there is no acceptable worldwide standard for probability of reservoir failure. As proposed the risk designation process in the Bill will use consequence as the main designation tool. However, the Bill does mention and refer to probability in a manner that suggested that it will be used, thus creating, what the Committee perceived as an inoperable clause at clause 22. The Committee concern however, centred not only on terminology but on the inability of the reservoir manager to affect the risk designation by their compliance with the Bill. The Committee therefore voted not content with the relevant clauses. Post this Committee vote, amendments from the Department on this issue were received. The amendments and a brief outline of the policy intent as described by the Department are at Appendix 7. During the Committee consideration of this Report it agreed it was content with the amendments. However, some Members disagreed with this position and indicated that they had insufficient time to fully consider the implications and practical out workings of the amendments.
5. The Bill is based on ensuring compliance by reservoir managers with a series of operating requirements. These requirements or the operating regime are largely based on the directions of and are “overseen” by various types of reservoir engineers as appropriate to the task. The Bill has provision for the Department to establish Panels of Reservoir Engineers. The engineers are hired on a personal basis from these Panels by the reservoir manager. The Bill included a series of offence and penalties for the reservoir manager regarding non-compliance with the directions or requirements of a reservoir engineer. And while there was no disagreement on the offences and associated penalties, the Committee indicated that it wished to see a more balanced approach to the role of the engineers. It was felt that there was a real risk that, in the interest of being risk adverse and on the precautionary principle, engineers may, in the words of many witnesses “over engineer”. The Committee noted there was opportunity to challenge the direction of a reservoir engineer, by hiring another reservoir engineer to act as a referee. However, outside of this mechanism, which may prove expensive, it could be particularly difficult for lay people to challenge engineers. There was concern that

there was no central government “oversight” to ensure that such over engineering did not happen. The Department proposed an amendment to clause 106 to address this issue which the Committee was content with.

6. As noted above to comply with the Bill the reservoir manager must adhere to an operating regime as provided in the Bill. One such requirement that the Committee did feel was “gold plated” was the minimum number of visits by a supervising engineer to a high or medium risk reservoir in any 12 month period (at least twice in any 12 month period for high risk and at least once in any 12 month period for medium risk) . The Committee sought an reduction in this requirement. A proposed amendment from the Department allowed that high risk reservoirs would have a visit at least once in every 12 months with medium risk at least once in every 24 months. The Department provided advice on why this could not go any further. The Committee did not feel that the reduction was sufficient. It therefore voted not content with specific reference to clause 25(2)(k) and 33(4)(i). At the last minute the Department brought further revised amendments to reduce the requirement for medium risk reservoirs to at least one in every 36 months with no further reduction for high risk reservoirs. It should be noted that as the revised amendments were not received in time for the formal Committee vote on the relevant clauses, the Committee vote of “not content” remained its formal position. The Committee considered the revised amendments and noted that it had not had sufficient time to study them in detail. This prevented a decision on the revised amendments being taken.
7. As with the issue of information on the condition of the 151 controlled reservoirs in Northern Ireland, in the opinion of the Committee there is an information gap around the costs that reservoir manager can expect to have to meet in order to comply with the Bill. Despite the fact that legislation of a similar nature to this has been operational in England, Scotland and Wales for decades, the Committee could find no public information on the financial cost of compliance. What little information was available appeared to suggest that capital costs could often be extremely high. This caused concern and indeed, distress for some of the private sector owners who worried about their ability to meet such costs. An amendment proposed by the Department will see that information on costs is published and while this will not be helpful in the short term, longer term it should help address another “information gap” around the Bill.
8. The Bill allowed the Department to step in and take specified actions, including works, when the reservoir manager did not comply with the requirements of the Bill. In such cases the Department would be obliged to seek to recover the full costs of such actions / works. While the Committee were of the opinion that those who could afford to pay, should do so, it also recognised that some reservoir managers, particularly the third sector, may be in this position because they were financially unable to comply with the Bill in the first instance. In response to the concerns of the Committee, the Department has proposed amendments to allow some discretion in whether to seek to recover or not recover costs.
9. All reservoirs including those on private land with no public access, are important assets in terms of the environment. They are also important from the viewpoint of social and recreation use and often have an important flood attenuation role. The Committee therefore expressed concerns that some reservoir owners are either considering or are already decommissioning their reservoirs in an attempt to avoid having to comply with the legislation when it is enacted. The Committee is concerned that these aspects and consequential potential negative impacts has not been clearly thought through or assessed by the Department – other than making it difficult to do so once the Bill is enacted.
10. The lack of information on the condition of the reservoirs in Northern Ireland and the estimated cost to bring them up to an acceptable standard meant that the Committee could not fully comment on the Grant Aid provisions within the Bill except to note that it was content that the Bill contained such provisions, and that for some, mainly the third sector owners, all grant aid, particularly capital grants may need to be at 100%.

11. Finally the Committee did give detailed consideration to changing the part of the definition of a controlled reservoir dealing with capacity. It considered whether capacity should change from 10,000m³ to either 15,000 or 25,000m³. However, based on the information provided to it by the Department it would appear that this would ultimately have little or no benefit and it therefore did not seek an amendment on this issue.

Introduction

1. The Reservoirs Bill (NIA 187/11-15) was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 4 February 2014.
2. The Minister for Agriculture and Rural Development made the following statement under section 9 of the Northern Ireland Act 1998: “In my view the Reservoirs Bill would be within the legislative competence of the Northern Ireland Assembly.”
3. The stated purpose of the Bill is to introduce a legal and administrative framework for regulating reservoir safety in order to reduce the risk of flooding as a result of dam failure in the Northern Ireland. The legislation aims to provide assurance that people, the environment, cultural heritage and economic activity are better protected from the potential risks of flooding from reservoirs.
4. During the period covered by this Report, the Committee considered the Bill and related issues at **16** meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.
5. The Committee had before it the Reservoirs Bill (NIA 187/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill. On referral of the Bill the Committee wrote on 5 February 2014 to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 6 March 2014.
6. A total of 17 organisations responded to the request for written evidence and a copy of the submissions received by the Committee are included at Appendix 3.
7. Further to this the Committee organised an event specifically for private reservoirs owners as this stakeholder group proved difficult to engage. The notes of this event are included at Appendix 4.
8. Following the introduction of the Bill the Committee took oral evidence from departmental officials about the policy behind the Bill and its general provisions on 11 February 2014. The Committee took oral evidence from NI Water, Northern Ireland Environment Agency, Belfast City Council, Craigavon Borough Council, Newry & Mourne District Council, Antrim & District Fishing Club, Armagh Fisheries Ltd, the Ulster Angling Federation, Ligoniel Improvement Association, the Institution of Civil Engineers, Creggan Country Park and the Ballysagart Environmental Group. The Committee took further evidence from departmental officials on 8 & 29 April 2014, 6, 13 and 27 May 2014 and 2, 10 and 17 June 2014. The Minutes of Evidence are included at Appendix 2.
9. At its meeting on 11 February 2014 the Committee agreed a Motion to extend the Committee Stage of the Bill to 4 July 2014. The Motion to extend was supported by the Assembly on 24 February 2014.
10. The Committee carried out clause by clause scrutiny of the bill on **3 & 10 June 2014**. At its meeting on **24 June 2014** the Committee agreed its report on the Bill and that it should be printed.

Consideration of the Bill

Background

11. The Reservoirs Bill will introduce a regulatory and operating regime that the owners and managers of 151 reservoirs in Northern Ireland must follow. The Bill provides a framework designed to ensure and enforce if necessary an operating regime that will, in the opinion of the Department reduce the risk of flooding as a result of dam failure. The introduction of such a regime will provide an assurance that the people who live in the flood path of a reservoir and the environmental, cultural and economic assets are better protected from the risks of dam failure and flooding.
12. The Bill has 9 Parts, 121 clauses and 4 Schedules.
13. The Bill will create a definition of “controlled reservoirs” that will fall under its remit. These will be reservoirs that are structures or areas capable of holding 10,000m³ or more of water above the natural level of any part of the surrounding land and that are created wholly or partially by artificial means. The Bill has provision to allow the Department to bring a reservoir under 10,000m³ under its remit for specific reasons such as a potential loss of life if the dam was breached.
14. As it currently stands there will be 151 controlled reservoirs in Northern Ireland with ownership as follows.
 - 77 in the public sector of which 48 belong to NI Water (NIW) making it the single largest owner of controlled reservoirs in Northern Ireland.
 - 59 in the private sector;
 - nine in the third sector;
 - six with ownership unknown.

Key Issues

15. The Bill will introduce a regulatory framework that is designed to ensure and enforce if necessary an operating regime that will, in the opinion of the Department address and reduce the risk of flooding as a result of dam failure. The Committee indicated that it agreed with and fully supported the principle that there is a need to ensure the safety of reservoirs regarding flood risk and to protect the life of those who live in their flood path, as well as the environment, economic activity and cultural heritage that could be damaged from a reservoir flood. However, some key issues emerged during the evidence around how the Bill proposed to address these key principles and these are discussed below.

Audit of Reservoirs

16. 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 detailed in the Bill is the correct approach.

17. The Committee noted that the lack of information concerning the condition of reservoirs and the likely cost to repair has made decision making in other areas of the Bill difficult.
18. The Committee is aware that of the 151 reservoirs, 48 belong to Northern Ireland Water and these have been maintained to the standards set out in the Reservoirs Act 1975 which applies in England, Scotland and Wales. The remaining 29 reservoirs in the public sector belong mainly to local authorities and government departments and with some exceptions are also maintained to the spirit of the Reservoirs Act 1975. The Committee is mindful that the Department are concerned about the 59 reservoirs in private ownership and nine in the ownership of the third sector (68 in total). Of these 68 reservoirs, 42 are high or medium risk and will be obliged to comply with the entire operating regime in the Reservoirs Bill as low risk reservoirs have a light touch regarding operating regime. The Committee noted that the Reservoirs Bill has been drafted to ensure that the owner / managers of the high and medium risk reservoirs take action to bring them up to a safe standard and the Committee has no concerns on this policy aspect.
19. In its written response to the issues raised during an event held by the Committee on 18th March for private sector reservoir owners (see Appendix 7) the Department stated:-
- “The vast majority of reservoirs in Northern Ireland were constructed from clay core embankments, which are now more than 100 years old. The ICE¹ has stated that the engineering involved would be considered to be primitive when compared to the standard of reservoir construction today. Also, anecdotal evidence would suggest that many reservoirs in private and 3rd sector ownership have not been subjected to any type of maintenance regime over the years and certainly not to the standard required by the Reservoirs Act 1975 which applies in England, Scotland and Wales. Therefore, it is fair to assume that many of the privately owned reservoirs are very old and could be in poor condition. The introduction of the Reservoirs Bill will ensure that controlled reservoirs are properly supervised and inspected by qualified reservoirs engineers and that any remedial works to make them safe are undertaken in a timely way.”*
20. The Committee endorsed the need to ensure reservoirs are safe and the public are protected but is of the opinion that the Department should not rely on “anecdotal evidence” that suggested that the condition of some private sector and third sector reservoirs are old and in poor condition. The Committee considered that an audit would have the benefits of:-
- defining the condition of reservoirs particularly in the private and third sector, which may have provided the definitive rather than anecdotal evidence that the Bill in its current format is actually required;
 - allow an informed assessment of the level, type and criteria around any grant aid that is likely to be needed to bring reservoirs up to the minimum safety standards that the Department would expect;
 - would have gone some way to addressing the real worries, concerns and indeed distress that some reservoir owners are experiencing regarding the potential impact this Bill may have; and
 - addressed the information vacuum that appears to exist around condition of reservoirs in Northern Ireland and the cost of bring them up to an acceptable standard for public safety.
21. The Committee discussed this in some depth at various oral briefing sessions with Departmental officials over a number of weeks. The Department responded to the concerns of the Committee and proposed a fundamental shift in policy approach but within the confines of the existing Bill. It proposed a new approach which would allow (i) an initial financial assistance package for reservoir managers to enable them to undertake the first inspection process as detailed in the Bill, or if that had already been done, other initial works; and (ii) the Bill to be enacted but with only certain sections commenced and the other

1 Institution of Civil Engineers

recurring sections paused until this initial financial assistance package had been provided, the inspections undertaken and the findings provided to the Assembly. The amendments for this “pause” will be at clause 120 Commencement and clause 29 Inspection Timing.

22. The Department proposed that the initial financial assistance package, subject to the required approvals, would be funded from the Budget (No 2) 2014 Bill. The financial assistance would come into effect before the Reservoirs Bill is enacted. The parts of the Bill which were “paused” would require affirmative regulation in the Assembly to be commenced. In a letter dated 30th May 2014, Minister O’Neill wrote to the Committee on this issue and stated (see Appendix 7) :-

“Provision for this assistance has been made in the 2014/15 Main Estimates which reads, “Expenditure to assist owners to comply with proposed reservoir legislation”. The Committee will be provided with a copy of the 2014/15 Main Estimates which sets this out. This will be included with DARD’s June Monitoring Round proposals. Also, the business case to support this funding will be shared with the Committee when completed. It is expected that reservoir managers will use this assistance to commission an inspection of their reservoir, if they have not already done so. This will allow the Department to identify those reservoirs that are in need of work, to establish the associated costs, and to determine the need for a future grant scheme under the new Reservoirs legislation.”

23. The letter from the Minister further sets out the two phase approach and what will be in phase 1 and phase 2 (see Appendix 7).
24. The Committee discussed this proposal and amendment at some length with some Members indicating that they were still not content with the approach and that it would be their preference that the Department “park the Reservoirs Bill” and that the Department take responsibility for an initial audit. Once that had been completed, the Department should reassess if the Reservoirs Bill as proposed was still required, or whether appropriate regulation could be brought forward in another manner.
25. Some concerns were expressed that the proposed initial financial assistance approach was prefaced on the assumption that the Reservoirs Bill would pass through its Assembly Stages without being substantially altered. There was concern around Committee scrutiny of the financial assistance as its provision was within the Budget Bill and this would fall to the Committee for Finance and Personnel, although it was recognised that the Committee would scrutinise the Business Case for this initial financial assistance.
26. After due consideration of all the issues and the proposal, and on foot of reassurances from the Minister, the Committee indicated that it was content and commended the Department for bringing this revised approach and the amendments to clause 120 Commencement.

Costs of compliance

27. The cost of complying with the requirements in the Bill was a major issue discussed during the Second Stage Debate in the Assembly and the Committee Stage of the Bill. The costs of complying with the Bill could include the following non exhaustive list:-
- costs to commission a supervising engineer who may decide that multiple visits to the reservoir is required depending on the condition of the reservoir;
 - costs to commission an inspecting engineer;
 - costs to commission a construction engineer, only required when undertaking such works that fall within the definition of construction or alteration of a reservoir;
 - costs of complying with safety recommendations – capital works or maintenance works;
 - costs associated with appeals and disputes;

- costs associated with monetary penalties arising from non-compliance;
 - possible repayment of costs incurred by the Department if the reservoir manager does not comply with certain conditions of the Bill for example at c69.
28. The Bill allows that the frequency of the visits of the engineers, particularly the supervising engineer, would be decided by the engineer at cost to the reservoir manager. Members were aware that there is little public information available on what the costs of such visits are likely to be. There was disquiet at the lack of information particularly in the Explanatory and Financial memorandum.
29. Members took evidence from and commended NI Water for operating to the spirit of the Reservoirs Act 1975 which covers England, Scotland and Wales. The Committee was also aware that some of the other public sector owners such as Belfast City Council also currently implemented a management regime that would allow them to become compliant with the Bill without incurring new and additional costs.
30. The Committee noted that similar assurances could not always be made by other public sector owners. For example, it noted the evidence and concerns raised by Newry and Mourne District Council regarding the estimated cost of remedial and capital work for Camlough Lake including its concerns regarding access to the substantial sums of monies required. In oral evidence to the Committee on 25th February 2014 an official from Newry and Mourne District Council stated (see Appendix 2):-
- “Therefore, a report investigating the works necessary to bring the dam to a safe standard was produced. A copy of the ‘Camlough Reservoir Improvement Options Report: February 2014’ is available, and the addendum report, a supplementary abandonment scoping report, is also enclosed. The report recommends the rehabilitation option, at a cost of £2,510,000. That capital cost assessment is identified in paragraph 8.8 on page 24 of the report. NI Water has indicated that it will apply to the Department for 50% of the cost. There is therefore a budget of £1.25 million to be found. Given the council’s present activities at Camlough lake, for the purpose of the Reservoirs Bill, when enacted, the council will be the reservoir manager. If Newry and Mourne District Council were to continue to use Camlough lake, the cost could fall to the council.”*
31. The Committee noted that in the opinion of the Department, Camlough Lake is an extraordinary case with extreme costs that are unlikely to be repeated across Northern Ireland. However, as discussed earlier in this report, as no audit of reservoirs has been carried out, the Department cannot provide definitive evidence that this is the case. In oral evidence to the Committee on 8th April 2014, Departmental officials stated (see Appendix 2):-
- “Camlough is the worst example, and I do not expect to find another like it, purely because of the size of the lake, the condition of the structure and the number of houses downstream. I hope that that gives you a little comfort. I know for a fact that there are reservoir managers and owners who have an engineer’s report and have not actioned matters in the interests of public safety.”*
32. The Committee accepted that while many parts of the public sector will have to meet the new and additional costs arising out of this Bill, such organisations do have the means via the public purse to fund the operating regime that will be imposed particularly where the issue of public safety is concerned.
33. The same is not true of the private sector and the third sector. For many, if not most in these sectors this will be a new, additional and unknown cost. There is almost a complete lack of public information on the potential cost for complying with the Bill and many of those who talked to the Committee found this gap in information to be worrying. It was the costs associated with complying with safety recommendations that would incur capital costs that created a real sense of worry and indeed fear for some of the private and third sector individuals that talked to the Committee.

34. In oral evidence to the Committee on 25th March 2014 the Institution of Civil Engineers stated (see Appendix 2):-

“For our committee, a far bigger funding issue is the cost of repairing these dams and bringing them up to the standard of public reservoirs. For some, tens of thousands of pounds would be needed to bring their overflows or whatever up to standard. As a committee, we have talked about the fact that the funding not only of inspections but of 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.”

And

“The difficulties that you are discussing are very similar to those that we see. As an AR panel engineer, the reservoirs that I dread going to are fairly large, were built 100 years ago and are in the hands of private owners, having previously been under the ownership of a municipal water authority. That is because those structures demand a lot more maintenance and ongoing cost. I sometimes feel that the private owners are not aware of what can happen. A relatively minor repair could cost £50,000, but it could go up to millions. I looked at one last week, which belonged to a water utility. The two costs that it was looking at were £5 million and £10 million. That was to sort out a spillway, where clearly something had to be done. So, there are large costs involved in some of these structures.”

35. The evidence collected by the Committee indicated that some reservoir owners / managers in the private and third sector had no idea that the body of water on their land was a reservoir – it had been there so long many assumed it was a natural structure. Many, but not all, were unaware of the potential for and the consequences of dam failure. As they never received flood maps they did not know how far or how fast and deep the water could run, or how many people may be affected if the dam failed. The Committee is aware that these individuals and organisations would be culpable under common law if the dam wall failed on a reservoir. While the Committee agreed that the priority should be the safety of the people living below a reservoir, it nevertheless had sympathy for the situation that the private sector and third sector reservoir manager may find themselves in post enactment of the Bill. In a written submission to the Committee a private sector reservoir owner, Mr and Mrs Wilson wrote:-

“We never imagined we could be in possession of a so called reservoir (we see our lake / mill dam as such and nothing else).”

And

“How can a family farm be expected to carry the ongoing cost of inspection never mind the impact of perhaps hundreds of thousands of pounds of works needed to be spend to comply? No Bank would ever lend such money for works or exorbitant inspection fees.”

36. In oral evidence to the Committee on 11th March 2014, Antrim and District Angling Association Club stated:-

“It is not just the cost of what you are talking about but the ongoing cost of the whole exercise. We have already spent £3,500 on engineers’ reports. We paid for that ourselves. You have to bear in mind that nearly half our members are honorary members and pensioners and that those bills quickly mount up.”

37. The Committee had major concerns regarding the ability of reservoir manager to pay for the costs of compliance and what could potentially happen if the costs could not be met. The Committee was particularly but not exclusively concerned for the third sector and some private sector owners. In its oral evidence to the Committee on 11th March 2014, Armagh Fishing Club indicated that it was a community based organisation and that without 100% grant aid to meet the costs of complying with this legislation, it would likely be unable to continue operating and may cease to exist or may go bankrupt.

Mr Doyle: We would fold without it. Our club would cease without 100% grant aid.

Mr Donnelly: Yes, we would go bankrupt. It is as simple as that.

38. The Committee was also strongly of the opinion that the three paragraphs in the Explanatory and Financial Memorandum were not sufficient. The Committee was able in a matter of weeks to collect information on the cost of compliance with the proposed regime in the Bill from Northern Ireland Water, from various Government Departments and from some Northern Ireland Councils (see Appendix 7). While recognising that these are indicative of costs in the public sector, it does consider that they go some way to addressing the information vacuum around and the need for transparency on the costs of complying with the requirements of the Bill. The Committee provided this information to the Department with a request that a supplementary document to the Bill on indicative costs be provided. Some of the figures provided are shown below for information purposes only and indicate the range of likely costs that reservoir managers may face.

Reservoir Name	Financial Year	Reservoir Monitoring	Reservoir Supervision	Inspecting Engineer	Construction Engineer	Maintenance Works	Capital Works
Creightons Green (NI Water)	2005/2006	£0.00	£1,000.00	£2,000.00	£0.00	£3,000.00	£0.00
	2011/2012	£0.00	£1,000.00	£0.00	£0.00	£3,000.00	£109,812
Lower Conlig (NI Water)	2005/2006	£0.00	£1,000.00	£2,000.00	£0.00	£2,000.00	£0.00
	2013/2014	£0.00	£1,000.00	£0.00	£0.00	£2,000.00	£72,000
Springfield Pond (DSD)	2008/2009	£0.00	£0.00	£3,450.00	£0.00	£2,000.00	£0.00
	2009/2010	£0.00	£0.00	£0.00	£0.00	£3,350.00	£0.00
	2010/2011	£0.00	£4,000.00	£0.00	£0.00	£3,206.00	£0.00
	2011/2012	£0.00	£0.00	£0.00	£0.00	£8,121.00	£0.00
	2012/2013	£0.00	£0.00	£0.00	£0.00	£3,146.00	£0.00
	2013/2014	£0.00	£0.00	£0.00	£5,011.00	£0.00	£4,750.00
Kiltonga (DARD)	2008	£373.44	£152.76	£0.00	£0.00	£58.20	£0.00
	2009	£205.00	£157.48	£0.00	£0.00	£60.00	£0.00
	2010	£255.90	£161.26	£0.00	£0.00	£61.44	£0.00
	2011	£163.30	£165.94	£0.00	£0.00	£63.22	£0.00
	2012	£140.51	£170.25	£0.00	£0.00	£64.87	£0.00
	2013	£338.35	£174.68	£2,255.00	£0.00	£1,331.04	£6,861.33

39. Despite a similar system being operated in England, Wales and Scotland for some decades, the Committee was of the opinion that there is a lack of transparency on the likely costs associated not only with the inspecting and supervising aspects but with the more substantial repair, maintenance and capital costs. The Committee understood that the Panel of Engineer system operated on one of commercial competition and confidentiality but nevertheless it was not content with the paucity of information on costs for hiring the various types of reservoir engineers. The Committee therefore welcomed an amendment for a new clause at 106A which proposed that the Department may publish information as regards range of costs of the provision of relevant services by engineers who are members of panels of reservoirs engineers. In presenting this amendment to the Committee on 3rd June 2014, Departmental Officials stated (see Appendix 2):-

“We have added the provision that the Department may publish information on the range of costs for the provision of relevant services by engineers. This allows us to publish the range of costs, probably based on the average costs and then the outliers, to give people an indication of what they should expect to pay. They can then look at it and say whether they are getting a good deal or a bad deal; it allows them then to ask that question. We feel that this is consistent with the legal advice we got in that we are not entering into the realm of dealing with the contractual relationship between an individual and their engineer. It allows us to publish information without being embroiled in the contractual relationship.”

Cost Recovery Aspects

40. The Committee in its deliberations noted that when the reservoir manager failed to comply with certain requirements of the Bill, the Department has provided itself with the powers to meet those requirements. This would cover operating requirements such as commissioning an engineer, carrying out safety works etc. In most of these instances the Bill as drafted provided that the Department must recoup or recovery the full costs. The Bill used wording such as that at clause 65(4) *“The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in pursuance of the exercise of its powers under this section.”* There are a number of clauses in the Bill which deal with the issue of cost recovery. These are clauses 53(3)(m), 65(4), 67(6), 69(6), 71(7) & (8), 86(1) and 92(8).
41. The Committee understood that some reservoir managers may refuse to comply with the operating regime but for many it could be because the reservoir manager may be simply financially unable to comply. This was a fundamental issue for the Committee. It did not want the Department having to pursuing a community based club or a small farm when it was clear that there was little or no real prospect of the reservoir manager being able to pay. The Committee understood and agreed that any change to the cost recovery powers needed to ensure that those who could afford to pay did so. It was important that any change in provisions on this issue did not allow those who could afford to pay costs to avoid doing so. But it had a fundamental concern that as it stood the provisions could cause unforetold hardship, worry and stress or indeed bankruptcy for some individuals or third sector reservoir managers.
42. The Department agreed and suggested that it would amend a number of clauses to enable it to have discretion on cost recovery. Thus in cases where there was no possibility of a reservoir manager being able to pay or indeed where it did not make economic sense to seek to recover costs, the Department will have some discretion. In oral evidence to the Committee on 29th April 2014 departmental officials in discussing this issue with the Committee stated (see Appendix 2):-

“We will still keep quite strong on the first part of that. There will still be a duty on the reservoir manager to pay. However, maybe it could be something along the lines of “if requested” or “if deemed appropriate”. There has to be some discretion. However, if it is requested and we think that it is reasonable to recover the costs, the Bill does need to state

that they “must pay” so that we do not have a loophole whereby people can say, “I am quite able to pay, but I am going to give you the runaround”, and we have no powers.”

43. Creating this set of amendments necessitated putting in an appeal system. The appeal system is to the Water Appeal Commission. The amendments for the cost recovery aspects of the Bill are to clauses 53(3)(o), 53(3A), 53(3B), 65(4), 65(5), 67(6), 67(7), 69(6), 69(7), 71(8), 71(A), 86(3), 86(4), 92(8) and 92(8A), new clauses 103A, 103B and 103C, and consequential amendment to Schedule 3. The Committee received, discussed and noted it was content with the amendments on this issue at its meeting of 10th June.

Grant Aid

44. Clause 105 deals with grants and provides powers for the Department to make provision in regulations to enable the payment of grants to reservoir managers of controlled reservoirs to assist them in complying with their obligations under the Bill. The regulations, which will be under the Affirmative Assembly Procedure, will specify the terms and conditions of the payment of the grant. The Committee recognised that the issue of grant aid was vital both for community based organisations and indeed many of the private owners who may not have access to the potential large capital required for reservoir repair. In oral evidence to the Committee on 1st April 2014 Creggan Country Park replied on a question regarding grant aid (see Appendix 2):-

“It would not really matter. If the bill is £100,000, and someone says, “We will give you half”, we would not have the other half. If we had spent that half this year or last year, we would not have been able to pay for the insurance, the oil, the electricity and the rest of our bills. It is simple as that.”

45. The Committee noted and welcomed the proposal by the Department for the cost of the initial inspection to be covered by a financial assistance package (see paragraph 21 – 26 of this report). One of the outcomes of this should be that it will enable the Department to assess the costs of capital work required to bring all reservoirs up to a minimum safety standard. The Department will use this to assess if all or part of those costs be can or should be provided by the Department in all cases and situations. The Committee considered the following information from Departmental Officials in an oral evidence session on 13th May:-

“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.”

46. The Committee, taking into consideration the fundamental shift in the policy approach of the Bill to allow for the initial assessment of the condition of reservoir and approximate costs to bring to a safety standard, are content with the provision for grant aid in the Bill at clause 105.

Risk Designation Process

47. The Bill outlined a risk designation process at clauses 17 to 23. This section of the Bill outlined the requirement for the Department to give every controlled reservoir manager a risk designation of high, medium or low as soon as reasonably practical after a registration process. It also outlined how a review and an appeal of the risk designation would happen and what matters would be taken into account in giving the risk designation.

48. Each risk designation of high, medium or low would bring with it different operating requirements. The risk designation given to each reservoir would define an operating regime that the reservoir manager must adhere to including enforcement procedures and offences and penalties for non-compliance. The Committee considered that the risk designation process was therefore at the heart of the Bill.
49. When giving a risk designation the Department must take into account the matters mentioned in clause 22. Clause 22 referred to adverse consequences of an uncontrolled release of water from a reservoir and the probability of such a release. However, it soon became clear that the risk designation will not take account of the probability or likelihood of the reservoir failing despite being specified in the Bill. The risk designation will only, at this point in time and for the foreseeable future, take adverse consequences or impact into account. Clause 22(2) states
- (2) For the purposes of subsection (1)(a), potential adverse consequences include -
- (a) potential damage to any of the following
- (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.
50. Of these criteria the most important one is loss of life. Where a reservoir breach could endanger one or more lives it will be assessed as high impact. So if there are any houses in the flood path of a reservoir the reservoir will be given a high risk designation. The Committee indicated that it had no concerns with the importance placed on human life.
51. The Committee expressed concern that the risk classification methodology proposed in the Bill was based on impact with no weighting given to likelihood. No consideration would be given to any remedial works that a reservoir manager may carry out. In other words, no matter how safe the reservoir is or is made to be, it will continue to be ranked as high risk unless all risk to human life (the consequence) is removed from its flood path. In oral evidence to the Committee on 25th March 2014, the Institution of Civil Engineers stated (see Appendix 2):-
- “The legislation is very well designed in that it takes a risk-based approach. The problem with the risk-based approach is that, at the moment, there is no universally accepted standard to assess the likelihood of a dam failing. However, the legislation, as it stands, is beneficial in the sense that you will not have to come back and re-enact primary legislation when a risk-based approach to dams has become accepted worldwide. You can then invoke that through secondary legislation. Your legislation, as drafted, is risk-based, but it is risk-based according to the consequence: if the dam fails.”*
52. The Committee discussed its concerns with the risk assessment process in considerable detail over a number of meetings and noted that once enacted, the risk designation process would, for the foreseeable future, be based on consequence only. It would appear that, short of removal of the threat to life, by for example removal of habitable dwellings, nothing could be done by the reservoir manager to change their designation.
53. The concerns of the Committee came down to two aspects. The first is that the Bill uses the term “risk” and this suggests that consequence and probability will be used to assess and to give a risk designation. This matches with what is a common understanding of risk. However, this is not the approach that will be used and the Committee were concerned that in the context of the Bill, the use of the term “risk” was misleading.

54. A second and more fundamental issue is that, in the opinion of the Committee, the Bill contains an inoperable clause which created what could be perceived as an inherent unfairness to the reservoir manager. No amount of investment by the reservoir manager, no amount of compliance with the operating regime and undertaking of safety measures would enable the risk designation to change over time. The Bill was based around the concept of enforcement and there was no incentive in any part of the Bill to encourage and reward compliance by the reservoir manager.
55. The Committee noted that Ligoniel Improvement Association and Belfast Hills Partnership, who provided evidence to the Committee on 25 March 2014 summarised the concerns of the Committee when they stated (see Appendix 2):-

“A particular issue is the classification of high, middle and low risk and the word “risk”. We are not risk management professionals. We deal with risk management, and our common understanding is that risk is the potential perceived estimated impact of an incident multiplied by the probability of such. If you can lower the probability, you lower the risk. What we believe is being classified here is potential impact. The proposal is that you would nominate a reservoir as being high risk and always high risk, depending on volume, but particularly for housing below a possible inundation route should a dam fail. We regard the use of the word “risk” as extremely difficult.”

And

“You could, for instance, have two high-risk reservoirs in an area — one that needed urgent attention and one that did not — but would they both be called high risk? We see that as a problem.”

56. The Committee therefore voted during its formal clause by clause on 3rd June 2014 that it was not content with the risk designation clauses and that it would reserve the right at Consideration Stage to recommend to the Assembly that these clauses not stand part of the Bill. The Department responded by proposing amendments to address the two concerns of the Committee i.e. the terminology concern and inability of reservoir manager by compliance and investment to change the risk designation.
57. The terminology amendments proposed that “risk designation” is replaced by “reservoir designation” throughout the Bill. Therefore ‘High-risk’, ‘medium-risk’ and ‘low-risk’ would be replaced by ‘high-consequence’ medium- consequence, and ‘low-consequence’. This would impact at clauses 3, 8, 16, 17, 18, 19, 20, 21,23, 24, 25, 28, 29, 30, 31, 32, 33, 35, 36, 46, 49, 52, 53, 54, 55, 56, 77, 88, 91, 93, 95, and 107 as well as Schedule 1, Schedule 2 and Schedule 3.
58. The Department proposed to address the concern on changing risk designation by amending clause 22 to provide that the issues such as those in paragraphs (a) to (e) of 22(3), for example how the reservoir is maintained, may be considered for both consequences and probability of an uncontrolled release of water. This amendment would allow the Department to consider these issues as well as the consequences, which will be based on detailed reservoir inundation maps. This new revised methodology would operate until a suitable methodology was agreed to determine the probability of reservoir failure. In the opinion of the Department, this opens up the potential for a reservoir designation of high consequence to be changed to medium consequence in the circumstances where a reservoir manager has completed all the works in the interests of safety and these works have been certified by the inspecting engineer. The amendment also provided for a new clause 22A which would provide power by regulations to amend the matters to be considered when giving a reservoir designation, in particular, providing a methodology for assessing the probability of an uncontrolled release of water. These regulations will also allow for the term risk to be re-introduced into the Bill, if desired. There would be consequential amendments to clauses 3 and 117.

59. The policy of the proposed amendments was presented to the Committee informally on 9th June along with a revised “Reservoir Risk Matrix” (see Appendix 7). The amendments were tabled at the Committee meeting 10th June 2014 (see Appendix 7). The Committee considered the amendments and noted that it had not been given sufficient time to consider the policy implications and the potential impacts of the proposed amendments. It had concerns that the operating regime in the new proposal did not show sufficient change and in fact may make the situation worse for the reservoir manager.
60. The Committee deferred deciding on its formal view of the amendments until 17th June when it took further oral evidence on this issue. The Department explained that in recognition that it was speed and depth of water, as well as volume that created the risk to human life and in response to Committee concerns, it was in the process of procurement of new flood maps. These new maps would allow velocity and depth of flood water from a reservoir to be mapped, as well as volume. This would provide a more detailed analysis of the consequence of a flood and therefore allow for a more accurate designation. It was also pointed out that the amendment created greater flexibility in the Bill to allow for change in designation by for example, the ability to carry out works that would divert flood water or change its speed / depth.
61. It should be noted that as the amendments were received too late for the formal Committee vote on the relevant clauses, the Committee vote of “not content” remains as its formal position. However, on 17 June the Committee considered the information provided to it (after the formal vote) and voted that it was now content with the amendments. However, some Members voted against the amendments stating that they considered that they had not had the time to fully scrutinise them. Based on the revised Risk Assessment Matrix, (see appendix 7), these Members had concerns that the amendments made little real difference to the operating regime and that the eventual impact was at this stage unknown.

Reservoirs Panel Engineer System

62. Part 7 of the Bill is concerned with the Panel of Reservoir Engineers including the establishment, alteration or dissolution of panels and the removal of panel members.
63. The Committee recognised the professionalism of the Institution of Civil Engineers. It had an oral evidence session with and questioned the Institution of Civil Engineers in some depth on the system as it currently operates in England, Scotland and Wales. The Committee was confident that Institution of Civil Engineers demonstrated a very high degree of integrity, experience and expertise regarding reservoirs engineering. It noted that the Panel of Engineers, as it operates in England, Scotland and Wales works on a five year renewable basis and that there have been occasions where engineers reapplying to the panel have been unsuccessful. The Institution further stressed that an individual engineer must demonstrate a high degree of expertise and experience before being admitted to the Panel System. In oral evidence to the Committee on 25th March the Institution of Civil Engineers stated (see Appendix 2):-

“The panel appointments are made on a five-year renewable basis. Panel engineers have to reapply, and there are cases of people who have not been reappointed. I believe that your proposed legislation covers for the removal of people from the panels.”

64. The Committee noted that the Bill does contain a system of reviews, dispute referrals, and appeals of decisions at various stages of the operating regime. However, when there is a dispute on a technical issue or direction from a reservoir engineer it requires another reservoir engineer to act as a referee. Part 5 deals solely with the Dispute Referral mechanism. The Committee further noted that it is an offence not to comply with the instructions of the various engineers and that defences for such non-compliance are laid out in the Bill.

65. The Committee had concerns that the Bill could be viewed as, and indeed some of those who spoke to the Committee called the Bill an “Engineers Charter”. The Committee considered that this may be a particular concern for the private and third sector reservoirs managers who are lay people and perhaps less able to understand and challenge recommendations that reservoir engineers may make regarding the number of supervising visits and / or the repair, capital and remedial works that may be required for a reservoir or other similar such requirements.
66. The Committee expressed concerns that the Bill lacked sufficient checks and balances on the engineers particularly, but not exclusively, around costs and charges and prevention of requirement of works above what would be necessary for minimum safety standards. Many who spoke to the Committee indicated concerns that an engineer would over specify works on the precautionary principle. Part of this concern arises from what the Committee considered is an information vacuum around the charges made by the various reservoir engineers and that any review of recommended works by a reservoir engineer involved having to hire another reservoir engineer. It therefore welcomed proposal by the Department to amend clause 106 to allow for scrutiny by the Department of the contents of the reservoir engineer reports. In oral evidence to the Committee on 3rd June the Department presented this amendment and stated (see Appendix 2):-

“Instead of there just being reference to the “quality” of the reports, we have added the words “and content”, which are very important. The word “quality” could relate to just the format and type and whether it is in the right paragraphs or covers roughly the right issues. We have gone a significant step beyond that in that it is not just the look and feel of the report that is covered but what the report actually says. This is what we mean by dealing with over-engineering. Where a reservoir manager is concerned about over-engineering, we will have an interest in that as the reservoir authority. This then gives us the power to be concerned about not only the quality of the report but its content, which could be either good or bad. We are specifically steering away from using the term “over-engineering” because there may well be poor quality reports or poor content reports that we want to address. It is not just about gold-plating. That is why we felt that it was best to keep it like that. So, there is reference not just to “quality”, which is what was in the clauses previously, but “and content”. We hope that the words “and content” will allow us to address reservoir managers’ concerns about over-engineering.”

67. The Committee indicated that it welcomed and was content with the amendment to clause 106 Assessment of engineers’ report etc.

Operating Regime

68. The Committee examined the operating requirements within the Bill and welcomed the light touch for low risk reservoirs. However, it expressed a general discontentment with the supervising and inspecting requirements for high and medium risk reservoirs. The Bill stated at Clause 25(2)(k) that the supervising engineer must visit a high risk reservoirs at **least** twice in every 12 months and that a medium risk reservoir will require a visit at **least** once in every 12 months. Both will require a visit by an inspection engineer a minimum of once in every 10 years. As it stands in the Bill this is the minimum requirement, and more supervising and inspecting visits could and are likely to be specified in many cases until the structure is made safe. The costs of such additional visits are to be met by the reservoir manager. The Committee are aware that such costs could mount up, become substantial and have not seen sufficient evidence to suggest that multiple visits would improve the safety situation. In evidence to the Committee on 25th March 2014 on the issue of multiple visits the Institution of Civil Engineers stated (see Appendix 2):-

“Other recommendations are much more immediate, such as a leak, and require further monitoring. Carrying out more monitoring to keep an eye on the leak is one way of managing it; fixing the leak is another. It is likely that more regular monitoring will be required before

all the issues are resolved, at which point you go back to the default position of a 10-yearly inspection and supervision twice a year. The default position applies when a reservoir is returned to a satisfactory condition: it meets standards and does not require a lot of urgent inspection monitoring work. The default position is set out: biannual and 10 -yearly inspections.”

69. Further evidence from the Institution stated that often dam failure is due to unforeseen causes such as exceptionally high rainfall, which no amount of supervising engineer visits could account for (see Appendix 2):-

“Back in 2007-08, Ulley failed through high rainfall etc. It overtopped as the spillway was inadequate. That caused the M1 in England to be shut — in England, they do not shut motorways — because it was a risk to the main north-south gas main. The failure occurred rapidly. They had not seen it coming for weeks. I have seen the pictures of the Fire Service trying to pump down the dam. All the sluices were open, there was a big scour hole on the front slope, and the dam was at risk. Unfortunately, things do happen.”

70. In oral evidence to the Committee on 11th February 2014, Departmental officials provided evidence to support this operating requirement and stated (see Appendix 2):-

“We are setting at least two visits a year by a supervising engineer for high-risk structures, so for those who own an old, ropery clay bank that has not been well maintained and about which they are a bit concerned, the supervising engineer should be saying that two visits are not enough. The engineer should be saying, “We are going to do many more than two in order to provide assurance that your structure is not moving, leaking or at the point of breach”. The minimum standard is at least two visits per year by a supervising engineer, although a supervising engineer can do more inspections for structures that owners are more concerned about.”

71. The Committee were not convinced the operating requirements for the minimum number of visits as set out at Clause 25(2)(k) and 33(4)(i) are proportionate. It was the opinion of the Committee that the requirements were “gold plated”. The Committee therefore considered proposals by the Department for amendments at clause 25(2)(k) and clause 33(4)(i) to reduce the operating requirements for a minimum number of visits by a supervising and inspecting engineer. In oral evidence to the Committee on 13th May 2014 Departmental Officials stated (see Appendix 2):-

“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.”

72. The Department provided a Reservoir Risk Matrix to the Committee which can be found at Appendix 7 of this report. Departmental officials stated the following on 13th May 2014 (see Appendix 2):-

“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."

73. In the opinion of the Committee the amendment did not go far enough in reducing the minimum number of visits by a supervising engineer. It considered the evidence that reservoir engineers may not be comfortable with or have professional liability cover for further reductions and decided not to suggest its own Committee amendment on clauses 25(2)(k) and 33(4)(i). The Committee also noted that, even if the departmental amendment was accepted, there was no upper limit on the visits. Based on these two concerns during its formal clause by clause consideration, the Committee voted "not content" with Clause 25 and 33 but with specifically reference to clauses 25(2)(k) and 33(4)(i).
74. In response to this position the Department provided a revised amendment to the Committee on the last day of its Committee Stage of the Bill (24th June 2014). This revised proposed amendment would change the requirement for a supervising engineer to visit a medium consequence reservoir from at least once in every 24 month period to at least once in every 36 month period. The Department did not considering a change to the requirement for a supervising engineer to visit a high consequence reservoir at least once in every 12 month period.
75. It should be noted that as the revised amendments were not received in time for the formal Committee vote on the relevant clauses, the Committee vote of "not content" remained its formal position. The Committee considered the revised amendments and noted that it had not had sufficient time to study them in detail. This prevented a decision on the revised amendments being taken.

Decommissioning Reservoirs and Potential Impact of Decommissioning

76. The term decommissioning is not used within the Bill – it refers to abandonment and discontinuing with distinct technical definitions of each as follows:-
- Discontinuance – making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of the surrounding land (but may still hold water); or
 - Abandonment – making the reservoir incapable of holding any water above the natural level of the surrounding land.
77. However many of those who presented to the Committee used the term decommissioning as one they understood. The evidence presented was that decommissioning was a serious possibility for many reservoir managers in order to avoid what could become a serious and ongoing liability. Some of the evidence suggested that some reservoir owners would decommission now before the requirements of the Bill became law. In oral evidence to the Committee on 25th February 2014, this issue was discussed with the representatives from Northern Ireland Councils with officials from Craigavon Council stating (see Appendix 2):-

"Given the costs that are associated with registration, inspection and maintenance, it is our opinion that a grant scheme should be developed to assist reservoir owners to meet any legal obligations placed on them. We are aware that some reservoirs have already been decommissioned in anticipation of the Bill, and there are likely to be consequences in flood mitigation if the process is accelerated."

And

"One reservoir is in the process of being decommissioned because the owner is so frightened by the tenor of the Bill, and the other is being considered for decommissioning."

78. However, during discussions with the Northern Ireland Environment Agency, it was made clear that “decommissioning” was perhaps more complicated than reservoir managers envisaged. In oral evidence to the Committee on 18th February 2014, Northern Ireland Environment Agency officials stating the following regarding “decommissioning” (see Appendix 2):-

“Without prior agreement from the agency, they would be in breach of a number of pieces of environmental legislation, for example, the Water (Northern Ireland) Order 1999. It would be illegal to discharge what could be a polluting or noxious material as described. The contents of the bottom of a reservoir would not be regarded as pristine, clean water; therefore, they would be knowingly or otherwise discharging something that could have a polluting impact. If there is a fish kill, the fisheries legislation kicks in. It would not be consistent with the water framework directive, and if it is in a sensitive habitat or area, and a number of the private reservoirs are, it could breach the habitat regulations as well. We have responded to small bodies of water that have been drained, perhaps because of disputes between farmers, and even those small activities have led to impacts and, allegedly, fish kills, although we did not get the evidence when we went out to inspect.”

And

“I do not know the particular example, but, in theory, moving from a reservoir full of water to dry land is a change of land use, which could require planning permission. There is no set formula for deciding whether, if you turn a small reservoir into slightly drier wetland, that is a change of land use. The Planning Service would have to decide whether the change in land use was significant enough to warrant planning permission. Once the planning permission process kicked in, we would be consulted and be directly involved in commenting on or conditioning how it was done.”

79. The Committee noted that greater clarity was required around the issue of decommissioning and planning permissions, particularly regarding the use of site and / or land of any decommissioned reservoir – for example could it be used for building or as agricultural land.
80. The Committee noted and expressed serious concerns around the potential impacts of decommissioning. Reservoirs are important environmental, social and recreational assets and some are in area of special scientific interest (ASSI). If a reservoir is designated as being on an ASSI, the owner is legally bound to notify the NIEA of any alterations such as decommissioning. In oral evidence to the Committee on 1st April 2014, the Chairperson of Ballysaggart Environment Group stated (see Appendix 2):-

“As I understand it, there are 151 reservoirs, 59 of which are privately owned. I am concerned that people who privately own the reservoirs may drain them to avoid having to pay the money to employ engineers and so on to survey and fix them. So, I am concerned that there is nothing in the Bill to protect reservoirs from being drained. I am also concerned that they have not been looked at from the point of view of the natural environment.”

81. In oral evidence to the Committee on 11th March 2014 The Ulster Angling Federation discussed this issue with the Committee and stated (see Appendix 2):-

“I am telling you what people have done because they know that this is coming up the track to them. If they put a bulldozer through one of the walls of the reservoir and let the thing go, that it is finished with, as far as they are concerned. It does not concern them anymore; it is gone. So, you are in danger of losing that environment and all those amenities between Antrim and Armagh for nearly 1,000 anglers. You heard in my presentation that the most recent angling review highlighted that there are not enough amenities, and this could make the matter a lot worse.”

82. The Committee also noted that reservoirs by their very nature often act as flood attenuation and expressed concerns that if reservoirs were decommissioned they could cause flooding. In correspondence to the Committee dated 2nd April 2014, the Department stated (see Appendix 7):-

“All impounding reservoirs provide some degree of flood attenuation. The Agency has constructed reservoirs for attenuating flood flows where there has been significant flooding or potential flooding problems in certain catchment areas, for example, at Kiltonga Reservoir. In such cases, Rivers Agency will readily accept its reservoir manager responsibilities.”

83. In further correspondence dated 2nd April the Department stated (see Appendix 7):-

“The Bill requires that actions to discontinue or abandon a reservoir be supervised by a construction engineer. The legislation does not prevent a reservoir manager from taking either of these actions in order to avoid the requirements of the management regime. However, it is worth noting that other consents and approvals will be required prior to such works being commenced.”

And

“DOE Planning advises that the Planning (NI) Order 1991 defines development as ‘the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land’. As the nature of the works associated with the discontinuance or abandonment of a reservoir may constitute engineering operations, and/or a change of material use of the land, DOE Planning advises that reservoir managers/owners should engage with their local planning office to determine if planning permission would be required in advance of any works being commenced.”

And

“In addition, there is a requirement under a number of pieces of environmental legislation for reservoir managers/owners to consult with the NI Environment Agency (NIEA) about any plans to alter a reservoir. The Committee heard evidence from NIEA on this matter. Consent from the Department of Agriculture and Rural Development, under Schedule 6 of the Drainage (NI) Order 1973, would also be required if alterations were to impact on a watercourse.”

84. The Department also confirmed that in order to “decommission” a controlled reservoir it must no longer have the capacity to hold 10,000m³ or more above the natural level of any part of the surrounding land. In other words even if the water was drained to below this limit, if it was still capable of holding 10,000m³ or more above the natural level of any part of the surrounding land it would fall under the remit of the Bill.

85. The Committee wished to express its concerns that the prospects of this Bill being enacted could cause reservoir managers to “decommission” before it is introduced in an attempt to avoid complying with the operating regime.

The Delegated Powers around the Appeals Mechanism

86. As part of its scrutiny of the Bill, the Committee requested that the Northern Ireland Assembly Examiner of Statutory Rules considered the Delegated Powers within the Bill. After deliberation on the outcome of that scrutiny, the Committee agreed to seek amendments to the Appeal mechanism. Clause 21(9) provided the power to the Department of Agriculture and Rural Development to make regulations in relation to appeals to the Water Appeals Commission about the determination and charging of fees and the award of costs. The Committee considered that it was preferable that this power rested with the Office of the First Minister and deputy First Minister, which has similar functions in respect of appeals to both the Water Appeals Commission for Northern Ireland and the Planning Appeals Commission for Northern Ireland under other broadly similar legislation. The Department would be a party to the Appeal and there might therefore be seen as having a conflict of interest. This necessitated amendments to clauses 21(9), 73(4), 73(5), 73(6), 73(6), 74(1), 74(2), 77(1), 79(1), 79(6), 79(7), 82(1), 82(7), 82(8), 84(3), 84(5), 84(6), 86(3) and 86(4), the introduction

of new clauses at 103A, 103B and 103C, and consequential amendment to Schedule 2. All of these proposed amendments have been proposed by the Department and agreed by the Committee.

Definition of Controlled Reservoir

87. The Reservoirs Bill proposed at clause 1 that a controlled reservoir is any structure or area designed or used for collecting and storing water, artificial or partly artificially lakes or other artificial areas which are capable of holding 10,000m³ or more of water above the natural level of any part of the surrounding land. The Committee considered the impact of an amendment that would change the definition by raising the 10,000m³ to 25,000m³. In written evidence to the Committee on 4th April 2014 the Department provided the following tabular information, based on its initial risk designation of the 151 reservoirs in Northern Ireland that are likely to come under the scope of the Reservoirs Bill. The Department advised that the initial designation could be subject to change.

High Risk

Threshold	Numbers	Private Sector High Risk	3rd Sector High Risk
10,000	151	23	6
15,000	132	22	6
25,000	120	21	6
Difference 10000 to 25000	31	2	0

Medium Risk

Threshold	Numbers	Private Sector Medium Risk	3rd Sector Medium Risk
10,000	151	10	3
15,000	132	10	3
25,000	120	9	3
Difference 10000 to 25000	31	1	0

Low Risk

Threshold	Numbers	Private Sector Low Risk	3rd Sector Low Risk
10,000	151	26	0
15,000	132	14	0
25,000	120	9	0
Difference 10000 to 25000	31	17	0

88. The Committee noted that changing the definition from 10,000 to 25,000m³ removed 31 reservoirs from the remit of the Bill. However, closer examination indicated that only three of these were high and medium risk reservoirs belonging to the private sector. Any such amendment had no impact on the reservoirs belonging to the third sector. The Committee

considered that any amendment to raise the threshold would ultimately benefit the public sector where reservoirs were by and large, currently being maintained in the spirit of Bill.

89. The Committee also noted that the Reservoir Bill provided the Department at clause 2 with the ability to bring smaller structures by regulation under the remit of the Bill.
90. Taking this evidence into consideration, the Committee agreed that it would not suggest an amendment to change the definition of a controlled reservoir.

Removal of Low Risk Reservoirs from the Operating Requirements of the Bill

91. The Committee considered whether low risk reservoirs should be removed from the operating requirements of the Reservoirs Bill. It noted that correspondence from the Department dated 25th April on this issue (see Appendix 7). This correspondence indicated that the management requirements of a low risk reservoir have been set at a minimum. Keeping low risk reservoirs within the remit of the Reservoirs Bill will however confer the advantage that the reservoir manager / owner must be consulted before any development that would place human life, economic, environmental or cultural heritage in the path of flood waters and thus change the designation from low risk to medium or high.

Reservoirs and Planning Issues

92. The Committee discussed issues around reservoirs and planning matters and were content that sufficient safeguards were in place to avoid new developments downstream from a reservoir that could potentially change its risk designation. A change of designation from low risk to high or medium would have considerable consequences. The Committee considered correspondence dated 14th March from DoE Planning on this issue (see appendix 8) and noted the following extract:-

“A key element of FLD 5 relates to the requirement for a developer to provide assurance regarding reservoir safety, so as to enable the development to proceed. This is regarded as a necessary requirement in order to mitigate against the downstream flood risk in the event of a controlled release of water or an uncontrolled release of water due to reservoir failure. Where such assurance is not forthcoming planning permission will be refused.”

Summary of evidence

93. In considering the Bill, the Committee took account of the written and oral evidence received from the range of stakeholders who responded to its call for evidence as well as attended its stakeholder event. It also took oral evidence from Departmental officials who provided additional information and clarification on some of the points raised in the evidence.

General Comments

94. Those who provided evidence to the Committee welcomed the principles of the Reservoirs Bill as introduced, however they particularly had concerns around clause 105, Grant aid, and the lack of detail supporting financial implications of the Bill. Other major concerns were on the risk designation process and supervising engineers visits. Issues were also raised that cut across a number of clauses and part of the Bill. The summary of evidence provided in respect to this Bill is therefore contained in the body of the report and in places may not be attributed to specific clauses.

Clause 1 – Controlled reservoirs

95. Those who provided evidence to the Committee on this clause raised questions relating to the figure of 10,000m³ for a controlled reservoir and how this was calculated including whether this should be either 15,000m³ or 25,000m³ respectively. There were further questions raised over the definition of water and how the formula for encapsulating the escapement value of 10,000m³ of water above the natural level of the land was calculated.
96. Evidence from the Institution of Civil Engineers and the Department drew the Committees attention to the fact the other regions of the UK regulate reservoirs of 25,000m³ and over, although Scotland have legislation on its books to reduce this to 10,000m³ while England and Wales are in the process of following. Evidence from the Department based on an initial assessment of all 151 reservoirs also highlighted that changing the figure would make no or little difference to reservoirs with a high or medium risk designation.

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

97. The Committee received evidence from Belfast City Council that stated that although two reservoirs under its auspices fall below the level of a controlled reservoir, they are treating them as such due to them being in situ in urban areas. Department informed the Committee that the basis for this clause is to make sure that if in taking the Bill forward if they find a structure that causes particular concern, they will have the ability to deal with it through this legislation.

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

98. The Committee did not receive any comments in relation to this clause.

Clause 4 – Controlled reservoirs: further provision

99. The Committee recognised that evidence received on clause 2 was also relevant to clause 4. The Department provided the proviso that this clause was to enable room for manoeuvre in the legislation so that in the event of a change the Primary Legislation does not have to be re-visited, but that the ability to make some minor adjustments is there.

Clause 5 – Controlled reservoirs: supplementary

100. The Committee did not receive any comments in relation to this clause.

Clause 6 – Reservoir managers

101. The majority of the evidence provided to the Committee for this clause was that fishing clubs and/or community groups who use reservoirs but don't own them should not have the burden of being the reservoir manager thrust upon them.
102. Evidence also showed that there was concern around the appointment of a reservoir manager in the situation where a number of parties are deemed to have an interest.
103. The Department stated that it would be in the interests of any club or group who uses a reservoir to revisit the contract of lease to identify exactly who is the reservoir manager. They were also keen to point out that under current common law a reservoir should at present be maintained as a structure. Evidence from NI Water indicated that its leases to 3rd parties did not transfer the duties regarding the Reservoirs Bill.

Clause 7 – Multiple reservoir managers: supplementary

104. There was evidence received calling for clarity on the issue of the appointment of a reservoir manager when a number of bodies hold an interest in the reservoir. The Committee understood that the same issues aired under clause 6 were also appropriate to this clause.
105. It was highlighted to the Committee that individuals will have to register as reservoir managers and, where there are multiple managers, the legislation allows for a lead reservoir

manager who will be responsible. Department did indicate the need for a discussion about who is responsible for making sure that the reservoir is safe, carrying out routine inspections and, ultimately, giving it an assurance that the reservoir is being managed in an appropriate way.

Clause 8 – Duty of multiple reservoir managers to co-operate

106. The Committee considered the evidence provided at both clauses 6 & 7 for this clause. It also received further evidence from the Newry & Mourne District Council highlighting the reservoirs within its council area that have been identified and considered as controlled reservoirs under the legislation. They have been identified as ranging from public sector to private sector ownership, or not registered. It stated that there being no management of a number of the reservoirs represents an unknown risk to local communities.

Clause 9 – Controlled reservoirs register

107. Armagh Fishing Club and Antrim & District Fishing Club raised some concerns with this clause as a major source of anxiety identifying the costs that may arise from registration and subsequent inspection, remedial work and upkeep. They fear that as a club they do not have the necessary finance nor any identifiable way of raising the money required. The Institution of Civil Engineers supported the clause on the basis that it regularises, and provides some framework to manage in a consistent way the risks associated with reservoirs.

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

108. The Committee did not receive any comments in relation to this clause.

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

109. The Committee did not receive any comments in relation to this clause.

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

110. The Committee did not receive any comments in relation to this clause.

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

111. The Committee did not receive any comments in relation to this clause.

Clause 14 – Fees: registration and administration

112. The Antrim District Fishing club noted its concerns to the Committee in relation to the part of this clause that states that the Department “may by regulations”, and indeed stated this concern throughout the Bill, that when the Department says “may” they actually mean “will”. This was seen as being the means to bring forward additional costs.

Clause 15 – Registration: supplementary

113. The Committee did not receive any comments in relation to this clause.

Clause 16 – Offences: Registration

114. Evidence received on this clause suggested that fishing clubs would be concerned with the management of offences in relation to registration and more over expressed concern that whatever member of a club managed this, they may face a jail sentence.

Clause 17 – Giving a risk designation

115. A number of submissions and briefings drew the attention of the Committee to the definition of risk used in the Bill. It was stated that risk in general terms means the potential perceived estimated impact of an incident multiplied by the probability of such. The term risk in the

Bill seems to mean potential impact rather than anything to do with the probability of the structure of the reservoir failing.

116. Other submissions and briefings from NI Water and the Institution of Civil Engineers highlighted that the inspection and supervision regime of all high and medium-risk reservoirs requiring qualified civil engineers to carry out inspections and make recommendations, as occurs in England, Scotland and Wales, is the only suitable means of managing the risk of failure. The Department stated that while research is ongoing, there is currently no recognised methodology for determining the probability of reservoir failure, nor is there likely to be in the near future. Therefore, the risk designation of an impounding reservoir will be based on the consequence or impact on human life, economic activity, environment and cultural heritage of an uncontrolled release of water as a result of dam failure.

Clause 18 – Periodic re-assessment of risk designation

117. The Department of the Environment provided the Committee with evidence stating that this clause would mean that a planning application for development within a reservoir inundation zone would trigger such a re-assessment and that the result of this would come into effect once the development was completed and occupied. It further highlighted that the revised draft PPS 15 required the developer to provide sufficient assurance regarding reservoir safety before planning permission is granted.

Clause 19 – Date on which risk designation given under section 17 or given as different designation under section 18 takes effect

118. The Committee did not receive any comments in relation to this clause.

Clause 20 – Review by Department of its decision under section 17 or 18

119. The evidence from NI Water indicated that those who disagree with the designation will find that the appeals system that is built into the Reservoirs Bill is very strong and robust, and provides good assurance that it will work very well.
120. The Committee also noted and agreed with comment from the Examiner of Statutory Rules that the responsibility for making regulations around cost for an appeal and costs to be awarded to parties involved in appeals should rest with the Office of the First Minister and Deputy First Minister and not the Department.

Clause 21 – Appeal against Department’s decision in a review under section 20

121. There was evidence provided to the Committee by the Ligoniel Improvement Association that based on the current structure and mechanism of high, medium and low risk, and the criteria upon which they are based, it is difficult to see how an appeals process would benefit them or other such groups.
122. Members also considered the evidence provided under clause 20 as being relevant to clause 21.

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

123. As with clause 17 of the Bill the evidence provided to the Committee was based on the risk and hazard being treated as the same instead of two completely separate entities. There was some scepticism towards the Department stating that it is not possible to assess with absolute certainty the probability of a failure, with some evidence stating it should be possible to identify those reservoirs with a high or low risk of failure, and the need for inspection and the frequency of its occurrence should reflect that.
124. NI Water stated their support for the clause which it feels provides some measure of flexibility so that those who have privately owned reservoirs, can look to negotiate with the Reservoir

Authority to make sure not only that the provisions are complied with but that there is a degree of reasonableness in the Bill. The Institution of Civil Engineers also stated that there is no universally accepted standard to assess the likelihood of a dam failing. The legislation is risk based according to the consequence.

Clause 23 – High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

125. As with other clauses in this part of the Bill the evidence provided was much in the vein of what risk is and how it is measured. The Institution of Civil Engineers and NI Water were supportive stating that very measured and risk-managed approach to reservoirs and that the designation of high, medium and low represented a development from the Reservoirs Act 1975 in England and Wales.
126. Craigavon Borough Council indicated that it felt the Department should be able to identify those reservoirs with high or low risk of failure, which would enable them to reflect on the need for inspection.

Clause 24 – Supervision requirement and commissioning of supervising engineer etc.

127. Evidence from local government showed concerns that there is currently only one inspecting engineer in Northern Ireland creating a potential lack of competition when seeking to commission such an engineer. NI Water was happy with the clause given that they employ supervising engineers, and they have engineer-qualified staff who have been trained and have gained experience working with reservoirs.
128. The Institution of Civil Engineers informed the Committee that a supervising engineer will typically visit a reservoir once or twice a year to check that no safety issues are arising, that necessary maintenance is being carried out to identify any further maintenance required and that the reservoir undertaker is keeping the necessary records.

Clause 25 – Duties etc. in relation to supervision

129. The Bill provided that a supervising engineer will typically visit a reservoir at least twice a year to check that no safety issues have arisen, that the necessary maintenance is being carried out to identify any further maintenance required and that the reservoir undertaker is keeping the necessary records.

Clause 26 – Visual inspection directed under section 25(4)(a): further provision

130. The Committee did not receive any comments in relation to this clause.

Clause 27 – Nominated representative under section 25(7)(a): further provision

131. The Committee did not receive any comments in relation to this clause.

Clause 28 – Inspection timing: general requirements

132. The Department provided details that once the reservoir manager receives a designation decision, he or she has six months to put a supervising engineer in place. Following that, the supervising engineer, in the absence of an inspection report, will call for such a report. The supervising engineer will have a further 12 months in which to carry out the inspection report and a further 28 days before it has to be forwarded to the Department.
133. Belfast City Council have provided their experience as evidence to clause 28 and detailed the costs incurred by it. Costs have been highlighted as a concern by the fishing clubs and community groups who have an interest, or are managers of a reservoir.

Clause 29 – Inspection timing: reservoir subject to pre-commencement inspection report

134. The Committee did not receive any comments in relation to this clause.

Clause 30 – Inspection timing: other qualification

135. The Committee did not receive any comments in relation to this clause.

Clause 31 – Pre-commencement inspection report

136. The Committee did not receive any comments in relation to this clause.

Clause 32 – Commissioning of inspecting engineer etc.

137. Once again there is evidence from councils and local government to suggest that as there is one inspecting engineer in Northern Ireland which leads to a lack of competition. The Department stated that although one supervising and one inspecting engineer lives in NI, with another supervising engineer in training, these panels tend to be multinationals willing to travel so availability will not be an issue.

Clause 33 – Duties etc. in relation to inspection

138. The Committee did not receive any comments in relation to this clause.

Clause 34 – Inspection reports: compliance

139. Belfast City Council provided information that following its inspection report, it was recommended that inspections are undertaken every 10 years, which will require expenditure in the region of £20,000. Annual inspections will also be required and, eventually, these may be undertaken by council staff. The findings of these inspections must be presented to the supervising engineer, which may result in further inspections and works that could incur costs.

Clause 35 – Recording of water levels etc. and record keeping

140. Evidence provided shows that this is done as a matter of good practice by fishing clubs and other stakeholders in order to have historical evidential base for reference.

Clause 36 – Offences: supervision, inspection, record keeping

141. The Committee did not receive any comments in relation to this clause.

Clause 37 – Defences: offence under section 36(1)(f)

142. The Committee did not receive any comments in relation to this clause.

Clause 38 – Application of Part 3 etc.

143. It was evident to the Committee that a major fear among clubs and community groups is that, without accessible capital grant aid at 100% from the Government, they will be forced into bankruptcy, and reservoirs could be left abandoned and therefore at risk of breach through a lack of monitoring and possible dam wall failure. The Committee also considered the environmental aspects of decommissioning a reservoir. The NI Environment Agency pointed out that to do so without prior agreement from the Agency, they would be in breach of a number of pieces of environmental legislation, for example, the Water (Northern Ireland) Order 1999.

144. Department clarified to the Committee that the terms they use in the Bill are “abandonment” and “discontinuance” rather than decommissioning, and explained the meaning of these terms. Further to this they detailed that if a reservoir manager is of the mind to go down either of these routes, that consents and approvals will be required prior to such works being commenced such as in laid out in the Planning (NI) Order 1991.

Clause 39 – Meaning of “relevant works” for purposes of Act

145. The Committee did not receive any comments in relation to this clause.

Clause 40 – Notice to Department and commissioning of construction engineer

146. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as outlined in this Clause. The Institution of Civil Engineers provided details that a construction engineer will issue certificates that permit impounding, and also provide a certificate that provides a record of the design and construction. After three years and provided that the construction engineer is satisfied that the reservoir no longer requires their supervision, their responsibility ends.

Clause 41 – Supervision of relevant works and reservoir safety by construction engineer

147. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as concerned with this clause.

Clause 42 – Safety report

148. The Committee did not receive any comments in relation to this clause.

Clause 43 – Safety report: compliance

149. The Committee did not receive any comments in relation to this clause.

Clause 44 – Preliminary certificate

150. The Committee did not receive any comments in relation to this clause.

Clause 45 – Construction certificate

151. The Committee did not receive any comments in relation to this clause.

Clause 46 – Final certificate

152. The Committee did not receive any comments in relation to this clause.

Clause 47 – Preliminary and final certificates: compliance

153. The Committee did not receive any comments in relation to this clause.

Clause 48 – Termination of supervision by construction engineer

154. The Committee did not receive any comments in relation to this clause.

Clause 49 – Offences: construction or alteration

155. The Committee did not receive any comments in relation to this clause.

Clause 50 – Defences: offences under section 49(1)(b) or (c)

156. The Committee did not receive any comments in relation to this clause.

Clause 51 – Controlled reservoirs subject to relevant works on the commencement date

157. The Committee did not receive any comments in relation to this clause.

Clause 52 – Incident reporting

158. The Committee did not receive any comments in relation to this clause.

Clause 53 – Flood plans

159. Although there was some evidence of concern at who would pay for drafting such plans, it was evident from most stakeholders that this was acceptable and could be done in house with little input from engineers and at minimum cost. There was some concern at the lack of detail in the Bill as to what the flood plan would entail, however the Department stated it would include elements such as the location, the responsible person, the use and type of

structure, the named company and the address and phone number of supervising engineers, which is seen as routine information.

Clause 54 – Maintenance of records

160. The Committee did not receive any comments in relation to this clause.

Clause 55 – Display of emergency response information

161. This clause was welcomed and described as invaluable as it will provide information on the area that could be flooded, as well as providing information for first responders and the emergency services on what area could be impacted and who to contact.

Clause 56 – Offences under Part 4

162. The Committee did not receive any comments in relation to this clause.

Clause 57 – Referral to referee: directions in safety report or inspection report

163. The evidence provided to the Committee suggested that although this clause is in the Bill to provide a right of appeal for a reservoir owner/manager, it was not known if this option had ever been tested in similar legislation in England and Wales. There was also the view that there would be no ability, based on knowledge or experience of the average reservoir manager, to challenge the decision of a qualified engineer.

Clause 58 – Referral to referee: requirements in preliminary certificate or final certificate

164. The Committee did not receive any comments in relation to this clause.

Clause 59 – Commissioning of referee

165. The Committee did not receive any comments in relation to this clause.

Clause 60 – Powers of referee: referral under section 57(2)

166. The Committee did not receive any comments in relation to this clause.

Clause 61 – Powers of referee: referral under section 58(1)

167. The Committee did not receive any comments in relation to this clause.

Clause 62 – Procedure etc.

168. The Committee did not receive any comments in relation to this clause.

Clause 63 – Enforcement notice: commissioning of engineers

169. Evidence the Institution of Civil Engineers, Ligoniel Improvement Association, the NI Environment Agency and NI Water agreed that the enforcement aspects of this clause were needed and welcomed. It was described as providing support and reinforcement to any such reports and recommendations that are made in respect of a reservoir, with some accepting this.

Clause 64 – Offence: failure to comply with notice under section 63(2)

170. The Committee did not receive any comments in relation to this clause.

Clause 65 – Commissioning of engineer by Department

171. The Committee did not receive any comments in relation to this clause.

Clause 66 – Commissioning by the Department: engineers’ reports, certificates, recommendations etc.

172. The Committee did not receive any comments in relation to this clause.

Clause 67 – Enforcement notice: safety measures

173. The Committee did not receive any comments in relation to this clause.

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

174. The Committee did not receive any comments in relation to this clause.

Clause 69 – Department’s power to arrange taking of safety measures

175. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as outlined with this clause.

Clause 70 – Offence under section 36(1)(f) or 49(1)(b): further remedies

176. The Committee did not receive any comments in relation to this clause.

Clause 71 – Emergency powers

177. The Department provided clarification to the Committee that this clause was in connection with a situation where it appears to it that immediate action was required in the interest of safety.

Clause 72 – Stop notices

178. The Committee did not receive any comments in relation to this clause.

Clause 73 – Stop notices: content and procedure

179. The Committee did not receive any comments in relation to this clause.

Clause 74 – Stop notices: compensation

180. The Committee did not receive any comments in relation to this clause.

Clause 75 – Stop notices: enforcement

181. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as outlined in this clause.

Clause 76 – Enforcement undertakings

182. The Committee did not receive any comments in relation to this clause.

Clause 77 – Regulations as to enforcement undertakings: further provision

183. The Committee did not receive any comments in relation to this clause.

Clause 78 – Fixed monetary penalties

184. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as outlined with this clause. The Department provided details of both the criminal and civil sanctions for the Committee showing they were broadly in line with similar legislation in Scotland.

Clause 79 – Fixed monetary penalties: procedures etc.

185. The Committee did not receive any comments in relation to this clause.

Clause 80 – Fixed monetary penalties: criminal proceedings and conviction etc.

186. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as outlined with this clause.

Clause 81 – Variable monetary penalties

187. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as Outlined with this clause.

Clause 82 – Variable monetary penalties: procedure etc.

188. The Committee did not receive any comments in relation to this clause.

Clause 83 – Variable monetary penalties: criminal proceedings and conviction

189. The Committee did not receive any comments in relation to this clause.

Clause 84 – Undertaking referred to in section 82(5): enforcement

190. The Committee did not receive any comments in relation to this clause.

Clause 85 – Consultation in relation to regulations under sections 72(1), 76(1), 78(1) and 81(1)

191. The Committee did not receive any comments in relation to this clause.

Clause 86 – Recovery by the Department of certain costs

192. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as Outlined with this clause.

Clause 87 – Publication of enforcement action

193. The Committee did not receive any comments in relation to this clause.

Clause 88 – Powers of entry

194. The Committee did not receive any comments in relation to this clause.

Clause 89 – Warrants authorising entry

195. The Committee did not receive any comments in relation to this clause.

Clause 90 – Powers of entry: supplementary

196. The Committee did not receive any comments in relation to this clause.

Clause 91 – Offence: preventing or obstructing entry

197. The Committee did not receive any comments in relation to this clause.

Clause 92 – Compensation

198. The Committee did not receive any comments in relation to this clause.

Clause 93 – Affording of reasonable facilities to engineers

199. The Antrim and District Fishing Club made the Committee aware of its concerns around who would pay for such works as outlined with this clause.

Clause 94 – Power of the Department to require information and assistance from reservoir managers

200. The Committee did not receive any comments in relation to this clause.

Clause 95 – Offences: sections 93 and 94

201. The Committee did not receive any comments in relation to this clause.

Clause 96 – Power to require information and assistance from others

202. The Committee did not receive any comments in relation to this clause.

Clause 97 – Panels of reservoir engineers

203. Represented groups of fishing clubs and community groups have stated their concern on the costs associated with hiring the various panel engineers. There is a fear that those reservoirs, that do not have the financial resource to employ a panel engineer and carry out their recommendations for work, will be lost as a local amenity. Newry and Mourne District Council stated that although they employ engineers who are competent in their field of expertise, none of them are a member of the all reservoirs panel so the council would have to acquire those professional services. NI Water indicated that this is a process that they have used for a while and are content with it.

204. The Institution of Civil Engineers supported the Bill's inspection and supervision regime of all high- and medium-risk reservoirs, requiring panel engineers to carry out supervision inspections and make recommendations. They stated that it is the only suitable means of managing the risk of failure, but would further recommend that even low-risk reservoirs should have some regular form of inspection, rather than relying on change of downstream conditions being identified by planning processes or the review by the enforcement authority.

205. The Department provided details that the Institution of Civil Engineers has a reservoir panel in London to assess candidates and that robust criteria required the applicant to provide evidence that they had experience in the area, were well trained and had the skills and competency. The panel would, in the case of Northern Ireland, make a recommendation to the Department, which will draw up a list of people suitable for the various grades of engineer. The Department is content that this is a well-tried and tested process.

Clause 98 – Appointment of members to panels: further provision

206. Evidence from the Institution of Civil Engineers stated that all reservoir panel engineers are appointed on a personal basis; it is not the case that a firm is appointed. A panel engineer takes personal responsibility for what they report, and it is their opinion. There are lots of guidelines in the industry, but, basically the panel engineer will make their personal recommendation on how safe a reservoir is against various modes of failure.

Clause 99 – Removal of panel members

207. Evidence on the system used in England and Wales indicated that appointments to panels are renewed every five years and there have been cases of engineers who have not been reappointed. The Institution of Civil Engineers has disciplinary procedures but there was no evidence provided to show that any panel engineer has gone through or been taken through that process. There was no further evidence to show of any objections to this clause.

Clause 100 – Dissolution or alteration of panels etc.

208. The Committee did not receive any comments in relation to this clause.

Clause 101 – Review of decisions not to appoint, or to remove civil engineers from panels etc.

209. The Committee did not receive any comments in relation to this clause.

Clause 102 – Consultation with Institution of Civil Engineers

210. The Committee did not receive any comments in relation to this clause.

Clause 103 – Reimbursement of costs incurred by Institution of Civil Engineers

211. The Committee did not receive any comments in relation to this clause.

Clause 104 – Time limit for certain summary offences under Act

212. The Committee did not receive any comments in relation to this clause.

Clause 105 – Grants

213. This Clause was an item of concern discussed by all stakeholders with all being in favour of a Government funded grant scheme and seeing this as a necessity for the Bill. There were also views expressed by community groups that although they would wish to see a grant scheme introduced it would have to 100% funded or such a scheme would make no difference to their ability to comply with the requirements of the Bill. The Institution of Civil Engineers was supportive of a grant-aid scheme.

214. This evidence provided and the lack of detail on cost in the Explanatory Financial Memorandum led the Committee to request the Department to clarify issues on a grant scheme. The Department provided details of the timeline of the Bill and that its enactment crossed over into a different Comprehensive Spending Review period made it hard to put figures on any likely grant aid package.

Clause 106 – Assessment of engineers’ reports etc.

215. The Committee did not receive any comments in relation to this clause.

Clause 107 – Notice to the Department of revocation of commissioning, or resignation, of engineer

216. The Committee considered the evidence considered for clause 99 as appropriate for this clause also.

Clause 108 – Form and content of notices, reports, certificates etc.

217. The Committee did not receive any comments in relation to this clause.

Clause 109 – Electronic serving or giving of notices or other documents

218. The Committee did not receive any comments in relation to this clause.

Clause 110 – Change to the Institution of Civil Engineers

219. The Committee did not receive any comments in relation to this clause.

Clause 111 – Civil liability

220. Fishing clubs and community groups had reservations as to what liability would fall on them in respect of a reservoir failure. The Department advised that should a freeholder attempt to disclaim interest in a reservoir in order to avoid liability, the Department would proceed to enforcement.

Clause 112 – Application to the Crown

221. The Committee did not receive any comments in relation to this clause.

Clause 113 – Enforcement in relation to the Crown

222. The Committee did not receive any comments in relation to this clause.

Clause 114 – Service or giving of notices or other documents: the Crown

223. The Committee did not receive any comments in relation to this clause.

Clause 115 – Offences by bodies corporate and partnerships

224. The Committee did not receive any comments in relation to this clause.

Clause 116 – Supplementary, incidental, consequential etc. provision

225. The Committee did not receive any comments in relation to this clause.

Clause 117 – Orders and regulations

226. The Committee did not receive any comments in relation to this clause.

Clause 118 – Definitions

227. The Committee did not receive any comments in relation to this clause.

Clause 119 – Minor and consequential amendments and repeals

228. The Committee did not receive any comments in relation to this clause.

Clause 120 – Commencement

229. The Committee did not receive any comments in relation to this clause.

Clause 121 – Short title

230. The Committee did not receive any comments in relation to this clause.

Schedule 1 – Pre-commencement inspection reports: review of decisions under section 31(2)

231. The Committee did not receive any comments in relation to this schedule.

Schedule 2 – Index of defined expressions

232. The Committee did not receive any comments in relation to this schedule.

Schedule 3 – Minor and consequential amendments

233. The Committee did not receive any comments in relation to this schedule.

Schedule 4 – Repeals

234. The Committee did not receive any comments in relation to this schedule.

Other Evidence

235. During the evidence session the Committee heard concerns around Camlough Lough in particular. This was portrayed as the reservoir Northern Ireland in the poorest condition, has issues of confirming the ownership, and will cost in the region of 2-3 million pounds to rectify. Although the Department have clarified that there are roughly six such ‘orphaned’ reservoirs in Northern Ireland the Committee did air its concern.

236. Fishing Clubs and Community organisations made the Committee aware of its concerns of the impact this will have on communities all across the country if it is enacted as laid. The main fear is that this Bill would drive these reservoirs down the route of decommissioning, leading to withdrawal of recreation, tourism and development opportunities based around reservoirs.

Clause By Clause Consideration of the Bill

237. The Committee undertook its clause by clause scrutiny of the Bill on 3 and 10 June 2014 – see Minutes of Evidence in Appendix 2.

Clause 1 – Controlled reservoirs

238. The Committee indicated it was content with the clause as drafted.

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

239. The Committee indicated it was content with the clause as drafted.

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

240. The Committee indicated it was content with the clause as drafted.

Clause 4 – Controlled reservoirs: further provision

241. The Committee indicated it was content with the clause as drafted.

Clause 5 – Controlled reservoirs: supplementary

242. The Committee indicated it was content with the clause as drafted.

Clause 6 – Reservoir managers

243. The Committee indicated it was content with the clause as drafted.

Clause 7 – Multiple reservoir managers: supplementary

244. The Committee indicated it was content with the clause as drafted.

Clause 8 – Duty of multiple reservoir managers to co-operate

245. The Committee indicated it was content with the clause as drafted.

Clause 9 – Controlled reservoirs register

246. The Committee indicated it was content with the clause as drafted.

Clause 10 – Reservoir managers' duty to register with the Department

247. The Committee indicated it was content with the clause as drafted.

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

248. The Committee indicated it was content with the clause as drafted.

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

249. The Committee indicated it was content with the clause as drafted.

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

250. The Committee indicated it was content with the clause as drafted.

Clause 14 – Fees: registration and administration

251. The Committee indicated it was content with the clause as drafted.

Clause 15 – Registration: supplementary

252. The Committee indicated it was content with the clause as drafted.

Clause 16 – Offences: Registration

253. The Committee indicated it was content with the clause as drafted.

Clause 17 – Giving a risk designation

254. The Committee indicated it was not content with the clause as drafted. The Committee agreed that it would consider the option to register its formal opposition to these clauses at Consideration Stage.

Clause 18 – Periodic re-assessment of risk designation

255. The Committee indicated it was not content with the clause as drafted. The Committee agreed that it would consider the option to register its formal opposition to these clauses at Consideration Stage.

Clause 19 – Date on which risk designation given under section 17 or given as different designation under section 18 takes effect

256. The Committee indicated it was not content with the clause as drafted. The Committee agreed that it would consider the option to register its formal opposition to these clauses at Consideration Stage.

Clause 20 – Review by Department of its decision under section 17 or 18

257. The Committee indicated it was not content with the clause as drafted. The Committee agreed that it would consider the option to register its formal opposition to these clauses at Consideration Stage.

Clause 21 – Appeal against Department’s decision in a review under section 20

258. The Committee indicated it was content with the amendment to clause 21(9) in connection with the regulations to make provisions for the fee for the appeal and the awarding of costs put and agreed to.

259. The Committee indicated that it was content with clause 21 as amended not agreed.

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

260. The Committee indicated it was content with the amendment to the clause 22(4) in connection with two distinct rules when perhaps there should be one put and agreed.

261. The Committee indicated it was content with clause 22 as amended not agreed.

Clause 23 – High-risk reservoirs and low-risk reservoirs: further provision

262. The Committee indicated it was content with the clause as drafted.

Clause 24 – Supervision requirement and commissioning of supervising engineer etc.

263. The Committee indicated it was content with the clause as drafted.

Clause 25 – Duties etc. in relation to supervision

264. The Committee indicated it was not content with the clause as amended with specific reference to clause 25(2)(k).

Clause 26 – Visual inspection directed under section 25(4)(a): further provision

265. The Committee indicated it was content with the clause as drafted.

Clause 27 – Nominated representative under section 25(7)(a): further provision

266. The Committee indicated it was content with the clause as drafted.

Clause 28 – Inspection timing: general requirements

267. The Committee indicated it was content with the clause as drafted.

Clause 29 – Inspection timing: reservoir subject to pre-commencement inspection report

268. The Committee indicated it was content with the clause as amended.

Clause 30 – Inspection timing: other qualification

269. The Committee indicated it was content with the clause as drafted.

Clause 31 – Pre-commencement inspection report

270. The Committee indicated it was content with the clause as drafted.

Clause 32 – Commissioning of inspecting engineer etc.

271. The Committee indicated it was content with the clause as drafted.

Clause 33 – Duties etc. in relation to inspection

272. The Committee indicated it was not content with the clause as amended with specific reference to clause 33(4)(i).

Clause 34 – Inspection reports: compliance

273. The Committee indicated it was content with the clause as drafted.

Clause 35 – Recording of water levels etc. and record keeping

274. The Committee indicated it was content with the clause as drafted.

Clause 36 – Offences: supervision, inspection, record keeping

275. The Committee indicated it was content with the clause as amended.

Clause 36A – Offence in connection with inspection: failure to secure compliance with safety direction or recommendation

276. The Committee indicated it was content with the new clause as drafted.

Clause 37 – Defences: offence under section 36(1)(f)

277. The Committee indicated it was content with the clause as amended.

Clause 38 – Application of Part 3 etc.

278. The Committee indicated it was content with the clause as drafted.

Clause 39 – Meaning of “relevant works” for purposes of Act

279. The Committee indicated it was content with the clause as drafted.

Clause 40 – Notice to Department and commissioning of construction engineer

280. The Committee indicated it was content with the clause as drafted.

Clause 41 – Supervision of relevant works and reservoir safety by construction engineer

281. The Committee indicated it was content with the clause as drafted.

Clause 42 – Safety report

282. The Committee indicated it was content with the clause as drafted.

Clause 43 – Safety report: compliance

283. The Committee indicated it was content with the clause as drafted.

Clause 44 – Preliminary certificate

284. The Committee indicated it was content with the clause as drafted.

Clause 45 – Construction certificate

285. The Committee indicated it was content with the clause as drafted.

Clause 46 – Final certificate

286. The Committee indicated it was content with the clause as drafted.

Clause 47 – Preliminary and final certificates: compliance

287. The Committee indicated it was content with the clause as drafted.

Clause 48 – Termination of supervision by construction engineer

288. The Committee indicated it was content with the clause as drafted.

Clause 49 – Offences: construction or alteration

289. The Committee indicated it was content with the clause as amended.

Clause 49A – Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate

290. The Committee indicated it was content with the new clause as drafted.

Clause 50 – Defences: offences under section 49(1)(b) or (c)

291. The Committee indicated it was content with the clause as amended.

Clause 51 – Controlled reservoirs subject to relevant works on the commencement date

292. The Committee indicated it was content with the clause as drafted.

Clause 52 – Incident reporting

293. The Committee indicated it was content with the clause as drafted.

Clause 53 – Flood plans

294. The Committee indicated it was content with the clause as amended.

Clause 54 – Maintenance of records

295. The Committee indicated it was content with the clause as drafted.

Clause 55 – Display of emergency response information

296. The Committee indicated it was content with the clause as drafted.

Clause 56 – Offences under Part 4

297. The Committee indicated it was content with the clause as drafted.

Clause 57 – Referral to referee: directions in safety report or inspection report

298. The Committee indicated it was content with the clause as drafted.

Clause 58 – Referral to referee: requirements in preliminary certificate or final certificate

299. The Committee indicated it was content with the clause as drafted.

Clause 59 – Commissioning of referee

300. The Committee indicated it was content with the clause as drafted.

Clause 60 – Powers of referee: referral under section 57(2)

301. The Committee indicated it was content with the clause as drafted.

Clause 61 – Powers of referee: referral under section 58(1)

302. The Committee indicated it was content with the clause as drafted.

Clause 62 – Procedure etc.

303. The Committee indicated it was content with the clause as drafted.

Clause 63 – Enforcement notice: commissioning of engineers

304. The Committee indicated it was content with the clause as drafted.

Clause 64 – Offence: failure to comply with notice under section 63(2)

305. The Committee indicated it was content with the clause as drafted.

Clause 65 – Commissioning of engineer by Department

306. The Committee indicated it was content with the clause as amended.

Clause 66 – Commissioning by the Department: engineers’ reports, certificates, recommendations etc.

307. The Committee indicated it was content with the clause as drafted.

Clause 67 – Enforcement notice: safety measures

308. The Committee indicated it was content with the clause as amended.

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

309. The Committee indicated it was content with the clause as drafted.

Clause 69 – Department’s power to arrange taking of safety measures

310. The Committee indicated it was content with the clause as amended.

Clause 70 – Offence under section 36(1)(f) or 49(1)(b): further remedies

311. The Committee indicated it was content with the clause as amended.

Clause 71 – Emergency powers

312. The Committee indicated it was content with the clause as amended.

Clause 71A – Recovery of cost under section 65, 67, 69 or 71: appeal

313. The Committee indicated it was content with the new clause as drafted.

Clause 72 – Stop notices

314. The Committee indicated it was content with the clause as drafted.

Clause 73 – Stop notices: content and procedure

315. The Committee indicated it was content with the clause as amended.

Clause 74 – Stop notices: compensation

316. The Committee indicated it was content with the clause as amended.

Clause 75 – Stop notices: enforcement

317. The Committee indicated it was content with the clause as drafted.

Clause 76 – Enforcement undertakings

318. The Committee indicated it was content with the clause as drafted.

Clause 77 – Regulations as to enforcement undertakings: further provision

319. The Committee indicated it was content with the clause as amended.

Clause 78 – Fixed monetary penalties

320. The Committee indicated it was content with the clause as drafted.

Clause 79 – Fixed monetary penalties: procedures etc.

321. The Committee indicated it was content with the clause as amended.

Clause 80 – Fixed monetary penalties: criminal proceedings and conviction etc.

322. The Committee indicated it was content with the clause as drafted.

Clause 81 – Variable monetary penalties

323. The Committee indicated it was content with the clause as drafted.

Clause 82 – Variable monetary penalties: procedure etc.

324. The Committee indicated it was content with the clause as amended.

Clause 83 – Variable monetary penalties: criminal proceedings and conviction

325. The Committee indicated it was content with the clause as drafted.

Clause 84 – Undertaking referred to in section 82(5): enforcement

326. The Committee indicated it was content with the clause as amended.

Clause 85 – Consultation in relation to regulations under sections 72(1), 76(1), 78(1) and 81(1)

327. The Committee indicated it was content with the clause as agreed.

Clause 86 – Recovery by the Department of certain costs

328. The Committee indicated it was content with the clause as amended.

Clause 87 – Publication of enforcement action

329. The Committee indicated it was content with the clause as drafted.

Clause 88 – Powers of entry

330. The Committee indicated it was content with the clause as drafted.

Clause 89 – Warrants authorising entry

331. The Committee indicated it was content with the clause as drafted.

Clause 90 – Powers of entry: supplementary

332. The Committee indicated it was content with the clause as drafted.

Clause 91 – Offence: preventing or obstructing entry

333. The Committee indicated it was content with the clause as drafted.

Clause 92 – Compensation

334. The Committee indicated it was content with the clause as amended.

Clause 93 – Affording of reasonable facilities to engineers

335. The Committee indicated it was content with the clause as drafted.

Clause 94 – Power of the Department to require information and assistance from reservoir managers

336. The Committee indicated it was content with the clause as drafted.

Clause 95 – Offences: sections 93 and 94

337. The Committee indicated it was content with the clause as drafted.

Clause 96 – Power to require information and assistance from others

338. The Committee indicated it was content with the clause as drafted.

Clause 97 – Panels of reservoir engineers

339. The Committee indicated it was content with the clause as drafted.

Clause 98 – Appointment of members to panels: further provision

340. The Committee indicated it was content with the clause as drafted.

Clause 99 – Removal of panel members

341. The Committee indicated it was content with the clause as drafted.

Clause 100 – Dissolution or alteration of panels etc.

342. The Committee indicated it was content with the clause as drafted.

Clause 101 – Review of decisions not to appoint, or to remove civil engineers from panels etc.

343. The Committee indicated it was content with the clause as drafted.

Clause 102 – Consultation with Institution of Civil Engineers

344. The Committee indicated it was content with the clause as drafted.

Clause 103 – Reimbursement of costs incurred by Institution of Civil Engineers

345. The Committee indicated it was content with the clause as drafted.

Clause 103A – Power of Water Appeals Commission to award cost in an appeal

346. The Committee indicated it was content with the new clause as drafted.

Clause 103B – Orders as to costs: supplementary

347. The Committee indicated it was content with the new clause as drafted.

Clause 103C – Fees in relation to appeals

348. The Committee indicated it was content with the new clause as drafted.

Clause 104 – Time limit for certain summary offences under Act

349. The Committee indicated it was content with the clause as drafted.

Clause 105 – Grants

350. The Committee indicated it was content with the clause as drafted.

Clause 106 – Assessment of engineers' reports etc.

351. The Committee indicated it was content with the clause as amended.

Clause 106A – Publication of information as regards ranges of costs of engineers' services

352. The Committee indicated it was content with the new clause as drafted.

Clause 107 – Notice to the Department of revocation of commissioning, or resignation, of engineer

353. The Committee indicated it was content with the clause as drafted.

Clause 108 – Form and content of notices, reports, certificates etc.

354. The Committee indicated it was content with the clause as drafted.

Clause 109 – Electronic serving or giving of notices or other documents

355. The Committee indicated it was content with the clause as drafted.

Clause 110 – Change to the Institution of Civil Engineers

356. The Committee indicated it was content with the clause as drafted.

Clause 111 – Civil liability

357. The Committee indicated it was content with the clause as drafted.

Clause 112 – Application to the Crown

358. The Committee indicated it was content with the clause as drafted.

Clause 113 – Enforcement in relation to the Crown

359. The Committee indicated it was content with the clause as drafted.

Clause 114 – Service or giving of notices or other documents: the Crown

360. The Committee indicated it was content with the clause as drafted.

Clause 115 – Offences by bodies corporate and partnerships

361. The Committee indicated it was content with the clause as drafted.

Clause 116 – Supplementary, incidental, consequential etc. provision

362. The Committee indicated it was content with the clause as drafted.

Clause 117 – Orders and regulations

363. The Committee indicated it was content with the clause as amended.

Clause 118 – Definitions

364. The Committee indicated it was content with the clause as amended.

Clause 119 – Minor and consequential amendments and repeals

365. The Committee indicated it was content with the clause as drafted.

Clause 120 – Commencement

366. The Committee indicated it was content with the clause as amended.

Clause 121 – Short title

367. The Committee indicated it was content with the clause as drafted.

Schedule 1 – Pre-commencement inspection reports: review of decisions under section 31(2)

368. The Committee indicated it was content with the schedule as drafted.

Schedule 2 – Index of defined expressions

369. The Committee indicated it was content with the schedule as amended.

Schedule 3 – Minor and consequential amendments

370. The Committee indicated it was content with the schedule as amended.

Schedule 4 – Repeals

371. The Committee indicated it was content with the schedule as drafted.

Long title

372. The Committee indicated it was content with the long title of the Bill.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Appendix 1 – Minutes of Proceedings

11 February 2014

18 February 2014

25 February 2014

11 March 2014

25 March 2014

1 April 2014

8 April 2014

29 April 2014

6 May 2014

13 May 201

27 May 2014

3 June 2014

10 June 2014

17 June 2014

24 June 2014

Tuesday 11 February 2014

Room 30, Parliament Buildings

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

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer
Mr Mark Allen, Research Officer

1:34pm The meeting commenced in Closed Session

1. Reservoirs Bill – Key Issues

The Committee discussed the key issues contained in the Reservoirs Bill.

1:36pm Ms Cochrane joined the meeting.

1:44pm Mr Milne joined the meeting.

1:46pm Mr McAleer joined the meeting.

1:54pm Mr McMullan joined the meeting.

2:00pm Ms Cochrane left the meeting.

2:01pm Mr Byrne left the meeting.

Agreed: The Committee agreed a methodology for taking forward the key issues in the Reservoirs Bill during Committee Stage.

2:01pm The meeting moved into Open Session.

2. Oral Briefing RaISe: Reservoirs Bill

2:05pm The Assembly Research Officer joined the meeting and briefed the Committee on the Reservoirs Bill. This was followed by a question and answer session.

2:15pm Mr Milne left the meeting.

2:16pm Mr Irwin rejoined the meeting.

2:27pm Mr McAleer rejoined the meeting.

2:35pm Mrs Dobson left the meeting.

3. Oral briefing Rivers Agency: Reservoirs Bill

2:42pm The following Departmental officials joined the meeting.

David Porter, Grade 6

Kieran Brazier, Grade 7

The officials briefed the Committee and this was followed by a question and answer session.

2:45pm Mr Irwin left the meeting.

3:00pm Ms McIlveen left the meeting.

3:01pm Mr Milne rejoined the meeting.

3:07pm Mr Irwin rejoined the meeting.

3:31pm Ms Cochrane rejoined the meeting.

3:35pm Ms McIlveen rejoined the meeting.

3:46pm Mr Irwin left the meeting.

3:47pm Mr McAleer left the meeting.

3:49pm Ms Cochrane left the meeting.

3:49pm Mrs Dobson rejoined the meeting.

4:00pm Mr Buchanan left the meeting.

4:11pm Mr Irwin rejoined the meeting.

4:25pm Mrs Dobson left the meeting.

4:30pm Mr McMullan left the meeting.

Agreed: Rivers Agency agreed to forward information to the Committee on a number of Reservoir Bill issues.

Agreed: The Committee agreed the motion to extend the Committee Stage of the Reservoirs Bill until 4 July 2014.

Agreed: The Committee agreed to forward the Delegated Powers Memorandum to the Examiner of Statutory Rules.

4. Forward Work Programme

Agreed: The Committee agreed to write to the Culture, Arts and Leisure, Regional Development and Environment Committees to seek their input into the Reservoirs Bill.

Agreed: The Committee agreed to write to the Water Appeals Commission to give oral evidence in respect of the Reservoirs Bill.

5:25pm The meeting adjourned.

Tuesday 18 February 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Ms Judith Cochrane MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:32pm The meeting commenced in Open Session

1. Reservoirs Bill – Key Issues

Agreed: The Committee agreed to write to the Minister to request financial information on the likely cost of compliance with the Reservoir Bill legislation and the grant support issue.

Agreed: The Committee agreed to write to the Department to request information on all costs associated with DARD/Rivers Agency owned reservoirs.

2:56pm Mr McAleer rejoined the meeting.

2:58pm Mr Irwin left the meeting.

3:00pm Mrs Dobson left the meeting.

2. Oral briefing NI Water: Reservoirs Bill

3:01pm The following NI Water officials joined the meeting.

Bill Gowdy, NI Water
Paddy Brow, NI Water

The officials briefed the Committee and this was followed by a question and answer session.

3:16pm Mr Irwin rejoined the meeting.

3:19pm Mr Buchanan left the meeting.

3:20pm Mr Byrne rejoined the meeting.

3:40pm Mr Swann left the meeting.

3:45pm Mrs Dobson rejoined the meeting.

3:46pm Mr McMullan left the meeting.

3:49pm Mr Buchanan rejoined the meeting.

Agreed: The Committee agreed to write to NI Water to request details on all NI Water owned reservoirs including capacity and financial costs.

3. Oral briefing NI Environment Agency: Reservoirs Bill

3:50pm The following NI Environment Agency officials joined the meeting.

Peter Close, Senior Scientific Officer
Bob Davidson, Senior Scientific Officer

The officials briefed the Committee and this was followed by a question and answer session.

3:53pm Mr McMullan rejoined the meeting.

3:57pm Mrs Dobson and Mr Irwin left the meeting.

3:59pm Mr Swann rejoined the meeting.

4:04pm Mr McMullan left the meeting.

4:07pm Mr McAleer rejoined the meeting.

4:12pm Mr Irwin rejoined the meeting.

4:15pm Mr Swann left the meeting.

4. Forward Work Programme

*Noted:*The Committee noted that NILGA and the Water Appeals Commission have advised that they will forward written evidence in respect of the Reservoirs Bill rather than provide oral evidence.

5. AOB

Agreed: The Committee agreed to seek clarification from Rivers Agency on what constitutes a reservoir manager.

4:29pm The meeting adjourned.

Tuesday 25 February 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Ms Judith Cochrane MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Mr Thomas Buchanan MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:05pm The meeting commenced in Open Session.

1. Reservoirs Bill – Key Issues

Noted: The Committee noted the memo on key issues within the Reservoirs Bill.

2. Oral briefing Local Councils: Reservoirs Bill

1:10pm The following local council representatives joined the meeting;

- Ian Bowden, Belfast City Council
- Rose Crozier, Belfast City Council
- Jonathan McGilly, Newry & Mourne Council
- Eamon McManus, Newry & Mourne Council
- Marcus Malley, Craigavon Council
- Gerard McGibbon, Craigavon Council

The representatives briefed the Committee and this was followed by a question and answer session.

1:12pm Mr Swann joined the meeting.

1:14pm Ms Cochrane joined the meeting.

1:33pm Mr McMullan joined the meeting.

1:40pm Mr Irwin left the meeting.

1:45pm Mr McAleer joined the meeting.

1:50pm Mr Irwin rejoined the meeting.

1:55pm Mr Byrne and Mr Milne left the meeting.

1:56pm Mr McAleer and Mr Swann left the meeting.

1:58pm Mr McMullan left the meeting.

Agreed: The Committee agreed to write to NILGA to request that they take note of council planning issues in respect of the Reservoirs Bill.

Agreed: The Committee agreed to write to Craigavon Council to request further information on the two reservoirs which are subject to decommissioning.

Agreed: The Committee agreed to write to the three councils to ask if they have considered the proposed dispute and appeals mechanisms contained in the Reservoirs Bill.

Agreed: The Committee agreed to write to Belfast City Council to ascertain if they have insurance in place against the risk of flooding if one of their reservoirs flooded.

Agreed: The Committee agreed to seek a response from Rivers Agency on issues raised in respect of the Reservoirs Bill.

1:59pm The meeting suspended

2:51pm The meeting resumed with the following Members present: Mr Frew, Mr Byrne, Mrs Dobson, Mr Irwin and Mr Swann.

Agreed: The Committee agreed to write to NI Water to ask if a fee is paid for water drawn from Camlough Lake.

3. Forward Work Programme

Agreed: The Committee agreed to host a stakeholder event on 18 March 2014 for private reservoir owners in respect of the Reservoirs Bill.

Agreed: The Committee agreed the draft Press Release to publicise the stakeholder event.

4. AOB

6:07pm The meeting adjourned.

Tuesday 11 March 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Ms Michelle McIlveen MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:35pm The meeting commenced in Open Session

1. Reservoirs Bill: Clerk's memo on key issues

Noted: The Committee noted the correspondence from the Committee for Regional Development in respect of the Reservoirs Bill.

Noted: The Committee noted the timetable provided by the Department on the Key Stages of the Reservoirs Legislation.

2. Reservoirs Bill: Oral briefing from Antrim and District Angling Club and Armagh Fisheries Limited

2:23pm The following representatives joined the meeting.

Maurice Parkinson, Chairman Antrim and District Angling Association

Cathal Doyle, Armagh Fisheries Ltd

Aidan Donnolly Chairman, Armagh Fisheries Ltd

The representatives briefed the Committee and this was followed by a question and answer session.

2:32pm Mr Buchanan rejoined the meeting.

2:41pm Mr Irwin rejoined the meeting.

2:46pm Mr Byrne left the meeting.

2:56pm Mr Irwin left the meeting.

2:58pm Mrs Dobson rejoined the meeting.

3:02pm Mr Swann rejoined the meeting.

3:08pm Mr McAleer left the meeting.

3:11pm Mr Byrne rejoined the meeting.

Agreed: The Committee agreed to write to the Department to seek details and clarification on a range of issues raised by the Antrim and District Angling Club and Armagh Fisheries Limited.

3. Reservoirs Bill: Oral briefing Ulster Angling Federation

3:19pm The following representatives joined the meeting.

Robbie Marshall, Development Officer

Jim Haughey, Chairman

The representatives briefed the Committee and this was followed by a question and answer session.

3:21pm Mr Irwin rejoined the meeting.

3:31pm Mr McMullan rejoined the meeting.

4:40pm The meeting adjourned.

Tuesday 25 March 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Mr Declan McAleer MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:35pm The meeting commenced in Open Session

1. Reservoirs Bill: Clerk's memo on key issues

Noted: The Committee noted the correspondence dated 21 March 2014 from the Department in respect of the Reservoirs Bill. The Chairperson advised the Committee that the paper on the methodologies for risk assessment for Scotland is still at draft stage and therefore should not be shared outside the Committee.

Agreed: The Committee agreed to issue the notes taken at the Reservoirs stakeholder event on 18 March 2014 to all attendees and place on the Committee website.

Agreed: The Committee agreed to schedule an oral evidence session in respect of the Reservoirs Bill with Mrs Denise Corbett.

Noted: The Committee noted the response from the Department of the Environment in respect of planning.

Agreed: The Committee noted the written submission from Mr David Barr and the Wilson family and agreed to place them on the Committee website.

Agreed: The Committee noted the designation process flow chart and agreed to place it on the Committee website.

Agreed: The Committee noted the correspondence dated 14 March 2014 from the Department for the Environment in respect of the Reservoirs Bill from a planning perspective and agreed to place it on the Committee website.

Agreed: The Committee agreed to consider agenda items 8 and 9 next.

2. Reservoirs Bill: Oral briefing Ligioniel Improvements Association

2:00pm The following representatives joined the meeting.

Damien McCallin, Environmental Recreation Officer

Dr Jim Bradley, Belfast Partnership Hills Partnership Manager

The representatives briefed the Committee and this was followed by a question and answer session.

2:01pm Mr Swann joined the meeting.

2:05pm Mr Irwin left the meeting.

2:07pm Mr Byrne left the meeting.

2:09pm Mrs Dobson left the meeting.

2:25pm Mr Irwin rejoined the meeting.

2:28pm Mr Irwin left the meeting.

2:32pm Mr Swann left the meeting.

2:32pm The meeting suspended.

2:37pm The meeting resumed with the following Members present

Mr Buchanan, Mr Byrne, Mr Frew, Mr Irwin and Mr Milne.

2:50pm Mr McMullan joined the meeting.

3. Reservoirs Bill: Oral briefing the Institution of Civil Engineers

2:51pm The following representatives from the Institution of Civil Engineers joined the meeting.

Alan Cooper

Jack Meldrum

David McKillen

Stephen Orr

The representatives briefed the Committee and this was followed by a question and answer session.

2:53pm Mr Swann rejoined the meeting.

3:05pm Mr Milne left the meeting.

3:09pm Ms McIlveen rejoined the meeting.

3:16pm Mr Milne rejoined the meeting.

3:55pm Mr Byrne left the meeting.

4:28pm Mr Irwin left the meeting.

4:45pm Mr Swann left

4:50pm Mr Irwin rejoined the meeting.

Agreed: The Committee agreed to forward additional questions to the Institution of Civil Engineers for answer.

4. AOB

5:02pm The meeting adjourned

Tuesday 1 April 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Ms Judith Cochrane MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:33pm The meeting commenced in Open Session

1. Reservoirs Bill: Clerk's memo on key issues

Agreed: The Committee noted the written submission from Lissanoure Farms in respect of the Reservoirs Bill and agreed to place it on the Committee website.

2. Reservoirs Bill – Delegated Powers within the Bill – Response from Examiner of Statutory Rules

Agreed: The Committee discussed the paper from the Examiner of Statutory Rules on the Delegated Powers within the Bill and agreed to write to Rivers Agency on the issues raised in the paper.

3. Reservoirs Bill: Oral briefing Creggan Country Park

1:44pm The following representatives from Creggan Country Park joined the meeting.

Gerry Quinn, Manager

Emmalene Edgar, Administrator

The representatives briefed the Committee and this was followed by a question and answer session.

1:45pm Mr Buchanan joined the meeting.

1:56pm Mr McAleer joined the meeting.

2:03pm Mr Irwin left the meeting.

2:11pm Mr Irwin rejoined the meeting.

2:21pm Mr Swann left the meeting.

2:23pm Mr Buchanan left the meeting.

2:31pm Mr McAleer left the meeting.

Agreed: The Committee agreed to write to Derry City Council to ascertain what it deems are its potential responsibilities within the Reservoirs Bill in respect of the lease of reservoirs within Creggan Country Park.

Agreed: The Committee agreed to write to the Department for Regional Development to ascertain what it deems are its potential responsibilities within the Reservoirs Bill in respect of its ownership of a path on the dam wall.

Agreed: The Committee agreed to consider a visit to Creggan Country Park post Easter 2014.

Agreed: The Committee agreed to consider agenda item 9 next.

4. Reservoirs Bill: Oral briefing Denise Corbett

2:40pm Denise Corbett, Chairperson, Ballysaggart Environmental Group, joined the meeting.

Ms Corbett briefed the Committee and this was followed by a question and answer session.

2:41pm Mrs Dobson left the meeting.

2:43pm Mr McMullan left the meeting.

2:51pm Mr McMullan rejoined the meeting.

3:00pm Ms McIlveen left the meeting.

3:03pm Mr Buchanan rejoined the meeting.

3:11pm Mr Milne joined the meeting.

5. Correspondence

Agreed: The Committee noted the correspondence dated 20 March 2014 from the Committee for Enterprise, Trade and Investment to the Department in respect of the Impact on Ground Based Solar PV on Single Farm Payments. The Committee agreed to request that it is copied into the reply from the Department.

Noted: The Committee noted the emailed correspondence from Mr Kieran Murphy in respect of farm entitlements.

Agreed: The Committee noted the emailed correspondence from Rural Support Group on a targeted response to deal with rural crime. The Committee agreed to forward the correspondence to the Department and the PSNI for comment.

4:37pm The meeting moved into Closed Session. The following Members were present: Mr Buchanan, Mr Byrne, Mrs Dobson, Mr Frew, Mr Irwin, Ms McIlveen, Mr McMullan, Mr Swann.

6. Reservoirs Bill – Discussion

The Committee discussed the main themes and issues within the Reservoirs Bill.

4:45pm Mr Milne rejoined the meeting.

5:00pm Mr McAleer rejoined the meeting.

5:20pm Mr Irwin left the meeting.

5:27pm The meeting suspended.

5:43pm The meeting resumed with the following Members present:

Mr Buchanan, Mr Byrne, Mr Frew, Mr Irwin, Mr McAleer, Ms Mcilveen, Mr Swann.

5:45pm Mr Irwin left the meeting.

5:46pm Mrs Dobson rejoined the meeting.

6:12pm Mr Irwin rejoined the meeting.

6:14pm The meeting adjourned.

Tuesday 8 April 2014

Room 30, Parliament Buildings

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

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:34pm The meeting commenced in Closed Session

The Committee discussed the allocation of questions to Rivers Agency.

1:39pm Mr Swann joined the meeting.

1:40pm The meeting moved into Open Session

1. **Reservoirs Bill: Clerk's memo on key issues and other papers**

Agreed: The Committee agreed to add the submissions from the Ulster Farmers' Union and the Department in respect of the Reservoirs Bill to the Committee website.

Agreed: The Committee agreed to add the financial information from NI Water on the scale of costs associated with maintaining impounding reservoirs to the Committee website.

Agreed: The Committee agreed to forward the NI Water correspondence to Rivers Agency and request that they prepare a supplementary financial memorandum.

Agreed: The Committee noted the correspondence dated 7 April 2014 from Belfast City Council in respect of issues raised at the meeting on 25 February 2014 and agreed to add it to the Committee website.

2. **Reservoirs Bill: Oral briefing Rivers Agency**

3:19pm The following Departmental officials joined the meeting.

David Porter, Director of Development

Kieran Brazier, Head of Bill Team

The officials briefed the Committee and this was followed by a question and answer session.

3:20pm Mr Byrne rejoined the meeting.

3:23pm Mrs Dobson rejoined the meeting.

3:26pm Mr Buchanan rejoined the meeting.

3:31pm Ms Cochrane and Mr McMullan rejoined the meeting.

3:46pm Ms McIlveen left the meeting.

3:49pm Mr Milne left the meeting.

3:52pm Ms McIlveen rejoined the meeting.

3:55pm Ms McIlveen left the meeting.

4:07pm Mr McIlveen rejoined the meeting.

4:12pm Ms Cochrane left the meeting.

4:16pm Mr Milne rejoined the meeting.

4:17pm Mr Swann left the meeting.

4:26pm Mr McMullan left the meeting.

4:29pm Mr Irwin left the meeting.

4:33pm Mr McMullan rejoined the meeting.

4:46pm Mr Swann rejoined the meeting.

5:06pm Mr McMullan left the meeting.

Agreed: The Committee agreed to write to Rivers Agency to ask that it considers a number of draft amendments to the Bill.

Agreed: The Committee agreed to write to Rivers Agency to request that it discusses with the Minister the concerns of the Committee in respect of decommissioned reservoirs and the loss of community and environmental assets.

Agreed: The Committee agreed to write to Rivers Agency to enquire if it had considered a Statutory Rule to deal with the regulation of reservoirs via a licensing scheme.

5:34pm The meeting adjourned.

Tuesday 29 April 2014

Room 30, Parliament Buildings

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

In attendance: Ms Stella McArdle, Committee Clerk
Ms Ciara McKay, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Michelle McDowell, Clerical Officer

1:37pm The meeting moved into Open Session.

1:38pm Mr Swann joined the meeting.

1. **Reservoirs Bill: Clerk's memo on key issues and other papers**

Agreed: The Committee agreed to add the further submissions from the Creggan Country Park and the Institution of Civil Engineers in respect of the Reservoirs Bill to the Committee website.

Agreed: The Committee agreed to add the correspondence from both Derry City Council and the Department for Regional Development in respect to Creggan Country Park to the Committee website. It further agreed to forward the correspondence to Creggan Country Park for information.

Agreed: The Committee noted the correspondence from the Department dated 15 April 2014 and 25 April 2014 in relation to the Reservoir Bill meetings of 11 and 18 March 2014 and 8 April 2014 respectively, and agreed to add them to the Committee website.

Noted: The Committee noted the correspondence from NILGA in respect to the Reservoirs Bill.

2. **Reservoirs Bill: Oral briefing Rivers Agency**

4:10pm The following Departmental officials joined the meeting.:

David Porter, Director of Development; and

Kieran Brazier, Head of Bill Team.

The officials briefed the Committee and this was followed by a question and answer session.

4:11pm Ms McIlveen rejoined the meeting.

4:20pm Mr Byrne left the meeting.

4:30pm The meeting suspended.

4:53pm The meeting resumed with the following Members present: Mr Frew, Mr Buchanan, Mrs Dobson and Mr Swann.

4:55pm Mr Irwin rejoined the meeting.

4:58pm Mr Milne rejoined the meeting.

5:02pm Mr McMullan rejoined the meeting.

5:31pm Mr Milne left the meeting.

5:35pm Mr Irwin left the meeting.

Agreed: Officials agreed to consider a number of draft amendments to the Bill as discussed during the Committee Meeting.

5:45pm Officials left the meeting.

5:50pm The meeting adjourned.

Tuesday 6 May 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Ms Judith Cochrane MLA
Mr Declan McAleer MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1. 34pm The meeting commenced in Open Session.

1. Reservoirs Bill – Informal Clause by Clause and consideration

1:40pm The following Rivers Agency officials joined the meeting to discuss issues in relation to the informal clause by clause of the Reservoirs Bill.

Mr David Porter, Director of Development

Kieran Brazier, Head of Bill Team

The Committee queried Clause 1 and how the volume of water would be measured.

The Committee discussed Clause 2 to 5 and no issues were raised.

1:55pm Mr Byrne and Mr Swann left the meeting.

Agreed: The Committee discussed Clause 6 and agreed to request clarification from Rivers Agency on subsection 6(8).

The Committee discussed Clause 7 and no issues were raised.

Agreed: The Committee discussed Clause 8 and agreed to request clarification from Rivers Agency on the offences and associated fines.

2:16pm Mr Irwin left.

Agreed: The Committee discussed Clause 9 and agreed to request more detail and clarification from Rivers Agency on subsection 4.

The Committee discussed Clause 10-13 and no issues were raised.

The Committee queried Clause 14 and the costs associated with this clause.

Agreed: The Committee discussed Clause 15 and 16 and queried the role of a previous reservoir manager and agreed to request clarification from Rivers Agency.

The Committee discussed Clause 17 and expressed concerns regarding risk and fairness of the clause.

2:58pm Mr Swann rejoined the meeting.

3:07pm Mr Byrne rejoined the meeting.

The Committee discussed Clause 18 and 19 and no issues were raised.

Agreed: The Committee discussed Clause 20 and 21 and agreed to request clarification from Rivers Agency regarding costs for reviews and appeals.

3:12pm Mr Buchanan left the meeting.

3:13pm Mr Irwin rejoined the meeting.

Agreed: The Committee discussed Clause 21 and agreed to request that Rivers Agency bring forward an amendment based on the recommendation by the Examiner of Statutory Rules.

3:22pm Mrs Dobson left the meeting.

Agreed: The Committee discussed Clause 22 and agreed to request clarification from Rivers Agency on subsection (2)(a)(iv).

The Committee discussed Clause 23 and no issues were raised.

Agreed: The Committee discussed Clause 24 and agreed to request clarification from Rivers Agency on the level of penalties and responsibilities for the Reservoir Managers.

3:31pm Mr Buchanan left the meeting.

3:32pm Mr Milne joined the meeting.

3:32pm Ms McIlveen left the meeting.

The Committee discussed Clause 25 and raised queries regarding public access to information.

The Committee discussed Clause 25(2)(k) and proposed amendments and indicated that it was still not content.

The Committee discussed Clause 26 and 27 and no issues were raised.

5:55pm The meeting adjourned.

Paul Frew,

Chairperson, Committee for Agriculture and Rural Development

Tuesday 13 May 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Thomas Buchanan MLA
Ms Judith Cochrane MLA
Mrs Jo-Anne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Mr Joe Byrne MLA (Deputy Chairperson)

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1. 33pm The meeting commenced in Open Session.

1. Reservoirs Bill – Informal Clause by Clause and consideration

2:23pm The following Rivers Agency officials joined the meeting to discuss issues in relation to the informal clause by clause of the Reservoirs Bill.

Mr David Porter, Director of Development

Kieran Brazier, Head of Bill Team

The officials briefed the Committee on its revised proposals regarding a Reservoirs Risk Matrix.

The officials also advised the Committee that they had recently met with the Minister in respect of the Reservoirs Bill; discussions had been on a proposal bringing forward a provision in the Budget Bill to provide financial assistance for the initial implementation of the Bill.

Agreed: The Committee agreed that it required a letter from the Minister on this issue ASAP

Agreed: The Committee agreed that it needed to examine proposed amendments to the clauses ASAP

2:46pm Ms Cochrane joined the meeting.

2:50pm Mr Dobson left the meeting.

3:08pm Mr McAleer rejoined the meeting,

3:11pm Mr Buchanan left the meeting.

3:14pm Mr Irwin left the meeting.

The Committee discussed Clauses 28-51 and no issues were raised.

The Committee discussed Clause 52 and queried the order of subsection 2(c) and (d) and what constitutes an incident.

Agreed: The Committee agreed to write to the Department to request examples of what constitutes an “incident”.

3:33pm Mr McMullan rejoined the meeting.

3:34pm Mr Milne left the meeting.

The Committee discussed Clauses 53-86 and no issues were raised.

3:38pm Mr McAleer left the meeting.

3:55pm Mr Milne rejoined the meeting.

3:57pm Mrs Dobson rejoined the meeting.

Agreed: The Committee discussed Clause 87 and agreed to write to Rivers Agency to seek clarification on the justification for the clause.

3:59pm Mrs Dobson and Ms McIlveen left the meeting.

Agreed: The Committee discussed Clause 88 and 89 and agreed to write to Rivers Agency to seek clarification on the powers of entry and warrants authorising entry.

The Committee discussed Clauses 90-95 and no issues were raised.

Agreed: The Committee discussed Clause 96 and agreed to write to Rivers Agency to seek clarification on the whether the Secretary of State has a role within the clause and what constitutes “other body”.

4:16pm Mr Swann rejoined the meeting.

The Committee discussed Clauses 97-104 and no issues were raised.

4:21pm Ms Cochrane left the meeting.

Agreed: The Committee discussed Clause 105 and agreed that Rivers Agency would bring the Business Case for the initial grant to the Committee.

The Committee discussed Clause 106 and no issues were raised.

Agreed: The Committee discussed Clause 107 and agreed to write to Rivers Agency to seek clarification on the resignation of a supervising engineer.

4:28pm Mr Irwin left the meeting.

The Committee discussed Clause 108-112 and no issues were raised.

Agreed: The Committee discussed Clause 113 and agreed to write to Rivers Agency to seek clarification on why the clause is included in the Bill.

The Committee discussed Clause 114 and no issues were raised.

Agreed: The Committee discussed Clause 115 and agreed to write to Rivers Agency to seek clarification.

The Committee discussed Clause 116-121 and no issues were raised.

The Committee discussed Schedules 1-4 and no issues were raised.

4:51pm Ms McIlveen rejoined the meeting.

4:52pm Mr Milne left the meeting.

4:55pm The meeting adjourned.

Paul Frew

Chairperson,
Committee for Agriculture and Rural Development

Tuesday 27 May 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1. 34pm The meeting commenced in Open Session.

1. Consideration of Amendments: Reservoirs Bill

3:28pm The following Rivers Agency officials joined the meeting.

Mr David Porter, Director of Development

Mr Kieran Brazier, Head of Bill Team

The Committee considered the proposed amendments to Clause 22 and Clause 25(2)(k). The Committee considered a tabled consequential amendment to Clause 117 which occurs as a result of the amendment to Clause 22.

The Committee considered a tabled amendment to Clause 120.

Rivers Agency officials briefed the Committee on the clauses it is not proposing to amend which are clause 6(8), clause 15(1)(c), clause 16(5), clause 17(2), clause 105 and clause 106.

The Committee noted that Rivers Agency has yet to respond on a number of outstanding amendments and clarification on a range of issues identified in previous meetings.

The Committee noted that a letter from the Minister addressing issues such as financial assistance and a two-phased approach to the Reservoirs Bill is still outstanding.

Agreed: The Committee agreed to write to the Finance and Personnel Committee to request information on the provision for financial assistance within the Budget Bill No. 2 for the Reservoirs Bill.

3:57pm Mr McAleer rejoined the meeting.

3:59pm Mr Byrne left the meeting.

4:00pm Ms McIlveen rejoined the meeting.

4:02pm Mr Byrne rejoined the meeting.

4:14pm Mr McAleer left the meeting.

4:30pm Mr Irwin left the meeting.

4:46pm Mr Irwin rejoined the meeting

4.47pm Mr Byrne left the meeting.

5.02pm The meeting adjourned.

Paul Frew, Chairperson, Committee for Agriculture and Rural Development

Tuesday 3 June 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Ms Judith Cochrane MLA
Mrs Joanne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Mr Thomas Buchanan MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Roisin Kelly, Bill Clerk (for agenda item 7)
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1.33pm The meeting commenced in Open Session.

1.39pm Mr Irwin joined the meeting.

1.46pm Mr McAleer joined the meeting.

1.52pm Ms Cochrane joined the meeting.

1.54pm Mr Byrne left the meeting.

2.17pm Mr Byrne rejoined the meeting.

1. Reservoirs Bill: Formal Clause by Clause

2.18pm The following Rivers Agency officials joined the meeting.

Mr David Porter, Director of Development

Mr Kieran Brazier, Head of Bill Team

The officials briefed the Committee on proposals for amendments to clauses 36, 49, 70 and 106 of the Reservoirs Bill.

2.24pm Ms Cochrane and Ms McIlveen left the meeting.

2.37pm The meeting moved into Closed Session.

2.49pm Mr Milne joined the meeting

3.01pm Mr Swann left the meeting.

3.10pm Mr McAleer left the meeting.

3.25pm The meeting moved into Open Session

The following Members were present: Mr Byrne, Ms Cochrane, Mr Frew, Mr Irwin, Mr Milne, and Ms McIlveen.

The Committee commenced its formal clause by clause consideration of the Reservoirs Bill.

Clause 1 – Controlled reservoirs

Question: That the Committee is content with clause 1 put and agreed to.

Clause 2-5

Question: That the Committee is content with clauses 2-5 put and agreed to.

Clause 6 – Reservoir Managers

Question: That the Committee is content with clause 6 put and agreed to.

3.28pm Mrs Dobson rejoined the meeting.

Clause 7 – Multiple reservoir managers: supplementary

Question: That the Committee is content with clause 7 put and agreed to.

Clause 8 – Duty of multiple reservoir managers to co-operate

Question: That the Committee is content with clause 8 put and agreed to.

Clause 9 – Controlled reservoirs register

Question: That the Committee is content with clause 9 put and agreed to.

Clause 10-14

Question: That the Committee is content with clauses 10-14 put and agreed to.

Clause 15 – Registration: supplementary

Question: That the Committee is content with clause 15 put and agreed to.

Clause 16 – Offences: registration

Question: That the Committee is content with clause 16 put and agreed to.

3.33pm Mr McMullan joined the meeting.

Clauses 17-20

Agreed: The Committee agreed that it was not content with clauses 17, 18, 19 and 20 as drafted and opposed that the clauses stand part of the Reservoirs Bill.

Agreed: The Committee agreed that it would consider the option to register its formal opposition to these clauses at Consideration Stage.

Agreed: The Committee agreed to write to the Minister to advise that the Committee is not content with clauses 17-20 of the Reservoirs Bill.

Agreed: The Committee agreed to consider a form of words to reflect the Committee view on clauses 17-20, for inclusion in the Committee report.

Agreed: The Committee agreed to pause its formal clause by clause consideration of the Reservoirs Bill until the next meeting to allow time for further amendments to be presented to the Committee.

3.55pm Mr McAleer rejoined the meeting.

4.00pm Mr McMullan left the meeting.

4.01pm The meeting adjourned.

Tuesday 10 June 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Thomas Buchanan MLA
Ms Judith Cochrane MLA
Mrs Joanne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

Apologies: Mr Joe Byrne MLA (Deputy Chairperson)

In attendance: Ms Stella McArdle, Committee Clerk
Ms Roisin Kelly, Bill Clerk (for agenda item 8)
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1.34 p.m. The meeting commenced in Open Session.

1.35 p.m. Mr Buchanan and Mr Milne joined the meeting.

1.37 p.m. Mr Irwin joined the meeting.

1.45 p.m. Mr Irwin left the meeting.

1.47 p.m. Mr Irwin rejoined the meeting.

1.52 p.m. Mr Buchanan, Mr Irwin and Ms McIlveen left the meeting.

2.10 p.m. Mr Irwin and Ms McIlveen rejoined the meeting.

2.13 p.m. Mr Swann left the meeting.

2.14 p.m. Mr Buchanan rejoined the meeting.

1. Reservoirs Bill: Formal Clause by Clause

2.18 p.m. The following departmental officials joined the meeting.

Mr David Porter, Director of Development

Mr Kieran Brazier, head of Bill Team

The officials briefed the Committee on its proposals for amendments.

Agreed: The Committee agreed to consider the proposals for amendments to the risk assessment process at the next meeting.

The Committee commenced its formal clause by clause consideration of the Reservoirs Bill.

2.23 p.m. Mr Milne left the meeting and Mr McAleer joined the meeting.

2.31 p.m. Ms McIlveen left the meeting.

2.36 p.m. Ms Swann rejoined the meeting.

2.39 p.m. Ms Cochrane joined the meeting.

Agreed: The Committee agreed to defer consideration of the letter to the Minister outlining concerns with the risk assessment process until the next meeting.

Agreed: The Committee acknowledged receipt of the amendments on risk designation but as the formal clause by clause consideration of the Reservoirs Bill has already commenced, the Committee agreed to consider the proposed amendments at the next meeting.

2.48 p.m. Mr McAleer left the meeting.

2.53 p.m. Ms McIlveen rejoined the meeting and Mrs Dobson left the meeting.

Clause 21

Question: That the Committee is content with the amendment to clause 21(9) in connection with the regulations to make provisions for the fee for the appeal and the awarding of costs of the parties in an appeal put and agreed to.

Question: That the Committee is content with clause 21 as amended not agreed.

Clause 22

Question: That the Committee is content with the amendment to clause 22(4) in connection with two distinct rules when perhaps there should be one put and agreed.

Question: That the Committee is content with clause 22 as amended not agreed.

The Committee formally acknowledged receipt of the amendments on risk designation from the Department. Unfortunately the Committee had already started its clause by clause decision making on the bill. The Committee is therefore content to consider the amendments proposed by the Department once the Committee has had adequate time to consider the text of the proposed amendments and the impact of the amendments on what is a complex and interconnected bill.

Clause 23

Question: That the Committee is content with clause 23 put and agreed to.

Clause 24

Question: That the Committee is content with clause 24 put and agreed to.

Clause 25

Agreed: The Committee agreed that it is not content with Clause 25 as amended, specifically 25(k). The Committee agreed its concerns were around the minimum number of visits by a supervising engineer and on the lack of an upper limit of visits.

Clause 26-28

Question: That the Committee is content with clauses 26-28 put and agreed to.

Clause 29

Question: That the Committee is content with clause 29 as amended put and agreed to.

Clause 30-32

Question: That the Committee is content with clauses 30-32 put and agreed to.

Clause 33

Agreed: The Committee agreed that it is not content with Clause 33 as amended specifically clause 33(4)(i).

Clauses 34-35

Question: That the Committee is content with clauses 34 and 35 put and agreed to.

3.22 p.m. Ms Cochrane left the meeting.

3.27 p.m. Mr McMullan left the meeting.

3.28 p.m. Mrs Dobson rejoined the meeting.

Clause 36

Question: That the Committee is content with clause 36 as amended put and agreed to.

Clause 36A

Question: That the Committee is content with the new clause at 36A put and agreed to.

Clause 37

Question: That the Committee is content with clause 37 as amended put and agreed to.

Clause 38-48

Question: That the Committee is content with clause 38-48 put and agreed to.

Clause 49

Question: That the Committee is content with clause 49 as amended put and agreed to.

Clause 49A

Question: That the Committee is content with the new clause at 49A put and agreed to.

Clause 50

Question: That the Committee is content with clause 50 as amended put and agreed to.

Clause 51-52

Question: That the Committee is content with clauses 51 and 52 put and agreed to.

Clause 53

Question: That the Committee is content with clause 53 as amended put and agreed to.

Clause 54-64

Question: That the Committee is content with clause 54-64 as drafted put and agreed to.

3.31 p.m. The meeting moved into Closed Session.

3.40 p.m. Mr Irwin left the meeting.

3.43 p.m. The meeting moved into Open Session.

The following Members were present: Mr Frew, Mr Buchanan, Mrs Dobson,

Ms McIlveen and Mr Swann.

3.48 p.m. Mr McMullan rejoined the meeting.

4.03 p.m. Mr Irwin rejoined the meeting.

Clauses 65

Question: That the Committee is content with clause 65 as amended put and agreed to.

Clause 66

Question: That the Committee is content with clause 66 put and agreed to.

Clause 67

Question: That the Committee is content with clause 67 as amended put and agreed to.

Clause 68

Question: That the Committee is content with clause 68 put and agreed to.

Clause 69

Question: That the Committee is content with clause 69 as amended put and agreed to.

Clause 70

Question: That the Committee is content with clause 70 as amended put and agreed to.

Clause 71

Question: That the Committee is content with clause 71 as amended put and agreed to.

Clause 71A

Question: That the Committee is content with the new clause 71A put and agreed to.

Clause 72

Question: That the Committee is content with clause 72 put and agreed to.

Clause 73

Question: That the Committee is content with clause 73 as amended put and agreed to.

Clause 74

Question: That the Committee is content with clause 74 as amended put and agreed to.

Clause 75-76

Question: That the Committee is content with clause 75 and 76 put and agreed to.

Clause 77

Question: That the Committee is content with clause 77 as amended put and agreed to.

Clause 78

Question: That the Committee is content with clause 78 put and agreed to.

Clause 79

Question: That the Committee is content with clause 79 as amended put and agreed to.

Clause 80-81

Question: That the Committee is content with clause 80 and 81 put and agreed to.

Clause 82

Question: That the Committee is content with clause 82 as amended put and agreed to.

Clause 83

Question: That the Committee is content with clause 83 put and agreed to.

Clause 84

Question: That the Committee is content with clause 84 as amended put and agreed to.

Clause 85

Question: That the Committee is content with clause 85 put and agreed to.

Clause 86

Question: That the Committee is content with clause 86 as amended put and agreed to.

Clause 87

Question: That the Committee is content with clause 87 put and agreed to.

Clause 88-91

Question: That the Committee is content with clause 88-91 put and agreed to.

Clause 92

Question: That the Committee is content with clause 92 as amended put and agreed to.

Clause 93-103

Question: That the Committee is content with clause 93-103 put and agreed to.

Clause 103A, B and C

Question: That the Committee is content with new clause 103A, B and C put and agreed to.

Clause 104-105

Question: That the Committee is content with clause 104-105 put and agreed to.

Clause 106

Question: That the Committee is content with clause 106 as amended put and agreed to.

Clause 106A

Question: That the Committee is content with new cause 106A put and agreed to.

Clause 107-116

Question: That the Committee is content with clause 107-116 put and agreed to.

Clause 117

Question: That the Committee is content with clause 117 as amended put and agree to.

Clause 118

Question: That the Committee is content with clause 118 as amended put and agreed to.

Clause 119

Question: That the Committee is content with clause 119 put and agreed to.

Clause 120

Question: That the Committee is content with clause 120 as amended put and agreed to.

Clause 121

Question: That the Committee is content with clause 121 put and agreed to.

Schedule 1

Question: That the Committee is content with schedule 1 put and agreed to.

Schedule 2

Question: That the Committee is content with schedule 2 as amended put and agreed to.

Schedule 3

Question: That the Committee is content with schedule 3 as amended put and agreed to.

Schedule 4

Question: That the Committee is content with schedule 4 put and agreed to.

Long Title

Question: That the Committee is content with the Long Title of the Bill put and agreed to.

4.11 p.m The meeting adjourned.

Tuesday 17 June 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Joanne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Roisin Kelly, Bill Clerk (for agenda item 5)
Mr Mark Allen, Research Officer (for agenda item 6)
Ms Elaine Farrell, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1.32 p.m. The meeting commenced in Open Session.

1.34 p.m. Mr Milne joined the meeting.

1. Reservoirs Bill – Committee Consideration of Draft Report

1.35 p.m. The following officials joined the meeting.

David Porter, Director of Development

Kiernan Brazier, Head of Bill Team

The officials briefed the Committee, providing clarification on the proposed amendments to clause 25(2)(k). This was followed by a question and answer session.

1.37 p.m. Mr Buchanan joined the meeting.

1.45 p.m. Mr Swann joined the meeting.

1.58 p.m. Mr Byrne left the meeting.

1.59 p.m. The meeting suspended.

3.07 p.m. The meeting resumed.

The following Members were in attendance: Mr Byrne, Mr Frew, Mr Milne, Mr McAleer and Mr McMullan.

The Committee resumed its deliberation of the amendments to the risk designation clauses as put forward by Rivers Agency.

The Committee considered the question that it was content with the proposed amendments and consequential amendments to the risk designation clauses. However, some Members expressed strong concerns that they had insufficient time to consider the implications and practical outworking of the amendments.

3.25 p.m. Mrs Dobson rejoined the meeting.

The Committee voted on the proposed amendments to clauses 17-23 and consequential amendments.

Ayes:

Mr Byrne, Mr Milne, Mr McAleer and McMullan

Noes:

Mrs Dobson and Mr Frew

Agreed: The Committee agreed to consider a draft paragraph to reflect the vote, for inclusion in the Committee Report, at the next meeting.

The Committee gave consideration to the draft report on the Reservoirs Bill.

3.33 p.m. Mr Swann rejoined the meeting.

Agreed: The Committee agreed the Introduction to the report.

Agreed: The Committee agreed paragraphs 11-15.

Agreed: The Committee agreed to consider an amendment to paragraph 16 at the next meeting.

Agreed: The Committee agreed paragraphs 17-45.

Agreed: The Committee agreed to defer consideration of paragraphs 46-58 until the next meeting.

Agreed: The Committee agreed paragraphs 59-69.

3.46 p.m. Mrs Dobson left the meeting.

Agreed: In its consideration of paragraph 70, the Committee agreed to request that Rivers Agency brings forward a further amendment regarding clause 25(2)(k).

3.50 p.m. Ms McIlveen rejoined the meeting.

3.56 p.m. Mr Irwin rejoined the meeting.

Agreed: The Committee agreed paragraphs 71 and 72.

Agreed: The Committee agreed to consider an additional paragraph to be added to paragraph 73.

Agreed: The Committee agreed paragraphs 74-86.

Agreed: The Committee agreed the Summary of Evidence at pages 92-112.

Agreed: The Committee agreed the clause by clause consideration at pages 113-124.

Agreed: The Committee agreed Appendix 1-7 of the report and noted that Appendix 7 was to be subdivided.

4.20 p.m. The meeting suspended.

4.38 p.m. The meeting resumed.

The following Members were in attendance: Mr Frew, Mr Irwin, Mr Milne, Mr McAleer, Ms McIlveen and Mr McMullan.

5.07 p.m. The meeting adjourned.

Tuesday 24 June 2014

Room 30, Parliament Buildings

Present: Mr Paul Frew MLA (Chairperson)
Mr Joe Byrne MLA (Deputy Chairperson)
Mr Thomas Buchanan MLA
Mrs Joanne Dobson MLA
Mr William Irwin MLA
Mr Ian Milne MLA
Mr Declan McAleer MLA
Ms Michelle McIlveen MLA
Mr Oliver McMullan MLA
Mr Robin Swann MLA

In attendance: Ms Stella McArdle, Committee Clerk
Ms Roisin Kelly, Bill Clerk (for agenda item 5)
Mr Sean McCann, Assistant Clerk
Mr Mark O'Hare, Clerical Supervisor
Ms Alison Ferguson, Clerical Officer

1.36p.m. The meeting commenced in Open Session.

1. Reservoirs Bill – Committee Consideration of Draft Report

The Committee continued its consideration of the draft Committee Report on the Reservoirs Bill.

Members considered but did not register a position on the further amendment to Clause 25(2)(k) and Clause 33(4)(i).

1.50p.m. Mr Milne joined the meeting.

Agreed: The Committee agreed that it is content with paragraph 1 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 2 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 3 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 4 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 5 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 6 of the executive summary of the report subject to a line to reflect the position of the further amendment to clause 25 and clause 33.

Agreed: The Committee agreed that it is content with paragraph 7 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 8 of the executive summary of the report.

Agreed: The Committee agreed that it is content with paragraph 9 of the executive summary of the report.

- Agreed:* The Committee agreed that it is content with paragraph 10 of the executive summary of the report.
- Agreed:* The Committee agreed that it is content with paragraph 11 of the executive summary of the report.
- Agreed:* The Committee agreed that it is content with paragraph 17 of the report.
- Agreed:* The Committee agreed that it is content with paragraphs 47-53 of the report.
- Agreed:* The Committee amended paragraph 54 of the report.
- Agreed:* The Committee amended paragraph 55-61 of the report.

2.00 p.m. Mr McMullan joined the meeting.

- Agreed:* The Committee agreed that it is content with paragraph 74 of the report.
- Agreed:* The Committee agreed that it is content with paragraph 75 of the report.
- Agreed:* The Committee agreed that it is content with paragraph 79 of the report.
- Agreed:* Members agreed that, in relation to today's meeting, an unapproved version of the Minutes of Proceedings and Hansard transcript will be included in the appendices of the Report.
- Agreed:* The Committee agreed that its Report on Reservoirs Bill should be laid in the Business Office and that it should be printed.

The Chairperson stated that the laying of the Report and ordering to print results in the end of the Committee stage of the Reservoirs Bill.

2.32p.m Mrs Dobson left the meeting.

2.54p.m. Mr Milne left the meeting.

2.58p.m. Mr Irwin left the meeting.

3.20 p.m. Mr McAleer joined the meeting.

3.20 p.m. Mr McMullan left the meeting.

3.22 p.m. Mr Irwin rejoined the meeting.

3.35 p.m. Mr Milne rejoined the meeting.

3.35 p.m. Mr Byrne left the meeting.

3.40p.m. Mr Byrne and Mr McMullan rejoined the meeting.

3.45 p.m. Mr Irwin left the meeting.

3.45 p.m. Mrs Dobson rejoined the meeting.

3.46 p.m. Mr McMullan left the meeting

3.47p.m. Mr Swann joined the meeting

3.48 p.m. The meeting moved into closed session.

4.00 p.m. The meeting moved into open session.

4.03 p.m The meeting adjourned.



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

Appendix 2 – Minutes of Evidence

11 February 2014

Rivers Agency

18 February 2014

Northern Ireland Water

Northern Ireland Environment Agency

25 February 2014

Belfast City Council, Craigavon Borough Council and Newry & Mourne Borough Council

11 March 2014

Antrim and District Fishing Club, and Armagh Fishing Club

Ulster Angling Federation

25 March 2014

The Institution of Civil Engineers

Ligoniel Improvement Association

1 April 2014

Creggan Country Park

Ballysaggart Environmental Group

8 April 2014

Rivers Agency

29 April 2014

Rivers Agency

6 May 2014

Informal Clause by Clause

13 May 2014

Informal Clause by Clause

27 May 2014

Consideration of Amendments

3 June 2014

Consideration of Amendments and Formal Clause by Clause

10 June 2014

Formal Clause by Clause

17 June 2014

Consideration of Draft Report

24 June 2014

Final Report

11 February 2014

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	<i>Department of</i>
Mr David Porter	<i>Agriculture and Rural Development</i>

The Chairperson: I welcome from Rivers Agency David Porter, who is a grade 6, and Kieran Brazier, who is a grade 7. Thank you very much for coming here today for what is the beginning of a lot of important work on scrutinising the Reservoirs Bill. If you want to start by giving your presentation, we will go into questions after that.

1. **Mr David Porter (Department of Agriculture and Rural Development):**
 Mr Chairman and Committee members, thank you for the opportunity to address you. I am conscious that Mark from the Assembly Research and Information Service (RaISe) covered a considerable amount of the ground, so I will pick out a small number of key issues and take a moment or two to provide some clarification on them. We are then happy to take any members' questions.
2. I will deal with three areas: the policy context; the timeline, which I think will help the Committee understand when, in particular, a grant-aid scheme may be required; and terminology. We listened to the Second Stage debate and have considered some of the other conversations that have been had about the Bill, and we think that clarification is needed. Some of the words are quite familiar to us because we deal with the

subject day in, day out, but some may have a different meaning and context.

3. First, I really want to focus on the EU floods directive. It was a considerable issue in the debate in the House, and I want to make absolutely crystal clear to people the context of the floods directive. I do not want to go through the whole history — I have given you that a number of times before — but, in order to give the context, I need to go through the previous legislation.
4. The first legislation was introduced in GB in 1930 and subsequently amended in 1975. However, that legislation does not apply to Northern Ireland. That is the legislative context. There are mentions of reservoirs in Northern Ireland legislation in the Drainage (Northern Ireland) Order 1973 and the Water and Sewerage Services (Northern Ireland) Order 1973. The latter stated that regulations could be brought forward to ensure the safety of reservoirs, but no regulations were ever made under the order. That situation was identified in the independent flood management policy review, which was undertaken in and around 2007. In September 2008, the document 'Living with Rivers and the Sea' was made public. It is the Government response to the Northern Ireland policy review. Paragraph 7.4 deals with reservoirs and states:

"Other regions of the UK have introduced independent control to ensure the safety of large raised reservoirs."
5. There is then a highlighted section. In the document, highlighted sections detail the recommendations, and the recommendation there is:

"Appropriate legislation will be proposed to provide for regulatory control of reservoir safety in Northern Ireland by Rivers Agency."
6. That is where the more recent policy context started.

7. Parallel to that, we have the EU floods directive. It came in in 2007 and was transposed in 2009. It has been claimed that it relates only to rivers and the coast, but that is a misunderstanding of the directive. It is not restricted to rivers and the coast, and article 2.1 defines a flood as:
8. The directive does not state that the water has to come from rivers or the coast. It has a very loose definition. The directive does refer to providing information in the case of river basin districts, units of management and coastal zones. However, that refers to geographical areas, not the source of the flooding.
9. The way in which European legislation is brought forward is that it is cleared in the European Parliament before going to member states. The legislation is Europe-wide, so it cannot be prescriptive in every detail, and there are some flexibilities for member states. The European Commission ensures that the flexibility between members states is controlled or reasonable by bringing forward the common implementation strategy (CIS), which requires a working group — in the case of the floods directive, it was working group F — to come together to discuss issues of commonality or where it is unclear what something means.
10. One of the issues discussed by working group F was what a flood is and what the scope of a flood is, as the definition is so loose. Working group F discussed that a number of times. It decided that the answer was not entirely clear and that it would set up a smaller working group of interested representatives from key member states to look at the issue. That was done, and the group produced a paper on 18 October 2010. We can make that available to the Committee. The paper referred to dam breach, stating:

“There was not however unanimous agreement on whether floods arising from the breach of flood defences with a very high

standard of defence ... or from dam breach events should be within the definition of the Directive.”

11. Therefore, that small working group of representatives from core members states looked at the definition, argued it back and forward and produced a paper that suggested that they could not agree on it. The Commission had to take that paper and, at the working group F meeting of 28 October 2010 in Brussels, which, incidentally, I attended, not as a representative of Northern Ireland but the whole of the UK, the Commission’s spokesperson reiterated that the definition in article 2.1, the one that I quoted earlier, did not:
12. The words “such floods” refer to floods from dam breaches.
13. That is the European Commission saying to the member states, “I know that you’ve gone away and had a look at this. You couldn’t decide among yourselves, so the Commission is stepping in and saying that its interpretation is that flood risk from a dam breach is within the scope”. The Commission reiterated that article 4 of the floods directive, which I will deal with in a moment, gives the possibility to member states to define “significant flood risk”. It did that because there is not the same flood problem across the whole of Europe. The European Commission did not say, “Here are the floods that you have to consider”. Instead, it said, “Member states, look at your flood risk, assess your flood risk, and, from that information, determine what is significant in your context”.
14. Text from the preliminary flood risk assessment (PFRA) was quoted from in the House last week. The first paragraph of the Rivers Agency document sets out the significant flood risks in the context of Northern Ireland. It states:

“The PFRA considers flooding from all of the main flood sources including rivers, the sea,

- surface water runoff (also known as pluvial flooding) and impounded water bodies (such as dams and reservoirs)."*
15. That is what was determined for Northern Ireland. It was claimed that the justification for the Reservoirs Bill was the floods directive. The justification for this legislation is not, and has not been claimed to be, the floods directive, but the directive does provide the background, as we had to look at all the significant flood risks across Northern Ireland and determine what is significant. The PFRA goes on to state that a flood from a reservoir could be significant because reservoirs are not regulated. We do not know the condition of them, and we do not require any inspection or maintenance of them to be undertaken. As a result, that could present a very significant flood risk. We just do not know, because we have not got the information.
16. The report goes on to argue that by requiring owners to have their structures inspected, to carry out routine maintenance and to keep a close eye on them, there will not be the same risk, because this legislation deals with the risk that reservoirs pose. Therefore, it is the Reservoirs Bill that stops the risk from our reservoirs being significant in a European context.
17. Hopefully, we did not misrepresent the situation. It was the information from that analysis that gave us the 66,000 people that are in the potential flood inundation area. It was claimed that that was ridiculous and that all the reservoirs could not breach at the same time. I said exactly the same thing to the Committee. It is ridiculous — we do not expect all 156, as assessed by the PFRA, to breach. This is about trying to get some sort of indication of what we are talking about here and establish the relative importance of the issue as a piece of work for us as a Department and you as a Committee. Nobody is claiming that all 156 will fail at once, or that we will have to deal with a situation in which 66,000 people are simultaneously being impacted on. All that we are doing is trying to quantify what the impact may be.
18. That hopefully gives you some information on the policy context.
19. Secondly, I thought that it might be useful to set out the timeline for a number of key steps, because we have a difficulty in putting forward a case for, as Mark outlined earlier, a grant-aid scheme. We have a difficulty finding justification for that.
20. I want to demonstrate why we have that difficulty. It is purely because of the time allowed for various steps in the legislation. The first step is that owners have to register to say that they own a body of water greater than 10,000 cubic metres that is an impounded structure; that is, a controlled reservoir. In the legislation, owners are given six months to register. Following that, the legislation requires the Department to take a decision on the designation as soon as possible. For the sake of argument, let us say that it takes us two months to assign that. The reservoir manager receives that decision, after which he or she has six months to put a supervising engineer in place. Following that, the supervising engineer, in the absence of an inspection report, will call for such a report. The supervising engineer will have a further 12 months in which to carry out the inspection report and a further 28 days before it has to be forwarded to the Department.
21. If you add all that up, it comes to 27 months. If we assume that we get Royal Assent in the current calendar year and, for the sake of argument, commence the legislation in April 2015, we will not have the information on the state of the reservoir stock until July 2017. It is only at that point that we will be able to determine with any degree of certainty the size of the bid that we need to make. That is why we have been saying that that is in the next comprehensive spending review (CSR) period and will need to go to the Executive at some point. We are not fobbing anyone off; rather, we genuinely do not have the information because of the timeline.

22. However, we may know something sooner than that. I have talked about the maximum dates, but some owners may well register a bit quicker. For the sake of argument, someone could register in one month, and we could decide the designation straight away. A supervising engineer could be appointed in one month, submit an inspection report in another month and then give it to us straight away. We could know some of what the situation entails four months after commencement, but we will not know about all the reservoirs until we have exhausted the timeline, which could be well into the next CSR period and the next Assembly mandate. I hope that that has given you an understanding of some of the difficulties surrounding the timeline.
23. Thirdly, I will deal with terminology. I want to explain two words that we use in the legislation: “abandonment” and “discontinuance”. We do not use the word “abandonment” in the context of ownership. It is not that an owner says that he is abandoning the facility and is walking away because it is not his any more or, to pick up on points made earlier, that he is abandoning it because he cannot afford it. It does not mean that. “Abandonment” means, in the sense of the legislation, that, where a reservoir is made to no longer be capable of holding water, an impounding structure would need to be removed. It is not about ownership but about the physical presence of the dam structure and the capability of that structure to impound water.
24. We use the word “discontinuance” where an owner has a large reservoir, does not wish to be subject to the legislation and, in order to do that, wants to reduce its size. In that case, the reservoir remains capable of holding some water but not above the 10,000 cubic metre threshold. The reservoir is then deemed to be discontinued; that it, it is made smaller. I thought that it would be useful for members to be absolutely clear on the context of those two words.
25. I hope that I have given you some understanding of the policy context, particularly where the floods directive has been driving us as an industry, where the numbers came from, the timeline, the challenges that we have in trying to quantify the size of any future grant-aid scheme, and some clarification of the terminology that we use. Thank you for your time. I am happy to answer questions.
26. **The Chairperson:** Thank you very much for that, David. I want to ask you about the classification of risk. A reservoir is assessed as being high, medium or low risk, as defined in the Bill at clauses 22 and 23. How are we to be sure that that methodology is the correct one and that the classifications are appropriate and proportionate, considering that there is a differential between Scotland and England? England has just high and low, and there does not seem to be much difference between medium and high.
27. **Mr Porter:** For clarification, England has high and nothing. Reservoirs are classified as high risk or they are not classified at all, which presents problems, because, if you are required to make a judgement between high and nothing, you are almost saying that there is no risk. We are getting feedback from the industry that that is causing problems. Are we brave enough as engineers to say that there is no risk? It is not even that it is low risk; it is just high risk and a void.
28. We tried to ensure that there was a measurable methodology, so we have flood inundation maps from which we can determine the number of properties in an area. The responses to our public consultation said that the on/off switch between high and low is not representative of our reservoir stock in Northern Ireland. The rationale was that, although there are flood inundation maps that show property in the flood outline, it may be far down where the water spills. By the time the water got down to them it might be shallow and slow-moving and not cause any obvious harm, so we had to make a distinction between structures that would cause

- a wall of water or deep, fast-moving water, which is what kills people, and structures with shallow, slow-moving water.
29. The distinction between high and medium is that high is where it is foreseeable that somebody could die because of the speed and depth of the water. Medium is where they might still get wet, or the area that they live in might still get wet, but, because of where the houses are situated in the flood inundation area, it is foreseeable and you can react. You would still survive it as it would not be fast-flowing or very deep. That is the distinction between high and medium.
30. **The Chairperson:** Really, the difference between high and medium is the risk of death.
31. **Mr Porter:** The foreseeable risk of death, yes. That has a knock-on effect on how we require it to be managed, but that is the difference in designation.
32. **The Chairperson:** How do you factor the state of the reservoir into the risk-management scale? You could have the equivalent of the Hoover dam in an area with a large population centre. The owner might have purchased it when there was no population around it, but one has built up. Therefore, even though he has built a modern, state-of-the-art dam, he may find, through no fault of his own, that it could still be deemed to be high risk, which could place a burden on to him.
33. **Mr Porter:** That is correct. The reason is that he has the potential to cause significant harm; therefore, he must be subject to a high degree of regulation. He has to have a high degree of inspection and maintenance, as that allows that person to sleep in their bed at night. They know that, by being compliant, all reasonable steps have been taken to ensure that the big body of water that they own does not cause harm to a downstream population.
34. It is also worth clarifying that what we are really talking about is impact. There is a great deal of talk about the risk-based approach. However, I urge caution on that. At present, there is no industry-agreed way of determining the likelihood of failure of a reservoir. That is why we were clear through the public consultation and in our documentation that we are initially bringing forward a classification based on the potential impact of a structure. So that we are future-proofed and do not have to revisit the primary legislation, we are including other factors, such as pollution and the historical maintenance of a structure. However, there is no agreed industry standard; it comes down to a particular engineer's views on the likelihood of failure. The right and proper way of dealing with those reservoirs is to say, "We require you, the owners of high-risk reservoirs, to keep them to this particular standard". That is what the legislation will do.
35. For those that would cause less harm, there is a slightly less onerous requirement. For those for which we cannot see significant harm, we will exercise a very light touch. Hopefully, that is what we have set out in the legislation.
36. **The Chairperson:** What burden is on the person who has a state-of-the-art reservoir? How many inspections per year? If it is a modern, state-of-the-art reservoir, what relaxation could be made to relieve the burden when you know that the reservoir owner is responsible, has always made the investment when needed and has a best-practice model?
37. **Mr Porter:** Rather than relaxing the minimum standard, we need to look at it the other way. We are setting at least two visits a year by a supervising engineer for high-risk structures, so for those who own an old, ropery clay bank that has not been well maintained and about which they are a bit concerned, the supervising engineer should be saying that two visits are not enough. The engineer should be saying, "We are going to do many more than two in order to provide assurance that your structure is not moving, leaking or at the point of breach".

38. The minimum standard is at least two visits per year by a supervising engineer, although a supervising engineer can do more inspections for structures that owners are more concerned about. Rather than relaxing the minimum standard, we have put in a standard that we think is reasonable for all except when we are concerned, when more inspections will be required.
39. **The Chairperson:** Would it be possible for the Rivers Agency to provide the Committee with the differentials between what you hope to bring into play in Northern Ireland and England, Scotland and Wales with regard to the methodology of the risk assessment? I hear what you are saying with regard to a risk-based structure, but providing that information would give us a fuller picture.
40. **Mr Porter:** Yes.
41. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** My understanding is that, during the consultation, the Department and the Rivers Agency proposed a two-tier approach to high and low. It was not until stakeholders suggested, in response to the policy development phase of the consultation introducing a medium category, that it found its way into the legislation.
42. **Mr Milne:** Who appoints to the panel of engineers and where do you get the expertise? Are there enough engineers here with the expertise to deal with such work?
43. **Mr Porter:** The Institution of Civil Engineers has a reservoir panel in London to assess candidates. Robust criteria require evidence that you have experience in the area, that you are well trained and have the skills and competency. The panel does not appoint; it makes a recommendation under the 1975 Act in GB to the Secretary of State. Under our legislation, the recommendation will come from the same panel or committee but will go to the Department, which will draw up a list of people suitable for the various grades of engineer. That is a well-trying and tested process.
44. What we did not want to do in the policy development was reinvent the wheel, as that would have been a burden on engineers, who would have reflected it in the price. If a reservoir engineer in England wants to work here — having gone through a certain registration and a parallel, but different, system with an associated cost — all they would do is up their price in order to reflect that. At an early stage, we agreed with England, Scotland and Wales that we wanted to use a single committee to make recommendations to the various devolved Administrations, which would then allow us to take that forward. Hopefully, that has dealt with the “who”.
45. As regards quantity; I am a member of the Institution of Civil Engineers, but I do not sit on the reservoir committee as a member of the institute; I sit on it as a representative of the reservoir authority in Northern Ireland in readiness for the legislation. There has been much debate about the age profile, the capability of engineers because of the ageing profile, in particular of inspecting engineers, and also the future need to encourage more engineers into the area. The institution has agreed to bring forward the key players: the large water companies in England, because it is not just a concern for Northern Ireland; the key employers of reservoir panel engineers; the institution and other interested people. They will have a workshop before the next reservoir committee, which is in about three months’ time, to deal with issues such as how we can encourage young engineers to see it as attractive work.
46. They have, however, concluded that, at present, there are sufficient numbers, although they are worried about the future. I see quite a number of applications being dealt with by the committee, both renewals and new applicants. I would not be as concerned in the short term, and certainly not on introduction, about the number of reservoir panel engineers. However, it is something to keep an eye on in

- the longer term. It is not peculiar to Northern Ireland; it has been identified across England, Scotland and Wales as well.
47. **The Chairperson:** Does the panel of engineers quantify risk?
48. **Mr Porter:** No.
49. **The Chairperson:** Who does?
50. **Mr Porter:** The Rivers Agency.
51. **The Chairperson:** Will it be done in-house?
52. **Mr Porter:** Yes. We started to use a panel to do it. However, we have used a panel too often. So there will be a reservoir committee — although that title is used as well. A group of people will be pulled together in the Rivers Agency so that the decision does not rest on one individual. They will look at the flood inundation maps and at any other information that the manager provides. The group will also hear the first informal appeal. So if, when the initial designation decision is given, the manager wants to challenge our maps or provide us with different information, that group of people will hear it informally before we get to a final designation. We plan to do that in-house rather than outsourcing it.
53. **The Chairperson:** With the need for three or four different types of engineers, such as supervising engineers, the list could go on. Could costs spiral out of control?
54. **Mr Porter:** Interestingly, some of the panel engineers argue the opposite, as a number of firms are very specialist in that area; they feel that they are underpricing their expertise. It is probably driven by procurement and the ability to get onto frameworks. Some of the large companies recognise that the cost of not getting onto a framework is grave for them because other associated work is packaged out of the framework. I have heard the argument that it is a race to the bottom as opposed to necessarily an elevation of the price. Therefore I do not think that there will be a problem.
55. Although we do not have many panel engineers who work and reside in Northern Ireland, it is not a difficult to get back and forth to England. The role of the inspecting engineers is clear: to inspect on a particular day and produce a report. That satisfies the requirements of the legislation. As they are not involved continuously, an inspection engineer could fly in, carry out their role adequately, complete the report and then return to wherever they are based. I do not see an issue, certainly not for the inspecting engineer.
56. There is a question about the supervising engineer. You will be getting a number of supervising engineers from the Institute of Civil Engineers before the Committee. I would ask them those questions, particularly what number of reservoirs they, as individuals, would be comfortable managing. They will be able to articulate what personal responsibility they feel for their structures. They would be better placed to say, “I would be comfortable looking after two, three, four, or five.” I know that you have already approached supervising engineers, so some of those questions may be better teased out with them.
57. **Mr Swann:** How many engineers at each grade are there in Northern Ireland?
58. **Mr Porter:** At present, only one supervising and one inspecting engineer live in Northern Ireland, and another supervising engineer is training. Those guys are from multinational firms. You asked, “Who else is there?” They do not have many, but they have others. I would be not overly concerned about the initial inspection and not at all concerned about the inspection. If there is an issue with the initial phase of supervision, it is around that area. Again, I would address that one to the institution when it comes to talk to you.
59. **Mr Swann:** The registering body that you talked about is based in London. Is there a registered company south of the border? You are talking very specifically

- about those resident in Northern Ireland.
60. **Mr Porter:** Many of the companies that we deal with are not just GB-, UK- or these islands-wide; they are multi-nationals, such as Atkins and URS/ Scott Wilson. They are huge firms that operate across the globe. Some are involved in Southern Ireland, although not so many, because they do not have any legislation. Neither do they have as many reservoirs because Northern Ireland and Southern Ireland developed in slightly different ways. The economy in Southern Ireland was much more agriculturally driven in comparison to the industrialised employment that we had here with mills, shipbuilding, rope-making et al. The South does not have as many reservoirs, and they tend to be managed by the Electricity Supply Board (ESB) as part of its large hydroelectric schemes.
61. **Mr Milne:** I take it that engineers have surveyed all 151 structures.
62. **Mr Porter:** No.
63. **Mr Milne:** So there is no engineer survey of any of them.
64. **Mr Porter:** There is an engineer survey on quite a number. We have been very careful in the legislation to recognise surveys, provided that they meet a certain standard.
65. **Mr Milne:** So those will stand.
66. **Mr Porter:** They will. There is no nugatory work done. If anybody wants to anticipate the legislation and get in first, they will be encouraged to do so. Northern Ireland Water structures are inspected, as are the structures that we maintain in the Department. We have panel engineer reports, and we know from talking to councils that they have had panel engineer inspections on their structures.
67. **Mr Milne:** So, it is the private structures that are not—
68. **Mr Porter:** Yes. Some of the private structures have been assessed for particular reasons. If they were part of a development, if their owner had to put in a planning application and was concerned about the structure, or if they were looking to develop a hydroelectric scheme, the first thing they would do is get a dam engineer out to do an assessment to see how good it was or to see whether it was worth spending money on it. It is not that none of them has inspections, but they are the structures that we are more concerned about.
69. **Mr Irwin:** I apologise for leaving earlier, but I had to ask a question in the Chamber. You are proposing that 10,000 cubic metres be the level that defines a controlled reservoir. Why do you feel that that is the correct level? Ten thousand cubic metres is not a massive amount of water.
70. **Mr Porter:** Ten thousand cubic metres is the level that Great Britain is moving towards, although at different rates in different areas. That question would have been much easier to answer three years ago, when it was nice and clean and tidy. It is not quite as clean and tidy today. The 1975 Act required reservoirs that had 25,000 cubic metres or more to be regulated. The Pitt review into serious flooding recommended that that threshold be looked at, and smaller reservoirs were brought in. That was subsequently enacted through legislation in England and Wales. As you heard from the researcher, the Scottish decided, rather than become embroiled in that, to bring forward a stand-alone piece of legislation. To-day, reservoirs in Scotland with 25,000 cubic metres are regulated, and Scotland has legislation that brings that down to 10,000 cubic metres. Wales is regulated to 25,000 cubic metres, and it has legislation, which its Ministers are content with, to bring it down to 10,000 cubic metres. In England, they regulate 25,000 cubic metre reservoirs, and they have legislation to bring that down to 10,000 cubic metres. The decision on whether that will be enacted as phase 2 of the Flood and Water Management Bill is sitting on a Minister's desk, as we

- speaking. Therefore it is a slightly different position.
71. When we started to write the legislation, it was easy; everyone was going to 10,000 cubic metres, so we went to 10,000 cubic metres. Given the changing position, we asked the Institution of Civil Engineers whether we had got it right. We asked if 10,000 cubic metres was reasonable, and it has confirmed that, in its view, 10,000 cubic metres is the level that could cause harm if its water were released. They are the guys who manage reservoirs and who have experience in the area.
72. To give you some comfort, I will play with the 10,000 cubic metres. As we know, 10,000 cubic metres gives the figure of 151 structures; upping it to 15,000 cubic metres would reduce the 151 to 132 structures. Going to 25,000 cubic metres would reduce the number to be regulated to 120. I do not think that that tells you the whole story, because it looks worth exploring. More interesting are the structures in private ownership. Let us look at 10,000 cubic metres and focus on the high-impact or high-risk structures. From our investigations, the initial number of high-risk structures greater than 10,000 cubic metres in private ownership is 24. If we up that to 15,000 cubic metres, there are still 24. That means that there are no privately owned reservoirs in high-risk designations between 10,000 cubic metres and 15,000 cubic metres. If we upped it to 25,000 cubic metres, the 24 goes down by one to 23 structures. Therefore the real beneficiary of changing the threshold would be the public sector. As you heard earlier, we are probably not that concerned about the burden on the public sector because most reservoirs are regulated in the spirit of this. This is not a financial burden on public sector owners because they already understand the risks associated with a reservoir and they already carry out inspections and maintenance. There is no real benefit that I can see, other than for that one group, which changes from 24 to 23. I am not sure where that one is, and we have not looked at it.
73. We can do the same exercise for the third sector with the 10,000 cubic metre threshold. We are dealing just with the high-risk structures, of which there are eight. If we increase the threshold to 15,000 or 25,000 cubic metres, we still have eight structures. Therefore there is no benefit to the third sector in changing the threshold. The benefit is largely to those that are in public ownership. I am not sure that I would encourage you to do that, as there would be no measurable benefit. There would not be a reduction in the burden on the public purse as a result of changing the threshold, although I am happy to be challenged on that or to look at the figures differently if you wish.
74. **Mr Irwin:** Thank you. I, for one, would have thought that there would have been a bigger difference.
75. **Mr McAleer:** I want to ask about the part of the Bill that deals with enforcement and offences. In your paper you set out the different levels of fines, which range from £2,500 and £5,000 right up to imprisonment. Are those penalties appropriate and proportionate? How do they compare with other jurisdictions where such legislation has been introduced? I understand that a table is to be published illustrating offences and penalties. When will that be published?
76. **The Committee Clerk:** It is in the pack.
77. **Mr McAleer:** Is it available in the pack? Thank you, Stella; you can omit that last sentence. *[Laughter.]*
78. **Mr Brazier:** I have been comparing the Northern Ireland Reservoirs Bill with that which is proposed for Scotland, but I have also been looking at England and in particular at the levels of sanction in Scotland for stop notices. There are three clauses in the Reservoirs Bill that deal with civil sanctions and 16 that deal with criminal sanctions. Scotland has all but one of those clauses in its Bill. To a large extent they mirror our approach to this and we mirror theirs.

79. The Reservoirs Bill contains all three civil sanctions and all but one of the criminal sanctions so, as Mark said, there are a few minor differences in the criminal sanctions. We have a penalty for six months' non-compliance, whereas Scotland has a 12 months' non-compliance penalty. It is my understanding that that is more to do with a quirk in the legislation than a policy intent, because the same policy intent is there. The policy intention of the Reservoirs Bill in England, Scotland, Wales and Northern Ireland is to seek agreement and cooperation from the reservoir managers, to work with them and to help them to understand their responsibilities and to get them to do that voluntarily. It is only where that starts to fail that we get into considering civil or criminal sanctions. The major difference between our enforcement system and Scotland's is the stop notice.
80. Stop notices are just what they say they are. By issuing one, we want somebody to stop doing something that is very dangerous, and we would only issue one when it is really necessary to do so. We also want to have as much of a deterrent as possible for non-compliance with a stop notice. When considering the best deterrent, we looked around the rest of the United Kingdom. In England and Wales, the level of penalty in their reservoirs Bills is the same, with six months' imprisonment and a £20,000 fine. Scotland differs significantly, and, I would suggest, is too lenient. If somebody fails to comply with a stop notice in Scotland, they will, on summary conviction, receive a maximum of 60 days' imprisonment and a fine of £2,500. That is completely out of kilter with what is proposed in England and Wales and what we are proposing here.
81. It is about trying to deter somebody from doing something. In Scotland, the penalty for indictment for a first offence is three months, a fine, or both, although the maximum fine in Scotland is £50,000. It goes up. Ours is 12 months' imprisonment with a fine on first conviction and two years imprisonment or a fine for a second offence. A second offence in Scotland attracts a penalty of six months' imprisonment, a fine, or both. There is a significant difference between our proposed system and the one in Scotland. England, Northern Ireland and Wales are taking exactly the same approach.
82. The policy intention throughout the United Kingdom is the same, but in Scotland the penalty regime is significantly different. I suggest that the system in Scotland is a bit too lenient when it comes to the degree of offence that we are talking about.
83. **Mr McAleer:** I want to ask one other question. Community and voluntary organisations, including those in my community, have taken on the leases of reservoirs for community development purposes. If a group takes on that responsibility corporately, who would you pursue in order to impose those fines or serve enforcement or stop notices? You probably know that membership changes in many organisations, and the fortunes of groups change too, and it is just not as consistent as having a single owner. I am anxious that this could be a bit off-putting for voluntary organisations, who might feel that they are taking on an extra liability that could be prohibitive for them.
84. **Mr Porter:** There are two aspects to this. I encourage organisations that take on such responsibility, particularly responsibility for a lease, to make it very clear who is responsible. Mark raised the issue of recreational users of reservoirs, and I encourage those who lease facilities to look at those leases and make sure that they do not say, or that it could not be read into them, that they are responsible for water level management. That will be one of the measures that we will apply, and now is the opportunity to draw this to the attention of owners from whom they lease the land, and clubs, so that we do not get a situation such as the one you have described.

85. Individuals will have to register as reservoir managers and, where there are multiple managers, the legislation allows for a lead reservoir manager who will be responsible. Again, I urge caution, particularly to people to gain an understanding of what this means, because there is the reservoir owner who owns the ground and then there is, potentially, the organisation. There needs to be a discussion about who is responsible for making sure that the reservoir is safe, carrying out routine inspections and, ultimately, giving us an assurance that the reservoir is being managed in an appropriate way.
86. **Mr McAleer:** Many organisations have entered into 20- or 30-year leases for reservoirs, as levering funding from particular programmes may have required them to take on such a lease. What you are saying is that they must now start to go through those leases to find out who is the reservoir manager. If that is ambiguous, will that potentially require some negotiation with the owner and amendment of the lease?
87. **Mr Porter:** It is not a requirement and I am not saying that they have to do it. However, I would do it if I were on the board, panel or committee or in charge of some of those groups. I would want to gain an understanding of what I was responsible for. If it is not clear, I would seek a way to address that and make it clear what the responsibilities are. There may need to be some negotiation, but it is not a requirement of the legislation, rather it is a consequence of it. We do not require those leases to be reviewed, but it would be a very wise move to get that clarified so that we are not dealing with it in an emergency or enforcement situation, and that we do not get to the point of having to enforce on community groups and individuals. I encourage people to get that tidied up now rather than waiting.
88. **Mr Brazier:** A clause in the Bill deals specifically with partnerships, responsibilities within partnerships and individuals in partnerships. I think it is a standard clause. It makes it clear that, if any individual commits an offence, they commit it on behalf of the partnership. It is not as though someone in a partnership can take on the responsibility for the reservoir, do something against the law, and that the rest of the partnership can say that it was that person's responsibility. That is not the case. They need to be very careful about what is in their leases and contracts for reservoirs. It is clause 115, if you want to have a look at it.
89. **The Chairperson:** You can see the difference between Northern Ireland and Scotland regarding convictions. To be clear and for the record so that we are all clear, if there were a breach, and hundreds of houses were flooded and, God forbid, somebody died, what would the manager be looking at? Would they be looking at the six months' imprisonment and the £20,000 fine or would that be a whole different ball game and scenario as regards the law? They could be looking at manslaughter.
90. **Mr Porter:** That would be a different circumstance. The offence and penalties are for non-compliance with the Reservoirs Bill. By carrying out that duty, you would be managing the structure in a reasonable way and it should not fail. We have argued throughout that the legislation should limit people's liability. At this moment, it is under common law, and in the situation you describe, you would go to court and a sentence would be passed under common law. This legislation would allow reservoir managers to say that they taken all reasonable steps and were compliant with the legislation and show the evidence for that. That may assist in limiting their liability.
91. **Mr Swann:** I know that it is not part of the Bill, but when will the Rivers Agency publish the reservoir inundation flood maps? Those will have a bearing.
92. **Mr Porter:** Going back to the floods directive, we had to have the maps for significant flood risk areas produced — the word in the legislation is “produced” — by 22 December 2013. We have done that. We are looking for an opportunity to make the river and coastal maps

- public. Discussions are ongoing as to whether we can publish the reservoir inundation maps at the same time.
93. We were very hesitant to do this before as the Bill had not been introduced. However, as the legislation is going through scrutiny, and its principles are agreed, we are slightly more comfortable. So, we are hopeful of doing so in the not-too-distant future. We are seeking a date at the moment.
94. **Mr Swann:** I understand the Department wanting to wait to release all the inundation maps at the same time, but the fact is that the reservoir maps are specifically for this Bill. Why are you not going ahead with producing them or releasing them now?
95. **Mr Porter:** We have made them available to any of the managers and anybody who wishes to see them, provided that they are known and have an interest.
96. **Mr Swann:** Do they have to request them from you?
97. **Mr Porter:** Yes. In fact, today, we have had another request for the release of another two. During the stakeholder event, we were quite happy to give a reservoir inundation map to those who admitted being an owner. We wanted to put the public release of the maps in the context of this being not just another hazard to be concerned about and that government is doing something about that hazard. That will give the public a little bit of comfort so that they will not take an adverse reaction to that.
98. **Mr Swann:** Once you have highlighted a hazard, such as the potential breach of a reservoir in an area, have there been any concerns? I think I raised the issue of household or business insurance.
99. **Mr Porter:** There should not be. The insurance industry tends to view reservoirs as low risk in the way it describes risk, provided that it gets an assurance that they are inspected, routinely maintained and that a panel engineer looks at them. The industry will take that assurance that it is a risk that it does not need to concern itself with. It is recognised that, if all the water could release, it will cause significant harm. Therefore, the design standard that reservoirs are constructed to is very high. Our issue is about routine inspection and maintenance. The real drive behind the Bill is that somebody routinely needs to have a look at them. An expert needs to come in once a year on a medium structure and twice a year on a higher-risk structure. Every 10 years, there needs to be a really good thorough look at it by an absolute professional. That gives assurance that the structure is being maintained and managed in a reasonable way. Therefore, household insurance should not be an issue in flood inundation areas.
100. **Mr Swann:** As regards building on flood plains or potential flood plains should a dam or reservoir breach, PPS 15 currently deals with flood risk management. The Minister of the Environment is reviewing all his planning statements. What liaison is there between the Department of the Environment and Rivers Agency about the Bill?
101. **Mr Porter:** It was mentioned by the researcher earlier that draft PPS 15 was out for public consultation, which finished on 10 January. There is a new FLD 5 in that. There was very close working between Rivers Agency and DOE officials in drafting the FLD 5 flood policy. There has been very close working.
102. **Mr Swann:** Is there a planning policy for reservoirs?
103. **Mr Porter:** FLD 5 is the planning policy. That is not accepted yet. PPS 15 was approved by the Executive to go to public consultation. It was subjected to public consultation, which ended on 10 January. Subsequently, responses made during that public consultation have to be considered by the Department of the Environment. There will then be a final approved version. Today, there is no FLD 5 regarding enforcement or planning policy, but there is a draft FLD 5, which we expect to be put through the public

- consultation process and confirmed in the not-too-distant future.
104. **The Chairperson:** If you have a low-risk reservoir, but, over the years, the surrounding area is built up into a population centre, will that change the definition of the reservoir to high risk, even though it has complied with all the legislation to that point?
105. **Mr Porter:** Yes. That is why, in FLD 5, we have included the requirement — not in the legislation, but in the planning policy — that a developer downstream has to be able to demonstrate that the hazard upstream is OK. That, then, will be a private matter between the developer and the reservoir manager. The developer will have to be able to give us assurance that the upstream hazard is OK. This will encourage a good working relationship between the two because the developer will not be able to give that assurance without getting access to the land and carrying out inspections. Therefore, if there are defects, the onus will be on the developer to come to some arrangement on those defects.
106. **The Chairperson:** What arrangements could a developer possibly come to? If he wants to build on a slot of land that could well become flooded through a breach in a reservoir, that would be a yes or no negotiation. Is it not unfair on the reservoir manager or owner that his destiny is not his own?
107. **Mr Porter:** I would put it the other way. A developer who wants to develop downstream of a low-risk reservoir will need to take on board the fact that he may well have to fix a reservoir in order to allow the development to go ahead. His planning approval will be conditional on him being able to provide that assurance. If the reservoir manager says that he does not want a development downstream and is not going to fix his reservoir, the developer will not get planning permission. The only way that the developer will get planning permission is by working with the manager.
108. **The Chairperson:** Let us live in the real world of planning, in which people push their luck, build and then fight it at enforcement, when enforcement has no real teeth or appetite to fight. If conditions are laid down that in order for a developer to build 20 or 30 properties he must do work to someone else's property, he may say, "OK that is dead on, I agree to that". He will then start building his houses, putting in his foundations, but does not start the work on the reservoir. How can you ever expect enforcement to come down on him and enforce things when there have been so many breaches and failures in the past?
109. **Mr Porter:** I would not like to try to defend Planning.
110. **The Chairperson:** No, I don't think you could. *[Laughter.]*
111. **Mr Porter:** That is way outside my area of responsibility, but I can give you a little bit of comfort. An initial look at the designation shows that there are only 20 low-risk structures. This means that the vast majority of reservoirs already have development downstream. By looking at where those 20 are located, and given the property boom that we went through, had there been development in the lea of those reservoirs, I suspect that the applications would have already been in.
112. These are remote reservoirs. There is one that, when it spills, it spills into the sea and there is no development land downstream. Although it is a concern, I am not sure that it is a significant concern. There will not be lots of applications that we get that will change this designation from low to medium or high.
113. You may well get the situation where additional development changes a medium-risk structure to a high-risk one. However, the financial burden would not be quite so significant, because it will already have a supervising engineer and one visit per year, which will then go up to two visits per year, and it will already have the initial inspection report

- by the inspecting engineer. By going up to high risk, there is the requirement that the report is done every 10 years, as opposed to when called on, but the change is not so significant. I could see that being an easier position for a developer to come to an agreement on, purely because the sums of money are not as significant. In some cases, it may well not be anything. The current arrangements may be OK.
114. **The Chairperson:** OK, thank you for that.
115. **Mr Buchanan:** What will happen to orphaned reservoirs such as Camlough? A report in February 2012 estimated improvement and safety costs to be £3.4 million, an annual operational cost of £13,000 and a 10-yearly inspection cost of approximately £3,000. Who will pick up the cost for that type of work? What is the situation regarding such reservoirs?
116. **Mr Porter:** There are now only six reservoirs in that situation, whereby we have not been able to identify who we believe to be the owner or manager. We continue to work on that. In the legislation, we have powers, in the interests of public safety, to step in and carry out works so that we can deal with the downstream consequences. That is so that we can give assurances that these reservoirs are being reasonably managed.
117. I would not describe Camlough as an orphaned reservoir. We know who owns it and who is responsible for it and we are working with a number of groups. Again, to give you a little bit of comfort, the figure has come down slightly. I know that you are calling DRD and Northern Ireland Water, and they will have done some work. Those initial figures of £3.4 million did not come from a panel engineer report. That came from a water strategy report: we asked that they had a quick look at that reservoir in order to give us an indicative figure. They have since commissioned an inspection engineer, and I was at a meeting of that group at the tail end of last week, and they have a more detailed report. The figure is still scary but it is not as scary as that, and they are working through that.
118. In general, in the case of reservoirs that we cannot find an owner for, we have the powers to address those items in the interests of public safety, so we will carry out an inspection. That will remain as a burden and we can choose whether, when we find the owner, to seek to recover those costs or we can potentially put the cost on as a burden on the deed of that property in the longer term. Again, that is a situation that we will have to deal with on a case-by-case basis. Thankfully, there are not too many cases, because we have worked through that and are now down to six. We are still confident that we will find some of the others before the legislation is enacted.
119. **Mr Buchanan:** This might not be appropriate for you, but, in light of everything that is in the Reservoirs Bill, what is the Department doing about seeking to ensure that the proper funding will be in place for this type of thing? Is funding being looked at and set aside or tied into the budgets? How is that panning out?
120. **Mr Porter:** There are two aspects. First, I will throw this argument out because I think that it is something that you need to keep in mind as we are going through the scrutiny of the Bill: a reservoir owner or manager should be maintaining their structure today irrespective of this legislation. In the event of failure, they are responsible. The common law is *Rylands v Fletcher*, as was mentioned in the Assembly the other day. What was argued the other day was that, because of that common law responsibility, which is that we know who is responsible at the point of failure, that should drive behaviour. People should be saying that, if this fails, I will be responsible and therefore I should be inspecting and maintaining my reservoir. We have evidence that that is not the case, and that is why we are bringing forward this legislation.
121. This function needs regulation. People need to be required to inspect and maintain their reservoirs. However,

- I would then argue that, if they are responsible today, it is not because of the legislation that those big figures are there. They are responsible for that irrespective of the legislation. They should be maintaining their structure in a way that is not a danger to people downstream. Thankfully, we have had no reservoir breaches in Northern Ireland that have killed anybody, but that is not the case when you look at England, Scotland and Wales where over 350 people have died in the past 150-odd years because of reservoirs. We have been very fortunate that we have not had a breach. A prudent owner will be subject to the costs of managing the structure today. Thankfully, the owners who have not been subject to it have managed to get away with it, but those costs are not as a direct result of the legislation, it is because they own a reservoir.
122. The second thing to mention is our ability to bid. That is why I went through the timeline. Our difficulty is that we will not really know all the information about these structures until around July 2017, which will be the end of the CSR period. By then, or at some point along that road, we will have started to gain an understanding.
123. You mentioned Camlough, which is a real concern. I am genuinely not expecting to find many situations like Camlough. There may be another one like it out there that is a real problem and has big figures associated with it, but I am genuinely not expecting to find a lot of them because of our knowledge of the reservoir stock. We are not in a position to bid, and, even if we get the money, we cannot do anything in the absence of legislation anyway.
124. **Mr Buchanan:** Nobody has been killed by water coming out of a reservoir so far, and you are saying that it has been the responsibility of the owner to keep the reservoir in good condition and safe to date. A person on whose ground the reservoir is located may not be aware that it could be in poor condition. Therefore, this will be coming as something new to them and putting an added cost on them that they may not be able to afford. What happens if a person does not have the financial ability to upgrade the reservoir as the Bill requires?
125. **Mr Porter:** This was the single biggest issue raised in the public consultation, and it was a very clear concern of the Assembly. So, we have put in the provision for a grant scheme. The Minister went further in the House when she said that she was particularly concerned about third-sector or not-for-profit organisations. She gave a commitment to look at the issue in more detail to see whether she should be meeting measures in the interests of public safety. That commitment stands, and it will be a piece of work that her officials will be doing and taking to the Minister as we go through this process.
126. **Miss M McIlveen:** Apologies for missing part of the meeting. I hope that I do not repeat questions that others asked.
127. You said that you will move in where there is no identifiable owner and where it is in the interest of public safety to do so. Clause 71 addresses the Department's powers in an emergency. Under what circumstances would you enact that clause?
128. **Mr Porter:** This clause gives us the power to deal with the situation faced in 2007 at Ulley reservoir in England. In that instance, a slip in the downstream face was identified: part of the dam structure had started to move and float downstream. There was also a high-pressure gas main downstream, so there was potentially a very serious situation. The Environment Agency, the panel engineer and the owner had to work together to deal it. So, the powers detailed in clause 71 allow us to work in the type of situation where the consequences could be catastrophic. We would have to go in and commission assistance from an engineer or work alongside an engineer to make sure or attempt to make sure that there was no failure.
129. **Miss M McIlveen:** It would seem that that would be at the extreme end of

- the measures that you would have to take. Would that follow on from issuing notices and taking owners to court? Obviously, if there was the potential for that amount of danger, you would surely move in in advance.
130. **Mr Porter:** You are absolutely right. This is outlining a situation where it appears to the Department that immediate action is required. So, where that immediate action is required, it is not about what the other clauses say. You have to deal with situation in the interests of public safety. So, in that situation, we would absolutely invoke that clause and deal with it in that way, as opposed to trying to keep that responsibility on somebody else's shoulders. In that situation, we would be particularly concerned about the downstream consequence and the impact on the wider community.
131. **Miss M McIlveen:** Those costs would then have to be recouped from the owner at a later stage.
132. **Mr Porter:** Cost recovery is referred to in clauses 7 and 8.
133. **Miss M McIlveen:** Moving on to costs, obviously there are financial implications, and others mentioned that where grants and so on are concerned. However, are you aware of an approximate cost of employing a supervisory engineer, an inspecting engineer or a construction engineer and so on? Do you have an idea of how much that would cost the owner or manager?
134. **Mr Porter:** I would set aside the cost of a construction engineer. A construction engineer is a specialist for a particular role. So, that is not a routine cost. If you were going to do some works that are particular to your structure, you would employ a construction engineer. Those costs are not routinely encountered. It would, as we would describe it, be project based. So, if you were going to do something or change the reservoir into a hydroelectric scheme, it would be part and parcel of that. At the same time, if you were going to decommission or abandon your structure, you would need a construction engineer to come in to certify that those works have been done in a reasonable way. The routine costs are for the supervising engineer and the inspection engineer. We have set out a range of figures. For supervision, it is between £2,500 and £5,500 a year. For the first inspection, we have a higher figure for the inspection engineer, which is between £6,000 and £8,000. For subsequent 10-yearly inspections, it would be between £2,500 and £4,000.
135. Those figures come from the Environment Agency in GB. There is a difference between the first inspection and the subsequent inspection, because we recognise that, if you do not have any information about your structure, lots of inspection work will have to be done. There may need to be some ground investigation and some understanding of the catchment so that they understand how much water can come in from the upland areas. So, a larger figure is involved with that. It would be worth raising some of those questions with the engineers. That information has been derived from information that the EA has held over a period of years. The engineers will be able to give a figure for a particular structure and could say, for instance, what a company would charge for a concrete structure. That may be more useful to you when deciding whether it really is a burden or how unreasonable it may be. They will be very well able to give you a range of costs. However, it is in that range.
136. **Miss M McIlveen:** The owners or managers would then have to select those engineers from a list.
137. **Mr Porter:** From the panel.
138. **Miss M McIlveen:** How are engineers appointed to that list? Is it a transparent process?
139. **Mr Porter:** It is. Again, this is similar to an answer that I gave earlier, but I recognise that you were not in at that stage. The Institution of Civil Engineers in London maintains a reservoir committee that scrutinises applications.

- It does not appoint; under the 1975 Act, it gives a recommendation to the Secretary of State. Under our Bill, it will give a recommendation to the Department, and it will be a departmental appointment to the reservoir panel.
140. We are also recognising that engineers on the existing panels will be allowed to operate initially under this legislation. We are doing that so that no nugatory element or cost is associated with setting up a panel particular for Northern Ireland. We will be able to use those panels for the initial phases. Looking forward, we have had discussions with the reservoir panel about how we will have a geographical difference in their application. So, if a reservoir panel engineer wants to work in all areas and apply for and tick all those areas, he has to be prepared to be questioned on the different pieces of legislation and has to be able to understand the different legislation. However, if you want to work just in Northern Ireland, you can then get on the list just for Northern Ireland, and you will be asked only about the Northern Ireland legislation. That will be the difference. However, that is for the future; it is not in the initial plan. Initially, we will take the list as existing and will recognise that under the legislation.
141. **The Chairperson:** Can I ask questions on flood plans, which are one of the operating requirements for the high- and medium-risk reservoirs? Who has the capacity and capability to produce that flood plan? Is that left to the reservoir owner? Could inspecting engineers produce it? How do you know that a flood plan is sufficient?
142. **Mr Porter:** A little bit more detail is required on that, because we say “by regulation”. It is one of the factors that we will bring forward. In appendix D of the public consultation document that was put out in March 2012, we laid out information that may be included in the on-site plan. That included elements such as the location, the responsible person, the use and type of structure, the named company and the address and phone number of supervising engineers. That is routine information. We are not talking about flood inundation maps or consequence decisions; we are dealing with operational and routine issues. I am not as concerned about the on-site flood plans and the requirement for them. It starts to become more complex when you try to develop those into off-site flood plans and try to say, “The time of inundation to a particular point will be x and our reaction will be something else”. We do not have that in our mind at this time. We will bring forward an on-site plan that is operational, and it should be within the gift of most reservoir managers, with some assistance from their engineer, to draw it up at, we suspect, a relatively modest cost.
143. **The Chairperson:** That brings me on to another point about secondary legislation and the delegated powers. It looks as though you could go into up to 26 areas. Are we all being blindsided? Are you asking the Assembly to pass legislation that you could change dramatically in all sorts of directions?
144. **Mr Porter:** Certainly not. We included a lot of the areas that we have discussed — the flood plan is a good example — in the public consultation, and we asked questions about the type of forms and about whether it was reasonable. We have been laying out our stall from day one. We do not intend to do anything dramatically different from what we said, and we have tried to keep as many of the significant issues in primary legislation as we could. Areas that have the potential to change can be dealt with that through secondary legislation.
145. **The Chairperson:** Can I take you to clause 4, which is about further provisions for controlled reservoirs? Clause 4(1) enables the Department to make provision, by order, for a different volume of water to be substituted for the volume threshold of a controlled reservoir. Is that about one specific reservoir, or is it a 10,000 cubic metre threshold for all reservoirs?
146. **Mr Porter:** No, that is for all. That is just trying to give us some room for

- manoeuvre in the legislation so that, in the event of a change, we do not have to try to revisit the primary legislation and that we have the ability to make some minor adjustments. Again, it is one of those provisions that is there to future-proof the legislation. There are quite a few of those. We do not envisage having to use that at this minute in time.
147. **The Chairperson:** How will that then be acted out? Will that come by negative or affirmative resolution?
148. **Mr Brazier:** It will be draft affirmative, Chair. As was alluded to, 37 of the clauses will require regulations, 13 of which are draft affirmative and 24 of which are negative. That said, we expect to share our thinking on the negative resolutions with you, obviously before those are laid. We will explain our thinking around all that. The one that you are referring to is draft affirmative, and the clause on flood plans is also draft affirmative. So, those are two particular resolutions that we will definitely be talking to you about, but we will be talking to you about them all.
149. **The Chairperson:** Clause 2(3) enables the Department, by regulations, to provide that a smaller reservoir is to be subject to the Bill in the same way as a controlled reservoir. What do you have in mind there? What is concerning you that means that you have that clause?
150. **Mr Porter:** We are not concerned about any particular structure. Again, at this minute in time, all that we are doing is making sure that if, as we go forward, we find something that we are particularly concerned about, we do not have a problem bringing it forward. However, at this minute in time, we have identified no structures that we plan to use that regulation for. That one refers to a specific structure, so that will not be a clause that we will be able to use to change the volume; that is somewhere different. This one is a particular structure for a particular reason.
151. **The Chairperson:** If you were to pick a puddle of water, how would the owner of that puddle be able to appeal that? If they feel aggrieved, what mechanisms are there for them?
152. **Mr Porter:** I cannot think of any puddle of water that we plan to do this for. All that it is is the power to do that by regulation. At this time, all that we are doing is future-proofing the legislation to give us the ability to do that in case there is something in the middle of a highly populated area that is on the point of failure and we have to step in and do something about it informally. That, therefore, requires the owner to bring it up just because of the consequence. However, there are no examples that I can think of that we will be doing that for.
153. **The Chairperson:** So, if you were to bring forward secondary legislation on this, would there be an appeals mechanism along with that?
154. **Mr Porter:** Yes.
155. **The Chairperson:** OK. With regard to the overall dispute-and-appeals mechanism, you have an appeals mechanism that would be allowed for stop notices. So, if an owner does something that you want them to stop doing — you would want them to stop immediately, I imagine — how can you have an appeals mechanism? Although that appeals mechanism carries on, does the behaviour and activity continue while they are going through an appeals mechanism? Sorry, I am referring to clause 73.
156. **Mr Porter:** Can we come back to you on that?
157. **The Chairperson:** That is fine; there is no problem with that whatsoever. The question is about the practical outworkings of the appeals. The stop notices are only one aspect of appeals that I have picked out. Obviously, you want someone to stop, because there is fear. So, if they then appeal that, can they continue the behaviour? I want to clarify that, and we can certainly take that in writing; there is no problem there.
158. There are other reviews, decisions and appeals mechanisms in the Bill. Again,

- are you confident that they are all open, transparent and conservative in cost? Are there any other best practice methods that could be used that you are not using?
159. **Mr Porter:** We have looked at having an informal system, and, in the event that that does not work, there are appeals. As I described, a group of people in Rivers Agency make a decision on a designation. We will have that as an initial designation, and, if an owner wishes to, they can then provide other information. Again, that would be done on a no-cost basis. That is informal, and it is only then when decisions are not accepted that people would have the ability to take those down to a formal process. So, both those are built in to that.
160. We looked at various options for the appeal of a decision. One of the options that we had was to refer to the Institution of Civil Engineers, because we suspect that most of the appeals will be of a technical nature. For instance, if we look at comparable legislation under the Drainage Order and schedule 6, we see that, if you are not content with the Department's decision under that schedule, you can ask for the Institution of Civil Engineers to appoint an adjudicator who will hear the case. We looked at that as one of the possibles. We discounted it for the very reason that you gave, which was that, by doing that, we would not be able to give a reasonable scale of costs up front. However, we could, through the Water Commissioners, because they have a published and agreed scale of costs. However, the Institution of Civil Engineers has a cost for appointing the person to hear the appeal. After that, it is whatever it costs to hear the appeal. Our concern with that was that a person could be put off, because they may not be sure about what the appeal would cost, and that could be a barrier to them taking a very reasonable appeal. So, we felt that the water panel was the better approach, because it gives some cost certainty.
161. **The Chairperson:** I think that it was me who asked for a comparison of the methodology of the risk assessment in England, Scotland and Wales. Can we also have the differential in the requirements for the operation, the assessments and the yearly ongoing burden in England, Scotland and Wales?
162. **Mr Brazier:** Do you mean the inspection regime, Chair?
163. **The Chairperson:** Yes, can we have the operating and mandatory requirements for the owners?
164. One thing that concerns me is the cost. You have been asked about it, and you have given some rationale. Although you want the Assembly to pass the Bill, no one knows how much it is going to cost the industry, the private sector, the public sector or the ratepayer, if it will be done by NI Water. Indeed, if there is a grant scheme, no one knows how much will be needed in that pot. You have an explanatory and financial memorandum, but I can see only three points in that that are related to costs. However, the Reservoirs (Scotland) Act has a supplementary financial memorandum, which is additional. How come we cannot produce a supplementary financial memorandum? How come DARD or Rivers Agency cannot produce a separate piece of information?
165. **Mr Porter:** We can certainly look at that to see whether we can provide additional information. The issue, however, will be how robust that is. Scotland has had regulations since 1930, so it knows the number of reservoirs that it is dealing with, it knows the size of them, and it knows that they have been inspected and maintained during that period.
166. Scotland is changing the responsibility from local councils to the Scottish Environment Protection Agency (SEPA). It is changing the threshold and clarifying some of the responsibilities, but it is not introducing regulation from scratch. Our difficulty is that, when we ask how good or bad our reservoir stock is, we can get good assurance on certain reservoirs but very poor assurance on others. So, the information is very difficult to get together. It would be based on lots and

- lots of assumptions that may or may not prove to be correct. So, it is a problem that we recognise.
167. **The Chairperson:** The Scottish Government commissioned an independent financial report from Atkins Ltd in August 2010. Have the Rivers Agency or DARD done that?
168. **Mr Porter:** No, we have not. Again, because they know what reservoir stock they are dealing with, they have that information. They are taking that information based on inspection reports, so they know the condition of their structures. Therefore, they can identify what works are needed in the interests of public safety and who is unable to do those works. We do not have that first piece of information, which is the initial inspection report, to then be able to better inform it. I would again try to give a little bit of comfort on this. You mentioned a concern about Departments and Northern Ireland Water in particular. Northern Ireland Water manages its structures in the spirit of the 1975 legislation. Its own engineers and a supervising engineer carry out routine inspections, and they have 10-year panel engineer reports, as well as a programme of works that comes out of those. So, I would not be concerned about the costs for that.
169. I can give you the same assurance for the structures that we look after. We have a routine inspection by our own engineers, as well as a supervising engineer and an inspection engineer, and works are being done. Going forward, those costs are not real, because we are currently dealing with that, and we manage it between Northern Ireland Water and ourselves. We can give you that same assurance about many other public bodies, as well as some of the councils. It boils down to that last third, which are the private sector facilities, or the unknown ones or the third sector, for which it is going to be very difficult to quantify with any degree of certainty what the costs will really be.
170. **The Chairperson:** Even with regard to the grant scheme that may or may not be brought in, at least the Scottish Government have identified the potential costs. In their memorandum, they state that:
- “The potential cost to the public purse for an individual grant could, therefore, range from £1,000 to £1.2 million if the grant covered the full cost of adaptation.”*
171. That is in that memorandum, so at least the Scottish Parliament can make a judgement as they go forward with their Act. However, the Northern Ireland Assembly cannot make that judgement.
172. **Mr Porter:** You are correct about that at this minute in time. However, the Minister gave a commitment to look at the third sector in particular in more detail to see whether she can meet the costs of those matters in the interest of public safety. So, for her to take that decision, she is going to require some of this information. That means that we are going to have to do some work on this to try to quantify it in some way.
173. **The Chairperson:** Are you able to do that work in the time that is available to this Committee to scrutinise the Bill?
174. **Mr Porter:** We can certainly attempt to do some of that work. Again, I would add a caveat about some of the assumptions that we are going to have to make. We are not going to be able, and properly we should not be able, to commission an initial inspection on the structures, because that responsibility rests with the owner. The legislation makes it clear that that responsibility does not shift. I would not like to be in a position where I would undermine that fundamental point, which is that the reservoir manager is responsible for the structure. We are certainly going to have to think about how we can quantify the scale of any grant scheme for the Minister to take an informed decision.
175. **The Chairperson:** OK.
176. **Mr McMullan:** Most of my questions have been answered. Talking of the law, is there any difference between industrial law and common law? Will everybody come under the same law?

- You mentioned the possibility of court cases, so are we talking about the County Court or the High Court? There is no mention of it in this Bill. I know that it was mentioned in the Marine Bill that went through the Assembly. Is there a third-party appeal process? Some of these people could end up being caught in a court case. I am talking about the likes of councils, which can afford to go to court. However, other people, such as managers cannot, and it would leave a very unfair situation.
177. **Mr Brazier:** The Bill refers to summary conviction and then to conviction on indictment. My understanding is that summary convictions are dealt with by the Magistrates' Court and that convictions on indictment are dealt with in the High Court. That is the language that the Bill uses. So, those are the jurisdictions that will consider those convictions.
178. As I said, we would hope never to have to use these penalties. They are there as a deterrent. This is about trying to help people to understand what their responsibilities are, to encourage them to comply with their responsibilities and to give them help and support in doing so where they have difficulties. The last thing that we want to do is take anyone to court. We do not want to have to do that. There is a raft of other things, such as civil convictions and fixed and variable monetary penalties and that kind of thing, but we do not want to go down that road. If we have to, however, the Bill allows us to do that.
179. **Mr McMullan:** When you talk about downstream danger to the public, how far away are we talking about? They could be up the side of a mountain, miles away, or just up the road. What is the difference?
180. **Mr Porter:** It will vary according to reservoir, topography and shape. However, we have flood inundation maps, as was mentioned, so we can determine where that water would go in the event of a breach of that structure. Those maps were made just to give the high-level figure; they show only a flood outline, not depth or velocity. The next bit of work that our mapping and modelling teams will undertake will be to develop that flood inundation map to show depth and velocity. That will refine that work, because we need that information to take the decisions about high and medium risk. As I explained, depth and velocity — deep water flowing fast — is what causes the harm. We have flood inundation maps, and some of them go quite a distance. Certainly, when dealing with some of the larger structures, you see that the water will go some distance.
181. **Mr McMullan:** My last question is this: can the planning authority use any of the Bill as a stick to beat the owner with? If a shrewd developer came in, could he use the planning laws to get round a manager or owner to do something with a reservoir that could endanger his development proposals? The only person who is safe in this is the Crown.
182. **Mr Porter:** I think that it applies to the Crown as well —
183. **Mr McMullan:** No. Not as much to the Crown; it does not apply that much to the Crown. Is there any safeguard in the Bill for the ordinary manager or owner?
184. **Mr Porter:** The safeguard is in planning policy. It was identified in PPS 15 that that was one of the gaps. We were going to bring forward legislation to require owners to do things, but there was no link-up with planning policy. That is the gap that FLD 5 closes. As I said, that was subject to public consultation, and it will be confirmed in the not too distant future, taking on board the comments from the public consultation. That planning policy is what gives that manager or owner the safeguard.
185. **Mr McMullan:** What happens in the case where a council owns one of the reservoirs but the planning function has now been handed to council? Does the council just declare an interest and carry on? Surely there would be a conflict of interest there. Is there nothing in the Bill to safeguard against that?

186. **Mr Porter:** One good thing is that we have planning policy statements that assist decision-makers. Such a council would have to demonstrate how it is compliant with planning policy statements. It would be dealt with in the same way that central government own reservoirs and are the planning authority today. I suspect that it is no different; it will just be under a different authority.
187. **The Chairperson:** Can I go back a bit? I promise that this is my last question. I think that it was Tom who brought up the example of Camlough. You referred to knowing who the owners are. I know that we are in public session, but we are led to believe that Camlough was owned by a trustee group, the members of which may all be deceased.
188. **Mr Porter:** That is correct. Camlough was brought forward by a piece of legislation. Off the top of my head, that happened in 1871, and it enabled that reservoir to be constructed and enabled the formation of the Water Commissioners. We know who the last Water Commissioners were, so the people who are responsible for that reservoir today are the Water Commissioners. The piece of legislation that puts them in place still exists. Parts of that 1871 legislation have been repealed, but the bit relating to the appointment of a Water Commissioner has not. So, technically, it is the Water Commissioners, but there is no person who sits in or holds that position. That is something that we have worked through with Northern Ireland Water and Newry and Mourne District Council, because both those organisations have an interest in Camlough lake going forward.
189. We have been having a discussion about the best option for everybody collectively and about what the options are, given that that post — the Water Commissioner's post — does not have an individual in it who can take a decision. The barrier to any person putting their hand up for that position is the £3.5 million liability that they will incur. That liability is down a wee bit from that figure now, but it is a particularly complex situation. I am absolutely sure that Northern Ireland Water, Newry and Mourne and DRD will want to talk about it. However, it has been a very good test case for us in trying, informally, to understand the types of issues that we will face when we are the reservoir authority for Northern Ireland.
190. **The Chairperson:** I am happy enough. Members, do you have any more questions to ask? This is your last chance to scrutinise the Rivers Agency in this period. OK, the members are content. Thank you very much, David and Kieran, for your time and for your marathon session.
191. **Mr Porter:** Thank you.

18 February 2014

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
 Mr Oliver McMullan
 Mr Robin Swann

Witnesses:

Mr Peter Close *Northern Ireland*
 Mr Bob Davidson *Environment Agency*

192. **The Chairperson:** I welcome to the Committee Peter Close, senior scientific officer in the environmental protection directorate of the Northern Ireland Environment Agency (NIEA), and Bob Davidson, senior scientific officer in the natural heritage directorate. You are very welcome to the Committee to discuss the Reservoirs Bill. Members have already had a chance to read your briefing paper. You can take up to 10 minutes to address the Committee, and then we will have questions.
193. **Mr Bob Davidson (Northern Ireland Environment Agency):** We work for different parts of the Environment Agency. I work for the natural heritage part, while Peter works on the water management regulation side. I will draw a little bit of a picture from the natural heritage perspective to begin with.
194. Setting aside the Reservoirs Bill and just looking at nature conservation issues, I believe that our legislation and practice operates on a sort of hierarchical basis. At the top end are the issues that are of European importance, then there are those of national importance and then there are those of local importance. I will quickly take the Committee through that.
195. Under the habitats and species directive, member states are required to designate Natura 2000 sites. A lot of members will have heard of special areas of conservation (SACs) and special protection areas (SPAs), and it is a requirement of the habitats directive to have those sites in place. We have over 50 such sites across Northern Ireland. There are also European protected species. Otters, bats and, although they are not relevant to reservoirs, dolphins are all species protected under European law, and we have to give them special protection. Therefore, we have a suite of European sites, but we also have habitats and species of European importance scattered across the countryside outside the designated sites.
196. Down a level, we have areas of special scientific interest (ASSIs), and that is the designation of land that is of national importance. All our Natura 2000 sites are double-badged as ASSIs. Whereas we have over 50 Natura 2000 sites, we have something of the order of 360 ASSIs, which cover 7% to 8% of the area of the country. Within that suite of sites, each site is identified for particular reasons, and owner-occupiers of the sites are required to notify us if they propose to carry out any operations that could damage features of the ASSIs.
197. At the next level below that — the local level — there are other species that are protected under the wildlife order that are not species of European importance. Otters and all birds are protected by law. Furthermore, as I mentioned, we have priority habitats and priority species in the wider countryside. There is a general obligation on public bodies to protect those where they can.
198. That gives you some background to and context of how nature conservation and protection works. There is much more detail behind it than that, but, just to give people a starting framework to think about, that is the broad framework under which we operate.

199. **The Chairperson:** Peter, do you want to add to that?
200. **Mr Peter Close (Northern Ireland Environment Agency):** Yes. I work in the water management unit of the Northern Ireland Environment Agency. I have responsibility for the team that regulates the abstraction and impoundment licensing regulations for Northern Ireland, so any abstraction or diversion of water for hydropower or Northern Ireland Water taking water from reservoirs for potable supply etc fall under this legislation.
201. I was tasked with contributing to the work on the Bill and for the consultation on it, so my team and I have been involved in all aspects of the work of Rivers Agency thus far and fully support the Bill and the regulations from a health and safety perspective. During that time, we were made aware that Northern Ireland Water, in preparation for the Bill and, obviously, in preparation for good practice and inspections, had identified reservoirs that fell within its area of ownership and which may require work on scour valves or the refurbishment of the valves associated with the towers and their structures. That meant that there was a fair chance that some of them would need to be drawn down and, possibly, emptied. Therefore I established, essentially, a cross-NIEA committee to take into consideration how best that activity could be done in line with the current environmental legislation and in line with a way that would still support Northern Ireland Water and meet the requirements of the Reservoirs Bill from a health and safety point of view. Most of the information that I have provided has been on the guidance and agreement that we have put to Northern Ireland Water in relation to an activity such as the drawing down of the water in our reservoirs.
202. **The Chairperson:** Thank you very much, Peter and Bob, for your presentation. It is clear that you have an area of responsibility and concern about the impact of drawdown not only on wildlife in the reservoir but in the surrounding area and downstream of a reservoir, including habitat. There is also the pollution aspect, and I was interested to read your detail, albeit technical for my simple mind, on the differences in the water levels. You say that, when you have to drain the reservoir down to an adequate level to work at valves or pipes, you then disrupt or go into a different type of water. If it were all to be drained at one time, it could affect water tables or the type of water flowing down into our water courses. Have you concerns about the implementation of the Bill? You said that you welcome the Bill for health and safety reasons, which is good, but have you any concerns about its impact?
203. **Mr Close:** I do not have any concerns about the Bill, and, as stated, NIEA welcomes the Bill and its key objectives. There is activity of a reservoir having to have works done to the impoundment or to valves, for example, the scour valve, and that activity is necessary. Essentially, it has to be located at a very low level. The consultant's report from Northern Ireland Water indicated that a number of those scour valves may need to be replaced and that, in doing so, the level that you would have to draw down would be quite low. So, yes, we have concerns about potential impacts of the release of such water. From a quantity point of view, if you release too much — it would take a considerable time, maybe 30 or 60 days, to draw all that water down — you have also water coming into the reservoir. A reservoir that was built in the 1850s, say, will have received considerable amounts of sediment from the catchment above it that will naturally come down to the impoundment. Over time, there may have been servicing by way of the scour valves, but, essentially, you will always have a build-up of sediment that will sit on the bottom of the reservoir. Because of the nature of the sediment, the material that is coming in and the chemistry associated with the water in those columns that we spoke about, dissolved oxygen at lower levels is very low and the temperature of the water is very low. If you simply open a valve in

- the middle of the summer, for argument's sake, and you have a reasonably good ecosystem below with fish etc, very cold water with no oxygen in it and lots of sediment would have an adverse impact; hence there are controls.
204. I have spoken to the Environment Agency, the Environmental Protection Agency (EPA) and the Scottish Environment Protection Agency (SEPA), our Scottish sister agency, about those issues, and a fair bit of work has been done on them. However, it is not very often that that needs to be done and done in a manner whereby you need to draw down the whole thing or a lot of it. It took quite a while, with the group that we established, to set up a mechanism to look for the best fit to mitigate the potential for environmental damage by controlling the discharge. Northern Ireland Water and the consultants have, broadly speaking, agreed and welcomed the document that we have greened and the authorisation that we have given.
205. **The Chairperson:** The Committee is hearing of some councils, one in particular and one reservoir owner in particular, that is of the mind that it should decommission its reservoir. What is to stop a reservoir manager or owner decommissioning and draining their reservoir now and perhaps indirectly causing an impact?
206. **Mr Close:** Without prior agreement from the agency, they would be in breach of a number of pieces of environmental legislation, for example, the Water (Northern Ireland) Order 1999. It would be illegal to discharge what could be a polluting or noxious material as described. The contents of the bottom of a reservoir would not be regarded as pristine, clean water; therefore, they would be knowingly or otherwise discharging something that could have a polluting impact. If there is a fish kill, the fisheries legislation kicks in. It would not be consistent with the water framework directive, and if it is in a sensitive habitat or area, and a number of the private reservoirs are, it could breach the habitat regulations as well. We have responded to small bodies of
- water that have been drained, perhaps because of disputes between farmers, and even those small activities have led to impacts and, allegedly, fish kills, although we did not get the evidence when we went out to inspect.
207. **Mr Davidson:** I do not know the particular example, but, in theory, moving from a reservoir full of water to dry land is a change of land use, which could require planning permission. There is no set formula for deciding whether, if you turn a small reservoir into slightly drier wetland, that is a change of land use. The Planning Service would have to decide whether the change in land use was significant enough to warrant planning permission. Once the planning permission process kicked in, we would be consulted and be directly involved in commenting on or conditioning how it was done.
208. **The Chairperson:** You said that you had a part to play in discussions with the various agencies in drafting the Bill. Is there anything not in the Bill that should be in it?
209. **Mr Close:** Not that I am aware of.
210. **The Chairperson:** You are happy with the scale of enforcement, the management regime and the panel of experts that will need to be put in place at all the different levels. You are content with everything.
211. **Mr Close:** Essentially, yes.
212. **Mr Buchanan:** I want to come in on a point that has perhaps been partially answered. You went over all that needs to be done around the draining down of reservoirs to get at the scour valves. Is that not something that Northern Ireland Water would have done in the past?
213. **Mr Close:** It may well have. However, I have no evidence or information to that effect.
214. **Mr Buchanan:** A great deal of information is coming forward from NIEA about regulations that Northern Ireland Water has to abide by when changing scour valves because of the difficulties that that could cause downstream. Would

- Northern Ireland Water not have done that in the past without causing any difficulties? Now, it may be faced with a ream of stuff that it has to adhere to.
215. **Mr Close:** No. Northern Ireland Water identified the reservoirs that were inspected by the panel engineer. Of the first tranche of the 151 reservoirs identified — previously it was 156 — 90 were inspected that are under its ownership. Those 17 reservoirs — originally 19 — were identified by the panel engineer and their inspection programme as being at risk. As is good practice, the company responded accordingly. I have worked for NIEA for 26 years, in emergency pollution through to industrial consents, and waste and agriculture regulations. To my knowledge, NIEA has never been approached in that capacity before. That was new to me. To be quite honest with you, there was a lengthy debate on whether other environmental legislation would have applied that set legal controls on how it would be done. That was set aside because of the health and safety implications and because there was a requirement that the valves needed to be replaced to ensure that the structures were fit for purpose and safe so that it could continue to provide the service and be an asset to the company. NIEA took a very pragmatic, sensible and balanced approach and, in conjunction and consultation with NIW, Rivers Agency and its consultants, and across our disciplines, came up with the best fit to allow the activity to take place in a manner that would provide health and safety benefits, environmental benefits to the advantage of all.
216. **Mr Swann:** You said that if anybody was going to drain down a reservoir, there would be all sorts of potential planning issues. Would that be under PPS 15 or just in general?
217. **Mr Davidson:** It is just in general. Under PPS 1, there is a definition of development. A change of land use is considered development. However, I am not aware that there is a precise definition for changing a reservoir to an area of dry land.
218. **Mr Swann:** I am just concerned that, if a private reservoir owner does remedial works, NIEA and planning enforcement will come in because he did not go through the proper procedures. We need to look at the supporting documentation to the Bill so that if something is put into planning or if somebody has to drain down a reservoir that they are going to reinstate as a reservoir, they do not have to go down the route of planning permission for changing consent. You are talking about the planning process and appeals. It needs to be a simplified process to do that.
219. You talked about the time that it would take to draw down some of those reservoirs. How long would it take to refill them?
220. **Mr Close:** How long is a piece of string? It depends on the catchments that drain into the reservoirs. We have licensed Northern Ireland Water's water treatment facilities, and the reservoirs sit with those. Ballinrees, for example, has 18 sources of abstraction, all of which work in a slightly different way depending on how the abstraction facilities were engineered. We are reviewing those licences in line with the water strategy to ensure that we fully understand how the mechanisms work.
221. It is a good question. The number of days to bring it down depends on how much you release. How much you release depends on the capacity of the system below to carry the water safely to, for argument's sake, the sea. If you are draining through Bangor, the last thing you want to do is wash most of it away.
222. There are both quantity and quality aspects. That is why we asked the company to recognise that it will draw down into supply as much quality water as possible and do so very slowly, either through the scour valve or — SEPA suggested this — possibly a siphoning system, whereby a pipe would be designed to take a certain quantity primed and draw that down using gravity. You would draw from the top-down, so if it came to a point where dissolved

- oxygen levels or sediment were becoming problematic, you could stop it.
223. The other issue that we asked it to explore was whether the depth of the water at that point could allow for an engineered solution around the tower itself, such as cofferdamming, whereby you would pump the water out and back in again. In that way, you could contain the water while you worked on dry land.
224. What we are looking at is preventative. Setting aside the planning issue, if a private reservoir owner were to do this activity so that they could bring their reservoir back into use, there is a template here for how they would do it in a manner that would not give rise to flooding downstream and pollution issues. If your neighbour has a fish farm that requires good, clean oxygenated water and does not like sediment, the last thing you would want to do is put their business out of action as a result of this. We have a responsibility under our legislative powers. However, there is a balance to be struck between the needs of industry and the needs of the environment. That is what we are trying to strike: the right balance.
225. **Mr Swann:** Do you have any idea — this may be outside your remit — about cofferdamming?
226. **Mr Close:** I am not an engineer. That is the suggestion. To be honest, it may or may not be practical. It may be very expensive, so, again, a private individual, Northern Ireland Water or others can challenge it. To be honest, the guidance is guidance as an authorisation. We are here to assist and support the activity so that the assets can be brought back into use. If the scour valves are not operating — they will be used in the event of something happening to the impounding structure; that is where you release the pressure — and are not fit for purpose, I would not like to say what would happen. What I am saying is that we would like to facilitate that work.
227. **Mr Byrne:** Have we had recent examples of where the decommissioning of a reservoir has posed difficulties such as stratification or otherwise?
228. **Mr Close:** I have never come across that — ever.
229. **The Chairperson:** So there has been no decommissioning of any reservoir.
230. **Mr Close:** Northern Ireland Water has indicated that it does not use a number of reservoirs. In those instances, it has looked at the reservoirs' intake and return back to the natural environment and has struck a balance. The reservoir is not acting as a supply but is still acting as a diversion of water. In many ways, the reservoir itself is intake [*Inaudible.*] and the [*Inaudible.*] is out. They have operated for 50, 60 or 70 years and have therefore become waterways in their own right. If we were to insist, under legislation, that that had to stop, you would have to demonstrate that there would be more environmental benefits as a result of taking something offline. Hence, Northern Ireland Water's looking for recreational use of those assets and retaining ownership still gives it the opportunity, in the future, to access that water in the event of a problem, such as a drought.
231. **The Chairperson:** You talk about your guidance, and I am sure that it would be in the best interests of all the reservoir managers and owners to use that guidance for this sector of people, habitat and everything else. However, in the Bill —
232. **Mr Close:** It does not sit in the Bill.
233. **The Chairperson:** The question is this: should it? If the Bill forces a reservoir manager into action, one way or the other, and although they do not damage the actual structure of the dam or reservoir, they may have an indirect effect on someone. Is that a blind spot? Is it new legislation? Is it something that is governed by other law?
234. **Mr Close:** That is an interesting point. I am not sure.
235. **Mr Davidson:** From an area of special scientific interest (ASSI) conservation

point of view, it is not a blind spot, mostly. I say “mostly”, but I might come back to that. If a reservoir is designated as an ASSI, the owner is legally bound to notify us of their intentions. If there is an ASSI downstream, a private landowner is not obliged to notify us if they are changing an operation. However, if it is a publicly managed reservoir, or if a public body is giving permission for a draw down or some sort of change, we are routinely notified. That is a legal requirement. Our environment order, through the ASSI framework, gives protection to the environment. There is also protection for protected species. People are not allowed to harm protected species such as bats or otters knowingly. There could be bats, for example, in disused pipe work. They could get washed out if the pipes were suddenly opened. Otters could get washed out if there were floods. Outside that, it is an interesting question.

236. **The Chairperson:** What about badgers?

237. **Mr Davidson:** Badgers’ setts could get flooded out. One of the best practice recommendations is that the controlled discharge mimic, as far as possible, a natural flood. Otters are used to natural floods, but a sudden and extreme event would be bad for many reasons, not just for wildlife; it would be bad for public safety.

238. **Mr Close:** I am not competent to talk on built heritage, which is another directorate in the NIEA, but there are other structures that you would need to take into consideration, such as crannogs. If you drop the level of a reservoir, a crannog will dry out. They are internationally important. Then you have terrestrial ecosystems or wetland features, which may be protected under legislation. Once the level drops, it takes a year or two to empty and fill. In that time, you could lose habitat or bryophytes. It is a complicated scenario, but that is why consultation and working with the agency will be important at the pre-application planning stage. When a panel engineer recommends action to a private owner, an informative signposting to us would be useful. Perhaps we

could talk to Rivers Agency about that afterwards.

239. **The Chairperson:** Yes, to me, that is a blind spot. If a panel engineer who is competent in his field tells a reservoir owner that they must do a, b and c, he will not necessarily know the impact that that will have.

240. **Mr Close:** Yes. I accept that point.

241. **The Chairperson:** OK. There are no further questions. Thank you very much for your time, your presentation and your answers.

18 February 2014

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
 Mr Oliver McMullan
 Mr Robin Swann

Witnesses:

Mr Paddy Bro	<i>Northern Ireland</i>
Mr Bill Gowdy	<i>Water</i>

242. **The Chairperson:** I welcome Bill Gowdy and Paddy Brow from NI Water (NIW). Members will have had a chance to read your briefing paper. I invite you to take up to 10 minutes to address the Committee. Following the briefing, members will ask questions about that and might seek further information.

243. **Mr Bill Gowdy (Northern Ireland Water):** Thank you very much. Northern Ireland Water welcomes the opportunity to discuss the Bill with the Committee. I should point out that Mr Byrne and Mr McAleer have heard this presentation before.

244. Northern Ireland Water, like its predecessor, the Department for Regional Development (DRD) Water Service, is committed to ensuring the safety of the public in Northern Ireland. It has already been managing its impounding dams in line with the Reservoirs Act 1975 that applies in England and Wales. Northern Ireland Water has arranged for competent staff to carry out monthly, biannual and annual inspections. In addition, we employ an independent inspecting engineer to carry out 10 yearly inspections — the section 10 surveys — and provide a comprehensive report on reservoir condition, including recommendations for any work that may be required. The independent inspecting

engineer holds an inspecting engineer certificate and is a member of the all reservoirs panel under the Reservoirs Act 1975. For any improvements identified in the section 10 surveys, Northern Ireland Water puts in place a programme of work to address these recommendations. The most recent round of section 10 surveys, which was carried out in 2007, is being delivered in the current price control (PC) 13 period. To comply with the new Reservoirs Bill, therefore, a new activity will fall on Northern Ireland Water, which is the preparation and maintenance of formal on-site and off-site flood plans.

245. As the largest single owner of structures that will be affected by the proposed Bill, Northern Ireland Water welcomes the clarity that it will bring on responsibilities and management. Overall, the introduction of the Reservoirs Bill will not have a major impact on Northern Ireland Water, apart from that requirement to prepare on-site and off-site flood plans. Of course, we are aware that it may have a greater impact on the impoundments that are in private ownership.

246. Paddy will talk about the Bill and the Northern Ireland Water assets affected.

247. **Mr Paddy Brow (Northern Ireland Water):** Thank you, Bill,

248. Northern Ireland Water has under its ownership 71 structures that will fall within the proposed Northern Ireland Reservoirs Bill, and those are scheduled at appendix 1 of our briefing paper. There are 46 impounding reservoirs, including two operated under the Alpha public-private partnership (PPP) contract. Impounding reservoirs hold raw water, which is the water before we treat it and put it into the supply. In addition, we have 25 service reservoirs or clear water tanks at 13 sites, including two operated under the Alpha PPP contract, and they hold treated water just before it

- is put into the pipelines. For the majority of those sites, Northern Ireland Water will be the designated reservoir manager and carry out all related responsibilities.
249. In preparation for the introduction of the Reservoirs Bill, Northern Ireland Water developed an action plan to prepare for compliance when the Bill is introduced. The plan was completed in 2011 and is being implemented.
250. **Mr Gowdy:** Chair, I would like to say a few words about how the Bill will affect Northern Ireland Water's estate management plan in relation to the disposal of reservoirs declared redundant. The estate management plan lists a number of impounding reservoirs that are no longer required for operational use and, therefore, may be disposed of. That is because each reservoir has been out of service for some time and been assessed as unsuitable as a future source of raw water. Despite each being out of service and, where possible, leased for recreational uses such as fishing, these unused reservoirs do not make any money for Northern Ireland Water. Indeed, they cost money and require ongoing inspection and maintenance. As a public body, Northern Ireland Water is required, under its regulatory licence, to manage its assets efficiently and obtain best value for the release of unused assets.
251. Of course, we take a number of factors into account when considering the sale of surplus reservoirs. Recent economic issues, for example, have impacted on land values for property development and other commercial uses. Also, the proposed Bill is likely to reduce the potential sale value of disused impounding reservoirs where the buyer proposes to maintain the structure to retain water. That is because new owners will be required to fund and implement a legally required programme of surveys and carry out the maintenance recommended. Councils and environmental bodies are concerned that many of the impounding reservoirs should remain in public ownership because of the ecological and environmental benefits realised over the past number of years. Departments such as the Department of Culture, Arts and Leisure (DCAL) and councils are, of course, reluctant to accept the new cost responsibilities. Northern Ireland Water has included funding in the next set of section 10 surveys to be carried out in 2016-17, and we have included those in our PC15 business plan, which we will submit to the Utility Regulator in March 2015.
252. Finally, Paddy will say something about the Camlough dam arrangements.
253. **Mr Brow:** Camlough dam near Newry is a particular example of an impoundment that is operated by a range of bodies and will be affected by the new Reservoirs Bill. The dam's arrangements are complex, so we have provided more details in our briefing paper.
254. The Newry Improvement and Water Act 1871 set up the Camlough Waterworks Trustees to build a dam in Camlough lake to regulate the flow and supply of water into Camlough river. The trustees are technically the owners of the dam. However, all are deceased.
255. Camlough lake has been used as a raw water source since the local government reorganisation in 1973. The current rate of abstraction by Northern Ireland Water from the lake is 5 megalitres per day, which serves a population of roughly 20,000. As Northern Ireland Water does not own the bed or the dam and has not historically inspected or maintained it, there is nothing in the terms of the historical or current abstraction licence for Camlough lake that constitutes an obligation to maintain the site or the impounding structure.
256. In February 2010, the Rivers Agency informed Northern Ireland Water that a panel engineer had recommended that the dam be cleared of vegetation and an inspection made. In 2011, Northern Ireland Water commissioned a preliminary inspection of the main dam at Camlough lake for two reasons: to assess the assets being used by Northern Ireland Water to supply

- drinking water into Newry and the surrounding area as part of our 2012 water resource management plan; and to inform our consultation response on the proposed Reservoirs Bill. That report was completed in February 2012 and concluded that a high-level estimate of the cost of improving the dam's safety in accordance with the requirements of the England and Wales Act would be in the order of £3.4 million. In addition, annual operating costs of around £13,000 would be required for maintenance and inspection.
257. There have been a number of stakeholder meetings to address issues of ownership and responsibilities under the proposed Reservoirs Bill and the way forward for the funding of surveys and improvement works. On 3 February, URS consultants provided a report to the key stakeholders, which set out a revised and more accurate estimate of costs — £2.5 million — for the works that would be necessary to comply with the Reservoirs Bill and the annual maintenance costs thereafter. The report also considered a number of options. The report was developed further to inform discussions on how to fund and deliver the works to improve the dam and consider its future ownership and long-term maintenance. On 6 February, a meeting took place to discuss the report, and we are progressing the actions that resulted from that.
258. Northern Ireland Water has no interest in becoming the owner of the reservoir as it is uncertain whether it will be required as a source of raw water from 2017. Newry and Mourne District Council has stated an interest in becoming the owner. However, it needs to understand the associated operating and maintenance costs. A number of legal issues also have to be resolved.
259. **The Chairperson:** Thank you very much for your presentation. This is a very technical area and Bill that we are scrutinising. From what we have heard so far, NI Water is a massive player in reservoirs, so the Bill will have an impact on you. You have been going by the standards and the spirit of the legislation currently operating in England and elsewhere. There have been new developments, and there will have to be man management and procedural changes.
260. One development could be, as you touched on, flood plans, especially for the high- and medium-risk controlled reservoirs. Do you have any indication of how much the plans will cost and the difference that they will make to your organisation? What should be in a flood plan?
261. **Mr Brow:** The preparation of flood plans will cost us in the region of £60,000 for all of our reservoirs. We already hold much of the information necessary to compile them, and the Reservoirs Bill will provide a well thought out and structured approach to how the information should be provided. So, in that respect, we welcome that component of the Bill.
262. **The Chairperson:** If it will cost you £60,000 for all reservoirs and you have already compiled much of the information, what are your thoughts on the private and third sectors having to compile the same information, possibly from scratch?
263. **Mr Brow:** If there was ever an issue with a dam, this information would be invaluable. It provides information on the area that could be flooded. It provides information for first responders and the emergency services on what area could be impacted and who to contact. It is essential information. If a dam presents a risk to life and property, that information should be available, and it seems appropriate to have it in a structured format. However, it will be a mixed bag: for some impoundments, people will have the information; for others, the information will not but should exist.
264. **The Chairperson:** We heard, not so long ago, about the sale of reservoirs from NI Water. I do not know the state of play or how many have been successfully sold, but there is a risk that they could be drained. I know that certain technical

- terms are used to describe that. Are you of a mind to drain those reservoirs if you cannot sell them or if they are of no use to you and are costing you money? If you are, how much would it cost to drain them?
265. **Mr Gowdy:** We have 23 surplus reservoirs, which are those declared as not being used for drinking water purposes at all. We will go through a process, under our licence to operate, which demands that we offer such surplus property for sale. Of course, before we do that, the Regional Development Minister, Danny Kennedy, has insisted that we explore all the opportunities to transfer any of them to public ownership. That is the first stage, and that process will take some time, because we understand the sensitivities. The reservoirs have, in fact, become very much part of the community and people enjoy them. So we do not take their sale lightly.
266. If we ever had occasion to draw down a reservoir permanently, we would take that very seriously. We would consult the Environment Agency, many other statutory undertakers and indeed residents to ensure that any draining of a reservoir was done in a proper and appropriate way. However, we are far from that at the moment. As I said in my opening statement, we are carrying out some maintenance works as part of the section 10 surveys. A number of reservoirs around the country have been drained or at least lowered a little. That was done to expose some of the mechanical equipment in the reservoir, mainly water towers, oftakes and platforms, so that we can fix it. So you may, at the moment, come across some reservoirs that have been lowered. That is only to facilitate the maintenance work; they will be refilled to their normal level. That is happening now. In future, should we ever have to drain a reservoir down, we would, as I said, take full recognition of all the requirements of all the stakeholders, including the Environment Agency.
267. **The Chairperson:** NI Water recently informed the Regional Development Committee that the average cost per reservoir was between £15,000 and £20,000 a year. Could you undertake an exercise for the Committee on the costs? Maybe you could provide a list of every reservoir, its capacity, its provisional risk designation, the costs associated with its operation and how the Reservoirs Bill will impact. We would write to you to confirm the details formally, but is it in order for you do that?
268. **Mr Gowdy:** Yes, we can do that. I will just to explain to the Committee now that the order of magnitude of £15,000 to £25,000 includes all our costs: labour; plant and equipment; and all the overall costs. I would not like the Committee to think that, if a reservoir went into private ownership, for example, those maintenance costs would be identical for a private owner. They might not be. We are taking this on a broad sweep, so it is a generalisation of all the costs associated with maintaining the reservoirs. Certainly, we can identify in general terms how much it costs to maintain and operate them. Indeed, as Paddy said, it will cost us about £60,000 to develop the on-site and off-site flood plans for them
269. **The Chairperson:** Robin, do you have any questions?
270. **Mr Swann:** Not on the presentation.
271. **Mr Buchanan:** The Bill refers to a reservoir manager as a person or organisation that owns or manages and operates all or part of the reservoir. Previously, it was assumed that clubs, societies and charities that were the main users but not the recognised owners of the reservoir were excluded from this, but there now seems to be some doubt about the particulars of a person or organisation that controls the water level. That could pull clubs and recreational societies into this sphere in which they would be classed as the manager and therefore have to operate the reservoir. What are your thoughts on that?
272. **Mr Gowdy:** For reservoirs owned by Northern Ireland Water, we are the reservoir manager, and we are

- responsible for all of the provisions and obligations in the Reservoirs Bill. If, for example, we were to lease out a reservoir for fishing or for some other recreational use, such as you described, we would still retain the responsibility. We are the reservoir manager, we control the levels in the reservoir, and therefore we will accept full responsibility under the Reservoirs Bill for all of those matters.
273. **Mr Buchanan:** So none of the societies or clubs that use them will be classed as a reservoir manager under the Bill. Is that right?
274. **Mr Gowdy:** For Northern Ireland Water owned reservoirs, yes. That is correct.
275. **The Chairperson:** The Bill defines operating requirements for the new supervising, inspection, administrative and maintenance regime. There are all these categories and stages of requirements, particularly for the high- and medium-risk controlled reservoirs. As an organisation, are you happy with the designation of high, medium and low, considering that England, in particular, do it differently?
276. **Mr Gowdy:** Yes, Chair. We are very happy with that. In fact, we in Northern Ireland Water take the view that the Reservoirs Bill takes a very measured and risk-managed approach to reservoirs and that the designation of high, medium and low represents a development from the Reservoirs Act 1975 in England and Wales. I believe that the reservoirs safety industry, particularly in the British Isles, is moving in that direction. We support the designation by the Department of Agriculture and Rural Development (DARD) of reservoirs as high, medium and low.
277. **The Chairperson:** You said in your presentation that NI Water has arranged that competent staff carry out monthly, biannual and annual inspections. Will you explain a wee bit more about competent staff? It is statutory and legal term that I am aware of but what does “competent staff” mean for NI Water? Are we talking about the engineers mentioned in the Bill or others, who you would not then be able to use for inspections? If that is the case, should competent staff be able to carry out the work detailed in the Bill?
278. **Mr Gowdy:** Yes, Northern Ireland Water employs competent staff, and their competency is determined by their qualifications and experience. We have supervising engineers, and they are engineer-qualified staff who have been trained and have gained experience working with reservoirs, water towers etc. That is at our level, so they certainly tick all the boxes as far as academic qualifications, professional qualifications and experience are concerned. They are regarded as very skilled engineers for supervisory purposes.
279. Beyond that, the inspecting engineers referenced in the Bill have a different category of qualification. That requires a chartered civil engineer who is appointed or is on the all reservoirs panel of engineers, which, under the English and Welsh Act, is set up by the Secretary of State. The same would apply here. We have been going by the English and Welsh Act and using all panel reservoir engineers as inspecting engineers for many years. That same regime would continue.
280. **The Chairperson:** Oliver, do you want to ask a question?
281. **Mr McMullan:** No, I am happy enough with that.
282. **Mr Irwin:** Is 10,000 cubic metres the correct figure for controlled reservoirs? We know that, in England and Scotland, it sits at 25,000 cubic metres. What would be the consequences of amending the Bill to make it 25,000 cubic metres?
283. **Mr Brow:** The principle set out by the Rivers Agency is very good, whereby they are categorised by risk. A smaller reservoir could constitute a risk depending on the way that it breached and released water. We are happy to support that. For us, it will not really make much difference. Most of our concrete tanks, clear water basins and service reservoirs are in the region of 10,000 to 25,000 cubic metres.

- However, we think that most will end up being classified as low risk because they are heavily engineered concrete boxes that are monitored 24 hours a day. We do not know yet, but, whatever way it works out, we are not concerned.
284. Only one of the impounding reservoirs is below 25,000 cubic metres. Most are above 25,000 cubic metres. For us, the classification process and looking at each one in turn is more important. You could have a smaller reservoir that presents a much higher risk depending on its location and where it sits above properties.
285. **Mr Byrne:** I am sorry that I had to nip out. I welcome the presentation. It seems that a plethora of engineers will be required. What can NIW do to soften the blow for private reservoir owners — some might not have the expertise to comply; others might be worried about the cost — and ensure the continuity of NIW's work?
286. **Mr Gowdy:** A number of engineers in Northern Ireland Water are on the panel and have advised us on reservoir inspections over several years. As well as that, there are quite a number of engineers available from the panel in GB. So quite a number of engineers are ready to do that, and Northern Ireland Water has employed a number of them. We would be willing to give private owners advice and point them in the direction of inspecting engineers. It might be up to those private owners to club together and, in some way, make particular commercial deals with any inspection engineers that they may wish to employ to help them to comply with the Bill.
287. **Mr Byrne:** Are we now talking about a sharing of the cost for such engineering inspections or advice? Given that NIW is the main user of the water from these reservoirs, will it, in any way, take the burden of the costs associated with inspections?
288. **Mr Gowdy:** I am talking about reservoirs owned by Northern Ireland Water. We will conduct the inspections of reservoirs owned by Northern Ireland Water. We could give advice to someone who owns a private reservoir, but we would not share the cost of any inspections that they have to do under the Reservoirs Bill.
289. **Mr Byrne:** I want to follow up on the information that Bill provided to the Committee for Regional Development last week. Camlough lake has been a major source of water in the past. Do I take it that NIW wants to cease using that source of fresh water for that part of the world? What volume of water does NIW currently take from that reservoir or lake? What are the likely consequences if NIW walks away from using the lough?
290. **Mr Brow:** Joe, we try to supply most of our large towns from a number of sources. At the moment, Newry has two sources of water. One is Fofanny treatment works in the Mourne. It draws water from three reservoirs, and that water is blended and pumped round. The second supply is Camlough. At the moment, Camlough lake is the lesser supply. In the summer, we drew only about 2.5 megalitres a day. We can draw up to 5 megalitres, which would provide for a population of 10,000 to 20,000. To improve the resilience of supply, we are bringing a pipeline from our very large treatment works at Castor Bay, which is on the south edge of Lough Neagh. We are bringing it south in stages. That means that, in 2015, we will be able to supply Newry from three sources — two very large, state-of-the-art treatment works and the very small works at Camlough, which will then be one of our smallest treatment works.
291. At that point in 2015, we will be able to discontinue the use of Camlough, but, at this stage, we do not know whether that is the right thing to do. We have started a long process of detailed assessment of all of our sources of supply to see whether they should be rationalised. That will consider various factors such as droughts and freeze/thaw events, which can stress the distribution network. We will look at resilience, climate change and operating costs, because one of Northern Ireland Water's values is providing the services that

- we offer at the best value for money. That will go out to public consultation, and that will tell us whether or not Camlough water treatment works should be disused. At this stage, to be honest, I do not know. Had you asked me five or 10 years ago, I would have said, “Absolutely, let’s stop using it”. Now, however, energy prices are increasing year on year and the projections are that they will continue to increase, which may mean that Camlough comes back into the mix, but it is a very small works and expensive to operate compared with some of the larger works.
292. **The Chairperson:** I just want to touch on the designation again. When we had officials from the Rivers Agency up last week, it was very clear that the risk designation was more about the potential impact than the state of the reservoir. I have nothing to suggest that all NI Water reservoirs are in anything other than a very good state and are modern and up to date. You have looked after them well and have had a responsibility to do that. You know exactly what you own and who is responsible. You could have the most modern, state-of-the-art reservoir in Europe, but, because of the population downstream and because it could result in the loss of one life, it could be deemed high risk, with all the burden that that brings. Do you agree with that?
293. **Mr Brow:** Thank you for that question, Paul. You used the word “burden”. In Northern Ireland Water, we do not see it as a burden and never have. We see it as good practice. These dams, even if they are in good condition, have a complex network of pipes and valves below them, so inspecting them is good practice. In some dams, the earth can move or other things can happen, and it is good just to keep an eye on them. So, even if there is only one life downstream from a reservoir, we think it the right thing to do.
294. With a smaller dam that is poorly maintained, the inspecting engineer would probably require it to be looked at much more often. That would be appropriate until it was brought up to standard. We think that introducing the Bill is good because at least every one of the impounding reservoirs in Northern Ireland would be looked at. With some, the panel engineer will say that they will come back in 10 years’ time; with others, they might say that they will come back in a year’s time. If the panel engineer comes back and says that they need to inspect it more frequently, it is because there is a risk that needs to be managed, and we think that that is a good thing.
295. **The Chairperson:** There will be a register, built up by the Rivers Agency and DARD. By the sound of things, the cost of that will borne by the reservoir owners. There could well be cost recovery. Have you any difficulties or issues with that?
296. **Mr Brow:** No. Fortunately, we have been engaged by Rivers Agency at every stage of the development. We support their proposals and how they are going about it.
297. **The Chairperson:** You will know your areas and your reservoirs better than anyone. Do you envisage a time when you will sit down with Rivers Agency and DARD, and the panel of engineers for that matter, and say that they have designated you as high risk but you believe that you should be moved to medium or low? If you were confident in your own structures, that would be a valid debate to have. There would be nothing wrong with that. However, if you get to the point at which you disagree with the Department’s designation, you could go to a review and appeals process. Do you envisage Northern Ireland Water entering into that bartering debate of wanting reservoirs to be designated as lower risk? Are you confident that the review and appeals process would be fit for purpose and serve its purpose?
298. **Mr Gowdy:** I do not think that, in any form of dispute, we would say to DARD that we disagreed with its designation. I cannot foresee that happening at all. From reading the Bill and knowing a little bit about the structure of the appeals mechanism, I can say that those who

- disagree with DARD's designation will find that the appeals system that is built into the Reservoirs Bill is very strong and robust, and provides good assurance to the observer that the appeals process works very well.
299. To go back to Northern Ireland Water, I do not see us getting into any dispute about the designation of reservoirs as high, medium or low risk. We will use the full force of the legislation to conduct our business and will comply with our obligations under it.
300. **The Chairperson:** There are issues around maintenance. You will know better than anyone how to maintain a reservoir, and we will hear from the Northern Ireland Environment Agency (NIEA) very soon on the dangers and cost to the environment of draining a reservoir in order to replace valves or pipes in the reservoir bed. There could well be cases in which, downstream, because the water has to flow somewhere, there could be developments. Things could have moved on. The river may have changed course and not take the same route of travel, and that could put jobs at risk if not managed right. How big an issue is that for NI Water?
301. **Mr Gowdy:** First, not too many of our reservoirs have been drained completely. At the moment, most of our reservoirs are drained by whatever is required to expose the equipment that we have. In saying that, however, should we ever have occasion to drain a reservoir significantly or completely, we will undertake a full risk assessment and look at the impact of the discharge of water from a public safety point of view and an environmental point of view. At all times, we will take on board whatever recommendations come from residents or residents' groups, other stakeholders and, in particular, the Environment Agency to ensure that the release of water does not cause any damage. We would do that well in advance of ever contemplating drawing down a reservoir.
302. **The Chairperson:** OK. Grant aid to help bring reservoirs up to standard is a massive issue. What is NI Water's position on grant aid? I assume that you should be able to apply — maybe not — being the body that you are, connected to government but not in government. Should there be something there, and will Northern Ireland Water hope to avail itself of it?
303. **Mr Gowdy:** That, regrettably, is outside Northern Ireland Water's competence. If grant aid is available, we might wish to avail ourselves of it, but I cannot comment on grant aid for private owners.
304. **Mr McMullan:** I want to ask about grant aid. If you were to lease out a reservoir, could you enter into an agreement with the owner on a 50:50 basis?
305. **Mr Gowdy:** We will lease for recreational purposes only. That could be mostly for fishing or sailing or some sort of surface recreation-type activity. I cannot foresee us leasing the reservoir out or entering into some sort of agreement with the person for any other purpose. I think that it will be for recreational purposes only.
306. **Mr McMullan:** I thought that I heard here last week that the reservoir managers were responsible for the reservoirs, yet you tell me today that, if you lease a reservoir out, you are still the reservoir manager.
307. **Mr Gowdy:** No, to clarify, we are not leasing out the reservoir; we are giving a lease to people to fish or to sail. Northern Ireland Water will retain ownership of Northern Ireland Water's reservoirs, and we will comply with the Bill fully. As I said, the leasing that we do will be for recreational purposes.
308. **Mr McMullan:** Is that a good deal for the local community? I use this as an example: you could let the local community use the reservoir, but, at the same time, there are a lot of grants out there that authorities, such as the water authority, cannot apply for, or on which you would not comment. However a local organisation or group, or even a local council, could apply for those

- grants to improve the facilities that you lease out for sailing, recreation and all of that. This is around the whole idea of improving the lifestyle of a community or providing more recreational facilities. If you do not mind my saying so, your present plan will hinder that.
309. **Mr Gowdy:** No, I do not think that it does, because a number of community groups will lease out reservoirs for, for example, fishing, and those community groups have access to funds from various means. I know that they avail themselves of those funds, and good luck to them. In some cases, they have acquired funds from, say, the lottery, and been able to carry out some works on the embankments of some of our reservoirs — with our permission, of course — to help put in fishing stalls, for example.
310. **Mr McMullan:** That is what I am talking about. You go into an agreement with them. You have to, because they could not apply for funding if they did not have any ownership of what they are applying for funding for.
311. **Mr Gowdy:** Yes, our agreement with them will be to lease a reservoir out for fishing, for example, and they will then seek permission from us to put in a fishing stall. Generally speaking, we will give that permission. We benefit from local communities using our reservoirs, because the people are usually very interested in recreation and are very particular, and, as such, they protect the reservoir. Therefore, we benefit from the community leasing it out, or from sailing. It is good for us and good for the community. If they can, they normally access whatever funds they can from wherever, and we certainly encourage them to do that.
312. **Mr McMullan:** That is better explained now, because now we know what can be done. Do you require groups to comply with the Disability Discrimination Act (DDA), etc?
313. **Mr Gowdy:** Yes, we have conditions. Part of the lease contains all the provisions that make sure the water is kept safe, not contaminated, and so on. There are a number of conditions in the lease. Communities sign up to these things and the arrangement works well, and it has worked well for many years.
314. **Mr McMullan:** In keeping with the Disability Discrimination Act, do you leave the reservoirs disability-friendly when you lease them out for recreational purposes, ?
315. **Mr Gowdy:** Indeed. For example, we have been asked to put in access to fishing stalls for disabled fishermen and fisherwomen, and we have done that for a number of reservoirs. We always look sympathetically at doing that and have done so with a number of reservoirs that we lease out for fishing. We want to try to be as diverse as possible in the leasing arrangements.
316. **Mr McMullan:** That sounds very good. My last question is this: you have 23 surplus reservoirs —
317. **Mr Gowdy:** Yes.
318. **Mr McMullan:** When you do a flood risk assessment, how many are near built-up areas?
319. **Mr Gowdy:** The 23 that we have form part of your briefing. I suppose that there are a number near built-up areas in Conlig, which is not too far from here, and Church Road in Ballysallagh. In Conlig, there are some housing developments near reservoirs, but a number of the others are reasonably well out of towns or villages. Generally, the reservoirs are outside built-up areas. Over the years, there has been some encroachment by housing developments. As I look down my list, Conlig is probably the one that is closer than others to a development.
320. **Mr McMullan:** What plans are in place for getting information to residents about whether they are at high, medium or low risk? How do you get information out to people if something happens?
321. **Mr Gowdy:** We would not normally go out and tell people about high-, medium- or low-risk assessments. Rivers Agency

- would assess our reservoirs, and we would take whatever steps are required based on that. We would comply with all the measures in the Reservoirs Bill. The assurance given would be that we have protected and maintained our reservoirs properly. I am not sure that going to residents, for example, and telling them that we have carried out a risk assessment and that this is the category of reservoir nearby is necessarily something that Northern Ireland Water would do. We feel that there is no risk at all. Although the Reservoirs Act in England and Wales does not apply here, we follow it. Our compliance with the Reservoirs Bill will enable us to provide very good public safety assurances for all our reservoirs.
322. **Mr McMullan:** Where and with whom do you see responsibility for that lying?
323. **Mr Brow:** With us. One of the things in the Reservoirs Bill that I think is a good idea is that a sign providing contact details should be erected at reservoirs. That will benefit us, because, when they see anything, people will know who to phone. As Bill said, members of the public phone to report problems at our reservoirs such as vandalism and littering.
324. **Mr McMullan:** To finish, does the developer contact you or do you contact the developer? Surely prospective residents must be told that there is a reservoir in the vicinity of the house that they are buying. We cannot simply rely on them being told, "There's a notice up there. Go and have a look at it before you buy that house". There has to be something in there. Has Planning Service brought it up? That is where am coming from. I do not hear an answer to that.
325. **Mr Gowdy:** That certainly happens. If a new development is to be built, Northern Ireland Water, as a statutory consultee, will submit its comments on the building. We point out where there are sewers, water mains, pumping stations, reservoirs and whatever other infrastructure we have in that vicinity.
- The developer is well aware of that. The full planning process is gone through.
326. **Mr McMullan:** That is good. I am glad to hear that.
327. **The Chairperson:** I have a question on reservoir management, which Tom Buchanan touched on. Forgive me if he has already asked this, because my concentration has slipped. In the context of the Bill, who will be reservoir manager for an organisation such as Northern Ireland Water?
328. **Mr Gowdy:** The reservoir manager is the corporate body, which is Northern Ireland Water. That is a corporate designation. We would be the reservoir manager. It will not be a named individual. We will, of course, have named individuals, but the corporate responsibility is on Northern Ireland Water.
329. **The Chairperson:** If, God forbid, something were to go wrong, who would be liable? I am speaking hypothetically, and I hope that that remains the case. The Bill is needed to protect the life and property of 66,000 people. In that context, were something to happen — God forbid, a death — who would be prosecuted as reservoir manager?
330. **Mr Gowdy:** A number of things flow from that. First, Northern Ireland Water, as reservoir manager, would be the corporate "person" that would hold civil liability for the problem. Northern Ireland Water could also be guilty of corporate manslaughter. That could extend down to the officials in Northern Ireland Water who may be responsible for managing the reservoir. Furthermore, it could even fall under health and safety legislation, whereby individuals and the company could become civilly and criminally liable. The matter of something such as that happening, and, as you say, God forbid that it does, is a corporate and an individual responsibility. Corporate first, and, if there were negligence on behalf of any person, it would apply to that person as well.
331. **The Chairperson:** Right. Thank you very much for the clarification. Are you content, looking through the Bill, with the

- enforcement measures? By that I mean the offences, fines and prison terms? The Bill is different from legislation in Scotland and England, of which you have following the spirit. Do you think that the difference in terms is adequate?
332. **Mr Gowdy:** We have had experience of the England and Wales Reservoirs Act 1975, which was extended into Scotland. We have had long experience in dealing with that and assisting with its development over a number of years. You may know that Scotland is pursuing something similar under the Reservoirs (Scotland) Act 2011. Over the years, we have built up experience and learnt lessons. The Reservoirs Bill takes all the good lessons, experience and maturity of the development of the Scottish legislation. What we have here is a very good Bill that is being promoted by DARD and Rivers Agency. It reflects all the modern thinking of reservoir engineers based on public safety and risk assessment.
333. The provisions containing enforcement, inspection and appeal, etc, are very good indeed. The Bill represents a very good piece of legislation for Northern Ireland and public safety.
334. **The Chairperson:** I want to ask about timescales. Clause 11 requires a reservoir manager to register a controlled reservoir not later than six months after the commencement date of clause 10, which concerns the register. A reservoir manager is to be given six months. Clause 12, which relates to structures or areas that become controlled reservoirs after the relevant date, allows for 28 days. I imagine that yours are all established reservoirs and that you have no new reservoirs, so you have the six months.
335. When you get into issues around risk designation, however, there is no responsibility or time pressure on DARD or Rivers Agency in clause 17 to designate a risk, yet there are time pressures if you want to review and appeal that. Is that proportionate?
336. **Mr Gowdy:** From a Northern Ireland Water point of view, we are comfortable with supplying information, getting the register up to date and moving within the times specified. As I read it, the other provisions that you mentioned do give some measure of flexibility within DARD. I am not speaking on behalf of DARD. I am just thinking that, as I look at it, the clause gives some measure of flexibility so that those who have privately owned reservoirs can look to negotiate with DARD to make sure not only that the provisions are complied with but that there is a degree of reasonableness in the Bill. It is an important Bill for Northern Ireland and will cause some issues for private owners, so that shows a measure of flexibility and reasonableness.
337. **Mrs Dobson:** Point 31 of the NIEA submission states:
- “Following an assessment of the environmental risks NIW should agree with NIEA the order in which reservoirs will be emptied.”*
338. Can we clarify the issue of draining or emptying reservoirs and whether that in itself poses any risk to their structure?
339. **Mr Gowdy:** That is a very good point. Thank you for raising it. Should we ever have occasion to drain a reservoir down, or down significantly, as I said before, we will take into account any discharge of water into watercourses. We will consult with all the statutory undertakers, including the Environment Agency, to ensure that there is no ecological or environmental damage or threat to public safety. That is a given. However, when doing that, we would normally take the advice of the inspecting engineer, as mentioned in the Bill, to ensure that any draining down did not affect the stability of the dam, and, if it did, what measures we would have to take to rectify the situation or what contingency plans we would need to have in place. However, you are quite right: there are certain dams that, if we chose to lower the water level in them or empty them, would require a structural inspection.

340. **Mrs Dobson:** I am happy that you have considered that possibility.
341. **Mr Gowdy:** Very much so.
342. **The Chairperson:** There are no further questions from members. Thank you very much for your time. It was good to get to speak to you on the Bill, and we wish you all the best.

25 February 2014

Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
 Mr Joe Byrne (Deputy Chairperson)
 Mrs Judith Cochrane
 Mr William Irwin
 Mr Declan McAleer
 Miss Michelle McIlveen
 Mr Oliver McMullan
 Mr Ian Milne
 Mr Robin Swann

Witnesses:

Mr Ian Bowden	<i>Belfast City Council</i>
Ms Rose Crozier	
Dr Marcus Malley	<i>Craigavon Borough Council</i>
Mr Gerry McGibbon	
Mr Jonathan McGilly	<i>Newry & Mourne District Council</i>
Mr Eamon McManus	

343. **The Chairperson:** I welcome Ian Bowden, who is a senior civil engineer with Belfast City Council; Rose Crozier, Belfast City Council's assistant director of parks and leisure; Jonathan McGilly, Newry and Mourne District Council's assistant director of district development; Eamon McManus, Newry and Mourne District Council's deputy director of technical and leisure services; Marcus Malley, who is a conservation officer with Craigavon Borough Council; and Gerard McGibbon, who is a contracts manager with Craigavon Borough Council. You will not have to go through the introductions; I have done them for you.

344. Members have already had a chance to read your briefing paper, so I will ask you to take up to five minutes for each council to address the Committee. I remind you that we are time-bound; we have to be out of here at 2.00 pm. We want to be rid up by 2.00 pm so that we do not have to detain you for half an hour and then ask you to come back again. Members will have specific questions for you, so, without further

ado, I will ask you to commence. Maybe Belfast can start off.

345. **Ms Rose Crozier (Belfast City Council):** Thank you, Chair. We really appreciate the opportunity to address the Committee today. I will defer to my colleague Ian to make the presentation.
346. **Mr Ian Bowden (Belfast City Council):** Belfast City Council (BCC) currently owns and manages five reservoirs across the city: the Waterworks upper and lower, Alexandra Park pond, Boodles Dam in Ligoniel and Half Moon Lake. In November 2011, the council agreed to the establishment of an inspection process in line with current best practice for all appropriate water-retaining structures. Following this agreement, the council appointed external consultants to undertake inspections at four of the reservoirs. At this point, Alexandra Park pond had not been identified as an impoundment, and when it was identified by Rivers Agency in 2012 we included it in our inspection process.
347. To date, the council has spent in the region of £57,000 on preparations and inspections of our reservoirs. As a result of the inspections, a number of recommendations were made in relation to each of the five reservoirs. We received the final reports on each site in late 2013 and, in January this year, the council gave authority to the director to proceed with works to implement the various recommendations. We are currently commencing the process of undertaking the work.
348. Several of the recommendations relate to ongoing maintenance such as grass cutting, tree pruning and general clearance, which will be included in our regular maintenance schedules. However, there are several other recommendations that will require the council to acquire the services of external specialist consultants, and we estimate that this work will

- cost in the region of £24,000. We are currently working on the costings for ongoing annual professional fees, and we anticipate that these will be approximately £10,000 across all five sites. This figure does not include BCC maintenance figures.
349. The inspection reports include dates for recommended follow-up inspections. It has been recommended that inspections are undertaken every 10 years, which for Belfast City Council will require expenditure in the region of £20,000. Annual inspections will also be required and, eventually, these may be undertaken by council staff. The findings of these inspections must be presented to the supervising engineer, which may result in further inspections and works that could incur costs.
350. Belfast City Council has not taken a policy position on the size of reservoir according to cubic capacity that should be included within the scope of the Bill. However, we have taken the view that, due to the location of our reservoirs in urban areas and the potential number of people who would be affected should there be a breach, all our reservoirs should be included in our inspection programme, regardless of size. Alexandra Park pond and Half Moon Lake each have a capacity under 10,000 cubic metres, but due to their location they have been included in our inspection programme. As a public authority, Belfast City Council strives to follow best practice in all its operational practices and will continue to minimise the risk to residents by ensuring that we have good maintenance schedules for our reservoirs.
351. We also believe that reservoirs can provide much-needed recreation opportunities. We currently provide angling opportunities in the Waterworks and are exploring opportunities to develop Half Moon Lake. In addition, many reservoirs provide good freshwater habitats for biodiversity and contribute to the beauty of the landscape. Reservoirs also serve a flood relief function, holding water at times of high rainfall rather than allowing flood surges which, in themselves, cause damage and devastation.
352. There are another five reservoirs within our council boundary that are not in our ownership. It is our view that they also should be maintained to a high standard to ensure that the risk to all our residents is minimised. However, we recognise that this can place a large burden on private individuals and third-sector organisations, so there is a need to balance risk minimisation with a process that is not overly bureaucratic or burdensome. Given the cost associated with inspection and maintenance, a grant scheme should be developed to assist reservoir owners to meet any legal obligations placed on them.
353. The council's emergency planning unit is aware of the requirement in the legislation to produce flood plans for the council's impoundments. These will be developed in due course. The council is a key member of the Belfast Resilience Forum, a multi-agency emergency planning forum for the city of Belfast. The forum has a flood working group with membership that includes the emergency services, Rivers Agency, Northern Ireland Water, Roads Service, the Met Office, the Red Cross and Castlereagh Borough Council. The group has developed an extensive multi-agency flood plan and coastal flooding protocol for the city. In the light of the Reservoirs Bill, the intention of Belfast City Council's emergency planning team is to request the forum's steering group to allocate a further task to the flood working group to develop the multi-agency reservoir flood plans.
354. I am happy to take any questions.
355. **The Chairperson:** That is lovely. Thank you. We will take all the presentations before we have questions, but thank you very much. Do any of the other councils want to take the next step?
356. **Mr Jonathan McGilly (Newry & Mourne District Council):** Thanks for the opportunity, on behalf of Newry and Mourne District Council, to present.

- Within the council area, 11 reservoirs have been identified and considered as controlled reservoirs under the proposed legislation. The Rivers Agency has identified ownership ranging from public sector to private sector to not registered. Whilst the council has a direct involvement in a number of reservoirs in the district, a number are in the ownership of other agencies or the private sector. There being no management of a number of the reservoirs represents an unknown risk to local communities.
357. Whilst analysis is available on a small number of these reservoirs, no detailed assessment is available on the condition of them all. Any remedial actions, long-term maintenance and the number of people potentially affected downstream are unknown. With a lack of detailed information on the reservoirs, the burden on reservoir managers in the district is unknown. The concern will be both financial and for the skills capacity to meet the requirements of the Bill.
358. Given the council's experience to date, the impact of the Bill on controlled reservoirs is likely to place a significant financial burden on the reservoir operator. The ability of the operator to meet the financial requirements is a significant concern. It is important that the Department considers making a grant-aided scheme for reservoir operators across sectors.
359. Camlough dam was discussed briefly by the Committee on 18 February as part of Northern Ireland Water's presentation. The ownership of Camlough dam is unclear. The Newry Improvement and Water Act 1871 gave ownership and control of Camlough lake to the Camlough Waterworks Trustees. However, it would appear that all the trustees have died, and no successors were appointed.
360. Both Northern Ireland Water and Newry and Mourne District Council have an interest in the lake. Northern Ireland Water utilises the reservoir for public water supply. Historically, the council has a twofold interest in the dam. First,
- the Newry Improvement and Water Act 1871, part of which remains part of our legislation, stated that:
- "And whereas during the summer months there is frequently in the Newry Canal an insufficient depth of water for the navigation of the same",*
361. sufficient water was to be taken from Camlough lake to protect the canal. Secondly, the lake is widely used as a local amenity, with activities from canoeing to angling and waterskiing. The lake is becoming increasingly renowned for swimming and hosts the annual Camlough triathlon and Camlough water festival, among other events. This year, it will host the national triathlon championships.
362. The council manages recreational access by virtue of a licence from the Richardson estate. The council has no title to Camlough lake. The council also manages recreational access to the lake through a subcommittee that includes the council, local user groups, environmental groups and the community sector. The facility is very much regarded as a community asset. The lake is designated as an area of special scientific interest. It is one of the few remaining mesotrophic lakes in Northern Ireland. It is a special place because of its aquatic flora and fauna; a wide range of birds and invertebrates are found at Camlough. Its shoreline includes an area of wet woodland that supports several species of willow and downy birch, as well as fenland and marshy grassland habitats.
363. In the context of the Reservoirs Bill, councils have been working in partnership with every agency in Northern Ireland Water. An article 10 report on Camlough has been completed in accordance with the good practice of the Reservoirs Act 1975. The inspection identified a number of serious deficiencies in the existing dam structure. Therefore, a report investigating the works necessary to bring the dam to a safe standard was produced. A copy of the 'Camlough Reservoir Improvement Options Report:

- February 2014' is available, and the addendum report, a supplementary abandonment scoping report, is also enclosed.
364. The report recommends the rehabilitation option, at a cost of £2,510,000. That capital cost assessment is identified in paragraph 8.8 on page 24 of the report. Northern Ireland Water has indicated that it will apply to the Department for 50% of the cost. There is therefore a budget of £1.25 million to be found. Given the council's present activities at Camlough lake, for the purpose of the Reservoirs Bill, when enacted, the council will be the reservoir manager. If Newry and Mourne District Council were to continue to use Camlough lake, the cost could fall to the council.
365. Clause 105 of the Bill provides as follows:
- "(1) The Department may by regulations make provision as to the payment of grants to reservoir managers of controlled reservoirs for the purpose of enabling or assisting the managers to comply with their obligations arising by virtue of this Act.*
- (2) Regulations made under subsection (1) must require such grants to be subject to such terms and conditions as the Department may determine (including conditions as to repayment in the event of contravention of the other terms or conditions on which the grant is made)."*
366. The requirement —
367. **The Chairperson:** Sorry, John, I have to rush you. Can you just finish up for me? We are tight for time.
368. **Mr McGilly:** OK. I was concluding. I just wish to say that, in the event of half of the costs in relation to Camlough falling to the council, we request that a multi-agency approach be taken, and the council will approach central government to look at sharing those costs.
369. **The Chairperson:** OK. Thank you very much, and I am sorry for having to cut you off. Marcus or Gerry, do you want to pick it up?
370. **Dr Marcus Malley (Craigavon Borough Council):** Thanks very much for the opportunity. Craigavon Borough Council owns and manages two reservoirs: Lurgan Park lake and Craigavon lakes. Craigavon lakes comprises the north lake and south lake, which are linked. We are appointing external consultants to establish an initial inspection process, which is likely to cost about £10,000 for both reservoirs. Craigavon lakes were excavated in the 1970s to reduce flood risk by attenuating the run-off from the newly built urban area around the then new town of Craigavon.
371. In both Lurgan Park lake and Craigavon lakes, at least part of the dam banks are not in council ownership. Private housing is built on them and, in the case of Lurgan Park, a public road. The council has concerns about its responsibility for a dam bank that is outside its control.
372. Both Lurgan Park and Craigavon Park lakes are important recreational facilities that provide a vital function in improving the water quality of the streams that drain from the urban areas, thus reducing the pollution of the Lough Neagh special protection area. They are important sites for wildfowl and biodiversity in general, with Craigavon south lake forming part of the city park's local nature reserve. The Craigavon lakes have a flood relief function.
373. The lakes contribute to the green space at Craigavon and are well regarded by the people in the borough. Craigavon lakes and Lurgan Park lake are run as fisheries, and funding was obtained recently to further develop that facility. While Craigavon will endeavour to maintain best practice in relation to inspection and the running of its reservoirs, we believe that the likely cost of the Bill will be onerous on private individuals and other organisations. So there is a need to balance risk minimisation with a process that is not too bureaucratic, burdensome or expensive. Given the costs that are associated with registration, inspection and maintenance, it is our opinion that a grant scheme should be developed to assist reservoir owners to meet any legal obligations placed on them. We are

- aware that some reservoirs have already been decommissioned in anticipation of the Bill, and there are likely to be consequences in flood mitigation if the process is accelerated.
374. We understand that, in the Bill, the risk has been assessed on the basis of the likely damage to life and property rather than the likely failure of the dam bank or wall. An assessment of the risk based on the likelihood of failure should be adopted, as we understand has happened or is happening in other countries. Furthermore, while the Department tells us that it is not possible to assess with absolute certainty the risk of a failure, it should be possible to identify those reservoirs with a high or low risk of failure, and the need for inspection and the frequency of its occurrence should reflect that. The requirement for a supervising engineer to visit every six months and report yearly could then be reduced to a more practical schedule if the reservoir is a low risk.
375. It is proposed in the Bill that risk is based on the likely damage to property or the loss of life in the flood inundation map. Building works outside council control within a flood inundation area may potentially increase the risk level of the reservoir and hence the costs for the reservoir manager. That has not been addressed in the Bill and may need to be addressed by Planning Service. The council has concerns about how that will be insured against. We understand that the flood inundation maps need to be updated and are based on data and assumptions that are no longer current.
376. Rivers Agency identified two significant flood risk areas in the Craigavon borough. The Neagh Bann flood forum has been established, and Craigavon Borough Council is represented at member and officer level due to the significant area affected by the strategic flood risk assessments (SFRAs) within its boundary, and especially given the risk posed by the flooding of lands and property in the vicinity of the River Bann and the impact on levels in Lough
- Neagh. The risk assessment also acknowledges that, unlike the rest of the UK, Northern Ireland does not currently have legislation for the management of reservoir safety. There is an obvious impact on the community living in an at-risk area from the perspective of emergency planning, and that is why the principal administrative officer, who also acts as the emergency service coordinator for the borough, serves on the Neagh Bann flood forum.
377. **The Chairperson:** Thank you all very much for your presentation. We will go straight into questions. I remind members that, if you feel that your question has been answered through the presentation, there will be no need to ask it. However, if you need it on the record or want detail on specifics, ask the question.
378. **Mr Irwin:** The Bill refers to controlled reservoirs holding 10,000 cubic metres of water. In England and Scotland, it is 25,000 cubic metres. What is your feeling about that?
379. **The Chairperson:** I am going to have to try to manage this in some way, because I do not think that we can have three answers. Belfast mentioned that in its presentation, so maybe its representative can answer that. If the other councils do not agree, they can chip in at the end, if that is OK?
380. **Mr Irwin:** I should have been more specific in regard to whether it poses a threat or not, and the reason for the controlled reservoir and the amount of water that it holds. You said that, in areas where it poses a risk, it should be lower than 10,000 cubic metres.
381. **Mr Bowden:** Two of ours are lower, but we went ahead and carried out our inspections anyway simply because they are in urban areas. We feel that a risk-based analysis is probably better because, with a huge reservoir in an area where there is open farmland, it might get away, whereas, in an urban area, there is more risk to human life. That is where we were coming from.

382. **Mr Irwin:** I believe that many of the reservoirs pose little or no risk even though they may have 25,000 cubic metres in country areas, as you say. There is a fear among many of us that the legislation could be too harsh on some of those. It is difficult to get the balance.
383. **The Chairperson:** Do the other two councils agree with that?
384. **Mr Gerry McGibbon (Craigavon Borough Council):** We agree. We think that it should be more based on the risk. You could have a very small reservoir in a built-up area and need to consider that, but you could have a bigger reservoir in a rural area that is lower risk.
385. **The Chairperson:** There is provision in the Bill to do that for a lower-capacity reservoir. DARD could pick that out. Is Newry and Mourne content?
386. **Mr Eamon McManus (Newry & Mourne District Council):** Yes, Newry and Mourne has Bessbrook pond, which has a capacity in excess of 25,000 cubic metres. We also have a small reservoir in the Donaghaguy area and our interest in Camlough lake. So, we have no issue with the 10,000 cubic metres capacity and the dividing line between what is included and what is not.
387. **Mr Byrne:** I have a generic question; the risk has been addressed, more or less. Belfast City Council is in charge of five reservoirs in its ownership. What percentage of the water is taken from you by NIW?
388. **Mr Bowden:** None. They are all recreational.
389. **Mr Byrne:** I ask the same question to the Newry and Mourne District Council people. What volume of water is taken from Camlough lake by NIW? What earnings do you make from NIW?
390. **Mr McManus:** I understand that NIW takes up to five megalitres a day. The council does not own Camlough lake, so it does not benefit in any way from the abstraction that Northern Ireland Water takes from Camlough lake.
391. **Mr Byrne:** So, the Newry and Mourne council has used the lake in some ways for the replenishment of the level of the water in the canal, it uses it for recreational purposes, and NIW takes fresh water from the lake.
392. **Mr McManus:** Those are the arrangements at present, yes.
393. **Mr Byrne:** There is a grey area about what NIW pays for the water that it takes.
394. **Mr McManus:** I cannot comment on that; I do not know what the relationship is between Northern Ireland Water and its abstraction with Camlough lake, or who it might pay. It does not pay Newry and Mourne District Council, anyway. I can categorically say that.
395. **Miss M McIlveen:** In your presentation, you mentioned the issue around cost, and also grant aid. I will look specifically at Belfast City Council in the first instance. You have started to do a piece of work from 2011. Obviously, the burden of that cost has lain with the ratepayer for Belfast, and likewise for the other councils. Are you aware of the ownership of the reservoirs that are outside your responsibility, and also what burden that may have? Are they community organisations, or are they other public bodies?
396. **Mr Bowden:** Of the five, there are three of them we do not know. One of the others is DSD, and the other is a community group in Wolfhill. There are three dams up in Wolfhill, just above Ligoniel: upper, middle and lower. The middle one is owned or managed by a community group.
397. **Miss M McIlveen:** What about the other council areas? Are there community groups involved in the use of the reservoirs that you do not have control of?
398. **Mr McGilly:** Not that I am aware of, in Newry and Mourne council, but I am not exactly sure who owns all of them. I am not aware of any other community interests similar to that in Camlough lake.

399. **Miss M McIlveen:** Obviously, if we are moving forward to look at a grant scheme, we need to look at how that should be developed and accessed. Have any of you given any thought to that, other than that there is a need for one?
400. **Ms Crozier:** Not really, other than the need.
401. **Mr McManus:** Through our presentation, we have made clear that Newry and Mourne council will certainly seek to turn to central government for the funding of the £1.25 million capital works that will be necessary to fund even 50% of the rehabilitation of Camlough dam. Unless that level of funding was available, Newry and Mourne council feels that it could not, financially, take on the responsibilities that the Reservoirs Bill would currently assign to the reservoir managers. Thereafter, we would certainly seek to secure funding for the running costs for the annual maintenance if Newry and Mourne was the only interested body in relation to Camlough lake. We very much ask the Committee to consider the means by which a grant aid scheme could be available to those reservoir managers in the future.
402. **Mr McGibbon:** Likewise, we use Craigavon balancing lakes for recreational purposes, but Craigavon council has no option but to maintain that, because the Rivers Agency depends on those lakes for flood attenuation. We do not have an option to decommission those lakes, because they are relied heavily upon for flood attenuation. That has been the plan for Craigavon since before Craigavon council became what it is now. Because it is a shared resource between us and the Rivers Agency, there needs to be some help coming forward in terms of maintaining that for the attenuation purposes that it serves
403. **Miss M McIlveen:** There is a myth that the council has responsibility for everything. Has anyone approached you about the proposed Bill?
404. **Mr McGilly:** No, but I think that any intervention should be applied equally. If there is risk associated with a reservoir in private sector ownership, that needs to be looked at. We are not saying that it would be a scheme open solely to the public sector. The private sector should, if it likes, be equally open to apply should it be available. Again, that would be on the basis of the risk element.
405. **Miss M McIlveen:** For council-owned reservoirs, for example, those owned by Belfast City Council, are you insured against the risk or are you self-insured?
406. **Mr Bowden:** I honestly do not know.
407. **Dr Malley:** I mentioned the decommissioning of reservoirs. Two of our council employees own reservoirs, although not in the Craigavon area. One reservoir is in the process of being decommissioned because the owner is so frightened by the tenor of the Bill, and the other is being considered for decommissioning.
408. **The Chairperson:** Can you name them?
409. **Dr Malley:** I can. The one being decommissioned, and I know that consultant engineers have produced a plan, is, I understand, called Whitehead town lake. The other one is Straid dam in County Antrim.
410. **Mrs Cochrane:** A number of you mentioned multi-agency reservoir flood plans. Do you think that a multi-agency approach should be the norm instead of the individual reservoir owner being responsible for a flood plan? If so, is that because the plan should be about more than having administrative details in place; it should include a response plan? Are private individuals in the third sector likely to have the capability to do that?
411. **Ms Crozier:** Belfast City Council is a member of the Belfast Resilience Forum, which is a multi-agency emergency planning forum for the city. The group has worked very effectively in planning for emergencies such as the recent coastal flooding and has established a protocol for that. We see this as another tool in the box for how we deal with such emergencies and intend using a

- similar multi-agency approach because we feel that that works. We will apply a similar template to how we come up with a plan to address the risk of the impoundments breaching.
412. **Mr Milne:** I have a point on the contribution from the private sector. Joe Byrne asked how much water NI Water takes from the reservoirs. Surely NI Water should face some of the bill.
413. **Mr McManus:** In the case of Newry and Mourne, NIW played a part in the Camlough dam discussion, and we would seek funding for up to 50% of the capital costs. For as long as it has an interest in Camlough lake, we believe and hope that it will contribute to annual running costs. So there might be a partnership approach between Newry and Mourne District Council and Northern Ireland Water while both bodies have an interest in Camlough lake.
414. **Mr Milne:** You talked about consultation with the planning department. Are you talking about the decommissioning?
415. **Dr Malley:** No. My concern is that, if somebody builds in the flood inundation area below a dam, it will potentially increase the risk for the dam and, therefore, the cost to the reservoir owner. There does not seem to be any consideration of that. I am not sure how we as a council will insure against that.
416. **Mr Milne:** That is a very interesting point.
417. **Mr McGibbon:** Another issue is the effect on property owners. When we assess a dam, people are unaware of it. When they bought their property, they were unaware of it. Then, all of a sudden, we present this risk, and they are downstream from it. How does that affect the price of their property? Both of our dams — Lurgan lake in Craigavon and Donaldson lake near Holywood — are earth dams. The land has been sold not by the council but by other Departments for private development. The residents have paid their money. Are they aware that they have bought into this risk and the associated ongoing fee? As the local authority, we have to try to work with them and get their agreement to do the investigations, and they have to share the cost. If we try to approach all the owners of residential properties and bring this up with them, it will present us with difficulties.
418. **Mr McManus:** Also, there is the question of who is liable.
419. **Mr Milne:** Have any of your dams been breached? You talked about the likelihood of failure. What is that based on? Is it because many are over 100 years old?
420. **Mr McGibbon:** We have no idea.
421. **Mr McManus:** In Newry and Mourne, we understand that the flood inundation studies carried out project the consequences of a catastrophic failure of Camlough dam. We have to bring to the Committee's attention the fact that there would be serious consequences. There are somewhere in the region of 1,600 properties downstream of Camlough dam, and they would, in the event of a sudden dramatic failure, be at risk, and there would be the potential for loss of life. Newry and Mourne District Council wants to stress to the Committee that, although the dam is in the council's area and it has an interest in it, the consequences of failure go far beyond the council's responsibility. Therefore, we seek central government intervention to deal with the risk identified with the possible failure of Camlough dam.
422. **Mr McMullan:** I apologise for being late. I was caught up in another meeting. What are your views on the mechanism for disputes, third-party appeals etc and the costs involved? Have you looked at that?
423. **Ms Crozier:** We have not considered that yet.
424. **Mr McGibbon:** We could.
425. **Mr McMullan:** I think that you should. I just wanted to get your views on it.
426. You talked about the danger to people living downstream of the dam. I have not heard any mention of anybody else's responsibility in this. We are

- talking about people buying houses and then being told that there is a dam above them that might have risk attached to it. The dams are classified as high, medium or low risk. Does the estate agent or the legal representative involved in the conveyance not have a responsibility? When a person buys a house, a legal representative has to look at all such issues. I do not understand why nobody is coming at it from that angle. You seem to take this on as your responsibility; I see it as the responsibility of those involved in buying or selling the house of behalf their client. Have you a view on that?
427. **Mr McGibbon:** It is more about how we are now being forced to assess the risk: we have to assume catastrophic failure and its consequences. If we took a more measured approach and factored in some more likelihoods, that could result in a lower risk, which might have a lesser effect on the value of those properties.
428. **Mr McMullan:** That goes back to my point about the high, medium or low classification of a dam. Do we need to talk to the people who are involved in the selling of property and land, such as the planning authority etc? Given that they pass ground as fit for building, should this not be in planning law?
429. **Mr Bowden:** In the case of Belfast City Council, no matter which dam, houses are involved.
430. **Mr McMullan:** I am scared that this will become another piece of red tape for the house owner or someone building a house and that they will have to pay to get the information. That information should be there. You can get flood plain maps, and you should now be able to get a map showing high-, medium- and low-risk dams.
431. **Ms Crozier:** Clearly, there is an impact on planning and properties anywhere near impoundments. We have taken a view purely about the registration, inspection and maintenance of the dams in our ownership and how we manage the risk.
432. **Dr Malley:** If a house is built below the dam, as well as potentially creating a liability for the house owner, it may increase the risk level of the dam. Therefore, it adds a liability to the dam owner as well. The fact that a house could be inundated might increase the risk level.
433. **Mr McMullan:** It would also increase the insurance paid by the dam owner. Has all this been factored into your community plans?
434. **Mr McGilly:** We will have to look at that. In the event of something happening, the council's emergency plan would kick in. It will need to be taken into account in any new district plan. However, we are where we are. It is about moving forward in light of the legislation and trying to sort out what position people will be left in once the Bill is enacted.
435. **Mr McMullan:** Does it not need to be in community plans now? We are only a couple of months away from elections to the shadow councils. Surely you need that as part of the pro forma for the councils to work on.
436. **Ms Crozier:** It will impact on planning considerations and planning decisions.
437. **Mr McMullan:** You are also getting planning powers.
438. **Ms Crozier:** Yes.
439. **Mr McMullan:** If we are not careful, the poacher will become gamekeeper, or vice versa.
440. **The Chairperson:** How do councils feel about the operational procedures and the panel engineers on whom you will need to rely to get the work done? There are operating procedures for the high-, medium- and low-risk dams. Jonathan, in his presentation, mentioned the at-least-twice-a-year regime. Do we think that the detail of the Bill is sufficient, or is it too stringent and too much of a burden on councils? Does Belfast City Council have a view?
441. **Mr Bowden:** There is no doubt that it is a burden. We have produced reports on our five dams, and they include a date

- on which we have to come back with the section 10 inspection required by the 1975 legislation. We have to go back based on what we have, and that is in the public domain. In the meantime, we have to inspect annually. Some of our dams cannot be inspected in that way by council staff; they have to be inspected by a supervising engineer. Currently, as there is only one in Northern Ireland, the lack of competition is a problem. We would like more competition.
442. **The Chairperson:** You, as public bodies, will, of course, have done everything efficiently and to the letter of the law. You could have a state-of-the-art dam or reservoir that, because of the risk to the life of the population below it, will be classed as a high-risk reservoir.
443. **Mr Bowden:** All of Belfast's are high risk.
444. **The Chairperson:** If you have done everything to the letter of the law and inspected a dam to the point of it being a state-of-the-art facility, do you think that the inspection regime is too much of a burden?
445. **Mr Bowden:** It is certainly an ongoing burden. You have no idea of the costs. It is a movable feast. We reckon that, in 10 years' time, it will cost £20,000 simply to repeat the inspections. So that is hanging over us, and from those inspections may come further required works. That element is unknown.
446. **Dr Malley:** I question the basis for this way of assessing risk. We have one dam, Craigavon lake, which has an extremely low failure risk because of the nature of it. Yet, it will still be classified as high risk because there are properties below it. I think that some cognisance should be given to the likelihood of failure as well as to the risk areas below the dam.
447. **The Chairperson:** If your dam is deemed to be high risk, you can go into a dispute and appeals mechanism. Do you feel that that is sufficient, bearing in mind that, if you ask for a review of a decision and then appeal that, you have to pay for it? How do you feel about that? Have you studied it yet? Perhaps you have not, because it relates to Oliver's initial question. If you do not yet have a position on that, is it in order to ask you to consider it and write back to us, at your own leisure but in a timely fashion, with your thoughts? Would that be possible? I know that, at present, you may be unsighted and unable to answer the question that I asked, but do you have any initial views on the disputes mechanism?
448. **Mr McGilly:** We have not looked at that.
449. **The Chairperson:** My advice is that you each check out your council position.
450. **Ian,** you mentioned the lack of engineers and bringing in other expertise. How big an issue will that be? Do any of the councils have what could be classed as in-house competent people to deal with it?
451. **Mr McManus:** Newry and Mourne council employs engineers who are competent in their field of expertise, but none of them is a member of the all reservoirs panel. So our council will have to seek to acquire those professional services from the qualified people on that panel. We advocate that those engineers and services be available on a competitive basis.
452. **The Chairperson:** There is an issue with the transparency involved in getting people on to the list for you to use. That will have to be in line with your procurement restrictions and regulations. Have you looked at the actions that the council will have to take to enlist these engineers?
453. **Mr McGibbon:** It looks like we will have to look further afield than —
454. **Ms Crozier:** There is a possibility that we could look at a collective regional tender for that kind of expertise to make it more competitive.
455. **The Chairperson:** OK.
456. A reservoir manager will be liable for the reservoir. If there were a breach or failure, he would be responsible. From your understanding of the Bill, who in the council is the reservoir manager?

457. **Mr McManus:** It is my understanding that Newry and Mourne District Council as the corporate body is the reservoir manager. There is not any one named individual. The council corporately has to accept, share and deal with that responsibility.
458. **The Chairperson:** If a breach led to, God forbid, manslaughter, would the responsibility fall on a chief executive and then trickle down to the culpable person?
459. **Mr McManus:** In the event of any failure, all relevant officers in the council structure would potentially be liable, but I think that negligence would have to be established in the first instance: some person, at whatever level in the organisation, would have to be proven negligent in their actions or lack of actions. The council is mindful of its responsibilities under corporate manslaughter and is certainly mindful that this would potentially apply in a Reservoirs Bill situation.
460. **The Chairperson:** On enforcement, offences, fines and prison terms, do you feel that they are proportionate, notwithstanding anything that could happen to your council? In the Bill, a standard scale 4 is a £2,500 fine and a scale 5 is a £1,000 fine, depending on the offence, or up to six months' or two years' imprisonment. Have you looked at the scale of offences and penalties?
461. **Mr Bowden:** No. At this stage, we are dealing more with the risk and the inspection process. We have not looked beyond that.
462. **Mr McMullan:** One of the driving forces for new clusters when councils amalgamate under RPA is the sharing of personnel. There is, for example, to be one accountant in each cluster and so on. Have you looked at sharing an engineer?
463. **Ms Crozier:** Just before we came in here, we were talking about that opportunity and saying that, because there is only one panel member in the region, we should perhaps look at tendering collectively for a professional resource.
464. **Mr McMullan:** I think that that would go with the ethos of sharing services that is built into RPA, the idea being to save money. Some will argue against that, but that is the ethos. I think that, if there are not enough engineers, you could be held over a barrel. That applies right down the line from you to other council employees. Having your own engineer in shared services across local government is an option that we have not explored yet.
465. **The Chairperson:** We can send the Hansard report of the meeting to the Northern Ireland Local Government Association and ask it, as the umbrella body, to respond to the issues raised.
466. Thank you very much. We were limited for time, and I did not want you to have to hang about for 45 minutes and then come back, so we rushed through that slightly to let you away. I hope that the time was sufficient for you; it was certainly very useful for us. If, as you go through the Bill with your officers and chief executives/ directors, there are any other issues to which you need resolution or questions to which you need answers, please write to us.
467. Marcus, is there any chance that you could send Committee staff details — I do not want you to tell me publicly — of the reservoirs that are to be decommissioned so that we can write to the owners to ask for their thoughts and maybe give them an opportunity to come before us?
468. **Dr Malley:** Yes, certainly. I will speak to the people concerned. Obviously, they would have to agree.
469. **The Chairperson:** Absolutely. Thank you all very much.

11 March 2014

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
 Mr Ian Milne
 Mr Robin Swann

Witnesses:

Mr Maurice Parkinson *Antrim and District Angling Association*
 Mr Aidan Donnelly *Armagh Fisheries Ltd*
 Mr Cathal Doyle

470. **The Chairperson:** We have Maurice Parkinson, the chairman of Antrim and District Angling Association; Aidan Donnelly, the chairman of Armagh Fisheries Ltd; and Cathal Doyle from Armagh Fisheries Ltd. You are very welcome to the Committee for the scrutiny of the Reservoirs Bill. Do you have a presentation for us?
471. **Mr Aidan Donnelly (Armagh Fisheries Ltd):** Just a few points.
472. **The Chairperson:** We can go into questions afterwards.
473. **Mr Donnelly:** Armagh and District Angling Club is in broad agreement with the Reservoirs Bill and the need for appropriate legislation to minimise the risk of a breach and any subsequent detrimental effect that that would have on life and/or property. We also welcome the introduction of an appropriate maintenance regime to aid us to comply fully with the Bill. Our reservoirs supply angling not only to our local community but to visiting anglers and tourists. One of our reservoirs supplies the water necessary to run our fish hatchery, in which we raise the fish that we stock into lakes and rivers that are under our control. Angling in

the Armagh area also supports local traders, including tackle shops, fish feed merchants and local fish farmers. Armagh and District Angling Club is a non-profit-making organisation that is run on a largely voluntary basis to improve angling and to enhance the flora and fauna environment. We promote the protection of our indigenous species of brown trout and are constantly aware of the need for biosecurity to minimise the introduction of alien species into our lakes and reservoirs.

474. The current plan to introduce legislation via the Reservoirs Bill will take into account health and safety issues that have perhaps never been fully addressed in Northern Ireland and that any right-minded individual and angling club would wholly welcome. A major source of anxiety and concern for our club is the cost that may arise from registration, inspection, remedial work and upkeep. As a club, we do not have the necessary finance, and nor do we have any identifiable way of raising the money required. A major fear is that, without accessible grant aid from the Government and, perhaps, others, other clubs, including ours, will be forced into bankruptcy, and reservoirs could be left abandoned or in risk of breach through a lack of monitoring and possible dam wall failure.
475. Ultimately, we fear that the Government will have to pick up that bill. Grant aid, if provided by government, would allow us as a club, and other clubs, to continue to develop amenities that would benefit the community, boost the local economy and promote growth and tourism to the overall benefit of the Northern Ireland economy.
476. Management of our reservoirs also adds to the ecology of the Northern Ireland environment, which we are working with to plant indigenous trees and wild flowers around our reservoirs. That is all that I have to say at this point.

477. **The Chairperson:** Aidan, thank you very much. Maurice, do you have anything to add at this stage?
478. **Mr Maurice Parkinson (Antrim and District Angling Association):** Thank you very much for the opportunity to make a presentation on an issue that we regard as very important. It goes without saying that Antrim and District Angling Association has no difficulty with the Bill per se. We have about 400 members, which is a substantial number. In addition, we sell many permits, and we have season permit holders and so on. We are an extremely important resource. I emphasise, as Aidan did, that permits go to tourists, and we regard it as one of the best rivers — if not the best — in the Province and a very good reservoir.
479. We are a charity or, as we term it, a local community business. We are not there to make lots of money for anyone other than ourselves. We do not employ fisheries managers; in the main, all the work is done by our members. That is the way we operate. The bulk of the members are local. Most of them come from Antrim town, which is primarily a working-class area. Many of our members are retired, many are young and, obviously, there are lots in between.
480. Our fees tend to be lower because we try to make sure that our club is inclusive; that is what we are about. We could become exclusive and increase the fees, but the bulk of the members want to make it as inclusive a local community organisation as it can be.
481. I will refer to a number of points as I go along, specifically to individual clauses. We have had a reservoir for many years, and it is very well used. We stock it regularly. If you go there any day, you will see members introducing their kids or others to fishing and keeping an eye on it and managing it. Fortunately, it seems to be in reasonable condition. That is the initial assessment. However, members, I have to say to you that the future does not look so rosy in the context of the Bill. That is my initial message. I will go through some items to emphasise that.
482. Clause 1 mentions 10,000 cubic metres or more of water. I can see no reference to the definition of water. I am not too sure whether that includes slurry. At Greenmount College, for example, there are large areas for treating farmyard run-off. As far as we are concerned, a lot of those can amount to large amounts of leachate and could enter major rivers if they were not secure. That is another area. I am not sure whether that is water or slurry. The clause just states “water”, so it does not seem to include that. I just want to make that point.
483. Clause 6 relates to reservoir managers. When I read all that, my first question was “How in the name of God will we ever get a reservoir manager?”. It does not bear thinking about. In addition, if there is no reservoir manager per se, the club undertakes that role, and the question then arises, “Who in the club will be appropriately upgraded?” We do not have any officers. Who will pay? When someone leaves, who pays for retraining?
484. Clause 14 relates to the registration and administration of fees. It states, “The Department may by regulations.” I have worked nearly all my life in public authorities, and I know exactly what that means. You do not need to tell my members that. “May” means “will”. Therefore, there is an additional cost.
485. Clause 16 deals with offences in relation to registration. You just have to look at those items and ask: who in our club is going to manage that? It would seem as though they might spend most of their time in jail.
486. Clause 22(4) states:
“The Department may, after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate, by regulations make further provision about the matters that are to be taken into account”.
487. In our case, who pays for all that?
488. Part 3 relates to the construction or alteration of controlled reservoirs. Clause 40 states:

- “The reservoir manager of a controlled reservoir which is to be subject to relevant works must, not later than 28 days before the proposed relevant works begin, give notice to the Department of the proposed works.”*
489. It then states:
- “The reservoir manager must, not later than 28 days before the proposed relevant works begin —*
- (a) commission a construction engineer,*
- (b) give notice to the Department of the commissioning.”*
490. Who pays?
491. Clause 41 relates to the supervision of relevant works and reservoir safety by a construction engineer. Who pays? Part 4 relates to other requirements for controlled reservoirs. Clause 53 relates to flood plans. It states, “The Department may by regulations”. Of course it will do it, but who pays? Part 6 relates to civil enforcement, emergency powers and further offences. I really do not need to say any more.
492. Clause 69 relates to the Department’s power to arrange the taking of safety measures. Subsection (6) states:
- “The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in making arrangements under this section.”*
493. Who pays?
494. Clause 75 relates to stop notices, and it raises the same question. Who pays?
495. Clause 78 relates to fixed monetary penalties. It is all there, members. Clause 80 relates to fixed monetary penalties and criminal proceedings and conviction, and it is exactly the same story. Clause 81 relates to yet more variable monetary penalties. Clause 86 relates to recovery by the Department of certain costs, under a range of miscellaneous items. Clause 93 is the same. Clause 95 relates to offences, and it is exactly the same. Subsection (3) states:
- “A reservoir manager guilty of an offence under subsection (1) or (2)*
- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine”.*
496. The association got a supplementary document: the explanatory and financial memorandum. I am sure that you have it. It comments on the financial effects of the Bill and mentions a grant scheme. Aidan has already made the point, and you can see exactly where we are coming from. It is very unfortunate that:
- “no decision has been taken to introduce ... a [grant] scheme”.*
497. We have to be entirely pessimistic on that.
498. The document talks about human rights. I indicated to the Committee the make-up of Antrim: it is not the most salubrious town in the Province. The club, as I said, aims to make sure that it is a community facility, not an exclusive facility. I argue that it does impact on our human rights, without a shadow of a doubt. You just have to look at the range of individuals. The very same thing applies to the equality impact statement. I must say that I am surprised that that was not undertaken.
499. In conclusion, the one thing missing from the Reservoirs Bill is that there is no mention of decommissioning. I will give you our association’s scenario. We own the reservoir. If the association decided to say goodbye to the reservoir — no more fishing — the question that would arise is this: who would buy it under the Bill? If we do not want to continue, who takes that responsibility? Who would assume responsibility for safety and everything else? Who makes it safe? That is the scenario. If you take that to its ultimate conclusion, and the club had to make it safe but did not have the resources to do so, the club would fold. What happens to the reservoir? I must say that I am also surprised about the supplementary document. I got a note this morning about active communities consultation events, through which the Assembly is encouraging communities to be active, in this case in sport. It could apply to

- health, social inclusion and all that sort of stuff, yet the document makes no reference to that. That is what we are doing every day — we are doing those tasks — yet someone has come along and said that they are going to make it so difficult for us that we will not be able to do it. On the one hand, we are encouraged, and, on the other hand, we are told that they do not want us to do it and that they are going to stop us doing it.
500. Our organisation undertakes a very significant community role at no cost to anyone other than ourselves. I could introduce you to many of the members who spend hours making sure that our fishery is in good order, whether it is the dam or the river. It seems to me that the Bill says to us, “Well done, guys, for what you have done, and here is the reward”. That is the message that our members are getting. Thank you very much.
501. **The Chairperson:** Thank you very much, Maurice and Aidan, for that presentation. Cathal, do you want to add anything at this stage or are you happy enough?
502. **Mr Cathal Doyle (Armagh Fisheries Ltd):** No, I am happy enough.
503. **The Chairperson:** I maybe let you go on a wee bit longer than I should have, Maurice.
504. **Mr Parkinson:** Sorry.
505. **The Chairperson:** No, your presentation was very forensic. That is to be applauded, and I was certainly not going to stop you mid-flight. Aidan, you were also very good in making your presentation. It is what the Committee needs to hear when we scrutinise a Bill.
506. Committee members will have questions that they want to ask you, which will glean a lot more information and maybe interrogate the points that you have made. However, I want the Committee to get a sense of where Antrim and Armagh angling clubs are in the whole scheme of things. Antrim has one reservoir — one lake. How many does Armagh have?
507. **Mr Donnelly:** We have two.
508. **The Chairperson:** Do you have any notion at this time of where those reservoirs will be in the scale of risk and whether they will be high, medium or low risk?
509. **Mr Donnelly:** Our two reservoirs will be high-risk.
510. **The Chairperson:** Have you been told that specifically by DARD?
511. **Mr Donnelly:** Yes. Their preliminary designation is high-risk.
512. **The Chairperson:** Maurice, have you had anything like that?
513. **Mr Parkinson:** No, we have not had a designation from the Department. However, as I said, our members want to look after our interests, and we have employed a consultant engineer. The situation can change very quickly. We just do not know. The reservoir is OK. There is no major cause for concern.
514. **The Chairperson:** What do you mean by OK? Do you mean that the structure is sound?
515. **Mr Parkinson:** It seems to be fine. It seems to be operating OK.
516. **The Chairperson:** This question is perhaps more directed to Aidan. Do you know the rationale and the reason why your reservoirs are high-risk?
517. **Mr Donnelly:** Yes. If you interpret the Bill, one or more dwellings would be in the inundation area if there were a breach. Obviously, there would be damage if there were a major breach of the reservoir walls. That is my understanding.
518. **The Chairperson:** You said that there would be one or two dwellings.
519. **Mr Donnelly:** I think that the Bill states that it will be high-risk if one or more dwellings could be impacted if there were a breach. I take it that that is why our reservoirs have been designated as high-risk.
520. **The Chairperson:** I will give you a bit of context. The reason why I asked the

- question is that, in the Bill, the rationale is very clear that you could have a state-of-the-art, modern reservoir akin to the Hoover dam, yet, because of the population in the inundation area or around that, the reservoir could be deemed as high-risk. So, really, your destiny is not in your own hands at that point, no matter what you have done in the past to keep the maintenance standard of a reservoir high and in good order. My fear is that a lot of groups, maybe even a lot of councils, are not aware of the full facts and figures behind the Bill. However, looking at what you have already done to date, I must say that you seem to be very much clued-in to the aspects of it.
521. I will now open the floor to members.
522. **Mr Byrne:** I am under pressure again for a question. I welcome the presentation from both the Antrim and District Angling Association and Armagh Fisheries Ltd. It was very refreshing. You are challenging the orthodoxy, which is always good. It is good to hear a former public servant say that he can read with some scepticism the words that are used in official documents. Does Northern Ireland Water take water from the Antrim reservoir?
523. **Mr Parkinson:** No, it does not.
524. **Mr Byrne:** So, that is a reservoir that is used purely by you.
525. **Mr Parkinson:** It is purely for our purpose, yes.
526. **Mr Byrne:** Are you its sole owners?
527. **Mr Parkinson:** Yes.
528. **Mr Byrne:** What is the reservoir's asset value?
529. **Mr Parkinson:** Under the Bill, it would be totally negative. There would be negative equity.
530. **Mr Byrne:** I notice that your company is called Armagh Fisheries Ltd, so it is a limited liability operation.
531. **Mr Donnelly:** Yes.
532. **Mr Byrne:** And you own two lakes.
533. **Mr Donnelly:** We have two.
534. **Mr Byrne:** Does NI Water take any water from you?
535. **Mr Donnelly:** No.
536. **Mr Byrne:** So, again, it is purely for recreational purposes.
537. **Mr Donnelly:** Absolutely.
538. **Mr McAleer:** I am glad that you are here. I can see how passionate you are about it all. I hope that you appreciate that we share these concerns, and I know that Thomas and others raised them in the Committee before. Indeed, I raised it here and in the Regional Development Committee when NIW came to meet us. I know exactly what you are saying. One of the reasons that I know is that, in my spare time, I chair a group a group at home. We lease a reservoir, which is the bedrock of the community development in the area where I live. We stock the reservoir and all that. We are looking at taking on a second lake. Obviously, the Bill may cause a bit of prohibition, so I would like to know what the implications will be for us, as ours is a voluntary organisation, like yours.
539. All that I can say is that the points that have been raised here today have completely reinforced some of our thinking. I think that we need to be very forceful with DARD so that it will provide clarity on those points. If needs be, we can put the brakes on it until we get some absolute clarity on the points that have been raised about who is liable and who pays for all that. They are very valid points. I know at first hand the value of taking an asset such as a reservoir and maximising its use for community benefit. I can understand where your passions and fears come from. So, all I want to say is that the message is being heard today louder and clearer than ever before. We should make sure that that is passed on to DARD, and we should demand that we get clarity around all the points that have been raised.

540. **The Chairperson:** Of course, DARD representatives have been following the journey that we are on. We have so many sessions and presentations to go through to get the Bill's full context. However, your concerns are well made, and I think that that is the Committee's sense at the present time. Are you happy enough with that?
541. **Mr McAleer:** I do not think that there is anything to add to what has been said, because those are the concerns of the organisations that might use such facilities.
542. **Mr Milne:** I have to say exactly the same as Declan said, and I agree with everything that you are saying. We have to explore and find out information from groups such as yours about how this might affect you. You said that the reservoir seemed to be in good shape but that it will not be good enough in time to come. You said that you have an engineer to look at it, but, in future and in real terms, if that engineer is not part of a panel of engineers that are experts in their field, I believe that his report would not be acceptable to DARD. It is very difficult to ask you how you will employ an engineer when you are saying that you are not in a position to pay anything.
543. I would imagine at this stage that there is a part in the Bill for grants. Yours is a charitable organisation, so I would imagine that part of the Bill has to accommodate charitable organisations such as yours to employ the likes of engineers and to go through the whole procedure at no cost to the group. Maybe I am wrong in that, Chair, but that is the way. Fair play to you for saying all the stuff that you did today, but I imagine that, when we come up with a Bill, it will not be left to a group such as yours to foot the bill.
544. That is all that I can add at this stage.
545. **Mr Buchanan:** I apologise for missing part of your presentation. However, I will certainly follow it up in Hansard.
546. Coming back to some of the things that Declan touched on, I will mention clause 6. It was previously assumed that any clubs, societies or charities that used reservoirs would be excluded from any liability through the Bill and that the reservoir owner would be held accountable. Some clarity is needed in the Bill, for it would seem now that some charities or other groups using a reservoir are the people who could be held responsible, rather than the owner.
547. When we questioned Northern Ireland Water on that, it said that it did not matter what charities used a reservoir. It would still be responsible, because it is the owner. Where do you stand in this situation?
548. **Mr Parkinson:** We own our reservoir.
549. **Mr Buchanan:** Does it not matter what charities, clubs or societies use it, you are still —
550. **Mr Parkinson:** Yes, we are the owner.
551. **Mr Buchanan:** Are you still taking full responsibility?
552. **Mr Parkinson:** Yes. Technically, we would be the reservoir manager.
553. **Mr Donnelly:** As, indeed, we would be. No other clubs use our reservoir. We are like Maurice in some ways. We have members who pay a yearly fee to fish that reservoir. We own those two reservoirs; therefore, we would be seen as the reservoir owner.
554. **Mr Buchanan:** Thank you. That clears that up.
555. **Mr Irwin:** I apologise for not being here for your presentation. You said that you own two reservoirs. Are you aware whether they are medium-, low- or high-risk?
556. **Mr Donnelly:** Yes, provisionally, from the Armagh point of view, we have been told that they are high-risk.
557. **Mr Irwin:** That would be causing you concern, I am sure.
558. **Mr Donnelly:** Quite a bit.
559. **Mr Irwin:** I think that the Bill says that high-risk reservoirs have to be inspected by engineers at least twice a year. So,

- as it stands, is it the case that you be liable for the cost of that?
560. **Mr Donnelly:** As it stands, without grant aid being agreed as part of the Bill, we would be incurring those costs, yes.
561. **Mr Irwin:** I think that many of us on the Committee have concerns in and around this. Some of us feel that much of this is almost like using a hammer to crack a nut.
562. **Mr Donnelly:** Yes.
563. **The Chairperson:** Maurice, you made the point that the decommissioning or drawing down of reservoirs is a live threat, although officials will tell you that that has not happened to date. From what we are led to believe, for that to take place, you would need planning permission in some instances. Is that something that you have considered investigating at this point, or does that process in itself scare you by the fact that it will also cost money?
564. **Mr Parkinson:** Exactly. Members have talked about this, and that is why they are concerned about the Bill. There is no getting away from it, and we have discussed it. It is not just the cost of what you are talking about but the ongoing cost of the whole exercise. We have already spent £3,500 on engineers' reports. We paid for that ourselves. You have to bear in mind that nearly half our members are honorary members and pensioners and that those bills quickly mount up. That is our credible concern now, never mind further down the road if we wanted to get rid of this thing. If you go to our reservoir, you will see that it is an absolutely stunning site. It is absolutely fabulous, and that is why people like it.
565. **The Chairperson:** Has Armagh considered going down that route?
566. **Mr Donnelly:** If we decommission reservoirs, our club dies. It is as simple as that, and that is not something that I am willing to consider at this point. Decommissioning it would certainly mean that it was no longer a risk, but that is really not what we are about as a community-based group. It does not help our situation, and it does not take us any further along. Yes, we have certainly looked at that, but, as far as we are concerned, it is a non-goer at this point.
567. **The Chairperson:** Maurice, could you detail what you have actually spent to date on consulting engineers?
568. **Mr Parkinson:** I do not have the detail here. There was an initial inspection, which was done primarily to make sure that everything was OK structurally. Off the top of my head, that cost about £2,600 or £2,700. Subsequent to that, there have been more inspections. The engineers are the only approved engineers in the Province, and they are expensive. For our own benefit, we had to make sure that, should anything happen to this thing, there was a process in place with records and everything else to try to protect us as much as we possibly could. We have to put in place a whole record of information of inspections and checkpoints. The engineers drew up the documentation on how that is done.
569. **The Chairperson:** Is it your understanding that the work that you have done to date could form part of the requirements? Clause 29 refers to the pre-commencement inspection report and to inspection timing and to the fact that a reservoir is the subject of a pre-commencement inspection report.
570. **Mr Parkinson:** I suspect that that will be part of it, yes.
571. **The Chairperson:** Do you feel that the work that you have done to date could be part of that?
572. **Mr Parkinson:** It was Scott Wilson, which used to be Ferguson McIlveen.
573. **The Chairperson:** If you have no concept or idea of what band you will sit in and whether it will be high, medium or low, you could have to endure a twice-yearly inspection. If you are in the low band, the cost could be minimal. Do you feel that your club's angst could be nullified if you were to fall into the low category?

574. **Mr Parkinson:** If you read through the proposed legislation, you will see that the parameters may change. The worry for members is that we just do not know. Members say that it looks pretty terrible, but there are a lot of occasions when the word “may” is used, and there are a lot of options open to the Department for how it will manage the thing going forward. It could change quite dramatically.
575. **The Chairperson:** Do you have any idea of your reservoirs’ capacity? Maurice, you might have had that work done through work with your consulting engineer.
576. **Mr Parkinson:** No, we do not. I think that there is an issue about calculating the volume. We have not done that, because you have to have depth probes and everything else. I do not have the figure here. It is very rough, but it is obviously well in excess of that figure. I think that our reservoir is about five acres. It is substantial.
577. **The Chairperson:** So, does that mean that all three reservoirs that you have presented on today would be well above the 10,000?
578. **Mr Donnelly:** If yours is five acres and ours are 26 and 21, we are well above 10,000 cubic metres squared.
579. **Mr Milne:** May I just say something on that? Does the engineer not give you a report on how much water is in the reservoir?
580. **Mr Parkinson:** That is what I am saying. I think that he gave a rough estimate and so on, but you would obviously have to measure the depth and all that type of stuff to get an accurate assessment.
581. **Mr Milne:** I have one last question. Is he an expert on reservoirs?
582. **Mr Parkinson:** Absolutely. We used Scott Wilson engineers. In fact, I understand that that is the only company of consulting engineers on reservoirs in the Province.
583. **The Chairperson:** Apart from the size, scale and structure of your reservoir, there is also a requirement for a flood plan. Do you have any idea of that, or do you know the depth of detail that will have to go into that?
584. **Mr Parkinson:** No, we do not. I am not too sure. I have not seen the parameters of it or what is required and so on.
585. **Mrs Dobson:** I apologise for missing your briefing. My question might already have been answered. The Ulster Angling Federation is on record requesting that DARD consider financial help for private reservoir owners to conduct maintenance work. Do you support that call? What is your view on it?
586. **Mr Parkinson:** We would support anything. *[Laughter.]*
587. **Mrs Dobson:** I suppose it is a bit of a silly question.
588. **Mr Parkinson:** Obviously, there are the ongoing running costs and so on to consider. This is going to be an issue. As I indicated at the beginning, the circumstances can completely change at the drop of a hat. So, it is not just a matter of the immediate work; it is about what is required at other times. I emphasise that this is a community organisation; it is not some private business or consortium. We just do not know what the situation will be, going forward. We certainly do not have a lot of money to start doing major works.
589. **Mrs Dobson:** If you were to have an aspirational list, what would you like to see come forward from the Department?
590. **Mr Donnelly:** From Armagh’s point of view, we would welcome virtually 100% grant aid.
591. **Mr Doyle:** We would fold without it. Our club would cease without 100% grant aid.
592. **Mr Donnelly:** Yes, we would go bankrupt. It is as simple as that.
593. **Mrs Dobson:** So, as you say, the club would cease to exist.
594. **Mr Donnelly:** Exactly.

595. **Mr Parkinson:** I think that that is the danger in all this. You were not here at the time that I painted the scenario of our club deciding to say, “Look, we have got to get rid of this reservoir. We will close it”, there is the whole issue of decommissioning it and who would pay for all that. Under these circumstances, no one would buy it. That would be highly unlikely. So, were we to abandon this, who would accept responsibility? If the club went bust, who would take the responsibility? We would simply walk away and become bankrupt, but you would still have a problem.
596. **Mrs Dobson:** In essence, however, would you still be liable for it?
597. **Mr Parkinson:** Sorry?
598. **Mrs Dobson:** Would you still be liable for it?
599. **Mr Parkinson:** If we are bankrupt, we have gone, so it does not solve the problem.
600. **The Chairperson:** I would like that point clarified, so we will maybe get the Department to clarify it. In most cases, someone has to be liable. So, an organisation or a body could disappear, go bankrupt or fold and members would disperse. There could also be an object there that could mean that, God forbid, there was a failure and something horrendous happened. If those things were to occur, you would find it a bit like water, in that it always trickles down somewhere, and someone responsible would be sought. So, I think that that is a point that we will try to get clarified.
601. **Mr Parkinson:** Yes, that is a good point. Ultimately, it is the members of the club, because we are a member organisation. I do not know what the legal consequences would be if all the members said, “We resign”. So, you could —
602. **The Chairperson:** The onus could well fall to the last reservoir manager, whoever that may be. It could be the chairman of the club.
603. **Mr Parkinson:** Yes, or the trustees.
604. **The Chairperson:** Yes, it could be the club trustees. So, that is something that I think we will need to clarify.
605. **Mr McAleer:** Thank you, Chair, for letting me back in again. I have a question. I know that it is early days for the legislation, and until it rolls out a bit further you will not see what its implications might be. However, from your early sight of it, do you think that the Bill will require you to do any more work than you habitually do to your reservoir anyway to keep it conforming to health and safety regulations?
606. **Mr Donnelly:** Yes. It will definitely make a huge difference.
607. **Mr McAleer:** Over and above what you do now?
608. **Mr Donnelly:** Yes. Absolutely.
609. **Mr McAleer:** Thank you, Chair. That is an important point.
610. **The Chairperson:** OK. Maurice you raised this point, but do you think that enough was done in the original consultation stage to make groups such as yours aware of the impact of the legislation? Obviously, you are used to reading the type of language and text that are in a Bill. However, when the people out there who are interested in angling read the Bill, will they really have any chance of understanding its impact?
611. **Mr Parkinson:** We are an inclusive group, and one or two individuals in the club might have some knowledge of what is expected. We were given a briefing when we were initially informed that this Bill was likely to happen. We were also told that it followed Bills that are progressing in Scotland, England and Wales. That is the avenue, the approach and the lead that we generally took. However, I have to say that club members do not understand it. The bulk of them do not understand their role as members or their liability and so on. Umpteen times, I as chairman have had to repeatedly emphasise their responsibilities as members, whether they are recruiting new members,

- undertaking certain tasks, making certain statements or whatever.
612. **Mr Donnelly:** To give you an analogy, it is a bit like being in a golf club. Most of the membership of a golf club will go only once a week, play a round of golf and go home. Only a very few core members deal with the administration of the club, legislation, health and safety, and all that. It boils down to literally half a dozen to a dozen members of each of those clubs who really keep their eye on the ball as best they can about what is going on in the larger picture with the environment, legislation and the whole lot. So, huge numbers of people are not aware. If you mention the Reservoirs Bill, anglers on reservoirs will not know about it.
613. **Mr Parkinson:** They will ask, “What is that?”
614. **Mr Donnelly:** It is only when it comes down to what the Bill is designed to do and how it impacts on our clubs that committees, directors and chairmen will really have to step up to the mark and read about it. Generally speaking, anglers are not terribly well informed about it.
615. **The Chairperson:** I must ask this question, because we are where we are now. Do you think that the body that deals with it — I mean the one or two, the sixes and sevens, the committee that takes to do with the day-to-day and week-to-week running of the club — aware of the law as it is at present? If, God forbid, there was a failure on their reservoir and someone sustained damage to their property or lost their life, would they be aware now of the present burden of responsibility on the club?
616. **Mr Donnelly:** I think that they would be blissfully unaware of it. It is not something that they regularly think about. They go out onto a lake to fish. It is a bit like parking your car in the drive. We know that if it were to roll down the drive and into someone else’s property, that would be our problem, but until it happens, we do not think about it so much. I think that that is the kind of scenario that we are looking at here.
617. **The Chairperson:** You talked at the start about the principles of the Bill and how you were generally supportive of them. Let me ask this question. You do not have to answer it today, although that would be helpful. You can come back to us at any time, because we have time on this. Do you see any other legislative way to regulate reservoirs in a safe way to protect life?
618. **Mr Donnelly:** I think that all 151 reservoirs that exist are, generally speaking, old, established reservoirs that probably need inspection and some degree of year-on-year regulation, particularly those that are in high-risk designations.
619. Finance, or the lack of it, will be the key to this, in my opinion. I agree with you that, if clubs are forced to go to bankruptcy, there will always be somewhere where the buck stops. It is not as clear-cut as just walking away from it would be, because the problem, as Maurice says, continues if the reservoir is either occupied or unoccupied. There is no doubt that legislation is needed to bring us into line with the EU and with England, Scotland and Wales. There need to be inspections and remedial works. Depending on the reservoir’s designation, whether it is low, medium or high, some regular inspection would then need to occur.
620. **The Chairperson:** Maurice, did you want to add to that?
621. **Mr Parkinson:** No, not really, except to emphasise generally what Aidan said. The difficulty, as I outlined, is that, if you just look at the monetary penalties and the liability of conviction and so on, you would find that our committee is aware of all that but that the general membership is not. If I was to say that to members or to raise it at an AGM and give the same presentation that I gave to you today, I know that there would be an immediate vote to get rid of it. We would get into the whole debate on how we could not do that. So, members

- at committee level are extremely concerned about this. We make no bones about it.
622. We are an organisation that has been around for a long time. We are really important in the local community. After the major fish kill in our river in 2008, it was just amazing that people were totally devastated. Those people were not just anglers but the whole community. They could not believe that a river such as the Sixmilewater could not have fish in it and that it could be polluted and destroyed in the way that it was. They were just devastated. The level of concern was amazing — just fantastic.
623. **The Chairperson:** I am sure that record books are kept, but do you have any awareness of having, at any time in your history, your reservoir, lough or lakes being drawn down to fix a structure or to ease a valve?
624. **Mr Parkinson:** Yes, that is an ongoing thing. You have to make sure that the outlets are OK and make minor alterations and so on, and it is quite easy to draw them down anyway.
625. **The Chairperson:** So, have you done that?
626. **Mr Parkinson:** Yes.
627. **The Chairperson:** Maybe “restock” is not the right word, but is that to —
628. **Mr Parkinson:** Yes, or to manage it. It could be done to control weeds and so on.
629. **The Chairperson:** So, that is something that you manage on a daily basis.
630. **Mr Donnelly:** Yes, at times of very high water, we control the level just by opening valves on one lake to avoid any impact on adjoining land.
631. **The Chairperson:** I will ask my final question. Where the lake is, there is bound to be a natural line where the water would lie, and the built-up structure of the reservoir would make it rise or be topped up to the way that it is now. Have you any idea or concept of where your natural line is that would make the bunging up or the reservoir redundant?
632. **Mr Donnelly:** I actually asked that of some of our longer-serving members, particularly about Lowry’s Lough, which is our major reservoir. Those people were of the opinion that there was never a lake there until a dam wall was put in place. So, lowering that dam wall or by taking it away would mean that there is no natural level; it is literally a man-made structure.
633. **Mr Parkinson:** Ours were water reservoirs for water supply, so they are just built into the side of a hill.
634. **Mr Doyle:** As Aidan said, a lake that we control, Lowry’s lake, used to be the reservoir for Armagh. Our club is over 60 years old. The members of the club were able to buy it off the government. We then bought the area where our hatchery is situated, which used to be the beds. What we own, we bought off the Government way back, years ago. Somebody had said, “If you buy this, you will have your own lake and your own hatchery, and you can develop your angling club.” We have done that very successfully over the years. We go back generations.
635. **The Chairperson:** Do you have any relationship with the local council? Does it have any say on or responsibility for your lakes?
636. **Mr Donnelly:** We work well with the local council, but we have no definitive link with it whereby it comes in and does anything for us or we do anything for it. We are aware of the council. We meet the council quite regularly, but we have never actually needed to go to it for grants or anything of that nature. We have been quite lucky.
637. **Mr Buchanan:** What you are really telling us today is that, if this Bill goes forward as it is and is not followed up with a proper financial structure, your organisation and many more like it will go out of business and these reservoirs will be left in limbo with nobody to look after them, care for them or anything else.

638. **Mr Donnelly:** Yes, that is essentially it. We see that as factual. If the Bill goes through without significant grant aid, that would be unavoidable for us.
639. **Mr Parkinson:** There is a reservoir above us that the angling club has disowned. It was leased from Holywell Hospital, and the angling club that had it has, apparently, discontinued that lease. We understand that the reason why the angling club opted out is that it is in a pretty poor condition. Knowing that this was coming, it said, "No, we are not renewing the lease".
640. **The Chairperson:** OK. There are no further questions. Thank you very much for your attendance today. We have been struggling to get private owners of reservoirs up to see us. It has been very beneficial.
641. **Mr Byrne:** Chairman, I am sorry that I had to nip out. I lost the thrust of the debate. Given the level of analysis and commentary that these gentlemen have given us today, it would be welcome if they wanted to issue us with a further written submission with clarification on some matters.
642. **The Chairperson:** The session is being reported by Hansard; I am sure that you knew that before you came in. If you want to give us any supplementary information when it comes to mind, even at a later stage, send it to us and we will scrutinise it along with everything else. Cathal, Aidan and Maurice, thank you very much for your time.

11 March 2014

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 Oliver McMullan
 Mr Ian Milne
 Mr Robin Swann

Witnesses:

Mr Jim Haughey *Ulster Angling*
 Mr Robbie Marshall *Federation*

643. **The Chairperson:** From the Ulster Angling Federation I welcome Robbie Marshall, development officer, and Jim Haughey, chairman. Gentlemen, you are very welcome. You had the benefit of hearing the previous presentation. Members will have had a chance to read your briefing paper. If you could stay in and around the 10-minute mark in addressing the Committee, that would be very welcome. Robbie, are you starting off?
644. **Mr Robbie Marshall (Ulster Angling Federation):** Yes, Mr Chairman. Ladies and gentlemen of the Committee, thank you very much for inviting us along today. As you have already heard, this issue is giving some of our members quite a bit of cause for concern. I will just go over my briefing paper.
645. The Ulster Angling Federation is the representative body for game angling associations in Northern Ireland. We have a membership of some 60 associations, with a total individual membership of some 7,000 anglers. The federation represents anglers in discussions with public bodies, government and NGOs. We have been in existence since 1930. We are represented on a wide range of committees to ensure that the concerns of anglers are heard. Our member angling associations are very concerned about the effects of this proposal on their reservoirs.
646. It is important for tourism and local clubs that we allow existing fish populations to prosper. You will all be aware of the report that PricewaterhouseCoopers did for DCAL in July 2007 on the social and economic value of angling in Northern Ireland. It states quite clearly that it is worth some £40 million per annum to the Northern Ireland economy, mostly from game angling, and supports 780 full-time equivalent jobs. The provision of good water quality and satisfactory fish stocks is absolutely vital for our fisheries and tourism and to maintain and enhance these jobs and economic benefits. The following comments are made in that light.
647. The publication of the first state of the environment report for Northern Ireland in 2008 and the introduction of annual Northern Ireland environmental statistics reports in 2009 means that we now have an extensive set of indicators on the Northern Ireland environment. The following are extracts from the “conclusions and key challenges” section of the most recent state of the environment report, which was prepared by government in 2013.
- “As a result we are better able to assess the effectiveness of environmental policies over the longer term and to base decisions on how we manage and protect our environment, on appropriate evidence ... The challenge of sustainable rural land use remains but it is too soon to judge the impacts of planning policy changes and agri-environment schemes. However, it is clear from new evidence from the marine environment, from biodiversity indicators and the status of our waters that key ecosystems remain under threat. A fully integrated approach to the management of our land and water environment is needed ... To address these challenges we need to recognise the full value of the services our environment provides in achieving a healthy economy, prosperity and*

well-being in all our decision-making. The key principles underpinning the way forward are already widely recognised: working to achieve resilient, diverse ecosystems capable of providing vital services while absorbing pressures and responding to change; valuing and managing natural resources to support economic and social prosperity; protecting the quality of life by reducing pollution, protecting heritage and promoting sustainable land use."

648. With all this in mind, we need careful consideration of the proposed Reservoirs Bill. The federation is not opposed to the Bill. In fact, we welcome it as it brings us into line with the rest of the UK and places a greater focus on human life. We have some 140 reservoirs, of which some are council-owned, some belong to Northern Ireland Water, and approximately 28% are privately owned, including by some of our members.
649. The federation has grave concerns about the cost of obtaining a panel engineers report — it could be in the region of £10,000 — because most clubs, as you have already heard, will not have the financial resources to pay such a bill. There is a real danger, therefore, that these types of reservoirs will be lost as an amenity. I refer back to the state of the environment report, which talks about:
- "valuing and managing natural resources to support economic and social prosperity ... developing innovative solutions that protect and enhance our environment".*
650. You have already heard from our club members that young people, people from disadvantaged backgrounds and disabled anglers are all involved in these clubs. They support the local community. With this in mind, there is a real need for government to provide a grant scheme to allow the clubs to comply with the new legislation. Otherwise, you may find that clubs will declare themselves bankrupt and walk away from the reservoir, leaving government to pick up the bill anyway.
651. Going back to a point that was made earlier, I come from a financial background and know that, if a company

is limited by guarantee, as most of our clubs are, they will not be liable: they will just fold. All fees associated with the legislation need to be waived in the case of clubs, which are providing an amenity for local and tourist anglers. The following is an extract from the recent strategic review of angling, which has just been completed. One of the issues it highlighted was the development of derelict waters for angling under the Fisheries Act (Northern Ireland) 1966:

"Derelict Waters may offer the potential to increase opportunities for angling where there is a shortage of opportunities to meet the needs of local communities, which, it was suggested, is particularly acute around Belfast."

652. We could add to this with the Bill. Again, any loss of amenity where shortage exists is not acceptable.
653. The current proposal is that a structure with the capacity to hold 10,000 cubic metres or more above the natural level of the surrounding land will be regarded as a controlled reservoir. There may be an argument to raise that to 15,000 cubic metres, which would allow some reservoirs to opt out of the legislation. In addition, the Department has not been able to provide the formula that has been applied for the escapement of 10,000 cubic metres above natural land level. A certain amount will be retained where there has been a natural lake previously with no dam wall.
654. That concludes my presentation. Mr Haughey wants to say a few words.
655. **Mr Jim Haughey (Ulster Angling Federation):** A couple of issues have arisen since Robbie wrote our submission. The first one concerns clauses 17 and 22 of the Bill, which deal with the assessment of risk. I have spent a lifetime in the construction industry, where risk assessment has made a great deal of difference in reducing death and injury on building sites, which is most welcome. It was surprising to me, therefore, to see that there seems to be confusion, mainly in clause 22, between risk and hazard.

656. When any risk assessment is being carried out, risk and hazard are two completely separate entities. The risk is the chance of something happening and the hazard is the outcome or the result of the event. Clause 22, however, seems to confuse the two. It is probably the result of the Department wanting to end up with an abbreviated designation of high-, medium- or low-risk reservoirs but, in doing so, it rather confuses the issue. The example you quoted earlier, Chairperson, about the Boulder dam is a very good one, because the risk of the Boulder dam breaking is probably infinitesimally low, but the hazard resulting were it to break would be astronomically high. Clause 22 does not really bring that out, but that is a technical thing.
657. The second point is that we have concerns about the implementation of the Bill in relation to water. At the moment, for example, Northern Ireland Water is implementing a procedure whereby it leases its reservoirs out to various people, and it is the mother and father of chaotic nightmares. I cannot begin to tell you the mess that has been made of it. It has caused untold problems for several of our clubs and we have quite a concern. We do not have a big argument with the principles of the Bill, as you have heard, but we are really very concerned about implementation as a result of what has happened with Northern Ireland Water.
658. Finally, I want to make a quick comment on the question of decommissioning and what happens if some of these clubs fold and areas of land or water are left more or less derelict. There is a debate in the Chamber at 5.00 pm today about the millions of tons of illegal waste that have been dumped at the side of the River Faughan in County Londonderry. It appears that nobody is responsible for that, so the question of responsibility is a live issue.
659. **The Chairperson:** Thank you very much, Robbie and Jim. Clause 22 may well be technical but you have got to the heart of the Bill, which is the measurement of risk and hazard. Measuring that and performing under that pressure is the nub of the matter.
660. We have a controlled reservoir with a capacity of 10,000 cubic metres, but the point you make in your presentation is that, if it is a natural lake built on with a dam and the dam were to fail, the flood water is an artificial mass of water. Should there not be another measurement whereby you measure the scale and size of the reservoir and take away the natural lake?
661. **Mr Marshall:** Only the escaped amount should be measured, because that is the only bit that can do any damage.
662. **The Chairperson:** That in itself will add to the scale and to the risk to the population downstream. Do you agree with that?
663. **Mr Marshall:** Yes.
664. **The Chairperson:** Do you also agree that the soundness of the structure should be part of the measurement and the assessment in deciding whether a reservoir should be designated as low, high or medium risk?
665. **Mr Haughey:** Yes, we have no argument with any of that. It is just the detail of the amounts expressed.
666. **Mr Marshall:** The problem is that we do not know at this stage which reservoirs sit in which group. I sat on the stakeholder group that went through the Bill. Originally, there were to be only two designations, but we managed to get a third brought in. We do not know where some of the reservoirs sit in respect of whether they are low, medium or high risk. Obviously, the more reservoirs that we can get into the low-risk group, the better, because that will virtually take them out of the legislation, and only a minimum amount of work will need to be done.
667. I am not sure about Antrim but, in Armagh's case, you heard quite clearly that a club cannot find £5,000 or £10,000 to get a report from the panel of engineers, which is a minimum requirement for a high-risk reservoir. I

- already know of two reservoirs that have been bulldozed because people are so scared of this legislation.
668. **The Chairperson:** Are you able to get that information to the Committee?
669. **Mr Marshall:** No. I am telling you what people have done because they know that this is coming up the track to them. If they put a bulldozer through one of the walls of the reservoir and let the thing go, that it is finished with, as far as they are concerned. It does not concern them any more; it is gone. So, you are in danger of losing that environment and all those amenities between Antrim and Armagh for nearly 1,000 anglers. You heard in my presentation that the most recent angling review highlighted that there are not enough amenities, and this could make the matter a lot worse.
670. **Mrs Dobson:** Robbie, as you say, you were part of the stakeholder group set up by the Department. From the minutes of that group's meetings, I see that you raised a point about the costs associated with reservoir safety being prohibitive, given the lack of financial resources, which you very eloquently outlined. Will you outline the concerns in a bit more detail? You are obviously very passionate about this; that comes across.
671. **Mr Marshall:** Most clubs are charities, and the number of members that they have depends on the amount of water that they own. I am a member of the Ballynure club, which is situated above Antrim. We had to close our books at 80 anglers because we could not accommodate any more. We actually fish in other places, two of which may be closed over the Reservoirs Bill. So there are limited funds. We are not exclusive. We try to include everybody in the community and bring people into angling clubs, but we can only bring in so many, depending on what we have. There is a limited amount of money, and there is no money anywhere else. To ask members for £200 or £300 each is just not realistic, because you are talking about old-age pensioners, junior anglers and the main members.
672. **Mrs Dobson:** In your briefing paper, you suggest that there is an argument for raising the capacity to 15,000 cubic metres. Did you put that to the Department at your stakeholder meetings? If so, what was its view on that?
673. **Mr Marshall:** I mentioned it at the stakeholder meetings. I think that 10,000 cubic metres was seen as the correct amount for the Bill because that is in line with the rest of the UK.
674. **Mrs Dobson:** So you did raise it?
675. **Mr Marshall:** I did, yes.
676. **Mr Swann:** Thanks, gentlemen, for your presentation. Robbie, you said that you were part of the stakeholder group. Were you listened to?
677. **Mr Marshall:** I felt that I was listened to in some ways, Robin, because they brought in the provision whereby grant moneys could be available. That was one of the big things for me because I knew in my heart of hearts that we would lose everything if there was no grant money. I was pleased to see that part brought in.
678. **Mr Swann:** Do you mean the fact that there could be grant money?
679. **Mr Marshall:** Yes, at least that there could be.
680. **Mr Swann:** It does not say that there will be.
681. **Mr Marshall:** It is as obvious as the nose on my face that, if there is not, we will lose all those amenities.
682. **Mr Swann:** How many clubs would be designated in that way?
683. **Mr Marshall:** I am only aware of the Antrim and Armagh clubs, which were here today. There are angling syndicates that are not necessarily members of the federation but have other reservoirs. They may have, I dare say, a wee bit more money because they are syndicates and are sort of a closed shop. I do not think that applies to very many clubs. When I put out my

- request, we were only able to ascertain without doubt that Antrim and Armagh were owners. From that point of view, there may not be that big a bill for government.
684. **Mr Haughey:** There is a potential difficulty on the horizon in that, even though the angling clubs may not own the reservoir, the risk is from the knock-on effect. For example, Banbridge council owns Corbet lough, but it is run on a kind of loose subcontract arrangement by Banbridge Angling Club. The council owns the reservoir, and Banbridge Angling Club runs and polices it. However, if Banbridge council is hit with some large cost to keep that reservoir going, it may feel that it either has to offload that cost onto the club or else shut the doors. The fact that the club does not own the reservoir does not necessarily take the problem away.
685. **Mr Marshall:** I have been told — I do not know whether this is right or not — that it will take approximately £2.5 million to sort out Camlough lake outside Newry, which is owned by Newry council. Where will it find that?
686. **Mr Byrne:** Like others, I welcome the presentation. It is good to see an organisation that has done a strong analysis of the issue. Jim, you referred to risk and hazard and going up to 15,000 cubic metres of water. Where has the Department or Rivers Agency got this wrong in not fully addressing the risk and hazard?
687. **Mr Haughey:** I am not so sure that they have not addressed it; it is just that it has not been well expressed. For instance, one of the boys said earlier that one of the reservoirs had been designated as high risk because there was one house downstream of the dam. That does not really tell you anything about the situation. The dam wall could be good for maybe another 200 years but, because there is a house downstream that might be affected by a deluge, it has been designated as high risk. That is not to do with the risk but with the hazard. As I said, it is a conceptual matter. It confuses
- the information that is available and, therefore, perhaps confuses what needs to be done about it.
688. **Mr Byrne:** Would you welcome a reassessment of all those reservoirs in the context of assessing the risk and also of assessing the potential hazard or damage if a risk became real and a wall were breached?
689. **Mr Haughey:** Yes, very much so. That definitely needs to be done. There is a need to separate the risk from the hazard. I expect that to be a desktop operation; I do not expect people to have to go out and visit sites or anything. I am sure that all the information is available. It is just a question of how it is expressed.
690. **Mr Byrne:** Finally, is the Reservoirs Bill needed at all? You are a man who can assess risk.
691. **Mr Haughey:** Well, I am sure you have all heard the old phrase, “If it is not broken, why are we fixing it?”. As I understand it, there was a minor breach of a dam wall a few years ago in Northern Ireland. Somebody mentioned to me that, before that, the last one was in 1902. To be blunt, we do not oppose the Bill and we do not oppose precautionary measures being taken, but, when get down to brass tacks, are we faced with a lot of reservoirs that are about to collapse? I am not sure that the case has been made that we are. We do not oppose the Bill. We accept its principles and if that is the way it has to be, that is fine.
692. **The Chairperson:** Taking aside the high-, low- and medium-risk allocation for controlled reservoirs, the operating requirements for a high- or medium-risk reservoir could be quite burdensome. You are looking at having to visit a high-risk reservoir at least twice a year. Have you any thoughts on whether that is appropriate or proportionate to the risk?
693. **Mr Haughey:** Again, that is where the confusion between risk and hazard comes in. If a civil engineer inspects a dam and says, “That dam is in perfect condition. She is not going anywhere for 100 years”, do you really need to

- inspect it twice a year? However, if the dam is largely silt and there are a few cracks, obviously there will be no arguments. That is where the play-off between risk and hazard comes in.
694. **The Chairperson:** How would you ever get that down in legislation?
695. **Mr Haughey:** It is a matter that the civil engineers deal with day and daily. There is a good example if you look through the window beside me. If a contractor goes to work at the site outside this window, he will not set foot on it until he has carried out a set of comprehensive risk assessments. Different risk assessments will be carried out for different aspects of the work, and each one will say whether the risk is high, medium or low and whether the hazard is high, medium or low, although some of them can get more complicated than that. That will determine how the contractor goes about that work. For instance, if there are adequate protection barriers along the top of the ridge outside, the risk of somebody falling is low, but the hazard, if he falls off and hits the bottom, is high.
696. That is the sort of work that members of the like of the Institution of Civil Engineers do every day. It may well be that the way that it is expressed in the Bill is to simplify matters and make life a bit easier. I felt that the information flow and the way in which that is presented lacked clarity and, as a result, did not aid decision-making.
697. **The Chairperson:** I can relate to what you say. I was in the electrical game for 20 years. There is range of costs: the cost of supervisor engineers; the cost of inspecting engineers; the costs of construction engineers, if needed; the cost of remedial repair works recommended by the engineers; and the cost of record keeping, fees for registration and appeals if someone wants to contest something etc. Can all those engineers — you will have an inspecting engineer and supervisor engineer — not be met by the same body of people or the same person?
- Is there a requirement for those differentials between engineers?
698. **Mr Haughey:** I hesitate to offer advice on that. That is something for the likes of the Institution of Civil Engineers.
699. **The Chairperson:** I ask that question because you could be creating a whole industry or a whole sphere of engineers. Is that something that worries you?
700. **Mr Haughey:** We do not want to be seen to be criticising the Bill because of our sectional interest. If there is a safety issue, we appreciate that there is a need for a procedure, and we would not presume to offer advice on how that should be carried out.
701. **Mr Milne:** You have done exactly the same thing as the people who gave the previous presentation. I can understand groups coming here and coming at it from their point of view. You said that two reservoirs were basically going to close up shop. There are 151 reservoirs. Is it possible that there might be no need for 140 of them and that they should be bulldozed and put out of the equation?
702. **Mr Haughey:** How do you express “no need”?
703. **Mr Milne:** That is what I am saying. If you say that two are going to do that, what do you mean? Is it going to cause any risk?
704. **Mr Marshall:** I said that two had been bulldozed because they were so scared of the legislation.
705. **Mr Milne:** Yes, that is what I am saying, but, if they are going to be bulldozed, and are bulldozed, they will not cause a risk.
706. **Mr Marshall:** No, those reservoirs probably did not cause a risk, but the point is that our angling clubs do not want to do that. They want to use the facility; they want to be able to use the facility. To them, that is not an option. There was mention of decommissioning, but we probably do not want that. We want to keep these facilities. Do not forget this: these facilities are not

- just for anglers; they contribute to the environment of Northern Ireland in a big way.
707. **Mr Milne:** I understand, but it is early in the game to determine whether privately owned reservoirs or charity-held reservoirs are going to be standing a tremendous amount of cost. There is provision within the Bill, I believe, to assist, if not completely assist, charities.
708. **Mr Marshall:** That would be very welcome, and that is what we need to see. There is no doubt in my mind that, if that does not happen, we are going to lose these amenities.
709. **Mr Milne:** Yes, and it is only right that you come here and put it across in the way that you have done. Well done.
710. **The Chairperson:** If the Bill goes through in the way it is and if there is no grant scheme in place — those are two massive “ifs” — and there is a threat that clubs could go to the wall, fold or decommission, could there be a role for a collective of responsible bodies, such as Rivers Agency, councils, all the angling clubs and your federation, to come together and pool resources to see whether they could get things at less cost? Do you think that that is practical? In reality, would it work? Do even the angling clubs work together in order to try to pool their resources to employ an engineer to bring their cost burden down? Is that something that would be operationally practical?
711. **Mr Haughey:** With my experience in the construction industry, I can say that the potential for savings would be limited. I say that because, if you are engaging consulting engineers to carry out a job of work, they will price it on the basis of what is required for that job. It will be on the basis of so many hours at such and such a rate, the writing up of reports, and so forth, and attending meetings. Consulting engineers will price that work based on what it takes. If a contract is let for all the reservoirs in Northern Ireland, for example, there is no doubt that consulting engineering companies would price that more cheaply than they would on an individual basis. Nevertheless, the potential for savings is always going to be limited.
712. **The Chairperson:** There are no more questions or comments. If any supplementary evidence or information comes to mind after the meeting, pass it on to us, and we will scrutinise it.
713. We are struggling to get private owners and syndicates, as was mentioned, to come forward to give their views on the Bill. It is something that we want to step into. Without that, we are blinded. The one thing that we cannot be when scrutinising the Bill is blinded on people’s views.
714. **Mr Marshall:** I have passed on your invitation to two other bodies that, I thought, should be represented on 18 March.
715. **The Chairperson:** OK. That is all we can ask. If you can encourage people to come up, please do so, because it is in their best interests to be here.
716. **Mr Marshall:** I know that.
717. **The Chairperson:** The event is on 18 March at 5.30 pm in Stormont. That is the plug.
718. **Mr Marshall:** I have passed it on already.
719. **The Chairperson:** Thank you very much for your time, answers and presentation.

25 March 2014

Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
 Mr Joe Byrne (Deputy Chairperson)
 Mr Thomas Buchanan
 Mr William Irwin
 Miss Michelle McIlveen
 Mr Oliver McMullan
 Mr Ian Milne
 Mr Robin Swann

Witnesses:

Mr Alan Cooper	<i>Institution of</i>
Mr David McKillen	<i>Civil Engineers</i>
Mr Jack Meldrum	
Mr Stephen Orr	

720. **The Chairperson:** I welcome Alan Cooper, Jack Meldrum, David McKillen and Stephen Orr. Thank you very much for attending. Members have already had an opportunity to read your briefing papers, so I ask you to take no more than about 10 minutes, if that is possible — I know there are four of you — and then the Committee will go straight into questions, if that is OK. I do not know who is leading off. OK, Alan, without further ado, thank you.
721. **Mr Alan Cooper (Institution of Civil Engineers):** Thank you, Chairperson. The Institution of Civil Engineers (ICE) welcomes the opportunity to discuss the Bill with the Committee, and we thank you for your invitation. My name is Alan Cooper, and my colleagues are Jack Meldrum on my left, David McKillen on my right and Stephen Orr on my extreme left. Jack, David and I are all experienced panel engineers in terms of the Reservoirs Act 1975 as it applies in England and Wales, and Stephen is in the process of training to become a supervising panel engineer.
722. David, Stephen and I represent a committee of the Institution of Civil Engineers in the Northern Ireland region. We have provided a technical advisory role to DARD regarding the guiding principles of the Reservoirs Bill. Jack and I are both reservoir panel engineers, but Jack is here specifically to represent the institution's reservoirs committee in London. He will inform us later, halfway through my talk, about the function and mechanisms of the reservoirs committee.
723. Before we start, I should say that flooding arising from the uncontrolled release of water from storage is entirely different from flooding from rivers and surface water following heavy rainfall. They are totally different, because the failure of reservoir structures produces fast-flowing deep water, which, as history tells us, has claimed lives and damaged livelihoods. The institution is a professional body with many members engaged in design, operation and the maintenance of reservoirs, so we are acutely aware of the need for vigilance in order to protect life and property from undue risk from the failure of dams.
724. I and my colleague Jack will give a brief statement on behalf of the civils institution, following which we will be pleased to answer any questions you might have. First of all, the reasons for the Bill. We support the introduction of the Bill to establish the legal and administrative frameworks for regulating reservoir safety in order to reduce the risk of flooding as a result of failure. It is estimated, at the latest count, that there are approximately 150 impoundments that will come within the scope of the Reservoirs Bill. Public reservoirs in Northern Ireland have been managed by the statutory authorities, notably Northern Ireland Water, which is the largest owner of reservoirs in Northern Ireland. It has generally followed the provisions of the Reservoirs Act 1975 — which, as I said at the start, is applicable in England and Wales — as best practice, even though the Act does not apply in Northern Ireland.

725. The institution is strongly supportive of the introduction of specific legislation for the safety of reservoirs in Northern Ireland. However, owners of private reservoirs have no obligation to follow the 1975 Act. The introduction of the Bill will ensure public safety assurance for all reservoirs of a capacity of 10,000 cubic metres and above. The institution supports the adoption of that threshold of 10,000 cubic metres. Until the reduction from 25,000 cubic metres, there had been concern for some time within the profession that the threshold of 25,000 cubic metres was based on an outdated understanding of the current risks to reservoir safety. The 25,000 cubic metre capacity corresponds to reservoirs of at least the size that were responsible for the fatal incidents in the 1920s in north Wales and Scotland. There have been a number of incidents at smaller reservoirs in recent years where there was a potential for the loss of life, and the figure of 10,000 cubic metres capacity was therefore concluded to be the right figure for assessing risk to the public from reservoir failure.
726. However, the institution is pleased to note that the safety record of reservoirs in Northern Ireland has been good, with no fatalities reported, even though some reservoirs have failed — and some quite recently. However, we cannot be complacent, and, since many of the reservoirs are in excess of 100 years old, a well-structured and enforceable Bill will provide assurance for the safety of the public. We support the Bill's assertion that the inspection and supervision regime of all high- and medium-risk reservoirs requires qualified civil engineers, referred to as panel engineers, to carry out inspections and make recommendations. That is the only suitable means of managing the risk of failure. However, we recommend that even low-risk reservoirs should have some regular form of inspection, rather than relying on change of downstream conditions being identified by planning processes or the review by the enforcement authority.
727. There will be financial implications arising from regulation, as we just heard from the meeting ahead of us, and these will cause concerns, especially among owners, many of whom have limited resources to meet the requirements. Existing impoundments contribute to the environment in terms of habitat, flood alleviation and amenity use, to the overall benefit of society at large. Consequently, it is important that the costs associated with regulation do not result in owners modifying their reservoirs to remove their capability of holding water completely or to reduce it below the threshold in order to avoid the financial burden of routine maintenance and inspection.
728. At this stage I will hand over to Jack, who will explain the process for panel appointments and inspections, and, in fact, the general working of the Bill in GB.
729. **Mr Jack Meldrum (Institution of Civil Engineers):** As mentioned by my colleague, Alan Cooper, I am an all reservoirs (AR) panel engineer and currently a member of the ICE reservoirs committee, which I represent here. I have been a panel engineer since 1987. I will deal with the general workings of the Reservoirs Act 1975 first, and then explain the panel engineering system that services the Act and how engineers are appointed to the panels.
730. The Reservoirs Act 1975, with changes currently enacted from the Flood and Water Management Act 2010, provides a registration, surveillance, supervision and inspection system for large raised reservoirs. Prior to the latest changes, that covered all reservoirs that are capable of storing more than 25,000 cubic metres above the lowest surrounding ground level. The Flood and Water Management Act 2010 introduced a risk-based criterion for the requirement for continuing supervision and inspection of reservoirs and made provision to reduce the minimum size. The 2013 secondary legislation brought in the risk-based criteria and that is currently being introduced; we are going through a changeover phase at the moment. The register of all large raised

reservoirs is kept by the enforcement authority, which is the Environment Agency. It keeps details of the reservoirs and copies of all reports and certificates, monitors compliance and keeps records of incidents. It also takes action when non-compliance occurs, although that is normally managed by reminders.

731. The Act requires that the design and construction of all new large raised reservoirs must be supervised by a construction engineer. That engineer will issue certificates that permit impounding and also provide a certificate that provides a record of the design and construction. After three years and provided that he is satisfied that the reservoir no longer requires his supervision, the construction engineer's responsibility ends. The reservoir then comes under a supervising engineer, and that will be the same for old, existing reservoirs that have not been caught up in the Act before. They would come in at that point and come under a supervising engineer. The supervising engineer appointment is a continuous appointment. The supervising engineer will typically visit a reservoir once or twice a year to check that no safety issues are arising, that necessary maintenance is being carried out to identify any further maintenance required and that the reservoir undertaker is keeping the necessary records. The supervising engineer will provide an annual statement to the undertaker advising him of any issues. That will also be copied to the enforcement authority so that it is aware of any safety or compliance issues. If the supervising engineer has concerns about the safety of the reservoir, he may call for an inspection. When I talk about the reservoir undertaker, I believe that your terminology is "reservoir safety manager".
732. Two years after a new reservoir is completed and thereafter at intervals of normally 10 years, periodic inspections by an inspecting engineer are required. Those inspections consider the condition of the structure as well

as reviewing aspects such as the structure's stability and spillway and scour capacity. If any shortcomings are identified by the inspecting engineer, he may require measures to be taken in the interests of safety, and the undertaker will have to comply with that. For recently built reservoirs, the likelihood of such measures may be expected to be low, but, for older reservoirs, requirements are more common.

733. I will move on to the panel engineer system that we operate under. There are currently four panels under the 1975 Act: all reservoirs; non-impounding reservoirs, and by "non-impounding", I mean reservoirs that are not on a river but are off stream; service reservoirs; and supervising engineers. All-reservoir panel engineers may carry out any of the duties required from panel engineers under the Act, including being the construction engineer and inspecting engineer that I mentioned previously, whereas supervising engineers are responsible for providing continuity of reservoir safety. The members of the non-impounding reservoir and service reservoir panels have the same responsibility as the all-reservoir panel engineers, but they are restricted in the type of reservoirs that they may deal with as construction and inspecting engineers. The current numbers on each panel are 39, two, four and 141 respectively; the principal panels are the all-reservoirs and the supervising engineers panels.
734. The all-reservoir, non-impounding reservoir and service reservoir panel members are generally senior members of the civil engineering profession and have significant experience in reservoir engineering. The supervising panel engineers generally are engineers who have experience in reservoir engineering, often in operation and maintenance or assisting in the design and construction of reservoir works. Ideally, supervising engineers should be based in the same region as the reservoirs that they supervise so that they are more readily available to attend call-outs and also to minimise cost. Construction

- and inspecting engineers frequently work outside their region. Construction, inspecting and supervising engineers are selected and engaged by the reservoir undertakers. In Great Britain, the names of the panel engineers, together with their addresses and contact details, are kept on a database available on the Environment Agency website. There are no fixed fees for the various duties of the panel engineers.
735. Is it all right for me to continue?
736. **The Chairperson:** I am going to stop you there, Jack. I note that we are reading off the presentation: we have the presentation, and we have all read it. Your ten minutes is up, so I will stop you there. If you want to paraphrase the end of your written presentation or if any of your colleagues want to step in for a few minutes, I will give you time for that. We will, of course, be asking questions, which should glean more information from you. However, please assume that all members have read your written presentation.
737. We will move straight into questions.
738. **Mr Byrne:** I welcome the presentation. It is good to hear from such experts as civil engineers.
739. The accusation is that the Reservoirs Bill is a civil engineers' charter, and there is grave concern among many in the voluntary and community sector who look after impounded waterways that the cost will be prohibitive and they will be put out of business. What is your answer to that charge?
740. **Mr Cooper:** Owners of reservoirs have responsibilities as they stand, and that has to be faced.
741. **Mr Byrne:** Why, therefore, do we need the Reservoirs Bill, if they already have obligations?
742. **Mr Cooper:** I am saying that they have a responsibility in the sense that they are liable at the minute.
743. **Mr Stephen Orr (Institution of Civil Engineers):** I would like to add to that. As Alan said, there is a liability on the owners, but there is not an obligation to positively act to safeguard the community or public life. Therefore, if something did go wrong, there is a liability under law that they could be taken and prosecuted for it. However, we would still have dead people.
744. **Mr Byrne:** Are you saying that we have been living in such dangerous times but did not realise it?
745. **Mr David McKillen (Institution of Civil Engineers):** You were certainly living under an unrecognised risk by those who were looking after the reservoirs. They realised the asset that they had but, perhaps, did not fully understand the impact that the release of the water could have and, therefore, the risk that they were responsible for. The legislation tries to regularise that and to take an approach that is in the interests of public safety downstream. It tries to control that risk by identifying it to the owners, thereby allowing them to take appropriate measures to put an appropriate level of inspection in place to help manage that risk robustly.
746. **Mr Byrne:** Yes, I can see your perspective. However, there is a fear that we are now using a sledgehammer to crack a nut.
747. **Mr Orr:** Effectively, bringing the legislation into Northern Ireland is bringing Northern Ireland into line with the rest of the UK.
748. **Mr Cooper:** Do you mean that, because we have not had a disaster, there is no need for caution?
749. **Mr Byrne:** I mean that engineers have been observing the reservoirs before and surveys have been done before, including the one that we heard about earlier — the Wolfhill Middle — and nobody rang great alarm bells.
750. **Mr Cooper:** That is not true.
751. **Mr McKillen:** That is incorrect. The survey that was carried out on the three reservoirs that are held by the organisation that presented previously identified significant problems. Two

- of the reservoirs have had those problems resolved by one landowner who has resolved the upper and the lower reservoir. The middle one has not gone through the same robust remedial exercise. Therefore, a question remains over the middle one. However, the other two have been resolved.
752. **Mr Byrne:** Are you saying that, at the moment, the middle one is a risk to the public at large?
753. **Mr McKillen:** The middle one is an unknown quantity, in that, since the original inspection, there has not been a further inspection of it by a qualified civil engineer.
754. **Mr Cooper:** In fact, I have written a letter saying that the middle reservoir is a problem. That letter is on the record.
755. **Mr Byrne:** Does that letter signify a warning signal to those people?
756. **Mr Cooper:** It should have done.
757. **Mr McKillen:** It should have done.
758. **Mr Byrne:** How many reservoirs should a supervising engineer look after? Is it reasonable for a supervising engineer who is responsible for a reservoir here to reside in England or GB?
759. **Mr Cooper:** I will ask David to deal with that.
760. **Mr McKillen:** As a supervising engineer, I look after a couple of reservoirs in England. The reason that that mechanism works is that they are a particular type of reservoir, and the client understands the operation that I carry out here to maintain the safety of the reservoirs. He carries out inspections and reports his findings. It is not necessarily a difficulty to have a remote person; it can work.
761. As for your question about the number of reservoirs, that depends on their proximity and whether the clients are individual or different clients. For instance, in the Wolfhill situation, the fact that the three reservoirs are adjacent to each other means that you are most likely to inspect them together, which actually provides cost efficiencies to the reservoir owner and manager. Therefore, you can inspect them along with a number of others. It would be quite reasonable to look after 15 or 20 reservoirs in that context, bearing in mind that you inspect them once a year.
762. **Mr Byrne:** Given that you, as an institution, are now over the complexities and the issues associated with the implications of bringing in the Reservoirs Bill, have you done an audit of the existing reservoirs across Northern Ireland?
763. **Mr Cooper:** No, we have not.
764. **Mr Byrne:** So, so far, there is an observational survey.
765. **Mr Cooper:** As I understand it, Rivers Agency has carried out an exercise on the entire portfolio of reservoirs that could come within the Act. However, we, as an institution, have not done that.
766. **Mr Byrne:** Have you guys had sight of the survey report?
767. **Mr Cooper:** No. As I understand it, the full details of the reservoir inundation mapping and the database are not in the public domain at the moment. We, as an institution, have no access to that information.
768. **Mr Byrne:** Is it reasonable to assume that, given the critical role that you guys as professionals will play in the surveys, Rivers Agency should provide that report to you as an institution?
769. **Mr Cooper:** We, as an institution, have no responsibility for reservoirs. However, if we as individuals were asked to inspect a reservoir, it would be reasonable for us to approach Rivers Agency and ask for a copy of the flood map for that reservoir, and that would probably be forthcoming.
770. **Mr Byrne:** The reason I ask that question is that you stated very clearly here that you welcome the Reservoirs Bill, and I am wondering why you are so welcoming of it if you do not have the full report of the survey.

771. **Mr McKillen:** The answer is that it regularises, and provides some framework to manage in a consistent way, the risks associated with reservoirs. Up until now, and before this legislation was brought forward, it was left to the professional and robust approach of individual reservoir owners to deal with the safety and risks of their particular reservoir in order to minimise downstream risks to the population, industry and the environment. The legislation regularises that and provides a consistent approach to it.
772. **Mr Byrne:** So, are you saying that you welcome the Reservoirs Bill because you feel that so many owners out there do not realise the risks that they are responsible for or the liability consequential of any accident?
773. **Mr McKillen:** It is probably fair to say that the legislation provides support and reinforcement to any such reports and recommendations that are made. As I said, up until now, recommendations to any reservoir owner did not have to be carried out and, in some cases, have not been carried out. That is because there is no enforcement of legislation behind the actual report that is being provided to a particular reservoir owner.
774. **Mr Cooper:** Basically, we see it as a preventative measure.
775. **Mr Byrne:** Just on this point, is the implication there that some reservoir owners have been irresponsible in not having these surveys done?
776. **Mr McKillen:** When reports are done, they are left to the individual owners to deal with them. In many cases, it is done; in other cases, it is not done as robustly as it should be.
777. **Mr Byrne:** Thanks, Chair.
778. **The Chairperson:** OK, Joe, thank you. David, Joe's questioning brought something out. You talked about the three reservoirs collectively at Wolfhill. They could well be owned by various people. You mentioned that there would be cost savings in reviewing all three reservoirs at the one time. How would that be itemised, if there were three separate owners?
779. **Mr McKillen:** There is nothing to stop owners coming together as combined bodies. Look at other fishing clubs, for instance, not Wolfhill: there is nothing to stop the Ulster Angling Federation or whoever saying, "We have x number of reservoirs, and we want someone to carry out the supervising function." They can then get a quote from supervising engineers to carry out that function. There is absolutely nothing in a commercial environment to stop that taking place.
780. **The Chairperson:** I can understand the scale and the cost-effectiveness of doing three at the same time, but that would be one overall bill, which —
781. **Mr McKillen:** — they then distribute out.
782. **The Chairperson:** It would be distributed out between the three or four owners, depending on how many there were.
783. In your presentation, you mentioned the availability of engineers. How many engineers of your ilk are there in the UK? How many are in Northern Ireland? I ask that because, last week, it was stated that there were very few in Northern Ireland.
784. **Mr Cooper:** As Jack said, there are different levels of panel engineers. Correct me if I am wrong, Jack, but I think that there are 39 AR panel engineers. I am the only one in Ireland, currently. There are about 300 supervising engineers.
785. **Mr Meldrum:** There are 141, of which one is in Northern Ireland.
786. **The Chairperson:** Would the engineers who are based in England, Scotland and Wales be willing and able to work in Northern Ireland?
787. **Mr Meldrum:** I would not see a problem, but, as I said in my talk, I would see the supervising engineers as coming largely from Northern Ireland. They may not be there to begin with, but I would see the Northern Ireland consultancies picking up the task and getting their engineers

- trained. In my opinion, you would probably need a pool of about 10 people trained as supervising engineers to cover the 150 reservoirs. The maximum might be 20 to 30 on one individual engineer, but there will be engineers coming on to the list at the young end, and there will be those retiring at the other end and, probably, shedding the number of reservoirs that they do. Those are the sorts of numbers that you are talking about.
788. The ICE, for Northern Ireland, should certainly be trying to service with the supervising engineers, but the inspecting engineers, construction engineers and AR panel engineers are more difficult. There is one at the moment. There is no reason why there should not be more in the future, as the good supervising engineers move on and become competent enough to become AR panel engineers. However, I expect that, for a decade or so, you will see some servicing from the mainland — from England and Scotland — where there are a number. For example, we still do a lot of work in Hong Kong, and AR panel engineers are required for reservoirs there. So, panel engineers are willing to travel.
789. **The Chairperson:** By what percentage did the work increase in England due to the legislation?
790. **Mr Meldrum:** The large increase came when we brought in the 1975 Act. The supervising engineers were not required before that time, which was the major change. That brought in a lot more work under the supervision phase.
791. Generally, there has been an increase in the AR panel work at the higher level, for a number of reasons. There has been an increased awareness of some of the problems: as you find one failure mechanism or situation, you look at your other reservoirs in the same way. There has been an updating of the understanding of floods, so that has brought in more work. Public acceptance of difficult situations is less. The big utility companies have more corporate responsibility and do not wish to have problems on their patch. Those sorts of things all influence the amount of work. So, there has been an increase from that side, but, at the moment, it has stabilised.
792. The next thing that is going to happen is that we will see the risk base, which you are adopting to begin with, and we will see a decline in the amount of supervision work from that, because we have a large number of small, low-risk reservoirs, which I expect to fall out at the supervision stage. If we drop down to 10,000 cubic metres, which is what is being talked about, we will see a few increases.
793. **The Chairperson:** Do you have any thinking on how many? From 25,000 cubic metres down to 10,000 cubic metres. Is it going to double the reservoirs?
794. **Mr Meldrum:** It is difficult to tell, because there is a degree of conservatism to start with in the approach of the Environment Agency, which is the enforcement authority, to deregulation of the reservoirs; ie the deeming of them as low risk. It will take two or three years at least for that to unwind and for us to find out. Early figures that I have heard indicate that we may be losing a quarter of the reservoirs.
795. **Mr McKillen:** I want to add to that to help inform you about the numbers of engineers and the process. There is one AR panel engineer and one supervising engineer who, due to personal business reasons, given the organisations that we work in, have had an interest in reservoir design and development work throughout the island of Ireland and across other areas of Europe. I referred to looking after a couple of reservoirs. In order to be a panel engineer, you need to be looking after some reservoirs, from a supervising point of view, under the GB legislation. That is why I have looked after some.
796. There are a number of others — Stephen is one example — who are in training, and I know some who have

- applications prepared. That would assist in increasing the number of supervising engineers. So, I would not be as concerned.
797. I am not sure what discussions you have had with Northern Ireland Water, but it has quite a number of engineers who are involved in ongoing inspection work. It depends on the commercial decision by Northern Ireland Water as to whether it will formally have its trained people go through the panel appointment process or whether it will outsource it — that is a debate for Northern Ireland Water — but it has a number of individuals who could go through that process.
798. **The Chairperson:** If the legislation came into force, would the requirement to be looking after reservoirs in England change?
799. **Mr McKillen:** I presume that it would and that looking after reservoirs here would allow you, by default, to be a panel engineer, which you would otherwise not have been able to be.
800. **The Chairperson:** Are there any concerns about the age profile of panel and supervising engineers?
801. **Mr McKillen:** I will answer that, because my colleague keeps asking me when I am putting in my AR panel application. I have been working on reservoirs for 30 years, and I am at a stage where I should be putting in my all reservoirs panel application. I am not saying what age I am. *[Laughter.]*
802. **Mr Cooper:** As an institution, we are concerned that the average age of the supervising engineers is higher than it should be. We would like it to be much lower.
803. **The Chairperson:** The panel of supervising engineers who look after reservoirs only look after reservoirs; they do not build bridges or anything else.
804. **Mr Cooper:** Very few supervising engineers do nothing else but supervise reservoirs. That is not a healthy situation; we would not like to encourage a situation where supervising engineers do nothing else. Jack would agree with that.
805. **Mr Meldrum:** I absolutely endorse that. You need people to have a good, broad-based understanding of the engineering aspects that are involved with reservoirs. For example, it probably takes up no more than 20% of my time.
806. **The Chairperson:** Looking after reservoirs?
807. **Mr Meldrum:** Yes, reservoirs in GB.
808. **Mr Swann:** If engineers are dedicated only to looking after reservoirs — they seem to be governed by your organisation — who sets the fee for an inspection?
809. **Mr Meldrum:** There is no fixed fee; there is fee competition. Different clients have different approaches to it, as do different engineers. It depends on the amount of work that is involved, the complexity of the reservoir and, with some clients, what exactly the client is expecting. Some clients are far more proactively involved and want to know, review and discuss what is happening, while others are not so involved.
810. **Mr McKillen:** I will give you another example of things that will influence the cost of an inspection. On some occasions, the staff or the owner of the particular reservoir will take an interest and be involved in keeping an eye on the reservoir, and they will work with the supervising engineer such that he requires less input to the overall process. He talks to individuals, reviews what they have been looking at, considers any concerns that they have had and then writes his report. If it is left totally to the supervising engineer to keep an eye on the reservoir, and he is responsible at all times, he will have to look at it more frequently and will spend more time. If there is a collaborative approach by the reservoir owner, the supervising engineer can take a different view on cost.
811. The other thing that influences cost is the period of appointment. The

- supervising engineer may be appointed for a year, after which the appointment will go out to competition and someone else has to do it for another year. The difficulty with that is that if you are doing it on a consistent basis, you gain an understanding of how a particular reservoir works and performs. That makes it easier and more cost-efficient to look after a reservoir. If you are coming into a new reservoir every time, and you have to research the background and understand everything that is going on, that adds cost. It means that a one-off inspection for looking after a reservoir for one year is more expensive than if you were looking after it for a three-year or five-year period.
812. **Mr Swann:** A number of the private individuals who have appeared before the Committee are, I suppose, scared of what the initial fee is going to be. A lot of them are ignorant or unaware of what will be involved in the legislation. I can see a lot of reservoir owners/managers asking you how much it is going to cost them. For a minimum input from them, because they are unaware of what their responsibility is, what would your ballpark figure be?
813. **Mr McKillen:** Have you heard from Glenowen Fisheries from Derry and other organisations like that?
814. **The Chairperson:** No.
815. **Mr McKillen:** You are moving between ICE and normal work. In the past, we sat down with a number of owners and explained the process, and we would like to give them an understanding of what is involved. It is better for reservoir owners to understand what we are doing, and we always prefer that to be part of the process. That is what I try to do when working with a client on a reservoir supervision project.
816. **Mr Swann:** David, what is the ballpark figure for someone coming to you for the first time?
817. **Mr McKillen:** It is difficult to say. It depends whether it is Ben Crom or a Wolfhill one, which is a different kettle of fish.
818. **Mr Swann:** Take, for example, Wolfhill Middle.
819. **Mr McKillen:** Supervision work for Wolfhill Middle will not cost any more than £1,000.
820. **Mr Swann:** Would that be a one-off cost or every three years?
821. **Mr McKillen:** The engineer might come and have a look at it on a couple of occasions, talk to the client and then write a report on its condition.
822. **Mr Cooper:** For our committee, a far bigger funding issue is the cost of repairing these dams and bringing them up to the standard of public reservoirs. For some, tens of thousands of pounds would be needed to bring their overflows or whatever up to standard. As a committee, we have talked about the fact that the funding not only of inspections but of 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.
823. **Mr Buchanan:** Do you have an agreed method of assessing the likelihood of a reservoir flooding?
824. **Mr Cooper:** This is a big, big issue. The proposed legislation merely sets out a process; there is nothing about how to make dams safe. There are various modes of failure for an engineer to consider when approaching a dam. It depends, for example, whether it is a concrete dam or an earth dam. An all reservoirs panel engineer is appointed on a personal basis; it is not the case that his firm is appointed. A panel engineer takes personal responsibility for what he reports, and it is his opinion. There are lots of guidelines in the industry, professional and otherwise, but, basically, the panel engineer will make his personal recommendation on how safe a reservoir is against various modes of failure. There are many, but there is not time today to go into all of them. It is a very technical area.
825. **Mr Buchanan:** You are telling the Committee that it is down to an individual engineer's opinion: any

- mitigating circumstances that might, to some, make a reservoir safe will be seen only through his eyes; and any recommendations will be based on that engineer's opinion.
826. **Mr Cooper:** It is the opinion of the panel engineer. Currently, under the 1975 Act, a panel engineer produces what is known as a section 10 report, which requires him to look at all aspects of a reservoir. He will carry out a very thorough examination of the records and any other available information. He will ask for previous reports, the supervising engineer's statements and all of the monitoring information. Before signing off on what is a very serious report, he goes through all of that. When he finishes his report, his job is done. The supervising engineer's role goes on and on over the period of his appointment. The section 10 report is complete when the supervising engineer signs and submits it, unless he is instructed to do further work.
827. **Mr Buchanan:** Yes, but there is no agreed method of assessing the likelihood of reservoir failure, so there could be an added cost to individual owners. A panel engineer could determine that x amount of work needs to be done, but that would be based solely on his opinion and not on any agreed method of how to assess the likelihood of a failure.
828. **Mr Cooper:** There are lots of guidelines. Are you saying that, if an owner wants a second opinion, he should get one?
829. **Mr Buchanan:** No. I am asking you, as an engineer, what method of assessment there is. You are the professionals. You are the boys who will get paid to do this, so the question that I put to you is this: what mechanism do you have to assess the likelihood of a failure?
830. **Mr Cooper:** There are so many aspects to look at. Take, for example, the overflow. There are general guidelines on the design of a spillway, which are universal and accepted. A panel engineer has to keep himself fully up to date with current industry guidelines and expertise. It is a big, big subject, and there are very many modes of failure.
831. **Mr Buchanan:** Fair enough. We will leave it at that.
832. If a reservoir manager implements a recommendation, repair or maintenance programme, as set out by an engineer to make a reservoir safe, that would greatly reduce the risk of failure and should leave that reservoir subject to a lower level of regulation, inspection, maintenance and repair. In a case like that, what would that lower level of risk be?
833. **Mr Cooper:** You have to be very careful when talking about risk. Risk is a combination of the likelihood of failure and the consequence of that failure. Are you talking about the likelihood of failure?
834. **Mr Buchanan:** Yes.
835. **Mr Cooper:** The section 10 report makes recommendations. When those are carried out, they are signed off. The panel engineer will sign them off only if they are carried out to his satisfaction. You are right to say that the recommendations are what need to be done in the opinion of the panel engineer.
836. **Mr Buchanan:** If all that work is carried out, does that reduce the risk?
837. **Mr Cooper:** It reduces the likelihood of failure.
838. **Mr Meldrum:** It does not change the risk category.
839. **Mr Cooper:** It does not change the risk category, but it reduces the likelihood.
840. **Mr Meldrum:** I will just explain that. The risk category is dependent on what the consequence of the failure is. So, if there are 100 houses downstream, the only way to change the risk category is to remove the houses.
841. **Mr Buchanan:** If the recommended work is carried out, that reduces the number of inspections and the level of maintenance and repairs. Is that right?

842. **Mr Meldrum:** There can be differences. You have hit on a pretty good point. You can tackle problems in different ways. If something is seen as a problem, in certain cases, increasing surveillance is a way of managing the risk of it failing. Looking at it daily to see whether anything is going wrong is one way of managing something that you think could happen. Take the example of an embankment leaking. Leaks, in the long term, potentially lead to failure. However, if somebody is watching that leak and it is not progressing, you can carry on in the monitoring phase for longer. Without the assurance of that monitoring, you would have to do something preventative sooner. Have I explained myself?
843. **Mr Buchanan:** Yes, but, really and truly, if an engineer comes out to look at a reservoir and recommends that certain works need to be done to make it safe and that work is then done, that should reduce the number of inspections, as well as the maintenance and repair that have to be carried out. If it does not, the recommendation put forward in the first place was not correct.
844. **Mr Cooper:** Absolutely, a stitch in time. If the thing is fixed early, so much the better. We all agree with that. If you have a roof tile missing, you want to get it fixed pretty quickly, do you not? Improved surveillance is fine and worth doing, but it will not necessarily stop the dam failing.
845. **Mr McKillen:** There are two types of recommendation. The report could include some that are due to the fact that a reservoir does not comply with standards. If, for example, the spillway does not have enough capacity, you have to change it so that it does. Other recommendations are much more immediate, such as a leak, and require further monitoring. Carrying out more monitoring to keep an eye on the leak is one way of managing it; fixing the leak is another. It is likely that more regular monitoring will be required before all the issues are resolved, at which point you go back to the default position of a 10-yearly inspection and supervision twice a year. The default position applies when a reservoir is returned to a satisfactory condition: it meets standards and does not require a lot of urgent inspection monitoring work. The default position is set out: biannual and 10-yearly inspections.
846. **Mr Orr:** The legislation is very well designed in that it takes a risk-based approach. The problem with the risk-based approach is that, at the moment, there is no universally accepted standard to assess the likelihood of a dam failing. However, the legislation, as it stands, is beneficial in the sense that you will not have to come back and re-enact primary legislation when a risk-based approach to dams has become accepted worldwide. You can then invoke that through secondary legislation. Your legislation, as drafted, is risk-based, but it is risk-based according to the consequence: if the dam fails.
847. I accept your points. David was trying to outline that, if you carry out works, you will benefit in the sense that your inspections will be a bit cheaper because you will not be looking at things in as much detail. However, that does not reduce the number of inspections required. The legislation, as it stands, will not take you from a high risk to a medium risk because there is not a worldwide acceptance of the likelihood of failure. Research on that is being done across the world. The legislation, as it stands, will permit that to come in at such times as it is accepted. Hopefully, that helps you.
848. **Mr Buchanan:** So, once a high risk, always a high risk.
849. **Mr Orr:** At present, the risk is based on the consequence and the number of houses downstream. Work is ongoing to understand the balance of the number of houses versus a very good, well-maintained, brand new dam that has low risk of failure. Once that knowledge becomes standard, worldwide practice, it will be enacted in Northern Ireland. However, at the moment, it is not standard practice.

850. Another point is that dams fail quite rapidly. I appreciate that it was 150 years ago, but Dale Dike in Yorkshire failed. At 5.00 pm, somebody noticed leaks starting to come through the dam. At 2.00 am, the entire dam failed and people were dead. Back in 2007-08, Ulley failed through high rainfall etc. It overtopped as the spillway was inadequate. That caused the M1 in England to be shut — in England, they do not shut motorways — because it was a risk to the main north-south gas main. The failure occurred rapidly. They had not seen it coming for weeks. I have seen the pictures of the Fire Service trying to pump down the dam. All the sluices were open, there was a big scour hole on the front slope, and the dam was at risk. Unfortunately, things do happen.
851. **The Chairperson:** That begs this question: why did the supervising engineer not pick that up?
852. **Mr Orr:** That is a very good question and maybe the subject of your — [*Inaudible.*]
853. **The Chairperson:** The kernel of the point is that you are basing risk on a false premise. Everybody, no matter what society or job they are in, has to manage risk.
854. **Mr Orr:** Yes.
855. **The Chairperson:** What you are doing is not managing risk.
856. **Mr Orr:** Yes.
857. **The Chairperson:** I take the point that flooding is completely different from river levels rising. It is a surge or a tsunami, for want of a better way of describing it. You mentioned the Hoover Dam, for instance. You cannot tell us that, if you recommend £10,000 of repairs to a dam wall, that cannot and will not change the risk. Surely the risk must be based on impact and probability.
858. **Mr Orr:** We concur with that, and your legislation is drafted as such. However, we, the institution, do not believe that there is an internationally recognised approach. If you were to adopt something here in Northern Ireland, it would have to be based on something developed here, presumably by Rivers Agency, which would not be based on research or knowledge elsewhere in the world.
859. **Mr Cooper:** It is very important to distinguish between likelihood and consequence. The likelihood of a dam failure can change very quickly. A tree could come down and block a spillway and, in half an hour, change the likelihood of that dam being overtopped and people being killed. It is as stark as that.
860. The dams in Northern Ireland that we are most concerned about are the privately owned ones, which are, largely, embankment dams. An embankment dam is made up of three main features. Imagine your bath. There is the retaining structure, the overflow and the plug to let water out. Once you have improved the spillway to the standard appropriate to the downstream consequence, and provided the spillway is kept clear, that should be it finished. You are then talking about any deterioration in the embankment or the draw-off works. Those do deteriorate with time and need to be maintained. That is the reality. Those are the three big features of an earthing embankment.
861. In the 1970s, I, along with a colleague, brought all of the 60 publicly owned water-supply reservoirs in Northern Ireland up to a good standard. They have been extremely well maintained by the water service, as well as anywhere in the world, we would say. However, a lot of the privately owned reservoirs have had absolutely nothing done to them in the past 40 or 50 years, which has to be a concern for the Committee.
862. **The Chairperson:** The point that Tom and I are trying to get at is that, if you were to supervise and spotted a wee leak, you would supervise more. I take it that you will be doing the surveillance, which will incur more cost —
863. **Mr Orr:** Not necessarily.
864. **Mr McKillen:** Not necessarily, no. In the current situation, I am not required to do the surveillance. I can provide advice to a particular owner that they need to

- keep an eye out. However, there is no legislative requirement for any reservoir owner to involve me in that supervision. It can be carried out by them until such time as the legislation requires it to be carried out by a qualified civil engineer.
865. **The Chairperson:** If you produce a report that recommends certain investment, no matter what type of reservoir it is, and that work is done, is it not a waste of time and resource for you still to come out twice a year to inspect something that is probably state of the art? You will know that, in all probability, that dam will not breach or fail. If it does, it will fail within hours, so two inspections a year might not catch that. Are we saying that the six-monthly inspections are appropriate, or am I hearing that they might never be appropriate? Given that a breach can happen within hours, we might never catch one, so does that mean that this Reservoirs Bill is redundant?
866. **Mr McKillen:** I will explain that by going back to the fact that, in the normal process, the biannual attendance is in conjunction with discussions with the reservoir manager's staff. It is not that this is the only level of keeping an eye on things. What is expected is that the owner's organisation has an understanding, as I mentioned to your colleague, of what we are looking at and how the reservoir performs. We involve them with that process, and then, on the biannual inspections, we discuss that operation. It does not need to be an onerous task. People from fishing clubs are around all the time. They can have it in the back of their head that, if they see a damp piece, they should refer it to such and such. They can be involved with the whole process to keep the burden to a minimum. Taking a collaborative approach to managing will allow that level of inspection.
867. **The Chairperson:** Yes, but you still have an involvement that puts a burden on the reservoir owner. No matter whether the owner is NI Water, a local angling club or someone involved with an environmental association, they still have an annual cost burden that could be around £4,000, which might put them under.
868. **Mr McKillen:** Sorry, where does that figure of £4,000 come from?
869. **The Chairperson:** The £4,000 comes from two inspections a year and any required work.
870. **Mr McKillen:** Are you talking about a combination of inspection and maintenance work?
871. **The Chairperson:** Yes.
872. **Mr McKillen:** I am not clear on the cost of the maintenance work.
873. **The Chairperson:** I have information here for Mackie's Dam in Belfast. In 2010-11, the cost of a supervising engineer was £4,000, and, in 2013-14, the cost of an inspecting engineer was £5,000. Maintenance work over the past five years has cost £24,500.
874. **Mr McKillen:** I would not have thought that the inspection work was to that value. Certainly, in one of the years, there is probably a section 10 and a section 12.
875. **The Chairperson:** What do you mean by section 10 and section 12?
876. **Mr McKillen:** Sorry, a 10-yearly inspection as well as a section 12. That could not be right. I would need to see the detail of that, but that is strange.
877. **The Chairperson:** That information came from the Department for Social Development. We will have to get that checked out.
878. **Mr McKillen:** Right, OK.
879. **The Chairperson:** If you can give us any supporting evidence —
880. **Mr McKillen:** I suggest that the figure that I mentioned is a fairly typical local figure for that sort of service.
881. **The Chairperson:** You said £1,000.
882. **Mr McKillen:** Yes.
883. **The Chairperson:** A year?

884. **Mr McKillen:** Yes.
885. **Mr Orr:** For two inspections. It is £500 per inspection. Chairperson, I have been to a large, raised concrete dam in Scotland, which is owned by Scottish and Southern Energy. Since the day and hour that it was constructed, it has had leaks. The bitumen sealant between the concrete sections squeezes through over time. I was kindly taken there by Scottish and Southern Energy and a particular supervisor, who goes there twice a year with a team of people to check whether the leak is continuing. In fairness, he has a team of people because they have 90 reservoirs. Even with spending capital money on a dam, even an earth bank dam, it will continue to leak. Dams leak, and regular supervision is simply about keeping an eye on it and ensuring that things are not changing that would raise alarms.
886. The gentleman from Scottish and Southern Energy goes every six months and told me that, in winter, because it is cold, the bitumen does not seep through just as much as it does in summer. He has that sort of knowledge, whereas, if someone new turned up and saw water leaking through and stalactites hanging, they would panic. It is about having that long-term understanding of the dam to ensure that there is not a problem and reassure the owner of that. So it is about keeping a regular eye on the dam for that safety reason.
887. **Mr Milne:** A lot of the questions that I was going to pose have been covered. You said that the average cost is roughly £1,000 for two inspecting engineer visits every year. What about the follow-up by the supervising engineer? How is that calculated, and how much will that cost?
888. **Mr McKillen:** For the sake of clarity, I should say that we were talking about Wolfhill Middle, and that was a ballpark figure for the supervising service for that period. The inspecting engineer's role is required once every 10 years.
889. **Mr Milne:** How much would that cost?
890. **Mr McKillen:** It is probably fair to say that, at that time, it could be £3,000 or £4,000 once every 10 years. So that is about £300 or £400 a year. Is that fair to say?
891. **Mr Cooper:** It depends on the scale. For a small reservoir, it could be much less than £2,000. It could be £1,500.
892. **Mr Orr:** It depends also on whether they can be grouped. If, for example, an engineer is based in Belfast and has to inspect a dam in west Tyrone, it is better if they can visit three in that area so that they travel that distance only once.
893. **Mr Milne:** I would like to follow up on Thomas Buchanan's point. If a panel engineer gives an opinion and makes a recommendation, is it possible that another engineer might have a different opinion, or do they sing from the same hymn sheet?
894. **Mr Cooper:** There is pretty good consistency across the board. The first point to make is that there is no British standard for dams. It is not a matter of simply ticking boxes. So the section 10 report by the all reservoirs panel engineer is his personal opinion. His is a personal appointment by the Secretary of State, and he stakes his reputation on it. However, the question of getting a second opinion arises. The legislation covers a situation in which an owner says that the engineer's report is a load of rubbish.
895. **Mr Milne:** Does the owner have to pay for the second opinion?
896. **Mr Cooper:** It very rarely happens. Jack, do you want to speak on that?
897. **Mr Meldrum:** It very rarely happens, but there is an appeals process. Within so many days, someone can object and ask for a second inspection. I, personally, have not known one that has gone through that route. I believe that it has happened that somebody has had a different opinion, but, by and large, the issues are seen fairly much in the same way by panel engineers. There will always be a degree of subjectivity. We are individuals with our own opinions and our own thresholds at which we consider something safe or unsafe.

- Your colleague asked whether there is a quantitative approach. All these structures are individual, so it is very difficult to be quantitative. You can look at a big portfolio of reservoirs and judge them on a quantitative basis to prioritise when and where you spend your money, but it is difficult.
898. **Mr Milne:** From an engineer's point of view, why can probability not be taken into account?
899. **Mr Cooper:** We are moving in the direction of looking at the qualitative risk analysis. The science of qualitative risk analysis is developing. It is not an exact science and, ultimately, it is largely the judgement of the engineer.
900. **Mr Meldrum:** Subjective judgements have to be made even if one takes the route of quantitative assessment.
901. **Mr Cooper:** I will try to explain this in very practical terms. You are looking at a particular embankment reservoir, which was built 100 years ago. You are told, "We have no record drawings. We understand that it has clay in its core, but we're not sure what width". Often, the difficulty in trying to come up with a standard method is that all reservoirs are very different and have been there for many years. You cannot tell by looking at the outside what exactly is on the inside. Therefore, you do not know how wide it is and how much clay is in it. You would have to do a lot of investigation, and, even were you to investigate, there is so much potential for variation that it makes coming up with a standardised approach quite difficult. I am sure that you are probably aware that people have made boreholes in some places and found all sorts of other things between the boreholes.
902. **Mr Milne:** So, if you are quantifying how many cubic metres there are in a reservoir, you know that a certain amount of silt, glaur or muck — whatever you call it — is in it. So, you are basing your cubic metres on the actual water that is in the reservoir.
903. **Mr Cooper:** It is the volume that can escape.
904. **Mr Milne:** How do you find out how much liquid is in that reservoir? Is doing that in an engineer's remit?
905. **Mr McKillen:** Yes. Sometimes particular reservoir owners have a bathymetric survey done; therefore, you are able to determine what it is. There are, at times, some records from previous original designs where there is what is called a high-capacity curve. Information is sometimes available. Aside from that, by looking at the topography and profile of the valley, you can calculate what is likely to be in the reservoir. If you are not going to spend money doing a bathymetric survey, you can come to some geometric means of calculating what is there and what might be released by the failure of an embankment. So, there are different ways to do it, depending on the information that is available from a particular reservoir owner.
906. **Mr Orr:** Making that calculation would not sit with the panel engineer; it would sit with the Rivers Agency as the enforcement authority.
907. **Mr McKillen:** Yes.
908. **Mr Milne:** Right. I suppose, then, that I need to ask the Rivers Agency how it arrives at that capacity.
909. What types of defects would you expect to find in a typical reservoir? You talked about the bath, the plug, the leak, the overflow and all that.
910. **Mr Cooper:** We are focusing on privately owned earth dams in Northern Ireland that have not been maintained, but in an earth dam, or any dam, one critical feature is a means of entering the reservoir quickly in case something happens. Were I to be called out to a leak in a reservoir in the pitch dark at 2.00 am, the only thing that I could do there and then, if it is safe to do so, is to open the scour valve and get the water level down. That is because a reservoir that is emptied is made safe. That is the only on-site plan that you can have in the middle of the night, when you are working alone or almost on

- your own by torchlight. So, that is a very important feature.
911. I mentioned the overflow. The risk of overtopping an earth dam is high. If the spillway is fixed for the appropriate downstream consequence and does not block, it should not be a concern anymore. However, the embankment and the draw-off facilities are a continuing concern, because they can deteriorate.
912. **Mr McKillen:** If you are looking for specific risks — you talked about the embankment that Alan looked at — the upstream face will have likely pitching to stop the wave action eating into the embankment. If you walked along that, you would often find that the material between the pitching has been sucked out by the wave action. You can often find voids behind that pitching. You can find growths such as trees and whatever along the crest. The difficulty is that sometimes a tree that gets to a particular size can fall over and take a chunk of the embankment with it, thereby creating the potential for a release of water. Equally, a tree's roots can go through the core. If there is supposed to be a clay core in the middle, the roots can go through. Even if you cut down the tree down on the downstream side, the root can decompose and you have a route along which the water can seep out. So, quite a number of things can happen, and all sorts of training sessions are held to look at the things that can potentially go wrong with reservoirs. Understanding how a dam is constructed informs the type of defects that are associated with it.
913. **Mr Milne:** Are you concerned about the structure of any of the 150-odd reservoirs that are here? If so, why?
914. **Mr Cooper:** Any that we have seen we have dealt with. I have been to about 100 of Northern Ireland's reservoirs at some stage and have been advising Northern Ireland Water on its 48 reservoirs since 1973. Currently, about half those are out of service. I have reported on most of them.
915. The firm that I worked for at that time was involved in building or raising a number of reservoirs. If we raised a reservoir by more than 25,000 cubic metres, I did not report on it under section 10 but asked someone from another firm to report. That is to do with independence. I cannot comment on the reservoirs that I have not seen, and there is one in particular that I do not want to mention.
916. I really have to say that we need legislation. If you want to see what a breach looks like, I suggest that the Committee asks David Porter to lift a gate at Toome to simulate a breach. It would scare the life out of you, as would the noise of it. If one of our dams, say Woodburn in Carrickfergus, were to go, it would be appalling, and the loss of life would be absolutely enormous. I have lived with that and have been giving advice since 1972.
917. Northern Ireland's dams are in terrific shape, but, having said that, the Silent Valley nearly failed in the 1970s. Very few people know about that. David spoke about revetments. The revetment in the Silent Valley was undermined by material that was being washed out through the cracks, and the crest wall was about to go. If that storm had gone on much longer, believe it or not, the Silent Valley would have been breached. It is staggering.
918. **Mr Milne:** How was it repaired? This is very interesting.
919. **Mr Cooper:** A firm called Binny's was involved in the original project. As you know, there was a big problem with the cut-off in the Silent Valley. A chap from Binny's engineered a complete restructuring of the revetment, and they rebuilt the entire revetment to make sure that that did not happen again.
920. That reservoir was built only in the 1930s. A lot of the dams that we are talking about go way back. For instance, Lough Island Reavey reservoir was built in 1839. It is a very old reservoir and was built when techniques were really quite primitive. The Silent Valley is very

- well built, yet it needed maintenance. However, it was saved.
921. **The Chairperson:** How was the potential failure identified?
922. **Mr Cooper:** The revetment suddenly collapsed during a storm. The material was being sucked out from under the big ashlar blocks in the revetment, and the gravel from underneath was being washed out. People were not aware of that, and it suddenly collapsed in a storm. I am sure that you are all familiar with the Silent Valley. The crest wall was undermined, and, had the storm gone on for much longer, there was a real risk of a breach. That is a bit scary.
923. **Mr McKillen:** That was prior to Northern Ireland Water's inspections.
924. **Mr Cooper:** Yes. It was at the very start.
925. **Mr McKillen:** That was at a stage prior to Northern Ireland Water having instigated the regime that it has in place. I am sure that it has mentioned that to you.
926. **Mr Cooper:** That would not happen now. The system that we have with Northern Ireland Water means that there are inspections at different levels of personnel. There is a very important monthly inspection. The inspector checks against a whole lot of different features. It is almost like a very thorough checklist. It is signed off, and then it goes up the line. There are two other additional inspections, and then there is the yearly inspection. So, as you go up, more senior people deal with it. There is also the 10-yearly inspection. Northern Ireland Water has been doing those carefully since 1972.
927. **Mr Milne:** Thank you. I found your presentation and conversation very interesting.
928. **Mr Irwin:** We have heard from a number of private sector owners. Some of them have been seriously considering decommissioning, abandoning or discontinuing their reservoirs because of the onerous duties that the Bill will impose on them. What are your thoughts on the decommissioning of a reservoir?
- Are you aware of whether that has been done anywhere else, such as in England or Scotland?
929. **Mr Meldrum:** Yes. It is actually covered by our legislation. There are two things that you can do. One is to abandon a reservoir, and the other is to discontinue it. One is where you basically stop it from being able to store water at all, and the other is where you take it down below the threshold level, which, at present, is 25,000 cubic metres. In England, Wales and Scotland, a panel engineer has to certify that. So, the works have to be safe. Of course, you could do it in such a way that means that somebody could just drive a bulldozer through the bank, leaving it in a pretty unstable, unsafe state. When you get a flood through the reservoir, it could start to wash out raw material, and you would have a large mess downstream.
930. So, there is experience, and it is done. I do not have examples here, but there are a number of examples of where people have had it done. The other issues that occur with it are quite often planning and environmental. They are all associated with it.
931. **Mr Irwin:** OK. Can your institution train non-engineers to carry out the routine observation of a reservoir? If so, what benefit is that to the supervising engineer? Could a private sector owner or manager, for instance, be trained to carry out that work?
932. **Mr McKillen:** If you asking whether the ICE can train people to carry out that work, I can tell you that there is nothing to prevent any individual in a private sector or community group or whatever going through the training process and applying and being appointed to the supervising panel, provided that they have the requisite experience. If they do that, they can carry out that role as a supervising engineer with the same right as any other supervising engineer.
933. As I indicated, there is also a sort of intermediate level whereby they can reduce the cost and input that

- are required by a trained supervising engineer by carrying out a lot of the ongoing work on keeping an eye on the reservoir and having a bit of training and understanding that helps them to assist the formal supervising engineer in carrying out his or her annual statement.
934. So, yes, it goes back to what I said: a collaborative approach is very much the best one, because it keeps a closer, more regular, ongoing eye on the reservoir. People understand when issues occur, if they occur.
935. **Mr Irwin:** I have concerns about the bigger picture. You mentioned the Silent Valley and the number of very large reservoirs that could be a major risk if they were breached. Although we are aware that many of the private, smaller reservoirs pose little or no risk, there is concern among those owners that this could be very onerous for them.
936. **Mr Cooper:** Could I stop you there? I am sorry, but the interesting thing that has come out of DARD's work is that some of those smaller reservoirs have a very big consequence downstream. This has possibly come as a bit of a surprise to this Committee, but imagine a small reservoir sitting above Hollywood. There are two such small reservoirs: Church Road Upper and Church Road Lower. If the upper one goes, it will take the lower one with it, but the loss of life in Hollywood would be high. You are aware of the topography of Hollywood. It is steep and is a confined valley that opens out through the town of Hollywood. A failure of the Church Road Upper reservoir does not bear thinking about. I do not live in Hollywood, but I am familiar with how steep the Hollywood hill is. That water would roar down through the town.
937. Some of these smaller reservoirs have a high consequence. It is not by any means just the Woodburns, the Spelgas and Silent Valleys. Having said that, a big reservoir like Altnaheglish/Banagher sits above Dungiven, but Dungiven is on a hill, so by the time that the flood would hit Limavady, which again is sitting quite high, there would be many fatalities from Altnaheglish. That is a big reservoir, and I had to stabilise it 30 years ago, because it was going to lift off its foundations. It is a 40 metre high dam and is the highest in Northern Ireland. It is a big reservoir, but its failure would not kill as many people as a small reservoir in Hollywood.
938. So, be very careful. Do not think that, because the reservoir is small, the risk is limited. It depends on where it sits above a population. You would not want some of these small ones to fail.
939. **Mr Irwin:** That is interesting.
940. **Mr Milne:** Thank you for letting me back in, Chair. The more that I hear about reservoirs, the more it seems that they provide a service to communities. Is that what you are saying?
941. **Mr Cooper:** Yes. Out of the hundreds —
942. **Mr Milne:** It is maybe not you that I should be asking, but if they provide a service to communities, surely communities have a shared interest in the cost of preserving them. It should not be left to private landowners, some of whom inherited the reservoirs. My point is that there is a public responsibility. I hear people talking about the value of these dams to wildlife and so forth. Therefore, if it is in the public interest, I think that the public should be very much involved in the expenditure on them.
943. **Mr McKillen:** That is absolutely correct. One thing that I would add —
944. **Mr Milne:** So, I am asking whether these reservoirs provide a service to the public.
945. **Mr Cooper:** Of the 150 reservoirs in Northern Ireland, about only 24 supply water to the public. The other half of their portfolio is out of service, but every single one of the 150 provides an amenity, such as a wetland, as well as flood attenuation. They all provide uses that are way beyond a commercial use, in that sense. Maybe there is a case for a reservoir trust such as a wildlife trust or the Woodland Trust. The water service wants to sell half

- its reservoirs. Who would buy them? I ask that because there is the cost of maintaining them to consider. It is a big issue. We talked about it in committee, and we do not have a solution. However, it is a big issue, and they should not be abandoned.
946. **Mr McMullan:** I think everything has been said, from the demise of Holywood to other issues. Getting back to the potential risks, surely that fault lies with the planning authority or other authorities that knew that that reservoir was there and allowed houses to be built on a hill in the face of a reservoir. You have floodplains, but never once in any planning application did I hear of the risk from reservoirs. You have not factored in the cost. Are we looking at a situation where the planning authority will charge the applicant for an engineer's report on a dam if he wants to build downstream? The fault has to lie with other people, instead of putting the blame on the owner. We are quick to say that some of the smaller ones are at a bigger risk than some of the bigger ones. However, what would happen if some of those smaller ones were reclassified as something other than a reservoir?
947. **Mr McKillen:** If they were reclassified in so much as removed from being subject to the requirements of the Bill, they would not become a risk to the downstream.
948. **Mr McMullan:** Exactly. Why has that not been said today? That is clearly something that you can do.
949. **Mr McKillen:** However, it is about finding a balance between your colleagues, the environmental benefit, the flooding benefit and the community benefit that those reservoirs provide.
950. **Mr McMullan:** That is fine, but the fact that you can reclassify was not mentioned today. You can take them out of that, and that would spare the expense to the owner.
951. **Mr Cooper:** What do you mean by the term "take them out"?
952. **Mr Orr:** To reclassify, you would have to bring it to below the 10,000 cubic metre threshold, as Jack said, or abandon it entirely.
953. **Mr McMullan:** Is that impossible to do?
954. **Mr Orr:** No.
955. **Mr McMullan:** So, it is something that we can do, but it has not been set out as an alternative to the owner.
956. Another thing that has been set out is this: if we came in here to inspect these reservoirs, there would be a cost. I think that some of my colleagues said that it would be a cost to the owner. If that owner cannot pay, would you carry out your inspection, knowing that you were not going to get paid? Under the derelict buildings order, councils, for example, can slap an order on you. They say, "We'll do the work, but we'll charge you." Are we coming into that sphere? I think, gentlemen, that there is a lot more that we have not teased out in the Bill. We have talked about all the costings and everything else, but we have not got away from who is responsible.
957. **Mr Cooper:** The owner is responsible. Currently, the manager is responsible.
958. **Mr McMullan:** With all due respect, how can the owner be responsible if he was not notified or advised? Are you going to tell me now that, if the planning authority, for example, has never come to the applicant or advised him about building houses or multiple houses in the path of a reservoir, the owner of that reservoir is responsible for the lives of those people downstream?
959. **Mr McKillen:** Historically, the owner has always been responsible. It is an asset that he has. If you had a wall that fell over on to the road or a car, you would be responsible for it. It is the same thing. He has an asset that he has always been responsible for.
960. **Mr McMullan:** Are you responsible for your report?
961. **Mr McKillen:** I am responsible for the report, and our company is responsible for a report that we do.

962. **Mr McMullan:** If anything happens over and above your report, are you responsible?
963. **Mr McKillen:** It depends on how it relates to what is in the report.
964. **Mr McMullan:** Exactly, and the reservoir owner will say the same thing. He will ask questions too, as you would if it were your report.
965. **Mr McKillen:** If you lived downstream of that reservoir and it failed and you were washed out as a result, under current common law, you would have the ability to get redress from the individual who owned that reservoir.
966. **Mr McMullan:** Under common law.
967. **Mr McKillen:** Yes.
968. **Mr McMullan:** Do you think —
969. **Mr McKillen:** My understanding is that, as a result of the Rivers Agency work, applicants who make planning applications where there is a reservoir above are referred to the need and the risks of that reservoir.
970. **Mr McMullan:** Who does the applicant for that house get the report from?
971. **Mr McKillen:** Let us take a theoretical situation where a developer is building downstream of a reservoir. The process is that the developer is required to carry out a flood risk assessment. You can check this with Rivers Agency, but it is my understanding that the developer is required to carry out a flood risk assessment and to liaise with the owner of the reservoir, because the reservoir has an impact on that assessment.
972. **Mr McMullan:** Who pays for all that?
973. **Mr Orr:** The applicant, which is the developer in this case
974. **Mr McMullan:** What about the flood plans that the Rivers Agency already has?
975. **Mr McKillen:** We do not have the flood plans. They would be with Rivers Agency.
976. **Mr McMullan:** Everyone washes their hands of this, and it keeps coming back to the man who owns the reservoir.
[Laughter.]
977. **The Chairperson:** No. It is not just as flippant a case as people washing their hands. It is a very serious issue.
978. **Mr McMullan:** I am being flippant in a way, but I really think that there are parts of this that we are not getting to the bottom of. You can redesignate the reservoir. That information is in front of all the members here.
979. **The Chairperson:** With all due respect, we have been looking at this for weeks, Oliver.
980. **Mr McMullan:** That is OK, but no one has mentioned it today, with all due respect.
981. **The Chairperson:** It has been mentioned every week.
982. **Mr McMullan:** Can you redesignate the reservoir if it is below or above 10,000 cubic metres?
983. **Mr Orr:** Perhaps I can take a couple of your points. As we already said, if the reservoir has a capacity of 10,100 cubic metres, it can be brought down below the level that is specified in the Bill, but that has to be done formally. Unfortunately, in the context of your question maybe, that must be done with the involvement of a qualified engineer. It has to be done safely, but it can be brought down from 10,000 cubic metres to 9,900 cubic metres.
984. You could also formally abandon the reservoir and take it entirely out of service. That is possible, but again it would require the services of an engineer, and it would bring in the wider context of planning and all the other environmental issues that your colleague mentioned.
985. I will answer some of the questions that can arise from that. Reducing the reservoir from 10,100 cubic metres to 9,900 cubic metres can be done. However, if the reservoir failed, albeit that it would be below the level specified

- in the legislation, there would be little difference in the impact. There is still a fundamental risk with a reservoir of under 10,000 cubic metres.
986. Let me also take your points about planning. We, as the institution, cannot comment on what has happened in planning. Things have happened in the past, and housing developments have been built and things have been built on the floodplain. I know that, over the past number of years, Rivers Agency has undertaken works that largely correct flood defects in areas that have been developed only recently, such as areas around Ballygawley and another town that was recently flooded. Those were things that Planning Service granted approval for not that long beforehand. As a consequence, that now has to be dealt with. There are historical and legacy issues that have gone through in the past, when knowledge of flood risk and other matters has perhaps not been as advanced.
987. Where the reservoir owner is concerned, if someone comes along and wants to build a housing development of 100 houses downstream of the reservoir, that should not cost the owner anything. It is the developer's responsibility to undertake a flood risk assessment and to pay for it as part of his planning process. That follows PPS 15, which I know is being looked at in the context of an upgrade.
988. **Mr McMullan:** You say that in England there is a threshold of 25,000 cubic metres.
989. **Mr Orr:** Yes.
990. **Mr McMullan:** Why can we not start at that threshold here?
991. **Mr Orr:** We tried to cover that in our paper.
992. **Mr McMullan:** I know that you did, although I want to go back to it briefly.
993. **Mr Orr:** Ten thousand cubic metres is seen as the accepted level. Since the 1975 Act, knowledge has developed and moved on, and 10,000 cubic metres is around the threshold level for reservoirs.
994. **Mr McMullan:** Are you bringing the 25,000 cubic metres threshold that pertains in England down to 10,000?
995. **Mr Meldrum:** That is certainly what was planned, and, although the Floods and Water Management Act 2010 does not actually state the lower figure, that is what was envisaged. At the moment, we do not know what is going to happen. The secondary legislation is not there, and we do not know exactly what will happen. I can say that Wales is going for 10,000 cubic metres. Scotland is going initially for 25,000 but intends to phase that down to 10,000.
996. **Mr McMullan:** Over how long?
997. **Mr Meldrum:** I do not know what the period is; I do not have that information.
998. **Mr Orr:** Scotland has the legislation in place but has not yet enacted it. So, it is still running at the 25,000 threshold under the 1975 Act, as enacted in Scotland. It has the new legislation on the statute book, but it has not yet pressed the "Go" button.
999. **Mr McMullan:** The legislation is there for 10,000.
1000. **Mr Orr:** For 10,000, yes.
1001. **Mr McMullan:** But that has not been brought in.
1002. **Mr Orr:** Yes.
1003. **Mr McMullan:** OK. Thank you.
1004. **The Chairperson:** Oliver, there is a reply from the Department of the Environment giving a planning perspective on the Bill. It says something similar to what Stephen Orr stated. For your information, there is further clarification from pages 27 to 30 of the Members' packs.
1005. Alan, you touched on low-impact reservoirs. To a certain degree, you will be blinded on them. Are you comfortable with that?
1006. **Mr Cooper:** We are saying this: do not forget about the low-consequence ones. They are still there. The danger does not just disappear when the level drops by

- a few hundred cubic metres. That is the issue. We should not forget about them.
1007. **The Chairperson:** You are talking about the reservoirs that lie below the designated controlled reservoirs.
1008. **Mr Cooper:** Yes.
1009. **The Chairperson:** But there are also controlled reservoirs that sit at the low risk. Are you blinded on them? Is that something that worries you? Do you lose sleep at night over them?
1010. **Mr Cooper:** I have lost a lot of sleep in the past 50 years. We have to be jolly careful. We may have been lucky. In fact, I think that we have been lucky. We have had failures. The last one was at Tildarg above Doagh, but there was no loss of life. The upper one at Creggan failed. That was fairly small, and it was absorbed by the middle one. The dam at Keady failed way back in the 1800s. It swept right down the valley, the Cusher, and wiped out a lot of Keady. So, they fail. I think that the danger is that you can be complacent.
1011. I think that the issue is money. Nobody is against this legislation. It is very necessary, because I am afraid that those in the private sector will not address their dams unless there is legislation. I think that it has to happen. The issue is money. They need help. A farmer could go out of business if he had to fork out money on this scale to fix a spillway or whatever, and he just could not afford that. They should not be dug through. The logical thing would be to dig through them, and that is a danger. The whole community will lose out. They are very valuable to the landscape and to wildlife. As I said earlier, every single one of the 150 dams has an amenity, and they should not be destroyed.
1012. **Mr Milne:** On that point, if they all have an amenity and are of public interest, surely the responsibility cannot lie with the private owner.
1013. **Mr Cooper:** You are going outside engineering here.
1014. **Mr Milne:** I understand that, but I want to make this point, and I have been making it.
1015. **Mr Cooper:** You are absolutely right.
1016. **Mr Milne:** I think that there should be a public responsibility, rather than putting the onus onto the private owner.
1017. **Mr Cooper:** They have all these other benefits such as flood alleviation and flood attenuation; they do absorb floods. They provide wildlife and fishing. Fishing is the biggest amenity. There is even fishing on the ones that are used for potable water supply. Quite rightly, there is no boating on them; there should be no boating on a reservoir used for potable supply. People fish in them and walk around them. They are too valuable to lose. The private owners need help.
1018. **Mr Orr:** It is outside our remit, but ICE would be supportive of a grant-aid system. As we see it, through our consultations on the policy as it was developed, the problem with the legislation is that you have to rest responsibility somewhere, and, unfortunately, it rests with the owner or the manager in that respect.
1019. **The Chairperson:** Let us be clear: under common law now, the reservoir owner is responsible.
1020. **Mr Orr:** May I just address your question about low-risk reservoirs? Through our consultations on the policy, we fed back to Rivers Agency, and it has taken that into consideration. We genuinely believe that a low-risk reservoir has to be looked at at some point in time. Effectively, we are turning our back on them, and that was your point when you asked whether we are completely unsighted on them. ICE debated that in our committee, and the general feeling was that it needs something, but it should be a downgraded version of inspection — maybe not the supervision inspections, but a qualified pair of eyes looking at it at some point in time and feeding back, but with a much lower profile in respect of the fact that it is a low risk.

1021. **Mr McMullan:** With the power of planning going back to council, and as councils are the owners of some of those reservoirs, there is a conflict of interest there.
1022. **Mr Cooper:** I will ask Jack to talk about the Environment Agency in GB.
1023. **Mr Meldrum:** It has reservoirs and it manages those reservoirs. It wears, basically, two hats, I think, and it does it well. Because it is the enforcement authority, it has to set a good example.
1024. **Mr Swann:** Thanks, gentleman, for your patience. Going back to Ian's train of thought, if they are all public amenities, maybe Rivers Agency and the Department should pay for those inspections.
1025. **Mr Milne:** Yes, that is why I was making reference to it. They are sitting back there.
1026. **Mr Swann:** You could maybe ask Michelle the next time you see her. There was a train of thought that Oliver started that did not reach finalisation. If one of your engineers inspects a reservoir and gives it a certificate or report of fitness, walks away and it breaches within five minutes, does the engineer retain any liability?
1027. **Mr Orr:** I could take that under my commercial hat for my organisation. When an owner employs an engineer, they require them, under the standard of law, to exercise reasonable skill and care. If the engineer has not exercised reasonable skill and care, quite frankly, the lawyers will take them to the cleaners. It will be the case, but you will have to get another engineer and go through the court proceedings, certainly if the engineer has got it wrong and has not spotted something that they should have spotted, or whatever. You have heard from Jack about the panel system. I am mid-career. I have spent 20-plus years after graduation getting experience, and I am currently going for the panel, so I have had to build up a wealth of experience before I can even get on to the supervising panel, never mind the two gentlemen to my right who are on the all reservoirs (AR) panel and are at a much higher level. You are dealing with highly specialised people.
1028. **Mr Swann:** So, unless you can get another engineer to say that the first engineer was at fault, the answer is no.
1029. **Mr Orr:** You will always get an engineer to act as an expert witness.
1030. **Mr Swann:** Who would be a member of the same institute as the original engineer who did the inspection.
1031. **Mr Orr:** Absolutely, yes.
1032. **Mr Cooper:** Engineers are human beings and can make mistakes. They are not infallible, but it would be very surprising for a dam to fail shortly after a thorough inspection.
1033. **Mr Swann:** But you do not incur liability.
1034. **Mr Cooper:** That would be very rare.
1035. **Mr Orr:** It would probably also last for a period of time, say, if the dam failed five years after a full statutory inspection, and you went back to show that the AR inspector had missed something. I will give you a scenario. I was at a meeting yesterday with Severn Trent Water. The gentleman who is the reservoir manager used to be the enforcement person for the Environment Agency and he has a policy of changing the inspecting engineer each time so that he gets a fresh pair of eyes and it is not the same person looking at it each time. His current inspection engineer has picked up an issue in one of the dams, and it will be written up. The British Dam Society is running its biannual conference in Northern Ireland in September, and it will be written up in one of the papers for that. That particular inspecting engineer has said that it is a similar spillway to Silent Valley. It goes down and around a bend, and he picked up a concern with that, which has prompted modelling. The paper will look at how 50 years have gone by without someone raising an issue on that.
1036. **Mr Swann:** So, are you saying that it is good practice to have a new set of eyes every time?

1037. **Mr Orr:** Some owners believe that it is good practice. I certainly think that, in respect of the supervising engineer, familiarity is good, because you are asking for someone to inspect it every six months, and they need to understand it. Alan or Jack may be more versed and able to comment on that, but that particular owner has a preference to rotate. I believe that the company I mentioned earlier, Scottish and Southern Energy, also rotates. It uses a small panel of three or four engineers for its 90 dams, but it rotates them. If you inspect one now, you will not inspect the same one in 10 years' time.
1038. **Mr Cooper:** The supervising engineer looks for change. Therefore, as David said, a degree of continuity over, say, three or four years has merit. There are two basic things that change in the embankment: deformation, which is a change of shape, or leakage. Those are key issues for the embankment. Leaks are very serious, because soil is erodable. The dams that we are talking about are earth dams. We have only four major concrete dams, which you will be aware of: Spelga, Ben Crom, Altnahinch and Atlnaheglish. All the others in Northern Ireland are earth dams, so they are erodable. As Stephen said, once a leak starts, you might get warning, but soil erodes quickly. Therefore, failures are quick. The failure of a concrete dam is totally different. A concrete dam is lifted off its base with uplift pressure. If Spelga ever fails, it will be because it lifts off its foundations. The uplift pressure on all four of our concrete dams is very low. I am monitoring those. They will not lift off their foundations. Failure of an earth dam is different. That is due to internal erosion through the dam, and, when it happens, it can be quite quick. That is the worrying bit.
1039. **Mr Swann:** Alan, you mentioned earlier that you have been involved with Water Service, or NI Water, for 30 years and have inspected all its dams, which are pretty much at a good standard. Do you see the legislation as being solely to bring private owners into line with that inspection?
1040. **Mr Cooper:** It catches us up with what happened after Dolgarrog in north Wales. In 1925, around 15 people were killed at Dolgarrog. The legislation did not come in until 1930. I do not know why it did not come in here immediately; it should have. We are playing catch-up. Luckily, we have had no loss of life since 1925. Since the 1930 Act, there has been no loss of life from the failure of a dam in the whole of GB. There has been loss of life from the failure of a canal, but not from an impoundment. That is remarkable. We are killing people at a terrific rate on the roads, but our record on reservoirs is fantastic. Here, we have been lucky, I think, but we have managed it. The legislation is not just for the private dams. It will bring everybody up to the same standard.
1041. **The Chairperson:** There are only a couple more questions, gentlemen. Thank you very much for your time. The session has been very good and very informative.
1042. I want to get back to the operational mechanics of it. Let us say that you go out to inspect and supervise, and you find a leak in an earth dam. Is there a degree of professional discretion as to whether you recommend to the owner that the reservoir will need a monthly inspection for a year, at £500 a go, or, because the leak could lead to something bigger, that it needs fixed right now and that you will inspect it when it is fixed or in six months' time?
1043. **Mr Cooper:** As Jack said, there is judgement there. It depends of the nature of the leak. If the leak is starting to move material out of the bank, if you can see soil coming out of the bank, you start drawing the reservoir down. There is no question about that. You take immediate action, if there are signs that the leak is causing what we call progressive internal erosion. Material is eroding, and it forms a pipe. Eventually, that pipe will get to such a size that you get a collapse and a breach. If the leak is starting to move material out of the bank, there is imminent failure, and you do not mess around, so you bring the reservoir down. As I said earlier,

- you want to have the capability in the reservoir to draw the reservoir down at a certain amount. Very roughly, you are talking about from 300 millimetres to 500 millimetres a day. Those are the sort of guidelines. It depends on the size of the reservoir, the catchment and all sorts of things. That is with nothing coming in. In other words, you have a pipe that will draw the reservoir down fairly quickly, depending on the nature of the leak, where it is and whether it is linked in some way to the pipe through the dam. Drawing the reservoir down quickly may not be the thing to do, because you could make matters worse. It depends on where the leak is. Is it near the outlet pipe? Is it away from the outlet pipe? What is the nature of it? Is it moving material? So, there are big issues there, and it is the judgement of the engineer to decide what the best thing to do is. If it is a minor leak, you start monitoring it, and you ask whether this has changed much. So, it really depends on the condition.
1044. **The Chairperson:** Will there always be an option of remedial works to solve it now, even though it may not get bad for another two or three years? I am trying to establish whether an unscrupulous engineer, if there is such a thing, could say, "I am on a banker here, and I am going to do 12 visits over the next two years". You know what I mean. Or, is it that the engineer advises to get that fixed and says that it will cost a one-off payment of whatever?
1045. **Mr Cooper:** The engineer will behave very responsibly. We are talking about life and death, and the people who become supervising engineers are, invariably, fully chartered. I think that the bulk of them are fully chartered engineers or equivalent. They are very senior and are probably aged over 40. They are mature people, and they realise what a responsible position they are in. It is incredibly important that they behave responsibly.
1046. **The Chairperson:** Yet, as you said, they are human beings.
1047. **Mr Cooper:** Yes, they can make mistakes. That is the price that you pay for being a human being. However, they are well trained.
1048. **Mr McKillen:** If your concern is on the side of whether there will be quite regular inspection of this leak, in my experience, that inspection does not necessarily need to be carried by the supervising engineer. It is done in liaison with the supervising engineer, but some of the owner's staff can be keeping an eye and measuring the flow. In some cases, you would put in some sort of mechanism to allow you to do even the simplest procedure, such as putting a measuring cylinder in to try to find what the rate of flow is. You would often try to look at that rate of flow in relation to the upstream water level and see whether it is the climate conditions that are causing this or whether it is directly related to the water level in the reservoir. If you drop it down a bit, does it reduce? You are trying to get information, because, when you ask whether there is an immediate way to fix it, you need to know what you are fixing. So, you need to understand what is causing this. Is it coming from the upstream side or where is it actually coming from? You need to know that before you can understand how to actually fix it. You are saying that people have to have the experience of understanding how reservoirs are built and how they work to understand how to fix them.
1049. **Mr Meldrum:** I want to say something on the unscrupulous engineer, dare I say it. The panel appointments are made on a five-year renewable basis. Panel engineers have to reapply, and there are cases of people who have not been reappointed. I believe that your proposed legislation covers for the removal of people from the panels. So, I think that that is covered.
1050. **The Chairperson:** That brings me to my next question, Jack, so you have done very well. Does the institution itself have any disciplinary powers or levers?

1051. **Mr Meldrum:** The institution has disciplinary procedures, but I have never known a panel engineer who has gone through that process or been taken through that process. There is a disciplinary process whereby clients who have engaged engineers can take issue with the ICE about the conduct of the engineers.
1052. **The Chairperson:** How will the operating regime for high-risk reservoirs in England compare to that here if the legislation goes through unchanged?
1053. **Mr Meldrum:** Could you ask that again, please? I missed the first part.
1054. **The Chairperson:** How does the operating regime in England differ from what is proposed in this Reservoirs Bill?
1055. **Mr Meldrum:** We are playing catch-up. We have moved to a risk-based approach, which is coming in at the moment. The Environment Agency is reviewing each of the cases. It is starting with the low-risk to remove those that are likely to be in that category. We have low- and high-risk categories; we do not have an in-between. I will not say that we have got it right and you have got it wrong; you have probably got it right and we have got it wrong. I do not know. You may have a better approach that is in-between.
1056. **Mr Milne:** In England, for example, are private owners helped financially?
1057. **Mr Meldrum:** I am not aware of any help, unless they can get grants for other reasons. The difficulties that you are discussing are very similar to those that we see. As an AR panel engineer, the reservoirs that I dread going to are fairly large, were built 100 years ago and are in the hands of private owners, having previously been under the ownership of a municipal water authority. That is because those structures demand a lot more maintenance and ongoing cost. I sometimes feel that the private owners are not aware of what can happen.
1058. A relatively minor repair could cost £50,000, but it could go up to millions. I looked at one last week, which belonged to a water utility. The two costs that it was looking at were £5 million and £10 million. That was to sort out a spillway, where clearly something had to be done. So, there are large costs involved in some of these structures.
1059. **The Chairperson:** With regard to those types of reservoirs, how do we sit with GB? Obviously, we have a lot of earth dams, dating back to the industrial revolution and the mills, including the flax mills. Does England have the same types?
1060. **Mr Meldrum:** We have the Pennine dams, which are of a similar age and probably, if we look at them closely, have similar problems. We have got a few others. We have a newer generation of farm reservoirs, which you do not have here, a lot of which come into the low-risk category. We also have the ornamental lakes and the bigger water supply reservoirs.
1061. **The Chairperson:** Thank you very much for your presentation and this lengthy question-and-answer session. We really appreciate your time, your answers and, as always, your expertise. It is important that we hear from all sectors during the scrutiny of the Bill. Alan, you are right to say that it is very important that we get this right, and, as Chair, I have been ensuring that the Committee looks in every nook and cranny in scrutinising each clause, line by line. Again, thank you very much for your time today.

25 March 2014

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 Ian Milne
 Mr Robin Swann

Witnesses:

Dr Jim Bradley	<i>Belfast Hills Partnership</i>
Mr Damien McCallin	<i>Ligoniel Improvement Association</i>

1062. **The Chairperson:** I welcome Damien McCallin, environment and recreational officer, and Dr Jim Bradley, Belfast Hills Partnership manager. You are very welcome to the Committee, gentlemen, for what is a very important session on the Reservoirs Bill. Jim, I met you at our table at the stakeholder event. I hope that you found it very useful. Damien, I do not think that I have met you yet.

1063. **Mr Damien McCallin (Ligoniel Improvement Association):** I was in the other group.

1064. **The Chairperson:** I suspected that. I was probing there more than anything else. I hope that you both found the event very useful and that it prepared you for this presentation. I ask you to take no more than 10 minutes to address the Committee, and then members will ask questions. Without further ado, please continue.

1065. **Mr McCallin:** First, I would like to thank the Committee for the opportunity to speak to you and to be involved in the process. I am Damien McCallin, and I am environment and recreation officer for Ligoniel Improvement Association (LIA). With me is Dr Jim Bradley, who is the manager of the Belfast Hills Partnership; he is also an environmental

committee member for Ligoniel Improvement Association.

1066. Let me explain a bit about Ligoniel Improvement Association. We are a charitable community organisation founded in 1974 to improve the well-being and environment of the residents of Ligoniel. Our main activities include community development, regeneration work, education, health and well-being, community relations, environmental work, advice and welfare and youth development work. In addition, LIA is the lead partner for the delivery of the government's neighbourhood renewal strategy. The strategy is applicable to those wards across NI that fall into the top 10% of deprived disadvantaged communities. The Ligoniel ward is listed as number 57 for deprivation.

1067. We have provided you with some photographs. Page 1 gives an aerial picture of the four dams in our area. I will give you a brief spiel on who owns each of them. The middle dam — Wolfhill Middle — is owned by Ligoniel Improvement Association. We have a fishing club that uses it, and there are more than 100 members. We believe that the upper and lower dams are owned by O'Kane Limited, which is involved in the ongoing development of housing, and we have a good working relationship with it. Boodle's Dam is at the other side of the Ligoniel Road in Ligoniel Park, which is owned by Belfast City Council.

1068. I will tell you a wee bit about what we are doing at our dam and what is being achieved. We have maintained the dam for more than 10 years since we purchased it. We have set up a cross-community fishing club right on the rural/urban fringe. We have also created and developed a network of connecting footpaths and key facilities, including rural development-programme funded paths and key links to other public

seats. Photos 3, 4 and 5 show some of the work recently completed on location. We also have interpretation and heritage panels. You can see an example of that in photo 6. The dams in the mill race are very important to us for landscape, biodiversity, heritage and community development. We have other cross-community projects and events working with local schools on environmental education.

1069. The projects and developments have been funded by a kaleidoscope of funders, including the Heritage Lottery Fund, the Department for Social Development, Belfast Hills Partnership, the rural development programme, landfill tax, the Northern Ireland Environment Agency and Belfast City Council, among others. We have plans to further develop the site and the links to other public sites, and we are redeveloping an old corn mill on the site. The plans are with the planners at the minute. The idea is that that will provide an environmental centre that will be a hub for the activities on site and for the groups that use the site.

1070. **Dr Jim Bradley (Belfast Hills Partnership):** I will talk about Wolfhill Middle in particular. We have been told that it has been classified as high risk, although we do not know because we are not owners of the other sites, but at least two of the dams in the Ligoniel area are also likely to be high risk. A survey was carried out on Wolfhill Middle roughly when Ligoniel Improvement Association purchased the site. That was linked to the housing shown on the aerial photograph. Planning Service had stipulated that a survey needed to be carried out. Some actions were identified and were carried out to Planning Service's satisfaction. Ligoniel Improvement Association has been considering other surveys, particularly when some new DSD paths were being put in last year. Getting grant aid for such survey work is not easy, and Ligoniel Improvement Association and ourselves have, as you can see, experience in working with many different funders. It is more difficult than

it might appear to get grant-aid funding, particularly depending on how much we are talking about and what type of work it is for.

1071. We have two or three concerns to point out to the Committee. The annual costs figures indicated to us £4,500 to £8,000 will be a millstone around the neck of community groups such as Ligoniel Improvement Association. Those figures are larger than the unrestricted reserve that the LIA has at present, given all its project work. There are future comments and plans about possible grant aid, but that is cold comfort for the likes of Ligoniel Improvement Association. Even if it was in place for the first few years, questions would have to be asked about how long it would be maintained.

1072. A particular issue is the classification of high, middle and low risk and the word "risk". We are not risk-management professionals. We deal with risk management, and our common understanding is that risk is the potential perceived estimated impact of an incident multiplied by the probability of such. If you can lower the probability, you lower the risk. What we believe is being classified here is potential impact. The proposal is that you would nominate a reservoir as being high risk and always high risk, depending on volume, but particularly for housing below a possible inundation route should a dam fail. We regard the use of the word "risk" as extremely difficult. You can imagine the scenario when we are trying to explain to residents that this is nominated as a high risk but that the engineers have said that they are only going to carry out surveys every 10 years, and they are satisfied with the situation. That is difficult to communicate to residents. You could, for instance, have two high-risk reservoirs in an area — one that needed urgent attention and one that did not — but would they both be called high risk? We see that as a problem.

1073. Moreover, many organisations similar to Ligoniel Improvement Association come to look at what has been achieved and what might be possible in their own

- area. We believe that if the Reservoirs Bill goes through with relatively few changes, we will get fewer such groups. We are also aware that if the Bill were to go through in its present form, our advice would have to be extremely guarded. I ask you to consider what a director on the board of an organisation such as the Ligoniel Improvement Association would have to bear in mind if such a proposal came to the board. It would be extremely difficult to decide to take on potential liability and what might be potential increasing liability in future.
1074. I will finish by inviting the Committee, as a group or as individuals, to see what is at stake and what is being achieved at Ligoniel and to bear in mind that the Bill will have significant ramifications for areas and developments such as we have in Ligoniel.
1075. **The Chairperson:** Thank you very much for your presentation and thank you for being so concise and succinct. Robin, I believe that you have to go out.
1076. **Mr Swann:** I do at 2.30pm, Chair. I have nothing at the minute.
1077. **The Chairperson:** Nothing on the planning issues?
1078. **Mr Swann:** No.
1079. **Mr Milne:** You said that you own the middle one. Have you had any engineers on site looking at the reservoir and giving an opinion on it?
1080. **Dr J Bradley:** There were engineers up in 2000. URS Infrastructure and Environmental Ltd, previously Ferguson McIlveen LLP, which had performed the surveys, linked in with the paths. It was at that stage that we were investigating the possibility of carrying out another survey before the Reservoirs Bill came into being.
1081. **Mr Milne:** Did it identify any problems at the time?
1082. **Dr J Bradley:** No.
1083. **Mr Milne:** It did not specify any work that needed to be done?
1084. **Dr J Bradley:** It did not carry out a full survey, but it had no issues.
1085. **Mr Milne:** The Bill refers to a panel of engineers. These are highly specialised people. To employ them will take a substantial amount of money. I gather from your presentation that that will put a burden on to your group that you will not be fit to meet. Is that right?
1086. **Mr McCallin:** A huge burden. Big time. As Jim said, if we did not own the dams and we were to be presented with this next year and the Bill was in place, would we sign up to taking it over? Probably not, if it was an added liability. As well as that, a lot of development and educational programmes run on site. Do they suffer because we have to put our money into surveys and the like? Yes. It is a serious concern, and, as Jim said, we do not have much money in reserve.
1087. **Dr J Bradley:** We have gleaned estimates of what that cost might be. However, given our circumstances and the number of houses below, engineers could say that the actual cost could well be higher. It might be more difficult for them to say that they will inspect only every 10 years. There is then the question of who decides whether that judgement is fair and proper. Will they go for the precautionary principle and say that they need to come up every two years?
1088. The cost is only a rough estimate, but it could be higher, even though there are no indications. We would like to get a survey, but we would like one to show that our dam is in good shape. We do checks weekly in the summer and slightly less frequently in the winter. We already have a regime of maintenance works. That is not the same as a full specialist survey, I grant you, but we can see that the cost could be quite a bit higher.
1089. **Mr Buchanan:** Given that Ligoniel Improvement Association owns the middle dam, the normal circumstances would be that you are responsible for managing it. Clubs and other associations use it for fishing and

- water-sports, for example, but there now appears to be some confusion that the person who uses it, not the owner, can be held responsible for its management. How do you see that? Irrespective of who uses it, will you be the sole managers of it or will it fall back on the person who uses it?
1090. **Mr McCallin:** Irrespective of who uses it, we will be the managers. We have a good working relationship with the groups, who are all made up of local people, so on a community and voluntary basis, we work with them as much as possible.
1091. **Dr J Bradley:** When fishing club requests are agreed to, it is the association that carries out the work. It is clear that Ligoniel Improvement Association is the manager of the dam.
1092. **Mr Buchanan:** You have spelled out the implications that the Bill would have for you folk as an organisation should it go forward in its present form. There is no doubt that there is finance regarding engineers and all of that type of thing. What other key issues do you see in the Bill that would need to be changed in order for it keep your club or organisation from going under, if you like, if the Bill went through in its present form?
1093. **Dr J Bradley:** That is very difficult to answer because it is more about what is missing. I can understand that there is a split between what the Bill intends to do with regard to health and safety and the future development of open water. One of my general concerns is that the positive development that is important not only for the community but for tourism will receive quite a knock from this — not just for community groups, but councils. I can imagine many councils having to take a serious look at areas of open water, reservoirs and dams. My concern is that you would see a significant proportion of open water that is either being used as it exists or has the potential to be used and expanded disappearing in the next few years if the Reservoirs Bill goes through. I know that that does not answer your
- question directly. However, it is a key point to make.
1094. At the meeting last week there seemed to be confusion about ownership and what might be alleviated or partially removed, and whether getting under the 10,000 cubic metres mark would mean that we were taken out of the system altogether. I have concerns about how the Bill is interpreted and wrong decisions being made. I am particularly concerned about how a community group and a local community will interpret being told that their body of water is a high risk.
1095. **The Chairperson:** OK. Thank you, Tom. Perhaps I could go through a series of questions. The first, I suppose, relates to the level that defines a controlled reservoir. There are four reservoirs in your area, one of which you are responsible for and the other three you are not. Two of them are owned by O’Kane Limited. I believe that you said they were developers?
1096. **Dr J Bradley:** Yes.
1097. **The Chairperson:** That brings a curious mix because you have development, which will change the designation of a reservoir, yet the developers own the reservoir. Have you had any conversations or direct links with O’Kane on the issue?
1098. **Dr J Bradley:** Not directly on that issue, but they are linked in with the plans for the corn mill, the environment centre and visitor services.
1099. I know that it is not quite what you asked, but the aerial photograph shows that the housing below our dam is fairly new; it has happened in our area in the past 10 or 15 years. Exactly what you are asking about is what would happen if that were repeated in other sites.
1100. **The Chairperson:** Basically, more development around the site that you are not in control of will lead to a higher designation if you have not already reached that.

1101. **Dr J Bradley:** Wolfhill Upper is at a much higher level than Wolfhill Middle. If that failed, it would go into our dam and then into our reservoir. Therefore I suppose that there is a joint risk involved from two dams there.
1102. **The Chairperson:** In the aerial photograph, they all seem to be of differing sizes and scales. Are we sure that there are four reservoirs that meet the correct scale — the 10,000 cubic metres?
1103. **Mr McCallin:** The middle dam definitely does. I am not sure about the rest of them off the top of my head. I imagine that Wolfhill Lower does not meet the classification.
1104. **Dr J Bradley:** It is in the audit list.
1105. **The Chairperson:** OK. Even if it did fall below the 10,000 cubic metres, there are provisions in the Bill to bring it in if it was deemed to be high risk. That is my understanding. Size does not really come into it to that degree in a built-up area.
1106. **Dr J Bradley:** You will see that there is a cleared area to the right of Wolfhill lower. That is where future development by the owners of Wolfhill lower will happen.
1107. **The Chairperson:** Yes. You will know your dam pretty well and the surrounding areas and levels, but do you know, or do you have the means of finding out, whether Wolfhill middle was ever a natural lake? Do you also know what the differential, for want of a technical word, is between the natural lake and the reservoir water?
1108. **Dr J Bradley:** We know from old maps that there was no lake there.
1109. **The Chairperson:** So you are talking about a 100% reservoir.
1110. **Dr J Bradley:** The natural river is —
1111. **Mr McCallin:** The Forth river runs behind it.
1112. **Dr J Bradley:** Yes. The natural river — the Ligoniel river — runs parallel to the main road. Those are all fed from springs further up. That is the whole idea. Wolfhill middle is artificial and always has been.
1113. **The Chairperson:** In your presentation, you talked about the operating requirements and how they will burden the group. You also said that, if they were in place, the group would have to be consider whether it would purchase it and that you would probably make the decision not to go ahead because of the burden and, I suppose, to a certain degree, the responsibility.
1114. I am sure that you have had a wee dip into the Bill. There is a need for government to try to prevent flooding, damage to property and perhaps even a loss of life. Do you have any idea of how that could be done without this Bill or with a Bill of this nature but just not in such a burdensome way?
1115. **Dr J Bradley:** One consideration that I had was about how grant aid might be applied, although, as we said in our associated documents, it is not directly related to the Bill. If bodies of water are used for public use, whether for sport or environmental education, perhaps they could be registered in some way — whether we have the Bill or not — and be eligible not for one-off grant aid but for ongoing financial support to meet the costs. That would be one way of doing it.
1116. I fully agree with the need for an approach to ensure that bodies of water such as Wolfhill middle are kept safe.
1117. **Mr McCallin:** It is about getting a balance between the work that needs to be completed and the value that we get from those open bodies of water. You do not want to lose that because of introducing the Bill for safety reasons. It is about striking a balance between the two.
1118. **Dr J Bradley:** We have no difficulty with the purpose of the Bill and, in many ways, with the structures proposed. However, our case is a grey area. You need a clear idea about how to approach both if you are to develop and use the resource properly.

1119. **The Chairperson:** I do not mean, at any stage, to put words in your mouth or to answer a question for you. That is not what I am about. However, what would happen if the additional probability of a failure that Jim mentioned was added in?
1120. If you are a reservoir owner, an engineer may tell you that you need to do work costing so many thousands of pounds as you are high risk. However, if you do that work, you will still be deemed to be high risk. Is there anything in the mechanics of what I have just illustrated that can be done? It looks unfair. Even though you invest money in your dam or reservoir it will still be deemed as high risk. You could invest in the Hoover dam but you would still be high risk, whereas someone down the road may not have invested that money and still be deemed as high risk. How should that be in legislation? How do we get that written down?
1121. **Dr J Bradley:** An interesting thing that I heard last week at your event was that risk seems to be estimated in other countries for this situation. We are not engineers, but we are interested in that if that is the case. Yes, we find it difficult. It would be interesting to hear from the engineers themselves whether they can judge that the need to survey or carry out mitigation works is based on there being a higher risk than a situation where they say, "No, we do not need to do that work". I find it difficult to combine the two.
1122. In purely layman's terms, and not just for residents but for members of community groups, users, funders and insurers, the word "risk", which I believe is about estimating severity of impact, is really muddying the waters, if you pardon the pun. It also means that it is difficult to explain to people why you are carrying out works that, in theory, do not decrease the risk. That does not seem to fit in with what people would usually expect.
1123. **The Chairperson:** I do not know whether you dipped into the disputes and appeals mechanism in the Bill, whereby you are designated as a high risk, for instance, and there is an opportunity to appeal a decision and then have a review of it. Did you look at that?
1124. **Dr J Bradley:** I did. However, we were told unofficially that this is a great example of a high-risk reservoir, again purely for potential impact as opposed to whether there is a high risk of failure in the near future. We looked at that. However, with the current structure and mechanism of high, medium and low risk, and the criteria upon which they are based, it is difficult to see how an appeals process would benefit us.
1125. **The Chairperson:** There is also a review process if an engineer recommends remedial work. If you disagree with that or think it is too much or exorbitant, there is an appeals mechanism for that also. Did you look at that in any shape or form?
1126. **Dr J Bradley:** Yes, but when a professional produces a report like that, I do not know whether we could even say that we disagree with it. As you said, these are highly specialised reports, so I would have a concern about that.
1127. **The Chairperson:** I wonder how a community group would have the capacity even to contest it. You could end up spending more money to contest the findings or recommendations.
1128. **Dr J Bradley:** The clock would be ticking and we would be looking very quickly for funds to do the work. We would have a choice to make.
1129. **The Chairperson:** You covered grant aid in your presentation and questions. Last week, one person said, "Do not talk to me about 50% or 75% grant aid. If we are talking thousands of pounds, you are going to put me under." How do you feel about that?
1130. **Mr McCallin:** Jim pointed that out in the presentation. The estimated cost for one inspection is higher than our reserves. That highlights how serious it could be if we were left with the responsibility of doing that down the line. Whatever grant aid is put in place would need to cover the whole cost for an organisation such as ours. I understand that there

are different reservoir owners, but for a community and an organisation with so much social benefit from the site, it would make sense for us not to have any bill at the end.

1131. **The Chairperson:** The question with regards grant aid is how long it runs. Does it run for ever or is it a snapshot of grant assistance for two, three or five years after the bill or until you have been surveyed for the first time and been given a recommendation of works? How do you feel about that? Should it be ongoing? Would your reservoir benefit from grant aid assistance for one-off remedial works to bring your dam up to a standard? Even though you have a burden going forward of a yearly inspection, you would have had grant assistance to bring your dam up to a certain spec. Would you tentatively support that?
1132. **Dr Bradley:** I can imagine that it would be possible for major mitigation and improvements that have obvious benefits to be grant-aided. I find it difficult to believe that any of the funding bodies that we have mentioned would take on the smaller running costs per year. It is in their nature to look for additionality and extra impact, so to have a hidden cost that they would fund would be that bit more difficult. It would have to be up to the Departments involved to give a long-term commitment for even those small running costs.
1133. As I said, our costs could be quite a bit higher than that per annum. One-off costs for improvements — of course, depending on how much you are talking about — might be more possible to secure than the smaller running costs. That is what it looks like from our point of view, being a small organisation.
1134. **The Chairperson:** OK. When Robin goes out the door, we will lose the quorum, so we will have to pause. Freeze everything, as the Dick Tracy cartoon used to say.

Committee suspended.

On resuming —

1135. **The Chairperson:** Jim, and Damien, I apologise. We ran out of quorum there. We have got it back, so we are able to continue. I am not 100% sure whether I was asking a question or you were answering a question. Nonetheless, we will move on. I have only one or two more questions for you.
1136. What do you know about flood plans? A flood plan will have to be done for each controlled reservoir, if my understanding is correct. What expertise do you currently have for producing a flood plan? Do not confuse that with flood inundation maps. It will still be a flood plan where, if something happens, you will be able to take a course of action for health and safety issues and maybe even to try to lessen the impact. What do you know of a flood plan? Do you have any experience whatsoever on anything like that?
1137. **Dr J Bradley:** Very little, from a professional or engineering point of view. Between us, we have good knowledge of general risk management and general planning for risk and risk management. Given the proper data and information on this issue, I am sure that we could produce that. It depends to what level that would need to be produced and whether that would need to be approved by engineers, for instance. I am sure that it would be. It depends on what that would mean for costs again.
1138. **The Chairperson:** Yes. Again, we talk about the costs and burden of the actual work on and maintenance of the reservoir. However, we also have the cost with regard to offences and fines were something to go wrong or you were not to comply. Failure to comply with recommendations in the engineer's report could well mean two years' imprisonment, a fine of £2,500 or both. Does that even get on your Richter scale? Obviously, nobody wants to think about things like that.
1139. **Mr McCallin:** No, it is the first thing that comes to mind when we were brought in on this; in your head, you go to the

- worst-case scenario, if you know what I mean. The big concern for any of the board members that we spoke to was what would happen, although they understood the risks involved.
1140. **Dr J Bradley:** We have read through the entire document. We realise that there are all these particular points, but it is hard for us to get past those early issues and problems of the high risk, the running costs and the additional burden that they give. We understand and see the need for that sort of enforcement. We hope that we would always be in a position to avoid that and seek to achieve all the recommendations. So we understand that it is only right that that should be in place. It obviously has an effect on board members and liability and what is seen as an additional thing to consider if and when you are talking about doing this sort of work.
1141. **The Chairperson:** We hear in the news of some high-profile cases going to court and what some would say are very lenient penalties being imposed for offences. I am talking about issues such as the welfare of animals and the spectrum of all sorts of crimes and criminality that goes on. Do you think that a possible two years in prison for non-compliance with an engineer's report is proportional?
1142. **Dr J Bradley:** It is difficult to say. I suppose that it depends on what is seen as being the potential impact. Where you have an entire housing estate below a reservoir, it may seem a bit more proportionate than some of the other situations that we talked about last week, where you might have one person living below that, and it might be the owner.
1143. I would also like you to bear in mind that we are talking from a community group point of view, but we work closely with councils, and not just Belfast City Council. We are aware that these things also weigh on officers' minds. We have Boodles Dam in Ligoniel Park, and, although our concern is focused on Wolfhill Middle, we are also concerned about the others and the effect that that will have on the whole site in general. So, it is difficult to say whether it is proportionate. It has also been raised, including in the notes on the Bill, how often this has actually happened, but I realise that it takes only one incident or event for the whole perception to change.
1144. **The Chairperson:** I understand. You are, of course, members of a community group. You are volunteers; you have panels and groups. How much of this is actually on your mindset when you have your meetings, either in Belfast Hills Partnership or an environmental recreation officer within your group, with regard to the Ligoniel Improvement Association? How much of this is bearing down on your group? Is it the topic of every conversation, or is it something that is out there that nobody wants to look at? Are people turning their face away? What is the climate out there at present?
1145. **Mr McCallin:** Yes, there is concern from an environment and heritage group's perspective. We understand that the issues have to be addressed, but, as Jim said, the risk and likelihood of it happening all have to be balanced up. Yes, everybody is ultra-concerned when they think of the worst-case scenario. However, as we also said, the dam has been in operation for x amount of years and there have not been any issues. A survey that we had done did not throw up any red flags. So, thinking about it pragmatically, it might not be a worst-case scenario, but it could be, and that is the worry for everyone involved.
1146. We want to get it sorted out. This is a big project for us; it is a big part of our work and development for the future. It is a great resource, not only for our organisation but for the local area and others that come into it. So we are concerned. Is it our every thought? Well, with a wife and four kids in the house, no, it would not fit; but it definitely is on the agenda to be discussed. Without having full knowledge of what is going to happen or what the ramifications of the Bill are, you kind of do think about the

- worst-case scenario. So it is concerning for us, at all levels.
1147. **Dr J Bradley:** I was aware, at the meeting last week, that there was a lot of talk about the consultations that have been gone through. Having been involved in trying to get messages out to communities in general, I appreciate how difficult that is. I would have to say that there are still members who have not realised the full implications of what is going on here. Those who know can see the problems and start to understand some of the implications. However, it is not the topic that everyone is talking about, compared, for instance, to CAP and areas of natural constraint, for instance. That is just one example of what is perceived as a current major issue. However, we will be reporting this again to the board of the Belfast Hills Partnership and to the Ligoniel Improvement Association. It will come up fairly quickly. However, as often happens in these consultation processes, people arrive late to the game. We can see quite clearly that this raises problems and issues for us. If we do not manage to get our voice heard, it could present us with lots of problems.
1148. **The Chairperson:** Would you ever contemplate, or are you contemplating, the decommissioning of the dam?
1149. **Mr McCallin:** Again, it is not as simple as you might think. That is one of the things that come to mind: what if there is a problem with decommissioning? That could run into £500,000 or £1 million.
1150. **The Chairperson:** If this is a complete artificial reservoir, you may not be able to fully decommission it. Where would the water go?
1151. **Mr McCallin:** That is the other issue. If you decommission it, as people have been asking, what happens to the water?
1152. **Dr J Bradley:** I am sure that it could be done, but the cost would be substantial. It may well be that we will be sent away to look at that as one of the options. We will look at them all. However, it would be a disaster for us.
1153. **The Chairperson:** A get-out clause has been looked at in various other jurisdictions, whereby the Bill would have a get-out clause for third-sector voluntary groups. If you knew that you could not withstand the burden and costs associated with the ramifications of the Bill, a government body, in one guise or another, would come in and take over management. Is something that would be attractive to you?
1154. **Dr J Bradley:** We would certainly see that as an option, but I think that there is an in-between. The word “grant aid” is the problem. If the word “support” were put in, in a way that was at less of a cost than a full takeover by a government body, that would help. There might be a middle way to do it or there might not, when you look at the practicalities, but I think that that would be a good option to look at first.
1155. **Mr Byrne:** I am sorry about, Jim. I am a bit disconnected. What is the capacity of the Wolfhill Middle dam?
1156. **Mr McCallin:** It is just under 19,000 cubic metres.
1157. **Mr Byrne:** OK. From the survey that was done last time round, it has been flagged up as a high risk. Is that right?
1158. **Mr McCallin:** No. We are basing that on the classifications that are suggested for this Bill.
1159. **Mr Byrne:** From what you have observed and witnessed of operations, would you regard it as high risk?
1160. **Mr McCallin:** If you are using the fact that there are so many residential houses around it.
1161. **Dr J Bradley:** Yes, it is purely that.
1162. **Mr Byrne:** So, the proximity to housing is the danger.
1163. **Mr McCallin:** Yes.
1164. **Dr J Bradley:** We do not believe that that is the case, but we would welcome the idea of doing regular surveys. That seems sensible to us.

1165. **The Chairperson:** Damien and Jim, thank you very much for your time here today. It has been very informative and useful for us as a Committee; I hope you found it of some use. Thank you very much for adding to our evidence on the Reservoirs Bill.

1 April 2014

Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
 Mr Joe Byrne (Deputy Chairperson)
 Mr Thomas Buchanan
 Mr William Irwin
 Miss Michelle McIlveen
 Mr Oliver McMullan

Witnesses:

Ms Denise Corbett *Ballysaggart
 Environmental Group*

1166. **The Chairperson:** I welcome to the Committee Denise Corbett, the chairperson of the Ballysaggart Environmental Group. We have met before and have had a phone conversation about the issue. I ask you to take no more than 10 minutes, and then we will go into questions and glean more information that way.

1167. **Ms Denise Corbett (Ballysaggart Environmental Group):** I am here to represent the natural environment, rather than a particular lough. I have been involved in Ballysaggart lough for about 10 years. It covers 42.5 acres and is home to 102 species of birds, 18 of which are on the worldwide endangered list. There are three species of fish, namely pike, perch and specimen rudd. There are several dozen types of grass, such as aquatic grasses etc. All that should be on the website, but, if it is not, I am happy to furnish you with whatever information you need.

1168. The lough has never been afforded any government protection, but I feel that the Bill has not taken cognisance of the fact that our natural environment is not very well protected in Northern Ireland. As I understand it, there are 151 reservoirs, 59 of which are privately owned. I am concerned that people who privately own the reservoirs may drain them to avoid having to pay the money to employ engineers and so on to survey and fix them. So, I am concerned that

there is nothing in the Bill to protect reservoirs from being drained. I am also concerned that they have not been looked at from the point of view of the natural environment. I point out that we have important international obligations in Northern Ireland on habitats and species due to the loss of biodiversity throughout the world. That was addressed at Nagoya in October 2010, and the 2010 EC biodiversity strategy aims to halt the loss of biodiversity in ecosystems throughout the EU by 2020. Those obligations include the wild birds directive, the EC habitats directive and the Ramsar convention.

1169. The Environment (Northern Ireland) Order 2002 provides legal protection for Northern Ireland's important habitats through its powers to designate, protect and manage areas of special scientific interest (ASSIs). The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 provides further protection for European sites as well as strict measures for protecting animals and plants that are of European importance. As I mentioned, there are at least 18 bird species on the lough that are on the worldwide endangered list. Only 6% of Northern Ireland is designated as having environmental protection, and I think that that is woefully neglectful of us. I think that if that is not carefully managed, we will lose even more habitat through the Reservoirs Bill.

1170. So, I appeal to everybody here to think about our natural environment. We are not above the ecosystem; we are part of it. We depend on the ecosystem just as much as it depends on us. For example, the honeybee is in rapid decline throughout the world because of the varroa mite and colony collapse disorder. The honeybee pollinates at least 96% of human food. When the honeybee goes, the human will have a

- great deal of difficulty finding food, so I appeal to you from that point of view.
1171. I mentioned Ramsar sites and ASSIs, which are areas that can be designated and protected, but even our ASSIs in Northern Ireland are not protected. They may have those labels, but they are not properly protected. I have brought photographs with me of dead horses that are lying in the middle of a river in an ASSI in Slieve Beg, which is one of the largest blanket bogs in Ireland. There is plenty of evidence to support the fact that we are not looking after our natural environment in Northern Ireland, and I appeal to the Committee to look again at the Bill, because biodiversity needs protection. As I see it, you could drive a coach and horses through the Bill as it stands, particularly private owners, who could “accidentally” drain their reservoir to avoid having to pay substantial fees to engineers, etc.
1172. **The Chairperson:** Denise, thank you very much for your succinct presentation and for keeping within the time. I really do appreciate that for our time management.
1173. Obviously, you come to this with a specific viewpoint, which, as you relayed to us, concerns the natural environment and wildlife. As you said, there is that fear of people trying to drain reservoirs so that they are not penalised financially or burdened with the responsibility of this and of what the legislation means for them. There was a bit of media coverage yesterday about Portavoe reservoir, which is between Bangor and Donaghadee. It is a Northern Ireland Water reservoir, and it is being drained for what NI Water says is essential health and safety maintenance work. How do you see that? Obviously, there is disgruntlement that that has not been managed correctly, although I think that we all recognise that those might be essential works. In your opinion, how has that relationship or that friction between essential works and the wildlife been managed over the past 10 years?
1174. **Ms Corbett:** Are you asking me whether these reservoirs have been managed?
1175. **The Chairperson:** Yes. Do you have any experience of that?
1176. **Ms Corbett:** I am a private individual who campaigns on behalf of the environment in general and Ballysaggart lough in particular, so I have no experience. However, I can say that, if you drain one of these reservoirs, you are killing millions of creatures. It is not just a few fish and a few birds that will have to find a new home. You are killing the invertebrates, and you are killing the amoebas — you are killing everything. Everything is part of the food chain, and everything is essential to everything and to every human. Given that there are EU directives and given that, as I said, 6% of Northern Ireland is given over to ASSIs, I can say that we are not doing enough.
1177. **The Chairperson:** If there were an engineer’s report, and the reservoir owner were told that they would have to drain that reservoir to fix the scour valve or any other sort of valve that is underneath, would there be a proper way to manage a drainage scheme?
1178. **Ms Corbett:** I do not know, Paul. I am neither an engineer nor a scientist.
1179. **The Chairperson:** I imagine that you could lift birds and even fish away to another place. However, there is bound to be the minutiae of all sorts of life and fauna and flora that you just could not see or lift.
1180. **Ms Corbett:** That is right. That would all be destroyed, which would be a huge loss.
1181. I know that most people think that I am mad — they have told me so. However, I can clearly see that we are part of the ecosystem and that we must protect it at all costs, particularly as the latest scientific evidence from all the top scientists in the world tells us that global warming is here. We will have to try to realise that we all have a part to play in preventing further loss of habitat.
1182. I cannot tell you the answers to those questions, as I do not have the expertise. However, I really do not think

- that drainage is the answer. There are bound to be other ways around it. You could maybe partly drain a reservoir to fix whatever the problem is. However, I honestly do not think that, in 2014, you would have to drain an entire reservoir to fix a part of it. It does not make sense to me.
1183. **Mr Byrne:** I welcome Denise's presentation. Denise, is the ownership of the lough in doubt, or does Moygashel Mills own it?
1184. **Ms Corbett:** No. The ownership is in doubt. Basically, the lough is attached to two others loughs: Eskragh lough, which is about four miles away, and the Dungannon Park lake. Eskragh lough is privately owned by a man called Donovan Ross, and the Dungannon Park lake is owned by Dungannon and South Tyrone Borough Council. The Black lough or Ballysaggart lough is not owned by anybody. There are several landowners around the lough, and I know the names of them all, but no one owns the lough. Moygashel Mills went into liquidation, and Lamont Holdings took over. It has now also disappeared off the scene. So, to my knowledge, there is nobody, apart from some of the landowners around the lough. Some of them own part of the lough bed.
1185. **Mr Byrne:** How long has the Ballysaggart Environmental Group been constituted? Is it a company limited by guarantee or a group of volunteers?
1186. **Ms Corbett:** It is a group of volunteers. It is constituted, but it is a group of volunteers.
1187. I do several things at the lough, one of which is to bring local children and those from over the border to the lough to teach them about the biodiversity of a natural eutrophic lough. I do that at least once a year. I have probably had about a thousand children through, and, through pond dipping, mini beast hunts, seed hunts and one thing and another, I have tried to teach them to respect their environment. I also rescue birds that are in trouble, lift litter and try to make sure that the local people are aware of just how important an asset the lough is to the community.
1188. **Mr Byrne:** Lastly, what would you like to see happening to Ballysaggart lough?
1189. **Ms Corbett:** I would like it to be left alone.
1190. **The Chairperson:** Denise, I do not wish to alarm you, but having heard what you said about the ownership of the lough, I want to make you aware of what the Rivers Agency has said. It states:
- "There is some evidence from the published work of the Ballysaggart Environmental Group that indicates a significant interest in the reservoir and immediate environment."*
1191. I think that we all realise that. The agency went on to state:
- "Consequently, the details of this Group have been included in the Rivers Agency database of potential reservoir managers. This status will only be confirmed when the Bill is enacted and the registration process completed."*
- The Group only came to the attention of Rivers Agency last year when the Reservoir Information booklet was being compiled. Therefore, the Group was not invited to the policy consultation events."*
1192. So, you were not consulted on the Reservoirs Bill whatsoever.
1193. **Ms Corbett:** No; that is right.
1194. **The Chairperson:** There is a question mark over whether you and your group are the managers of that reservoir.
1195. **Ms Corbett:** I manage it, but I have absolutely no legal obligation or right to do so. I do not have anything to do with water levels. I cannot have anything to do with pollution, because I am not in control of the pipes that go into the lough. So, I do manage it, but that is because I am passionate about the environment. I value what most people see as nothing.
1196. **The Chairperson:** With you having such an interest in it, as well as an interest in the environmental side of things, as opposed to the mechanics and engineering side of it, do you know of anyone who maintains the structure of

- the reservoir, the pipes leading into it or the valves leading out of it? Do you have any experience of seeing anybody on site?
1197. **Ms Corbett:** No. I frequently contact the Northern Ireland Environment Agency's water pollution hotline when there is oil etc going into it but no. Nobody manages it in that sense.
1198. **The Chairperson:** Obviously, you have not been consulted whatsoever prior to the draft Bill being formed. I do not know how much you know about the ins and outs of the Bill.
1199. **Ms Corbett:** Just what I have read and what I can glean from has been sent to me.
1200. **The Chairperson:** If you were deemed to be a reservoir manager, what is in the Bill that concerns you?
1201. **Ms Corbett:** These are Victorian structures. They are possibly coming to a point when they need to be looked at, and some may need maintenance work. Ballysaggart lough may be one of those; I would not have the technical know-how. None of them has ever flooded, as far as I know. This lough is only 1.5 metres at its deepest point. If it flooded, there is a very small risk. I do not know. I cannot say, but I do not see it as high risk.
1202. I just feel that the Bill is not covering the natural environment properly. You get people building on floodplains and doing all sorts of things in Northern Ireland, and you get people killing animals in ASSI areas, so what is to stop the 59 private owners from draining these reservoirs? What have you put in the Bill to stop people from draining them? What is in the Bill to encourage people to look after their reservoirs better? I cannot see anything in the Bill about protecting the biodiversity, and that is my concern.
1203. **The Chairperson:** That reservoir is deemed high risk, due to the 102 properties that are downstream. This comes back to the designation argument and debate on what is formally used to designate the risk. It is all about the population centre downstream and the potential loss of life. You could have the best-managed reservoir with the best-structured dam yet still be classed as high risk. Could you, as a group, afford it if —
1204. **Ms Corbett:** Absolutely not. There is no funding whatsoever. As I said before, the good people of Northern Ireland do not seem to appreciate their natural environment, so it is difficult even to get volunteers.
1205. **The Chairperson:** I want to put your mind at ease. Rivers Agency had a site visit with Denise yesterday. Is that right?
1206. **Ms Corbett:** Yes.
1207. **The Chairperson:** The Rivers Agency got back to say that it does not believe that the group will be the reservoir manager.
1208. **Ms Corbett:** I would be happy to be the manager if I were able to manage the lough. However, you are not talking about managing the lough; you are talking about —
1209. **The Chairperson:** You are managing the risk, which is a different thing.
1210. **Ms Corbett:** It is giving me no control of what people are doing to the reservoir.
1211. **Mr McMullan:** Is there not something in the Bill that says that, if you empty the lough, you are still responsible for the engineer's report and for filling it in?
1212. **The Chairperson:** Yes. I think it is the potential capacity and the capacity to hold and retain water.
1213. **Mr McMullan:** So, there is something like that in the Bill. If you empty the —
1214. **Ms Corbett:** I know, but the problem is that, when you empty a lough, you kill millions of creatures. Nature is very generous, but it would be difficult to fill a lough in again and expect it to be the same as it was. It would never be the same as it was. It would maybe take it 100 years to recover. I go back to the point that we have an obligation, through the European Parliament, to

- protect our natural environment, and we are not doing that. We are not properly protecting the environment in Northern Ireland in lots of ways, including through this. There is also the wild birds directive. There are all sorts of —
1215. **Mr McMullan:** Do you have the support of the RSPB?
1216. **Ms Corbett:** The RSPB is an educational resource; that is all it is. It would not come out, for instance, if birds were in danger of dying. It would not come out to help, and it does not give any funding.
1217. **Mr McMullan:** Nothing like that at all.
1218. **Ms Corbett:** No. In Northern Ireland, you will find that there is absolutely nobody. I wade into loughs and pull swans out to take them to the vets, where I spend a lot of money to get them fixed. The reality is that, in Northern Ireland, the resources do not exist.
1219. **Mr McMullan:** Are swans not protected birds?
1220. **Ms Corbett:** Indeed they are, but it makes no difference. I could ring the USPCA or whomever until I am blue in the face. In fact, I have done that.
1221. **Mr McMullan:** I thought that the USPCA was busy enough. People like you do a great job, but there is sometimes a lack of help.
1222. **Ms Corbett:** I do not get any help. Other than the fact that I was born a Rottweiler — a very tenacious creature — I would have been worn into the ground by now.
1223. **Mr McMullan:** I understand.
1224. **Ms Corbett:** None of those statutory or voluntary organisations provides support. When I teach children, I get organisations such as the RSPB to come and talk to them. I have to pay the Ulster Wildlife Trust £55 an hour to teach the children. What does that tell you?
1225. **Mr McMullan:** This is the Wildlife Trust?
1226. **Ms Corbett:** I am doing all this for nothing. Nobody ever gives me anything.
- I am doing it to try to get children in our society to value our biodiversity.
1227. **Mr McMullan:** What would happen if you stopped in the morning?
1228. **Ms Corbett:** If I stopped in the morning, there would be nobody in Dungannon to do what I am doing.
1229. **Mr McMullan:** That is an awful shame.
1230. **Ms Corbett:** I have a group of people, but they are all very elderly and are not —
1231. **Mr McMullan:** Are there no young ones at all?
1232. **Ms Corbett:** No.
1233. **The Chairperson:** Obviously, you went to the stakeholder event and heard the views of people who are most definitely reservoir managers and owners. What are your views on a grant aid scheme? Would that reassure you?
1234. **Ms Corbett:** No, because a grant aid scheme would not cover people's costs. That is my worry. If, for instance, I were a retired reservoir owner, on a £119-a-week pension, and this Bill were slapped on me, I might get about 50% of the cost returned to me. Where would I get the rest of the money from? I honestly do not think that that is any incentive at all. I am not speaking as an owner here. You witnessed people who were visibly emotional and upset, because they had inherited a reservoir but just did not have the money.
1235. I go back to the fact that we have never had a flood. As far as I know, none has flooded. The Victorians were fantastic engineers — much better than anybody today. The bridges and everything else that they built are still going. I am not saying that things will not flood or that government does not have a responsibility — naturally, they do. However, I do not think that the Bill covers the things that I can see happening, such as people in desperation draining their reservoirs to avoid having to pay engineers. It is an unknown quantity. People may own a body of water, but they do not

- necessarily know anything about the structure of the reservoir.
1236. **The Chairperson:** I ask this question respectfully, in the knowledge that you have not looked in detail at the Bill and nor were you consulted. So I understand that you will not be able to go into detail. The Rivers Agency's motive in bringing forward such a Bill was, in its words, to protect life and property. It reckons that, in the unlikely event that all the reservoirs were to breach at once, 66,000 households could be in jeopardy.
1237. **Ms Corbett:** I do not think that that is a fact; it is a projection. It is a possibility, but it is also a possibility that none of them will ever breach.
1238. **The Chairperson:** I know that it is a highly unlikely probability, but it may be the case that something needs to be done. Do you have any idea, or can you give us any indication, of something that can do the same job as the Bill, which is to prevent loss of life and damage to property, but that is not like the Bill? I know that that is a very technical question.
1239. **Ms Corbett:** I appreciate why there is a Bill, and I appreciate exactly what people are saying. However, I will go back to my point that if you are thinking about human life and are killing everything else under it, you are not going to have human life. Biodiversity is more important than any of us. We do not seem to realise that, but that is a fact. We would not have flooding, we would not have melting ice caps — we would not have any of that if it was not for human beings. I respect the fact that there has to be some control, but I think that it needs to be rethought because, as I said, when you drain a reservoir for whatever reasons — I suspect that a lot of people will do that to avoid cost — you are killing millions of creatures, and it could take maybe 100 years to re-establish that. We have little enough protection in Northern Ireland for our natural environment: all we have is 6%.
1240. **Mr Byrne:** I appreciate that you are very passionate about this issue. Are there any dams at either end of Ballysaggart lough? Is there a freshwater lake where water is maybe not being replenished, or is it dead water?
1241. **Ms Corbett:** There is water running into it from Eskragh lough, which is privately owned. I do not know whether it is a reservoir. Perhaps the Rivers Agency could tell you. Ballysaggart lough runs into Dungannon Park lake, which is owned by the council, so the council is bound to have some responsibility. This is just one of three lakes, and Dungannon council is bound to have some responsibility.
1242. **Mr Irwin:** In a situation such as this where there is no clear ownership, do you believe that the Government should take ownership of any maintenance?
1243. **Ms Corbett:** I would like the Government to take ownership of all the costs for all the reservoirs. Apart from anything else, they are part of our history and our heritage, and, to get away from biodiversity, they all deserve to be retained and maintained properly. However, if the Government are not going to do it, can you honestly say that private owners can do it?
1244. **Mr McMullan:** Nobody owns it.
1245. **Ms Corbett:** Not that I know of. I have searched, but there are several owners around it.
1246. **Mr McMullan:** Have you asked the council?
1247. **Ms Corbett:** Pardon?
1248. **Mr McMullan:** Have you asked the council?
1249. **Ms Corbett:** The council has no interest in it.
1250. **Mr McMullan:** It might not have any interest in it, but it must know.
1251. **Ms Corbett:** I have done proper searches on it, and the council would do only what I have done. There are several owners around it. One of the owners is

a farmer who owns part of the bed of the lough. However, as I said, there are several owners. I have not seen their deeds, but the deeds should tell you who owns what.

but we can send you the Committee report on its scrutiny of the Bill. Thank you.

1252. **Mr McMullan:** If you own the bed of the lough, do you own it to the top of the water?
1253. **Ms Corbett:** No, because nobody can. You can own fishing rights and water rights, but I am told that you cannot own a body of water. A solicitor told me that you can own only the bed of it. You can own the rights to fish and shoot, but you cannot own the actual body of water.
1254. **Mr McMullan:** Did we not discuss that with whoever owns the rivers for fishing?
1255. **The Chairperson:** I am not too sure. There are different responsibilities in Northern Ireland for loughs, rivers, inland fisheries and sea fisheries.
1256. **Mr McMullan:** Why do you not register it in your own name? That costs £50.
1257. **Ms Corbett:** That will not give me any —
1258. **Mr McMullan:** It will after 10 years, if nobody else claims it.
1259. **Ms Corbett:** Good thinking; I may look at doing that. *[Laughter.]*
1260. **The Chairperson:** There are no further questions.
1261. **Ms Corbett:** This Reservoirs Bill might catch me then.
1262. **The Chairperson:** Denise, thank you very much for your time. The session has been good and informative and covered an aspect of the Bill that we had not looked at. It was vital that you came to us today, and we appreciate it very much. We wish you all the best in your endeavours.
1263. **Ms Corbett:** Thank you very much. Do I get any feedback on whether you are going to make any changes?
1264. **The Chairperson:** Yes. We can keep you on our database. We have written to many people. I cannot promise that we will be able to give you all the minutiae,

1 April 2014

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 Robin Swann

Witnesses:

Ms Emmalene Edgar *Creggan Country Park*
 Mr Gerry Quinn

1265. **The Chairperson:** I welcome Gerry Quinn, the manager, and Emmalene Edgar, the administrator. You are very welcome to the Committee to talk about this important issue as part of our scrutiny of the Reservoirs Bill. I ask you to take no more than 10 minutes to address the Committee, and then we will go into questions, if that is OK. Gerry, are you starting off?
1266. **Mr Gerry Quinn (Creggan Country Park):** Yes, I will indeed. We are glad to be here. We are a company limited by guarantee with charitable status. We operate on a non-profit-taking basis. Our turnover is somewhere in the region of £200,000 to £250,000 per year. Over the long run, we break even. This year, we might spend our surplus and then not have a surplus next year. That is the way life is in the sector in which we operate.
1267. We took on three reservoirs from Derry City Council on a 99-year lease in 2002. Previously, we had occupied a reservoir on an understanding with Derry City Council and operated that as a trout fishery. The reservoirs were built in the 1840s as an unemployed assistance scheme. Documentation from the Water Service, when we were negotiating the whole plan, indicated that they were essentially sound, which we believe to be the case still.
1268. The council, I suppose, in theory, owns, as our landlord, the whole site. It is a 100-acre complex, with three bodies of water, one of which is partially drained. The dam breached in the early 1970s. We have a larger dam below it and a larger dam again below that, so they seem to have been built in a series of three, first for filtering out detritus from the water but also, I suppose, as a fail-safe so that you have one filling the other, filling the other.
1269. We have a Reservoirs Bill coming down the road at us, and we own three reservoirs on a 99-year lease, so we find ourselves managers of three high-risk reservoirs. If this Bill is brought in, as seems will be the case, I suppose, first, there is a wish to deliver conformity with the situation across the water. Secondly, you are faced with the concept of the precautionary principle, so if somebody raises a public safety issue, people might feel remiss that they did not take it seriously. That is not to say that, in the absence of a Reservoirs Bill, people do not, because we look after the reservoirs. We inspect them and do bits and pieces of ongoing maintenance, albeit on a low scale. When we took this site from Derry City Council, it was with the idea of providing recreation, which would create opportunities for training, employment and an income stream. We spend that income stream basically surviving.
1270. The Bill has implications for resources also. Although those who are writing up the Bill do so in one sphere, those who own reservoirs inhabit a completely different sphere, where they will possibly have to adapt to a new regime that will cost money. If it costs money, my role at Creggan Country Park will be to find that money. If the Bill were to be brought in

- tomorrow, we would not have the money. That is the reality.
1271. I read some of the presentations from Jim Haughey, Marcus Malley and others. People are talking about breaching dams to release the water so that they are no longer impoundments. We can artificially lower the level of our reservoirs. We do so already using a hydro scheme, so we can drop it by two metres. It would probably be impossible for us ever to get all the water down in all the impoundments so that they would be outside the remit of the Bill, so that is not an option anyway. The implications of that would be that we would not exist any more anyway, because without these bodies we would have no purpose. It would no longer be possible to provide the service that we provide, so it is fairly obvious that if we had to get rid of the reservoirs, that would do away with us as well. But that is for another day.
1272. **So, to go back to where we started, we own three high-risk reservoirs:** what to do? We contacted Derry City Council and asked it to consider discussing the implications of this with us; it has yet to respond. We contacted the Department for Regional Development (DRD), which owns a path on top of the lower dam, which might imply that it owns something of that dam. It suggested that its input might be negligible. Water Service owns a pumping station on the toe of the bottom dam. It has yet to respond about its view of its responsibilities, if any.
1273. We are stuck in the middle, so we are the responsible manager de facto. The council may have responsibilities. When we took the dams off it at the time, I told it that all we needed was the water and that if it wanted to keep the dams, that was OK. That was a non-flyer, obviously.
1274. You cannot bring in a Bill without resource implications for those it affects. We understand that the Bill is likely to come in in one form or fashion anyway. However, if you present us with a bill tomorrow for remedial works to one or two dams, we would not have the wherewithal to pay. In a bad year, we might not even have the wherewithal to engage a panel engineer. That is the world we live in, and that is the real world, and I am sure you all know that. We all live in the real world and have our own households, so we know that we have only so much money to spend and we cannot spend it twice.
1275. Having said all that, we do approach the managing and ownership of the reservoirs responsibly. We have kept them safe for years — I have been there for 22 years. We have spent more time keeping people out and the public safe from self-harm by, for example, swimming at night. We are not always successful, unfortunately. I suppose that the regime has taken precedence over the whole concept of what happens if a dam fails. We are at the dam every day, walk beside it every day and are familiar with it.
1276. The Water Service told us and a representative of the Department of Agriculture that the sites that it has left are in a good state and are intact. Reservoirs do not deteriorate quickly, and it expects them to remain in a good state. We also believe that to be the case, but we are not engineers.
1277. I suppose that that is the short version. I could go on and on, but you probably would not want to hear it.
1278. **The Chairperson:** Thank you very much, Gerry. I thank you for being succinct and to the point. We will glean more information through the questioning, which is just as effective. Again, thank you very much for that.
1279. **Mrs Dobson:** Thank you for your briefing. Gerry, in your submission you say that the upper reservoir was breached by a one-in-500-year flood in the early 1970s and that the damage was never repaired. Did that breach cause any risk to life or property?
1280. **Mr Quinn:** That was long before my time, but we do not believe that it did. From what we have been able to find out, the water flow was contained in the overall reservoir site. There is a perimeter

- wall around the whole thing, and one reservoir falls into another, which falls into another. The regime seems to be predicated on a one-in-200-year flood. It could be a one-in-500-year flood, but it is more likely to be a one-in-200-year flood.
1281. I would probably have to go back and look through old newspaper records. I was not up there in 1975, so I am not really sure. However, perhaps the best way of describing it was that it did not seem to make the news; there is nothing that I can find anyway.
1282. **Mrs Dobson:** OK. So, you are not aware of any short- or long-term damage —
1283. **Mr Quinn:** No.
1284. **Mrs Dobson:** — being caused to wildlife or natural habitats?
1285. **Mr Quinn:** Well, I suppose that if you had a dam breach, the impact on wildlife would be incalculable. There probably was not any great conservation lobby or many conservationists on site then. The other thing is that Creggan was a very different place in 1975. There were not a lot of statutory agencies in the area at that time.
1286. **Mrs Dobson:** Finally, you have outlined your thoughts about the Bill. Do you feel that the inspections and the duties that will be placed on landlords will prevent flooding from one-in-500-year or one-in-200-year breaches?
1287. **Mr Quinn:** I do not know. I suppose that an engineer looks at the best case scenario and then tries to compensate for extreme events that might happen. It could happen tomorrow. That said, it seems that the dams were built to last. They have been there since 1840. It also seems that the Water Service built systems to contain one-in-200-year floods, if not one-in-500-year floods.
1288. The top dam failed, but the Water Service did not use it at that time, and it may have failed because there had been no investment in or appraisal of it. I do not know. I am only conjecturing really. What I do know, from having been on site for 22 years and from having talked to representatives from Water Service, is that the top reservoir was essentially redundant for a very long time. The middle of the three reservoirs was used as a service reservoir and the bottom reservoir was used as an impoundment in case of overflow.
1289. I suppose that does not answer your question, but my best answer is that I really do not know.
1290. **Mrs Dobson:** Thank you.
1291. **The Chairperson:** You talked about one-in-200-year and one-in-500-year floods. Surely, when it comes to reservoirs, we are not talking about weather cycles or the probability of flooding over a period of time. There may be a lot of cases in which a pool of water overflows due to floodwater; that would pose a risk. However, it is more to do with the structure of the dam being breached.
1292. **Mr Quinn:** Yes, it is about the integrity of the dam.
1293. **The Chairperson:** That would not depend on weather cycles. What do you mean by a one-in-200-year flood?
1294. **Mr Quinn:** Basically, they dammed the valley in 1840s, built three dams across the valley and impounded the water. The top dam was breached.
1295. I cannot tell you what was there in 1975, but the system that is there now will cope with an inordinate amount of water, and much more than is prevalent. Therefore, they have done their calculations and their projections, and they have worked out the normal pattern and the extreme. We had an extreme event in 2003, and the whole thing coped. The whole of Derry city centre was flooded. Despite an inordinate amount of water landing on top of us, the middle reservoir rose only by about an inch, whereas the whole city was flooded. So, it copes. I do not know whether that was the one-in-200- or one-in-500-year flood or the lowest flood, but an inordinate amount of water fell on the catchment, and you would not even have noticed it.

1296. **The Chairperson:** Who produced that study?
1297. **Mr Quinn:** Which study?
1298. **The Chairperson:** The 200 —
1299. **Mr Quinn:** Water Service engineers.
1300. **The Chairperson:** So, they proposed what would happen to the reservoir if there was a flood condition.
1301. **Mr Quinn:** They designed the dams to take a one-in-200- or a one-in-500-year flood — I forget which now, to be honest. The design of the system is to allow the escape of enough water but also to hold back enough water so that it does not all go at once. The system is there to impound but to release gradually.
1302. **The Chairperson:** There has never been any report or work done on the surveying of the structure of the dam?
1303. **Mr Quinn:** There was work done in the 1980s and 1990s. The bottom dam was reinforced with steel piling and a concrete cap. So, the bottom one is the critical one. That is the end of the whole system. It was reinforced with steel piling and capped in concrete. You would imagine that it is quite robust.
1304. The middle one is an earth dam. We are on site all the time. We watch for evidence of water escaping, and that gives you an indication that there might be a leak, and a small leak could become a big failure. We have not had any evidence. We have had bits and pieces of wave damage to the inner face of the dam, which we have repaired, but they seem quite robust. They are not flimsy structures. They are built in clay and are then stone faced. Whoever did it did a good job, because it is hand-built stone. They were built to stay, and they do stay.
1305. **Mr McMullan:** You leased the dam from the Water Service. Is that correct?
1306. **Mr Quinn:** We lobbied Derry City Council in the late-1980s —
1307. **Mr McMullan:** Sorry, the council.
1308. **Mr Quinn:** It took it off Water Service and gave it back to us.
1309. **Mr McMullan:** Was any paperwork given to you on the state of the reservoirs?
1310. **Mr Quinn:** Not then, no. There was not what you might call a handover. Water Service, at that time, just walked away. It was working there one day, and the next day it was not.
1311. **Mr McMullan:** When you say it walked away, do you lease those reservoirs off the council?
1312. **Mr Quinn:** We lease them off the council now.
1313. **Mr McMullan:** Was there a contract drawn up?
1314. **Mr Quinn:** There is a lease.
1315. **Mr McMullan:** Does it tell you the state of the reservoirs or who is responsible for them?
1316. **Mr Quinn:** Essentially, we are responsible, as the tenant. So, we look after the place.
1317. **Mr McMullan:** Are you responsible for the complete thing?
1318. **Mr Quinn:** We are left with the whole shebang at the minute, except for the fact that, like a tenant in a house, if there were a major structural repair, you would go back to your landlord. So, we look after day-to-day maintenance. If the worst case scenario happened and there was an indication of a likely failure or a major problem, I suppose that we would go back to the council, because it has a whole city engineers' department with people who have a competency that we do not. Basically, I am just a layperson.
1319. **Mr McMullan:** Yes, but what I am asking you, Gerry, is this: did you, at any time, see a report on the situation in the reservoirs at the time of the lease?
1320. **Mr Quinn:** No. At the time of the lease, we took on the site as seen. There has been some work done since, and, out of that, we were advised to keep an eye out for an egression of water from the reservoirs.

1321. **Mr McMullan:** Who did the work?
1322. **Mr Quinn:** The council did some work. We had a concern when we went in to develop the reservoirs for public access and recreation that there was no mechanism to lower the water level. The council engaged with Water Service on our behalf, and it came back and did some work. We now have a facility that was not there before so that the water can be reduced.
1323. **Mr McMullan:** Can you empty the reservoirs?
1324. **Mr Quinn:** Both the reservoirs have been pretty much emptied. It was a long task. You can never get them fully dry, but we have them pretty much below a level where it would be a concern to anybody in DARD or Rivers Agency. Effectively, we can empty them, but it is not easily done. You can take them down so far and then you have to bring in pumps and drain them. Like anything else, if you spend enough money, it can be done.
1325. **Mr McMullan:** I find it strange that you were told nothing.
1326. **Mr Quinn:** I suppose, in fairness, it never came up. Perhaps it would have if we had done our own due diligence. The whole idea of Derry City Council acquiring the reservoirs was our idea. It acquired them on our behalf. I suppose that we got what we asked for. We take our responsibilities seriously. If we were a council, with all those budgets and engineers, it would be a lot easier, but we are not.
1327. **Mr McMullan:** Have you inquired about the cost of the maintenance?
1328. **Mr Quinn:** There is no indication that there would need to be remedial works. I read the report about Camlough, and we do not have any reason to believe that anything like that is sitting there. We do the maintenance work ourselves. It might take a bit longer than it would if the council were to do it because of resources, personnel and time, but we generally get round to everything. However, in a small organisation, there is always something that needs done.
- There is a list of things to be done. Having said all that, I do not believe that the dams in Creggan are in the situation that the dam in Camlough appears to be, although I have never been to the dam in Camlough, so I do not know.
1329. **Mr McMullan:** Thank you.
1330. **The Chairperson:** You talked about maintenance. What sort of maintenance do you mean? Is it ground works?
1331. **Mr Quinn:** Essentially, it is ground works. We have a 100-acre site, and there are parts that we rarely visit because they are outlying. We do not do a lot with those sites, but people can walk their dogs, and we let those sites grow naturally, so it is unimproved grassland. We have high-amenity areas that are maintained in and around buildings where activities take place and where there is more public access. As we are there all the time, we keep them tidy. We have been out cutting grass on one site in the past few weeks. Someone mentioned that you might only have to cut the grass. The bottom dam has an angle of about 60 degrees, and it is a seriously interesting job cutting the grass on it. That is the reality. That is life. If you are going out with a big Scag mower to cut that, you need to know what you are doing. Cutting grass at the face of a dam is a good day's work.
1332. **The Chairperson:** But there is no actual maintenance work on the structure of the dam itself.
1333. **Mr Quinn:** First, to go near a dam, you would need an engineer's report. Even I know that you do not go near dams.
1334. **The Chairperson:** Or engineers.
[Laughter.]
1335. **Mr Quinn:** I have relatives and friends who are engineers, but engineers are expensive. My experience is that there is sometimes over-engineering, but that is their job and they cannot afford a dam to fail. They are always going to err on the side of caution, which is important. We have done bits and pieces. As I mentioned earlier, we noticed some years ago that there was a bit of wear

- and tear on the inner face of the middle dam. Some of the stonework had become uncovered and there was a bit of wash. We reinforced that and capped the whole thing with concrete, and it held. We did not get an engineer or a report. Back then, in the 1990s, we did not even have a lease. We were there and we fixed it. If we are there and we can fix it, we do. If it is something bigger —
1336. **The Chairperson:** So you actually went ahead with that work, even though you were not responsible for the dam.
1337. **Mr Quinn:** Well, we were there. If you live in a house that someone else owns and there is something wrong, you are probably better fixing it if you can, and that is what we did.
1338. **The Chairperson:** You talked about concrete. Did you concrete the bit that was suspect or did you concrete the whole thing?
1339. **Mr Quinn:** What we did was belt and braces. It is still there and has been there for maybe 15 years now. We did not concrete the whole dam, of course. We are talking about an area that is maybe about the size of a tabletop.
1340. **Mr Byrne:** I appreciate the presentation by Gerry and his colleague. It is probably the most interesting presentation we have had so far in relation to the voluntary and community sector. Gerry, what happened to the upper reservoir in the 1970s to cause a breach?
1341. **Mr Quinn:** As far as I know, it was just that an inordinate amount of rain came down, Joe. As I said, there is not a lot of documentation about it. You will find a reference if you dig very hard among Water Service records, but I have not read any reports about why it failed. There may be reports, but I have never seen them or been made aware of them. I spoke to a guy who fished there and lived close by, and he said there was a wall of water that came down, but it stayed within the overall reservoir site and did not affect any property downstream, so I assume that the structure there held the excess. The structures below contained what came out of that. It was quite small compared with others.
1342. **Mr Byrne:** It seems to me that you are, essentially, a voluntary and community organisation company limited by guarantee, providing for the recreation and sporting needs of Derry city. Are you caught in a catch-22 situation? You are not really the outright owners. You have a tenancy agreement and there is a fairly loose arrangement as regards the obligations that you have.
1343. **Mr Quinn:** Well, I suppose. We have a written lease, so, if the council wanted, it could walk away and just say, "There is the lease. Sort it out." There was a time when property was at a premium and there was a building boom in the country, and the council got a bus and brought all the councillors up to see its land bank in Creggan. You cannot have your cake and eat it. If they thought that was their land bank, they might come back and have a wee look at it. What I have tried to do with the council is ask John Kelpie to talk to me about it; not to say, "Give me all your money and fix these dams", but to talk, because we believe that a partnership arrangement might work best. We have an interest. They are not disinterested — that might be the best way of describing it. At the moment, I think their position is that they are being cautious to see just how far it is going to take them.
1344. **Mr Byrne:** When did you last have an engineering inspection done on the dams?
1345. **Mr Quinn:** We have not had an inspection done on the dams ourselves.
1346. **Mr Byrne:** Has the council carried out any inspections?
1347. **Mr Quinn:** The council did have a guy up some time ago. We have done quite a bit of engineering work up there with the council. Between us, we did a hydro scheme, so a good bit of engineering work has been done up there. We have spent millions up there over the last couple of years, investing heavily in infrastructure. With hindsight, we might

- have spent a little bit of that looking at the dams, if they needed investment, but there was never any indication that investment was necessary. The water service told DARD quite recently — one of the officials was on the phone — that it believes that the reservoirs are in good order. It left them in good nick and expects them to still be like that. We would not really expect it to walk away and hand them over to the council if they were not like that.
1348. **Mr Byrne:** Lastly, does NI Water take any water from your reservoirs at the moment?
1349. **Mr Quinn:** It used to. It was a service reservoir until 1992, when it went offline. Apparently, the water's iron content exceeds an EC directive. It is safe to drink but it exceeds the directive. It came back in 1993-94, when there was a problem with its Carnmoney water treatment plant, and used it as an emergency source of water. NI Water maintains the option, I suppose, to come back if it needs to, but both it and Rivers Agency, at the time we occupied the site, said that they really had no further interest in the reservoir sites. The Rivers Agency does not need it for its flood management systems. So, I suppose it is a moot point, if it does not need it for flood management purposes.
1350. **Mr Byrne:** That is fine. Chairman, I think Creggan park might be a good location and operation for the Committee to visit, because we would see at first hand the dilemma that some of the voluntary and community organisations are left with, given the operation's extent and proximity to a big urban population.
1351. **Mr Buchanan:** Who is the manager of the reservoir? Is it the Creggan Community Association?
1352. **Mr Quinn:** It is us. We are on site every day, so, in effect, we are the manager.
1353. **Mr Buchanan:** If the new Bill came in, you would still be the manager; it would not fall back on the likes of a club, for instance, that is using it?
1354. **Mr Quinn:** No. Essentially, it is us.
1355. **Mr McMullan:** I was going to ask the same thing. It is signed up in your name, Creggan Country Park Enterprises. The council's name is not on it anywhere.
1356. **Mr Quinn:** The council is on the lease. The council leases it to us on a 99-year lease.
1357. **Mr McMullan:** It has the whole shooting match leased out to you in your name. Have you read the lease?
1358. **Mr Quinn:** Of course.
1359. **Mr McMullan:** You are responsible for everything?
1360. **Mr Quinn:** Essentially, we are.
1361. **Mr McMullan:** Does it say anywhere in the lease that the council is responsible for anything?
1362. **Mr Quinn:** I do not think that I saw that part, no.
1363. **Mr McMullan:** OK, that is grand.
1364. **Mr Quinn:** That said, it took the site off the Water Service at our behest. We lobbied for that. Water Service could not give it to us, but it gave it to the council, which let us in to use it.
1365. **Mr McMullan:** You used it as —
1366. **Mr Quinn:** We used it as a fishery.
1367. **Mr McMullan:** When the Water Service had it?
1368. **Mr Quinn:** No. The lease was not written until 2002, but we have been there since 1992.
1369. **Mr McMullan:** The council had it up until 2002?
1370. **Mr Quinn:** Yes.
1371. **Mr McMullan:** And it was maintaining it up until then.
1372. **Mr Quinn:** No. It never spent a penny on it.
1373. **Mr McMullan:** But it was in its name?
1374. **Mr Quinn:** Yes.
1375. **Mr McMullan:** Do you have it insured now?

1376. **Mr Quinn:** Yes.
1377. **Mr McMullan:** So, you are, in fact, the total owner of it.
1378. **Mr Quinn:** We insure it and do everything else. We have fenced three bodies of water as well for public safety; we have spent a lot of time maintaining fences. In the summer, because it is an urban area, we have a lot of young people out at night drinking, cutting fences and going in to swim. That has really been our preoccupation: trying to keep people from swimming. On 12 July 2012, a young man drowned. That was probably the worst night of my life. I was there all night waiting for his body to be recovered. Again, that was our responsibility; it was our job. You try to stop them, but you cannot always do that.
1379. **Mr McMullan:** What is below it? I am trying to picture it.
1380. **Mr Quinn:** There is a big field; it is called Tinney's field.
1381. **Mr McMullan:** And what is below that?
1382. **Mr Quinn:** There is a big field below it. I think it belongs to an MP or a Minister; I am not sure which. It is a big open field. The stream that comes out of the reservoir system runs down through the middle of that field in a culvert. It used to be an open stream. I imagine that that would stop anybody developing there. Below that, you have the Glen estate and housing the whole way down towards the Foyle.
1383. **Mr McMullan:** Does that pipe —
1384. **Mr Quinn:** That pipe discharges at Pennyburn. It was probably piped in the 1970s or 1980s. I can remember it as an open stream, but Emmalene would not remember it.
1385. **Mr McMullan:** That is interesting. Thank you very much.
1386. **Mr McAleer:** Thank you. I am taking a wee look at the draft legislation. Clause 6(5) states:
- "Any person who manages or operates the reservoir or any part of it, but is not the owner of the reservoir (or the part), is the reservoir manager of the reservoir".*
1387. I presume that that ties you into being the manager.
1388. **Mr Quinn:** We will be the manager, yes.
1389. **Mr McAleer:** Presumably, that is something that we as a Committee can look at to see if it is appropriate to get that amended.
1390. **The Chairperson:** Yes, we can do that. We can do anything.
1391. **Mr Quinn:** I am not saying that we shirk our responsibilities in managing reservoirs; we do not. I have been managing a reservoir, or reservoirs, since 1992. The regime that we implement is probably not one that Rivers Agency would implement, but we do our best within the resources that are available to us. We do what is reasonable. Let me repeat that the dams have been there since the 1840s. Obviously, they have been improved in that time. We do not expect that anyone will come along with a big bill, telling us to do this or that, but we do not know. So far, the dams seem all right. I suppose that, since it is a matter of public safety, and there is property — houses and even a school — downstream, according to the precautionary principle, we must look at the worst-case scenario rather than the best. So, we are caught by this but we cannot do much about it.
1392. **Mr McAleer:** I am just thinking out loud. I do not know what is possible or desirable. You manage and operate the facility and provide all those opportunities for the people of Derry —
1393. **Mr Quinn:** And Tyrone.
1394. **Mr McAleer:** And Tyrone, sorry, and Donegal as well. Certainly, if the legislation made it clear that, in no circumstances would the owner be considered the manager in so far as meeting its requirements, that would take you out of the equation, would it not?

1395. **Mr Quinn:** Let us project this situation forward 90 years, to the end of the lease. Then, the council, or rather the super-council, would be back in the hot seat. I believe that there is a role here for Derry City Council. I think that it may be afraid that it is getting roped into something that it had not seen coming.
1396. **Mr McAleer:** Derry City Council owns it, and you are providing the facilities. You are maximising the use of it.
1397. **Mr Quinn:** I suppose that, in a sense, we have the benefit of it. However, it is a matter of teasing it out with the council, and maybe revisiting the lease as well.
1398. **Mr McAleer:** In fairness, if it were not for you, the reservoirs would be a huge burden and liability for the council. You have taken them off the council's hands and are making use of them.
1399. **Mr Quinn:** We took on the liability and we insure them. We bring people on site. We have people there at night, trying to stop people going into it. We fenced it; when Water Service owned it, it was not fenced. Our regime of management is different to that which Water Service operated. Water Service did not have people there at night watching, or people there during the day doing anything except providing water, or provide fencing. We have done things differently. Without the backup of engineers, we have probably managed the reservoirs in a way that is different to the way the council or the Rivers Agency would have.
1400. **Mr Irwin:** If, for instance, an inspection were made by engineers and there was a need to spend x thousands of pounds — £20,000, £30,000 or £40,000 — what position would that leave you in? Would you be able to finance it?
1401. **Mr Quinn:** We would not be able to find it tomorrow. The question would be: where would we go for it? We could take out a loan but we would have to pay it back.
1402. Basically, we have two sources of income. About 50% of our income at the moment comes from DSD under the neighbourhood renewal budget. The other 50% is earned. We rent an office to Groundwork Northern Ireland. Most of the money comes from providing activities for the public — fishing, canoeing, paintballing and raft building — for which people pay us. That 50% is the money that we use to pay for staff, insurance, heating, lighting, maintenance, replacement of equipment and stuff like that. That is the money that we live on. If a bill comes in tomorrow for £10,000 or £20,000, we might pay it but the lights might go off, the oil would run out or something like that. We have finite resources, so a big bill, arriving unexpectedly, could close us down.
1403. **Mr Irwin:** Your reservoirs are designated as high-risk.
1404. **Mr Quinn:** Partly.
1405. **Mr Irwin:** Do you see them that way?
1406. **Mr Quinn:** If you have been working there for 22 years and they are part of your life almost, you do not and nor, probably, do the people who live around them. I am quite sure that people who live downstream from them would be alarmed if somebody told them the reservoirs are high-risk. Nobody in Derry, or even closer to them on the likes of Glen Road, would think that they were at high risk. As some people have said, if you were trying to sell a house, would you tell everybody that you lived in a high-risk area?
1407. I suppose that the general public probably do not yet know a lot about the Reservoirs Bill. They probably do not know that there are reservoirs of high, medium or low risk, or even think about it.
1408. **Mr Irwin:** Something has just come to mind: do you think that engineers should have looked at reservoirs before designation? To say that something is “high risk” puts the thought in your mind that that reservoir is a risk when it may not be.
1409. **Mr Quinn:** It comes down to what Jim Haughey said to the Committee about the difference between risk and

- hazard. The hazard is that a wall of water may come down, but the risk is what might make that happen. We do a risk assessment every day before anybody goes on the water in canoes. You do that to mitigate the risk. That is appropriate to all reservoirs. For example, in the 1980s the Water Service put steel piling with a concrete cap in the bottom reservoir, because it probably thought that it would last maybe another 100 years.
1410. As I said, we do not underestimate our responsibility in this. The fact that we are familiar with the reservoirs — I have been there 22 years; Emmalene not quite so long — gives us a degree of confidence in their integrity. I am stoic enough to accept that, if legislation is mooted and comes to the Agriculture and Rural Development Committee, you cannot just throw it out and say, “We are not doing that.” You have to consider the risk. However, every risk can be managed. You can mitigate risk. It may cost a bit of money or you may have to change how you do things. Sometimes, you can mitigate risk without spending money; it is about being practical and sensible.
1411. **The Chairperson:** I have a question that is, again, around the operating requirements that William asked you about — the operating costs. What would happen if this legislation were passed and you get in a supervising engineer, which will cost you between £1,000 and £2,000 a year, and that engineer reckons that you need an inspecting engineer, which puts about £2,000 on top of that? A report is then produced stating that you need to spend around £4,000 a year on a maintenance regime, and you will have to find £100,000 a year in capital spend. What would your response be to that?
1412. **Mr Quinn:** I might go up the nearest hill and shout for a while. I will put it like this: we got a letter from the Revenue at Christmas telling us that we owed £23,000 in VAT. I looked at it and rang the chairman to say that the VAT man said we owed him £23,000. He replied, “Jeepers”. I said that it did not really matter and he asked why. I said that we did not have £23,000, so it was a moot point. It was a way to catch our attention and get us to put in a VAT return on time. The point is that were we to get a bill for £100,000 tomorrow, it would not be paid. So, we would be going round Departments and statutory agencies saying that we had a bill for £100,000 and asking them who will help us to pay it.
1413. **The Chairperson:** I have not plucked those figures out of the air —
1414. **Mr Quinn:** Of course not.
1415. **The Chairperson:** We asked NI Water to produce a report for us. It did that for six reservoirs, took four weeks to complete, and those are the figures that NI Water cited as its spending, and the capital works were for 2011-12. That gives you some indication of what NI Water has —
1416. **Mr Quinn:** Did you get a breakdown of what that was spent on? Was it for remedial works or maintenance works?
1417. **The Chairperson:** Just capital works, basically. Maintenance works were separate and averaged £4,000 a year, but in some cases the cost is £8,000 a year. I am not just bandying figures about.
1418. **Mr Quinn:** Our income could be £250,000 this year and our expenditure could be somewhere in and around that. Our expenditure could be a bit less or a bit more, and next year it could go the other way, but if you add a bill for £100,000, it will not be covered. It is as simple as that. If somebody comes up with a bill, somebody will have to pay it, but that might not necessarily be Creggan Country Park Enterprises. If the bill is for something that is in the public interest and it is presented to us and we cannot pay it, somebody is going to have to pay it.
1419. **The Chairperson:** As the reservoir manager, the onus and responsibility could well lie with you.
1420. **Mr Quinn:** It is not Gerry Quinn who is the reservoir manager; the reservoir manager is the corporate body: Creggan

- Country Park Enterprises. I suppose that if they heap it on Creggan Country Park Enterprises, the company might be forced to wind up and hand the whole thing back to the council and say, “You fix that now.” In the worst case scenario, that is probably what would happen.
1421. **The Chairperson:** Obviously, there is classification risk. Even if you spend £100,000 on investment in your compound, you will still be deemed as high-risk because of the population centre that is below you, and no other reason. What are your views on that? You have spent so much money, or you could spend so much money, to bring it up to a standard and yet you have no repercussion or any less of a burden on you other than the fact that you know you have invested the money and can boast that you have the safest or costliest dam in Northern Ireland. What is your view on that?
1422. **Mr Quinn:** If somebody devises a regime that must be applied somewhere, it is not always appropriate to turn around and say to the person that you hand it to, “You must adhere to those regulations from now on”, and say that they have to pay for everything. It may sound a wee bit strange, but the whole administration, licensing and registration of this will be a resource burden on people anyway.
1423. I am not convinced that the public or ourselves should have to pay for somebody else’s system, even if it is for the public safety. If somebody devises a system, it cannot always be self-financing by passing the buck. If there is a public safety issue, all of the houses were built long after the reservoirs were built. In 1840, the whole place would have been agricultural land, but people, including the councils, have allowed things to happen for decades. Planners have allowed people to build on a floodplain. You might have to look at planning policy and all sorts of stuff if you are talking about high risk. Going back to who pays for it, we cannot pay for it at this point.
1424. **The Chairperson:** What are your thoughts on a grant-aid scheme? What percentage should that be set at? Would it make a difference to you if somebody said to you, “We will give you 50% or 80% of the £100,000”?
1425. **Mr Quinn:** It would not really matter. If the bill is £100,000, and someone says, “We will give you half”, we would not have the other half. If we had spent that half this year or last year, we would not have been able to pay for the insurance, the oil, the electricity and the rest of our bills. It is simple as that.
1426. **The Chairperson:** Have you looked at the mechanics of the Bill and the logistics around the disputes appeals mechanism?
1427. **Mr Quinn:** No. To be honest, I have looked at the main thrust of the Bill, the purpose of it and its implications. You can get lost in the detail, and I do not really want to get into the detail of dispute mechanisms, resolutions or anything else. We recognise that people believe that they need a Bill. We do not think that the implications of that have been thought through, and that possibly may not happen until every reservoir is affected. In our case, we own three reservoirs that might come under the Bill’s purview. Our situation has obviously not been factored in. As the owner of most dams, the water service has obviously had the most input, and probably did so before this became public. It has deep pockets, and sometimes we do not have a pocket. It is as simple as that.
1428. **The Chairperson:** Do you have a flood plan?
1429. **Mr Quinn:** The term “flood plan” has never come across my desk. No; that is not true, of course — I have heard of flood plans, but we do not have a flood plan for up there. I know where the water comes from, where it is impounded and where it goes naturally, so I know the floodplain, which follows the Glen Road. It is a glen, because it was all a natural valley at one time.

1430. **The Chairperson:** That sounds like an inundation map, on which you would see where the flood would go.
1431. **Mr Quinn:** Yes, you would see where it has to go.
1432. **The Chairperson:** Would you have —
1433. **Mr Quinn:** No.
1434. **The Chairperson:** — standard operating procedures in the event of a flood? Do you have an alarm going off, people going to a focal point or phoning 999? Do you have a standard operating procedure for your staff?
1435. **Mr Quinn:** No. As I said, we had a flood in 2003, and the water in the middle reservoir rose by a couple of inches. It flooded the whole of Derry city, and the town came to a standstill. Businesses had cellars flooded, and downstairs bars were —
1436. **The Chairperson:** I am sorry; when was that?
1437. **Mr Quinn:** It was in 2003. We believe that the system was built to accommodate an inordinate amount of rain falling in a very short period. We have never even considered it; it was never something that came to mind. I actually do not know anybody that would have one. Perhaps we should, but I have never heard of it before, and we have been there for 22 years. We try to manage the place responsibly and so forth. We are on a hill, and if you ever came up, you would see why the people in the building are never going to be affected by a flood. The reservoir system can probably cope; that is why it was built the way that it was. I suppose that engineers in those days knew how to build a dam too.
1438. **Mr Irwin:** You said that you have three reservoirs. Under the proposed legislation, it looks as though you will have to get three separate engineers' reports.
1439. **Mr Quinn:** I would like to think that one would do the whole lot.
1440. **Mr Irwin:** I am not so sure, if there are three reservoirs.
1441. **Mr Quinn:** I am not quite sure either. The person from DARD who I was talking to suggested that even the dam that is breached might still come under the purview of the Bill, because it might have the potential to contain water. The breach is at least the height of the wall in this room. It is quite high, and a natural stream flows down through it. If you did not know that it was a breach in a dam, you would not know it was a dam, if you know what I mean.
1442. **Mr McMullan:** My advice to you, Gerry, is to go away and look at the lease again. Under the lease, and even if you step out of the lease, you can still be responsible. However, I can be corrected on that.
1443. **Mr Quinn:** I suppose that may matter for solicitors, Oliver.
1444. Where the lease is concerned —
1445. **Mr McMullan:** Yes, but if the Bill comes in, it could leave you in an awful position. I have not said this to anybody else yet, so I will say that you are doing a really good job, but, unfortunately, you are caught up in the issues in this Bill. I think that there is something in this Bill that means that, if you walk away from the lease, you can still be held responsible as the reservoir manager. I think that that should be pointed out to you. I would certainly look at this again, because, although I am reluctant to say it, councils are lucky to get people to lease these reservoirs from them. The Chair alluded to some of the costings, and he is quite right. Some could be low, and some could be higher — we have a ballpark figure, depending on how bad they are. In reality, I would go away today and check all that out, or get your people in Creggan Enterprises to check it all out, set up a meeting with the council and ask what would happen if you walked away from the lease.
1446. **The Chairperson:** On that point, I propose that the Committee writes to Derry City Council to ask it to ascertain what it sees as its responsibilities for

- the lease under the Reservoirs Bill and see what comes back. We could send that response to you.
1447. **Mr Quinn:** From the limited discussions that I have had with councils, some officers are assuming that they are going to have to spend money one way or the other. However, I would prefer to have the conversation with them first, although they have not responded to the communication yet. As with everything with resource implications, they may also be doing their homework before it comes back just to see what the implications are.
1448. **Mr McMullan:** We have had some councils here that did not know what the costs to each council would be. One thing that councils can do is get together and share the costs. That is the whole idea of RPA. They admitted that they were talking about that before they came into the meeting. Councils can get together and hire the two or three types of engineers that, according to the Bill, are needed. One engineer cannot do the other man's job; it is unbelievable. I would certainly back writing to the council. From my point of view, I would hate to see a good group such as yours get into trouble, Gerry. I am not saying that you will, but you would be as well to cover your back.
1449. **Mr Quinn:** The worst-case scenario is that we are forced to wind up and the thing reverts to council, which then becomes responsible.
1450. **Mr McMullan:** Make sure that it does; that is what I am saying to you. I understand what you are saying, but watch your back on this, because groups such as yours that do that type of work are one in a million. You are doing work that would cost a private enterprise or councils a lot more money to implement.
1451. **Mr Quinn:** We have a wee bit of faith that there might be some good will with councils, even though I suppose nobody wants to spend money.
1452. **Mr McMullan:** I was on a council for 22 years, so believe you me —
1453. **Mr Quinn:** I have been working with Derry City Council since 1987, so I know the good and the bad too. However, we have a bit of faith in the new man.
1454. **The Chairperson:** Councils have to weigh up the public amenity and justify every pound that is spent, which is the ratepayer's pound, on whatever they spend it on. We will write to the council and ascertain an answer. Under our scrutiny of the Bill, we have the right to write to it and ask what the reservoir means to it, how the lease is and how that qualifies and brings it into it. If nothing else, it will force the council to look at and consider the implications for the council.
1455. **Mr Quinn:** The council took back a path along the middle dam, so it owns that now. Apart from leasing out the whole site to us on a 99-year lease, it also owns a path that is a public right of way on the middle dam.
1456. **The Chairperson:** Is that on top of the dam structure?
1457. **Mr Quinn:** It is on top of the dam structure. I imagine that it might have implications for the council.
1458. **Mr McMullan:** It could close it up in the morning; it is only a right of way.
1459. **Mr Quinn:** The council adopted it only around four years ago.
1460. **The Chairperson:** I do not want to get into a debate on rights of way.
1461. **Mr Quinn:** DRD owns another path on top of the bottom dam.
1462. **The Chairperson:** I think that we should write to DRD and to NI Water to ask what their interests are in the reservoirs and how they see the Reservoirs Bill applying to them on those specific courses. OK? There are no further questions, Gerry and Emmalene. Thank you for your time. It has been very useful.
1463. **Mr Quinn:** It has been very useful for us too. If you come up, I will make sure that you have a cup of tea.
1464. **The Chairperson:** OK, you have sold us.

- public. That allowed us then to confirm the policy, which was subsequently approved by the Executive.
1471. I am putting it in that context because we, as officials, deliver policy. The policy position is very important in this. I want to draw your attention to two elements of it. The first is that DARD's Rivers Agency would act as the reservoir authority. The position that we have is one step removed from the manager. Our role is to be the reservoir authority to enforce the regulations to require people to do certain actions. So, that defines what we do. The second thing that was confirmed in the policy was who is actually responsible. It states that reservoir managers would be responsible for reservoir safety. That was the second policy position that was confirmed and approved by the Executive subject to public consultation and subsequently approved by the Executive again.
1472. Those two policies — first, that we would be the reservoir authority and, secondly, that the person responsible for reservoir safety is the reservoir manager — have driven the work that we were enabled to undertake in developing the Bill. That does not mean that we are completely oblivious to the condition of reservoirs out there. The team and I have a very good understanding of the condition of reservoirs, and we have got an even better understanding of that through this process, particularly from dealing with some of the private individuals.
1473. We have been quite guarded in our language, because we have been trying to make sure that we get the appropriate Bill without causing panic out there about the condition of particular reservoirs. We have talked about being a little bit concerned and having "anecdotal evidence", which is a term that we use in the policy document. Anecdotal evidence indicates that reservoirs may be in bad condition, but we have more than anecdotal evidence of that. However, we need to be careful, because we are in public view. We need to be careful that we do not cause complete panic or concern about those reservoirs. Hopefully, that gives you the context of why it is difficult for us to produce a single document that is entitled, "Audit of Reservoirs".
1474. **The Chairperson:** I understand.
1475. **Mr Byrne:** I welcome the presentation, David, and the fact that you are pointing out that there are two policy issues: the reservoirs authority, which you are as the Rivers Agency, and the distinction between that and the managers/ owners of reservoirs. Given that we are embarking on something that is quite radical and given that there is quite a lot of uncertainty among the third sector and the private owners, could it be that that was overlooked in relation to doing a full-scale audit? If it was overlooked, can it be revisited? For example, £200,000 would probably cover the cost of a comprehensive audit, and maybe DARD, as the responsible Department, could give that serious consideration?
1476. **Mr Porter:** It absolutely was not overlooked; we considered it. As I said, we know a lot about the condition of many, many reservoirs. Our knowledge is not exhaustive, but we know the condition of many, many of them. It is interesting that you say £200,000, because we have had discussions about how much an audit would cost and what we can do, as a Department, to help the process move on.
1477. I still have a difficulty with removing or moving the fundamental responsibility for reservoir safety from the manager to the Department. If we stepped in and carried out an audit, it would change that role. However, that is not to say that it is impossible to have a first inspection carried out that is in some way assisted. That may well be something that we can explore a bit more.
1478. I do not want to jump down your list too far, Mr Chairman, but, in relation to grant aid, there may well be something that we need to think about. Our thinking on the grant aid has always been about the works. Maybe we are too focused on the works, and maybe

- there is something that we need to explore with the Committee and possibly take to the Minister and say, “Is there something that we can do to assist reservoir managers with the early stages of this Bill?” That may be a better way of getting an audit of the structures because it answers the questions that we need answered without removing responsibility from the individuals and giving it to the Department. So, it keeps the responsibility clear. That is something that I am happy enough to explore.
1479. **Mr Byrne:** I can see the get-out clause that you are looking for. However, given that this is being visited purely on the private owners and the third sector, and given that it has come as quite a shock to them, surely it would make sense to have a single benchmark audit report done by the Department to make sure that everybody is on the same page and has a clear understanding of their roles and responsibilities subsequent to the initial report.
1480. **Mr Porter:** Again, I have difficulty accepting that this just affects private sector owners. I accept that they feel that the Bill disproportionately impacts upon them, but there are many public sector reservoirs that are not up to standard. Camlough reservoir is the obvious example that we have talked about at length. Northern Ireland Water talked about it, and Newry and Mourne District Council talked about it. That is not a private reservoir, but it needs £2.5 million spent on it to bring it up to standard. So, I do not accept that only private owners are affected, but I accept that they feel that the impact may be disproportionate.
1481. I agree that it would be good to get that wider view or understanding. I am happy to explore how we can do that and to take that to the Minister if we can agree some sort of proposal that could move this forward. I will not, however, change the responsibility of reservoir managers for reservoir safety. That is what the Executive agreed, what was subject to public consultation and what I have been told to do. I cannot change that fundamental policy; we are past the post on that one. However, I am open to exploring how we can assist reservoir owners, particularly the private and third sector owners, to understand the condition of their structures.
1482. I told you that I know quite a lot about the condition of reservoirs. There are some cases where, if people would just get an engineer to talk to them, I know that they would get some comfort. There are people who are concerned and they do not need to be concerned. If, instead of objecting to this, they would get half a day with an engineer, I know that they would get comfort as opposed to being alarmed. There are some people for whom there will be bad news, but there are others who are annoyed about this and do not need to be. If they got professional advice, it would help them. I cannot stress that enough.
1483. **Mr Byrne:** That is fine. I want to make one wee comment about the Camlough reservoir. Am I right in saying that it was owned by trustees, none of whom now seem to exist? Newry and Mourne District Council is almost the managing authority rather than the owners.
1484. **Mr Porter:** You are absolutely correct that Newry and Mourne District Council is not the owner of the bed and soil of that reservoir. The owners of the reservoir or the dam structure were brought in by legislation, and you are correct that there was a water board or a board of trustees, all of whom are now deceased. I do not see that Newry and Mourne District Council has stepped in, in their absence. The council has water rights from that structure and uses water from it to control the water levels on Newry canal. Northern Ireland Water also extracts water from that reservoir. So, irrespective of the problem of the deceased trustees, Northern Ireland Water and Newry and Mourne District Council are reservoir managers because of their activities on that structure. That has formed part of the discussions that we have had with them.
1485. **The Chairperson:** There seems to be a fundamental question on this issue. The

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

1486. **Mr Porter:** Let us consider a structure that is in poor condition. We are the employing authority to the engineer under a contract, and the report then belongs to us. The report might say that the reservoir is at the point of failure — you see it clearly when you push it to extremes. As a professional agency in central government with highly qualified people who understand what that means, we could not then pass that to the reservoir manager for information. We would have to react to that, and that would change the fundamental principle of who was responsible. We need the Reservoirs Bill to be passed to get that information and to say that the reservoir manager who owns the structure needs to do something about it.
1487. **The Chairperson:** So, you are tiptoeing the Bill in to be able to do something. This is a fundamental point. There are three paragraphs that deal with the Bill's financial aspects. When you look at the information that is presented on the Scottish legislation, you see that there is a glaring blind spot. It is as if you are going to the Executive with a blank cheque and saying, "Please fill this in, and we will add the noughts as we see fit".
1488. **Mr Porter:** We are not asking the Executive for any money. Fundamentally, there is a responsibility on private owners today, and they are not doing it. We are going to make them do it through the Bill. This is true regulation. This is not about bringing in a new duty; they are failing in their duty. I know of reservoir owners who have an engineer's report outlining defects and are not acting on it. They need compelled to do that. We also know that, on average, about 500 people live below the private reservoirs. So, an owner may have a report signed off by an engineer saying that something needs done and is still happy enough to say, "That is for another day". There are 500 people, on average, who are potentially at peril downstream of that reservoir. That is the fundamental that we are trying to bring in. It is not that we are tiptoeing round to get this in, and it is not that we are trying to avoid it. There is a responsibility on owners today, and I believe that they are failing in that. They are not managing their structures in a way that is reasonable. Thankfully we have had no failures, and thankfully we have had no fatalities. However, if we do, I do not know what their defence will be.
1489. **The Chairperson:** That is the same today as it will be on the first day that the Bill is enacted. The difference is that you will then have the power to do something.
1490. **Mr Porter:** Correct.
1491. **The Chairperson:** If you were to do a reservoir audit and basically lay it on the line to those people, surely the onus will still be on them whether we have the Bill or not.
1492. **Mr Porter:** If we can get a situation where I can help them to do that, that keeps us, as a Department, still acting as a reservoir authority. They may be having difficulty getting their head around the fact that they have to spend money on a reservoir and on an engineer. Maybe that is the bit that we need to help with, so that we get the level playing field, as Joe put it, and get that uniform understanding. Maybe it will get everybody to sit up and pay attention.
1493. **The Chairperson:** Surely, if the responsibility is on the reservoir

- manager to make sure that his structure is safe, the onus is on the Department to find out the detail of what is safe and what is not.
1494. **Mr Porter:** As I say, we have much of that, but I have been very careful in the examples that we have used so that we do not cause unnecessary alarm.
1495. **The Chairperson:** How did you get that information?
1496. **Mr Porter:** We got it through a number of different means. We got some information through our involvement with planning decisions and planning issues, such as something being identified under PPS 15's flood risk assessment. In some of the structures that we are involved in, there are designated watercourses over or adjacent to a private reservoir and dam that we have had historical dealings with. We have also been out and talked to lots of people. People came to the stakeholder groups, and we asked them questions. Have you had an engineer look at this? Do you know anything about the condition? Who has inspected it? How long is it there? What is it made of? Is it overgrown or is it in good condition? We have gleaned information from a lot of that. We also did the work on the reservoir community asset report. That required one of the team to find some reservoirs, and, where we could find no published information, we went out and looked at them. So, we also gleaned some information from that. It came from a whole myriad of sources as well as from the institution itself.
1497. **Mr Byrne:** I am picking up, David, that you have quite a bit of information on a lot of the reservoirs. Is there a file marked "secret" in which you have gathered the intelligence? That would lead to concerns and alarm among those who may feel that they are a reservoir manager and are very concerned about what you know and what they do not know.
1498. **Mr Porter:** There is no file marked "secret". A lot of it is probably in our heads because a lot of it is gleaned from conversations that we have had with people. I can give one bit of comfort to people. At the event that took place here, plus at our own stakeholder events, when people talk about being alarmed about the structure, we keep giving the advice, "Go and get an engineer". Now, that is not given just because that is the general advice. That is given because I know that there are some people out there who are unnecessarily frightening themselves. If they got some professional advice, they might well be in a better-informed position. That does not make the problem go away, but I think that it will make the size of the problem that they are facing a little bit more realistic.
1499. **The Chairperson:** Ian, I am going to bring you in. We are only talking about the audit of reservoirs.
1500. **Mr Milne:** I understand, Chair. I just want to follow up on the point that you were making. To clarify, David, are you saying that you have knowledge of a private reservoir with problems? If you are saying that, surely, if something happened tomorrow morning or tonight, you as a Department would be implicated in that whole inquiry, because you have the knowledge and are doing nothing about it.
1501. **Mr Porter:** That is right. It is a very good point, and that is why, for the last two and a half years, I have been working at Camlough. I chaired the meetings between Northern Ireland Water, Newry and Mourne District Council and the Richardson estate. It was me who called for that meeting and brought those people together, because it was drawn to my attention personally. I received a letter from Alan Cooper, a panel engineer, saying that, in his opinion, that was the worst-condition reservoir in the UK. As an engineer, I received that letter personally and thought, "I need to do something about this". We started that informal process with those groups to try to work out who the actual owner/manager is. My whole focus in that is to get those parties to get a civil engineer. They commissioned an inspecting engineers report, cleared the bank, put

- in monitors and put in a system, not me. It was not for me to go in and do that. My job is to get others to do their duty. That is what the regulation is all about.
1502. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** Setting aside what David is saying and thinking about the practicalities of it, a lot of the powers that would enable us to do the survey are only contained in the Reservoirs Bill. We would not have a power of entry. We could not go to a private reservoir owner and insist that we inspect the reservoir or send a panel engineer to inspect it. The powers of entry that we have, from my understanding, are under the Drainage Order, and that is where there is an emergency. This is a survey to gather information. Some owners may resist and may not want to be involved. We have heard that. Some owners would not want an engineer on their property looking at their reservoir, probably for fear of what the reservoir panel engineer would say. A lot of them have nothing or little to fear, as David has alluded to, but others might have.
1503. Once we were in possession of that information, we would be obliged to share that, of course, with the reservoir owner. We could not make that reservoir owner do anything with that information, whereas, with the Reservoirs Bill, we could enforce the outcome of an inspection report. So, we would be in a limbo situation if something was known and the reservoir owner or manager did not feel that he wanted to do anything with the reservoir. We would not be in a position to enforce that either.
1504. **Mr McMullan:** You mentioned 100 houses or 500 houses downstream. Where does that put the Planning Service? God forbid, if something happened — you talked about the reservoir owner's view — what would the Planning Service's view be?
1505. **The Chairperson:** Oliver, I am trying to keep focused on the audit of reservoirs. There is a planning section coming up. We may well get to it today, if you can just hold off.
1506. **Mr Swann:** David, I am trying to get my head round whether the information that you know is reliable. You said that you, as an agency, could not go in to do the audits because you might receive information that you would then be forced to take action on. Latterly, you said that you have in your head an idea of the condition of the reservoirs. Are you admitting that you know that there are more reservoirs than Camlough that need action taken now?
1507. **Mr Porter:** I think that I said previously to the Committee that I do not believe that there is another problem of the size and scale of Camlough.
1508. **Mr Swann:** I am not talking about the size and scale of Camlough; the very specific question is whether you are aware of another reservoir, apart from Camlough, that is in a dangerous condition.
1509. **Mr Porter:** I am aware of reservoirs in need of attention.
1510. **Mr Swann:** What action are you taking on those at the minute?
1511. **Mr Porter:** We are bringing forward a Reservoirs Bill to address those.
1512. **Mr Swann:** So, if they fail in the meantime —
1513. **Mr Porter:** Individuals are responsible.
1514. **Mr Swann:** But you are not, even though you are aware.
1515. **Mr Porter:** We are bringing forward a Reservoirs Bill to address that. It is a known gap. We have been working for the past three years to bring forward a Reservoirs Bill to address the issue. We do not have the powers to address the issue today.
1516. **Mr Swann:** In the instance of Camlough, you intervened on behalf of the agency; I assume that it was your responsibility. What makes that case different from the other ones?
1517. **Mr Porter:** In that particular case, it was because it was so stark and because of the groups involved. We knew that

- we could work with Northern Ireland Water, that it understood the hazards that dams and reservoirs pose, and that it has a reservoir stock in very good condition. By taking on that issue, we knew that we could try to improve that situation in the absence of powers. If we try to do that with a private individual, they may choose not to talk to us, and we cannot compel them to. We knew that we did not need to compel Northern Ireland Water or Newry and Mourne District Council.
1518. We also purposely took that as an issue to test some of the issues that we knew we would be facing. For instance, Joe mentioned ownership earlier. It took us about 12 months to work out who the owners were. We, as an agency, welcomed the opportunity to do that before the Reservoirs Bill, because at least it informed us of some of the types of issues that we were going to have to address. That, for example, is why there is no time limit on us giving a designation. You have six months to register, but there is no time limit for us to make the initial designation. That was purely and simply because of the work that we did in Camlough. We recognised that, if we had said that DARD would give a designation within two months, we would not have been ready. There may be other complicated cases of land law and historical legislation. We tackled the question of who owned Camlough for about 12 months before we got an answer. There will be other complex cases in trying to find who is responsible. A lot of them have passed down through trusts, wills or companies that have closed and have been wound up and then somebody else has taken those assets. It is a very complex picture out there. Camlough was a good one for us to see what we were taking on and how we could solve some of the problems.
1519. **Mr Swann:** I think that we established in previous meetings that a total of 51 reservoirs are going to be in public ownership, partnership ownership or orphaned.
1520. **Mr Porter:** We now have just six unknown.
1521. **Mr Swann:** Aye, but, in total, I think that 51 reservoirs are not in public sector money.
1522. **Mr Porter:** In public, there are 77. There are 59 private or not public. We think that nine are owned by the third sector or not-for-profit organisations.
1523. **Mr Swann:** Right, so let us say 59. You said that you have to take forward legislation because some owners may resist.
1524. **Mr Porter:** Yes.
1525. **Mr Swann:** How many of them have resisted to date? Have you sampled those 59?
1526. **Mr Porter:** None of them has resisted, because we do not have a Reservoirs Bill.
1527. **Mr Swann:** Have you approached them in the same way as you did Camlough?
1528. **Mr Porter:** None has been drawn to my attention that requires work as urgently as Camlough. As I have said to the Committee before, Camlough is the worst example, and I do not expect to find another like it, purely because of the size of the lake, the condition of the structure and the number of houses downstream. I hope that that gives you a little comfort. I know for a fact that there are reservoir managers and owners who have an engineer's report and have not actioned matters in the interests of public safety.
1529. **Mr Swann:** I will not labour this any further, but I have a concern. If the agency has knowledge of reservoirs that are in any state of disrepair, surely it is its duty, whether or not there is legislation, somehow to inform the owners.
1530. **The Chairperson:** Point taken, but David would say that the agency is acting by putting forward the Bill. However, there seems to be an immediate issue there.
1531. **Mr Porter:** If someone were to draw another Camlough to my attention, I

- do not think that I would sleep easily in my bed at night. Take from that that Camlough is the worst. I could not wait for the Reservoirs Bill to act on Camlough. To date, nothing else has been drawn to my attention that required me to act as quickly as I felt I had to on Camlough. However, there are other reservoirs that need attention.
1532. **Mr Byrne:** David, irrespective of who commissions an audit or pays for it, if there were a comprehensive audit of every reservoir, we could apply a traffic light system: red for danger; amber for moderate risk; and green for OK. In that way, everyone would start with a clear picture.
1533. **Mr Porter:** That is correct.
1534. **The Chairperson:** This is still on the question of why the Rivers Agency cannot do a complete audit. You stated that 59 reservoirs are in the hands of private individuals, bodies with charitable status or not-for-profit organisations, and all the rest are owned by the public sector. Surely there should be no issue with getting engineers' reports on and, if need be, entry to, those reservoirs.
1535. **Mr Porter:** I would not say that there was "no issue" with that, but, as you have also heard, a lot of them are compliant with the spirit of the 1975 Act. For instance, the 48 reservoirs that Northern Ireland Water owns are compliant, so there is no need to get entry to them. They are compliant, not with our legislation but with the spirit of our legislation, because they are compliant with the spirit of the English legislation.
1536. **The Chairperson:** So does it come down to the other 59?
1537. **Mr Porter:** The 59 privately held reservoirs, and we know that some other public reservoirs have had no recent inspection, and there may well be some minor defects.
1538. **The Chairperson:** So we are talking about maybe 60 or 70 reservoirs. At £2,000 a pop for an inspection, you can do the maths. It is not a great amount, but it would encapsulate all the detail needed for you to make informed choices on the Bill and for MLAs to scrutinise that when it comes forward. That is the catch-22 situation that we are in.
1539. **Mr Porter:** Yes, it is.
1540. **The Chairperson:** You said that you know that people are turning a blind eye to reports. Surely that is even more reason for the Rivers Agency to audit. Then, you would have the knowledge of exactly what had to happen so that, when the legislation was enacted, you could enforce it. At present, if engineers are writing reports that just sit on the shelf, there is a problem. So this has to be dealt with: how it will be dealt with is the issue.
1541. **Mr Porter:** Absolutely, but those owners are not currently non-compliant. So a reservoir owner can take a report and say, "Thank you very much. That is very interesting. My risk management strategy is to place it neatly on a shelf."
1542. **The Chairperson:** Yes, but you would have the information.
1543. **Mr Porter:** Yes, but I can do nothing with it.
1544. **The Chairperson:** Until the Reservoirs Bill is enacted.
1545. **Mr Porter:** I have no powers to do anything with that information.
1546. **The Chairperson:** Until the Bill is enacted.
1547. **Mr Porter:** We need the Bill in order to keep the responsibility for appointing an engineer and carrying out that inspection in the right place. I agree 100% with you, and I would love to know the condition of all these structures and have an inspecting engineer visit all of them. That would mean that I could write a much more definitive case to the Minister on the big grant scheme needed so that she could take it to the Executive and get it approved. If that was the case, we could take that decision now. If it turns out to be a

- relatively small figure, from a public safety point of view, this is not worth fighting and arguing about — let us get on and do it.
1548. The fundamental question of where responsibility for reservoir safety sits cannot be compromised. Currently, in common law, the responsibility rests with the owner. We are formalising that position, and I will not compromise on that at all. If that means that we cannot go forward with the Reservoirs Bill, I have no issue with that. I want to be clear about this: all those private owners are on notice. No reservoir owner in Northern Ireland can say that they do not know that their reservoir is unsafe. If the Bill falls, it is not that the problem will go away; they are all on notice. The only reasonable thing that any private owner can do is to get an engineer. The big difference is that, at least under the Reservoirs Bill, they have the prospect of grant aid. If the Reservoirs Bill falls, there is no grant aid. You fix your reservoir and are on notice that you hold something that is a hazard —
1549. **The Chairperson:** Yes, but if the Reservoirs Bill falls, the Committee will still expect the Rivers Agency to deal with this issue.
1550. **Mr Porter:** We have no powers.
1551. **The Chairperson:** So you will have to put forward a Bill.
1552. **Mr Porter:** The powers that we put forward would be the Reservoirs Bill. So we get back to the same point because, no matter how you look at it, what is set out for us to do — appoint a supervising engineer to be there at all times, have routine inspections every year and an expert inspecting engineer coming in periodically — is fundamentally correct. If we are asked to bring forward something different, we will bring back those same fundamentals. That is the problem; we will get back to the same point of having this discussion.
1553. **The Chairperson:** I want to ask you about the power of entry to reservoirs in private ownership. I imagine that some of them feed designated watercourses.
1554. **Mr Porter:** Yes.
1555. **The Chairperson:** Surely you have the power to walk designated waterways.
1556. **Mr Porter:** Yes, but some of them are not designated.
1557. **The Chairperson:** If the information that you have gleaned, either by tripping up on it or finding it from other sources, was compiled, what would it look like? If you shared that with us, how would that affect —
1558. **Mr Porter:** I am sharing much of that with you. Camlough is number one, and, when I was chairing the informal sessions with Northern Ireland Water and Newry and Mourne District Council, I said so. This was the encouragement to get them to do what they did. I told them that, as soon as I had a Reservoirs Bill, it would be number one on the enforcement list because I was really concerned about it. Thankfully, things have been done, works are ongoing and there is an inspection report. That is why I am comfortable talking about it. However, the things that are in place are exactly the things that we have written into the Bill — this is what needs done. I know that it has an impact on people, and I know that, at the moment, people cannot see how they will deal with it, but the fundamentals in this are the right thing to do to ensure reservoir safety. Then, we need to think about the ability to pay, or a grant scheme or assistance, but that is not about compromising what is the right thing to do. We start from the basis that this is the right thing to do, and then we will worry about who pays and how we can assist people to get it done. We need to separate that into two distinct issues.
1559. **The Chairperson:** Yes, but if we are to scrutinise a Bill that has a blind spot, we have to invade that blind spot. We have to try to get as much information as we possibly can to allow us to make an informed decision.
1560. **Mr Porter:** I take that on board absolutely. We have given a commitment to provide a supplementary financial memorandum, and we will. I will

- explain why Scotland has one: it is supplementary because, as the name suggests, it was brought in after the main explanatory and financial memorandum. It was brought in through the legislative process — I am not sure whether it was at Committee Stage — because Scotland did not have a grant scheme in its Bill. Therefore, when an amendment was made that a grant scheme was needed, a supplementary financial memorandum was required to justify that amendment. The figures are very loose. You quoted between £1,000 and £1.2 million for each reservoir. That is not sufficiently robust to take a bid to the Minister or the Executive. The question would be which figure should be multiplied by 50: £1,000 or £1.2 million? I know that, if I took that to the Minister, she would show me the door because she could not make an informed decision. That is why we need some way of finding out whether we need to assist owners to carry out their first inspection. We could take that information and work on the bigger grant scheme because we would have an actual figure based on the information. However, because of the responsibility and the potential shift in liability, we cannot do that before the Bill is enacted.
1561. **The Chairperson:** A fundamental issue for me is that I cannot see how the responsibility would shift by doing an audit. Maybe you could address that. I doubt that we will get a meeting of minds today.
1562. **Mr Porter:** Is it worth exploring — maybe we will do this more in the grant scheme — the potential assistance that we might give? If you take my argument that the fundamentals and process of this are right — independent engineers have looked at this and given proper informed professional advice as opposed to layman's hearsay — the issue is then how we fund and pay for it. Is it fair that, for example, individuals or community groups should pay? When we get on to the grant scheme — what it looks like and whether there is anything that we can do at the early stages —
- that may be the mechanism for finding a way round this. We need to focus on the assistance to do what is right as opposed to whether it is the right thing to do. I have heard no argument that this is not the right thing to do.
1563. **The Chairperson:** This has to be dealt with and managed, but it is a question of the cost and how it looks in the Bill. We know that there is an issue and that there has to be some sort of bridging.
1564. I am struggling for time, so we will move on and take issues 2 and 3 together. Issue 2 is the adverse financial impact on the private and third sector. Members expressed concerns that, because the private and third sector will not have the means to raise the finances, the Bill will have a disproportionately adverse effect on it.
1565. Issue 3 is the availability of information on likely costs associated with the Bill, which is similar to what we just delved into. The lack of financial information in the Bill will place those in the private and third sector at a disadvantage because they will have no indication of potential costs. The Rivers Agency could, perhaps, address that omission by way of a supplementary to the explanatory memorandum. The agency needs to address the pros and cons of identifying the cost of an engineer. It also needs to take on an oversight role on costs and include that in clause 106. That is similar to what we have already debated. I will let Jo-Anne in before asking you to respond.
1566. **Mrs Dobson:** I apologise for missing the start of your briefing. What is your response to the concerns raised with us by private sector farmers and landowners that they do not have the resources to comply with the legislation? From what I hear, it would be virtually impossible for a farmer to get a loan from a bank to fix a reservoir. The bank would not support that because it would not see the benefit. As the Chair outlined, we know that the public sector will be able to source the finance, through their tax, rates or whatever, so there is a disproportionate effect

- on the private sector. Do you have an estimate of how much it will cost public sector bodies to inspect, supervise and maintain the reservoirs?
1567. **Mr Porter:** You will be pleased to hear that I have no opposition to any of that. I put up a lot of barriers to the first one, but I could not agree more with this one. It was the biggest issue raised in our engagement with the stakeholders and the public consultation. It has also been the biggest issue that I have heard in all the evidence provided to you. The concerns raised have had nothing to do with the technicalities; they were all about people's ability to pay. As I said, we need to find a way forward on that and present a case.
1568. The Minister, at Second Stage, said that she was keen to explore the assistance to third sector organisations because that was the issue. However, in the evidence provided to you, it is clear that private individuals are concerned about their ability to pay, so we will have to explore that. Maybe that relates more to what an initial grant would look like and what the potential is for the bigger grant. I have some difficulty in trying to put a quantum on it because we come back to the audit issue and getting actual figures for the works required. I agree with you 100% on the finance. I understand that a bank would not view the repair of a reservoir as an asset, unless it was being used as a public water supply or for irrigation or hydropower. If it simply sits on your land, it is a liability, and I can understand why it is not an asset that you could borrow against.
1569. **Mrs Dobson:** Farmers are under enough pressure as it is without that added burden and worry. Are you going to touch on that in the grant scheme?
1570. **Mr Porter:** We need a bit more discussion about what the Committee feels is reasonable and what I feel is reasonable. If we can reach a point where we have some sort of meeting of minds, and I can then tell the Minister that I think that that is what needs to happen to assist with the bringing in of
- the Bill, I am happy enough to have that discussion.
1571. **Mrs Dobson:** It is the disproportionate effect on the private sector that is, as you said, the single biggest issue. It was top of the list at the stakeholder event. The possibility of a grant scheme, but without any hard evidence of one, does not help farmers who think that this is coming down the line
1572. **Mr Porter:** I reiterate what I said earlier. A number of people are scaring the life out of themselves over this. We could tell them to get an engineer for half a day so that they are better informed, rather than being frightened, and go into this with their eyes open. If private owners, farmers or third sector organisations just took half a day to get informal advice from an engineer, it would give a number of them some comfort. It does not have to be an inspection or supervision; it could be from a panel engineer.
1573. **Mrs Dobson:** That leads me to my second point. There are massive concerns, particularly among farmers and some reservoir owners, that engineers could over-engineer the solutions, which would mean that they faced higher specifications and increased costs. They worry what they might face should they get an engineer. How do you alleviate that concern? It is a catch-22 situation: they need an engineer to alleviate their concern but are very fearful that over-engineering will leave them with a larger bill that they have no way of paying.
1574. **Mr Porter:** There are a couple of points to make. The evidence from the Institution of Civil Engineers demonstrated that they are a group of very conscientious people. In fact, Alan Cooper has been doing reservoir inspections almost as long as I have been on the planet. I thought that he came across as a very reasonable individual who worked with people, tried to give them some assistance and, perhaps, to come up with other solutions to some of the problems that they faced. I thought that the

- evidence from them should have given you some comfort that those guys are not in this for a quick buck. These guys are serious: they live and breathe reservoirs.
1575. **Mrs Dobson:** It is not us you have to convince.
1576. **Mr Porter:** Absolutely, I know that. Under clause 106, we will carry out checks on the quality of submissions. That is a safeguard for people who feel that they have not got the service required. The Department has a role to view reports and ensure that particular issues are not being over-egged. The fallback position is that the institution also has disciplinary powers. If an engineer is found to be wanting, he can be referred to the president of the institution, which has very strong disciplinary procedures to deal with that. I am not sure how I can convince people by saying that. All that I can say to them is that they should try it and see because it might not be as bad as they think.
1577. **Mrs Dobson:** The fear of the cost leads to the fear of the report, so it is about overcoming that.
1578. Finally, what could be done to ensure that suggested alterations to reservoirs in the reports are proportionate in order to protect against over-engineering and alleviate the fear about cost? How could you ensure that they are proportionate and thereby give people some comfort?
1579. **Mr Porter:** Again, I will use Camlough as an example. Camlough was given one report on the condition of the structure and another setting out its options. That second report had a range of options and detailed the timescale, the construction cost and what each would mean for the reservoir. One option was to reduce the size of the reservoir, and that was also costed.
1580. So people can choose one of a range of options. They might decide on the basis of reducing risk or go for a short-term option, knowing that they will have to spend some more in years to come. That is what the engineers will do; they will not simply tell someone to rebuild their structure. The oversight role for the Department is set out in clause 106 so that we can comment on the quality of the reports, written statements and certificates given under the Act to ensure that there are some checks and balances.
1581. **Mrs Dobson:** You really need to get that message out because there is concern about over-engineering and, as far as the cost is concerned, a fear of the unknown.
1582. **Mr Brazier:** We gave our colleagues in the Environment Agency across the water a picture of a typical private sector reservoir in Northern Ireland and asked whether it could, based on many years' experience, give us the costs associated with that. The agency's costs are very similar to those that the Institution of Civil Engineers outlined to the Committee: for example, a 10-year inspection is between £2,000 and £3,500; and the annual cost of a supervising engineer is between £500 and £1,500. They are also the average of the costs that we are picking up through the information that we are gathering and that the Committee Clerk has shared with us.
1583. **Mrs Dobson:** There was some concern at the stakeholder event about the shortage of engineers and the fact that they were coming from England. Alarm bells were going off when people thought about the cost of accommodation and flights as well as the cost of the report. The stakeholders whom I spoke to seemed to think that they will be held to ransom. They need to get a report because of the legislation, but they think that the way that they are charged could be a free-for-all.
1584. **Mr Brazier:** I know. We are happy to share that information on typical costs with reservoir owners and managers.
1585. **Mrs Dobson:** That would be useful because they are very alarmed and concerned. They do not know the exact cost implications and, therefore, think that the cost could be much higher.

1586. **Mr Brazier:** Exactly. If I were a reservoir manager and expected a bill of £1,500, but it came in at £5,000, I would question that. Through the Bill, we could look at the reservoir's authority and satisfy ourselves that the costs were justified in its particular circumstances.
1587. **The Chairperson:** Where is that in the Bill?
1588. **Mr Porter:** That is the point that I was going to make when I was asked about cost. Under clause 106:
- “The Department may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Act by*
- (a) supervising engineers,*
- (b) inspecting engineers,*
- (c) other qualified engineers,*
- (d) construction engineers.”*
1589. What is not included in that is cost. If you think that there is some value in having an oversight role on cost, I have no real strong opposition to that. I do not mind —
1590. **Mrs Dobson:** I think that there should be, Chair.
1591. **Mr Porter:** We need to be careful. We are not going to make it a regulated market. We do not want to become a cost regulator. However, I would have no difficulty with doing a survey, publishing figures of typical costs or asking the institution to give us the typical costs on an annual basis and publishing those. If you want that added to the Bill as an amendment, I have no issue.
1592. **The Chairperson:** Surely you could do that only on the inspection reports and not on the actual quantitative work that needs to be done.
1593. **Mr Brazier:** No.
1594. **Mr Porter:** It is when you put in average costs for works that you get the sky-high figures; that is what skews it. If, for all your reservoirs, you are told, “We need £5,000 spent here, £10,000 spent here and £10,000 spent here”, and then you have Camlough at £2.5 million, the average will be about £1 million or £1.5 million.
1595. **The Chairperson:** Are we sure that an inspection engineer will not come out and charge double because it takes him twice as long to walk around a reservoir because of its capacity or scale?
1596. **Mr Porter:** There will be other issues. With more complex structures and concrete structures where there are confined spaces — there are not that many of them over here — you might need more than one person to go out and look at them from a health and safety point of view. That is where the range is useful. Do not just expect every reservoir to be the same. If you want us to publish a range and add that as an amendment to the Bill, as long as it is not that we will regulate, we can do that so that people have guidance and can at least look at theirs and say, “Actually, I got good value”, or “I did not get good value, and I am going to negotiate a bit harder next year”.
1597. **The Chairperson:** The only difficulty that I would have around regulation is that, if you have a wide range, by default, everyone will go to the top of the range and that will be made the norm.
1598. **Mr Porter:** No. The figure that Jack gave when he was over from the institution was, I think, 341. So, if you do not like the price that you are getting, you have 340 other people to get a price off. You will have a sufficient pool to get a competitive tender — to use civil servant talk — and a competitive price.
1599. **The Chairperson:** You could really only assess a spike.
1600. **Mr Porter:** Yes, an outlier. You would question why one was very dear. We would have no issue with asking the questions to see what the issue was. Was it bundled? Were there two or three reservoirs? Was it a particularly complex one? Was it in particularly bad condition? Did they have lots of work to do because no one knew the hydrology or how it worked? Were there no record

- drawings? Those are the issues that will affect the price of the first inspection. After that first inspection, I would expect costs to be much of a muchness, certainly for the 10-year inspections.
1601. **The Chairperson:** Do you think that clause 106 is the place for that sort of —
1602. **Mr Porter:** It certainly strikes me as the closest fit for it. If you want, we can have a look at it. It is probably best if we take that on as a recommendation and do it as a departmental amendment to the Bill.
1603. **The Chairperson:** Even if you assess it in the meantime. You could then come back and tell us what it would look like in the Bill.
1604. **Mr Porter:** Yes. We could see where it would fit, whether that is the right place and what the pros and cons of it are. We are happy enough to take that away.
1605. **The Chairperson:** If there are no other questions on the adverse financial impact and the availability of information linked to cost, I will move to the issue of low-risk designation. Is there merit in making it that low-risk reservoirs do not have to comply with the legislation? That would remove 26 private sector reservoirs and leave 33 under the remit of the Bill. How many of the remaining reservoirs could be considered low risk? William, do you want to come in now?
1606. **Mr Irwin:** You have asked the question; have you not? *[Laughter.]*
1607. **The Chairperson:** That is OK.
1608. **Mr Porter:** Again, I have no strong feelings about low-risk reservoirs. I think that we need a low-risk category. I do not like the system of “high risk” and “no risk” that England has. “No risk” is an odd designation, so they just have “high risk”. I am much more comfortable with these bands. We will leave the low-risk band so that you can get your reservoir designated as low risk. We are certainly happy to look at what the requirements would be for the owner of a low-risk reservoir. We think that they are very light, but, if they have to be lighter, I have no strong feelings about that.
1609. From memory, the only requirements are for them to register, which has no cost, to put up an information board or some information at the location and, if we bring in regulation on flood plans, to develop a flood plan. The only cost would come from the latter requirement. Do you really need a flood plan for a low-impact reservoir? To be perfectly honest with you, probably not. Maybe we should go back through the Bill, check out what the requirements are and discuss which ones we would feel comfortably dropping.
1610. **The Chairperson:** How would you ever have sight of low-risk reservoirs if, for instance, you lose the scrutiny and inspection of them? A small hamlet could be built downstream, or something could happen to the structure — well, no, I suppose that the risk designation is all about the impact. Let us say that a hamlet is built in 10 years’ time.
1611. **Mr Porter:** That gets us on to the planning issue. It does not matter what the designation is, PPS 15 will deal with that. As long as they are controlled reservoirs, we will have a flood inundation map, and that will be a material consideration under the older version of PPS 15. It is not an issue, and we will still be able to deal with that, not through the Reservoirs Bill but through PPS 15. I would keep them in as low-risk reservoirs, but I would be happy to check and to compromise on the requirements. In essence, we were trying to keep them as light as we could. If we can make them even lighter, we would have no issue with that.
1612. **The Chairperson:** Will you explain to us again — I have not checked it in the Bill — whether you are talking about a 10-year inspection for low-risk reservoirs?
1613. **Mr Porter:** No. There will be no inspection and no supervising engineer. How a reservoir manager manages that will be a matter for them.
1614. **The Chairperson:** At the present time.

1615. **Mr Brazier:** And after the Bill.
1616. **Mr Porter:** One requirement will be to register, which will involve them filling out a form to give us details of who they are, what the reservoir is, where it is and what its capacity is. They will also have to put up an information board about who the owner is and who to contact in an emergency.
1617. The flood plans are not differentiated between low-, medium- and high-risk, but, if we were to bring those in by regulation, we could do that. There is no requirement to have a supervising engineer, to have routine inspections or to have 10-yearly inspections. We have kept it as light touch as we could, but making it lighter would not be a show-stopper as far as we are concerned because they are low impact. That brings me back to the fundamental point. We want to focus on the ones that will cause the harm. For those that will not cause harm, the private owners or whoever else owns them can manage them themselves and manage that risk in whatever way they are comfortable with.
1618. **Mr Milne:** It is just on this low-risk issue. You said that, in England, they do not have that category but just have high or low —
1619. **Mr Brazier:** They have high or nothing.
1620. **Mr Porter:** They just designate high-risk reservoirs.
1621. **Mr Milne:** Why would you want to be any different if it works there? Would it be fair to say that England has hundreds or maybe thousands of reservoirs? Is it because there are 151 here that you feel that you have to keep as many in as possible to justify some kind of operation like this?
1622. **Mr Porter:** There are about 2,200 reservoirs in England. They had a volume threshold, which related to large raised reservoirs, and have only recently moved to high and no.
1623. Our first public consultation position was to have high- and low-risk reservoirs, and we got a very strong response that people like the middle band. That was why we introduced it. We are asked to do that in the responses to the public consultation. We did not put it in at the start as the on/off switch seems to be an easy enough way because of the small numbers. However, people wanted the differentiation between high- and medium-risk reservoirs.
1624. Now that we have developed it and developed our thinking, I do not think that that is a bad thing. It allows us to recognise that harm could be caused but not as much harm. Therefore, we can be proportionate in our management and there can be a difference between two inspections and one inspection a year. So, there is £500 of difference purely on the supervising engineers' costs, a one-off inspection engineer and then at an interval to be determined. That is as opposed to saying that it must be done within 10 years. There will be a cost differential between high and medium, so I think that that is not a bad thing because it recognises the different level of impacts.
1625. **The Chairperson:** If there are no further questions on low-risk designation, we will move to issue number 5, which is public interest and the value of reservoirs for environmental and social/recreational uses.
1626. **Mr Irwin:** Some concerns have been expressed about the impact of drawdown or decommissioning. Can Rivers Agency assure us that sufficient weight has been given to the value of reservoirs for environmental, social and recreational uses?
1627. **Mr Porter:** I think that it has within the Bill, but we are in a difficult position at this minute in time in that managers and owners of structures may well take rash decisions or wish to avoid the requirements of the Bill and do something that would have an environmental impact. It was something that we were very clear on with the stakeholder groups that we met. Again, we give the same bit of advice: before you take a decision, please go and get some professional help and advice on

- this. An engineer may well be able to come in and say that you do not have as much to worry about as you think that you do and that drawing down or removing this structure may not necessarily be the best option. It may well be, but it may not be. The only way that you are going to know that is by getting the engineer in to give you some help and assistance.
1628. When the Bill comes in, we are quite comfortable with the provisions in it because we have included environment as one of the impact designations, but, to be honest with you, we are in a tricky position at the minute in that there is no restriction on people doing something to their reservoir now. We would implore them not to without at least getting some professional advice. We also have to remind people that they may well need other consents and approvals, whether that is from planning, a schedule 6 from us or something else. There may well be other consents and approvals that you need and there may well be constraints on that activity, so our advice is not to take rash decisions without getting some help and assistance on it.
1629. **Mr Irwin:** You understand the concerns. Some of these groups may not be financially strong or able to finance any major works that need to be done. I think that the Chairman touched on it earlier. We need grant aid running in tandem to allay people's fears.
1630. **Mr Porter:** Yes, and that is something that we can get into whenever we are talking about the grant aid. It is starting to become clear in my mind that we cannot bring in the big grant, the grant for works, because we cannot take that to the Executive. We cannot take that to the Minister. Maybe there is something that we need to do in between that could be brought in to at least get the first inspection or some of the initial works done. If that is something that will help bring this forward, I can take it the Minister to seek approval on it. Because of the quantum that we are talking about, it has potential. I would be comfortable enough taking that to the Minister.
1631. **Mr Irwin:** I think that there is merit in that. I think that it would help.
1632. **The Chairperson:** You talked about the impact and the environmental aspect. The "personality" of a reservoir may be a better word to describe it. Where do we see that personality in the Bill? If you understand my question. Where does the environmental rating —
1633. **Mr Brazier:** It probably is not that obvious. I think that one of the perceptions during the workshop was that the Bill is about decommissioning reservoirs or will lead to the decommissioning of reservoirs. What this is about is protecting reservoirs as they are. OK, that entails a management regime in order to make sure that it is protected, so that the on average 500-odd people living downstream from a private reservoir are safe in their houses knowing that that structure upstream is being well looked after. In so doing, that will mean that the environment is protected. The last thing that we would want to see are reservoirs being abandoned, discontinued or decommissioned simply to avoid the management regime that is in this Bill.
1634. That is why David was saying earlier that this is about having a regime that manages reservoirs well, and the ability to pay is separate from that. Let us ensure that we are putting in place something that ensures that the reservoir is maintained and stays as it is rather than breaching and harming it when emptying the reservoir and destroying the environment downstream as it goes. I do not think that it is obvious, apart from the environmental aspect that comes into the risk designation. It does not appear that much because this is about safety. However, in looking after the safety of the reservoir, you are looking after the environment as well and all the social benefits that come with that reservoir. If you do not look after it, there is a risk that the reservoir will breach and it will all be lost. We are trying to prevent

- people downstream being harmed or killed from an uncontrolled release of water. For us, the environment is a side issue.
1635. **The Chairperson:** I take that point, and I know that is the whole basis of the Bill. However, indirectly, because of it and because of the discussion and scrutiny, you could then have a run on reservoirs. I do not mean that as a pun; it is the only way I can describe it.
1636. **Mr Brazier:** You could.
1637. **Mr Porter:** That is another challenge. Let us use Northern Ireland Water's reservoirs that it is trying to sell off as an example. Some of those are drawn down for works not connected to the Reservoirs Bill but are a good example. You can see a picture of a full reservoir and a picture of the mess that is left when you drawdown. That is not just grass and something tidy. When you draw it down, you are left with muck and stuff that you have to fix and put back to normal. We need to think about whether that is the right place for the reservoir to be managed if it is no longer a benefit. We are picking on Northern Ireland Water here. Other things that happen on those reservoirs, such as people canoeing on them, walking round them and fishing on them are not core functions for Northern Ireland Water. So, I can understand why it is trying to offload those and get somebody else to look after them. However, maybe the issue is not about trying to give it to somebody else but recognising it as a community asset and managing it in a different way.
1638. There may well be some challenging situations such as with Camlough where the council has to say, "We recognise that this is a benefit for the wider community". It may say to the private owner, "You do not own that anymore. We are going to take that over. You are going to agree to give us that. We are going to fix that up because we do not want it to disappear because of its value to other people". I cannot see how I can put that in the Bill, but, as the reservoir authority and as people in government,
- we can have that discussion with people and say, "Do not take that option. Do not remove your dam, because it has a wider value. Let us introduce you to other people who you need to talk to to see whether collectively you can manage this in a different way". It may well be that it is no longer their asset and that, because of the liability, they are not capable of dealing with it. As a community asset, somebody else needs to step in and take that.
1639. **Mr Brazier:** That type of discussion happened with Creggan reservoir and its relationship with Derry City Council. The suggestion was to go back to the owners and see what relationship you can build with them based on the new understanding of what it is to manage the reservoir. People have to have that type of discussion about their reservoirs.
1640. **The Chairperson:** I will bring in Michelle. Michelle, issue 12 deals with the decommissioning.
1641. **Miss M McIlveen:** I was going to follow on from that.
1642. **The Chairperson:** I am going to deal with two more issues. The first is decommissioning, and then I will ask members to talk about the risk assessment. That is a fundamental issue. I will hand over to Michelle on decommissioning.
1643. **Miss M McIlveen:** It has been covered in some ways by your response to the Chair. A number of Northern Ireland Water's reservoirs have been designated surplus to requirements and will be put on the open market very shortly. It may feel that the Bill, as it is coming through, may then devalue its asset. Not everyone is going to want to take that on as an asset, because, although they will have brought it up to a standard, there may be a concern for its future and any associated costs. Lough Cowey in my constituency is under lease with DCAL. It is something that could maybe be looked at for a community asset, such as a hatchery. However, the issues there would be about whether DRD

- would be content to take that with a lease and still do the work associated with it. I suppose that it can be quite complicated, even among Departments or within government bodies about who is going to take responsibility for it moving forward. I suppose that that all needs to be —
1644. **Mr Brazier:** NI Water said that its first option is to pass on responsibility or ownership to the public sector and to have it maintained there rather than to sell it off to the private sector. However, I do not think that it would find too many people queuing up for it.
1645. **Miss M McIlveen:** There may be issues around access with a number of the reservoirs.
1646. **Mr Porter:** There certainly are. We cannot find a way of writing that in. I do not know how you can write that in, because it is so site specific. If they are community assets, I think that there is an onus on government to try to work and not make them go away. It may well be that an individual owner loses that asset, but that might be a blessing to them, because, as we heard, they are not viewed as assets when they have a big liability associated with the potential failure and the requirements of the Bill. I could not agree more with the comments. The difficulty is trying to find a way of putting that into legislation in any meaningful way.
1647. **Miss M McIlveen:** I understand the issues around decommissioning, discontinuance or whatever way you want to look at it. Is there any way that Rivers Agency will be able to stop this happening? Or will it be very much dependent on legislation through DOE, be it through the NIEA or planning?
1648. **Mr Porter:** In the Reservoirs Bill, there will be no ability to stop whatever risk management strategy an individual wants to take.
1649. **The Chairperson:** You have a stop notice. Can that be —
1650. **Mr Porter:** That would be a stop notice regarding work. If the option is to discontinue a reservoir, we will not have the ability to tell them to stop that. We can tell them to stop managing their reservoir in the way that they are doing it because of the harm that it is causing, but, if they take the decision and say, “I have weighed up the pros and cons. I can manage the risk under the terms of the Reservoirs Bill, or I can draw it down in order to minimise the risk, or I can make it go away in its entirety”, we cannot say that that is a better option under the Reservoirs Bill. That is what I was saying. I think there is still a piece of work for government to do to look at that. I do not know how you legislate for it, but there is a piece of work to be done to enable government to say, for example, that a fishing club is using the reservoir. Instead of a private owner having that responsibility, maybe it needs to be transferred to a council, DCAL or wherever to manage the asset because of the wider benefit that it offers.
1651. **Mr Brazier:** I want to give some clarification on the stop notice. If someone was discontinuing or abandoning the reservoir in a dangerous way, we could stop them and go in and do it properly, or we would try to force them to do it properly. However, if he decided that that is what he wanted to do and was doing it safely —
1652. **The Chairperson:** Through a business case.
1653. **Mr Brazier:** We could not stop him doing that.
1654. **Mr Porter:** Not under the powers of the Reservoirs Bill.
1655. **Miss M McIlveen:** My concern, from what you have said throughout the conversation here today, is that the principle of the Bill is about protecting reservoirs, but an unintended consequence of it could be that we could lose reservoirs.
1656. **Mr Porter:** This is about the risk that reservoirs pose, and it is about managing the risk that reservoirs pose. If the right thing to do is to make that risk go away, in some circumstances,

- we have to accept that that may well be the most economically viable way of dealing with it. That gives assurance to the people downstream that they are no longer at risk, because the reservoir has gone away.
1657. **Miss M McIlveen:** Some of the reservoirs may not be discontinued or abandoned because there is a risk to broader safety; it could be more to do with the fact that there is a risk to their pocket.
1658. **Mr Porter:** Yes, and that is the ability-to-pay bit.
1659. **Miss M McIlveen:** Which, again, is an unintended consequence of all this.
1660. **Mr Porter:** Absolutely, and we recognise that.
1661. **Miss M McIlveen:** You are losing a resource, which is much greater to the community and the environment and so forth.
1662. **Mr Porter:** The message to owners is: please do not remove your dams without at least considering all the options. One of the options may be for you no longer to be the owner: somebody else could take it over and release you from the liability associated with it because it is a community asset. A council could develop it into a park, a hydro-electric person could make electricity from it, or DCAL could promote fishing in it. However, some of them may be lost.
1663. **Miss M McIlveen:** I appreciate that, David. We could sit all day and discuss the options for reservoirs. In an ideal world, we would have the funding to do what we want. However, if someone thinks that the quickest and cheapest option is to drain a reservoir, they will do it. They will not sit around and wait for a council to come through with a bid through Europe or whatever to build a dam. They will not do that; they will drain it. As a result, the greater loss will be to —
1664. **Mr Porter:** I agree. That is a consequence of the Reservoirs Bill. We are entirely focused on the risk-management of potential failure for those downstream. In some cases, the best management strategy is to make the risk go away, so there may be cases of reservoirs being drained. However, people should not take that decision lightly. People have time to think about it: the Bill is not on the statute book. There is at least a year's lead-in before we even think about a commencement date — perhaps even longer. There is time for people to think about this now; they should not wait until we have an Act and they are facing associated costs. This should be on everybody's radar now. Start to think about your options.
1665. **Miss M McIlveen:** I appreciate what you are saying, but I go back to comments at the very beginning in relation to an audit allaying fears in relation to costs.
1666. **Mr Porter:** Those points were accepted. We accept that we have some difficulty in addressing that purely because of the shift in responsibility. Again, spending half a day with an engineer may be the best money somebody spends because they will get a night's sleep as opposed to worrying about their structure and the consequences of the Bill.
1667. **Mr Brazier:** Forgive me if I have not got this right, but you talked about the protection of reservoirs. The Bill is not about the protection of reservoirs; it is about the protection of people who live downstream from reservoirs; it is about making sure that public safety is at the centre of the Reservoirs Bill rather than the protection of reservoirs. We hope that they are protected.
1668. **Miss M McIlveen:** I picked up on a comment that you made earlier about protecting reservoirs as they are.
1669. **Mr Brazier:** I want to clarify that. The consequence of looking after a reservoir and protecting people downstream is that the reservoir remains where it is, does what it is doing and everybody enjoys it.
1670. **Miss M McIlveen:** I recognise that and appreciate that that is a main principle of the Bill.

1671. **Mr Brazier:** The Bill is about safety.
1672. **The Chairperson:** On the issue of decommissioning, I understand that there is nothing in the Bill to prevent someone from decommissioning a reservoir if it is part of a business case. However, if you are in an ASSI or an area of outstanding natural beauty, would there be stipulations?
1673. **Mr Porter:** Oh, aye. Absolutely. We are answering that question in the context of the Reservoirs Bill; other legislation may constrain actions. You heard the Environment Agency talking about the natural and built environments, and other legislation may say, "I know you want to do that, but you are not allowed to do it because of whoever has taken up residence or because of the downstream consequences to habitat or to the environment".
1674. Potentially, through the Drainage Order, we may constrain you: you may not get schedule-6 approval to decommission a reservoir, because that is a change to a water course. If, by removing a dam, you cause a flood problem downstream, we will say no to schedule-6 approval. There are other checks and balances and approvals that you have to have in place.
1675. **This Bill does not stop that action:** if facilitates it if it is the right thing to do to manage the downstream impact of a reservoir failing.
1676. **Mr Milne:** If someone was going to decommission or abandon a reservoir, the Rivers Agency would not take it on because you are the authority and will not take on the responsibility of a manager. However, to protect or maintain reservoirs, is it not possible for local councils or the future super-councils to take on the responsibility? Surely, they should be investigated or something should be put in to ensure the protection of reservoirs and to avoid them being abandoned without somebody looking to see who might take them on.
1677. **Mr Porter:** I agree with the principle, but I do not see how we could write that into the Bill. Whether it may be something that the Minister agrees to and speaks to other Departments about and we actively look at is one thing, but it is not a legislative requirement. It sounds like a sensible idea that councils look after some reservoirs if that is for the greater good. Although the Rivers Agency is the reservoir authority, it also manages some structures. Therefore I would not necessarily discount the fact that we may be one of the players that you have to consider as well. That is not me putting my hand up for all reservoirs. We are another Department that should at least be considered if that is the right thing to do. So I would not discount that.
1678. **Mr Milne:** In presentations, we have been told that some reservoir owners have inherited them or see the dams or reservoirs as being of no value to them at all. If they tell you that through consultation or negotiation, surely the onus falls on somebody to find something to protect that reservoir.
1679. **Mr Porter:** I agree wholeheartedly. I would love to see that situation. However, I cannot give a commitment to put it in as a clause in the Bill, because I cannot see how it would work. However, as a principle, it is absolutely sensible. I would hate to see reservoirs that benefit the wider community done away with because of the requirements of this, where somebody else could manage them, accept liability and further develop them. It is a matter of finding a way forward. The Minister might be asked to take this to her Executive colleagues or to other Departments, or it may be something for the Committee to explore. However, I do not see it as a clause in the Bill, although we are happy to take that away and discuss among ourselves. I do not see it as a natural fit in the Bill, but I cannot argue against the principle, which is absolutely spot-on.
1680. **The Chairperson:** I want to talk about risk assessment, because it is a fundamental fault line. I know that we are pushed for time, but I want to — sorry, Oliver, did you want to come in?
1681. **Mr McMullan:** I just want to ask this quickly: have you taken into

- consideration the community plans that councils have to draw up?
1682. **The Chairperson:** No, we will deal with that next, Oliver.
1683. **Mr McMullan:** For frig's sake. *[Laughter.]*
1684. **The Chairperson:** It is an important issue that needs tackling.
1685. **Mr McMullan:** These reservoirs will be empty by the time we get the answers. *[Laughter.]*
1686. **The Chairperson:** It will be discussed next time. One of the fundamental issues — to the Committee it is as fundamental as the audit of reservoirs — is risk assessment. Although there was a good body of work done, more should have been carried out before the Bill was produced. Risk assessment is as big and as fundamental an issue —
1687. **Mr Porter:** Aye, the risk designation.
1688. **The Chairperson:** Not even the risk designation but the risk assessment. If an inspector says that he needs to do a range of work that, even when completed, does not change the designation. Even though a reservoir may be state of the art, and a breach nigh impossible, its high-risk designation does not change. I cannot get round that there should be no onus on inspection reports.
1689. **Mr Byrne:** For clarification: is that because the risk assessment is based on the number of houses downstream, irrespective of the state of the dam or reservoir?
1690. **The Chairperson:** Clause 22.
1691. **Mr Porter:** We have high, medium and low. In order to explain this, we need to think about high, medium and low in reasonable condition and then high, medium and low subject to enforcement. That is the differentiation. If you have a risk designation, you are the owner of a high-impact, high-risk reservoir and outstanding issues were identified by the inspecting engineer, you are subject to enforcement to get those done. If you do those, the enforcement issue goes away. That is the benefit of keeping your reservoir in good condition. It makes the enforcement bit go away.
1692. The other thing that I picked up through the evidence given to you was what the terminology or understanding of “high risk” is. People were concerned that this badge that we have put on means that something is in imminent danger. That is not what we mean because you can use “risk” as a relative term. What we are saying is, “Here is a list of 150-odd reservoirs. Which of those, if they failed, would cause the greatest impact?” That is the first batch, and we chose to give them the name “high risk”.
1693. Whether it is the term “risk” that people are balking at, that is what we are trying to do. We are trying to say that those are the ones that, in the event of failure, could cause most harm, but that is too long a title, so we have called them high risk. It does not mean that they are in imminent danger of failing because we have control: getting an engineer in and doing some works is the control that means that it is in reasonable condition, and, therefore, the likelihood of failure is very low. It is the same for medium, high and however you intend to manage your low. It is the same across the board.
1694. I heard you use the example of this new reservoir and the impression is that it cannot fail. Malpasset, in France, was brand new. If we showed you pictures of it before it failed, it was nice, shining white concrete. It was not like the old clay core stuff that we have here. It was a pristine reservoir, but it failed one night and killed 424 people. That is when you heard the engineers say that there is no agreed method of working out likelihood. That is what they meant; that is what is driving them. What they mean by that is that there is no numerical way. They cannot add two things together and say, “The answer is: “
1695. Engineers manage them by becoming experienced in looking for potential defects: how a structure will fail. The inspection report gives you the benefit of their experience. What manages the risk is their experience. We do not

- change the risk designation because it is purely to say which ones we are most concerned about and which ones we are not so concerned about if they happen to fail. Rightly or wrongly, we are getting hung up on the word “risk”. We might have been better with a different word, but it is not saying that a structure is high risk and, therefore, at the point of failure. It is at very low likelihood of failure, but if it fails, the consequence is —
1696. **The Chairperson:** Whatever you call it, the burden is the same —
1697. **Mr Porter:** Correct.
1698. **The Chairperson:** — with regard to the regulatory behaviour.
1699. **Mr Porter:** Between high and medium it would be, yes.
1700. **The Chairperson:** If we remove “low” completely, do we need another layer to say, “These were our high risks, but they have had works done.”?
1701. **Mr Porter:** That is why I think of the non-compliant. High and medium are what we are focused on here. Across here, you have the non-compliant, the naughty list — the ones that we have outstanding issues that we are going to enforce on. The benefit of doing those works is that you move from the enforcement side of the page over to the, “Actually, we are quite comfortable; the risk is dealt with. Just keep doing the routine stuff and that will be OK.” It is finding terminology that explains that to people.
1702. **The Chairperson:** Let me use an example: an engineer does an inspection report that says that £50,000 should be spent. The £50,000 is spent and a supervising engineer does all the work. The inspector comes out again and says, “Right, OK, that was great. Another £5,000 spent on that and £5,000 spent again” — and it goes on and on.
1703. **Mr Porter:** And it will, yes.
1704. **The Chairperson:** Surely an onus should be placed on the engineers qualified to inspect to say, “Yeah, I’m content that the work has been done. All the work’s been done, and we asked for it to be done. A very high range. I’m going to be coming out here every” — what is it for a high or medium risk?
1705. **Mr Porter:** For high, at the moment, it is two supervisions a year and 10-yearly inspections.
1706. **The Chairperson:** So, a supervisor comes out every six months and looks at the same thing. It has not moved, and it has no intention of moving. It is a waste of time. I hear what you say about the Malpas reservoir. If that reservoir just went in a bang, six-monthly inspections would not have picked it up.
1707. **Mr Porter:** Six-monthly inspections pick up the significant changes to a reservoir, but they are not the whole story or package. David McKillen, who is a supervising engineer, said that it is about collaborative working. It is about the owner doing some work, which may well be walking the dam crest once a week and writing down, “I don’t see any dips”, looking down the face and saying, “I don’t see any water”, and ticking the sheet to say, “I’m comfortable with that.” If they are not comfortable, they should call the supervising engineer. It is not just a case of our dropping in a supervising engineer twice a year and that is the risk dealt with. It is not as simple as that. The owner has a responsibility. The amount that an owner is prepared to do will influence how comfortable the supervising engineer is with a structure.
1708. We have put in two years as the minimum standard. There may be others that the inspecting engineer looks at and says, “This is a 100-year-old structure in complete disrepair. It’s high impact, and we require it to be inspected more often”. An example is Camlough. An inspecting engineer report in October of last year recommended, “You’re not going 10 years until I see this again. I’m going to see this structure in 12 months’ time because I am so concerned about it”. That was one of the recommendations by the inspecting engineer; he was not prepared to say,

- “This is OK for 10 years”. He gave it an OK for a year, provided that things are done. He will go back to do an inspection. It is not that you would reduce the requirement; you increase it for the ones that you are concerned about. If you do certain works in the first year, you may be able to get down to the minimum standard, but I do not see a situation in which I would agree to do less than the minimum standard. The minimum standard is set because we feel that it is the reasonable minimum; others will require much more, particularly in the first couple of years.
1709. **Mr Swann:** Risk, or whatever you want to call it, is about any buildings or damage to life or property downstream from the reservoir. Theoretically, if a reservoir containing 100,000 cubic litres had no housing or people and had no risk on the flood plain, would that not need to come under this legislation?
1710. **Mr Porter:** That would be a low-impact reservoir. The requirement, as we said earlier, is to register. You do not have to appoint a supervising engineer, and you do not have to have a 10-year inspection.
1711. **Mr Swann:** You just have to be registered.
1712. **Mr Porter:** Yes. If we bring in flood plans, you might have to have one, but, again, we can discuss whether that is reasonable. It is a very light touch. In the exact situation that you set out, how an individual manages that themselves is a matter for them.
1713. **Mr Swann:** Theoretically, say that the owner of a reservoir owns two houses below it that he rents or leases. If he removes the lease and puts the people out of the houses, they are only structures. Is that a low-risk reservoir?
1714. **Mr Porter:** He could potentially have a low-risk reservoir.
1715. **Mr Swann:** Potentially. What would be the restrictions making it not?
1716. **Mr Porter:** We would need to check the flood inundation map to make sure that there are not others —
1717. **Mr Swann:** What if there is nothing else?
1718. **Mr Porter:** If I owned a reservoir with a building downstream, I would try to buy it to knock it down. That would be cheapest, because the burden of this goes on for ever. I would buy that house — assuming that I could afford it — knock it down and argue that I am not a medium- or high-risk reservoir any more, and that is the end. I become low risk, and how I manage that is a matter for me. That is an entirely reasonable way of doing things.
1719. **Mr Milne:** I do not have my tablet with me, and there is a chart in it showing different designations. If it were raised to 25,000 cubic metres, would that change the category to high, low or medium?
1720. **Mr Porter:** It would change the numbers of reservoirs in total. It does not change any of the designation criteria that we use; it is just a volume threshold.
1721. **The Chairperson:** That is on page 85.
1722. **Mr Byrne:** Twice, David mentioned Camlough lake, and he has put the flashing lights of warning on. I want to test the authenticity of what he is saying. Since the trustees are deceased or disappeared, I accept that NIW extracts some water from it and pays £4,800 or £4,900 a year. Therefore it has some legitimate responsibility. Newry and Mourne District Council operates it for leisure and other activities. Have the chief executives of NIW and Newry and Mourne District Council been warned about the risk that you have assessed vis-à-vis the engineer’s report that you have?
1723. **Mr Porter:** The chief executive of Newry and Mourne District Council sat in on the meetings, and Northern Ireland Water was represented by its head of asset management and its solicitor. To agree to the suggested requirements, it had to take that back and get approval from an executive director in Northern Ireland Water for the spend. The organisations are well aware of —

1724. **Mr Byrne:** They are fully apprised and are taking remedial action.
1725. **Mr Porter:** Correct, yes.
1726. **Mr McMullan:** Following on from what Robin said, you said that you would buy the house if it were sitting down in the —
1727. **Mr Porter:** If I did not own it, but it was my reservoir, I would attempt to buy it if that would remove it from medium or high. That may be a cheaper management option to avoid the burden of the Bill.
1728. **Mr McMullan:** How would you keep planning off that ground?
1729. **Mr Porter:** Planning is dealt with under PPS 15; therefore to get planning permission, the applicant has to give an assurance that the dam structure is in good condition. The only way that they can do that is with my co-operation to do an inspection on my dam. If you wanted to build downstream, I would be very clear: if I did not want it, you would not be inspecting my dam; or, if I could come to some arrangement, I would be making sure that there was a legally binding document that ensured that the developer was paying any additional costs as part of the development cost. In the same way, if you needed a right of way across someone's ground or if you needed sight lines or if you needed a water main across something, you would have to negotiate something with a third-party landowner to permit that development. There may be costs associated with that.
1730. **Mr McMullan:** That could hold up the whole planning system.
1731. **The Chairperson:** I will stop it there, because we are going to talk about planning next week. We have another half hour's business to go through today.
1732. **Mr McMullan:** Chairman, I have put up with you today, now. I am leading into another question, and twice you have jumped in on me.
1733. **The Chairperson:** Yes, and I will tell you why: planning is a topic all on its own.
1734. **Mr McMullan:** You will not do it a third time.
1735. **The Chairperson:** It deserves time for proper scrutiny.
1736. **Mr McMullan:** Yes, but then wait until I have finished.
1737. **The Chairperson:** I was going to bring you in on question 6 after question 5, but you walked out of the room.
1738. **Mr McMullan:** You did not let me finish my question, Chairman.
1739. **The Chairperson:** When you walked out of the room, I brought in Michelle, so you missed your turn. We will return to this. Planning is a very important issue.
1740. **Mr McMullan:** People have missed their turns in here before, and you have brought them in, Chair. So, do not go down that line.
1741. **The Chairperson:** We have run out of time. You will be brought in first next time, on 29 April.
1742. **Mr McMullan:** Do not be going down the line that I missed my turn.
1743. **The Chairperson:** Unfortunately, you did, because I am the one managing and controlling it. Unfortunately, just as I was about to call you, you walked out of the room, so I had to call Michelle.
1744. **Mr McMullan:** Just wait until I have finished my question first. I was not going to dwell on planning.
1745. **The Chairperson:** No. I am moving on now, Oliver, because we have had a good lot of time on this. David and Kieran can take away what they have heard. We can come back on 29 April and finish the other seven points. We have gone through 50% of the scrutiny here today. Your issue will be picked up, and you will be the first to ask questions on it if you are in the room.
1746. OK, gentlemen, thank you very much for your time. There were some very important issues there and some not so important issues, but, nonetheless, issues that we have. There are some fundamentals such as designation,

the audit, and the work that we believe could have been done before now. I know that you are telling us that you have scary stories and secrets —

1747. **Mr Byrne:** Chairman, I have to do something to get noticed here.
[Laughter.]

1748. **The Chairperson:** That is information that we could do with to assess and scrutinise the Bill right. We will leave it at that for today. Thank you very much for your time and your solid, informed answers.

29 April 2014

Members present for all or part of the proceedings:

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

Witnesses:

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

1749. **The Chairperson:** Gentlemen, you are very welcome. We will do exactly the same as we did at our previous meeting, so this session will be very similar in style and fashion. I will start with the audit issue. I know that we covered that to a certain extent at our last evidence session on 8 April, but some issues are still outstanding. We had some concerns then, so is there anything that you want to add at this stage before we move on?

1750. **Mr David Porter (Department of Agriculture and Rural Development):** Thank you, Mr Chairman, for the opportunity to discuss the Reservoirs Bill with you. We attended all the evidence sessions and have been thinking long and hard about some of the issues — in particular, the need for an audit. At our previous session, it was accepted that the ideal would be to be in a position to know the condition of all reservoirs and to get to the point at which we could then inform any further decisions. That is not in question. What really is in question in our minds is how we achieve that: first, within the policy framework that has been agreed by the Executive and, secondly, in a way that does not shift the responsibility, or will continue to confirm that responsibility, with the reservoir manager but in a way

that facilitates those issues and gets the information.

1751. The last time I was here, I introduced the possibility of some sort of grant aid, at least to commence the requirements of the Bill. We have had some further discussions and thoughts on that. That is still in our minds. It is still caveated in that we have to take the issue to the Minister. We have to seek approval for it through the Department and also from the Minister. If that were a way to help to take the Bill forward, we would certainly be keen to explore it, because it would put us in a much better-informed position.

1752. That leads on to the question of what to do with the subsequent elements of the Bill and whether you leave the Bill as it sits at the moment. We have identified that, if you simply introduce the Bill and the requirement is only for an inspection, an inspection may not necessarily give you the costs, because an inspection report does not necessarily have to give you that. All an inspecting engineer has to say is, “Here are the defects”. The obvious thing for a reservoir manager or owner to say is, “Tell me the cost as well”, but there is no requirement to have that under the legislation.

1753. We have one or two things in our minds. One is the possibility of adding a number of additional clauses that introduce a first inspection. That first inspection allows a qualified reservoir inspector or engineer not only to look at the structure but to quantify the indicative costs. That would then allow us to have not only the reports on the condition but the bit that we feel is missing: the cost element. That would allow us to be informed of whether there is a big or a relatively small problem, and it would give us some idea of how we could go forward. We need to look at the clauses to see whether that is

- the way forward or whether we simply introduce it using the current provisions. We need to work through those with our drafters to see what the best way forward is. On the basis of that, and if that is acceptable to the Committee, we will take that away and seek to redraft some of the clauses, then offer those back to you for your clause-by-clause consideration.
1754. **The Chairperson:** That would be welcome. It would give the Committee much more with regard to quantum and quantity to be able to measure the problem. Do members want to ask questions on the specific issue of an audit, the initial inspection and measuring the problem?
1755. **Mr Swann:** If it is possible to do that, is there any way that we could delay the introduction of further parts of the Bill, with maybe a delaying clause or something along those lines, so that the rest of the legislation does not come into effect until that audit is completed?
1756. **Mr Porter:** I refer you to clause 120(1) (a). On commencement, the sections mentioned there — 1, 2, 5, 6, 39, 88 to 92, and so on — will come in when the Bill gains Royal Assent. A commencement order is then required for the other provisions, and regulations are required for some. We will undertake that work to see whether that list remains valid under what we are saying, or whether you would need to take some of those items out so that they do not come in at the point of Royal Assent. What exactly would be in the commencement order? You can stage the commencement order to do exactly what you have said, but it may be useful to make that clearer, either in the clause or in the documentation, so that everybody is clear about how we expect it to go forward.
1757. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** That clause brings in a natural pause, but perhaps the pause is not constructed in the way that we want it to be, now that we have considered the needs of the Agriculture Committee. We will look to do that and make sure that the main components are mentioned so that, when the Bill comes in, those clauses can be enacted immediately.
1758. **The Chairperson:** Are there any other comments on the audit and the discussion that Robin has started?
1759. **Mr Byrne:** My comment ties into the same issue: consultation with the private or third sector. There has been a feeling among some private owners, and certainly among third sector owners, that there has not been sufficient consultation. There is an open question about that. Given that there is a sense of grievance among those managers, be they in the private or third sector, it makes sense to address that issue. I welcome the comments about possibly having some delays in getting the overall strategy teed up. Can either of the witnesses explain what the issue is in trying to seek a pot of money to carry out the required audit benchmarking exercise?
1760. **Mr Porter:** I need to take this back to the Department and seek approval, and we will then put that as a recommendation to the Minister. We will put it in the context of the negotiations that we have had on scrutiny. We all know that things are tight: in the Department, certainly, in the years to come, there is not a lot of money. However, we are talking about a relatively modest sum, at least to start the process. To be clear: we are not talking about construction work because this relates only to inspections. Based on our figures, an inspection report costs £2,250, and that is a reasonable enough figure. If it costs roughly £2,000 for each reservoir, we are not talking about millions of pounds; it would cost £100,000 to £200,000. That is the type of scale. I would be relatively comfortable with taking a bid to the Minister for that.
1761. **Mr Byrne:** I welcome that statement.
1762. This exercise is largely EU-driven in order to meet EU requirements and regulations. I would have thought that

- the Department could have applied directly to get a grant to cover the costs of the quantum of the initial benchmarking programme.
1763. **Mr Porter:** We can explore that. We have given some thought to what a grant scheme would look like, and we also need to recognise that some people have been very conscientious and already have reports. I would hate to be in a position whereby we grant-aid something that is very specific and then the people who have put their house in order miss out on that benefit.
1764. We are proposing a grant that would give initial assistance of a certain amount per reservoir as opposed to a fee for a certain activity. Therefore, if people did not have their initial inspection, it would cover that cost, but if they have already had their initial inspection because they were conscientious, they may be able to use the grant for other requirements in the Bill — for instance, employing a supervising engineer or doing minor remedial works. It would be the same amount of money, but it could be used in a slightly different way. We do not want to penalise conscientious people who have put their house in order.
1765. **The Chairperson:** Sorry, Joe, have you finished?
1766. **Mr Byrne:** There would be a better chance of getting a comprehensive package that covered every initial audit of the entire infrastructure of waterways or reservoirs. I can see how a case can be made for that, whereas, with individual issues or individual reservoirs, it is more complicated and cumbersome.
1767. **The Chairperson:** You talk about a grant scheme for reservoir managers or owners for a certain piece of work, and I take your point about fairness and the fact that some people may have already done that work. If the scheme were Department-led and done in-house, you could ask reservoir owners whether they had done the initial work and, if you were assured of that, that would reduce the burden or unfairness because you would be able to use that exercise as part of your work?
1768. **Mr Porter:** We can certainly look at that to see whether we can separate out those who have a report. The issue would be that they will have paid for it out of their own pocket, so they may view it as unfair. If, like others, they had waited, the report would have been funded, and they would not have had to pay for it out of their own pocket. We do not want to penalise conscientious people.
1769. The money could be per reservoir to help with the initial implementation of the Reservoirs Bill, given that, for the vast majority of people, it will be their first inspection. We know the costs of a first inspection, and we would bid for a figure that is very similar to that. However, if people have already had that first inspection, I do not want a situation whereby they would say that they were conscientious and had put their house in order, had abided by the principles of what reasonable owners should do, but were getting no financial help because they had funded the inspection themselves before any grant was available.
1770. I will build on Joe's point about private owners. We would try to get such owners up to speed, engage them with the process and encourage them with a time-bound grant. I am talking off the top of my head, but moneys could be available for two years, for instance, after the Bill is commenced, which would allow time for us to get all the inspection reports. We do not want to be in a position whereby, two years in, we know that 140 reports have been submitted, but we cannot get the last 11. We do not know whether those 11 are not being done because they have big problems that would slew any potential for a capital grant scheme or whether they are not being done because there is no issue with them. If the grant was time-bound, that would encourage private owners to come on board, get the work done and move forward.
1771. **The Chairperson:** Robin Swann is next.

1772. **Mr Swann:** Are you moving on to general questions, Chair?

1773. **The Chairperson:** Yes, I am; sorry.

1774. **Mr Swann:** Clause 120 relates to commencement. Subsection (2) states:

“The other provisions of this Act come into operation on such day or days as the Department may by order appoint.”

1775. That control will still rest with the Department, and there will be no reference back to the Committee or the House.

1776. **Mr Porter:** We need to look at that. We might change some provisions from a commencement order to regulation. I will leave some of the issues that we talked about until we come to the operational requirements. We have had some thoughts on that, and we may be able to change some of the wording from being so prescriptive to be by regulation. That would allow us to come back to you for discussion.

1777. **Mr Swann:** That ties in with an issue that comes into immediate effect after Royal Assent: the definition of reservoir managers. You will be aware of the Committee’s concerns as to who should or could be a reservoir manager, especially for community and voluntary groups managing lakes or parts of lakes for regulation purposes. The Committee was keen that the responsibility of a reservoir manager should rest with the reservoir owner rather than somebody being designated to do that. That has already been accepted by the Minister for Regional Development for NI Water. No matter who is operating a reservoir, NI Water is still the reservoir manager.

1778. **Mr Porter:** That is absolutely unquestionable. Northern Ireland Water is on record in the Committee for Regional Development and in this Committee as saying that it is the reservoir manager. If it leases a reservoir to somebody else, it remains the reservoir manager. It will not transfer that risk to somebody else. In that case, there is no possibility of a misunderstanding. There is the

possibility of a misunderstanding if a lease is not clear. We said previously that community groups should revisit their leases to make sure that it is clear where responsibility lies. We cannot write people out of the legislation. The legislation defines who the reservoir manager is as opposed to who is not the reservoir manager. If you are any of these, you are the reservoir manager, and you are quite correct to say that the default is the owner.

1779. **Mr Brazier:** We have taken legal advice, and the Bill reflects the common law position, which is that the person who mainly controls or manages a reservoir is the person responsible, not the owner.

1780. **Mr Swann:** Maybe we do not have the complete scenario. Do some reservoirs have multiple contracts or users?

1781. **Mr Porter:** We have come across examples of multiple owners who own different bits of folios. That is covered in clause 8, whereby there is a duty on multiple reservoir owners to cooperate. They can appoint a single reservoir manager and can then apportion responsibility. That requirement means that it is more than encouragement, and there is a duty on them. In certain cases, that may mean that managers need to sit down, have a conversation and come to an agreement, because the law requires them to do so. There is a duty on them to cooperate in a manner that ensures reservoir safety.

1782. **Mr Brazier:** That could be quite complicated. Ten farmers, for example, could have fields that run down to reservoirs. Under the Bill, each farmer or landowner would have a responsibility for the reservoir. They would have to get together and nominate one reservoir manager who would act on behalf of all of them. It would not remove the responsibility from any individual, but the reservoir manager would act on behalf of all of them. The manager would probably be the person who is responsible for the majority of the reservoir, particularly the impoundment.

1783. **The Chairperson:** What about the competency of a reservoir manager if it is a cooperative of owners and one person is designated? There are similar scenarios in fishing clubs whereby someone could be the best fisherman in the world but would not have a clue how to manage a reservoir. There is a competency issue, and that will not prevent something from happening.
1784. **Mr Porter:** No, which is why the role of supervising engineers is so important. Those people are competent, and they will give day-to-day advice, if required, on their visits. The way in which that relationship will develop is that an engineer will start by calling out a couple of times and explaining the risks that are associated with the reservoir and what you need to look for on a day-to-day basis. He or she will set up the paperwork system, and will maybe set up a water monitoring situation so that people do not need to be competent, provided they can then follow that instruction. When a supervising engineer is not content that those works have been done correctly, he or she will want to be assured that that is in place, either by offering the service or by giving further training to someone else to carry out that role.
1785. It sounds very elaborate to talk about training people in competency, but I need to stress that these are fairly routine inspections. You examine whether there is any change in the crest level and whether any wet spots have appeared that are different. You make sure that the spillway remains clear and that nothing is blocking it, and perhaps you take a dip of a water level, write that down on paper and make sure that it is recorded. These are relatively routine and rudimentary functions, but they still need to be done. A supervising engineer would expect that to be done and will work with the reservoir owner or manager to make sure that it is in place.
1786. Committee suspended for a Division in the House.
- On resuming —*
1787. **The Chairperson:** I am sorry for the interruption. We were talking about reservoir managers. David, you were cut off in mid-flow. I do not know if you can pick that up again. I had asked about the issue of competence. Robin, I do not know if you had come in on the back of that. I do not remember.
1788. **Mr Swann:** I do not remember either.
1789. **The Chairperson:** You were trying to reassure us about the supervising engineer and inspections and working with the manager to bring him up to a certain capacity of training and engagement. I think you said that that will be sufficient.
1790. **Mr Porter:** Absolutely. That is a key role for the supervising engineer. We almost need to differentiate the roles of an inspecting engineer and a supervising engineer. The inspecting engineer appears once every 10 years and does his duty on that day. That is the big inspection. The supervising engineer almost treats the structures as if they are their own. The supervising engineer David McKillen was here giving you evidence about building a relationship with the reservoir manager, and that relationship changes over time as the reservoir manager becomes more competent and comfortable with carrying out duties. The supervising engineer then has to do less and less, and they can maybe then go down to two inspections a year or potentially one inspection a year on the medium-impact structures. They will not accept shoddy records, and they will not be able to do their annual statement in the absence of any other evidence. They will ensure that reservoir managers understand that role and will train them up if need be.
1791. **The Chairperson:** Robin, I know that this is your issue, so just chip in at any time if you feel that you need to. When does the liability, competence or responsibility go on to the supervising engineer as opposed to the manager?
1792. **Mr Porter:** In law, the reservoir manager is responsible. Duties are defined for the supervising engineer, and that is his role.

It is quite stringent because it states that they are appointed “at all times”. That does not mean that they have to camp out on the structure, but they do have to be readily available at all times. I can tell you that supervising engineers take that responsibility very seriously. For instance, even if they go on holiday for a fortnight, they will deputise someone to that role, because, if an incident happens, they have to be available at all times. That is what the 1975 Act says in England, Scotland and Wales, and we have replicated that level of responsibility and commitment in our Bill.

1793. **The Chairperson:** No other members have questions on the issue of reservoir managers. Is there anything else that you want to add on reservoir managers that you keen to tell us about, perhaps because we have not picked up on it, or are you content?
1794. **Mr Porter:** I think that we are content on that area.
1795. **The Chairperson:** OK. I am going to bring in Tom to discuss the operating requirements.
1796. **Mr Buchanan:** Why is the Department still so struck on the fact that high-risk reservoirs require a minimum of two inspections every year? If an inspection is done, something is identified and work is carried out, why would there be a need for two or more inspections every year? We feel that one inspection would be ample in any one year when it has already been inspected and work has been done to the standard required. Why do we need a minimum of two inspections a year?
1797. **Mr Porter:** I will explain the rationale for that. There is, however, a discussion to be had on that point because we are trying to ensure that, as we go through this scrutiny, we are not using a sledgehammer to crack a nut. Perhaps this is one of the areas in which we have a bit of room for discussion.
1798. The rationale initially came from advice from the Institution of Civil Engineers and the supervising engineers. They said that the best or optimum way of managing high-impact structures is to see them in two different conditions during a year. So you could maybe see them in summer conditions, when the water would perhaps be lower and vegetation is high; and in winter conditions, when the water level would be high but maybe the vegetation would not be as great on the dam structure. We accepted that as evidence and put it out to public consultation. If you recall, we went out to public consultation on just high-risk and low-risk reservoirs. Through that public consultation, we heard a very clear voice that that on/off switch was not suitable and there was a strong feeling that the designations should be high, medium and low.
1799. We wanted to make sure that there was a differentiation between high-risk and medium-risk reservoirs. Therefore, we stuck with the two inspections for the high-risk reservoirs and arrived at the one inspection for low-risk reservoirs. It was really just to make sure that there was some differentiation and to demonstrate that we were being proportionate in our approach.
1800. That is the rationale and why it is in the Bill. However, if there is a strong feeling among the Committee that that is maybe too onerous a standard, we are quite happy to look at that. The reason why we are quite happy to look at that is because that is just the minimum standard. For structures that are in a very poor condition, the supervising engineer may well recommend a slightly higher standard, and that is where the benefit of bringing your structure into a good condition will be gained. If a structure is a very poor condition and has not been looked at for many years, the supervising engineer might say that he wants to see it every month until certain works are done, and it may be that it could go to the minimum standard when those works have been delivered.
1801. As I said, it is two inspections at the minute, but we are happy to look at that if, after discussion, the Committee feels that that is too onerous. I have had a discussion with the institution

- about whether we could ease up on that slightly. It has stressed, however, that medium-risk structures should not be pushed out too far because the engineers still need to have familiarity with and understanding of those structures. If it were pushed out to something like one in five, they would feel that there is a disconnect from the structure. That would result in engineers not being prepared to take the risk of exposing their company to doing that work. You might think that that approach would mean fewer inspections and that, therefore, it would be cheaper, but because of the additional risk that companies would associate with that, it might actually push the price up. If there is a feeling that that should be looked at again, we are happy enough to take that on board.
1802. **The Chairperson:** Tom, you may want to come in with another question.
1803. **Mr Buchanan:** Go ahead.
1804. **The Chairperson:** This is tied in with risk designation. In all cases, the reservoir manager will not be able to do anything to remove a high-risk or medium-risk designation because of the population centre below. There is a degree of unfairness: the onus and responsibility is on them to keep their reservoir up to a fit standard. The fact is that, when they carry out that work and they take that pain financially, it makes absolutely no difference to the risk label or the minimum standard. If you were to add a consequence to that to the effect that, if you do that work, the burden becomes less, whether in the label or the burden of inspections, you could make it fairer system and less of a burden. It also keeps the responsibility where it is, and it rewards responsibility and responsible reservoir managers.
1805. **Mr Porter:** There are two aspects to that. One is the word “risk”. I fully accept that somebody hearing that they live below a high-risk structure may well feel uneasy. We are not talking about risk in the sense that it is at the point of failure. It is the balance between likelihood, probability and consequence that we are trying to communicate. Perhaps we are better talking about high-consequence reservoirs. Some people could argue that it is semantics and that we are just playing with words, but it may better communicate what we are trying to put across to people. It is not that the structure that people are living below is at the point of failure, and the risk is very high in comparison with the risk of crossing a busy road or flying on a plane or something like that. It is purely because of the quantum of the impact that it would cause. We have had some discussions about that. We will maybe look at it again to see whether that word is the right one for our Bill.
1806. **The Chairperson:** The second aspect is the reward aspect. The reward is getting from the enhanced inspection that the supervising engineer will require down to the minimum standard. I am not sure how we can put that in so that it is obvious in the Bill, but the point is that we get the reward by looking at that minimum standard and making sure that it is the absolute bare minimum that we will accept and are comfortable with. Any structures in not great condition will not get that; they will have an enhanced inspection regime by a supervising engineer just because of the nature of the structure or what is in the downstream. Maybe the reward is easing up on that minimum standard.
1807. **Mr Buchanan:** Where you have something named high risk, work is done to it, it is brought up to a standard and it is still called high risk, does that have any implications for someone who is then looking to take out insurance to cover themselves? Does high risk make it more difficult to take out insurance compared with something that is low risk? If you go to an insurance company and say, “Well, this is high risk”, you know quite well what is going to happen.
1808. **Mr Porter:** We can certainly look at the wording to see whether that will ease it up. Do you want me to answer the insurance point now?
1809. **The Chairperson:** That was actually Michelle’s question but she is absent at the minute so, yes, it would lead on. It

- is clause 25(2)(k), regarding the visiting of the reservoir and a high-risk reservoir being visited at least twice every 12 months and a medium-risk reservoir being visited at least once every 12 months.
1810. **Mr Porter:** Are the Committee's thoughts that that should be reduced to once in 12 months? The option is to be not quite so prescriptive and change that to wording such as, "an inspection regime will be introduced by regulation".
1811. **The Chairperson:** I am not convinced that one visit in every 12 months is not burdensome. I still believe that that may well be too frequent when we have reservoirs that have been here forever and a day. Although they are growing older, they are still here. If you compare it with other inspection regimes throughout the living world, it seems to be just too burdensome. Again, if you leave it more flexible, how do you regulate that so you do not get this by default anyway?
1812. **Mr Porter:** Yes, that is the issue.
1813. **The Chairperson:** That might mean a more robust or stringent appeals mechanism.
1814. **Mr Porter:** Maybe the thing to do is to leave that with us. We will have a look at that and come back with an alternative, with a bit of rationale behind it, rather than just what our gut feeling is, if that is acceptable.
1815. **The Chairperson:** OK, no problem. Tom mentioned insurance and public liability.
1816. **Mr Porter:** I want to deal with two different aspects on insurance. The first is the insurance of properties that are downstream. The second is the insurance of the reservoir itself. We need to be clear that they are completely different insurance issues.
1817. I spoke to the Association of British Insurers (ABI), which said that a property downstream of a reservoir would be covered by its property insurance. That would be a reasonable thing to be covered by property insurance in the event of failure. They would not inflate prices for houses below reservoirs, because they are comfortable enough. They understand the risk. However, they are concerned that they are not regulated in Northern Ireland, but we are dealing with that and going through this process. We will get a Bill and regulation. I do not get any sense within the Committee or among even reservoir managers that people do not recognise that something needs to be done, so I think we will get something. Knowing that we are bringing forward a Reservoirs Bill and will regulate our structures brought some comfort to the ABI. Individual household insurance will be not influenced by structures when we get the Bill in place.
1818. The second issue is liability insurance. My understanding is that it is virtually impossible to get liability insurance for dam breach. It is not insurable. You just could not afford the liability associated with that, so I caution and encourage anyone who believes that they have it to check that that is the case. They certainly do not have it if they have not declared that they have a reservoir on their property. It is not a standard component of any business or property insurance. The liability associated with that will not be covered, so anybody who thinks they are insured needs to have a discussion with their insurance company. The first thing that the company will ask, because we have examples of that even here, is, "Have you got a supervising engineer and an inspection engineer, and when was the last time an expert looked at it?"
1819. I think that this was raised by the Antrim angling club in discussions in one of the stakeholder groups. In order to get third-party liability insurance on the paths around the structure, it had to have an inspection report to show that the club was managing the structure and that it was in reasonable condition. That was not to get insurance for a dam breach; it was to get third-party liability insurance on the paths around the reservoir. They had to show that they were managing their structure in a reasonable way.

- I would encourage people who think that they are insured to go and have a discussion with their insurance company to make sure that it is covered. If they assume that it is covered in a household or business policy without them having declared it, I would be really cautious. The liability associated with a dam breach will not just be part of a normal household or business insurance.
1820. **The Chairperson:** I understand. Are there any questions on that, Tom?
1821. **Mr Buchanan:** No; that is quite clear and covers the issue of insurance.
1822. **The Chairperson:** Jo-Anne, you wanted to touch on the issue of a worst-case scenario.
1823. **Mrs Dobson:** Yes, Chair. May we have a look at clause 69? I suggest that consideration be given to soften that to allow a wider discretion as to whether or not DARD will go for full cost recovery. It just seems to me that a common-sense approach is needed rather than the very heavy-handed approach that is there at the minute. Have you considered that aspect at all?
1824. **Mr Porter:** This is another area that we have picked up from some of the discussions that you have had and some of the evidence that you have taken from other people. Clause 69(6) is very black and white. The term “the amount of any costs” means that we would be duty bound to recover costs under the job code and everything associated with that. If there is no prospect of cost recovery, the Department will need to take a decision. It cannot just go after money that it has no prospect of getting.
1825. **Mrs Dobson:** I am just thinking of the scenario of maybe an elderly person who has no means of paying and the mental anguish that you put that person through when there is no way of recovering it. Common sense should come into play.
1826. **Mr Porter:** We will still keep quite strong on the first part of that. There will still be a duty on the reservoir manager to pay. However, maybe it could be something along the lines of “if requested” or “if deemed appropriate”. There has to be some discretion. However, if it is requested and we think that it is reasonable to recover the costs, the Bill does need to state that they “must pay” so that we do not have a loophole whereby people can say, “I am quite able to pay, but I am going to give you the runaround”, and we have no powers.
1827. **Mrs Dobson:** How then, David, do you find a form of words so that you are not putting people through —
1828. **Mr Porter:** We will have to take that clause back to the drafters. That is another clause for which we will present you with an alternative.
1829. **Mr Brazier:** Clause 71(7) states:
“If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred”.
1830. So, there is already a form of words in a clause that is not as black and white as the one that you have just quoted.
1831. **Mrs Dobson:** So, that could be incorporated into clause 69?
1832. **Mr Brazier:** Yes; words to that effect. We are not sure whether we need to go to another form of words that will change that one and the others to make it the way that David has suggested, but we are working with our drafter on that.
1833. **Mrs Dobson:** If that were incorporated, it would go some way towards alleviating people’s concerns that they are going to be pursued to the bitter end whether they have the money or not.
1834. Again, under the heading of worst-case scenario, I have asked you before about my concerns, and concerns that I have heard, about over-engineering. I know that you have answered on this before, David. How do we get around the concerns that have been raised with me about recommendations being over-engineered and people’s fear that they are going to incur prohibitive expenses? Are you concerned about the potential

- effect and people's fear of the worst-case scenario in which they are going to incur this excessive cost that there is no way that they can deal with? How do you alleviate that fear? How do you address in the Bill the concerns about over-engineering? Have you any proposals for that?
1835. **Mr Porter:** Again, I am not sure whether we can necessarily address that in the Bill itself. What I can say is that there are a number of appeal mechanisms in the Bill. If a reservoir manager feels that what was recommended is over-engineered, they can take an appeal and get another person's opinion. In addition, the professional conduct in the institution is very stringent.
1836. **Mrs Dobson:** It goes to their reputation.
1837. **Mr Porter:** Yes. There is a mechanism whereby professional conduct committees can place sanctions against professional members if they are mistreating a client, not dealing with them in a professional way, not being up front about costs or charging something different than was agreed.
1838. **Mrs Dobson:** I just do not want reservoir owners to feel that their hands are tied completely; that they are at the mercy of the engineers; that, even if it is over-engineered, they will have to pay these costs come what may; and that they have nowhere to turn. It needs to be built in somewhere that they can go at it from another angle to take the pressure off and so that, if, in their eyes, it is being over-engineered, they are not going to face an excessive bill because they have no choice in the matter.
1839. **Mr Porter:** The dispute mechanism in the Bill is probably the first way of dealing with that. You then have the profession. The last time that we were here, we also discussed whether we could have some sort of oversight role on costs.
1840. **Mrs Dobson:** It would probably be reassuring if there was that oversight role so that they do not feel that they are on their own. It has just been said to me, "Come what may, we are going to have to pay. We have no choice. If we feel that it has been over-engineered, we have nowhere to turn. Who is protecting us from that?" So, do you foresee an oversight role for yourselves?
1841. **Mr Porter:** The last time that we were here, we said that we would have a look at that and see whether we can fit that in. I stress that that is not so that it becomes a regulated activity. We could put in an annual statement a range of costs that we saw for supervising costs or inspection report costs. Someone could then look at where they fit into that range. That would either give them comfort that they are paying roughly what other people are paying or that they are one of the outliers, which would at least alert them to ask why.
1842. **Mrs Dobson:** There would be those guidelines.
1843. **Mr Porter:** There may well be a reason why. It may be because your structure is particularly complex or in particularly poor order or because you, as a reservoir manager, did nothing, chose to do nothing or felt that you could not do anything and that you needed more assistance. It would at least flag up those outliers and allow an individual to ask the question. We are committed to that. We are quite happy to keep to that commitment and look at that for you.
1844. **Mrs Dobson:** Finally, what do you foresee as the means of redress if the owners feel that the recommendations of the engineers are too excessive? How will they know where to turn or where to go? Will there be guidance on how to appeal or where they should turn?
1845. **Mr Porter:** That is covered in clause 57.
1846. **Mrs Dobson:** So that is enshrined in the Bill?
1847. **Mr Porter:** Yes. Clause 57 deals with referral to a referee, clause 58 deals with the requirements of a preliminary certificate, and clause 59 deals with the commissioning of a referee.
1848. **Mr Brazier:** What would happen in practice is that, if a reservoir manager

- felt that there was over-engineering — to use that term — they could agree with the reservoir manager to have another reservoir engineer look at the reservoir. If they wanted a completely independent person to be appointed, the Institution of Civil Engineers could do that for them.
1849. **Mrs Dobson:** Would getting a second report bring an additional cost for the manager?
1850. **Mr Brazier:** Yes, it would.
1851. **Mrs Dobson:** They would then fear that they will have to pay again for another report.
1852. **Mr Brazier:** Yes, there is that risk.
1853. **Mrs Dobson:** David, you spoke about guidelines on the upper and lower limits of the prices. Will there be anywhere where you can step in and say no if they feel that it is being over-engineered, or are they on their own?
1854. **Mr Porter:** Because it is not a regulated activity, we will be able to have an oversight role. We will be able to give an indication of costs. However, if there are outliers from that, we would not be able to cap costs or fees. It would just be an indication to someone who is tendering for this work or asking for a price whether they have a fair deal. I am not sure how we can go further from that.
1855. **Mrs Dobson:** I am just concerned that if they were over-engineered they would have to go to the expense of another report.
1856. **Mr Porter:** Although there is additional cost in this, if the institution felt that a manager had a problem with an engineer, a discussion could take place with the institution about whether there was malpractice. There would be no cost in having, at least, that initial discussion, which may well allow for any fears to be dismissed and for an assurance to be given. An individual might want to take that step before going down the formal route of appointing a referee. Moreover, when it comes to getting a very high price for some work, most reservoir managers will know that it is expensive, but they will not know whether it is high or low because they are not engineers.
1857. **Mrs Dobson:** Hence the fears about over-engineering.
1858. **Mr Porter:** We accept that. There may be a process whereby they do not have a high price but have been given the right price and it is just a bit bigger.
1859. **The Chairperson:** It is not necessarily all about the cost of the report or the cost of the work. Does it sit more neatly in clause 106, which is titled “Assessment of engineers’ reports etc”?
1860. **Mr Brazier:** I was coming to that.
1861. **The Chairperson:**
“The Department may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Act”
1862. by the various engineers.
1863. **Mr Porter:** What we are getting at is that there is a required minimum standard. It has to say certain things in a certain format, and it has to have certain pieces of information. That allows us, then, if it is not in that format. The way it works in GB is that there are guidelines. The 10-year reports all look very similar; they all have the same contents page and they all follow the same structure.
1864. **The Chairperson:** They used a template.
1865. **Mr Porter:** The EA produced templates saying that that was the way it wanted them. This power is to say that they are not coming to us in the way that we would like to see them.
1866. **The Chairperson:** So it is the form of the reports?
1867. **Mr Porter:** It is the form rather than the content. I know of one case in England where exactly what you are describing took place and another engineer had to be brought in, but I know only of that one case. There are 2,200 reservoirs —
1868. **Mrs Dobson:** But it is the owners’ or managers’ fear that it will happen to them.

1869. **Mr Porter:** But there is only one that I know of since the regulations came in where someone was going over and above what they should have been required to do. Another engineer came in on that case and was critical of the reports; the engineers were removed and someone else completed the reports. Although it is a possibility, it is very rare. The guys who are here view themselves as being at the top of their profession, and they are very conscientious.
1870. **Mrs Dobson:** I understand that, but there is a real fear. It is about getting past that for reassurance that there will be some comeback and that they will not be over-engineered.
1871. **Mr Milne:** I want to ask you about the grants scheme. I know that it was covered very sensibly at the start of our discussion. Just to be clear when we are talking about grants, is it grants that are foreseen to cover private and third-sector parties exclusively?
1872. **Mr Porter:** At the moment, the clause does not specify who is covered; we have to do that by regulation. We would set out in the regulations exactly who would and who would not be eligible.
1873. During the Second Stage debate, the Minister made a commitment. She said that she was particularly interested in looking at the third sector, the not-for-profit organisations. That was in response to issues that were brought to the Floor. She was not saying that those were the only organisations that she was interested in; she was responding to comments that were predominantly about third-sector and not-for-profit organisations. That is why she responded in that way. It will not necessarily be restricted to that. First, we need to establish that we can take out a grants scheme and establish that audit, and then see what larger capital grant is required and, at that stage, determine who should be eligible and who can get money from elsewhere.
1874. **Mr Milne:** That is done on all the reservoirs.
1875. **Mr Porter:** That is what we propose. We will have a scheme that will require owners to carry out their first inspection. It will be a first inspection-plus, because we need to have a cost component to it so that we can at least sit with a suite of 151 reports and come up with a figure of what it will take to bring structures up to standard. At that stage, we will at least be better informed to make a business case for a capital grant scheme, for instance. We might have enough evidence to satisfy ourselves that this, in fact, is not an issue and that we are talking about relatively small sums of money and that private owners and companies should have that burden. We will have to wait and see what size of figure we end up with.
1876. **Mr Milne:** We are talking about the initial inspection at this stage.
1877. **Mr Porter:** Yes, we are focused on the initial inspection. I am proposing not to restrict that. We need 151 reports —
1878. **Mr Milne:** — before we see where we are.
1879. **Mr Porter:** I do not believe that I need 151 times whatever figure I can bid for, because Northern Ireland Water's structures are already inspected. The figures that we are talking about are small in comparison with its overall budget. Our structures are already inspected, so we do not need any assistance, and, again, it is small in comparison with our overall budget. You have heard from a number of district councils, including Belfast. They have already had theirs done.
1880. **Mr Milne:** Are we talking about 50, roughly?
1881. **Mr Porter:** I think that we are focused on that smaller number. I think that 50-ish structures need assistance to get the first inspection done.
1882. **The Chairperson:** Yes, that is a very good point — it should not be just not-for-profit organisations. A lot of private sector individuals do not make a profit out of the reservoirs, so there

- is no financial gain to them. They would certainly need to be a part of it too.
1883. **Mr Porter:** I have no issue with saying that it will cost us more to work out who should get the assistance for the initial tranche of inspections than it will to administer the scheme. However, I may have an issue when it comes to giving out large capital grants to commercial companies, although that is a debate for another day. I do not think that we need get into that. First, we need to have the figures to understand whether it is a real situation and one that we will have to find a way around, or whether they are in reasonably good condition and need only a bit of tidying up or minor work, as opposed to some of the major capital works that we think may be required.
1884. **The Chairperson:** Are you content with the justification for a Bill, as opposed to the other two ways mentioned in the explanatory notes? You talk about the reservoir licensing scheme. Option 1 was to do nothing — soft regulate. Why could you not have used a licensing regime, or the existing legislation of article 30 of the Drainage (Northern Ireland) Order 1973 and article 297 of the Water and Sewerage Services (Northern Ireland) Order 2006?
1885. **Mr Porter:** First, I will deal with the options considered, and then I will deal with the other legislation.
1886. I am absolutely convinced that the panel engineer system is the right system, as it means that independent advice is given to the reservoir manager, as opposed to centralising that and then charging for the service. The panel engineer system will be more cost-effective for individual managers than if government tried to do it and charged for a licence system. I am absolutely comfortable with that, as were those who responded to the public consultation. Question 4 asked: are you content that option 3, the panel engineer system, would be the preferred implementation option? Out of 13 responses, 11 were content and the other two were content, provided that assistance was required. That means that every response to the public consultation was positive that this was the appropriate system out of the options that we considered.
1887. I am absolutely and utterly convinced that the self-regulation system does not work. We have evidence of inspection reports being done and no subsequent work being carried out. We know of other examples where obvious defects are not being addressed. Government needs to do something to give assurances that those reservoirs are in good condition. I have absolutely no doubt in my mind that self-regulation should not be considered as a realistic option and that, therefore, new legislation is required. I want to talk about whether a Bill is required, as opposed to bolting it on to the Drainage Order or the Water and Sewerage Services Order. The Drainage Order deals with the arrest of injury to land and enables us only to require the opening of sluices or valves. It is about drawing down water to stop harm to land. There is no requirement in it for any inspection or improvement works. As soon as you stop injuring land, in essence, the Drainage Order is satisfied. It is very specific.
1888. The second point is that it cannot be used on Departments. We cannot serve notice on harbours and other listed public-sector bodies. Again, that dismisses it as a realistic option. The Water and Sewerage Services Order was a realistic option. We could have brought in regulations for the construction, repair and maintenance of dams and reservoirs. However, the legal advice was that the thrust of the Bill was the supply of public water and sewerage services and that, although we could have brought regulations for the safety of reservoirs through it, it could have been challenged, because the thrust of the legislation is public water supply, not private dams. In the face of that challenge, the regulations brought in may well be destabilised. The advice was that it would be easier to go for a blank sheet of paper and introduce a reservoirs Bill that is clean and tidy, with all the legislation in one document,

- which can then be subjected to scrutiny, as we are doing today.
1889. **The Chairperson:** I am happy enough with that.
1890. The other outstanding issue is RPA in planning and local government. Oliver, do you want to come in on that?
1891. **Mr McMullan:** No.
1892. **The Chairperson:** Are you convinced that, given RPA and the role of local government in planning, there is no place in the Bill to say that councils have to be involved, side by side either Rivers Agency or the enforcement agency in Planning Service, to create or prevent something from happening? Where do you see councils sitting in the Bill after RPA?
1893. **Mr Porter:** I do not see that requirement in the Bill. The reason it is not in the Bill is that it is adequately covered in the new draft PPS 15. Probably the most significant change between the current PPS 15 and the new draft PPS 15 is that the old policy had four policy areas and the new one has five; it has an FLD5, specifically about development in proximity to reservoirs.
1894. So I feel that it is adequately covered under the new version of PPS 15. The public consultation on that has just finished, and they are going through the consultation responses at the minute. We expect that it will be confirmed with some slight tweaks.
1895. **The Chairperson:** Will the FLD5 put a complete blanket ban or moratorium on development downstream in inundation maps?
1896. **Mr Porter:** It absolutely will not because it is perfectly safe to live below a reservoir provided that somebody looks after it, provided that an engineer looks at the reservoir a couple of times a year, provided that some rudimentary evidence is kept of water levels and you can check whether there is leakage, provided that somebody keeps an eye on whether it is moving, and provided that every 10 years an inspection engineer carries out their role. It is perfectly safe to live below a reservoir. When working with planning on the new policy, we were very conscious to make the point that we were making sure that development was not stopped below reservoirs.
1897. That is not to say that all development is appropriate. You have to recognise that there is still a risk that you could get failure. Therefore, FLD5 deals with that. It questions that there will be a presumption against development in the potential flood inundation area for proposals that include essential infrastructure; storage of hazardous substances; and bespoke accommodation for vulnerable groups. It is perfectly safe to live there, and it is perfectly safe to carry on in your workplace; however, if you can find somewhere else to do it, it might be better to do so. Therefore if there is essential infrastructure, storage of hazardous substances or bespoke accommodation for vulnerable groups, you might want to think about putting those somewhere else. Then, at least, you will not have the problem of how you evacuate them in the event of a failure. It is a presumption against; it is not an absolute ban if there is no viable alternative.
1898. As part of the flood risk assessment, a road has to go below a reservoir. That does not block it entirely, but at least it poses the question. Justification will have to be provided at planning stage why it has to be there and why that road cannot be somewhere else.
1899. **The Chairperson:** Since development can change the status of a reservoir to high risk, there is an unfairness, as I see it, because the reservoir manager has done nothing different, but they will have a different level of burden depending on how the Bill travels through its passage. Is there anything that can be done in the Bill or in FLD5 to assure a reservoir owner? I know that the developer has to provide assurance regarding reservoir safety, but it is not really in his gift to provide reservoir safety. How does that work?

1900. **Mr Porter:** It would work in a similar way to your having a requirement for a sight line that goes on to third-party land. If you want your development, you need to deal with the person who owns the third-party land and come to an arrangement to secure that land and achieve your sight line. In essence, and being very simplistic, this is no different. If you want to develop downstream of a reservoir and you want planning approval, you, as the developer, need to work with the owner and agree whatever works are needed to satisfy the planning condition. It is not dissimilar from how planning conditions work today. I suspect that there will be some difficult situations where a reservoir manager does not want a development downstream, but, in essence, that is no different from somebody who owns a field not wanting development beside them and, therefore, will not sell the ground for the sight line. It is no different from that situation because we are dealing with third-party land, and you cannot be compelled to give up your property.
1901. **The Chairperson:** Yes and no, in that the reservoir manager may not own the land to be developed. Basically, then, if the reservoir manager sees that he is one development away from going from medium to high risk, he will put a blanket ban on everybody and every development that comes near him. That hurts, and the unfairness flips over, in that the person who owns and wishes to develop the land downstream will not be able to, because that development will default the risk level from medium to high.
1902. **Mr Porter:** You are absolutely right. If we take it away from reservoirs, there are sites and pieces of fields in towns that are not developed, not because of reservoirs but because they cannot get agreement with neighbours. It is really no different from that. The cost associated with this then needs to be factored in. If we cannot assure people that they are living below a safe reservoir, a development might not be the right thing to do. Although it is painful for an individual who had hoped for value, not allowing a development to proceed in an unsafe manner might be the right thing to do for the greater good.
1903. **The Chairperson:** It is not in your gift and nothing to do with Rivers Agency, because it is a private-party agreement. However, could you envisage a developer saying to the reservoir manager, “I will pay for your additional inspection. We will accrue that burden for you and pay for it because it gives us our planning application and an assurance that you are going up to standard.”?
1904. **Mr Porter:** Absolutely, and I could see the reservoir owner being in a relatively good negotiating position, particularly in such a case. That applies not just to a move from low to medium risk but also from medium to high. Although the burden is slightly different, there is an additional burden there as well. All that does is strengthen the negotiating position of the reservoir manager to make sure that they do not get caught with an unnecessary burden, that it, rightly, sits with the developer, who can then factor that cost in and say, “Well, I have £100,000 of work to do that, plus this longer-term burden: does that make this site viable and attractive or do I walk away and develop somewhere else?”.
1905. **The Chairperson:** OK. I have no further questions. Members, this is our last chance to discuss the Bill before we go into informal clause-by-clause scrutiny. Do any other members have questions for David and Kieran? I know that we have covered all the main topics over the last two sessions, but if there is something additional that you want to ask or that you are not sure of that you want to clarify, this is the time to do it. OK.
1906. David or Kieran, is there anything that you want to ask us or say to us?
1907. **Mr Porter:** Sorry, I do not want to extend everybody’s time, but there is one piece of clarification that I feel is worthwhile. Somebody said that Scotland has no regulation, but it is bringing in the Reservoirs (Scotland) Bill to introduce

regulation. That is slightly incorrect. The Reservoirs Act 1975 covers England, Scotland and Wales. So, their structures have been regulated since 1930.

1908. The new Scottish legislation removes that piece of GB-wide legislation and puts in bespoke Scottish legislation. It is that which has not been commenced, so their structures are regulated today; all that is happening is that the reservoirs authority will change. They are also going to have high-, medium- and low-risk categories and 10,000 cubic metres. In fact, the Scottish Bill is very similar to what we are scrutinising. However, their structures are regulated today. I thought that that clarification would be useful.

1909. **The Chairperson:** OK.

1910. **Mr Swann:** Just a brief point that has not been covered anywhere else: some private reservoir owners are feeling a bit of stress and strain about what may come. Is the Department working with any other agencies to give support and guidance to the owners of private dams, or even to the Ulster Farmers' Union, because they corresponded with us?

1911. **Mr Porter:** We are not working specifically with anybody that I can think of, but we are happy to work with other groups if that would —

1912. **Mr Swann:** As you get further down the line and people start to get worried as we go through the Bill clause by clause, it is something that the Department may need to be aware of. Some of the DARD inspectorate work with rural support and get training through it as well in identifying signs of stress or strain.

1913. **Mr Porter:** I think that it is something that we can take on board.

1914. **Mr Brazier:** Absolutely, that is a good suggestion.

1915. **The Chairperson:** Members have no further comments. Kieran and David, thank you very much for your time. I am sure that it has been time spent wisely for the Committee and you. It is an important piece of work that we have taken seriously, so thank you.

Next week, we go into informal clause-by-clause consideration, and I know that there will be work for you to do beforehand. We will let you get on with that over the next few days. *[Laughter.]*

6 May 2014

Members present for all or part of the proceedings:

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

Witnesses:

Mr Kieran Brazier	<i>Department of</i>
Mr David Porter	<i>Agriculture and Rural Development</i>

1916. **The Chairperson:** I advise members that the next agenda item is a critical stage for the Committee in respect of the Reservoirs Bill. This is the point where we finalise all the issues raised before formally voting as a Committee. This is the last chance for you, as members, to air your opinions, concerns and thoughts, so it is extremely important that you try to remain in the room for this discussion as much as possible. If any member feels that a clause is contentious or gives cause for concern, they will need to state what they do not like about it and what would be a solution, if they have one.
1917. You will need to have the following documents open: the consideration of Bill clauses matrix, which is at pages 37 to 130 in your packs, and the Reservoirs Bill, which is at pages 131 to 211.
1918. We have two meetings in which to complete the informal clause-by-clause process before moving into the formal clause-by-clause process. I will take each clause in turn, and I will explain it briefly and draw your attention to the evidence we have gathered on the clause, any subordinate legislation or regulation contained in the clause and any offence and related penalties associated with the clause.

You must begin to consider whether the subordinate legislation, and the offence and associated penalties, are reasonable and appropriate.

1919. Regarding offences and penalties, members may also refer to the table in the Bill pack at tab 10, which contextualises all the offences and penalties on one or two pages.
1920. Rivers Agency officials are in the Public Gallery and are available to come to the table if required. Rivers Agency has also provided a synopsis of the amendments being considered, and that has been tabled for members' information. Members may wish to take a few minutes now to read that synopsis and see whether they consider that the amendments will address the concerns of the Committee. We will have an opportunity to discuss these potential amendments at the appropriate clauses in the Bill.
1921. Members, we are looking at the paper that has been tabled today containing the thoughts of Rivers Agency and the Department on the amendments that are being considered by them out of the discussions with us and also based on the officials having sat in on the sessions that we have had. I will give you time to read the paper and go through it before we even start the informal clause-by-clause consideration.
1922. Members, I will ask you for any initial thoughts on the amendments being considered. I know that it might be hard, without reading it with the Bill, to know exactly what clauses are being talked about. We will pick that up as we go through the clause-by-clause consideration, so there will be times when we will relate to this piece of paper and the amendments that are being considered as we go through the Bill. Again, these are not concrete and have not been finalised. What is in front of us is only for our consideration, and

- we must be mindful of that as we go through them.
1923. I will ask for any comments at this stage. The text that accompanies the first proposed amendment to clause 17(2) reads:
- “To take account of comments made by the ARD Committee that the term “risk” may not be the most appropriate.”*
1924. I agree with that and that “risk” is not the most appropriate term. The proposed amendment deals with the terminology and instead of “high risk” it will be something else; either “high impact” or “high consequence”. However, there is a fundamental point. If a reservoir manager invests in his reservoir and spends a lot of money making it safer, his reservoir will still be of “high consequence” or “high impact” if it is breached. What the proposed amendment does not deal with is the fact that, in all probability, the breaching of that reservoir may have been lessened by the investment the reservoir manager or owner made. It is important that we are mindful of that. That amendment will change the terminology. It will not amend the fundamental issue of the unfairness of a reservoir manager investing in his reservoir and compound and making it to a safer standard, yet having the same burden of regulation as he had before he started.
1925. As there are no comments from Committee members, I ask whether members are content to proceed to the informal clause-by-clause consideration of the Bill?
- Members indicated assent.*
1926. **The Chairperson:** We will now begin. Part 1 of the Bill deals with controlled reservoirs, registration and risk designation. Is everyone happy that they have the Bill and the matrix that deals with the schedules of offences and penalties before them?
1927. Clauses 1 to 5 deal with controlled reservoirs, and clause 1 is entitled “Controlled reservoirs”. The Bill provides a regulatory regime for reservoirs that will be known as controlled reservoirs. A controlled reservoir is a structure or area capable of holding 10,000 cubic metres or more of water. From the evidence taken, it would appear that changing the capacity to 15,000 cubic meters or 25,000 cubic metres will have little impact. I seek comments from members.
1928. As there are no comments from members, I want to add that, from what I can see, it is still not clear how that will be measured. I recognise that having capacities of 10,000 cubic meters, 15,000 cubic meters or 25,000 cubic metres will not have a massive impact on the number of reservoirs that are controlled and that there is a clause whereby they can bring in reservoirs of a smaller capacity. However, we still do not know how they will measure the compound of water compared to a natural lake and what would be there naturally. Members should consider that. There are no comments on clause 1, so we will move on.
1929. Clause 2 deals with the structure or area which is to be treated as a controlled reservoir. Under this clause, certain structures or areas that individually are not a controlled reservoir under clause 1 will be regulated by the Bill as if they were controlled reservoirs. There is a regulation in this clause and regulations made under this provision will be subject to Assembly scrutiny under the affirmative procedure.
1930. I will ask the Committee Clerk to explain the affirmative procedure.
1931. **The Committee Clerk:** There are three Assembly procedures for subordinate legislation. The first is negative resolution, and rules made under this have the effect of becoming law as soon as they come into operation. They can be annulled by the Assembly during a statutory period, and there is a technical way of calculating that. A Member, or the Committee, must table a prayer of annulment. That is negative resolution and we will come across that.

1932. The next procedure is affirmative resolution. Under this a statutory rule is made, printed and laid before the Assembly but will not come into effect unless affirmed by the Assembly. Normally, the Minister responsible for the rule will table a motion in the Business Office and the rule will be affirmed in the Assembly. The level of control, oversight or scrutiny is a little bit higher under affirmative resolution.
1933. Under confirmatory resolution, a statutory rule is printed, made and laid before the Assembly, but ceases to have effect unless approved by a resolution of the Assembly within a specified period, which is normally something like six months. The Minister — and it is normally the Minister again — will table a motion in the Business Office to propose that the rule be confirmed by the Assembly. There is a little bit more freedom for the Department and Minister with this one.
1934. Those are three main types of statutory rules that will be referred to in the Bill as we go through it.
1935. **The Chairperson:** No issues have been identified with this clause. I seek comments from members. As there are no comments from members we will move on.
1936. Clause 3 is entitled, “Matters to be taken into account under section 2(3)”. This requires the Department to take into account the probability and consequence of an uncontrolled release of water when making a structure or area a controlled reservoir by regulation under clause 2(3). No concerns were raised in the evidence from witnesses.
1937. There is a regulation at subsection 4 requiring DARD to consult with the Institution of Civil Engineers (ICE) and other such organisations if research indicates a need to consider additional matters. The regulation could amend the provisions in clause 3 of the Bill; therefore, it will be subject to Assembly scrutiny under the affirmative procedure. I seek comments from members.
- Again, as there are no comments from members on that clause we will move on.
1938. Clause 4 is entitled, “Controlled reservoirs: further provision”. Subsection 1 allows the Department to substitute a different volume of water for the volume threshold of the reservoir. This is to allow the Department the power to specify a different threshold and respond to new evidence in respect of a reservoir. No concerns have been raised via the evidence of the Examiner of Statutory Rules. Should the need arise to amend the primary legislation, it will be subject to Assembly scrutiny under the affirmative procedure.
1939. Subsection 2 allows the Department, by regulation, to make provision for how a reservoir’s capacity is calculated and how “natural level” and “surrounding land” are to be defined. Negative procedure is considered appropriate, as subsection 3 deals with the consultation process in making the order and the regulations. I seek comments from members. As there are no comments from members we will move on.
1940. Clause 5 is entitled, “Controlled reservoirs: supplementary”. Subsection 1 details anything that is integral to the functioning or operation of a controlled reservoir. Subsection 2 details structures or areas that will not be taken into account in relation to what is treated as a controlled reservoir. Subsection 3 enables the Department, by regulation, to define, with more precision, the things listed in subsection 2 and exclude other things from being, or being treated as, controlled reservoirs. No concerns have been raised about the clause. Subsection 3 will be subject to the negative resolution procedure as it is felt that the Department will need the flexibility to amend the legislation if necessary. I seek comments from Members. There are no comments.
1941. Clauses 6 to 8 deal with reservoir managers. Clause 6 determines who the reservoir manager is. It may be possible that there could be more than one manager. The Committee received

- a number of comments from witnesses, particularly from fishing organisations and community groups outlined in pages 42 to 46 of the matrix alongside the response from Rivers Agency. I seek comments from members?
1942. **Mr McMullan:** Sorry, Chair; are we at number 6?
1943. **The Chairperson:** Yes, clause 6.
1944. **Mr McMullan:** Number 8 —
1945. **The Chairperson:** Say again, Oliver?
1946. **Mr McMullan:** Number 8.
1947. **The Chairperson:** Clause 6(8)?
1948. **Mr McMullan:** Yes, sorry. Who would be regarded as the reservoir manager under clause 6(8)? Is it still the owner?
1949. **The Chairperson:** Are you asking who is regarded as being the reservoir manager?
1950. **Mr McMullan:** Yes.
1951. **The Chairperson:** There would be a reservoir manager, and, if they could not identify a reservoir manager, it would go to the owner, as far as I know. We have Rivers Agency officials here if you want to ask that specific question.
1952. **Mr David Porter (Department of Agriculture and Rural Development):** We put this clause in because we do not want there to be a grey area regarding the work that Rivers Agency does with respect to the free flow of water under the Drainage Order.
1953. We want to make it clear that maintaining the watercourse in order to allow the free flow of water does not mean that the Department becomes a reservoir manager. The removal of bushes, silt, or carrying out some very minor maintenance-type function on the watercourse does not mean that we will become enjoined or own the structure. We do not have any responsibility for the structure and we do not control water levels. We recognise this as an issue that people might be confused about, knowing that our diggers and our direct labour have been working on the watercourse and whether that means that we have some responsibility for the dam structure.
1954. We felt that this was the best way of making it clear that, for the avoidance of doubt, if maintenance works have been done on a watercourse historically and it is still designated so that we will be doing this work in the future, that does not change the responsibility; the responsibility for the structure remains with the cascade of people in the top elements of the clause. If there is a water undertaker, it would be them. If there is a sewerage undertaker, it would be them. There might be some other business involved, and then there is the default position of the owner. We do not take over responsibility because of the Drainage Order.
1955. **The Chairperson:** From time to time, you would do work through your various guises and responsibilities in regulations. What would be the case if works that you completed, as Rivers Agency, caused the structure to breach or prevented the reservoir manager from doing works that would stop it from breaching because of the works that you had done? What is the legal aspect of that?
1956. **Mr Porter:** I cannot think of a situation in which we would carry out works that would cause it to breach, but I can think of situations in which we have done works that have changed the flow pattern through the dam structure. We are examining a couple of them to see whether that is more than maintenance. For instance, where a drainage scheme was carried out — where the spillway might have been too small, and, in order to reduce flood risk, we have changed the spillway significantly — we may well be a reservoir manager. We have a small number where we actually have done works and we are examining them at the minute to see whether we have responsibility under the Reservoirs Bill.
1957. This clause is really just in terms of routine maintenance and not any capital works that we have done.

1958. **Mr McMullan:** There is a relevant word there — the “routine” maintenance. Something like that needs to be built in there, so that there is no confusion when people read that. We are talking about routine maintenance here.
1959. **The Chairperson:** Sorry, that is clause 6(8).
1960. **Mr McMullan:** Yes, clause 6(8), so that anybody who reads it will know that it is routine maintenance rather than enlarging the waterway or anything like that. That is because, I take it that if you do that you could then charge the owner of the reservoir.
1961. **Mr Porter:** No, we would not charge for that because it would be part of a drainage scheme that we did for the greater good, and that scheme had to have an economic justification. We had to be able to demonstrate that it was for the greater good and was cost beneficial. So, we do not recharge the likes of those schemes back to the individual, but we have found a number where schemes have been done through what are impoundments. We are asking the questions, because of the works that we have done historically: does that mean that we are a reservoir manager or what is the extent of our responsibilities?
1962. This will clear up the issue of maintaining any works, and it will make clear to people that they are not absolved of their responsibility and that it does not automatically default to us in that case.
1963. **The Chairperson:** What happens if the work that you have done in the past led to either the holding back of water or increasing the capacity of a reservoir to the point that it has had a direct effect on inundation maps, which then has a direct effect on risk? In other words, what you have done to either compound more water or prevent the running away of water.
1964. **Mr Porter:** If there are any examples of that, we are certainly happy to talk to people to see whether the works that we did made us a reservoir manager or whether it was just purely maintenance or routine functions that we carried out. I suppose we are trying to tidy up what we have done in the past, because we did not have this legislation to test what we were doing, to see whether we became a reservoir manager.
1965. We will obviously be wise to it now, going forward, so that each time we have a situation we will be able to check it out before it happens. That is why we know that there is a small number of cases where we have carried out a drainage scheme and we are asking ourselves: does that mean that we are part-reservoir manager because of what we have carried out?
1966. **The Chairperson:** Do you have that detail to hand?
1967. **Mr Porter:** Not to hand, and, again, we are into specific locations. However, if there are cases that you know of, where works had been carried out by us, and there is a question as to whether we are part-manager, we are quite happy to deal with them on a case-by-case basis.
1968. **The Chairperson:** Even if you could furnish the Committee with a letter of clarification on the points that Oliver and I have raised. Will you also get to hand information on the number of reservoirs where it may well be the case that the works that you have done have increased the levels, maybe from the natural level?
1969. **Mr Porter:** I am not sure that we have increased reservoirs from a natural level, because the works that we tended to do were on the reservoir. So, they were pre-existing structures that we increased the flow through. Certainly, on that specific question, we are happy to look at the examples that we know of to see if any of them fit that particular example.
1970. We are quite conscious that, with some of these, we are dealing with people to try to work out who the reservoir managers are. So, I am not sure that we would like the whole list to be published. We can certainly give you a number of examples, if that would be helpful.

1971. **The Chairperson:** OK. Thank you very much. Are there any further questions for David before I relieve him of his post on clause 6? We are not going to open up another debate on clause 6. OK, David, thank you very much. Sorry, you may end up jumping back and forth, but that is a necessary evil. Are there any further comments on clause 6, which makes provision for the reservoir manager?
1972. Moving forward to clause 7, which is “Multiple reservoir managers: supplementary”. This clause applies where there is more than one reservoir manager. Subsection 2 provides that the requirements of the Bill apply to each of the reservoir managers separately. Subsection 3 enables reservoir managers to nominate one of the managers to fulfil any requirements of the Bill. Subsection 4 requires details of the nomination, and subsection 5 that the details are forwarded to the Department or any qualified engineer commissioned in relation to the reservoir.
1973. Creggan Country Park raised an issue with this clause. It is in your pack at page 46, alongside the Rivers Agency’s response. The clause is clause 7. I seek comments from members.
1974. **Mr McMullan:** Under subsection 5, why do we wait 28 days after the date of nomination to give notice of it?
1975. **The Chairperson:** Yes:
“The nominating manager must, not later than 28 days after the date of the nomination, give notice of the nomination and of what it contains to—
(a) the Department,
(b) each other reservoir manager of the controlled reservoir,
(c) any supervising engineer, inspecting engineer, other qualified engineer or construction engineer commissioned in relation to the reservoir (see Parts 2 and 3).”
1976. You are asking why they should wait 28 days?
1977. **Mr McMullan:** Yes. That is a month, and there is the possibility of having to wait another month before any nomination is made, and,
“the Department may notify and consult the nominee in accordance with the nomination”.
1978. Why is it a month, and then it could take another month? Why is it not done as soon as the nomination is made?
1979. **The Chairperson:** David, do you want to comment on clause 7 with regard to the 28-day period?
1980. **Mr Porter:** That little bit of flexibility was built in because we recognise that some reservoir managers will be clubs. People who engaged with us during the consultation with stakeholders, before we started to draft the Bill, said that they needed a little bit of flexibility because they needed to get approval from others before they were happy to release information. So, there are a number of places in the Bill where we have built in a little bit of flexibility, but without being so flexible that people can then use it as a loophole. That is why the 28-day period is there.
1981. **Mr McMullan:** Would there be any problem with 14 days?
1982. **Mr Porter:** We have no issue with that, but I suspect that the stakeholders may well think that it is a little tight. I am not sure that an additional 14 days of notification is actually really a benefit when we are managing the structures. What we intend to do — what the Bill intends to do — is to manage these structures for evermore. So, giving 14 days, in view of the long period of time that we will be managing them, is neither here nor there. I have no argument for or against it; if you want it to be 14 days, I am happy to make it 14. I suspect it may well —
1983. **The Chairperson:** I am sorry David. Let me pose a scenario, Oliver: If a council owns a reservoir, there may well be procedures to be followed within a council committee, whereby they go to a subcommittee and then to a full council meeting. That may well be a monthly

- cycle. There will be other occasions when there will be multiple reservoir managers, and an ultimate reservoir manager who will be responsible for gathering all the information. Some of it may not even be within their own gift, and it may come from other agencies, such as NI Water or Rivers Agency and others like that. It may be the case that they need time to try to get that information, or allow agencies to locate it, and pass it back to the reservoir managers again. Are you happy on that specific time period?
1984. **Mr McMullan:** Yes.
1985. **The Chairperson:** Are there any other comments on clause 7? Thank you for that, David. There are no other comments.
1986. We move to clause 8, which is entitled, “Duty of multiple reservoir managers to co-operate”. This clause applies where there are two or more reservoir managers. They must cooperate with one another as far as necessary to enable all the requirements of the Bill to be complied with. No issues were raised with this clause. Subsection 2 makes it an offence for them not to cooperate, and for high-risk reservoirs, the penalty is a fine of up to level 5. The scale for level 5 is currently £5,000.
1987. The second offence is for medium- and low-risk reservoir managers and carries a penalty of up to level 4. The scale for level 4 is currently £2,500. I refer members to the offences and penalties table in their Bill pack and also to the standard scale fines on the back page of the pack. That gives you the context of the level of the scale and the level of fine for each scale. Are there any questions or comments on clause 8?
1988. David — ably assisted by Kieran, I understand — why do you think that that specific scale is appropriate to that offence for multiple reservoir managers, who may not be able to garner and glean information? Also, although they might be the most understanding people in the world, other reservoir managers may not be. How will that offence be proven and investigated? Do you think that the scale of penalty is correct?
1989. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** In the first instance, incidents such as that will come to our attention via a reservoir manager, we imagine, if he finds that other reservoir managers are not assisting him in the fulfilment of his duties. The Department has taken legal advice on the level of penalties associated with any offence in the Bill. It has been advised that that level of penalty is commensurate with that level of offence.
1990. **The Chairperson:** Are there any other comments or questions for David or Kieran?
1991. In the grand scheme of things, and in the context of the whole Bill and the other levels of penalty, apart from imprisonment, this is the top of the range. Can that be justified, given that it is not a breach or something that would lead to a breach of a reservoir? It may lead to that indirectly, but it is basically a failure to cooperate between two, three or four people.
1992. **Mr Porter:** We are trying to encourage people to do their quite straightforward duties. It does not matter what the size of the penalty is. If they cooperate and do what is required, we will never get to that stage. We want a penalty that means that people will not dawdle or play games with the legislation and the Department. We want the fundamentals: tell us who is involved with the reservoir, appoint somebody who will act on your behalf, and let us get the easy things done and dusted, knowing that we will get to more difficult issues about works and breaches. The penalty is there to encourage people not to dawdle at those early stages.
1993. **Mr Brazier:** We will do our utmost to try to encourage reservoir managers to work together. The reservoirs authority will do that. If we received a complaint that it was not working and reservoir managers were not cooperating, we would go out and talk to them to try

- to encourage that. As with any of the penalties, this would be a last resort. We would try to encourage as much working together as possible. We would seek to enforce only if it brought the safety of the reservoir into question. The penalty is there because we want to use it as a deterrent against lack of cooperation, as with the other penalties.
1994. **The Chairperson:** Remind us: although you may move in to try to resolve a situation, what are you actually asking of the reservoir manager or managers at that time?
1995. **Mr Brazier:** We are asking them to work together to agree who the reservoir manager is and who will take responsibility for liaising with the reservoirs authority on reservoir issues and making sure that the requirements of the Bill are met. We are also asking that a supervising engineer and an inspection engineer are commissioned at the appropriate times and that works that are expected to be done to the reservoir are undertaken. If works were required to be done, for example, to a section of a reservoir that was not owned by or was not the responsibility of the nominated reservoir manager and required the cooperation of another reservoir manager who did not play ball, resulting in the safety of that reservoir coming into question, that would be a rather serious issue.
1996. Although we cannot state this, we would expect that the nominated reservoir manager will be responsible for the important parts of a reservoir. However, that may not be the case, and someone else may take on that responsibility. If a reservoir manager who had responsibility for, say, the spillway was not cooperating with the nominated reservoir manager or any other reservoir manager, we would consider that quite a serious issue and would want to be able to stop that and deter it as much as possible.
1997. **Mr Buchanan:** I was listening to what you outlined and, since a fine is in place and should the Bill be passed, will a set of guidelines be issued to clear up any ambiguity? It appears to me that there is ambiguity about who should be doing what and what reporting they should do.
1998. **Mr Porter:** I think that we will leave that as a matter for individuals to determine. We do not want to be too prescriptive. We can envisage a situation in which there may be multiple managers, but many of them will have little or no responsibility. We have used the following example a couple of times: if you happen to own land that is under the wetted area of a reservoir, there is very little that you can do that influences water level and the safety of the dam structure — the impoundment. We are really focused on the safety of that, because it keeps the water in its place. Rather than being too prescriptive, we would leave that up to individuals to determine whether they have little or no influence and should, therefore, carry little or none of the burden. They can agree that between themselves.
1999. Equally, as Kieran said, somebody who is a landowner may be an engineer and may say that, although he has little responsibility, he will take the lead on behalf of the group. He is best placed to do that because he understands engineering and the dam structure and can bring something more to the table than someone who just happens to own land that the dam structure sits on. That is why we purposely tried not to be too prescriptive, but we are happy enough to provide informal advice. I am not sure whether we can write down formal, strict guidelines or anything like that.
2000. **The Chairperson:** What happens if one of the people who, I suspect, could be deemed to be a reservoir manager but may not have the ultimate responsibility for it is a council or a Crown agency? Is there is an issue with the Rivers Agency penalising those Crown agencies by taking them to court? That cannot happen at present.
2001. **Mr Porter:** There is no Crown immunity under the Bill; it also applies to the Crown. We will come to that issue towards the end of the Bill. We recognise that we had to identify who

- the owners were and who the Bill had to apply to. It applies to the Crown.
2002. **The Chairperson:** Say, for instance, you own a reservoir, and a public road runs across it or a council owns part of it. If you asked that council to comply and give you information that is not forthcoming, does the clause still apply?
2003. **Mr Porter:** The clause still applies. Those agencies have a duty to cooperate. The duty is mentioned at the start of the Bill, and it lays out its stall. We said that we wanted to try to get the easy things out of the way — cooperation between two organisations or two people — and the Bill sets that out early on. Clause 8 applies throughout the Bill, in that there is a duty to cooperate. The first agreement should apply to everything that reservoir managers do. If work is subsequently required, for instance, reservoir managers still have a duty to comply or to cooperate with one another. It is important to work out the responsibility for a dam structure and reservoir, and to negotiate that well with the other bodies. You have to do that. The law requires agreement among parties.
2004. **The Chairperson:** Are there any further questions on clause 8? Oliver, are you happy enough?
2005. **Mr McMullan:** I will wait until we get to clause 16.
2006. **The Chairperson:** Clauses 9 to 16 deal with registration. Clause 9 requires the Department to establish and maintain a register of controlled reservoirs. Subsection (2) allows the Department to specify what information and documents are required to be in the register. Concerns were raised by fishing clubs, community groups and Creggan Country Park. The Department needs to establish what information is available and appropriate for the register. That will be done by regulations, which are subject to negative resolution. Do members feel that negative resolution is appropriate?
2007. **Mr McMullan:** In clause 16(5) —
2008. **The Chairperson:** No, sorry, we are at clause 9.
2009. **Mr McMullan:** Sorry. I am getting mixed up.
2010. **The Chairperson:** Are you OK to wait, Oliver?
2011. **Mr McMullan:** Yes, I will wait.
2012. **The Chairperson:** I will ask Stella to remind us what negative resolution means.
2013. **The Committee Clerk:** A statutory rule made under negative resolution procedure has the effect of law as soon as its “comes into operation” date is reached. Such a statutory rule can be annulled by the Assembly within the statutory period. For it to be annulled, a Member or Committee must table a motion known as a prayer of annulment in the Business Office. Basically, negative resolution means that it would normally come to the Committee as an SL1, when the Committee would agree the policy. It would then come as a statutory rule. If the Committee did not agree with it at that stage, it would have to put a prayer of annulment down in the Assembly. The Committee has looked at that a couple of times.
2014. **The Chairperson:** Can I seek comments from members?
2015. **Mr McMullan:** Is that clause 9?
2016. **The Chairperson:** It is clause 9.
2017. **Mr McMullan:** Can I ask about clause 9(4)? When we talk about Crown immunity, can the Secretary of State step in?
2018. **The Chairperson:** Yes. Subsection (4) enables the Secretary of State to direct the Department to withhold information.
2019. **Mr McMullan:** Who assumes responsibility for anything that is asked not to be registered?
2020. **The Chairperson:** We can ask David and Kieran.
2021. **Mr Porter:** This is not about allowing people not to register. If there is

- information that is in the interest of national security, the Secretary of State can say that that information should not be released. I can give you a very real example. We have flood inundation maps that do not show depth and velocity. If we have maps that show depth and velocity, a DEFRA protocol agreed in Whitehall states that depth and velocity are in the interest of national security, and you are not allowed to release that information to the public. It concerns those types of issues, when somebody could misuse or use that information to do something that could cause a problem.
2022. **Mr McMullan:** Is that not a form of Crown immunity?
2023. **Mr Porter:** No. The Crown would still have to register.
2024. **Mr McMullan:** Who would be responsible for that?
2025. **Mr Porter:** This is information about any reservoir, not just Crown reservoirs. If we had the depth and velocity of any reservoir, whether it is public, private, owned by an individual, a company, and so on, the Secretary of State would say that that information could be used against national security, so it could not be released.
2026. **Mr McMullan:** Who is party to that information? Are reservoir managers party to it?
2027. **Mr Porter:** Reservoir managers could be party to it, but we would not put it on the register, and the register would be in the public domain.
2028. **The Chairperson:** The Rivers Agency would have sight of that information.
2029. **Mr Porter:** Yes, we would have it, because we generate it. I will keep to this example. We could share it, in a controlled way, with reservoir managers to allow them, for instance, to produce their flood plan. We would not put that element on the public register because of its sensitivity.
2030. **Mr McMullan:** Would the Planning Service be allowed sight of it?
2031. **Mr Porter:** Do you mean for a development application?
2032. **Mr McMullan:** Yes.
2033. **Mr Porter:** We are probably getting caught up in the example that I used. We may use a version of depth and velocity to show at-risk areas. I will use a slightly different example. Let us say that there is a very large reservoir in the middle of Belfast: the Secretary of State could say that no information about it should be released and be available in the public domain because people could use that information adversely in understanding how and where it would be released. It does not take away from the registration, but it means that the information is sensitive. The names of the owner or the person who has keys, for instance, would not be made public because people could use that information for other purposes.
2034. **Mr McMullan:** I cannot see the benefit of that. There are low-, medium- and high-risk reservoirs, and I take it that high-risk reservoirs would be part of this.
2035. **Mr Porter:** It may not necessarily be all of them.
2036. **Mr McMullan:** No, not all of them, but some of them.
2037. **Mr Porter:** For national security, certain categories of infrastructure are more important.
2038. **Mr McMullan:** I am not being disrespectful, but I think that that needs to be explained more fully because it does not make sense. It definitely does not make sense to take it forward on that basis.
2039. **The Chairperson:** I can understand and grasp the example that you used, Oliver. If the Planning Service were concerned, it would write to the Rivers Agency anyway as a consultee, which could then decide what information to give or give its opinion on the information that it has. It is not as though it would be hidden away and not used, but, in

- the public interest, it would not be on a public register.
2040. **Mr McMullan:** I cannot see how that would affect national security.
2041. **Mr Porter:** Let us think about two reservoirs in Belfast that are exactly the same size: one is used for the public water supply, and the other is not. There will be greater sensitivity and security about the reservoir that is used for the public water supply because someone could poison that. The name of the man who has the keys to access that reservoir should not really be put on the public record, because someone could take that information and use it to do wrong. The second reservoir is exactly the same size and has exactly the same flood risk, but it does not supply public water, and it, therefore, poses less of a national security risk.
2042. **The Chairperson:** We can seek clarification from the Rivers Agency.
2043. **Mr McMullan:** With respect, that could refer to anyone who has the keys for a lot of places. It could pertain to anything, but we can get more information on that.
2044. **The Chairperson:** There are no further comments from members on clause 9 and the controlled reservoirs register.
2045. We move on to clause 10, which requires the reservoir managers of controlled reservoirs to register their reservoirs by providing the Department with information and documents that are to be detailed in the regulations. The regulations requiring provision of information are not thought to be contentious, and, therefore, the negative procedure is considered appropriate. The Committee did not receive any comments about this clause, and there are no comments from members.
2046. Clause 11 concerns the structures or areas that are controlled reservoirs on the relevant date. The clause requires a reservoir manager to register a controlled reservoir not later than six months after the commencement date of clause 10. The Committee did not receive any comments on this clause, and there are no comments from members?
2047. Clause 12 deals with structures or areas that become controlled reservoirs after the relevant date. The clause requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. The Committee did not receive any comments on this clause, and there are no comments from members.
2048. Clause 13 deals with the registration time frame for a structure or area that is to be treated as a controlled reservoir because of the regulations under clause 2(3). The Committee did not receive any comments on the clause, and there are no comments from members.
2049. Clause 14 deals with fees and their registration and administration. The clause enables the Department, by regulations, to introduce the requirement to set, charge, collect and recover fees from reservoir managers in order to recoup costs reasonably incurred by the Department for registration and other departmental functions in respect of the reservoirs register. Armagh and Antrim fishing clubs expressed concern that the word “may” really means “will”. The regulations will be subject to negative procedure so would need a prayer of annulment at that point.
2050. I have a few questions, David and Kieran. In government, we always talk about cost recovery. I suppose that the question is: why should the Rivers Agency not bear the costs of registration, considering that reservoir managers may have to invest heavily in capital works for their reservoir and take on the burden of the regulations for inspections? Is it necessary that they be asked to foot the bill for the cost of government regulations and requirements, for which they will have no gift as regards efficiency? How much would that cost? Have we any costings? How would that be distributed among reservoir managers or owners?

2051. **Mr Porter:** We do not intend to bring in fees for registration. We are making sure that we write primary legislation that allows us to charge a fee if the economic situation continues to change. Government policy is for all cost recovery, so, at present, we do not have a fee or a plan to bring in a registration fee. At this stage, I do not see this clause being used. It is there in case it takes some time to get the Bill through. When the legislation becomes live, the policy may be that the Government charge for all their functions. However, they are not doing that at present.
2052. **The Chairperson:** Have you not done any initial work on the cost of registration or any similar scheme in the Rivers Agency or the Department?
2053. **Mr Porter:** No, the reason being that we do not wish to introduce fees. We want people to register their structures, because we want to understand the risk that those pose. We see fees as potentially being an impediment to that. All we are doing through the Bill is making sure that we do not have a gap, because, at the point at which the legislation goes live, it may not be compliant with government policy. At present, we do not plan to bring it in, so we do not know what the fee would be. We have no intention of introducing fees, so, in our view, that would be nugatory work.
2054. **The Chairperson:** I am sure that there have been in-house calculations on how much it would cost the Department or on the size of the bid to DFP.
2055. **Mr Porter:** We know how much we have bid for to staff up a reservoir enforcement team. We have a recurrent cost of about £200,000 a year, which is met within the current CSR. It was a new bid within the current CSR. It will then become part of our baseline as we go into the next CSR. At the minute, we have no reason to think that that would not be funded or that it would not be a function that would be important enough to be funded out of any allocation that we get. However, we do not know that. We are told that we continue to be in hard times, and, in the next CSR period, there will be a lot of demands for money, certainly on the resource side. However, we are relatively confident that we are OK as an agency if we are funded, and we see this as a necessary function that we would fund.
2056. **The Chairperson:** How do you counter the argument about the words “may” and “will”? How would you get round that fear and perception?
2057. **Mr Porter:** There was a fear from one individual. However, I spoke to him after he gave his evidence and tried to reassure him that we do not plan to do that. There was a suspicion that we had ulterior motives. I am not sure how we convince somebody that we do not have such motives. We have said that we do not plan to bring fees forward, and we are on record here as saying that we do not plan to do that. That may change if government policy changes, but, at the minute, we do not plan to bring fees forward.
2058. **The Chairperson:** Are there any further questions for David or Kieran on the registration and administration of fees? Members have no further comments on clause 14 and are happy enough.
2059. We move on to clause 15, which requires a person to notify the Department within 28 days of the date that they cease to be a reservoir manager and to provide the name of the new reservoir manager. The Committee received no comments about this clause.
2060. Clause 16 makes it an offence not to register. The offence carries a fine of up to £5,000 for high-risk reservoirs and up to £2,500 for low- and medium-risk reservoirs.
2061. I have another question, David and Kieran, for which I apologise. In clause 15, a person has to notify the Department within 28 days of the date on which they cease to be a reservoir manager. That is all well and good, but they then have to provide the name of the new reservoir manager, which may not be within their gift. If a reservoir

- manager were to retire, leave on bad terms with his employer, or were deceased, how would that work? How can you put the onus and responsibility on a former reservoir manager, who may then have no responsibility or outworkings on appointing a new reservoir manager or who may simply not even know?
2062. **Mr Porter:** In this case, we were thinking about a reservoir being transferred to somebody. It would be similar to saying that you had disposed of your car, sold it to a dealer or sold it privately to an individual. That was what was in our mind's eye. We can take that back and have another look at it to see whether there would be other situations that may not be the norm and whether we are a little bit too tight on that one. We can take that on board.
2063. **The Chairperson:** That may work, because in a used car scenario, you can simply say that you got rid of the car, scrapped the car or sold it on to Mr A. Some sort of registration may be required where you could put, "I do not know" or "not applicable" on a form. I do not know how that would work in registration terms and how the Department would seek to find out who the new reservoir manager is and whom you would hold responsible.
2064. **Mr Brazier:** I suppose that it would be in much the same way as we are trying to find out the names of unknown reservoir owners. We would probably be in that situation. It would involve a bit of detective work, if nothing else. That scenario might arise. I wonder whether it is a matter of extending the timescale or putting in something more specific to cover the scenario that you suggest.
2065. **The Chairperson:** If someone has no knowledge of the new reservoir manager or of a decision taken by a committee that he is no longer part of, it will be very hard, even with a longer timescale.
2066. **Mr Brazier:** Yes, it would not matter how long he had.
2067. **The Chairperson:** The onus and responsibility is no longer his.
2068. **Mr Porter:** It may well be a case of adding "if known" at the end. We can have a look at that.
2069. **The Chairperson:** You do not want somebody who does not have the responsibility getting slapped with a £5,000 or £2,500 fine.
2070. **Mr Brazier:** So the issue is about placing the onus on the outgoing reservoir manager to give us the name of the incoming reservoir manager.
2071. **The Chairperson:** Yes, it is about the onus being placed on the ex-reservoir manager to come up with the goods when he may not know or have any means of knowing who the new manager is.
2072. **Mr Porter:** OK. We can have a look at it.
2073. **The Chairperson:** What about deceased reservoir managers?
2074. **Mr Porter:** If there is a club and somebody just walks away, the club corporate is the owner. However, it then has to appoint an individual to carry out that duty. We may well need to have a little look at that.
2075. **The Chairperson:** What about issues involving probate? Can responsibility fall on family members or somebody who has no inclination towards, or even any sight of, the deceased's work? You would not want that to happen to a family member or dependant.
2076. **Mr Brazier:** If a family member took over a farm and the land was falling down on to the reservoir, that would be part of the reservoir. That person may decide that they do not want to have anything to do with the reservoir, and, in those circumstances, it is about nominating a reservoir manager. If the father, for example, was a reservoir manager and the person who inherited the land did not want to take on that role, he would have to go to the others, agree which of them would take on that responsibility and let us know. That is one scenario; there may be others. We will have a look at that clause. Placing the onus on an outgoing reservoir manager to give

- us the name of the incoming reservoir manager is the concern.
2077. **The Chairperson:** There is a grey area when a disaster happens in a family or an organisation. We cannot always legislate for the worst-case scenario, and there could be loopholes or even grey areas that would make it very difficult. If there has been a family tragedy, for example, the last thing on people's minds will be the reservoir.
2078. **Mr Brazier:** Yes, or telling us who their new reservoir manager is.
2079. **Mr Porter:** We will have a look at that.
2080. **Mr McMullan:** You mentioned farming. The reservoir would be marked on the farm map. Therefore, if it came to the son, it would be his responsibility. Do you not have powers under the Bill to appoint a manager if need be? In a case of not knowing who the manager is, can you not appoint one to oversee the reservoir until a new one is in place?
2081. **Mr Porter:** No. This goes back to clause 6: people are managers in law. If there is no water undertaker, sewerage undertaker or any other person managing or operating a reservoir, the owner is the manager. It is not for us to appoint someone. There will always be such situations unless we get to a point at which there are orphaned reservoirs, when the Department may need, in the interests of public safety, to step in. It is not for us to say, "You own that. Therefore, you are the manager". The legislation places that burden on the owner.
2082. **Mr McMullan:** Somewhere in the legislation, the line of succession of ownership needs to be explained: if the father owns a farm and there is a dam on that farm, it is the responsibility of whoever takes over.
2083. **The Chairperson:** It certainly is a grey area. Will you have a wee look at it?
2084. **Mr Brazier:** Are we going back to clause 6 and reservoir managers? Is it about that or is it about the transfer of responsibility from one reservoir manager to another?
2085. **The Chairperson:** A bit of both. That may well need to be tied up in other parts of the Bill.
2086. **Mr Porter:** We will have a look at that.
2087. **The Chairperson:** When looking at one clause, we need to see how that, indirectly, affects other clauses. It seems to be a grey area or a blind spot.
2088. Members have no further comments on clause 15, so we move on to clause 16, which provides that it is an offence for a reservoir manager to fail to comply with the specified requirements for the registration of a controlled reservoir and in relation to the change of a reservoir manager. The Antrim angling club commented that no one in a fishing club would be able to manage that requirement. An offence at clause 16(2) carries the penalty of a fine up to level 5, which is currently £5,000 for high-risk reservoirs. The second offence for medium- and low-risk reservoirs carries a fine of a penalty of up to level 4, which is £2,500.
2089. **Mr McMullan:** Earlier, we talked about the transfer of ownership and who the next manager might be. In clause 16(5), however, we have built in a defence to a charge in proceedings:
"that the person did not know and could not reasonably be expected to have known that the person was the reservoir manager".
2090. We had this argument about clause 15, and here is the defence that the person did not know. One contradicts the other.
2091. **The Chairperson:** Very good, Oliver. I am surprised that you were able to keep your powder dry. [Laughter.] I commend you for that.
2092. Could something similar be added, if necessary, to the other clause? Is that necessary, considering that it is already in clause 16?
2093. **Mr Porter:** The two are interrelated. We tend to think through these issues using scenarios. If an estate was willed

- to somebody who lived in America, and nobody had contacted them and they had no reasonable way of knowing that they had become a reservoir manager, it would be entirely reasonable and proper for them to be able to say, "Sorry, I couldn't have committed an offence because I had no possible way of knowing that I was the manager." I suspect that such a person would use clause 16 as their defence.
2094. **Mr McMullan:** He could say that his daddy never told him.
2095. **Mr Brazier:** Let us work that through: the Department charges him with that offence, and he uses clause 16(5) as his defence. Previously, it was suggested that amending clause 15(2) might take account of that. It might negate the need for that defence because we would never have charged him in the first place. That is the scenario. It is a point well made.
2096. **The Chairperson:** Do members have any more comments? Good man, Oliver, that is why you are here.
2097. **Mr McMullan:** I am useful.
2098. **The Chairperson:** Clauses 17 to 23 deal with risk designation, which is another fundamental issue for the Committee. These clauses, particularly clause 22, have caused some concern among members.
2099. Clause 17 deals with the requirement for the Department to give a risk designation as soon as is reasonably practicable after the registration of a controlled reservoir. Clause 17(2) establishes that the risk designation is high, medium or low. A number of concerns were raised, particularly about the understanding of the word "risk". They are detailed at pages 50 and 54 of our matrix, alongside the Rivers Agency response.
2100. I refer members to the tabled paper from the Rivers Agency, which states that it has considered the Committee's comments that the word "risk" may not be appropriate. The Department is considering an amendment to clause 17(2):
- "To take account of comments made by the ARD Committee that the term "risk" may not be the most appropriate."*
2101. You are right that "risk" may not be the right terminology. We are interested in public perception and in not alarming people, which you have echoed throughout our scrutiny. Having something that is high risk is not good. However, simply changing the terminology to "high impact" or "high consequence" will not change the fundamental designation. If designated "high", the regulatory burden will be placed on you. No matter what you do or how much you invest to improve the safety of your structure, you will be left with the burden of regulation that will apply to a reservoir deemed to be "high risk", "high impact" or "high consequence". There is, to me, some unfairness there. If a responsible owner is prepared to invest in his reservoir, there is no real recognition or reward for that: he will still have to satisfy the minimum requirements. I know that you will say that he does not have to go to the maximum requirements, but that still seems unfair. That is especially the case given that changes downstream can affect the designation, but he or she cannot do anything that changes the designation.
2102. **Mr Porter:** I will jump forward and refer you to clause 22(1)(b), which allows for matters to be taken into account. Clause 22 (1)(a) mentions "potential adverse consequences" and clause 22(1)(b):
- "the probability of such a release."*
2103. So we have built into the Bill that we can take that into account. The issue, as you heard from the Institution of Civil Engineers, comes back to the fact that there is no agreed numerical method of coming up with the probability of failure. So we have purposely built in that, should such a method be agreed, we will be able to take that in the Bill as written. However, there is no agreed way in the United Kingdom of doing that. It

is about coming up with a system that determines the probability of a release. The probability of failure is, technically, nigh on impossible to determine in any numerical way. It will be a difficult one for us.

2104. I cannot put forward a winning argument on this because it is a discussion that we have had quite a number of times. Clearly, you are not hearing an argument that sits well in your mind. I am not sure that I have anything else to give, other than to say that it is built into the Bill. If the industry comes up with a way of numerically determining the probability of release, the Bill can accommodate that. The engineers told the Committee that they could not do that, so the best that we can do now is accept that the probability of reservoir failure, if all reservoirs are in reasonably good condition, is very low. All we are then dealing with is the consequence, which is what we have tried to say. If the consequence of failure is very low, you have a “low impact”, “low consequence” or “low risk” reservoir, and you will get the lightest touch regulation. If the consequence would have slightly more impact, the requirements are slightly greater. Those in the top band will get most regulation. We have tried to differentiate between the three.
2105. The best that I can offer is that we look at the minimum standards under clause 25(2)(k) and try to keep them as low as possible. That would differentiate between structures in poor condition and those in good condition. An engineer will look at one in poor condition every month. If the reservoir manager then puts in capital investment and gets his reservoir into good condition, it can then be looked at based on a minimum standard. Unfortunately, that is the best that I can offer at present.
2106. **The Chairperson:** So you will do something on clause — sorry, what clause was it again?
2107. **Mr Porter:** We mentioned two. First, you picked up on the terminology in clause 17(2), and we accept that living downstream of a reservoir deemed “high

risk” may have a negative connotation to the people concerned. We are not saying that a reservoir is “high risk” to mean that it is at the point of failure; we are using “risk” in relative terms. Here is a bunch of 150 reservoirs: these are the ones that we consider of lowest consequence; these are the ones in the middle; and these are the ones in a higher risk group. The point is that they are designated relative to one other; not to what we might consider to be the risk of, for example, an aeroplane crashing.

2108. Secondly, in clause 25(2)(k), we will take account of the ARD Committee’s view on the number of supervised engineer’s visits.
2109. **The Chairperson:** So, under clause 25(2)(k) is:
“(i) where it is a high-risk reservoir, at least twice in every 12 month period”.
2110. **Mr Porter:** We will lower the minimum standard to as low as we are comfortable with, but without making it unattractive to the industry.
2111. **The Chairperson:** Is it possible to have some sort of certificate from an engineer? I heard what you said about engineers not having come up with a probability matrix. However, within the designation of “high risk”, could there not be broad subsections of low, medium and high probability, which would allow the differentiation of minimum regulatory requirements?
2112. **Mr Porter:** That is in the Bill, although not, perhaps, in the terms that you have used. There will be high-risk reservoirs that an engineer identifies require work in the interests of public safety. Some high-risk reservoirs will have a clean bill of health, but an engineer will say that others do not and that there are outstanding issues. A third step would be our taking enforcement action on the work that has been identified as being required.
2113. Whether that is as clear as it needs to be, and whether we have articulated it as clearly as it needs to be, is another question. Under the Bill, all

high-risk reservoirs will not be the same because of what is identified in the inspecting engineer's report and whether we do anything about it as a result of a manager's action. It is a matter of whether that gives you that differentiation and whether we need to try to write that down in some way.

2114. **Mr Buchanan:** You could have a high-risk reservoir on which a lot of work has been done and a lot of money spent to make it safe. However, that reservoir, which remains high risk, is much safer than a medium-risk reservoir on which no work has been done. Is that the case?
2115. **Mr Porter:** The whole thrust of the Bill is to require owners to bring all structures up to a reasonable condition so that the probability of failure is equal across all of them. Therefore, the differentiation in risk terms is purely of the impact. We are talking about the same thing and the same matrix. If all the required works are done, whether the risk is high, medium or low, that levels the playing field for the likelihood of failure. So we are dealing purely with the vertical axis of that matrix. We do not want to allow structures to be maintained in a slightly worse condition because we are happy enough that fewer people live below them. I am not sure that I would like to get to, or could envisage getting to, that situation. That said, you could argue that we are doing that for low-risk reservoirs, in that how a reservoir manager deals with their structure is up to them, and, if they want to ignore their structure, that is a matter for them. We are comfortable with that only when there is nothing below a reservoir. You have to remember that, with medium- and high-risk reservoirs, there are things and people below them. The only differences are the speed of inundation and the depth of water. The differentiator is whether somebody could die, not whether somebody will be impacted on. With high- and medium-risk reservoirs, somebody will get wet. What makes the risk high is that somebody may well get wet and die.
2116. **Mr McMullan:** People below a high-risk reservoir could get wet and die. However, if a multinational is coming in to do some construction there, it could have the designation reviewed. It could win that review and get the designation changed from high to medium. Leaving a designation open to review means that there is a possibility of getting the designated risk downgraded. Otherwise, the word "review" would not be there.
2117. **Mr Porter:** I was stuck on the term "multinational" and trying to work out why you used it. It would not matter whether it was a multinational. If anybody, not just a multinational, has different information, wants to have a discussion with us or does not believe that a reservoir has the depth and velocity to kill, we are quite happy for them to have that review.
2118. **Mr McMullan:** How does the review work?
2119. **Mr Porter:** The review of the risk designation?
2120. **Mr McMullan:** Yes.
2121. **Mr Porter:** We will give an initial risk designation, which will be based on our flood inundation maps. People may well come along and say, "We have had somebody look at your flood inundation maps, and we interpret this slightly differently." We can have that discussion. For instance, they could demonstrate that our assumptions on the basic topography — the shape of the ground — were wrong because somebody had come in and done something to the ground so that the water went a different way, making our predictive model wrong. If they were able to provide us with that information and demonstrate that with a high degree of certainty, we would accept that and change our designation through that review process. If there is different information, we have no issue, irrespective of whether it is a multinational, a company or a private individual. If we got it wrong and somebody shows us that we got it

- wrong, we are quite happy to change our risk designation.
2122. **Mr McMullan:** As Tom said, you could do a lot of work on a high-risk reservoir, and it could end up being more secure than a medium-risk reservoir. So, when it comes down to it, is the risk designation of high, medium or low predicated on volume?
2123. **Mr Porter:** A number of things, such as the volume of water and speed of inundation, will vary between a designation of high and a designation of low. At Kiltonga, houses sit right below the dam, and anybody could work out that, in the event of its failing, a wall of water would impact on them. Everybody accepts that that would be a high consequence situation.
2124. If the same reservoir with the same volume was up on a hill and the houses were four or five miles downstream, our flood map would still show that they were in the catchment area, but it would take 20 minutes for the water to go down the hill and reach them. As water goes along the ground, its energy lessens, so that wall of water will have dissipated and become a trickle. The houses will still get wet, but the likelihood of their being damaged or the people in them dying is clearly much lower because of their position relative to the dam. So the designation of a reservoir is not just about the volume of water; it is about what could be harmed because of its relative location.
2125. **The Chairperson:** The current inundation maps do not show that.
2126. **Mr Porter:** That is correct. We have undertaken that we will have depth and velocity maps. Currently, we have a very coarse set of maps to allow us to see the overall impact, which was based on a number of assumptions. Even through the work that we have done, we have seen a number of quirks in the maps. That is why I used the example of the topography. For instance, one of the maps that we looked at shows a dead straight line of water, but that line is, in fact, made up of trees. The computer worked out that there was a difference in level, and it knows that water does not jump steps, but it did not know that there were trees there. So we need to revisit the likes of that map and make sure that they show that such lines are permeable: water goes through trees rather than running down the edge of them. That is what we get when we have a very coarse opening set of maps. They will be refined and have much more detail, which will give us the depth, velocity and lots of other information.
2127. **The Chairperson:** So a current inundation map may show a house or dwelling on a blue footprint, but it may be that the water is nothing more than a trickle.
2128. **Mr Porter:** Yes, that is correct.
2129. **The Chairperson:** So that house is then at medium risk.
2130. **Mr Porter:** Yes, or we may look at some of those when we get the more detailed maps and take them out. If, when we run the more sophisticated map, there is one house at the very low end of an inundation, it may not end up in the blue area. If a dam has a house directly below it, it does not matter how we change the flood inundation characteristics; it will still be within a flood inundation zone. In that case, the best you can hope for is the classification going from high to medium. There may well be some cases of houses being at the very edge of a flood inundation zone, and the more detailed maps may remove some of those properties when we get more detailed information on their location or the ground profile.
2131. **Mr Buchanan:** Someone with a high-risk reservoir spends thousands of pounds on improving and securing it so that it will not bust, leak or send a flow of water down on top of people. The construction is carried out by an engineer who knows what he is doing, and everything is secure for 100 years or more — it is almost impossible that it will leak. Your saying, “Spend money

- on doing it up, but, sorry, you will still be high risk”, defeats your argument
2132. **Mr Porter:** No engineer will ever say, “Don’t worry about that one ever again”. These are structures with huge forces, especially those that are very deep and have very high walls or embankments. The pressure on them is considerable.
2133. An engineer will recognise that a reservoir manager has taken all reasonable steps to tidy up any obvious defects or that a spillway is the correct size to deal with extreme rainfall events, which will ensure that such events will not take the dam away. He will recognise that a manager has a system in place to keep an eye on the reservoir regularly so that we can catch any change at the earliest point. If all those things are in place, your structure is as reasonably safe as we can make it, and that is what the Bill is trying to do. It is not saying that its provisions mean that dams will not be breached or fail; it is trying to ensure that as many reasonable steps as possible are taken. If those steps are not being taken, that is when we start to be concerned and enforcement comes in.
2134. **Mr Brazier:** We sat in on the current live risk-designation process in England to see what the Environment Agency there does. We posed the type of scenarios that have been posed in evidence sessions here and asked specifically about probability, about reservoirs being improved and so on. We do not expect this to sort out the issue, but the Environment Agency does not take probability into account at all. When looking at its risk designations, it has the figures for the volume and speed of the water. Its officials err on the side of caution every time. If there is any chance whatsoever that somebody might be hurt, they will designate a reservoir as high risk. They do not have medium or low risk, so it is either high risk or not high risk. They do not have the same leeway that we do. That is their position. If they think that there is a chance that somebody might be injured as a result of the uncontrolled release of water from the reservoir, the reservoir is designated as high risk and the associated management regime is introduced.
2135. **The Chairperson:** Members have no comments. We will move on this, away from clause 17. Thank you, Kieran and David.
2136. Clause 18 is entitled:
“Periodic re-assessment of risk designations”.
2137. This clause states that the Department must undertake a periodic reassessment of controlled reservoirs’ risk designation, taking into account matters mentioned in clause 22, and must either confirm or give the reservoir a different risk designation. The Committee received a comment from the DOE, which is on pages 55 to 56 of the matrix, along with the Rivers Agency’s response. Members have no comments.
2138. Clause 19 is:
“Date on which risk designation given under section 17 or given as different designation under section 18 takes effect”.
2139. This clause requires that the notice given of risk designation for the first time under clause 17, or notice given giving a different designation under clause 18, takes effect on the day after the notice is served. The Committee did not receive any comments on this clause, and members have no comments on it.
2140. Let us move on to clause 20:
“Review by Department of its decision under section 17 or 18”.
2141. This clause enables reservoir owners to apply for review of the Department’s decision on risk designations given by the Department under clauses 17 or 18. It also allows the Department to commission a reservoirs’ panel engineer to provide expert opinion that the Department is required to consider when determining a review decision. The only comment received was from NI Water, which stated that the appeal system appeared to be robust. Subsection (7) provides the power to make further provision in relation to applications for

- reviews of decisions on risk designation of a controlled reservoir. That will be subject to negative resolution procedure. I seek comments from members.
2142. **Mr McMullan:** I take it that there is nothing in the Bill whereby the Department may claw back any —
2143. **The Chairperson:** I am sorry. Face this way first so that I can hear you, Oliver. Do you want to ask a question of the —
2144. **Mr McMullan:** Under that section, are financial outgoings borne by the Department or can they be levied against the person who has asked for the review?
2145. **The Chairperson:** I will have to call in the officials to answer that question. On clause 20, with regard to reviews by the Department of its decision under clauses 17 and 18, who bears the cost of reviews?
2146. **Mr Porter:** We wanted to put in somewhere that there is a low-cost or no-cost review, so there will be no charge for the Department to hear that. It would just be whatever cost it takes to generate the information. The individual manager would have to bear that, but it would be a low-cost review because we can hear it informally. That is what the first review is, but then with the appeal, there is a ramping-up, and there starts to be a cost associated with it. However, for the first review, we will not be recovering costs, and we are happy to do it at no or low cost.
2147. **Mr McMullan:** What happens if it goes to court? Do you envisage going to the County Court or the Crown Court?
2148. **Mr Brazier:** Reviews under clause 20 do not go to court; they will go to the Water Appeals Commission. That is in the next clause.
2149. **The Chairperson:** This is about who bears the cost. If it is a review such as one under clause 20, that is fine. However, if it is under clause 21, which is the appeal, there are definite costs.
2150. **Mr Brazier:** It is for the Water Appeals Commission to decide.
2151. **Mr Porter:** There is an issue around that clause, Chair. It is mentioned in the list of 'Amendments Being Considered' document that we gave you, clause 21(9).
2152. **The Chairperson:** Yes, sorry.
2153. **Mr Brazier:** So that you understand it, the issue — it relates to all the other clauses in which the Water Appeals Commission is mentioned — is that the Bill allows for the Department to make regulations on what the Water Appeals Commission may or may not do. The Examiner of Statutory Rules has drawn the Committee's attention to the fact that those regulations should perhaps be made by the Office of the First Minister and deputy First Minister as the oversight Department for the Water Appeals Commission, in the same way as it does for the Planning Appeals Commission under the Planning Act. We are considering that. We have written to the Department about that and are awaiting its response. Once we receive it, we will consider it and come back to the Committee.
2154. That permeates the Bill wherever the Water Appeals Commission is mentioned. The examiner's concern was that the Department would be a party to the appeal; therefore, it needed to distance itself from that. We agree, but it is whether OFMDFM agrees. We are consulting on that.
2155. **The Chairperson:** So it would be very similar to the Planning Appeals Commission —
2156. **Mr Brazier:** It is exactly the same.
2157. **The Chairperson:** — where the Planning Service would be a party and the applicant would be the —
2158. **Mr Brazier:** Yes.
2159. **The Chairperson:** OK.
2160. **Mr Brazier:** I think that it was for that reason that the Planning Appeals Commission was moved under the auspices of OFMDFM. Our intention was to make sure that the Water Appeals Commission could charge a

- fee and award costs. We assumed that responsibility, but the Examiner of Statutory Rules has corrected us on that. We hope that OFMDFM will do that.
2161. **The Chairperson:** Regarding Oliver's point about costs, I cannot see a cost in the review.
2162. **Mr Porter:** No, that is because there are no costs in the review.
2163. **The Chairperson:** I know that we are jumping ahead, but in the appeal —
2164. **Mr Porter:** There is a cost, yes.
2165. **Mr Brazier:** That is dealt with in clause 21(9)(b).
2166. **The Chairperson:** Clause 21(9) states:
"The Department may by regulations make provision ...
the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs)."
2167. What is that saying? That the Department will charge a fee if it went to appeal?
2168. **Mr Brazier:** As it is written, the Department would make a regulation to enable the Water Appeals Commission to award costs or charge a fee.
2169. **The Chairperson:** OK.
2170. **Mr Brazier:** The Examiner of Statutory Rules said that the Department, as a party to that appeal, should not be in the position of making that regulation.
2171. **The Chairperson:** It should be OFMDFM.
2172. **Mr Brazier:** Yes. So that clause and others will be amended if OFMDFM agrees to make regulations that would enable the Water Appeals Commission to do that.
2173. **The Chairperson:** What if it does not agree?
2174. **Mr Brazier:** We are very keen that the Water Appeals Commission can do that for appeals against the Bill. We would have to think about that, but we would encourage it in the first instance to try to comply with the concerns of the Examiner of Statutory Rules. If the Examiner of Statutory Rules could set that aside and allow the Water Appeals Commission to be enabled to do that by our Department, we would be happy with that.
2175. **The Chairperson:** Someone has to be in charge, and that should not really be the Department that may be a party to it.
2176. **Mr Porter:** No; that is right.
2177. **Mr Brazier:** No; that is right.
2178. **Mr Porter:** We considered another couple of options and ended up with the Water Appeals Commission. We had thought about the Institution of Civil Engineers, because of the technical nature, and the reservoirs panel or its president could appoint someone to hear an appeal. The issue with that was not that they are engineers and are all part of it through the Bill and the engineers' charter, but because they could not give us a scale of fees. The Water Appeals Commission has that. Not having a scale of fees could be a dissuading factor in someone taking an appeal as they would not know what they are entering into —
2179. **The Chairperson:** How much it would cost them?
2180. **Mr Porter:** Whereas at least if the Water Appeals Commission has a scale of fees they will know how much it will cost them and that, win or lose, it will cost them at least that. They can then take an informed decision on whether it is worth making an appeal. They will have had the review informally, and the scale of fees will allow them to decide whether they are prepared to take it to the next stage and at least they will know what the financial burden, penalty or cost will be of doing that. The institution could not give that scale of fees, and that might have been off-putting for people as they would enter into an appeal not knowing what costs they might end up with.
2181. **The Chairperson:** OK. Are there any other questions on that or comments

- on clause 20? OK, thank you, David and Kieran.
2182. I move on to clause 21, which we have been discussing and which refers to appeal against the Department's decision in a review under section 2. The clause deals with the rights of a reservoir manager to appeal against the decision in a review of a risk designation given by the Department. Subsection (9) makes the power for the Department, by regulation, to determine the fee for such an appeal and the awarding of costs of the parties to an appeal, including the amount of costs. That will be a negative resolution procedure. The appeal is made to the Water Appeals Commission. The Examiner of Statutory Rules advised that it might be preferable to consider conferring that power on the Office of the First Minister and deputy First Minister, which has similar functions in respect of appeals to both the Water Appeals Commission and the Planning Appeals Commission for Northern Ireland under other broadly similar legislation.
2183. The Rivers Agency has been asked to consider an amendment to that to confer the power on the Office of the First Minister and deputy First Minister. That amendment would also affect, or have consequential amendments at, clauses 73(6), 74(2), 77(2), 79(7), 82(8), 84(6) and 86(4). I seek comments from members. It is one that we have already discussed.
2184. Clause 22 relates to matters to be taken into account under clauses 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a). The clause is one that has given the Committee considerable concern. It details the matters that must be taken into account in making a risk designation for the first time, in undertaking a periodic reassessment, and in reviewing a risk designation. Concerns raised during the evidence sessions are detailed at page 58 of the matrix, alongside the Rivers Agency's response. The main concerns are that, although the clause notes that probability and impact are part of a risk assessment, in reality the risk designation will be based on impact only. The Examiner of Statutory Rules has suggested amendments to take account of the fact that there are two distinct rules when perhaps there should be one. The Rivers Agency is considering that. Clauses 22(3)(a) and 22(4) are both subject to negative resolution. Again, we have discussed that with regard to:
- "the probability of such a release."*
2185. It is in clause 22(1)(b). There is no point in going over old ground. There seems to be an issue with the Rivers Agency not being able to calculate probability at the present time. I seek comments from members.
2186. **Mr Swann:** On further reading and further thought, I saw in clause 22(2)(a) (iv) "cultural heritage". What definition have Departments applied to cultural heritage? Do they look to archaeology and potential sites? We could be looking to a reservoir that has absolutely nothing downstream of it, but somebody has said that there might be something there.
2187. **The Chairperson:** OK, David.
2188. **Mr Porter:** That is a straight lift from the floods directive. Those are the four criteria in the EU floods directive. The way we interpreted cultural heritage in the preliminary flood risk assessment (PFRA), where we had to assess the impact on cultural heritage, was on the built heritage predominantly. It is hard to work out what the impact of our culture is on flood risk, so we had to take it as something that was tangible. In our assessment of the PFRA we took it as built heritage. I suspect that we will do the same under this — something of significant heritage value. We got that information on the PFRA from consulting the Northern Ireland Environment Agency (NIEA). On the other items, human health or people and economic activity, we were able to do runs about where building and particular pieces of infrastructure were. On both environment and cultural heritage, we consulted NIEA to see whether there

- was anything additional that had to be brought into the assessment.
2189. **Mr Byrne:** Does that mean that, for example, a fort would be regarded as cultural heritage.
2190. **Mr Porter:** Yes, it was scheduled monuments in the built environment, so, yes, it could be.
2191. **Mr Swann:** What about a moat or bailey?
2192. **Mr Porter:** If it was a scheduled monument on the built environment section in NIEA, we would have taken it into account.
2193. **Mr Swann:** Chair, I would like to see a stronger definition.
2194. **The Chairperson:** Of cultural heritage?
2195. **Mr Swann:** Yes.
2196. **Mr McMullan:** Is human habitation in there?
2197. **Mr Porter:** “Human life” is the term used in the EU directive. Again, in the PFRA, we took the places where humans inhabit in order to assess the impact on human life, so the data set was dwelling houses. The economic activity covered the workplace element of humans. That is how we assess those through the PFRA, so the proxy of property is quite good to demonstrate impact on human life.
2198. **The Chairperson:** Are the values of these for human life, human health, environment, economic activity and culture all the same when it comes to designation?
2199. **Mr Porter:** No, they are not. That was set out. We had an initial indication of how we would assess this in the public consultation document that we put out. That, again, set out where we intend to go back to “human life”. If there is a possibility that one or more human lives were likely to be lost, that would get you into high-risk designation. A medium risk is where there would be impact on human life but death was unlikely and there would be a significant impact on the environment, cultural heritage or economic activity. Low risk is where no life would be likely to be affected and there would be no long-term detrimental effect on the environment, cultural heritage and economic activity.
2200. We can provide that table again if you think that it would be useful.
2201. **The Chairperson:** Yes, please.
2202. Are there any further comments on clause 22? No. Ok, thank you, David.
2203. Clause 23 is on further provision for high-, medium-, and low-risk reservoirs. The clause clarifies that the terms “high-, medium- and low-risk” in relation to a controlled reservoir refer to its risk designation. Concerns have been raised and are detailed on pages 25 to 29 of the matrix alongside the Rivers Agency response. I see that members have no further comments.
2204. Part 2 deals with the requirements for high- and medium-risk reservoirs. Clauses 24 to 27 deal with supervision for supervising engineers. Clause 24 deals with supervision requirements and commissioning of supervising engineer etc. This clause requires a high- or medium-risk controlled reservoir to be under the supervision of a supervising engineer at all times. A supervising engineer must be commissioned within six months of the risk designation taking effect and a reservoir manager is required to give notice to the Department within 28 days of the commissioning.
2205. A number of concerns were raised, including the lack of competition in respect of engineers and the availability of suitably qualified engineers here. There is an offence at clause 24(2) regarding commissioning a supervising engineer. The offence carries the penalty of a fine up to level 5, which is at £5,000 for high-risk reservoirs. The second offence for medium- and low-risk reservoirs carries a fine of a penalty of up to level 4, which is £2,500.
2206. There is an offence at clause 24(4) regarding notifying the Department about commissioning a supervising

- engineer. The offence carries the penalty of a level-5 fine, which is £5,000, and for medium and low risk a level 4 fine, which is £2,500. Any comments? Sorry, it is clause 36 that gives the offence. We will have to go to clause 36 in order to come back to clause 24. Are there any comments?
2207. **Mr Byrne:** Can I ask a general question about these engineers? The penalty fees seem quite high. What is the function or otherwise of the professional liability cover as well with the reservoir manager in relation to *[Inaudible.]* by him or her in relation to the advice or otherwise that the engineer might give?
2208. **The Chairperson:** I will ask David to come up. I do not know if you got all that, David and Kieran. Do you want to ask again, Joe?
2209. **Mr Byrne:** It is about the engineers who are relevant to this clause. What is the function or otherwise of the professional liability insurance cover that would pertain to the advice or otherwise that would be given by him or her to the reservoir manager?
2210. **Mr Porter:** If the advice was shown to be negligent, a claim could be taken against their professional indemnity insurance. That situation would not be blocked out by the Bill and would be very real, but it is not a case then where the engineer has proven to be negligent in carrying out their duty.
2211. **Mr Byrne:** Would an engineer also have to notify the Rivers Agency when they have completed the assessment of a reservoir?
2212. **Mr Brazier:** I think that it is in clause 24(4). It is covered; we just cannot remember the clause number off the top of our heads. We will check it for you.
2213. **The Chairperson:** We can get that.
2214. **Mr Byrne:** Can I query that further? Clause 24(4) states:
“A reservoir manager who commissions a supervising engineer in accordance with subsection (2) must, not later than 28 days after the commissioning, give notice of it to the Department.”
2215. Therefore the onus is on the reservoir manager to pass the report to the Department. Would it not make sense for the engineer also to send a copy of his report to the Department so that there would be no negligence by anybody?
2216. **Mr Porter:** I would not like to put that in as a direct reporting line. The contractual responsibility is between the reservoir manager and the supervising engineer. The situation may not happen, but let us assume that it could. If the reservoir manager did not particularly like what the report said, they could at least have that conversation under the contractual relationship that they have, and the supervising engineer’s role would be to convince the reservoir manager that what they said was right and proper. The report would then be agreed and sent to us. In coming straight to us with a recommendation, I would be concerned that the contractual conversation that should rightly and properly take place may be stymied somewhat and that we might have a report that a reservoir manager may not be content with or that there may need to be further discussion on.
2217. **Mr Byrne:** Given that there is a wider public interest issue at stake and that there is an onus on the reservoir manager to carry out his duty subsequent to receiving the report from the engineer, I feel that it would be relevant for the Department also to get sight of the engineer’s report when he sends it to the reservoir manager.
2218. **The Chairperson:** OK.
2219. **Mr Porter:** Clause 25(3)(b) covers that situation but again gives you some time. We do not want the supervising engineer to sign it off and for it then to have to come straight to us. In this case, we have to get a copy of it not later than 28 days after giving the written recommendation.
2220. **The Chairperson:** Play that in real terms. A reservoir manager employs a

- supervising engineer and commissions a reservoir supervisor to do the work. He produces the report, which is given to the reservoir manager. The supervising engineer, on handing that over to the reservoir manager, then —
2221. **Mr Porter:** So they have up to 28 days before we get it.
2222. **The Chairperson:** Where did I see it? I have lost it. No later than 28 days after giving the written recommendation, give the Department a copy of it. What does clause 33 say?
2223. **Mr Porter:** Clause 33 is about inspecting engineers . This is the 10-yearly inspection, as opposed to the routine supervising.
2224. **The Chairperson:** Yes. Is that only the 10-yearly inspection? What about the two-year?
2225. **Mr Porter:** Yes, that is this first bit that we are talking about. The supervising engineer provides an annual statement giving the information from the reservoir manager about water levels, about the routine maintenance that they have carried out and about the routine observations that they had — the walk-over inspections to make sure that things are not moving and all the record keeping. The supervising engineer then provides the annual statement, which assures the reservoir manager that everything seems OK. That assurance is then provided to us under clause 25(6).
2226. **The Chairperson:** Clause 25(6) states:
2227. “The supervising engineer must, not later than 28 days after giving a written statement under subsection (5), give the Department a copy of the statement.”
2228. **Mr Porter:** Yes. That is the annual statement. We are looking at that as well, because, if we go back to the discussion about what the minimum standard is — if it is not one a year, you cannot give an annual statement. Or can you? Do you just give a different sort of annual statement? Can you give a desk-based assessment of the written records, the water levels and the routine maintenance? Would that be sufficient? Or, for medium structures for which we could potentially take it from the current one a year to less than one a year, do we consequently need to look at this as well for medium-risk structures? That is, again, caught up in the mix of some of the other changes that we are looking at.
2229. **The Chairperson:** Joe, are you happy enough?
2230. **Mr Byrne:** Yes, that clarifies it.
2231. **The Chairperson:** Are there any other comments on clause 24? We move to clause 25, “Duties etc. in relation to supervision”. Some of these might have been covered already.
2232. This clause sets out the key aspects of supervision by commissioned supervising engineers. Concerns raised are detailed at page 65 of the matrix, alongside the response from the Rivers Agency.
2233. These concerns are outlined at pages 65 to 67 of the matrix, alongside the response from the Rivers Agency. One of the main concerns of the Committee is clause 25(2)(k), which outlines the minimum number of visits by a supervising engineer for high-and medium-risk reservoirs. Members felt that that may be excessive, and the Rivers Agency indicated last week that it would consider an amendment to reduce the operational requirements.
2234. There is an offence at clause 25(8)(a) or (b) regarding giving copies of various reports to the supervising engineer. That is what we have just covered. The offence carries the penalty of a fine up to level 5, which is £5,000 for high-risk reservoirs. The second offence for medium- and low-risk reservoirs carries a fine of a penalty of up to level 4. The scale for level 4 is £2,500.
2235. Do members have any comments? This is a clause that the Rivers Agency has looked at, and it is prepared to consider amendments. Clause 25(2) states:
- “(k) visit the reservoir*
- (i) where it is a high-risk reservoir, at least twice in every 12 month period,*

- (ii) where it is a medium-risk reservoir, at least once in every 12 month period”.
2236. Are there any comments from members?
2237. **Mr McMullan:** When we go through all those supervising engineers’ reports and come down to high risk, are properties round that reservoir notified of that category?
2238. **The Chairperson:** We can ask —
2239. **Mr McMullan:** Or should they be notified of that category?
2240. **The Chairperson:** Again, this is another fundamental that the Committee has looked at — whether the burden of regulation is excessive. David, do you want to answer the specific question from Oliver about knowledge?
2241. **Mr Porter:** We would not write directly to all those people, but because we have a public register, if these people want to know, the information is available to them.
2242. **Mr McMullan:** So they will be made aware of that register?
2243. **Mr Porter:** A public register will be set out in the legislation. We are not going to write to all those people to say that there is a register, but if somebody wanted to know whether they were at risk, they would be able to find that. That information will be publicly available.
2244. **Mr McMullan:** How would they know that?
2245. **Mr Porter:** In the same way that, if you are buying a house and want to know whether you were under the flight path of an airport, you can find that information. If you want to know about the flight paths of aeroplanes, somebody will be able to tell you that. That information will be freely available. If one of my concerns is flood risk, I look at the various sources of flood risk. Am I within a flood inundation area? I want to know whether it is high, medium or low — if I am living in it, it will be high or medium. The public register information is there, and I will be able to access that.
2246. **Mr McMullan:** That will be something that all solicitors would come back with in their property searches for potential buyers.
2247. **Mr Porter:** It is not a requirement of the legislation that solicitors must come back to them, but it would seem to be a very wise thing to include that in the surveys.
2248. **Mr McMullan:** Would they not be negligent by not coming back with that and —
2249. **Mr Porter:** I cannot possibly answer that question.
2250. **Mr McMullan:** That is what I would like to know. We are talking about people getting wet and damaged. If somebody is negligent in telling the potential buyer that they could get wet or that their house could float away, there has to be somebody to take responsibility for that.
2251. **Mr Porter:** There is no requirement in the Bill for the legal profession to include the requirements of the Bill in any property search. I am not sure how they come up with a list of what is included in a standard property search. There are certainly no requirements in the Bill for them to do that.
2252. **Mr McMullan:** That may be something that we should look at for the protection of the people who live in that area. If there is no requirement for the legal profession to check that, it leaves those people very exposed.
2253. **The Chairperson:** I am keen to always keep the onus on Rivers Agency, Oliver, as opposed to the Committee.
2254. **Mr Porter:** I would understand that if there were a negative issue. As I have said before, provided that reservoirs are kept in a reasonable condition, it is perfectly safe to live below them — absolutely perfectly safe. Our difficulty at the minute is that we cannot give assurances that all structures are in a safe condition. We are bringing in the legislation to require owners to get a professional to look at the structure, to carry out some routine, rudimentary checks on it and to keep them in reasonably good condition. It is

- perfectly safe to live below a reservoir, provided that somebody manages it in a reasonable way. That is the thrust of the Bill. Saying, “Well, here’s something else to keep you up at night” would unnecessarily alarm people. If we get this in, they should not be worrying about the reservoir above them unduly, because of the requirements of the Bill. It should not affect their household insurance or their property values.
2255. **Mr McMullan:** But can we give a guarantee that that will not happen? Will the insurance companies not find any loophole at all to put the prices up? They know the Bill is going through. It is really down to Rivers Agency now to be very robust in the Bill to state that fact.
2256. **Mr Porter:** The last time I gave evidence, I said that I had spoken to the Association of British Insurers (ABI). It gave assurance that there was no issue with the Bill. In fact, it is quite keen to see this come in, because this gives it the assurance that the risk is low. All we are dealing with is consequence, and it understands the risk. It is quite prepared to keep it as a standard part of household insurance. I do not see that being withdrawn. The ABI represents the UK market, and the situation in England, Scotland and Wales is that there is no issue about living below a reservoir and getting insurance. It is not a material issue that we are aware of.
2257. **The Chairperson:** With regard to the detail of the clause and the subsections thereof, a high-risk reservoir must be visited at least twice every 12 months and a medium-risk reservoir at least once every 12 months. I know that, after talking to the Committee, you are considering amendments to that. Can you shed any more light on where those amendments will lead us?
2258. **Mr Porter:** Yes. We in the Department have our own thoughts, and we want to double-check those thoughts with the institution. We said that, if we push it too far, there may be a consequence in actually getting engineers to carry out the work. Our thoughts for high risk are to take it down to one in a 12-month period. We are still undecided about how comfortable we are with pushing it out for medium-risk reservoirs. It will certainly go to an inspection every other year. The discussion that we really want to have with the institution is about whether we are prepared, as a minimum standard, to push it out to once every three years. We do not want to get to a situation where we, through legislation, develop a service that cannot be delivered because of the risk and the professional indemnity that Joe mentioned earlier. Engineers would not bother touching it if they thought that all that would be paid for, or that all that people were prepared to do or price on the basis of, was the absolute bare minimum as set out by the Bill.
2259. **The Chairperson:** OK. Are there any comments from members, even in light of what David just told us about reducing it from at least twice every 12 months to once every 12 months for high-risk reservoirs? So it will basically be at least an annual inspection. Any comments or questions?
2260. **Mr Byrne:** It seems reasonable, Chairman.
2261. **The Chairperson:** Again, if I could put one thing in it, I suppose I would compare it with an annual MOT. If you have a car that has moving parts and everything else, and it is being driven every day, doing different things every day and travelling different distances every day, the cost of maintenance would surely be higher. Maintaining a car would be more of a burden than maintaining a reservoir, I imagine, yet we equate an annual MOT with an annual inspection of a reservoir. I am not 100% convinced that that is comparable.
2262. **Mr Byrne:** Chairman, the only point that I would make is that, in a very severe winter with a very deep frost, sometimes concrete structures can be affected.
2263. **Mr Milne:** At the last meeting, I think that you made the point that these reservoirs have been in place for quite a long time and that inspecting them every year is just a wee bit too much. I

- go along with that. Something that is low risk — what we are talking about? I am sorry, but I missed —.
2264. **The Chairperson:** Sorry, this is for high risk.
2265. **Mr Milne:** I know that you said that it will be reduced from twice to once a year. That is fair enough. However, I would imagine that, for medium- and low-risk reservoirs, surely you should be talking about five years.
2266. **The Chairperson:** Sorry; for low risk, there is nothing.
2267. **Mr Porter:** There are no requirements for low risk.
2268. **Mr Milne:** But even for medium risk.
2269. **The Chairperson:** At the minute, medium risk is sitting at at least once every 12 months, and high risk is sitting at at least twice every 12 months. However, an engineer could come along and say, “No, you need to inspect it quarterly.”
2270. **Mr Milne:** I understand that.
2271. **Mr Irwin:** Many of these reservoirs have not had an engineer looking at them for 50 years. Now, all of a sudden, they need to be visited twice a year. In my eyes, that seems way over the top, and I am not so sure about it. For 50 years or maybe more, they have never been inspected or regulated, and now, all of a sudden, they need to be inspected twice a year. I am not so sure that that is totally necessary.
2272. **Mr Milne:** The point is, who comes up with the idea of whether it should be a year, two years or five years, and what is that based on?
2273. **Mr Porter:** I outlined the rationale the last time. The reason why I am comfortable with going down to one per year is that, in essence, that is the situation in England and Wales. Their structures have been inspected on that basis since 1930. So there is evidence, taken over a long period, that says that that seems to be a reasonable level, balancing the cost to the individual owner and the approach that the engineer wants to take so that they understand and know their structure. That is why I think that it is reasonable to change the requirement from twice in 12 months to once in 12 months for a high-risk or high-impact structure.
2274. For medium, as I said, we are undecided. It will certainly move from one in one. If we are quite comfortable with every other year, we will have the discussion with the institution to see whether going out to one in three is acceptable. We have the slight concern that we may well be writing it into the legislation and that it will have no effect because the engineer will say that, despite what the legislation says, for you to not over-expose their professional indemnity insurance, they will need to look at every year or every other year. The engineer may well say that they will not touch it if it is any less than that. So, we can push this out to whatever we want, but we are kidding ourselves that we are saving anybody any cost, because the engineers’ exposure to their professional indemnity insurance probably will not let them do this. It is about balancing it and putting in something that is representative of what will happen in reality. We accept that what is written is too high a standard.
2275. **Mr McMullan:** Could it be that, as we go through this Bill, we are becoming more and more at the mercy of the engineers? Everything that we look at shows that. That is hypothetical, but it seems to be more and more that we are. Nowhere in this do I see regulation of engineers. That is missing from the Bill, and that is becoming more and more apparent. The other question is: if an inspection of a high-risk reservoir takes place every year, when can that high-risk become medium? It must, at some stage, become medium if you are doing it every year.
2276. **Mr Porter:** The first element was about engineers and the regulation of engineers. We have some elements of that in clause 106, under which we will assess their reports. We have also taken into consideration the Committee’s views that you want costs

- included in that, and we are looking to see how we will include that, not as a regulated activity — I must stress that again — but just as an oversight role that we may well have on that. I do not see a situation where this is just a charter for engineers. I do not accept that, because these are the professionals. These are the people who have been recommended, and their experience and knowledge is such that they can give this advice. The reservoir managers, in the main, do not have that same experience and must buy it in. This is not something to be toyed with. It is not something that a layperson can nearly do OK and get away with. This needs professionals to look at it, so, in drafting the Bill, we have tried to make sure that the responsibility rests with the reservoir manager but that the assistance of an engineer and the services that they offer is clearly set out without trying to give a charter or too much for engineers. I feel that we have achieved that, and it is really a matter for the Committee to determine whether you agree with that or whether you wish to push it harder. I think that there is balance in it.
2277. **Mr McMullan:** I raised that because engineers are coming from a very small pool of engineers. I say that based on their own presentation to us. The fact that they are coming from a small pool means that we are limited in our choices. As you said, they will not go over their public indemnity. So, I think that you need to look at something in there that does not allow the engineers to, in a way, dictate the pace of the Bill.
2278. **The Chairperson:** There is a commitment to look at considering an amendment to clause 106 to take account of the comments made by the Committee that the Department should monitor charges being made by reservoir panel engineers and the over-engineering of reservoirs in Northern Ireland. Members, are there any other comments?
2279. **Mr Byrne:** I have one point for clarification. If we had a situation where there was a high-risk reservoir and there was an annual inspection and a recommendation that work should be done, and those remedial capital works were done, could the designation of the reservoir change from high risk to medium or low risk?
2280. **Mr Porter:** No. The designation does not change, because the designation is based predominantly on impact, because there is no agreed way of determining probability. What changes is that that is no longer a non-compliant high-impact or high-risk structure with outstanding matters in the interest of public safety, and the consequence of enforcement being taken to get those issues resolved.
2281. **Mr Byrne:** Thanks for the clarification.
2282. **The Chairperson:** Any further comments? OK, moving on to clause 26. We will do clauses 26 and 27, which leads us to a natural break. That will do us today — over two hours, there.
2283. Clause 26, entitled “Visual inspection directed under section 25(4)(a): further provision”, states that the reservoir manager must comply with any direction in relation to a visual inspection directed by the supervising engineer and requires the manager to maintain and provide written records to the supervising engineer on request and give notice to the supervising engineer and the Department of anything identified during the visual inspection that might affect the safety of the reservoir. It is an offence not to comply with this clause at 26(1), (2)(a) and (2)(c). The offence and penalty are set out at clause 36. The same penalties apply as previously discussed: level 5 for high risk or level 4 for medium and low risk. The Committee did not receive any comments in relation to this clause. Can I seek comments from members?
2284. OK, moving on to clause 27, “Nominated representative under section 25(7)(a): further provision”. This clause requires a nominated representative to be eligible to be commissioned as a supervising engineer and provides that a nominated representative has the same powers

and obligations as the supervising engineer when the supervising engineer is unavailable. The Committee did not receive any comments in relation to this clause. Can I seek comments from members?

2285. OK, no comments. I am going to leave it there and draw a line at that point, members. We will pick this up again at clause 28. I remind members that there are 120 clauses, which works out at about another 10 hours of scrutiny. It could well mean an additional meeting.

2286. I thank David, Kieran and the rest of the team who were backup for you today. I am appreciative of you being here, answering our questions and jumping up and down when needed, so thank you very much for your attendance.

- heritage. A low-risk reservoir is where there is no significant impact.
2293. 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.
2294. 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.
2295. 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.
2296. 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.
2297. **The Chairperson:** Do any members want to comment on the reservoir risk matrix? Jo-Anne, do you want to raise something?
2298. **Mrs Dobson:** No, I am happy enough.
2299. **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?
2300. 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?

2301. **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.
2302. 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.
2303. **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?
2304. **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.
2305. **The Chairperson:** So are the departmental intervention and cost recovery outlined in clause 69 basically emergency powers?
2306. **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.
2307. **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.
2308. **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.
2309. 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.
2310. **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.
2311. **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.
2312. **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.
2313. **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.
2314. 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.
2315. **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.
2316. 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.
2317. **Mr Milne:** Are there reservoirs here that have been tested by engineers over many years to date?
2318. **Mr Brazier:** Yes.
2319. **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.
2320. **Mr Milne:** So you have reservoirs that have been examined by engineers for the past 10 years.
2321. **Mr Porter:** Yes.
2322. **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?
2323. **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.
2324. 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.
2325. **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?
2326. **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.
2327. **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.
2328. **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.
2329. 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.
2330. **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.
2331. **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.
2332. **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.
2333. **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.
2334. 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.
2335. **The Chairperson:** I am sorry; is that for the initial audit?
2336. **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.
2337. 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.
2338. **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.
2339. **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.
2340. **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?

2341. **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”.*
2342. 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.
2343. **Mr Swann:** There will be grant assistance, everybody will get their assessment done and reported, and that clause can come out of the Bill.
2344. **Mr Porter:** We will leave it in because — this is why it is so important —
2345. **The Chairperson:** We will leave clause 105 in because money could well be needed for —
2346. **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.
2347. **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?
2348. **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 —
2349. **Mr Swann:** That should be good enough for a grant scheme anyway.
2350. **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.
2351. 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.
2352. **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.

2353. **Mr Brazier:** Rather than the Bill or that clause?
2354. **Mr Swann:** Rather than the Bill.
2355. **Mr Brazier:** The important thing —
2356. **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.
2357. **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.
2358. 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.
2359. **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.
2360. **Mr Brazier:** That is right.
2361. **Mr Swann:** So you cannot bring in your grant scheme until the Bill is passed.
2362. **Mr Porter:** No, you can. Again, it is using the words “to comply with their obligations” arising from the Bill.
2363. **Mr Swann:** So, if you use that phrase in your grant scheme, you are assuming that the Bill will pass in its entirety.
2364. **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.
2365. **Mr Swann:** I thought that you said that the grant scheme was coming in under the Budget Bill
2366. **Mr Porter:** It is yes, sorry.
2367. **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.
2368. **Mr Porter:** The justification for the scheme is to assist reservoir managers with their initial requirements under the new piece of legislation.
2369. **Mr Swann:** Under the Budget Bill.
2370. **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.
2371. 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.
2372. **The Chairperson:** OK, Robin?

2373. **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.
2374. **Mr Porter:** Correct.
2375. **Mr Swann:** The first section of the Reservoirs Bill will include what? The ability for a grants scheme under 105?
2376. **Mr Porter:** Not necessarily.
2377. **Mr Swann:** Not necessarily.
2378. **Mr Porter:** It now does not have to be in the first section.
2379. **Mr Swann:** It does not have to be in there. So what would be in that section?
2380. **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.
2381. 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.
2382. 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.
2383. **The Chairperson:** When will you know that as regards the Budget Bill?
2384. **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.
2385. **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?
2386. **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.
2387. **The Chairperson:** OK. Do any other Members want to ask a question?
2388. **Mr Irwin:** Chairman, maybe I missed this, but what is the rate of grant aid?
2389. **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 —
2390. **The Chairperson:** Those options would be completely eradicated if Rivers Agency did the work itself, because it would not be grant-aid assistance.
2391. **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.
2392. **The Chairperson:** William, do you want to come in again?
2393. **Mr Irwin:** No. That is fine.
2394. **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?
2395. **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 —
2396. **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 —
2397. **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.
2398. **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.
2399. If you have your Bill folder and your advisory notes, this will go more quickly.
2400. 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.
2401. 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.
2402. 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.
2403. The Committee did not receive any comments on clause 31. I seek comments from members.
2404. 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.

2405. 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?
2406. 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?
2407. 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?
2408. 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?
2409. 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?
2410. 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.
2411. **The Committee Clerk:** It is page 215 in the pack.
2412. **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?
2413. 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.
2414. 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.
2415. 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.
2416. 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.
2417. 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.
2418. 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.
2419. 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.
2420. **Mr Porter:** He has failed to act.
2421. **The Chairperson:** That is basically the most serious offence in the legislation. Is that correct?
2422. **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.
2423. **The Chairperson:** At that point, there are appeals mechanisms in the legislation.
2424. **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.
2425. **The Chairperson:** OK. Sorry. Thank you for that accuracy, Kieran. I appreciate it.
2426. Clause 44 relates to the preliminary certificate. The Committee did not receive any comments on the clause. I seek comments from members.
2427. 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.
2428. Clause 46 relates to the final certificate. The Committee did not receive any comments on the clause. I seek comments from members.
2429. 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.
2430. Clause 48 is “Termination of supervision by construction engineer”. The Committee did not receive any comments on the clause. I seek comments from members.
2431. 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.
2432. 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.
2433. 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.
2434. OK, members. We move to Part 4, which is “Controlled Reservoirs: Other Requirements”.
2435. 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.
2436. **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).
2437. **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”.
2438. **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?
2439. **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”.
2440. 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”.
2441. 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.
2442. **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?
2443. **Mr Porter:** It will be a sequence.
2444. **Mr Swann:** So would you inform the Department before you would engage an engineer?
2445. **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.
2446. **Mr Swann:** My reading of clause 52(2) (d) is that you are determining whether an incident has occurred before you inform the Department.
2447. **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.
2448. **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?
2449. **Mr Porter:** It is the reservoir manager.
2450. **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?
2451. **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.
2452. **The Chairperson:** OK. Do members have any further comments on clause 52?
2453. **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.
2454. **The Chairperson:** OK. Are there any further comments? Are there any examples of this that are used already in England?
2455. **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.
2456. **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.
2457. 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.
2458. 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.
2459. 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.
2460. 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.
2461. 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.
2462. Clause 59 is “Commissioning of referee”. The Committee did not receive any comments on this clause. I seek comments from members.
2463. 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.
2464. 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.
2465. 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.
2466. 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.
2467. **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.
2468. 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.
2469. **Mr McMullan:** Chair, where are we now?
2470. **The Chairperson:** Page 42 of the Bill; clause 65. Are you happy enough, Oliver? If you need more time, I will give you it.
2471. **Mr McMullan:** Does that take in court costs?

2472. **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.
2473. **Mr McMullan:** Is there the right of appeal there?
2474. **The Chairperson:** If I am reading that clause right, it enables the Department to commission an engineer.
2475. **Mr McMullan:** Aye, but is there the right of an appeal for the reservoir manager?
2476. **The Chairperson:** If you have not complied.
2477. **Mr Porter:** This is the enforcement of something that is a requirement.
2478. **Mr McMullan:** OK.
2479. **The Chairperson:** Any other comments from members?
2480. 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.
2481. 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.
2482. 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.”*
2483. I seek comments from members.
2484. 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?
2485. **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.
2486. **The Chairperson:** OK. Are members content? If so, we will move on.
2487. 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.
2488. 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.
2489. 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.

2490. 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,”*
2491. 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.
2492. **Mr Brazier:** Yes.
2493. **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.
2494. **The Chairperson:** OK. Are there any further comments from members?
2495. Clause 73 is “Stop notices: content and procedure”. The Committee did not receive any comments about the clause. I seek comments from members.
2496. Clause 74 is “Stop notices: compensation”. The Committee did not receive any comments about the clause. I seek comments from members.
2497. For accuracy, clause 75, which we —
2498. **Mr Swann:** Sorry, Chair. Who calculates the compensation under clause 74? Is it the Water Appeals Commission?
2499. **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.
2500. **Mr Swann:** Who calculates the value?
2501. **Mr Brazier:** The Department in the first instance.
2502. **Mr Swann:** The Department decides how much the Department will pay.
2503. **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.
2504. **The Chairperson:** Clause 75 is entitled “Stop notices: enforcement. I seek comments from members on this.
2505. 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.
2506. 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.
2507. 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.
2508. **Mr McMullan:** What happens if it is a company? Do you still have to have a designated name, or can you fine the company?
2509. **Mr Brazier:** The Department would be looking for the name of an identified reservoir manager.
2510. **Mr McMullan:** He is protected under company law.
2511. **Mr Porter:** Clause 115, which is entitled “Offences by bodies corporate and partnerships”, deals with that.
2512. **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.
2513. 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.
2514. **Mr Porter:** It gives us options.
2515. **Mr Brazier:** Yes, it does.
2516. **The Chairperson:** Are you happy enough, Oliver?
2517. **Mr McMullan:** Yes.
2518. **The Chairperson:** Are there any other comments from members?
2519. 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.
2520. 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.
2521. 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.
2522. **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.
2523. **The Chairperson:** OK. If members are content, we will move on. There are no further comments.
2524. Clause 82 is called “Variable monetary penalties: procedure etc”. The Committee did not receive any comments on this clause. I seek comments from members.
2525. Clause 83 is “Variable monetary penalties: criminal proceedings and conviction”. The Committee did not receive any comments on this clause. I seek members’ comments.
2526. 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.
2527. 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.
2528. 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.
2529. Clause 87 is "Publication of enforcement action". The Committee did not receive any comments on this clause. I seek members' comments.
2530. **Mr McMullan:** What exactly does "publication of enforcement action" mean?
2531. **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.
2532. **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))."
2533. **Mr McMullan:** Why would it not be published if the appeal overturned the decision?
2534. **Mr Porter:** That would be the case if we got it wrong. You do not want to blacken somebody's name wrongly.
2535. **Mr McMullan:** You are going to blacken it anyway if he loses the appeal.
2536. **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.
2537. **Mr McMullan:** In the case of the action being overturned, would the Department foot the Bill?
2538. **Mr Brazier:** Yes. The Water Appeals Commission will decide on costs, and it is unlikely to make a successful appellant pay the costs.
2539. **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.
2540. **The Chairperson:** The question is this: is there a need for this clause?
2541. **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.
2542. **Mr Porter:** The Bill states that the Department "may" publish, as opposed to "must" or "should". There is a little bit of discretionary power.
2543. **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?
2544. **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?
2545. **The Chairperson:** That is good.

2546. **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.
2547. **Mr Brazier:** There may be some fundamental reason why this is in the Bill, so we will look at that.
2548. **The Chairperson:** That is all that we need — the justification for the need for it. Otherwise, why is it there?
2549. 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.
2550. **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.
2551. **The Chairperson:** OK. Are there any further comments on clause 88, which deals with on the powers of entry?
2552. **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)."
2553. It is basically the same as what happens with the water services at the moment.
2554. **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.
2555. **Mr Brazier:** Clause 92 is about compensating any landowner in that regard, but we are coming to that.
2556. **Mr McMullan:** Is anybody exempt from that?
2557. **Mr Brazier:** Such as? *[Laughter.]*
2558. **Mr McMullan:** I may not be the one to say it. *[Laughter.]*
2559. **Mr Brazier:** I cannot imagine so, but we can clarify that. We will clarify whether anyone is exempt.
2560. **Mr McMullan:** In the past, a certain section was exempt from those sorts of statutory goings-on.
2561. **Mr Brazier:** We will come back to you on that point.
2562. **The Chairperson:** OK. Are you happy enough, Oliver?
2563. **Mr McMullan:** Yes, thank you.
2564. **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?
2565. **The Chairperson:** Clause 90 is entitled "Powers of entry: supplementary".
2566. **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,"
2567. 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?

2568. **Mr Porter:** I hope not. *[Laughter.]*
2569. **Mr Brazier:** Do you mean that Rivers Agency would use force?
2570. **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”.
2571. **The Chairperson:** Sorry, what clause is that?
2572. **Mr Porter:** Clause 89(1).
2573. **Mr Swann:** I am looking more at clause 89(5)(a), which states:
“does not entitle a person to use force against an individual”.
2574. **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.
2575. **The Chairperson:** OK. Are you happy enough, Robin, or do you seek further clarification?
2576. **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?
2577. **The Chairperson:** It might be that one complements the other.
2578. **Mr Brazier:** Yes, I think that that is it, to be perfectly honest.
2579. **The Chairperson:** Before you would ever have the power of entry, you would need a warrant.
2580. **Mr Brazier:** Yes, you would need a warrant.
2581. **Mr Swann:** Why is a warrant authorising entry not needed for everything?
2582. **Mr Porter:** We have a general power of entry.
2583. **Mr Swann:** You have a general power of entry, so the two stand alone.
2584. **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.
2585. **The Chairperson:** Maybe we could have clarification of that in writing.
2586. Clause 90 is entitled “Powers of entry: supplementary”. The Committee did not receive any comments on this clause. I seek members’ comments.
2587. 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?
2588. 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.
2589. **Mr McMullan:** I see that the Lands Tribunal deals with compensation.
2590. **Mr Porter:** This is about harm to land.
2591. **Mr McMullan:** Yes, harm to land. Are we talking about agricultural land?
2592. **Mr Porter:** It can be any type of land. The Lands Tribunal would assess any impact on land.
2593. **Mr McMullan:** Clause 92(7) refers to payment of compensation, reinstatement or both.

2594. **Mr Porter:** Yes.
2595. **Mr McMullan:** Is it down to the Lands Tribunal or yourselves to decide that reinstatement is better than compensation? Who makes that decision?
2596. **Mr Porter:** Hopefully, that will happen much sooner than the Lands Tribunal stage. This will be an informal agreement.
2597. **Mr McMullan:** Is that between the owner of the land and yourselves?
2598. **Mr Brazier:** Yes, in the first instance.
2599. **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.
2600. **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.
2601. 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.
2602. **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.
2603. 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.
2604. **Mr McMullan:** Does that include the Secretary of State, who figures in the Bill?
2605. **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 —
2606. **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?
2607. **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.
2608. **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 —
2609. **Mr Porter:** It is a body that has been established or constituted, as opposed to the Secretary of State.
2610. **The Chairperson:** Would that body be the Northern Ireland Office or the MoD?
2611. **Mr Brazier:** Yes.
2612. **The Chairperson:** We need clarification on that.
2613. **Mr Brazier:** Yes.
2614. **The Chairperson:** OK. Are there any further comments on that?

2615. **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.
2616. If there are no comments to be made on the clause, members, I will move on.
2617. 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.
2618. Clause 99 is titled “Removal of panel members”. The Committee received comments on the clause from the ICE. I seek comments from members.
2619. **Mr McMullan:** Do we publish the names of those who are removed for the safety reasons?
2620. **Mr Porter:** They are removed from the list and therefore cannot be appointed.
2621. **Mr McMullan:** For how long?
2622. **Mr Porter:** Until they are reappointed.
2623. **Mr McMullan:** Is there not a time frame for how long they have to be out before they are reappointed?
2624. **The Chairperson:** Do they have to prove something to get back on the panel or is it time-bound?
2625. **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.
2626. **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.
2627. **Mr McMullan:** Could we not put in a minimum time frame in case the engineers came back?
2628. **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.
2629. **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.
2630. 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.
2631. 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.
2632. 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.
2633. We now move to Part 8 of the Bill, which deals with miscellaneous provisions.
2634. 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.
2635. 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.
2636. **The Committee Clerk:** I have heard differently just today.
2637. **The Chairperson:** Yes, you will seek to make that provision through the Budget Bill.
2638. **Mr Porter:** Yes.
2639. **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?
2640. **Mr Porter:** I do not think that it will come in front of this Committee, but I would need to double-check that.
2641. **Mr Swann:** Right. When the grant scheme for this comes forward, the Committee will not have any input.
2642. **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 —
2643. **Mr Swann:** I appreciate that, but I am talking about the process. Will the Finance and Personnel Committee scrutinise it?
2644. **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.
2645. **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.
2646. **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.

2647. **The Chairperson:** OK. If you are happy enough, Robin, and members have no other comments, we will move on.
2648. 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.
2649. 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.
2650. **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.”*
2651. Why is that? Should it be in there? That is a get-out clause.
2652. **Mr Porter:** It is to provide safety for the reservoir manager. If he did not know that somebody else had —
2653. **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 —
2654. **Mr Porter:** If the reservoir engineer resigns?
2655. **Mr McMullan:** Yes.
2656. **Mr Porter:** But this is protection for the manager.
2657. **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.
2658. **Mr Porter:** This is trying to do is tie up the fact that the reservoir manager, earlier on, must have —
2659. **Mr McMullan:** He must cross his t’s and dot his i’s.
2660. **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 —
2661. **Mr McMullan:** Whom does he resign to?
2662. **Mr Porter:** Resign his contract with the reservoir manager?
2663. **Mr McMullan:** Exactly. His resignation is not an argument. Whom else would he resign to?
2664. **Mr Porter:** He could have resigned from his job or just—
2665. **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?
2666. **Mr Porter:** He may well have resigned from his employment.
2667. **Mr McMullan:** Why, then, do we have resignation as a defence against a charge or proceedings?
2668. **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 —
2669. **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.
2670. **Mr Porter:** OK. We can take that back to our draftsmen.
2671. **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?
2672. **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.
2673. 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.
2674. **Mr McMullan:** Is that the case in which the engineer has 28 days to make a report?
2675. **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.
2676. **Mr McMullan:** We are into crystal balls and mind reading.
2677. **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.
2678. **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.
2679. **Mr McMullan:** It is not a defence in proceedings.
2680. **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.
2681. **Mr McMullan:** Nobody else has that luxury, even —
2682. **The Chairperson:** Are you opposed to the clause, Oliver, or do you want to add to it?
2683. **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.
2684. **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.
2685. **Mr McMullan:** I would not like to be standing in front of the oul' judge making that argument.
2686. **The Chairperson:** We will seek further clarification.
2687. **Mr Porter:** We will have a wee look at it.
2688. **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.
2689. 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.
2690. 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?
2691. Clause 111 deals with civil liability. The Committee received comments on the clause. Are there any comments from members?
2692. 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.
2693. 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.]*
2694. **Mr Milne:** Peace be with you.
2695. **Mr Brazier:** There was silence on clause 112.
2696. **Mr McMullan:** There was more silence on clause 113.
2697. **The Chairperson:** Do you want to make any comment, Oliver, or are you happy enough to move on at this stage?
2698. **Mr McMullan:** I will wait until clause 113.
2699. **The Chairperson:** We are at clause 113.
2700. **Mr McMullan:** The top one.
2701. **The Chairperson:** Are you seeking clarification on what that means?
2702. **Mr McMullan:** I have an idea of what it means.
2703. **The Chairperson:** Are you seeking clarification? Can David or Kieran shed any light on it?
2704. **Mr Porter:** It is just as it reads. It is standard piece of legal drafting.
2705. **Mr McMullan:** I am referring to subsection 4(c). It is not you but the land belonging to the government Department.
2706. **Mr Porter:** Are you referring to clause 112 or 113?
2707. **The Chairperson:** It is clause 113(4)(c).
2708. **Mr McMullan:** It is still allowing that land.
2709. **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?
2710. **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."*
2711. 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.

2712. **Mr McMullan:** Basically, nobody can be exempt from any of this ground. There is no ground exempt.
2713. **Mr Porter:** That is correct.
2714. **Mr McMullan:** I just want to make that very clear.
2715. **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.
2716. **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.
2717. 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.
2718. 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.
2719. 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.
2720. 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.
2721. 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.
2722. 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.
2723. 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.
2724. 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.
2725. I seek comments from members on schedule 2. If there are no comments, we will move on.
2726. I seek comments from members on schedule 3. If there are no comments, we will move on.
2727. I seek comments from members on schedule 4. If there are no comments, we will move on.
2728. If there are no further comments —
2729. **Mr McMullan:** Chair, could I just very quickly —
2730. **The Chairperson:** I was just about to say “Well done, members, on getting through that”.
2731. **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?

2732. **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.
2733. **Mr McMullan:** But there is nothing to protect — for want of a better word — the innocent partner.
2734. **Mr Brazier:** Others.
2735. **Mr McMullan:** Yes.
2736. **Mr Porter:** I think that it is by exception.
2737. **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 —
2738. **Mr McMullan:** Is it not a defence if one is taking that —
2739. **Mr Porter:** You do not need a defence, because your defence is that —
2740. **Mr Brazier:** It has to be proven.
2741. **Mr Porter:** The defence is, “It wasn’t me; it was my partner”.
2742. **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.
2743. **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.
2744. **The Chairperson:** There is still the onus on a reservoir manager.
2745. **Mr McMullan:** I am thinking of a partnership that maybe owns a bit of ground.
2746. **The Chairperson:** Someone still has to be a reservoir manager. Is that right?
2747. **Mr Porter:** Yes.
2748. **The Chairperson:** That would had to have been detailed and sorted out beforehand.
2749. **Mr McMullan:** What if you have a dispute on the ground?
2750. **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.
2751. **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?
2752. **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.
2753. **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.

2754. **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.
2755. **Mr McMullan:** The civil court?
2756. **Mr Brazier:** Yes, or the Crown Court, depending on the offence.
2757. **Mr McMullan:** There is no mention of Crown Court in there.
2758. **Mr Brazier:** Where? In the Bill?
2759. **Mr Porter:** The criminal sanctions, where there is talk of imprisonment.
2760. **Mr Brazier:** It talks about summary conviction and conviction on indictment. So, yes.
2761. **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?
2762. **Mr Brazier:** I will get clarification on that for you. I would only be guessing, so we will go back and clarify that.
2763. **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.
2764. **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.
2765. **Mr Porter:** But not under the Reservoirs Bill.
2766. **Mr Brazier:** But not under the Reservoirs Bill.
2767. **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.
2768. **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.

2769. **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.
2770. **The Chairperson:** Do members have any further comments? OK.
2771. 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.

27 May 2014

Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
 Mr Joe Byrne (Deputy Chairperson)
 Mr Thomas Buchanan
 Mr William Irwin
 Mr Declan McAleer
 Miss Michelle McIlveen
 Mr Oliver McMullan

Witnesses:

Mr Kieran Brazier	<i>Department of</i>
Mr David Porter	<i>Agriculture and Rural Development</i>

2772. **The Chairperson:** I advise members that the purpose of the session is to consider the Rivers Agency amendments and to seek agreement or otherwise on them. It will also be the last opportunity for members to indicate whether they wish to see any further amendments or to seek clarity on any issue. Next week, we hope to commence the formal clause-by-clause scrutiny of the Bill and, by that stage, it will be too late to seek clarity. I ask members to give this session their full attention, to consider whether they have any other amendments and to remain in the room for the duration of the session.

2773. With us today we have David Porter, the director of development, and Kieran Brazier, the head of the Bill team. As always, you are very welcome to the Committee.

2774. Members may wish to have their copy of the Bill and other relevant documents open in front of them for this part of the meeting. The Rivers Agency has provided three positions for us as follows: amendments that are being recommended to the Minister, which we have in front of us for consideration today — annex B, annex B1 and annex B2 — and two tabled documents. We will look at those shortly. We had hoped to see today the amendments that are being worked on for recommendation to the Minister;

they are at annex C. We will have a short discussion on why we still do not have those, when we can expect to have them and whether we can have them later. Finally, annex D sets out the proposed amendments that the Rivers Agency has decided against, and we will discuss those in some detail later.

2775. David and Kieran, although I know that you have a massive body of work on these amendments and the Committee's other concerns, we felt that it was a considerable time since we last met, and we thought that these would have been produced for us and be in our packs so that we had a number of days to peruse and assess them. That has not been the case for many of them, we received tabled papers only today, and one document has only just been put before us. I am looking at the main amendment for clause 120 with all its subsections and paragraphs, and I realise that there is a massive body of work. However, given that we did not meet last week, we felt that there had been sufficient time to produce documents for us in good time. I consider it bad form that we have not had the document before now. I am putting down a marker because I think that, for us to scrutinise and assess the legislation and give it the time that it deserves, we are behind the eight ball if we are seeing it only now. I will let you come in on that.

2776. **Mr David Porter (Department of Agriculture and Rural Development):** Your point is accepted, but we have been trying to clear all the amendments and have them drafted. I can tell the Committee that we have them all drafted. We found ourselves in a position in which we could release some because they were within our gift, and we were not relying on approvals from others, so we prioritised those and got them to you first. We have continued to work on clause 120 in particular, and,

as you identified, we did not give it to you because of its complexity. We want to ensure that what we put forward is as accurate as possible, albeit that the thrust of what we agreed has not changed at all. It was purely down to the amount of work involved in going through the Bill and checking every single clause to see whether it should be in or out. Perhaps it is partly to do with our diligence and our not wanting to put something forward that is not 100% accurate. As I said, we have drafted the items that we have not been able to release. We are depending on others, and there are sensitivities. I will use one example: we are writing into the Bill that the Office of the First Minister and deputy First Minister (OFMDFM) may do something by regulation, and, quite clearly, we need to get that cleared. We cannot simply put forward that amendment and then have OFMDFM hear that it will be required to do something in legislation. There is a process that we are not in control of, so I have to beg your indulgence. We are really focused on getting those amendments so that you can continue your formal clause-by-clause scrutiny next week. That is our absolute target, and we are doing our absolute best.

2777. **The Chairperson:** I understand. Stella, would it be in order to send out a text message to remind members that we have just started the consideration of amendments for the Reservoirs Bill? Members may not realise that we have reached this point.
2778. We will start by looking at the amendments that are being recommended to the Minister and that we have in front of us for consideration today. I advise members that the Rivers Agency is now in a position to recommend two amendments to the Minister. The first is on clause 22, which is on matters to be taken into account in relation to risk designation. The others are to clause 25(2)(k) and clause 33(4)(i), which is on the frequency of visits by supervising engineers. Should we go through these one by one, with you explaining them? Are members agreed?

Members indicated assent.

2779. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** The first amendment is to clause 22 — specifically, clauses 22(3)(e) and 22(4). The Examiner of Statutory Rules drew the Committee’s attention to that clause and suggested that two regulating powers seemed very similar, that clause 22(3)(e) was not subject to consultation with the Institution of Civil Engineers and that both regulations were by negative rather than affirmative procedure. If made, the regulations would be crucial to the Bill. That relates to matters that need to be taken into consideration when giving a risk designation to a reservoir. The first part of that regulation refers to consequence and the second part refers to probability. We gave this consideration. The Examiner of Statutory Rules suggested that one regulatory power could be introduced there. We considered that. However, what the examiner was keen to ensure was that, if we retained both regulatory powers, both would be subject to consultation with the Institution of Civil Engineers. We have decided to keep clause 22(3)(e):
- “such other matters as the Department may by regulations specify.”*

2780. That was done to give transparency to that part of the Bill on probability. I know that probability and consequence have featured largely in the discussions with the Committee throughout our time here. We did not want to remove anything that might lead people to think that we were trying to slip something through in another regulation. We wanted to be clear that other matters that the Department might want to take into consideration when looking at the probability of a reservoir failure would be made by regulation under clause 22(3)(e).
2781. Clause 22(4) gives us the regulating power to control other matters that are to be taken into consideration in the overall clause. We wanted to retain that as well. Crucially, we have agreed that those regulating powers are by affirmative resolution. If we are going to bring forward any regulations under

- clauses 22(3)(e) or 22(4), we will do so and will bring that forward to the Assembly. We will also consult on both parts of that regulating power with the Institution of Civil Engineers before we do so. So we will retain clauses 22(3)(e) and 22(4). In retaining both, we will ensure that regulations are made by affirmative rather than negative resolution and that we consult the Institution of Civil Engineers before bringing forward any regulations to the Assembly.
2782. **The Chairperson:** Are there any comments on clauses 22(3)(e) and 22(4)?
2783. **The Committee Clerk:** Or on proposed new subsection (5).
2784. **The Chairperson:** Thank you very much, Stella. Are there any comments, members?
2785. **Mr Byrne:** That is OK.
2786. **The Chairperson:** We will move on.
2787. We will deal with clauses 25(2)(k) and 33(4)(i), which relate to the frequency of visits by supervising engineers.
2788. **Mr Brazier:** Clause 25(2)(k) relates to the number of visits by supervising engineers to high-risk and medium-risk reservoirs. As currently drafted, it states:
- “(i) where it is a high-risk reservoir, at least twice in every 12 month period,”*
- “(ii) where it is a medium-risk reservoir, at least once in every 12 month period”.*
2789. We discussed the possibility of relaxing that stipulation at the last Committee meeting. We consulted the Institution of Civil Engineers, and it was agreeable to our suggestion to reduce the minimum number of visits to a high-risk reservoir to one every 12 months and to change the regime for a medium-risk reservoir to a visit at least once every 24 months. The amendment now reflects that proposal. There is also a consequential amendment to clause 33(4)(h)(i). It states:
- “if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently”.*
2790. That repeats clause 25(2)(k), so it needed to be amended to reflect the proposed amendment of a minimum of one visit to a high-risk reservoir every 12 months and a minimum of one visit to a medium-risk reservoir every 24 months. That is a consequential amendment.
2791. **Mr Byrne:** Are high-risk reservoirs in GB visited with the same frequency, or are we more stringent?
2792. **Mr Porter:** In England, no minimum standard is specified in legislation. It has an implied minimum standard. A supervising engineer has to provide an annual statement, which means that it is implied that they have to visit the structure.
2793. **Mr Byrne:** Is the annual statement for a high-risk reservoir or for all reservoirs?
2794. **Mr Porter:** There is no medium designation.
2795. **Mr Byrne:** So it is for all reservoirs.
2796. **Mr Porter:** We are in a period of flux because, previously, under the 1975 legislation, it was for all reservoirs of a certain size, irrespective of their consequence. At present, amendments are being brought to that legislation to change the requirement from a certain size to high-risk and no designation. Therefore, all reservoir structures that are designated as high risk will have to have an annual statement.
2797. **Mr Byrne:** That is fine.
2798. **The Chairperson:** Are there any other comments? To repeat: this is clause 25(2)(k), which states that a visit to a high-risk reservoir must happen at least twice every 12 months, whereas a medium-risk reservoir must be visited at least once every 12 months. The proposed amendment is that a high-risk reservoir must be visited at least once every 12 months and, in the case of a medium-risk reservoir, once every 24 months. The time between visits has been extended. Do members have any comments?

2799. **Mr Byrne:** Chairman, I welcome the change. We raised that point three or four weeks ago.

2800. **Mr Buchanan:** I wonder whether the time between visits could be extended further. If someone has spent thousands of pounds and carried out works to a reservoir, I cannot understand why it has to be visited every 12 months and a report done at expense to whoever owns the reservoir. If I build a house, it is inspected at the time. It is not inspected every 12 months or whatever because it is a new dwelling. It is the same with everything else. If new work is done and a huge amount of money is spent, I cannot for the life of me understand why it has to be visited every 12 months. I think that it should be extended further to maybe once every five years, provided work is done on it. It may be different for reservoirs on which no work has been done, when there may be a need to visit those every 12 months. However, I cannot see why a reservoir that has had a lot of work has to be visited every 12 months, thereby putting further expense on the owner.

2801. **The Chairperson:** I suppose that it comes back to one of the fundamentals: probability/risk.

2802. **Mr Porter:** There is also the competence aspect. Say you and I have houses built. We are relatively competent to understand that, if there is any significant change, we must call in a builder or an engineer. A reservoir structure is not the same as a house, because it can fail catastrophically, the consequence of failure is much greater, and, therefore, the layperson — the person who happens to own it — is not competent to look at it annually and give any assurance. You need an expert who is, as we have described, the supervising engineer. The role of a supervising engineer is to work with an owner or reservoir manager to make sure that that structure will not cause harm. I see that less as having to call someone in and bear the expense than as having someone who works alongside me to make sure that I do not get exposed to that liability.

2803. I have been thinking a lot about that since our last discussions, particularly about the annual visits. We made an analogy with the MOT test, but I think that we have been hung up with the wrong type of inspection. We are not talking about an MOT test here. An MOT test is more akin to an inspecting engineer. Once every now and again, somebody who is separate from the structure takes a look at it and signs off a certificate to say that it is good to go. The 10-year inspection is much more akin to an MOT test, when there is an in-depth check. A supervising engineer is like a garage man who routinely runs his eye over a car to say that the oil is OK and the tyres look OK when you get your car serviced. That is what a supervising engineer does; he stands alongside the reservoir manager and makes sure that the regime is OK. He takes a look at the structure to make sure that nothing catastrophic is going to happen to it and that it has not changed over time because that is the bit that will catch out people. By doing that, your liability or exposure is limited. We need to get our heads around that.

2804. As I have said many times, I do not mind: we can push this out further, but there is a conflict between what we write into the Bill and the contractual relationship between engineers and whether they are prepared to expose their professional indemnity (PI) insurance to liability. If they see that a reservoir manager is trying to negotiate an arrangement whereby he wants only the minimum standard and no more, and we set the minimum standard as one inspection in five years, engineers will not take that risk because they are in a relationship and are working with a reservoir manager to manage the risk. If we have to push this out in order to bring the Bill forward, I have no issue with it, but I have to be clear that we may be kidding ourselves. If we push it out to one inspection in five years, nobody might get it. We might think that we have produced good legislation that has reduced the burden, but, in fact, we have not because nobody will be able to negotiate that position.

2805. **The Chairperson:** I take the point about change and simply monitoring and supervising rather than inspecting at a 10-year point. Surely a reservoir could have been there for 100 years and, to all intents and purposes to the uneducated eye, has not moved or weakened. We are now putting on a regulatory burden, from now to eternity, that that reservoir will have to be supervised, with an inspection once every 12 months. So, over three years, one person sets eyes on that structure once, then he sets eyes on it twice and then three times. If there is no movement or difference, or concerns are not raised, is it not a case of saying, “This is not just a snapshot, it is not just a one-off, and we cannot identify change over the past 20 years”? They will have built up a record over three years with three inspections. Surely that would be the time to say, “We have scrutinised and studied the reservoir for three years, and it has not moved. We suspect that it will not move in the next five years”. I take your point that making inspection less frequent might mean that no engineer would touch the work, but could we not impose greater scrutiny at the start and then, if a dam does not move or cause concern, move to a less strict process? I do not know how you write that or whether it would work in practice, even for the engineering work, but you understand what I am saying.
2806. I understand that, if I look at a reservoir once, I do not know whether it has changed because I do not know what it looked like previously. However, if I go back the following year and again the year after that, I will know whether there has been any change. You could put a burden of scrutiny on a reservoir at the start but then relax it once you realise that there is no cause for concern. The impact would still be there and, unfortunately, the term “high-risk” still used, but you are lessening the burden of regulation because you have scrutinised and monitored it for that intense period. Can anything be done there? That, to me, sounds like a compromise through which you may well be able to bring in the engineers. Also, reservoir owners would see that the inspection/maintenance regime could be relaxed after that scrutiny period, if and when they performed or pursued a certain line of work.
2807. **Mr Porter:** In essence, what you are describing is exactly how we think that this will operate. The first inspection will state what the maintenance regime should be and the number of visits that we want the supervising engineer to make. In many cases, the requirement will be much greater. An inspection engineer will say, for example, that, because there are no records, they do not know whether a leakage is new or old; or what volume of material has been removed from the dam. In that case, initially, rather than seeking the minimum, a supervising regime of three or four times a year will be required until such time as we are satisfied that the settlement happened a long time ago and there has been no further movement. At that stage, we could relax the regime.
2808. I agree 100% that that is exactly what we are trying to write in. Our difficulty is the level to which it comes down to. I am comfortable that it will go up to a higher level than one visit a year and then come back down. The problem with being more specific is that there are, I suspect, many structures that will achieve this on day one: an inspecting engineer will go out and look at a dam and be relatively comfortable that, with a bit of clearing and a few minor works, it will be OK and not cause concern. Specifying a higher standard initially might put a burden on those whose structures do not necessarily need additional work. That is why the flexibility is already built in.
2809. It comes down to whether we are collectively comfortable with this as the minimum standard. As I say, I have no problem pushing it out further in legislation, if that is what is wanted. I am not sure that it would be of much benefit when it came to what people could negotiate contractually. I do not want this to be a sticking point of the Bill. There are more fundamental and

- bigger issues that we need to talk about. If we need to relax a little further, I am quite happy to do so, but only because I think that doing so would help to move the Bill forward. I am not sure whether it would really help the reservoir managers.
2810. **The Chairperson:** You are saying that it may not deliver in practical terms.
2811. **Mr Porter:** Yes. It is also worthwhile remembering what the Institution of Civil Engineers said when it was here. When two visits a year was suggested, David McKillen said that his firm would do that for about £1,000 a year. I suspect that that would be for a single visit and the oversight of a supervising engineer. I will not bind them contractually, but I guess that people are talking about £600 a year. Let us say that £600 a year is spent on a high-risk structure from which the release of water as a consequence of failure could affect 1,500 properties downstream. In the event of failure, I think that we would find it difficult to say that saving the cost of one inspection every other year was of benefit, given that something could have been spotted that bit sooner.
2812. **The Chairperson:** Yet we do not really know what the impact will be because the initial audit did not tell us that.
2813. **Mr Porter:** We know exactly what the impact will be. The impact is not in question. The flood inundation maps clearly show that 66,000 people would be impacted. What we do not know is the probability of that occurring.
2814. **The Chairperson:** Although the inundation is shown in blue, we do not know the force or the run-off of that area. So we do not really know the impact.
2815. **Mr Porter:** We have accepted that. That is not an issue because we have the differentiation between high and medium. We know that we have that bit of work to do, but we do not need to know all the answers because we have this step, and we know that the water will be lower in those on the lower step. We do not yet know which ones those are, but we will know by the time this is enacted. Fundamentally, your ability to scrutinise the Bill should not be compromised by that because you have that differentiation between high and medium. The question is whether you are comfortable enough with that differentiation, or do you want to keep high risk at one inspection every 12 months and push out medium risk to once every three years or something like that? That may be as far as you would be comfortable with going. I am not sure whether you are helping anybody because I am not sure that they will be able to negotiate that contractually.
2816. **The Chairperson:** Are there any further comments on the clause?
2817. **Mr Byrne:** I do not want to go against the sentiment of what Tom said because I said that I welcomed the change.
2818. **The Chairperson:** Absolutely. I understand.
2819. **Mr Byrne:** I am not prescriptive on the final outcome.
2820. **The Chairperson:** No, I understand. The first change is to have inspection at least once in every 12 months for high risk — “at least” is the key here — as opposed to at least twice in every 12 months. The second change is to at least once in every 24 months for medium risk as opposed to at least once in every 12 months. Are there any further comments?
2821. **Mr Irwin:** I also have concerns. As the Chairman said earlier, and I have said on a number of occasions, there have been no inspections for umpteen years — maybe 50 or 100 years — but, all of a sudden, we need so many. It just seems over the top to me, but the practicalities of making it work and its being overly burdensome are the problems. I hope that we do not live to regret some of this.
2822. **The Chairperson:** We will leave it there and move on. Opinions have been voiced. This has always been one of the fundamental issues, and it may never be resolved.
2823. I refer members to the amendment to clause 117, which occurs as a

- consequence of the amendment to clause 22.
2824. **Mr Brazier:** Clause 117(3) contains a list of orders and regulations that can be made only when a draft of the order or regulation has been laid before, and approved by a resolution of, the Assembly. I referred earlier to clauses 22(3)(e) and 22(4), which were to be subject to negative resolution. It is now proposed that they come under the draft affirmative procedure. The amendment to clause 117(3) takes account of that, so it is a technicality. I should say that there is a possibility of further amendments to that clause as a result of other as yet incomplete work. If we find that there is no further amendment, we will let the Committee know immediately. However, as it sits, clause 117(3) takes account of the fact that, in respect of clauses 22(3)(e) and 22(4), the regulations therein will be made by affirmative resolution and are added to the list at clause 117.
2825. **The Chairperson:** OK. We will deal with the wording of clause 117 later.
2826. Clause 120 is the one that we received immediately before we started the briefing. This looks very busy.
2827. **Mr Porter:** Yes. I will start, and, if you need the detail, Kieran can go through it. This introduces the pause that we talked about. We have gone through the Bill and identified the items that are phase 1. These are the fundamentals that we need immediately: registration, appointing an inspecting engineer and getting the initial inspection report.
2828. Phase 2 incorporates all the recurring burdens in the Bill, and we have a complex list of those. We had to go through the Bill and work out whether something was phase 1 or phase 2 and then draft this amendment. The single most important part is at clause 120 (2A):
- “No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly”.*
2829. What we really need to concentrate on is that I do not have control of this pause; you do. When the Bill is on the statute book, all that we will be able to do is the registration and the first inspection, which will allow us to work out whether there is a problem. If there is a significant problem, we can put a paper to the Minister, who could take that to the Executive and potentially deal with some of the issues. Only when we have quantified that will we be able to bring back phase 2 of the Bill and ask the Assembly to take that forward. That pause is not for the Department to be in control of; it is for the Assembly to be in control of. Kieran can give you more detail, but I question how useful that would be unless there are particular issues that you wanted to be drawn out. Basically, this takes the whole Bill and works through from phase 1 to phase 2.
2830. **The Chairperson:** I am happy enough. Perhaps it would be better to keep the explanation at a higher level, David. I apologise that I was listening to two people at once, and some members have just walked in. So the amendment will pause the Bill: it will not be enacted until the Assembly is satisfied —
2831. **Mr Porter:** That is when it will be commenced.
2832. **The Chairperson:** The Assembly will have the power to commence. That will be on the basis of information gleaned and gathered from the audit of the actual context and scale of the problem.
2833. **Mr Porter:** Correct. That allows us both to get what we wanted. Your argument was that you did not have enough information to scrutinise the future requirements, so we said, “OK, let’s build in a pause and get that information.” My argument has always been that I will not get that information because it would shift the fundamental responsibility. This does not change that. We both get to a point at which we have the information to enable us to assess the recurring bits of the Bill. The button will not be pressed on the recurring bits unless the draft orders have been laid before, and approved by

- a resolution of, the Assembly. It is not for the Department to call via secondary legislation; it has to come back to the Assembly.
2834. **The Chairperson:** Explain the mechanics of that. What does the drafting of the order entail?
2835. **Mr Brazier:** I will bring you back to the clause. You are at a disadvantage because you do not have how the clause will read in front of you. Neither do I, but I can help you through this. Clause 120 sets out how the Bill will be commenced. Clause 120(1) details all parts of the Bill that will come in on Royal Assent. So, when the Bill receives Royal Assent, clauses 1, 2, 5 and the others numbered there will come in, together with clauses 120 and 121. That does not change.
2836. Clause 120(2) as currently drafted states that all other parts of the Bill can be introduced as and when the Department decides. That has now been changed through the amendment's introduction of subsection (2A). The clauses listed under (2A) would otherwise be contained in clause 120(2). So the Department can bring in all clauses under Royal Assent except for those listed. That is the crucial bit. This is where all the recurring parts of the Bill are contained: for example, additional inspections by an inspecting engineer and the works required to be undertaken following an inspection report.
2837. The Department requires the commissioning of an inspecting engineer who will provide a report. The rest of the Bill as currently drafted states that, if a report includes directions, they must be followed. Otherwise, the Department will wonder why, and it might lead to enforcement. Those parts of the Bill can be made only when we list them in a commencement order and bring that to the Assembly for draft affirmative resolution. So you have to vote in that part. That is rather than our bringing it as a negative resolution — if you do not say anything, it will come in naturally on the date specified. The Assembly has to physically and consciously agree that those parts of the Bill will come in. Once we introduce this amendment, that power no longer rests with the Department.
2838. **The Chairperson:** Who is responsible for bringing that to us? Is it the Minister?
2839. **Mr Brazier:** Yes.
2840. **The Chairperson:** We talked about there being an initial audit to ensure that we know the context and gravity of the situation. Where is the grant scheme to allow people to employ an inspection engineer to get an initial report? That would enable you to supply us with the information that we need to have confidence in putting the draft order through.
2841. **Mr Porter:** As I said two weeks ago, in parallel to the Reservoirs Bill, we are bringing in a scheme to assist owners with its initial requirements. We are doing that under the Budget Act, so it is not dependent on this legislation. The business case for the scheme will be entirely focused on the initial requirements, which helps with phase 1. After completing phase 1, we can then work out whether we need a capital grant scheme. We cannot answer that question now. If we need to introduce that scheme, we will do so under the provisions in clause 105 of the Reservoirs Bill that set out the grants. We do not need clause 105 in phase 1 because we have found an alternative way of offering the scheme to help people with the initial requirements.
2842. As I said, the amendments are with the Minister. Also with her is a letter to the Committee giving an assurance that she will introduce that scheme.
2843. **The Chairperson:** The scheme is being incorporated into the Budget Bill. Is that right?
2844. **Mr Porter:** That is correct, yes.
2845. **The Chairperson:** Do you have any indication of how much financial assistance has been applied for?
2846. **Mr Porter:** All of this is predicated on our getting an approved business case.

However, we have to give an indicative figure of the quantum, purely for budgetary purposes, and we said that we think that we need in and around £200,000 over about a 12-month period. We are relatively optimistic that we will get the first half of that towards the end of the current business year. That profile may well change. It depends on how long it takes us to get an approved business case and how long it takes us to get the scheme in place and people on the ground. We can control that profile.

2847. **The Chairperson:** Are you reliant, before any work is done on the audit, on the Bill proceeding through to Royal Assent with the main amendment in place and the Budget Bill allowing it to release money? What is the timescale? That will not be within a year.
2848. **Mr Porter:** We can use the Budget Act as a scheme. The quantum and nature of the work mean that we can introduce the scheme very quickly — much more quickly than a grant scheme under clause 105, because we already have the legislation. All that we are doing is setting out a scheme that the Department wishes to take forward. Subject to the Minister being content with that and our being able to demonstrate that it is value for money through a business case, that is acceptable because it will be approved through the system: through DFP and through the House — through the Budget Act itself. The Budget Act and the scheme are not dependent on this passing, but the business case for it is. Therefore, the two are inextricably linked. Without the Reservoirs Bill, there would be no point giving anybody grant aid assistance to prepare for it. However, we have thought about the risk involved and are content that given the timeline — that is why I keep using the term “in parallel” — I genuinely do not believe that the scheme will have handed out much, or any, money, by the time that this Bill is at an advanced stage and we know whether it will go on the statute book. Therefore, we will have control over — [Inaudible.] — if that is necessary. This is not required to introduce the scheme, but the scheme and this are inextricably linked and run in parallel.
2849. **The Chairperson:** The Budget period is to 31 March 2015. Are you confident that you can take out that resource before the new financial year comes in and you run into all sorts of trouble?
2850. **Mr Porter:** This is just our profiling. Providing that I can anticipate the spend and make adjustments at the monitoring round, that is normal business for the Department. We do that for all schemes. In every budget line that we do, we continually juggle different pots and different schemes to try to get as close to the targeted closing position as possible. If we need to change the profile because it takes us a while to get the business case through or because the uptake is slower, provided that we anticipate that, it is not lost money. We divert it or offer it up for use by another Department, and there is a subsequent carry-over into the following year. However, for the Department, the figures that we are talking about are very small. Even as far as our agency allocation is concerned, we can manage fluctuations of that size relatively painlessly.
2851. **The Chairperson:** Is there a timescale or time limit for the audit period in which you entice or encourage reservoir owners to engage?
2852. **Mr Porter:** There absolutely will be because that is the benefit. We will tell owners that there is a constraint on the help that we can offer. We need to be in a position to say that there are 151 reports and that we can, therefore, quantify the overall position. There is no point in getting 149 and then wondering whether the two that we do not have might be the worst. That would probably mean being no further forward than we are now. So, we need to put a constraint on that. We recognise that there is work for us to do, because many owners — we have seen this ourselves — are not familiar with their requirements, so they will need encouragement. They will need to be directed to the scheme, and

- they may need help to understand it. That help is about trying to move this forward. We recognise that we have work to do.
2853. **The Chairperson:** Although there is a constraint, and rightly so, — I understand exactly what you are saying about the need to get this gathered up — what pressure is on the engineers to conduct the work in that time? Is that realistic?
2854. **Mr Porter:** Again, we are quite comfortable with that, because an inspecting engineer does not have to be from here — there is a long list of inspecting engineers. An inspection involves visiting a site to inspect and view the assets of the reservoir and then writing up a report. There is not a recurring requirement that you have to be available at all times, so somebody can quite easily fly in and do a report. If you can get a better price from a bigger firm in England, I can see that being a very realistic proposition, with people coming in just to do the initial inspections. I genuinely do not believe that it will be an issue.
2855. **Mr Byrne:** I welcome the general thrust of what David outlined about trying to put a quantum of money together, separate from the Bill, to try to do an audit report. That would mean that you are starting from a reasonable position where you understand that it will take a wee bit of time to encourage all private owners to accept that they have some responsibility and to make them aware that help is there for them to get the report done.
2856. **The Chairperson:** Do any other members want to comment on the main amendment to clause 120? It is basically a delaying amendment so that we can be reassured of the context and the risk. Any further comments?
2857. **Mr Brazier:** May I clarify something in case it skipped your attention? We referred earlier to the clause on the number of visits by a supervising engineer. Just in case there is any confusion, that will be in phase 2
- of the Bill, because it is a recurring responsibility.
2858. Bringing forward the commencement orders does not give the opportunity to amend the Bill. I am just making that clear, in case members felt that that was an opportunity for further scrutiny of the Bill. Once the Bill is made, it is made, and the commencement orders will reflect what is in it.
2859. **The Chairperson:** So, all a commencement order does is commence a part of the Bill —
2860. **Mr Brazier:** Yes, what is in the Bill.
2861. **The Chairperson:** — that needs to be triggered. What needs to be triggered is an Assembly vote on that. So, the clause is as it is whilst we scrutinise it and go through the stages of the Bill.
2862. **Mr Brazier:** Yes. I did not want members to feel that they perhaps had another opportunity at some stage to change clause 25(2)(k).
2863. **Mr Porter:** The whole Bill goes on the statute book. Certain elements of it will commence on Royal Assent. That will start phase 1, and then phase 2 will commence at some future point. The whole of the other requirements in the Bill may not even be commenced at that point, because, as was said, we have future-proofed elements of this that we may not start even with phase 2. So, there could be various commencement orders or other regulations that have to be made.
2864. **The Chairperson:** I understand. Are there any other comments on clause 120? There are no further comments at this stage. On the same paper, can you clarify what the related amendment to clause 29 is? It may just be technical.
2865. **Mr Brazier:** It is consequential; it is about the timing of inspection reports and such.
2866. **The Chairperson:** OK. For clarity then, after the Bill goes through in its entirety, with all the letters and words win it as is or as amended, what will phase 1 look like? I am sorry for my loose

- terminology, but phase 1 will be an audit phase.
2867. **Mr Porter:** Yes; it will put on the statute books and commence a legal definition of a controlled reservoir; it will define a reservoir manager and that hierarchy and will put in a requirement that you register; it will make the Department the reservoir enforcement authority and will allow a public register; and it will require the appointment of an inspecting engineer and the initial inspection. Those are the bits that allow us to find out for sure who owns the 151 reservoirs that we are dealing with, the condition they are in and who are the reservoir managers. Everything else after that is not included in phase 1 because it is about the recurring elements of the Bill.
2868. **The Chairperson:** Are members content with that? Are there any further questions?
2869. **Mr Buchanan:** In phase 1, there is no cost to the person who owns the reservoir. Is that right?
2870. **Mr Porter:** There will be cost, but there will be a grant scheme in parallel to the Bill under the Budget Act that will give a contribution towards it. We are working through the business case at the moment to work out what that contribution is, what the mechanism for payment will be and whether we will do it by lump sum or pay actuals with a cap. That is the stuff that we are going through in order to justify the business case.
2871. I said before that when the business case has been developed I will be happy to come back and say, "We thought that it looked like this, but now we have had our thinking, this is what we have fleshed out." I am happy to do that if that would be helpful.
2872. **The Chairperson:** That would be good. Since the Committee for Finance and Personnel will be considering the Budget (No. 2) Bill this week, are members content that we write to it to ascertain whether provision for financial assistance for reservoir owners and managers has been allowed for in the Budget (No.2) Bill, how much is that provision for; when will the moneys need to be spent by; and whether there any other conditions, i.e. a business case and timeline, for approvals?
2873. **Mr McMullan:** I am sorry, Chairperson; how long will that money be there for?
2874. **Mr Porter:** Again, we need to flesh that out in the business case. We may do it over a 12-month period, but the other option, if we can get it in now, is that we might end up with the rest of this business year and all of next business year. At least that keeps us —
2875. **Mr McMullan:** It will be over a two-year period.
2876. **Mr Porter:** Yes. It will be a year and a half in practice, but it will be over two financial years. It is definitely in two financial years; that is unquestionable. We have not even profiled it over one financial year. The question is whether it is over the 12 months of the second financial year or over six months of it. That is something that we will firm up, but it is absolutely over at least two financial years. I do not think we could spend it and deliver it over one year.
2877. **The Chairperson:** Are members content that we write to the Committee for Finance and Personnel for clarification on those issues?
- Members indicated assent.*
2878. **The Chairperson:** The proposed amendments to the Reservoirs Bill that the Rivers Agency is not recommending to the Minister can be found at pages 178 to 180 of your packs. I ask Rivers Agency officials to take members through the clauses that are not to be amended. Can we start with clause 6(8), which is to do with reservoir managers? It starts off at clause 6(8), followed by clause 15(1)(c). Are you happy enough, David?
2879. **Mr Porter:** Yes.
2880. **The Chairperson:** Do you know what you are looking at?
2881. **Mr Porter:** Yes, I do.

2882. **The Chairperson:** Please take us through each of those clauses, starting with clause 6(8), which is to do with reservoir managers.
2883. **Mr Porter:** We have had a look at it again and are content that it is accurate. That is the avoidance of doubt question. Work will be done on a designated watercourse, and the starting position is that we are not the reservoir manager. That has not automatically transferred responsibility to us. There may be cases in which we are part of the previous arrangements, and we talk about it as a cascade.
2884. What we do not want is people saying that, because it is a designated watercourse, we must own it. There are two different pieces of legislation: one, the Drainage Order is about the free flow of water; the other is about reservoir safety. Unless somebody can demonstrate that we were a reservoir manager, the responsibilities on us to maintain the free flow of water would not relieve somebody else of that responsibility. That is what the clause sets out.
2885. **The Chairperson:** OK. What about clause 15(1)(c)?
2886. **Mr Brazier:** I will take that one, Chair. That is about a reservoir manager notifying the Department of any change in ownership. There was concern about the defence at clause 16(5), which deals with a person not knowing that they were a reservoir manager. From memory, the example was given of a reservoir manager who dies and his or her family did not know of their ownership.
2887. We do not intend to amend the provision. If a reservoir manager dies, the responsibility for notifying the Department dies with him, and we would not pursue it in those circumstances. If a reservoir manager has transferred responsibility for the reservoir to someone else, he or she should know who that person is and would be responsible for letting us know. We do not feel that the circumstances exist in which there would be a need to amend that clause.
2888. **The Chairperson:** If I am reading it right, clause 16(5) gives a defence. Is that right?
2889. **Mr Brazier:** Yes, if that was required. If they do not know, they can simply say that they do not know. We would not enforce that. We would know that beforehand from our investigations and research into it, and we certainly would not pursue enforcement in those circumstances.
2890. **The Chairperson:** So although you see a defence in clause 16(5), you do not feel a need to amend clause 15(1)(c).
2891. **Mr Brazier:** Yes.
2892. **The Chairperson:** There are no comments on those clauses, so we will move on. Clause 17(2) deals with giving a risk designation.
2893. **Mr Brazier:** That is about the use of the word “risk”. That is one of the fundamental issues in the Bill.
2894. **The Chairperson:** I suppose that there are two distinct issues: the label attached; and the regulatory burden of the labels. No matter what you call it, it will be the same burden.
2895. **Mr Brazier:** Yes; that is it.
2896. **The Chairperson:** You talked about changing “high risk” to “high impact” or “high consequence”. If you are told that you are living beside something that is high-risk, it will frighten the bejabbers out of you. How do you get round that, and how can you justify keeping the word “risk” in?
2897. **Mr Porter:** We looked at it to see whether we could change that word. In certain aspects of the Bill, we could have. It becomes problematic when we came to clause 22, which deals with matters to be taken into account under that section. That clause clearly sets out the concepts of “adverse consequences” and “probability”, which deal with the risk. Risk is properly defined in the Bill as impact and consequence. If we took out certain

- aspects and made it something other than risk, there would need to be a wholesale rewriting throughout the Bill.
2898. I have thought a great deal about the fundamental issue of whether it is risk-based. It clearly is. Our problem is not about risk when we assess this; it is that the industry does not have an agreed way of quantifying probability. When it does, the legislation will accept it. When it has got an agreed way, if somebody then does work on a structure, as has been argued quite a few times, in the future that risk classification may change because of the way this is written.
2899. We are trying to be as open with you as possible at this early stage. I cannot see an agreed methodology to determine probability; that is not on the industry's horizon as far as I can see. That is why we keep coming back to its being predominantly consequence.
2900. To try to give you some comfort that we are not taking a sledgehammer to crack a nut, we still have high and medium. If there is harm to life, the question for the Department is whether it is high or medium. If we think that the harm is death, then that is high; if we think that harm is not death, that is medium. There has to be a judgement call. In a likely failure mechanism, if I may use that term, how quickly will that water be released? Where will be harmed by that flood inundation?
2901. For example, even though there are properties around a reservoir, we would be saying that, based on the flood inundation maps, that although that property would get wet, death is unlikely. Therefore, we are trying to take that into account. We cannot do it in as black and white a way as you would perhaps like to see: if you invest x amount into this reservoir, you get this benefit by the changing down. However, the legislation allows for that. I am being honest with you: I do not see that we will be able to introduce something like that in the foreseeable future.
2902. **The Chairperson:** That is an interesting point. You said that you do have consequences because when you invest and do the work that is required, your inspections will reduce. That is OK. You also talk about — I am struggling to find a way of putting this. I will come back to it.
2903. **Mr McMullan:** I know that you struggled with the wording, but the only thing that would worry me about that categorisation is insurance. If somebody sees high risk, it will be a high-insurance area for everybody living around the reservoir. It could also affect building in the area. Something needs to be built in to assure insurance companies and the new planning service, which will be the responsibility of local authorities, that this is only in a word.
2904. You talk about no death and just wet. That should not affect planning in the countryside for a house on a farm, for example. Moreover, it should not give insurance companies the opportunity to rocket insurance policies. I can see that clause being used to do that if we do not build in some mitigation.
2905. **Mr Porter:** We have two issues: planning and insurance. I need to deal with those differently because they are different approaches. In planning, we have the new draft PPS15 under FLD5. The new draft deals specifically with reservoir inundation. Although in a river flood plain there is a clear presumption against, in a reservoir inundation there is not.
2906. **Mr McMullan:** That is in that already?
2907. **Mr Porter:** Absolutely. It is FLD5. It went out to public consultation and is being finalised. It says that there are certain types of building that you may not want to put into it, and it lists essential infrastructure and homes for “vulnerable groups”. So if you are going to build an old people's home, right below a reservoir may not be the best place — somewhere different may be. However, if you are going to build a normal dwelling house below a reservoir, as I have said before, provided the reservoir is inspected by somebody competent and the works identified are carried out, it is

- absolutely perfectly safe to do so, as far as is reasonably practicable and as far as we can give assurance. It is perfectly safe to live below a reservoir, although you may want to think about the types of things that you are putting in that area. It is more to do with, in the event of failure, how you evacuate people, or where you have critical infrastructure below the reservoir. That could mean that, in the event of failure, the pain is not just felt in the local area but, potentially, right across the Province, for example. However, I am content that, under PPS15 and FLD5, that is very well addressed.
2908. **The Chairperson:** I have got back my train of thought.
2909. **Mr Byrne:** That is a dangerous term to use. [Laughter.]
2910. **The Chairperson:** With regard to the probability that you talk about, that is not here yet, in the engineering world, how is that practically inserted in the Bill, if it appears?
2911. **Mr Porter:** It is under clause 22(1)(b).
2912. **The Chairperson:** What does that look like?
2913. **Mr Porter:** That is the first place that it appears. For instance, the industry might agree a methodology for assessing different types of structures and materials of different ages. It is, in fact, the list that is included under clause 22(3), where you have:
- (a) *the purpose for which the reservoir is (or is to be) used,*
- (b) *the materials used to construct the reservoir,*
- (c) *the way in which the reservoir was or is being constructed,*
- (d) *the age and condition of the reservoir and how it has been maintained,*
- (e) *such other matters as the Department may by regulations specify.*
2914. If the industry comes up with something that does that, the Bill can, without any change, adopt it, because it says there, in black and white:
- “the probability of such a release.”*
2915. We needed some wriggle room in the absence of that, so we have written down the things that we might take into consideration. This will not be: “Here is a numerical way of calculating”. Rather, in our assessment, the way we see this going forward is that an assessment panel will be set up to determine the designations. The panel will look at the flood inundation map and will also take the information from the structure — where it is, what it is constructed of — and will come up with a “likely failure mechanism”. That likely failure mechanism will determine whether the reservoir is medium or high risk. I am not prepared to go so far as to say that we are taking probability into account, because I know, in my heart of hearts, that it is not a numerical probability calculation. However, it is as close as I can get to it without trying to get the industry to move as well.
2916. **The Chairperson:** I understand. Are there any other questions on risk designation and all the aspects of it?
2917. **Mr Brazier:** That takes us back to clause 22(3)(e):
- “such other matters as the Department may by regulations specify.”*
2918. We wanted to keep that in. We wanted it to be clear that, if we were bringing forward regulations under probability, that that is the clause that we would bring them under. It is the draft affirmative procedure, so the Assembly will have the opportunity to comment on it.
2919. **The Chairperson:** There are two other clauses that you are not going to amend. Clause 105 “Grants” and clause 106 “Assessment of engineers’ reports etc.”
2920. **Mr Porter:** The “Grants” clause is relatively straightforward, in that the reason why we were asked to modify it was to allow for an initial grant. Now that we have found a different mechanism of bringing in an initial grant, clause 105 does not need to be modified. We have found a different mechanism, so we do not lack clarify with it.

2921. **The Chairperson:** However, it is still in there?
2922. **Mr Porter:** Yes, because we may need it at some point in future, so we do not want to lose that provision or power, but we do not need to amend it to clarify that we are going to bring forward an initial grant. We are comfortable with that.
2923. **The Chairperson:** OK. Let us turn to clause 106.
2924. **Mr Brazier:** The Committee had concerns about the scrutiny of costs.
2925. **The Chairperson:** Yes, overengineering.
2926. **Mr Brazier:** Scrutiny of overengineering. We have looked at this really hard, and, from our legal advice, we are concerned about putting something into the Bill that would be considered as the Department over-regulating or which may compromise other EU law on contracts. There is just enough doubt there currently. We are very reluctant. We fully understand the Committee's concerns about this, but there is enough doubt around putting something in the Bill that would give the Department a regulatory role around monitoring costs and questioning the costs that a reservoir engineer is charging a reservoir manager.
2927. On overengineering, there is no one in the Department or in government who can fulfil that role. The only people who can look at what a panel engineer is suggesting is a reservoir panel engineer, and we have included in part of the Bill the dispute referral mechanism around that. I know that there were concerns around that, but, if there were an easy way of putting it into the Bill, we would be more than happy to do that. However, we are concerned that it would start to compromise the Bill. We are still talking to our legal advisers on this, and we will come back when we have the stated position. At the moment, we are being advised against putting anything into the Bill in that regard.
2928. **The Chairperson:** Is that advice that you have received in written form?
2929. **Mr Brazier:** Yes.
2930. **The Chairperson:** Can we see it? Some of the members are not here, but this is one of the fundamentals.
2931. **Mr Porter:** The other thing that is worth saying is that we are not opposed to doing this administratively. So, if we can find a different way of doing this, while we have no panel engineers, I have no problem with the agency challenging reports or the quality of reports or, if needs be, the cost of reports administratively. The issue for us is putting it in the Bill to make it a regulated function, because, as soon as you go down the route of making it a regulated function, you need a body to scrutinise that, and I genuinely do not believe that it requires another body to be overseeing this. I genuinely do not believe that it is a problem. I know that it is hard to convince somebody of that until we are running the process, but the experience in England is that this is not a problem.
2932. **Mr McMullan:** It may not be a problem in England, where you have quite a lot more engineers. Here, we do not, and that is the problem. We talked about flying in engineers, for want of a better phrase, from England and all over. That is extra expense for us. We will be faced with this extra expense, so, while legal opinion is that they do not think that this is a problem, obviously, they think that there is need to talk about it a bit more. Therefore, at this stage, we cannot put it in there. I think that we need to keep that out until we find a way around this, because we are marginalised here in not having the number of engineers who are suitable to do this job. If we are going to be taking them from elsewhere, that will bring an extra cost. They will not come this far without extra cost. Therefore, we have to get that worked out. Anybody who has a reservoir must have an idea of the costings before it happens. There is nothing to stop the 11 local authorities getting together and hiring an engineer. The costs would be shared out across the 11 councils, but an individual would have the total cost. So I think, secondly, that if we do

- not do that now, the all-powerful people in the Bill will be the engineers. After what you said, there does not seem to be any regulation of the engineers. We need to go back to find some sort of regulation of engineers, because the Bill is predicated on engineers without imposing any control on them. I am not saying that in a bad way.
2933. **Mr Porter:** And I did not take it in a bad way. Overengineering is dealt with in the quality of reports. So, again, there will be no issue if somebody is specifying something that we would question.
2934. **Mr McMullan:** But you cannot question an engineer because, to use your words, the only people who can question an engineer are engineers. The gamekeeper quickly becomes the poacher.
2935. **Mr Porter:** In a case like that, we would refer it to the reservoir committee of the institution, and its role is not to produce a report or to be a supervising engineer or inspecting engineer but to be the gatekeeper that allows those competent people onto that list and recommends to us people to put on the panel. That committee would take a dim view of somebody over-engineering or overcharging. From a professional point of view, the committee would bring a penalty against an engineer for doing that. That happens not only with reservoirs but with all other engineering functions.
2936. An example that I read of recently was that of an engineer who had not agreed a price beforehand. A private individual then got a bill that was larger than expected. They complained to the institution, and the engineer had to appear before the panel to justify the bill and was then charged with a disciplinary offence. So, there are other ways of getting at engineers rather than just through the Bill.
2937. The other issue is that the number of engineers here is low because there has not been any of this work. We are now starting to see that change. Although it has predominantly been from a single firm, we are now seeing at least one other training a supervising engineer, as we speak. In fact, it was Stephen Orr, who gave evidence here. He was a trainee supervising engineer from a different firm from David and Alan. The market will develop.
2938. **Mr McMullan:** That is if the engineering fraternity allows those numbers to go through and be trained. It can regulate the numbers that are being trained.
2939. **Mr Porter:** No, it cannot.
2940. **Mr McMullan:** I will come back to that. You said that the committee —
2941. **Mr Porter:** The reservoir committee.
2942. **Mr McMullan:** Well, there you are: it should be setting the fees and all of that. If it is the regulating authority, it should be regulating the fee, because, if somebody gets a bill that is more than they expected, how do they know what to expect? That could be the standard rate or it could be too high, whatever. Therefore, the reservoir committee should have that information; its members should become the people with that information. Maybe we have hit on the answer of how to get round it.
2943. **Mr Porter:** If only it were so simple, I would be delighted and I would take it to them. We have no issue with putting out what the costs are. We are on record with ours. We went out to competitive tender, and it cost £2,250 per inspection. That is what the costs are. We have no problem with publishing that. Our published consultation documents already have an indication of the costs. We have no problem, administratively, putting that type of information out. The problem is that, if we write into the Bill that we will regulate costs, that is a whole body of work outside reservoir safety that I am not sure we can justify doing. That is because I am not sure that we have seen evidence that this is real and will happen.
2944. **Mr McMullan:** We have regulated other things legally in the Bill. I cannot see that as being a problem. There has to be a safeguard for the reservoir owners in there somewhere. If there is not, it is

- open season for the engineers. That is all that I have to say on it.
2945. **Mr Porter:** You have to be able to demonstrate that it is a potential problem that needs to be solved. I accept that it is a concern. However, there are other ways of getting costs that you do not know. For instance, if a normal person who is not involved with the building trade were to build a house, that person does not know what a house costs to build. What they do in that case is to get three quotes. They look at them and say, "Well, this one is offering this and it costs x; this one is offering something different and it costs this; and this one is the outlier." So, there are other ways of getting costs. It does not necessarily need to be a relationship in which you would just go and get one cost and pay that. Certainly, I would not see it as that. There is a long list of reservoir engineers out there. Keep pricing until you get a service and a cost that you are content with. Maybe by asking enough of them, you will convince yourself that this is what it costs and this is what you will have to pay.
2946. **Mr McMullan:** OK. Very quickly; how many engineers can I go to for a price in the Six Counties here?
2947. **Mr Porter:** Currently, two firms have supervising engineers who live in Northern Ireland. However, many firms will supply the service here. I hear that there is an additional cost. However, sometimes I have to smile to myself when I travel. I fly to London very regularly. The last time I was over there, I had to get a train from London to Birmingham. It cost me more to go on the train than it had cost me to fly over. So, while I accept that there is a cost, I am not sure that it is disproportionate when we compare it with the cost for people in England who might have reservoir managers closer at hand. It is not that dear to fly here for an inspection once every 10 years. I do not see it as a disproportionate cost or a cost that would actually stop the tendering process, at least.
2948. **The Chairperson:** OK. Are there any other comments? Are you finished, Oliver?
2949. **Mr McMullan:** Yes. Sorry, Chair. Thank you.
2950. **The Chairperson:** Very good. You outlined my concerns and sentiments exactly, Oliver. There is no problem that way.
2951. There are still a number of outstanding amendments. When can the Committee expect to see them? We are at the point where we just cannot wait any longer.
2952. **Mr Porter:** We recognise that entirely. While it looks like there is a long list, a lot of them are interrelated. As I said, we have them drafted. So, when we get the release on one issue, it will actually release two or three of them.
2953. **Mr Brazier:** I can outline where we are with each one. The Examiner of Statutory Rules suggested the amendment on appeals to the Water Appeals Commission. What that is intended to do is to give OFMDFM the regulatory power to allow the Water Appeals Commission to charge fees and award costs. The Bill as it is currently drafted gives the Department those powers. The Examiner of Statutory Rules identified a conflict of interest there. We have raised that with OFMDFM. We await a response.
2954. **The Chairperson:** OK. Sorry, members; we are on page 177 of your packs. Go ahead, Kieran. I am sorry that I interrupted you.
2955. **Mr Brazier:** We talked to them just before we came here. The Water Appeals Commission is considering the proposals. We hope to meet it tomorrow or the following day and to have something with you. I would love to be able to say that, yes, you will have that on Thursday. We will try our utmost to have this and the others with you so that the Clerk can issue papers to you on Thursday.
2956. **Mr Porter:** It is worth reiterating that we have them drafted. Everything is sitting ready. All that we need is the agreement that people are comfortable with what is

- written. That will release them. So, we have them.
2957. **Mr Brazier:** The other amendment that relates to the Water Appeals Commission is on cost recovery. The Committee was very concerned to see that we made that amendment. It was to introduce a discretion for the Department. On advice, we did that and made the amendment. The advice was that, once the Department makes a decision on whether it will or will not seek recovery, it introduces, under the European Convention on Human Rights, the right of appeal. That is what is keeping us, because we have now asked the Water Appeals Commission whether it will agree to considering appeals under those clauses. There are about four or five clauses. We are waiting on a response. So, we are with the Water Appeals Commission on two of those issues and are hoping to have them resolved.
2958. There is another clause on defences. If a reservoir manager is given a direction by an inspecting engineer to do something on his reservoir and he feels that it is in breach of some European law and does not follow the direction, the defence would be that he did not follow it because he was fearful. Our first position on that was that we would not enforce in those circumstances, but we are making it absolutely clear in the Bill that we would not enforce in those circumstances. We are dotting our i's and crossing our t's on that one. We are very hopeful that we will be able to come back to you very quickly on that one. As I say, all the amendments are drafted, and it is just about getting all the dominoes in a row and getting it signed off.
2959. **The Chairperson:** OK. We are also waiting for letters from the Minister, which we need to have, too. Whilst you may have made arguments that we cannot have things in Bills, we really need as much information as possible, including letters of clarification from the Minister, and that will then be judged on its own merits. The one that Oliver and I have spoken on is clause 106, and it is fundamental. It is one of those. I do not know how we can meet.
2960. **Mr Porter:** We have no argument against that one on principle. In fact, we have said that. Our difficulty is in doing it in the Bill, and so we are dealing with the legal bit. If we can find a way, we will do it.
2961. **The Chairperson:** You talked about the will of the Department or Rivers Agency to pass things on to a scrutiny body. We want some sort of clarification or even some guarantee from the Minister that that is the will of the Department. We want as much as possible for us to make judgements. The more the better.
2962. **Mr Brazier:** OK.
2963. **The Chairperson:** Clauses 17 and 106 have been dealt with.
2964. Does any other member want to say anything now? Next week, if all goes well and we have the amendments in front of us, we will go into formal clause-by-clause scrutiny, so, if any other member has any other comments to make, this is the time to do it.
2965. Members, we now have a fair idea of how far the Department and the Minister are prepared to go regarding amendments, even if we have not seen all of them yet. I ask members to start thinking about any additional amendments that they may want and whether they wish those to be Committee amendments. We definitely want that for next week. Next week is the point when we move into formal clause-by-clause proceedings, and any members who wish to bring amendments for the Committee to decide on must do that for next week.
2966. Gentlemen, thank you very much for your time to date. It was very informative, as always.

are getting a good deal or a bad deal; it allows them then to ask that question. We feel that this is consistent with the legal advice we got in that we are not entering into the realm of dealing with the contractual relationship between an individual and their engineer. It allows us to publish information without being embroiled in the contractual relationship.

2972. As I said, we took a slightly different approach to over-engineering. Again, we thought long and hard about it. Initially, we were thinking primarily about an organisation that would administer the process. However, when we thought about it, Rivers Agency and the enforcement authority will be doing more than just administering a process. In the absence of the reservoir manager carrying out his duty, we would step in and carry out the engineering work. The first thing we would do in that situation would be to ask, "Does what we are about to step in and do actually need to be done?". Our defence, or power, is that we can step in in the interests of public safety. So, the first thing that we, as a Department, would say is, "Right, this person has not done this. We are going to spend public money on it. Is this a reasonable step to take?" We recognise that our role in that situation is to question what the engineer has recommended in order to satisfy ourselves that it is reasonable for us to step in and spend public money.
2973. **The Chairperson:** I will stop you there. As regards the mechanics of the Bill, when a reservoir manager gets a supervising report and is told to do a, b and c, how can he question that?
2974. **Mr Porter:** That is exactly what this clause is going to do. Instead of there just being reference to the "quality" of the reports, we have added the words "and content", which are very important. The word "quality" could relate to just the format and type and whether it is in the right paragraphs or covers roughly the right issues. We have gone a significant step beyond that in that it is not just the look and feel of the report that is covered but what the report

actually says. This is what we mean by dealing with over-engineering. Where a reservoir manager is concerned about over-engineering, we will have an interest in that as the reservoir authority. This then gives us the power to be concerned about not only the quality of the report but its content, which could be either good or bad.

2975. We are specifically steering away from using the term "over-engineering" because there may well be poor quality reports or poor content reports that we want to address. It is not just about gold-plating. That is why we felt that it was best to keep it like that. So, there is reference not just to "quality", which is what was in the clauses previously, but "and content". We hope that the words "and content" will allow us to address reservoir managers' concerns about over-engineering.
2976. **The Chairperson:** I will just stop you there. We will take this in bite-size chunks. Do members have any comments about clause 106 and proposed new clause 106A? On page 15 of your tabled papers, you can see how it affects the clause when that is added. The words "and content" have been added to the first line, and then there is a whole new clause 106A. Any there any comments, members, before we allow David to move on?
2977. **Mr Byrne:** Again, Chairman, it is a welcome change, given what we said last week.
2978. **The Chairperson:** OK. Do Members have any other comments? On the practicalities, David, it says, "The Department may". Sometimes, we worry about the word "may" because it can mean all sorts of things and sometimes can be more forcibly put, as the word "will". Sometimes we want it to be a "will"; sometimes a "may". For more reassurance, would you be minded to change the word "may"?
2979. **Mr Porter:** There are lots of "mays" throughout the Bill. They give us permissive powers, so that where we see that a problem is developing, we

- have the ability to step in. We tend to keep the “musts” to the absolute fundamentals, the things that we must do or else the system will not work. If the system is working well, and we have no reason to step in, the “mays” give us the flexibility to reserve that position. So, the power is there, and what I would say is that if there is evidence that we were not using that power then the Committee has the ability to challenge the Minister and say that, in this particular case, the Department has permissive powers and really should be using them. In that way, you can challenge the Department and Minister and say: “You really need to be using the power in this case.”
2980. **The Chairperson:** How will you know that there is a problem with over-engineering? How will you know that supervising engineers are making visits needlessly and recommending work that is on the safe side and not really practicable?
2981. **Mr Porter:** I think it came out of our discussions about the case of a reservoir manager flagging this up as a problem. That is the most likely place that it will come from. However, it is not necessarily the only place, because, obviously, we will be getting the reports in on a regular basis and, if we see a disparity between work required on reservoirs of similar structure, where some have more onerous requirements than others, it will prompt the question as to what is going on. However, I think it is more likely to be a case of a reservoir manager posing the question or wanting to have a discussion with us about whether the things he is being asked to do are reasonable. He will say, “The Department, the reservoir enforcement authority, will require me to do these. If I do not do them, it is over to you guys in the Department to do it.” That is where there would be a greater role for us. It is not just about receiving reports and giving somebody a tick to say that they are complying; there is an enforcement role that requires us to bring some intelligence to this as well.
2982. **Mrs Dobson:** I apologise for missing last week’s session; I know that you went through this in detail then. It is a good idea to assess the content of a report. As we know, this issue was raised by many owners. You have said that the Department would do it, but who exactly would be expected to undertake the assessment primarily?
2983. **Mr Porter:** Which assessment do you mean?
2984. **Mrs Dobson:** The assessment of engineers’ reports and everything in clause 106.
2985. **Mr Porter:** In a case where a reservoir manager is not content, they can first have a discussion with us and, hopefully, we can allay their fears. That can be informal. If we then find that there is something wrong with it, we can use the clause to say to the reservoir engineer, “We are not content with the quality or content of your report.” So, there is an informal step that we could take, as the enforcement authority, because a person may well get it wrong.
2986. **Mrs Dobson:** So, it is at first informal, but the clause is there for protection?
2987. **Mr Porter:** This is the formal power to actually do something.
2988. **The Chairperson:** There are amendments to clause 49. Are they similar in effect to the amendments to clause 36?
2989. **Mr Porter:** Yes.
2990. **The Chairperson:** Can you just clarify it for us?
2991. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** Clause 36 is about compliance with inspection reports written by the inspecting engineer. Clause 49 is about compliance with instructions from a construction engineer. They are parallel to one another, and the same approach has been taken for both. The consequential amendment to clause 70 is necessary because it refers to clauses 36 and 49. So, the same approach has been taken for both.

2992. **The Chairperson:** Do members want to say anything on the amendments to clauses 36 and 49? There are no comments on that.
2993. Before we start the clause-by-clause scrutiny, I would like to go into closed session for a period. It would be better, though, to go through this in open session before we start. Thank you very much, David and Kieran, for the time being.
2994. Members should have the informal clause-by-clause matrix open and the Hansard report from the meeting of 27 May in order to refer to the comments received from Rivers Agency on issues raised during evidence sessions. You will also wish to ensure that you can quickly reference the letters at pages 114 and 115.
2995. We will take a formal vote on each clause in, and schedule to, the Bill. The options available to the Committee are to agree that the Committee is content with the clause, agree that the Committee is content with the clause as amended, or agree that it is content with the new clause. That is basically three contents but meaning different things by way of whether the clause was agreed as it was, as amended, or whether it was a new clause. The fourth option is to agree that the Committee is not content with a clause or a new clause. Within that, you can vote that you are not content with a clause or agree that a Committee amendment is required. We will basically vote on whether we are content with a clause or, if not content, whether we simply vote it down or agree that a Committee amendment is required. I will probably end up reading all that again. If we decide that we are not content with a clause, I remind members that, in advance of Consideration Stage, we have the option of registering our formal opposition to the Question that a clause stand part of the Bill. This will ensure that the clause is debated at Consideration Stage.
2996. If a member is not happy with something and wants to vote against a clause or propose an amendment, they will need Committee agreement. For a Committee amendment, they need to be very clear about what they do not like about the current clause, what the policy objective of an amendment would be, or what they want the amendment to do. This is purely so that the staff — the Clerk of Bills and the Committee Clerk — know exactly what they need to write up by way of an amendment. Members know that they always have the option, as individuals, to put down their own amendments to the Bill, and the Bill Office staff will assist with that.
2997. I intend to group clauses where there have been no queries during the informal clause-by-clause scrutiny or no proposed amendments. Again, please shout or bring to our attention the fact that you are not happy, even with the way in which they are grouped. If there is one clause in a grouping that you are not happy with, please shout.
2998. Before we start the clause-by-clause scrutiny, I want to go into closed session, if that is in order.
2999. **Mr Byrne:** Chairman, in relation to the process and the mechanics of bringing this forward, obviously we want to get to a stage where the Minister and the Department present the Bill — is that right? — and then there would be debates on certain matters. Does the Committee want to agree as much as possible before the Bill re-enters the Assembly or do we want a debate in the Assembly? That is our job.
3000. **The Committee Clerk:** The Bill is at Committee stage. The Committee is undertaking a detailed scrutiny of each clause. The Committee report will inform all Members. However, the Bill will come back once its Committee Stage is finished and it is scheduled for Consideration Stage debate. That scheduling is at the Minister's discretion. That is when the debate will take place in the Assembly on the Bill, at Consideration Stage. The next debate will be in the Assembly at Consideration Stage, to be scheduled at the Minister's discretion.

3001. **Mr Byrne:** What is the timescale? Does the Committee or the Department have a view on whether to have accelerated passage?
3002. **The Committee Clerk:** No. It is too late; we cannot have that now. It is a completely different procedure that would have needed to have been agreed quite a while back, and we would not have gone through the process that we are engaged in.
3003. **The Chairperson:** Remember that the onus is on the Department to bring forward the Bill.
3004. **Mr Byrne:** So, the Department can determine the pace of passage of the Bill.
3005. **The Committee Clerk:** Yes, after it comes out of Committee.
3006. **The Chairperson:** Our responsibility is to scrutinise the Bill, and our report will reflect that scrutiny.
3007. **The Committee Clerk:** The debate in the Chamber — Roisin will keep me right here — will be on the clauses with proposed amendments or groups of clauses that are to be amended. If the Committee decides that it is not content with a clause and wants to debate it, that is when it registers that it is not content with a clause and intends to vote it down. So, if there is not an amendment or something but you are not particularly happy with a clause, you should register that now, and you will have a debate on that aspect of the Bill. OK?
3008. **The Chairperson:** Are members content to go into closed session for a brief period to have a discussion?
- Members indicated assent.*
3009. The Committee went into closed session from 2.37 pm until 3.26 pm.

Clause 1 (Controlled reservoirs)

3010. **The Chairperson:** The Committee sought clarification on how the cubic capacity of a reservoir would be measured, and the response is in the matrix. The

Committee also considered changing the 10,000 cubic metre threshold, but the evidence suggested that this would make minimum difference.

Question, That the Committee is content with clause 1, put and agreed to.

3011. **The Chairperson:** Clauses 2 to 5 can be grouped, as no issues with them were identified.

Question, That the Committee is content with clauses 2 to 5, put and agreed to.

Clause 6 (Reservoir managers)

3012. **The Chairperson:** The Committee requested clarification of where the Department has performed the work on a designated watercourse that flows to, through or from a controlled reservoir that may have involved works to the dam structure, as specified under clause 6(8). The response from the Department is on the matrix.

Question, That the Committee is content with clause 6, put and agreed to.

Question, That the Committee is content with clause 7, put and agreed to.

Clause 8 (Duty of multiple reservoir managers to co-operate)

3013. **The Chairperson:** The Committee sought clarification on the offences and associated levels of fines. The Department's response is in the matrix.

Question, That the Committee is content with clause 8, put and agreed to.

Clause 9 (Controlled reservoirs register)

3014. **The Chairperson:** The Committee requested an explanation of what information may not be included in the register if the Secretary of State considered it would affect national security. The response from the Department is in the matrix.

Question, That the Committee is content with clause 9, put and agreed to.

3015. **The Chairperson:** Clauses 10 to 14 can be grouped together, as no issues were identified.

Question, That the Committee is content with clauses 10 to 14, put and agreed to.

Clause 15 (Registration: supplementary)

3016. **The Chairperson:** The Committee expressed concern at the onus placed on a retiring reservoir manager to inform the Department that there was a new reservoir manager. The response from the Department is in the matrix for clause 15.

Question, That the Committee is content with clause 15, put and agreed to.

Clause 16 (Offences: registration)

3017. **The Chairperson:** The Committee expressed concern about the impact that clause 15 would have on clause 16(5), and the response from the Department is in the matrix.

Question, That the Committee is content with clause 16, put and agreed to.

Clause 17 (Giving a risk designation)

3018. **The Chairperson:** I will group clauses 17 to 23. The Committee expressed concern around the term “risk” and the unfairness that this creates around the risk designation process. The response from the Department is in the matrix. The Department is not proposing to amend this clause. However, it has proposed an amendment to clause 25(2)(k) that will reduce the minimum number of visits that will be required by the supervising engineer. I am grouping these from clause 17 to clause 23.

3019. Are there any comments, members? I will raise one. I am still concerned that there is no fairness in this system. I have a concern around the word “risk” being used as a designation when there is absolutely no chance of a reservoir owner or manager being able to change or reduce that. I do feel that “high consequence” would be better terminology, because, at the end of the day, there would be high consequences

if there were a breach. I do believe that there should also be a secondary designation whereby a reservoir could be high consequence and then either high risk or low risk depending on the investment that the manager has put into the structure and also the advice that he was given, either from the inspection engineer or the supervisor engineer. That would bring, I believe, a degree of fairness into the system. It would mean that the reservoir owner, when encouraged to invest in his structure, would get some gain — more gain than the amendment at clause 25(2)(k) — and that the stigma attached to a designation being high risk would be minimised.

3020. I think that I have covered all of my concerns there. Now, that would make it a lot more complicated. You would not just have the three designations: high, medium and low risk. It would mean that you could well have high consequence, high risk; high consequence, low risk; medium consequence, high risk; and medium consequence, low risk. You could have five. Whilst a reservoir manager could not affect whether it is high consequence, medium consequence or low consequence, he could affect whether it is high risk or low risk. I know that we have been through the arguments with Rivers Agency and the engineers, but there is just that degree of unfairness there that, no matter how much a reservoir manager looks after his structure and his land, and whatever investment he puts into it and whatever probability there is for a breach of that dam, it is not being measured and there is no real reward for someone looking after their structure. Whilst we would not want anybody to be negligent in their actions — we all have responsibilities — I think that there is a very high degree of unfairness in this clause and the clauses associated with it — clauses 17 to 23.

3021. Are there any other comments, members?

3022. **Mr Irwin:** I have similar concerns. We have always had concerns about this.

- As it stands, it leaves a degree of unfairness for the reservoir owners.
3023. **Mrs Dobson:** I also am concerned. I feel, as you and William Irwin have said, that the concerns raised by the reservoir owners and us have not been adequately taken on board by Rivers Agency. I do not feel that they are adequately covered in clause 25. I share your concerns about clauses 17 to 23. I do not think that they suffice. To agree with it would not be fair at all to the reservoir owners. I echo your sentiments.
3024. **Mr Byrne:** I can see the merits in having a differentiated position between the risk factor and the consequence factor if capital improvements have been done on the foot of advice from an engineer. I can see that it would be sensible and practical to recognise that.
3025. **The Chairperson:** If there are no further comments, I will put the Question.
- Question, That the Committee is content with clause 17, put and negatived.*
3026. **Mr Milne:** In the light of what you said, I am very much of a similar mind.
3027. **The Chairperson:** Are members content to vote that we are not content with the clause?
3028. **Mr Byrne:** Not content as currently drafted.
3029. **The Chairperson:** If we vote that we are not content, which we have, and there are no contrary voices of that mind, we will get the Committee Clerk to draft a form of words for the Committee report, as we have indicated here today. This has been a thread throughout the whole debate on that. What more, Stella, do you need, then, at this stage?
3030. **The Committee Clerk:** Indicate intention to vote against the clause stand part at Consideration Stage.
3031. **The Chairperson:** Yes, and that the Committee will indicate its intention to vote against the clause, as it sits, standing part at Consideration Stage of the Bill. Are members content?
- Members indicated assent.*
3032. **The Chairperson:** Can we also write to the Minister outlining the concerns and the desired course of action?
3033. **Mr Byrne:** Yes, I think that it is only fair to the Department that we write to it formally.
3034. **The Chairperson:** OK? So that covers clauses 17 and 23.
3035. **The Committee Clerk:** That is clauses 17 to 19, but there is another decision to be made at clause 21, if you do not mind.
3036. **The Chairperson:** I can go down each question. We have said that we are not content with clause 17 to 19: are members clear that we are not content?
3037. **The Committee Clerk:** Clauses 19 to 20, sorry.
3038. **The Chairperson:** We are not content with clauses 17, 18 and 19.
3039. **Mr Byrne:** We are not content with clause 17 and consequently, we are not content with clauses 18, 19 and 20. Is that right?
3040. **The Committee Clerk:** Yes.
3041. **The Chairperson:** Yes. Are all members agreed? I will put the Question again.
- Question, That the Committee is content with clauses 18 to 20, put and negatived.*
- Clause 21 (Appeal against Department's decision in a review under section 20)**
3042. **The Committee Clerk:** There are two issues here: there is one about not being content with the clause, but there is also this issue about clause 21(9).
3043. **The Chairperson:** Yes, which I think we need to go through. Clause 21 will be part of the grouping with clause 17, so we will not be content with that either. However, there is an additional aspect to this, which is the appeal against the Department's decision in a review under section 20. The Examiner of Statutory Rules recommended that the responsibility for making the

- regulations in clause 21(9) should rest with the Office of the First Minister and deputy First Minister rather than the Department in order to avoid a conflict of interest. An amendment is therefore required to clause 21(9). For clarity, clause 21(9) deals with the regulations to make provisions for the appeal and the awarding of costs of the parties in an appeal.
3044. There are also amendments proposed to clauses 73(6), 74(2), 77(2), 79(7), 82(8), 84(6) and 86(4). These amendments are rather technical in nature. We have been informed that amendments to this and the other clauses have been drafted by the Department but still require the approval of the First Minister and deputy First Minister. This has been sought and has not yet been received. We therefore do not have sight of the series of amendments. I understand that amendments here will result in new clauses later in the Bill.
3045. **We have two options:** we can finish today at clause 21 and hope to have these amendments at the meeting next week. If they are still not available next week, we will have to continue with the formal vote on the clause regardless. Or we can register our discontent and say that we are content with the clause as drafted as we have not had sight of the amendments. Members will be aware that undoing such a decision at a later stage will be very complicated and messy, but it can be done.
3046. Again, one of the options is to finish today at clause 21 and hope that the proposed amendments are before us next week. There is no guarantee in that, because their destiny is not in River Agency's or DARD's hands; they are in the hands of the Office of the First Minister and deputy First Minister. Certainly, we cannot blame the Rivers Agency for that. However, we could also simply register our discontent and say that we are not content with the clause as drafted as we have not yet had sight of the amendments. Again, that can come out in our Committee report to say that the reason we are not content is because we did not see the amendments at the formal clause-by-clause scrutiny stage. We can then carry on. I am entirely in your hands, members.
3047. **Mr Byrne:** Personally, I believe that we should pull the handbrake at this point until we have the amendments presented to us, because I think that we are working in the dark.
3048. **The Chairperson:** Are members content, then, that we finish today at clause 21 and hope to see the amendments at the meeting next week? Are members content? Can we do 22?
3049. **The Committee Clerk:** No.
3050. **The Chairperson:** Right, OK. So are members content, then, to leave it at 21 and hope that the amendments come forward, and no matter what, next week we carry on, whether we see the amendments or not?
- Members indicated assent.*
3051. **The Committee Clerk:** We have no choice, we are out of time.
3052. **The Chairperson:** We will just register our discontent because we have not seen them, which is fair enough. That is what we will have to do. We cannot scrutinise something that is not in front of us, and we cannot be content with that, so we will put it in our report.
3053. Members, we will have a long meeting next week because there are so many other clauses to get through. I am happy enough with the attendance that we have this week to go through clause-by-clause scrutiny at this point, but, if we could have the same next week that would be great. OK, members, content to leave it at that?
- Members indicated assent.*
3054. **The Chairperson:** Thank you.

10 June 2014

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	<i>Department of</i>
Mr David Porter	<i>Agriculture and Rural Development</i>

3055. **The Chairperson:** This session will be split into two parts. The first part will deal with further amendments, and then we will move to formal clause-by-clause consideration. Last week, the Committee expressed its discontent with the risk designation clauses — clauses 17 to 23. We did that by voting “not content” with clauses 17 to 20; by indicating that the Committee would recommend that, at Consideration Stage, the Assembly votes that clauses 17 to 23 not stand part of the Bill; and by agreeing to write to the Minister outlining our concerns with those clauses. We stopped at clause 21 because there is another, separate amendment here regarding the regulations for fees for appeals and awarding of costs that we had not received at that point. That is why we stopped.
3056. The amendments for the provisions to make regulations in connection with the Water Appeals Commission for fees and awarding of costs were received and sent out to you on Friday, as were the amendments on the cost recovery issues. All of those, and all the other amendments previously received, are in your tabled papers. They are in order.
3057. OK, subsequent to the decisions taken last week on risk designation, Rivers Agency has come forward with a set of amendments to address the Committee’s concerns. We had an informal meeting yesterday, at which we got an opportunity to discuss this. The actual amendments are being tabled today and are in your tabled papers.
3058. I ask the Committee to note that I intend to deal with the various sets of amendments in two different ways. First, the amendments to the regulations for fees etc, for the Water Appeals Commission and on cost recovery have been discussed in Committee on numerous occasions, both in oral presentations and written briefings. I am therefore content that the Committee has had sufficient time to consider those. The Committee will vote on the clauses, as amended by these two sets of amendments.
3059. On the amendments dealing with risk designation, I intend to take a different approach. These have been seen by members only today. They represent a substantial policy change, and, in my opinion, we need time to consider them. Whilst we will discuss them today, we will not have had sufficient time to decide whether the amendments address the concerns of the Committee. I do not propose that the Committee take a position today on whether they are acceptable. We will put that discussion on the agenda for next week, so that the Committee report can be finalised.
3060. Are members content with this approach?
Members indicated assent.
3061. **The Chairperson:** As always, I welcome David Porter and Kieran Brazier to the Committee. We have had previous written and oral briefings on the amendments to do with the provision to

- make the regulation for the appeals and costs awarded to parties being moved from DARD to OFMDFM and on the cost recovery and new appeals aspects. The amendments were emailed to members on Friday and are in your tabled papers.
3062. David and Kieran, given the time constraints that we face, will you quickly explain those amendments once again? That is, basically, the amendments to do with the provision of making the regulation for the appeals, the costs awarded to parties moving from DARD to OFMDFM, and the costs recovery and appeals aspects.
3063. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** Shall I do that now?
3064. **The Chairperson:** Yes please.
3065. **Mr Brazier:** The power to charge fees and award costs is an issue that was identified by the Examiner of Statutory Rules. The Bill as currently drafted gives the Department the power, by regulation, to make provision for determining a fee and for the charging of that fee in relation to appeals under clauses 21, 73, 74, 77, 79, 82, 84 and 86. The Bill as currently drafted also gives the Department the power, by regulation, to make provision for the awarding of costs of the parties to such appeals under those clauses.
3066. The Examiner of Statutory Rules suggested that it may be preferable to confer that power on the Office of the First and deputy First Minister rather than on this Department, as OFMDFM has similar functions in respect of the Water Appeals Commission and the Planning Appeals Commission. The Department has accepted the suggestion and proposes to address it as follows. First, in all the clauses that I referred to, we propose to remove all reference to determining a fee, the charging of a fee and the awarding of costs. Secondly, to confer that responsibility on the Water Appeals Commission and OFMDFM, we propose three new clauses: clauses 103A, 103B and 103C.
3067. Clause 103A gives power to the Water Appeals Commission to award costs for all appeals that it hears under the Reservoirs Bill. Clause 103B is a bit technical in that it allows the Water Appeals Commission the power to award costs if it has invited people to a hearing in the appeal, even if those people have not attended. Clause 103C allows OFMDFM the power, by regulation, to specify fees that may be paid to the Water Appeals Commission by appellants under the Reservoirs Bill. This approach is now entirely consistent with the approach being taken in the Planning Act (Northern Ireland) 2011, which the Examiner of Statutory Rules referred to in his suggestion.
3068. **The Chairperson:** OK. We will move on to the risk designations, but do members have any comments or questions on those specific amendments?
3069. **Mr McMullan:** Under clause 103B, costs can be awarded if you are not there. Can you give an example of that?
3070. **Mr Brazier:** In hearing an appeal, the commission may invite people to come along and give evidence verbally. However, if they do not accept that invitation or do not turn up, the Water Appeals Commission can still award costs to the appellants without the hearing having taken place. It allows costs to be awarded even if the people they have invited or who have expressed an interest in appearing before the commission have not done so.
3071. **The Chairperson:** OK. If there are no further questions on those amendments, we will move on. I will ask David and Kieran to explain the proposed amendments to the risk designation process and the content from yesterday's informal meeting; I know that not all members were there.
3072. **Mr David Porter (Department of Agriculture and Rural Development):** I will lead on this one. I am going to do two things. I will refer to the clauses — there are two clauses in particular to which I wish to draw your attention

— and I will also explain the risk matrix that we have developed. This is operational; it is about trying to put the Bill into some sort of context to explain how this would work in practice.

3073. In essence, the issues that the Committee have are, first, around the definition or the issue of risk designation and living below something that is high risk. That is an issue of terminology and the consequential reaction to that. Secondly, there is an issue where a reservoir manager could do some works but cannot influence either the probability of release or the consequence of it. We are trying to grapple with those two issues and, hopefully, you will see those through our proposed amendments to the Bill.
3074. First, I will turn your attention to the changes to clause 17. You will see quite clearly in the amendments that we propose to remove the word “risk” from the Bill to make it absolutely crystal clear that the Bill is based on consequence. We have said that consistently throughout. When we were drafting the Bill, we were trying to make it future-proof, because risk is a function of two things: impact and likelihood. There continues to be no agreed methodology to determine the likelihood or probability of failure. We were trying to write a Bill that was future-proof, but because of that we were, potentially, tying ourselves in knots. In light of the Committee’s concerns, we decided to take a step back and strip that word out and put in “consequence”. Then we needed to make sure that there is provision in the Bill to allow us, if there is an agreed methodology, to revert to that. That is the first thing that will give some comfort to people that they no longer live below something that is, in statute, considered to be high risk. It is now going to be known as “high consequence”. People will understand the consequence of failure, because of what is below it, as opposed to associating risk with something like the high risk of failure, which is not really what we are trying to describe. So that

is the “consequence of failure” and the use of the word “risk”.

3075. That, then, got us to a point where we had to work out how a reservoir manager can influence what the risk designation is. How can they influence the consequence and the probability? They are going to be required to do some works by the inspecting engineer. If they carry those out, what is the tangible benefit that they can see? That is set out in the table: turn to that now. Where a structure is high consequence — ie the failure will impact on many people and potentially cause death — we have a range of boxes. Each one steps up as the probability of failure increases. We start on the left, where the reservoir has no outstanding matters in the interests of public safety, so the reservoir manager is fully compliant and has carried out their works. To the right of that is where matters have been identified, and that case we classify as a higher risk. What we are suggesting is that, operationally, we would know that as a high-risk structure. And then comes the case where the reservoir manager fails in their duty and does not carry out those matters in the interests of the public safety, and the Department has to step in. In that case, operationally, we would know that as a very high-risk structure.
3076. There still remains an issue about whether the reservoir manager can influence the consequence. Can they move from a high consequence to a medium consequence? That is where I want to take you in this final moment or two: to clause 22. There is a very important point here that, I think, will tackle some of the concerns of the Committee. The Bill as originally drafted only enabled us to take a range of factors, such as the purpose for which a reservoir is being used, materials, the way it has been constructed and how it has been maintained into consideration in determining the probability of failure. We are proposing a very significant amendment here.
3077. **The Chairperson:** Sorry for interrupting you, David. Members, this is on page 44

- of your tabled papers. Clause 17 is on page 41, and clause 22 is on page 44.
3078. **Mr Porter:** You will see in clause 22(3) that we have taken out the provision that we can only use those matters in determining, as it says in paragraph 22(1)(b), the probability of failure, and we have changed that to:
- “the potential adverse consequences”.*
3079. That is very significant, because it allows us first, as I have said before, to determine those reservoirs which could cause harm, ie where there is some dwelling, person or economic activity at risk. So then we know that those are not low; we know that they are either medium or high. In the past, we have described how, to differentiate those, we would use detailed flood inundation maps to determine the speed, velocity and depth of water. That was like an on/off switch. There was very little that you could really do to influence whether you were high consequence or medium consequence. The change to clause 22 allows the Department to take into account more factors in determining whether you are high consequence or medium consequence. So the use of the reservoir, and how it has been maintained — there are now factors whereby a reservoir manager can influence whether it is high consequence or medium consequence, and not just by knocking down buildings. Previously, that was what you would have had to do. Now, there may well be certain works that a reservoir manager could do that could then change the reservoir’s consequence designation.
3080. To summarise that, there are two things that we have done to the Bill. First, we have removed the word “risk” and entirely focused on “consequence”. Secondly, by drawing in other matters that we can take into consideration in determining the consequence of failure, we have significant room to determine between high and medium consequence, and it also allows a reservoir manager to undertake works that could influence that and, therefore, the designation of a reservoir could potentially change.
3081. **The Chairperson:** OK. Any questions on the risk designation amendment? Again, it is in clause 17 but its affects go right up to clause 22 and is, of course, entwined right throughout the Bill.
3082. **Mr Porter:** That is correct.
3083. **The Chairperson:** Any questions on that?
3084. In the absence of members’ questions, I will ask a question. We referred to your colour chart. Again, I appreciate and see the gains in what you have done here through the amendment by bringing into play factors that could be used to measure probability. So I understand that, and I see it as a gain. The fact that you have moved the labelling — the designation — from “risk” to “consequence” is, again, common sense to me; it is a gain. Having the consequence of reservoir failure mixed in with the probability to give you this part designation and the actions therein can change that.
3085. However, I still have a problem with the actions within. The whole motive for me in this — and why I was not content — was that I thought that it was unfair that a reservoir owner could not change from the current rigours of the legislation to a better place with regard to regulation. From what I see here in front of me, the only differential now is that, whilst things may remain the same, if a reservoir owner initially does capital works at the start, his reservoir could well move from a high to a medium consequence. However, the actual risk probability does not really go to a better place because of his actions. In fact, if anything, it seems as if we have a new segment, which is very high risk. That does not mean anything different, because it was always there. It basically means that, where interests of safety are identified, a reservoir manager needs to do it, and if he does not do it, his reservoir goes straight into the very high risk category, which basically means that there will be enforcement.
3086. **Mr Porter:** That is correct.

3087. **The Chairperson:** Can you explain to me where the gain is? I can understand that you are starting to bring in a bit of fairness by the fact that you can change your consequence designation, but the probability which is now in has been given teeth by the fact that you are adding conditions by which you measure it. That is still the same as before, and we are still left with a regulatory burden because, under clauses 25 and 23, there is still at least one supervising engineer visit a year, and so on. So, if anything, we have not seen a gain in that regard. We have just seen a redesignation of the enforcement issue.
3088. **Mr Porter:** There has been a gain in that that has moved from two per year to one per year. So, in essence, that gain has already been achieved. As I have said before, if the Committee wishes to push that out further, I have no objection to it. However, I do not believe that, contractually, anybody will be able to negotiate any better than what is written there, because we are exposing an engineer's professional indemnity (PI) insurance, and they will not take on a risk that they think is unreasonable. What is in the Bill is very reflective of what a reservoir manager who has a structure that is in good condition could expect to achieve. Irrespective of how pristine it is, I genuinely do not believe that they will be able to negotiate a better deal than what is shown. That is why I am absolutely comfortable with those as minimum standards. If the Committee wishes to push it out further, we can do so. We would be doing that to satisfy ourselves; there will not, as I explained, be any real gain on the ground.
3089. **The big difference is that the reservoir manager can now control two different things. First, he controls the probability of failure:** by not having measures required in the interests of public safety, he brings his structure into a reasonable condition. In the event of failure, that is his defence: he has done everything that the law asked of him.
3090. Secondly, and more importantly, there may well be measures that he could undertake to reduce the risk from high to medium. That will make a difference to the regulatory burden because it is now based on consequence. If he could take some measure to divert the water, move the property or improve the structure, there is the potential to change from high consequence to medium consequence and therefore gain the benefit of not being required to have an inspecting engineer's report other than initially and not going from one inspection a year to two. That is now possible in the Bill; it was not when I spoke to you last week. That was the sticking point when the Committee voted on it. That has fundamentally changed. A reservoir manager can influence the consequence because of the range of factors that we can now take into consideration.
3091. **The Chairperson:** OK. Are there any further questions on that amendment? No.
3092. Thank you, David and Kieran, for that explanation of the amendments. Members, as I proposed earlier, given that we have not had sufficient time to consider all the policy implications, I propose that any decision made by the Committee on whether it feels that an amendment addresses its concerns be deferred until next week. I remind members that we retain the right to register formal opposition by the Committee to the Question that the clause stand part of the Bill at Consideration Stage.
3093. Before we begin the formal clause-by-clause scrutiny, I refer members to the draft letter to the Minister. The Committee agreed last week that it be drafted for approval. I suggest that we defer a decision on issuing the letter until next week. I invite members to read it. It may well need to be amended, but that can be done next week, if we defer sending it until the discussion on the risk designation amendments. Are members content that we defer making a decision on the letter until next week?
- Members indicated assent.*

3094. **The Chairperson:** Members should refer to their formal clause-by-clause matrix. It contains comments, responses and clarification from Rivers Agency on various clauses. Members will also find all the proposed amendments in sequence. These should enable members to follow the text of the amendments. Members should also have their copy of the Bill in front of them.

3095. I will advise members of the options available to the Committee. We will take a formal vote on each clause and schedule. The options available to the Committee are to agree that it is content with the clause; agree that it is content with the clause as amended; agree that it is content with the new clause; or agree that it is not content with the clause or new clause. It can vote that it is not content with the clause or agree that a Committee amendment is required.

3096. If we decide that we are not content with a clause, I remind members that, in advance of Consideration Stage, we also have the option to register our formal opposition to the Question that a clause stand part of the Bill. That will ensure that the clause is debated at Consideration Stage. If a member is not happy with something and wants to vote against a clause or propose an amendment, they will need Committee agreement. For a Committee amendment, they need to be very clear what they do not like about the current clause and what the policy objective is of an amendment or what they want the amendment to do. Please remember that, given the complexity and technical nature of the Bill, it is likely that only relatively simple amendments could be tackled in the time available. Members will know that they always have the option as individuals to table their own amendments, and Bill Office staff will assist with that.

3097. I also want to inform members that I intend to group clauses about which there has been no query during the informal clause-by-clause scrutiny and no proposed amendment. If that is clear, we can start the formal part of the

proceedings. Are there any questions at this point?

3098. OK. Members will recall that, at last week's meeting, we considered up to clause 20. We will commence formal clause-by-clause consideration at clause 21. Finally, please be aware that it is my intention to finish the formal clause-by-clause consideration today. That will mean getting through some 100 clauses and four schedules. If we do not get that done today, there will be an additional meeting.

Clause 21 (Appeal against Department's decision in a review under section 20)

3099. **The Chairperson:** Two decisions need to be made today. The first relates to the regulation or fees for appeals and the awarding of costs by the Water Appeals Commission. The second decision will be on the risk designation process. I will, therefore, put two Questions. The first will relate to the Water Appeals Commission and is a technical amendment. The Examiner of Statutory Rules recommended that the responsibility for making regulations in clause 21(9) rest with the Office of the First Minister and deputy First Minister rather than the Department in order to avoid a conflict of interest. An amendment is, therefore, required to clause 21(9). For clarity, 21(9) deals with the regulations to make provisions for the fee for the appeal and the awarding of costs of the parties to an appeal. There are also amendments to clauses 73(6), 74(2), 77(2), 79(7), 82(8), 84(6), 86(4) and 118(1) and to schedules 2 and 3. Those amendments are of a technical nature. The proposed amendment is at page 3 of the tabled papers.

Question, That the Committee is content to amend clause 21 in line with the departmental amendment, put and agreed to.

3100. **The Chairperson:** I will now put the Question on the clause as amended. The Committee has serious concerns about the risk designation mechanism. Although it is content to amend the

clause in line with the recommendation of the Examiner of Statutory Rules, it is not content with the clause as amended in so far as it relates to risk designation.

3101. Is the Committee content with clause 21 as amended? I have to say that I am not. Are members agreed that we are not content?

3102. **Mr McMullan:** Chair, can you state why you are not content?

3103. **The Chairperson:** The crux is risk designation. We will talk about it next week, but we must push through the formal consideration.

Question, That the Committee is content with clause 21, subject to the proposed amendment, put and negatived.

3104. **The Chairperson:** I formally acknowledge receipt of the amendments on risk designation from the Department. Unfortunately, the Committee has already started its clause-by-clause decision-making on the Bill. We are therefore content to consider the amendments proposed by the Department once the Committee has had adequate time to consider their text and impact on what is a complex and interconnected Bill.

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

3105. **The Chairperson:** As with clause 21, two decisions need to be made today. The first decision is on a recommendation from the Examiner of Statutory Rules on the number of regulations in the clause and its technical nature. The second decision will be on the risk designation process. I will therefore put two Questions. The first Question will be on the technical amendment. The Examiner of Statutory Rules said that there were two distinct rules at 22(4) when there should perhaps be one. The Department has suggested an amendment, which was considered at the meeting on 27 May. There is a consequential amendment to clause 117 as a result of the amendment to clause 22. The amendment is at page

4 of your tabled papers. The Committee has also requested clarification on the definition of cultural heritage, and the response is in the matrix.

Question, That the Committee is content to amend clause 22 in line with the departmental amendment, put and agreed to.

3106. **The Chairperson:** We will now ask the Question on the clause as amended. The Committee has serious concerns about the risk designation mechanism and, although content to amend the clause in line with the Examiner of Statutory Rules' recommendations, is not content with the clause as amended in so far as it relates to risk designation.

Question, That the Committee is content with clause 22, subject to the proposed amendment, put and negatived.

3107. **The Chairperson:** I wish to state the following, which can be added to the minutes. I formally acknowledge receipt of the amendments on risk designation from the Department. Unfortunately, the Committee has already started its clause-by-clause decision-making on the Bill. We are therefore content to consider the amendments proposed by the Department once the Committee has had adequate time to consider the text of the amendments and their impact on what is a complex and interconnected Bill.

Question, That the Committee is content with clause 23 put and agreed to.

Clause 24 (Supervision requirement and commissioning of supervising engineer etc.)

3108. **The Chairperson:** The Committee has expressed concern about whether the level of penalties is commensurate with the offence. There was also concern about the responsibilities of a supervising engineer. The responses from the Department are in the matrix.

Question, That the Committee is content with clause 24, put and agreed to.

Clause 25 (Duties etc. in relation to supervision)

3109. **The Chairperson:** The Committee has received an amendment to the clause to take account of the number of supervising engineer visits to high-risk and medium-risk reservoirs. The amendment is at pages 4 to 6 of the tabled papers. There is a consequential amendment at clause 33(4)(i).
3110. Before I put the Question, I will say my piece. I am not yet content with clause 25(2)(k), which deals with the visits to a high-risk reservoir. The number of visits will change with the amendment to at least once in every 12-month period for a high-risk reservoir and at least once in every 24-month period for a medium-risk reservoir.
3111. Again, there are two factors to my concerns. One is the words “at least”. More could have been done on the minimum and maximum number of inspections in any given time. I am not content with the periods, namely 12 months and 24 months. I revert to my MOT analogy. A car goes through an MOT once a year. Is that comparable with a reservoir that has been in existence for a long time? Those are my concerns and the reasons why I am not content with the clause.
3112. Members may well ask me whether we should amend the clause. The problem is that I do not see that I, and maybe even the Committee, are informed enough technically to put a time on it. We could push it out, but how far? You have heard the arguments from David and Kieran on what engineers are saying about their PI protection. So where would it be suitable for the Committee to draw the line? Again, I put the onus back on the Department. Really, the onus on setting a period should be placed there and not with the Committee.
3113. My issues are with the words “at least” for a minimum; the absence of a maximum period; and with the intervals specified. I acknowledge that amendments were made and that the number of inspections was pushed out

from twice every 12 months to once every 12 months for high-risk reservoirs and from at least once in every 12 months to at least once in every 24 months for medium-risk reservoirs. However, I am not content that that is enough. That is my spoke. Do members have any comments or questions?

3114. **Mr McMullan:** How many times is a high-risk reservoir inspected before it is downgraded to medium risk? It will not always stay as a high-risk reservoir. Therefore, if it comes down to medium consequence, it will have a 24-monthly inspection. Are you looking for one inspection in every 36-month period?
3115. **The Chairperson:** I am not content with the periods as they sit. This is all very much wrapped up with clause 17 and the risk designation and probability issue. That is where I sit. I see that gains have been made, and we now have the amendment, which we will discuss and debate next week. In the amendment, factors come into play that change the designation.
3116. **Mr McMullan:** At the same time, you cannot let a reservoir go too long without inspection. I know that you may want to have a three-, four- or five-year inspection period, but you could be letting it go too far.
3117. **The Chairperson:** It is about finding the balance. I do not know whether the Committee has the technical information to be able to make that informed judgement. That is why I am not proposing an amendment, but I am not content with the clause.
3118. **Mr McMullan:** These decisions are all predicated on cost. Without the cost, we could, I think, take the decisions much more easily. However, we know that there is a cost to the inspections, so we are trying to find a suitable inspection period to cover that cost. That is what is really driving —
3119. **The Chairperson:** It is the regulatory burden and then making sure that it is effective.

3120. **Mr McMullan:** Yes, so we are keeping in our head the costs to the people who own the reservoirs. If a high-risk reservoir is inspected once a year, after three years, it should be ready for downgrading to medium risk. It cannot remain high risk every year if it complies with the regulations; it has to be downgraded at some stage.

3121. **The Chairperson:** Yes, that is one of the points that I made before. A reservoir might have been there for 100 years without any movement. The new regime means visits by supervising engineers and inspection engineers' reports. If nothing has changed over that initial period, there could be a way to relax that regime. Given that it is time framed, I do not know how you would ever write that into a Bill. Do we have to do the same thing over and over again? Does a supervising engineer need to see the same thing over and over again? Rivers Agency would say that you would start with more visits in a 12-month period and a 24-month period, and then you get to the point at which you have one a year and one every 24 months. That is, I think, just too burdensome, and that is why I am not content.

3122. Any other questions or queries?

3123. **Mr McMullan:** How long does an inspection take? If you have an inspection once a year and write up your report, you are no sooner finished than you are into the following year.

3124. **The Chairperson:** Every reservoir will be different.

3125. **Mr McMullan:** It is about cost. We have cost in our head rather than the period of inspection. Costs are driving this decision.

3126. **The Chairperson:** If you have an engineer supervising a reservoir every month —

3127. **Mr McMullan:** If we are not content, we may leave that and come back to it next week.

3128. **The Chairperson:** We have to do it formally. This has always been a

fundamental issue. I am not content with it as it is. I do not have enough technical information to make an amendment.

3129. Before I put the Question, do members have any other comments? No.

Question, That the Committee is content with clause 25, put and negated.

Question, That the Committee is content with clauses 26 to 28 put and agreed to.

Clause 29 (Inspection timing: reservoir subject to pre-commencement inspection report)

3130. **The Chairperson:** Whilst no comments were received in relation to the clause, there is a consequential amendment in clause 120. The amendment is at pages 6 and 7 of the tabled papers.

Question, That the Committee is content with clause 29, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 30 to 32 put and agreed to.

Clause 33 (Duties etc. in relation to inspection)

3131. **The Chairperson:** No comments were raised in relation to the clause. However, it is consequential to the proposed amendment to 25(2)(k), which was considered at the meeting on 27 May. The amendment can be found at pages 7 and 8 of the tabled papers. Clause 33 is linked to clause 25(2)(k). I am not going to rehearse the issues, but I have a problem with the minimum time and the period between inspections. It is exactly the same issue.

Question, That the Committee is content with clause 33, subject to the proposed amendment, put and negated.

Question, That the Committee is content with clauses 34 and 35, put and agreed to.

Clause 36 (Offences: supervision, inspection, record keeping)

3132. **The Chairperson:** The Department is considering an amendment to the clause to ensure that, where a reservoir manager is required by other legislation

to obtain consents, sufficient time is allowed to obtain such consents before enforcement action is considered. The amendment can be found at pages 8 and 9 of the tabled papers and includes a new clause 36A. There is a consequential amendment to clauses 37 and 70.

Question, That the Committee is content with clause 36, subject to the proposed amendment, put and agreed to.

New Clause

3133. **The Chairperson:** New clause 36A is entitled:

“Offence in connection with inspection: failure to secure compliance with safety direction or recommendation”

3134. The new clause 36A is at page 9 of the tabled papers.

Question, That the Committee is content with the new clause, put and agreed to.

Clause 37 (Defences: offence under section 36(1)(f))

3135. **The Chairperson:** There is now a consequential amendment to clause 37 due to the amendment to clause 36. The amendment is at page 10 of the tabled papers.

Question, That the Committee is content with clause 37, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 38 to 48 put and agreed to.

Clause 49 (Offences: construction or alteration)

3136. **The Chairperson:** There is an amendment to this clause, which can be found at pages 10 and 11 of the tabled papers.

Question, That the Committee is content with clause 49, subject to the proposed amendment, put and agreed to.

New Clause

3137. **The Chairperson:** New clause 49A is entitled:

“Offences: failure to comply with safety direction in safety report, preliminary certificate or final certificate”

3138. The new clause 49A is at pages 10 and 11 of the tabled papers.

Question, That the Committee is content with the new clause, put and agreed to.

Clause 50 (Defences: offences under section 49(1)(b) or (c))

3139. **The Chairperson:** There is a consequential amendment due to the new clause 49A. It amends the title to “Defences: offences under section 49A(1)(a) or (b)”, and it is at page 11 of the tabled papers.

Question, That the Committee is content with clause 50, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 51 and 52, put and agreed to.

Clause 53 (Flood plans)

3140. **The Chairperson:** An amendment is proposed to this clause, and it can be found at pages 11 to 13 of the tabled papers.

Question, That the Committee is content with clause 53, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 54 to 64 put and agreed to.

Clause 65 (Commissioning of engineer by Department)

3141. **The Chairperson:** We now come to the first of a number of clauses that deal with the issue of cost recovery. These are clauses 65(4), 67(6), 69(6), 71(7), 71(8), 86(1) and 92(8) and the new clauses 103A, 103B and 103C.

3142. The Committee in its deliberations noted that, when the reservoir manager fails to comply with certain requirements of the Bill, the Department has provided itself with the powers to meet those requirements. This covers areas such as commissioning of an engineer, carrying out safety works etc. In most of

- these instances, the Department must recoup or recover the full costs. The Department seems to be working on the assumption that, in such cases, it would be because the reservoir manager was refusing to comply. The Committee understood that, in fact, in many cases, it could be because the reservoir manager would be financially unable to comply. This was a fundamental issue for the Committee. It did not want the Department having to pursue a community-based club or farmer when there was no likelihood of the reservoir manager being able to pay.
3143. The Department agreed that it would amend a number of clauses to enable it to have discretion on cost recovery. Thus in cases where there was no possibility of a reservoir manager being able to pay or where payment would cause severe financial difficulties or even bankruptcy or, indeed, where it did make economic sense to seek to recover costs, the Department will have some discretion. However, as the Department will be making a decision on whether to recover costs, that has necessitated the provision of an appeal system in the Bill. The appeal system will be managed by the Water Appeals Commission for Northern Ireland. OFMDFM is the sponsor Department for the Water Appeals Commission, and its approval is therefore required for that new function and the relevant amendments. The amendments have been received, and we will come across them individually as we go through the clauses.
3144. The first amendment is to clause 65, and it is on page 13 of the tabled papers. This was a major issue for many members of the Committee, and so the amendment is, if you like, a gain for the Committee.
3145. **I will put the Question:** is the Committee content with clause 65 as amended?
3146. **Mr McMullan:** Would the word “reasonable” not be better on the other side of the word “costs”, rather than “costs reasonably incurred”?
3147. **The Chairperson:** This is at clause 65.
3148. **The Committee Clerk:** It is just the way that it is drafted.
3149. **Mr McMullan:** Yes, but if you were reading it, what would you think?
3150. **The Chairperson:** I can bring the officials forward if you wish, but they will probably say that that is the way that it is drafted.
3151. **Mr McMullan:** OK. I will go with that.
3152. **The Chairperson:** Are you happy enough?
3153. **Mr McMullan:** Yes.
3154. **Mr Buchanan:** On that, the amendment states that the Department:
“may by notice served ... require the manager to pay”.
3155. Therefore, the Department will have the flexibility to seek to restore any moneys that it has spent. However, the word “may” is used. How far can the Department go? It is still somewhat open-ended. If the Department moves in, does a bit of work and is looking to recover its money, is there a possibility that the reservoir manager could lose his house or part of a holding that he has? If he does not have the money to pay, is it possible that he is going to lose part of a business, a farm, a house or whatever?
3156. **The Chairperson:** I ask the officials to come to the table. Did you hear all of that?
3157. **Mr Porter:** Yes. The fundamental point is that those are the responsibilities of the reservoir manager. They are responsible for the structure. We have passed the point in the Bill of establishing that it is their responsibility as is the cost associated with that. When the reservoir manager does not fulfil their duty, which is established in law, the flexibility is there for the Department to step in and carry out the works. The question is then what costs we will recover.
3158. The word “may” is there to give us some flexibility. We will not pursue when there is no prospect of cost recovery. That is

the element that is in there. However, where there is a prospect of cost recovery and somebody is quite capable of carrying out that duty but chooses not to, we need the legislation to be quite strict. It is their responsibility. They own the structure, and if it fails, they are liable for the harm that is caused. We are regulating that function. It is highly important that that is made clear and that we do not write in a legal loophole whereby people who are quite capable of carrying out their duty just sit on their hands and wait for the Department to do it and have wriggle room to get out of it. It needs to be quite tight to make sure that we do not leave that prospect of people playing out legal arguments with us.

3159. **The Chairperson:** OK. Are there any further questions for the officials, David and Kieran?
3160. **Mr Buchanan:** It is still not overly clear. Somebody may not have the money to do what is required of them, but they have a holding or property, something like that. For example, if they have property, is there the possibility that that property could be seized to make up for the money that the Department is looking for?
3161. **Mr Porter:** It would be exactly the same as if you owed the taxman money. In law, it says that you owe that money and, if you have the ability to pay that, it is right and proper that you are pursued for it. Just because you are going to lose something is not a good enough argument. If you dodge your tax, and you have assets, it is entirely right and proper, in law, for that to be pursued because you owe that money. That principle needs to be maintained. We recognise that there are people who hold this in a charity trust or who have been left a reservoir or a body of water in a will and they have no other assets. We need the discretion in a genuine case like that, so that the Department can put a case — internally to the Department and potentially to the Minister — to say that there is no reasonable prospect of cost recovery and it is not mischievousness by an

individual or clever management of their assets. We need a little bit of wriggle room for those cases. However, if somebody is just avoiding their responsibility — in the same way as they might avoid paying tax or any other bill — and they have the ability to pay, they should pay in law. Just because you do not like paying is not a good enough defence. We have to be careful that we do not write that in.

3162. **The Chairperson:** Various members want to speak. We have covered this, week in and week out. It is one of the fundamentals. We are going over ground that we have already covered. You used the example of tax, David, but you pay tax because you have made money. That is not the case if you are a reservoir owner. In most cases, the person has inherited it, and it may be a millstone round their neck.
3163. **Mr Porter:** It applies irrespective of how you got it. If you were willed a house, not a reservoir, and it had a leaking roof, unfortunately it comes as a package, and you cannot separate out the bits that you would like to be left to you and give up the bits that you do not like. Unfortunately in life, that is what happens. You get good bits, and there are risks and responsibilities. We have established through history that, in common law, the owner of the land is responsible for this hazard; we have established that they are not managing it in a way that means that we can give an assurance to people, particularly those living downstream, that it is being managed in a reasonable way; and we have established that something needs to be done. Unfortunately, we cannot just say that we will let them off the pain bit of owning it because of the circumstances. However, we have put in a little bit of wriggle room so that we do not see people being made destitute over this. It is difficult in law to write that in, and this is as good as we can get it.
3164. **The Chairperson:** I understand.
3165. **Mr Swann:** I am looking for some clarity. If a reservoir owner has assets, the

- Department will pursue them for those assets.
3166. **Mr Porter:** The Department would have to consider whether it was right and proper to pursue them. We are establishing the powers in law. The difficulty is the individual cases that you have to deal with. We cannot go through and say that there are 40 individual cases and that we will pursue this one because of this circumstance, but that we might not pursue that one. We have to take it on a case-by-case basis when it arises. That is where we need it to be tight, so that we do not leave a loophole. However, we need a little bit of discretion for the Department, so that, when we are presented with the facts of an individual case, we have the ability to apply a little bit of discretion.
3167. **Mr Brazier:** As currently drafted, the Bill says that we “must” recover; the Department will pursue in any circumstances. The amendment gives the Department discretion and more accurately reflects its policy on cost recovery. We cannot write into the primary legislation all the scenarios that might come up around this. If the Department has incurred costs that should otherwise have been incurred by a reservoir manager, it has a responsibility to consider recovering those costs. That is what this is doing. That might lead to full-cost recovery in certain circumstances and no-cost recovery in others because of the circumstances of the individual reservoir manager. As drafted and introduced in the Assembly, there was no discretion around that. In addition, we have brought in, in the amendment, that if we decide to recover costs, the reservoir manager will have the right to appeal to the Water Appeals Commission as to the amount and the decision to recover.
3168. **Mr Swann:** As far as I am aware, the Department’s policy on cost recovery is full-cost recovery.
3169. **Mr Brazier:** We checked that and that is not the case. This Bill accurately reflects the policy, and we checked that with our policymakers. We showed this proposed amendment to our policymakers, and they agreed that it accurately reflected the position.
3170. **Mr Porter:** Maybe the example is better not to think of the extremes but the very small cases. For instance, if the Department had to step in and spend a few hundred pounds to do something, and it is going to cost us £10,000 to recover that cost, clearly we would put a case that it is not value for money to spend £10,000 to pursue and recover a few hundred pounds. In that case, irrespective of whether it was in the Reservoirs Bill or any other bit of the Department, there would have to be a judgement made on whether cost recovery was the correct thing to do.
3171. **Mr Swann:** David, we pass SRs here quite regularly where we go for the cost recovery of the price of plastic shoes. So, when you are talking about the Department going after a few hundred pounds, they go after a few pence in certain cases. This example is purely theoretical: if somebody has been bequeathed a reservoir that then needs money, which they do not have, spent on it, and the Department moves in to seize the asset, the only asset they have is the reservoir. Will the Department take the reservoir or is that too big a risk for the Department?
3172. **Mr Porter:** Again, I am not sure. We would need to consider that.
3173. **Mr Swann:** But if he had a house, you would take the house.
3174. **Mr Porter:** No, we would not say that.
3175. **Mr Brazier:** Not necessarily.
3176. **Mr Swann:** Not necessarily, but you may.
3177. **Mr Brazier:** Yes, it is a possibility. It needs to be considered. The Department has incurred costs that would otherwise have been incurred by the reservoir manager, and it needs to consider the recovery of those costs. Whether it does or not —
3178. **Mr Porter:** — is a different matter.

3179. **Mr Brazier:** — depends on the circumstances.
3180. **Mr Swann:** The flexibility may be in the legislation, but I think that it will be a different matter in practice.
3181. **Mr Brazier:** The way the Bill is written, we would be in breach of the legislation if we did not apply how it is written.
3182. **Mr Irwin:** I have issues similar to Robin's whereby someone can inherit a reservoir and quite possibly be asset-rich, but they do not have the funds. It would be a travesty if those people had to sell property.
3183. **Mr Porter:** Unfortunately, that is a hazard associated with getting willed something. I am not sure how, in legislation, we can deal with that.
3184. **Mr Irwin:** I know that. Put it this way: those who cannot afford it, you do not go after them; those who have assets, you do go after them. It is not fair either way.
3185. **Mr Porter:** We are happy to revert to the previous one that says that we will just go after everybody, if that is what you want. That is the alternative.
3186. **Mr Irwin:** Most of the time, you would be wasting your time.
3187. **Mr Swann:** Put it this way, going back to that would make our decision an awful lot easier. *[Laughter.]*
3188. **Mr Porter:** At least that is equally unfair on everybody. I do not know what to do here.
3189. **Mr Brazier:** We brought that forward because that is what we thought the Committee was looking for: discretion. If we are hearing otherwise, we can revert.
3190. **Mr Irwin:** Discretion is good, but —
3191. **Mr Brazier:** We cannot give guarantees, if that is what the Committee is looking for. We just cannot.
3192. **Mr Porter:** We cannot because we are bringing in a power in order to do something. We cannot write in, "In this particular case, we will do this, and in

that particular case, we will do that". It is then how we deal with individual cases after that. The flexibility is good because at least it means that we do not have to recover costs. At least it requires us to pose that question to ourselves. Will we recover costs? Is it reasonable? At least that flexibility is a movement.

3193. **The Chairperson:** We have opened up this debate again. We have had this countless times, and I know that the Department has moved and the Committee has made gains. I am happy to go into a five-minute closed session if members want to discuss the issue further. Otherwise, I will put the Question. It is completely up to members. A five-minute informal?

Members indicated assent.

3194. The Committee went into closed session from 3.31 pm until 3.43 pm.

3195. **The Chairperson:** I remind members that we are back in open session. We have discussed clause 65 in open and closed sessions.

Question, That the Committee is content with clause 65, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with Clause 66, put and agreed to.

Clause 67 (Enforcement notice: safety measures)

3196. **The Chairperson:** An amendment is proposed to clause 67(6) to take account of the Committee position on discretion in seeking full cost recovery.

Question, That the Committee is content with clause 67, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with Clause 68, put and agreed to.

Clause 69 (Department's power to arrange taking of safety measures)

3197. **The Chairperson:** An amendment is proposed to clause 69(6) to take

account of the Committee's position on discretion over full cost recovery.

Question, That the Committee is content with clause 69, subject to the proposed amendment, put and agreed to.

Clause 70 (Offence under section 36(1)(f) or 49(1)(b): further remedies)

3198. **The Chairperson:** There is a new consequential amendment to clause 70, due to the amendment of clause 36.

Question, That the Committee is content with clause 70, subject to the proposed amendment, put and agreed to.

Clause 71 (Emergency powers)

3199. **The Chairperson:** There is an amendment to clause 71(7) and (8) to take account of the Committee position on discretion on full cost recovery. The amendment is at page 15 of tabled papers, and there is a new clause at 71A.

Question, That the Committee is content with the clause 71, subject to the proposed amendment, put and agreed to.

New Clause

3200. **The Chairperson:** New clause 71A is entitled "Recovery of costs under section 65, 67, 69 or 71: appeal". It is a new clause due to the amendment to clause 71.

Question, That the Committee is content with new clause 71A, put and agreed to.

Question, That the Committee is content with clause 72 agreed to.

Clause 73 (Stop Notices: content and procedure)

3201. **The Chairperson:** There is an amendment at 73(6) regarding the change in the responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 73, subject to the proposed amendment, put and agreed to.

Clause 74 (Stop notices: compensation)

3202. **The Chairperson:** There is an amendment at clause 74(2) regarding the change in the responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 74, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 75 and 76, put and agreed to.

Clause 77 (Regulations as to enforcement undertakings: further provision)

3203. **The Chairperson:** There is an amendment to clause 77(2) regarding the change in the responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 77, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 78, put and agreed to.

Clause 79 (Fixed monetary penalties: procedure etc)

3204. **The Chairperson:** There is an amendment to clause 79(7) regarding the change in the responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 79, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 80 and 81, put and agreed to.

Clause 82 (Variable monetary penalties: procedure etc)

3205. **The Chairperson:** There is an amendment to clause 82(8) regarding the change in responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 82, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 83, put and agreed to.

Clause 84 (Undertaking referred to in section 82(5): enforcement)

3206. **The Chairperson:** There is an amendment to clause 84(6) regarding the change in responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 84, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 85, put and agreed to.

Clause 86 (Recovery by the Department of certain costs)

3207. **The Chairperson:** There is an amendment to clause 86(1) to take account of the Committee position on full cost recovery. There is also an amendment to clause 86(4) regarding the change in responsibility for making regulations to clause 21(9); that is, it should rest with the Office of the First Minister and deputy First Minister rather than with the Department in order to avoid a conflict of interest.

Question, That the Committee is content with clause 86, subject to the proposed amendments, put and agreed to.

Clause 87 (Publication of enforcement action)

3208. **The Chairperson:** The Committee sought clarification of why enforcement actions were required to be published, and the response is on page 20 of the matrix.

Question, That the Committee is content with clause 87, put and agreed to.

Clause 88 (Powers of entry)

3209. **The Chairperson:** The Committee sought clarification on exemptions for powers of entry or the differences between this clause and what is accepted as normal standard operating procedures.

Question, That the Committee is content with clause 88, put and agreed to.

Clause 89 (Warrants authorising entry)

3210. **The Chairperson:** The Committee sought clarification on the use of the force element in the clause.

Question, That the Committee is content with clause 89, put and agreed to.

Question, That the Committee is content with clauses 90 to 91, put and agreed to.

Clause 92 (Compensation)

3211. **The Chairperson:** There is an amendment to clause 92(8) to take account of the Committee position on full cost recovery.

Question, That the Committee is content with clause 92, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clauses 93 to 95, put and agreed to.

Clause 96 (Power to require information and assistance from others)

3212. **The Chairperson:** The Committee sought clarification on what was meant by "other body" and whether that covered the Secretary of State.

Question, That the Committee is content with clause 96, put and agreed to.

Question, That the Committee is content with clauses 97 to 102, put and agreed to.

Clause 103 (Reimbursement of costs incurred by Institution of Civil Engineers)

3213. **The Chairperson:** No issues were identified with clause 103. However, there are new clauses 103A, 103B and 103C to take account of the amendments to clause 65.

Question, That the Committee is content with clause 103, put and agreed to.

New Clause

3214. **The Chairperson:** New clause 103A is entitled “Power of Water Appeals Commission to award cost in an appeal”.

Question, That the Committee is content with new clause 103A, put and agreed to.

New Clause

3215. **The Chairperson:** New clause 103B is entitled “Orders as to costs: supplementary”.

Question, That the Committee is content with new clause 103B, put and agreed to.

New Clause

3216. **The Chairperson:** New clause 103C is entitled “Fees in relations to appeals”.

Question, That the Committee is content with new clause 103C, put and agreed to.

Question, That the Committee is content with clause 104, put and agreed to.

Clause 105 (Grants)

3217. **The Chairperson:** Members will recall that the Minister has advised that she is proposing a grant scheme, and this was discussed at last week’s meeting.

Question, That the Committee is content with clause 105, put and agreed to.

Clause 106 (Assessment of engineers’ reports etc.)

3218. **The Chairperson:** The Committee expressed concern regarding the possibility of overengineering by engineers and the lack of checks and balances on engineers in the Bill. The Department has proposed an amendment and a new clause 106A. A briefing was given on this amendment at the meeting last week. Members should refer to the Hansard report of that briefing.

Question, That the Committee is content with clause 106, subject to the proposed amendment, put and agreed to.

New Clause

3219. **The Chairperson:** New clause 106A is entitled “Publication of information as regards ranges of costs of engineers’ services”. It is directly related to the issues raised by the Committee on some sort of checks and balances on the engineers, as well as dealing with the information vacuum around the cost of hiring the various types of engineer.

Question, That the Committee is content with new clause 106A, put and agreed to.

Clause 107 (Notice to the Department of revocation of commissioning, or resignation, of engineer)

3220. **The Chairperson:** The Committee sought clarification on the defence at clause 107(6).

Question, That the Committee is content with clause 107, put and agreed to.

Question, That the Committee is content with clauses 108 to 112, put and agreed to.

Clause 113 (Enforcement in relation to the Crown)

3221. **The Chairperson:** The Committee sought clarification as to the reason why this clause was included in the Bill.

Question, That the Committee is content with clause 113, put and agreed to.

Question, That the Committee is content with clause 114, put and agreed to.

Clause 115 (Offences by bodies corporate and partnerships)

3222. **The Chairperson:** The Committee sought clarification on who would be liable in a partnership or merger when an act of sabotage or vandalism took place.

Question, That the Committee is content with clause 115, put and agreed to.

Clause 116 (Supplementary, incidental, consequential etc. provision)

Question put, That the Committee is content with clause 116.

3223. **Mr McMullan:** Are we dealing here with limited companies?

3224. **The Chairperson:** This is clause 116. We have just voted on clause 115. Do you want to come in on clause 116?

3225. **Mr McMullan:** No, it's OK.

Question accordingly agreed to.

Clause 117 (Orders and regulations)

3226. **The Chairperson:** There is a consequential amendment to clause 117(3)(a)(ii) due to an amendment to clause 22.

Question, That the Committee is content with clause 117, subject to the proposed amendment, put and agreed to.

Clause 118 (Definitions)

3227. **The Chairperson:** There is an amendment to clause 118. This is directly related to the technical amendment around who makes regulations to provide for appeals fees and awarding of costs in relation to the Water Appeals Commission.

Question, That the Committee is content with clause 118, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with clause 119, put and agreed to.

Clause 120 (Commencement)

3228. **The Chairperson:** The Committee considered a proposed amendment to clause 120 at the meeting on 27 May. This is an amendment to allow for the two-phase approach as defined in discussions and the letter from the Minister that was considered last week. There is a further amendment to clause 120. The Committee was very much of this mind with regard to the two phases of the Bill, given the fact that we did not have all the information that we should have had with regards to initial audit and the information that would flow from that. Pardon the pun.

Question, That the Committee is content with clause 120, subject to the proposed amendments, put and agreed to.

Question, That the Committee is content with clause 121, put and agreed to.

Question, That the Committee is content with schedule 1, put and agreed to.

Schedule 2 (Index of Defined Expressions)

3229. **The Chairperson:** There is an amendment to schedule 2. It adds the words "the Water Appeals Commission" and "Section 118(1)".

Question, That the Committee is content with schedule 2, subject to the proposed amendment, put and agreed to.

Schedule 3 (Minor and Consequential Amendments)

3230. **The Chairperson:** There is an amendment to schedule 3.

Question, That the Committee is content with schedule 3, subject to the proposed amendment, put and agreed to.

Question, That the Committee is content with schedule 4, put and agreed to.

Question, That the Committee is content with the long title, put and agreed to.

3231. **The Chairperson:** That concludes clause-by-clause scrutiny of the Reservoirs Bill. The Committee staff will now draft the

Committee report for consideration and approval by the Committee on 17 June.

3232. **Mrs Dobson:** You will do that tonight.
3233. **The Chairperson:** You would probably need to do it tonight to keep everything in your head.
3234. We can have a discussion next week on the amendments that we have received today. Having said that, we have already completed formal clause-by-clause scrutiny. Everything else will go into the Committee report that the staff will compile for our approval. The letter to the Minister will also need to be amended next week. I had better not be counting out numbers in my sleep.
[Laughter.]

17 June 2014

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	<i>Department of</i>
Mr David Porter	<i>Agriculture and Rural Development</i>

3235. **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.
3236. 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.
3237. Without further ado, David and Kieran, do you want to brief us on the amendments?
3238. **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.
3239. **The Chairperson:** Yes.
3240. **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.
3241. 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.
3242. 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.
3243. 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.
3244. **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.
3245. **The Chairperson:** OK. Do any members want to comment before I come in? Are members content? Oliver, do you want to come in?
3246. **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?
3247. **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.
3248. 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.
3249. 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.

3250. **The Chairperson:** Oliver, are you happy with that?
3251. **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.
3252. **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.
3253. **Mr McMullan:** As long as the developer cannot force the reservoir owner to do that —
3254. **Mr Porter:** No, he cannot.
3255. **Mr McMullan:** There would be a little bit of work in there to agree the shared costs.
3256. **Mr Porter:** Yes, that is absolutely right.
3257. **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?
3258. **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.
3259. **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.
3260. **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.
3261. **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.
3262. **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.
3263. **The Chairperson:** OK.
3264. **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?
3265. **Mr Porter:** I am not sure what you mean by “surcharged”.
3266. **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.
3267. **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.
3268. **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?
3269. **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.
3270. **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?
3271. **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.
3272. **Mr Swann:** In your calculations for flow and velocity, I take it that they consider the position of the house or structure —
3273. **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.
3274. **Mr Swann:** You are going to do that modelling for all reservoirs.
3275. **Mr Porter:** Yes.
3276. **Mr Kieran Brazier (Department of Agriculture and Rural Development):** Yes.
3277. **Mr Swann:** Do you have access to all reservoirs to enable that modelling to be accurate?
3278. **Mr Porter:** You do not need physical access at this minute.
3279. **Mr Swann:** Sorry, Kieran said yes, David, and you said that you did not need access.
3280. **Mr Brazier:** We know where all the reservoirs are.
3281. **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.
3282. **Mr Swann:** Do you need access to be able to do that accurately?
3283. **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.

3284. **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.

3285. **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.

3286. **The Chairperson:** How will that run in parallel with the initial audit report, which is the first phase of the legislation?

3287. **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.

3288. **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 —

3289. **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?

3290. 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?

3291. OK. We will move on. Members, we need to consider proposed amendments to risk designation. Can I have members' comments?

3292. 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".

3293. Are there any comments?

3294. 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.

3295. **Mr Byrne:** Do you mean grant aid, Chairman?

3296. **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 —
3297. **Mr Byrne:** Grant aid for capital improvements?
3298. **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.
3299. **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?
3300. **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.
3301. **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?
3302. **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.
3303. **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
3304. **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.
3305. **Mr Milne:** Where would the money come from?
3306. **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.
3307. **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.
3308. 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.

3309. 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.

3310. **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.

3311. **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.

3312. **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.

3313. **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.

3314. **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.

3315. 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.

3316. **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.

3317. **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.

3318. **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.

3319. **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.

3320. **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.

3321. **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.

3322. **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.

3323. **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 —

3324. **The Chairperson:** I know —

3325. **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.

3326. **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.

3327. **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 —

3328. **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.
3329. **Mrs Dobson:** Certainly, yes —
3330. **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?
3331. **The Chairperson:** Are members content?
3332. **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.
3333. **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.
3334. **Mrs Dobson:** Yes. The same here, likewise.
3335. **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.
3336. **The Committee Clerk:** I can bring the report actions back next week.
3337. **The Chairperson:** Bring them specifically on clauses 17 to 23.
3338. **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?
3339. **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.
3340. 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.*
3341. **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.
3342. **Mr Byrne:** At paragraph 14 —
3343. **The Committee Clerk:** We are going to go through the report paragraph by paragraph.
3344. **The Chairperson:** We will now deal with the paragraphs on the background of the Bill. What page is that?

3345. **The Committee Clerk:** It is at page 60.
3346. **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.
3347. **The Committee Clerk:** That is the evidence that we have been given.
3348. **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.
3349. **The Chairperson:** Are members content with paragraph 15 on key issues?
Members indicated assent.
3350. **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.”
3351. 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.
3352. **The Committee Clerk:** I will add a line.
3353. **The Chairperson:** Is it OK for you to add a line and then bring it back? It has been a handicap for us.
3354. **The Committee Clerk:** Yes.
3355. **The Chairperson:** Are members content with paragraph 17 of the report?
Members indicated assent.
3356. **The Chairperson:** Are members content with paragraph 18?
Members indicated assent.
3357. **The Chairperson:** Are members content with paragraph 19?
Members indicated assent.
3358. **The Chairperson:** Are members content with paragraph 20?
Members indicated assent.
3359. **The Chairperson:** Are members content with paragraph 21?
Members indicated assent.
3360. **The Chairperson:** Are members content with paragraph 22?
Members indicated assent.
3361. **The Chairperson:** Are members content with paragraph 23?
Members indicated assent.
3362. **The Chairperson:** Are members content with paragraph 24?
Members indicated assent.
3363. **The Chairperson:** Are members content with paragraph 25?
Members indicated assent.
3364. **The Chairperson:** We will now deal with the paragraphs on the costs of compliance.
3365. Are members content with paragraph 26?
Members indicated assent.
3366. **The Chairperson:** Are members content with paragraph 27?
Members indicated assent.

3367. **The Chairperson:** Are members content with paragraph 28?
Members indicated assent.
3368. **The Chairperson:** Are members content with paragraph 29?
Members indicated assent.
3369. **The Chairperson:** Are members content with paragraph 30?
Members indicated assent.
3370. **The Chairperson:** Are members content with paragraph 31?
Members indicated assent.
3371. **The Chairperson:** Are members content with paragraph 32?
Members indicated assent.
3372. **The Chairperson:** Are members content with paragraph 33?
Members indicated assent.
3373. **The Chairperson:** Are members content with paragraph 34?
3374. **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.
3375. **The Chairperson:** Sorry, say again, Oliver? I could not hear.
3376. **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.”
3377. **The Chairperson:** Yes, that is in speech marks. That is just what has been reported. It is not —
3378. **Mr McMullan:** It may take issue with that.
3379. **The Chairperson:** That is not from our Committee. It is from the committee of the Institution of Civil Engineers. That is just a quotation.
3380. **Mr McMullan:** OK.
3381. **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?
3382. **Mr McMullan:** Yes.
3383. **The Chairperson:** Are members content, then, with paragraph 34?
Members indicated assent.
3384. **The Chairperson:** Are members content with paragraph 35?
Members indicated assent.
3385. **The Chairperson:** We will check the spelling and punctuation.
3386. Are members content with paragraph 36?
Members indicated assent.
3387. **The Chairperson:** Are members content with paragraph 37?
Members indicated assent.
3388. **The Chairperson:** Are members content with paragraph 38?
Members indicated assent.
3389. **The Chairperson:** We will now deal with the paragraphs on cost recovery, which was another big issue for the Committee.
3390. Are members content with paragraph 39?
Members indicated assent.
3391. **The Chairperson:** Are members content with paragraph 40? That is a very important paragraph.
Members indicated assent.
3392. **The Chairperson:** Are members content with paragraph 41?
Members indicated assent.
3393. **The Chairperson:** Are members content with paragraph 42?
Members indicated assent.

3394. **The Chairperson:** We will now deal with the paragraphs on grant aid.
3395. Are members content with paragraph 43?
Members indicated assent.
3396. **The Chairperson:** Are members content with paragraph 44?
Members indicated assent.
3397. **The Chairperson:** Are members content with paragraph 45?
Members indicated assent.
3398. **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.
3399. 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.
3400. **The Chairperson:** Are members content with paragraph 60?
Members indicated assent.
3401. **The Chairperson:** Are members content with paragraph 61?
Members indicated assent.
3402. **The Chairperson:** Are members content with paragraph 62?
Members indicated assent.
3403. **The Chairperson:** Are members content with paragraph 63?
3404. **The Committee Clerk:** There is a spelling mistake in there that I will correct.
3405. **The Chairperson:** OK. Are members content with paragraph 63?
Members indicated assent.
3406. **The Chairperson:** Are members content with paragraph 64?
Members indicated assent.
3407. **The Chairperson:** We will now deal with the paragraphs on the operating regime. Are members content with paragraph 65?
Members indicated assent.
3408. **The Chairperson:** Are members content with paragraph 66?
Members indicated assent.
3409. **The Chairperson:** Are members content with paragraph 67?
Members indicated assent.
3410. **The Chairperson:** Are members content with paragraph 68?
Members indicated assent.
3411. **The Chairperson:** Are members content with paragraph 69?
Members indicated assent.
3412. **The Chairperson:** Are members content with paragraph 70?
3413. 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?
3414. **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.
3415. **The Chairperson:** OK. How would you amend that? That is the only —
3416. **The Committee Clerk:** We could ask Rivers Agency to bring forward an amendment by September.
3417. **The Chairperson:** We could ask Rivers Agency to squeeze out something more.
3418. **Mr Byrne:** That is where there is still a wee bit of reservation about the power and control of the engineer.
3419. **The Chairperson:** Obviously, it states in the previous paragraph that we do not have the expertise to amend.

3420. **The Committee Clerk:** I will amend paragraph 70 to reflect that.
3421. **Mr Byrne:** OK. Thanks.
3422. **The Chairperson:** We will now deal with the paragraphs on decommissioning reservoirs and the potential impact.
3423. Are members content with paragraph 71?
Members indicated assent.
3424. **The Chairperson:** Are members content with paragraph 72?
Members indicated assent.
3425. **The Chairperson:** Are members content with paragraph 73?
Members indicated assent.
3426. **The Chairperson:** Are members content with paragraph 74?
Members indicated assent.
3427. **The Chairperson:** Are members content with paragraph 75?
Members indicated assent.
3428. **The Chairperson:** Are members content with paragraph 76?
Members indicated assent.
3429. **The Chairperson:** Are members content with paragraph 77?
Members indicated assent.
3430. **The Chairperson:** Are members content with paragraph 78?
Members indicated assent.
3431. **The Chairperson:** Are members content with paragraph 79?
Members indicated assent.
3432. **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.
3433. **The Committee Clerk:** There is a section dealing with planning.
3434. **The Chairperson:** There is a section on planning.
3435. **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?
3436. **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.
3437. **The Committee Clerk:** I will add in a paragraph to reflect that.
3438. **The Chairperson:** We will bring that back next week.
3439. **The Committee Clerk:** Yes.
3440. **The Chairperson:** That is paragraph 73.
3441. **Mr McMullan:** It is paragraphs 73 to 79, which refer to the Environment Agency and the planning authority's position on decommissioning and planning.
3442. **The Chairperson:** OK. We will now deal with the paragraph on the delegated powers around the appeals mechanism.
3443. Are members content with paragraph 80?
Members indicated assent.
3444. **The Chairperson:** We will now deal with the paragraphs on the definition of a controlled reservoir.
3445. Are members content with paragraph 81?
Members indicated assent.
3446. **The Chairperson:** Are members content with paragraph 82?
Members indicated assent.
3447. **The Chairperson:** Are members content with paragraph 83?
Members indicated assent.
3448. **The Chairperson:** Are members content with paragraph 84?
Members indicated assent.

3449. **The Chairperson:** We will now deal with the paragraph on the removal of low-risk reservoirs from the operating requirements of the Bill?
Members indicated assent.
3450. Are members content with paragraph 85?
Members indicated assent.
3451. **The Chairperson:** We will now deal with the paragraph on the removal of low-risk reservoirs from the operating requirements of the Bill.
3452. Are members content with paragraph 85?
Members indicated assent.
3453. **The Chairperson:** OK, we will now deal with the paragraph on reservoirs and planning issues.
3454. Are members content with paragraph 86? I address you specifically on that, Oliver.
3455. **The Committee Clerk:** Are you happy enough with paragraph 86?
3456. **Mr McMullan:** Yes, that is all the stuff downstream, which is different from the paragraphs that I mentioned. Paragraphs 73 to 79 are different.
3457. **The Chairperson:** OK. Are members content?
Members indicated assent.
3458. **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.
3459. We start at page 92. Are members content with page 92?
Members indicated assent.
3460. **The Chairperson:** Are members content with page 93?
Members indicated assent.
3461. **The Chairperson:** Are members content with page 94?
Members indicated assent.
3462. **The Chairperson:** Are members content with page 95?
Members indicated assent.
3463. **The Chairperson:** Are members content with page 96?
Members indicated assent.
3464. **The Chairperson:** Are members content with page 97?
Members indicated assent.
3465. **The Chairperson:** Are members content with page 98?
Members indicated assent.
3466. **The Chairperson:** Are members content with page 99?
Members indicated assent.
3467. **The Chairperson:** Are members content with page 100?
Members indicated assent.
3468. **The Chairperson:** Are members content with page 101?
Members indicated assent.
3469. **The Chairperson:** Are members content with page 102?
Members indicated assent.
3470. **The Chairperson:** Are members content with page 103?
Members indicated assent.
3471. **The Chairperson:** Are members content with page 104?
Members indicated assent.
3472. **The Chairperson:** Are members content with page 105?
Members indicated assent.
3473. **The Chairperson:** Are members content with page 106?
Members indicated assent.
3474. **The Chairperson:** Are members content with page 107?
Members indicated assent.

- Members indicated assent.*
3475. **The Chairperson:** Are members content with page 108?
- Members indicated assent.*
3476. **The Chairperson:** Are members content with page 109?
- Members indicated assent.*
3477. **The Chairperson:** Are members content with page 110?
- Members indicated assent.*
3478. **The Chairperson:** Are members content with page 111?
- Members indicated assent.*
3479. **The Chairperson:** Are members content with page 112?
- Members indicated assent.*
3480. **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.
3481. Are members content with page 113?
- Members indicated assent.*
3482. **The Chairperson:** Are members content with page 114?
- Members indicated assent.*
3483. **The Chairperson:** Are members content with page 115?
- Members indicated assent.*
3484. **The Chairperson:** Are members content with page 116?
- Members indicated assent.*
3485. **The Chairperson:** Are members content with page 117?
- Members indicated assent.*
3486. **The Chairperson:** Are members content with page 118?
- Members indicated assent.*
3487. **The Chairperson:** Are members content with page 119?
- Members indicated assent.*
3488. **The Chairperson:** Are members content with page 120?
- Members indicated assent.*
3489. **The Chairperson:** Are members content with page 121?
- Members indicated assent.*
3490. **The Chairperson:** Are members content with page 122?
- Members indicated assent.*
3491. **The Chairperson:** Are members content with page 123?
- Members indicated assent.*
3492. **The Chairperson:** Are members content with page 124?
- Members indicated assent.*
3493. **The Chairperson:** We will now consider appendices 1 to 7.
3494. **Mr Byrne:** On page 114, does that section relate to a further note that the Committee Clerk will take on — ?
3495. **The Committee Clerk:** That is a record of the formal vote.
3496. **Mr Byrne:** OK. Thanks.
3497. **The Committee Clerk:** For the paragraphs that I have that I am going to bring back next week.
3498. **The Chairperson:** Yes, that will all be recorded.
3499. **Mr Byrne:** That is OK.
3500. **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.
3501. Are members content with appendix 1, which is the minutes of proceedings?

Members indicated assent.

3502. **The Chairperson:** Are members content with appendix 2, which is the minutes of evidence as listed?

Members indicated assent.

3503. **The Chairperson:** Are members content with appendix 3, which is the written submissions?

Members indicated assent.

3504. **The Chairperson:** Are members content with appendix 4, which is the stakeholder event?

Members indicated assent.

3505. **The Chairperson:** Are members content with appendix 5, which is the list of witnesses?

Members indicated assent.

3506. **The Chairperson:** Are members content with appendix 6, which is the research paper?

Members indicated assent.

3507. **The Chairperson:** The Committee Clerk wants to come in on appendix 7, which is correspondence.

3508. **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.

3509. **The Chairperson:** Having heard that, members, are you content?

Members indicated assent.

3510. **Mr Byrne:** Is it the same list as in appendix 7 divided up?

3511. **The Committee Clerk:** More or less, yes.

3512. **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.

3513. **The Committee Clerk:** I will bring you a list next week.

3514. **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.

3515. Are members happy enough with the process? Any questions? OK, members are happy enough.

Members indicated assent.

24 June 2014

Members present for all or part of the proceedings:

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

3516. **The Chairperson:** Before we commence consideration of the Committee report, I advise members that Rivers Agency has advised that it has further amendments to clauses 25 and 33. At this point, I am not going to ask officials to come to the table, as they have had time enough with clarification after clarification. All members will be aware that we have already voted on those clauses. However, if there is agreement to accept the amendments, that will be reflected in the report, which we will be finalising today. The issue is whether we have had enough time to consider them.
3517. Can I seek comments from members on the amendments to clauses 25 and 33? As you can see, one amendment changes the number of visits to a medium-risk reservoir from a minimum of one in every 24 months to one in every 36 months. In fairness, they always said that they were prepared to push it out. They do not know if it would make that big an impact because, at the end of the day, it will be the engineers who will advise on how many visits are required, so it is just pushing it out.
3518. The problem that I see with this is that whilst we can amend the clause in whatever way we see fit, we do not have the expertise to say what should or should not be the case. That has always been a problem for me in amending, although if I am forced to do it I will consider something through the various Stages of the Bill. However, what Rivers Agency has done is to move it with

regards to medium risk. They have not touched the high risk, which remains the same at one visit in every 12-month period. Do members wish to comment?

3519. **Mr Byrne:** It is a welcome change, certainly in relation to the medium-risk category.
3520. **The Chairperson:** In the formal clause-by-clause vote, we were not content with this clause. Are members content with the amendment? The issue that I have is the timescale, as the amendment could have been brought sooner. It could have been brought last week when we were seeking clarification, but it was not. It was after the meeting that staff were approached and told that Rivers Agency was prepared to amend.
3521. To me, a bit of bad form was shown there with regard to the process and the many weeks and months that we have already been scrutinising this. The report needs to relay the fact that even though the clause has been amended once before in the high- and medium-risk sections, this was basically a last-gasp amendment, made after we had done clause-by-clause scrutiny. I am happy enough to take comments.
3522. **Mrs Dobson:** Chair, I agree. It would certainly have been better had it been done sooner rather than left to the last minute, but as a Committee we should welcome the proposed amendments, especially now that they have taken into account the views raised about engineering and the designation from high- to low-risk, or high- to low-consequence, reservoirs, as they are better named. I welcome the fact that they have brought the amendments; however, I agree that it has been quite a struggle to get this far.
3523. **The Chairperson:** OK. Any other comments, members? I will have to put the question whether we are content with the amendment. We did ask about

- the maximum/minimum argument and whether we could close it more, but they said that they were not happy with going down that route.
3524. **Mr Byrne:** Procedurally, we took an opinion before on that clause. Is that right?
3525. **The Chairperson:** Yes, we were not content.
3526. **The Committee Clerk:** You have taken a final view on the clause.
3527. **Mr Byrne:** So, any further comment can be reserved for when the Bill is debated in the Chamber.
3528. **The Committee Clerk:** It can be reflected in the report.
3529. **The Chairperson:** As it has come so late in the day, we could just say that we have not had time. You could welcome the fact that they have moved, but address the issue of not knowing exactly how it will affect matters. Are members content with that approach? Stella, are you content?
3530. **The Committee Clerk:** I am not exactly sure what you want me to do.
3531. **The Chairperson:** To be fair, if I have to pose the question about whether we are content, I would say that it is a safe bet that we are not content because of the time.
3532. **Mr Byrne:** Yes, Chairman. I think that that is the safest position to be in at this stage.
3533. **The Committee Clerk:** I will have to look at that when we get to it. It is paragraphs 74 and 75. When we get to them, I will make sure that they are right.
3534. **The Chairperson:** We will now go on to finalise the report. Members will recall that a few amendments were suggested at last week's meeting to the paragraphs in the main body of the report. We will now go through those amendments and seek agreement or otherwise.
3535. I refer Members to paragraph 17, which is an additional paragraph to take account of Committee comments on the lack of information on the condition of reservoirs and the likely costs of repair. It reads:
- "The Committee noted that the lack of information concerning the condition of reservoirs and the likely cost to repair has made decision making in other areas of the Bill difficult for it."*
3536. One of the fundamental points that came through in our scrutiny of the Bill was the lack of knowledge and initial audit. We had asked that the Bill be broken into two and that the initial audit be done before the main body of the Bill was proceeded with and only after the Assembly was content. We have secured that amendment, but that has still impacted on our work. We have had to take the word of the Rivers Agency on the context of the problem, and it has been very hard for us to contextualise every clause because we do not know the extent of the problem. I needed something in the report to clarify and illustrate that.
3537. Stella, are you happy enough with the way that I have summarised that?
3538. **The Committee Clerk:** Yes.
3539. **The Chairperson:** Are members content with paragraph 17?
- Members indicated assent.*
3540. **The Chairperson:** I refer members to the section of the report on the risk-designation process at page 17 of the report. We will start at paragraph 47. We did not agree that section last week because of the last-minute amendment on the risk-designation process. We will go through all the paragraphs starting with paragraph 47.
3541. Are members content with paragraphs 47 to 50?
- Members indicated assent.*
3542. **The Chairperson:** Are members content with paragraph 51, about which the Committee expressed concern?
- Members indicated assent.*

3543. **The Chairperson:** Are members content with paragraphs 52 and 53?

Members indicated assent.

3544. **The Chairperson:** Are members content with paragraph 54?

3545. **Mr Byrne:** Is that a spelling mistake in the last sentence of paragraph 54? It states, “in the part”. Should it be, “in the past”?

3546. **The Committee Clerk:** It refers to the “part” of the Bill. I will put in “of the Bill” for clarity.

3547. **The Chairperson:** Paragraph 54 is very important. Are members content?

Members indicated assent.

3548. **The Chairperson:** Are members content with paragraphs 55 to 60?

Members indicated assent.

3549. **The Chairperson:** Some members were not present for what is described in paragraph 61. The content of paragraph 61 is factual. It states:

“However, some Members voted against the amendments stating that they considered that they had not had the time to fully scrutinise them.”

3550. I was one of those members. Are members content with paragraph 61?

Members indicated assent.

3551. **The Chairperson:** I refer members to page 50, where an additional paragraph has been inserted at paragraphs 74 and 75, based on the late amendments forwarded by Rivers Agency. Please note that the last line of paragraph 75 will be amended to reflect the views of the Committee taken earlier today. I will give you time, members, to consider paragraphs 74 and 75. Those are the amendments that came after the meeting last week and which we discussed before we went into the paragraphs.

3552. **The Committee Clerk:** I will read out a form of words for you. Paragraph 75 will now read:

“It should be noted that as the amendments were not received in time for the formal Committee vote on the relevant clauses, the Committee vote of “not content” remained its formal position. However, the Committee considered the information provided to it and noted that it had not been given time to consider this in any detail. This prevented a decision on this amendment being taken at the meeting.”

3553. Is that OK?

3554. **The Chairperson:** Are members content with that?

Members indicated assent.

3555. **The Chairperson:** Are members content with paragraphs 74 and 75?

Members indicated assent.

3556. **The Chairperson:** I refer members to page 53 of our packs, which has been amended to reflect the Committee’s concerns about decommissioning and planning permissions. That is paragraph 79, which is on page 53 of your packs and page 30 of the report. Oliver raised that issue. It reads:

“The Committee noted that greater clarity was required around the issue of decommissioning and planning permissions, particularly regarding the use of site and / or land of any decommissioned reservoir – for example could it be used for building or as agricultural land.”

3557. It is just to add that in. Are members content with paragraph 79?

Members indicated assent.

3558. **The Chairperson:** I refer members to the executive summary at pages 20 to 23. We will take this paragraph by paragraph. Are members content with paragraphs 1 to 3?

Members indicated assent.

3559. **The Chairperson:** OK, that is very important. Are members content with paragraph 4?

3560. **Mr Byrne:** Do any changes have to be made to it that are relevant to what we had today?

3561. **The Chairperson:** Yes, with regard to the reservoir designation. Are members content with paragraph 4?

Members indicated assent.

3562. **The Chairperson:** Are members content with paragraph 5?

Members indicated assent.

3563. **The Chairperson:** Are members content with paragraph 6?

3564. **The Committee Clerk:** The last line of that paragraph will change to reflect the decision, and I will use the exact same wording that is used earlier.

3565. **The Chairperson:** Are members content?

Members indicated assent.

3566. **The Chairperson:** Are members content with paragraphs 7 to 11?

Members indicated assent.

3567. **The Chairperson:** OK. I advise members that the report needs to contain the relevant extract from the minutes of today's meeting and to outline the agreed content of the report. Can I seek agreement for the inclusion of today's minutes in the report, prior to members having sight of them?

Members indicated assent.

3568. **The Chairperson:** Now that we have agreed the report in its entirety, I put the question: That the Committee for Agriculture and Rural Development order the Reservoirs Bill report, NIA Bill 31/11-15, to be printed?

Members indicated assent.

3569. **The Chairperson:** OK. Thank you very much, members.

3570. **Mr Byrne:** We can blame the Clerk if anything develops on it. [Laughter.]

3571. **The Chairperson:** It always has to be qualified. [Laughter.]



Northern Ireland
Assembly

Appendix 3

Written Submissions

Appendix 3 – Written Submissions

1. Antrim and District Angling Association
2. Belfast City Council
3. Committee for Regional Development
4. Creggan Country Park
5. Department of the Environment
6. Institution of Civil Engineers
7. James Hunter Environmental Liaison Friends of Portavoe Reservoir
8. Ligoniel Improvement Association
9. Lissanoure Farms
10. Newry and Mourne District Council
11. Northern Ireland Authority Utility Regulator
12. Northern Ireland Environment Agency
13. Northern Ireland Local Government Authority
14. Northern Ireland Water
15. Ulster Angling Federation
16. Walter Watson
17. Wilson Family
18. Ulster Farmers' Union

Antrim and District Angling Association

From: Maurice Parkinson
Sent: 05 March 2014 23:14
To: +Comm Agriculture Public Email
Subject: Attendance by the Antrim and District Angling Association at the Committee for Agriculture and Rural Development re the Reservoirs Bill

I refer to the invitation of the Committee for the Association to make a short presentation re the Reservoirs Bill.

Gerry Wilson a member of our management committee and myself will be in attendance.

The presentation will refer in the main to the following:-

- A. Para 1. Definition of a controlled reservoir.
- B. Para 6. Role of reservoir manager.
- C. Para 14. Fees: registration and administration.
- D. Para 16. Offences: registration.
- E. Para 20. Requirements for high risk and medium risk reservoirs.
- F. Para 35. Offences: supervision, inspection, record keeping.
- G. Para 40. Commissioning of construction engineer.
- H. Para 41. Supervision of relevant works and and reservoir safety by construction engineer.
- I. Para 49. Offences: construction or alteration.
- J. Para 53. Flood plan regulations.
- K. Para 69. Department power to arrange taking of safety measures.

Financial impact of the bill.

Human rights issue.

Equality issues.

Regards.

Maurice Parkinson,
Chairman of the Antrim and District Angling Association

Belfast City Council

Briefing paper from Belfast City Council re The Reservoirs Bill

Presentation to the Committee for Agriculture and Rural Development on 25 February 2014

Mrs Rose Crozier – Assistant Director Parks and Leisure

Mr Ian Bowden – Senior Civil Engineering Officer, Parks and Leisure Department

A detailed oral statement will be made to the Committee; the following is a summary of key points in relation to the Bill.

Current position

- Belfast City Council currently own and manage 5 reservoirs across the city. These are Waterworks Upper and Lower, Alexandra Park Pond, Boodles Dam in Ligoniel and Half Moon Lake.
- In November 2011 the Council agreed to the establishment of an inspection process in line with current best practice for all appropriate water retaining structures.

Associated Costs

- To date the Council has spent in the region of £57,000 on the preparation for and inspections of our reservoirs.
- Based on the recommendations made within the inspection reports we anticipate that there will be initial works costing in the region of £24,000 and annual maintenance costs of approximately £10,000 across all 5 sites.
- Inspections will also be required every 10 years which will require expenditure in the region of £20,000.

Size of reservoirs that should be included

- Belfast City Council has 2 reservoirs that are less than 10,000 cubic metres but we have taken the position due to their location within an urban area and the potential impact if there was to be a breach to include them within our inspection process.

Maintenance of reservoirs in other ownership

- The Council believe that the other 5 reservoirs within our Council boundary, not in our ownership, should be maintained to a high standard to ensure that the risk to all our residents is minimised. However there is a need to balance risk minimisation with a process that is not overly bureaucratic and it is our opinion that a grant scheme should be developed to assist reservoir owners meet any legal obligations which are placed on them.

Emergency Planning

- The Council is a key member of the Belfast Resilience Forum, the multi-agency emergency planning forum for the City of Belfast and in light of the new reservoirs bill the intention of Belfast City Council's Emergency Planning team is to request the forum's steering group to allocate a further task to the Flood working group for the development of multi-agency reservoir flood plans.

Committee for Regional Development

To: Stella McArdle
Clerk to the Committee for Agriculture and Rural Development

From: Paul Carlisle
Clerk to the Committee for Regional Development

Date: 20th February 2014

Subject: Reservoir Bill

1. I refer to the above.
2. The Committee for Regional Development received a presentation from Northern Ireland Water (NIW) officials at their meeting of 12th February 2014. Unfortunately, the meeting was not quorate and a decision on the Committee response could not be taken until the meeting of 19th February 2014.
3. A copy of the Hansard of this meeting has been forwarded to your office for information. You will see from this that NIW warmly welcomes the Reservoirs Bill as it makes provision for the regulation of the management, construction and alteration of certain reservoirs, in particular in relation to their safety to collect and store water; and for connected purposes.
4. NIW has, like its predecessor DRD Water Service, been committed to ensuring the safety of the public of Northern Ireland and has already been managing its impounding dams in line with the England and Wales Reservoirs Act 1975, since 1975.
5. NIW acknowledges that the Bill will result in an additional duty on them to prepare and maintain formal on-site and off-site flood plans and has no objections to this.
6. NIW does have a concern regarding impounding reservoirs that are no longer required for operational use and, therefore, may be disposed of. As a public body, under our regulatory licence, NIW is required to manage its assets efficiently, obtain best value for money and release unused assets. It is expected that the proposed new Reservoirs Bill is likely to reduce the potential sale value of disused impounding reservoirs, because a buyer who proposes to buy one will have to comply with the Reservoirs Bill and carry out surveys and the required maintenance.
7. There are also concerns with regards to the Camlough lake impoundment that is operated by a range of bodies and will be affected by the Reservoirs Bill. The lake was awarded to trustees in 1871 and, whilst NIW has used the lake as a raw water source for Northern Ireland Water since government reorganisation in 1973, it is unlikely that it will be used beyond 2017. NIW does not, therefore, have an interest in the lake.
8. However, clause 5 of the Bill could see NIW be appointed as reservoir manager which would result in immediate repair costs ranging from £2.5 - £3.2 million and an annual upkeep of circa £13,000. It is unlikely that the other users of the lake, Newry and Mourne Council, would be keen to take on this responsibility and the resultant financial burden.
9. Finally, Mr Declan McAleer MLA has expressed concern that community organisations could, in particular circumstances, be left with the liability for impoundments used for social and recreational purposes. The Committee for Regional Development would support the arguments that this should not be the case.
10. The Committee for Regional Development reserves the right to make further contributions in respect of the Committee and further Stages of the Bill.

Paul Carlisle
Clerk to the Committee for Regional Development

Creggan Country Park

Contents

PART 1

Controlled Reservoirs, Registration and Risk Designation

Controlled reservoirs

Creggan Country Park Enterprises Limited is a not-for-profit organisation based in Creggan in Derry, which promotes a range of adventurous sports and green space provision which combine to provide a platform for innovative training and employment initiatives.

Located within a 100 acre green space site on the site of 3 disused reservoirs, we provide a range of adventurous sports, angling and outdoor pursuits activities unique to the Derry City Council area, and indeed the wider North West area.

The primary aim of Creggan Country Park is;

“to improve the quality of life of those living in the North-West”

And this is to be achieved through the provision of:

- 1 Creating a healthy society by
 - providing access to attractive green spaces
 - creating new opportunities for sport and recreation
- 2 Promoting inclusion and cohesion by:
 - ensuring access to new jobs and services
 - tackling social exclusion by targeting disadvantaged communities and minority groups
3. Promoting sustainable development through:
 - supporting sustainable economic growth
 - developing renewable energy projects

The 100 acre site which is in the ownership of Creggan Country Park Enterprises ranges from the lower reservoir at Forest Park/Creggan Road to Bligh’s Lane a distance of approximately 1400 metres and is bounded to the North by the Holyhall Road (formerly “Holywell”) and to the Northeast by Westway. Within this area the land varies from a plateau comprising species rich grassland at the upper end to steeply banked grassland surrounding the middle reservoir. There are substantial stands of Scots pine in the area surrounding the top reservoir, which itself, being partially drained forms a valuable wetland area which provides a home to wildfowl including moorhens, wild mallard and grebes. The NW corner of the middle reservoir provides a spectacular viewing platform. Its location 1000 feet above sea-level presents a panoramic view of the hills of Donegal to the North, in the foreground is the North East of the city punctuated by the spire of St Eugene’s Cathedral and in the distance can be seen the Lough Foyle estuary with Binevenagh mountain visible almost thirty miles away.

The three reservoirs on the site were built during the 19th century. These are the upper, middle and lower reservoirs. It is believed that the reservoirs were constructed in the mid 1800's under an Unemployed Relief Scheme. The upper reservoir was breached during the early 1970's and was never repaired. The middle 9.5 acre reservoir, reaches a depth in excess of fifty feet in places. The lower reservoir, in the region of 14 acres is around 40 feet at the deepest point. The upper reservoir has little water in it and is currently unused.

Our involvement with the site began in 1992 with the development of an angling project delivered by Glenowen Fisheries Cooperative. Having lobbied Stormont and Derry City Council we got the green light to enter the middle reservoirs site and with an IFI grant of £17000 and employment grants amounting to £25k from we LEDU we set about establishing an angling business, known colloquially as a "put and take" rainbow trout fishery.

We began plans to develop the wider (almost 100 acre site) and put together a major funding package combining funds from the EU Urban Community Initiative programme, Derry City Council, Landfill Tax Credit Scheme, PEACE 1 and 2, Lottery and sundry other funders.

We have developed an activity centre and a green space for public recreation utilising the reservoirs for water sports and angling.

Having taken on the site from the local authority, and accepted the liabilities, we were promised an annual management grant which, unfortunately, ended when we signed a formal lease for 99 years. This management grant was to be dealt with as an appendix to that lease, but this was never honoured.

We understand that the issue of reservoir safety is a matter of concern to the public and legislators alike, and there is a drive to deliver conformity with the situation across the water.

We take the issue of public safety seriously, and we have maintained the site to the best of our ability. Unlike the case when operated previously by DOE Water Service, we have enclosed all three bodies of water with fences. We are constantly upgrading/replacing/improving fencing and gates to keep the place safe. Essentially we are working to keep the public safe when we are not here by denying them access. Despite this we did have a tragic drowning in the early hours of July 12 2012, when a number of young people climbed two fences and entered the water to swim.

We insure the site and carry out maintenance to paths and perimeter regularly. We clear sluices and waterways and have from time to time carried out small scale repairs to the dam wall of the middle reservoir.

Historically our approach to public safety reflects the persistent and regular attempts by young people to breach the fences and gain access to deep and dangerous water bodies, which is not of course the purpose of the reservoirs bill. But this does of course impact on resources.

The reservoirs bill will focus on the wider issue of the danger to the public from potential dam failure, and we recognise that the passage of the bill would seem inevitable, and thus a new management regime for all dams will be ushered in. Like many who find themselves responsible for dams, and who will come under the purview of the proposed bill, Creggan Country Park management acknowledge that the way we manage risk will inevitably change, and compliance with the new bill will have resource implications.

We generate income to cover all running costs and overheads, by selling services to the public, including outdoor pursuit activities, room hire/rental etc. From this we pay wages, insurance, heat light and power, repairs, maintenance etc. Some years our income will exceed expenditure, some years the reverse occurs, so that in the long run we tend to just about break even.

Some of the comments regarding the implications of the new bill are interesting. For example, the suggestion that in some cases all that will be required is to cut the grass. Cutting the grass on the lower slope of a dam embankment is an interesting and challenging activity, and I would imagine that those penning the report have never attempted it. It is a serious piece of work (at least in our case) and requires a great deal of time, and therefore money.

Similarly there is a suggestion that dam operators could install hydro-electric schemes as a way of generating additional income to defray the likely financial costs associated with the implementation of the bill. Micro hydro electric schemes (or at least the one we have) are by no means the money spinners they are touted to be. The one we have hardly covers the line rental and broadband we installed to enable us to monitor it remotely. It cost around £300000. A recent repair cost £32000.

But I digress.

I am aware that this legislation is likely to be enacted, and I can accept the inevitability that it will involve additional regulation and responsibilities. We will have to adapt to the new situation, but we welcome any offers of assistance in the event that remedial works are prescribed.

Department of the Environment

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Your reference:

Our reference: CQ/37/14

Date: 14 March 2014

Stella McArdle
Clerk to the Agriculture and Rural Development Committee
Northern Ireland Assembly
Room 244
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Stella,

I refer to the ARD Committee memo dated 12th February 2014 concerning the Reservoirs Bill seeking views on the Reservoirs Bill and / or its policy implications.

In reviewing the Assembly Research and Information Service Bill Paper (the Bill Paper) which accompanied the ARD Committee memo, the Department of Environment (DOE) considers that the main implications of the Reservoirs Bill from the Planning perspective fall within the following section of the Paper:

- Section 4.1.2 – Downstream development- impacts on reservoir designation and associated costs / PPS 15 implications;

In consideration of this section, DOE offers the following comments.

DOE officials have worked closely with DARD Rivers Agency officials in the Review of PPS 15 leading to the publication of Revised Draft PPS 15 on 10th October 2013 for public consultation over a 12 week period. This includes a new policy (FLD 5) which provides planning policy to address the newly identified source of flood risk associated with reservoirs.

Policy FLD 5 of Revised Draft PPS 15 is designed to manage development in proximity to reservoirs so as to reduce flood risk to new and replacement development and elsewhere as a result of such development.

In the course of engagement with Rivers Agency, officials have discussed the emerging Reservoirs legislation and the implications for planning and development. These considerations have also been taken into account in the drafting of policy FLD 5.

A key element of FLD 5 relates to the requirement for a developer to provide assurance regarding reservoir safety, so as to enable the development to proceed. This is regarded as a necessary requirement in order to mitigate against the downstream flood risk in the event of a controlled release of water or an uncontrolled release of water due to reservoir failure. Where such assurance is not forthcoming planning permission will be refused.

Significant issues arising out of this requirement relate to costs for any improvements to the reservoir and ongoing maintenance works which are deemed necessary in order to facilitate development within the potential flood inundation zone. Section 4.1.2 of the Bill Paper points out that such costs are likely to be influenced by the risk based approach for the management of controlled reservoirs being brought forward in the legislation. Thus, reservoirs designated as 'high' risk will be subject to more rigorous standards of control and ongoing maintenance than those included in 'medium' or 'low' risk categories. The Bill Paper also notes that the allocated risk designation of a reservoir is likely to change as a result of downstream development, particularly where there is no existing development. In these circumstances, development that triggers a change from 'low' risk to 'medium' or 'high' risk is likely to result in increased costs to secure and maintain the higher standards in order to comply with the legislation. The outworking of the relevant legislative provisions is a matter for DARD.

Policy FLD 5 does not prescribe responsibility for such costs but advises that *"the funding of such costs is a private matter between the developer and the reservoir manager"*. Clearly it would be improper for the policy to require the reservoir owner / manager to bear the financial burden of works made necessary by a new development proposal from which he / she may derive little benefit.

Given this context, Section 4.1.2 of the Bill Paper identifies a number of issues pertaining to the Reservoirs Bill that may raise questions or require further clarification. These are set out below accompanied by DOE comment:

- How does such an arrangement (i.e. the onus on the developer and reservoir owner / manager to reach agreement as to sharing of costs) sit within the wider framework of the Reservoirs Bill in terms of assessment of required works and with regards to the ability to access potential grant support?

DOE Comment: Costs and the ability of the developer and / or reservoir owner / manager to access potential grant support is not considered to be a matter for the planning system.

- The lack of detailed information in the Bill pertaining to the assessment of risk designation criteria.

DOE Comment: Discussions with Rivers Agency officials in regard to the Reservoirs Bill and PPS 15 have indicated a risk designation classification the same as that referred to in the Bill Paper based on the Reservoir Bill Stakeholder Minutes of 23rd September 2011 are set out as follows:

High Impact / Risk – where a reservoir breach could endanger 1 or more lives and / or could result in extensive or lasting impact on the environment, culture, heritage or economy;

Medium Impact / Risk – where a reservoir breach would have no risk to life but would have significant but not extensive or lasting impact on the environment, culture, heritage or economy;

Low Impact / Risk – where no loss of life could be reasonably foreseen and limited impact on the environment, culture, heritage or economy.

The Department acknowledges that clause 17(2) of the Reservoir Bill refers to the different risk categories and that clause 22 refers to the potential adverse consequences that will be taken into account by DARD in assigning a risk designation to particular reservoirs. It is also understood that Rivers Agency will share the risk designation for any of the controlled reservoirs with DOE Planning, on request.

Notwithstanding all these considerations; given the significant inter-relationship between development and risk designation, DOE considers that it would be helpful for all involved in the development process if either the Bill, or any regulations or guidance brought forward to underpin its delivery, were to refer to the more detailed classification referred to in the Bill Paper.

- It is unclear as to whether downstream development would trigger an immediate reassessment of the reservoir risk designation or whether this would not be looked at until up to 10 years after the initial designation.

DOE Comment: Clause 18 (3) (a) of the Reservoirs Bill provides that DARD must reassess a reservoir risk designation at any time when it considers that the designation may have ceased to be appropriate. Having consulted with Rivers Agency on this issue, DOE understands that a planning application for development within a reservoir inundation zone would trigger such a re-assessment and that the result of this would come into effect once the development is completed and occupied.

Further to this it is important to note that Revised Draft PPS 15 requires the developer to provide sufficient assurance regarding reservoir safety **before** planning permission is granted. This in turn is likely to require a negative condition attached to the permission or a planning agreement to prevent occupation of buildings approved until the reassessment has been completed by Rivers Agency and the appropriate works have been carried out. Officials intend to engage with operational colleagues and Rivers Agency officials on this issue prior to publishing PPS 15 in final form.

DOE considers that it would be important for DARD to clearly explain and make public the implications of the Reservoirs Bill to those likely to be affected, such as reservoir owners / managers, landowners and developers. DOE would be happy to assist in this process, as appropriate.

As regards other departmental inputs to the Reservoirs Bill, the Committee should note that NIEA staff from the Environmental Protection Directorate and Natural Heritage Directorate gave oral evidence to the ARD Committee on 18th February, specifically, but not exclusively, around the operational issues of discontinuing or abandoning reservoirs and the impact on the environment. NIEA fully supports the safety aims and objectives of the Reservoirs legislation.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO

[by e-mail]

Institution of Civil Engineers



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ARD COMMITTEE BRIEFING ON RESERVOIRS BILL

THURSDAY 25 MARCH 2014

14:30, Room 30

Attendees for ICE:

Alan Cooper OBE CEng FICE
Jack Meldrum BEng FICE
David McKillen CEng MICE
Stephen Orr CEng MICE

STATEMENT ON BEHALF OF ICE

Welcome

1. The Institution of Civil Engineers welcomes the opportunity to discuss the Reservoirs Bill with the Committee, and we thank you for the invitation to meet.
2. I am Alan Cooper, and my colleagues are, Jack Meldrum, David McKillen and Stephen Orr. Jack, David and I are all experienced dam Panel engineers and Stephen is in the process of training to become a Panel Engineer. David, Stephen and I represent a committee of the Institution of Civil Engineers in Northern Ireland which has provided a technical advisory role to DARD regarding the guiding principles of the Reservoirs Bill. Jack is an All Reservoirs Panel Engineer and represents the Institution's Reservoir Committee. He will inform you further about its function and mechanisms later in our presentation.
3. Before we commence I would like to make it clear that flooding arising from the uncontrolled release of water in storage is entirely different from flooding from rivers and surface water following heavy rainfall. Failure of reservoir structures produces fast-flowing, deep water which, as history tells us, has claimed lives and damaged livelihoods. The Institution is a professional body with many members engaged in design, operation and maintenance of reservoirs and so we are acutely aware of the need for vigilance in order to protect life and property from undue risk from failure.
4. I, and my colleague Jack, will give a brief statement on behalf of ICE, following which we will be pleased to answer any questions you may have.

Reasons for the Reservoir Bill

5. ICE supports the introduction of a Reservoirs Bill to establish the legal and administrative frameworks for regulating reservoir safety in order to reduce the risk of flooding as a result of dam failure. It is estimated that approx. 150 impounding reservoirs will come within the scope of the Reservoirs Bill.
6. 'Public' reservoirs in Northern Ireland have been managed by the statutory authorities, notably Northern Ireland Water, and have generally followed the provisions of the Reservoirs Act 1975, which is applicable in England and Wales as best practice, even though this Act does not apply in NI. The



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Institution is strongly supportive of the introduction of specific legislation for the safety of reservoirs in NI.

7. However owners of 'private' reservoirs have no obligation to follow the 1975 Act. The introduction of this Reservoirs Bill will ensure public safety assurance to all reservoirs of 10,000m³ capacity and above. ICE supports the adoption of the 10,000m³ threshold. Until the reduction, there had been concern for some time, in particular within the profession, that the 25,000 cubic metres threshold was based on outdated understanding of the current risks to reservoir safety. The 25,000m³ corresponds to reservoirs of at least this size which were responsible for the fatal incidents in the 1920s. There have been a number of incidents at smaller reservoirs in recent years where there was potential for loss of life and the figure of 10,000 cubic metres capacity was therefore concluded to be the right one for assessing risks to the public from reservoir failure.
8. However, ICE is pleased to note that the safety record of reservoirs in NI has been good with no fatalities reported, even though some reservoirs have failed. However, we believe that we cannot be complacent, and since many of the reservoirs are in excess of 100 years old, a well-structured and enforceable Reservoirs Bill will provide assurance for the safety of the public.
9. We support the Bill's assertion that the inspection and supervision regime of all high and medium risk reservoirs requires qualified civil engineers (referred to as Panel Engineers) to carry out inspections and make recommendations. This is the only suitable means of managing the risk of failure. We would however recommend that even low risk reservoirs should have some regular form of inspection, rather than relying on change of downstream conditions being identified by planning processes or the review by the Enforcement Authority.
10. There will be financial implications arising from regulation and these may cause concerns, among owners, many of whom may have limited resources to meet its requirements.
11. Existing impoundments contribute to the environment in terms of habitat, flood attenuation and amenity use to the overall benefit to society at large. Consequently, it is important that the costs associated with regulation do not result in owners modifying their reservoirs to remove their capability of holding water, in order to avoid the financial burden of routine maintenance and inspection.
12. My colleague, Jack Meldrum will now explain the process for Panel appointments and inspections and the general working of current legislation in GB.

1975 Act and Panel appointment process

13. As mentioned by my colleague, Alan Cooper, I am an AR Panel Engineer and I am currently a member of the ICE Reservoirs Committee whom I am representing here. I have been a Panel Engineer since 1987.
14. I will deal with the general workings of the Reservoirs Act 1975 first, then explain the Panel Engineer system and how Engineers are appointed to the Panels.

Current Working of the Reservoirs Act 1975

15. The Reservoirs Act 1975 (the Act), as currently applied to England, Scotland and Wales with changes currently enacted from the Floods and Water Management Act 2010 that were introduced in 2013 provides a registration, supervision and inspection system for large raised reservoirs. Prior to latest changes this covered all reservoirs that are capable of storing more than 25,000 m³, referred to as 'large raised reservoirs' above the lowest surround ground level. The Floods and Water Management Act introduced a risk based criteria for the requirement for continuing supervision and inspection of reservoirs and changed the minimum size to 10,000 m³/s. The 2013 secondary legislation has brought in the risk based criteria and this is currently being introduced. Prior to the 1975 Act, which came into force in 1986 reservoir safety was managed through the provisions of the Reservoirs (Safety Provisions) Act 1930 Legislation that was brought after the failure at Dolgarrog in North Wales where 16 people died when 2 dams failed.
16. The register of all large raised reservoirs is kept by the Enforcement Authority. They keep details of the reservoirs and copies of all reports and certificates, monitor compliance and keep records of incidents. They also take action where non-compliance occurs, although this is normally managed through reminders.
17. In relation to all new large raised reservoirs the Act requires that that the design and construction must be supervised by a Construction Engineer. This engineer will issue both certificates that permit impounding and also provide a certificate that provides a record of the design and construction. After 3 years, and providing he is satisfied that the reservoir no longer requires his supervision, his responsibility ends. The reservoir then comes under a Supervising Engineer. This is a continuous appointment. The Supervising Engineer would typically visit a reservoir once or twice a year to check that no safety issues are arising, necessary maintenance is being carried out, to identify any further maintenance required and that the reservoir undertaker is keeping the necessary records. The Supervising Engineer will provide an Annual Statement to the undertaker advising him of any issues. This will also be copied to the Enforcement Authority so that they are aware of any safety or compliance issues. If the Supervising Engineer has concerns for the safety of the reservoir he may call for an inspection.
18. Two years after new reservoir has been completed and thereafter at intervals of normally 10 years inspections are required. These inspections consider both the condition of the structures as well as review aspects such as the structure stability, spillway and scour capacity. If any shortcomings are identified the Inspecting Engineer may require measures to be taken in the interest of safety, which the undertaker has to comply with. For recently built reservoirs the likelihood of such measures may be expected to be low, but for older reservoirs requirements are more common .

The Panel Engineer System

19. There are currently four Panels under the 1975 Act: All Reservoirs (AR); Non-Impounding Reservoirs (NIR); Service Reservoirs (SR) and Supervising Engineers (SupE). AR Engineers may carry out any of the duties required from Panel Engineers under the Act, including being the Construction Engineer and Inspecting Engineer that I have previously mentioned, whereas Supervising Engineers are responsible for providing continuity of reservoir safety. The members of the NIR and SR Panels have the same responsibility as the All Reservoir Panel Engineers, but they are restricted in the types of reservoirs they



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may deal with as Construction and Inspecting Engineers. The current numbers on each Panel are 39, 2, 4 and 141 respectively, i.e. the principal Panels are the AR and SupE Panels.

20. The AR, NIR and SR Panel members are generally senior members of the civil engineering profession and have significant experience in reservoir engineering. The SupE Panel Engineers generally are engineers who have experience in the reservoir engineering, often in operation and maintenance or in assisting in the design and construction of reservoir works.
21. Ideally Supervising engineers should be based in the same region as the reservoirs they supervise so that they are more readily available to attend call outs and also to minimise cost. Construction and Inspecting Engineers frequently work outside their own region.
22. Construction, Inspecting and Supervising Engineers are selected and engaged by the reservoir undertakers. In GB the names of Panel Engineers together with their addresses and contact details are kept on a data base available on the Environment Agency website on the internet. There are no fixed fees for the various duties of the Panel Engineers.

Appointment of Panel Engineers

23. The Panel Engineers are appointed for periods of 5 years. Towards the end of the 5 year period Panel Engineers may apply for reappointment for a further term of 5 years. For example in my case I was appointed initially to the SupE Panel in 1987 and then applied to the AR Panel in 1992 and I have subsequently reapplied four times and my current appointment expires in 2017.
24. The appointment of Panel Engineers is administered by the Reservoirs Committee of the ICE. The Committee makes recommendations to Defra on appointments (or rejections) and they administer the appointment process on behalf of the UK Government.
25. The Committee is chaired by the President of the ICE, or his nominated representative, and consists of a number of Panel Engineers, who serve 3 year terms and representatives of Defra and the Enforcement Authority. Secretarial and administrative support to the Committee is provided by the ICE. I currently serve on the Committee as a AR Panel Engineer and my appointment is from 2011 to 2014. I previously served on the Committee from 2001 to 2004. The role of the Committee is to review applications for both new appointments and re-appointments and to interview applicant where considered necessary (all new applicants are interviewed, but applicants for re-appointment are only interviewed if there are concerns about the application, for example if there are concerns that the applicant has not been keeping up to date with technical or legislative changes.
26. When applying the applicants are required to provide details of their relevant experience and the training they have undertaken. New applicants are also required to provide a record of the particular training they have carried out and a reference from a Panel Engineer who has knowledge of their experience. To help new applicants to the SupE Panel there is a week long course. The British Dams Society, an associated society of the ICE, also provides information to Panel and prospective Panel engineers through lectures, both in London at the ICE and in other major towns, publications and bi-annual conferences. The 2014 conference is being held in Queen's University in Belfast. The Panel application cost is currently £ 385.

Provisions within the Bill

27. The Bill draws on best practice of reservoir management which was established in the Reservoirs (Safety Provisions) Act 1930 and the Reservoirs Act 1975. It builds upon these to include the risk management of reservoirs. The Bill provides for DARD to categorise reservoirs as 'High', 'Medium' or 'Low' risk, which reflect a proportionate approach to the assessment of reservoirs falling under the terms of the Bill.
28. The Bill also provides the Reservoirs Authority with the mechanism, by regulation, to require owners to produce flood plans for their structure to provide assurance and to set out emergency arrangements in the event of a failure of the structure.
29. The Bill also requires Reservoir Managers to ensure that their Supervising Engineers are available at short notice to check the reservoir and to make recommendations should there be any changes in the characteristics of the reservoir. I, and my colleagues, have experience of being responsible for structures which are not in Northern Ireland and we can provide clarification on the mechanics of this during the time for questions.
30. ICE can provide reassurance to the Committee that despite the current limited number of qualified Panel Engineers in NI, in the event of an urgent request, an Engineer from GB can travel to NI relatively quickly. The committee should be reassured that ICE are encouraging the training of chartered civil engineers in NI to become qualified in terms of the Reservoir Bill and this is actively being advanced.

Conclusion

31. ICE welcomes this Reservoirs Bill and we are pleased to have provided advice to DARD during its preparation.
32. We believe that the Bill is required in NI to ensure the safety of reservoirs in terms of public safety as this will allow effective management of a currently inconsistent approach which results in unacceptable risks to downstream communities. The legislation will provide for a measured and proportionate approach to the assessment and management of reservoirs. Thank you for your attention and we will be glad to answer any questions you may have.

James Hunter Environmental Liaison Friends of Portavoe Reservoir

Dear sir/madam,

I have today been talking to Stella McArdle clerk of the Reservoir Bill Committee, she has informed that the committee has now finished the evidence gathering stage and is now debating the bill clause by clause.

However I hope you will still accept the following submission from the group "Friends of Portavoe Reservoir" (FOP)

Friends of Portavoe Reservoir was formed in response to the draining of Portavoe reservoir, which commenced in April 2014, we only became aware of the Reservoir Bill at that time hence our late input to the committee.

The group became very concerned about the impact of the draining on the habitat and wildlife in the main body of water - especially in relation to the fact that this draining was taking place in the peak bird nesting season and that neither the public or NDBC the local council authority were informed or consulted in advance.

While FOP accept that the essential safety work on the scour valve is necessary and that adequate mitigation measures were put in place to protect habitats downstream from the discharge, we believe that the mitigation measures to minimise the impact on Biodiversity in the main reservoir were wholly inadequate and indeed virtually non existent. At one point numerous dead Cormorants and decaying Mussels were being found round the perimeter of the reservoir.

Later nearing the end of the draining operation when it looked like the reservoir was going to be totally drained and the residual wildlife which included fish and eels (an endangered species) would be killed or displaced, FOP negotiated a temporary dam to be put in for the water fowl etc. and for a determined effort to be made to rescue as many fish and eels as possible.

Please note that we believe that it was only because of our groups determined input that the impact on the biodiversity of the reservoir habitat was reduced. Much harm has already been caused and could have been avoided or minimised.

In light of the occurrences at Portavoe Reservoir, and the likelihood of similar problems in some of the remaining reservoirs that will require works in the future, directly as a result of the new legislation, we urge the committee to include adequate protection measures for Biodiversity, not only to protect upstream and downstream habitats, but also in relation to the main body of water and the edges of the reservoirs. This is especially relevant to NIW owned reservoirs, as all Statutory agencies have a duty in law to conserve and protect biodiversity.

Kind regards,

James Hunter

Environmental Liaison Friends of Portavoe Reservoir.

Ligoniel Improvement Association

IMAGES OF WOLFHILL DAM – MIDDLE

The four Controlled Reservoirs at Ligoniel



Wolfhill Upper – owned by O’Kane Limited

Wolfhill Middle – owned by Ligoniel Improvement Association

Wolfhill Lower – owned by O’Kane Limited

Boodle’s Dam – owned by Belfast City Council

1. View of Wolfhill Middle Dam from the Wolfhill Upper Dam.



2. More recent photo showing fishing club members and new earthworks



3. New paths and interpretive panels



4. One of two new fishing stands



5. Additional paths and Kissing Gate above Wolfhill Upper and Middle



6. Heritage Panel to be installed at the Dams shortly

BH_Lig_GP1_H

BELFAST HILLS

**Ligoniel Dams
Ligoniel Linen Village**

Ligoniel was once a thriving industrial area. It was particularly important for linen manufacture. A number of important works, such as Ewar's Spinning Mill and Emerson's Spinning Mill, were located throughout the village.

By the late 19th century the Ewart family owned the largest linen manufacturing company in the world which included Glenbank Bleachworks and Ewart's Mill in Ligoniel.



bebfasthills.org



Mill Complex of Ewart's Spinning Company showing Ligoniel Village



Employees of the Wolfhill Spinning Company 1877

The village was established as a direct result of the mill owners providing accommodation for their workers.

The concentration of linen manufacture in this area was largely due to the power and reliability of the Forth and the Ligoniel rivers. This old corn mill formed part of the large mill complex of the Wolfhill Spinning Company. It is labelled on early maps from the mid 1800s.

Three dams and watercourses remain intact. Their scale and completeness are testament to the importance of water power during the industrialisation of Belfast during the later 1700s. The corn mill, dams and the remnants of the adjacent bleach green are the last survivors of the area's industrial heritage that once thrived here under Wolf Hill.

Did you know?
Linen is 3 times stronger than cotton and is made from the flax plant.



Lissanoure Farms



**LISSANOURE
FARMS**

21 March 2014

Mr Paul Frew MLA
Chairman
Agricultural and Rural Development Committee
Room 243 Parliament Buildings
Bililmiscaw
Stormont
Belfast
BT4 3XX

RE: Reservoirs Bill

I'm writing to you following your event on 18 March 2014, which I had asked Mr John Witchell, from Blakiston Houston Estates, to attend on my behalf. I have read the initial proposals and as a land owner, with lakes of historic and scenic value, some of these proposals do give me considerable grounds for concern.

Although I fully support the need to be aware of structures and reservoirs that may cause a risk, I have never heard of any major failure in Northern Ireland in recent times, let alone the last 100 years. I am also fully aware that "common law" applies and it is beholden on the landowner to make proportionate checks and carry out appropriate maintenance as a matter of good management.

My concern lies not with the high or even medium risk reservoirs/lakes but with the proposals that could be imposed on low risk structures.

There is always a tendency with legislation for "inflation" of requirements and hence, costs. In my experience, if there is a requirement to instruct a specialist firm of professionals (say, structural engineers) to inspect a low risk dam, they will always "over engineer" a recommendation as it is in their interest to take a zero risk approach. When in the real world, a common sense and pragmatic approach which has managed these structures of the years, is quite sufficient. What happens if the landowner cannot afford these "recommendations"? The default position of local authorities is grants, which of course never cover the complete costs. Is this really a sensible solution to a problem that did not exist in the first place?

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I understand that areas at risk of floods are being mapped and I presume that these will be available to planning departments of local authorities and will be part of their analysis of any planning applications. A low risk lake could become a high risk should certain planning consent be granted with no compensation from the developer to the lake owner who would have substantially increased costs.

Many of these lakes are of scenic value to the locality but are not producing revenue for the landowner. My concerns are that we are sleepwalking to legislation which is onerous and heavy handed for a problem that is overstated. I fully support the registration of such lakes on the above basis but request that the approach of "common law" continues for low risk lakes where pragmatic and sensible management has been appropriate over the years.

I would be grateful if you would take my points in to consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Mackie', with a horizontal line underneath the name.

Peter Mackie
Managing Director

CC Stella McArdle, Committee Clerk

Newry and Mourne District Council



Comhairle an Iúir agus Mhúrn
Newry & Mourne District Council

Oral Presentation by Newry & Mourne DC
To Agriculture and Rural Development Committee
25 February 2014
The Reservoir Bill

In Attendance:

Mr J McGilly: Assistant Director of District Development

Mr E McManus: Deputy Director of Technical & Leisure Services

Newry & Mourne DC

Summary of Main Points - The Committee for Agriculture and Rural Development on the Reservoirs Bill

General Comments

- Within the NMDC area 11 Reservoirs have been identified and considered as 'controlled reservoirs' under the Reservoirs Bill. The Rivers Agency has identified ownership as ranging from Public Sector, Private and Not Registered.
- Whilst Council currently have a direct involvement in a number of the Reservoirs in the District, a number are in the ownership of other agencies or the Private Sector. Currently with no management of a number of reservoirs, this represents an unknown risk to the community downstream.
- Whilst analysis is available on a small number of Reservoirs, no detailed assessment is available on the condition of all Reservoirs, any remedial action, long term maintenance and the number of people potentially affected downstream within the community is unknown.
- With the lack of detailed information on the Reservoirs, the burden on Reservoir Managers within the District is unknown. The concern will be both financial and the skills capacity to meet the requirements of the Reservoir Bill.
- Given Council experience to date with potential impact of the Reservoir Bill on 'controlled reservoirs', it is likely to place a significant financial burden on the Reservoir operator. The ability of the operator to meet the financial requirements is a significant concern. It is important that in introducing the Bill, the Department considers making a grant aided scheme to Reservoir operators.

Camlough Dam

- The Camlough Dam was briefly discussed at the Agriculture and Rural Development Committee on 18 February 2014 by Northern Ireland Water, in their presentation to the Committee on The Reservoir Bill

- **Ownership**

The ownership of Camlough Dam is unclear. The Newry Improvement and Water Act of 1871 given ownership and control of Camlough Lake to the Camlough Lake Waterworks Trustee. It would appear however that all of the trustees have died and no successors were appointed.

Both NI Water and Newry & Mourne DC have an interest in Camlough Lake.

NI Water utilise the reservoir for public water supply.

Newry & Mourne DC has historically a twofold interest in Camlough Dam

Firstly the Newry Improvement and Water Act of 1871 part of which remains part of our legislation stated “and whereas during the summer months there is frequently in the Newry Canal an insufficient depth of water for the navigation of same” and that Act of 1871 went on to protect Newry navigation with the requirement at Section 86 of the Act for the delivery out of Camlough Lake of sufficient gallons of water to protect inter-alia Newry Canal”.

Secondly the lake is widely used a local amenity activities ranging from canoeing, angling to water skiing. The lake is becoming increasingly renowned for swimming and hosts annually the Camloch Triathlon and Camlough Water Festival among other events.

The Council manage recreational access by virtue of a licence from Richardson Estate; the Council have no title at Camlough Lake.

The Council manage recreational access to Camlough Dam through a Sub Committee which includes Council, local users group, environmental group and community sector, the facility is very much regarded as a community asset.

- **Camlough Lake - Area of Special Scientific Interest**

Camlough Lake is a designated Area of Special Scientific Interest. It is one of the few remaining Mesotrophic lakes in Northern Ireland. It is a special place because of its aquatic flora and fauna. A wide range of birds and invertebrates are also found at Camlough. The shore line includes an area of wet woodland supporting several species of Willow and Downey Birch as well fenland and marshy grassland habitats

- **Camlough Lake – The Reservoir Bill**

In the context of The Reservoir Bill to Northern Ireland, Council have been working in partnership with Rivers Agency and Northern Ireland Water. A Section 10 Report on Camlough has been completed in accordance with the current good practice of the Reservoirs Act (1975). The inspection identified a number of serious deficiencies with the existing dam structure therefore a report to investigate the works necessary to bring the Dam to a safe standard was produced. A copy of the Report is attached entitled **Camlough Reservoir Improvement Options Report February 2014 with Addendum Report A supplementary Abandonment Scoping Report January 2014 is also enclosed.**

Camlough Reservoir Improvement Options Report February 2014 recommends the Rehabilitation Option at a cost of £2,510,000

At paragraph 8.8 page 24 of the report Camlough Reservoir Improvement Options Report February 2014 attached the capital costs assessment is £2,510,000. Northern Ireland Water has indicated it will make application to the Department for 50% of this cost. There is therefore a budget of £1.255 million to be found.

Given the Council's present activities at Camlough Lake, the Council could be a reservoir manager for the purposes of the Reservoirs Bill when enacted. If Newry & Mourne District Council was to continue to use Camlough Lake then this cost of £1.255 million could fall to the Council.

Section 105 (1) of the draft bill provides as follows:- “The Department may by regulations make provision as to the payment of grants to reservoir managers of controlled reservoirs for the purpose of enabling or assisting the managers to comply with their obligations arising by virtue of this Act.

(2) Regulations made under subsection (1) must require such grants to be subject to such terms and conditions as the Department may determine (including conditions as to repayment in the event of contravention of the other terms or conditions on which the grant is made)”.

The requirement on the Council to raise £1.255million is a significant concern. Camlough Lake is a tourist and recreation amenity not just for the benefit for the people of Newry & Mourne but also for the benefit of a much wider catchment area than the District Council area itself.

The risks to the Community set out at paragraph 3.2 page 8 of Camlough Reservoir Improvement Options Report February 2014 attached are regarded as potential danger to persons and property which is outside the remit and powers of the District Council and is really the responsibility of Government Departments.

The Council believe the 50% cost of £1.255 million requires a multi agency approach which includes Council, therefore Council will be seeking the support of various Government Departments.

If the Council agreed to become the owners on the basis of securing the funding for Rehabilitation Improvements, the ongoing maintenance estimated at £14,000 per annum would be the responsibility in the long-term, of the Council and will require both financial and staff resources.

Reports Attached:

1. Camlough Reservoir Improvements Options Report – February 2014
2. Camlough Reservoir Improvements Options Report – February 2014 – Addendum
3. Camlough Reservoir - Abandonment Scoping Report – January 2014

URS

Camlough Reservoir

Camlough Reservoir
Improvements

Options Report

February 2014

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Prepared for:
Northern Ireland Water

UNITED
KINGDOM &
IRELAND



REVISION SCHEDULE					
Rev	Date	Details	Prepared by	Reviewed by	Approved by
1	Dec 2013	Draft	Alan Cooper Panel AR Engineer	David McKillen Technical Director	Alan Cooper Panel AR Engineer
2	Feb 2014	Final	Gareth Briggs Associate Alan Cooper Panel AR Engineer	David McKillen Technical Director	Alan Cooper Panel AR Engineer

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CAMLOUGH RESERVOIR
February 2014



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Costs may vary outside the ranges quoted. Whilst cost estimates are provided for individual issues in this Report these are based upon information at the time which can be incomplete. Cost estimates for such issues may therefore vary from those provided. Where costs are supplied, these estimates should be considered in aggregate only. No reliance should be made in relation to any division of aggregate costs, including in relation to any issue, site or other subdivision.

No allowance has been made for changes in prices or exchange rates or changes in any other conditions which may result in price fluctuations in the future. Where assessments of works or costs necessary to achieve compliance have been made, these are based upon measures which, in URS' experience, could normally be negotiated with the relevant authorities under present legislation and enforcement practice, assuming a pro-active and reasonable approach by site management.

Forecast cost estimates do not include such costs associated with any negotiations, appeals or other non-technical actions associated with the agreement on measures to meet the requirements of the authorities, nor are potential business loss and interruption costs considered that may be incurred as part of any technical measures.

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1 INTRODUCTION

1.1 Scope and objective of this report

In April 2013 RPS and URS were appointed to produce a condition assessment of Camlough Reservoir with the option to extend the appointment to investigate any issues identified and advise on the subsequent remediation of these.

The condition assessment included an inspection and report in accordance with the current good practice of the Reservoirs Act 1975 (GB Legislation), involving the preparation of a Section 10 Report as defined by the Act.

This inspection identified a number of serious deficiencies with the existing dam structure. The appointment scope was subsequently confirmed to include the preparation of a report to investigate the works considered to be necessary to stabilise the structure and enable the reservoir to remain safely in service for public water supply beyond July 2015. The brief stated that the report should set out.

- (a) Priority and urgency of any immediate capital works to stabilise the structure – focused on safety
- (b) Priority and urgency of the capital works necessary if the dam is to remain in use for an extended period beyond 1 July 2015
- (c) Estimated costs of initial works (which must take into consideration that NI Water requires a continuous abstraction be provided until at least June 2015 – hence any 'temporary works' need to be costed accordingly)
- (d) Estimated annual operational costs (insurance, inspections, compiling on site and off site plans etc)
- (e) Estimated costs of typical annual base maintenance costs (based on the assumption that the initial capital works have been completed) – to include intermittent costs such as 10 yearly Section 10 Surveys.
- (f) A section to set out a process for NI Water decommissioning the dam at lowest cost after 1 July 2015 (which will be assumed to include digging out part of the face and using this to landscape the remaining elements), and restoring the natural lake level and river bed to the pre year 1870 level. This should include a timeline, any approvals necessary, and the estimated costs. This option will become viable if NI Water becomes the owner of the impoundment (which may occur if N&MDC determine that the dam is not needed to regulate flows in the Newry Canal, or for recreational activity).

1.2 Limitations of the report

It should be noted at this stage that the report is considered to be a pre-feasibility report and is only to be used to develop the overall strategy for the reservoir and to inform funding considerations. The report does not comment on the need for the management of the site and the role of reservoir undertaker to be confirmed and resolved. Significant investigation works and hydraulic modelling will be necessary to develop the recommended designs through feasibility stage and detailed design.

2 RESERVOIR DETAILS

Camlough Reservoir is located outside the village of Camlough, Co. Armagh, approximately 5km West of Newry City.

The reservoir is currently used by Northern Ireland Water as a water supply source for the Newry area with an abstraction limit of 5Ml/d. The reservoir is also used to supplement and 'top up' the flow within the Newry Canal, although abstraction volumes for this supply are not known.

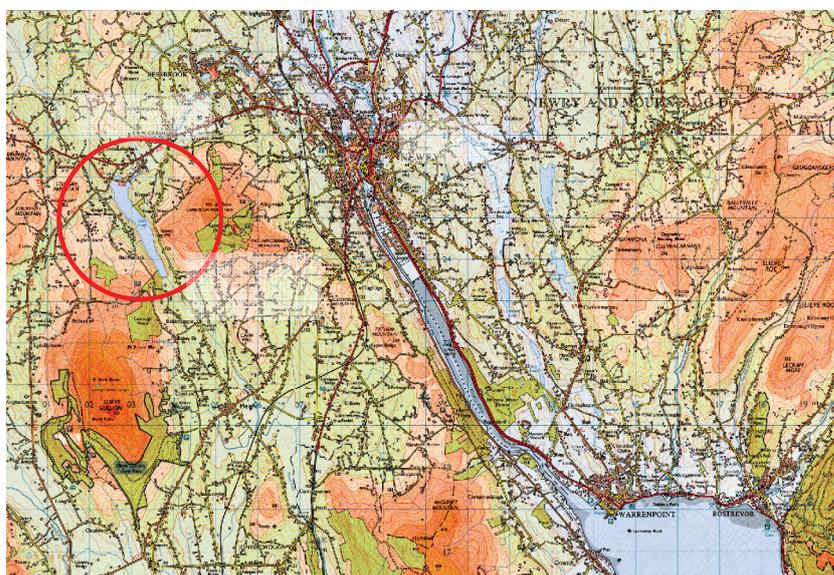


Figure 1 Location Plan

The reservoir was formed in circa. 1872 by raising the original Camlough Lake through the construction of an earthfill dam with two flanks, each of 65m in length, at the Northern end of the Lake. The reservoir has a direct catchment area of 7.73km² with an additional 5.59km² of indirect catchment contributing to the reportable useable storage capacity of 3705Ml. The surface area at top water level of 97.4mAOD is 72ha.

The earthfill dam comprises a main embankment and a return embankment each with a length of 65m. The maximum height above original ground level of the main embankment is approximately 6m. The original specification refers to the use of a puddle clay core. The upstream pitched slopes were to be at 1 vertical: 3 horizontal and the downstream grassed slopes at 1 vertical: 2 horizontal. The crest is approximately 4m wide at a level of 98.40mAOD and forms an irregular access path from the car park to the spillweir area. The road embankment, forming the B30 Newtown Road, at the North end of the reservoir separates the reservoir from the "Commons" pond which forms part of the Camlough impoundment since it is connected by road culverts.



The overflow spillweir from the impoundment is located at the Eastern end of the main embankment. The curved spillweir is 22.5m long and discharges into a channel cut through the rock forming the Eastern abutment of the main embankment. The channel quickly narrows to 3.0m before curving around the Eastern abutment and discharging into a pool at the base of the main embankment.

Access to the reservoir, the embankment crests and the toe of the return embankment is via the B30 road. There is no vehicular access to the toe of the main embankment.

The NIW Operating Manual shows that the water supply draw off arrangement was changed in 1991 with the addition of new 350mm diameter pipes connected to both the original 13" dia pipework and the 24" dia mill supply under the dam. Neither the 13" dia or the 24" dia pipes appear to have any form of upstream control, and all records show valves to be located downstream of the embankment.

The alterations carried out in 1991 reduced the scour capacity by installing a 12" dia scour valve on a tee downstream of the original valve on the 24" draw off pipe, which formed the original mill supply.

Detailed descriptions of the reservoir site, its catchment and the key reservoir features are contained within the Section 10 report.

2.1 Reservoir Usage

The reservoir is currently used by Northern Ireland Water as a water supply source for the Newry area with an abstraction limit of 5M/d. The reservoir is also used to supplement and 'top up' the flow within the Newry Canal, although abstraction volumes for this are not known. However, Northern Ireland Water has indicated it will be able to meet the daily demand requirements of the Newry area without the use of Camlough reservoir upon completion of trunk main works in 2015.

The reservoir is also used for a wide range of social activities including canoeing, cycling, coarse angling, day visits/general enjoyment, running, shooting, swimming, triathlon, walking and water-skiing. A number of these events are organised by Newry District Council and the local community.

2.2 Environmental Designations

The water body was designated as an Area of Special Scientific Interest (ASSI) in October 2004. It is described as a Mesotrophic lake due to the diverse aquatic plant community present and, in its unpolluted state, is among the best example of its type in Northern Ireland.

2.3 Valley Downstream of the Dam

The Camlough River valley downstream of the dam is densely populated with the towns of Camlough and Bessbrook immediately downstream, leading to the centre of Newry some 5km to the East.

The downstream consequences that would result from a failure of the dam have been identified by Rivers Agency within its Reservoir Inundation Mapping (RIM) exercise completed in 2010. The associated mapping, while not yet in the public domain, shows that a breach of Camlough dam could pose a significant threat to communities, infrastructure and property downstream.



3 SECTION 10 REPORT SUMMARY

An Inspection was carried out by Mr Alan Cooper OBE on 17th October 2013 and a Section 10 Report was produced. The inspection identified a number of serious issues that need addressed in the interests of safety.

3.1 Matters in the Interest of Safety

Paragraph 15.2 of the Section 10 report included the following recommendations as to measures to be taken in the interests of safety:

1. Responsibility for management of the reservoir should be clarified.
2. The overflow capacity including the stilling basin and outlet culvert are inadequate and all options should be investigated to determine the optimum solution.
3. The stability of the overall embankment and the effectiveness of the puddle clay core should be investigated to ensure long term safety.
4. The upstream revetment and the need for a wave wall should be assessed to ensure its effectiveness against wave action.
5. The draw off arrangements including the pipes under the dam should be investigated both in terms of normal and emergency drawdown.
6. Trees on the dam should be surveyed with the stumps removed or treated as appropriate and the revetment repaired.
7. The toe of the dam should be protected against scouring by flood flows from the spillway and the "Commons" watercourse.
8. The seepage along both mitres should be investigated and options to reduce this considered.
9. Until items 1-8 are carried out, it is recommended that the water level is maintained at least 1.5m below top water level.

In the context of the 1975 Reservoirs Act these recommendations must be actioned as soon as reasonably practicable by the reservoir undertaker.

3.2 Summary of key issues

With the exception of point 1, which is outside the scope of this report the significant issues associated with the reservoir can be summarised under the following general headings.

1. **Hydraulic risks** – The report has identified the dam as having inadequate flood discharge capacity. During the appropriate design flood event the water level within the reservoir would overtop the crest which could result in a catastrophic failure of the embankments. The report also raises concerns about erosion risk to the downstream toe of the main embankment during low return period flood events as a result of the layout of the stilling basin and the 'Commons' watercourse.
2. **Structural risks** – The Section 10 report identified concerns regarding the long term geotechnical stability of the main embankment including the uneven profile of the downstream slope and crest, the presence of significant trees and vegetation on the



embankment, significant levels of seepage along both mitres and the inadequate protection to the upstream slope from wave action.

3. **Control risks** – There are no upstream control arrangements for either the 13" dia or the 23" dia outlet pipes both of which operate under full pressure. A collapse of either pipe under the main embankment could result in a catastrophic failure of the dam.

The scour pipework is the only means of drawing down the reservoir level for maintenance or in an emergency. The report has identified that the existing scour facility could not draw the reservoir down at an appropriate rate,

This report will assess the implications of these issues in more detail and consider options, both short term and long term to remedy them. It will present and compare options in terms of technical merit, whole life costs, environmental and social impacts.

4 ASSESSMENT OF HYDRAULIC RISKS

The Section 10 report has identified a number of issues that can be broadly grouped under the heading of hydraulic risk, and these are considered in more detail within this Section of the Report.

- Section 4.1 contains an initial assessment of the flood discharge capacity of the existing structure to quantify the risk and inform the design of works to increase the overall discharge capacity.
- Section 4.2 comments on the specific issues associated with the current arrangement of the downstream stilling basin, and
- Section 4.3 comments on the diversion of the 'Commons' watercourse,

4.1 Existing Flood Discharge Capacity

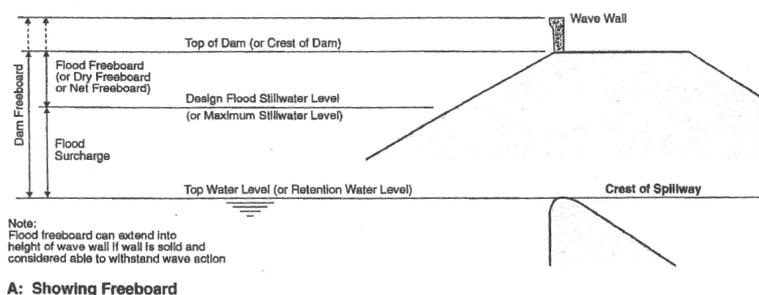
The Section 10 report has identified the dam as having inadequate freeboard for the appropriate design flood and that during the appropriate design flood event the water level within the reservoir would overtop the crest which could result in a catastrophic failure of the main embankment.

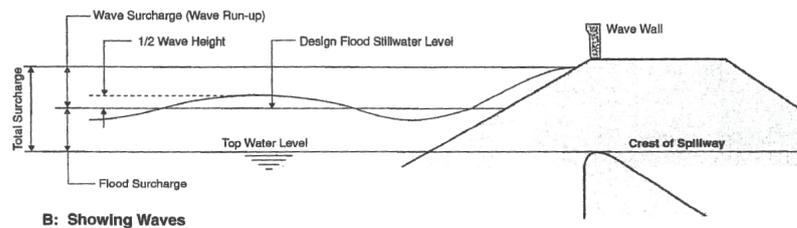
4.1.1 Flood and Wave Surge Assessment

An assessment of the flood and wave surcharge is necessary to ensure that a dam has the required freeboard to pass a flood without being damaged or breached. Although earth fill dams fail for a variety of reasons, an inadequate spillway capacity leading to overtopping and erosion of the fill in the embankments is one of the more likely modes of failure.

The dam freeboard is the height from the top water level to the lowest part of the crest of the dam or solid wave wall and is influenced by the hydraulic capacity of the spillway and the effect of waves and run-up. Dam freeboard, and the influence of waves on freeboard are illustrated in Figure 2 below which can be found within the "Floods and Reservoirs Safety, An Engineering Guide 3rd edition" (FRS), published by the Institution of Civil Engineers.

Figure 2: Example of Dam Freeboard (Generic)





The assessment of appropriate overflow capacity is generally carried out using the FRS to:

"assist those individuals who bear the personal responsibility that comes from being appointed to the statutory panel of engineers qualified to design and also to inspect reservoirs."

The guide categorises dams in terms of potential hazard to life and property downstream.

4.1.2 ***Floods and Reservoir Safety - Classification***

As discussed in Section 2.3, a breach of Camlough dam could pose a significant threat to the communities downstream. Consequently, the likely loss of life arising from a breach at either the main or return embankments justifies placing the reservoir in Category A, as defined in the FRS. Category A applies "where a breach could endanger lives in a community".

For a Category A Reservoir, the general reservoir design flood inflow is the Probable Maximum Flood (PMF) with a wave surcharge allowance of not less than 0.6m. If overtopping of the dam crest is tolerable, which is dependent on the profile and surface protection of the revetment of the dam, the less severe 10,000 year flood inflow would apply to the spillweir with the same minimum wave surcharge allowance; the remaining PMF being allowed to overtop the dam.

The earth fill embankments at Camlough are not currently protected against overtopping and therefore it should be assumed that overtopping at present could not be tolerated. For the existing condition the full PMF design flow for the spillweir should therefore apply at this location.

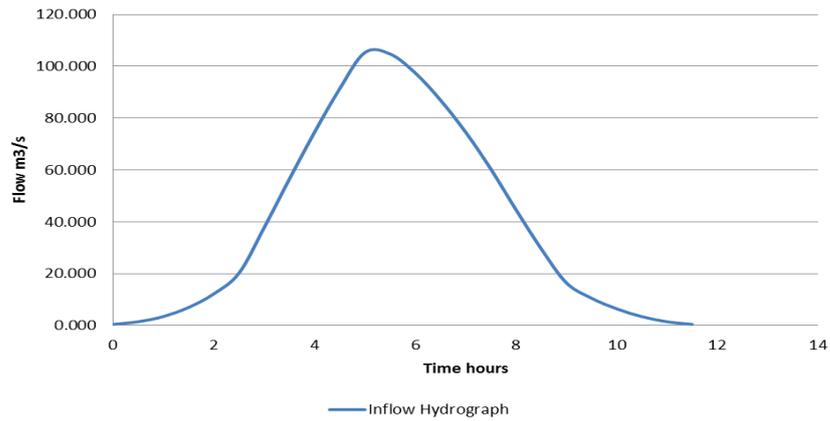
4.1.3 ***Assessment of the design flood***

The Section 10 Report has demonstrated that the PMF design flood inflow, assessed using the Hydrograph method from the 1975 Flood Studies Report (FSR), has a peak inflow of 105m³/s, refer to Figure 3 for the associated hydrograph.

In general, all impounding reservoirs have an attenuation effect on the design inflow hydrograph. This effect reduces the peak flood outflow and creates a lag effect on the time of the peak. The magnitude of this attenuation effect is a function of the reservoir storage characteristics and surface area relative to its catchment area and the overflow weir discharge properties.

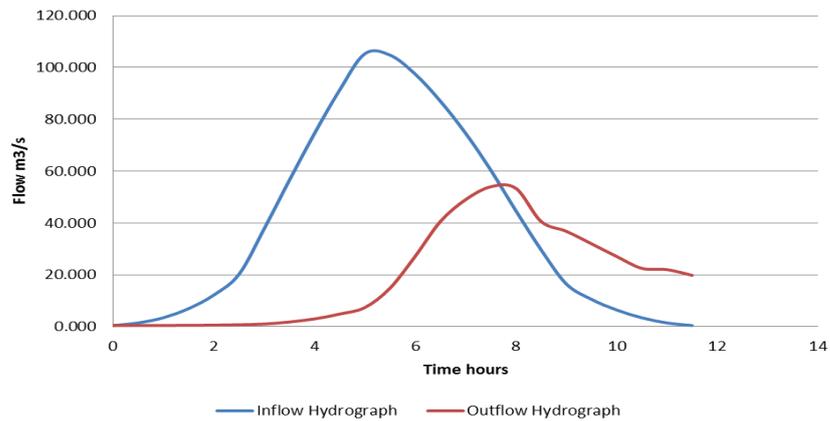


Figure 3: Inflow Hydrograph



The Section 10 report also assessed the attenuation effect on the design inflow hydrograph which reduces the peak flood flow and creates a lag effect on the time of the peak. The reservoir routing exercise quantified this attenuation effect and the associated spillway discharge hydrograph for the design inflow reducing the peak inflow from 105m³/s to an outflow of 52m³/s. Such a large effect is predominately due to the large surface area of the reservoir, which creates a large flood storage volume. The inflow and outflow hydrographs for the existing spillweir arrangement are shown in Figure 4.

Figure 4: Inflow and Outflow Hydrographs





4.1.4 *Wave surcharge assessment*

An assessment of the wave surcharge is necessary to ensure that there is sufficient freeboard to prevent overtopping. Factors which have an impact on the wave surcharge include fetch, wind direction, design wind speed and wave run-up. The estimated wave surcharge at Camlough is 0.4m. However the floods and reservoir safety handbook recommends that a minimum wave surcharge of 0.6m must be applied to a Category A reservoirs and must therefore be applied in this case.

4.1.5 *Freeboard assessment*

An assessment of the freeboard highlights that the existing 22.5m long spillweir and the 3m wide spillway channel, cannot discharge the PMF flow without overtopping the crest of the dam. Camlough Reservoir therefore does not comply with the requirements of the FRS guidelines and cannot safely pass the design flood through the reservoir without risk of damage to the dam.

4.1.6 *Summary*

The design outflow is $52\text{m}^3/\text{s}$ but the existing spillweir/spillway arrangement can only discharge around $10\text{m}^3/\text{s}$ without overtopping the crest. Therefore overtopping will occur on a structure not capable of sustaining overtopping flows. Accordingly, based on the dam categorisation of 'Category A', the existing spillweir is insufficient in discharging the design flow. Additional spilling capacity is therefore required in order to meet the current recommended safety standards.

If no remedial action is undertaken then an accidental, uncontrolled escape of water from the dam would present a risk to both life and property downstream. Works to increase the flood freeboard capacity must therefore be undertaken as part of any future scheme which maintains the current level of storage and design inflow.

4.2 **Assessment of Downstream Stilling basin**

The Section 10 report has identified that the existing stilling basin does not have adequate discharge capacity. In its present arrangement it is likely to flood the toe of the embankment during modest return period floods. Such flooding could increase the risk of slippage of the embankment and also prevents access to the current scour valve arrangement.

Any options to rehabilitate the structure should incorporate works to improve the hydraulic efficiency of the stilling basin and protect the downstream embankment toe from erosion.

4.3 **Assessment of 'Commons' Watercourse**

The existing watercourse which acts as a discharge from the 'Commons' pond currently passes very close to the embankment and its Western mitre in an open channel before discharging into the existing stilling basin.

As discussed in Section 4.2 the existing stilling basin cannot adequately pass the design flood downstream without flooding the toe of the main embankment. The interface with the 'Commons' watercourse worsens this situation and it is suggested that any option to rehabilitate the structure should separate the 'Commons' flows from those from the spillway. This would be best achieved with the culverting and diversion of the existing watercourse from the point where it emerges from within a 1500mm diameter culvert below the B30 Newtown Road to a point approximately 50m downstream of the main embankment.



5 ASSESSMENT OF STRUCTURAL RISKS

The Section 10 report has identified concerns regarding the long term structural / geotechnical stability of the main embankment. Features identified during the inspection included;

1. The uneven profile of the downstream slope and crest
2. Significant levels of seepage along both mitres

While a detailed assessment of the causes and significance of these features cannot be determined without a detailed site investigation, it is evident that significant works are necessary to protect the long term stability of the embankment structure.

5.1 Profile of Downstream Slope and Crest

The uneven profile visible along the downstream slope and crest suggests that the embankment may have been subject to historic movement and settlement. Such movement may have been caused by a wide number of factors including:

- Changes in the phreatic surface, as a result of a failure in the core material which could lead to stability issues in the downstream embankment
- Internal erosion and subsequent removal of material from the embankment structure
- Inappropriate maintenance which could have damaged or overloaded the structure
- Poor construction and compaction resulting in long term settlement
- Inappropriate design factors of safety to the embankment slope

Limited existing site investigation information is available and information from boreholes completed in 1971 indicates that the core material included patches of decayed wood fragments, sand and peat in the fill material. The underlying embankment seat comprised 2.7m of boulder clay overlying bed rock.

The information currently available is inadequate for advancing detailed design and it is therefore recommended that comprehensive site investigation works are carried out prior to any detailed design work.

However, for the development of options any refurbishment works at the site should assume, as a minimum, that the crest is made to an even profile and the downstream slopes be regraded, to a minimum gradient of 1 vertical:3 horizontal to improve stability. New toe drainage should also be installed and a mechanism for collecting and measuring the toe drainage flows provided.

5.2 Significant levels of seepage along both mitres

The Section 10 Report has noted that there are significant levels of seepage along both mitres. On subsequent inspections the seepage was particularly evident on the Eastern mitre and there was a noticeable softening of the surrounding topsoil.

The seepage could be as a result of a failure of the interface seal between the dam core material and the underlying foundation. If the seepage is not controlled it could increase the risk of internal erosion within the embankment. As with the settlement issues, this requires specific investigation as part of a comprehensive site investigation contract.



With the development of refurbishment options it should be assumed that the works to achieve the following will be necessary:

- works to improve the seal between the core and foundation material
- works to reduce the risk of internal erosion failure
- works to collect and measure seepage flows



6 ASSESSMENT OF CONTROL RISKS

In many cases the only immediate action that a dam engineer can take during an emergency situation, where the stability or structure of the dam is at risk, is to open the scour facility to draw the reservoir level down and reduce the pressure on the embankments. However, at Camlough the existing drawoff arrangements are totally inadequate both because there is insufficient capacity and a lack of upstream control.

The lack of upstream control results in having unguarded pressurised 24" diameter and 13" diameter cast iron mains, which are 140 years old, under the earth embankment. The only available control currently at the site is located immediately downstream of the main embankment in an area that is inundated and inaccessible during modest flood events (see Section 4.2). This could result in a situation where the scour valves cannot be opened during an emergency.

In addition the appropriate rate of drawdown is to achieve a water level reduction of 0.4m per day with the reservoir at top water level. The current scour pipe, assuming it is clear and the valve can be opened, would allow the reservoir to be drawn down at a rate of 0.06m per day with the reservoir at top water level. It will therefore be necessary to provide additional scour capacity to guarantee that at least the top 2m of storage can be drawn down quickly, as this would reduce the impoundment capacity by approximately 50% and would reduce pressure on the dam foundations by approximately 75%.

Therefore any proposed options to rehabilitate the structure should as a minimum include provision for upstream control of the scour pipework and the inspection and replacement if necessary of the existing scour pipework through the dam. They should also include the provision of a supplementary scour facility to satisfactorily augment the rate of drawdown.



7 HIGH LEVEL OPTION APPRAISAL

When the deficiencies which are outlined within Sections 3 - 6 are considered alongside the downstream consequences identified by Rivers Agency within its 2010 Reservoir Inundation Mapping (RIM) exercise, Camlough Dam currently poses a significant risk to life, infrastructure and property. The 'do nothing' option therefore does not exist.

Works should be carried out to reduce these risks and a number of high level options have been considered in broad terms looking at reconstructing the dam, rehabilitating it or abandoning it.

7.1 Reconstruction

Given the spectrum and severity of the issues identified within the Section 10 report, Camlough Dam could be considered as a candidate for full demolition and reconstruction. Such a scheme would allow all the issues identified within the Section 10 Report to be fully resolved and the dam reconstructed to modern standards using modern safe construction techniques.

The costs, environmental impacts and planning issues associated with such works are unlikely to make such an option viable for the current storage level. However, it may be an alternative to reconstruct the dam at a lower level to reduce the associated costs and long term risk of the impoundment on the downstream infrastructure. Such an option could have similar social and environmental issues identified within the assessment of the abandonment option discussed below. Accordingly this option would only be considered in detail following direction from NIEA, Planning Service and Newry and Mourne District Council on an appropriate lowered top water level.

Such an assessment is outside the scope of this report and has not been taken forward to the detailed consideration stage.

7.2 Rehabilitation

As set out in the recommendations of the Section 10 Report significant refurbishment of the structure will be required to reduce the risks associated with the dam to acceptable limits.

These works include stabilising the embankment; providing adequate spillweir/spillway capacity; satisfy freeboard requirements; provide an adequate cut-off; protect the toe and provide suitable scour capacity. This option has the advantage of largely retaining the existing lake conditions, minimising environmental, flooding and planning issues and is therefore discussed in more detail in Section 9 of the report, as Option 1.

7.3 Abandonment

While Camlough reservoir is currently used by Northern Ireland Water as a water supply source for the Newry area, Northern Ireland Water has indicated that it will be able to meet the daily demand requirements without the use of Camlough reservoir by July 2015. Assuming that abstraction from the reservoir will cease following commissioning of this trunk main, the source would become a candidate for abandonment.

Abandonment of a reservoir is defined within the 1975 Reservoir Act as:

"Where the use of a large raised reservoir as a reservoir is to be abandoned, the undertakers shall obtain from a qualified civil engineer a report as to the measures (if any) that ought to be taken in the interests of safety to secure that the reservoir is



incapable of filling accidentally or naturally with water above the natural level of any part of the land adjoining the reservoir or is only capable of doing so to an extent that does not constitute a risk."

Abandoning Camlough reservoir would remove the need for any operational and maintenance costs associated with the reservoir and the removal of the risk to downstream infrastructure. However, any reduction in maintenance costs needs to be offset against the capital costs of abandonment and the impact on the environment, downstream flooding and social amenity associated with the removal of the dam structure.

In order to fully assess the implications of abandonment a detailed abandonment report has been produced separately and Section 9 of this report summarises the main issues identified within the abandonment report along with associated costs, as Option 2.



8 OPTION 1 - RESERVOIR REHABILITATION

The refurbishment of the existing structure will need to address all the hydraulic, geotechnical and scour issues identified within the Section 10 Report. The works will involve three main elements:

- A. Increase the reservoir discharge capacity and freeboard
- B. Address all the structural issues associated with the main embankment
- C. Provide a suitable means of controlling the reservoir for operation and maintenance or in an emergency

8.1 Element A – Improvements to discharge capacity

The existing crest level at Camlough is currently only one metre above the spillweir level. With the minimum wave surcharge provision of 0.6m for a Category A dam, this leaves only 0.4m for the allowable flood lift. The initial analysis has shown that on this basis the existing spillway arrangement is only capable of discharging around 10m³/s which represents approximately 20% of the routed design Probable Maximum Flood (PMF).

8.1.1 Consideration of Options

As the discharge capacity and dam freeboard are directly dependant on each other there are several of options available to increase the existing discharge capacity. A selection of the main options is discussed below:

Option A1 – Provision of a secondary spillweir

A secondary spillway could be constructed to supplement the existing spillway arrangement. However, if the discharge head over the spillweir remains constrained to the available flood lift then the dam would require the addition of a 90m long spillweir at the same level as the existing spillweir which would occupy most of the length of the embankments.

The works involved in the creation of such a length of new spillweir on an existing embankment with known geotechnical issues are likely to constitute the reconstruction of the full dam. As a result this is unlikely to be a cost effective or technically viable solution.

Option A2 – Widening the existing spillweir and spillway channel

Widening the existing spillweir and channel would increase the flow that can pass downstream within the available flood lift allowance.

However, initial modelling has shown that the spillweir would have to be extended over 90m into solid rock on the Eastern abutment to discharge the PMF, using only the available 0.4m head. The costs associated with this approach are likely to be prohibitive and the option would be complicated by the associated lands issues. It is therefore apparent that such an option is only viable when combined with measures to increase the available freeboard.

Option A3 – Raising the dam crest combined with widening the existing spillweir and spillway channel

As discussed above, trying to maintain the existing freeboard constraint has a significant influence on the development of a revised spillway arrangement that can safely pass the PMF design flood. Consideration must be given to the implications of releasing this constraint and



allowing an increased flood lift value combined with some increase to the spillweir/spillway capacity – i.e. providing a wider weir and allowing a greater head for discharge over it.

There are several combinations of weir width and increased head which will achieve the desired result but our preliminary analysis has shown that the balanced solution to remedy the existing deficiency in the spillway capacity is to raise the dam crest by 0.3m and to provide a wave wall on the crest to protect against the design wave run up. The increase in hydraulic head on the existing spillweir will enable it to safely discharge the Probable Maximum Flood after attenuation and to satisfy the current safety standards for a reservoir with this level of consequence.

In order to ensure that the spillweir does not become “drowned out” by a restriction in the outlet channel, the capacity of the spillway channel should be increased along the 30m length downstream of the spillweir. This could be achieved by deepening the collection basin downstream of the spillweir and marginally widening and lowering the invert of the channel. The collection basin would be lowered to a level of 95.40m AoD and the average lowering of the 30m length of spillway channel would be approximately 1.6m. The channel would have a minimum width of approximately 4m.

Preliminary hydraulic analysis of the preferred option, based on a basic site survey, suggests that the proposed spillway arrangement can safely discharge the attenuated PMF flow within the revised freeboard allowance. However, detailed hydraulic analysis must be carried out in order to finalise the detailed design.

The excavated rock from the spillway area could all be recycled through use in the revetment and other areas of the structure.

This solution makes full use of the existing substantial spillweir which would be reprofiled at its current level and would provide a non-erodible outlet in solid rock. The modest raising of the crest is consistent with other structural improvements of the embankment slopes. The wave wall will also provide a safety feature along the water edge of the crest.

Option A4 - Creation of overtoppable embankments

As an alternative to Option A3, it may be technically feasible to modify the existing crest and downstream slopes of the dam to protect them from overtopping. Where overtopping of an embankment dam structure is tolerable the minimum design flood inflow can, in accordance with the guidance within the Floods and Reservoir Safety Handbook, be reduced to the 10,000-year flood, approximately half the PMF.

This would still require modification to the existing spillway to ensure it can discharge the 10,000-year flood, with the remainder of the PMF being retained before overtopping the embankments. To discharge the 10,000-year flood with 600mm freeboard, would require the existing spillweir and spillway channel to be extended by 40m into the eastern abutment. The crests and downstream slopes of both embankments would require to be protected against erosion from overtopping flows by providing a robust mattress which would be resistant to extreme flood conditions.

While such an option may be technically feasible, the costs associated with the spillweir and spillway extension into the abutment rock are likely to be high and pose similar land issues outlined in Option A2. There would also be more significant maintenance issues associated with an overtoppable embankment which would increase the whole life cost of the solution.



8.1.2 **Assessment of options to improve discharge capacity**

Of the solutions discussed above only Option A3 appears to be viable both technically and economically. Option A3 is therefore proposed as the preferred option to provide the appropriate flood discharge.

Although outside the normal scope of reservoir safety reports by Panel Engineers, it should also be noted that a wave wall, as included within Option A3, would provide an additional safety feature considering that the public have such easy access.

8.2 **Element B – Improvements to embankment structure**

8.2.1 **Core and downstream slope improvements**

The inspection of the dam revealed that the puddle clay core in the embankment was defective, since seepage was clearly evident in several areas, particularly at the mitres of the main embankment. Study of BH B368, which was driven through the crest of the dam at the junction of the two embankments, showed the nature of the puddle clay core. The borehole log from the drilling, carried out in 1971, indicated that the core material included patches of decayed wood fragments, sand and peat in the fill material. The underlying embankment seat comprised 2.7m of boulder clay overlying bed rock, which is satisfactory as a foundation.

Due to the observed seepage, it is recommended that the core forming the central water barrier in the embankment fill should be improved to reduce seepage to acceptable levels.

In this particular instance, the most economical and appropriate form of improvement necessary to secure stability and control against excessive seepage, is the installation of interlocking steel sheet piles. These would be driven through the existing puddle clay core and through the underlying boulder clay down to rock level. The new core would be connected to the reconstructed crest arrangement to provide a continuous barrier.

The downstream grassed slope should be reduced to a gradient of 1 vertical : 3 horizontal to improve stability and facilitate maintenance. In order to ensure stability against any remaining seepage through the improved core, or at the interface with bed rock, the slope should incorporate graded filter layers.

The assessment of the necessary core and embankment improvements will require a detailed site investigation.

8.2.2 **Revetment improvements**

The existing revetment is comprised of open jointed masonry pitching, which is extensively damaged in some areas by tree roots and erosion. During the removal of all tree roots, there will be further unavoidable damage to the revetment area. It requires to be upgraded by the replacement of suitably sized masonry blocks on a gravel bed in all defective areas.

8.3 **Element C – Improvements to Scour and Drawoff facilities**

As discussed in Section 6 the existing scour and drawoff arrangements at the site are totally unacceptable. It is proposed that the rehabilitation of the scour and drawoff facilities should include a new reinforced concrete drawoff tower, complete with valves and pipework, located at the upstream toe of the main embankment and connected to the crest by a pedestrian access bridge.

The new valve and pipework arrangement will depend on the intended future use of the reservoir for water supply, and any proposal to refurbish the pipework would use only the



existing 24" diameter pipe, which should be surveyed by CCTV and if necessary strengthened by appropriate relining. If the condition of this pipework is very poor it may need to be replaced and this could result in significant additional costs. In addition the capacity of this pipe is deficient when compared to acceptable drawdown requirements and the need to supplement this is covered in Section 8.3.1.

The drawoff tower would be constructed within a steel sheet pile cofferdam and be provided with drawoff valves at two levels and a bottom scour valve.

The 13" diameter supply main should be cleared of deposits and pumped full with foam concrete to abandon it and reduce the risk of a future collapse of the pipework.

8.3.1 **Supplementary drawdown facility**

In the event of the need to draw the reservoir level down in an emergency, the existing 24" dia pipe under the embankment cannot provide the necessary capacity. It will therefore need to be augmented to achieve a lowering rate of 0.4m per day from top water level, assuming no inflow.

To install an additional lower level outlet under or through the embankment present significant risks in having to excavate approximately 7m down in the embankment and would be technically extremely difficult and expensive.

The provision of a siphon arrangement to achieve lowering of the top few metres of storage would involve a pipe on the upstream face, over the crest and down to the downstream face to a control valve at the toe. It would also require a priming facility on the crest.

As well as being vulnerable to vandalism, it would be expensive, require maintenance and its operation in an emergency could be difficult.

A further alternative option would be to provide a facility in the spillway to lower the water level more quickly by 2m to 95.40m AoD. This would involve cutting openings in the rock forming the spillweir and installing twin sluices with 700 x 700mm clear openings.

A rapid draw down of the top 2m of storage to 95.40m AoD would reduce the impoundment capacity by approximately 50% and would reduce the pressure on the dam foundations by approximately 75%.

8.4 **Spillway outlet and the 'Commons' outlet Works**

As discussed in Section 4.2 the existing stilling basin does not have adequate discharge capacity. In its present arrangement it is likely to flood the toe of the embankment during modest return period floods and the interface with the 'Commons' watercourse worsens this situation.

It is therefore proposed to divert the open channel section of watercourse from where it issues below the B30 Newtown Road to a point approximately 50m downstream of the main embankment. The diversion should be via a 1500mm diameter culvert, or box section which will have to pass beneath the existing access road.

8.5 **Site clearance**

In addition to the items listed above the rehabilitation option would also have to include significant site preparation for the major construction items. All trees and vegetation should be removed from the site.



8.6 Control of water levels during construction

Due to the scale of work associated with the core, eduction tower, outlet mains and revetment and the need for some specific elements of this work to be carried out within a cofferdam, it would be preferable for the reservoir to be emptied during the contract.

Consequently the works would be best carried out with the reservoir out of service in terms of water supply. Following this course of action would also prove the most cost efficient solution. However the acceptability of this would have to be discussed with all appropriate stakeholders.

During the construction of the drawoff works, flow diversion of the incoming flows by a mechanism to the downstream side of the dam would be necessary and this is likely to be best achieved by pumping as necessary, possibly to the 'Commons' outlet culvert.

8.7 Summary

The preferred option to rehabilitate the existing dam structure therefore includes:

- widening and deepening of the existing spillway channel by on average 0.7m and 1.6m respectively
- diversion of the 'Commons' watercourse
- replacement of downstream road access bridge and measuring weir
- raising of the dam crest by 300mm
- provision of a wave wall along the dam crest
- sheet piling of the embankment core
- stabilising and protecting the downstream slope
- provision of protection to the downstream toe of the embankment
- reinstatement of the upstream revetments
- construction of a drawoff tower and associated footbridge
- lining the existing scour pipework
- provision of a rapid drawdown facility within the spillweir structure

Drawings of the proposals are included within Appendix A.



8.8 Cost estimates

The capital costs associated with this option are detailed within Table 1 below.

Table 1 – Option 1 Capital Cost Assessment

Item	Quantity
Widening and deepening of the existing spillway channel	150,000
Provision of a rapid drawdown facility within spillweir structure	10,000
Diversion of the 'Commons' watercourse	130,000
Replacement of downstream road access bridge / weir	50,000
Raising of the dam crest by 300mm	20,000
Provision of a wave wall along the dam crest	50,000
Sheet piling of the embankment core	300,000
Stabilising and protecting the downstream slope	60,000
Reinstatement of upstream revetment	10,000
Provision of protection to the downstream toe of the embankment	30,000
Construction of a drawoff tower and associated footbridge	120,000
Lining the existing scour pipework	20,000
Temporary works	300,000
Allowance for preliminaries and general items	230,000
Sub total	1,480,000
Allowance for design development risk @ ≈ 20%	300,000
Allowance for construction stage risk @ ≈ 20%	300,000
Total estimated construction budget	£2,080,000
Professional fees and Surveys	
Design Fees	150,000
Site Investigation Woks	80,000
Procurement and Contract Management	100,000
Site Supervision (assuming 18 month contract)	100,000
Sub Total	430,000
Grand Total	2,510,000



8.9 Whole life cost assessment

To determine the whole life costs of the option the on-going maintenance and refurbishment costs associated with the refurbished structure have been considered. The general maintenance activities, frequency of interventions and estimated costs are included within Table 2.

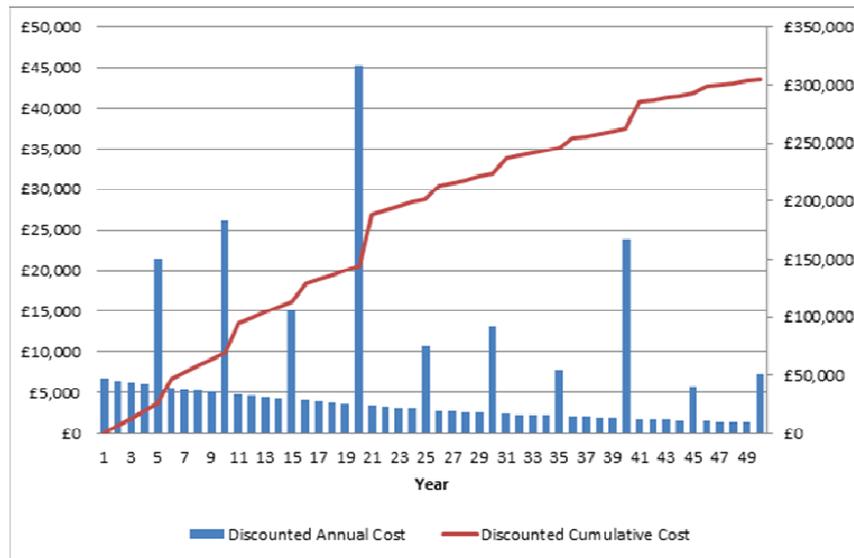
Table 2 – Option 1 Maintenance Schedule

Item	Cost	Frequency	
Safety Reports	Safety Reports – Site Inspections	£2,000	1
	Safety Reports – Section 10	£3,500	10
	Safety Reports – Section 12	£1,500	1
Landscaping	Landscaping – General	£1,000	1
	Landscaping – Spillway maintenance	£1,000	5
Dam	Dam – Wavewall	£4,000	20
	Dam – Crest Road Maintenance	£6,000	20
	Dam – Revetment	£500	1
Pipework	Pipework – Testing	£500	1
	Pipework – Refurbishment	£2,000	10
	Pipework - Valve Replacements	£20,000	20
Valve Tower	Valve Tower – General	£1,000	1
	Valve Tower – Steel work	£5,000	5
	Valve Tower – Roof	£6,000	10
Footbridge	Footbridge – Maintenance	£5,000	5
	Footbridge – Replacement	£20,000	20
Toe Drain	Toe drain – Maintenance	£500	1
	Toe drain – Refurbishment	£3,000	20
Downstream	Downstream – Stilling Basin	£5,000	5
	Downstream Watercourse	£2,500	5

Based on this assessment, whole life costs have been estimated for the preferred option. Whole life costs have been discounted in accordance with the rates within the July 2011 edition of the Green Book: Appraisal and Evaluation in Central Government, as published by HM Treasury. A rate of 3.5% applied for the first 30 years and a rate of 3% applied between years 31-50. The profile of the discounted operation and maintenance costs and the cumulative discount total are shown in Figure 5. The whole life costs of this option are therefore estimated as £2,821,802.



Figure 5 – Annual Operation and Maintenance Discounted Cost profile





9 OPTION 2 - RESERVOIR ABANDONMENT

Abandoning Camlough reservoir would remove the need for and costs associated with maintaining the reservoir and remove the risk that any storage of water above natural ground can pose to downstream communities and infrastructure. However, as already stated, any reduction in maintenance costs needs to be offset against the capital costs of abandonment and the impact on the environment, change in risk to downstream flooding and the possible loss of social amenity associated with the removal of the dam structure.

9.1 Method of abandonment

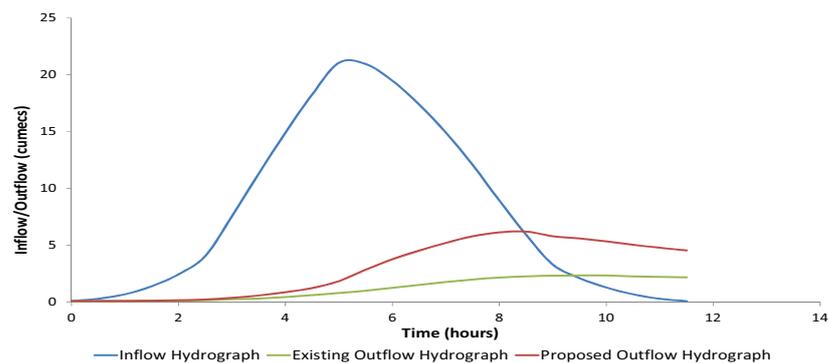
The method of abandonment is discussed in more detail in the separate January 2014 Abandonment Report. In summary, abandonment cannot commence until the water level in the lake is lowered using the existing scour and drawoff facilities. A notch would then be excavated in the main embankment down to river bed level. The existing drawoff, structures, valves and pipelines should then be removed, and the lake would no longer be considered as a large raised reservoir in the context of the 1975 Reservoirs Act.

Abandoning the reservoir would result in a reduction in top water level of 4.5m from 97.4mAOD to 92.9mAOD. The associated reduction in surface area would be 42%, a reduction from its current surface area at top water level of 72ha to 42ha,

The effect of reservoir abandonment needs to be considered in conjunction with the environmental, hydraulic and social impact.

9.2 Hydraulic impact

The abandonment report includes a detailed assessment of the hydraulic impact of abandoning the reservoir in relation to downstream flood risk. It demonstrates that following removal of the impoundment, the Q150 outflow from the lake will be 6.2m³/s. (based on flow being discharged through a trapezoidal channel, 5.0m wide at the base and with 2H: 1V side slopes following abandonment). This is a 265% increase in the current Q150 outflow of 2.3³/s. Figure 6 below shows the Q150 inflow hydrograph for the reservoir, the Q150 outflow hydrograph for the current condition and the Q150 hydrograph for the new outlet channel.





9.3 Environmental impact

Camlough Lake was designated as an Area of Special Scientific Interest (ASSI) in October 2004. The Abandonment Report concludes that a permanent reduction in the top water level will undoubtedly impact on the ASSI. However, it is difficult to assess whether the long term impact on the aquatic flora will be positive or negative and as a result the Abandonment Report recommends that a detailed survey should be undertaken by a qualified botanist. The report also notes that ASSI assent will be required to do any of the works and that an EIA may be required as part of the associated planning process.

9.4 Social impact

The lake is currently widely used as a local amenity for activities ranging from canoeing to water-skiing. Even following abandonment, the lake, which will be restored to its natural level and size, will still cover a considerable area of 42ha. It is therefore likely that many, if not all, activities currently supported by the lake will still be able to continue. However, changes to infrastructure surrounding the lake will be required, for example relocating jetties, to ensure it is still accessible to the public.

The lake is also used by Newry and Mourne District Council to top up water levels in the Newry Canal during dry periods. This impact is considered in further detail in the Abandonment Report.

9.5 Cost estimates

The estimated cost for abandoning the reservoir is £420,000. A detailed breakdown of costs is shown in Table 3.

**Table 3 – Abandonment Capital Costs Estimates**

Item	Quantity	Units	Rate (£)	Total (£)
Construction				
Excavation and disposal of embankment	1,750	m ³	20.00	35,000.00
Removal of pipelines	220	m	22.50	5,000.00
Removal of valves, valve tower and access		Sum	15,000.00	15,000.00
Landscaping and river channel training		Sum	10,000.00	10,000.00
Allowance for environmental works to			(assume)	100,000.00
Allowance for provision of access points and			(assume)	100,000.00
<i>Downstream infrastructure improvements</i>			<i>Undefined at this stage</i>	
		Construction Preliminaries		20,000.00
			Sub-Total	285,000.00
Professional fees and Surveys				
Planning		Sum	5,000.00	5,000.00
EIA		Sum	50,000.00	50,000.00
ASSI Assent		Sum	15,000.00	15,000.00
Public Consultation		Sum	15,000.00	15,000.00
Design		Sum	50,000.00	50,000.00
			Sub-Total	135,000.00
			Estimated Total Cost	420,000.00

These costs excludes the upgrade works that may be required to infrastructure downstream all of which require detailed assessment.

9.6 Whole life cost assessment

By its nature abandonment of the reservoir will result in no long term or annual maintenance costs and the net present value of the overall works is £420,000



10 RECOMMENDATION

10.1 Recommended Option

As discussed within Sections 7, 8 and 9 there are two main options that have been identified and reviewed in detail. These options, Rehabilitation and Abandonment, sit at opposite extremes in terms of cost and the approach to maintaining Camlough Dam as a long term asset.

The option to abandon the reservoir has the lowest capital value and a number of advantages in that it permanently removes the risk associated with the structure from the downstream infrastructure and population, and negates future maintenance costs.

However the Abandonment Option has a number of intangible detriments due to its impact on the environment and the loss of the reservoir as an asset for the local community. It also has a real financial detriment in terms of the flood attenuation protection the dam and reservoir currently offers to properties and infrastructure downstream and the costs associated with upgrading this protection. However, quantifying these costs is outside the scope of this report.

The abandonment process is likely to involve a number of environmental studies, a planning application and Environmental Impact Statement. Only when the scheme is granted full Planning Permission can the abandonment option be confirmed as deliverable.

While the Rehabilitation Option involves more capital expenditure and on-going maintenance costs it has a number of intangible benefits, for the local community, Newry and Mourne District Council, and the environment. As discussed above it also has a financial benefit in terms of the flood attenuation protection the dam and reservoir offers to properties and infrastructure downstream.

The Rehabilitation Option does not require planning permission although an ASSI assent would be required alongside environmental assessments and a scour management plan to facilitate the short term draining of reservoir to carry out the works. These issues are not insurmountable and the rehabilitation option is deliverable. It is therefore recommended that the Rehabilitation Option, as set out within Section 8 of this report, is progressed through to detailed design stage.

10.2 Short term measures

The preceding sections have identified the preferred option to bring the structure up to current and acceptable safety standards. However it is recognised that significant discussions must take place amongst stakeholders to agree the appropriate way forward and there are also necessary timescales to complete investigations, detailed design, procurement and construction. It is therefore recommended that the recommendations in paragraph 15 of the Section 10 Report be implemented. In particular:

- Maintaining the water level at least 1.5m below top water level as recommended within the Section 10 report. Additionally a water level gauge should be installed and water levels recorded on a weekly basis.
- Site Investigation works should be carried out to inform the geotechnical design of the embankment stability improvements.
- The remaining trees and vegetation on the embankment should be removed down to stump level to reduce the risk of windfall damage to the embankment or crest.



- A maintenance programme should be implemented to prevent the regrowth of vegetation and maintain growths at a maximum height of 150mm.
- Perforated drainage should be installed within appropriately designed filter stone to drain the seepage from the dam mitres, and that flows from this drainage are recorded on an agreed regular basis.

In addition to the above the dam should be monitored regularly and any unusual observations, which may require an early inspection, should be reported immediately to the Inspecting Engineer, including but not limited to:

- signs of movement in the embankment or crest
- evidence of scouring at the embankment toe
- An increase in the seepage recorded at the mitres
- Any evidence of overtopping
- An inability to maintain the water level 1.5m below top water level
- The identification of additional damp areas on the downstream slope, toe or area immediately downstream of the dam.

Excluding the site investigation contract it is envisaged that these short term measures would cost no more than £15,000 to implement.

10.3 Implementation Programme

In the context of the 1975 Reservoirs Act the recommendations made within Section 15 of the Section 10 report must be actioned as soon as reasonably practicable by the Reservoir undertaker. In order to implement the recommendations of this report to advance the Rehabilitation Option a summary of key timescales are summarised in Table 4.

Table 4 – Key Milestones

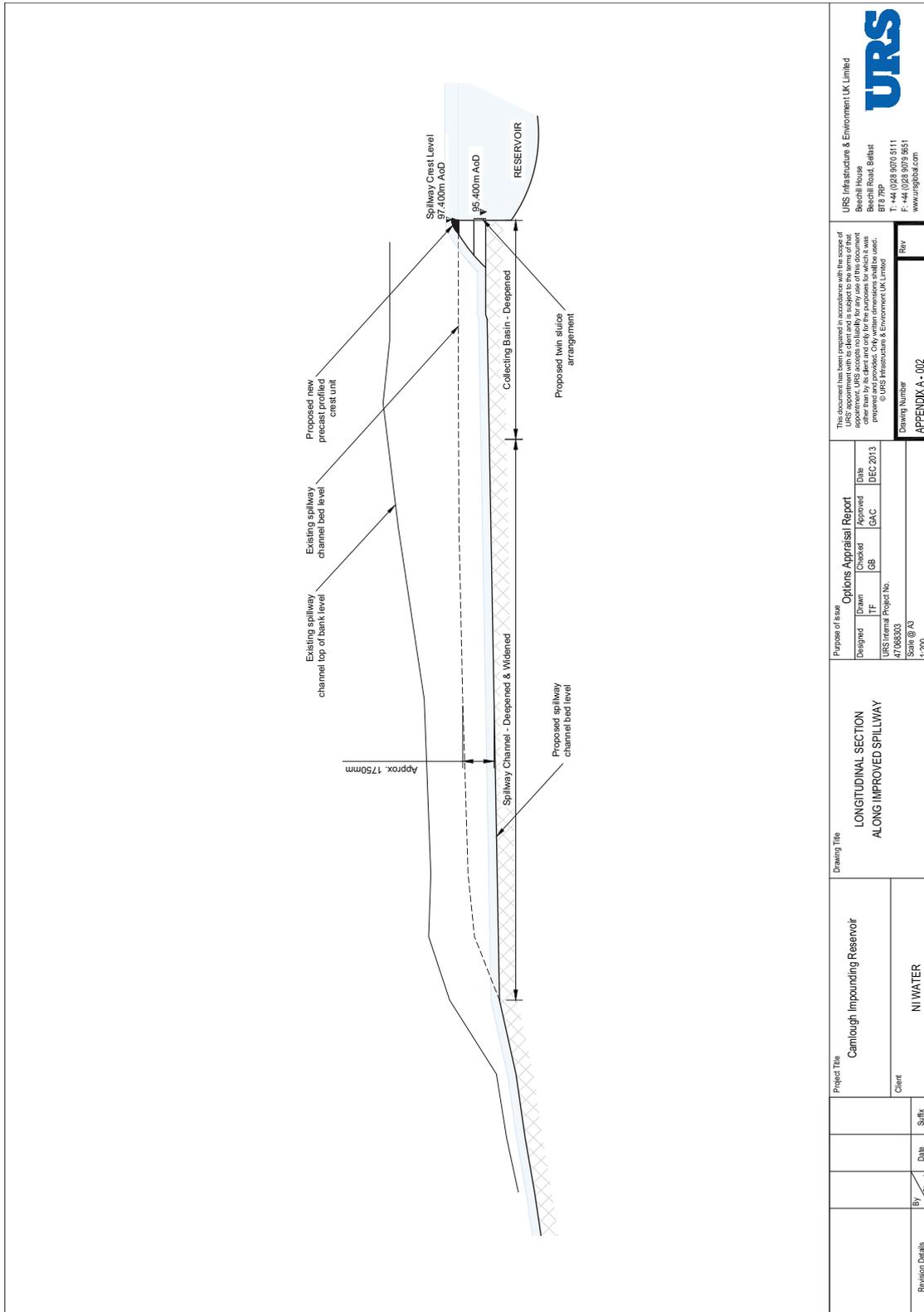
Milestone	Date
Commencement of Design Phase	March 2014
Procurement of Site Investigation	April 2014 – May 2014
Site Investigation Works	June 2014 – July 2014
Completion of Detailed Design	October 2014
PQQ Period	July 2014 – August 2014
Tender Period	December 2014 – January 2015
Tender Assessment and Approval	February 2015 – March 2015
Contract Award	April 2015
Construction Commences	May 2015
Construction Complete	November 2016



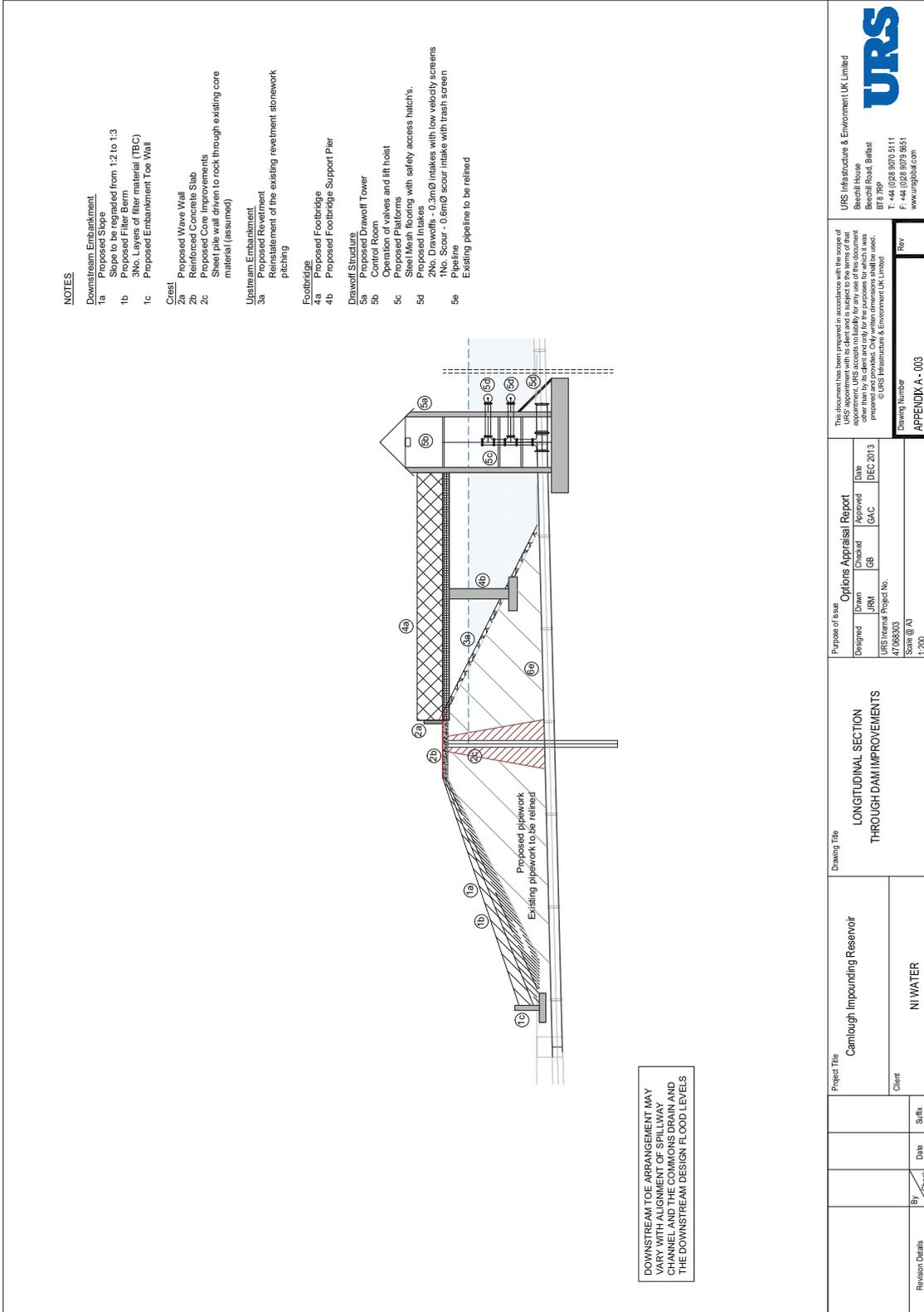
Northern Ireland Water – Camlough Reservoir
Improvements Options Report

APPENDIX A – DRAWINGS

CAMLOUGH RESERVOIR
February 2014



Revision Details	By	Check	Date	Suffix
Project Title		Client		
Camcough Impounding Reservoir		NI WATER		
Drawing Title		Scale @ A3		
LONGITUDINAL SECTION ALONG IMPROVED SPILLWAY		1:200		
Purpose of Issue		Options Appraisal Report		
Designed	Drawn	Checked	Approved	Date
	TF	GB	GAC	DEC 2013
URS Internal Project No.		© URS Infrastructure & Environment UK Limited		
47/088303		The document has been prepared in accordance with the terms of the URS agreement with its client and is subject to the terms of that agreement. URS accepts no liability for any use of this document other than that for which it was prepared and provided. Any written amendments shall be used.		
Drawing Number		Drawing Number		
APPENDIX A - 002		REV		
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		F: +44 (0)28 9070 5051		
		www.ursgb.com		



NOTES

- Downstream Embankment
- 1a Proposed Slope
- 1b Slope to be graded from 1:2 to 1:3
- Proposed Filter Berm
- 1No. Layers of filter material (TBC)
- 1c Proposed Embankment Top Wall
- Crest
- 2a Proposed Wave Wall
- 2b Reinforced Concrete Slab
- 2c Proposed Core Improvements
- Sheet pile wall driven to rock through existing core material (assumed)
- Upstream Embankment
- 3a Proposed Revetment
- Reinstatement of the existing revetment stonework pitching
- Footbridge
- 4a Proposed Footbridge
- 4b Proposed Footbridge Support Pier
- Drawoff Structure
- 5a Proposed Drawoff Tower
- 5b Control Room
- 5c Control valves and lift hoist
- Proposed Platforms
- Steel Mesh flooring with safety access hatch's.
- Proposed Intakes
- 2No. Drawoffs - 0.3m \varnothing intakes with low velocity screens
- 1No. Scour - 0.6m \varnothing scour intake with trash screen
- Pipeline
- Existing pipeline to be refined

DOWNSTREAM TOE ARRANGEMENT MAY VARY WITH ALIGNMENT OF SPILLWAY CHANNEL AND THE COMMONS DRAIN AND THE DOWNSTREAM DESIGN FLOOD LEVELS

Revision Details		By	Check	Date	Suffix
Project Title		Camlough Impounding Reservoir			
Drawing Title		LONGITUDINAL SECTION THROUGH DAM IMPROVEMENTS			
Purpose of Issue		Options Appraisal Report	Drawn	Checked	Approved
URS Internal Project No.		47 088503	JRM	GB	GAC
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1 ADDEDNDUM NR 1 – WHOLE LIFE COSTS

1.1 Scope and objective of this Addendum

This addendum to the Camlough Reservoir Improvements Option Report (the 'Report') translates the costs provided in Section 8.9 Table 2 – 'Option 1 Maintenance Schedule' into the figures required by the following elements of the scope:

- (d) Estimated annual operational costs (insurance, inspections, compiling on site and off site plans etc).
- (e) Estimated costs of typical annual base maintenance costs (based on the assumption that the initial capital works have been completed) – to include intermittent costs such as 10 yearly Section 10 Surveys.

1.2 Operational and Base Maintenance Cost Assessment

Table 2 of the Report identified the on-going operation and maintenance costs associated with the refurbished structure and provided estimates of the frequency of intervention. However, the table did not identify the split between operational and base maintenance costs, or the average annual value of the forecast operational and maintenance expenditure.

Table A1 overleaf has expanded on the detail provided within Table 2 of the Report and the subsequent Tables A2 and A3 split the activities into operational and base maintenance cost schedules, with a total and average annual (undiscounted) figure provided for each.

Based on this assessment the average annual non discounted operational costs are £5,700 and the average annual base maintenance costs have been assessed as £8,270.

Note that insurance costs have not been included within the operational costs at this stage as the value of insurance is unknown and will be dependent on the resolution of the dam ownership issues. The preparation of on-site have also not been considered as part of the operational cost assessment as these would form part of the professional fees associated with the development of the dam included within Table 1 of the Report.



Table A1 – Option 1 - Maintenance Schedule

Item	Description	Type	Cost	Frequency	Total 50yr	Average 1yr
Safety Reports	Safety Reports - Site Inspection	Opex	£2,000	1	£100,000	£2,000
	Safety Reports - Section 10	Base Maintenance	£3,500	10	£17,500	£350
Landscaping	Safety Reports - Section 12	Base Maintenance	£1,500	1	£75,000	£1,500
	Landscaping – General	Opex	£1,000	1	£50,000	£1,000
	Landscaping - Spillway	Opex	£1,000	5	£10,000	£200
	Dam - Wave wall	Base Maintenance	£4,000	20	£8,000	£160
Dam	Dam - Crest Road Maintenance	Base Maintenance	£6,000	20	£12,000	£240
	Dam – Revetment	Opex	£500	1	£25,000	£500
Pipework	Pipework – Testing	Opex	£500	1	£25,000	£500
	Pipework – Refurbishment	Base Maintenance	£2,000	10	£10,000	£200
	Pipework - Valve Replacements	Base Maintenance	£20,000	20	£40,000	£800
	Valve Tower – General	Opex	£1,000	1	£50,000	£1,000
Valve Tower	Valve Tower - Steel work	Base Maintenance	£5,000	5	£50,000	£1,000
	Valve Tower – Roof	Base Maintenance	£6,000	10	£30,000	£600
Footbridge	Footbridge – Maintenance	Base Maintenance	£5,000	5	£50,000	£1,000
	Footbridge – Replacement	Base Maintenance	£20,000	20	£40,000	£800
Toe Drain	Toe drain – Maintenance	Opex	£500	1	£25,000	£500
	Toe drain – Refurbishment	Base Maintenance	£3,000	20	£6,000	£120
Downstream	Downstream - Stilling Basin	Base Maintenance	£5,000	5	£50,000	£1,000
	Downstream - D/S Watercourse	Base Maintenance	£2,500	5	£25,000	£500
		Total		Total	£698,500	£13,970

Table A2 – Option 1 – Operational Costs

Item	Description	Type	Cost	Frequency	Total 50yr	Average 1yr
Safety	Safety Reports - Site Inspection	Opex	£2,000	1	£100,000	£2,000
Landscaping	Landscaping – General	Opex	£1,000	1	£50,000	£1,000
	Landscaping – Spillway	Opex	£1,000	5	£10,000	£200
Dam	Dam – Revetment	Opex	£500	1	£25,000	£500
Pipework	Pipework – Testing	Opex	£500	1	£25,000	£500
Valve Tower	Valve Tower – General	Opex	£1,000	1	£50,000	£1,000
Toe Drain	Toe drain – Maintenance	Opex	£500	1	£25,000	£500
				Total	£285,000	£5,700

Table A3 – Option 1 - Base Maintenance Costs

Item	Description	Type	Cost	Frequency	Total 50yr	Average 1yr
Safety Reports	Safety Reports - Section 10	Base Maintenance	£3,500	10	£17,500	£350
	Safety Reports - Section 12	Base Maintenance	£1,500	1	£75,000	£1,500
Dam	Dam - Wave wall	Base Maintenance	£4,000	20	£8,000	£160
	Dam - Crest Road Maintenance	Base Maintenance	£6,000	20	£12,000	£240
Pipework	Pipework – Refurbishment	Base Maintenance	£2,000	10	£10,000	£200
	Pipework - Valve Replacements	Base Maintenance	£20,000	20	£40,000	£800
Valve Tower	Valve Tower - Steel work	Base Maintenance	£5,000	5	£50,000	£1,000
	Valve Tower – Roof	Base Maintenance	£6,000	10	£30,000	£600
Footbridge	Footbridge – Maintenance	Base Maintenance	£5,000	5	£50,000	£1,000
	Footbridge – Replacement	Base Maintenance	£20,000	20	£40,000	£800
Toe Drain	Toe drain – Refurbishment	Base Maintenance	£3,000	20	£6,000	£120
Downstream	Downstream - Stilling Basin	Base Maintenance	£5,000	5	£50,000	£1,000
	Downstream - D/S Watercourse	Base Maintenance	£2,500	5	£25,000	£500
				Total	£413,500	£8,270

URS

Camlough Reservoir

Abandonment Scoping Report

January 2014

47068303

Prepared for:
Northern Ireland Water

UNITED
KINGDOM &
IRELAND





Northern Ireland Water – Camlough Reservoir

Rev	Date	Details	Prepared by	Checked by	Approved by
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Costs may vary outside the ranges quoted. Whilst cost estimates are provided for individual issues in this Report these are based upon information at the time which can be incomplete. Cost estimates for such issues may therefore vary from those provided. Where costs are supplied, these estimates should be considered in aggregate only. No reliance should be made in relation to any division of aggregate costs, including in relation to any issue, site or other subdivision.

No allowance has been made for changes in prices or exchange rates or changes in any other conditions which may result in price fluctuations in the future. Where assessments of works or costs necessary to achieve compliance have been made, these are based upon measures which, in URS’ experience, could normally be negotiated with the relevant authorities under present legislation and enforcement practice, assuming a pro-active and reasonable approach by site management.

Forecast cost estimates do not include such costs associated with any negotiations, appeals or other non-technical actions associated with the agreement on measures to meet the requirements of the authorities, nor are potential business loss and interruption costs considered that may be incurred as part of any technical measures.

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1. INTRODUCTION

Camlough reservoir is currently used by Northern Ireland Water as a water supply source for the Newry area with an abstraction limit of 5MI/d. However, Northern Ireland Water would be able to meet the daily demand requirements of the Newry area without the use of Camlough reservoir upon completion of trunk main works in 2015. Assuming that abstraction from the reservoir would cease following commissioning of the trunk main from Castor Bay Water Treatment Works, Northern Ireland Water would no longer have an interest in the impoundment in terms of the need for storage as a water supply and the source could be considered a candidate for abandonment.

1.1 Scope and objective of this report

The appointment scope required the preparation of a report that would include the following:

“A section to set out a process for NI Water decommissioning the dam at lowest cost after 1 July 2015 (which shall be assumed to include digging out part of the face and using this to landscape the remaining elements), and restoring the natural lake level and river bed to the pre year 1870 level. This should include a timeline, any approvals necessary, and the estimated costs. This option will become viable if NI Water becomes the owner of the impoundment (which may occur if N&MDC determine that the dam is not needed to regulate flows in the Newry canal, or for recreational activity).”

The purpose of this report is therefore to assess the environmental, hydraulic, social and economic implications of abandoning Camlough reservoir.

2. RESERVOIR DETAILS

Camlough Reservoir is located outside the village of Camlough, Co. Armagh and approximately 5km West of Newry City.

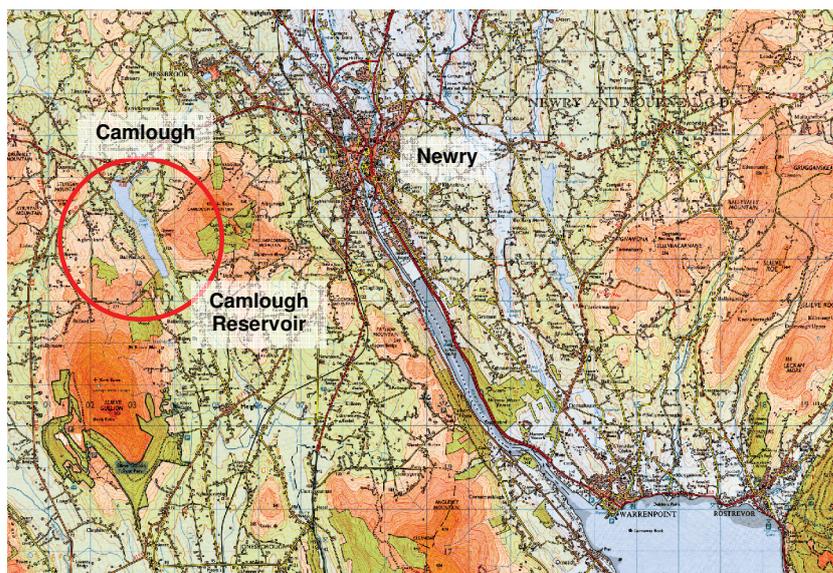


Figure 1 Location Plan

The reservoir was formed in circa. 1872 by raising the original Camlough Lake through the construction of an earthfill dam with two flanks, each of 65m in length, at the Northern end of the Lake. The reservoir has a direct catchment area of 7.73km² with an additional 5.59km² of indirect catchment contributing to the reportable useable storage capacity of 3705MI. The surface area at top water level of 97.4mAOD is 72ha.

The overflow spillweir from the impoundment is located at the Eastern end of the main embankment. The curved spillweir is 22.5m long and discharges into a channel cut through the rock forming the Eastern abutment of the main embankment. The channel quickly narrows to 3.0m before curving around the Eastern abutment and discharging into a pool at the base of the main embankment.

Access to the reservoir, the embankment crests and the toe of the return embankment is via the B30 road. There is no vehicular access to the toe of the main embankment.

The Camlough River valley downstream of the dam is densely populated with the towns of Camlough and Bessbrook immediately downstream, leading to the centre of Newry some 5km to the East.



3. CONSIDERATIONS FOR ABANDONMENT

The Reservoirs Act 1975 provides a legal framework to ensure the safety of UK reservoirs holding at least 25,000m³ of water above natural ground level. The Act does not apply in Northern Ireland, although many reservoir owners and operators here comply with the spirit of the Act.

The Reservoirs Act 1975 defines abandonment of a reservoir as:

“Where the use of a large raised reservoir as a reservoir is to be abandoned, the undertakers shall obtain from a qualified civil engineer a report as to the measures (if any) that ought to be taken in the interests of safety to secure that the reservoir is incapable of filling accidentally or naturally with water above the natural level of any part of the land adjoining the reservoir or is only capable of doing so to an extent that does not constitute a risk.”

Following abandonment, the lake may still be physically capable of storing in excess of 25,000m³ of water but will be incapable of retaining water above natural ground level.

Abandoning Camlough reservoir would remove the need for and costs associated with maintaining the reservoir with the added benefit that reducing the volume of water stored would remove the risk of inundation downstream due to release of impounded water. However, any reduction in maintenance costs needs to be offset against a number of impacts as follows:

1. The capital cost of abandonment
2. The environmental impacts
3. Effect on downstream flooding
4. Impact on social amenity

In the context of Camlough, it should also be noted that the latest Section 10 report completed for the reservoir has identified significant issues with the dam structure that require refurbishment works in order to make the impoundment safe. The costs of these works also need to be considered in the context of this report.

3.1 Method of Abandonment

Before commencing the abandonment of the reservoir, the water level in the lake will need to be reduced using the existing scour and drawoff facilities. Because of the inadequate scour capacity, this facility is likely to need additional support to achieve drawdown within a reasonable timescale.

In order to abandon the reservoir, a notch would be excavated in the main embankment down to river bed level. Appendix A contains a drawing of a typical notch excavation. The notch would require excavation of approximately 1,750m³ of material and would be designed to prevent the reservoir from retaining water once it is emptied. Excavation would be carried out in phases to ensure any remaining water below the level of the drawoffs is released in a controlled manner so as not to impose an adverse risk to downstream infrastructure.

Once the new notch has been excavated the existing drawoff, structures, valves and pipelines should be removed and any silt in the reservoir basin should be risk assessed and, if necessary, made safe by removal or spreading. Landscaping and planting works will be required to help soften the appearance of the area following the abandonment. River bed profiling will also be required to the channel downstream of the lake.



4. EFFECTS OF ABANDONMENT

The effect of reservoir abandonment needs to be considered in conjunction with the environmental, hydraulic and social impact.

This section of the report looks at each of these factors to ascertain how they may be impacted by the removal of the impoundment at Camlough and how any negative effects may be mitigated.

4.1 Environmental and Planning Impact

Camlough is a mid-altitude lake lying in a steep-sided valley between Slieve Gullion and Sturgan Mountain to the west and Camlough Mountain to the east. It was designated as an Area of Special Scientific Interest (ASSI) in October 2004. It is a Mesotrophic lake, meaning that it potentially has the highest diversity of plants and wildlife of any lake. The diverse aquatic plant community is characteristic of unpolluted waterbodies with low levels of plant nutrients and is among the best example of its type in Northern Ireland.

One of the most important features of the lake is the shoreweed located around the shore and in the shallows. Quillwort is also present at these locations as a rare associate of the shoreweed. A number of other rare plants are present within the macrophyte community including eight-stamened waterwort, six-stamened waterwort, red pondweed and lesser pondweed. The lake is also surrounded by wet woodland and marshy grassland habitats.

The citation document for the ASSI, prepared by the Northern Ireland Environment Agency, has identified a number of operations and activities that would appear to the Department to be likely to damage the flora and fauna of the area. It is a requirement of The Environment (Northern Ireland) Order 2002, which is the legislation relating to ASSIs in Northern Ireland, that:

“Any Public Body/Competent Authority intending to carry out or permit any operation listed in the ASSI citation schedule, which lists operations thought by the Department to have potential to cause damage to the designated site, is obliged to notify the Department of the Environment.”

The means of notifying NIEA is to submit an Application for Assent to its Conservation Designations and Protection (CDP) section. The assent requires the applicant to provide details as to who will carry out the work, the proposed duration of the works, the measures to be put in place to minimise impact on the ASSI and how any damaged sections of the ASSI will be restored.

If an ASSI is also part of a Special Area of Conservation (SAC) or Special Protection Area (SPA), a ‘test of significance’ or ‘appropriate assessment’, as defined in the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 and which come under the umbrella of Habitats Regulations Assessments (HRA), must be carried out. These regulations transpose the EC Habitats Directive into law in Northern Ireland. As Camlough is not designated as either an SAC or SPA there is no requirement to carry out an HRA.

Abandoning the reservoir would result in a reduction in top water level of 4.5m from 97.4mAOD to 92.9mAOD. The associated reduction in surface area would be 42%, a reduction from its current surface area at top water level of 72ha to 42ha in the area of the original lake. Appendix B contains a drawing showing how the surface area of the lake changes following abandonment.

Reducing the water level by this amount will impact on the ASSI. However, it is difficult to assess whether the long term impact on the aquatic flora will be positive or negative. The lower water level may provide an opportunity for the wet woodland and marshy grassland



habitats to expand. There is also the possibility that the shoreweed and quillwort will retreat to the reinstated natural shoreline and shoreline treatment may help to accelerate this regeneration process. It is difficult to fully determine the impact of the reduction in lake level on the aquatic flora; therefore, it is recommended that a detailed survey should be undertaken by a qualified botanist.

Removing the capability for water to be stored above natural ground level at Camlough will mean it is not possible to restore sections of the ASSI that will be impacted by the reduction in water level. Therefore, NIEA may request a more detailed assessment on the works to be carried out to enable them to make a fully informed decision in relation to granting assent. They will be likely to request detailed information on why the works are necessary and the benefit of completing them, the percentage of each type of habitat to be impacted and whether the affect is positive or negative, details on the depth of water to be retained across the lake and details of the consequences of the works on the general biodiversity of the ASSI.

In accordance with the Planning (Northern Ireland) Order a planning application is required when development occurs. In this instance, development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

In the case of abandoning a reservoir, this would constitute development and would therefore require a planning application.

The Planning (General Development) (Amendment) Order (Northern Ireland) 2007 provides permitted development rights (development that does not require express consent) for water and sewerage undertakers. However, the proposed abandonment works do not fall within any of the categories listed.

Although the proposal does not fall within Schedule 1 or 2 of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999, since the development is likely to have significant effects on the environment, by virtue of factors such as its nature, size or location, it may require an EIA.

The cost for submitting a planning application and Environmental Impact Assessment (EIA) has been assessed in the order of £5,000 and £50,000 respectively.

4.2 Hydraulic Impact

Reservoir inflows are commonly higher than reservoir outflows. This is due to the ability of the reservoir to attenuate floods and therefore reduce the magnitude of the outflows. This is because the outlet spillweir to the reservoir is only capable of discharging a specific flow at any particular water depth over the spillweir level. The depth of water above spillweir level is effectively storing some of the inflow volume within the reservoir until it can be released. Abandoning the reservoir will reduce the attenuation effect of the reservoir therefore increasing the flows released downstream and potentially adversely impacting on downstream infrastructure.

The hydraulic impact of abandoning the reservoir, particularly in relation to downstream flood risk, will need to be fully assessed. Abandonment of the reservoir would eliminate the risk of release of impounded water to communities downstream. However, it is likely that due to the large reduction in surface area, the current beneficial attenuation effect of the reservoir would be reduced and the downstream flood risk correspondingly increased.

An assessment of the 1 in 150 year return period (Q150) flow at the reservoir site from the catchment has been undertaken in accordance with standard hydrological assessment techniques. Most flood defence systems are constructed to protect against floods with a



return period of between 100 and 200 years. Therefore, the Q150 flood was chosen as a normal urban design flow figure for comparison purposes.

Following removal of the impoundment, it is estimated that the Q150 outflow from the lake will be 6.2m³/s. This is based on flow being discharged through a trapezoidal channel, 5.0m wide at the base and with 2H: 1V side slopes following abandonment. This is 265% greater than the current Q150 outflow of 2.3m³/s. The figure below shows the Q150 inflow hydrograph for the reservoir, the Q150 outflow hydrograph for the current condition and the Q150 hydrograph for the new outlet channel.

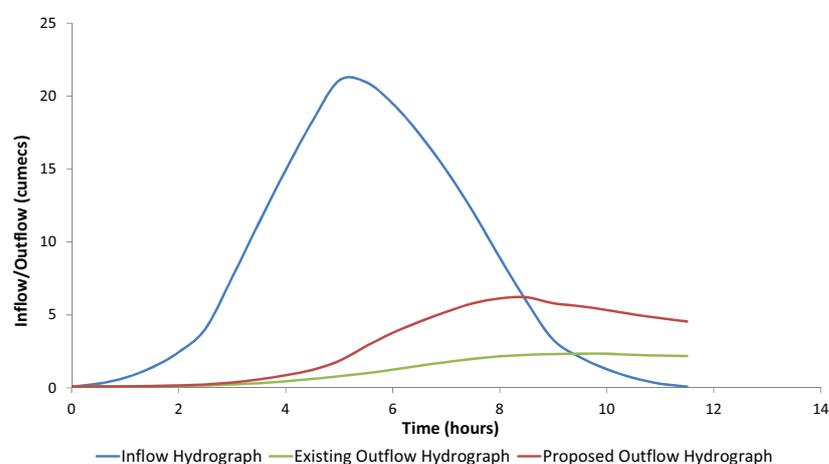


Figure 2 Q150 Inflow and Outflow Hydrographs

Discussions would need to be held with Rivers Agency to determine the implications of removing the flood attenuation currently provided by the reservoir on downstream flood defences and communities. A model would need to be prepared to assess how the flood defences would be impacted by the change in flow released from the reservoir. Any costs associated with modifying these defences to contain the changed flows would need to be considered in the overall costs of the abandonment of the reservoir. However, determining this impact and quantifying the costs are beyond the scope of this report.

One potential solution to mitigate the impact of the removal of the existing impoundment on downstream flood flows, would be to construct a new control structure at the outlet. This structure would allow low flows to pass through a naturalised channel at the lowered top water level but would constrain flood flows below the Q150 flood to provide some temporary storage and maintain the attenuation affect currently provided by the existing dam structure. The option would mean there is no worsening on downstream infrastructure. However, as the structure could provide the ability to store water above natural ground level, the lake would still be considered an impoundment under the 1975 Reservoir Act although it could be engineered as a very simple structure with minimal maintenance and monitoring requirements.



4.3 Social Impact

The social and amenity impact of the abandonment of Camlough Reservoir would be very significant.

The lake is currently used for canoeing, cycling, coarse angling, day visits/general enjoyment, running, shooting, swimming, triathlon, walking and water-skiing. All of these activities provide economic benefits to the area and the removal of these benefits would need to be taken into account when considering abandoning the reservoir.

Even following abandonment, the lake, which would be restored to its natural level and size, will still cover a considerable area of 42ha. It is therefore likely that many, if not all, of the activities currently supported by the lake would still be able to continue.

However, works will be required to the access points around the perimeter of the lake, which would be 4.5m lower than previous. This would include amending, extending and/or relocating jetties, fishing stands and slipways. Works may also be required to construct new paths or tracks.

In 2011, Newry and Mourne District Council issued a Final Draft of its Camlough Lake Masterplan, outlining its aspirations to further develop the lake as a visitor attraction. The proposals detailed in this document would need to be revised to take account of the revised lake area if the abandonment were to proceed.

It would be good practice to undertake a public consultation in instances where a public amenity is being significantly changed. The purpose of this would be to inform the public of the proposals to abandon the reservoir and explain why this option is being considered and outline the potential impacts.

During dry periods, Newry and Mourne District Council use water from Camlough to top-up the water level in Newry Canal. If abandoned, the Council will lose the ability to control the volume of water released from Camlough, as the natural water regime would have been restored. This in turn may have a negative impact on water levels in the canal during periods of dry weather.

4.4 Impact on Water Supply Source

Camlough reservoir is currently used by Northern Ireland Water as a source for 5Ml/d of raw water to feed the Water Treatment Works at Camlough which supplies the Newry area.

The removal of Camlough Dam and the lowering of the lake to the pre-1872 level would result in the loss of Camlough Lake as a viable water supply source. However, following completion of trunk main works in 2015, Northern Ireland Water would no longer need to abstract water from the lake to meet the daily demand requirements of the Newry area.



5. COSTS FOR ABANDONMENT

The estimated cost for abandoning the reservoir is £420,000. A detailed breakdown of costs is shown in Table 1.

Item	Quantity	Units	Rate (£)	Total (£)
Construction				
Excavation and disposal of embankment material	1,750	m ³	20.00	35,000.00
Removal of pipelines	220	m	22.50	5,000.00
Removal of valves, valve tower and access gallery		Sum	15,000.00	15,000.00
Landscaping and river channel training		Sum	10,000.00	10,000.00
Allowance for environmental works to shoreline		Sum	(assume) 100,000.00	100,000.00
Allowance for provision of access points and relocation of slipways/jetties		Sum	(assume) 100,000.00	100,000.00
<i>Downstream infrastructure improvements</i>			<i>Undefined at this stage</i>	-
			Construction Preliminaries	20,000.00
			Sub-Total	285,000.00
Professional fees				
Planning		Sum	5,000.00	5,000.00
EIA		Sum	50,000.00	50,000.00
ASSI Assent		Sum	15,000.00	15,000.00
Public Consultation		Sum	15,000.00	15,000.00
Design		Sum	50,000.00	50,000.00
			Sub-Total	135,000.00
			Estimated Total Cost	420,000.00

Table 1 Estimated Costs

These costs exclude upgrade works that may be required to infrastructure downstream all of which require detailed assessment.



6. RECOMMENDATIONS

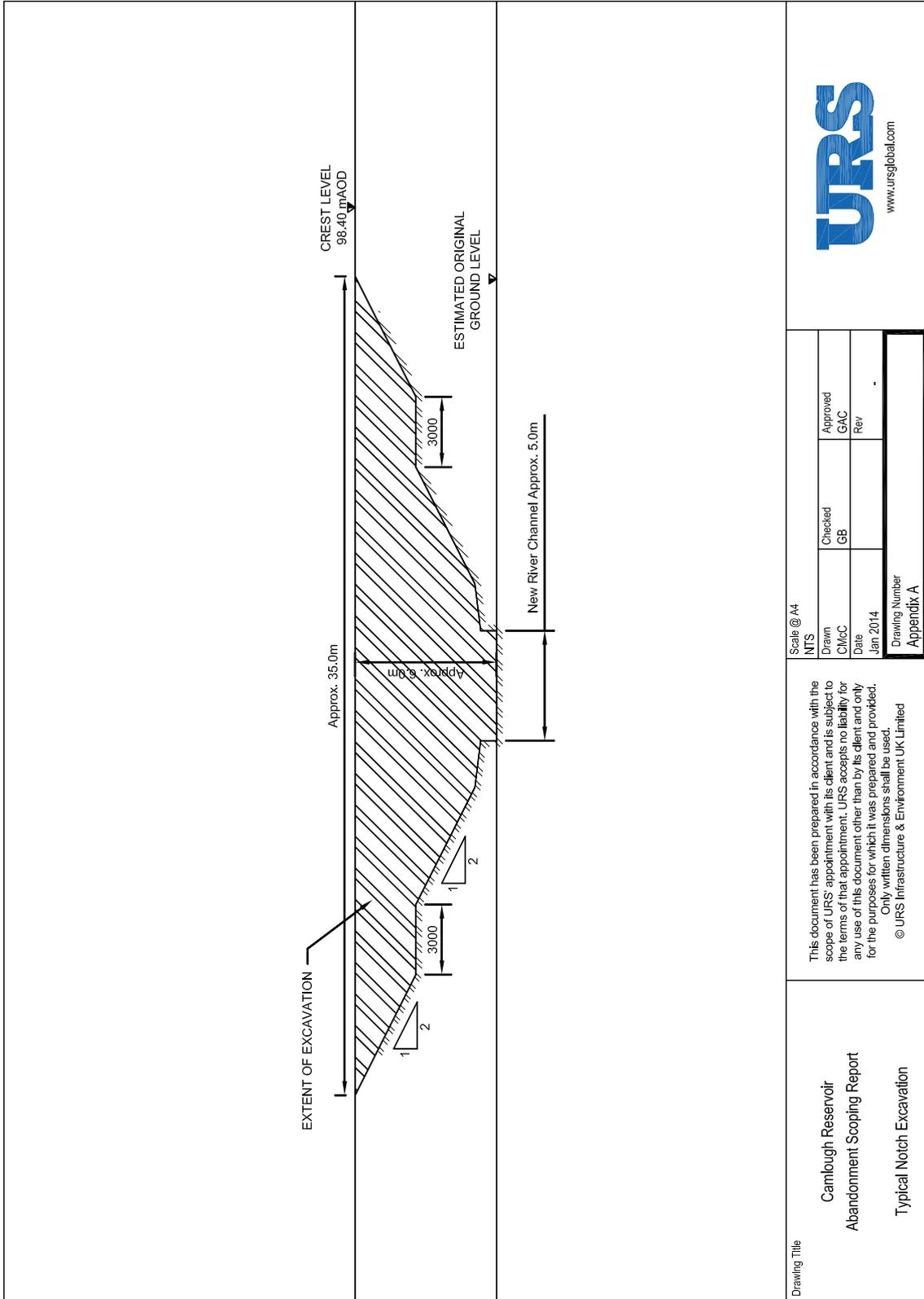
As discussed in this report, there are likely to be high social, hydraulic and environmental impacts associated with its abandonment which are difficult to quantify but which should be given further detailed consideration before a decision is reached. In order to achieve this, we recommend that the following work is carried out:

1. Appoint a qualified botanist to undertake a detailed survey of the ASSI and to help quantify the impact of abandonment on the aquatic flora.
2. Discuss the proposal for abandonment with NIEA to determine the level of environmental assessment required to fully assess the impact of abandonment.
3. Further investigation should be undertaken into how abandonment impacts downstream infrastructure. A model should be prepared to determine the effect the increased Q150 outflow from the site would have on existing flood defences and downstream communities.
4. Engage Newry and Mourne District Council to discuss how abandonment would affect the proposals set out in its Masterplan for the lake.
5. Convene a public consultation to inform the public of the purpose and proposal for abandonment and to explain how they could be impacted.



Northern Ireland Water – Camlough Reservoir

APPENDIX A TYPICAL NOTCH EXCAVATION



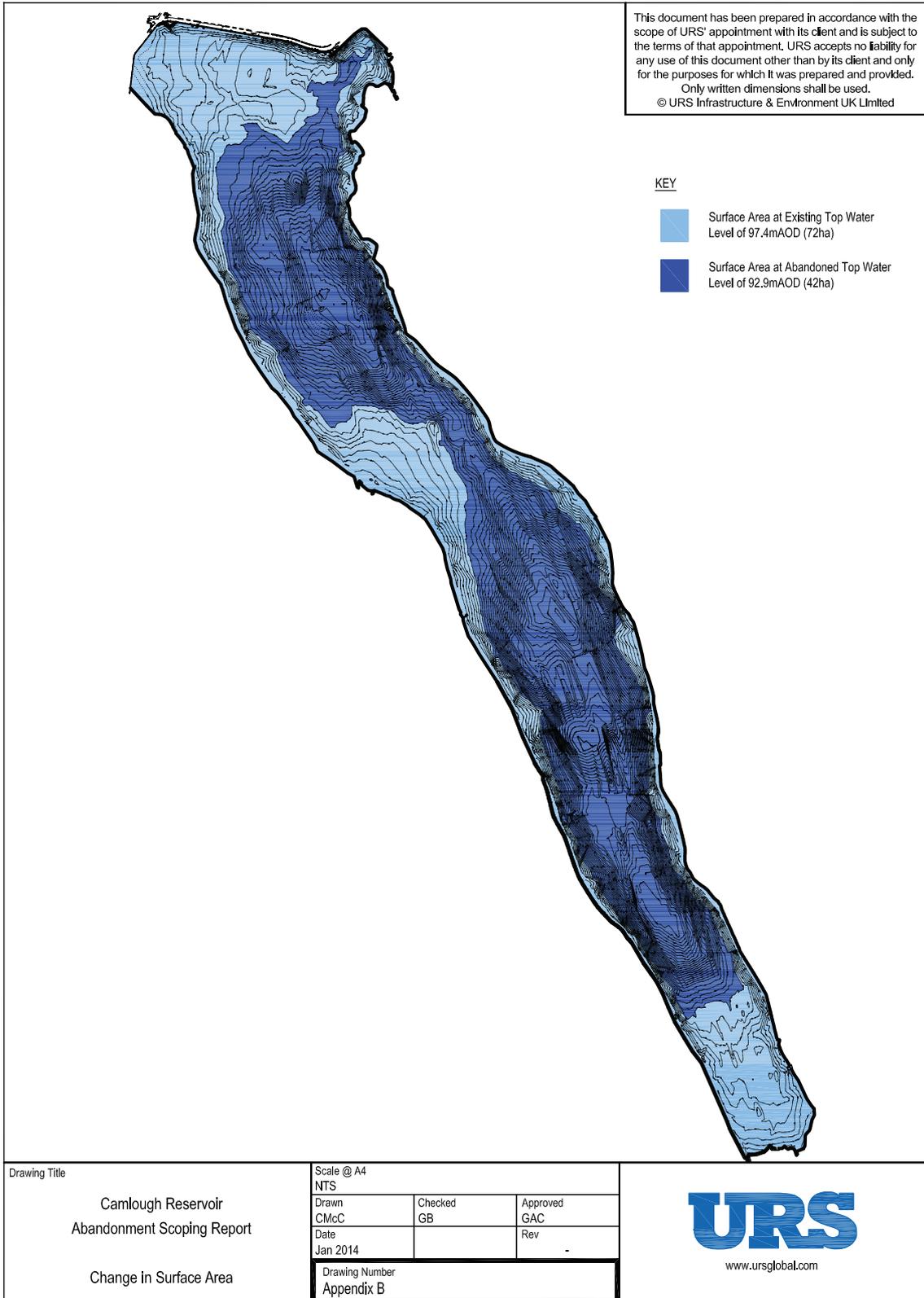
Drawing Title Camlough Reservoir Abandonment Scoping Report Typical Notch Excavation	Scale @ A4 NTS Drawn CMC Date Jan 2014 Drawing Number Appendix A			
	Checked GB	Approved GAC Rev		
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Northern Ireland Water – Camlough Reservoir

APPENDIX B CHANGE IN SURFACE AREA



Northern Ireland Authority Utility Regulator

Ms Stella McArdle

Committee for Agriculture and Rural Development
Parliament Buildings
Ballymiscaw
Stormont BT4 3XX

By email

Our Ref: W007/CARD/JBM/1014
20 February 2014

Date:

Dear Ms McArdle,

The Reservoirs Bill

Dear Ms McArdle

Thank-you for your letter to Jo Aston dated 21 January 2014 asking the Utility Regulator to provide written evidence to the Committee for Agriculture and Rural Development in respect of the Reservoirs Bill which is currently progressing through the Assembly.

The Utility Regulator welcomes the Reservoirs Bill which will provide a statutory framework for managing the risk of flooding from major reservoirs. Our comments are related to our statutory duties as the economic regulator of the water, electricity and gas sectors in Northern Ireland. The principal impact of the Bill in respect of our statutory duties is the impact on NI Water which owns and operates a significant stock of impounding reservoirs and service reservoirs with a volume greater than the 10,000 m³ threshold included in the legislation.

We understand that the effect of the Reservoirs Bill is similar to legislation which is already in place in GB. We understand that NI Water has followed the principles of that legislation as best practice including ten yearly inspections of its reservoirs by independent engineers. The company's recent Price Controls, PC10 and PC13, have included investment to carry out works arising from these inspections and this work continues. In view of this, we take comfort that NI Water has already taken steps to secure the safety of its major reservoirs and that this will minimise the cost of implementing the new legislation. That is not to say that emerging risks will not be identified and future funding required.

We expect NI Water to make the necessary provision for reservoir safety within its PC15 Business Plan which will cover the period 2015-21. In view of the long (6-year) duration of this Price Control, we have made provision for a 'mid-term review' which will allow us to refresh the investment programme to take account of further investigations and studies carried out during the first half of PC15. This will allow us to accommodate any necessary works which are identified when initial inspections carried out under the new statutory framework.

We note that the wording of Article 6(2) and Article 6(3) are slightly different. Article 6(2) includes the wording "or any part of a controlled reservoir", Article 6(3) omits this wording. The explanatory and financial memorandum explains that this is because the wording of Article 6(3) is directed at the sewerage undertaker in respect of tanks containing effluent (in effect, in respect of their work as a sewerage undertaker) and therefore it would be inappropriate to have a another manager for these reservoirs. We note that it is implicit in Article 6(3) that it applies to only those reservoirs which relate to the sewerage functions of a sewerage undertaker.

We welcome the opportunity to respond to the Committee on this matter. We would be pleased to provide further briefing or discuss any matters arising if that would be helpful.

Yours sincerely

A handwritten signature in black ink, consisting of the initials 'JM' followed by the name 'Mills'. The signature is written in a cursive style and is underlined with a single horizontal stroke.

John Mills

Network Regulation Manager (Water)

cc: Jo Aston (UR)

Tanya Headley (UR)

Northern Ireland Environment Agency

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Your reference:

Our reference:

Date: 7 February 2014

Stella McArdle
Clerk to the Agriculture & Rural Development Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
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Belfast
BT4 3XX

Dear Stella

In response to your letter of 24 January 2014 inviting the NI Environment Agency (NIEA) to make an oral presentation to the Committee regarding the Reservoirs Bill on 18 February 2014, I can inform you that Mr Peter Close will attend on behalf of NIEA's Environmental Protection Directorate and Mr Bob Davidson on behalf NIEA's Natural Heritage Directorate.

I also attach the submission of written information from NIEA ahead of the oral evidence being given.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Helen Richmond

DALO

[by e-mail]

The Northern Ireland Reservoirs Bill – safety policy proposals

Submission of written information from the Northern Ireland Environment Agency (NIEA) ahead of oral evidence being given to the Agriculture and Rural Development Committee.

1. NIEA officials attended and contributed to the development and stakeholder engagement relating to the Northern Ireland Reservoirs Act. NIEA fully supports the safety aims and objectives of this legislation.
2. NIEA recognises that the 17 (possibly more) planned reservoir releases for Northern Ireland Water (NIW) work is important and necessary from a health and safety / reduction in flood risk perspective and therefore must be completed.
3. An expert engineer has inspected and recommended that refurbishment of the scour / stop valves in these existing structures must be replaced in the interests of safety. This recommendation will mean full drawdown of the reservoir to reduce the water pressure on the structure to enable the refurbishment of control valves.
4. With the development of the Reservoirs Bill for Northern Ireland, these new policies and procedures should significantly reduce the risk of a dam failure and therefore an uncontrolled release of water, which could cause widespread flooding, damage to buildings and potentially loss of life.
5. NIW's targeted emptying plan does not need to wait for the Reservoirs Bill in Northern Ireland to be on the statute book and lessons learned will help inform the production of 'on site' emergency plans.

Environmental risks / potential impacts of the controlled emptying of reservoirs.

6. Poorly managed water releases from reservoirs can have significant impacts on the environment.
7. The release of water from the bottom layers of the reservoir through the scour valve will inevitably contain suspended solids from the floor of the reservoir and the water / sediment may contain polluting concentrations of metals and possibly chemicals.
8. If not carefully controlled, the release volume, its velocity and the pollutant content can significantly impact habitats, damage ecosystems, displace fish, erode river banks and flood properties and displace people.
9. NIEA recognises that some sediment release is inevitable and acceptable, since in the absence of the dam it would have been transported naturally down the river and controlled quantities of sediment can be beneficial. However, it is important that the released sediment does not overwhelm the natural transport mechanisms and damage the downstream river and established ecosystems.
10. Timing the planned opening of scour valves to coincide with higher natural river flows, for example, following rainfall when the river is transporting elevated concentrations of natural sediments will help to prevent locally damaging sediment accumulation.
11. The gradual opening of the scour valve will also mobilise less sediment.
12. As the scour valves have not been opened for some years, NIW should first carry out a survey to establish how much sediment has accumulated and estimate the quantity likely to be washed out through the scour valve. Alternatively, water could be siphoned off from the top of the reservoir with the siphon pipe being lowered as the reservoir level drops.

13. NIW should also consider whether pollutants might be present in significant amounts within the sediment and/or the water.
14. If an initial risk assessment indicates that sediments might contain pollutants, the sediment must be chemically tested.
15. If NIW identifies high levels of metals or other pollutants in the dam sediment, then NIW must consult NIEA to discuss additional mitigation measures which may be required.
16. It may be necessary for NIW to dredge sediment from the reservoir before the emptying of water through the scour valve. Dredged sediment will be waste and treated as such within the bounds of the waste regulatory framework. Stratification is one of the most environmentally damaging aspects of reservoir releases; causing pollution and killing fish and other creatures that may reside in the reservoir itself.
17. During summer months, the sun warms the surface waters whilst the deeper water remains colder. This produces two separate layers of water that do not mix, separated by a layer where the temperature and density change rapidly, called the thermo-cline.
18. As the lower layer of water is not in contact with the air, little oxygen reaches it. The decay of organic matter in the water and the depletion of oxygen on the bed of the reservoir may make it become completely anoxic.
19. This increases the concentrations of substances such as iron, manganese, ammonia and sulphides in the water and it may become toxic to fish and other aquatic life as well as creating an offensive smell and appearance.
20. NIW can prevent stratification in reservoirs by using de-stratification devices, such as a bubble curtain, that keeps the water mixed in spring and summer.
21. However, since stratification can be unpredictable, the undertaker should continuously monitor and test the dissolved oxygen levels in the reservoir during the emptying process as the reservoir may stratify. A significant release of reservoir water containing low levels of dissolved oxygen would adversely impact the receiving waterway and its ecology.
22. The authorisation from NIEA may make it an offense to make planned releases of bottom water when the reservoir is stratified.
23. Algal blooms in the reservoir may also result in poor quality discharge water.
24. NIW should not empty a reservoir at a time when a significant algal bloom is occurring, unless it can be shown that the bloom will not affect the receiving waterway.
25. Where planned work could affect Natura 2000 sites the competent authority is required to carry out a Habitats Regulations Assessment to ensure that the project will not adversely affect the integrity of the Natura 2000 site.
26. Where planned work could impact on Areas of Special Scientific Interest (ASSIs) public bodies must ensure that the work does not cause significant damage to ASSI features.
27. Planned work must not be allowed to harm European protected species or nationally important species and where necessary appropriate licenses sought and mitigation measures put in place.
28. Outside designated sites priority habitats and species should not be subject to unacceptable adverse impact.

In summary, a suggested programme of works.

29. Environmental risk assessments should be completed at each reservoir where there are issues relating to Natura 2000 sites, ASSIs, locally important sites, European priority species, nationally important species, priority habitats, priority species or other natural features consulting NIEA Natural Heritage as necessary.
30. A method statement should be developed for the refurbishment work clearly identifying in the plan the steps to be taken to mitigate against the cumulative impacts of numerous emptying activities on the receiving waterway if that is planned. An example of this is in the Woodburn series of reservoirs.
31. Following an assessment of the environmental risks NIW should agree with NIEA the order in which reservoirs will be emptied.
32. If feasible, divert any feeder streams to prevent them from entering the reservoir; this will greatly reduce the time needed to empty these systems.
33. Quantify the sediment load within the reservoir and the amount likely to be mobilised. Test the sediment for contamination and provide detailed mitigation proposals if a pollution risk is identified.
34. Plan sediment releases using the following steps – take as much potable water as possible out of the reservoir via the drawdown tower. Once sediment and pollutant risks are mitigated for start the scour valve drawdown. The volume and velocity should be ramped up to mimic a natural storm event.
35. If sediment quantities, sediment availability and pollutants contained in sediment present an unacceptable risk to the receiving waterway, NIW should consider pumping water out of the reservoir via the spillway or using a large siphon pipe system to draw out of the reservoir. The siphoning method was suggested by the Scottish Environmental Protection Agency (SEPA) and possibly could allow for a mobile drum filter to be used to further reduce pollution risk.
36. Assess the risk for the reservoirs located around Belfast and Bangor where the release water will travel through urban streams / culverts that in situ pollutants are not mobilised which then impact fish, or estuarine / coastal water quality. These reservoir releases may be better planned for periods when sufficient natural flow could buffer any likely impacts. The volume and velocity planning will need careful consideration.
37. Downstream abstractors, dischargers and recreational water users should be made aware of when these releases occur.
38. NIW should as a priority consult with NIEA (Natural Heritage Directorate) to discuss any additional monitoring / surveys etc needed to inform the Habitats Assessment process. Biodiversity and protected sites should also be taken into consideration.
39. NIW will be required to submit a pollution prevention plan and monitoring plan to ensure that each controlled release meets the NIEA requirements. Flow, velocity, quality, biodiversity requirements will need prior agreement with NIEA.
40. NIW should consider as a mitigation measure ‘in river’ enhancement works following these controlled reservoir releases. A good source of advice and guidance on river enhancement works is the River Restoration Centre in the UK.
41. NIEA will not licence this issue, however, it will regulate under Article 7 of the Water (Northern Ireland) Order 1999, which makes it an offence, whether knowingly or otherwise, to discharge or deposit any poisonous, noxious or polluting matter so that enters a waterway or water in any underground strata.

Northern Ireland Local Government Authority

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Mr Paul Frew MLA

Chairman
Agriculture and Rural Development Committee
Room 243, Parliament Buildings
Ballymiscaw, Stormont
Belfast, BT4 3XX

Cc. Stella McArdle, Committee Clerk

18th February 2014

Dear Mr Frew

Reservoirs Bill

I am writing on behalf of NILGA to thank the Committee for the invitation to make an oral presentation in relation to the Reservoirs Bill. This Bill is important to councils, since many councils are owners or managers of bodies of water that will be covered by the requirements of the Bill. Councils are also materially involved in community resilience and emergency planning, working closely with DARD and particularly Rivers Agency to prevent flooding, and to protect the public in the event that flooding does occur.

I have been in contact with a number of councils that have ownership or management responsibilities in relation to reservoirs, in the hope that they could assist NILGA in giving evidence in relation to what is an extremely technical Bill. In doing so, I established that the Committee has been in contact with the same councils, and that they will be giving evidence to the Committee on the same day. It is therefore unlikely that NILGA could add much value to the Committee's scrutiny of the Bill from a technical standpoint.

Additionally, given the current constraints on NILGA and heavy prioritisation of our work due to the legislative passage of the Local Government Bill and related subordinate legislation, it is with regret that I must turn down the opportunity offered to NILGA to give evidence on the Reservoirs Bill. There are however, a number of issues that I would highlight to the Committee, and trust that you will take these into consideration during your deliberations.

Key Issues

1. I understand, from conversations with the Committee Clerk, that the Committee is particularly concerned by the lack of information in relation to costs associated with the implementation of this Bill, and this is a concern that would be shared by NILGA. There may be large maintenance and repair bills for reservoirs where an owner cannot be traced or is irresponsible, and it is vital that councils are not a point of last resort for funding of works that need to be carried out in default.
2. NILGA has been requested to provide the Committee with some background information in relation to cost estimates that councils may have developed in relation to maintenance of reservoirs in council control, to assist the Committee in developing a wider cost estimate. We

will endeavour to source this information and provide it to the Committee in a timely manner, should it be available.

In the meantime, we would recommend that the Committee refers to the Government's response to the Pitt Review (2008) published in December 2009, which gives an indication of the funding required for this work in England and Wales. This document is available online at:

<http://archive.defra.gov.uk/environment/flooding/documents/risk/pitt-progress091215.pdf>

3. NILGA has discussed the Bill with the Secretary of the Local Government Chief Environmental Health Officers Group and Local Government Emergency Management Group (LGEMG), Mr Barny Heywood (Omagh District Council), and also with Mr Eugene Cunningham who is the Emergency Planning Co-ordination Officer for the Southern Group Environmental Health Committee. Local Government Emergency Management and Planning is performed on a collaborative basis, under the regional auspices of LGEMG. We are particularly keen to ensure that the Committee looks at the Bill within the context of emergency planning, as well as the engineering context. To this end, I have attached a paper, prepared by Mr Cunningham in liaison with Mr Heywood, to outline concerns from an emergency planning and resilience standpoint.

NILGA would strongly encourage the Committee: a) to consider the repercussions of the attached paper, and b) to propose the development of robust Civil Contingencies legislation appropriate to Northern Ireland as a key recommendation of your forthcoming report.

The attached paper also contains a substantive list of references to publications that may be of interest to the Committee in its scrutiny work on this Bill. Please feel free to come back to me with any queries you may have in relation to the information provided.

4. NILGA is aware that a more integrated approach to emergency planning, flood prevention and management and adaptation to climate change has been developing in recent years, and that Rivers Agency have been materially involved in this work, alongside councils. Our members are keen to ensure that the recently formed flood forums are all meeting regularly and working effectively, and that they take risks from reservoir failure into account, in addition to coastal and fluvial flooding.

The members and staff of NILGA wish the Committee well in its scrutiny of the Bill, and we will revert to you with any information that is made available to us in relation to costs of reservoir maintenance. Should you require any further information from the Association, please do not hesitate to contact me at the NILGA offices.

Yours sincerely

Karen Smyth

Head of Policy

Enc.

Reservoir Flood Resilience in Conjunction with the Draft Reservoirs Bill

Introduction

The following discussion offers an emergency planning and resilience viewpoint of managing the risks associated with reservoir safety. In the last 200 years there have been 14 dam failures that have resulted in the deaths of 465 people across the UK. However, there were 10 dam failures and a number of serious incidents since then. Pitt (2008: 303).

Many observers argue that some of the failures leading to such crises and disasters are only 'predictable' with the benefit of hindsight, Wildavsky, (1985, 1988). However, learning from past disasters and accepting that not all risk can be 'hard' engineered out of existence, is a more holistic approach. Thankfully as Hood and Jones, (2001:12) point out '*...it is a normal principle of sound design to incorporate both the lessons of previous failures and forethought about likely future ones*' Hence emergency planning and resilience should be essential elements of the Reservoirs Bill.

Apart from those engineering works discussed elsewhere within the consultation process, the following key points are recommended regarding the overall risk from flooding and subsequent inundation associated with reservoir failure.

Flood Planning & Resilience

The management of such structures should include an overall flood plan. The plan should consist of the three main elements consistent with recommendations documented by the Pitt Review (2008) below.

- The plan should include an on-site flood plan detailing the response to a potential breach. This may reduce the impact of any uncontrolled escape of water.
- An inundation map for each reservoir depicting the area potentially affected by an uncontrolled escape of water. This should highlight potential critical infrastructure and domestic households potentially affected by the flooding.
- A communications plan outlining how all stakeholders will communicate with each other. This must involve warning and informing advice to all those potentially affected by the uncontrolled release of water.
- Plans should be formulated and reviewed through respective First Responders Groups.

Roles & Responsibilities

Although the legislation pertaining to Reservoirs safety in England and Wales; *The Reservoirs Act 1975*, was amended within *The Flood and Water Management Act (2010)* such instruments are not currently applicable in Northern Ireland. Despite this, consideration should be afforded to the wealth of experience and research readily available within.

Some of the terminology and associated roles and responsibilities regarding the overall management of the risks involved, will require agreement and possible amendment to suit existing structures within resilience arrangements in Northern Ireland.

Civil Contingencies functions in Northern Ireland do differ from those in England and Wales and key agencies, pivotal in the management of reservoir safety within the arrangements mentioned do not have the same responsibilities in Northern Ireland. In particular, the roles of Local Resilience Forums in England and Wales are now well established following the passing of the *Civil Contingencies Act 2004*.

The Northern Ireland equivalent, *'The Civil Contingencies Framework 2005* provides mere enabling powers for many including District Councils, and the resilience groups are voluntary coalitions of like minded agencies. These differences and others have often been seen as barriers to, and at times a hindrance to effective resilience building in NI. Indeed numerous reports such as PEDU OFMDFM (2012: 8, 25, 27, 29) and the report into the Freeze/Thaw

crisis (Consumer Council 2011) offer a contemporary analysis of flood resilience and reiterate recommendations for change.

Funding

Much weight has been given to the need to ensure the Draft Reservoirs Bill will equip society to manage the current and possible future challenges associated with flood risk. The timing of the bill and associated arrangements are given added focus due to the obligations contained within the EU Floods Directive (2007). In order to make these and future initiatives realistic and achievable, consideration must be given towards the possible funding needs of any resilience building measures. This should include not only the 'hard' solutions, already discussed within the earlier consultations of this bill, but also all those activities such as community engagement, warning and informing, training and testing of plans and protocols etc necessary to establish and maintain an acceptable and effective standard of resilience. Schemes of funding such as those highlighted by DEFRA (2009: 91) whilst not comprehensive do offer some estimation of some of the costs involved.

Conclusion

The incidence of excessive weather episodes, and unknown future changes to our climate have focused our attention to the real and potential impacts associated with flooding. Since 2007, the only year without a serious flooding event in NI was 2010. The sources of flooding are common knowledge and whether this is from coastal surge, recently experienced in NI, or from swollen river courses in many previous episodes, the impacts are very tangible. Whilst the likelihood of failure from our water storage structures is low, the potential impacts could prove devastating. This is especially critical when examining those dams and reservoirs located in close proximity to populations and critical infrastructure. The failure of the Ulley reservoir in Rotherham in 2007 documented by Pitt (2008: 301) serves as a fairly contemporary reminder that vulnerability exists. Pitt recognised the need to learn from this incident and reminds the emergency planning community of the lack of contingency arrangements of the time. These failings have prompted recommendations regarding hard engineering measures and contingency building initiatives similar to those outlined above and are now included in The Reservoirs (Scotland) Act 2011 as well as contingency measures offered by The British Dams Society (2014). This duality of strategies between hard engineering and the softer measures provides the basis for the more holistic approach called for above.

Eugene Cunningham EPCO Southern Group

18th February 2014

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Northern Ireland Water

ANNEX A



Implications of the Reservoir Bill to NI Water

1. Implications of the Reservoirs Bill to NI Water

1.1 Introduction

DARD Rivers Agency (Rivers Agency) is the competent authority for the implementation of the EU Floods Directive in Northern Ireland. The Reservoirs Bill is being introduced to make provision for the regulation of the management, construction and alteration of certain reservoirs, in particular in relation to their safety to collect and store water; and for connected purposes. The Reservoirs Bill seeks to introduce management regimes on controlled reservoirs (defined as a structure or area which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land), dependent on the risk associated with the structure.

NI Water is, like its predecessor DRD Water Service, committed to ensuring the safety of the public of Northern Ireland. It has already been managing its impounding dams in line with the England and Wales Reservoirs Act 1975.

NI Water has arranged that competent staff carry out inspections on a monthly, biannual, and annual basis. In addition NI Water employs an Independent Inspecting Engineer to carry out 10 yearly inspections ('Section 10 surveys') and provide a comprehensive report on the Reservoir condition, including recommendations for any work which may be required. The Independent Inspecting Engineer holds an 'Inspecting Engineers Certificate' and is a member of the Panel AR (All Reservoirs Panel) under the Reservoirs Act 1975. For any improvements identified on the Section 10 surveys NI Water then puts in place a programme of work to address the recommendations. The most recent round of Section 10 surveys were carried out in 2007, and the last of the recommendations are being delivered in the current PC13 period.

To comply with the new NI Reservoirs Bill, a new activity to NI Water will be the preparation and maintenance of formal on-site and off-site flood plans.

1.2 Summary

As the largest single owner of structures that will be affected by the proposed Bill, NI Water welcomes the clarity that it will bring regarding responsibilities and management. Overall the introduction of the Reservoir Bill will not have a major impact on NI Water, apart from the requirement to prepare on-site and off-site flood plans. It may have a greater impact on the impoundments which are in private ownership.

1.3 NI Water Assets affected by the Reservoirs Bill

NI Water has 71 structures under its ownership that will fall within the proposed NI Reservoirs Bill. These are set out in Appendix 1.

These are:

- 46 impounding reservoirs (including two that are operated under the PPP Alpha Contract)
- 25 Service Reservoirs or Clear Water Tanks at 13 sites (including two that are operated under the PPP Alpha Contract)

For the majority of these sites NI Water will be the designated 'Reservoir Manager' and carry out all related responsibilities. This will include Killea Impoundment, an out-of-service impoundment that spans the border with Donegal. NI Water is currently negotiating to secure the ownership of the land surrounding this reservoir.

The sites that will have a different management regime are the 5 currently operated under the Alpha PPP contract. These are the clear water basins (large tanks that hold treated water before it is put into supply) at Dunore Point Water Treatment Works (WTW), Castor Bay WTW and at Ballinrees WTW, plus the 2 raw water impoundments at Ballinrees and Altikeeragh. The PPP operator will be the 'Reservoir Manager', with duties for surveys and inspections. However NI Water is contractually obliged to meet any necessary repair costs.

In preparation for the introduction of the Reservoir Bill NI Water developed an action plan to prepare for compliance when the Bill is introduced. This plan was completed in 2011 and is currently being implemented.

2. How the Reservoirs Bill will impact NI Water's estate management plan and Disused Asset Disposal

NI Water's Estate Management Plan (EMP) lists a number of impounding reservoirs which are no longer required for operational use and are therefore due to be disposed of. This is because each reservoir has been out of service for some time, and each has been assessed as being unsuitable as a future source of raw water.

Despite each being 'out of service', and where possible leased for recreational use, such as fishing, these unused reservoirs are loss making and require ongoing inspection and maintenance. As a public body and under our regulatory licence NI Water is required to efficiently manage its assets and obtain best value from the release of unused assets.

There are a number of other factors to be considered including:

- recent economic issues have impacted upon land values for property development and other commercial uses;
- the proposed new NI Reservoirs Bill is likely to reduce the potential sale value of disused impounding reservoirs where the buyer proposes to maintain the structure to retain water. This is because the new owners will be required to fund and implement a legally required programme of surveys and to carry out the maintenance recommended;
- Councils and environmental bodies are concerned that many of the impounding reservoirs should remain due to the ecological and environmental benefits that have been realised at these sites over the years and;
- Government departments, such as DCAL, and Councils are reluctant to take on new cost liabilities.

3. Plans for the 2016/17 'Section 10 Surveys'

NI Water is including funding for the next set of 'Section 10 surveys' to be carried out in 2016/17 in the PC15 Business Plan, which it to be submitted to the Utility Regulator in March 2015.

4. Camlough Dam Arrangements

Camlough Dam is a particular example of an impoundment which is operated by a range of bodies and will be affected by the new Reservoirs Bill. Due to the complexity of arrangements regarding this particular impoundment, more details have been provided below.

The 'Newry Improvements and Water Act 1871' set up 'Camlough Waterworks Trustees' to build a dam on Camlough Lake to regulate the flow and supply of water in the Camlough River. The Trustees are technically the owners of the dam; however they are now deceased.

Camlough Lake has been used as a raw water source since local government reorganisation in 1973. The current rate of abstraction by NI Water from the lake is 4-5 MI/d – this roughly serves a population of 20,000.

As NI Water does not own the lake bed or the dam it has not historically inspected or maintained it. There is nothing within the terms of the historical or current abstraction Licenses for Camlough Lake that would constitute an obligation to maintain the site or the impounding structure.

In February 2010 Rivers Agency informed NI Water that a NI based England & Wales Reservoir Act 1975 'Panel Engineer' (Mr Alan Cooper, URS Consultants) had indicated the dam should be cleared of vegetation and an inspection made.

In 2011 NI Water commissioned a preliminary inspection of the main dam at the Camlough Lake to:

- assess the assets being used by NI Water to supply drinking water into Newry and the surrounding area as part of the 2012 Water Resource Management Plan (WRMP).
- inform NI Water's consultation response on the proposed NI Reservoirs Bill.

This report was completed in February 2012 concluded that a high level estimate of costs to improve the dam safety in accordance with the requirements of the England & Wales Reservoirs Act 1975 (including the 2003 and 2010 amendments) would be in the order of £3.4m. In addition, annual operational costs of around £13,000 would be required for maintenance and inspection and a 10 yearly inspection is required at an approximate cost of £3,000.

There have been a number of stakeholder meetings to address issues of ownership and responsibilities under the NI Reservoirs Bill as well as a way forward for the funding of surveys and improvement works. URS provided a report to the key stakeholders on 3 February 2014 which set out a revised more accurate estimate of the cost of works necessary to comply with the NI Reservoirs Bill (£2.5m), the annual maintenance costs thereafter, and considered a number of options. The report was developed to inform further discussions on deciding how to fund and deliver the works to improve the dam, and to consider its future ownership and long term management. A further stakeholder meeting is planned to meet and discuss the findings of this report in February 2014.

Ownership of Camlough Dam

NI Water has no interest in becoming the owner of the reservoir as it is uncertain of whether or not it will be required as a source of raw water from 2017. N&MDC has stated an interest in becoming the owner, however needs to understand the associated operating and maintenance costs (the recently completed report should meet this requirement). A number of legal issues remain to be resolved.

Benefits

NI Water has tried to identify the key stakeholders to determine what benefits are provided by the reservoir. These are listed below.

	Benefit	Beneficiary	Responsible Party
1	Raw water supply	Customers of NI Water (the Camlough WTW supplies some of NI Water's customers in the N&MDC area. It does not supply any other area.)	NI Water – however could discontinue using this source from April 2015. A review to be completed in 2017 will determine if NI Water should continue to use this source.
2	Recreation & Tourism	Residents and businesses, predominantly from within the Newry and Mourne District Council (N&MDC) area.	N&MDC has built facilities and operates them (such as the slipway, car park, & disabled access walkway). The council promotes the area due to scenery (has built and maintains other car parks around the reservoir).
3	Control of levels in the Newry & Mourne Canal	N&MDC - who are responsible for the maintenance of the canal.	N&MDC has operated the valves to do this and has stated through their lawyer that it wants to continue to do so.
4	Release of water during low levels to provide water for animals & land (direct from the river)	Residents of N&MDC area who have lands along the downstream river.	A ' community group ' that N&MDC engages with.
5	Attenuation of storm water leading to a reduction in peak discharge during storm events.	Owners and occupiers of properties in the floodplain.	Rivers Agency (ref EU Flood Risk Management Plans). Rivers Agency would not permit removal of the dam unless detailed analysis has been carried out, and if found to be necessary suitable alternative flood alleviation measures are in place. Rivers Agency has noted that significant development on the original flood plain and to watercourses downstream has occurred since the dam was built in 1870.

Appendix 1: Schedule of NI Water's Impounding Reservoirs

NI Water has recently disposed of 2 No Impounding Reservoirs and is now responsible for 46:

Impounding Reservoirs In Service (23 No):

- 1) Copeland
- 2) Clay Lake
- 3) Seagahan
- 4) Altnaheglish (IR)
- 5) Glenhordial (WTW)
- 6) Lough Fingrean
- 7) Lough Bradan (IR)
- 8) Mournes Silent Valley IR 2
- 9) Mournes Silent Valley IR 1 (Ben Crom)
- 10) Spelga IR
- 11) Fofanny IR
- 12) Woodburn Lower (3)
- 13) Woodburn Lower (1)
- 14) Woodburn Lower (2)
- 15) Killylane (IR)
- 16) Woodburn North
- 17) Dungonnell (IR)
- 18) Altnahinch (IR)
- 19) Ballinrees (IR) (Operated by PPP)
- 20) Altikeeragh (Operated by PPP)
- 21) Lough Island Reavy IR
- 22) Loughmourne (Carmanus)
- 23) Dorisland

Not included in the above list are Lough Fea, Lough Macrory, Lough Lee – which NI Water has categorised as natural loughs.

Impounding Reservoirs Out of Service (23 No):

- 1) Creightons Green (IR)
- 2) Ballysallagh Upper
- 3) Craighulliar
- 4) Altmore (High)
- 5) Altmore (Low)
- 6) Killea (WTW)
- 7) Ballydoolagh (IR)
- 8) Ballysallagh Lower
- 9) Church Road
- 10) Conlig Lower (IR)
- 11) Boomers Reservoir
- 12) Ballintemple IR
- 13) Knockbreckan
- 14) Stoneyford Reservoir
- 15) Leathemstown
- 16) Quolie (South)
- 17) Quolie (North)
- 18) Ballyversall
- 19) Dunalis
- 20) Lough Cowey
- 21) Lough Money
- 22) Portavoe IR
- 23) Conlig Upper

Impounding Reservoirs Sold:

- Tannaghmore
- Ballywillan

Note also that Killyfole / Killyfoyle was transferred back to the local Council many years ago.

Ulster Angling Federation

Presentation to DARD Committee re Reservoirs Bill

The Ulster Angling Federation is the representative body for game angling associations in Northern Ireland. We have a membership of some 60 associations with a total individual membership of some 7,000 anglers. The Federation represents anglers in discussions with Public Bodies, Government and other NGO's and has been in existence since 1930. We are represented on a wide range of committees to ensure the concerns of anglers are heard.

Our member Angling Associations are very concerned about the effects of these proposals on their Reservoirs.

It is important for tourism and local clubs that we allow existing fish populations to prosper.

The Pricewaterhouse Coopers Report of July 2007 for DCAL on the social and economic value of angling in NI, states that all forms of angling in NI support some 780 full time equivalent jobs, and are worth some £40m p.a. to the NI economy, mostly from game angling. If these jobs/economic benefits are to be maintained and enhanced, the provision of good water quality and satisfactory fish stocks are absolutely vital for our fisheries and tourism. The following comments are made in that light.

The publication of the first State of the Environment Report for Northern Ireland in 2008, together with the introduction of annual Northern Ireland Environmental Statistics reports in 2009, means that we now have an extensive set of indicators on the Northern Ireland environment. The following are an extract from the "Conclusions & Key Challenges" from the most recent State of the Environment Report prepared by Government in 2013.

As a result we are better able to assess the effectiveness of environmental policies over the longer term and to base decisions on how we manage and protect our environment, on appropriate evidence.

The challenge of sustainable rural land use remains but it is too soon to judge the impacts of planning policy changes and agri-environment schemes. However, it is clear from new evidence from the marine environment, from biodiversity indicators and the status of our waters that key ecosystems remain under threat. A fully integrated approach to the management of our land and water environment is needed.

Response and Opportunities

To address these challenges we need to recognise the full value of the services our environment provides in achieving a healthy economy, prosperity and well-being in all our decision-making. The key principles underpinning the way forward are already widely recognised:

1. Working to achieve resilient, diverse ecosystems capable of providing vital services while absorbing pressures and responding to change.
2. Valuing and managing natural resources to support economic and social prosperity.
3. Protecting the quality of life by reducing pollution, protecting heritage and promoting sustainable land use.
4. Taking advantage of new opportunities and developing innovative solutions that protect and enhance our environment will not only provide a clean and safe place to live but also make Northern Ireland an attractive place for investment in our key agriculture, food and tourism sectors.

With this in mind we need very careful consideration of the proposed Reservoirs Bill, The UAF is not opposed to the Bill in fact we welcome it as it brings us into line with the rest of the UK and the greater focus on human life.

We have some 140 reservoirs of which some are Council owed some belong to NI Water and approximately 28% of these are privately owned, which includes some of our members. The Federation have grave concerns about the cost of obtaining a Panel Engineers Report which could cost in the region of £10,000 as most clubs will not have the financial resources to pay such a bill. There is a real danger therefore that these type of Reservoirs will be lost as an amenity and I refer back to my previous comments on State of the Environment **Valuing and managing natural resources to support economic and social prosperity. Also develop innovative solutions that protect and enhance our environment.**

With this in mind there is a real need for Government to provide a grant Scheme to allow those clubs etc to comply with the new legislation. Otherwise you may find that clubs will declare themselves bankrupt and walk away from the reservoir leaving Government to pick up the bill anyway. All fees associated with the legislation need to be waived in the case of clubs etc who are providing an amenity for local and tourist anglers.

This is an extract from the recent Strategic Review of Angling in Northern Ireland "Derelict Waters: One of the issues highlighted was the development of derelict waters for angling under the 1966 Fisheries Act. Derelict waters may offer the potential to increase opportunities for angling where there is a shortage of opportunities to meet the needs of local communities, which, it was suggested, is particularly acute around Belfast.

Again any loss of amenity where a shortage exists is not acceptable.

The current proposal is that a structure with the capacity to hold 10,000 cubic meters or more above the natural level of the surrounding land will be regarded as a controlled reservoir. There may be an argument to raise this to 15,000 cubic meters which would allow some reservoirs to opt out of the legislation. In addition the Department have not been able to provide the formula which has been applied for the escapement of the 10,000 cubic meters above natural land level. Many reservoirs have been created from existing lakes with the addition of a wall or walls to provide more water. If a breach occurs the reservoir will only spill that quantity of water which is above the natural land line and we have no idea how this has been calculated. In other words there appears to be a flaw in the legislation as there is going to be a quantity of water still retained within the natural lie of the land.

R F Marshall

Development Officer
Ulster Angling Federation

Walter Watson

FAO Mr Paul Frew.

Dear Paul,

Thank you for the invitation to the meeting at Parliament buildings tonight, unfortunately I am currently away on business and will not be able to attend.

The “reservoir” that relates to me is McAuley’s Lake, Spa Ballynahinch. The involvement is simply having land on the western upstream boundary of the water. We do not use the water for anything and have no ownership of the Water Rights. I believe the water rights, the control of the sluice gate used to belong to Drumaness Mill and was since obtained by the Late John Lewis Crosby before he put a valve in to control the flow to a corn mill museum at Raleigh Road, Crossgar.

The key Points for me are.

- The work activities of my small holding does not increase the volume of impounded water anymore than other farms on the contributing rivers.
- I do not use the water in the lake
- I would have no issue if the lake was drained to below the threshold volume of retained water.
- Roads Service would be a considerable contributor to the water supply to the lake.
- There are at least two major water turbines downstream of the lake, I believe as the impoundment is for their benefit, the costs of inspections should be met by the end user.

I would appreciate a copy of the minutes from tonight's proceedings.

Regards

David

David Barr
Managing Director



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Wilson Family

TO AGRICULTURE AND RURAL DEVELOPMENT COMMITTEE.

Points of concern from a family farm potentially affected by the proposed Reservoirs Bill.

- We only became aware of this catastrophe two weeks ago. We never imagined we could be in possession of a so called reservoir (we see our lake/mill dam as such and nothing else). Rivers Agency seem to be trying to get this Bill implemented under the cover of darkness. We did not know we should be contributing input to the preceding consultation.
- How can a family farm be expected to carry the ongoing cost of inspection never mind the impact of perhaps hundreds of thousands of pounds of work needed to be spent to comply? No Bank would ever lend such money for works or exorbitant inspection fees.
- European Convention of Human Rights guarantee the individuals right to property and every person is entitled to peaceful enjoyment of his possessions. It would surely be a grave mistake for the Northern Ireland Assembly to arbitrarily introduce legislation which would have the effect of bankrupting the individual by making him sell his property and losing his livelihood.
- In this consultation was there an impact study carried out on individuals such as ourselves as to the stress and heartache such as we have felt these last two weeks. It seems that there has been more consideration given to the penalties and jail sentences threatened to those who see absolutely no way of being able to implement this Bill as instructed.

This Bill is unworkable and unfair in its present form.

18.03.14

Wilson Family

Ulster Farmers Union



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26 March 2014

FROM THE DEPUTY PRESIDENT

Paul Frew
Chairman of Agriculture and Rural Development Committee
Room 243,
Parliament Buildings,
Ballymiscaw,
Stormont
Belfast,
BT4 3XX

Dear Paul,

THE PROPOSED RESERVOIR BILL

I write to you with regard to the above matter to raise concern about the practical and financial impact this will have on some farmers.

The linen industry was very significant to our history. Nearly every town and village had a mill which was generally serviced by a mill dam. Although the linen industry is no more, many of the mill dams still remain. However, through time, these dams have evolved to become important landscape features and an important habitat for wildlife.

Against this background, it is our opinion that these 'Landscape features' should not be defined as a reservoir in any sense and should therefore be exempt from the proposed Reservoirs Bill. This would mitigate any practical and financial impact on farmers.

Should you have any queries on this matter, please do not hesitate to get in touch.

Yours sincerely,

BARCLAY BELL

Established 1918
Clarke Black, Chief Executive



Northern Ireland
Assembly

Appendix 4

Private Sector Stakeholder Event

Appendix 4 – Stakeholder Event

1. Stakeholder Event notes – Tuesday 18th March
2. DARD response regarding Stakeholder Event

Stakeholder Event notes – Tuesday 18th March

Reservoirs Bill

Discussion with Private Sector Owners

Tuesday 18 March 2014

In Attendance:

John Witchell
Terry Maguire
Jim Haughey MBE
Damien McCallin
Dr Jim Bradley
Robert Wilson
John Gilliland
Martin Coburn
John Coburn
Marcus Malley
Ray McKeeman
Nuala Wheeler
Denise Corbett
Kieran Brazier
David Porter

During the discussion the participants broke into two discussions groups. The first group discussed and reported back on issues 1, 2 and 3. The second group discussed and reported back on issues 4, 5 and 6. Both groups were given the opportunity to discuss other issues of concern which are reported at the end of this document.

Issue 1: Classification of Risk

- Concerns about how the risk is designated, It is not based on the probability of the reservoir breaching.
- Other countries (USA & Australia) have achieved this yet we here say it is impossible.
- This is coming from Europe yet some EU countries are not implementing this, why are we?
- Current classification of risk and the Bill are based on out of date flood maps.
- Unfair burden being placed on people who have had reservoirs placed upon them and classification may push them under.
- Reservoirs prevent more flood risk than they create. There is likelihood that abandoned or decommissioned reservoirs would create more flooding.
- Risk comes from probability, if a high risk reservoir has £20k worth of improvements for example, it would still be high risk. How is this workable?
- We always hear about reducing red tape, yet it seems to be being created here along with an industry.

Issue 2: Panel of Engineers

- Grant aid should be 100% for both inspection and remedial work. It is unfair when private owners are categorised with councils and other Government bodies who have access to money.

- Reservoirs have successfully regulated their reservoirs here for years, why the need now for experts?
- Reservoirs are covered by 3rd party insurance.
- One engineer in Northern Ireland who is not quite yet a panel engineer. Are we creating an industry? Other engineers could have the ability/capability to do this, is there a need for panel engineers?
- No engineer will ever say a reservoir is 100% safe.

Issue 3: Planning Service

- Concerns about who will police the planning aspect.
- Concerns about abandoned reservoirs which would need planning permission to be decommissioned.
- Mills are frequently downstream from reservoirs, and employ people. Options could be to fix/make it safe or get rid of employees.
- Dishonest builders may build without permission. This will have or could have a negative effect on your reservoir until a case is decided on, maybe even 3-4 years.

Issue 4: Operating requirements

- Concern re 'capable of holding' – what if there is no economic reason to 'fix' a reservoir. Will an engineer still be required?
- Low number of failed reservoirs here – what is the reasoning behind the Bill for low key reservoirs?
- Engineer's recommendations could increase costs for some reservoirs significantly but could also reduce them or reduce fears around the process.

Issue 5: Grant Aid

- Grant aid would need to be a guarantee. Community assets will be lost and the time and effort spent in developing them will have been wasted. Huge impact on the community.
- If a dam is filled in, will compliance still be required?
- Concern regarding getting a dam up to the required standard and the associated capital costs. Grant aid is a grey area.
- Wildlife and biodiversity issues need to be considered if grant aid at 100% is not provided.
- Bill will have an impact on a range of issues if grant aid not given – health, social benefits, biodiversity and environmental impact.
- Funding should be open ended – if time bound then just delaying the problem.
- Requirement for more record keeping – too much red tape. Will this necessitate employing an additional person just for this purpose?

Issue 6: Decommissioning

- The Bill will not stop you decommissioning a reservoir but there needs to be recognition of the wider use i.e. community and environmental costs.
- Will Rivers Agency take costs if clubs etc. go into liquidation? Rivers Agency will but they may pursue for costs.

Other Issues

- There seems to be no concern for the rights of unknowing reservoir owners, particularly stress and wellbeing issues.

- Concern around correct definition and explanation of a reservoir, including qualifying amount.
- The consultation process between Rivers Agency and reservoirs owners prior to tonight. How many have further fell through the loophole?
- Importance of dams regarding heritage and the true definition of why the Bill is being brought forward.
- Ecology issues were decommissioning may be the only option and the impact on wildlife including endangered species.
- How will any work that is undertaken improve the mitigation of failure?
- A need for a simple way of decommissioning reservoirs including a reasonable get out clause for owners not able for the costs. This is seen as a last resort and not what we want to see.
- Concern regarding the consultation process carried out by Rivers Agency.
- Private owners should have been properly identified before consultation began in order to influence thinking.
- Whilst the Bill is a well-researched engineering document, no thought has been given to social and environmental concerns.
- Committee cannot make a judgement call unless all costs for private owners are known.
- Rivers Agency has agreed to provide the risk assessment and flood maps.
- The Bill will not be a priority within the budget and therefore grant aid may not be guaranteed.
- If initial works are identified will there be financial assistance?

DARD additional response regarding issues raised on 11 and 18 March 2014

**Corporate Services Division
Central Management Branch**



Department of
**Agriculture and
Rural Development**

www.dardni.gov.uk

AN ROINN
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Forbartha Tuaithe**

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Stella McArdle
Clerk to the Committee for
Agriculture and Rural Development
Room 243
Parliament Buildings
Ballymiscaw
Belfast BT4 3XX

Date: 15 April 2014

Dear Stella

Reservoirs Bill Committee Meeting 11 & 18 March 2014

Further to my letter of 2 April, Rivers Agency officials have now considered and commented on the issues raised by private sector reservoir owners during the stakeholder event on Tuesday 18 March 2014. This is attached at Annex A and, for ease of reference, Rivers Agency comments are set out immediately below each of the issues raised.

Rivers Agency noted the correspondence which the Committee received from the Department of Social Development dated 13 March 2014 which contains maintenance costs for Springfield Reservoir in Belfast. This information is useful as it will assist in preparing the supplementary Financial Memorandum which will be shared with the Committee.

Rivers Agency also noted the correspondence which the Committee received from NI Water dated 10 March 2014 containing details of the annual abstraction fee to the Northern Ireland Environment Agency for water that it draws from Camlough Reservoir. This cost is not related to reservoir safety. Due to their activity, NI Water will be a part manager for this reservoir under the Reservoirs Bill.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely

A handwritten signature in black ink that reads "Paul Mills". The signature is written in a cursive style with a large initial 'P'.

Paul Mills

Departmental Assembly Liaison Officer

DARD response regarding Stakeholder Event

Issue 1: Classification of Risk

- Concerns about how the risk is designated, It is not based on the probability of the reservoir breaching.

Comment: The Reservoirs Bill allows for both consequence and probability to be considered during the risk designation. However, as there is no industry standard for determining the probability, the risk designation will be based primarily on the consequence of total reservoir failure. Rivers Agency understands that the risk designation of reservoirs in England and Wales is also being determined on this basis and a similar approach will be taken in Scotland when its new legislation is commenced.

- Other countries (USA & Australia) have achieved this yet we here say it is impossible.

Comment: Rivers Agency position on this matter is based on advice from the Institution of Civil Engineers (ICE) which has informed the Agency that there is presently no industry standard for determining the probability of reservoir failure. Representatives of ICE re-stated this position in oral evidence to the ARD Committee on 25 March 2014.

- This is coming from Europe yet some EU countries are not implementing this, why are we?

Comment: The main driver for the reservoir safety policy emanates from the Government response to the Northern Ireland policy review of flood management 'Living with Rivers and the Sea' which was published in September 2008. One of the recommendations contained in the report was that "Appropriate legislation will be proposed to provide for regulatory control of reservoir safety in Northern Ireland by Rivers Agency."

The reservoir policy was informed by the preliminary flood risk assessment (PFRA) of Northern Ireland, which was a requirement of the EU Floods Directive. This assessment identified reservoirs as presenting a potential flood risk. The PFRA estimated that approximately 66,000 people are at risk from flooding due to total dam failure of the 151 reservoirs capable of holding 10,000 cubic metres or more of water.

This information was presented to the NI Executive in 2011 when it was agreed that DARD should bring forward legislation to regulate reservoirs in Northern Ireland.

- Current classification of risk and the Bill are based on out of date flood maps.

Comment: Rivers Agency has developed initial flood inundation maps in order to determine the provisional risk designation of those reservoirs that it considers will be regulated by the Bill. More detailed flood inundation maps will be developed for the formal designation of risk. These will include depth, velocity and time of inundation.

- Unfair burden being placed on people who have had reservoirs placed upon them and classification may push them under.

Comment: The management regime contained in the Reservoirs Bill reflects industry best practice and will be applied to all controlled reservoirs in Northern Ireland in order to ensure they are safe, as far as is reasonably practicable to do so. Under common law reservoirs managers have responsibility for reservoir safety and adherence to the requirements of the Bill may limit their liability in the event of a dam failure.

- Reservoirs prevent more flood risk than they create. There is likelihood that abandoned or decommissioned reservoirs would create more flooding.

Comment: All reservoirs provide some degree of flood attenuation. The purpose of the Reservoirs Bill is to ensure that those reservoirs capable of holding 10,000 cubic metres or

more of water are safe. Rivers Agency strongly encourages adherence with the management regime contained in the Bill rather than the discontinuance or abandonment of reservoirs as it recognises the value of reservoirs in Northern Ireland. However, Rivers Agency also recognises the right of the reservoir owner to discontinue or abandon a reservoir and these activities should be carried out responsibly, obtaining the necessary approvals and consents to mitigate flooding or other impacts. When the Bill is enacted any alteration to a reservoir must be supervised by a construction engineer.

- Risk comes from probability, if a high risk reservoir has £20k worth of improvements for example, it would still be high risk. How is this workable?

Comment: Risk designation will be determined by the consequence of total reservoir failure. The probability of reservoir failure cannot be determined at this time, for the reasons stated above. In the circumstances the only means of reducing a risk designation will be to reduce the consequential effect of total reservoir failure.

- We always hear about reducing red tape, yet it seems to be being created here along with an industry.

Comment: As stated previously, the management regime contained in the Reservoirs Bill reflects industry best practice and will be applied to all controlled reservoirs in Northern Ireland in order to ensure they are safe, as far as is reasonably practicable to do so. This also provides assurance to the 66,000 people living in the inundation area of these reservoirs that this risk is being managed appropriately.

Issue 2: Panel of Engineers

- Grant aid should be 100% for both inspection and remedial work. It is unfair when private owners are categorised with councils and other Government bodies who have access to money.

Comment: Rivers Agency acknowledges the costs associated with the commissioning of reservoir engineers and any remedial works that are required to ensure, as far as is reasonably practicable, that the reservoir is safe. The Reservoirs Bill provides the Department with the power to make, by regulation, grant payments to reservoir managers of controlled reservoirs to enable them to comply with their obligations in the Bill.

- Reservoirs owners/managers have successfully regulated their reservoirs here for years, why the need now for experts?

Comment: The vast majority of reservoirs in Northern Ireland were constructed from clay core embankments, which are now more than 100 years old. The ICE has stated that the engineering involved would be considered to be primitive when compared to the standard of reservoir construction today. Also, anecdotal evidence would suggest that many reservoirs in private and 3rd sector ownership have not been subjected to any type of maintenance regime over the years and certainly not to the standard required by the Reservoirs Act 1975 which applies in England, Scotland and Wales. Therefore, it is fair to assume that many of the privately owned reservoirs are very old and could be in poor condition. The introduction of the Reservoirs Bill will ensure that controlled reservoirs are properly supervised and inspected by qualified reservoirs engineers and that any remedial works to make them safe are undertaken in a timely way.

- Reservoirs are covered by 3rd party insurance.

Comment: The Agency is unsure as to the extent of the cover provided by insurance companies. In particular, would such insurance extend to damage or injury in the inundation area of a reservoir caused by reservoir failure or breach, when no inspection or maintenance regime is in place.

- One engineer in Northern Ireland who is not quite yet a panel engineer. Are we creating an industry? Other engineers could have the ability/capability to do this, is there a need for panel engineers?

Comment: Reservoir panel engineers are recognised as having achieved a level of competence and experience in the specialism of reservoir engineering. This allows them to be covered by the appropriate professional indemnity insurance which other engineers would not be able to obtain. With the introduction of the Reservoirs Bill, the Department will follow the policy long held by the Department for Environment, Food and Rural Affairs in ensuring that only those engineers recommended by ICE can be commissioned to supervise and inspect controlled reservoirs in Northern Ireland.

- No engineer will ever say a reservoir is 100% safe.

Comment: No-one can give such assurance to a reservoir manager. However, adherence to the industry best practice management regime contained in the Reservoirs Bill should generally reduce the risk of total reservoir failure.

Issue 3: Planning Issues

- Concerns about who will police the planning aspect.

Comment: The new policy entitled 'Development in proximity to Reservoirs' in draft PPS 15 places an onus on the developer to ensure that the flood risk has been assessed and there are suitable measures to manage and mitigate the identified flood risk. All applications will require the developer to provide DOE Planning with a flood risk assessment, prepared by a reservoir panel engineer detailing any necessary upgrading to the reservoir and its management regime. This will require the developer to engage and to reach agreement with the reservoir manager on the proposed development. The financing of any associated costs to the reservoir and its supervising/inspecting regime would be a matter between the developer and the reservoir manager. This should provide assurance about reservoir safety which will enable development to proceed. Where such assurance is not forthcoming, planning permission will be refused.

- Concerns about abandoned reservoirs which would need planning permission to be decommissioned.

Comment: DOE Planning advise that the meaning of development is set out in Article 11 of the Planning (NI) Order 1991 which reads:

"...development means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land." This wording has been carried over to Article 23 of the Planning Act (NI) 2011 which will be commenced next year. Therefore, planning permission is required in advance of any development covered by Article 11 of the Planning (NI) Order 1991. DOE Planning further advises that the need for planning permission for the abandonment / discontinuance of reservoirs will depend on the nature of any associated works and whether these would constitute engineering operations. Planning permission would also be required for a change of use; e.g. for recreational purposes. Reservoirs owners should, therefore, seek advice from DOE Planning, if abandonment / discontinuance of a reservoir is being considered.

- Mills are frequently downstream from reservoirs, and employ people. Options could be to fix/make it safe or get rid of employees.

Comment: Adherence to the industry best practice management contained in the Reservoirs Bill will significantly reduce the risk of total reservoir failure and make reservoirs safer thus negating the need to redeploy employees. All employers have a duty under Health and Safety legislation to undertake risk assessments, to ensure that any significant risks are appropriately managed therefore ensuring employees are working in a safe environment.

- Dishonest builders may build without permission. This will have or could have a negative effect on your reservoir until a case is decided on, maybe even 3-4 years.

Comment: As stated previously, the risk designation of a controlled reservoir will be determined by the consequence of total reservoir failure on the reservoir inundation area. The legal status of development cannot be a consideration when deciding the risk designation.

Issue 4: Operating requirements

- Concern re 'capable of holding' – what if there is no economic reason to 'fix' a reservoir. Will an engineer still be required?

Comment: Yes. The purpose of the Reservoirs Bill is to make all controlled reservoirs as safe as possible.

- Low number of failed reservoirs here – what is the reasoning behind the Bill for low key reservoirs?

Comment: The Reservoirs Bill will introduce a risk-based approach for the management and regulation of controlled reservoirs in Northern Ireland. The management regime will be proportionate to the impact of total reservoir failure in the flood inundation area. The risk designations are; High, Medium and Low. Reservoirs with Low Risk designation will be subject to minimal requirements.

- Engineer's recommendations could increase costs for some reservoirs significantly but could also reduce them or reduce fears around the process.

Comment: The reservoir panel engineer will be commissioned to carry out a full and thorough examination of the reservoir and will make recommendations based on their observations as to the measures required in the interest of safety. Those measures directed in the interests of safety must be carried out by the reservoir manager. If the reservoir manager carries out these directions their liability and the risk of failure is reduced.

Issue 5: Grant Aid

- Grant aid would need to be a guarantee. Community assets will be lost and the time and effort spent in developing them will have been wasted. Huge impact on the community.

Comment: There is no guarantee that aid will be available as this depends on many things particularly the availability of funds and the Executive spending priorities. Executive agreement will be required, when the Reservoirs Bill is enacted.

- If a dam is filled in, will compliance still be required?

Comment: A reservoir that is abandoned, i.e. no longer capable of holding any water above the natural level of the surrounding land, will not come within the scope of the Reservoirs Bill. This activity must be supervised by a construction engineer and a certificate obtained certifying that works have been completed correctly.

- Concern regarding getting a dam up to the required standard and the associated capital costs. Grant aid is a grey area.

Comment: The Reservoirs Bill provides the Department with the power to make, by regulation, grant payments to reservoir managers of controlled reservoirs to enable them to comply with their obligations in the Bill. The Executive will consider this need after the Bill is enacted.

- Wildlife and biodiversity issues need to be considered if grant aid at 100% is not provided

Comment: Any grant payments made will be to enable reservoir managers to comply with their obligations in the Bill which is to make the reservoir safe. Reservoir managers will be advised to seek the appropriate consents/approvals prior to undertaking measures to ensure that they are not in breach of any other legislation.

- Bill will have an impact on a range of issues if grant aid not given – health, social benefits, biodiversity and environmental impact.

Comment: Rivers Agency accepts the diverse use made of reservoirs. However, the sole purpose of the Reservoirs Bill is to introduce a riskbased approach for the management and regulation of reservoirs in order to protect the public from the risk of flooding.

- Funding should be open ended – if time bound then just delaying the problem.

Comment: The viability of the payment of grants over the long term will be considered when developing the business case. Executive priorities and the availability of resources will be key factors in the long term payment of grant aid.

- Requirement for more record keeping – too much red tape. Will this necessitate employing an additional person just for this purpose?

Comment: Keeping records of reservoirs is an important element of the management regime for reservoirs. For example, the changes in the water level may indicate a reservoir leakage. It is envisaged that a reservoir manager should be able to maintain these records and therefore employment of an additional person should not be required. The management regime contained in the Bill was subjected to a Regulatory Impact Assessment the outcome of which was that it is not overly bureaucratic. The Bill complies with the principles of Better Regulation, in particular, it facilitates the introduction of a proportionate management regime that places most requirements on managers of reservoirs that pose the greatest risk to human life and limited requirements on managers of low risk reservoirs.

Issue 6: Decommissioning

- The Bill will not stop you decommissioning a reservoir but there needs to be recognition of the wider use i.e. community and environmental costs.

Comment: As stated previously, Rivers Agency would prefer that reservoir managers adhere to the management regime in the Reservoirs Bill rather than decide to discontinue or abandon the reservoir.

- Will Rivers Agency take costs if clubs etc. go into liquidation? Rivers Agency will but they may pursue for costs.

Comment: The Reservoirs Bill provides the Department with emergency powers to protect persons or property against an escape of water from a controlled reservoir

Other Issues

- There seems to be no concern for the rights of unknowing reservoir owners, particularly stress and wellbeing issues.

Comment: Rivers Agency readily acknowledges that the requirements of the Reservoirs Bill are a concern for some reservoir owners/managers, particularly those who were not aware that they owned/managed a reservoir. However, the primary purpose of the Bill is to ensure that controlled reservoirs are as safe as possible in order to protect the public and property from flooding.

- Concern around correct definition and explanation of a reservoir, including qualifying amount.

Comment: The definition of a controlled reservoir is set out in Sections 1 to 5 of the Reservoirs Bill.

- The consultation process between Rivers Agency and reservoirs owners prior to tonight. How many have further fell through the loophole?

Comment: Rivers Agency held 3 stakeholder events from July 2011 to November 2011 the purpose of which were to inform and help shape the policy development on reservoir safety. These events were followed by the formal Public Consultation on the reservoir safety policy draft proposals which took place between March and June 2012. During the Public Consultation period Rivers Agency held 6 information events. When preparing for the informal and formal consultation Rivers Agency made every effort to identify and contact all those that own or manage a reservoir.

Rivers Agency has now identified who we believe the owns or manager all but 6 of the 151 controlled reservoirs in Northern Ireland, many of which, despite the Agency's best efforts, were not known at the time of the public consultations.

- Importance of dams regarding heritage and the true definition of why the Bill is being brought forward.

Comment: The Bill seeks to protect all structures from failure, including those with heritage value. The Explanatory and Financial Memorandum that accompanies the Reservoirs Bill contains the background and policy objectives of the legislation.

- Ecology issues were decommissioning may be the only option and the impact on wildlife including endangered species.

Comment: Decommissioning of a reservoir would require a number of consents or approvals prior to this activity taking place. Rivers Agency has no powers to stop decommissioning a reservoir prior to the legislation being enacted. When enacted the discontinuance or abandonment requires the supervision of a construction engineer. Rivers Agency considers that improving reservoir safety is the best means of protecting the environment. Rivers Agency is working closely with the Northern Ireland Environment Agency to ensure that appropriate consideration of the environment is fully taken into account when deciding a reservoir's risk designation.

- How will any work that is undertaken improve the mitigation of failure?

Comment: It is considered that any works undertaken in the interests of safety will reduce the risk of reservoir failure.

- A need for a simple way of decommissioning reservoirs including a reasonable get out clause for owners unable for the costs. This is seen as a last resort and not what we want to see.

Comment: As stated previously, Rivers Agency would prefer that reservoir managers adhere to the management regime in the Reservoirs Bill rather than decide to discontinue or abandon the reservoir.

- Concern regarding the consultation process carried out by Rivers Agency.

Comment: See previous comment on the consultation process.

- Private owners should have been properly identified before consultation began in order to influence thinking.

Comment: See previous comment on the consultation process.

- Whilst the Bill is a well-researched engineering document, no thought has been given to social and environmental concerns.

Comment: The reservoirs safety policy was subjected to equality, regulatory, social, economic and environmental impact assessments, the results of which informed and shaped policy considerations and the drafting of the Bill.

- Committee cannot make a judgement call unless all costs for private owners are known.

Comment: Rivers Agency acknowledges that it will not be possible to assess the full costs of a management regime and any remedial works until after all of the controlled reservoirs have been inspected by an inspecting panel engineer. The Agency has provided estimated costs for supervision and inspection of reservoirs and a range of indicative costs for minor or major remedial works.

- Rivers Agency has agreed to provide the risk assessment and flood maps.

Comment: A Flood Inundation Map and provisional risk designation will be made available to reservoir owners/managers on request.

- The Bill will not be a priority within the budget and therefore grant aid may not be guaranteed.

Comment: Rivers Agency acknowledges it cannot be definitive on this matter. It is for this reason that the Bill advises that the Department may rather than will make provision for the payment of grants to reservoir managers.

- If initial works are identified will there be financial assistance?

Comment: As previously stated, there is no guarantee that aid will be available as this depends on many things particularly the availability of funds and the Executive spending priorities.



Northern Ireland
Assembly

Appendix 5

List of Witnesses

Appendix 5 – List of Witnesses

Mr Kieran Brazier	Department of Agriculture and Rural Development
Mr David Porter	Department of Agriculture and Rural Development
Mr Bill Gowdy	Northern Ireland Water
Mr Paddy Brow	Northern Ireland Water
Mr Peter Close	Northern Ireland Environment Agency
Mr Bob Davidson	Northern Ireland Environment Agency
Mr Ian Bowden	Belfast City Council
Ms Rose Crozier	Belfast City Council
Mr Jonathan McGilly	Newry & Mourne City and District Council
Mr Eamon McManus	Newry & Mourne City and District Council
Mr Marcus Malley	Craigavon Borough Council
Mr Gerry McGibbon	Craigavon Borough Council
Mr Aidan Donnelly	Armagh Fisheries Limited
Mr Cathal Doyle	Armagh Fisheries Limited
Mr Jim Haughey MBE	Ulster Angling Federation Ltd
Mr Robbie Marshall	Ulster Angling Federation Ltd
Mr Maurice Parkinson	Antrim and District Angling Association
Mr Gerry Wilson	Antrim and District Angling Association
Mr Alan Cooper	Institution of Civil Engineers
Mr Jack Meldrum	Institution of Civil Engineers
Mr David McKillen	Institution of Civil Engineers
Mr Stephen Orr	Institution of Civil Engineers
Mr Damien McCallin	Ligoniel Improvement Association
Dr Jim Bradley	Belfast Hills Partnership
Ms Denise Corbett	Ballysaggart Environmental Group
Ms Emmalene Edgar	Creggan Country Park
Ms Karen Healy	Creggan Country Park
Mr Gerry Quinn	Creggan Country Park



Northern Ireland
Assembly

Appendix 6

Research Papers

Appendix 6 – Research Paper

1. Research Paper – The Reservoirs Bill



Northern Ireland
Assembly

Research and Information Service Bill Paper

Paper 000/00

4 February 2014

NIAR 248-13

Mark Allen

This Bill papers provides an overview of the Reservoirs Bill as introduced to the Assembly on the 20th January 2014. The paper also identifies those areas within the Bill which may be contentious and, where relevant, compares similar legislation within England, Scotland and Wales

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relates to our papers and this should be sent to the Research and Information Service,

Northern Ireland Assembly, Room 139, Parliament Buildings,
Belfast BT4 3XX or e-mailed to RLS@niassembly.gov.uk

Key Points

- The Reservoirs Bill was introduced to the Assembly on the 20th of January 2014.
- DARD/Rivers Agency argues that existing legislation does not provide a means to deal with the issue of reservoir safety in a comprehensive manner within Northern Ireland.
- There are two references to reservoirs within existing legislation, namely Article 33 of the Drainage (Northern Ireland) Order 1973 and Article 297 of the Water and Sewerage Services (Northern Ireland) Order 2006.
- As result of implementing the EU Floods Directive, Rivers Agency completed a preliminary flood risk assessment for Northern Ireland. This exercise identified a potential risk from total dam failure of 156 impounding reservoirs (subsequently amended to 151 having a capacity of greater than 10,000 cubic metres of water above the natural level of any part of the surrounding land) to 66,000 people.
- The purpose of the Reservoirs Bill seeks to introduce regulations for the safety of controlled reservoirs capable of holding 10,000m³ (individual or combined capacity if linked) or more of water above the natural level of any part of the surrounding land.
- The emphasis within the Reservoirs Bill could be characterised as seeking to address the potential public safety risk posed by an uncontrolled release of water from a controlled reservoir within Northern Ireland.
- The provisions in the Bill build upon similar legislative mechanisms within Scotland, England and Wales.
- The Bill will have implications for public , private and 3rd sector owners/managers of controlled reservoirs
- Areas for consideration in relation to the Bill include:
 - the development/implementation of additional regulations/orders.
 - Costs to reservoir owners/managers.
 - Downstream development – impacts on reservoir designation and associated costs/ PPS15 implications.
 - The definition of reservoir managers.
 - Risk designation.
 - Supervision requirement and commissioning of supervising engineer etc.
 - Duties in relation to supervision.
 - Offence: failure to comply with notice under section 63(2).
 - Stop notices: enforcement.
 - Grant aid provision.

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 - 4.2.4 Duties in relation to supervision (Clause 25,2k)
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Appendix 1

Comparison of key features of reservoirs legislation across the UK

Appendix 2

Engineer titles, responsibilities, duties and associated conditions/restrictions as set out within the Bill

1 Introduction

There is currently no legislation comprehensively covering the regulation of reservoir safety within Northern Ireland. There are two references to reservoirs within existing legislation as follows:

- Article 33 of the Drainage (Northern Ireland) Order 1973¹ – which deals with the control of dams. This article can only be used however for ‘...*the purpose of preventing or arresting injury to land*’ and cannot be used ‘...*in relation to any dam or sluice which is vested in or controlled by any other government department, any harbour authority, any district council or the Northern Ireland Electricity Service*’
- Article 297 of the Water and Sewerage Services (Northern Ireland) Order 2006² – enables the making of ‘...*regulations with respect to the construction, inspection, maintenance and repair of reservoirs and dams.*’ but to date this provision has not been utilised.

Given this context, reservoir owners and operators effectively operate at their own discretion in terms of what safety measures, if any, they implement. The legal basis for this current system of self-regulation is effectively common law and the Health and Safety at Work (NI) Order 1978³, where it applies.

As a result of implementing the EU Floods Directive⁴, which requires member states to identify, assess, and manage potential significant flood risks, Rivers Agency completed a preliminary flood risk assessment for Northern Ireland. This exercise identified a potential risk from total dam failure of 156 impounding reservoirs (subsequently amended to 151, having a capacity of greater than 10,000 cubic metres of water above the natural level of any part of the surrounding land) to 66,000 people

The Reservoirs Bill, as introduced, is a direct response to this apparent legislative gap and seeks to introduce regulations for the safety of controlled reservoirs capable of holding 10,000m³ (individual or combined capacity if linked) or more of water above the natural level of any part of the surrounding land. The emphasis within the Reservoirs Bill could be characterised as seeking to address the potential public safety risk posed by an uncontrolled release of water from a controlled reservoir within Northern Ireland.

It should be noted that the focus on controlled reservoirs means that the following structures **will not** fall under the auspices of the Bill:

- canals or embanked waterways;
- reservoirs under 10,000m³ (unless DARD decides otherwise by regulation to treat a particular reservoir as such);
- embanked watercourses;
- road or railway embankments which are not integral to the functioning of or operation of the controlled reservoir;
- a weir which does not serve a functional or operational purpose as regards a controlled reservoir;
- a structure or area of water which protects land from sea;
- a pond within an extractive waste site or other waste facility;
- a sewage sludge lagoon or other waste water treatment lagoon;

1 Drainage (Northern Ireland) Order 1973

2 The Water and Sewerage Services (Northern Ireland) Order 2006

3 Health and Safety at Work (Northern Ireland) Order 1978

4 DIRECTIVE 2007/60/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (Floods Directive) 2007

- an ash, silt or sludge lagoon used for the purpose of a mine or power generation;
- a lagoon for the storage of chemical materials or their waste products; and
- a slurry tank.

DARD (through the auspices of the Rivers Agency) will act as the reservoir authority under the new legislation and as such would have responsibility for the enforcement of the provisions within it.

At the request of the Agriculture and Rural Development Committee, Rivers Agency has carried out a survey of all 151 reservoirs in Northern Ireland, to assess the impact of the proposed reservoirs legislation on reservoirs that are regarded as community assets.

The results published in April 2013 reveal the following in terms of ownership:

- Public – 60;
- Private – 59;
- Council – 16;
- 3rd Sector – 9;
- Not registered/unknown – 7.

The actual geographical spread of these 151 reservoirs, on a district council basis, is set out in tables 1 and 2 below.

Table 1: Controlled reservoir ownership – those within 1 district council area

Council Area	Public	Private	Council	3rd Sector	Not registered/ unknown	Total
Antrim	2	1	-	1	-	4
Ards	2	3	1	2	-	8
Armagh	2	2	-	3	-	7
Ballymena	2	3	-	-	-	5
Ballymoney	1	2	-	-	-	3
Banbridge	-	1	1	-	-	2
Belfast	1	-	5	1	3	10
Carrickfergus	7	-	1	-	-	8
Castlereagh	1	1	-	-	-	2
Coleraine	6	4	-	-	-	10
Cookstown	3	3	-	-	-	6
Craigavon	-	1	2	-	-	3
Derry	1	-	-	2	-	3
Down	4	7	-	-	-	11
Dungannon & South Tyrone	2	3	1	-	1	7
Fermanagh	1	-	1	-	-	2
Larne	1	3	-	-	-	4

Council Area	Public	Private	Council	3rd Sector	Not registered/ unknown	Total
Limavady	2	1	-	-	-	3
Lisburn	5	2	1	-	2	10
Magherafelt	-	4	-	-	-	4
Moyle	-	1	-	-	-	1
Newry & Mourne	5	3	2	-	1	11
Newtownabbey	-	6	1	-	-	7
North Down	6	4	-	-	-	10
Omagh	3	1	-	-	-	4
Strabane	-	1	-	-	-	1

Five of the 151 reservoirs actually fall within more than one existing Council boundary and this information is presented in table 2 below.

Table 2: Controlled reservoir ownership – those within more than 1 district council area

Council Areas	Public	Private	Council	3rd Sector	Not registered/ unknown	Total
Ballymena/Moyle	1	-	-	-	-	1
Banbridge/Armagh	-	1(multiple)	-	-	-	1
Banbridge/Lisburn	1	-	-	-	-	1
Newtownabbey/Ballymena	-	1	-	-	-	1
North Down/Ards	1	-	-	-	-	1

It should be noted that these ownership designations should be considered provisional at this point, as a definitive picture of reservoir ownership will only emerge after the Bill is enacted and the formal registration process commences.

2 Overview of Bill

The following is a brief outline of the Bill which consists of 9 parts, 121 clauses and 4 schedules.

Part 1 - Controlled reservoirs, registration and risk designation (clauses 1-23)

Clauses 1-5 deal with the issues relating to controlled reservoirs including the proposed definition of a controlled reservoir in terms of size (10,000m³ of water above the natural level of any part of the surrounding land), and that individual reservoirs, even if below 10,000m³, are defined as a controlled reservoir if water can or does flow to another reservoir, and as a consequence their combined capacity would be 10,000m³ or more. The Bill also includes the provision to enable reservoirs smaller than 10,000m³ to be classified as controlled if reservoir failure has the potential to cause significant harm /result in loss of life, and also defines what structures are not a controlled reservoir and consequently not subject to regulation under the Bill.

Clauses 6-8 deal with the issues relating to reservoir managers including establishing that responsibility for managing or operating a reservoir is placed on persons or organisations referred to as 'the reservoir manager'; and creating the possibility for a controlled reservoir being managed by more than one 'reservoir manager'. In such instances, multiple reservoir managers must all apply the requirements of the Bill in relation to the area of the reservoir that they manage or operate and there is also a duty on them to co-operate.

Clauses 9-16 outline the requirements for controlled reservoir registration including the fact that DARD will create and maintain this register and that there will be a duty for controlled reservoir owners/managers to register their reservoirs. This element of the Bill also establishes the timeframes for registration, enables the Department to bring forward regulations introducing a registration fee, and identifies offences relating to the failure to register a controlled reservoir.

The issue of risk designation for controlled reservoirs is dealt with in clauses 17-23 which outline the proposed introduction of low, medium and high risk category designations based upon the potential consequences of an uncontrolled release and the probability of such a release. These clauses also deal with the process of periodic risk designation reassessment and the risk designation review and appeals mechanisms.

Part 2 – Requirements for high risk and medium risk reservoirs (clauses 24-37)

Clauses 24-27 deal with issues relating to the supervision of medium and high risk designated reservoirs by a supervising engineer, including commissioning, supervisory duties, visual inspections and the role for nominated representatives.

Clauses 29-34 relate to controlled reservoir inspections by an inspecting engineer and deal with issues such as the requirement for inspections of all medium and high risk reservoirs before the end of 1 year from designation, and the issue of pre-commencement inspections. Attention is also given to the process of appointing an inspecting engineer and the duties that they would be expected to perform.

Clause 35 sets out the requirement for owners/managers of medium and high risk controlled reservoirs to record data on areas such as water levels, leakage, repairs, settlement of walls or other works and other matters as the Department requires. The clause also enables the

Department to bring forward regulations which would detail how this information was to be recorded.

Clauses 35-36 identify those offences relating to failure to implement requirements for supervision, inspection and record keeping for medium and high risk designated reservoirs as well as setting out certain defences to offences.

Clause 37 detail defences to offences set out in clause 36.

Part 3 – Construction or alteration of controlled reservoirs (clauses 38-51)

Clauses 38-39 outline the requirement for owners/managers of all controlled reservoirs to appoint a construction engineer if the reservoir requires construction or alteration works. These clauses also define what works are to be considered as construction or alteration to include new construction, restoration to use, alteration to capacity, discontinuance and abandonment.

Clauses 40-48 deal with the specific issues relating to works supervised by a contracted construction engineer including initial commissioning, the content of and compliance with safety reports and the issuing of preliminary, construction and final certificates relating to reservoir construction or alteration activities. Clause 48 in particular sets the conditions for the termination of supervision by a construction engineer.

Clauses 49-50 define offences and defences in relation to the construction or alteration of a controlled reservoir.

Clause 51 sets out transitional arrangements for the Bill to apply to controlled reservoirs already under construction or alteration when the Bill is commenced.

Part 4 – Controlled reservoirs: other requirements (clauses 52-56)

Clauses 52-56 deal with other requirements for controlled reservoirs such as the maintenance of records and the display of emergency response information. Clauses 52 and 53 also enable the Department to make provision through regulations for the reporting of incidents and the preparation of flood plans respectively, and also include provisions for the Secretary of State to restrict disclosure of information if information in an incident report or flood plan would adversely affect national security. Clause 56 details offences under Part 4 and associated penalties/criminal sanctions.

Part 5 – Dispute referral (clauses 57-62)

Clauses 57-62 establish the processes for arbitration between controlled reservoir owners/managers and construction or inspection engineers. The clauses enable the commissioning of a referee, either through agreement between the reservoir owner/manager and relevant engineer or failing agreement through appointment by the Institution of Civil Engineers. The powers of referees are also established and provision is made to enable the Department to bring forward regulations that would set the time, manner and procedure of referrals and costs of the proceedings and investigations.

Part 6 – Civil Enforcement, emergency powers and further offences (clauses 63-96)

Clauses 63-66 enable the Department to serve enforcement notices requiring reservoir owners/managers to commission a supervising, inspection or construction engineer and also establish that it is an offence not to comply with such a notice. The Department also has the power to commission an engineer in instances where the reservoir owner/manager fails to comply with an enforcement notice.

Clauses 67-68 enable the Department to serve enforcement notices where a reservoir owner/manager has failed to comply with a direction in an inspection report, a pre-commencement safety recommendation or a direction in a safety report, and also establish that it is an offence to fail to comply with such an enforcement notice.

Clause 69 enables the Department to commission an engineer to supervise the taking of safety measures in situations where the reservoir owner/manager fails to comply with such an enforcement notice.

Clause 70 establishes the circumstances in which a reservoir owner/manager has committed an offence as it relates to failure to comply with safety matters established in inspection reports, pre-commencement safety recommendations or directions within a safety report.

Clause 71 enables the Department to take emergency action to protect people or property against an escape of water from a controlled reservoir that may cause harm.

Clauses 72-75 deal with issues pertaining to stop notices including giving the Department powers to make regulations to permit the serving of a stop notice on a reservoir manager. These clauses also provide the basis for establishing the content of, and procedure for, issuing stop notices, the possibility for compensation due to loss suffered as a result of the serving of a stop notice and also make it an offence to fail to comply with a stop notice.

Clauses 76-84 set out the other civil enforcement measures that the Department may bring forward through regulations including the introduction of fixed and variable monetary penalties.

Clauses 85-87 cover a range of miscellaneous issues. Clause 85 requires the Department to consult relevant bodies before invoking powers to provide, by regulations, for stop notices, enforcement undertakings and fixed and variable monetary penalties. Clause 86 establishes that the Department may make provision to reclaim reasonably incurred costs from reservoir owners/managers as a result of stop notices, enforcement undertakings and fixed and variable monetary penalties. Clause 87 enables the Department to publish information relating to enforcement action but establishes that this cannot be done where there has been a successful appeal.

Clauses 88-92 outline provisions relating to powers of entry within the Bill and deal with the process for the issuing of warrants, establishes that it is an offence to impeded the entrance to land of a person authorised by the Department and also sets out the circumstances under which the Department must pay compensation or undertake reinstatement work if there is damage to the land or disturbance of the right to occupy.

Clause 93 requires reservoir owners/managers to provide any relevant engineer with reasonable facilities in connection with the engineer's functions under the Bill which includes requiring reservoir owners/managers to make their records and other information available to an engineer in a form, manner and time specified by the engineer.

Clause 94 requires controlled reservoir owners/managers to provide the Department with such information and assistance reasonably sought in connection with the Department's functions under the Bill.

Clause 95 details offences relating to clauses 93 and 94 including the intentional alteration, suppression or destruction of information/documentation and provision of documents/information which is knowingly false or misleading.

Clause 96 enables the Department to require information or assistance from others for the purposes specified and in exercise of its functions under the Bill.

Part 7 – Panels of reservoir engineers (clauses 97-103)

Clauses 97-103 provide the basis for the appointment of engineers to a panel/panels of engineers by the Department. Related issues dealt with through these clauses include the process for removing an engineer from a panel, the dissolution or alteration of a panel, the establishment of a review system for engineers who have been unsuccessful applicants/removed from a panel/deemed as not suitable to continue in a commission, and placing a duty on the Department to consult with the President of the Institution of Civil Engineers before instigating a range of actions relating to a panel. There is also the prospect of the Department bringing forward regulations to enable the charging of fees in connection with the review process, whilst the Department is also proposing to reimburse the Institution of Civil Engineers for any costs reasonably incurred as a result of the appointment of engineers to panel/s or through consultation by the Department.

Part 8 – Miscellaneous (clauses 104-111)

Clause 104 enables the Department to bring forward regulations to extend the time limit for prosecution of summary only offences provided in the Bill.

Clause 105 provides powers to enable the Department to bring forward regulations to enable the payment of grant to reservoir owners/managers in order to meet the obligations within the Bill.

Clause 106 enables the Department to make provision in regulations for the assessment of reports, written statements, recommendations and certificates prepared by reservoir engineers – this would be done by a committee made up of members of the Institution of Civil Engineers.

Clause 107 sets out the requirements for reservoir owners/managers to notify the Department, within 28 days, when they have revoked the commissioning of an engineer. The clause also requires commissioned reservoir engineers to inform owners/managers of their resignation and owners/managers then have 28 days to provide this notice to the Department.

Clause 108 enables the Department to make further provision in regulations about the form and content of any notice, written statement, report or certificate under the Bill.

Clause 109 deals with conditions relating to the use of electronic communications to send notices or other documents required under the Bill.

Clause 110 enables the Department, by order, to amend references to the Institution of Civil Engineers within the Bill if the Institution ceases to exist.

Clause 111 stipulates that the Reservoirs Bill does not confer a right to claim damages in respect of a breach of an obligation imposed by the legislation.

Part 9 – General (clauses 112-121)

Clauses 112-114 clarify that the Bill applies to the Crown in Northern but also provide that the Crown will not be criminally liable for any contravention of the Bill's provisions, whilst still allowing the High Court to declare any act of the Crown in contravention of the Bill's provisions unlawful, upon application by the Department. Clause 113 also limits powers of entry to Crown land by requiring consent of an appropriate authority whilst Clause 114 deals with issues relating to the service or giving of notices or other documents to the Crown.

Clause 115 deals with offences by bodies corporate and partnerships establishing liability in relation to offences committed under the Bill.

Clause 116 enables the Department by order to amend, repeal, revoke or modify any statutory provisions made by or under the Bill.

Clauses 117-120 detail matters relating to the adoption of orders and regulations and the role and function of the Assembly in this process, key terms used within the Bill, minor and consequential amendments and repeals, and commencement of the Bill.

3 Public consultation

In 2011 Rivers Agency convened a Reservoir Bill Stakeholder Group with a view to shaping Reservoirs Policy. This stakeholder group included representatives from local councils, Executive Departments and Agencies, the Institution of Civil Engineers, Ulster Angling Federation, Ulster Farmer's Union and Waterways Ireland. The group met a number of times during 2011 and early 2012 and the work that they undertook informed the actual public consultation on draft reservoir safety proposals which ran from the 12th March to the 1st June 2012.

Over the course of the public consultation Rivers Agency also ran 6 information events in Antrim, Belfast, Cookstown, Craigavon, Hillsborough and Newry to provide stakeholders with an opportunity to both discuss the proposals and pose and obtain answers to questions relating to the legislation.

A total of 32 written consultation responses were received from individuals, 3rd sector organisations, public bodies, businesses and elected representatives, with 13 of the respondents providing comments to some or all of the 19 questions within the consultation document. Issues raised by consultees included the following:

- Concerns around potential costs associated with the legislation;
- The need for grant support to enable Bill obligations to be met;
- A general endorsement of the High, Medium and Low risk designation system(11 respondents);
- A general endorsement of the Panel Engineer System (11 respondents);
- A mixed message in relation the charging of fees and cost recovery.

3 Areas for additional scrutiny

The implementation of the proposed Reservoirs Bill will or may involve the development/implementation of additional regulations/orders in the following areas:

- Ability to treat a structure or area which does not currently meet the controlled reservoir definition within the Bill as a controlled reservoir (regulation - clause 2:3);
- Substitute a different volume of water in relation to a controlled reservoir from the currently proposed 10,000m³ (order – clause 4:1);
- define what constitutes a structure which is not to be treated as a controlled reservoir (regulation – clause 5:1);
- Specify the information and documentation required for reservoir registration (regulation – clause 9:2);
- Set fees related to reservoir registration (regulation – clause 14:1);
- Make further provision in relation to applications and reviews and appeals of controlled reservoir risk designation – to include issues relating to fees and awarding of costs (regulation – clauses 20:7 and 21:9);
- Controlled reservoir risk designation – make further provision about the matters that are to be taken into account under sections 17(3),18(2),20(3)(b)(ii) and 21(5) (regulation – clause 22:4)
- the form of record keeping to be maintained and information to be included in relation to water levels etc. (regulation – clause 35:2);
- specified works for reservoir safety in relation to controlled reservoir construction or alteration (regulation – clause 38:4b);
- Reservoir safety report content over and above what is outlined in the Bill (regulation – clause 42:1d);
- Construction certificate content over and above what is outlined in the Bill (regulation – clause 45:3c);
- Controlled reservoir incident reporting procedures(regulation – clause 52);
- The preparation of Flood plans for controlled reservoirs (regulation – clause 53);
- Display of emergency response information (regulation – clause 55:2);
- Commissioning of referee in dispute referrals – issues covered include timing, procedure and costs (regulation – clause 62);
- The serving of stop notices by DARD on reservoir managers of controlled reservoirs – issues covered include content, procedure, compensation and enforcement (regulation – clauses 72 and 73);
- Other civil enforcement measures including enforcement undertakings, fixed and variable monetary penalties (regulation – clauses 76-84);
- Recovery by the Department of certain costs – relating to stop notices, enforcement undertakings and variable monetary penalties (regulation – clause 86:1)
- Provisions around the information to be provided by a civil engineer applying to be a member of a panel of reservoir engineers (regulation – clause 98:2);
- Provisions in relation to reviewing decisions not to appoint, or to remove civil engineers from panels etc – including issues such as determining and charging fees (regulation – clause 101:2);

- Miscellaneous - hearing and determining a complaint charging the commission of a specified offence if the complaint is made before the end of the specified period (regulation – clause 104);
- Miscellaneous – provisions for the payment of grants to reservoir managers of controlled reservoirs to assist compliance with the Act (regulation – clause 105);
- Miscellaneous – provisions for the assessment of the quality of reports, written statements and certificates prepared by engineers (regulation – clause 106);
- Miscellaneous – provisions to determine the form and content of any notice required under the Act as well as provisions determining the form of any written statements, reports or certificates issued by engineers (regulation – clause 108);
- If the Institution of Civil Engineers ceases to exist DARD may amend references to the Institution and its President (order – clause 110);
- Supplementary, incidental, consequential provision etc. (order – clause 116).

In the absence of guidance and subordinate legislation, there are areas of the Bill which require further clarification regarding implementation.

4 Potential issues within the Bill

4.1 General issues

4.1.1 Costs to reservoir managers/owners

A common concern for a number of consultation respondents was the potential costs that reservoir managers and owners may have to bear as a result of this legislation.

The Bill makes it clear that the potential costs that a reservoir manager/owner will have to bear will be commensurate with the flood risk posed. Operating requirements with potential cost implications for owners/managers of controlled reservoirs are set out in table 3 below based upon reservoir flood risk designation. This table does not include capital requirements as these will vary from reservoir to reservoir and will only be determined upon inspection by an engineer.

Table 3 – Proposed operating requirements for low, medium and high risk designated controlled reservoirs

Risk designation	Operating requirements
Low risk	<ul style="list-style-type: none"> • Registration of the controlled reservoir – which may include a fee if one is introduced through subordinate legislation • Provision of an information board displaying emergency response information • Maintain a record of relevant documents detailing repairs • Periodic risk assessment – proposed every 10 years or more often if circumstances require • Potentially include the preparation of a flood plan if required by subordinate legislation • Potentially include the commissioning of a construction engineer if remedial or alteration works are required by an inspection engineer (may be encapsulated within capital costs however) as set out in clause 38 of the Bill. Clause 38 would also by default provide that more minor remedial works (ie not defined within the Clause) could be managed by a supervising or inspecting engineer.
Medium and High risk	<p>Same requirements as those for low risk reservoirs plus the following:</p> <ul style="list-style-type: none"> • Record keeping – water levels, repairs etc • Commissioning of a supervising engineer – who will visit a high risk reservoir at least twice in every 12 month and at least once in every 12 months for a medium risk reservoir and produce associated supervisory reports • Commissioning of an inspecting engineer to conduct an inspection of the reservoir before the end of period of 1 year from the high/medium risk designation (doesn't apply in situations where the controlled reservoir was, immediately before the designation of it as a medium risk reservoir took effect, designated as a high risk reservoir) – 10 year inspecting period thereafter for high risk reservoirs • Potentially include the commissioning of a construction engineer if remedial or alteration works are required by an inspection engineer (may be encapsulated within capital costs however) as set out in clause 38 of the Bill. Clause 38 would also by default provide that more minor remedial works (ie not defined within the Clause) could be managed by a supervising or inspecting engineer.

It should be noted that a number of the elements within table 3 are potential rather than confirmed operating costs that may emerge from this legislation and include:

- a registration fee;
- preparation of a flood plan;
- commissioning of an inspecting engineer in relation to medium/high risk designation reservoirs; and
- commissioning of a construction engineer if remedial works are required in relation to all controlled reservoirs.

The Rivers Agency public consultation document on draft Reservoir Safety Proposals published in March 2012, contained a guide of possible costs for a high impact (risk) reservoir in terms of operating and capital works (see tables 4 and 5 below).

Table 4: Estimated costs for reservoir operators⁵

Operating costs	Estimated costs	Comment
Supervision and record keeping by supervising engineer	£1,600-£2,500	Estimated range of costs per annum
Monthly monitoring, checks and record keeping	£2,000	Estimated cost per annum. These duties can be undertaken by the reservoir operator or staff following training by the supervising or inspecting engineer
General maintenance (staff and material to include required signage/information board)	£3,000	Estimated cost per annum. This work may be undertaken by the operator, the operator's staff or can be contracted in.
Inspection by approved inspection engineer	£2,500-£4,000	It is proposed that controlled reservoirs designated as high and medium impact will be required to be inspected at least every 10 years or more frequently if required by the supervising or inspecting engineer.
Preliminary survey and assessments (1 st inspection)	£4,000	It is likely that a survey and preliminary assessments will need to be undertaken for the first inspection by an approved inspecting engineer

Table 5: Estimated (remedial costs) for reservoir operators⁶

Estimates for remedial costs	Estimated costs	Comment
Minor concrete repairs	£15,000	The reservoir safety regime policy proposals only require reservoir operators of high impact controlled reservoirs to undertake works specified by the inspecting and supervising engineer.
Repair and replacing valves	£75,000-£150,000	
Abandoning a reservoir	£250,000	
Replacement of pressure points and grout holes under spillways	£400,000	These estimated repair costs provide a rough indication of anticipated costs. The need for these works is dependent on a number of factors including the condition of the reservoir
Repairs to spillways	£300,000-£1,000,000	

5 Reservoir Safety Policy, Consultation of Draft Proposals, Rivers Agency, DARD, March 2012 Table 10, page 48

6 Reservoir Safety Policy, Consultation of Draft Proposals, Rivers Agency, DARD, March 2012 Table 10, page 48

Estimates for remedial costs	Estimated costs	Comment
Cost of decommissioning a reservoir	£750,000	Abandoning a reservoir requires undertaking measures to secure that the reservoir is incapable of filling with water above the natural level of the surrounding land
Development and re-design costs	£333,000	The figure is provided from an example of where a reservoir had not been maintained but its continued use was desired

The researcher has been unable to find any other comparative or more up to date information within the public domain in Northern Ireland or further afield relating to potential/estimated costs that reservoir managers/owners would have to bear. Within this context, and whilst accepting that the costs provided by Rivers Agency are estimates, it is hard to assess whether these estimates are either conservative or extreme in nature.

With regards to potential operating costs, based upon the provisions within the Bill, the greater number of these costs would only apply to controlled reservoirs designated as medium or high risk. It is also worth noting that the Rivers Agency estimated costs figures (in tables 4 and 5) contain no indication as to the potential cost of registering a controlled reservoir or developing a flood plan.

As an added complication, costs, particularly in relation to capital works will undoubtedly depend greatly upon myriad factors such as the type and size of the reservoir, the form of its construction, its location and associated flood risk that it poses to people or property. For these reasons it may be next to impossible to provide a standard cost as the number of potential variables will mean that each reservoir will be a unique case. If the costing data provided by Rivers Agency is accurate however it would appear that there is the potential for some remedial or decommissioning work to cost up to £1million.

Whilst a full and accurate assessment of costs is not possible at this time, the available data would suggest that the potential costs may well present a financial burden to some reservoir managers and owners. By way of example, and based upon Rivers Agency figures cited previously, owners of medium/high risk controlled reservoirs could potentially be faced with annual operating costs of between £6,600 and £7,500, to which could be added an additional figure of between £3,500 and £4,000 if the services of an inspecting engineer was required. In addition a preliminary survey and assessment report, if one is required following risk designation by DARD/Rivers Agency, could carry a cost of £4,000 although this cost may potentially only apply to a limited number of medium and high risk reservoirs, and will depend on the information already available for these structures. These costings also do not include either a registration fee or preparation of a flood plan, the estimated costs of which are unknown at this time, and do not include any associated capital construction engineer costs.

The situation pertaining owner/managers of low risk reservoir costs is harder to pin down, but even considering the estimated costs of general maintenance in table 2, could potentially be up to £3,000 per annum. Once again this estimate does not include any potential costs for either registration or the preparation of a flood action plan.

Given these caveats, it is impossible to assess the full financial impacts for reservoir managers and owners resulting from this legislation, and indeed the potential costs will only be known when the Bill is enacted and affected reservoirs are inspected, given a risk designation and assessed by an engineer in relation to what remedial works, if any, are required.

4.1.2 Downstream development – impacts on reservoir designation and associated costs/PPS15 implications

A potential impact on the enacted Reservoirs Bill may come from ‘downstream development’ that would fall within the potential flood inundation area of a controlled reservoir.

The Department of the Environment recently published, and publically consulted on Revised Draft Planning Policy Statement (PPS) 15 ‘Planning and Flood Risk’ (closed on the 10th January 2014)⁷. Policy FLD5 within the draft PPS deals with the specific issue of Development in Proximity to Reservoirs and outlines proposed development conditions for both new and replacement buildings within the potential flood.

A significant issue within draft FLD5 is that new development downstream of a controlled reservoir could have cost implications for both the reservoir owner/manager and the developer if structural improvement works are required to bring the reservoir up to a condition which mitigates the flood risk to the proposed development. The guidance accompanying draft FLD 5 makes it clear that any costs incurred here would be the responsibility of the reservoir owner/manager and developer and as such the funding of such requirements would be a private matter. This raises questions as to how such an arrangement would sit within the wider framework of the Reservoirs Bill in terms of assessment of required works and with regards to the ability to access potential grant support.

Draft FLD5 contains a presumption against development within a potential flood inundation area for proposals that include the following types of development:

- essential infrastructure;
- storage of hazardous waste; and
- bespoke accommodation for vulnerable groups.
- and there is also a presumption against development located in areas where the Flood Risk assessment indicates potential for sudden and deep inundation.
- Looking at draft PPS15/FLD5, one of the further areas of potential concern could be the potential impact that new or replacement development will have on existing reservoir risk designations. Despite the lack of detailed information pertaining to the assessment of risk designation criteria within clauses 17-23 of the Reservoirs Bill, Rivers Agency stakeholder group information notes (23rd September 2011⁸) would appear to suggest how high, medium and low impact/risk would be assessed as follows:
 - High impact/risk – where a reservoir breach could endanger 1 or more lives and/or could result in extensive or lasting impact on the environment, culture, heritage or economy;
 - Medium impact/risk – where a reservoir breach would have no risk to life but would have significant but not extensive or lasting impact on the environment, culture, heritage or economy;
 - Low impact/risk – where no loss of life could be reasonably foreseen and limited impact on the environment, culture, heritage or economy.

Given this context there may well be scope for the allocated risk designation of a reservoir to change as a result of downstream development. Any such change, particularly if the risk designation moved from low to medium or low to high, could have significant financial implications for the reservoir owner/manager. It also remains unclear as to whether downstream development would trigger an immediate reassessment of the reservoir risk designation (Clause 18:3a of the Bill) or whether this would not be looked at until up to 10 years after the initial designation.

7 PPS 15 Revised (Draft) ‘Planning and Flood Risk’, DOE, October 2013

8 Reservoirs Bill Stakeholders Minutes September 2011, DARD/Rivers Agency

4.2 Clause specific issues

4.2.1 Reservoir Managers (Clause 6)

The original consultation document on draft reservoir safety proposals, published in March 2012, makes reference to the fact that *'Recreational users of controlled reservoirs ie fishing or sailing clubs will not be responsible for reservoir safety unless they are the owner(s) of the controlled reservoir'*.

This apparent protection for recreational users was welcomed by many of the respondents to the consultation process including the Ulster Angling Federation and Consumer Council.

The actual clause within the introduced Bill defines 'reservoir managers' under terms of water undertaker, sewage undertaker, any person who manages or operates the reservoir or any part of it but is not the owner, and owners of any part of a reservoir. This would suggest that recreational users of a reservoir will find themselves identified as 'reservoir managers' if they are 'managing' or 'operating' all or part of the reservoir, whether they own it or not. In order to clarify the situation it would be useful to further define what is meant by 'managing' and 'operating' a reservoir – does this primarily refer to the controlling of the water level within the reservoir? What other activities, if any, would fall within the remit of 'managing' or 'operating' a reservoir?

4.2.2 Risk designation (clauses 17-23)

The risk designation process proposed within clauses 17-23 of the Reservoirs Bill will see the creation of 3 risk categories i.e. low, medium and high. As discussed elsewhere within this paper the designation allocated to a controlled reservoir will potentially have significant financial implications for reservoir owners/managers. This potential makes it all the more critical that the process by which designations are allocated is clear.

A key issue pertaining to risk designation within the Bill, and the resulting requirements on reservoirs owners/manager, is that it is currently difficult to determine what, if any differentiation there is between medium and high risk reservoirs in relation to operating requirements. This does raise the question as to whether there is either any need for the medium risk classification or rather more information on the differences between medium and high risk.

Clause 22 within the Bill broadly identifies the factors which will be taken into account in this process in terms of potential adverse consequences from an uncontrolled release of water from a controlled reservoir and how probable such a release is. Clause 22 also further identifies potential adverse consequences under headings such as potential damage to human life or health, the environment, economic activity, cultural heritage and such other potential damage as the department considers relevant. There is however a lack of detail within the Bill as to the weighting applied in relation to each of these factors.

As highlighted previously within this paper, based upon Rivers Agency stakeholder group information notes (23rd September 2011⁹) that informed the development of the Reservoirs Bill, it would appear that existing impact designation utilised in Scotland (high, medium, and low), England and Wales (high risk) suggest that high, medium and low impact/risk could be assessed as follows:

- High impact/risk – where a reservoir breach could endanger 1 or more lives and/or could result in extensive or lasting impact on the environment, culture, heritage or economy;
- Medium impact/risk – where a reservoir breach would have no risk to life but would have significant but not extensive or lasting impact on the environment, culture, heritage or economy;

- Low impact/risk – where no loss of life could be reasonably foreseen and limited impact on the environment, culture, heritage or economy.

In the absence of detailed information as to what criteria will be used here, but drawing upon criteria used in the rest of the UK, it would seem likely that threat to human life and health will be the major factor in risk designation. This does raise the question as to how many lives/peoples health will need to be threatened in order for a controlled reservoir to be designated as high risk? If Rivers Agency apply the measure of endangerment to the life or health of one person will this mean that the majority of our controlled reservoirs could be designated as high risk?

Turning to factors that will affect the probability of an uncontrolled release of water from a controlled reservoir, clause 22 within the Bill identifies the following:

- the purpose for which the reservoir is (or is to be) used;
- the materials used to construct the reservoir;
- the way in which the reservoir was or is being constructed;
- the age and condition of the reservoir and how it has been maintained; and
- such other matters as the Department may by regulations specify.
 - However it fails to provide information as to the specific criteria and weighting that would be applied in relation to these issues. Such guidance will be critical given the potentially diverse nature of controlled reservoirs in Northern Ireland and the financial implications for owners/managers of high/medium risk reservoirs.

4.2.3 Supervision requirement and commissioning of supervising engineer etc (Clause 24)

The Bill proposes that all High and Medium risk controlled reservoirs must at all times be under the supervision of a supervising engineer. In addition reservoir owners of high and medium risk reservoirs may have to contract inspecting and construction engineers as a result of this legislation. Whilst the number of reservoirs that will be designated as high or medium risk will not be known until Rivers Agency complete an assessment, following enactment of the Bill, it is conceivable that there may be a significant requirement for supervisory, inspecting and construction engineers. Such circumstances may well present problems in relation to the number of engineers who could fulfil this function for reservoirs within Northern Ireland.

As part of their scrutiny of the Reservoirs (Scotland) Bill brought forward by the Scottish Government in 2010¹⁰, the Scottish Parliament's Rural Affairs and Environment Committee highlighted their concerns at both the steady decline in the number of panel engineers available to carry out regulatory duties as well the increase in their age profile. In their response to these concerns the Scottish Government was of the opinion that the current provision of all panel reservoir engineers was sufficient for the foreseeable future, but they did also give a commitment to work with the ICE and other stakeholders in England and Wales to ensure that there are sufficient engineers to carry out required roles and responsibilities.

Given the potential growth in the requirement for engineers resulting from this legislation it is legitimate to ask if demand will exceed supply. If such a circumstance occurred would this have an impact on the costs of contracting engineers? This issue has particular significance as the Reservoirs Bill appears to have no provisions for the setting of costs for contracting engineers, relying rather on the operation of the market. If there is a risk of market failure due to a shortage of qualified engineers is there a role for DARD/Rivers Agency or the ICE in monitoring or regulating the fees that engineers can charge?

10

Scottish Parliament Rural Affairs and Environment Committee. (2011b) Scottish Government

In addition there is a need for clarification on the number of reservoirs that one supervising engineer can safely and effectively supervise, as well as exploring the distance from the reservoir at which supervision can be effectively and safely conducted.

4.2.4 Duties in relation to supervision (Clause 25,2k)

Clause 25 of the Reservoirs Bill outlines those duties that a supervising engineer will be required to undertake in relation to a medium or high risk controlled reservoir. Paragraph 2k outlines the requirements for visiting a reservoir as follows:

- where it is a high-risk reservoir, at least twice in every 12 month period;
- where it is a medium-risk reservoir, at least once in every 12 month period.

The prescriptive nature of this requirement differs from that included within Clause 50(3) of the Reservoirs (Scotland) Act 2011¹¹, which whilst recognising the need for visual inspection does not set a specific requirement for how often reservoirs should be visited by the supervising engineer. Given this difference, and the fact that a visit to a reservoir will result in costs to the reservoir owner/manager what is the rationale for the proposed visit requirements within the Reservoirs Bill?

4.2.5 Incident Reporting (Clause 52)

Clause 52 within the Reservoirs Bill enables the Department to bring forward regulations that would define the requirements for the reporting of incidents at a controlled reservoir. There is a need for further detail around what would actually constitute an incident, as well as defining what would actually constitute an offence in relation to incident reporting.

4.2.6 Flood plans (Clause 53)

Clause 53 would enable the Department to bring forward regulations that could require the preparation of flood plans for controlled reservoirs. Whilst recognising that this issue will be dealt with by regulation there is still a need to clarify factors such as will this requirement apply to all controlled reservoirs, including those designated as low risk?, who will be qualified to produce a flood plan?, and what are the likely costs? It would also be useful to know how often a flood plan would need to be updated and any specific conditions that may require such.

4.2.7 Offence: Failure to comply with notice under section 63(2) (Clause 64)

Clause 64 within the Reservoirs Bill establishes that it is an offence to either fail to meet a requirement to commission a supervising, inspecting or construction or provide notice to the Department of the commissioning. A reservoir manager guilty of an offence under these terms is liable:

- on summary conviction¹² to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.
- on conviction on indictment¹³ to imprisonment for a term not exceeding 2 years, or to a fine, or to both;

The prospect of an up to 6 month prison term upon summary conviction is different from the provisions within the Reservoirs (Scotland) Act 2011, which provides for a imprisonment term of up to 12 months upon summary conviction (Clause 66).

11 Reservoirs (Scotland) Act 2011

12 summary conviction – tried in a magistrates court by a District Judge without a jury.

13 conviction on indictment – tried in the Crown court by a judge and jury.

4.2.8 Stop notices: enforcement (Clause 75)

Clause 75 of the Bill outlines the enforcement action that the Department may take in relation to failure to comply with a stop notice, which may be introduced through regulation (Clause 72). The penalties for the committing of an offence in relation to a stop notice appear to be far more severe than those contained within Clause 76 of the Reservoirs (Scotland) Act 2011, as illustrated in table 6 below.

Table 6: Enforcement action relating to stop notices within Northern Ireland Bill and Scottish Act

	Reservoirs Bill - NI	Reservoirs (Scotland) Act 2011
On summary conviction(NI)/ In the JP court (Scotland)	<ul style="list-style-type: none"> • Imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000, or to both 	<ul style="list-style-type: none"> • Imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 (£2,500), or to both
On conviction on indictment (NI)/In the sheriff court (Scotland)	<ul style="list-style-type: none"> • For a first offence – imprisonment for a term not exceeding 12 months, or to a fine, or to both • For any subsequent offence – imprisonment for a term not exceeding 2 years, or to a fine, or to both 	<ul style="list-style-type: none"> • For a first offence – imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum, or to both • For any subsequent offence – imprisonment for a term not exceeding 6 months, or to a fine not exceeding the prescribed sum, or to both

There is a need for further detail here as to why the penalties relating to stop notice offences appear to be more severe within Northern Ireland as compared to Scotland.

4.2.9 Grant aid provisions (Clause 105)

Given the previously discussed potential costs to reservoir owners and managers as a result of the obligations within this legislation, it would seem clear that the provision of grant aid may well be a critical issue, particularly for those owners/managers facing high compliance costs but potentially lacking the means to pay for them such as sporting clubs or charitable organisations.

Whilst Clause 105 provides a mechanism for the Department to bring forward regulations enabling the creation of a grants programme there is a lack of detail as to how such a mechanism, if introduced, would actually operate. From a practical point of view a key question here relates to eligibility for support. Would grants only be accessible by owners/managers of high or medium risk reservoirs facing capital costs, or would owners/managers of low risk reservoirs also be eligible? Would operating costs qualify for grant support? What would be the maximum grant size? What rate would grant aid be paid at?

At a more fundamental level there must also be questions as to how such a grant scheme, if it was introduced, would be resourced by DARD/Rivers Agency or the Executive. A key issue here is that the overall costs arising from this Bill cannot be known until such time as the Bill has been enacted, inspections completed and risk designations allocated to all the controlled reservoirs affected.

This makes the submission of a bid for support to the Executive, particularly if the grant aid is designed to address capital costs, challenging at the very least. In addition, given the ongoing obligations arising from this legislation, the associated operating costs to be borne by owners/managers are also likely to be ongoing, a circumstance which would suggest that

if operating costs were eligible for support, there may also be a need for an ongoing grant aid programme.

This ongoing commitment issue could also apply to capital works requirements. To illustrate this point, whilst a reservoir may initially be designated as low risk and requiring no capital remedial works, reassessment within 10 years or less, may conceivably see the reservoir designation being upgraded to medium or high risk and requiring remedial work, or if the owner/manager chooses, decommissioning work. Owners/managers facing such circumstances may well expect to be able to access a capital grants programme, given that other owners/managers may have benefited from a similar mechanism up to 10 years previously.

APPENDIX 1 - COMPARISON OF KEY FEATURES OF RESERVOIRS LEGISLATION ACROSS THE UK – sourced from Rivers Agency data and existing statute

Issue	Northern Ireland	Scotland	England	Wales
Reservoir legislation	Nothing exclusively specific at present. References to reservoirs within Article 33 of the Drainage (Northern Ireland) Order 1973 and Article 297 of the Water and Sewerage Services (Northern Ireland) Order 2006. Proposed Reservoirs Bill – all references hereafter are to the provisions within the proposed Bill	Reservoirs Act 1975 (as amended) Reservoirs (Scotland) Act 2011	Reservoirs Act 1975 as amended for England Flood and Water Management Act 2010 (schedule 4)	Reservoirs Act 1975 as amended for Wales Flood and Water Management Act 2010 (schedule 4)
Reservoir registration threshold	Bill proposes definition for controlled reservoirs of 10,000m ³ or more of water above natural level of any part of the surrounding land	2011 Act sets 10,000m ³ or more of water above the natural level of any part of the surrounding land	25,000m ³	10,000m ³
Can the volume of water that constitutes a reservoir within the legislation be changed?	Yes – Clause 4 – Department may by order, substitute a different volume of water	Yes – Clause 1 (6) The Scottish Ministers may— (a) by order substitute a different volume of water for the volume for the time being specified	2010 Act amendment to the 1975 Act as follows: The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (6). .	2010 Act amendment to the 1975 Act as follows: The Minister may by order substitute a different volume of water for the volume specified in subsection (3) or (6). .

Issue	Northern Ireland	Scotland	England	Wales
<p>Who has responsibility for the management or operation of a controlled reservoir/reservoir?</p>	<p>Proposed reservoir manager designation Designation applies to the owner of all or part of a controlled reservoir Water and sewage undertakers who manage or operate a controlled reservoir are reservoir managers for all of the reservoir or the part which they manage/operate</p>	<p>Reservoir manager Scottish Water is the reservoir manager of a controlled reservoir which is managed or operated by it In instances where the reservoir is not owned by Scottish Water the reservoir manager is (a) any person who manages or operates the reservoir or any part of it (other than the owner of the reservoir or that part of it),. (b) the owner of any part of the reservoir for which no person is reservoir manager by virtue of paragraph (a).</p>	<p>Undertaker</p>	<p>Undertaker</p>
<p>Risk designation</p>	<p>Proposed clauses 17-23 System will focus on high, medium and low risk.</p>	<p>High Medium and Low</p>	<p>High risk only – based upon probability of failure and consequence</p>	<p>High risk only – based upon probability of failure and consequence</p>

APPENDIX 2 - ENGINEER TITLES, RESPONSIBILITIES, DUTIES AND ASSOCIATED CONDITIONS/RESTRICTIONS AS SET OUT WITHIN THE BILL

Engineer	Responsibility	Duties	Conditions/Restrictions
Supervising	All Medium and High risk controlled reservoirs	<ul style="list-style-type: none"> • Supervise the reservoir at all times • Give notice to the Reservoir Owner/Manager of anything that the engineer considers might affect safety • Monitors compliance with safety and inspection reports, preliminary and final certificates • Monitors measures for maintenance • Notifies reservoir owner/manager and Reservoir Authority (DARD/Rivers Agency) of any failure of a reservoir owner/manager to comply with a direction in a certificate or report • Supervises a reservoir during draw-downs • Visits a High risk reservoir at least twice every 12 months • Visits a Medium risk reservoir at least once every 12 months • Gives reservoir owner/manager written recommendation of when an inspection is required • Gives reservoir owner/manager written direction to carry out visual inspections • Prepares written statement for reservoir manager at least every 12 months of steps taken by supervising engineer, safety measures taken by reservoir owner/manager, notices given by supervising engineer, recommendations by supervising engineer and directions by supervising engineer • Provides reservoir owner/manager with emergency contact information and that of a nominated representative • Directs the reservoir owner/manager about how and when to update records • Sends a copy of reports, certificates, statements and notices to the Reservoir Authority (DARD/Rivers Agency) <p>Could also manage/supervise remedial capital works on medium or high risk reservoir provided they are not those identified in clause 38 (see construction engineer duties below), which only a construction engineer can supervise</p>	<p>Must be commissioned within 6 months of a reservoir being designated as high or medium risk</p> <p>Cannot be the currently contracted construction or inspecting engineer for the particular reservoir, but can have held either of these positions previously.</p> <p>Can be an employee of the reservoir owner/manager but must be a member of a panel of engineers</p>

Engineer	Responsibility	Duties	Conditions/Restrictions
Inspecting	All Medium and High risk	<ul style="list-style-type: none"> • Provides initial inspection report, within 6 months of inspection date, to reservoir owner/manager and copy to the supervising engineer • Supervises measures included in the inspection report which are required in the interest of safety • Issues interim inspection certificates on satisfactory completion of measures • Issues inspection compliance certificates on completion of all measures included in an inspection report • Directs the reservoir owner/manager about how and when to update records • Provides advice and recommendations to the Reservoir Authority (DARD/Rivers Agency) in relation to risk designations, emergency measures, enforcement, reviews and appeals • Issues a copy of reports, certificates and notices to the Reservoir Authority (DARD/Rivers Agency) • Must complete an inspection of a high risk reservoir every 10 years <p>Could also manage/supervise remedial capital works on medium or high risk reservoir provided they are not those identified in clause 38 (see construction engineer duties below), which only a construction engineer can supervise</p>	<p>Must be commissioned and have a reservoir inspection completed within 1 year from date of reservoir being designated as high or medium risk</p> <p>Not required in instances where medium and high risk reservoirs are being supervised by a construction engineer</p> <p>Must be a member of a panel of engineers and cannot be an employee of the owner/manager of the particular reservoir. Also cannot have previously been a construction engineer for the particular reservoir.</p>

Engineer	Responsibility	Duties	Conditions/Restrictions
Construction	Potentially Low, Medium or High risk – dictating factor is works required	<ul style="list-style-type: none"> • Inspects reservoir and prepares design for construction, or alteration, of a reservoir • Supervises the relevant works, and the safety of the reservoir, until a final certificate is issued. Responsible for works as set out in clause 38 ie alteration or construction works such as restoring an existing structure or area, increasing or decreasing the capacity, discontinuation, abandonment and any other work that the Department may define by regulation. The nature of these works means that there may well be a need for a construction engineer at a number of low risk designated reservoirs • Issues a safety report and safety measures certificates on completion of measures • Issues preliminary certificates when satisfied that the reservoir may be filled, or partially filled, with water • Issues a construction certificate when relevant works have been completed to a satisfactory standard • Issues a final certificate when reservoir is sound and satisfactory and may be used for the collection and storage of water • Directs the reservoir owner/manager about how and when to update records • Sends a copy of reports, certificates, designs and notices to the Reservoir Authority (DARD/Rivers Agency) 	<p>Must be commissioned at least 28 days prior to commencement of any construction or alteration of a controlled reservoir</p> <p>Must be a member of a panel of engineers and cannot be an employee of the owner/manager of the particular reservoir. Is also disqualified if they have previously been an inspecting engineer for the particular reservoir</p>



Northern Ireland
Assembly

Appendix 7

DARD Correspondence

Appendix 7 – DARD Correspondence

1. Letter to Committee re. Reservoirs Bill Delegated Powers
 - 1.1 Delegated Powers Memorandum
2. Timeline for Implementation of Reservoirs Bill
3. DARD re. Committee meeting 11 February 2014
4. DARD re. Reservoirs Bill Designation Flow Chart
5. DARD re. Committee meeting 18 February 2014
 - 5.1 Annex A – Kiltonga Nature Reserve
 - 5.2 Annex B – Hillsborough Lake
 - 5.3 Annex C – Begny Lake
6. DARD re. Information on Ballysaggart, Creggan Upper and Creggan Lower Reservoirs
7. DARD re. Committee Meeting 25 February 2014
8. DARD re. Committee meetings 11 & 18 March 2014
9. DARD re. Reservoirs numbers by capacity
 - 9.1 DARD owned reservoirs
10. DARD re. Committee meeting 8 April 2014
11. DARD re. Committee meeting 29 April 2014
12. DARD Risk Matrix
13. DARD re. Proposed amendments being considered 27 May 2014
 - 13.1 DARD re. Revised Annex B3 of proposed amendments being considered 27 May 2014
14. DARD re. Amendments relating to clause 22 following recommendations to the Committee by the Examiner of Statutory Rules
15. DARD re. Committee stage informal clause by clause scrutiny
16. DARD re. Fixed amendment Clause 120
17. DARD Minister re. Reservoirs Bill
18. DARD re. Committee meeting 13 May 2014 informal clause by clause
19. DARD re. Fixed amendment Clause 106 and new Clause 106A
20. DARD re. Amendment Clause 22
21. DARD re. Amendment Clause 25
22. DARD re. Amendment Clause 29
23. DARD re. Amendment Clause 33
24. DARD re. Amendment Clause 36
25. DARD re. Amendment Clause 37

26. DARD re. Amendment Clause 49
27. DARD re. Amendment Clause 70
28. DARD re. Amendment Clause 106
29. DARD re. Amendment Clause 117
30. DARD re. Amendment Clause 120
31. DARD re. Fixed amendment Clause 21
32. DARD re. Fixed amendment Clause 53
33. DARD re. Fixed amendment Clause 65
34. DARD re. Fixed amendment Clause 67
35. DARD re. Fixed amendment Clause 69
36. DARD re. Fixed amendment Clause 71
37. DARD re. Fixed amendment Clause 73
38. DARD re. Fixed amendment Clause 74
39. DARD re. Fixed amendment Clause 77
40. DARD re. Fixed amendment Clause 79
41. DARD re. Fixed amendment Clause 82
42. DARD re. Fixed amendment Clause 84
43. DARD re. Fixed amendment Clause 86
44. DARD re. Fixed amendment Clause 92
45. DARD re. New Clause 103A
46. DARD re. Fixed amendment Clause 118
47. DARD re. Pending amendment Clause 120
48. DARD re. Fixed amendments to Schedules
49. DARD re. Further amendments to Bill – removal of risk
50. DARD re. Amendment to reservoir designation – extract provisions tracked
51. DARD re. Text of Clauses 3, 22, 22A and amendment to Clause 117
52. DARD amended Risk Matrix
53. DARD re. Revised fixed amendment Clause 25
54. DARD re. Revised fixed amendment Clause 33

Letter to Clerk re. Reservoirs Bill Delegated Powers

Corporate Services Division
Central Management Branch

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Date: 28 January 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
Room 243
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Dear Stella

Reservoirs Bill – Committee Stage

I am writing to present the Delegated Powers Memorandum to the Agriculture and Rural Development Committee in advance of the Reservoirs Bill Committee Stage.

The Reservoirs Bill was introduced to the Assembly on 20th January 2014. The Second Stage, at which the general principals of the Bill will be considered by the Assembly, is scheduled to take place on 4th February 2014.

Assembly rules and procedures indicate that following the Second Stage debate and acceptance by vote on the principals of the Bill, the Bill will move to Committee Stage during which it will receive detailed scrutiny and consideration by the ARD Committee.

The Delegated Powers Memorandum sets out the clauses in the Bill that provide the Department with the powers to introduce subordinate legislation covering the detailed procedures that are outlined in the Bill. The information contained in the Memorandum should be of assistance to the Committee members and I would be grateful if you would arrange for its circulation.

Yours Sincerely,



Paul Mills
Departmental Assembly Liaison Officer

Delegated Powers Memorandum

This Memorandum refers to the Reservoirs Bill as introduced in the Northern Ireland Assembly on [Bill Office will insert date], (Bill [Bill Office will insert No.] 2000)

RESERVOIRS BILL

Delegated Powers Memorandum

DELEGATED POWERS MEMORANDUM PURPOSE

- 1 This memorandum has been prepared by the Department of Agriculture and Rural Development (Rivers Agency) in accordance with paragraph 18 of “Guidance to Ministers and Departments on Dealing with Legislation” as agreed by the Executive on 20 November 2008. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes for the Bill.
- 2 The contents of this Memorandum are entirely the responsibility of the Department of Agriculture and Rural Development and have not been endorsed by the Northern Ireland Assembly.
- 3 The delegated powers being requested under the Reservoirs Bill are comparable to those provided by reservoir safety legislation currently operating in Great Britain, but not currently applicable in Northern Ireland.

OUTLINE OF BILL PROVISIONS

- 4 The Reservoirs Bill (Northern Ireland) is a single purpose Bill, principally focusing on reservoir safety issues.
- 5 The main purpose of the Reservoirs Bill (Northern Ireland) is to provide better protection from the risk of flooding from reservoirs by introducing a proportionate, risk-based approach to reservoir safety.
- 6 The Bill contains 9 Parts, 121 Clauses and 4 Schedules:

Part 1 Controlled reservoirs, registration, and risk designation – This part identifies the structures and areas that would be “controlled reservoirs” and regulated by the Reservoirs Bill. This part identifies the “reservoir manager” as having responsibility for reservoir safety. The term “reservoir manager” is explained. A duty is placed on multiple managers of a reservoir to co-operate with any other reservoir manager of the reservoir to enable the reservoir manager concerned to comply with the requirements of the legislation.

Controlled reservoirs register - The Department is required to establish and maintain a register of controlled reservoirs. Reservoir managers are required to register their

reservoirs with the Department within specified timescales, depending on when the structure or area becomes a controlled reservoir. Reservoir managers are required to inform the Department of any change of reservoir manager. Provision is also made to enable the Department to bring forward regulations to charge reservoir manager fees to enable the Department to recover its costs in relation to registration. Criminal sanctions are created for non compliance with these requirements.

Risk designation - The Department is required to designate all controlled reservoirs as high, medium or low risk, depending on the potential consequence of reservoir failure on human life or human health, the environment, cultural heritage and economic activity. Provision is made for periodic reassessment of the reservoir risk designation, at least every 10 years or if there is a change within the reservoir's surroundings or inundation area that would deem the designation to no longer be appropriate. Reservoir managers are to be able to request the Department to review the risk designation and if not satisfied with the outcome of the review can appeal to the Water Appeals Commission.

Part 2 Requirements for high-risk and medium-risk reservoirs - This part outlines the requirements for the supervision and inspection of high and medium-risk reservoirs by reservoir panel engineers. Reservoir managers are required to commission supervising and inspecting engineers whose roles are outlined in this part. Reservoir managers are required to comply with directions and written recommendations given by the inspecting and supervising engineers. Provision is made for the Department to recognise pre-commencement inspection reports prepared by reservoir panel engineers appointed under the Reservoirs Act 1975, prior to commencement of the Bill. Reservoir managers can request a review of the decision to recognise a pre-commencement report. Provision is also made for reservoir managers to keep records of water levels, repairs, other works and matters that may impact on the safety of the reservoir. Offences are introduced for non compliance in relation to the requirements of this part.

Part 3 Controlled reservoirs - Construction or Alteration - Reservoir managers of all controlled reservoirs are required to commission a construction engineer to supervise the construction or alteration of the reservoir. The construction engineer must prepare a safety report to detail any measures that need to be taken in the interests of safety. The satisfactory completion of each measure is certified. This system of reporting and certification is to ensure that the reservoir is only filled with water when the construction engineer determines that it safe to do so. Offences and defences are created in relation to the reservoir manager's duties in this part.

Part 4 Controlled reservoirs: other requirements – This part makes provision for incident reporting, the preparation of flood plans, the maintenance of records and the display of emergency response information for all controlled reservoirs. Offences are created for non compliance with requirements in this part.

Part 5 Dispute referral – This part makes provision for a dispute referral procedure for reservoir managers to challenge directions in safety and inspection reports and requirements in preliminary and final certificates made by reservoir panel engineers. Under this procedure the dispute is referred to an independent reservoir engineer whose decision is final.

Part 6 Civil enforcement, emergency powers and further offences – This part provides a suite of civil sanctions for the Department to use in enforcement of the legislation. Civil sanctions for use in the event of reservoir manager non-compliance include: enforcement notices, stop notices, fixed and variable monetary penalties and enforcement undertakings. The Department is to be provided with powers of entry and emergency powers to be able to take appropriate action, if required, to prevent or mitigate an escape of water from a reservoir. The Department is to be provided with the power to pay compensation and to recover its costs from the reservoir manager in certain circumstances. The Department may publish details of enforcement action.

Part 7 Panels of reservoir engineers – This part provides the Department with the power to establish, dissolve or alter reservoir engineer panels and to appoint or remove engineers from the panels. Civil engineers unsuccessful in their application for appointment to a panel, or removed from a panel, can request a review of the Department's decision. The Department is required to consult with the Institution of Civil Engineers before making a decision under specified clauses within this part.

Part 8 Miscellaneous – This part allows the Department to make provision, by regulations, for the payment of grant aid to assist reservoir managers to comply with their responsibilities for reservoir safety. This part places a duty on reservoir managers to give notice to the Department of any revocation of the commission of, or resignation of a reservoirs panel engineer. The Department is provided with the power to make regulations about the form and content of notices, statements, recommendations, reports and certificates and to make regulations to establish a committee of the Institution of Civil Engineers to assess the quality of engineer reports, statements and certificates. Provision is made for the Department to be able, by order, to amend references to the Institution of Civil Engineers in the primary legislation if the Institution ceased to exist. This part also provides for the use of electronic communication for service or giving of notices or other documents in certain circumstances. Provision is made to ensure that the legislation does not confer the right to claim damages in respect of a breach of obligations.

Part 9 General – This part binds the Crown and makes provision for enforcement in relation to the Crown. It also includes a standard provision for offences by bodies corporate and partnerships. It provides the Department with the power to make incidental, consequential or supplementary provisions by order and lists the regulations and orders to be laid before, and approved by a resolution, of the Assembly. This part includes definitions, consequential amendments, commencement arrangements and the short title for the legislation.

Schedule 1 Pre-commencement inspection reports: review of decision under clause 31
This schedule provides detail about the review procedure for decisions about recognising a pre-commencement report.

Schedule 2 Index of defined expressions

Schedule 3 Consequential amendments

Schedule 4 Repeals

6. More detailed information about the Reservoirs Bill is provided in the Explanatory and Financial Memorandum which is published separately.

RATIONALE FOR SUBORDINATE LEGISLATION

7. The Bill contains a number of delegated powers provisions which are explained in more detail below. The Department has considered carefully the importance of each matter against the following factors when deciding whether these provisions should be specified in the Bill or left to subordinate legislation:
 - This is new legislation and some rules will be better made after some experience of administering the Bill and which it is not essential to have as soon as it begins to operate.
 - The need for sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation.
 - Provision in subordinate legislation would allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation.
 - The detail about technical issues and definitions in the legislation could be more appropriately dealt with or clarified in subordinate legislation. This would facilitate more flexible amendment as a result of experience, research and changes to industry standards and best practice.
8. Subordinate legislation deals with the process as well as the policy. Where there are no policy issues involved then there is no need for the Department to make the rule, and no need for the Assembly to be able to annul or approve it.
9. If subordinate legislation does implement Government policy then some form of Assembly procedure is appropriate. A balance must be struck between the different levels of scrutiny involved in the negative and affirmative resolution procedures. In the Bill the balance reflects the view of the Department on the importance of the matter delegated by the Assembly.

GENERAL SUBORDINATE LEGISLATION PROVISION

10. Clause 117 - Orders and regulations; lists the subordinate legislation provisions. Subsection (1) provides that except where subsection (3) provides otherwise and for commencement orders under clause 120(2); orders are made subject to negative resolution. Subsection (2) provides the general rule that regulations, with the exception of those listed in subsection (3), are to be made subject to negative resolution. Subsection (3) specifies the exceptions for regulations and orders that are to be made by draft affirmative procedure.
11. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Assembly procedure has been considered appropriate.

DELEGATED POWERS

The Bill confers a number of powers on the Minister and the Department which are set out below:

Clause:	2(3) Power to provide that a structure or area is to be treated as a controlled reservoir.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 2(3) enables the Department to treat an area or structure as a controlled reservoir where that area or structure does not meet the criteria, specified in clauses 1 or 2(2), for a controlled reservoir.

Reason for taking power

It is important that all reservoirs, that have the potential to result in serious adverse consequences in the event of an uncontrolled release of water, are regulated to ensure that an appropriate management regime is implemented. Reservoirs panel engineers have agreed that a reservoir capacity of 10,000 cubic metres of water or more above the natural level of the surrounding land is an appropriate threshold for regulating reservoir safety. However, the location of buildings that are occupied by people, reservoir age or construction material and other factors could result in a reservoir below the threshold posing a risk of serious adverse consequences in the event of reservoir failure. In making regulations under clause 2(3), the Department must give notice to the person who will become the reservoir manager and take account of the matters mentioned in clause 3, which are the potential adverse consequences of an uncontrolled release of water and the probability of such a release. The potential adverse consequences are specified in clause 22(2)(a) and (b). These include damage caused to life, health, the environment, economic activity and cultural heritage. It is important to make provision for the Department to be able to include other individual reservoirs or combinations of reservoirs that are identified as high risk, where reservoir failure has the potential to result in serious adverse consequences, even though they do not meet the volume threshold for a controlled reservoir as provided in the Bill.

Choice of procedure

The power under this clause would only be used where it comes to the attention of the Department that there is a need to regulate the inspection and maintenance regime of a reservoir that would not normally fall within the scope of the legislation. It is therefore appropriate that regulations made under this provision be subject to Assembly scrutiny under the affirmative procedure.

Clause:	3(1)(b) Power to provide for additional matters to be taken into account when specifying a structure or area as a controlled reservoir.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 3 specifies the matters the Department is required to take into account when determining if a structure or area should be made a controlled reservoir, by regulations under clause 2(3).

Reason for taking power

Research is ongoing by the British Dam Society, European and Worldwide Reservoir Research Groups to better understand the potential causes and probability of reservoir failure. This research may, more accurately, identify relationships between factors involved in the deterioration of reservoirs and their failure. The Department requires the ability to consider these factors and amend provisions to further refine and improve decisions in respect of structures or areas that do not meet the criteria for a controlled reservoir within the scope of the legislation.

Choice of procedure

The Department is required by clause 3(4) to consult the Institution of Civil Engineers and other such organisations or persons it considers appropriate prior to making regulations. The power under this clause would only be used if industry research indicated a need to consider additional matters. As these regulations could amend the provisions in clause 3 of the Bill, it is appropriate that the regulations be subject to Assembly scrutiny under the affirmative procedure.

Clause:	4(1) Power to substitute a different volume of water to that for the time being specified.
Power conferred on:	The Department
Power exercisable by:	By order
Assembly procedure:	Draft Affirmative

Provision

Clause 4(1) allows the Department, by order, to substitute a different volume of water for the volume of 10,000 cubic meters currently specified.

Reason for taking power

Currently 10,000 cubic meters of water is considered by reservoir panel engineers to be the minimum volume of water which, if released as a result of reservoir failure, would result in potential adverse consequences. The condition of reservoirs in Northern Ireland is not known. Research and experience obtained in the future, along with further developments in inundation mapping and modelling technology may result in reservoir panel engineers proposing the adoption of a different threshold. Therefore; providing the Department with power to specify a different threshold, would provide the flexibility to respond to new evidence and more quickly adopt new industry best practice.

Choice of procedure

It is appropriate for an order which amends primary legislation to be subject to the Assembly scrutiny under the affirmative procedure.

Clause:	4(2) Power to make provision for the purpose of clauses 1 and 2 as to (a) how the volume of water capable of being held or released is to be calculated and (b) how “natural level” and “surrounding land” are to be construed.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 4(2) allows the Department, by regulation, to make provision about how a reservoir’s capacity is calculated and how “natural level” and “surrounding land” are to be defined.

Reason for taking power

The methodology for the calculation and the definitions are technical matters on which the Department will follow the advice and guidance of reservoir panel engineers and the Institution of Civil Engineers. The method for calculating the releasable capacity of a reservoir needs to be regulated to ensure that a transparent and consistent approach can be adopted. The Department may need to make further amendments to regulations made under this power in future if improved methodologies become available.

Choice of procedure

Negative procedure is considered appropriate as clause 4(3) requires the Department to consult with the Institution of Civil Engineers and other such organisations representing engineering or concerned with the practice of water and environmental management as it considers appropriate.

Clause:	5(3) Power to make provision as to what constitutes any of the structures or areas that are not to be a controlled reservoir and should not be taken into account and what other thing is not a controlled reservoir.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 5(2) specifies a number of structures or areas that are not to be regarded as a controlled reservoir for the purposes of the Bill. Clause 5(3) makes provision for the Department, by regulation, to define the structures or areas identified as being excluded from the scope of a controlled reservoir and provides for further description of other structures or areas that are to be excluded from being a controlled reservoir under the Reservoirs Bill.

Reason for taking power

A number of structures or areas identified in clause 5(2) are excluded from the scope of the Reservoirs Bill as they are regulated by other pre-existing legislation. The function or purpose of other structures or areas in the list excludes them from being a controlled reservoir. There may become a need to describe the excluded structures and areas to promote a common understanding and improve consistency in application of structures and areas that are to be excluded from the scope of the Bill. It may also become necessary in the future to identify additional structures or areas as being excluded from the scope of the Bill.

Choice of procedure

The negative resolution procedure is felt to be appropriate in this case as the Department would need flexibility to amend the legislation to be able to respond to the need to provide greater clarification and to be able to respond to change to ensure that the regulatory burden complies with the principles of Better Regulation.

Clause:	9 (2) Power to specify what information and documents are contained in the controlled reservoirs register.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 9 of the Bill requires the Department to establish and maintain a register of controlled reservoirs. Subsection (2) allows the Department to specify what information and documents are required to be contained within the register.

Reason for taking power

Reservoirs in Northern Ireland have not been regulated and therefore government has very limited information about these structures and areas. The Bill requires the Department to produce and maintain a register of controlled reservoirs. The Department needs to establish what information is available and appropriate for this register and as such would intend to specify the information by regulations at a date after commencement of the Bill.

Choice of procedure

It is considered that the regulations are unlikely to be contentious as they will be based on information already available or that will become available as the legislation beds in.

Clause:	10(2) Power to specify information and documents that a reservoir manager of a controlled reservoir must supply to the Department to register the reservoir and the time by which such information or documentation must be provided.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 10 places a duty on the reservoir manager to register the controlled reservoir with the Department. Subsection (2) allows the Department to specify by regulations the information that will be required for this registration and when this information should be supplied.

Reason for taking power

Clause 9(2) provides for regulations to specify what information will be held in the reservoirs register. This is different to the requirement to register a reservoir with the Department. Once the Reservoirs Bill is enacted, it will be necessary to introduce regulations under clause 10 to inform reservoir managers of the registration process and the time period within which to supply information to the Department.

Choice of procedure

The regulations requiring provision of information are not thought to be contentious and, therefore, negative procedure is considered appropriate.

Clause:	14(1) Power to make provision as to – a) payment to the Department by reservoir managers of controlled reservoirs of fees to cover costs reasonably incurred by the Department in relation to registration, b) other reasonable annual or recurring fees in relation to the performance by the Department of its functions as respects the controlled reservoirs register and registration of controlled reservoirs in the register, c) the amount of such fees.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 14 allows the Department, by regulations to make provision for the setting, charging, collection and recovery of fees from reservoir managers to recoup costs reasonably incurred by the Department in relation to registration and other functions of the Department in respect of the reservoirs register.

Reason for taking power

The power will enable the Department to charge reasonable fees to cover costs in relation to the reservoirs register should it become necessary. Similarly, the Department would have the flexibility to adjust fees, when deemed appropriate to do so.

Choice of procedure

Public finance principles require consultation with the Department of Finance and Personnel when such fees are to be introduced and revised in the future. The negative resolution procedure offers a balance between flexibility and the need for scrutiny of a provision of this nature.

Clause:	20(7) Provides the power to make further provision in relation to; applications and reviews of decisions on risk designation, of a controlled reservoir.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 20 outlines the procedure that affords a reservoir manager the right to request a review by the Department of its decision on the reservoir risk designation. The clause also allows the Department in subsection (3) to commission a reservoirs panel engineer to provide expert opinion which the Department is then required to consider when determining a review decision. When reviewing the risk designation decision the Department also considers the information and evidence, including the factors outlined in clause 22 used to make the original decision, along with new evidence and representations provided by the reservoir manager. Subsection (6) also details the process for notification of the review decision.

Reason for taking power

The risk designation assigned to a controlled reservoir will determine the level of supervision and inspection needed, and consequently impacts on the level of costs associated with managing that reservoir. Reservoirs are being regulated and assigned a risk designation for the first time and the Department, when it has experience of implementing these procedures, may need to make amendments to improve procedures or to provide additional clarity about an aspect of the procedure. The review process provides reservoir managers with the right to question the decision of the Department, for additional engagement with the Department and to provide additional new evidence that may alter the original decision. This power would enable the Department, when it has obtained appropriate experience, to be able to refine the review process to improve procedures and ensure that it is fair and transparent.

Choice of procedure

The negative resolution procedure is appropriate as the power is to provide further provisions for the review of the risk designation procedures and would provide the Department with the flexibility to be able to amend the legislation in response to experience or a changing situation.

Clause:	21(9) Power to make provision in relation to appeals under clause 21, as to – a) The determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal, b) The awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 21 provides a reservoir manager who is not satisfied with the Department's decision following a requested review of the reservoir risk designation under clause 20, to appeal to the Water Appeals Commission for Northern Ireland. Clause 21 outlines the grounds for appeal. The standard procedures of the Water Appeals Commission for Northern Ireland are to be adopted. Clause 21(9) provides the power for the Department by regulations to determine the fee for such an appeal and the awarding of costs of the parties to an appeal including the amount of costs.

Reason for taking power

The Department would wish to control the cost to an appellant to ensure that the cost of an appeal will not deter a reservoir manager from making an appeal. This approach would also provide the Department with the flexibility and the ability to respond to changes in market forces that may influence costs incurred by reservoir managers and will also allow the Department to respond to changes in procedures, policy or fees as required by the appellate body or its sponsor Department.

Choice of procedure

The negative resolution procedure is felt to be appropriate in this case as it is not considered to be contentious. The appeal fees would be in adherence with the Water Appeals Commission for Northern Ireland's standard policies and the awarding of costs would be reflective of the outcome of the appeals decision.

Clause:	22(3)(e) Power to make further provision about such other matters which may be taken into account in assessing the probability of an uncontrolled release of water from a controlled reservoir when giving a reservoir risk designation.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 22 provides the matters to be taken into account by the Department when determining the initial risk designation of a reservoir, the re-assessment of a risk designation, the review of a risk designation, and the appeal against a risk designation. Subsection (3) sets out the matters which may be taken into account in assessing the probability of an uncontrolled release of water from a reservoir and provides the power in subsection (3)(e) to include other matters by regulations.

Reason for taking power

Research into the causes of reservoir failure continues to inform policy. Providing the Department with the ability to make regulations on other matters to be considered in respect of the probability of reservoir failure when giving a risk designation will promote better decision making as amendments would be informed by technical development and changes to industry best practice.

Choice of procedure

The regulations would provide the Department with the flexibility to respond to improved understanding of, and changes in, industry best practice. The negative resolution procedure would be appropriate in this case as such regulations are unlikely to be contentious.

Clause: **22(4) Power to make further provision about the matters that are to be taken into account when assessing and giving a reservoir risk designation, during the review of the original decision and appeal of the review decision.**

Power conferred on: **The Department**

Power exercisable by: **Regulations**

Assembly procedure: **Negative Resolution**

Provision

Clause 22 provides the matters to be taken into account by the Department when giving the initial risk designation of a reservoir, the re-assessment of a risk designation, the review of a risk designation, and the appeal against a risk designation. Subsection (3) provides discretion to consider certain matters relating to probability of an uncontrolled release of water from a reservoir. Subsection (4) allows for regulations to include other matters that are to be taken into account when determining a risk designation.

Reason for taking power

The matters to be considered when giving the risk designation of a reservoir are the potential adverse consequences of an uncontrolled release of water and the probability of such a release. Reservoir research continues to inform policy and the Department would wish to retain the ability to respond to research findings and advancements in reservoir safety. Providing the Department with the ability to make regulations on further provisions about other matters to be considered during the risk designation, re-assessment, review, and appeals procedures, will promote better decision making by government departments.

Choice of procedure

The Department is required to consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate before making the regulations. The negative resolution procedure would therefore be appropriate in this case, as the regulations would be based on research findings and industry advice to provide greater protection for the general public. The resultant regulations are therefore not thought to be contentious.

Clause:	35(1)(e) Power to provide by regulations for such other matters to be regarded as “recorded matters” in relation to record-keeping requirements for reservoir managers of high and medium risk reservoirs.
	35(2) Power for the Department by regulations to make provision as to-
	a) The form of the record to be maintained,
	b) The information to be included in relation to the recorded matters.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 35 requires reservoir managers of high risk and medium risk reservoirs to maintain a record of matters specified in the subsection (1)(a)-(d). Clause 35 (1) (e) provides the Department with the power, by regulations, to require other matters to be regarded as “recorded matters”. Clause 35 (2) provides the Department with the power, by regulations, to specify the form of the record and the information to be included in relation to recorded matters.

Reason for taking power

Monitoring, visual inspection, and the maintenance of records are important management tools to provide trend data that can be used by engineers when considering how the reservoir should be managed to maintain its safety. Providing the Department with the ability to make regulations to specify recorded matters and the form and content of the record would provide flexibility in relation to the need to amend requirements when practical experience is obtained or to apply advances in technical best practice and appropriate reservoir safety record keeping. Regulations as to form and information would also provide for consistency in record keeping.

Choice of procedure

The negative resolution procedure would be appropriate as experience of administering the new reservoir safety regime may identify improvements to reduce the potential burden on reservoir managers and is, therefore, not likely to be contentious.

Clause:	38(4)(b) Power to specify by regulations any other work in relation to the reservoir (including work affecting its safety which amounts to alteration)
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 38 applies to the construction or alteration of all controlled reservoirs regardless of risk designation. Construction and alteration of a reservoir includes the construction of a new reservoir as well as works that are undertaken to increase or decrease the capacity of a reservoir; to restore the reservoir to use, or to discontinue or abandon the reservoir. The clause allows for the inclusion of other works, by regulation.

Reason for taking power

Works to a controlled reservoir, that may affect its safety, need to be supervised by an appropriate reservoirs panel engineer. Under the new reservoir safety regime such work to a controlled reservoir should fall within the scope of the construction and alteration of a reservoir or within the inspection regime. There may, however, be other works such as improvements to diversify the use of the reservoir or its surrounding land that may impact on reservoir safety and would need to be supervised by a reservoirs panel engineer. This power would enable the Department to identify other works that may affect the safety of reservoirs should, therefore, come within the requirements of the construction and alteration of a reservoir.

Choice of procedure

The negative resolution procedure is felt to be appropriate in this case as the need to include and regulate other works that may affect the safety of a reservoir is not thought to be contentious. The regulations will allow the Department to respond quickly to a new concern if the need arises.

Clause:	42(1)(d) Power to specify by regulations other matters to be included in a safety report.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 42 specifies what is to be included in a safety report prepared by the construction engineer commissioned to supervise the construction or alteration works at a controlled reservoir. These include any measures necessary in the interest of safety and directing the reservoir manager to ensure completion by the specified timescale. These measures are to ensure that the construction or alteration works are completed in a manner that results in the reservoir being safe for use or, in the case of abandonment, the reservoir remains incapable of filling with water above the natural level of any part of the surrounding land. Clause 42(1)(d) provides the Department with the ability to specify other matters that should be included in the safety report.

Reason for taking power

Providing the Department with the power to be able to specify by regulations other matters to be included in a safety report would enable the Department to benefit from experience before determining the other matters that might need to be included in the safety report. This also provides the scope to take account of changes to industry best practice and requirements.

Choice of procedure

The negative resolution procedure would be appropriate in this case as the Department may need the ability to take account of, and incorporate industry best practice, in response to an emerging or changing situation. Such a response is not thought to be contentious.

Clause:	45(3)(b) Power to specify by regulation such other information to be included in a construction certificate.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 45(3)(b) enables the Department to specify by regulations additional information that should be included in a construction certificate issued by a construction engineer to the reservoir manager when the engineer is satisfied that relevant works have been completed to a satisfactory standard.

Reason for taking power

The construction certificate certifies that the relevant works have been completed to a satisfactory standard in accordance with the drawings and descriptions included in the annex to the certificate. Full details about the works should be included in the annex and the power to include other information by regulation is required to accommodate other construction methods or materials that may be developed in the future. The construction certificate provides important information that may need to be considered when establishing an appropriate management regime for the reservoir. This power would enable the Department to specify such other information, as is considered to be beneficial to the management of the reservoir, to be included with the construction certificate.

Choice of procedure

The negative resolution procedure would provide the Department with the ability to respond to emerging needs or changes to industry best practice. Such administrative changes are thought to be contentious.

Clause:	52(1) Power to make provision by regulations for the reporting of incidents. Substance of regulations outlined in clause 52(2).
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 52 allows the Department to make regulations to provide for the reporting of incidents occurring at controlled reservoirs which meet criteria specified in or otherwise determined in accordance with, the regulations and to provide for the associated offences created in the Bill. This power enables the Department to implement by regulation the detailed procedural provisions as outlined in the Bill.

Reason for taking power

The regulations to implement the incident reporting provisions, as outlined in the Bill, will be too detailed for inclusion in the Bill. Incident reporting is an important stage for determining the need to activate emergency response procedures and it can also be used to share information and experience about potentially unique and difficult situation to enable other reservoir owners and engineers to learn from the experience. The information would enable the Department to identify trends and initiate appropriate action to inform the need for additional guidance for reservoir managers or research to better understand a specific problem.

Choice of procedure

The draft affirmative procedure is considered appropriate for these regulations as incident reporting is a cross-cutting issue that should be subject to the Assembly scrutiny afforded by the affirmative procedure.

Clause:	53(1) Power to make provision by regulations as to the preparation of flood plans and other related matters. Substance of regulations outlined in clause 53(3).
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 53 provides the Department with the power to make regulations for the preparation of flood plans and other such matters. This relates to the reservoir flood plan that would identify the action to be taken by the reservoir manager in the event of a potential incident at the reservoir. An outline as to the contents of the regulations is provided at clause 53(3).

Reason for taking power

The regulations would provide the detail of the policy that is outlined in the Bill. Flood plans would set out the actions to be taken by reservoir managers in order to control or mitigate the effects of flooding and should form part of the emergency response procedures for the reservoir manager. This power would enable the Department to amend provisions in relation to flood plans to comply with any changes to civil contingency planning policy.

Choice of procedure

The draft affirmative procedure is considered appropriate for these regulations as flood planning is a cross-cutting issue that should be subject to the Assembly scrutiny afforded by the affirmative procedure.

Clause:	54(3) Power to require by regulation the form of records that reservoir managers of low-risk reservoirs are required to maintain about repairs to the reservoir and to retain the documents specified in the clause.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 54(3) enables the Department to require reservoir managers of low-risk reservoirs to keep records of documents containing information about any repairs to the reservoir in the required form as prescribed by the regulations.

Reason for taking power

Low risk reservoirs are subject to construction and alteration requirements but are not subject to the supervision and inspection requirements that apply to high-risk and medium-risk reservoirs. Managers of low risk reservoirs have common law responsibility for the safety of the reservoir. The records of any repairs carried out or required would be used in the event of a reservoir incident or would inform the reservoir panel engineers if construction or alteration works were to be undertaken at the reservoir or if the reservoir risk designation was changed in the future. Therefore, it is important that the Department has the ability to proscribe the form in which these records are to be maintained.

Choice of procedure

The negative resolution procedure is felt to be appropriate in this case as this is a procedural matter. This procedure would enable the Department to respond to changing industry best practice or policies.

Clause:	55(2) Power to specify by regulations the information that will be regarded as emergency response information. This information is outlined in clause 55(3).
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 55 enables the Department to specify the emergency response information that the reservoir manager must display at, or near, a controlled reservoir. Subsection (3) outlines the information that may be specified by the regulations.

Reason for taking power

The requirement in subsection (1) will be to display emergency response information at or near each reservoir, therefore, re-assuring the public that the appropriate persons are contactable in the case of emergency. The power to specify the information to be provided (potentially on an emergency response information board) is being taken by regulations to allow for amendments to requirements over time.

Choice of procedure

This power is unlikely to be contentious as provision for the principles is already made in the Bill.

Clause:	62(1) Power to make provision by regulation to implement the dispute referral procedure outlined in part 5 of the Bill.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Part 5 provides a procedure for a reservoir manager to challenge and resolve disputes about directions, recommendations or requirements that are included in an inspection or safety report; or a preliminary or final certificate. Clause 62(1) enables the Department to provide, by regulations, for the time limits for appointing an independent referee, the procedures (including the manner) of the request, the payment of the cost of investigations and proceedings, including remuneration of referee expenses and the procedure in a referral before the referee.

Reason for taking power

The reservoir safety regime is new to Northern Ireland and, therefore, it is likely that disputes will arise between reservoir managers and their engineers as the new regime embeds. This power enables the Department, by regulations, to provide a process for resolving these disputes in a transparent and consistent manner. The regulations will provide the detailed provision for the procedure outlined in the primary legislation.

Choice of procedure

It is unlikely that this power would be contentious as the principles are already provided for within the primary legislation.

Clause:	72(1) Power to make provision by regulations as to the giving of stop notices.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 72(1) allows the Department to make provision by regulation, to serve stop notices to reservoir managers of controlled reservoirs. A stop notice is a notice requiring a reservoir manager to cease carrying on a specified activity, or permitting another person to do so, which the Department reasonably considers is a risk to the safety of the reservoir, or may involve the commission of an offence, until the manager has taken the steps specified within the timescale required in the notice.

The content and procedures for stop notices, including the right of appeal, are outlined in clause 73. Clause 74 and 75 respectively provide for compensation and the enforcement of non compliance with a stop notice. The Department must commission a reservoirs panel engineer to make recommendations prior to the issue of the stop notice.

Before making the regulations the Department is required to consult with such organisations as appear to it to be representative of persons substantially affected by the making of the proposed regulation, in accordance with requirements in clause 85. Clause 87 enables the Department to publicise enforcement action it has taken, including the use of stop notices.

Reason for taking power

The power to use this civil sanction would widen the enforcement options available to the Department to enable it to stop a reservoir manager carrying out an activity, or permitting another person to do so, that is considered by a reservoirs panel engineer to adversely impact the safety of the reservoir, or may involve the commission of an offence. The intention is that the Department would work to gain the agreement of reservoir managers and would only use this power when it was essential to do so.

Choice of procedure

The issue of a stop notice may be essential to mitigating potential reservoir failure. However, it is recognised that the activity being stopped could hinder a reservoir manager from carrying out his business. It is, therefore, appropriate that regulations to implement stop notices should be subject to Assembly scrutiny under affirmative procedures.

Clause:	76(1) Power to make provision by regulations for the Department to be able to accept an enforcement undertaking from a reservoir manager of a controlled reservoir.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 76(1) allows the Department to make provision by regulations, to accept an enforcement undertaking from a reservoir manager of a controlled reservoir. An enforcement undertaking would be a written undertaking to take action within a specified period. The undertaking is offered by the reservoir manager and accepted by the Department. The procedure, grounds and consequences of accepting an undertaking are outlined in Clauses 76 and 77. The acceptance of such an undertaking is to have the following consequences, unless the reservoir manager fails to comply with the enforcement undertaking, the reservoir manager may not be convicted of the offence to which the enforcement undertaking relates; and the Department may not impose on the reservoir manager a fixed or variable monetary penalty. The regulations would also provide for the creation of criminal sanctions for non compliance with an enforcement undertaking. The Department is required to consult with such organisations as appears to it to be representative of persons substantially affected by the making of the proposed regulations.

Reason for taking power

The Reservoirs Bill introduces a new reservoir safety regime and this civil sanction would provide the Department with increased enforcement options to secure compliance without taking criminal proceedings. Failure by the reservoir manager to comply with the undertaking would result in the application of other civil or criminal sanctions. The procedure, requirements and consequences are outlined in significant detail in the primary legislation and therefore it is considered that implementation by regulations would facilitate the provision of greater detail and transparency.

Choice of procedure

The power under this clause would provide a civil sanction for the Department to use to secure the compliance of reservoir managers. It is, therefore, considered appropriate that regulations made under these provisions should be subject to Assembly scrutiny under the affirmative procedure.

Clause:	78(1) Power to make provision by regulations for the imposition of fixed monetary penalties.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 78(1) would provide the Department with the power to impose fixed monetary penalties on reservoir managers, where it is satisfied that the manager has committed an offence. The procedures, consequences, results, criminal sanctions for non compliance, and appeal mechanism, using the Water Appeals Commission for Northern Ireland as the appellate body, are outlined in the Bill.

Fixed monetary penalties would be imposed by notice. The amount of the penalty which can be imposed in relation to the offence would not exceed the maximum amount of the fine that may be imposed on summary conviction of the offence. Clause 80 provides consequences when this civil sanction is used, which include preventing the reservoir manager from being convicted of the offence where liability for the associated fixed monetary penalty is discharged. The Department is required to consult such organisations as appear to it to be representative of persons substantially affected by the making of the proposed regulation. Clause 87 would enable the Department to publish enforcement action it has taken, including the issue of fixed monetary penalties.

Reason for taking power

This power would increase the options available to the Department to achieve compliance with requirements without taking criminal proceedings. The policy intention is for the Department to work with reservoir managers to achieve compliance and only use criminal sanctions where compliance cannot be achieved by guidance, persuasion and the use of civil sanctions.

Choice of procedure

Such powers can set precedent and therefore it is appropriate for regulations, to introduce enforcement options like fixed monetary penalties, be subject to the Assembly scrutiny afforded by the affirmative procedures.

Clause:	81(1) Power to make provision by regulations about the imposition of variable monetary penalties.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 81(1) enables the Department to make provision to impose variable monetary penalties where it is satisfied that the reservoir manager has committed an offence. Clause 82 outlines the procedure for imposing variable monetary penalties, the consequences of non payment, provides for appeals and identifies the Water Appeals Commission for Northern Ireland as the appellate body.

Variable monetary penalties would be imposed by notice. The regulations may provide that variable monetary penalties may be imposed in addition to an enforcement notice to commission a reservoirs panel engineer or to complete measures in the interests of reservoir safety, as provided in clauses 63 and 67 respectively. The amount of the penalty which can be imposed in relation to the offence must not exceed the maximum amount of the fine that may be imposed on summary conviction of the offence. Clause 83 provides consequences that would prevent a reservoir manager from being convicted of the offence where liability is discharged for the associated variable monetary penalty. The Department is required to consult such organisations as appear to it to be representative of persons substantially affected by the making of the proposed regulations. Clause 87 enables the Department to publish enforcement action it has taken, including the issue of variable monetary penalties.

Reason for taking power

This power would increase the civil sanctions available for use by the Department to enforce the requirements of the Bill. The policy intention is for the Department to use guidance, support and negotiation to achieve compliance and only use criminal procedures when other options are considered not to be effective.

Choice of procedure

The provision introduces civil sanctions which could set a precedent and therefore it is considered appropriate that the regulations be subject to Assembly scrutiny under the affirmative procedure.

Clause:	97(1)(c) Power to specify by order the clauses of the Reservoirs Bill and the type of controlled reservoir to which a member of an engineer panel may be commissioned.
Power conferred on:	The Department
Power exercisable by:	Order
Assembly procedure:	Negative Resolution

Provision

Clause 97 requires the Department to establish one or more panels of reservoir engineers for the purposes of the Bill. Subsection 97(1)(c) requires the Department to specify, by order, the clauses of the Bill under which, and the type of controlled reservoir in relation to which, a member of the panel may be commissioned.

Reason for taking power

The roles and responsibilities of reservoirs engineers are described in the Bill. To differentiate the various roles to which an engineer is eligible for appointment, it is intended to create panels of reservoir engineers. This power is required to provide the Department with flexibility and to ensure that distinct panels of reservoir engineers are available to provide clarity for reservoir managers who are required to commission reservoir engineers. This power would provide the Department with the flexibility to amend the reservoir engineer's panels in response to changes in industry best practice.

Choice of procedure

Panels of reservoir engineers is a technical matter that is thought unlikely to be contentious, as the general principle of having panels of appropriately qualified engineers is provided for in the Bill. The Bill imposes a duty in clause 102 to consult the Institution of Civil Engineers before making any order establishing a panel of reservoir engineers or making an appointment to a panel of reservoir engineers.

Clause:	98(2) Power to specify, by regulations, the information to be provided by civil engineers when making application for appointment to a panel of reservoir engineers.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 98(2) enables the Department, by regulations, to make provision as to what will constitute an appropriate application to a panel of reservoir engineers. This will ensure that applications to the panel are correct, valid and submitted appropriately.

Reason for taking power

Any provision made under this power would be likely to be detailed and set out the form and content of an application. The Department would be advised by the current application system for the appointment of panel engineers as operated in Great Britain under the Reservoirs Act 1975. This power would provide the Department with flexibility to facilitate amendment as new requirements are identified and considered to be a necessary competence in the specialism of reservoir engineering.

Choice of procedure

This power is considered to be non contentious as the principle of enabling civil engineers to apply to be appointed to a panel is provided for within the primary legislation.

Clause:	100(6) Power, by order, to amend the time period in subsection (3) whereby the Department may allow a member of a dissolved panel to continue to act in the capacity as a panel engineer after the dissolution of the panel.
Power conferred on:	The Department
Power exercisable by:	Order
Assembly procedure:	Negative Resolution

Provision

Clause 100 enables the Department to dissolve or alter a panel of reservoir engineers that will be established under Clause 97(1)(a). Subsection (3) makes provision for the Department to allow a reservoirs panel engineer, from a panel that is to be dissolved or amended and who is commissioned by a reservoir manager, to continue in the original role for a period of 4 years. Subsection (6) enables the Department to extend the four-year period.

Reason for taking power

It may become necessary, in the interest of reservoir safety, to extend the 4-year period provided in the Bill.

Choice of procedure

This power is not considered to be contentious as it would be used to support good practice and continuity of an engineer's commission.

Clause:	101(2) Power to make further provision by regulation in relation to applications from civil engineers to the Department seeking a review of its decision not to appoint to a reservoirs engineer panel or to remove from a panel, and the charging of fees for such applications.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 101 provides a process by which a civil engineer can apply to the Department for a review of its decision not to appoint to a reservoirs engineers panel, removal from a panel, or a direction from the Department that the engineer is no longer suitable for appointment. Subsection (2) provides powers for the Department, by regulation, to make further provision in relation to applications and reviews and allows the Department to determine and charge fees in connection with these.

Reason for taking power

The Department would wish to ensure that reviews of this nature are considered in a fair, open, transparent, and consistent manner. The regulations would set out the detail of the application and review process and the appropriate fees. The Department must consult with the Institution of Civil Engineers before making a decision in a review. This power would provide the Department with the flexibility to make changes when they are identified as being appropriate.

Choice of procedure

This power is considered to be non contentious as it is procedural in nature and therefore the negative resolution procedure is felt to be appropriate.

Clause:	104(1) Power to make provision by regulations to extend the time period for hearing of the offences specified for determination in the Magistrates' Court.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 104 would enable the Department to make regulations to extend the period of limitation for bringing a complaint before a Magistrates Court to hear and determine. Where the legislation does not provide for a specified period of limitation the complaint must be made within six months from the time when the offence was committed or ceased to continue.

Reason for taking power

The Reservoirs Bill would introduce a new reservoir regime in Northern Ireland. Officials in enforcement authorities in other regions of the United Kingdom have indicated that the period of limitation can be challenging for enforcers, given the nature of offences under reservoir safety regimes. The Department is seeking this power so that if, with experience, it is found to be necessary for the period of limitation to be extended, that this could be achieved by regulation for specified offences. This power would improve the effectiveness of enforcement as it would prevent a non compliant reservoir manager from evading prosecution if the Department does not discover the fact of the offence until after the expiry of six months. The policy intention is for the Department to work with reservoir managers and to provide guidance and support to achieve compliance. Extending the limitation period for prosecuting summary offences would only be used where necessary, such as in cases where guidance and civil sanctions are found or considered not to be effective. Provision to extend the limitation period in summary offences is often to be found in regulatory enforcement legislation.

Choice of procedure

The power under this clause would only be used if evidence became available that there is a need to extend the period of limitation to support effective enforcement. This power could set precedent and it is, therefore, considered appropriate that regulations made under these provisions be subject to Assembly scrutiny under the affirmative procedure.

Clause:	105(1) Power to make provision by regulations as to the payments of grants.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Draft Affirmative

Provision

Clause 105 provides the Department the power, by regulation, to make provision for the payment of grants to reservoir managers. Subsection (2) allows for the determination of terms and conditions that will be applicable to the payment of grants.

Reason for taking power

The Department is aware that some reservoir managers have not been properly managing their reservoirs. Therefore, the Reservoirs Bill is likely to result in some reservoir managers incurring costs that they have not had previously. During the policy consultation a number of reservoir managers raised concerns about their ability to finance remedial works. This power would enable the Department, in the future, to introduce a grant scheme to provide financial support to reservoir managers to help them undertake works in the interests of reservoir safety. The scheme rules would detail terms and conditions and it is, therefore, appropriate for this detail to be provided in regulations rather than on the face of the Bill.

Choice of procedure

This scheme would be cross-cutting and could set precedent. It is considered appropriate that these regulations should be subject to Assembly scrutiny under the affirmative procedures.

Clause:	106(1) Power to make provision by regulations for the assessment of the quality of reports, statements and certificates prepared by reservoir engineers.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 106(1) enables the Department to make provision for the assessment of the quality of reports, written statements and certificates prepared by construction engineers, inspecting engineers, other qualified engineers and supervising engineers.

Reason for taking power

The reports, statements and certificates prepared by construction, inspecting, other qualified engineers, or supervising engineers will be important communication tools. Used by engineers, reservoir managers and the Department they would identify measures and works that need to be undertaken in the interests of reservoir safety. The documents would also confirm that measures or works have been completed to an appropriate standard and within the required timescale. Ensuring that the reports, statements and certificates are of a consistent quality and are prepared to a sufficient standard will be important for the effective implementation of the reservoir safety regime in Northern Ireland. This power would enable the Department to provide for an assessment committee, made up of suitably qualified members of the Institution of Civil Engineers. The regulations would provide the criteria for assessment, what is to be assessed and other procedural matters. The committee would ensure that the documents are prepared to an appropriate standard and that there is greater consistency between documents provided by different engineers. This approach would identify if there is a need for the training of reservoir engineers in this area. This is a procedural matter and is, therefore, appropriate for subordinate legislation. This power would provide the Department with the flexibility to work with the Institution of Civil Engineers and reservoirs panel engineers to ensure that the assessment and procedures are appropriate and consistent.

Choice of procedure

The power is unlikely to be contentious as this is a procedural matter and the principles are already provided for within the primary legislation. The negative resolution procedure is considered appropriate.

Clause:	108 Power to make provision by regulations as to the form and content of notices, reports, certificates, statements and recommendations.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Clause 108 enables the Department to make provisions as to the form and content of notices required under the Bill and any reports, certificates, written statements or recommendations issued by a reservoir engineer under the Bill.

Reason for taking power

It is important that notices, reports, certificates and other written documentation produced by the Department and reservoir engineers are consistent and that they convey the required information. Provision is made elsewhere in the Bill regarding the key content of these documents. Clause 108 would enable the Department to specify the form and content of these documents to ensure that they are fit for purpose. This power would provide the Department with the flexibility to make amendments as it becomes necessary.

Choice of procedure

This is a procedural matter which is unlikely to be contentious as provision is made in the primary legislation for the principle requirements.

Clause:	110 Power, by order, to amend references in the primary legislation to the Institution of Civil Engineers, should it cease to exist.
Power conferred on:	The Department
Power exercisable by:	Order
Assembly procedure:	Draft Affirmative

Provision

Clause 110 allows the Department to amend Institution of Civil Engineers references in the Bill if the Institution ceases to exist.

Reason for taking power

This power would enable the Department to amend any references to the Institution of Civil Engineers in the Bill, if at any point, the Institution ceased to exist. This would enable the Department to transfer the responsibilities of the Institution of Civil Engineers under this Bill to another appropriate body.

Choice of procedure

The power under this clause allows the Department to amend the Bill. It is appropriate for an order made under these provisions to be subject to Assembly scrutiny under the affirmative procedure.

Clause:	116(1) Power by order to make supplementary, incidental, consequential, and such transitional, transitory or saving provisions giving full effect to this Bill.
Power conferred on:	The Department
Power exercisable by:	Order
Assembly procedure:	Draft Affirmative

Provision

Clause 116(1) enables the Department to make supplemental, incidental or consequential provision, and such transitional, transitory or savings provision they consider appropriate for the purposes of, or in consequence of, or giving full effect to this Bill or any provision made by or under it.

Reason for taking power

This is a large complex piece of legislation to introduce a reservoir safety regime and regulatory framework in Northern Ireland. Many of the provisions are inter-related and their effectiveness will not be known until the legislation is implemented in practice. This power would provide the Department with the flexibility to amend provisions if, with experience, it was found that they are not operationally effective.

Choice of procedure

Where an order changes primary legislation, it is appropriate for consideration by the Assembly under affirmative procedures.

Clause:	120(2) Commencements
Power conferred on:	The Department
Power exercisable by:	Order
Assembly procedure:	No Assembly Procedure

Provision

This clause lists the provisions of the Bill that will come into operation on Royal Assent. All other provisions shall come into force on such day or days as the Department may by order appoint.

Reason for taking power

This Bill introduces a new administrative and legal framework for the management and regulation of reservoir safety in Northern Ireland. There are a significant number of procedures for which provision is to be made by subordinate legislation. It is proposed to adopt a phased approach with provisions enacted in order of requirement for the effective operation of the new regime.

This approach is common for a Bill of this complexity which introduces a new legal framework.

Choice of procedure

Commencement Order is the appropriate and usual procedure.

Clause:	Schedule 1(6) Power to make further provision by regulations in relation to reviews and applications for reviews under Schedule 1.
Power conferred on:	The Department
Power exercisable by:	Regulations
Assembly procedure:	Negative Resolution

Provision

Schedule 1(6) allows the Department, by regulations, to make further provision in relation to applications for review and reviews requested by a reservoir manager about the Department's decision not to recognise a pre-commencement inspection report.

Reason for taking power

Reservoir managers that currently manage a reservoir in the spirit of the Reservoirs Act 1975 that applies in Great Britain, should have an inspection report. The Department may be able to accept this report provided it complies with the criteria in Clause 31. If so, this would mean that the pre-commencement report would have the same status as an inspection report under the Bill.

This could remove the need for managers of high risk and medium risk reservoirs having to commission an inspection of the reservoir within 12 months of the reservoir being designated and could result in a financial saving for the reservoir manager.

This power would enable the Department to amend the application for review and the review procedure to make improvements.

Choice of procedure

The negative resolution procedure is considered appropriate as this is a procedural matter.

Timeline for implementation of Reservoirs Bill

Key Stages of Reservoirs Legislation - Timeline

Key Stages	Period required within Bill	Estimated date	Comments
Bill receives Royal Assent.		December 2014	Articles that come into operation on Royal Assent are listed at Article 120.
Registration Section commenced.		April 2015	Secondary legislation required. Articles 9(2) & 10(2) refer.
Reservoir managers register their reservoir.	6 months after registration commences.	October 2015	Article 11(1) refers.
Department gives risk designation.	As soon as is reasonably practicable.	December 2015	Article 17 refers.
Reservoir manager of high or medium risk reservoir commission supervising engineer.	Not later than 6 months from notice of risk designation.	June 2016	Article 24(2) refers.
Reservoir manager of high or medium risk reservoir commission inspecting engineer.	Within 1 year from notice of risk designation.	December 2016	Article 28(1) refers.
Inspecting engineer gives Inspection report to reservoir manager.	6 months from completion of inspection	June 2017	Article 33(1)(b) refers.
Inspecting engineer gives Inspection report to the Department.	Within 28 days of giving the inspection report to the reservoir manager	July 2017	Article 33(5)(a) refers.

DARD re. Committee meeting 11 February 2014

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Our Ref:
Your Ref:
Date: 21 March 2014

Dear Stella

COMMITTEE MEETING 11 FEBRUARY 2014

Your letter of 14 February refers.

Reservoirs Bill

During oral evidence from Rivers Agency officials on the Reservoirs Bill on 11 February 2014, the Committee asked for a written response on the following matters:-

1. The differential between the proposed risk designations for Northern Ireland and those proposed for England, Scotland and Wales, with regard to the methodology for the risk assessment;
2. The proposed review, appeal and dispute mechanisms contained in the Bill;
3. The effect on a Stop Notice should the behaviour and activity of the reservoir manager continue while the manager is appealing against the decision to serve the Stop Notice; and
4. The differential between the proposed supervising and inspecting engineer regimes for Northern Ireland and that which is proposed for England, Scotland and Wales.

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



Rivers Agency advises as follows:-

1. Risk Designations

The Reservoirs Bill introduces a risk-based approach to the management of controlled reservoirs which, as far as it is reasonably practicable to do so, will take into account the consequence and the probability of reservoir failure. The Reservoirs Bill makes provision for 3 categories of risk designation, High Risk, Medium Risk and Low Risk (Clause 17(2) refers).

As in the rest of the United Kingdom, risk designation will initially be based on the consequence of reservoir failure, using inundation maps for *impounding* reservoirs. Rivers Agency plans to consult with *service* reservoir (typically large concrete tanks) managers when determining the risk designation of these structures, as it is not possible to simply produce inundation maps.

The likelihood or probability of reservoir failure is difficult to determine and there is currently no industry standard which can be applied. Consideration of methodologies that might be applied to assess the likelihood of reservoir failure are being progressed by the reservoir engineering community. Rivers Agency is monitoring developments and will apply probability of reservoir failure to reservoir risk designations once a methodology has been decided.

The Department will review a reservoir risk designation every 10 years, or at any time it considers that it is no longer appropriate (Clause 18(3) refers). For example, a risk designation will be reviewed when planning permission is granted for development in a reservoir inundation area, which could change the current designation.

A comparison of the methodologies to determine risk designation in England, Scotland and Wales and what is being proposed in Northern Ireland is provided at **Annex A**. Please note that the methodology for Scotland is currently in draft and may be subject to change prior to its being signed off. We would, therefore, request that this information is not shared or distributed outside the Committee at this stage.

2. Review, Appeal & Dispute Mechanisms

The Reservoirs Bill makes provision for a reservoir manager to apply to the Department for a review of the following:-

- a Risk Designation - Clause 20;
- the decision not to issue an Enforcement Certificate - Clause 77(1)(h);
- decision not to appoint or to remove civil engineer from panels etc- Clause 101; and
- Pre-commencement Inspection Report: review of decision under 31(2) – Schedule 1.

A review is an internal process that will allow the reservoir manager the opportunity to engage with the Department or to provide additional information. It also allows the Department to make a decision in a relatively short period and keeps costs to a minimum.

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



Appeals

The Reservoirs Bill makes provision for a reservoir manager to appeal to the Water Appeals Commission for Northern Ireland against the following:-

- the Department's decision in a review of a Risk Designation - Clause 21;
- the issue of a Stop Notice - Clause 73(2)(a);
- the decision not to issue a Completion Certificate - Clause 73(2)(g);
- not to award compensation for loss suffered as a result of the serving of a stop notice - Clause 74(1)(c)(i);
- the amount of compensation - Clause 74(1)(c)(ii);
- the Department's decision in a review not to issue Enforcement Certification - Clause 77(1)(i);
- the imposition of a Fixed Monetary Penalty – Clause 79(2)(e);
- the imposition of a Variable Monetary Penalty – Clause 82(2)(e);
- the imposition of a Non Compliance Penalty – Clause 84(3)(b);
- the requirement to pay costs – Clause 86(3)(a);
- the amount of costs – Clause 86(3)(b).

Disputes

The Reservoirs Bill makes provision for disputes to be referred to a referee in accordance with regulations to be made under Clause 62 and, to the Lands Tribunal, in respect of the following:-

Disputes to be determined by a referee

- A reservoir manager may challenge a direction in a safety report from a construction engineer, or an inspection report from an inspecting engineer, or a recommendation as to the next inspection, by referring it to a referee - Clause 57(2);
- A reservoir manager may also challenge certain matters in a preliminary or final certificate from a construction engineer, by referring it to a referee - Clause 58(1).

Lands Tribunal

- The Department must pay compensation to landowners or occupiers of land and/or undertake reinstatement of land where the Department has exercised its Powers of Entry and there is consequential damage to the land or disturbance of the right to occupy. Any dispute regarding compensation, or costs incurred by the Department in relation to compensation or an agreement to reinstate (wholly or partially) will be determined by the Lands Tribunal - Clause 92(9).

See **Annex B** for more information on the provision outlined above.

The Department's review of a Risk Designation (Clause 20) and provision to allow a reservoir manager to appeal against the review decision (Clause 21) will come into operation, by order, as soon as possible after the Bill has received Royal Assent. The procedures for dispute resolution by a referee will be introduced by regulations. Provision for disputes to be determined by the Lands Tribunal will come into operation when the Bill has received Royal Assent.

It should be noted that any decisions made by the Department prior to any appeal continues to have effect pending the outcome of the appeal, except in the case of a dispute to a referee. In such a case, the direction or recommendation is suspended until the dispute has been determined or withdrawn.

If you have a hearing difficulty you can contact the Department via the textphone on 028 9052 4420



Any fee charged by the Water Appeals Commission for Northern Ireland will be at a level which will not prevent appeals from being brought forward and is commensurate with the fee charged by the Planning Appeals Commission. This is currently £126.00.

3. Stop Notice - Appeal

A reservoir manager, on whom a Stop Notice is served, may appeal against that decision to the Water Appeals Commission for Northern Ireland (Clause 73(2)(b) refers). The terms of a Stop Notice continues to have effect, pending a decision on the appeal (Clause 73(2)(h) refers). Should a reservoir manager fail to comply with the Stop Notice, pending the outcome of the appeal, the manager will have committed an offence. In such circumstances, the Department will seek to enforce the Stop Notice by invoking Clause 75(1).

4. Supervising and Inspecting Regimes

Reservoirs designated as high or medium risk must be supervised and inspected by appropriately qualified reservoir panel engineers. The supervising and inspection regimes contained in the Bill are considered to be proportionate to the risk designation for the reservoir.

A supervising engineer must be in place at all times in order to monitor reservoir safety. A high risk or medium risk reservoir must, at all times, be under the supervision of a supervising engineer in order to provide the reservoir manager with advice, guidance, and assistance as and when required.

The legislation also requires high risk reservoirs to be visited by a supervising engineer at least twice in every 12 month period. This is to enable the reservoir to be viewed in different climatic conditions. High risk reservoirs are also to be inspected by an inspecting engineer within one year from the date the risk designation takes effect and every ten years thereafter, unless an earlier inspection has been recommended in the most recent inspection report, or by the supervising engineer.

The legislation requires medium risk reservoirs to be visited by a supervising panel engineer at least once in every 12 month period. As with high risk reservoirs, an initial inspection of a medium risk reservoir must be undertaken within one year from the date from which the risk designation takes effect. However, unlike a high risk reservoir, a medium risk reservoir will only be inspected again when recommended by the supervising panel engineer, or if recommended in the inspection report.

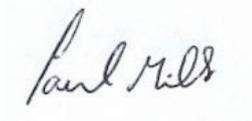
A comparison of the supervising and inspection regimes required by or proposed in legislation in England, Scotland and Wales and what is being included in the Bill for Northern Ireland, is provided at **Annex C**.

If you have a hearing difficulty you can contact the Department via the textphone on 028 9052 4420



I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely



Paul Mills
Departmental Assembly Liaison Officer

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



Annex A
Comparison of methodologies for determining the risk designations of Reservoir in England, Wales, Scotland and Northern Ireland.

	Risk Designation Categories	Criteria for High Risk	Criteria for Medium Risk	Criteria for Low Risk	Methodology
England	High risk only	Human life could be endangered in the event of an uncontrolled release of water. <i>Life could be endangered if there is reasonable expectations that in the event of an uncontrolled release of water conditions are such that</i> a) <i>Persons within or in the immediate vicinity of residential, business or recreational areas, whether permanent or temporary establishments, could be endangered;</i> b) <i>Damage to infrastructure is sufficient to lead directly to human life being endangered.</i>	N/A	N/A	Consequence only by considering a) site specific reservoir flood maps; b) downstream assessment for reservoir inundation mapping study 2009; c) last inspection report if it contains an assessment of the impact of failure downstream; and d) any other relevant information.
Wales	High risk only	Human life could be endangered in the event of an uncontrolled release of water. <i>Life could be endangered if there is reasonable expectations that in the event of an uncontrolled release of water conditions are such that</i> a) <i>Persons within or in the immediate vicinity of residential, business or recreational areas, whether permanent or temporary</i>	N/A	N/A	Consequence only by considering a) site specific reservoir flood maps; b) downstream assessment for reservoir inundation mapping study 2009; c) last inspection report if it contains an assessment of the impact of failure downstream; and d) any other relevant

		<i>establishments, could be endangered; Damage to infrastructure is sufficient to lead directly to human life being endangered.</i>			information.
Scotland	High, Medium and Low Risk	Risk to life for one or more persons within the reservoir inundation area. Hospitals, ambulance depots. Residential homes, health centres & clinics, police or fire station in remote/rural areas. Education facilities, prisons, power supply/production, Water for consumption. Non residential property with a score of 70+ – i.e 12+ offices, 5+ factories, 4+ warehouses, 13+ retail properties, Airport, motorways, A class road in remote area, railways. UNESCO world heritage sites, Scheduled monuments, Grade A listed buildings.	All residential homes, health centres and clinics, police or fire station in urban areas, water pumping & waste water treatment sites. Non residential properties with a score of 1-70 i.e. 1-11 offices, 1-4 factories, 1-3 warehouses, 1-12 retail properties, B roads in remote areas, all A roads unless in remote area, minor road in very remote area. Agricultural land classes 1-5 where class 1 is >136 ha and class 5 is > 2076 ha. Designated environmental areas containing species/habitats to be medium or high vulnerability. Category B listed Buildings, gardens etc.	No risk to life identified within the inundation area. GPS, Dentist, pharmacies, post office. Non residential properties score of 0. All B class roads unless in remote or very remote area, all minor roads unless in very remote area. Agricultural land classes 1-5 where class 1 is <136 ha and class 5 is < 2076 ha. Designated environmental areas containing species/habitats to be very low or low vulnerability. Category C listed buildings.	Required to assess on consequence and probability. Initially assessed on consequence on 4 receptors of Human Health, Economic activity, Environment and Cultural Heritage of an uncontrolled release of water assessed by Reservoir Inundation Mapping analysis. The 4 receptors have been divided into 7 high level categories and each category has been given a suite of indicators that will be assessed for impact. The assessment will be an automated process which will require the datasets of the various indicators to be overlaid onto the reservoir inundation maps It only requires one of the receptor groups to be impacted as high for the reservoir to be assigned high.
Northern Ireland	High, Medium and Low Risk	Where a reservoir failure could result in a) loss of 1 or more life; or b) significant impact on economic activity	Where a reservoir failure could impact on a) people but where no loss of life can be foreseen; or b) which may result in significant damage to the environment and culture heritage	Where as a result of reservoir failure a) no loss of life can be reasonably be foreseen and b) very limited additional flood damage would be caused.	Provision for consequence and/or probability to be considered. Initially designation will be purely on impact on Human Health, Economic activity, Environment, and Cultural Heritage, using Reservoir Inundation mapping for impounding reservoirs.

Annex B**Reservoirs Bill – Reviews/Appeals/Disputes****Clause 20 Review by Department of a Risk Designation (Introduced by Order)**

A reservoir manager of a controlled reservoir may apply to the Department for a review of a risk designation.

An application for a review must be made in writing within 90 days of the risk designation notice.

A risk designation continues to have effect pending a decision being made in the review.

Clause 77(1)(h) Review by Department not to issue Enforcement Certification. (Introduced by Affirmative Resolution)

Under Clause 76(1) the Department may by regulations make provision as to the acceptance by it of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where it has reasonable grounds to suspect that the reservoir manager has committed an offence.

Regulations made under Clause 76(1) may include provision that enables the Department to issue the reservoir manager with a certificate that an enforcement undertaking has been complied with.

Regulations made under Clause 76(1) may also include provision that enables a reservoir manager to ask the Department to review its decision not to issue such certification.

Clause 101 – Review of decision not to appoint, or to remove civil engineers from panels etc.

A civil engineer may apply to the Department for a review of its decision

- Where an application for appointment to a reservoir panel under clause 97 has been unsuccessful;
- To remove an engineer from a reservoir panel;
- Is given a direction under clause 100(4) (that he is no longer suitable to act in his commission under a panel which has been dissolved).

Schedule 1 – Pre-commencement Inspection Report: review of decision under 31(2)

A reservoir manager may seek a review of the Department’s decision regarding a document being a pre-commencement inspection report.

An application for a review must be made within 90 days beginning with the date on which notice was served.

Appeals to the Water Appeals Commission for Northern Ireland

Clause 21 Appeal against Department’s decision in a review under Clause 20. (Introduced by Order)

A reservoir manager of a controlled reservoir on whom notice of the Department’s decision in a review (under section 20) is served may appeal to the Water Appeals Commission for Northern Ireland against the Department’s review decision.

Any such appeal must be made in writing within 60 days of the review decision notice.

A risk designation continues to have effect pending a decision being made in the appeal

Clause 21(3)(a - c) sets out the grounds on which the appeal can be made.

Clause 73(2)(a) Appeal against Department’s decision issue a Stop Notice. (Introduced by Affirmative Resolution)

Under clause 72(1), the Department may, by regulations, make provision as to the serving by it of Stop Notices on reservoir managers of controlled reservoirs.

Regulations made under Clause 72(1) must enable the reservoir manager, on whom the Stop Notice is served, to appeal to the Water Appeals Commission for Northern Ireland against the decision to serve it.

A Stop Notice will continue to have effect pending a decision being made in the appeal.

Clause 73(4)(a - d) sets out the grounds on which the appeal can be made.

Clause 73(2)(g) Appeal against Department's decision not to issue a Completion Certificate. (Introduced by Affirmative Resolution)

Regulations made under Clause 72(1) must enable the Department to issue a completion certificate where it is satisfied that the reservoir manager has taken the steps specified in the Stop Notice.

Regulations made under Clause 72(1) must also enable a reservoir manager to appeal to the Water Appeals Commission for Northern Ireland against the decision by the Department not to issue a completion certificate.

A Stop Notice will continue to have effect pending a decision being made in the appeal.

Clause 73(5)(a - c) sets out the grounds on which the appeal can be made.

Clause 74(1)(c) Appeal against Department's decision not to award Compensation. (Introduced by Affirmative Resolution)

Regulations made under Clause 72(1) must enable a reservoir manager on whom a Stop Notice is served to appeal to the Water Appeals Commission for Northern Ireland against:

- A decision by the Department not to award compensation for loss suffered as a result of the serving of a Stop Notice;
- The amount of compensation.

Clause 77(1)(i) Appeal against Department's decision in a review under section 77(1)(h) (not to issue certification that an enforcement undertaking has been complied with). (Introduced by Affirmative Resolution)

Regulations made under Clause 76(1) may provide a reservoir manager with the right of appeal to the Water Appeals Commission for Northern Ireland against a decision by the Department in a review of its decision not to issue certification that an undertaking has been complied with.

Clause 77(1)(j)(i –iii) sets out the grounds on which the appeal can be made.

Clause 79(2)(e) Appeal against Department’s decision to impose a Fixed Monetary Penalty. (Introduced by Affirmative Resolution)

Under Clause 78(1) the Department may by regulations make provision about the imposition of a Fixed Monetary Penalty.

Regulations made under Clause 78(1) may provide a reservoir manager with the right of appeal to the Water Appeals Commission for Northern Ireland against a decision by the Department to impose a Fixed Monetary Penalty.

Clause 79(6)(a - c) sets out the grounds on which the appeal can be made.

Clause 82(2)(e) Appeal against Department’s decision to impose a Variable Monetary Penalty. (Introduced by Affirmative Resolution)

Under Clause 81(1) the Department may by regulations make provision about the imposition of a Variable Monetary Penalty.

Regulations made under Clause 81(1) may provide a reservoir manager with the right of appeal to the Water Appeals Commission for Northern Ireland against a decision by the Department to impose a Variable Monetary Penalty.

Clause 82(7)(a - d) sets out the grounds on which the appeal can be made.

Clause 84(3)(b) Appeal against Department’s decision to impose a Non Compliance Penalty. (Introduced by Affirmative Resolution)

Regulations made under Clause 81(1) may include provision for a reservoir manager to pay a non-compliance penalty if the manager fails to comply with a written undertaking previously given to take action that would benefit any person affected by the offence that caused the imposition of the Variable Monetary Penalty.

Regulations made under Clause 81(1) must also provide a reservoir manager with the right of appeal to the Water Appeals Commission for Northern Ireland against a decision by the Department to impose a Non Compliance Penalty.

Clause 84(5)(a - c) sets out the grounds on which the appeal can be made.

Clause 86(3)(a & b) Appeal against Department’s decision to impose the requirement to pay costs and to the amount of costs. (Introduced by Affirmative Resolution)

Regulations made under Clauses 72(1), 76(1), or 81(1) may include provision for the Department, by notice served on a reservoir manager:

- on whom a Stop Notice is served;
- from whom an enforcement undertaking is accepted; or
- on whom a variable monetary penalty is imposed,

require a reservoir manager to pay the amount of any costs reasonably incurred by the Department in relation to the above.

Regulations made under Clauses 72(1), 76(1), or 81(1) must also provide a reservoir manager with the right of appeal to the Water Appeals Commission for Northern Ireland against a decision by the Department to impose the requirement to pay costs and the amount of the costs.

Disputes

Disputes to a referee

Clauses 57 to 62 Dispute Referral (Clauses 57 to 61 will be Introduced by Order. Clause 62 will be introduced by Regulation – Negative Resolution)

The Bill makes provision for disputes to be referred to a referee in accordance with regulations under clause 62.

A reservoir manager may challenge a direction in a safety report from a construction engineer, or an inspection report from an inspecting engineer, or a recommendation as to the next inspection, by referring it to a referee (Clause 57(2) refers).

Where a referral is made under Clause 57(2) the matter referred is suspended until the reference has been determined or withdrawn.

A reservoir manager may also challenge certain matters in a preliminary or final certificate by referring it to a referee (Clause 58(1) refers).

Where a referral is made under Clause 58(1) the matter referred is suspended until the reference has been determined or withdrawn.

The referee must be a panel engineer and must be commissioned by agreement between the reservoir manager and the relevant engineer or by the Institution of Civil Engineers if no agreement is reached (Clause 59(1) refers).

Disputes to the Lands Tribunal

Clause 92(9) Compensation (Introduced on Royal Assent)

The Reservoirs Bill contains provision under Clause 88, which will come into operation when the Bill receives Royal Assent, which allows the Department to enter land on which a controlled reservoir is situated. These “Powers of Entry” also extend to neighbouring or other land through which access is required in order to enter land where a controlled reservoir is situated.

Clause 92 sets out the circumstances where the Department must pay compensation and/ or undertake reinstatement of land where land is damaged or the enjoyment of land is disturbed as a result of the Department exercising its Powers of Entry.

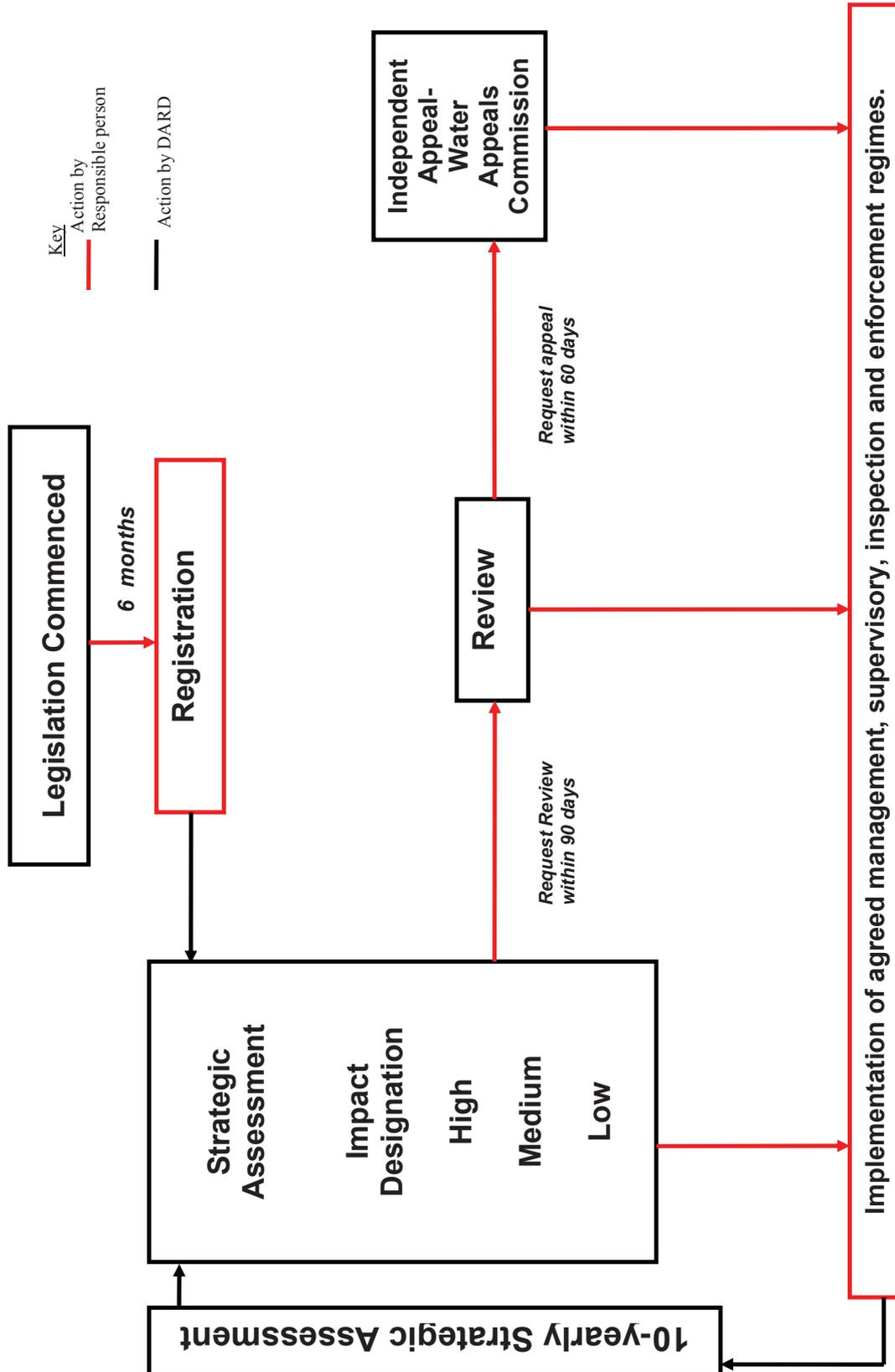
Clause 92(9) provides that the Lands Tribunal will determine any dispute as to:

- the right to a right of compensation;
- the amount of any such compensation;
- costs incurred by the Department in relation to such compensation; or
- costs incurred by the Department in relation to an agreement made with a person or the reservoir manager to secure the reinstatement or partial reinstatement of land where the Department has exercised its right to enter land.

		<p>recommended by the supervising panel engineer.</p> <p>c) At any time recommended in the last inspection report.</p> <p>d) Before the end of 2 years from date of a final construction panel engineer.</p> <p>e) Before the end of 6 months beginning with the date of completion of any alteration to the reservoir which does not increase or decrease its capacity, is such as might affect its safety and has not been designed or supervised by a qualified engineer.</p> <p>f) Within 2 years of the reservoir being designated as high risk where there is no final certificate for the reservoir.</p>	<p>recommended by the supervising panel engineer.</p> <p>c) At any time recommended in an inspection report.</p> <p>d) Before the end of a period of 2 years from the date of a final certificate.</p>	<p>c) At any time recommended by the supervising panel engineer.</p> <p>d) At any time recommended in an inspection report.</p> <p>e) At any time recommended in a pre-commencement report or within a period not exceeding 10 years from the date inspection to which the pre-commencement report relates.</p> <p>f) Before the end of 2 years from the date of a final certificate or at such earlier time if recommended in a final certificate.</p>	<p>Inspection to be undertaken by an inspecting panel engineer</p> <p>a) Initially within 1 year from the date the risk designation takes effect.</p> <p>b) At any time recommended by the supervising panel engineer</p> <p>c) At any time recommended in an inspection report.</p>
Medium Risk	N/A	N/A	<p>Inspection to be undertaken by an inspecting panel engineer</p> <p>a) at any time recommended by the supervising panel engineer.</p> <p>b) At any time recommended in an inspection report</p>	<p>Inspection to be undertaken by an inspecting panel engineer</p> <p>a) Initially within 1 year from the date the risk designation takes effect.</p> <p>b) At any time recommended by the supervising panel engineer</p> <p>c) At any time recommended in an inspection report.</p>	<p>Inspection to be undertaken by an inspecting panel engineer</p> <p>a) Initially within 1 year from the date the risk designation takes effect.</p> <p>b) At any time recommended by the supervising panel engineer</p> <p>c) At any time recommended in an inspection report.</p>

DARD re. Reservoirs Bill Designation Flow Chart

The Designation Process



DARD re. Committee meeting 18 February 2014

**Corporate Services Division
Central Management Branch**

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Date: 1 April 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
Room 243
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Dear Stella

Reservoirs Bill Committee Meeting 18 February 2014

Your letter of 21 February refers.

Financial Information

Reservoir Costs

Attached is the financial information on the reservoirs at Kiltonga [Annex A], Hillsborough [Annex B], and Begny [Annex C]. The Inspection Regime for each of these reservoirs was adopted by Rivers Agency in 2001. The average annual cost from 2008 to 2013 is as follows:-

Reservoir Monitoring

The average annual cost of monitoring for each of the reservoirs at Kiltonga, Hillsborough, and Begny is £288.72 (based on costs from 2008 to 2013).

This monitoring is undertaken by an Engineering Technician or a Foreman and entails a walkover to check for changes to the dam, such as the presence of rabbit burrows, erosion of the surface or unusual damp patches. They also check the operation of any sluices or valves and any blockages in the channels.

Reservoir Supervision

The average annual cost of supervision for each of the reservoirs at Kiltonga, Hillsborough, and Begny is £163.72 per year (based on costs from 2008 to 2013).

This is currently undertaken by a Rivers Agency Senior Engineer, but it is important to note that this is not a Panel Supervising Engineer, whose role requires a more detailed examination of embankment surfaces or joints in masonry, settlement of dam, operation and condition of any valves or mechanisms, measurement of leakage at monitoring points (if

installed) and prioritising any ongoing maintenance such as painting, pointing concrete joints or repairs to any vermin damage reported by the officers monitoring the reservoir.

Inspecting Engineer

A Reservoir Panel Inspecting Engineer, under the terms of the GB Reservoir Legislation, was commissioned to carry out a 10 year inspection at Kiltonga, Hillsborough, and Begny reservoirs in 2013. The average cost of this inspection was £2,255 per reservoir.

Construction Engineer

None of the reservoirs has required any construction work since 2008.

Maintenance Works

The average annual cost of this maintenance work for each of the reservoirs at Kiltonga, Hillsborough, and Begny over the last 6 years is set out in the Annexes to this letter.

Routine maintenance of reservoirs is undertaken, at various times throughout the year, by Rivers Agency squads, typically, comprising 3 industrial staff. This work entails grass cutting, valve lubrication and clearance of spillway outlets.

Capital Works

Following the Reservoir Panel Engineer inspections in 2013, capital works were identified for Kiltonga, Hillsborough, and Begny reservoirs. Most of these works have been completed and, again, the costs are detailed in the attached Annexes.

Definition of Reservoir Manager

Any person who manages or operates a reservoir or any part of it, but is not the owner (or part owner) of the reservoir, will be regarded as the reservoir manager for the entire reservoir or for that particular part for which he is responsible, (Clause 6(5) of the Reservoir Bill refers).

The default position, if a reservoir manager cannot be identified, will be that the owner is the reservoir manager. The relevant Bill Clause is 6(6) which states that: The owner of any part of the reservoir for which no person is reservoir manager by virtue of Clause 6(5) is the reservoir manager of the part.

Should a loan or lease agreement between a reservoir owner and another party (be it a club or community group) confer responsibility for managing or operating all or any part of a reservoir on the other party, the other party will be regarded as a reservoir manager.

The terms “manage” & “operate” are not defined in the legislation and therefore the normal dictionary definition will apply:-

“Manage” - Be in charge of, control, supervise.

“Operate” - Control the functioning of.

Any organisation that is part of any such agreement or arrangement with a reservoir owner would therefore be encouraged to carefully examine its position in this regard.

During its evidence to the Committee on 18 February 2014, NI Water advised that it enters into leases with clubs or organisations that allow members to, for example, fish or sail on the reservoir. NI Water, at all times, retains full ownership of, and full responsibility for, managing and operating all of its reservoirs. Therefore, NI Water readily acknowledges that it will be the reservoir manager for each of its reservoirs, and not the leaseholders.

Grant Aid (Clause 105)

The Reservoirs Bill provides the Department with the power to enable the payment of a grant to reservoir managers to assist them to comply with their obligations under the Reservoirs Bill. The need for grant assistance was the single biggest issue raised during the public consultation and it is clearly an issue for the Committee and for many individuals and organisations that have given evidence to the Committee.

The Minister has indicated that, she would be willing to consider the need for a grant scheme when measures, including safety works, required for reservoirs are known. Any such scheme will be subject to budget cover and Executive approval. The Minister is particularly concerned about the ability of 3rd sector or not-for-profit organisations to meet the cost of measures in the interests of reservoir safety.

Rivers Agency is currently establishing the potential costs of financing a grant scheme for reservoir safety to protect the public. These potential costs will be shared with the Committee at the earliest opportunity.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Mills". The signature is written in a cursive style with a large initial 'P'.

Paul Mills

Departmental Assembly Liaison Officer

Annex A - Kiltonga Nature Reserve

Reservoir Name: Kiltonga Nature Reserve
 Capacity: 90,987 cubic meters
 Structure type): Earth fill embankment
 Age: Dates from 1878
 Provisional Risk Designation: High

Financial year	Reservoir Monitoring	Reservoir Supervision (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
2008	£373.44	£152.76	Nil	Nil	£58.20	Nil
2009	£205.00	£157.48	Nil	Nil	£60.00	Nil
2010	£255.90	£161.26	Nil	Nil	£61.44	Nil
2011	£163.30	165.94	Nil	Nil	£63.22	Nil
2012	£140.51	£170.25	Nil	Nil	£64.87	Nil
2013	£338.35	£174.68	£2255.00	Nil	£1331.04	£6861.33
Average Costs	£246.08	£163.72	£225.00 (over the next 10 years)	Nil	£273.12	£686.13 (over the next 10 years)

Reservoir Monitoring

This column shows an average annual cost of £246.08 for monitoring the condition of Kiltonga reservoir. As mentioned in the covering letter, the monitoring will typically be undertaken by a Rivers Agency Professional Technical Officer (analogous to EO1) and Foreman (analogous to Administrative Officer) adopting a role similar to that which the Reservoir Manager will fulfil. This entails a walkover to check for damage to the dam such as rabbit burrows, erosion of surface, unusual damp patches, operation of any sluices or valves and any blockages in the channels.

Reservoir Supervision

This column shows an average annual cost of £163.72 for examining Kiltonga reservoir by a Rivers Agency Senior Professional Technical Officer (analogous to Deputy Principal).

Inspecting Engineer

An inspection of Kiltonga by an external Reservoir Panel Engineer was conducted during 2013. The cost of £2,255 to conduct this 10 year inspection is averaged over the next 10 years which is when the next inspection is due.

Construction Engineer

There have been no construction works on this reservoir in recent years.

Maintenance Works

This column shows an average annual cost of £273.12 for general maintenance works at Kiltonga. The significant increase in costs in 2013 represents additional works undertaken in preparation for the Panel Engineer Inspection.

Capital Works

The Panel Engineer Inspection Report, prepared following the January 2013 inspection, identified 7 measures to be taken to maintain reservoir safety. This is capital works which is estimated to cost £6861.33. This cost is averaged over the next 10 years from 2013 to 2023, when the next Panel Engineer inspection is due.

Annex B - Hillsborough Lake

Reservoir Name:	Hillsborough Lake
Capacity:	457,500 cubic meters
Structure type:	Earth fill embankment
Age:	Dates from 1650
Provisional Risk Designation:	High

Financial year	Reservoir Monitoring	Reservoir Supervision (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
2008	£349.18	£152.76	Nil	Nil	£465.60	Nil
2009	£305.04	£157.48	Nil	Nil	£480.00	Nil
2010	£317.29	£161.26	Nil	Nil	£491.52	Nil
2011	£379.31	£165.94	Nil	Nil	£505.77	Nil
2012	£243.34	£170.25	Nil	Nil	£518.92	Nil
2013	£338.35	£174.68	£2255	Nil	£532.42	£7213.61
Average costs	£322.08	£163.72	£2255.00 (over the next 10 years)		£499.03	£721.36 (over the next 10 years)

Reservoir Monitoring

This column shows an average annual cost of £322.08 for monitoring the condition of Hillsborough Lake. As mentioned in the covering letter, the monitoring will typically be undertaken by a Rivers Agency Professional Technical Officer (analogous to EO1) and Foreman (analogous to Administrative Officer) adopting a role similar to that which the Reservoir Manager will fulfil. This entails a walkover to check for damage to the dam such as rabbit burrows, erosion of surface, unusual damp patches, operation of any sluices or valves and any blockages in the channels.

Reservoir Supervision

This column shows an average annual cost of £163.70 for examining Hillsborough Lake by a Rivers Agency Senior Professional Technical Officer (analogous to Deputy Principal).

Inspecting Engineer

An inspection of Hillsborough by an external Reservoir Panel Engineer was conducted during 2013. The cost of £2,255 to conduct this 10 year inspection is averaged over the next 10 years which is when the next inspection is due.

Construction Engineer

There have been no construction works on this reservoir in recent years.

Maintenance Works

This column shows an average annual cost of £499.03 for general maintenance works at Hillsborough Lake.

Capital Works

The Panel Engineer Inspection Report, prepared following the January 2013 inspection, identified 5 measures to be taken to maintain reservoir safety. These are capital works which are estimated to cost £7213.61. This cost is averaged over the next 10 years from 2013 to 2023, when the next Panel Engineer inspection is due. Additional works have also been recommended for this reservoir. The option report for these has been delivered at a cost of £11290.00. An invitation to tender for this work has not yet been published so River Agency is unable to provide a cost estimate for this work at this time.

Annex C - Begny Lake

Reservoir Name:	Begny Lake
Capacity:	537,310 cubic meters (Estimated)
Structure type:	Earth fill embankment
Age:	Not known
Provisional Risk Designation:	High

Financial year	Reservoir Monitoring	Reservoir Supervision (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
2008	£266.86	£152.76	Nil	Nil	£232.80	Nil
2009	£300.12	£157.48	Nil	Nil	£240.00	Nil
2010	£102.40	£161.26	Nil	Nil	£245.76	Nil
2011	£400.48	£165.94	Nil	Nil	£252.89	Nil
2012	£324.46	£170.25	Nil	Nil	£259.46	Nil
2013	£393.83	£174.68	£2255.00	Nil	£266.21	£1490.72
Average Costs	£298.02	£163.72	£2255.00 (over the next 10 years)		£249.52	£149.07 (over the next 10 years)

Reservoir Monitoring

This column shows an average annual cost of £298.02 for monitoring the condition of Begny Lake. As mentioned in the covering letter, the monitoring will typically be undertaken by a Rivers Agency Professional Technical Officer (analogous to E01) and foreman (analogous to Administrative Officer) adopting a role similar to that which the Reservoir Manager will fulfil. This entails a walkover to check for damage to the dam such as rabbit burrows, erosion of surface, unusual damp patches, operation of any sluices or valves and any blockages in the channels.

Reservoir Supervision

This column shows an average annual cost of £163.72 for examining Begny Lake by a Rivers Agency Senior Professional Technical Officer (analogous to Deputy Principal).

Inspecting Engineer

An inspection of Begny Lake by an external Reservoir Panel Engineer was conducted during 2013. The cost of £2,255 to conduct this 10 year inspection is averaged over the next 10 years when the next inspection is due.

Construction Engineer

There have been no construction works on this reservoir in recent years.

Maintenance Works

This column shows an average annual cost of £249.52 for general maintenance works at Begny Lake.

Capital Works

The Panel Engineer Inspection Report, prepared following the January 2013 inspection, identified 3 measures to be taken to maintain reservoir safety. This is capital work which is estimated to cost £1490.72. This cost is averaged over the next 10 years from 2013 to 2023, when the next Panel Engineer inspection is due.

DARD re. Information on Ballysaggart Lough

Dear Stella,

Your request for information held by Rivers Agency for Ballysaggart Lough / Black Lough (Dungannon) refers.

Ownership / Reservoir Manager

The majority of the surface area of the lake is not registered on the publically available Land Registry records, which is one of the sources which Rivers Agency is using to establish reservoir ownership. This indicates that the area may have been part of a larger private estate. This theory is supported by reference in the Land Registry records to sporting rights that appear to be held by the Earl of Ranfurly.

According to Land Registry records, parcels of land and a portion of the water body are registered to Moygashel Ltd. whose registered office is at Moygashel Mills, Dungannon. Rivers Agency has invited this company to attend the information and consultation events held during the policy development phase of the Bill. The Agency also invited the company to contribute to the Reservoirs Community Assets survey. However, it has not responded to any of this correspondence.

The Ballysaggart Environmental Group came to the attention of Rivers Agency during research for the Reservoirs Information Booklet. This Information Booklet was supplied to the A.R.D. Committee along with the Community Asset Survey report at its meeting on 30 April 2013. It is available at http://www.dardni.gov.uk/reservoirs_in_northern_ireland_information_booklet.pdf.

The information on Ballysaggart reservoir is attached at Annex A.

There is some evidence from the published work of the Ballysaggart Environmental Group that indicates a significant interest in the reservoir and immediate environment. Consequently, the details of this Group have been included in the Rivers Agency database of potential reservoir managers. This status will only be confirmed when the Bill is enacted and the registration process completed.

The Group only came to the attention of Rivers Agency last year when the Reservoir Information booklet was being compiled. Therefore, the Group was not invited to the policy consultation events.

Risk Designation

The provisional risk designation is High by virtue of the 102 properties in the inundation area. A copy of the inundation map is attached at Annex B

Provisional information on the volume and dam height is sensitive and has been used by Rivers Agency for policy development purpose only. In any event it is unlikely that this data when verified during the registration phase will be made publically available, for reasons of National Security.

I understand an opportunity has been afforded to Mrs Denise Corbett to address the A.R.D. Committee at its meeting on 1st April 2014. Rivers Agency welcomes the Group's contribution to consideration of the Reservoirs Bill.

Also, Rivers Agency has advised Mrs Corbett that it is willing to meet with her and colleagues at their convenience to discuss the Reservoirs Bill in more detail.

Yours sincerely

Rivers Agency
Quinton Campbell

Ballysaggart Lough / Black Lough

Ownership: Private Owner. Moygashel Ltd. Moygashel Mills, Dungannon

Provisional Designation: High, by virtue of 102 properties in downstream inundation area.

Construction and purpose

- This reservoir was potentially formed by increasing the capacity of the pre existing natural Lough.
- This work was probably undertaken to improve supplies to mills in the area.

Environmental Considerations

- There are no designated environmentally sensitive areas in the vicinity of this reservoir.
- The historic buildings / antiquities on the site, a suspected Crannog and an ecclesiastical site are recorded as historic monuments. <http://apps.ehsni.gov.uk/ambit/Details.aspx?MonID=15586> & <http://apps.ehsni.gov.uk/ambit/Details.aspx?MonID=15595>

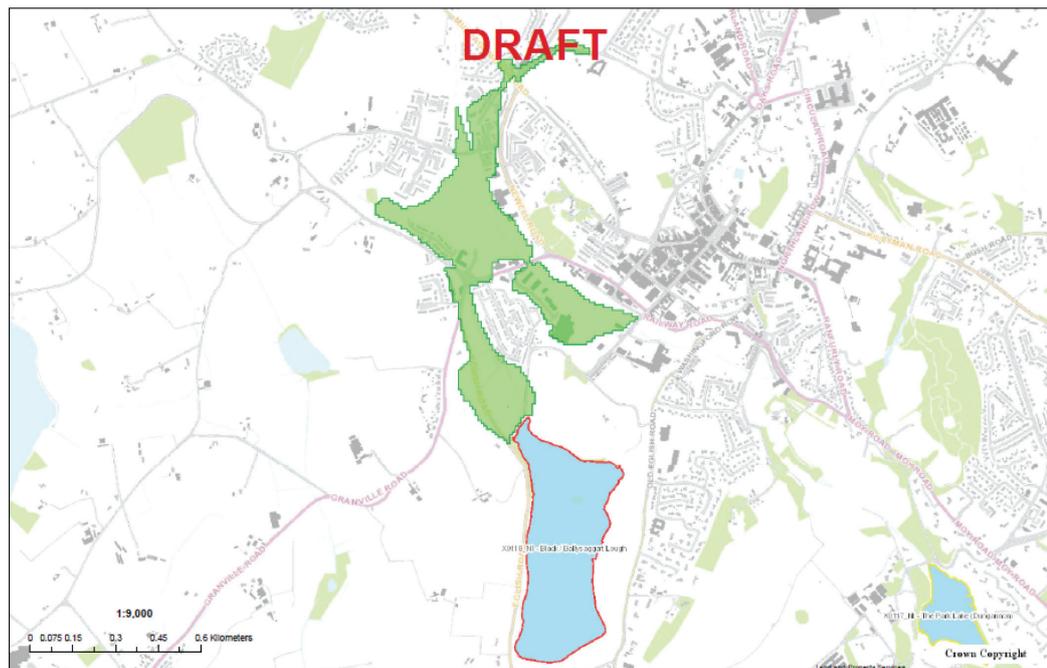
Access

- The site is serviced by car parking on road side lay bys.
- There are some surfaced paths on the eastern, southern and western shores.
- The northern shores of the reservoir are on private land.

Recreation & Leisure

- Walking opportunities to and round the reservoir with picnic benches.
- Active environmental group at: http://blacklough.org/beg_centre.html
- Future plans for visitor centre and further Lough development

Annex B



This map is provided in accordance with the "National Protocol for the Handling, Transmission and Storage of Reservoir Flood (Impoundment) Maps for England and Wales. The PROTECTIVE MARKING associated with this dataset is: "NOT PROTECTIVELY MARKED". Intellectual Property Rights - The Reservoir Flood Mapping is the property of Rivers Agency and is Crown Copyright. Licensing Restrictions - The dataset is jointly branded by Land and Property Services (LPS) and Rivers Agency. For Licensing queries contact LPS' IPRI Section. The Rivers Agency makes no warranty, representation or guarantee as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. The Rivers Agency explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The Rivers Agency shall assume no liability for: 1) any errors, omission, or inaccuracies in the information provided regardless of how caused; or 2) any decision made or action taken or not taken by the user in reliance upon any information or data furnished hereunder.

DARD re. Information on Creggan Upper and Creggan Lower Reservoirs

Dear Stella,

Your request for information held by Rivers Agency for Creggan Upper and Creggan Lower reservoirs refers.

Ownership / Reservoir Manager

There is a degree of ambiguity in relation to the ownership of the Creggan Reservoirs. In the response to the Community Asset Survey, Creggan Country Park advised Rivers Agency that the reservoirs are “Leased for 99 years by Creggan Country Park from Derry City Council”. The website for Creggan Country Park, however, advises that the “100 acre site is now in the ownership of Creggan Country Park Enterprises Limited.”

Creggan Country Park responded to the public consultation on the Reservoir Safety Policies during March to June 2012 and contributed to the Community Asset survey in April 2013.

The information on Creggan Upper and Creggan Lower reservoirs contained within the Reservoirs Information Booklet, is attached at Annex A.

Creggan Country Park has been included in the Rivers Agency database of potential reservoir managers. This status will only be confirmed when the Bill is enacted and the registration process completed.

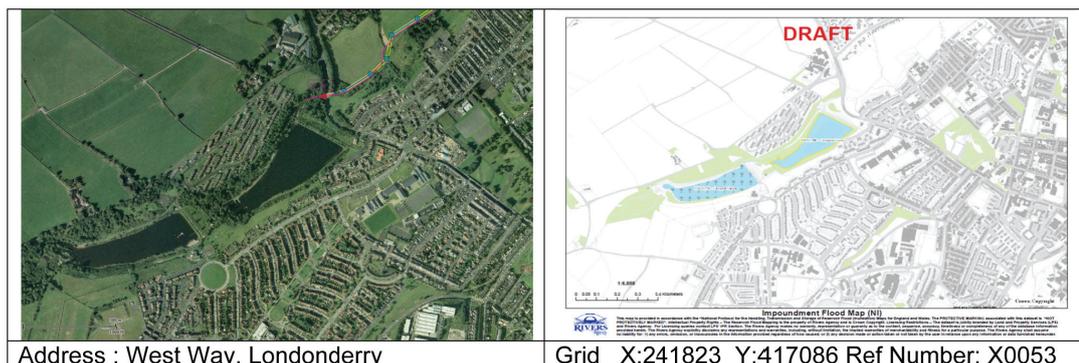
Risk Designation

Rivers Agency believes that Creggan Upper has an estimated capacity of 344,324 cubic metres and Creggan Lower an estimated capacity of 354,285 cubic metres. The provisional risk designation is High by virtue of the 463 properties in the flood inundation area. A copy of the inundation map is attached at Annex B. It should be noted that whilst both of the reservoirs are each capable of holding far more than the 10, 000 cubic metre threshold, they also form a combination, in that water in the upper reservoir will flow into the lower in the event of a dam breach.

Rivers Agency is aware of a third reservoir on this site which was breached in the early 1970’s but was never repaired. Rivers Agency has not been advised as to the detail of this breach, whether it was intentional or accidental, the mode of failure, other contributing factors or the consequences of this breach. The Agency, therefore, does not know if it is capable of holding 10,000 cubic metres or more of water and is presently not in a position to determine if it will be a controlled reservoir.

Annex A

Ceggan Lower



Ownership These reservoirs are owned by Derry City Council.

They are on long term lease to Creggan Country Park.

Construction and purpose

- The Creggan reservoir system was constructed in stages during the period 1849 to 1880.
- They were constructed by Derry Corporation for the supply of water to the growing city.
- No longer used for water supply, they are managed as the main feature of Creggan Country park.

Environmental Considerations

- There are no designated environmental features within the confines of the Creggan Country park.
- The roundabout at the site entrance is a marked antiquity site, (a rath).
- There are no other marked monuments / antiquities within the immediate vicinity of the reservoirs.

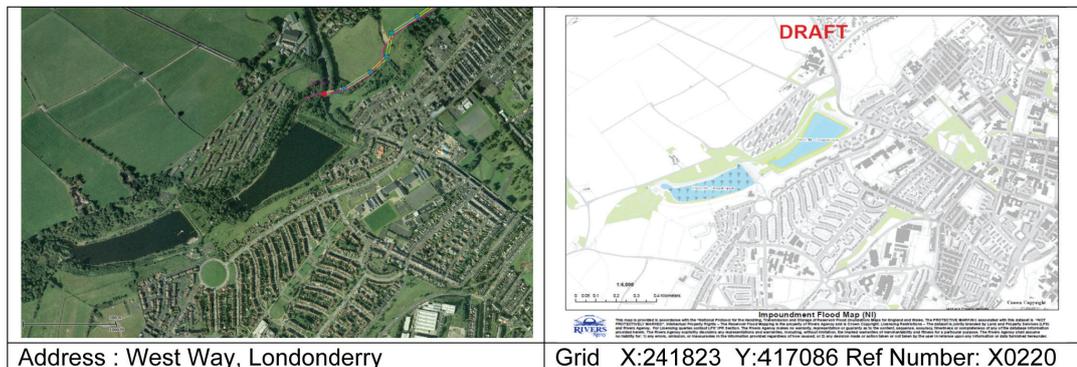
Access

- The main access to the reservoir is at the Creggan Country Park Visitor Centre at West Way.
- There is a mixture of surfaced and un-surfaced paths around the perimeter of the reservoirs.

Recreation & Leisure

- The Creggan Country park promotes numerous activities within the park boundaries.
- Walking, Boating, Sailing, Fishing are all available.

Ceggan Upper



Ownership These reservoirs are owned by Derry City Council.

They are on long term lease to Creggan Country Park.

Construction and purpose

- The Creggan reservoir system was constructed in stages during the period 1849 to 1880.
- They were constructed by Derry Corporation for the supply of water to the growing city.
- No longer used for water supply, they are managed as the main feature of Creggan Country park.

Environmental Considerations

- There are no designated environmental features within the confines of the Creggan Country park.
- The roundabout at the site entrance is a marked antiquity site, (a rath).
- There are no other marked monuments / antiquities within the immediate vicinity of the reservoirs.

Access

- The main access to the reservoir is at the Creggan Country Park Visitor Centre at West Way.
- There is a mixture of surfaced and un-surfaced paths around the perimeter of the reservoirs.

Recreation & Leisure

- The Creggan Country park promotes numerous activities within the park boundaries.
- Walking, Boating, Sailing, Fishing are all available.

Annex B



Impoundment Flood Map (NI)
This map is provided in accordance with the "National Protocol for the Handling, Transmission and Storage of Reservoir Flood (Inundation) Maps for England and Wales. The PROTECTIVE MARKING associated with this dataset is "NOT PROTECTIVELY MARKED". Intellectual Property Rights - The Reservoir Flood Mapping is the property of Rivers Agency and is Crown Copyright, Licensing Restrictions - The dataset is jointly branded by Land and Property Services (LPS) and Rivers Agency. For Licensing queries contact LPS' IPR Section. The Rivers Agency makes no warranty, representation or guaranty as to the content, sequence, accuracy, timeliness or completeness of any of the database information provided herein. The Rivers Agency explicitly disclaims any representations and warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The Rivers Agency shall assume no liability for: 1) any errors, omission, or inaccuracies in the information provided regardless of how caused; or 2) any decision made or action taken or not taken by the user in reliance upon any information or data furnished hereunder.



Impoundment Flood Map (NI)
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DALO re. Committee meeting 25 February 2014

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Date: 2 April 2014

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BT4 3XX

Dear Stella

Reservoir Bill Committee Meeting 25 February 2014

Briefing from representatives of Belfast City Council, Craigavon City Council and Newry & Mourne District Council.

At its meeting on the 25 February 2014, the ARD Committee received oral briefing from Belfast, Craigavon and Newry & Mourne Councils and written evidence from the Northern Ireland Local Government Association (NILGA). Rivers Agency has been asked to comment on the issues raised and its comments are set out below.

Costs and Financial burden on Councils and support for Grant Scheme

Representatives from all of the Councils expressed concern in relation to the costs of implementing the legislation and the financial burden that it would place on local government. Given the costs of inspections, supervision and the potential remedial works, support for the introduction of a grant scheme which would be available to all reservoir managers was endorsed. NILGA raised concerns regarding Council's having to fund remedial works for reservoirs where an owner cannot be traced or is irresponsible.

Rivers Agency Comment

Some Council areas have had inspections of their reservoirs undertaken. This reflects best practice and is welcomed. Provided the inspection reports are of suitable standard, they will be recognised under the Reservoirs Bill, when enacted, as pre-commencement inspection reports and therefore will negate the need to have an inspection undertaken within 1 year of the risk designation taking effect.

It is worth restating that the supervision and inspection regime proposed is based on industry best practice for the management of reservoirs and, under common law, reservoir managers are already responsible.

The Minister has indicated her willingness to explore, in more detail the possibility of meeting the costs of public safety measures, in particular the costs to not-for profit- organisations. The precise costs of these works will not be known until after the first inspection of reservoirs has taken place. It should be noted that this commitment was for not-for profit organisations and only for works in the interests of safety. As advised in my previous letter in response to the issues raised at the Committee meeting on 18 February 2014, Rivers Agency is currently seeking to establish the potential costs of financing a grant scheme for reservoir safety for these organisations. However, when undertaking this task, the Agency will consider the potential costs for a number of options, including grant scheme for all reservoir managers for supervision, inspection and works in the interests of safety. These potential costs will be shared with the Committee at the earliest opportunity.

Rivers Agency will have powers under the Bill to undertake works in an emergency situation, where an owner cannot be traced or is irresponsible, in order to avoid a potential dam breach. The costs of such works may be recoverable. The Bill does not confer such powers on Local Councils and nor will they be expected to fund works in these circumstances. However, they may be involved, given the role they play in civil contingency management in the event of an emergency.

Preparation of Flood Plans

Representatives from the Councils and NILGA supported the need for multi agency flood plans and questioned the need for individual reservoir flood plans. Comment was made on the lack of information in the Bill on what is to be included in flood plans.

Rivers Agency Comment

The legislation, as drafted, provides the Department with the power, by regulation, to make provision for the preparation of flood plans for controlled reservoirs. The regulations will provide the detail in respect of flood plans, for example, what is to be included in a flood plan and who is to prepare a plan. It is likely that any regulations will be limited to preparation of an 'on-site' plan for a reservoir, which will include a reservoir inundation map and what steps and who is to be contacted in order to control, or mitigate the effects of flooding likely to result from an uncontrolled escape of water from a reservoir. Any regulations will be subject to consultation with key stakeholders, interested parties, the public and the ARD Committee.

Reservoir Manager

Craigavon Borough Council raised concerns regarding responsibility for dams which are not wholly owned by the Council and are outside its control. In particular, mention was made of private houses having been built on the dam at Craigavon Lakes and, in the case of Lurgan Park Lake, a public road.

It was also indicated that Craigavon Lakes was a shared resource between the Council and Rivers Agency, as the Agency depends on the lakes for flood attenuation and, therefore, should contribute towards the cost of maintaining the Lakes.

Rivers Agency Comment

The Bill stipulates that a reservoir manager is the person or organisation that manages or operates the reservoir, or part of the reservoir and, where there is no manager or operator, the owner, by default, is the reservoir manager.

The Bill also excludes a road or railway embankment from being part of a reservoir if it is not integral to the functioning or operation of the reservoir. However, if a road is part of the dam, then it is deemed to be integral to the functioning of the reservoir and, therefore, the owner of the road will be a part manager of the reservoir. The Bill requires reservoir managers to co-operate and managers may nominate a single reservoir manager to act on their behalf.

Craigavon Lakes were constructed to facilitate the drainage for the new town of Craigavon and provides flood attenuation for watercourses which flow into Lough Neagh. Rivers Agency or its predecessors had no responsibility in the construction of these lakes and there are no designated watercourses in the immediate vicinity of the Lakes which Rivers Agency maintains under the Drainage (NI) Order 1973.

There is no historical or contemporary reason for Rivers Agency to become involved in the management or operation of Craigavon Lakes and, therefore, the Agency is not a reservoir manager or part manager.

All impounding reservoirs provide some degree of flood attenuation. The Agency has constructed reservoirs for attenuating flood flows where there has been significant flooding or potential flooding problems in certain catchment areas, for example, at Kiltonga Reservoir. In such cases, Rivers Agency will readily accept its reservoir manager responsibilities.

Designation of reservoirs

During the presentations it was made clear that the probability of reservoir failure should be considered when determining risk designation.

Rivers Agency Comment

The legislation, as drafted, requires the Department to take into account, in so far as it is reasonably practicable to do so, the consequences of an uncontrolled release of water and the probability of reservoir failure. However, while research is ongoing, there is currently no recognised methodology for determining the probability of reservoir failure. Therefore, the risk designation of an impounding reservoir will initially be predominately based on the consequence or impact on human life, economic activity, environment and cultural heritage of an uncontrolled release of water as a result of dam failure.

Once an agreed methodology is in place to determine the probability of reservoir failure, this will be taken into account by the Agency in a review of the risk designations for all controlled reservoirs in Northern Ireland.

Impact of downstream development

Concern was raised that consideration had not been given in the Bill to the impact of development taking place in the downstream inundation area on the risk designation of the reservoir and the consequential increased costs for the reservoir manager.

Rivers Agency Comment

This is incorrect as the new version of the Planning Policy Statement (PPS15) includes a planning policy to manage development in the downstream inundation area of a controlled reservoir. The public consultation on the review of PPS 15 ended in early January and we await the outcome.

The new policy entitled 'Development in proximity to Reservoirs' places an onus on the developer to ensure that the flood risk has been assessed and that there are suitable measures in place to manage and mitigate the identified flood risk. All applications will require the developer to provide DOE planning with a flood risk assessment, prepared by a reservoir panel engineer, detailing any necessary upgrading to the reservoir and its management regime. This will require the developer to engage and to reach agreement with the reservoir manager(s) on the proposed development. The financing of any associated costs in respect of the reservoir and its supervising/inspecting regime would be a matter between the developer and the reservoir manager. This should provide assurance regarding reservoir safety so as to enable development to proceed. Where such assurance is not forthcoming, planning permission will be refused.

If development in a reservoir inundation area is allowed, Rivers Agency will review the risk designation on its completion and advise the reservoir manager(s) of any changes to the designation and any changes to the supervising/inspecting regime. The Department will have the powers to review a risk designation at any time it considers that the designation is no longer appropriate.

Effect on property owners

Concerns were raised regarding the effect on property owners downstream, in particular the price of property and the availability of insurance.

Rivers Agency Comment

The Reservoirs Bill seeks to introduce a management regime for reservoirs in order to reduce the likelihood of total dam failure. The Agency considers that the introduction of such a regime on high and medium risk reservoirs should provide assurance that reservoirs are being managed in accordance with industry best practice and, therefore, do not pose an unnecessarily high risk to the public or to property. It is, therefore, anticipated that the legislation would not impact on the availability of insurance, the cost of insurance premiums, or the price of property in a reservoir inundation area.

Reservoir Inundation Maps

Craigavon Borough Council commented that they 'understand that flood inundation maps need to be updated and are based on data and assumptions that are no longer current'. The availability of reservoir inundation maps to members of the public was also raised, in particular, maps indicating the risk designations of reservoirs.

Rivers Agency Comment

Rivers Agency has produced draft Reservoir Flood Inundation Maps, which show the extent of inundation following a total dam failure. These maps were primarily produced to assist the Agency in the development of reservoir safety policy and to determine the provisional risk designation of the 151 impounding reservoirs in Northern Ireland that are capable of holding 10,000 cubic metres or more of water.

The Agency will be producing more detailed Reservoir Flood Inundation Maps which will show depth, velocity and time of inundation to better assess the consequences of total dam failure on the inundation area and give a more accurate risk designation. These maps will use existing data and any new data that becomes available and will assume total dam failure. These more detailed maps may also be used for Emergency Planning purposes or in the preparation of flood plans.

Reservoir Flood Inundation Maps contain information that is deemed to be sensitive in terms of national security and therefore controls are necessary in relation to the disclosure of this information. Rivers Agency, therefore, is adhering to the National Protocol for the handling, transmission and storage of Reservoir Flood Inundation Maps for England and Wales, which has been amended to include Northern Ireland.

Under this protocol, the draft maps which the Agency has already produced, which only show the dam breach outlines, are considered to be Type 1(A) and may be made available to reservoir owners/managers and to the ARD Committee on request and to the general public once the Reservoirs Bill has been enacted. The more detailed maps which will be produced in the future, and which will provide details of depth, velocity and timings, will be made available to reservoir owners/managers but will not be made available to the public.

Reservoir engineers

Representatives raised concerns in relation to the availability of reservoir engineers. They alluded to be fact that there is only one inspecting engineer in Northern Ireland and the potential lack of competition when seeking to commission such an engineer.

Rivers Agency Comment

There is currently a list of reservoir panel engineers from which reservoir managers can commission for the purpose of supervision and inspection of their reservoirs. Although there is only a small number of reservoir engineers from Northern Ireland on these lists, Rivers Agency has been promoting the Reservoirs legislation at various conferences and seminars in order to encourage reservoir engineers to consider making their services available to reservoir managers here.

When the legislation has been enacted, the Agency will write to all reservoir engineers on these lists and seek confirmation of their willingness to provide services in Northern Ireland. Those who accept this offer will be appointed to the initial panels of reservoir engineers for Northern Ireland. This should alleviate any concerns regarding the availability of engineers and the potential lack of competition in the short term. In the longer term, the Department will draw up a list of panel engineers following a Northern Ireland specific application process.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely

A handwritten signature in black ink that reads "Paul Mills". The signature is written in a cursive style with a large initial 'P'.

Paul Mills

Departmental Assembly Liaison Officer

DALO re. Committee meetings 11 March and 18 March 2014

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Date: 2 April 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
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Dear Stella

Reservoir Bill Committee Meeting 11 & 18 March 2014

Briefing from representatives of Armagh & Antrim District fishing clubs and the Ulster Angling Federation.

Issues raised

Most of the issues raised by the angling clubs and the UAF focused on the costs of implementation of the legislation, the need for a grant scheme, identifying a reservoir manager, and designation of risk. The Department has provided comments of these issues in its response to the ARD Committee dated 25 February 2014.

The Department's comments on the other issues raised are as follows:

Human Rights

It was suggested that the proposed legislation will impact on the human rights of reservoir managers. The Bill has been scrutinised by Departmental Solicitors' Office and the Attorney General, both of whom have concluded that the Bill is compliant with the European Convention on Human Rights.

Decommissioning

The "decommissioning" of a reservoir and whether planning permission was required prior to this activity taking place was discussed. It was also suggested that the Bill precludes this as an option.

The term decommissioning is not used in the Reservoirs Bill, rather the terms used are:

- Discontinuance – making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of the surrounding land (but may still hold water); or
- Abandonment – making the reservoir incapable of holding any water above the natural level of the surrounding land.

The Bill requires that actions to discontinue or abandon a reservoir be supervised by a construction engineer. The legislation does not prevent a reservoir manager from taking either of these actions in order to avoid the requirements of the management regime. However, it is worth noting that other consents and approvals will be required prior to such works being commenced.

DOE Planning advises that the Planning (NI) Order 1991 defines development as ‘the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land’. As the nature of the works associated with the discontinuance or abandonment of a reservoir may constitute engineering operations, and/or a change of material use of the land, DOE Planning advises that reservoir managers/owners should engage with their local planning office to determine if planning permission would be required in advance of any works being commenced.

In addition, there is a requirement under a number of pieces of environmental legislation for reservoir managers/owners to consult with the NI Environment Agency (NIEA) about any plans to alter a reservoir. The Committee heard evidence from NIEA on this matter. Consent from the Department of Agriculture and Rural Development, under Schedule 6 of the Drainage (NI) Order 1973, would also be required if alterations were to impact on a watercourse.

Regulation making powers

The Delegated Powers Memorandum outlines the regulations which the Department has the power to introduce. The Reservoirs Bill provides the framework for the regulations. Therefore, the Department’s powers are limited to what is included in the Bill.

There are a number of regulations which must be brought forward prior to the legislation being implemented. For example, the methodology for calculating reservoir volume, registration, panels of reservoir engineers. There are other regulations which the Department may bring forward, for example civil sanctions or registration fees. These will be introduced only if considered appropriate.

All proposed regulations will be subject to stakeholder engagement and consultation before they are presented to the ARD Committee for consideration.

Liability of an angling club in circumstances where they could not afford to pay, go bankrupt or close.

The Department has sought legal advice on the liability of an angling club that holds a freehold interest in the property on which a reservoir is situated where it:

- Disclaims an interest in the property on which a reservoir is situated; or
- It is declared insolvent.

This advice applies equally to any reservoir owner who holds a freehold interest in the property on which the reservoir is situated.

Disclaiming an Interest

In principle, where a freeholder disclaims its interest in a property, ownership reverts to the Crown. This is known as “escheat”. Any property which is subject to escheat, passes to the Crown to do with as it wishes. Escheat does not impose any obligation on the Crown, therefore the Crown does not automatically acquire any liabilities which accompany the property. This means that the Crown would not automatically become reservoir manager,

unless the Crown took active possession of the property and committed an act of management over it which it is not likely to do. Rather, the Crown would aim to dispose of the property, if possible with any sale proceeds going to the State.

A situation where a freeholder could successfully disclaim interest in property in order to avoid liabilities imposed by the Reservoirs Bill is not envisaged. If a freeholder attempted to do so and ignored the duties imposed by the Bill, the Department would proceed to enforcement.

If, however, interest in the property were somehow disclaimed, this would result in the club (and its members/users) losing the property on a permanent basis. There would, therefore, be no reservoir manager to carry out the duties under the Reservoirs Bill and it would be a matter for the Department to exercise Emergency Powers under Section 71 of the Reservoirs Bill as and when required in order to protect the public or property from an escape of water from the reservoir.

Insolvency

An owner who cannot afford to pay debts becomes bankrupt and a club, company or partnership is liquidated, after which it ceases to exist. This is commonly known as insolvency. Liquidation of a company's assets could be either compulsory or voluntary and both are instigated by a winding-up petition being presented to the Court for a winding-up order to be made. Once an order is made, a liquidator is appointed by the Court to deal with the company's assets, including paying outstanding debts, disposing of assets usually by sale, and taking on legal responsibilities in order to discharge the liabilities.

In the case of an angling club which is registered as a limited company, this would include the liquidator taking responsibility to act as the reservoir manager for the reservoir. If the Club has insufficient funds to pay the cost of duties imposed by the Bill, the liquidator has the power to disclaim "onerous property", which is defined as 'unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act'.

In such circumstances the Department would exercise Emergency Powers under Section 71 of the Reservoirs Bill, as and when required in order to protect the public or property from an escape of water from the reservoir.

Correspondence from the Department of Social Development and NI Water.

Officials are considering the request from the Committee and will provide a response as soon as possible.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely



Paul Mills

Departmental Assembly Liaison Officer

DARD re. Reservoir numbers by capacity

High Risk

Threshold	Numbers	Private Sector High Risk	3 rd Sector High Risk
10,000	151	23	6
15,000	132	22	6
25,000	120	21	6
Difference 10000 to 25000	31	2	0

Medium Risk

Threshold	Numbers	Private Sector Medium Risk	3 rd Sector Medium Risk
10,000	151	10	3
15,000	132	10	3
25,000	120	9	3
Difference 10000 to 25000	31	1	0

Low Risk

Threshold	Numbers	Private Sector Low Risk	3 rd Sector Low Risk
10,000	151	26	0
15,000	132	14	0
25,000	120	9	0
Difference 10000 to 25000	31	17	0

DARD owned Reservoirs

RES_Name	Reservoir manager	Capacity (m³)	Prov. Designation
Drum Manor Fish Ponds Lower	DARD Forest Service	11,020	L
Greenmount College	DARD, CAFRE, Greenmount Campus, Antrim BT41 4PU	14,375	M
Drum Manor Fish Ponds Upper	DARD Forest Service	23,010	L
Downhill Forest Lake	DARD Forest Service	24,400	M
Mill Pond (Annesborough)	DARD Forest Service	28,000	H
Kiltonga Nature Reserve	Rivers Agency	90,987	H
Binevenagh Lake	DARD Forest Service	117,333	M
Park Lake (Hillsborough)	Rivers Agency	457,500	H
Begny Lake	Rivers Agency	537,310	H

DARD re. Committee meeting 8 April 2014

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Date: 25 April 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
Room 243
Parliament Buildings
Ballymiscaw
Belfast
BT4 3XX

Dear Stella

Reservoirs Bill Committee Meeting 8 April 2014

Your letter of 10 April refers.

The Committee has sought information on a number of issues and the Department has provided the following comments:-

a) Supplementary financial memorandum

Thank you for sharing the costs on supervision, inspection and maintenance of reservoirs provided by NI Water and the Department for Social Development. These, together with the costs incurred by the Department on reservoirs for which it has responsibility, will assist with the preparation of the supplementary financial memorandum, which will be forwarded to the Committee soon.

b) Draft amendment to give Rivers Agency an oversight role, but not a regulatory role, in the costs for various engineers required under the Bill

This matter is still being considered and a response will be provided in due course.

c) Draft amendment that would accommodate the removal of operational requirements of all reservoirs that are low risk

The management requirements of a Low Risk reservoir are set out at Annex A and the Department has kept these to a minimum. A further discussion on this may be useful.

d) Rivers Agency should make the Minister aware of very real concerns that a consequence of this Bill could be the decommissioning of reservoirs

The Department will make the Minister aware of the Committee's concern regarding the possibility of reservoirs being decommissioned.

e) Consideration of a licensing regime with inspection and full cost recovery

The option of a Reservoir Licensing System was considered at the policy development stage. Key Stakeholders preferred the Panel Engineer System. These two options were subject to public consultation and the Panel Engineer System was the preferred option. This was subsequently agreed by the Executive. A summary of the Reservoir Licensing System considered is provided at paragraph 17 of the Explanatory and Financial Memorandum. Additional information on this System is provided at pages 11, 12, and 13 of the Consultation on Draft Proposals document, which was published March 2012.

f) Existing legislation namely Article 33 of the Drainage (NI) Order 1973 and Article 297 of the Water and Sewerage Services (NI) Order 2006

Article 33 of the Drainage (NI) Order 1973 and Article 297 of the Water and Sewerage Services (NI) Order 2006, were considered but were found not to be suitable for introducing comprehensive reservoir safety legislation.

Article 33 of the Drainage Order provides some controls in relation to dams and sluices. It provides powers for the Department, by notice served on the person in control of the dam, to require that person to 'to keep open or closed any sluice forming part of the dam, or otherwise to control the quantity of water in the dam' for the purpose of 'preventing or arresting injury to land'. However these powers cannot be served on a Government Department and, therefore, cannot be applied to the reservoirs owned by the Department, NI Water, or the Department for Social Development. Nor do they require inspection, maintenance or improvement to the structure in the interests of public safety.

Article 297 of the Water and Sewerage Services (NI) Order 2006 provides the Department for Regional Development with powers to make regulations regarding reservoir safety and construction 'the Department may make regulations with respect to the construction, inspection, maintenance and repair of reservoirs and dams'. It was considered that this provision is limited to safety of reservoirs used for water abstraction and supply purposes and it therefore does not cover other public sector, private or 3rd sector reservoirs.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely



Paul Mills

Departmental Assembly Liaison Officer

Reservoir Manager Duties for Low Risk Structures

A reservoir will be designated as Low Risk where an uncontrolled release of water would cause no appreciable detrimental effect on human life, economic activity, cultural heritage, or the environment.

The Low Risk reservoir manager is required to:-

- Register the reservoir with the Department;
- Provide notice to the Department where they cease to be a reservoir manager, and provide name of person who is or will become the manager;
- Maintain Basic Records;
- Display Emergency Response Information;
- Permit entry of authorised persons;
- Provide Information to the Department on request.

Additional requirements may be introduced by regulations. These may require the Low risk reservoir manager to:-

- Report Incidents;
- Have a Flood Plan.

Should a Low Risk reservoir manager wish to carry out relevant works, as defined under the clauses on construction and alteration, the Bill requires the following:-

- Give notice to the Department of relevant works;
- Commission a construction engineer and give notice of this to the Department;
- Follow directions in a safety report which has been produced by the construction engineer;
- Comply with requirements of a Preliminary or Final certificate.

DARD re.Committee meeting 29 April 2014

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Date: 8 May 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
Room 243
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Dear Stella

Committee Meeting 29 April 2014 – Reservoirs Bill

Your letter of 1 May refers.

I wish to advise that Rivers Agency is considering amending a number of clauses in the Reservoirs Bill as summarised at Annex A.

Officials are working with the Office of the Legislative Council on draft amendments and will present these to the Committee for consideration at the earliest opportunity, following Ministerial approval.

You will note that the proposed amendments take account of comments made by the Examiner of Statutory Rules and detailed in your letter of 11 April.

The Annex has already been provided to you and shared with the Committee.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely



Paul Mills

Departmental Assembly Liaison Officer

Reservoirs Bill – Amendments Being Considered

Clause 17(2)

To take account of comments made by the ARD Committee that the term “risk” may not be the most appropriate.

Clauses 21(9), 73(6), 74(2), 77(2), 79(7), 82(8), 84(6), 86(4)

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Clauses 22(3)(e) and 22(4)

To take account of comments made by the Examiner of Statutory Rules that there are two distinct rules when perhaps there should be one.

Clause 25(2)(k)

To take account of comments made by the ARD Committee in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

Clauses 36, 37, 49, and 50

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.

Clauses 65(4), 67(6), 69(6), 71(7) & (8), 86(1), and 92(8)

To take account of comments made by the ARD Committee in respect of cost recovery by the Department.

Clause 105

The Department is considering how best to make grant payments available to reservoir managers to cover the initial costs of implementing the requirements of the Bill. This may require an amendment to Clause 105 and/or a letter of assurance from the Minister to the ARD Committee.

Clause 106

To take account of comments made by the ARD Committee that the Department should monitor charges being made by reservoir panel engineers and the “over-engineering of reservoirs in Northern Ireland.

Clause 117

To include reference to the amended Clauses 22(3)(e) and 22(4) as it has been decided that the regulations referred to should not be made unless a draft has been laid before, and approved by resolution of the Assembly.

Clause 120

To take account of comments made by the ARD Committee that would allow for a “pause” in the commencement of certain parts of the Reservoirs Bill.

DARD re. Risk Matrix

Reservoir Risk Matrix

	Reservoir with no matters in the interest of safety identified.	Reservoir with matters in the interest of safety identified.	Reservoir with matters in the interest of safety identified and Reservoir Manager non-compliant.
<p>High Risk: Where a reservoir failure could endanger 1 or more lives, or result in significant impact on economic activity.</p>	<p>One Supervising Engineer visit per year and one Inspection every 10 years.</p> <p>No enforcement actions by the Department</p>	<p>Multiple visits by Supervising Engineer and frequent inspections.</p> <p>Enforcement which may result in:</p> <ul style="list-style-type: none"> • Variable Monetary Penalties • Fixed Monetary Penalties • Criminal Conviction • Fine to Level 5 	<p>Multiple visits by Supervising Engineer and frequent inspections.</p> <p>Enforcement which may result in:</p> <ul style="list-style-type: none"> • Departmental intervention and cost recovery • Criminal Conviction • Fine to Level 5 • Service of a Stop Notice • Fine of up to £20,000 / 2 years imprisonment
<p>Medium Risk: Where a reservoir failure could impact on people but where no loss of life can be foreseen and which may result in significant damage to the environment and cultural heritage.</p>	<p>Supervising Engineer visit every other year and one initial Inspection.</p> <p>No enforcement actions by the Department</p>	<p>Multiple visits by Supervising Engineer and frequent inspections.</p> <p>Enforcement which may result in:</p> <ul style="list-style-type: none"> • Enforcement Undertaking • Variable Monetary Penalties • Fixed Monetary Penalties • Criminal Conviction • Fine to Level 4 	<p>Multiple visits by Supervising Engineer and frequent inspections.</p> <p>Enforcement which may result in:</p> <ul style="list-style-type: none"> • Departmental intervention and cost recovery • Criminal Conviction • Fine to Level 4 • Service of a Stop Notice • Fine of up to £20,000 / 2 years imprisonment
<p>Low Risk: Where there is no significant impact as a result of reservoir failure</p>	<p>No visits by Supervising Engineers or Inspections required.</p>		

DARD re. Proposed amendments being considered 27 May 2014

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Date: 22 May 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
Room 243
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Belfast
BT4 3XX

Dear Stella

Committee Meeting 27 May 2014 – Reservoirs Bill

I wrote to you on 8 May to advise you that Rivers Agency were considering amending a number of clauses in the Reservoirs Bill as summarised at Annex A.

Rivers Agency has completed its deliberations on a number of these clauses. Those amendments that it is recommending to the Minister are summarised at Annex B. The detail of each proposed amendment is attached as follows:-

1. Annex B1 Clause 22 - Matters to be taken into account in relation to risk designation decisions.
2. Annex B2 Clause 25(2)(k) and 33(4)(i) Frequency of visits by supervising engineers.

Those clauses that Rivers Agency is considering amending but the work on which is not yet completed are summarised at Annex C.

Those clauses that Rivers Agency is recommending to the Minister not to amend, and the reasons for this, are summarised at Annex D.

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely



Paul Mills
Departmental Assembly Liaison Officer

Annex A

Reservoirs Bill – Amendments Being Considered

Clause 6(8) Reservoir Managers

To clarify this clause following discussion with the ARD Committee during its informal clause by clause scrutiny of the Bill on 6 May.

Clause 15(1)(c) Registration and 16(5) Offences

To take account of a suggestion made by the ARD Committee, during its informal clause by clause scrutiny of the Bill on 6 May, that a person who ceases to be a reservoir manager is only required to give to the Department the name of any person who has or will become a manager of a controlled reservoir if the name of that person is known.

Clause 17(2) Giving a Risk Designation

To take account of comments made by the ARD Committee that the term “risk” may not be the most appropriate.

Clauses 21(9), 73(6), 74(2), 77(2), 79(7), 82(8), 84(6), 86(4) Appeals to the Water Appeals Commission for Northern Ireland

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Clause 22 Matters to be taken into account in relation to risk designation decisions

To take account of comments made by the Examiner of Statutory Rules that there are two distinct rules when perhaps there should be one.

Clause 25(2)(k) and 33(4)(i) Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

Clauses 36(1)(f) and 49(1)(b) or (c) Offences

To ensure where a reservoir manager is required by other legislation to obtain consents, that sufficient time is allowed to obtain such consents before enforcement action is considered.

Clauses 65(4), 67(6), 69(6), 71(7) & (8), 86(1), and 92(8) Cost recovery

To take account of comments made by the ARD Committee in respect of cost recovery by the Department.

Clause 105 Grants

The Department is considering how best to make grant payments available to reservoir managers to cover the initial costs of implementing the requirements of the Bill. This may require an amendment to Clause 105 and/or a letter of assurance from the Minister to the ARD Committee.

Clause 106 Assessment of Engineers' Reports etc

To take account of comments made by the ARD Committee that the Department should monitor charges being made by reservoir panel engineers and the “over-engineering of reservoirs in Northern Ireland.

Clause 117 Orders and Regulations

To include reference to the amended Clauses 22(3)(e) and 22(4) as it has been decided that the regulations referred to should not be made unless a draft has been laid before, and approved by resolution of the Assembly.

Clause 120 Commencement

To take account of comments made by the ARD Committee that would allow for a “pause” in the commencement of certain parts of the Reservoirs Bill.

Annex B

Proposed Amendments to the Reservoirs Bill for Scrutiny by the ARD Committee

1. Matters to be taken into account in relation to risk designation decisions

■ Clause 22.

To take account of comments made by the Examiner of Statutory Rules that there are two distinct rules when perhaps there should be one.

2. Frequency of visits by supervising engineers

■ Clause 25(2)(k) and 33(4)(i).

To take account of comments made by the ARD Committee in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

Annex B1

Amendments relating to clause 22 in response recommendations to Committee by the Examiner of Statutory Rules:

“if the Department considers that a further regulation-making provision is necessary in clause 22(3)(e) then it should be subject to the requirement of consulting the Institution of Civil Engineers and other relevant organisations.”

Matters to be taken into account in relation to risk designation decisions

Clause 22, page 13, line 10

Leave out from ‘, after’ to ‘appropriate,’ in line 11

Clause 22, page 13, line 13

At end insert³/₄

‘(5) Before making regulations under subsection (3)(e) or (4), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.’

Clause 22

The wording of this clause in the Bill as introduced to the Assembly is:

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

22. (1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
 - (b) the probability of such a release.
- (2) For the purposes of subsection (1)(a), potential adverse consequences include—
- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,

- (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.
- (3) The matters which may be taken into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following—
 - (a) the purpose for which the reservoir is (or is to be) used,
 - (b) the materials used to construct the reservoir,
 - (c) the way in which the reservoir was or is being constructed,
 - (d) the age and condition of the reservoir and how it has been maintained,
 - (e) such other matters as the Department may by regulations specify.
- (4) The Department may, after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate, by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

The effect of the proposed amendments is shown in colour below:

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

22. (1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—
- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
 - (b) the probability of such a release.
- (2) For the purposes of subsection (1)(a), potential adverse consequences include—
- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
 - (b) such other potential damage as the Department considers relevant.
- (3) The matters which may be taken into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following—
- (a) the purpose for which the reservoir is (or is to be) used,
 - (b) the materials used to construct the reservoir,
 - (c) the way in which the reservoir was or is being constructed,
 - (d) the age and condition of the reservoir and how it has been maintained,
 - (e) such other matters as the Department may by regulations specify.
- (4) The Department may after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate, by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

- (5) Before making regulations under subsection (3)(e) or (4), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

Annex B2

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

These changes are made in section 25(2)(k) and are shown in isolation from the full clause 25.

Clause 25, page 15, line 6

Leave out 'twice' and insert 'once'

Clause 25, page 15, line 8

Leave out '12' and insert '24'

Clause 25(2)(k)

The wording of this clause in the Bill as introduced to the Assembly is:

Duties etc. in relation to supervision

25. (1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

- (k) visit the reservoir—
 - (i) where it is a high-risk reservoir, at least twice in every 12 month period,
 - (ii) where it is a medium-risk reservoir, at least once in every 12 month period,

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to supervision

25. (1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

- (k) visit the reservoir—
 - (i) where it is a high-risk reservoir, at least twice once in every 12 month period,
 - (ii) where it is a medium-risk reservoir, at least once in every 12 24 month period,

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

This is a consequential change to that made in Clause 25(2)(k).

These changes are made in section 33(4)(i) and are shown in isolation from the full clause 33.

Clause 33, page 21, line 24

Leave out 'twice' and insert 'once'

Clause 33, page 21, line 25

Leave out '12' and insert '24'

Clause 33(4)(i)

The wording of this clause in the Bill as introduced to the Assembly is:

Duties etc. in relation to inspection

33.

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, twice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every 12 month period,

must specify at what intervals, when, or in what circumstances, any additional visit should take place.

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to inspection

33.

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, oncetwice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every 2412 month period,

must specify at what intervals, when, or in what circumstances, any additional visit should take place.

Annex C

Proposed Amendments to the Reservoirs Bill – Work Continuing

1. Appeals to the Water Appeals Commission for Northern Ireland

- Clauses 21(9), 73(6), 74(2), 77(2), 79(7), 82(8), 84(6), 86(4).

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

2. Offences

- 36(1)(f) and 49(1)(b) or (c)

Amendments to these clauses is being considered to ensure where a reservoir manager is required by other legislation to obtain consents, that sufficient time is allowed to obtain such consents before enforcement action is considered.

3. Cost recovery

- Clauses 65(4), 67(6), 69(6), 71(7) & (8), 86(1), and 92(8).

To take account of comments made by the ARD Committee in respect of cost recovery by the Department.

4. Orders and Regulations

- Clause 117

To include reference to the amended Clauses 22(3)(e) and 22(4) and any other relevant clauses where it has been decided that the regulations referred to should not be made unless a draft has been laid before, and approved by resolution of the Assembly.

5. Commencement

- Clause 120

To take account of comments made by the ARD Committee that would allow for a “pause” in the commencement of certain parts of the Reservoirs Bill.

Amendments to the Reservoirs Bill – Not being Considered

1. **Clause 6(8) Reservoir Managers**

To clarify this clause following discussion with the ARD Committee during its informal clause by clause scrutiny of the Bill on 6 May.

Response

Clause 6(8) seeks to make clear that any works that the Department carries out under the Drainage (Northern Ireland) Order 1973, after the Reservoirs Bill is enacted, does not convey reservoir management responsibilities on Rivers Agency. Rivers Agency does not consider it necessary to amend this clause as it is the effect of the Bill in any case. Clause 6(8) restates the legal position for assistance to the reader of the Bill.

Rivers Agency may perform works on a designated watercourse to maintain a free flow of water in a channel. On occasions, drainage schemes undertaken by the Agency have involved works to lower the water level within a watercourse to improve freeboard and drainage at a point that may be upstream and remote to the works themselves. In a scenario such as Artoges Dam, where this type of work has involved a modification to a reservoir, for example the lowering of an existing spillway outlet; the work has been performed to best available engineering standards. This type of work would have been confined to the spillway outlet of a reservoir and contained within the natural channel as designated under the Drainage (Northern Ireland) Order 1973. For these works, the liability of Rivers Agency is limited to defects due to poor workmanship or materials.

Rivers Agency may also have performed emergency repairs to a reservoir under the Drainage (Northern Ireland) Order 1973 to prevent damage to land. Unless a written agreement to the contrary exists, Rivers Agency would not have assumed an ongoing management or maintenance role in these emergency situations.

The exception is where Rivers Agency has undertaken works to a reservoir to improve the flood attenuation properties of the area. For example, Kiltonga Wildlife Ponds has undergone extensive impoundment works to provide additional flood protection to dwellings and businesses in Newtownards. In situations such as this, Rivers Agency has adopted the role of reservoir manager and would intend to retain this responsibility.

2. **Clause 15(1)(c) Registration and 16(5) Offences**

To take account of a suggestion made by the ARD Committee, during its informal clause by clause scrutiny of the Bill on 6 May, that a person who ceases to be a reservoir manager is only required to give to the Department the name of any person who has or will become a manager of a controlled reservoir if the name of that person is known.

The defence contained in clause 16(5) may need to be amended should an amendment be made to clause 15(1)(c).

Response

Concern was expressed by the Committee at the onus placed on a retiring reservoir manager to inform the Department of the person who is taking over this role. When drafting the Reservoirs Bill, the Agency considered this scenario.

If a reservoir manager dies, there is no-one to be prosecuted. The offence in effect “dies” with the person who committed it. It doesn’t pass to the person’s successors.

If a reservoir manager transfers ownership of the reservoir or the management or operation of it to another person, he/she will know who that other person is.

The Department therefore does not consider that any amendment to these clauses is necessary.

3. Clause 17(2) Giving a Risk Designation

To take account of comments made by the ARD Committee that the term “risk” may not be the most appropriate.

Response

The policy objective of the Reservoirs Bill is to introduce a risk-based approach for the management and regulation of reservoirs. Therefore, this fundamental principle must be reflected in the Bill. To do otherwise would be contrary to its purpose.

The Reservoirs Bill allows for both consequence (clause 22(1)(a)) and probability (clause 22(1)(b)) to be considered when deciding the risk designation of a controlled reservoir. Therefore, it is considered inappropriate to remove references to “risk” from the Bill.

4. Clause 105 Grants

The Department is considering how best to make grant payments available to reservoir managers to cover the initial costs of implementing the requirements of the Bill. This may require an amendment to Clause 105 and/or a letter of assurance from the Minister to the ARD Committee.

Response

The Department does not consider that an amendment to clause 105 is required as the financial assistance to reservoir managers to cover the initial costs of implementing the requirements of the Bill will be provided under the Budget Act. Consideration will be given to the need for further financial assistance to meet the capital cost remedial works on reservoirs once this part of the Bill is introduced.

5. Clause 106 Assessment of Engineers’ Reports

To take account of comments made by the ARD Committee that the Department should monitor charges being made by reservoir panel engineers and the “over-engineering of reservoirs in Northern Ireland.

Response

The Department considers that the best way to monitor or provide an oversight role in relation to the costs of commissioning reservoir engineers would be to do so administratively rather than legislatively. To make such provision on the face of the Bill may be perceived as the Department over regulating and may give rise to claims that it was attempting to influence the commercial market.

The Department is unable to become involved in the commissioning of an engineer under the Reservoirs Bill as this must be on the terms and conditions agreed between the reservoir manager and the engineer. The Department can monitor reservoir engineer costs and can publish average costs on its website as an indicator for reservoir managers.

As regards the Committee’s concern in relation to ‘over engineering’ by reservoir engineers, the Department is satisfied that such a situation is unlikely to happen. Reservoir engineers are recognised as having achieved a level of competence and experience in the specialism of reservoir engineering. The majority of these engineers are members of the Institution of Civil Engineers or other similar professional body and they must adhere to a strict Code of Conduct.

Any works in the interests of safety identified by a reservoir engineer will be required to be undertaken to a recognised ‘standard’ which is based on years of research undertaken by the

British Dam Society or other interested organisation and which is considered industry best practice.

If a reservoir manager has concerns in relation to 'over engineering' by a reservoir engineer the Reservoir Bill allows for a dispute referral procedure to obtain a second opinion.

Revised Annex B3 of proposed amendments being considered 27 May 2014

Annex B3

Changes to Clause 117 that are shown below are to reflect proposed amendment to clause 22. (Any other amendments that may be needed to clause 117 for other matters arising in relation to the Bill will be dealt with when dealing with those matters.)

Clause 117, page 70, line 12

At end insert—

- (iia) section 22(3)(e) (further matters that may be taken into account in assessing under section 22(1)(b) probability of uncontrolled release of water),
- (iib) section 22(4) (further provision about matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)),'

Clause 117

The wording of this clause in the Bill as introduced to the Assembly is:

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

(a) regulations under any of the following—

(i) section 2(3) (structure or area to be treated as controlled reservoir),

(ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),

(iii) section 52(1) (incident reporting),

(iv) section 53(1) (flood plans),

(v) section 72(1) (stop notices),

(vi) section 76(1) (enforcement undertakings),

(vii) section 78(1) (fixed monetary penalties),

(viii) section 81(1) (variable monetary penalties),

(ix) section 104(1) (extension of time limit for specified summary offences),

(x) section 105(1) (grants),

(b) an order under—

(i) section 4(1) (substituting different volume of water in certain sections),

(ii) section 110 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

The effect of the proposed amendments is shown in colour below:

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

(a) regulations under any of the following—

(i) section 2(3) (structure or area to be treated as controlled reservoir),

(ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),

(iia) section 22(3)(e) (further matters that may be taken into account in assessing under section 22(1)(b) probability of uncontrolled release of water),

(iib) section 22(4) (further provision about matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)),

(iii) section 52(1) (incident reporting),

(iv) section 53(1) (flood plans),

(v) section 72(1) (stop notices),

(vi) section 76(1) (enforcement undertakings),

(vii) section 78(1) (fixed monetary penalties),

(viii) section 81(1) (variable monetary penalties),

(ix) section 104(1) (extension of time limit for specified summary offences),

(x) section 105(1) (grants),

(b) an order under—

(i) section 4(1) (substituting different volume of water in certain sections),

(ii) section 110 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

DARD re. Amendments relating to clause 22 in response recommendations to Committee by the Examiner of Statutory Rules

Amendments relating to clause 22 in response recommendations to Committee by the Examiner of Statutory Rules:

“if the Department considers that a further regulation-making provision is necessary in clause 22(3)(e) then it should be subject to the requirement of consulting the Institution of Civil Engineers and other relevant organisations.”

Matters to be taken into account in relation to risk designation decisions

Clause 22, page 13, line 10

Leave out from ‘, after’ to ‘appropriate,’ in line 11

Clause 22, page 13, line 13

At end insert—

‘(5) Before making regulations under subsection (3)(e) or (4), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.’

The effect of the proposed amendments is shown in colour below:

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

22.—(1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
- (b) the probability of such a release.

(2) For the purposes of subsection (1)(a), potential adverse consequences include—

- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.

(3) The matters which may be taken into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following—

- (a) the purpose for which the reservoir is (or is to be) used,
- (b) the materials used to construct the reservoir,
- (c) the way in which the reservoir was or is being constructed,
- (d) the age and condition of the reservoir and how it has been maintained,

- (e) such other matters as the Department may by regulations specify.
- (4) The Department may ~~after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate,~~ by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).
- (5) Before making regulations under subsection (3)(e) or (4), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

These changes are made in section 25(2)(k) and are shown in isolation from the full clause 25.

Clause 25, page 15, line 6

Leave out 'twice' and insert 'once'

Clause 25, page 15, line 8

Leave out '12' and insert '24'

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

(k) visit the reservoir—

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

(ii) where it is a medium-risk reservoir, at least once in every ~~12~~ 24 month period,

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

This is a consequential change to that made in Clause 25(2)(k).

These changes are made in section 33(4)(i) and are shown in isolation from the full clause 33.

Clause 33, page 21, line 24

Leave out 'twice' and insert 'once'

Clause 33, page 21, line 25

Leave out '12' and insert '24'

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to inspection

33.—

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, ~~once~~twice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every ~~24~~12 month period, must specify at what intervals, when, or in what circumstances, any additional visit should take place.

DARD re. Committee Stage Informal clause by clause scrutiny

**Corporate Services Division
Central Management Branch**

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Date: 29 May 2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural Development
Room 243
Parliament Buildings
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Belfast
BT4 3XX

Dear Stella

Reservoirs Bill – Committee Stage Informal Clause by Clause

I refer to your letter of 8 May 2014 to colleagues in Rivers Agency enclosing a note of the informal clause by clause consideration of the Reservoirs Bill by the ARD Committee at its meeting on 6 May 2014. Department Officials were invited to contribute to the discussion on a number of occasions and would wish to submit further comment on the clauses below:-

Clause 1 Controlled Reservoirs

The committee sought further explanation as to how the cubic capacity of a reservoir would be measured.

The Department would emphasise to the Committee that only the capacity created for the storage of water above the natural level of the ground by an artificial structure, i.e. the escapable volume of water, will be measured.

The Department will, by regulation, set out how the volume of water capable of being held above the natural level of the surrounding land is to be calculated. The Department is required to consult with the Institution of Civil Engineers and other organisations prior to making these regulations. It will also wish to ensure the approach is similar to that applicable in England; The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc.) (England) Regulations 2013, so as to minimise the opportunity for confusion.

Clause 6(8) Reservoir Managers

The Committee has sought clarification where the Department has performed works on a designated watercourse that flows to, through, or from a controlled reservoir that may have involved works to the dam structure.

Rivers Agency may perform works on a designated watercourse to maintain the free flow of water in a channel. On occasions, drainage schemes undertaken by the Agency have involved

works to lower the water level within a watercourse to improve freeboard and drainage at a point that may be upstream and remote to the works themselves. One such example is at Artoges Dam, where the existing spillway outlet has been lowered. For these works, the liability of Rivers Agency is limited to defects due to poor workmanship or materials.

Clause 6(8) of the Reservoirs Bill confirms the position of the Rivers Agency that works under the Drainage (Northern Ireland) Order 1973 does not convey reservoir management responsibilities on the Agency.

Clause 8 Duty of Multiple Reservoir Managers to Co-operate

It is apparent that there may not be a single reservoir manager for each controlled reservoir in Northern Ireland. The Reservoirs Bill, therefore, contains two clauses to accommodate and encourage co-operative working whilst at the same time making it clear that each individual manager retains a responsibility to comply with the requirements of the Bill.

As deterrence to non-compliance, Rivers Agency considered various sanctions available based on the advice of the Departmental Solicitors Office, and sought the opinion of the Department of Justice as to the suitability of the levels of fines and penalties proposed. In his reply to the Executive paper preceding introduction of the Bill, the Justice Minister commented that, "I note the various offences and penalties set out in the Bill, which align with equivalent provisions in Great Britain's legislation. I agree it is important to have criminal sanctions available in case the various measures short of prosecution, including fixed and variable financial penalties, were to prove inadequate in individual cases".

The maximum fines available, as specified in Clause 8(3) and (4), reflects the importance of manager co-operation to reservoir safety.

Clause 9(a) Controlled Reservoirs Register

The Department will establish a controlled reservoirs register and this will be available for inspection by any person at all reasonable times. The register will be established from information given to the Department by reservoir managers during the initial registration of the reservoir, the various reports and certificates generated by engineers, and the inundation maps developed for consideration of the risk designation.

Whilst information such as reservoir name, location, dam height, and capacity may be of interest to the public, and will be published on the Department's web site in a similar fashion to the "Reservoir Information Booklet" currently available, it is recognised that some of the information, delivered to the Department in compliance with the Bill, should not be made available to the public in order to protect National Security. For example the location of a particular weakness in the dam structure as identified in an inspecting engineer's report could be exploited. The Department would therefore apply to the Secretary of State for direction as to the disclosure of such information. The Department and the reservoir manager will be required to observe any direction that it receives from the Secretary of State on the withholding of information.

Information, such as the detailed inundation maps, would be made available to the reservoir manager, DOE Planning or emergency planning officers within local councils, subject to information sharing agreements, where a need for such information is established.

Clause 15(1)(c) Registration: Supplementary

Concern was expressed by the Committee at the onus placed on a retiring reservoir manager to inform the Department of the person who is taking over this role. When drafting the Reservoirs Bill, the Agency was mindful of this potential difficulty and where it might arise in exceptional circumstances, for example the sudden death of an individual where no provision for succession has been made.

To address this, the Department has included in clause 16(5) the statutory defence, “that the person did not know, and could not reasonably be expected to have known that the person was the reservoir manager of a controlled reservoir to whom the requirement concerned applied.”

To avoid repetition in the Bill, this statutory defence applies to clauses under registration as well as disposal of a controlled reservoir. Rivers Agency would not consider it necessary, therefore, to insert the words “if known” to clause 15(1)(c).

If the name of the new reservoir manager was not known and could not have been known, the Agency would not regard this as an offence and would work with the reservoir manager or the reservoir manager’s family to establish the identity of the new reservoir manager.

Clause 17 Giving a Risk Designation

Risk designation of a reservoir and the fundamental unfairness perceived by the Committee where a reservoir, that should it fail is likely to endanger life, can never be given anything other than a high risk designation; has been considered by Rivers Agency throughout the Committee evidence gathering process.

The Agency has sought further advice from the Institution of Civil Engineers and explained to the Committee, on 13 May 2014 using the risk matrix; that the risk designation of a reservoir will not change by virtue of any works performed. Rather the level of visits required and the potential for enforcement action would reduce. In addition the Agency has proposed an amendment to clause 25(2) (k) that will reduce the minimum number of visits that will be required to be undertaken by the supervising engineer.

Clause 20 & 21 Review/Appeal against a Risk Designation

Review and appeal mechanisms have been incorporated in the Reservoirs Bill to ensure that it is fully compliant with the European Convention on Human Rights. Rivers Agency has sought to ensure, that the charges that may be levied by an appeals body, do not form a barrier to the appeals process and that the appeals body is able to award costs to the successful appellant.

An independent appeals body, the Water Appeals Commission for Northern Ireland, has agreed to undertake this role in areas where specialist engineering judgement is not regarded as critical to the decision of the appeal.

The Examiner of Statutory Rules has suggested that, in order to avoid a conflict of interest, responsibility for making the regulations in clause 21 should rest with the Office of the First Minister and Deputy First Minister as parent Department of the Water Appeals Commission for Northern Ireland rather than with DARD. Rivers Agency has approached OFMDFM in respect of this and is currently awaiting a reply.

Clause 22(2) (a) (iv) Cultural Heritage

The term cultural heritage used in the Reservoirs Bill has been derived from the EU Floods Directive. The term has not been defined in the Bill.

Rivers Agency will consult with the Northern Ireland Environment Agency during the risk designation process to account is taken of any environmental or cultural heritage features that exist in the reservoir inundation area. An example of such consideration is Mountstewart. The provisional medium risk designation of the Mountstewart reservoir was influenced by the cultural heritage importance of the historic Mountstewart house and gardens.

Clause 24 Supervising Engineer

The concern regarding level of penalties has been covered at clause 8 above.

Rivers Agency clarified during the clause by clause examination, that responsibility for providing the Department with a copy of an inspection report or supervising statement, rests with the engineer. The relevant clauses are:-

Supervising Engineer

25 (2)(g), 25(2)(h), 25(3)(b), 25(4)(b), 25(6), & 25(7)(b)

Inspecting Engineer

33(5)(a), 34(8) & 35(5)

Construction Engineer

41(4), 44(3), 45(4), 46(8), & 46(9)(c)

Where a relevant engineer has been commissioned by the Department in respect of a reservoir; for example, where a reservoir manager is non-compliant with the requirements to appoint an engineer, or in an emergency situation, or as a result of enforcement intervention by the Department, any reports issued are initially to the Department and copied to the reservoir manager.

No criminal sanctions exist within the Bill, where a relevant engineer appears to be in breach of his requirements. The Department, in clause 106, can refer the engineer to the Institution of Civil Engineers. This body will assess the engineer's ability to achieve the professional conduct standards and the suitability of the engineer's appointment to a panel of engineers. The Institution would impose sanctions they deem suitable and this may involve a recommendation that the engineer be removed from the reservoir engineer panel to which they were appointed.

The Committee enquired as to professional indemnity insurance. This is carried by engineers to cover the risk posed where their advice to a client is later found to be negligent.

Clause 25(2)(k) Minimum Number of Visits by a Supervising Engineer

Rivers Agency is considering an amendment to the minimum number of supervising visit requirements for high and medium risk reservoirs.

Subject to ongoing discussions with ICE and Ministerial approval, Rivers Agency has proposed the following minimum requirements:-

- High Risk Reservoir
 - One supervising visit in every 12 month period
- Medium Risk Reservoir
 - One supervising visit in every 24 month period

I would be grateful if you would bring this to the attention of the Committee.

Yours sincerely



Paul Mills

Departmental Assembly Liaison Officer

DARD re. Fixed Amendment Clause 120

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Amendments relating to the commencement Clause 120 to take account of comments made by the ARD Committee that would allow for a “pause” in the commencement of certain parts of the Reservoirs Bill.

Draft amendments

Clause 120, page 71, line 13, at end insert—

“(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
- (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35,
- (c) sections 26 and 27,
- (d) in section 28—
 - (i) subsections (2) to (4),
 - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b),
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—
 - (i) subsections (2) and (3),
 - (ii) in subsection (4), paragraphs (c), (d) and (i),
 - (iii) in subsection (5), paragraph (b)
 - (iv) in subsection (6), paragraph (b),
- (h) sections 34 and 35,
- (i) in section 36(1)—
 - (i) paragraphs (a), (b), (c), (d),
 - (ii) paragraph (e) (in relation to the requirements of section 32(1)(b)),
 - (iii) paragraphs (f) and (g),
- (j) in section 36(2), paragraphs (a), (b), (d) and (e),
- (k) section 36(3), in relation to the following offences—
 - (i) an offence under section 36(1)(a), (b), (c) or (d),
 - (ii) an offence under section 36(1)(e) that is attributable to a failure to comply with the requirements of section 32(1)(b)
 - (iii) an offence under subsection (2)(a), (b), (d) and (e),
- (l) section 36(4),
- (m) section 37,
- (n) in section 63(1), paragraph (a),
- (o) sections 64 and 65, in so far as they concern the commissioning of a supervising engineer,
- (p) in section 66, paragraph (a),
- (q) sections 67 to 69,
- (r) section 70, in relation to an offence under section 36(1)(f),
- (s) sections 76 to 84,
- (t) section 85, in relation to the consultation required by sections 76(2), 78(2) and 81(2),
- (u) section 86, in relation to regulations under sections 76(1) and 81(1),
- (v) section 87,
- (w) section 93, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),

- (x) section 95, in relation to failure to comply with the requirements of section 93 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- (y) section 105.⁷

Clause 120

The wording of this clause in the Bill as introduced to the Assembly is:

Commencement

120.—(1) The following provisions of this Act come into operation on Royal Assent—

- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
- (b) this section,
- (c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

The effect of the proposed amendments is shown in colour below:

Commencement

120.—(1) The following provisions of this Act come into operation on Royal Assent—

- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
- (b) this section,
- (c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
- (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35.
- (c) sections 26 and 27,
- (d) in section 28—
 - (i) subsections (2) to (4),
 - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b).
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—

- (i) subsections (2) and (3).
- (ii) in subsection (4), paragraphs (c), (d) and (i).
- (iii) in subsection (5), paragraph (b)
- (iv) in subsection (6), paragraph (b).
- (h) sections 34 and 35.
- (i) in section 36(1)—
 - (i) paragraphs (a), (b), (c), (d).
 - (ii) paragraph (e) (in relation to the requirements of section 32(1)(b)).
 - (iii) paragraphs (f) and (g).
- (j) in section 36(2), paragraphs (a), (b), (d) and (e).
- (k) section 36(3), in relation to the following offences—
 - (i) an offence under section 36(1)(a), (b), (c) or (d).
 - (ii) an offence under section 36(1)(e) that is attributable to a failure to comply with the requirements of section 32(1)(b)
 - (iii) an offence under subsection (2)(a), (b), (d) and (e).
- (l) section 36(4).
- (m) section 37.
- (n) in section 63(1), paragraph (a).
- (o) sections 64 and 65, in so far as they concern the commissioning of a supervising engineer.
- (p) in section 66, paragraph (a).
- (q) sections 67 to 69.
- (r) section 70, in relation to an offence under section 36(1)(f).
- (s) sections 76 to 84.
- (t) section 85, in relation to the consultation required by sections 76(2), 78(2) and 81(2).
- (u) section 86, in relation to regulations under sections 76(1) and 81(1).
- (v) section 87.
- (w) section 93, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable).
- (x) section 95, in relation to failure to comply with the requirements of section 93 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable).
- (y) section 105.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

To take account of the proposed change to clause 120; the following consequential amendments are necessary in clause 29:

Draft amendments

Clause 29, page 17, line 25

Leave out 'subsection (2) applies instead of section 28(1)' and insert "section 28(1) does not apply'

Clause 29, page 17, line 35

At beginning insert 'Where section 28(1) does not apply by virtue of subsection (1),'

Clause 29, page 17, line 38

Leave out 'subsection (4) applies instead of section 28(1)' and insert 'section 28(1) does not apply'

Clause 29, page 18, line 4

At beginning insert 'Where section 28(1) does not apply by virtue of subsection (3),'

Clause 29

The wording of this clause in the Bill as introduced to the Assembly is:

Inspection timing: reservoir subject to pre-commencement inspection report

- 29.**—(1) Subject to subsection (5) and section 30, subsection (2) applies instead of section 28(1) where—
- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
 - (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.
- (2) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.
- (3) Subject to subsection (5) and section 30, subsection (4) applies instead of section 28(1) where—
- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,
 - (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.
- (4) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

The effect of the proposed amendments is shown in colour below:

Inspection timing: reservoir subject to pre-commencement inspection report

29.—(1) Subject to subsection (5) and section 30, ~~subsection (2) applies instead of section 28(1)~~section 28(1) does not apply where—

- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
- (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.

(2) Where section 28 (1) does not apply by virtue of subsection (1),~~the~~the reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.

(3) Subject to subsection (5) and section 30, ~~subsection (4) applies instead of section 28(1)~~section 28(1) does not apply where—

- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,
- (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.

(4) Where section 28 (1) does not apply by virtue of subsection (3),~~if~~the reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

DARD Minister re. Reservoirs Bill

From the Office of the Minister
Michelle O'Neill MLA



Department of
**Agriculture and
Rural Development**

www.dardni.gov.uk

AN ROINN
**Talmhaíochta agus
Forbartha Tuaithe**

MÁNNYSTRIE O
**Fairms an
Kintra Fordèrin**

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Our Ref: SUB/266/2014
Your Ref:

30 May 2014

Paul, a chara

RESERVOIRS BILL

I understand that the Committee is concerned at the absence of information on the condition of the 151 reservoirs that will be covered by the Reservoirs Bill, and the estimated capital costs of making them safe.

In order to address your concerns, I am writing to assure you that my Department will subject to the required approvals, make available financial assistance to reservoir managers to enable them to meet their initial obligations under the Reservoirs Bill.

Provision for this assistance has been made in the 2014/15 Main Estimates which reads, "Expenditure to assist owners to comply with proposed reservoir legislation". The Committee will be provided with a copy of the 2014/15 Main Estimates which sets this out. This will be included with DARD's June Monitoring Round proposals. Also, the business case to support this funding will be shared with the Committee when completed.

It is expected that reservoir managers will use this assistance to commission an inspection of their reservoir, if they have not already done so. This will allow the Department to identify those reservoirs that are in need of work, to establish the associated costs, and to determine the need for a future grant scheme under the new Reservoirs legislation.

The outcome of this will be presented to the Committee once the Department has completed its analysis of the initial inspection reports.

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



INVESTOR IN PEOPLE

I should point out, however, that this financial assistance is predicated on the Reservoirs Bill being enacted as no justification can be made for reservoir managers to receive Government funding otherwise.

I have also decided to propose an amendment to the Reservoirs Bill that effectively introduces it in two phases. Phase 1 will include the following:

- Determine what is a controlled reservoir;
- Determine who is the reservoir manager;
- Require all controlled reservoirs to be registered;
- Require all controlled reservoirs to be given a risk designation;
- Require reservoir managers of all High and Medium risk controlled reservoirs to commission an inspecting engineer to undertake an inspection of the reservoir;
- Any other associated clauses or part clauses necessary.

Phase 2 will include those parts of the Bill which are recurring such as the requirement to commission a supervising engineer, the requirement to commission further inspections by an inspecting engineer, and other associated clauses or part clauses as necessary. The clauses in Phase 2 can only be introduced after they have been laid before, and approved by a resolution of the Assembly.

I hope this assurance will address the concerns of the Committee.

Is mise le meas



MICHELLE O'NEILL MLA
Minister of Agriculture and Rural Development

If you have a hearing difficulty you can contact
the Department via the textphone on 028 9052 4420



INVESTOR IN PEOPLE

DARD re. Committee meeting 13 May 2014

informal clause by clause

Stella McArdle
 Clerk to the Committee for Agriculture and Rural Development
 Room 243
 Parliament Buildings
 Ballymiscaw
 Belfast
 BT4 3XX

Date: 30 May 2014

Dear Stella

Reservoirs Bill – Committee Stage Informal Clause by Clause

I refer to your letter of 15th May 2014 enclosing a note of the informal clause by clause consideration of the Reservoirs Bill by the ARD Committee at its meeting on 13th May 2014. Department Officials were invited to contribute to the discussion on a number of occasions and would wish to submit further comment on the clauses below:

Clause 52 Incident Reporting

The Committee sought clarification on the definition of a reservoir incident. Clause 52 allows The Department, by draft affirmative resolution of the Assembly, to introduce the requirement to report incidents. The Bill makes provision for the regulations to define what constitutes an incident by reference to circumstances which adversely affect the safety of a controlled reservoir, to specify who notifies an incident and who determines that an incident has occurred. These will be known as “reportable incidents”.

It is the Department's intention to issue supplementary guidance, which will include a definition of the types of incident to be reported. They are likely to be similar to that used in GB which is summarised in a paper published by the British Dam Society as follows:

Table 1. Reportable incidents

Incident level	Definition
One	Failure (uncontrolled sudden large release of retained water)
Two	Serious incident involving any of the following: <ul style="list-style-type: none"> o emergency drawdown o emergency works o serious operational failure in an emergency
Three	Any incident leading to: <ul style="list-style-type: none"> o an unscheduled visit by an inspecting engineer o a precautionary drawdown o unplanned physical works o human error leading to a major (adverse) change in operating procedures

In Great Britain such incidents are published by the Environment Agency in an annual report and the latest report is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288542/LIT7837_0c97b0.pdf

The Department will require managers of controlled reservoirs to notify all reportable incidents. Before reporting an incident the manager of a controlled reservoir may seek the advice of a supervising or inspecting engineer to establish if a reportable incident has occurred, however, there will be no requirement to do so. Should the supervising or inspecting engineer agree that a reportable incident has occurred, the reservoir manager will notify the incident to the Department. Whilst the duty to notify the Department will rest with the reservoir manager, the supervising engineer will also be expected to include a note of all incidents, reportable or un-reportable, in their annual statement, a copy of which will be sent to the Department.

Clause 87 Publication of Enforcement Action

The Committee sought further clarification on the need for publication of enforcement action taken by the Department.

The Department's, "Enforcement Policy" sets out its position on the publication of convictions in court and the publication of an Annual Counter Fraud and Enforcement Activities Report. The latest report, which details the enforcement activities and outcomes of Department enforcement staff, is available at:

<http://www.dardni.gov.uk/fraud-annual-report-12-13.pdf>.

The Department recognises that publication of enforcement outcomes provides transparency and the publicity of the penalties (custodial or financial) may act as a deterrent to others who may be tempted to offend.

Should the Reservoirs Bill be enacted, the Department's Annual Counter Fraud and Enforcement Activities Report will contain information on any enforcement actions and outcomes, where these have become necessary.

Clause 88 Powers of entry.

The Committee has sought clarification on the powers of entry included in the Reservoirs Bill in respect of normal operating procedures and any differences or exemptions provided by the Bill.

The powers of entry contained in the Reservoirs Bill allow for necessary entry to land, including land adjacent to a reservoir, provided 7 days' notice is given to the occupier or with a warrant. Where the land is unoccupied or the need for entry is one of urgency, the Department can apply for a warrant without having served 7 days' written notice of intent to enter. A warrant can also be sought where the consent and co-operation of the landowner affected is not obtained following service of a notice giving 7 days warning of the intent to enter.

In the case of Crown land, or Crown estate including land owned by a Department of the Government of the United Kingdom or a Northern Ireland Department, it should be noted that the powers are exercisable only with the consent of the appropriate authority. The appropriate authority, in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, is the Crown Estate Commissioners. In the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of the land, and in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, the government department.

Clause 89(5)(a) Warrants authorising entry

The Committee has sought clarification regarding the “use of force”.

The Department has the ability to seek a warrant authorising the power of entry, and, if necessary by using reasonable force. This will be obtainable from a lay magistrate after proving the necessity of entry and that other attempts to secure entry to occupied land have been unsuccessful. The warrant will allow use of reasonable force where this may be required.

Such reasonable force is most likely to be applied to gain entry to an abandoned site that has been closed off in some manner to prevent casual entry by members of the public. The issue of such a warrant does not entitle the Department to use force against an individual, Clause 89(5)(a) refers. Where obstructive resistance to legitimate Departmental activity is encountered, the Department would retire from the scene and consider submission of a prosecution for obstruction. In very serious cases, where human life is endangered by in-action, the Department would request PSNI assistance to gain entry.

Clause 96 Power to require information and assistance from others

The Committee has sought clarity as to the meaning of the term “other body” in this clause and if, in particular, the term covers the Secretary of State.

The term “any other body established or constituted under a statutory provision” in addition to providing a degree of future proofing in the legislation, covers all government departments and government companies such as Northern Ireland Water. In addition it includes the National Trust.

The term “other body” does not specifically cover the Secretary of State, however the term “any other person” would.

Clause 105 Grants

No amendments are needed to this clause as the initial grant aid scheme will be delivered under the Budget Act provisions.

Clause 107(6) Notice to the Department of revocation of commissioning, or resignation, of engineer

This clause includes a statutory defence in subsection (6) to a charge of legal proceedings where a reservoir manager fails to provide the Department with a copy of a notice of resignation by a supervising, inspecting, construction or other qualified engineer, where the reservoir manager did not receive notification of the resignation.

In such circumstances the Department would not consider that an offence had been caused as it would be unreasonable to hold a reservoir manager liable in a situation where, through no fault of their own, they were unable to comply with the requirements in the Bill. The reservoir manager would be expected to appoint a replacement engineer and notify the Department of the new appointment within 28 days.

Clause 113 Enforcement in relation to the Crown

The Committee have sought clarification on this clause.

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

Clause 115 Offences by bodies corporate and partnerships

The Committee considered the implications of this clause in respect of acts of vandalism or sabotage or other potential difficulties that may arise should a partnership become acrimonious.

The Department took legal advice on the implications of vandalism at an early stage in the drafting of the Bill. This advice suggested that other legislation relating to trespass, nuisance, and Health and Safety at Work is available to deal with vandalism. The Reservoirs Bill therefore does not need to address such matters as it is the reservoir manager's responsibility to protect their own property in whatever manner they deem appropriate. Subsequent failure of a reservoir as a result of vandalism would not in itself constitute a breach of the Reservoirs Bill. However the owner would remain liable under common law for any compensation claims that may arise as a result of the reservoir failure.

Where the safety of a reservoir, owned or managed by a body corporate or partnership, is affected through non-compliance with the Bill, and prosecution is deemed appropriate, any subsequent summons issued by the Public Prosecution Service, is issued to the body corporate (via the company secretary) or the partnership.

In the scenario presented to the committee by the angling clubs, the individual member with responsibility for reservoir safety, appointed by the club, is responsible under this clause for their action or in-action. Where no such member has been identified, the club is treated as a body corporate and the directors of such a club are summoned to appear before the court.

In the scenario where a partner or other individual associated with a partnership or body corporate has acted, potentially without the knowledge of others, and is responsible for the breach in legislative requirements, then that person is summoned to appear before the court.

A decision as to who to prosecute will be based on the evidence collected by the Department during the course of any investigation of potential offences.

David Porter

Director of Development

DARD re. Fixed amendment Clause 106 and new Clause 106A

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

To take account of comments made by the ARD Committee in respect of their concerns that engineers may provide “over-engineered” advice to reservoir managers, The Department would propose the following amendment to Clause 106. This will allow for scrutiny of the content reservoir engineer reports.

Draft amendments

Clause 106, page 65, line 29

After ‘quality’ insert ‘and content’

Power to publish information as to costs for services under Bill of panel engineers

To take account of comments by the ARD Committee that there should be a mechanism by which reservoir managers are able to compare the costs of reservoir engineer services.

Draft amendment

New clause

After clause 106 insert—

‘Publication of information as regards ranges of costs of engineers’ services

106A.—(1) The Department may publish information as regards ranges of costs of the provision of relevant services by engineers who are members of panels of reservoir engineers established under section 97.

(2) For the purposes of this section, “relevant services” are services that are provided by such engineers in pursuance of this Act or are available for such provision.

Clause 106

The wording of this clause in the Bill as introduced to the Assembly is:

Assessment of engineers' reports etc.

106.—(1) The Department may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Act by—

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

(2) The regulations may—

- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,
- (b) specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision as to—

- (a) the criteria for assessment,
- (b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,
- (c) the assessment procedure (including whether oral as well as written representations are to be permitted),
- (d) timing,
- (e) reporting by the committee to the Department,
- (f) the steps that may be taken by the Department following an assessment.

The effect of both proposed amendments are shown in colour below:

Assessment of engineers' reports etc.

106.—(1) The Department may by regulations make provision for the assessment of the quality **and content** of reports, written statements and certificates given under this Act by—

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

(2) The regulations may—

- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,
- (b) specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision as to—

- (a) the criteria for assessment,
- (b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,
- (c) the assessment procedure (including whether oral as well as written representations are to be permitted),
- (d) timing,
- (e) reporting by the committee to the Department,
- (f) the steps that may be taken by the Department following an assessment.

Publication of information as regards ranges of costs of engineers' services

106A.—(1) The Department may publish information as regards ranges of costs of the provision of relevant services by engineers who are members of panels of reservoir engineers established under section 97.

(2) For the purposes of this section, “relevant services” are services that are provided by such engineers in pursuance of this Act or are available for such provision.

DARD re. Amendment Clause 22

Amendments relating to clause 22 in response recommendations to Committee by the Examiner of Statutory Rules:
“if the Department considers that a further regulation-making provision is necessary in clause 22(3)(e) then it should be subject to the requirement of consulting the Institution of Civil Engineers and other relevant organisations.”

Matters to be taken into account in relation to risk designation decisions

Clause 22, page 13, line 10

Leave out from ‘, after’ to ‘appropriate,’ in line 11

Clause 22, page 13, line 13

At end insert—

‘(5) Before making regulations under subsection (3)(e) or (4), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.’

Clause 22

The wording of this clause in the Bill as introduced to the Assembly is:

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

22.—(1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
- (b) the probability of such a release.

(2) For the purposes of subsection (1)(a), potential adverse consequences include—

- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.

(3) The matters which may be taken into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following—

- (a) the purpose for which the reservoir is (or is to be) used,
- (b) the materials used to construct the reservoir,
- (c) the way in which the reservoir was or is being constructed,
- (d) the age and condition of the reservoir and how it has been maintained,
- (e) such other matters as the Department may by regulations specify.

(4) The Department may, after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate, by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

The effect of the proposed amendments is shown in colour below:

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

22.—(1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
- (b) the probability of such a release.

(2) For the purposes of subsection (1)(a), potential adverse consequences include—

- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.

(3) The matters which may be taken into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a controlled reservoir include any of the following—

- (a) the purpose for which the reservoir is (or is to be) used,
- (b) the materials used to construct the reservoir,
- (c) the way in which the reservoir was or is being constructed,
- (d) the age and condition of the reservoir and how it has been maintained,
- (e) such other matters as the Department may by regulations specify.

(4) The Department may ~~after consulting the Institution of Civil Engineers and such other organisations or persons as it considers appropriate,~~ by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

(5) Before making regulations under subsection (3)(e) or (4), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

DARD re. Amendment Clause 25

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

These changes are made in section 25(2)(k) and are shown in isolation from the full clause 25.

Clause 25, page 15, line 6

Leave out 'twice' and insert 'once'

Clause 25, page 15, line 8

Leave out '12' and insert '24'

Clause 25(2)(k)

The wording of this clause in the Bill as introduced to the Assembly is:

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

(k) visit the reservoir—

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

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

(k) visit the reservoir—

- (i) where it is a high-risk reservoir, at least ~~twice~~ once in every 12 month period,
- (ii) where it is a medium-risk reservoir, at least once in every ~~12~~ 24 month period,

DARD re. Amendment Clause 29

To take account of the proposed change to clause 120; the following consequential amendments are necessary in clause 29:

Draft amendments

Clause 29, page 17, line 25

Leave out 'subsection (2) applies instead of section 28(1)' and insert 'section 28(1) does not apply'

Clause 29, page 17, line 35

At beginning insert 'Where section 28(1) does not apply by virtue of subsection (1),'

Clause 29, page 17, line 38

Leave out 'subsection (4) applies instead of section 28(1)' and insert 'section 28(1) does not apply'

Clause 29, page 18, line 4

At beginning insert 'Where section 28(1) does not apply by virtue of subsection (3),'

Clause 29

The wording of this clause in the Bill as introduced to the Assembly is:

Inspection timing: reservoir subject to pre-commencement inspection report

- 29.—**(1) Subject to subsection (5) and section 30, subsection (2) applies instead of section 28(1) where—
- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
 - (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.
- (2) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.
- (3) Subject to subsection (5) and section 30, subsection (4) applies instead of section 28(1) where—
- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,
 - (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.
- (4) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

The effect of the proposed amendments is shown in colour below:

Inspection timing: reservoir subject to pre-commencement inspection report

29.—(1) Subject to subsection (5) and section 30, ~~subsection (2) applies instead of section 28(1)~~section 28(1) does not apply where—

- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
- (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.

(2) ~~Where section 28 (1) does not apply by virtue of subsection (1),~~The reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.

(3) Subject to subsection (5) and section 30, ~~subsection (4) applies instead of section 28(1)~~section 28(1) does not apply where—

- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,
- (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.

(4) ~~Where section 28 (1) does not apply by virtue of subsection (3) t~~The reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

DARD re. Amendment Clause 33

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

This is a consequential change to that made in Clause 25(2)(k).

These changes are made in section 33(4)(i) and are shown in isolation from the full clause 33.

Clause 33, page 21, line 24

Leave out 'twice' and insert 'once'

Clause 33, page 21, line 25

Leave out '12' and insert '24'

Clause 33(4)(i)

The wording of this clause in the Bill as introduced to the Assembly is:

Duties etc. in relation to inspection

33.—

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, twice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every 12 month period,must specify at what intervals, when, or in what circumstances, any additional visit should take place.

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to inspection

33.—

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, once twice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every 2412 month period,must specify at what intervals, when, or in what circumstances, any additional visit should take place.

DARD re. Amendment Clause 36

Proposed Amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Amendments relating to Clause 36 and 49 are to ensure that where a reservoir manager is required by other legislation to obtain consents, that sufficient time is allowed to obtain such consents before enforcement action is considered.

Draft amendments

Clause 36, page 24, line 12

Leave out paragraph (f)

Clause 36, page 24, line 41

Leave out subsection (4)

New clause

After clause 36 insert—

'Offence in connection with inspection: failure to secure compliance with safety direction or recommendation

36A.—(1) Failure by a reservoir manager of a high-risk or medium-risk reservoir without lawful excuse to comply with the requirements of section 34(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure) is an offence.

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

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1).'

Clause 36

The wording of this clause in the Bill as introduced to the Assembly is:

Offences: supervision, inspection, record keeping

36.—(1) Failure by a reservoir manager of a high-risk or medium-risk reservoir to comply with any of the following requirements under this Part is an offence—

- (a) the requirements of section 24(2) (commissioning of supervising engineer),
- (b) the requirements of section 26(1) (compliance with direction of supervising engineer under section 25(4)(a) as to carrying out of visual inspection of reservoir),
- (c) the requirements of section 26(2)(a) (maintenance of written record of each such visual inspection),
- (d) the requirements of section 26(2)(c) (notice to supervising engineer and Department of anything that might affect the safety of the reservoir identified during visual inspection directed under section 25(4)(a)),
- (e) the requirements of section 28, 29, 30 or 32(1)(a) or (b) (securing required inspections and supervision by inspecting engineer and commissioning of inspecting engineer),
- (f) the requirements of section 34(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure),
- (g) the requirements of section 35 (including those of regulations under subsection (2) of that section) (recording of water levels and other matters).

(2) A reservoir manager of a high-risk or medium-risk reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements of section 24(4) (notice to Department of commissioning of supervising engineer),
- (b) the requirements of section 25(8)(a) or (b) (giving supervising engineer copy of pre-commencement inspection report and any pre-commencement inspection report certificate),
- (c) the requirements of section 32(2) (notice to Department of commissioning of inspecting engineer),
- (d) the requirements of section 33(2) (giving inspecting engineer copy of latest report, any pre-commencement inspection report certificate, interim inspection compliance certificate, inspection compliance certificate and final certificate),
- (e) the requirements of section 34(2)(b) (notice to Department of commissioning of any other qualified engineer).

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(f).

The effect of the proposed amendments is shown in colour below:

Offences: supervision, inspection, record keeping

36.—(1) Failure by a reservoir manager of a high-risk or medium-risk reservoir to comply with any of the following requirements under this Part is an offence—

- (a) the requirements of section 24(2) (commissioning of supervising engineer),
- (b) the requirements of section 26(1) (compliance with direction of supervising engineer under section 25(4)(a) as to carrying out of visual inspection of reservoir),
- (c) the requirements of section 26(2)(a) (maintenance of written record of each such visual inspection),
- (d) the requirements of section 26(2)(c) (notice to supervising engineer and Department of anything that might affect the safety of the reservoir identified during visual inspection directed under section 25(4)(a)),
- (e) the requirements of section 28, 29, 30 or 32(1)(a) or (b) (securing required inspections and supervision by inspecting engineer and commissioning of inspecting engineer),
- ~~(f) the requirements of section 34(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure),~~
- (g) the requirements of section 35 (including those of regulations under subsection (2) of that section) (recording of water levels and other matters).

(2) A reservoir manager of a high-risk or medium-risk reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements of section 24(4) (notice to Department of commissioning of supervising engineer),
- (b) the requirements of section 25(8)(a) or (b) (giving supervising engineer copy of pre-commencement inspection report and any pre-commencement inspection report certificate),
- (c) the requirements of section 32(2) (notice to Department of commissioning of inspecting engineer),
- (d) the requirements of section 33(2) (giving inspecting engineer copy of latest report, any pre-commencement inspection report certificate, interim inspection compliance certificate, inspection compliance certificate and final certificate),
- (e) the requirements of section 34(2)(b) (notice to Department of commissioning of any other qualified engineer).

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

~~(4) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(f).~~

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

~~**36A.**—(1) Failure by a reservoir manager of a high-risk or medium-risk reservoir without lawful excuse to comply with the requirements of section 34(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure) is an offence.~~

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

- ~~(a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,~~

(b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1).

DARD re. Amendment Clause 37

To take account of the proposed change to clause 36; the following consequential amendments are necessary in clause 37:

Draft amendments

Clause 37, page 25, line 2

Leave out '36(1)(f)' and insert '36A(1)'

Furthermore; a change that would fall to be made as a printing point without amendment is:
Clause 37, page 25, line 1 – in the clause title, for '36(1)(f)' substitute '36A(1)'

Clause 37

The wording of this clause in the Bill as introduced to the Assembly is:

Defences: offence under section 36(1)(f)

37. It is a defence to a charge in proceedings under section 36(1)(f) for the person to show both—
- (a) that the failure to comply with the requirement concerned was as a result of an event which could not reasonably have been foreseen or any natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
 - (b) that the person—
 - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
 - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure,
 - (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

The effect of the proposed amendments is shown in colour below:

Defences: offence under section ~~36(1)(f)~~36A(1)

37. It is a defence to a charge in proceedings under section ~~36(1)(f)~~36A(1) for the person to show both—
- (a) that the failure to comply with the requirement concerned was as a result of an event which could not reasonably have been foreseen or any natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
 - (b) that the person—
 - (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
 - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure,
 - (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

DARD re. Amendment Clause 49

Clause 49

The wording of this clause in the Bill as introduced to the Assembly is:

Offences: construction or alteration

49.—(1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements under this Part is an offence—

- (a) the requirements in section 40(2)(a) (commissioning of construction engineer),
- (b) the requirements in section 43(1) (ensuring compliance with direction in safety report as to taking of safety measure),
- (c) the requirements in section 47 (ensuring compliance with preliminary certificate or final certificate).

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements in section 40(1) (notice to the Department of proposed relevant works),
- (b) the requirements in section 40(2)(b) (notice to Department of commissioning of construction engineer).

(3) A reservoir manager guilty of an offence under subsection (1)(a) or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) A reservoir manager guilty of an offence under subsection (1)(b) or (c) 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.

(5) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(b).

Defences: offences under section 49(1)(b) or (c)

50. It is a defence to a charge in proceedings under section 49(1)(b) or (c) for the person to show both—

The effect of the proposed amendments is shown in colour below:

Offences: construction or alteration

~~49.—(1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements under this Part is an offence—~~

- ~~(a) the requirements in section 40(2)(a) (commissioning of construction engineer);~~
- ~~(b) the requirements in section 43(1) (ensuring compliance with direction in safety report as to taking of safety measure);~~
- ~~(c) the requirements in section 47 (ensuring compliance with preliminary certificate or final certificate); the requirements in section 40(2)(a) (commissioning of construction engineer) is an offence.~~

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements in section 40(1) (notice to the Department of proposed relevant works),
- (b) the requirements in section 40(2)(b) (notice to Department of commissioning of construction engineer).

(3) A reservoir manager guilty of an offence under subsection ~~(1)(a)(1)~~ or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

~~(4) A reservoir manager guilty of an offence under subsection (1)(b) or (c) 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.~~

~~(5) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(b).~~

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

~~49A.—(1) Failure by a reservoir manager of a controlled reservoir without lawful excuse to comply with any of the following requirements under this Part is an offence—~~

- ~~(a) the requirements in section 43(1) (ensuring compliance with direction in safety report as to taking of safety measure),~~
- ~~(b) the requirements in section 47 (ensuring compliance with preliminary certificate or final certificate).~~

~~(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.~~

~~(3) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(a).~~

Defences: offences under section ~~49(1)(b) or (c)~~ 49A(1)(a) or (b)

50. It is a defence to a charge in proceedings under section ~~49(1)(a) or (b)~~ 49A(1)(a) or (b) for the person to show both—

DARD re. Amendment Clause 70

To take account of the proposed change to clause 36; the following consequential amendments are necessary in clause 70:

Draft amendments

Clause 70, page 43, line 33

Leave out '36(1)(f)' and insert '36A(1)'

Clause 70, page 43, line 35

Leave out '49(1)(b)' and insert '49A(1)(a)'

Clause 70, page 43, line 37

Leave out '36(3) or 49(4)' and insert '36A(2) or 49A(2)'

Furthermore; a change that would fall to be made as a printing point without amendment is:

Clause 70, page 43, line 30 - in the clause title, for '36(1)(f) or 49(1)(b)' substitute '36A(1) or 49A(1)(a)'

Clause 70

The wording of this clause in the Bill as introduced to the Assembly is:

Offence under section 36(1)(f) or 49(1)(b): further remedies

- 70.**—(1) This section applies where a reservoir manager is convicted of an offence under—
- (a) section 36(1)(f) (failure to ensure compliance with direction in inspection report or pre-commencement safety recommendation),
 - (b) section 49(1)(b) (failure to comply with direction in safety report).
- (2) The court may, in addition to or instead of imposing any penalty that may be imposed under section 36(3) or 49(4), order the reservoir manager to take such steps as may be specified in the order, before the expiry of such period as is so specified—
- (a) to secure compliance with the direction or recommendation concerned,
 - (b) to secure the remedying or mitigating of the effects of the failure to comply with the direction or recommendation.
- (3) The court may—
- (a) on an application made before the end of the period specified under subsection (2), by order extend the period to such extended period as is specified in the order,
 - (b) on an application made before the end of the extended period, by order further extend the period to such further extended period as is specified in the order,

- (c) by order grant further extensions of the latest period specified by it by order under paragraph (b), on an application made before the end of the latest period.

The effect of the proposed amendments is shown in colour below:

Offence under section ~~36(1)(f) or 49(1)(b)~~36A(1) or 49A(1)(a): further remedies

70.—(1) This section applies where a reservoir manager is convicted of an offence under—

- (a) section ~~36(1)(f)~~36A(1) (failure to ensure compliance with direction in inspection report or pre-commencement safety recommendation),
- (b) section ~~49(1)(b)~~49A(1)(a) (failure to comply with direction in safety report).

(2) The court may, in addition to or instead of imposing any penalty that may be imposed under section ~~36(3) or 49(4)~~36A(2) or 49A(2), order the reservoir manager to take such steps as may be specified in the order, before the expiry of such period as is so specified—

- (a) to secure compliance with the direction or recommendation concerned,
- (b) to secure the remedying or mitigating of the effects of the failure to comply with the direction or recommendation.

(3) The court may—

- (a) on an application made before the end of the period specified under subsection (2), by order extend the period to such extended period as is specified in the order,
- (b) on an application made before the end of the extended period, by order further extend the period to such further extended period as is specified in the order,
- (c) by order grant further extensions of the latest period specified by it by order under paragraph (b), on an application made before the end of the latest period.

DARD re. Amendment Clause 106

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

To take account of comments made by the ARD Committee in respect of their concerns that engineers may provide “over-engineered” advice to reservoir managers, The Department would propose the following amendment to Clause 106. This will allow for scrutiny of the content reservoir engineer reports.

Draft amendments

Clause 106, page 65, line 29

After ‘quality’ insert ‘and content’

Power to publish information as to costs for services under Bill of panel engineers

To take account of comments by the ARD Committee that there should be a mechanism by which reservoir managers are able to compare the costs of reservoir engineer services.

Draft amendment

New clause

After clause 106 insert—

‘Publication of information as regards ranges of costs of engineers’ services

106A. —(1) The Department may publish information as regards ranges of costs of the provision of relevant services by engineers who are members of panels of reservoir engineers established under section 97.

(2) For the purposes of this section, “relevant services” are services that are provided by such engineers in pursuance of this Act or are available for such provision.

Clause 106

The wording of this clause in the Bill as introduced to the Assembly is:

Assessment of engineers' reports etc.

106.—(1) The Department may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Act by—

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

(2) The regulations may—

- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,
- (b) specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision as to—

- (a) the criteria for assessment,
- (b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,
- (c) the assessment procedure (including whether oral as well as written representations are to be permitted),
- (d) timing,
- (e) reporting by the committee to the Department,
- (f) the steps that may be taken by the Department following an assessment.

The effect of both proposed amendments are shown in colour below:

Assessment of engineers' reports etc.

106.—(1) The Department may by regulations make provision for the assessment of the quality **and content** of reports, written statements and certificates given under this Act by—

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

(2) The regulations may—

- (a) make provision for the assessment to be made by a committee consisting of members of the Institution of Civil Engineers,
- (b) specify the conditions for membership of the committee.

(3) The regulations may, in particular, make provision as to—

- (a) the criteria for assessment,
- (b) the reports, statements and certificates, or categories of reports, statements and certificates, that are to be assessed,
- (c) the assessment procedure (including whether oral as well as written representations are to be permitted),
- (d) timing,
- (e) reporting by the committee to the Department,
- (f) the steps that may be taken by the Department following an assessment.

Publication of information as regards ranges of costs of engineers' services

106A. —(1) **The Department may publish information as regards ranges of costs of the provision of relevant services by engineers who are members of panels of reservoir engineers established under section 97.**

(2) For the purposes of this section, "relevant services" are services that are provided by such engineers in pursuance of this Act or are available for such provision.

DARD re. Amendment Clause 117

Changes to Clause 117 that are shown below are to reflect proposed amendment to clause 22. (Any other amendments that may be needed to clause 117 for other matters arising in relation to the Bill will be dealt with when dealing with those matters.)

Clause 117, page 70, line 12

At end insert—

- (iia) section 22(3)(e) (further matters that may be taken into account in assessing under section 22(1)(b) probability of uncontrolled release of water),
- (iib) section 22(4) (further provision about matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)),

Clause 117

The wording of this clause in the Bill as introduced to the Assembly is:

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

(a) regulations under any of the following—

(i) section 2(3) (structure or area to be treated as controlled reservoir),

(ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),

(iii) section 52(1) (incident reporting),

(iv) section 53(1) (flood plans),

(v) section 72(1) (stop notices),

(vi) section 76(1) (enforcement undertakings),

(vii) section 78(1) (fixed monetary penalties),

(viii) section 81(1) (variable monetary penalties),

(ix) section 104(1) (extension of time limit for specified summary offences),

(x) section 105(1) (grants),

(b) an order under—

(i) section 4(1) (substituting different volume of water in certain sections),

(ii) section 110 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

The effect of the proposed amendments is shown in colour below:

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

(a) regulations under any of the following—

(i) section 2(3) (structure or area to be treated as controlled reservoir),

(ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),

(iia) section 22(3)(e) (further matters that may be taken into account in assessing under section 22(1)(b) probability of uncontrolled release of water),

(iib) section 22(4) (further provision about matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)),

(iii) section 52(1) (incident reporting),

(iv) section 53(1) (flood plans),

(v) section 72(1) (stop notices),

(vi) section 76(1) (enforcement undertakings),

(vii) section 78(1) (fixed monetary penalties),

(viii) section 81(1) (variable monetary penalties),

(ix) section 104(1) (extension of time limit for specified summary offences),

(x) section 105(1) (grants),

(b) an order under—

(i) section 4(1) (substituting different volume of water in certain sections),

(ii) section 110 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

30. DARD re. Amendment Clause 120

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Amendments relating to the commencement Clause 120 to take account of comments made by the ARD Committee that would allow for a “pause” in the commencement of certain parts of the Reservoirs Bill.

Draft amendments

Clause 120, page 71, line 13, at end insert—

“(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
- (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35,
- (c) sections 26 and 27,
- (d) in section 28—
 - (i) subsections (2) to (4),
 - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b),
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—
 - (i) subsections (2) and (3),
 - (ii) in subsection (4), paragraphs (c), (d) and (i),
 - (iii) in subsection (5), paragraph (b)
 - (iv) in subsection (6), paragraph (b),
- (h) sections 34 and 35,
- (i) in section 36(1)—
 - (i) paragraphs (a), (b), (c), (d),
 - (ii) paragraph (e) (in relation to the requirements of section 32(1)(b)),
 - (iii) paragraphs (f) and (g),
- (j) in section 36(2), paragraphs (a), (b), (d) and (e),
- (k) section 36(3), in relation to the following offences—
 - (i) an offence under section 36(1)(a), (b), (c) or (d),
 - (ii) an offence under section 36(1)(e) that is attributable to a failure to comply with the requirements of section 32(1)(b)
 - (iii) an offence under subsection (2)(a), (b), (d) and (e),
- (l) section 36(4),
- (m) section 37,
- (n) in section 63(1), paragraph (a),
- (o) sections 64 and 65, in so far as they concern the commissioning of a supervising engineer,
- (p) in section 66, paragraph (a),
- (q) sections 67 to 69,
- (r) section 70, in relation to an offence under section 36(1)(f),
- (s) sections 76 to 84,
- (t) section 85, in relation to the consultation required by sections 76(2), 78(2) and 81(2),
- (u) section 86, in relation to regulations under sections 76(1) and 81(1),
- (v) section 87,
- (w) section 93, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),

- (x) section 95, in relation to failure to comply with the requirements of section 93 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- (y) section 105.⁷

Clause 120

The wording of this clause in the Bill as introduced to the Assembly is:

Commencement

120.—(1) The following provisions of this Act come into operation on Royal Assent—

- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
- (b) this section,
- (c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

The effect of the proposed amendments is shown in colour below:

Commencement

120.—(1) The following provisions of this Act come into operation on Royal Assent—

- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
- (b) this section,
- (c) section 121.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
- (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35,
- (c) sections 26 and 27,
- (d) in section 28—
 - (i) subsections (2) to (4),
 - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b),
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—

DARD re. Fixed amendment Clause 21

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD
Committee

Appeal against Department's decision in a review under section 20

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

Clause 21, page 11, line 33

Leave out 'for Northern Ireland'

Clause 21, page 12, line 21

Leave out subsection (9)

Clause 21

The wording of this clause in the Bill as introduced to the Assembly is:

Appeal against Department's decision in a review under section 20

21.—(1) A reservoir manager of a controlled reservoir on whom notice of the Department's decision in a review under section 20 is served may appeal to the Water Appeals Commission for Northern Ireland against the decision on one or more of the grounds mentioned in subsection (3).

(2) Any such appeal must be made in writing before the end of the period of 60 days beginning with the date on which the notice under section 20(6) was served.

(3) The grounds referred to in subsection (1) are that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(4) The Commission may confirm the risk designation or give the reservoir a different designation.

(5) A decision in an appeal under this section must take into account—

- (a) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
- (b) any representations made in relation to the appeal by or on behalf of—
 - (i) the reservoir manager,
 - (ii) the Department.

(6) A risk designation in respect of which an appeal is made under this section continues to have effect pending a decision being made in the appeal.

(7) Where the decision in the appeal is that the controlled reservoir is given a different designation, the designation which is the subject of the appeal ceases to have effect from the date on which the appeal is determined; and the different designation takes effect on the day after the date on which notice is given under subsection (8).

(8) Notice by the Commission to the reservoir manager and the Department of the Commission's decision in the appeal must specify—

- (a) whether the Commission confirms the risk designation or gives the reservoir a different designation,
- (b) where the Commission gives the reservoir a different designation, the different designation and the date on which it takes effect,
- (c) the reasons for the decision.

(9) The Department may by regulations make provision as to the following in relation to appeals under this section—

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

The effect of the proposed amendments is shown in colour below:

Appeal against Department's decision in a review under section 20

21.—(1) A reservoir manager of a controlled reservoir on whom notice of the Department's decision in a review under section 20 is served may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the decision on one or more of the grounds mentioned in subsection (3).

(2) Any such appeal must be made in writing before the end of the period of 60 days beginning with the date on which the notice under section 20(6) was served.

(3) The grounds referred to in subsection (1) are that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(4) The Commission may confirm the risk designation or give the reservoir a different designation.

(5) A decision in an appeal under this section must take into account—

- (a) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
- (b) any representations made in relation to the appeal by or on behalf of—
 - (i) the reservoir manager,
 - (ii) the Department.

(6) A risk designation in respect of which an appeal is made under this section continues to have effect pending a decision being made in the appeal.

(7) Where the decision in the appeal is that the controlled reservoir is given a different designation, the designation which is the subject of the appeal ceases to have effect from the date on which the appeal is determined; and the different designation takes effect on the day after the date on which notice is given under subsection (8).

(8) Notice by the Commission to the reservoir manager and the Department of the Commission's decision in the appeal must specify—

- (a) whether the Commission confirms the risk designation or gives the reservoir a different designation,
- (b) where the Commission gives the reservoir a different designation, the different designation and the date on which it takes effect,
- (c) the reasons for the decision.

~~(9) The Department may by regulations make provision as to the following in relation to appeals under this section—~~

- ~~(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,~~
- ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

DARD re. Fixed amendment clause 53

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department. These amendments necessitated inclusion of a right of appeal. The WAC have consented to hear this appeal. The Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

Clause 53, page 35, line 13

After '(n)' insert 'and subsection (3A)'

Clause 53, page 35, line 24

At end insert—

'(3A) Regulations under subsection (1) containing provision entitling the Department to recover costs as referred to in subsection (3)(m) must provide for a right of appeal to the Water Appeals Commission against—

- (a) the Department's decision to require the person to pay the costs,
- (b) the Department's decision as to the amount of the costs.

(3B) The Commission may confirm, quash or vary the decision.'

Clause 53

The wording of this clause in the Bill as introduced to the Assembly is:

Flood plans

53.—(1) The Department may by regulations make provision as to—

- (a) the preparation of flood plans for controlled reservoirs,
- (b) such other matters in relation to such flood plans as it considers appropriate.

(2) A “flood plan” for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) Regulations under subsection (1) may include provision—

- (a) as regards who is to prepare a flood plan,
- (b) requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories or types as may be determined by the Department,
- (c) allowing a single flood plan to be prepared in respect of 2 or more controlled reservoirs between which water does (or could) flow,
- (d) specifying—
 - (i) the form in which a flood plan is to be prepared,
 - (ii) what is to be included in a flood plan,
- (e) requiring the person preparing a flood plan to have regard to any guidance that may be issued by the Department as regards flood plans,
- (f) requiring flood plans to be produced or submitted to the Department (whether or not for approval) by such time as either—
 - (i) the regulations specify, or
 - (ii) the Department may direct,
- (g) as regards the approval of flood plans (whether by the Department, supervising engineers or inspecting engineers),
- (h) as regards the review and updating of flood plans,
- (i) as regards the publication or distribution of copies of—
 - (i) a list of controlled reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
 - (ii) flood plans,
- (j) in connection with the testing of flood plans,
- (k) in connection with the referral of matters to a referee,
- (l) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is reasonably practicable to do so, to take action set out in the plan relating to the reservoir in the event of an incident or emergency,
- (m) providing that the Department may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from the person,
- (n) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (o) making provision in connection with paragraphs (k), (m) and (n) amending this Act (other than this section) or applying this Act with modifications,

- (p) as to offences,
 - (q) providing that any offence created is triable only summarily,
 - (r) providing for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale.
- (4) If it appears to the Secretary of State that the publication or distribution of, or giving access to, any flood plans or any information in flood plans would adversely affect national security, the Secretary of State may by notice direct the Department to direct reservoir managers in accordance with subsection (5).
- (5) The Department on receiving notice under subsection (4) must, by notice served on each reservoir manager concerned, direct the manager—
- (a) not to publish, or not to publish except as specified in the notice, a copy of a flood plan prepared by the reservoir manager in pursuance of regulations made under subsection (1),
 - (b) not to distribute, or not to give access to, a copy of such a flood plan except as specified in the notice.
- (6) Before making regulations under subsection (1), the Department must consult—
- (a) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
 - (b) the Institution of Civil Engineers,
 - (c) such other persons as it considers appropriate.

The effect of the proposed amendments is shown in colour below:

Flood plans

53.—(1) The Department may by regulations make provision as to—

- (a) the preparation of flood plans for controlled reservoirs,
- (b) such other matters in relation to such flood plans as it considers appropriate.

(2) A “flood plan” for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) Regulations under subsection (1) may include provision—

- (a) as regards who is to prepare a flood plan,
- (b) requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories or types as may be determined by the Department,
- (c) allowing a single flood plan to be prepared in respect of 2 or more controlled reservoirs between which water does (or could) flow,
- (d) specifying—
 - (i) the form in which a flood plan is to be prepared,
 - (ii) what is to be included in a flood plan,
- (e) requiring the person preparing a flood plan to have regard to any guidance that may be issued by the Department as regards flood plans,
- (f) requiring flood plans to be produced or submitted to the Department (whether or not for approval) by such time as either—
 - (i) the regulations specify, or
 - (ii) the Department may direct,
- (g) as regards the approval of flood plans (whether by the Department, supervising engineers or inspecting engineers),
- (h) as regards the review and updating of flood plans,
- (i) as regards the publication or distribution of copies of—
 - (i) a list of controlled reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
 - (ii) flood plans,
- (j) in connection with the testing of flood plans,
- (k) in connection with the referral of matters to a referee,
- (l) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is reasonably practicable to do so, to take action set out in the plan relating to the reservoir in the event of an incident or emergency,
- (m) providing that the Department may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from the person,
- (n) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (o) making provision in connection with paragraphs (k), (m) and (n) **and subsection (3A)** amending this Act (other than this section) or applying this Act with modifications,
- (p) as to offences,

- (q) providing that any offence created is triable only summarily,
- (r) providing for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale.

(3A) Regulations under subsection (1) containing provision entitling the Department to recover costs as referred to in subsection (3)(m) must provide for a right of appeal to the Water Appeals Commission against—

(a) the Department's decision to require the person to pay the costs,

(b) the Department's decision as to the amount of the costs.

(3B) The Commission may confirm, quash or vary the decision.

(4) If it appears to the Secretary of State that the publication or distribution of, or giving access to, any flood plans or any information in flood plans would adversely affect national security, the Secretary of State may by notice direct the Department to direct reservoir managers in accordance with subsection (5).

(5) The Department on receiving notice under subsection (4) must, by notice served on each reservoir manager concerned, direct the manager—

- (a) not to publish, or not to publish except as specified in the notice, a copy of a flood plan prepared by the reservoir manager in pursuance of regulations made under subsection (1),
- (b) not to distribute, or not to give access to, a copy of such a flood plan except as specified in the notice.

(6) Before making regulations under subsection (1), the Department must consult—

- (a) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
- (b) the Institution of Civil Engineers,
- (c) such other persons as it considers appropriate.

DARD re. Fixed amendment clause 65

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department. These amendments necessitated inclusion of a right of appeal. The WAC has consented to hear this appeal. The Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

Clause 65, page 42, line 1

Leave out subsection (4) and insert—

‘(4) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in pursuance of the exercise of its powers under this section as is specified in the notice.

(5) Subject to section 71A, the reservoir manager must pay the amount of any costs so incurred and specified in such notice.’

Clause 65

The wording of this clause in the Bill as introduced to the Assembly is:

Commissioning of engineer by Department

- 65.—(1) The Department may commission a relevant engineer where—
- (a) it has by notice under section 63(2) required a reservoir manager to do so,
 - (b) the reservoir manager has failed to do so.
- (2) Any commissioning of a relevant engineer under this section is to be treated for the purposes of this Act as if the commissioning were by the reservoir manager under section 24(2), 32(1) or 40(2)(a).
- (3) The commissioning of a relevant engineer under this section—
- (a) has no effect if the reservoir manager has already commissioned a relevant engineer,
 - (b) terminates with effect from the date of the subsequent commissioning of a relevant engineer by the reservoir manager.
- (4) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in pursuance of the exercise of its powers under this section.

The effect of the proposed amendments is shown in colour below:

Commissioning of engineer by Department

- 65.—(1) The Department may commission a relevant engineer where—
- (a) it has by notice under section 63(2) required a reservoir manager to do so,
 - (b) the reservoir manager has failed to do so.
- (2) Any commissioning of a relevant engineer under this section is to be treated for the purposes of this Act as if the commissioning were by the reservoir manager under section 24(2), 32(1) or 40(2)(a).
- (3) The commissioning of a relevant engineer under this section—
- (a) has no effect if the reservoir manager has already commissioned a relevant engineer,
 - (b) terminates with effect from the date of the subsequent commissioning of a relevant engineer by the reservoir manager.
- (4) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in pursuance of the exercise of its powers under this section as is specified in the notice.
- (5) Subject to section 71A, the reservoir manager must pay the amount of any costs so incurred and specified in such notice.~~(4) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in pursuance of the exercise of its powers under this section.~~

DARD re. Fixed amendment clause 67

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department. These amendments necessitated inclusion of a right of appeal. The WAC has consented to hear this appeal. The Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

Clause 67, page 42, line 42

Leave out subsection (6) and insert—

‘(6) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in connection with consultation under this section as is specified in the notice.

(7) Subject to section 71A, the reservoir manager must pay the amount of any costs so incurred and specified in such notice.’

Clause 67

The wording of this clause in the Bill as introduced to the Assembly is:

Enforcement notice: safety measures

67.—(1) This section applies in relation to a controlled reservoir where it appears to the Department that the reservoir manager has failed to comply with—

- (a) the manager’s duty under section 34(1) (to ensure compliance with a direction in an inspection report or a pre-commencement safety recommendation),
- (b) the manager’s duty under section 43(1) (to ensure compliance with a direction in a safety report).

(2) The Department may by notice served on the reservoir manager require the manager to comply with the duty before the end of the period specified in the notice.

(3) The Department must consult an engineer commissioned by it under this section about the period to be specified in the notice.

(4) An engineer may be commissioned under this section, or section 69, if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section or section 69 in relation to the reservoir.

(5) Notice under subsection (2) must—

- (a) specify the measure that the Department requires to be taken,
- (b) state the Department’s reasons for considering that this section applies,
- (c) specify any particular steps the Department considers must be taken as respects the measures.

(6) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in connection with consultation under this section.

The effect of the proposed amendments is shown in colour below:

Enforcement notice: safety measures

67.—(1) This section applies in relation to a controlled reservoir where it appears to the Department that the reservoir manager has failed to comply with—

- (a) the manager's duty under section 34(1) (to ensure compliance with a direction in an inspection report or a pre-commencement safety recommendation),
- (b) the manager's duty under section 43(1) (to ensure compliance with a direction in a safety report).

(2) The Department may by notice served on the reservoir manager require the manager to comply with the duty before the end of the period specified in the notice.

(3) The Department must consult an engineer commissioned by it under this section about the period to be specified in the notice.

(4) An engineer may be commissioned under this section, or section 69, if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section or section 69 in relation to the reservoir.

(5) Notice under subsection (2) must—

- (a) specify the measure that the Department requires to be taken,
- (b) state the Department's reasons for considering that this section applies,
- (c) specify any particular steps the Department considers must be taken as respects the measures.

(6) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in connection with consultation under this section as is specified in the notice.

(7) Subject to section 71A, the reservoir manager must pay the amount of any costs so incurred and specified in such notice.~~(6) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in connection with consultation under this section.~~

DARD re. Fixed amendment clause 69

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department. These amendments necessitated inclusion of a right of appeal. The WAC has consented to hear this appeal. The Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

Clause 69, page 43, line 27

Leave out subsection (6) and insert—

‘(6) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in making arrangements under this section as is specified in the notice.

(7) Subject to section 71A, the reservoir manager must pay the amount of any costs so incurred and specified in such notice.’

Clause 69

The wording of this clause in the Bill as introduced to the Assembly is:

Department’s power to arrange taking of safety measures

69.—(1) This section applies where the Department has by notice under section 67(2) required a reservoir manager to take a measure and the reservoir manager has failed to do so.

(2) The Department may arrange for the taking of the measure under the supervision of an engineer commissioned by it under this section.

(3) Where the engineer is satisfied that the measure has been taken, the engineer must give a certificate to that effect to the Department.

(4) A certificate given under subsection (3) in respect of a measure which is the subject of a direction referred to in section 33(4)(a)(ii) (direction in inspection report to ensure taking of measure in interests of safety of reservoir), or in respect of a pre-commencement safety recommendation, has effect as if it were an interim inspection compliance certificate or (as appropriate) an inspection compliance certificate.

(5) A certificate given under subsection (3) in respect of a direction in a safety report as to a measure referred to in section 42(1)(a) (measure in interests of safety of reservoir) has effect as if it were a safety measure certificate.

(6) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in making arrangements under this section.

The effect of the proposed amendments is shown in colour below:

Department's power to arrange taking of safety measures

69.—(1) This section applies where the Department has by notice under section 67(2) required a reservoir manager to take a measure and the reservoir manager has failed to do so.

(2) The Department may arrange for the taking of the measure under the supervision of an engineer commissioned by it under this section.

(3) Where the engineer is satisfied that the measure has been taken, the engineer must give a certificate to that effect to the Department.

(4) A certificate given under subsection (3) in respect of a measure which is the subject of a direction referred to in section 33(4)(a)(ii) (direction in inspection report to ensure taking of measure in interests of safety of reservoir), or in respect of a pre-commencement safety recommendation, has effect as if it were an interim inspection compliance certificate or (as appropriate) an inspection compliance certificate.

(5) A certificate given under subsection (3) in respect of a direction in a safety report as to a measure referred to in section 42(1)(a) (measure in interests of safety of reservoir) has effect as if it were a safety measure certificate.

(6) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in making arrangements under this section as is specified in the notice.

(7) Subject to section 71A, the reservoir manager must pay the amount of any costs so incurred and specified in such notice.~~(6) The reservoir manager must pay the Department the amount of any costs reasonably incurred by it in making arrangements under this section.~~

DARD re. Fixed amendment clause 71

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department. These amendments necessitated inclusion of a right of appeal. The WAC has consented to hear this appeal. The Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

Clause 71, page 45, line 1

At beginning insert 'Subject to section 71A,'

New clause

After clause 71 insert—

'Recovery of costs under section 65, 67, 69 or 71: appeal

Recovery of costs under section 65, 67, 69 or 71: appeal

71A.—(1) A reservoir manager required by virtue of notice served by the Department under section 65(4), 67(6), 69(6) or 71(7) to pay the Department's costs referred to in the section may appeal to the Water Appeals Commission against—

- (a) the Department's decision to require the manager to pay the costs,
- (b) the Department's decision as to the amount of the costs.

(2) The Commission may confirm, quash or vary the decision.'

Clause 71

The wording of this clause in the Bill as introduced to the Assembly is:

Emergency powers

71.—(1) This section applies where it appears to the Department that immediate action is needed to protect persons or property against an escape of water from a controlled reservoir (whether or not the reservoir is in use).

(2) The Department may take any measures that it considers necessary—

- (a) to remove or reduce the risk to persons or property,
- (b) to mitigate the effect of an escape of water.

(3) The Department must—

- (a) commission an engineer to make recommendations about any measures to be taken under this section,
- (b) arrange for the measures to be taken under the supervision of the commissioned engineer.

(4) An engineer may be commissioned under this section if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir.

(5) The Department must serve notice on the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)—

- (a) must be served as soon as is reasonably practicable (which may be after any works have begun), but
- (b) is not required if the Department is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in relation to the exercise of its powers under this section as is specified in the notice.

(8) The reservoir manager must pay the Department the amount of any costs so incurred and specified in such notice.

The effect of the proposed amendments is shown in colour below:

Emergency powers

71.—(1) This section applies where it appears to the Department that immediate action is needed to protect persons or property against an escape of water from a controlled reservoir (whether or not the reservoir is in use).

(2) The Department may take any measures that it considers necessary—

- (a) to remove or reduce the risk to persons or property,
- (b) to mitigate the effect of an escape of water.

(3) The Department must—

- (a) commission an engineer to make recommendations about any measures to be taken under this section,
- (b) arrange for the measures to be taken under the supervision of the commissioned engineer.

(4) An engineer may be commissioned under this section if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir.

(5) The Department must serve notice on the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)—

- (a) must be served as soon as is reasonably practicable (which may be after any works have begun), but
- (b) is not required if the Department is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) If the Department considers it appropriate to do so, it may by notice served on the reservoir manager require the manager to pay the Department such amount of the costs reasonably incurred by it in relation to the exercise of its powers under this section as is specified in the notice.

(8) Subject to section 71A, ~~t~~he reservoir manager must pay the Department the amount of any costs so incurred and specified in such notice.

Recovery of costs under section 65, 67, 69 or 71: appeal

Recovery of costs under section 65, 67, 69 or 71: appeal

71A.—(1) A reservoir manager required by virtue of notice served by the Department under section 65(4), 67(6), 69(6) or 71(7) to pay the Department's costs referred to in the section may appeal to the Water Appeals Commission against—

- (a) the Department's decision to require the manager to pay the costs,
- (b) the Department's decision as to the amount of the costs.

(2) The Commission may confirm, quash or vary the decision.

DARD re. Fixed amendment clause 73

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 73

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 73, page 46, line 10

Leave out 'for Northern Ireland'

Clause 73, page 46, line 23

Leave out 'for Northern Ireland'

Clause 73, page 46, line 32

Leave out from 'include' to 'and' in line 33 and insert '—

(a)'

Clause 73, page 46, line 39

At end insert—

'(b) secure that the Commission may confirm, quash or vary the decision'

Clause 73, page 46, line 40

After 'must' insert '—

(a)'

Clause 73, page 47, line 2

At end insert—

'(b) secure that the Commission may confirm or quash the decision'

Clause 73, page 47, line 3

Leave out subsection (6)

Clause 73

The wording of this clause in the Bill as introduced to the Assembly is:

Stop notices: content and procedure

73.—(1) Regulations made under section 72(1) must secure the results in subsection (2) in a case where a stop notice is served.

(2) The results are that—

- (a) the stop notice must include information as to the matters specified in subsection (3),
- (b) the reservoir manager on whom the notice is served may appeal to the Water Appeals Commission for Northern Ireland against the decision to serve it,
- (c) where, after serving the stop notice, the Department is satisfied that the manager has taken the steps specified in the notice, the Department must give a certificate to that effect (a “completion certificate”),
- (d) the stop notice ceases to have effect on the giving of a completion certificate,
- (e) the reservoir manager on whom the stop notice is served may at any time apply for a completion certificate,
- (f) the Department must make a decision as to whether to give a completion certificate before the end of the period of 14 days beginning with the day on which the application for the certificate is made,
- (g) the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission for Northern Ireland against a decision not to give a completion certificate,
- (h) a stop notice in respect of which an appeal referred to in paragraph (b) or (g) is made continues to have effect pending a decision being made in the appeal.

(3) The matters referred to in subsection (2)(a) are—

- (a) the grounds for serving the stop notice,
- (b) rights of appeal,
- (c) the consequences of non-compliance with the stop notice.

(4) Provision pursuant to subsection (2)(b) must include provision as to the powers of the Commission in an appeal and secure that the grounds on which a reservoir manager may appeal against a decision of the Department to serve a stop notice include that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable,
- (d) any step specified in the notice is unreasonable.

(5) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of the Department not to give a completion certificate include that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(6) Provision pursuant to subsection (2)(b) or (g) may include provision about—

- (a) the determining by or under the regulations of a fee and the charging of any fee so determined in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

The effect of the proposed amendments is shown in colour below:

Stop notices: content and procedure

73.—(1) Regulations made under section 72(1) must secure the results in subsection (2) in a case where a stop notice is served.

(2) The results are that—

- (a) the stop notice must include information as to the matters specified in subsection (3),
- (b) the reservoir manager on whom the notice is served may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the decision to serve it,
- (c) where, after serving the stop notice, the Department is satisfied that the manager has taken the steps specified in the notice, the Department must give a certificate to that effect (a “completion certificate”),
- (d) the stop notice ceases to have effect on the giving of a completion certificate,
- (e) the reservoir manager on whom the stop notice is served may at any time apply for a completion certificate,
- (f) the Department must make a decision as to whether to give a completion certificate before the end of the period of 14 days beginning with the day on which the application for the certificate is made,
- (g) the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against a decision not to give a completion certificate,
- (h) a stop notice in respect of which an appeal referred to in paragraph (b) or (g) is made continues to have effect pending a decision being made in the appeal.

(3) The matters referred to in subsection (2)(a) are—

- (a) the grounds for serving the stop notice,
- (b) rights of appeal,
- (c) the consequences of non-compliance with the stop notice.

(4) Provision pursuant to subsection (2)(b) must—

~~(a) include provision as to the powers of the Commission in an appeal and~~ secure that the grounds on which a reservoir manager may appeal against a decision of the Department to serve a stop notice include that—

- (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unreasonable,
 - (d) any step specified in the notice is unreasonable
- ~~(b) secure that the Commission may confirm, quash or vary the decision.~~

(5) Provision pursuant to subsection (2)(g) must—

~~(a)~~ secure that the grounds on which a reservoir manager may appeal against a decision of the Department not to give a completion certificate include that—

- (a) the decision was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the decision was unreasonable
- ~~(b) secure that the Commission may confirm or quash the decision.~~

~~(6) Provision pursuant to subsection (2)(b) or (g) may include provision about—~~

- ~~(a) the determining by or under the regulations of a fee and the charging of any fee so determined in connection with an appeal,~~
- ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

DARD re. Fixed amendment clause 74

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 74

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 74, page 47, line 17

Leave out 'for Northern Ireland'

Clause 74, page 47, line 18

Leave out 'and provide for the powers of the Commission in an appeal'

Clause 74, page 47, line 21

At end insert—

'(d) must secure that the Commission may confirm, quash or vary the decision'

Clause 74, page 47, line 22

Leave out subsection (2)

Clause 74

The wording of this clause in the Bill as introduced to the Assembly is:

Stop notices: compensation

74.—(1) Provision under section 72(1)—

- (a) must include provision for the Department to compensate the reservoir manager for loss suffered as the result of the serving of the stop notice,
- (b) may provide for compensation only—
 - (i) in cases specified by the regulations,
 - (ii) in relation to descriptions of loss so specified,
- (c) must secure that the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission for Northern Ireland against the following and provide for the powers of the Commission in an appeal—
 - (i) a decision of the Department not to award compensation,
 - (ii) a decision of the Department as to the amount of the compensation.

(2) Provision under that section may include provision as to—

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

The effect of the proposed amendments is shown in colour below:

Stop notices: compensation

74.—(1) Provision under section 72(1)—

- (a) must include provision for the Department to compensate the reservoir manager for loss suffered as the result of the serving of the stop notice,
 - (b) may provide for compensation only—
 - (i) in cases specified by the regulations,
 - (ii) in relation to descriptions of loss so specified,
 - (c) must secure that the reservoir manager on whom the stop notice is served may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the following ~~and provide for the powers of the Commission in an appeal~~ —
 - (i) a decision of the Department not to award compensation,
 - (ii) a decision of the Department as to the amount of the compensation,
 - ~~(d) must secure that the Commission may confirm, quash or vary the decision.~~
- ~~(2) Provision under that section may include provision as to—~~
- ~~(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,~~
 - ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

DARD re. Fixed amendment clause 77

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 77

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 77, page 49, line 15

Leave out 'for Northern Ireland'

Clause 77, page 49, line 16

Leave out 'and the powers of the Commission in an appeal'

Clause 77, page 49, line 21

At end insert—

'(ja) for the Commission to have power to confirm or quash the decision,'

Clause 77, page 50, line 10

Leave out subsection (2)

Clause 77

The wording of this clause in the Bill as introduced to the Assembly is:

Regulations as to enforcement undertakings: further provision

77.—(1) Regulations under section 76(1) may in particular include provision—

- (a) as to the procedure for entering into an undertaking,
- (b) as to the terms and conditions of an undertaking,
- (c) as to the publication by the Department of an undertaking,
- (d) as to the variation of an undertaking,
- (e) as to the circumstances in which a reservoir manager may be regarded as having complied with an undertaking,
- (f) as to the monitoring by the Department of compliance with an undertaking,

- (g) as to the certification by the Department that an undertaking has been complied with,
- (h) allowing an application for a review by the Department against refusal by it to give such certification,
- (i) as to a right of appeal to the Water Appeals Commission for Northern Ireland against a decision in a review and the powers of the Commission in an appeal,
- (j) for the grounds of any such appeal to include that—
 - (i) the decision was based on an error of fact,
 - (ii) the decision was wrong in law,
 - (iii) the decision was unreasonable,
- (k) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
- (l) in a case where a reservoir manager has given inaccurate, misleading or incomplete information in relation to the undertaking, for the manager to be regarded as not having complied with it,
- (m) in a case where a reservoir manager has complied partly but not fully with an undertaking, for the part-compliance to be taken into account in the imposition on the manager of any criminal or other sanction,
- (n) extending any period within which criminal proceedings may be instituted against a reservoir manager in respect of the offence in the event of breach of an undertaking or any part of it,
- (o) as to the creation of offences,
- (p) for any offence created to be triable only summarily,
- (q) for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
- (r) for any defences to a charge in proceedings for such an offence to include in particular a defence for the person to show both—
 - (i) that the failure to comply with the requirement concerned was as a result of either an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
 - (ii) that the person took all practicable steps to prevent an uncontrolled release of water from the reservoir, took all practicable steps as soon as was reasonably practicable to rectify the failure and provided particulars of the failure to the Department as soon as practicable after the failure arose.
- (2) Provision as to a right of appeal referred to in paragraph (i) of subsection (1) may include provision about—
 - (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
 - (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

The effect of the proposed amendments is shown in colour below:

Regulations as to enforcement undertakings: further provision

77.—(1) Regulations under section 76(1) may in particular include provision—

- (a) as to the procedure for entering into an undertaking,

- (b) as to the terms and conditions of an undertaking,
 - (c) as to the publication by the Department of an undertaking,
 - (d) as to the variation of an undertaking,
 - (e) as to the circumstances in which a reservoir manager may be regarded as having complied with an undertaking,
 - (f) as to the monitoring by the Department of compliance with an undertaking,
 - (g) as to the certification by the Department that an undertaking has been complied with,
 - (h) allowing an application for a review by the Department against refusal by it to give such certification,
 - (i) as to a right of appeal to the Water Appeals Commission ~~for Northern Ireland~~ against a decision in a review ~~and the powers of the Commission in an appeal,~~
 - (j) for the grounds of any such appeal to include that—
 - (i) the decision was based on an error of fact,
 - (ii) the decision was wrong in law,
 - (iii) the decision was unreasonable,
 - (ja) for the Commission to have power to confirm or quash the decision,
 - (k) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
 - (l) in a case where a reservoir manager has given inaccurate, misleading or incomplete information in relation to the undertaking, for the manager to be regarded as not having complied with it,
 - (m) in a case where a reservoir manager has complied partly but not fully with an undertaking, for the part-compliance to be taken into account in the imposition on the manager of any criminal or other sanction,
 - (n) extending any period within which criminal proceedings may be instituted against a reservoir manager in respect of the offence in the event of breach of an undertaking or any part of it,
 - (o) as to the creation of offences,
 - (p) for any offence created to be triable only summarily,
 - (q) for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
 - (r) for any defences to a charge in proceedings for such an offence to include in particular a defence for the person to show both—
 - (i) that the failure to comply with the requirement concerned was as a result of either an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
 - (ii) that the person took all practicable steps to prevent an uncontrolled release of water from the reservoir, took all practicable steps as soon as was reasonably practicable to rectify the failure and provided particulars of the failure to the Department as soon as practicable after the failure arose.
- ~~(2) Provision as to a right of appeal referred to in paragraph (i) of subsection (1) may include provision about—~~
- ~~(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,~~
 - ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

DARD re. Fixed amendment clause 79

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 79

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 79, page 51, line 16

Leave out 'for Northern Ireland'

Clause 79, page 52, line 4

After 'must' insert '—

(a)'

Clause 79, page 52, line 9

At end insert—

'(b) secure that the Commission may confirm or quash the decision'

Clause 79, page 52, line 10

Leave out subsection (7)

Clause 79

The wording of this clause in the Bill as introduced to the Assembly is:

Fixed monetary penalties: procedure etc.

- 79.—**(1) Regulations made under section 78(1) must secure the results mentioned in subsection (2).
- (2) The results are that—
- (a) where the Department proposes to impose a fixed monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
 - (b) the notice of intent must also offer the manager the opportunity to discharge the manager’s liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
 - (c) if the manager does not so discharge liability—
 - (i) the manager may make written representations and objections to the Department in relation to the proposed imposition of the fixed monetary penalty,
 - (ii) the Department must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where the Department decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) must be served on the reservoir manager and comply with subsection (5),
 - (e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Water Appeals Commission for Northern Ireland against the decision to impose it.
- (3) To comply with this subsection, the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
 - (b) how payment to discharge the liability for a fixed monetary penalty may be made,
 - (c) the effect of payment of the specified sum,
 - (d) the right to make written representations and objections,
 - (e) the circumstances in which the Department may not impose the fixed monetary penalty,
 - (f) the period within which liability for the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served,
 - (g) the period within which representations and objections may be made, which must not exceed that period of 28 days.
- (4) Provision to secure the result referred to in subsection (2)(c)(ii)—
- (a) must secure that the Department may not decide to impose a fixed monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
 - (b) may include provision for other circumstances in which the Department may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection, the final notice must include information as to—
- (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,

(f) the consequences of non-payment.

(6) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(7) Provision to secure the result in that subsection must include provision as to the powers of the Commission in an appeal and may include provision as to—

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

(8) Regulations under section 78(1) may provide that, where a fixed monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

The effect of the proposed amendments is shown in colour below:

Fixed monetary penalties: procedure etc.

- 79.—(1) Regulations made under section 78(1) must secure the results mentioned in subsection (2).
- (2) The results are that—
- (a) where the Department proposes to impose a fixed monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
 - (b) the notice of intent must also offer the manager the opportunity to discharge the manager’s liability for the fixed monetary penalty by payment of a specified sum (which must be less than or equal to the amount of the penalty),
 - (c) if the manager does not so discharge liability—
 - (i) the manager may make written representations and objections to the Department in relation to the proposed imposition of the fixed monetary penalty,
 - (ii) the Department must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,
 - (d) where the Department decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) must be served on the reservoir manager and comply with subsection (5),
 - (e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the decision to impose it.
- (3) To comply with this subsection, the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
 - (b) how payment to discharge the liability for a fixed monetary penalty may be made,
 - (c) the effect of payment of the specified sum,
 - (d) the right to make written representations and objections,
 - (e) the circumstances in which the Department may not impose the fixed monetary penalty,
 - (f) the period within which liability for the fixed monetary penalty may be discharged, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served,
 - (g) the period within which representations and objections may be made, which must not exceed that period of 28 days.
- (4) Provision to secure the result referred to in subsection (2)(c)(ii)—
- (a) must secure that the Department may not decide to impose a fixed monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
 - (b) may include provision for other circumstances in which the Department may not decide to impose a fixed monetary penalty.
- (5) To comply with this subsection, the final notice must include information as to—
- (a) the grounds for imposing the penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,
 - (f) the consequences of non-payment.
- (6) Provision to secure the result in subsection (2)(e) must —

(a) secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

~~(b) secure that the Commission may confirm or quash the decision.~~

~~(7) Provision to secure the result in that subsection must include provision as to the powers of the Commission in an appeal and may include provision as to—~~

- ~~(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal;~~
- ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

(78) Regulations under section 78(1) may provide that, where a fixed monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

DARD re. Fixed amendment clause 82

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 82

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 82, page 53, line 38

Leave out 'for Northern Ireland'

Clause 82, page 54, line 31

After 'must' insert '—

(a)'

Clause 82, page 54, line 37

At end insert—

'(b) secure that the Commission may confirm or quash the decision'

Clause 82, page 54, line 38

Leave out subsection (8)

Clause 82

The wording of this clause in the Bill as introduced to the Assembly is:

Variable monetary penalties: procedure etc.

- 82.**—(1) Regulations made under section 81(1) must secure the results mentioned in subsection (2).
- (2) The results are that—
- (a) where the Department proposes to impose a variable monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
 - (b) the reservoir manager may make written representations and objections to the Department in relation to the proposed imposition,
 - (c) after the end of the period for making such representations and objections, the Department must decide whether to impose the variable monetary penalty (with or without modifications),
 - (d) where the Department decides to impose a variable monetary penalty, the notice (the “final notice”) must be served on the reservoir manager and comply with subsection (6),
 - (e) the reservoir manager on whom a variable monetary penalty is imposed may appeal to the Water Appeals Commission for Northern Ireland against the decision to impose it.
- (3) To comply with this subsection, the notice of intent must include information as to—
- (a) the grounds for the proposal to impose the variable monetary penalty,
 - (b) the right to make representations and objections,
 - (c) the circumstances in which the Department may not impose the variable monetary penalty,
 - (d) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served.
- (4) Provision to secure the result in subsection (2)(c)—
- (a) must secure that the Department may not decide to impose a variable monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
 - (b) may include provision for other circumstances in which the Department may not decide to impose a variable monetary penalty.
- (5) Provision to secure the result in subsection (2)(c) must also include provision for—
- (a) the reservoir manager on whom the notice of intent is served to be able to offer a written undertaking as to action to be taken by the manager (including the payment of a sum of money) to benefit any person affected by the offence,
 - (b) the Department to be able to accept or reject such an undertaking,
 - (c) the Department to take any undertaking so accepted into account in its decision.
- (6) To comply with this subsection, the final notice must include information as to—
- (a) the grounds for imposing the variable monetary penalty,
 - (b) how payment may be made,
 - (c) the period within which payment must be made,
 - (d) any early payment discounts or late payment penalties,
 - (e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,
 - (f) the consequences of non-payment.

(7) Provision to secure the result in subsection (2)(e) must secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the amount of the variable monetary penalty was unreasonable,
- (d) the decision was unreasonable for any other reason.

(8) Provision to secure the result in that subsection must include provision as to the powers of the Commission in an appeal and may include provision as to—

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

(9) Regulations under section 81(1) may provide that, where a variable monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

The effect of the proposed amendments is shown in colour below:

Variable monetary penalties: procedure etc.

82.—(1) Regulations made under section 81(1) must secure the results mentioned in subsection (2).

(2) The results are that—

- (a) where the Department proposes to impose a variable monetary penalty on a reservoir manager, it must serve on the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),
- (b) the reservoir manager may make written representations and objections to the Department in relation to the proposed imposition,
- (c) after the end of the period for making such representations and objections, the Department must decide whether to impose the variable monetary penalty (with or without modifications),
- (d) where the Department decides to impose a variable monetary penalty, the notice (the “final notice”) must be served on the reservoir manager and comply with subsection (6),
- (e) the reservoir manager on whom a variable monetary penalty is imposed may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the decision to impose it.

(3) To comply with this subsection, the notice of intent must include information as to—

- (a) the grounds for the proposal to impose the variable monetary penalty,
- (b) the right to make representations and objections,
- (c) the circumstances in which the Department may not impose the variable monetary penalty,
- (d) the period within which representations and objections may be made, which must not exceed the period of 28 days beginning with the day on which the notice of intent was served.

(4) Provision to secure the result in subsection (2)(c)—

- (a) must secure that the Department may not decide to impose a variable monetary penalty on a reservoir manager where it is satisfied that the manager would not, by reason of any defence, be liable to be convicted of the offence in relation to which it was imposed,
- (b) may include provision for other circumstances in which the Department may not decide to impose a variable monetary penalty.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

- (a) the reservoir manager on whom the notice of intent is served to be able to offer a written undertaking as to action to be taken by the manager (including the payment of a sum of money) to benefit any person affected by the offence,
- (b) the Department to be able to accept or reject such an undertaking,
- (c) the Department to take any undertaking so accepted into account in its decision.

(6) To comply with this subsection, the final notice must include information as to—

- (a) the grounds for imposing the variable monetary penalty,
- (b) how payment may be made,
- (c) the period within which payment must be made,
- (d) any early payment discounts or late payment penalties,
- (e) rights of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,
- (f) the consequences of non-payment.

(7) Provision to secure the result in subsection (2)(e) must ==

(a) secure that the grounds on which a reservoir manager may appeal against a decision of the Department include that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the amount of the variable monetary penalty was unreasonable,
- (d) the decision was unreasonable for any other reason.

(b) secure that the Commission may confirm or quash the decision.

~~(8) Provision to secure the result in that subsection must include provision as to the powers of the Commission in an appeal and may include provision as to—~~

- ~~(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal;~~
- ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

(8) Regulations under section 81(1) may provide that, where a variable monetary penalty remains unpaid after the expiry of the period for payment of the penalty, it is recoverable as if it were payable under a court order.

DARD re. Fixed amendment clause 84

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 84

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 84, page 55, line 36

Leave out 'for Northern Ireland'

Clause 84, page 56, line 4

After 'must' insert '—

(a)'

Clause 84, page 56, line 10

At end insert—

'(b) secure that the Commission may confirm or quash the decision'

Clause 84, page 56, line 11

Leave out subsection (6)

Clause 84

The wording of this clause in the Bill as introduced to the Assembly is:

Undertaking referred to in section 82(5): enforcement

84.—(1) Regulations under section 81(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to the Department if the manager fails to comply with an undertaking referred to in section 82(5).

- (2) The regulations—
 - (a) may specify the amount of the non-compliance penalty and provide for the amount to be—
 - (i) determined by the Department or determined in any other way,
 - (ii) calculated by reference to criteria specified in the regulations, but
 - (b) may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence may be made liable on summary conviction.
- (3) Provision pursuant to subsection (1) must secure that—
 - (a) the non-compliance penalty is imposed by notice complying with subsection (4), served by the Department on the reservoir manager,
 - (b) the reservoir manager on whom it is imposed may appeal to the Water Appeals Commission for Northern Ireland against the notice.
- (4) To comply with this subsection, the notice must include information as to—
 - (a) the amount of the penalty,
 - (b) how the amount is determined or calculated,
 - (c) the undertaking that has not been complied with,
 - (d) how payment of the penalty may be made,
 - (e) the right of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,
 - (f) the consequences of non-payment.
- (5) Provision conferring a right of appeal must secure that the grounds on which a reservoir manager may appeal against a notice referred to in subsection (3)(a) include the following—
 - (a) that the decision to give the notice was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) that the decision was unreasonable (including that the amount was unreasonable).
- (6) Regulations made under section 81(1) must include provision as to the powers of the Commission in an appeal and may include provision as to—
 - (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
 - (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).
- (7) Regulations under section 81(1) may provide that, where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under a court order.

The effect of the proposed amendments is shown in colour below:

Undertaking referred to in section 82(5): enforcement

84.—(1) Regulations under section 81(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to the Department if the manager fails to comply with an undertaking referred to in section 82(5).

(2) The regulations—

- (a) may specify the amount of the non-compliance penalty and provide for the amount to be—
 - (i) determined by the Department or determined in any other way,
 - (ii) calculated by reference to criteria specified in the regulations, but
- (b) may not specify an amount which exceeds, or make provision under which the amount may be calculated or determined so as to exceed, the maximum fine for which a person convicted of the offence may be made liable on summary conviction.

(3) Provision pursuant to subsection (1) must secure that—

- (a) the non-compliance penalty is imposed by notice complying with subsection (4), served by the Department on the reservoir manager,
- (b) the reservoir manager on whom it is imposed may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the notice.

(4) To comply with this subsection, the notice must include information as to—

- (a) the amount of the penalty,
- (b) how the amount is determined or calculated,
- (c) the undertaking that has not been complied with,
- (d) how payment of the penalty may be made,
- (e) the right of appeal, including the grounds of appeal, the procedure for making an appeal and the period within which an appeal may be made,
- (f) the consequences of non-payment.

(5) Provision conferring a right of appeal must—

(a) secure that the grounds on which a reservoir manager may appeal against a notice referred to in subsection (3)(a) include the following—

- (a) that the decision to give the notice was based on an error of fact,
- (b) that the decision was wrong in law,
- (c) that the decision was unreasonable (including that the amount was unreasonable).

(b) secure that the Commission may confirm or quash the decision.

~~(6) Regulations made under section 81(1) must include provision as to the powers of the Commission in an appeal and may include provision as to—~~

- ~~(a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,~~
- ~~(b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

~~(67) Regulations under section 81(1) may provide that, where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is recoverable as if it were payable under a court order.~~

DARD re. Fixed amendment clause 86

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Appeal against Department's decision in a review under section 86

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 86, page 57, line 4

After 'must' insert '—

(a)'

Clause 86, page 57, line 5

Leave out 'for Northern Ireland'

Clause 86, page 57, line 6

Leave out 'and provide for the powers of the Commission in an appeal'

Clause 86, page 57, line 9

At end insert—

'(b) secure that the Commission may confirm, quash or vary the decision'

Clause 86, page 57, line 10

Leave out subsection (4)

Clause 86

The wording of this clause in the Bill as introduced to the Assembly is:

Recovery by the Department of certain costs

86.—(1) Regulations under section 72(1), 76(1) or 81(1) may include provision for the Department, by notice served on a reservoir manager on whom a stop notice is served, from whom an enforcement undertaking is accepted or on whom a variable monetary penalty is imposed, to require the reservoir manager to pay the amount of any costs reasonably incurred by the Department in relation to (and up to the time of) the service of the notice, acceptance of the undertaking or imposition of the penalty.

(2) In subsection (1), the reference to “costs” includes in particular—

- (a) investigation costs,
- (b) administration costs,
- (c) costs of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager required to pay the costs may appeal to the Water Appeals Commission for Northern Ireland against the following and provide for the powers of the Commission in an appeal—

- (a) the Department’s decision to impose the requirement to pay costs,
- (b) the Department’s decision as to the amount of the costs.

(4) Provision pursuant to that subsection may include provision as to—

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

The effect of the proposed amendments is shown in colour below:

Recovery by the Department of certain costs

86.—(1) Regulations under section 72(1), 76(1) or 81(1) may include provision for the Department, by notice served on a reservoir manager on whom a stop notice is served, from whom an enforcement undertaking is accepted or on whom a variable monetary penalty is imposed, to require the reservoir manager to pay the amount of any costs reasonably incurred by the Department in relation to (and up to the time of) the service of the notice, acceptance of the undertaking or imposition of the penalty.

(2) In subsection (1), the reference to “costs” includes in particular—

- (a) investigation costs,
- (b) administration costs,
- (c) costs of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must —

(a) secure that the reservoir manager required to pay the costs may appeal to the Water Appeals Commission ~~for Northern Ireland~~ against the following ~~and provide for the powers of the Commission in an appeal~~—

- (a) the Department’s decision to impose the requirement to pay costs,
- (b) the Department’s decision as to the amount of the costs,
- (b) ~~secure that the Commission may confirm, quash or vary the decision.~~

(4) ~~Provision pursuant to that subsection may include provision as to—~~

- (a) ~~the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,~~
- (b) ~~the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).~~

DARD re. Fixed amendment clause 92

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department.

Draft Amendments

Clause 92, page 60, line 38

Leave out from beginning to ‘of’ and insert ‘If the Department considers it appropriate to do so it may, in the circumstances mentioned in subsection (8A), by notice served on the reservoir manager require the manager to pay the Department such amount of the following as is specified in the notice’

Clause 92, page 61, line 1

At beginning insert—

‘(8A) The circumstances are’

Clause 92

The wording of this clause in the Bill as introduced to the Assembly is:

Compensation

92.—(1) Subject to subsection (7), the Department must pay compensation in accordance with this section where subsection (2) or (4) applies.

(2) This subsection applies where, in the exercise of a right to enter land conferred by section 88 (whether or not under a warrant under section 89) any of the following occurs—

- (a) any land, other than land which is occupied by the reservoir manager, is damaged,
- (b) the enjoyment of any land, other than land which is so occupied, is disturbed.

(3) Compensation under subsection (1) in respect of the damage or disturbance, where subsection (2) applies, is to be paid to—

- (a) a person with an interest in the land,
- (b) a person whose enjoyment of the land is disturbed.

(4) This subsection applies where in the exercise of a right to enter land conferred by section 88 (whether or not under a warrant under section 89), land occupied by the reservoir manager is damaged and the reservoir manager is not disqualified from claiming compensation.

(5) The reservoir manager of a controlled reservoir is disqualified from claiming compensation under subsection (1) in either of the following circumstances—

- (a) the exercise of the right was for the purposes of section 69,
- (b) the exercise of the right was for the purpose of taking measures under section 71 and the reservoir manager had not taken all practicable steps to prevent an escape of water from the reservoir.

(6) Compensation under subsection (1) in respect of the damage, where subsection (4) applies, is to be paid to the reservoir manager.

(7) The Department may agree to secure the reinstatement or partial reinstatement of the land instead of payment of compensation under subsection (1), or a combination of such reinstatement and compensation; and subject to subsection (9) any such agreement reached with a person referred to in subsection (2), or the reservoir manager, is binding on the parties to it.

(8) The reservoir manager must pay the Department the amount of—

- (a) any compensation payable under this section,
- (b) any costs reasonably incurred by the Department in relation to such compensation or an agreement under subsection (7),

where the damage or disturbance concerned occurred in the exercise of a right to enter land in either of the circumstances referred to in paragraph (a) or (b) of subsection (5).

(9) Any dispute as to a right of compensation under this section, the amount of any such compensation or costs incurred by the Department in relation to such compensation, or costs incurred by it in relation to an agreement under subsection (7), is to be determined by the Lands Tribunal.

The effect of the proposed amendments is shown in colour below:

Compensation

92.—(1) Subject to subsection (7), the Department must pay compensation in accordance with this section where subsection (2) or (4) applies.

(2) This subsection applies where, in the exercise of a right to enter land conferred by section 88 (whether or not under a warrant under section 89) any of the following occurs—

- (a) any land, other than land which is occupied by the reservoir manager, is damaged,
- (b) the enjoyment of any land, other than land which is so occupied, is disturbed.

(3) Compensation under subsection (1) in respect of the damage or disturbance, where subsection (2) applies, is to be paid to—

- (a) a person with an interest in the land,
- (b) a person whose enjoyment of the land is disturbed.

(4) This subsection applies where in the exercise of a right to enter land conferred by section 88 (whether or not under a warrant under section 89), land occupied by the reservoir manager is damaged and the reservoir manager is not disqualified from claiming compensation.

(5) The reservoir manager of a controlled reservoir is disqualified from claiming compensation under subsection (1) in either of the following circumstances—

- (a) the exercise of the right was for the purposes of section 69,
- (b) the exercise of the right was for the purpose of taking measures under section 71 and the reservoir manager had not taken all practicable steps to prevent an escape of water from the reservoir.

(6) Compensation under subsection (1) in respect of the damage, where subsection (4) applies, is to be paid to the reservoir manager.

(7) The Department may agree to secure the reinstatement or partial reinstatement of the land instead of payment of compensation under subsection (1), or a combination of such reinstatement and compensation; and subject to subsection (9) any such agreement reached with a person referred to in subsection (2), or the reservoir manager, is binding on the parties to it.

(8) If the Department considers it appropriate to do so it may, in the circumstances mentioned in subsection (8A), by notice served on the reservoir manager require the manager to pay the Department such amount of the following as is specified in the notice~~The reservoir manager must pay the Department the amount of—~~

- (a) any compensation payable under this section,
- (b) any costs reasonably incurred by the Department in relation to such compensation or an agreement under subsection (7);~~;~~

(8A) The circumstances are where the damage or disturbance concerned occurred in the exercise of a right to enter land in either of the circumstances referred to in paragraph (a) or (b) of subsection (5).

(9) Any dispute as to a right of compensation under this section, the amount of any such compensation or costs incurred by the Department in relation to such compensation, or costs incurred by it in relation to an agreement under subsection (7), is to be determined by the Lands Tribunal.

DARD re. New clause 103A

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

The Department agreed it would amend a number of clauses to enable it to have discretion on cost recovery to take account of comments made by the ARD Committee in respect of cost recovery by the Department. These amendments necessitated inclusion of a right of appeal. The WAC has consented to hear this appeal. The Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft Amendments

New clause

Before clause 104 insert—

Power of Water Appeals Commission to award costs in an appeal

103A.—(1) The Water Appeals Commission may make an order as to the costs of the parties to an appeal mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The appeals are—

- (a) an appeal under section 21 (risk designation),
- (b) an appeal by virtue of regulations under section 53(1) (cost recovery in relation to flood plan),
- (c) an appeal under section 71A (cost recovery under section 65, 67, 69 or 71),
- (d) an appeal by virtue of regulations under section 72(1) (in relation to stop notice),
- (e) an appeal by virtue of regulations under section 76(1) (in relation to enforcement undertaking),
- (f) an appeal by virtue of regulations under section 78(1) (imposition of fixed monetary penalty),
- (g) an appeal by virtue of regulations under section 81(1) (in relation to variable monetary penalty).

(3) An order made under this section has effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (3), the Master (Taxing Office) has the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the Commission are, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975, to be regarded as proceedings to which section 1(1) of that Act applies.

Orders as to costs: supplementary

103B.—(1) Subsection (2) applies where all of the following apply—

- (a) for the purpose of an appeal referred to in section 103A(2)—
 - (i) the Water Appeals Commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether the person wishes, to appear before and be heard by it,
 - (ii) arrangements are made for a hearing to be held,
- (b) the hearing does not take place,
- (c) if it had taken place, the Commission would have had power to make an order under section 103A(1) requiring any party to pay any costs of any other party.

(2) The power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.

Fees in relation to appeals.

103C. The Office of the First Minister and deputy First Minister may by regulations specify the fees to be paid to the Water Appeals Commission in connection with appeals referred to in section 103A(2).⁷

This clause does not currently exist in the Bill as introduced to the Assembly:

The effect of the proposed amendments is shown in colour below:

PART 8

PART 8

MISCELLANEOUS

Power of Water Appeals Commission to award costs in an appeal

103A.—(1) The Water Appeals Commission may make an order as to the costs of the parties to an appeal mentioned in subsection (2) and as to the parties by whom the costs are to be paid.

(2) The appeals are—

- (a) an appeal under section 21 (risk designation),**
- (b) an appeal by virtue of regulations under section 53(1) (cost recovery in relation to flood plan),**
- (c) an appeal under section 71A (cost recovery under section 65, 67, 69 or 71),**
- (d) an appeal by virtue of regulations under section 72(1) (in relation to stop notice),**
- (e) an appeal by virtue of regulations under section 76(1) (in relation to enforcement undertaking),**
- (f) an appeal by virtue of regulations under section 78(1) (imposition of fixed monetary penalty),**
- (g) an appeal by virtue of regulations under section 81(1) (in relation to variable monetary penalty).**

(3) An order made under this section has effect as if it had been made by the High Court.

(4) Without prejudice to the generality of subsection (3), the Master (Taxing Office) has the same powers and duties in relation to an order made under this section as the Master has in relation to an order made by the High Court.

(5) Proceedings before the Commission are, for the purposes of the Litigants in Person (Costs and Expenses) Act 1975, to be regarded as proceedings to which section 1(1) of that Act applies.

Orders as to costs: supplementary

103B.—(1) Subsection (2) applies where all of the following apply—

(a) for the purpose of an appeal referred to in section 103A(2)—

- (i) the Water Appeals Commission is required, before a decision is reached, to give any person an opportunity, or ask any person whether the person wishes, to appear before and be heard by it,**
- (ii) arrangements are made for a hearing to be held,**

(b) the hearing does not take place,

(c) if it had taken place, the Commission would have had power to make an order under section 103A(1) requiring any party to pay any costs of any other party.

(2) The power to make such an order may be exercised, in relation to costs incurred for the purposes of the hearing, as if the hearing had taken place.

Fees in relation to appeals.

103C. The Office of the First Minister and deputy First Minister may by regulations specify the fees to be paid to the Water Appeals Commission in connection with appeals referred to in section 103A(2).

Time limit for certain summary offences under Act

104.—(1) The Department may by regulations provide that, notwithstanding anything in Article 19(1)(a) of the Magistrates' Courts (Northern Ireland) Order 1981, a magistrates' court has jurisdiction to hear and determine a complaint charging the commission of a specified offence if the complaint is made before the end of the specified period.

(2) In subsection (1)—

- (a) "specified offence" means an offence under this Act specified in the regulations,
- (b) "the specified period", in relation to a specified offence, means such period after the time when the offence was committed or ceased to continue as is specified in the regulations in relation to the offence or category of offences within which the specified offence falls; and different periods may be specified as respects different offences or categories of offence.

DARD re. Fixed amendment clause 118

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Consequential amendment to clause 118, “Definitions”.

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Clause 118, page 70, line 39

At end insert—

“the Water Appeals Commission” means the Water Appeals Commission for Northern Ireland,’

Clause 118

The wording of this clause in the Bill as introduced to the Assembly is:

Definitions

118.—(1) In this Act—

“the Department” means the Department of Agriculture and Rural Development,

“notice” means notice in writing,

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954,

“the 1975 Act” means the Reservoirs Act 1975.

(2) The expressions listed in Schedule 2 are defined or otherwise explained for the purposes of this Act by the provisions indicated in the Schedule.

The effect of the proposed amendments is shown in colour below:

Definitions

118.—(1) In this Act—

“the Department” means the Department of Agriculture and Rural Development,

“notice” means notice in writing,

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954,

“the Water Appeals Commission” means the Water Appeals Commission for Northern Ireland,

“the 1975 Act” means the Reservoirs Act 1975.

(2) The expressions listed in Schedule 2 are defined or otherwise explained for the purposes of this Act by the provisions indicated in the Schedule.

DARD re. Pending Amendment Clause 120

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Amendments relating to the commencement Clause 120 to take account of comments made by the ARD Committee that would allow for a “pause” in the commencement of certain parts of the Reservoirs Bill. This has been further updated to reflect changes in clauses relating to Cost Recovery and Appeals

Draft amendments

Clause 120, page 71, line 13, at end insert—

“(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—

- (a) section 24(1), (2), (4) and (5),
- (b) in section 25—
 - (i) subsections (1) to (9),
 - (ii) subsection (10), for the purposes of sections 26 to 29 and 35,
- (c) sections 26 and 27,
- (d) in section 28—
 - (i) subsections (2) to (4),
 - (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b),
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—
 - (i) subsections (2) and (3),
 - (ii) in subsection (4), paragraphs (c), (d) and (i),
 - (iii) in subsection (5), paragraph (b)
 - (iv) in subsection (6), paragraph (b),
- (h) sections 34 and 35,
- (i) in section 36(1)—
 - (i) paragraphs (a), (b), (c), (d),
 - (ii) paragraph (e) (in relation to the requirements of section 32(1)(b)),
 - (iii) paragraphs ~~(f)~~ and (g),
- (j) in section 36(2), paragraphs (a), (b), (d) and (e),
- (k) section 36(3), in relation to the following offences—
 - (i) an offence under section 36(1)(a), (b), (c) or (d),
 - (ii) an offence under section 36(1)(e) that is attributable to a failure to comply with the requirements of section 32(1)(b)
 - (iii) an offence under subsection (2)(a), (b), (d) and (e),
- (l) section 36~~A(4)~~,
- (m) section 37,
- (n) in section 63(1), paragraph (a),
- (o) sections 64 and 65, in so far as they concern the commissioning of a supervising engineer,
- (p) in section 66, paragraph (a),
- (q) sections 67 to 69,
- (r) section 70, in relation to an offence under section 36~~A(1)(f)~~,
- (s) section 71A, as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69.
- (t~~s~~) sections 76 to 84,
- (u~~t~~) section 85, in relation to the consultation required by sections 76(2), 78(2) and 81(2),
- (v~~u~~) section 86, in relation to regulations under sections 76(1) and 81(1),
- (w~~v~~) section 87,

- | (xw) section 93, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- | (yx) section 95, in relation to failure to comply with the requirements of section 93 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- | ~~(z) sections 103A, 103B and 103C, in relation to—~~
 - ~~(i) an appeal under section 71A as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69,~~
 - ~~(ii) an appeal by virtue of regulations under section 76(1), 78(1) or 81(1),~~
- | ~~(zay y) section 105.’~~

Clause 120

The wording of this clause in the Bill as introduced to the Assembly is:

Commencement

- 120.**—(1) The following provisions of this Act come into operation on Royal Assent—
- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
 - (b) this section,
 - (c) section 121.
- (2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.
- (3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

The effect of the proposed amendments is shown in colour below:

Commencement

- 120.**—(1) The following provisions of this Act come into operation on Royal Assent—
- (a) sections 1, 2, 5, 6, 39, 88 to 92, 116, 118 and Schedule 2,
 - (b) this section,
 - (c) section 121.
- (2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.
- ~~(2A) No order may be made under subsection (2) in respect of the following provisions unless a draft of the order has been laid before, and approved by a resolution of, the Assembly—~~
- ~~(a) section 24(1), (2), (4) and (5),~~
 - ~~(b) in section 25—~~
 - ~~(i) subsections (1) to (9),~~
 - ~~(ii) subsection (10), for the purposes of sections 26 to 29 and 35,~~
 - ~~(c) sections 26 and 27,~~
 - ~~(d) in section 28—~~
 - ~~(i) subsections (2) to (4),~~

- (ii) subsection (5), in so far as it defines an “inspecting engineer” as an engineer duly commissioned under section 32 to supervise the taking of a measure referred to in section 32(1)(b),
- (e) sections 29(2) to (5),
- (f) in section 32—
 - (i) in subsection (1), paragraph (b),
 - (ii) subsection (3),
- (g) in section 33—
 - (i) subsections (2) and (3),
 - (ii) in subsection (4), paragraphs (c), (d) and (i),
 - (iii) in subsection (5), paragraph (b)
 - (iv) in subsection (6), paragraph (b),
- (h) sections 34 and 35,
- (i) in section 36(1)—
 - (i) paragraphs (a), (b), (c), (d),
 - (ii) paragraph (e) (in relation to the requirements of section 32(1)(b)),
 - (iii) paragraphs (g),
- (j) in section 36(2), paragraphs (a), (b), (d) and (e),
- (k) section 36(3), in relation to the following offences—
 - (i) an offence under section 36(1)(a), (b), (c) or (d),
 - (ii) an offence under section 36(1)(e) that is attributable to a failure to comply with the requirements of section 32(1)(b)
 - (iii) an offence under subsection (2)(a), (b), (d) and (e),
- (l) section 36 A,
- (m) section 37,
- (n) in section 63(1), paragraph (a),
- (o) sections 64 and 65, in so far as they concern the commissioning of a supervising engineer,
- (p) in section 66, paragraph (a),
- (q) sections 67 to 69,
- (r) section 70, in relation to an offence under section 36A(1),
- (s) section 71A, as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69,
- (t) sections 76 to 84,
- (u) section 85, in relation to the consultation required by sections 76(2), 78(2) and 81(2),
- (v) section 86, in relation to regulations under sections 76(1) and 81(1),
- (w) section 87,
- (x) section 93, in so far as it defines a “relevant engineer” as a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- (x) section 95, in relation to failure to comply with the requirements of section 93 as respects a relevant engineer who is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable),
- (yz) sections 103A, 103B and 103C, in relation to—
 - (i) an appeal under section 71A as regards costs in relation to the commissioning of a supervising engineer under section 65 and costs under section 67 or 69,
 - (ii) an appeal by virtue of regulations under section 76(1), 78(1) or 81(1),
- (za) section 105.

(3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Department considers necessary or expedient in connection with the coming into operation of any provision of this Act.

To take account of the proposed change to clause 120; the following consequential amendments are necessary in clause 29:

Draft amendments

Clause 29, page 17, line 25

Leave out 'subsection (2) applies instead of section 28(1)' and insert "section 28(1) does not apply'

Clause 29, page 17, line 35

At beginning insert 'Where section 28(1) does not apply by virtue of subsection (1),'

Clause 29, page 17, line 38

Leave out 'subsection (4) applies instead of section 28(1)' and insert 'section 28(1) does not apply'

Clause 29, page 18, line 4

At beginning insert 'Where section 28(1) does not apply by virtue of subsection (3),'

Clause 29

The wording of this clause in the Bill as introduced to the Assembly is:

Inspection timing: reservoir subject to pre-commencement inspection report

- 29.**—(1) Subject to subsection (5) and section 30, subsection (2) applies instead of section 28(1) where—
- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
 - (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.
- (2) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.
- (3) Subject to subsection (5) and section 30, subsection (4) applies instead of section 28(1) where—
- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,
 - (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.
- (4) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

The effect of the proposed amendments is shown in colour below:

Inspection timing: reservoir subject to pre-commencement inspection report

29.—(1) Subject to subsection (5) and section 30, ~~subsection (2) applies instead of section 28(1)~~section 28(1) does not apply where—

- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
- (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.

(2) ~~Where section 28 (1) does not apply by virtue of subsection (1),~~Where section 28 (1) does not apply by virtue of subsection (1), the reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.

(3) Subject to subsection (5) and section 30, ~~subsection (4) applies instead of section 28(1)~~section 28(1) does not apply where—

- (a) a high-risk or medium-risk reservoir is the subject of a pre-commencement inspection report,
- (b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.

(4) ~~Where section 28 (1) does not apply by virtue of subsection (3) t~~Where section 28 (1) does not apply by virtue of subsection (3) the reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-risk or medium-risk reservoir takes effect.

DARD re. Fixed amendments to Schedules

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Consequential amendment to Schedules 2 & 3

To take account of comments made by the Examiner of Statutory Rules that the Reservoirs Bill should make provision to confer the power on the Office of the First and deputy First Minister rather than on the Department to make regulations in respect of appeals to the Water Appeals Commission for Northern Ireland.

Draft amendments

Schedule 2, page 74, line 9

At end insert—

'the Water Appeals Commission	section 118(1)'
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Schedule 3, page 74, line 15

Leave out 'for Northern Ireland'

Schedule 3, page 74, line 24

At end insert—

- '(aa) an appeal (made by virtue of regulations made under section 53(1) of that Act) against a decision as to recovery of costs in relation to a flood plan,
- (ab) an appeal (under section 71A of that Act) against a decision as to recovery of costs under section 65, 67, 69 or 71 of that Act,'

Schedule 2

The wording of this Schedule in the Bill as introduced to the Assembly is:

SCHEDULE 2

INDEX OF DEFINED EXPRESSIONS

<i>Expression</i>	<i>Interpretation provision</i>
construction certificate	section 45
construction engineer	section 40(3)
controlled reservoir	sections 1, 2 and 5
controlled reservoir being abandoned	section 38(7)(d) (see also section 38(6))
controlled reservoir being subject to alteration	section 38(7)(a) (see also section 38(4) to (6))
controlled reservoir being constructed	section 38(7)(a) (see also section 38(3))
controlled reservoir being discontinued	section 38(7)(c) (see also section 38(5))
controlled reservoir being restored to use	section 38(7)(b) (see also section 38(3))
controlled reservoirs register	section 9
the Department	
enforcement undertaking	section 118(1)
final certificate	section 76(1) and (3)
fixed monetary penalty	section 46
flood plan	section 78(1) and (3)
high-risk reservoir	section 53
inspecting engineer	section 23
inspection compliance certificate	section 28(5)
inspection report	section 34(5) and (7)
interim inspection compliance certificate	section 33(1)(b) and (4) section 34(3) and (4)
low-risk reservoir	
medium-risk reservoir	section 23
other qualified engineer	section 23
panels of reservoir engineers	sections 33(7) and 34(2)(a) section 97
periodic re-assessment of risk designation	section 18
pre-commencement inspection report	section 31(1)
pre-commencement inspection report certificate	section 33(2)(b) and (3)
pre-commencement safety recommendation	section 32(1)(b) and (3)
preliminary certificate	
relevant works	section 44
reservoir manager	section 39
risk designation	section 6 (see also section 7)
safety measure certificate	section 17(2)
safety report	section 43(2) and (3)
stop notice	section 42
supervising engineer	section 72(1) and (3) section 24(3) (see also section 25(7)(a) and (10) in relation to nominated representative of supervising engineer)
the 1975 Act	
variable monetary penalty	section 118(1) section 81(1) and (3)

The effect of the proposed amendments is shown in colour below:

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the Department	
enforcement undertaking	section 118(1)
final certificate	section 76(1) and (3)
fixed monetary penalty	section 46
flood plan	section 78(1) and (3)
high-risk reservoir	section 53
inspecting engineer	section 23
inspection compliance certificate	section 28(5)
inspection report	section 34(5) and (7)
interim inspection compliance certificate	section 33(1)(b) and (4)
low-risk reservoir	section 34(3) and (4)
medium-risk reservoir	section 23
other qualified engineer	section 23
panels of reservoir engineers	sections 33(7) and 34(2)(a)
periodic re-assessment of risk designation	section 97
pre-commencement inspection report	section 18
pre-commencement inspection report certificate	section 31(1)
pre-commencement safety recommendation	section 33(2)(b) and (3)
preliminary certificate	section 32(1)(b) and (3)
relevant works	section 44
reservoir manager	section 39
risk designation	section 6 (see also section 7)
safety measure certificate	section 17(2)
safety report	section 43(2) and (3)
stop notice	section 42
supervising engineer	section 72(1) and (3)
	section 24(3) (see also section 25(7)(a) and (10) in relation to nominated representative of supervising engineer)
the 1975 Act	section 118(1)
variable monetary penalty	section 81(1) and (3)
the Water Appeals Commission	section 118(1)

Schedule 3

The wording of this Schedule in the Bill as introduced to the Assembly is:

SCHEDULE 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)

1. The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.
2. In Article 293 (procedure of the Water Appeals Commission for Northern Ireland)—
 - (a) in paragraph (6), for “(9) or (10)” substitute “(9), (10) or (10A)”,
 - (b) after paragraph (10), insert—

“(10A) This paragraph applies to a decision by the Appeals Commission on an appeal falling within any of the following sub-paragraphs—

 - (a) an appeal (under section 21 of the Reservoirs Act (Northern Ireland) 2014) against a decision in a review of a risk designation of a controlled reservoir,
 - (b) an appeal (made by virtue of regulations under section 72(1) of that Act) against any of the following—
 - (i) a decision to serve a stop notice,
 - (ii) a decision not to give a completion certificate,
 - (iii) a decision not to award compensation or as to the amount of compensation,
 - (iv) a decision as to recovery of costs in relation to the serving of the stop notice,
 - (c) an appeal (made by virtue of regulations under section 76(1) of that Act) against any of the following—
 - (i) a decision in a review of refusal to give certification that an enforcement undertaking has been complied with,
 - (ii) a decision as to recovery of costs in relation to the acceptance of the undertaking,
 - (d) an appeal (made by virtue of regulations under section 78(1) of that Act) against a decision to impose a fixed monetary penalty,
 - (e) an appeal (made by virtue of regulations under section 81(1) of that Act) against any of the following—
 - (i) a decision to impose a variable monetary penalty,
 - (ii) a decision as to recovery of costs in relation to the imposition of the penalty,
 - (f) an appeal (made by virtue of regulations under that section) against a notice imposing a non-compliance penalty for failure to comply with an undertaking referred to in section 82(5) of that Act.”.
3. Article 297 (regulations by the Department for Regional Development as to safety of reservoirs) is omitted.
4. In Article 300 (regulations), in paragraph (1)(b), the words “or 297” are omitted.

The effect of the proposed amendments is shown in colour below:

SCHEDULE 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)

1. The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.
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 - (a) in paragraph (6), for “(9) or (10)” substitute “(9), (10) or (10A)”,
 - (b) after paragraph (10), insert—

“(10A) This paragraph applies to a decision by the Appeals Commission on an appeal falling within any of the following sub-paragraphs—

 - (a) an appeal (under section 21 of the Reservoirs Act (Northern Ireland) 2014) against a decision in a review of a risk designation of a controlled reservoir,

(aa) an appeal (made by virtue of regulations made under section 53(1) of that Act) against a decision as to recovery of costs in relation to a flood plan,

(ab) an appeal (under section 71A of that Act) against a decision as to recovery of costs under section 65, 67, 69 or 71 of that Act,
 - (b) an appeal (made by virtue of regulations under section 72(1) of that Act) against any of the following—
 - (i) a decision to serve a stop notice,
 - (ii) a decision not to give a completion certificate,
 - (iii) a decision not to award compensation or as to the amount of compensation,
 - (iv) a decision as to recovery of costs in relation to the serving of the stop notice,
 - (c) an appeal (made by virtue of regulations under section 76(1) of that Act) against any of the following—
 - (i) a decision in a review of refusal to give certification that an enforcement undertaking has been complied with,
 - (ii) a decision as to recovery of costs in relation to the acceptance of the undertaking,
 - (d) an appeal (made by virtue of regulations under section 78(1) of that Act) against a decision to impose a fixed monetary penalty,
 - (e) an appeal (made by virtue of regulations under section 81(1) of that Act) against any of the following—
 - (i) a decision to impose a variable monetary penalty,
 - (ii) a decision as to recovery of costs in relation to the imposition of the penalty,
 - (f) an appeal (made by virtue of regulations under that section) against a notice imposing a non-compliance penalty for failure to comply with an undertaking referred to in section 82(5) of that Act.”
3. Article 297 (regulations by the Department for Regional Development as to safety of reservoirs) is omitted.
4. In Article 300 (regulations), in paragraph (1)(b), the words “or 297” are omitted.

DARD re. Further amendments to Bill - removal of risk

Further proposed amendments to Reservoirs Bill - to remove reference to risk.

The following clauses and schedules will be amended to remove the term 'risk' from the Bill. Titles will also be updated as appropriate. This may address the Committee's concern regarding the possible stigma associated with the term 'risk'.

'risk designation' is replaced by 'reservoir designation'

'High-risk', 'medium-risk' and 'low-risk' are replaced by 'high-consequence' medium-consequence, and 'low-consequence'.

Clauses – 3, 8, 16, 17, 18, 19, 20, 21,23, 24, 25, 28, 29, 30, 31, 32, 33, 35, 36, 46, 49, 52, 53, 54, 55, 56, 77, 88, 91, 93, 95, and 107.

Schedule 1

Schedule 2

Schedule 3

The Committee has also expressed concern regarding a reservoir designation not being changed when a reservoir manager has invested money and undertaken all the works in the interests of safety as advised by the inspecting engineer. The Department is proposing to address this concern by amending Clause 22 to provide that the issues such as those in paragraphs (a) to (e) of 22(3), for example how the reservoir is maintained, may be considered for both consequences and probability of an uncontrolled release of water. This amendment will allow the Department to consider these issues as well as the consequences, which will be based on detailed reservoir inundation maps, until a suitable methodology exists to determine the probability of reservoir failure. This opens up the potential for a reservoir designation of high consequence to be changed to medium consequence in the circumstances where a reservoir manager has completed all the works in the interests of safety and these works have been certified by the inspecting engineer.

The amendment also provides for a new Clause 22A which will provide power by regulations to amend the matters to be considered when giving a reservoir designation, in particular, providing a methodology for assessing the probability of an uncontrolled release of water. These regulations will also allow for the term risk to be re-introduced into the Bill, if desired.

Consequential amendments are required to Clauses 3, and 117.

DARD re. Amendment to Reservoir designation - extract provisions tracked

Reservoirs Bill

Reservoir designation

Set of extract provisions tracked with proposed changes

With C33 - 06.06.14

PART 1

CONTROLLED RESERVOIRS, REGISTRATION AND RESERVOIR DESIGNATION

Controlled reservoirs

Matters to be taken into account under section 2(3)

3.—(1) The matters the Department is required by section 2(3) to take into account are—

- (a) in so far as it is reasonably practicable to do so, as respects the section 1(a) or (b) structure or area alone or, where water does or could flow between it and any other section 1(a) or (b) structure or area, also any such other structure or area—
 - (i) the potential adverse consequences of an uncontrolled release of water from the structure or area,
 - (ii) the probability of an uncontrolled release of water from the structure or area,
- (b) such other matters as the Department may, by regulations, provide.

(2) For the purposes of subsection (1)(a)(i), potential adverse consequences include the matters specified in paragraphs (a) and (b) of section 22(2) (for the purposes of reservoir designation).

(3) The issues the Department may take into account in assessing under subsection (1)(a) the potential adverse consequences or probability of an uncontrolled release of water from a section 1(a) or (b) structure or area include, as regards the structure or area, the issues specified in paragraphs (a) to (e) of section 22(3) and in regulations under section 22A (for the purposes of reservoir designation); and for that purpose the references in those paragraphs of section 22(3) to “the reservoir” are to be construed as references to the section 1(a) or (b) structure or area.

(4) Before making regulations under subsection (1)(b), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

Reservoir managers

Duty of multiple reservoir managers to co-operate

8.—(1) Where by virtue of section 6 there is more than one reservoir manager of a controlled reservoir, each of the reservoir managers must co-operate with any other

reservoir manager of the reservoir (including a nominee under section 7) so far as is necessary to enable the reservoir manager concerned to comply with the requirements to which the manager is subject under this Act.

(2) A reservoir manager who fails to comply with subsection (1) commits an offence.

(3) A reservoir manager guilty of an offence under subsection (2) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A reservoir manager guilty of an offence under that subsection in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Registration

Offences: registration

16.—(1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements relating to registration is an offence—

(a) the requirements of section 10 (including those of regulations made under subsection (2) of that section) (registering controlled reservoir with Department in accordance with sections 11 to 13),

(b) the requirements of section 15(1) or (2) (notice of change of reservoir manager).

(2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives any information or document which is false or misleading in a material respect commits an offence.

(3) A reservoir manager guilty of an offence under subsection (1) or (2) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A reservoir manager guilty of an offence under either of those subsections in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) It is a defence to a charge in proceedings for an offence under subsection (1) that the person did not know and could not reasonably be expected to have known that the person was the reservoir manager of a controlled reservoir to whom the requirement concerned applied.

(6) References in this section to a reservoir manager or the reservoir manager are to be construed, in relation to an offence of failing to comply with the requirements of section 15(1), as including a person who has ceased to be a reservoir manager.

Reservoir designation

Giving a reservoir designation

17.—(1) The Department must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a reservoir designation.

(2) A reservoir designation is a designation of the controlled reservoir by the Department as one of the following categories—

- (a) a high-consequence reservoir,
- (b) a medium-consequence reservoir,
- (c) a low-consequence reservoir.

(3) In giving a reservoir designation, the Department must, in so far as it is reasonably practicable to do so, take into account the matters mentioned in section 22.

(4) The Department gives a controlled reservoir a reservoir designation by notice served on the reservoir manager of the reservoir—

- (a) specifying the reservoir designation it has given the reservoir,
- (b) specifying the reasons for its decision,
- (c) specifying the date on which the designation takes effect,
- (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
- (e) specifying that the reservoir designation which is the subject of an application continues to have effect pending a decision being made in the review.

Periodic re-assessment of reservoir designations

18.—(1) The Department must carry out periodic re-assessments of reservoir designations in accordance with this section.

(2) In carrying out a periodic re-assessment of a reservoir designation in accordance with this section the Department must, having taken into account the matters mentioned in section 22 in so far as it is reasonably practicable to do so, either—

- (a) confirm the designation, or
- (b) give the controlled reservoir a reservoir designation as one of the other categories referred to in paragraphs (a) to (c) of section 17(2) (for the purposes of this Act “a different designation”).

(3) A periodic re-assessment of the reservoir designation of a controlled reservoir must be carried out at the following times—

- (a) at any time the Department considers the designation may have ceased to be appropriate,
- (b) in any event, not later than 10 years from whichever is the latest of the following—
 - (i) the date on which notice of the designation was served under section 17(4),
 - (ii) the date on which notice of the decision in a periodic re-assessment of the designation was served under subsection (4),
 - (iii) the date on which notice of the decision in a review in respect of the designation was served under section 20(6),
 - (iv) the date on which notice of the decision in an appeal in respect of the designation was given under section 21.

(4) The Department confirms the designation, or gives the controlled reservoir a different designation, by notice served on the reservoir manager of the reservoir—

- (a) specifying whether it confirms the designation or gives the reservoir a different designation,

- (b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,
- (c) specifying the reasons for its decision,
- (d) giving information about the right under section 20 to apply for a review by the Department of its decision, the procedure for making such an application and the period within which an application may be made,
- (e) specifying that the reservoir designation which is the subject of an application continues to have effect pending a decision being made in the review.

Date on which reservoir designation given under section 17 or given as different designation under section 18 takes effect

19.—(1) A reservoir designation—

- (a) given under section 17,
- (b) given as a different designation on a periodic re-assessment under section 18,

subject to subsections (2) and (3), takes effect on the day after the date on which notice of the designation is served by the Department on the reservoir manager under the section concerned.

(2) Where a reservoir designation is given under section 17 in relation to a controlled reservoir which is being constructed or restored to use (within the meaning of Part 3), the designation takes effect on the day after the date of the final certificate in respect of those works. (Section 46 makes provision about final certificates.)

(3) Where a reservoir designation is given (as a different designation) under section 18 in relation to a controlled reservoir which is subject to alteration for the purpose of increasing or decreasing the capacity of the reservoir, the different designation takes effect on the day after the date of the final certificate in respect of those works.

Review by Department of its decision under section 17 or 18

20.—(1) A reservoir manager of a controlled reservoir on whom notice is served under section 17(4) or 18(4) may apply to the Department for a review by it of its decision under section 17 or 18.

(2) An application must be made in writing before the end of the period of 90 days beginning with the date on which the notice was served.

(3) In considering an application under this section, the Department—

- (a) may commission to make recommendations to it about the reservoir designation either (or both)—
 - (i) an engineer who is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
 - (ii) such other person as the Department considers appropriate,

(b) must take into account—

- (i) a recommendation by an engineer or other person commissioned by it under paragraph (a),
- (ii) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
- (iii) any representations made to it by or on behalf of the reservoir manager in relation to the application.

(4) A reservoir designation in respect of which an application is made under this section continues to have effect pending a decision being made in the review.

(5) Where as a result of the review the Department gives the controlled reservoir a different designation, the designation which is the subject of the review ceases to have effect from the date on which the Department gives its decision; and the different designation takes effect on the day after the date on which notice is served under subsection (6).

(6) The Department must notify the reservoir manager of its decision in the review by serving on the reservoir manager notice—

- (a) specifying whether it confirms the designation or gives the reservoir a different designation,
- (b) where it gives the reservoir a different designation, specifying the different designation and the date on which it takes effect,
- (c) specifying the reasons for its decision,
- (d) giving information about the right of appeal under section 21 against its decision, the procedure for making an appeal and the period within which an appeal may be made,
- (e) specifying that the designation which is the subject of an appeal continues to have effect pending a decision being made in the appeal.

(7) The Department may by regulations make further provision in relation to applications and reviews under this section.

Appeal against Department's decision in a review under section 20

21.—(1) A reservoir manager of a controlled reservoir on whom notice of the Department's decision in a review under section 20 is served may appeal to the Water Appeals Commission for Northern Ireland against the decision on one or more of the grounds mentioned in subsection (3).

(2) Any such appeal must be made in writing before the end of the period of 60 days beginning with the date on which the notice under section 20(6) was served.

(3) The grounds referred to in subsection (1) are that—

- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable.

(4) The Commission may confirm the reservoir designation or give the reservoir a different designation.

(5) A decision in an appeal under this section must take into account—

- (a) in so far as it is reasonably practicable to do so, the matters mentioned in section 22,
- (b) any representations made in relation to the appeal by or on behalf of—
 - (i) the reservoir manager,
 - (ii) the Department.

(6) A reservoir designation in respect of which an appeal is made under this section continues to have effect pending a decision being made in the appeal.

(7) Where the decision in the appeal is that the controlled reservoir is given a different designation, the designation which is the subject of the appeal ceases to have effect from

the date on which the appeal is determined; and the different designation takes effect on the day after the date on which notice is given under subsection (8).

(8) Notice by the Commission to the reservoir manager and the Department of the Commission's decision in the appeal must specify—

- (a) whether the Commission confirms the reservoir designation or gives the reservoir a different designation,
- (b) where the Commission gives the reservoir a different designation, the different designation and the date on which it takes effect,
- (c) the reasons for the decision.

(9) The Department may by regulations make provision as to the following in relation to appeals under this section—

- (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
- (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

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

22.—(1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are —

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
- (b) the probability of such a release.

(2) The potential adverse consequences of an uncontrolled release of water from a controlled reservoir include—

- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.

(3) Issues that may be taken into account in assessing under subsection (1) the potential adverse consequences or probability of an uncontrolled release of water from a controlled reservoir include any of the following—

- (a) the purpose for which the reservoir is (or is to be) used,
- (b) the materials used to construct the reservoir,
- (c) the way in which the reservoir was or is being constructed,
- (d) the age and condition of the reservoir and how it has been maintained,
- (e) such other issues as the Department considers relevant.

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

22A.—(1) The Department may by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

- (2) Without prejudice to the generality of subsection (1), the regulations may—

- (a) make further provision in relation to the matters in section 22(1),
- (b) in particular, when the Department is satisfied that an appropriate methodology exists for assessing the probability of an uncontrolled release of water from a controlled reservoir, include provision as regards the methodology that is to be taken into account in assessing such probability,
- (c) amend references in this Act to “reservoir designation”, “high-consequence reservoir”, “medium-consequence reservoir” and “low-consequence reservoir” in pursuance of the regulations,
- (d) include adaptations for the purposes of section 3(3).

(3) Before making regulations under subsection (1), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

High-consequence reservoirs, medium-consequence reservoirs and low-consequence reservoirs: further provision

23. References in this Act to a “high-consequence reservoir”, “medium-consequence reservoir” or “low-consequence reservoir” are references to a controlled reservoir designated as such for the time being under section 17, 18, 20 or 21.

PART 2

REQUIREMENTS FOR HIGH-CONSEQUENCE AND MEDIUM-CONSEQUENCE RESERVOIRS

Supervision by supervising engineer

Supervision requirement and commissioning of supervising engineer etc.

24.—(1) A high-consequence or medium-consequence reservoir must, at all times, be under the supervision of a supervising engineer.

(2) The reservoir manager of a high-consequence or medium-consequence reservoir must, not later than 6 months after the date on which the designation of the reservoir as such takes effect (see sections 19, 20(5) and 21(7)), commission a supervising engineer.

(3) A “supervising engineer” is an engineer duly commissioned under subsection (2) to supervise the reservoir, at all times, in accordance with section 25.

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

(5) An engineer may be commissioned as a supervising engineer if the engineer is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section as a supervising engineer in relation to the reservoir.

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

- (a) give notice to the reservoir manager of anything that the engineer considers might affect the safety of the reservoir,
- (b) monitor compliance by the reservoir manager—
 - (i) subject to section 57, with any direction in the latest inspection report by virtue of section 33(4)(a) as regards any measure that should be taken in the interests of the safety of the reservoir which is a measure for its maintenance (see section 33(4)(f)),
 - (ii) with any recommendation in a pre-commencement inspection report for the time being applicable to the reservoir (see section 31(1)) as to a measure that should be taken for its maintenance,
- (c) monitor—
 - (i) any matter specified by virtue of section 33(4)(g) in the latest inspection report as a matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection of the reservoir,
 - (ii) any matter specified in a pre-commencement inspection report for the time being applicable to the reservoir as a matter that should be watched by a civil engineer until the next inspection of the reservoir (and which does not fall within paragraph (b)(ii)),
- (d) monitor any matter specified in a safety report as a matter the construction engineer giving the report recommends should be monitored by the supervising engineer until a final certificate is issued in respect of relevant works (see section 42(1)(c)),
- (e) monitor compliance by the reservoir manager with the requirements of—
 - (i) any preliminary certificate for the time being applicable to the reservoir (see section 44),
 - (ii) any final certificate for the time being applicable to the reservoir (see section 46),
- (f) monitor any matter specified in any such final certificate as a matter that should be monitored by the supervising engineer until the first or next inspection of the reservoir,
- (g) give notice to the reservoir manager and the Department of any failure to comply with—
 - (i) a direction or recommendation referred to in paragraph (b),
 - (ii) a safety report for the time being applicable to the reservoir,
 - (iii) a preliminary certificate for the time being applicable to the reservoir,
- (h) give notice to the reservoir manager and the Department of any failure to comply with any requirement of a final certificate for the time being applicable to the reservoir,
- (i) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,
- (j) monitor compliance by the reservoir manager with the requirements of section 35 (recording of water levels etc. and record keeping),
- (k) visit the reservoir—
 - (i) where it is a high-consequence reservoir, at least **once** in every 12 month period,
 - (ii) where it is a medium-consequence reservoir, at least once in every **24** month period,

-
- (l) undertake, in accordance with the latest inspection report, any additional visit that may be recommended in the report by virtue of section 33(4)(i).
- (3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 33, the engineer must—
- (a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place,
 - (b) not later than 28 days after giving the written recommendation, give the Department a copy of it.
- (4) The supervising engineer—
- (a) may by written direction require the reservoir manager to carry out a visual inspection of the reservoir at intervals specified by the engineer for the purpose of identifying anything that might affect the safety of the reservoir,
 - (b) must give a copy of any direction given under paragraph (a) to the Department.
- (5) The supervising engineer must give the reservoir manager, at least every 12 months, a written statement of—
- (a) the steps taken by the engineer in relation to the matters referred to in subsection (2)(a) to (h) and (j) to (l),
 - (b) any measure taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,
 - (c) any recommendation by the supervising engineer under subsection (3),
 - (d) any direction by the supervising engineer under subsection (4)(a).
- (6) The supervising engineer must, not later than 28 days after giving a written statement under subsection (5), give the Department a copy of the statement.
- (7) The supervising engineer must—
- (a) give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of the supervising engineer being unavailable, a nominated representative of the engineer),
 - (b) not later than 28 days after giving the reservoir manager such information, give the information to the Department.
- (8) Where the reservoir is the subject of a pre-commencement inspection report and inspection of it is not yet due under section 29, the reservoir manager must give the supervising engineer a copy of—
- (a) the report,
 - (b) any pre-commencement inspection report certificate (see section 33(3)),
 - (c) where the reservoir manager is unable to give a copy of a pre-commencement inspection report certificate, any other document dated before the relevant date which the reservoir manager considers relevant to the taking of a pre-commencement safety recommendation (see section 32(3)).
- (9) In this section—
- (a) “draw-down” means any intentional reduction in the water level except where done in accordance with the routine operation of the reservoir,
 - (b) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section,
 - (c) “the relevant date” has the same meaning as in section 29(6).

(10) In this section and sections 26 to 29, 33 and 35, references to “the supervising engineer” are references to the engineer duly commissioned for the time being as such under section 24 in relation to the reservoir and are to be construed as including a nominated representative of the supervising engineer under subsection (7)(a) who is acting as such in the event of the supervising engineer being unavailable.

Inspections etc. by inspecting engineer

Inspection timing: general requirements

28.—(1) Subject to subsection (2) and sections 29 and 30, the reservoir manager of a high-consequence or medium-consequence reservoir must secure that it is inspected by an inspecting engineer before the end of the period of one year beginning with the date on which the designation of the reservoir as such takes effect (see sections 19, 20(5) and 21(7)).

(2) Subsection (1) does not apply where the controlled reservoir was, immediately before the designation of it as a medium-consequence reservoir took effect, designated as a high-consequence reservoir.

(3) The reservoir manager of a high-consequence or medium-consequence reservoir must secure that it is inspected by an inspecting engineer at each of the following times—

- (a) at any time recommended by the supervising engineer by virtue of section 25(3),
- (b) subject to section 57, at any time recommended in an inspection report under section 33 (in accordance with section 33(4)(h)).

(4) The reservoir manager of a high-consequence reservoir must in any event secure that it is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the latest inspection.

(5) An “inspecting engineer” is an engineer duly commissioned under section 32 to inspect a high-consequence or medium-consequence reservoir when required by this section or section 29 or 30 or to supervise the taking of a measure referred to in section 32(1)(b).

Inspection timing: reservoir subject to pre-commencement inspection report

29.—(1) Subject to subsection (5) and section 30, subsection (2) applies instead of section 28(1) where—

- (a) a high-consequence or medium-consequence reservoir is the subject of a pre-commencement inspection report (see section 31(1)),
- (b) the Department is satisfied that—
 - (i) the report contains a recommendation as to when (or by when) the next inspection of the reservoir should take place,
 - (ii) the recommended next inspection would be due after the relevant date and within a period not exceeding 10 years from the date of the inspection to which the report relates.

(2) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer at the time, after the relevant date, recommended in the report for the next inspection of the reservoir.

(3) Subject to subsection (5) and section 30, subsection (4) applies instead of section 28(1) where—

- (a) a high-consequence or medium-consequence reservoir is the subject of a pre-commencement inspection report,

(b) the Department is satisfied that the report does not contain a recommendation as to when (or by when) the next inspection of the reservoir should take place.

(4) The reservoir manager must secure that the reservoir is inspected by an inspecting engineer before the end of the period of 10 years beginning with the date of the inspection which is the subject of the report.

(5) Where the supervising engineer recommends by virtue of section 25(3) that the reservoir should be inspected at a time which is earlier than is required by subsection (2) or (4), the inspection which is due by virtue of that subsection is not required.

(6) In this section, and sections 31 and 33, “the relevant date” means the date on which the designation of the controlled reservoir concerned as a high-consequence or medium-consequence reservoir takes effect.

Inspection timing: other qualifications

30.—(1) Where a construction engineer is required by section 40 to be commissioned to supervise relevant works for the purpose of a high-consequence or medium-consequence reservoir being discontinued or abandoned (within the meaning of Part 3) (see sections 38 and 39), any inspection which at the date of the commissioning is due by virtue of section 28 or 29 is not required.

(2) Where a construction engineer is required by section 40 to be commissioned to supervise relevant works for the purpose of a high-consequence or medium-consequence reservoir being constructed or subject to alteration (but not for the purpose of it being discontinued or abandoned) (within the meaning of Part 3)—

- (a) any inspection which at the date of the commissioning is due by virtue of section 28 or 29 is not required,
- (b) the reservoir manager must secure instead that the reservoir is inspected by an inspecting engineer either—
 - (i) before the end of the period of 2 years beginning with the date of the final certificate for the relevant works, or
 - (ii) at such earlier time as may be recommended in the final certificate (in accordance with section 46(2)(b)).

Pre-commencement inspection report

31.—(1) A “pre-commencement inspection report” is a document, provided to the Department by the reservoir manager of a high-consequence or medium-consequence reservoir and in respect of which the Department is satisfied as to the following matters—

- (a) that it was prepared by a civil engineer who, at the time of the inspection to which it relates and throughout the preparation and completion of the document, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate,
- (b) that it was prepared sufficiently in accordance with criteria that would have fallen to be applied in relation to an inspection under section 10 of that Act of a reservoir that was subject to that section,
- (c) that it is about an inspection of the reservoir which was carried out before the relevant date, but not more than 8 years before that date.

(2) The Department must, as soon as is reasonably practicable after receiving a document under subsection (1) and, where it considers it appropriate to do so after consulting an engineer commissioned by it under this subsection, decide whether or not it is satisfied that the document is a pre-commencement inspection report.

- (3) An engineer may be commissioned under subsection (2) if the engineer—
 - (a) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section in relation to the reservoir,
 - (b) is not disqualified by virtue of subsection (4) from being so commissioned in relation to the reservoir.
- (4) An engineer is disqualified from being commissioned under subsection (2) in relation to a high-consequence or medium-consequence reservoir if the engineer—
 - (a) is an employee of any person who is a reservoir manager of the reservoir,
 - (b) prepared the document provided in pursuance of subsection (1).
- (5) The Department must serve on the reservoir manager notice—
 - (a) specifying its decision under subsection (2),
 - (b) where its decision is that the document is not a pre-commencement inspection report, specifying the reasons for the decision,
 - (c) giving information about the right under Schedule 1 to apply for a review by the Department of its decision under subsection (2), the procedure for making such an application and the period within which an application may be made.
- (6) Schedule 1 makes provision in relation to review of a decision under subsection (2).

Commissioning of inspecting engineer etc.

- 32.—**(1) The reservoir manager of a high-consequence or medium-consequence reservoir must commission an inspecting engineer—
- (a) to inspect the reservoir when inspection of it is required by section 28, 29 or 30,
 - (b) to supervise the taking of any measure as mentioned in section 33(4)(e) or the taking of a pre-commencement safety recommendation.
- (2) The reservoir manager must, not later than 28 days after the commissioning, give notice of it to the Department.
- (3) A “pre-commencement safety recommendation” is a recommendation in a pre-commencement inspection report as to a measure the civil engineer who prepared the report considered to be required in the interests of the safety of the reservoir.
- (4) An engineer may be commissioned as an inspecting engineer if the engineer—
- (a) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this section as an inspecting engineer in relation to the reservoir,
 - (b) is not disqualified by virtue of subsection (5) from being so commissioned in relation to the reservoir.
- (5) An engineer is disqualified from being commissioned as an inspecting engineer in relation to a high-consequence or medium-consequence reservoir if the engineer—
- (a) is an employee of any person who is a reservoir manager of the reservoir,
 - (b) has previously been a construction engineer in relation to the reservoir.

Duties etc. in relation to inspection

- 33.—**(1) An inspecting engineer must—
- (a) inspect the reservoir,

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- (b) give the reservoir manager, not later than 6 months after the completion of the inspection, an inspection report prepared in accordance with this section.
- (2) The reservoir manager must give the inspecting engineer a copy of—
- (a) the latest report (if any),
 - (b) any pre-commencement inspection report certificate, interim inspection compliance certificate or inspection compliance certificate for the time being applicable to the reservoir,
 - (c) any final certificate for the time being applicable to the reservoir.
- (3) A “pre-commencement inspection report certificate” is a certificate—
- (a) stating that a measure recommended in the pre-commencement report as a measure that should be taken in the interests of the safety of the reservoir has been taken,
 - (b) signed and issued before the relevant date by a civil engineer who, at the time of signing, was a member of such panel of civil engineers constituted under section 4(1) of the 1975 Act as the Department considers appropriate.
- (4) The inspection report—
- (a) must—
 - (i) specify any measure the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including any such measure for the maintenance of the reservoir),
 - (ii) direct the reservoir manager to ensure that the measure is taken,
 - (b) may—
 - (i) specify any matter that the inspecting engineer considers relevant to the maintenance of the reservoir (but in relation to which the engineer does not specify a measure (as to safety) under paragraph (a)),
 - (ii) include any recommendation as regards the matter,
 - (c) must specify whether any measure specified in the inspection report was specified in the latest report,
 - (d) if any measure specified in the latest report has not been taken and the measure is not specified in the inspection report, must specify why the engineer considers the measure should no longer be taken,
 - (e) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is not a measure for its maintenance,is taken under the supervision of the inspecting engineer or, where permitted (by section 34(2)(a)) the other qualified engineer, and within the period of time specified in the inspection report,
 - (f) must direct the reservoir manager to ensure that any measure which both—
 - (i) is specified in the inspection report as a measure that should be taken in the interests of the safety of the reservoir, and
 - (ii) is a measure for its maintenance,is monitored by the supervising engineer,
 - (g) must specify any other matter that the inspecting engineer recommends should be monitored by the supervising engineer until the next inspection,

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
 - (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-consequence reservoir, once in every 12 month period,
 - (ii) in the case of a medium-consequence reservoir, once in every 24 month period,must specify at what intervals, when, or in what circumstances, any additional visit should take place.
- (5) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—
- (a) the Department,
 - (b) the supervising engineer (if a different person).
- (6) In this section and section 34—
- (a) references to “the inspecting engineer” are references to the engineer duly commissioned for the time being as such under section 32 in relation to the reservoir,
 - (b) references to “the latest report” are references to the inspection report of the latest inspection (if any) of the reservoir carried out under this section or the pre-commencement inspection report (if any) in relation to the reservoir (whichever is the later),
 - (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.
- (7) In this Act, references to “the other qualified engineer”, “any other qualified engineer” or “other qualified engineer” are references to any engineer duly commissioned for the time being as such under section 34(2)(a) in relation to the reservoir; and references to “other qualified engineers” are to be construed accordingly.

Inspection reports: compliance

- 34.—**(1) The reservoir manager must ensure that the following are complied with—
- (a) (subject to section 57) any direction in an inspection report given to the manager under section 33,
 - (b) any pre-commencement safety recommendation.
- (2) The reservoir manager—
- (a) may commission any other qualified engineer (being a person eligible to be commissioned as an inspecting engineer for the reservoir) to supervise the taking of—
 - (i) any measure specified in the inspection report prepared in accordance with section 33 as a measure that should be taken in the interests of the safety of the reservoir and which is not a measure for its maintenance,
 - (ii) any pre-commencement safety recommendation.
 - (b) must, as soon as is reasonably practicable after such commissioning, give notice of it to the Department.
- (3) Not later than 28 days after being satisfied that a measure which is directed (or recommended) as mentioned in subsection (1) has been taken—
- (a) the inspecting engineer, or

(b) in relation to any such measure which the other qualified engineer is (and may be) commissioned to supervise, the other qualified engineer, must give to the reservoir manager an interim inspection compliance certificate.

(4) An interim inspection compliance certificate must specify—

- (a) the inspection report (or pre-commencement inspection report) to which it relates,
- (b) the measure taken,
- (c) any measure that has yet to be taken.

(5) The inspecting engineer or (as appropriate) the other qualified engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report (or all pre-commencement safety recommendations) have been taken, give the reservoir manager an inspection compliance certificate.

(6) The engineer giving an inspection compliance certificate must take an interim compliance certificate given by another engineer under this Act or a pre-commencement inspection report certificate a copy of which is given to the engineer under section 33(2), to be conclusive of the measure specified in it (as a measure taken) as having been taken.

(7) An inspection compliance certificate must specify—

- (a) the inspection report (or pre-commencement inspection report) to which it relates,
- (b) that all of the measures directed in the inspection report (or all pre-commencement safety recommendations) have been taken.

(8) The inspecting engineer or (as appropriate) the other qualified engineer must, not later than 28 days after giving the reservoir manager an interim inspection compliance certificate or an inspection compliance certificate under this section, give the Department a copy of it.

Record keeping etc.

Recording of water levels etc. and record keeping

35.—(1) The reservoir manager of a high-consequence or medium-consequence reservoir must maintain a record of the following matters in respect of the reservoir (“the recorded matters”) in accordance with this section—

- (a) water levels and depth of water in the reservoir, including the flow of water over any waste weir or overflow,
- (b) any leakage,
- (c) any repair,
- (d) any settlement of walls or other works,
- (e) such other matters as the Department may by regulations specify.

(2) The Department may by regulations make provision as to—

- (a) the form of the record to be maintained,
- (b) the information to be included in relation to the recorded matters.

(3) A supervising engineer, an inspecting engineer or a construction engineer commissioned in relation to the reservoir may give directions to the reservoir manager as to—

- (a) the manner in which the information referred to in subsection (2)(b) is to be recorded,
- (b) the intervals at which the record is to be updated.

(4) The reservoir manager must comply with any directions under subsection (3).

(5) A copy of a direction given under subsection (3) must be given by the engineer concerned to the Department.

(6) The reservoir manager must install and maintain such instruments as may be necessary to provide the information to be recorded in relation to the recorded matters.

(Sections 54 and 56 make further provision in relation to records (to be maintained by the reservoir managers of all controlled reservoirs) and associated offences.)

Offences: supervision, inspection, record keeping

Offences: supervision, inspection, record keeping

36.—(1) Failure by a reservoir manager of a high-consequence or medium-consequence reservoir to comply with any of the following requirements under this Part is an offence—

- (a) the requirements of section 24(2) (commissioning of supervising engineer),
- (b) the requirements of section 26(1) (compliance with direction of supervising engineer under section 25(4)(a) as to carrying out of visual inspection of reservoir),
- (c) the requirements of section 26(2)(a) (maintenance of written record of each such visual inspection),
- (d) the requirements of section 26(2)(c) (notice to supervising engineer and Department of anything that might affect the safety of the reservoir identified during visual inspection directed under section 25(4)(a)),
- (e) the requirements of section 28, 29, 30 or 32(1)(a) or (b) (securing required inspections and supervision by inspecting engineer and commissioning of inspecting engineer),
- (g) the requirements of section 35 (including those of regulations under subsection (2) of that section) (recording of water levels and other matters).

(2) A reservoir manager of a high-consequence or medium-consequence reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements of section 24(4) (notice to Department of commissioning of supervising engineer),
- (b) the requirements of section 25(8)(a) or (b) (giving supervising engineer copy of pre-commencement inspection report and any pre-commencement inspection report certificate),
- (c) the requirements of section 32(2) (notice to Department of commissioning of inspecting engineer),
- (d) the requirements of section 33(2) (giving inspecting engineer copy of latest report, any pre-commencement inspection report certificate, interim inspection compliance certificate, inspection compliance certificate and final certificate),
- (e) the requirements of section 34(2)(b) (notice to Department of commissioning of any other qualified engineer).

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,

- (b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-consequence reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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

36A.—(1) Failure by a reservoir manager of a high-risk or medium-risk reservoir without lawful excuse to comply with the requirements of section 34(1) (ensuring compliance with direction in inspection report or pre-commencement safety recommendation as to taking of measure) is an offence.

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

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-risk reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to a controlled reservoir which is, at the time the offence is committed, a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1).

Defences: offence under section 36A(1)

37. It is a defence to a charge in proceedings under section 36A(1) for the person to show both—

- (a) that the failure to comply with the requirement concerned was as a result of an event which could not reasonably have been foreseen or any natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
- (b) that the person—
- (i) took all practicable steps to prevent an uncontrolled release of water from the reservoir,
 - (ii) took all practicable steps as soon as was reasonably practicable to rectify the failure,
 - (iii) provided particulars of the failure to the Department as soon as practicable after the failure arose.

PART 3

CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Supervision by construction engineer

Final certificate

46.—(1) Where the relevant works have involved the controlled reservoir being constructed or subject to alteration but not discontinued or abandoned, the construction engineer must give the reservoir manager a final certificate not later than 28 days after being satisfied that the reservoir is sound and satisfactory and may safely be used for the collection and storage of water.

- (2) A final certificate given under subsection (1)—
- (a) must state that the engineer considers the reservoir is sound and satisfactory and may safely be used for the collection and storage of water,
 - (b) where the reservoir is a high-consequence or medium-consequence reservoir and the construction engineer considers that there should be an early inspection of the reservoir, must state when the engineer recommends the inspection should take place,
 - (c) where the reservoir is a high-consequence or medium-consequence reservoir, must specify any matter the construction engineer considers should be monitored, until the first or next inspection of the reservoir under this Act, by the supervising engineer for the time being commissioned in relation to the reservoir under section 24,
 - (d) must impose the requirements mentioned in subsection (7).
- (3) Where the relevant works have involved the controlled reservoir being discontinued, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—
- (a) that the discontinuance has been safely completed,
 - (b) that the resulting structure or area is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land,
 - (c) that the resulting structure or area is sound and satisfactory and may safely be used for the collection and storage of water.
- (4) A final certificate given under subsection (3) must—
- (a) state that the construction engineer is satisfied as to the matters referred to in paragraphs (a) to (c) of that subsection,
 - (b) impose the requirements mentioned in subsection (7).
- (5) Where the relevant works have involved the controlled reservoir being abandoned, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—
- (a) that the abandonment has been safely completed,
 - (b) that the resulting structure or area is incapable of filling with water above the natural level of any part of the surrounding land.
- (6) A final certificate issued under subsection (5) must state that the engineer is satisfied as to the matters referred to in paragraphs (a) and (b) of that subsection.
- (7) The requirements referred to in subsection (2)(d) and (4)(b) are—
- (a) that water in the reservoir must not exceed a level specified in the certificate (the “specified level”),
 - (b) that the reservoir manager must ensure that the level of water does not exceed the specified level,
 - (c) any requirements the construction engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.
- (8) The construction engineer must, not later than 28 days after issuing a final certificate, give the Department a copy of the certificate.
- (9) If a final certificate is not issued by the end of the period of 5 years beginning with the date of the first preliminary certificate, the construction engineer must—
- (a) not later than 28 days after the expiry of the 5 year period, give the reservoir manager a written statement of the reasons,

- (b) at intervals of not more than 12 months thereafter until the final certificate is issued, give the reservoir manager subsequent written statements of the reasons,
- (c) not later than 28 days after any such statement is given, give the Department a copy of the statement.

Offences: construction or alteration

Offences: construction or alteration

49.—(1) Failure by a reservoir manager of a controlled reservoir to comply with the requirements in section 40(2)(a) (commissioning of construction engineer) is an offence. any of the following requirements under this Part is an offence—

- ~~(a) the requirements in section 40(2)(a) (commissioning of construction engineer);~~
- ~~(b) the requirements in section 43(1) (ensuring compliance with direction in safety report as to taking of safety measure);~~
- ~~(c) the requirements in section 47 (ensuring compliance with preliminary certificate or final certificate).~~
- (2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—
 - (a) the requirements in section 40(1) (notice to the Department of proposed relevant works),
 - (b) the requirements in section 40(2)(b) (notice to Department of commissioning of construction engineer).
- (3) A reservoir manager guilty of an offence under subsection (1) or (2)—
 - (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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

49A.—(1) Failure by a reservoir manager of a controlled reservoir without lawful excuse to comply with any of the following requirements under this Part is an offence—

- (a) the requirements in section 43(1) (ensuring compliance with direction in safety report as to taking of safety measure),
- (b) the requirements in section 47 (ensuring compliance with preliminary certificate or final certificate).
- (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.
- (3) Section 70 makes provision as to further remedies available on conviction of an offence referred to in subsection (1)(a).

PART 4

CONTROLLED RESERVOIRS: OTHER REQUIREMENTS

Incident reporting

52.—(1) The Department may by regulations make provision for the reporting to it of incidents occurring at controlled reservoirs which meet criteria specified in, or otherwise determined in accordance with, the regulations.

(2) The regulations may, in particular—

(a) provide that the Department or another person—

(i) may specify the criteria,

(ii) is to determine whether a controlled reservoir meets the criteria,

(b) define what constitutes an incident by reference to circumstances which adversely affect the safety of a controlled reservoir,

(c) require the reservoir manager of a controlled reservoir or other person to notify the Department of any incident occurring at the reservoir and to provide the Department with a report on the incident,

(d) provide for a supervising engineer, an inspecting engineer or other person to determine whether an incident has occurred,

(e) require reservoir managers of controlled reservoirs, supervising engineers, inspecting engineers and any other person of a specified description to have regard to guidance issued by the Department,

(f) make provision as to the publishing of incident reports,

(g) confer powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,

(h) make provision as to offences,

(i) provide that any offence created is triable only summarily,

(j) provide for any offence created—

(i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

(ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,

(k) make provision in connection with ensuring remedial action is taken following an incident report, including provision amending this Act (other than this section) or applying this Act with modifications.

(3) If it appears to the Secretary of State that the publication of, or giving access to, any incident report or any information in an incident report would adversely affect national security, the Secretary of State may by notice direct the Department to direct the reservoir manager concerned in accordance with subsection (4).

(4) The Department on receiving notice under subsection (3) must, by notice served on the reservoir manager concerned, direct the manager—

(a) not to publish, or not to publish except as specified in the notice, a copy of an incident report prepared by the reservoir manager in pursuance of regulations made under subsection (1),

(b) not to give access to a copy of such an incident report except as specified in the notice.

- (5) Before making regulations under subsection (1), the Department must consult—
- (a) the reservoir managers of controlled reservoirs to which they consider the regulations will apply,
 - (b) the Institution of Civil Engineers,
 - (c) such other persons as it considers appropriate.

Flood plans

53.—(1) The Department may by regulations make provision as to—

- (a) the preparation of flood plans for controlled reservoirs,
- (b) such other matters in relation to such flood plans as it considers appropriate.

(2) A “flood plan” for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

(3) Regulations under subsection (1) may include provision—

- (a) as regards who is to prepare a flood plan,
- (b) requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories or types as may be determined by the Department,
- (c) allowing a single flood plan to be prepared in respect of 2 or more controlled reservoirs between which water does (or could) flow,
- (d) specifying—
 - (i) the form in which a flood plan is to be prepared,
 - (ii) what is to be included in a flood plan,
- (e) requiring the person preparing a flood plan to have regard to any guidance that may be issued by the Department as regards flood plans,
- (f) requiring flood plans to be produced or submitted to the Department (whether or not for approval) by such time as either—
 - (i) the regulations specify, or
 - (ii) the Department may direct,
- (g) as regards the approval of flood plans (whether by the Department, supervising engineers or inspecting engineers),
- (h) as regards the review and updating of flood plans,
- (i) as regards the publication or distribution of copies of—
 - (i) a list of controlled reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,
 - (ii) flood plans,
- (j) in connection with the testing of flood plans,
- (k) in connection with the referral of matters to a referee,
- (l) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is reasonably practicable to do so, to take action set out in the plan relating to the reservoir in the event of an incident or emergency,
- (m) providing that the Department may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the costs of doing so from the person,

PART 4

- (n) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
 - (o) making provision in connection with paragraphs (k), (m) and (n) amending this Act (other than this section) or applying this Act with modifications,
 - (p) as to offences,
 - (q) providing that any offence created is triable only summarily,
 - (r) providing for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,
 - (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale.
- (4) If it appears to the Secretary of State that the publication or distribution of, or giving access to, any flood plans or any information in flood plans would adversely affect national security, the Secretary of State may by notice direct the Department to direct reservoir managers in accordance with subsection (5).
- (5) The Department on receiving notice under subsection (4) must, by notice served on each reservoir manager concerned, direct the manager—
- (a) not to publish, or not to publish except as specified in the notice, a copy of a flood plan prepared by the reservoir manager in pursuance of regulations made under subsection (1),
 - (b) not to distribute, or not to give access to, a copy of such a flood plan except as specified in the notice.
- (6) Before making regulations under subsection (1), the Department must consult—
- (a) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,
 - (b) the Institution of Civil Engineers,
 - (c) such other persons as it considers appropriate.

Maintenance of records

54.—(1) The reservoir manager of a controlled reservoir must maintain a record of relevant documents.

(2) The record must include all of the relevant documents. (Sections 35 and 36 make provision as regards other records to be maintained by the reservoir managers of high-consequence and medium-consequence reservoirs and associated offences.)

(3) Where the reservoir is a low-consequence reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Department may by regulations require.

- (4) The relevant documents are—
- (a) any of the following which is given to the reservoir manager (or copied to the manager pursuant to section 66)—
 - (i) a safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate,
 - (ii) a pre-commencement inspection report or an inspection report, interim inspection compliance certificate or inspection compliance certificate,

- (iii) a notice under section 25(2)(a) or (g), recommendation under section 25(3) or statement under section 25(5) (by a supervising engineer),
- (b) any flood plan currently applicable in respect of the reservoir which has been produced in respect of it in pursuance of regulations made under section 53.

Display of emergency response information

55.—(1) The reservoir manager of a controlled reservoir must ensure that emergency response information is displayed at or near the reservoir.

(2) Emergency response information is such information about the reservoir and the reservoir manager as may be specified by regulations by the Department.

(3) The information that may be specified under subsection (2) includes in particular—

- (a) the name of the reservoir (if any),
- (b) any registration number in the controlled reservoirs register in respect of the reservoir,
- (c) the reservoir manager's name and address and information for the purpose of enabling a person to contact the reservoir manager in the event of an emergency,
- (d) where the reservoir is a high-consequence reservoir or medium-consequence reservoir, information for the purpose of enabling a person to contact the Department in the event of an emergency.

(4) The Department may by notice served on reservoir managers of controlled reservoirs give them directions to as to—

- (a) the manner in which emergency response information is to be displayed,
- (b) each location at which it is to be displayed.

(5) Directions under subsection (4) may be general or specific.

(6) The reservoir manager of a controlled reservoir must comply with any direction by the Department under subsection (4).

Offences under Part 4

56.—(1) Failure by a reservoir manager of a controlled reservoir to comply with any of the following requirements under this Part is an offence—

- (a) a direction under section 52(4) (publication etc. of incident reports and national security),
- (b) a direction under section 53(5) (publication etc. of flood plans and national security).

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements under this Part commits an offence—

- (a) the requirements of section 54 (maintenance of records),
- (b) the requirements of section 55(1) or (6) (display of emergency response information).

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 6

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Other civil enforcement measures

Regulations as to enforcement undertakings: further provision

- 77.—(1) Regulations under section 76(1) may in particular include provision—
- (a) as to the procedure for entering into an undertaking,
 - (b) as to the terms and conditions of an undertaking,
 - (c) as to the publication by the Department of an undertaking,
 - (d) as to the variation of an undertaking,
 - (e) as to the circumstances in which a reservoir manager may be regarded as having complied with an undertaking,
 - (f) as to the monitoring by the Department of compliance with an undertaking,
 - (g) as to the certification by the Department that an undertaking has been complied with,
 - (h) allowing an application for a review by the Department against refusal by it to give such certification,
 - (i) as to a right of appeal to the Water Appeals Commission for Northern Ireland against a decision in a review and the powers of the Commission in an appeal,
 - (j) for the grounds of any such appeal to include that—
 - (i) the decision was based on an error of fact,
 - (ii) the decision was wrong in law,
 - (iii) the decision was unreasonable,
 - (k) conferring powers of entry on any person duly authorised in writing by the Department in connection with its functions under the regulations,
 - (l) in a case where a reservoir manager has given inaccurate, misleading or incomplete information in relation to the undertaking, for the manager to be regarded as not having complied with it,
 - (m) in a case where a reservoir manager has complied partly but not fully with an undertaking, for the part-compliance to be taken into account in the imposition on the manager of any criminal or other sanction,
 - (n) extending any period within which criminal proceedings may be instituted against a reservoir manager in respect of the offence in the event of breach of an undertaking or any part of it,
 - (o) as to the creation of offences,
 - (p) for any offence created to be triable only summarily,
 - (q) for any offence created—
 - (i) which is committed in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir to be punishable on conviction by a fine not exceeding level 5 on the standard scale,

- (ii) which is committed in relation to any other controlled reservoir to be punishable on conviction by a fine not exceeding level 4 on the standard scale,
- (r) for any defences to a charge in proceedings for such an offence to include in particular a defence for the person to show both—
 - (i) that the failure to comply with the requirement concerned was as a result of either an accident which could not reasonably have been foreseen or natural cause or force majeure which was exceptional and could not reasonably have been foreseen, and
 - (ii) that the person took all practicable steps to prevent an uncontrolled release of water from the reservoir, took all practicable steps as soon as was reasonably practicable to rectify the failure and provided particulars of the failure to the Department as soon as practicable after the failure arose.
- (2) Provision as to a right of appeal referred to in paragraph (i) of subsection (1) may include provision about—
 - (a) the determining by or under the regulations of a fee, and the charging of any fee so determined, in connection with an appeal,
 - (b) the awarding of costs of the parties to an appeal (including provision in relation to the amount of costs).

Powers of entry

Powers of entry

- 88.**—(1) Any person duly authorised in writing by the Department may, at any reasonable time for any of the purposes in subsection (2), enter—
- (a) land on which a controlled reservoir is situated,
 - (b) land on which a structure or area, which is to be treated by virtue of section 2(2) for the purposes of this Act as a controlled reservoir, is situated,
 - (c) land on which the Department considers there is a structure or area in relation to which the Department is considering making regulations under section 2(3),
 - (d) land on which a structure or area which previously at any time has been a controlled reservoir is situated,
 - (e) neighbouring or other land through which access is required in order to enter any land referred to in paragraphs (a) to (d).
- (2) The purposes are to carry out an inspection, survey or other operation—
- (a) to determine whether any provision of this Act applies,
 - (b) for the purpose of assisting the Department in giving a reservoir designation or a review, periodic re-assessment or appeal as regards a reservoir designation,
 - (c) to determine whether a direction under section 25(4)(a) (supervision: direction to carry out visual inspection) has been complied with,
 - (d) to determine—
 - (i) whether a measure directed in an inspection report or a pre-commencement safety recommendation has been taken (whether before or after the giving of an enforcement notice under section 67),
 - (ii) the period to be specified in a notice under that section,
 - (e) to determine whether a measure directed in a safety report has been taken,
 - (f) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,

- (g) to determine whether the records required by sections 35 or 54 are being maintained,
- (h) to determine whether any incident is being reported in accordance with regulations under section 52,
- (i) to determine whether a flood plan is being prepared in accordance with regulations under section 53,
- (j) for the purposes of section 69 (Department's power to arrange taking of safety measures),
- (k) to determine what (if any) emergency measures should be taken under section 71, or for any purpose connected with taking such measures,
- (l) to determine whether a stop notice should be served,
- (m) to assess whether any offence under this Act may be being, or has been, committed,
- (n) for the purposes of section 92 (assessment of compensation or reinstatement works).

Offence: preventing or obstructing entry

91.—(1) Any person who wilfully prevents or obstructs another person entitled to enter land by virtue of section 88 (whether or not by virtue of a warrant under section 89) commits an offence.

- (2) A person guilty of an offence under subsection (1)—
 - (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
 - (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Reasonable facilities, information and assistance

Affording of reasonable facilities to engineers

93.—(1) The reservoir manager of a controlled reservoir must, on being requested by a relevant engineer, provide the engineer with all reasonable facilities the engineer may seek in connection with the exercise of the engineer's powers and duties under this Act.

- (2) The reservoir manager—
 - (a) must, on being requested by a relevant engineer, make available to the engineer—
 - (i) where the reservoir is a high-consequence reservoir or a medium-consequence reservoir, the record maintained by the manager under section 35,
 - (ii) the record maintained by the manager under section 54,
 - (b) must on being so requested provide a relevant engineer with such further information or particulars as the engineer may require, in such form and manner and by such time as the engineer may by notice require.

(3) For the purposes of this section, a "relevant engineer" is a supervising engineer (including a nominated representative of a supervising engineer under section 25(7)(a) who is acting as such in the event of the supervising engineer being unavailable), an inspecting engineer, any other qualified engineer or a construction engineer commissioned for the time being in relation to the reservoir.

Offences: sections 93 and 94

95.—(1) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with any of the following requirements commits an offence—

- (a) the requirements of section 93 (affording of reasonable facilities to engineers),
- (b) the requirements of section 94 (provision of information and assistance to the Department).

(2) A reservoir manager of a controlled reservoir who does any of the following commits an offence—

- (a) intentionally alters, suppresses or destroys any document, information or particulars which the person has been required by virtue of either of those sections to produce,
- (b) for the purposes of either of those sections knowingly or recklessly provides any document which is, or any information or particulars which are, false or misleading in a material respect.

(3) A reservoir manager guilty of an offence under subsection (1) or (2)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,
- (b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

PART 8

MISCELLANEOUS

Notice to the Department of revocation of commissioning, or resignation, of engineer

107.—(1) Where the reservoir manager of a controlled reservoir revokes the commissioning of a supervising engineer, an inspecting engineer, other qualified engineer or a construction engineer commissioned in relation to the reservoir, the manager must, not later than 28 days after doing so, give the Department notice of the revocation and of the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns—

- (a) the engineer must give the reservoir manager notice of the resignation and the date on which it took, or is to take, effect,
- (b) the reservoir manager who receives notice under paragraph (a) must, not later than 28 days after the receipt, give the Department a copy of the notice.

(3) Notice under subsection (1) or (2)(a) must be given not later than 28 days after the revocation or resignation.

(4) Failure by a reservoir manager to comply with the requirements of subsection (1) or (2)(b) is an offence.

(5) A reservoir manager guilty of an offence under subsection (4)—

- (a) in relation to a controlled reservoir which is, at the time the offence is committed, designated as a high-consequence reservoir is liable on summary conviction to a fine not exceeding level 5 on the standard scale,

(b) in relation to any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) 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.

Orders and regulations

117.—(1) Except where subsection (3) provides otherwise, an order made under this Act (other than an order under section 120(2)) is subject to negative resolution.

(2) Except where subsection (3) provides otherwise, regulations made under this Act are subject to negative resolution.

(3) The following regulations and orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

(a) regulations under any of the following—

(i) section 2(3) (structure or area to be treated as controlled reservoir),

(ii) section 3(1)(b) (further matters to be taken into account in making regulations under section 2(3)),

([iia](#)) [section 22A\(1\) \(further provision about matters that are to be taken into account under sections 17\(3\), 18\(2\), 20\(3\)\(b\)\(ii\) and 21\(5\)\(a\)\)](#),

(iii) section 52(1) (incident reporting),

(iv) section 53(1) (flood plans),

(v) section 72(1) (stop notices),

(vi) section 76(1) (enforcement undertakings),

(vii) section 78(1) (fixed monetary penalties),

(viii) section 81(1) (variable monetary penalties),

(ix) section 104(1) (extension of time limit for specified summary offences),

(x) section 105(1) (grants),

(b) an order under—

(i) section 4(1) (substituting different volume of water in certain sections),

(ii) section 110 (amending references to Institution of Civil Engineers and its President),

(c) an order under section 116(1) (supplementary, incidental, consequential etc. provision) containing provision which adds to, replaces or omits any part of the text of a statutory provision.

(4) Any power of the Department to make an order or regulations under this Act includes power to make such supplementary, incidental, consequential, transitional, transitory and saving provision as the Department considers appropriate.

SCHEDULE 1

PRE-COMMENCEMENT INSPECTION REPORTS: REVIEW OF DECISION UNDER SECTION 31(2)

1. A reservoir manager of a high-consequence or medium- consequence reservoir on whom notice is served under subsection (5) of section 31 may apply to the Department for a review by it of its decision under subsection (2) of that section (that it is satisfied

that a document provided in pursuance of subsection (1) is not a pre-commencement inspection report).

2. Any such application must be made in writing before the end of the period of 90 days beginning with the date on which the notice was served.

3. In considering an application under paragraph 1, the Department—

(a) may commission to make recommendations to it about the document which was the subject of the decision (“the document”) an engineer who—

(i) is a member of a panel of reservoir engineers established under section 97 who may (by virtue of an order under that section) be commissioned under this paragraph in relation to the reservoir,

(ii) is not disqualified by virtue of paragraph 4 from being so commissioned in relation to the reservoir,

(b) must take into account—

(i) a recommendation by an engineer commissioned by it under paragraph (a),

(ii) any representations made to it by or on behalf of the reservoir manager in relation to the application.

4. An engineer is disqualified from being commissioned under paragraph 3 in relation to a high- consequence or medium- consequence reservoir if the engineer—

(a) was commissioned under section 31(2) in relation to the making of the decision which is the subject of the review,

(b) prepared the document,

(c) is, or has previously been an employee of any person who is, or has previously been, a reservoir manager of the reservoir.

5. The Department must notify the reservoir manager of its decision in the review by serving on the reservoir manager notice—

(a) specifying whether it confirms the decision or has decided that the document is a pre-commencement inspection report,

(b) where it has confirmed its decision, specifying the reasons for doing so.

6. The Department may by regulations make further provision in relation to applications for review, and reviews, under this Schedule.

SCHEDULE 2

INDEX OF DEFINED EXPRESSIONS

<i>Expression</i>	<i>Interpretation provision</i>
construction certificate	section 45
construction engineer	section 40(3)
controlled reservoir	sections 1, 2 and 5
controlled reservoir being abandoned	section 38(7)(d) (see also section 38(6))
controlled reservoir being subject to alteration	section 38(7)(a) (see also section 38(4) to (6))
controlled reservoir being	section 38(7)(a) (see also section 38(3))

<i>Expression</i>	<i>Interpretation provision</i>
constructed	
controlled reservoir being discontinued	section 38(7)(c) (see also section 38(5))
controlled reservoir being restored to use	section 38(7)(b) (see also section 38(3))
controlled reservoirs register	section 9
the Department	section 118(1)
enforcement undertaking	section 76(1) and (3)
final certificate	section 46
fixed monetary penalty	section 78(1) and (3)
flood plan	section 53
high- consequence reservoir	section 23
inspecting engineer	section 28(5)
inspection compliance certificate	section 34(5) and (7)
inspection report	section 33(1)(b) and (4)
interim inspection compliance certificate	section 34(3) and (4)
low- consequence reservoir	section 23
medium- consequence reservoir	section 23
other qualified engineer	sections 33(7) and 34(2)(a)
panels of reservoir engineers	section 97
periodic re-assessment of reservoir designation	section 18
pre-commencement inspection report	section 31(1)
pre-commencement inspection report certificate	section 33(2)(b) and (3)
pre-commencement safety recommendation	section 32(1)(b) and (3)
preliminary certificate	section 44
relevant works	section 39
reservoir manager	section 6 (see also section 7)
reservoir designation	section 17(2)
safety measure certificate	section 43(2) and (3)
safety report	section 42
stop notice	section 72(1) and (3)
supervising engineer	section 24(3) (see also section 25(7)(a) and (10) in relation to nominated representative of supervising engineer)
the 1975 Act	section 118(1)
variable monetary penalty	section 81(1) and (3)

SCHEDULE 3

MINOR AND CONSEQUENTIAL AMENDMENTS

The Water and Sewerage Services (Northern Ireland) Order 2006 (NI 21)

1. The Water and Sewerage Services (Northern Ireland) Order 2006 is amended as follows.

2. In Article 293 (procedure of the Water Appeals Commission for Northern Ireland)—

(a) in paragraph (6), for “(9) or (10)” substitute “(9), (10) or (10A)”,

(b) after paragraph (10), insert—

“(10A) This paragraph applies to a decision by the Appeals Commission on an appeal falling within any of the following sub-paragraphs—

(a) an appeal (under section 21 of the Reservoirs Act (Northern Ireland) 2014) against a decision in a review of a reservoir designation of a controlled reservoir,

(b) an appeal (made by virtue of regulations under section 72(1) of that Act) against any of the following—

(i) a decision to serve a stop notice,

(ii) a decision not to give a completion certificate,

(iii) a decision not to award compensation or as to the amount of compensation,

(iv) a decision as to recovery of costs in relation to the serving of the stop notice,

(c) an appeal (made by virtue of regulations under section 76(1) of that Act) against any of the following—

(i) a decision in a review of refusal to give certification that an enforcement undertaking has been complied with,

(ii) a decision as to recovery of costs in relation to the acceptance of the undertaking,

(d) an appeal (made by virtue of regulations under section 78(1) of that Act) against a decision to impose a fixed monetary penalty,

(e) an appeal (made by virtue of regulations under section 81(1) of that Act) against any of the following—

(i) a decision to impose a variable monetary penalty,

(ii) a decision as to recovery of costs in relation to the imposition of the penalty,

(f) an appeal (made by virtue of regulations under that section) against a notice imposing a non-compliance penalty for failure to comply with an undertaking referred to in section 82(5) of that Act.”

DARD re. Clean text of clauses 3, 22, 22A + amendment to clause 117

Reservoirs Bill

Reservoir designation

Clean text of clause 22, new clause 22A and existing amendment to clause 117, as they would read with proposed changes made by amendment

With C33 - 06.06.14

PART 1

CONTROLLED RESERVOIRS, REGISTRATION AND RESERVOIR DESIGNATION

Controlled reservoirs

Matters to be taken into account under section 2(3)

3.—(1) The matters the Department is required by section 2(3) to take into account are—

- (a) in so far as it is reasonably practicable to do so, as respects the section 1(a) or (b) structure or area alone or, where water does or could flow between it and any other section 1(a) or (b) structure or area, also any such other structure or area—
 - (i) the potential adverse consequences of an uncontrolled release of water from the structure or area,
 - (ii) the probability of an uncontrolled release of water from the structure or area,
- (b) such other matters as the Department may, by regulations, provide.

(2) For the purposes of subsection (1)(a)(i), potential adverse consequences include the matters specified in paragraphs (a) and (b) of section 22(2) (for the purposes of reservoir designation).

(3) The issues the Department may take into account in assessing under subsection (1)(a) the potential adverse consequences or probability of an uncontrolled release of water from a section 1(a) or (b) structure or area include, as regards the structure or area, the issues specified in paragraphs (a) to (e) of section 22(3) and in regulations under section 22A (for the purposes of reservoir designation); and for that purpose the references in those paragraphs of section 22(3) to “the reservoir” are to be construed as references to the section 1(a) or (b) structure or area.

(4) Before making regulations under subsection (1)(b), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

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

22.—(1) The matters required by sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a) to be taken into account in so far as it is reasonably practicable to do so, are—

- (a) the potential adverse consequences of an uncontrolled release of water from the controlled reservoir,
- (b) the probability of such a release.

(2) The potential adverse consequences of an uncontrolled release of water from a controlled reservoir include—

- (a) potential damage to any of the following—
 - (i) human life or human health (as the Department considers appropriate in the circumstances),
 - (ii) the environment,
 - (iii) economic activity,
 - (iv) cultural heritage,
- (b) such other potential damage as the Department considers relevant.

(3) Issues that may be taken into account in assessing under subsection (1) the potential adverse consequences or probability of an uncontrolled release of water from a controlled reservoir include any of the following—

- (a) the purpose for which the reservoir is (or is to be) used,
- (b) the materials used to construct the reservoir,
- (c) the way in which the reservoir was or is being constructed,
- (d) the age and condition of the reservoir and how it has been maintained,
- (e) such other issues as the Department considers relevant.

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

22A.—(1) The Department may by regulations make further provision about the matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a).

- (2) Without prejudice to the generality of subsection (1), the regulations may—
 - (a) make further provision in relation to the matters in section 22(1),
 - (b) in particular, when the Department is satisfied that an appropriate methodology exists for assessing the probability of an uncontrolled release of water from a controlled reservoir, include provision as regards the methodology that is to be taken into account in assessing such probability,
 - (c) amend references in this Act to “reservoir designation”, “high-consequence reservoir”, “medium-consequence reservoir” and “low-consequence reservoir” in pursuance of the regulations,
 - (d) include adaptations for the purposes of section 3(3).

(3) Before making regulations under subsection (1), the Department must consult the Institution of Civil Engineers and such other organisations or persons as it considers appropriate.

Clause 117, page 70, line 12

At end insert—

- ‘(iia) section 22A(1) (further provision about matters that are to be taken into account under sections 17(3), 18(2), 20(3)(b)(ii) and 21(5)(a)),’

DARD re. Amendmend Risk Matrix

Reservoir Risk Matrix

		Probability of Reservoir Failure	
		Reservoir with no matters in the interest of safety identified.	Reservoir with matters in the interest of safety identified.
Consequence of Reservoir Failure	High: Where reservoir failure could endanger 1 or more lives, or have a significant impact on economic activity.	<p>One supervising engineer visit per year. One initial inspection and further inspections every 10 years.</p> <p>No enforcement actions by the Department.</p>	<p>Multiple visits by supervising engineer and frequent inspections.</p> <p>Enforcement which may result in:</p> <ul style="list-style-type: none"> • Variable Monetary Penalties • Fixed Monetary Penalties • Criminal Conviction • Fine to Level 5
	Medium: Where reservoir failure is unlikely to result in loss of life but may result in significant damage to the environment and cultural heritage.	<p>One supervising engineer visit every 24 months and one initial inspection.</p> <p>No enforcement actions by the Department.</p>	<p>Multiple visits by supervising engineer and frequent inspections.</p> <p>Enforcement which may result in:</p> <ul style="list-style-type: none"> • Departmental intervention and cost recovery • Criminal Conviction • Fine to Level 5 • Service of a Stop Notice • Fine of up to £20,000 / 2 years imprisonment
Low: Where reservoir failure has no significant impact.		<p>No visits by supervising engineers or inspections required.</p>	

Key:  Low Risk  Medium Risk  High Risk  Very High Risk

DARD re. Revised - Fixed amendment Clause 25

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

Draft amendments

These changes are made in section 25(2)(k) and are shown in isolation from the full clause 25.

Clause 25, page 15, line 6

Leave out 'twice' and insert 'once'

Clause 25, page 15, line 8

| Leave out '12' and insert '~~12~~2436'

Clause 25(2)(k)

The wording of this clause in the Bill as introduced to the Assembly is:

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

(k) visit the reservoir—

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

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to supervision

25.—(1) The supervising engineer must supervise the reservoir, at all times, in accordance with this section.

(2) The supervising engineer must—

(k) visit the reservoir—

- (i) where it is a high-risk reservoir, at least ~~twice~~once in every 12 month period,
- (ii) where it is a medium-risk reservoir, at least once in every ~~12~~2436 month period,

DARD re. Revised - Fixed amendment clause 33

Proposed amendments to the Reservoirs Bill for scrutiny by the ARD Committee

Frequency of visits by supervising engineers

To take account of comments made by the ARD Committee on 29th April 2014 in respect of the number of supervising engineer visits to high risk and medium risk reservoirs.

This is a consequential change to that made in Clause 25(2)(k).

Draft amendments

These changes are made in section 33(4)(i) and are shown in isolation from the full clause 33.

Clause 33, page 21, line 24

Leave out 'twice' and insert 'once'

Clause 33, page 21, line 25

| Leave out '12' and insert '2436'

Clause 33(4)(i)

The wording of this clause in the Bill as introduced to the Assembly is:

Duties etc. in relation to inspection

33.—

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, twice in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every 12 month period,must specify at what intervals, when, or in what circumstances, any additional visit should take place.

The effect of the proposed amendments is shown in colour below:

Duties etc. in relation to inspection

33.—

(4) The inspection report—

- (h) must specify when the inspecting engineer recommends the next inspection of the reservoir should take place,
- (i) if the inspecting engineer considers that the supervising engineer should visit the reservoir more frequently than—
 - (i) in the case of a high-risk reservoir, ~~once~~ ~~twice~~ in every 12 month period,
 - (ii) in the case of a medium-risk reservoir, once in every ~~24~~ ~~36~~ ~~12~~ month period,must specify at what intervals, when, or in what circumstances, any additional visit should take place.



Northern Ireland
Assembly

Appendix 8

General Correspondence

Appendix 8 – Correspondence

1. Belfast City Council response regarding issues raised on 25 February 2014
2. NI Water response regarding Camlough Lough water abstraction fees 10 March 2014
3. Department for Social Development response regarding Reservoir Costs 13 March 2014
4. NI Water response regarding financial information on Reservoir Costs 14 March 2014
5. Institution of Civil Engineers response regarding issues raised on 25 March 2014
6. Creggan Country Park response regarding issues raised on 1 April 2014
7. NI Local Government Association response regarding Reservoir Costs 15 April 2014
8. Derry City Council response regarding Creggan Country Park 15 May 2014

Belfast City Council response regarding issues raised on 25 February 2014



Parks and Leisure Department

Ref: 12-010

7 April 2014

Ms Stella McArdle
Clerk, Committee for Agriculture & Rural Development
Room 244
Parliament Buildings
Ballymiscaw,
Stormont
Belfast
BT4 3XX

Dear Ms. McArdle

RE: Committee for Agriculture & Rural Development Meeting 25th February 2014

I refer to your letter of the 27th February 2014, following the attendance of the Assistant Director of Parks & Leisure and the Senior Civil Engineering Officer at the above meeting.

Committee raised a number of issues that we were unable to answer and we undertook to revert to Committee with Belfast City Council response at our earliest convenience. Those issues were namely;

What, if any, insurance Belfast City Council holds in respect to the failure of a reservoir under its ownership? &

What opinion, if any, does the council have regarding the various appeals and dispute mechanisms in the Bill?

Apologies for the delay in replying, but our response had to be ratified by the Parks & Leisure Committee and Full Council on 1st April 2014.

Belfast City Council, Insurance and Risk Officer has provided the following, as a response to the question 1;

Belfast City Council presently purchases commercial insurance protection for public liability risks arising from the ownership and use of all reservoirs that are located on council land or in council parks.

This insurance covers the cost of claims arising from the failure of, or defects in reservoirs which causes loss, or injury to members of the public and/or damage to their property.

The insurance only applies in so far as the council can be held legally responsible for the loss, damage or injury so caused.

The insurance protection is for £50M.

**Belfast City Council, Parks and Leisure Department,
Adelaide Exchange, 24-26 Adelaide Street, Belfast, BT2 8GD
Tel: 028 9032 0202 Textphone: 028 9027 0405 Fax: 028 9023 7080
Email: parks&leisure@belfastcity.gov.uk**



**INVESTORS
IN PEOPLE**

In response to question 2, the Council would reply as follows;

Reservoirs are designated as High, Medium or Low risk by the Department of Agriculture and Rural development and within the proposed Bill, Clauses 17 to 21 allow Reservoir owners to appeal against that Designation.

Council officers have considered the risk designation of Reservoirs owned by the Council and would categorise them all as High given the proximity to residential areas. Action plans are currently being developed in line with this designation. It is the view of officers that whilst the appeal mechanism is necessary this will not be relevant to Belfast City Council and will be more likely to be used by private owners.

I trust that this will answer the questions to the satisfaction of the Committee for Agriculture & Rural Development but should you require anything further, please do not hesitate to get in touch.

Yours sincerely



Andrew Hassard
Director of Parks & Leisure
Email: hassarda@belfastcity.gov.uk
Tel: 028 9027 0327

**Belfast City Council, Parks and Leisure Department,
Adelaide Exchange, 24-26 Adelaide Street, Belfast, BT2 8GD
Tel: 028 9032 0202 Textphone: 028 9027 0405 Fax: 028 9023 7080
Email: parks&leisure@belfastcity.gov.uk**

NI Water response regarding Camlough Lough water abstraction fees 10 March 2014

Northern Ireland Water
Westland House
Old Westland Road
Belfast
BT14 6TE

Tel: 08457 440088
www.niwater.com



10th March 2013

Response re: Camlough Reservoir

Alan,

As requested, please see response below to the enquiry from the DARD Committee.

NI Water pays an annual abstraction license fee of c£4,905 to NIEA in respect of the raw water that it draws from Camlough Reservoir.

Kind Regards,
Paddy Cullen

Department for Social Development response regarding Reservoir Costs 13 March 2014

Stella McArdle
Clerk, Committee for Agriculture & Rural Development
Room 244
Parliament Buildings
Belfast
BT4 3XX

[by email: committee.agriculture@niassembly.gov.uk]
13 March 2014

Dear Ms McArdle

Re: Reservoirs Bill

I refer to your letter of 21 February 2014 addressed to Mr Billy Crawford, DSD DALO requesting information and details on the costs of maintaining reservoirs in DSD ownership. Belfast Regeneration Office (BRO) owns one reservoir on the Springfield Road, Belfast known as Springfield Pond or Mackies Dam.

The requested information is outlined below:

Reservoir Name:	Springfield Pond or Mackies Dam
Capacity:	30,000 m ³
Structure type (e.g. earth dam or concrete):	Earth Dam
Age:	Constructed in 1832
Provisional Risk Designation:	Category II

Costs

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
08/09		£3,450		£2,000	
09/10				£3,350	
10/11	£4,000			£3,206	
11/12				£8,121	
12/13				£3,146	
13/14		£5,011		£4,750	
Total	£4,000	£8,461		£24,573	

Yours sincerely

Mary McCartan

cc: Chris Hughes
Mark O'Hare
Kevin Pelan
Billy Crawford
Mick Shine
Ian Hickland
Ellen Corry
Kate Jeffrey
Emma Murray

NI Water response regarding financial information on Reservoir Costs 14 March 2014

Northern Ireland Water
PO Box 1026
Belfast
BT1 9DJ

Tel: 08457 440088



14th March 2014

Dear Alan,

Reservoirs Bill – Financial Information

Thank you for your letter dated 20 February 2014 in which the Committee for Agriculture and Rural Development asked that NI Water provide information on the scale of the costs associated with maintaining its impounding reservoirs.

The Committee has asked that this cost information:

- Be for a representative sample of the reservoirs owned by NI Water ownership
- That the sample contains reservoirs of differing structural make-up, size, capacity, age etc.
- That the costs cover a number of years, with a view to ensuring that the costs are as representative as possible.

The Committee has requested that expenditure be stated under the following items:

- Supervising panel engineer (i.e. time, reports, instructions, drawings etc.). Please insert staff costs if this function is undertaken internally;
- Inspecting panel engineer (i.e. time, reports, instructions, drawings etc.). Again, please insert staff costs if this function is undertaken internally;
- Construction panel engineer (i.e. time, reports, instructions, drawings etc.). The Committee acknowledges that you may not have commissioned a construction engineer in the time period to which your return relates. In this instance cells have been left blank.
- Routine maintenance works;
- Capital works resulting from an inspection report (including the cost of any specialist equipment).

The Committee also asked that the information include the volume of water that each reservoir is capable of holding and the provisional risk designation.

We have populated the table provided for 6 impounding reservoirs, and provided explanatory notes as below.

Please accept our apology that this response has been delayed. This was necessary as it came at the same time as we have been completing our 6 year PC15 Business Plan for submission to the Utility Regulator and DRD on 24 March 2014.

NI Water notes that:

- 1) In England & Wales a 'Supervising Panel Engineer' is required to carry out an annual check under the E&W Reservoirs Act. As this legislation does not apply in NI, the annual check and duties are currently performed by a number of experienced members of staff as part of their 'business as usual' duties. None of these staff are currently qualified as a 'Supervising Panel Engineer'. We estimate that this work costs NI Water from £3,000 for the largest dam (such as the Silent Valley) to £1,000 per year for the smaller more simple dams. The cost varies depending on the location, structure type, complexity and access to control apparatus.
- 2) In England & Wales an 'Inspecting Panel Engineer' is responsible for the 10 year inspection and report. NI Water, and its predecessor organisations, has always commissioned an external qualified 'Inspecting Panel Engineer' to carry out these inspections. We have inserted the figure of £2,000 (for each reservoir) in the table in 05/06, which was the last time these inspections were carried out. We estimate that the next round of surveys will cost in the region of £3,500 to £5,000 per dam. Furthermore we would comment that it may cost others more if their dam has not been surveyed regularly before, if records for it are not available, or if it is not in a well maintained condition. We suggest that DARD Rivers Agency and ICE may be able to provide estimates that could apply to dams not owned by NI Water.
- 3) The Construction Panel Engineer has not been commissioned by NI Water in the past 10 years as this is only required if significant changes are to be made to the structures. We estimate that they will charge £650 to £1,100 per day. The duration of their involvement will depend on the scale, risk, and nature of the works.
- 4) Maintenance Works – includes a wide range of routine work such as:
 - Grass cutting and control of other vegetation (important as short grass allows any depressions or seepage to be identified quickly)
 - Removing flotsam (such as rubbish and branches – which could otherwise interfere with the operation of control apparatus)
 - Lubricating and maintaining control apparatus
 - Repairing any facing (to prevent erosion due to wave action)
 - Repairing access roads and paths
 - Repairing safety measures such as signs and fences etc.

The cost varies depending on the location, structure type, complexity and access to control apparatus, and if it is accessible to the public. This costs up to £50,000 annually for the largest dam (for example the Silent Valley) to £2,000 for the smaller simple dams.

- 5) Capital Works figures have been inserted in the tables for 6 reservoirs which should give an indication of the typical costs. Some of the work included in these estimates may have related to the improvement of access to permit subsequent maintenance. These sums are mostly for a few years because whilst the reports were completed in 2007, both the funding and the contractual means to deliver them were only possible from 2011/12. Hence if an estimate of the average yearly expenditure rate is required these sums should be divided by 20.

Where NI Water has not incurred any capital costs in the time period to which this return relates the cell has been left as blank.

We hope that this is of assistance. If you have any queries please do not hesitate to contact me.

Yours sincerely

Paddy Cullen

CC
Paddy Brow
Bill Gowdy

Reservoir Name: Seagahan

Capacity: 2200 MI

Structure type (e.g. earth dam or concrete): Earth

Age: Constructed 1959

Provisional Risk Designation: Current FRS Categorisation 'A'

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
05/06		2,000			
11/12					203,215
Annually	1,500			8,500	

Reservoir Name: Creightons Green

Capacity: 545 MI

Structure type (eg earth dam or concrete): Earth

Age: Constructed 1957

Provisional Risk Designation: Current FRS Categorisation 'A'

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
05/06		2,000			
11/12					109,812
Annually	1,000			3,000	

Reservoir Name: Glenhordial

Capacity: 100 MI

Structure type (eg earth dam or concrete): Earth

Age: Constructed 1878

Provisional Risk Designation: Current FRS Categorisation 'A'

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
05/06		2,000			
11/12					90,104
Annually	2,000			2,800	

Reservoir Name: Lower Conlig

Capacity: 77 MI

Structure type (eg earth dam or concrete): Earth

Age: Constructed 1884

Provisional Risk Designation: Current FRS Categorisation 'A'

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
05/06		2,000			
13/14					72,000
Annually	1,000			2,000	

Reservoir Name: Lower Ballysallagh

Capacity: 568 MI

Structure type (eg earth dam or concrete): Earth

Age: Constructed 1909

Provisional Risk Designation: Current FRS Categorisation 'A'

Northern Ireland Water is a trademark of Northern Ireland Water Limited, incorporated in Northern Ireland, Registered Number NI054463, Registered Office Westland House, 40 Old Westland Road, Belfast BT14 6TE.

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
05/06		2,000			
13/14					106,000
Annually	1,500			4,500	

Reservoir Name: Knockbracken

Capacity: 445 MI

Structure type (eg earth dam or concrete): Earth

Age: Constructed 1893

Provisional Risk Designation: Current FRS Categorisation 'A'

Financial year	Supervising Engineer (£)	Inspecting Engineer (£)	Construction Engineer (£)	Maintenance Works (£)	Capital Works (£)
05/06		2,000			
11/12					9,984
13/14					192,000
Annually	1,500			3,500	

Institution of Civil Engineers response regarding issues raised on 25 March 2014

Response to Additional Questions raised by ARD Committee

1. Have you engaged with private owners here and what is their level of understanding about their responsibilities?

ICE, as a professional body, acting in a learned society role could not, and has not, engaged with private owners in relation to the Bill.

ICE was invited to make presentations at stakeholder consultation workshops, arranged by DARD, to provide an understanding of reservoir design issues, the possible defects that arise and the processes and Panel Engineer systems being proposed. During these sessions it was apparent from questioning that some private owners did not fully realise their responsibility.

2. Can you give the Committee an indication of the types of defects you expect to have to address?

It is likely that the types of defects which may be found will cover the entire range of issues normally associated with earth retaining dams. The scale of inadequacies will vary widely from site to site but may include: insufficient overflow capacity, inadequate draw-off pipework, unstable slopes, damaged upstream pitching, growths and/or trees on embankments, leakage and interference by animals.

a. What costs are involved such defects?

The costs involved in the repair of such defects will obviously depend on the extent of the deficiency and the scale of the structure. It could stretch from a few thousand to many tens of thousands pounds and would not be known until there was a meaningful inspection by a Qualified Panel Engineer.

b. Is there any particular type of structure you are concerned about? Any why?

The greatest uncertainty with regards to cost and safety relates to overgrown earth dams. Vegetation growth on the structure may have occurred over many years and when present is generally indicative that maintenance or inspections have not occurred. The vegetation prevents meaningful inspection of the structure and may be masking defects.

In these cases, the first action will be to carefully clear the vegetation under the guidance of a Qualified Panel Engineer to permit proper inspection. It is worth noting, that because the structure is overgrown, it does not necessarily mean that, when cleared for meaningful inspection, that problems will be identified.

3. What are the likely costs associated with decommissioning a reservoir and how do you assess the wider/social/recreational/habitats impact?

Panel Engineers consider that decommissioning of a reservoir relates to the process of abandonment. Abandonment of a reservoir is the complete removal of the structure's ability to store water above natural ground. The likely cost of abandoning a reservoir is site specific, however, would include not just the removal of part of the structure but also the obtaining of appropriate permissions from the statutory authorities.

Response to Additional Questions raised by ARD Committee

The wider impacts on flooding habitats, fishing, social, environment etc. require consultations and may necessitate some form of environmental assessment and an economic appraisal to quantify these elements. The skills of Panel Engineers can assist owners with this wider

assessment however the extent of the process will depend on the requirements of the respective statutory Authorities.

4. Does the small number of Panel Engineers available mean that there is limited competition and therefore a fixed market regarding costs?

As discussed at our meeting with the Committee, the number of Panel Engineers resident in NI is increasing. Mr Meldrum reported to the Committee that in his opinion Northern Ireland would need 10 Supervising Engineers. By the time the primary and secondary legislation is in place we believe that there could be 5 supervising panel members resident in NI. In addition, there are several companies active in NI which have access to appropriately trained staff.

As reported to the Committee, there is the opportunity for several owners to group together to obtain economies of scale and there would be a sufficient level of interest from the market to generate competition attracting companies from GB to travel to NI.

5. Once the reservoirs in NI are designated through the Risk Assessment process as high or medium, they will require an inspection by an Inspecting Engineer with a short time period.

a. Will all High or Medium reservoirs require an inspection within a short time?

The initial designation process will identify whether reservoirs have an inspection currently valid. Many council-owned reservoirs and NIW reservoirs already have a valid inspection in place and will not immediately require a new inspection. ICE understands that currently this may cover approximately 50% of the medium and high risk reservoirs.

Only those reservoirs without an active inspection report will require the new inspection carried out. During the consultation with stakeholders, Rivers Agency has emphasised this and encouraged Reservoir Managers to undertake an inspection as soon as possible, not waiting for the commencement of legislation.

In many cases the inspection will be carried out in two stages because it will be necessary to first visit the site to advise on the required amount of clearance of excessive growth to enable a meaningful inspection.

As noted above, the grouping of reservoirs could also assist in the process of completing the initial inspections.

b. Can ICE guarantee that its Inspecting Engineers will be able to meet this demand?

Given the number of reservoirs that may be designated at high or medium, the inspection period should not cause a problem to the inspection process. ICE is

Response to Additional Questions raised by ARD Committee confident that the number of Panel Engineers available across the United Kingdom will not preclude this being undertaken within the required period.

As noted above, the grouping of reservoirs could also assist in the process of completing the initial inspections and ensuring market competition to attract GB-based Inspecting Engineers to quote competitively for such services.

Creggan Country Park response regarding issues raised on 1 April 2014

Central Management Branch

Room 413c
Clarence Court
10-18 Adelaide Street
Belfast BT2 8GB

Telephone: (028 905) 41140
Facsimile: (028 905) 40064
Email: alan.doherty@drdni.gov.uk

Our reference: SUB/340/2014

Stella McArdle
Clerk to the Committee for Agriculture and Rural
Development
Room 244
Parliament Buildings
BELFAST BT4 3XX

16 April 2014

Dear Stella

Creggan Country Park and Reservoirs Bill

Thank you for your letter of the 2 April 2014, outlining the Committee for Agriculture and Rural Development queries following briefing from Creggan Country Park on the proposed DARD Reservoirs Bill.

The Department for Regional Development (DRD) does not itself own any reservoirs nor does it envisage any managerial responsibilities for reservoirs under the Reservoirs Bill. As you will be aware, the DARD Reservoirs Bill is concerned with the safety of reservoirs and preventing an uncontrolled release of water as a result of reservoir failure. NI Water already manages the reservoirs under its control in line with standards set out in the Reservoirs Act 1975 (England and Wales). The introduction of the Reservoirs Bill will therefore not have a major impact on NI Water. It will however be required to introduce a new activity in relation to the preparation and maintenance of formal on-site and off-site flood plans.

NI Water has given consideration to instances where there may be multiple managers. For the majority of reservoirs within its control, NI Water will be the designated 'Reservoir Manager' and carry out all related responsibilities. In some instances NI Water envisages that under the Reservoirs Bill it will become a joint Reservoir Manager, an example of this would be Camlough Reservoir where it will become a joint Reservoir Manager with Newry and Mourne District Council. This is because the Council has historically operated the control valves and has stated a requirement to be able to continue to do so in order to top up the level of the Newry canal.

The Department's Transport NI has confirmed that it maintains an adopted footpath in the vicinity of one of the Creggan Reservoirs. However neither this, nor the existence of a NI Water pumping station near the dam at Creggan Country Park, constitutes a managerial role and NI Water understands that holding wayleaves or rights of way does not constitute a responsibility as Reservoir Manager under the proposed Reservoir Bill. On this basis neither the Department or NI Water envisage themselves becoming a Manager or joint Manager of the reservoirs at Creggan Country Park.

I am copying this letter to Paul Carlisle, Clerk to the Committee for Regional Development.

This letter is fully disclosable under FOI.

Yours sincerely

A handwritten signature in black ink, appearing to read "A. Doherty", with a horizontal line underneath the name.

Alan Doherty

Departmental Assembly Liaison Officer

NI Local Government Association response regarding Reservoir Costs 15 April 2014

Northern Ireland Local Government Association

Unit 5B
Castlereagh Business Park,
478 Castlereagh Road,
Belfast BT5 6BQ

Tel: 028 9079 8972
Email: office@nilga.org
Web: www.nilga.org

Ms Stella McArdle

Committee Clerk
Agriculture and Rural Development Committee
Room 243,Parliament Buildings
Ballymiscaw, Stormont
Belfast, BT4 3XX

15 April 2014

Dear Stella

Reservoirs Bill – Information on costs

Please accept my apologies for the delay in responding to you on this issue. I hope that the lateness of my reply hasn't caused the Committee too much inconvenience.

I contacted the 26 councils in an attempt to obtain the information requested by the Committee, but received only a very limited response.

The following Councils responded to let me know that they have no reservoir management responsibilities:

- Antrim Borough Council
- Ballymena Borough Council
- Ballymoney Borough Council
- Cookstown District Council
- Moyle District Council
- Omagh District Council

I have received a reply from Coleraine, who hold relevant information, but who are seeking clarification on what is meant by 'provisional risk designation' before sending their information through. I will liaise with them to ensure they receive the appropriate information, and forward their reply when I receive it.

Information has been received from Banbridge District Council, Craigavon Borough Council and Newry and Mourne District Council, detailed in Appendices to this letter.

You may also be aware that a number of DCAL-owned water recreational facilities are to transfer to local government as a result of the review of Public Administration. Deloitte were recently commissioned to do a 'Due Diligence Review' in relation to transfer, and have given an estimate of maintenance costs for these bodies of water. **It is acknowledged that many of these are not reservoirs.** The Deloitte report is currently in draft form, and so I would be grateful if you could treat the following information as confidential until the report is published.

"The ownership and operation of 21 water recreational facilities are currently the responsibility of DCAL. This will transfer to Local Government from April 2015. These assets are located at:

- Ballysaggart Lough, Dungannon
- Whitecoat Point, Newry
- Cashel Lough, Newry
- Glenmore, Ballycastle
- Knockarevan, Fermanagh
- Ardtea, Cookstown
- Bloody Bridge, Newcastle
- Drumsapar, Omagh
- Drumcahy, Fermanagh
- Crumlin Glen, Antrim
- Blackwatertown, Armagh
- Verner's Bridge, Armagh
- Maydown, Derry
- Keady Glen, Armagh
- Knocknacarry, Moyle
- Sloughan Glen, Omagh
- Coalisland Canal, Coalisland
- Omagh Town Centre
- Drumquin, Omagh
- Cranny Falls, Carnlough
- Oak Lough, Derry

Operating Costs

*The operating costs of assets relate solely to maintenance and rent. Total rent paid by DCAL to leaseholders in 2012/13 totalled £2k. **For maintenance, we examined the average annual maintenance for the last 7 years. The average annual maintenance cost for all assets was £55k.***

The maintenance of the local water recreational facilities is provided by the Rivers Agency and managed by Inland Waterways with DCAL. The contract is administered through a Service Level Agreement which was initially agreed for the 2011/12 year and extended for a further three years. This means that the contract will come to an end at the date of transfer. From 1 April 2015, Local Government will be responsible for maintenance of these assets.

Discussions should begin between the Councils and the Rivers Agency for maintaining the assets post transfer or the Councils should consider beginning a procurement process to find a new maintenance provider.

...the local recreational water facilities will require approximately £57k of funding to transfer to

the Councils.

I regret that more information has not been forthcoming from councils, but hope that the details provided above and in the accompanying appendices, will prove useful to the Committee in its deliberations. Please do not hesitate to contact me if you require any further information.

Yours sincerely



Karen Smyth

Appendix 1: Banbridge District Council Information for Corbett Lough Reservoir

1. **Inspection Report.**

This is carried out every 10 years and we have had 2 reports done since the lake was transferred to the Council from Water Service in 1992/4.

The last inspection was carried out in February 2006 by Alan Cooper, All Reservoirs Panel member, at a cost of £3,500.

The dam at Corbett is of earthen bank construction and the main recommendations are to keep it relatively clear of vegetation.

2. **Annual Maintenance (reservoir specific)**

On an annual basis we would tractor cut the embankment on 2 occasions and deploy 2 operatives x 8 hours x 4 occasions to carry out grass strimming of the banks. Cost approx. **£1,000**

3. **Public Amenity area**

The car park, picnic area, Boat house, Fishing Lodge, public toilets and grassed areas are regularly maintained. Litter picking, bins emptied and grass cutting on a weekly basis during the main summer and growing season. Public toilets cleaned on a daily basis and Boat house and fishing lodge painted every 3-4 years as required.

It is difficult to put a cost against this but would be around £3,000 to £5,000 per annum.

4. **Monitoring of Reservoir**

Banbridge District Council lease the angling rights to the lake to Banbridge Angling Club and their bailiffs and club officials would keep a watching brief on the dam structure and sluice and would report any issues to the Council.

From time to time the club would seek permission to open the sluice to lower the lake for fish management purposes. NO COSTS INCURRED

5. **Recommended Actions from Safety Report**

To date there have been no major issues with the dam and sluice and we are only recommended to keep the structure as clean and clear of any vegetation and obstructions on an on-going basis.

Appendix 2: Newry and Mourne District Council Information for Camlough Lake

In the context of The Reservoir Bill to Northern Ireland, Council have been working in partnership with Rivers Agency and Northern Ireland Water. A Section 10 Report on Camlough has been completed in accordance with the current good practice of the Reservoirs Act (1975). The inspection identified a number of serious deficiencies with the existing dam structure therefore a report to investigate the works necessary to bring the Dam to a safe standard was produced. A copy of the Report is attached entitled **Camlough Reservoir Improvement Options Report February 2014 with Addendum Report** A supplementary **Abandonment Scoping Report January 2014 is also enclosed.**

Camlough Reservoir Improvement Options Report February 2014 recommends the Rehabilitation Option at a cost of £2,510,000

At paragraph 8.8 page 24 of the report Camlough Reservoir Improvement Options Report February 2014 attached the capital costs assessment is £2,510,000. Northern Ireland Water has indicated it will make application to the Department for 50% of this cost. There is therefore a budget of £1.255 million to be found.

Given the Council's present activities at Camlough Lake, the Council could be a reservoir manager for the purposes of the Reservoirs Bill when enacted. If Newry & Mourne District Council was to continue to use Camlough Lake then this cost of £1.255 million could fall to the Council.

Section 105 (1) of the draft bill provides as follows:- "The Department may by regulations make provision as to the payment of grants to reservoir managers of controlled reservoirs for the purpose of enabling or assisting the managers to comply with their obligations arising by virtue of this Act.

(2) Regulations made under subsection (1) must require such grants to be subject to such terms and conditions as the Department may determine (including conditions as to repayment in the event of contravention of the other terms or conditions on which the grant is made)".

The requirement on the Council to raise £1.255million is a significant concern. Camlough Lake is a tourist and recreation amenity not just for the benefit for the people of Newry & Mourne but also for the benefit of a much wider catchment area than the District Council area itself.

The risks to the Community set out at paragraph 3.2 page 8 of Camlough Reservoir Improvement Options Report February 2014 attached are regarded as potential danger to persons and property which is outside the remit and powers of the District Council and is really the responsibility of Government Departments.

The Council believe the 50% cost of £1.255 million requires a multi agency approach which includes Council, therefore Council will be seeking the support of various Government Departments.

If the Council agreed to become the owners on the basis of securing the funding for Rehabilitation Improvements, the **ongoing maintenance estimated at £14,000 per annum** would be the responsibility in the long-term, of the Council and will require both financial and staff resources.

NB: NILGA understands that the Committee has already been provided with the appraisal information on Camlough Lake, but if a further copy is required, please let NILGA know and this can be forwarded.

Appendix 3: Craigavon Borough Council Information

We have received a quotation for £9,100 for the Initial Inspection that will be required under the Bill. We have not yet undertaken the survey so do not currently have a figure for any work to be undertaken.

Derry City Council response regarding Creggan Country Park 15 May 2014



Derry City Council
Comhairle Cathrach Dhoire
Derry Cittie Cooncil

Our ref: KP/AC

15 May 2014

Stella McArdle
Clerk, Committee for Agriculture & Rural Dev.
Room 244
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Dear Ms McArdle

Thank you for your recent correspondence to Sharon O'Connor, Town Clerk & Chief Executive of Derry City Council

Since receiving earlier correspondence from you dated 21st January 2014, my officers have been working with our Council Solicitor in order to explore the responsibilities proposed by the Reservoirs Bill and to propose arrangements to ensure that any requirements and obligations which may come with the Bill if enacted would be met.

Council officers have arranged a meeting with Creggan Country Park, who manage the reservoirs in the Derry City Council area, following this meeting an update will be provided to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry O'Hagan'.

B O'Hagan
Strategic Director - Environment

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