Passage of the

Reservoirs (Scotland) Bill
2010

SPPB 162
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Passage of the
Reservoirs (Scotland) Bill 2010

SP Bill 55 (Session 3), subsequently 2011 asp 9

SPPB 162
Contents

<table>
<thead>
<tr>
<th>Foreword</th>
<th>Page</th>
</tr>
</thead>
</table>

**Introduction of the Bill**

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill (As Introduced) (SP Bill 55)</td>
<td>1</td>
</tr>
<tr>
<td>Explanatory Notes (and other accompanying documents) (SP Bill 55-EN)</td>
<td>67</td>
</tr>
<tr>
<td>Policy Memorandum (SP Bill 55-PM)</td>
<td>106</td>
</tr>
<tr>
<td>Delegated Powers Memorandum (SP Bill 55-DPM)</td>
<td>119</td>
</tr>
</tbody>
</table>

**Stage 1**

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stage 1 Report, Rural Affairs and Environment Committee</td>
<td>145</td>
</tr>
<tr>
<td>Annexe A: Subordinate Legislation Committee Report</td>
<td>200</td>
</tr>
<tr>
<td>Annexe B: Finance Committee Report</td>
<td>216</td>
</tr>
<tr>
<td>Extracts from the Minutes, Rural Affairs and Environment Committee</td>
<td>236</td>
</tr>
<tr>
<td>Official Reports, Rural Affairs and Environment Committee</td>
<td>239</td>
</tr>
<tr>
<td>Written evidence received by the Rural Affairs and Environment</td>
<td>283</td>
</tr>
<tr>
<td>Committee</td>
<td></td>
</tr>
<tr>
<td>Correspondence from Scottish Government Bill Team, 7 December 2010</td>
<td>348</td>
</tr>
<tr>
<td>Correspondence from Roseanna Cunningham, Minister for Environment</td>
<td>352</td>
</tr>
<tr>
<td>and Climate Change, 12 January 2011</td>
<td></td>
</tr>
<tr>
<td>Extract from the Minutes, Finance Committee, 23 November 2010</td>
<td>356</td>
</tr>
<tr>
<td>Official Report, Finance Committee, 23 November 2010</td>
<td>357</td>
</tr>
<tr>
<td>Scottish Government response to Stage 1 Report on delegated powers</td>
<td>361</td>
</tr>
<tr>
<td>12 January 2011</td>
<td></td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 27 January 2011</td>
<td>364</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 27 January 2011</td>
<td>365</td>
</tr>
<tr>
<td>Scottish Government response to Stage 1 Report, 2 February 2011</td>
<td>380</td>
</tr>
</tbody>
</table>

**Stage 2**

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshalled List of Amendments for Stage 2 (SP Bill 55-ML)</td>
<td>399</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 2 (SP Bill 55-G)</td>
<td>417</td>
</tr>
<tr>
<td>Extract from the Minutes, Rural Affairs and Environment Committee, 23</td>
<td>419</td>
</tr>
<tr>
<td>February 2011</td>
<td></td>
</tr>
<tr>
<td>Official Report, Rural Affairs and Environment Committee, 23 February</td>
<td>420</td>
</tr>
<tr>
<td>2011</td>
<td></td>
</tr>
<tr>
<td>Bill (As Amended at Stage 2) (SP Bill 55A)</td>
<td>433</td>
</tr>
<tr>
<td>Revised Explanatory Notes (SP Bill 55A-EN)</td>
<td>503</td>
</tr>
<tr>
<td>Supplementary Financial Memorandum (SP Bill 55A-FM)</td>
<td>532</td>
</tr>
<tr>
<td>Supplementary Delegated Powers Memorandum (SP Bill 55A-DPM)</td>
<td>537</td>
</tr>
</tbody>
</table>
### After Stage 2

Subordinate Legislation Committee 23rd Report 2011: Reservoirs (Scotland) Bill (As Amended at Stage 2)

### Stage 3

<table>
<thead>
<tr>
<th>Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshalled List of Amendments for Stage 3 (SP Bill 55A-ML)</td>
<td>549</td>
</tr>
<tr>
<td>Groupings of Amendments for Stage 3 (SP Bill 55A-G)</td>
<td>554</td>
</tr>
<tr>
<td>Extract from the Minutes of the Parliament, 9 March 2011</td>
<td>555</td>
</tr>
<tr>
<td>Official Report, Meeting of the Parliament, 9 March 2011</td>
<td>556</td>
</tr>
<tr>
<td>Bill (As Passed) (SP Bill 55B)</td>
<td>571</td>
</tr>
</tbody>
</table>
Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The oral and written evidence received by the Rural Affairs and Environment Committee was originally published on the web only. The Official Reports and extracts from the minutes of the evidence sessions and all written submissions are included in this volume after the Stage 1 Report.

The report of the Finance Committee is included at Annexe B of the Stage 1 Report of the Rural Affairs and Environment Committee. Extracts from the minutes and the Official Report of the meeting on 23 November 2010 at which the Committee took evidence from the Bill team are included in this volume.

After Stage 2, the Subordinate Legislation Committee considered and reported on the delegated powers provisions in the Bill as amended at Stage 2.
CONTENTS

Section

PART 1
RESERVOIRS

CHAPTER 1
CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs
2 Controlled reservoirs: supplementary
3 Reservoir managers
4 Multiple reservoir managers: supplementary
5 Duty of multiple reservoir managers to co-operate
6 Guidance by SEPA: management of reservoirs
7 SEPA
8 The 1975 Act and its repeal

CHAPTER 2
REGISTRATION

9 Controlled reservoirs register
10 Reservoir managers’ duty to register with SEPA
11 Controlled reservoirs required to be registered under the 1975 Act
12 Controlled reservoirs not required to be registered under the 1975 Act
13 Structures or areas which become controlled reservoirs after the relevant date
14 Registration: supplementary
15 Transfer of information from existing relevant authorities
16 Offences: registration

CHAPTER 3
RISK DESIGNATION

17 Provisional risk designation
18 First risk designation
19 Periodic review of risk designations
20 Decision following a periodic review
21 Risk designation and periodic review: matters to be taken into account
22 Review of SEPA’s decisions giving risk designations
23 Guidance by SEPA: risk designation
24 High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision
CHAPTER 4
PANELS OF RESERVOIR ENGINEERS

25 Panels of reservoir engineers
26 Appointment and removal of panel members
27 Dissolution of panels etc.
28 Review of decisions to appoint or remove civil engineers from panels etc.
29 Consultation with Institution of Civil Engineers

CHAPTER 5
CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

30 Application of Chapter 5
31 Notice to SEPA and appointment of construction engineer
32 Inspection, reports, supervision of works etc. by construction engineer
33 Safety reports
34 Safety reports: compliance
35 Preliminary certificates
36 Construction certificates
37 Final certificates
38 Preliminary and final certificates: compliance
39 Termination of supervision by construction engineer
40 Offences: construction or alteration
41 Defences: offences under section 40(1)(d) or (e)
42 Controlled reservoirs subject to relevant works on commencement

CHAPTER 6
OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

43 Appointment of inspecting engineer etc.
44 Inspections: timing
45 Inspections: duties of inspecting engineers etc.
46 Inspection reports: compliance
47 Appointment of supervising engineers etc.
48 Supervising engineer and monitoring of reservoir
49 Recording of water levels etc. and record keeping
50 Offences: inspection, supervision, record keeping
51 Defences: offence under section 50(1)(e)

CHAPTER 7
OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

52 Incident reporting
53 Flood plans
54 Maintenance of records
55 Display of emergency response information
56 Offences: record keeping, display of emergency response information
CHAPTER 8
DISPUTE REFERRAL

57 Referral to referee: directions in safety report or inspection report
58 Referral to referee: requirements in preliminary certificate or final certificate
59 Appointment of referee
60 Powers of referee: referral under section 57(2)
61 Powers of referee: referral under section 58(1)
62 Procedure

CHAPTER 9
CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Appointment of engineers

63 Enforcement notice: appointment of engineer
64 Offence: failure to comply with notice under section 63(2)
65 Appointment of engineer by SEPA
66 Appointment by SEPA: engineers’ reports, certificates, recommendations etc.

Taking of safety and other measures

67 Enforcement notice: safety and other measures
68 Offence: failure to comply with notice under section 67(2)
69 SEPA’s power to arrange taking of safety and other measures
70 Offences under sections 40(1)(d) and 50(1)(c): further remedies

Stop notices

71 Stop notices
72 Stop notices: procedure
73 Stop notices: compensation
74 Stop notices: enforcement

Emergency powers

Other civil enforcement measures

76 Enforcement undertakings
77 Fixed monetary penalties
78 Fixed monetary penalties: procedure
79 Fixed monetary penalties: criminal proceedings and conviction etc.
80 Further enforcement measures
81 Further enforcement measures: procedure
82 Further enforcement measures: criminal proceedings and conviction
83 Further enforcement measures: enforcement

Miscellaneous

84 Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)
85 Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures
86 Recovery by SEPA of expenses
87 Publication of enforcement action
88 Powers of entry
89 Warrants authorising entry
90 Powers of entry: supplementary
91 Offence: preventing or obstructing entry
92 Compensation
93 Reports by SEPA to the Scottish Ministers
94 Affording of reasonable facilities to engineers
95 Power of SEPA to require information and assistance
96 Offences: sections 94 and 95

CHAPTER 10
MISCELLANEOUS

97 Assessment of engineers’ reports etc.
98 Notice to SEPA of revocation of appointment or resignation of engineer
99 Form and content of notices, reports, certificates etc.
100 Notices by SEPA
101 Change to the Institution of Civil Engineers
102 Civil liability

PART 2
PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

103 Remedial and restoration measures regulations

PART 3
GENERAL

104 Crown application
105 Offences by bodies corporate
106 Ancillary provision
107 Orders and regulations
108 Defined expressions
109 Commencement and short title

Schedule—Index of defined expressions
Reservoirs (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the regulation of the construction, alteration and management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs, for the repeal and replacement of the Reservoirs Act 1975, about offences to facilitate the achievement of the environmental objectives set out in river basin management plans; and for connected purposes.

PART 1
RESERVOIRS
CHAPTER 1
CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs

(1) This section (and section 2) determine what is a “controlled reservoir” for the purposes of this Part.

(2) A controlled reservoir is any of the following structures or areas which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land—

(a) a structure designed or used for collecting and storing water,

(b) an artificial (or partly artificial) loch or other artificial (or partly artificial) area.

(3) A combination of more than one of the structures or areas referred to in paragraph (a) or (b) of subsection (2) is to be treated as a controlled reservoir where—

(a) none of the individual structures or areas is a controlled reservoir under that subsection, but

(b) water does (or could) flow between them, and

(c) there could be an uncontrolled release of 10,000 cubic metres or more of water from the combination.

(4) The Scottish Ministers, having taken into account the matters mentioned in subsection (5), may by order provide that any of the following is to be treated as a controlled reservoir—
Reservoirs (Scotland) Bill

Part 1—Reservoirs

Chapter 1—Controlled reservoirs, reservoir managers, etc.

(a) a structure or area referred to in paragraph (a) or (b) of subsection (2) which is not a controlled reservoir,

(b) a combination of more than one such structure or area—

(i) between which water does (or could) flow, but

(ii) which does not fall within subsection (3) because there could not be an uncontrolled release of 10,000 cubic metres or more of water from the combination.

(5) The matters are—

(a) the potential adverse consequences of an uncontrolled release of water from the structure or area or (as the case may be) the combination,

(b) the probability of such a release.

(6) The Scottish Ministers may—

(a) by order substitute a different volume of water for the volume for the time being specified in subsections (2), (3)(c) and (4)(b)(ii) and sections 30(3) and (5), 33(2)(b) and 37(3)(b),

(b) by regulations make provision for the purposes of this Part as to—

(i) when a loch or other area is considered to be artificial or partly artificial,

(ii) how the volume of water capable of being held or released is to be calculated,

(iii) the meaning of “natural level” and “surrounding land”.

Controlled reservoirs: supplementary

(1) A controlled reservoir includes its basin, spillways, valves, pipes and any other thing which—

(a) controls the collection of water into the reservoir,

(b) controls the flow of water out of it,

(c) facilitates the storage of water in it,

(d) supports such control or storage.

(2) The following structures or areas are not controlled reservoirs (and are not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4))—

(a) ponds within extractive waste sites or waste facilities,

(b) canals or other inland waterways,

(c) weirs,

(d) structures or areas of water designed to protect land from the sea,

(e) sewage sludge lagoons,

(f) silt and ash lagoons,

(g) road and railway embankments,

(h) embanked watercourses.
(3) Regulations by the Scottish Ministers may make provision as to—
   (a) what constitutes any of the structures or areas referred to in subsection (2),
   (b) what other thing (if any) described in the regulations is not a controlled reservoir
       (and is not to be taken into account in relation to what is to be treated as a
       controlled reservoir for the purposes of section 1(3) or (4)).

3 Reservoir managers

(1) This section determines who is the reservoir manager of a controlled reservoir for the
    purposes of this Part.

(2) Scottish Water is the reservoir manager of a controlled reservoir which is managed and
    operated by it (or a prospective controlled reservoir which is to be managed and
    operated by it).

(3) Subsections (4) to (8) apply where Scottish Water is not the reservoir manager.

(4) Where the whole of the controlled reservoir is used (or the whole of the prospective
    controlled reservoir is proposed to be used) for the purpose of a commercial
    undertaking, the reservoir manager is the commercial undertaker or (as the case may be)
    the reservoir managers are the commercial undertakers.

(5) Where there is only one such undertaking, the commercial undertaker is the person who
    carries on (or who proposes to carry on) the undertaking.

(6) Where there is more than one such undertaking, the commercial undertakers are the
    persons who carry on (or who propose to carry on) each of the undertakings.

(7) Where part only of the controlled reservoir is used (or part only of the prospective
    controlled reservoir is proposed to be used) for the purpose of a commercial
    undertaking, the reservoir managers are—
       (a) the commercial undertaking (or commercial undertakers), and
       (b) the following person (or persons)—
           (i) where any part of the rest of the controlled reservoir (or any part of the rest
               of the land on which the prospective controlled reservoir will be situated) is
               let, the lessee (or lessees), and
           (ii) where any part of the rest of the controlled reservoir (or any part of the rest
                of the land on which the prospective controlled reservoir will be situated) is
                not let, the owner (or owners).

(8) Where no part of the controlled reservoir is used (or no part of the prospective
    controlled reservoir is proposed to be used) for the purpose of a commercial
    undertaking, the reservoir manager is or (as the case may be) the reservoir managers
    are—
       (a) where any part of the controlled reservoir (or any part of the land on which the
           prospective controlled reservoir will be situated) is let, the lessee (or lessees), and
       (b) where any part of the controlled reservoir (or any part of the land on which the
           prospective controlled reservoir will be situated) is not let, the owner (or owners).
(9) For the purposes of this section, a person who uses a controlled reservoir (or proposes to use a prospective controlled reservoir) or any part of such a reservoir for the catching of fish does not use (or propose to use) the reservoir for the purpose of a commercial undertaking, unless the person also has responsibility for the management and operation of the reservoir, whether alone or with others.

(10) In this section, “prospective controlled reservoir” means a reservoir which is being constructed or restored to use (within the meaning of Chapter 5) (see section 30, in particular subsections (1), (3) and (7)(a) and (b)).

4 **Multiple reservoir managers: supplementary**

10 (1) This section applies where by virtue of section 3 there is more than one reservoir manager of a controlled reservoir.

(2) The requirements of this Part apply in relation to each of the reservoir managers (whether or not they make a nomination under subsection (3)).

(3) Any of the reservoir managers (“the nominating manager”) may nominate another of the reservoir managers (“the nominee”) to do any of the following—

(a) fulfil on behalf of the nominating manager any requirements of this Part to which the nominating manager is subject and which are specified in the nomination,

(b) exercise any rights the nominating manager has under this Part and which are so specified.

(4) Where a nomination is made under subsection (3)—

(a) the nominating manager must give notice of the nomination to—

(i) SEPA,

(ii) any construction engineer, inspecting engineer or supervising engineer appointed in relation to the reservoir,

(b) SEPA may notify and consult the nominee in accordance with the nomination,

(c) any construction engineer, inspecting engineer or supervising engineer appointed in relation to the reservoir may give any notice, report, certificate or other document (required by this Part to be given to the reservoir manager of the reservoir) to the nominee in accordance with the nomination.

5 **Duty of multiple reservoir managers to co-operate**

10 (1) Where, by virtue of section 3, there is more than one reservoir manager of a controlled reservoir, each of the reservoir managers must co-operate with the other reservoir manager (or managers) of the reservoir so far as is necessary to enable all of the reservoir managers to comply with the requirements to which they are subject under—

(a) section 31(2)(a) or 63(2)(a) (appointment etc. of construction engineer),

(b) section 34(1) or 67(2) (directions of construction engineer as to taking of measures in safety report),

(c) section 38 (compliance with preliminary certificate or final certificate),

(d) section 43(1)(a) or 63(2)(a) (appointment etc. of inspecting engineer to carry out inspections in accordance with section 44),
Part I—Reservoirs

Chapter I—Controlled reservoirs, reservoir managers, etc.

(e) section 45(2) (giving inspecting engineer copy of final certificate and latest inspection report),

(f) section 46(1) or 67(2) (directions of inspecting engineer as to taking of measures in inspection report),

(g) section 47(1)(a) or 63(2)(a) (appointment etc. of supervising engineer),

(h) section 48(4) (direction by supervising engineer as to carrying out visual inspection of reservoir),

(i) section 49 (recording of certain matters),

(j) regulations under section 52(1) (reporting of incidents),

(k) regulations under section 53(1) (preparation of flood plans),

(l) section 54 (maintenance of records for controlled reservoirs),

(m) section 55 (display of safety information),

(n) section 94 (affording reasonable facilities to engineers),

(o) section 95 (providing information or assistance to SEPA).

(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, designated as a high-risk 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.

6 Guidance by SEPA: management of reservoirs

The Scottish Ministers may direct SEPA to publish guidance on—

(a) the management of controlled reservoirs by reservoir managers,

(b) co-operation among reservoir managers of controlled reservoirs where a controlled reservoir has more than one reservoir manager.

7 SEPA

In this Act “SEPA” means the Scottish Environment Protection Agency.

8 The 1975 Act and its repeal

(1) “The 1975 Act” means the Reservoirs Act 1975 (c.23).

(2) The 1975 Act is repealed.
CHAPTER 2

REGISTRATION

9 Controlled reservoirs register

(1) SEPA must establish and maintain a controlled reservoirs register.

(2) The controlled reservoirs register is a register containing the following information and documents in relation to each controlled reservoir—

(a) the name (if any) and location of the reservoir,

(b) the maximum volume of water capable of being held in the reservoir,

(c) the name and address of the reservoir manager,

(d) the risk designation for the time being of the reservoir (and the date on which the designation was given) (see sections 18 and 20),

(e) any different risk designation the reservoir may have had in the past (and where it has had a different risk designation, the dates on which such designation was given and changed),

(f) the name of any construction engineer, inspecting engineer or supervising engineer appointed at any time in relation to the reservoir (and the period of any such appointment),

(g) a copy of—

(i) any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate in relation to a controlled reservoir which is copied to SEPA (or given to it pursuant to section 66),

(ii) any inspection report, interim inspection compliance certificate or inspection compliance certificate in relation to a controlled reservoir which is so copied (or given),

(iii) any written statement by a supervising engineer under section 48(7) in relation to a controlled reservoir which is so copied (or given),

(h) a map showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded.

(3) The Scottish Ministers may by regulations—

(a) require further information or documents specified in the regulations to be contained in the register,

(b) make provision as to the manner in which the information to be contained in the register is to be recorded there.

(4) SEPA must make arrangements for the controlled reservoirs register (or a copy of it) to be available for inspection by any person at all reasonable times.

(5) The Scottish Ministers may by order make provision as to the place (or places) in which the register is (or copies of it are) to be kept.

10 Reservoir managers’ duty to register with SEPA

(1) The reservoir manager of each controlled reservoir must register the reservoir with SEPA in accordance with sections 11 to 13.
(2) The Scottish Ministers may by regulations make provision as to—
   (a) the information to be registered,
   (b) the time by which information, or any change to information, must be registered.

11 Controlled reservoirs required to be registered under the 1975 Act

5 (1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place before the end of the period of 6 months beginning with the relevant date.

(2) This subsection applies to controlled reservoirs which were, immediately before the relevant date, required to be registered in a large raised reservoirs register.

10 (3) In this section and sections 12, 13 and 15—
   a “large raised reservoirs register” means a register maintained under section 2(2) of the 1975 Act,
   “the relevant date” means the date of commencement of section 9.

12 Controlled reservoirs not required to be registered under the 1975 Act

15 (1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place by such time as the Scottish Ministers by order specify.

(2) This subsection applies to controlled reservoirs which are controlled reservoirs on the relevant date but which were not, immediately before that date, required to be registered in the large raised reservoirs register.

20 Structures or areas which become controlled reservoirs after the relevant date

Registration of a controlled reservoir which becomes a controlled reservoir after the relevant date must take place not later than 28 days after the day on which a preliminary certificate is given in relation to it for the first time.

14 Registration: supplementary

25 (1) Where a person ceases to be a reservoir manager of a controlled reservoir, the person must, not later than 28 days after ceasing to be reservoir manager, give notice to SEPA of that fact and the date on which the person ceased to be reservoir manager.

(2) A person who becomes a reservoir manager of a controlled reservoir must, not later than 28 days after becoming reservoir manager, give notice to SEPA of that fact and the date on which the person became reservoir manager.

30 (3) Where SEPA receives notice under subsection (1) or (2), it must take such steps as it considers are reasonably required to inform the new reservoir manager, as soon as is reasonably practicable, of the duties of reservoir managers of controlled reservoirs under this Part.

35 (4) The Scottish Ministers may by regulations make provision—
   (a) as to SEPA determining and charging reservoir managers of controlled reservoirs fees in relation to registration,
   (b) requiring SEPA—
(i) to prepare and publish guidance on registration,
(ii) to consult the Institution of Civil Engineers in relation to the preparation of such guidance.

15  Transfer of information from existing relevant authorities

(1) Each existing relevant authority must, as soon as practicable after the relevant date, give to SEPA—
   (a) the large raised reservoirs register maintained by the authority,
   (b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of the 1975 Act (referred to in this section as its “enforcement functions”).

(2) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority’s enforcement functions.

(3) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the relevant date.

(4) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority’s enforcement functions and is in the process of being done by or in relation to the authority immediately before the relevant date.

(5) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the relevant date has effect as if done by SEPA.

(6) An existing relevant authority is a body which, immediately before the relevant date, is a relevant authority in Scotland for the purposes of the 1975 Act.

16  Offences: registration

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter relating to registration is an offence—
   (a) the requirements of section 10(1) or of regulations made under section 10(2),
   (b) the requirements of section 11(1), 12(1) or 13,
   (c) the requirements of section 14(1) or (2).

(2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives information 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-risk 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.

CHAPTER 3
RISK DESIGNATION

17 Provisional risk designation

(1) SEPA must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a provisional risk designation.

(2) In giving a provisional risk designation, SEPA must take into account the matters mentioned in section 21.

(3) A provisional risk designation is a provisional designation of the reservoir as one of the following types—
   (a) a high-risk reservoir,
   (b) a medium-risk reservoir,
   (c) a low-risk reservoir.

(4) SEPA gives a controlled reservoir a provisional risk designation by giving the reservoir manager notice specifying—
   (a) the provisional risk designation it has given the reservoir,
   (b) the reasons for the provisional risk designation,
   (c) how representations may be made to SEPA,
   (d) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

18 First risk designation

(1) SEPA must, having taken into account any representations made in accordance with section 17(4), give the controlled reservoir a risk designation.

(2) In giving a risk designation, SEPA must take into account the matters mentioned in section 21.

(3) A risk designation is a designation of the reservoir as one of the types referred to in paragraphs (a) to (c) of section 17(3).

(4) SEPA may not give the reservoir a risk designation before the end of the period during which representations may be made under section 17(4).

(5) SEPA gives the reservoir a risk designation by giving the reservoir manager notice—
   (a) specifying the risk designation given,
   (b) specifying the reasons for the risk designation,
   (c) giving information about the right under section 22 to apply for a review of the risk designation.
Part 1—Reservoirs

Chapter 3—Risk designation

19 Periodic review of risk designations

(1) SEPA must review the risk designation for the time being of a controlled reservoir—
   (a) at any time SEPA considers the designation may have ceased to be appropriate,
   (b) where the designation was given under section 18 and has not been reviewed
       under paragraph (a) during the period of 6 years after it was given (whether or not
       it has been reviewed under section 22), by the end of that period,
   (c) by the end of the period of 6 years after each review under this section.

(2) In reviewing the risk designation, SEPA must, having taken into account the matters
    mentioned in section 21, either—
    (a) provisionally confirm the risk designation, or
    (b) provisionally give the reservoir a risk designation as one of the other types
        referred to in paragraphs (a) to (c) of section 17(3).

(3) SEPA does as is specified in paragraphs (a) and (b) of subsection (2) in relation to a
    controlled reservoir by giving the reservoir manager notice specifying—
    (a) whether it provisionally confirms the risk designation or provisionally gives the
        reservoir a different risk designation,
    (b) where it provisionally gives the reservoir a different risk designation, the different
        risk designation concerned,
    (c) the reasons for its decision,
    (d) how representations may be made to SEPA,
    (e) that any representations must be made not later than the end of the period of 2
        months beginning with the day on which the notice is given.

20 Decision following a periodic review

(1) SEPA must, having taken into account any representations made in accordance with
    section 19(3), either—
    (a) confirm the risk designation the reservoir had immediately before the review, or
    (b) give the reservoir a risk designation as one of the other types referred to in
        paragraphs (a) to (c) of section 17(3).

(2) In doing so, SEPA must take into account the matters mentioned in section 21.

(3) SEPA may not make a decision under subsection (1) before the end of the period during
    which representations may be made under section 19(3).

(4) SEPA does as is specified in paragraph (a) or (b) of subsection (1) by giving the
    reservoir manager notice—
    (a) specifying whether it confirms the risk designation or gives the reservoir a
        different risk designation,
    (b) where it gives the reservoir a different risk designation, specifying the different
        risk designation concerned,
    (c) specifying the reasons for its decision,
(d) giving information about the right of appeal under section 22 against the risk designation.

21 Risk designation and periodic review: matters to be taken into account

(1) The matters SEPA is required by sections 17(2), 18(2), 19(2) and 20(2) to take into account are—

(a) the potential adverse consequences of an uncontrolled release of water from the reservoir,

(b) the probability of such a release.

(2) For the purposes of subsection (1)(a), potential adverse consequences include—

(a) potential damage to—

(i) human health,
(ii) the environment,
(iii) cultural heritage,
(iv) medical facilities, power supplies, transport, the supply of water for consumption and anything connected with such matters,
(v) other social or economic interests,

(b) such other potential damage as SEPA considers relevant.

(3) The matters which SEPA may take into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a reservoir include—

(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 maintenance of the reservoir.

(4) The Scottish Ministers may, after consulting SEPA and the Institution of Civil Engineers, by regulations make further provision about the matters SEPA is to take into account under sections 17(2), 18(2), 19(2) and 20(2).

22 Review of SEPA’s decisions giving risk designations

(1) A reservoir manager of a controlled reservoir who is given notice of a risk designation (under section 18(5) or 20(4)) may apply to SEPA for a review of the designation.

(2) Any such application must be made before the end of the period of 12 months beginning with the date on which the notice was given.

(3) Subject to subsection (4), a risk designation in respect of which an application is made under this section continues to have effect despite the application and the review.

(4) Where as a result of the review SEPA gives the controlled reservoir a different risk designation, the designation which is the subject of the application ceases to have effect from the date on which SEPA gives its decision.

(5) SEPA may charge a fee of such amount as it determines in relation to an application for review under this section.
(6) Any fee charged by SEPA under subsection (5) must be returned by it to the reservoir manager in the following circumstances—

(a) where the risk designation which was the subject of the application was as a high-risk reservoir and SEPA’s decision in the review is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,

(b) where the risk designation which was the subject of the application was as a medium-risk reservoir and SEPA’s decision in the review is to give a risk designation as a low-risk reservoir.

(7) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section.

23 Guidance by SEPA: risk designation

The Scottish Ministers may direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs provisional risk designations and risk designations and in reviewing risk designations.

24 High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

(1) References in this Part to a “high-risk reservoir”, “medium-risk reservoir” or “low-risk reservoir” are references to a controlled reservoir designated as such for the time being under section 18, 20 or (as the case may be), subject to subsection (3) of section 22, that section.

(2) Chapter 6 of this Part makes provision about requirements for inspection, supervision and recording of particular matters in relation to high-risk reservoirs and medium-risk reservoirs.

CHAPTER 4

PANELS OF RESERVOIR ENGINEERS

25 Panels of reservoir engineers

The Scottish Ministers must—

(a) establish one or more panels of reservoir engineers for the purposes of this Part and specify by order the sections of this Part under which the members of any such panel may be appointed,

(b) appoint civil engineers who they consider to be fit and qualified for appointment to such panels to be members of such of the panels as they consider appropriate.

26 Appointment and removal of panel members

(1) A civil engineer who wishes to be appointed to a panel under section 25 must make an appropriate application.

(2) An appointment is for such period as the Scottish Ministers determine.

(3) A civil engineer appointed to a panel is eligible for re-appointment.
(4) The Scottish Ministers may remove an engineer from a panel where they are satisfied that the engineer is not fit or qualified to remain on it.

(5) The Scottish Ministers must give an engineer removed from a panel under subsection (4) notice of the removal.

(6) Notice under subsection (4) must specify the grounds on which the engineer has been removed from the panel.

(7) In this section, “an appropriate application” is an application made in accordance with regulations made by the Scottish Ministers.

(8) The Scottish Ministers may by regulations make provision for the determining and charging of fees in connection with applications for membership of panels established by them under section 25.

27 Dissolution of panels etc.

(1) The Scottish Ministers may dissolve a panel established under section 25.

(2) Before doing so, the Ministers must give reasonable notice to the members of the panel.

(3) Where the Scottish Ministers dissolve a panel whose members might, by virtue of an order under section 25, (if not for the dissolution) still be appointed as construction engineers or inspecting engineers, the Scottish Ministers may allow an engineer who immediately before the dissolution was such an engineer, to continue to act as such in relation to the controlled reservoir concerned for a period of 4 years.

(4) The Scottish Ministers may, by notice, direct that an engineer is no longer entitled to act under subsection (3) where they are satisfied that the engineer is not fit or qualified to do so.

(5) Notice under subsection (4) must specify the grounds on which the engineer has been removed under that subsection.

28 Review of decisions to appoint or remove civil engineers from panels etc.

(1) A civil engineer—

(a) whose application for appointment to a panel established under section 25 is rejected,

(b) who is removed from a panel under section 26(4),

(c) who is given a direction under section 27(4),

may apply to the Scottish Ministers for a review of their decision.

(2) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section, including provision as to determining and charging fees in connection with applications for review under this section.

29 Consultation with Institution of Civil Engineers

(1) The Scottish Ministers must consult the President of the Institution of Civil Engineers (or, if that Institution appoints a committee for the purpose, that committee), before—

(a) establishing a panel under section 25,
(b) making an order under that section,
(c) making an appointment to a panel under that section,
(d) removing an engineer from a panel under section 26(4),
(e) dissolving a panel under section 27(1),
(f) directing that an engineer is no longer entitled to act under section 27(4),
(g) making a decision in a review under section 28.

(2) The Scottish Ministers may reimburse the Institution of Civil Engineers for any expenses incurred by it by virtue of this section.

CHAPTER 5

CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

30 Application of Chapter 5

(1) This Chapter applies where a controlled reservoir is to be constructed or subject to alteration.

(2) Subsections (3) to (7) have effect for the purposes of this Chapter.

(3) Any work for the purpose of restoring the capacity of an existing structure or area (which has previously at any time had the capacity to hold 10,000 cubic metres or more of water above the natural level of any part of the surrounding land) to that capacity is to be treated as construction of a controlled reservoir.

(4) Alteration of a controlled reservoir includes—

(a) any work for the purpose of increasing or decreasing the capacity of a controlled reservoir,

(b) any other work in relation to the reservoir (including work which the Scottish Ministers are satisfied might affect its safety) which the Scottish Ministers by regulations specify.

(5) Alteration of a controlled reservoir amounts to discontinuance of a controlled reservoir where the alteration is for the purpose of reducing the reservoir’s capacity so that it is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (but is still capable of holding water above the natural level of any part of that land).

(6) Alteration of a controlled reservoir amounts to abandonment of a controlled reservoir where the alteration is for the purpose of reducing the capacity of the reservoir so that it is incapable of filling with water above the natural level of any part of the surrounding land.

(7) Any reference to—

(a) a controlled reservoir being constructed or subject to alteration is to be construed in accordance with this section,

(b) a controlled reservoir being restored to use is to be construed as a reference to a controlled reservoir being constructed as mentioned in subsection (3),
(c) a controlled reservoir being discontinued is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (5),

(d) a controlled reservoir being abandoned is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (6),

(e) “relevant works” is a reference to any works carried out for the purpose of the construction or alteration of a controlled reservoir.

31 Notice to SEPA and appointment of construction engineer

(1) 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 SEPA of the proposed works.

(2) The reservoir manager must, not later than 28 days before the proposed relevant works begin—

(a) appoint a construction engineer,

(b) give notice to SEPA of the appointment.

(3) “A construction engineer” is an engineer appointed under this section to supervise the relevant works and the reservoir until a final certificate is issued in respect of the works.

(4) An engineer may be appointed as a construction engineer if the engineer—

(a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,

(b) is not disqualified by virtue of subsection (5) from being appointed as a construction engineer in relation to the reservoir.

(5) An engineer is disqualified from being appointed as a construction engineer in relation to the reservoir if the engineer—

(a) is employed by any person who is a reservoir manager of the reservoir,

(b) has previously been a construction engineer in relation to the reservoir,

(c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer in relation to the reservoir.

(6) In sections 32 to 39—

(a) references to “the construction engineer” are references to the engineer appointed for the time being as such under this section in respect of the relevant works,

(b) references to “the reservoir manager” are references to the reservoir manager of the controlled reservoir which is the subject of the relevant works.

32 Inspection, reports, supervision of works etc. by construction engineer

(1) The construction engineer must supervise the relevant works and the controlled reservoir in accordance with this section until a final certificate is issued in respect of the works.
(2) The engineer must—
   (a) inspect the reservoir,
   (b) design any construction or alteration.

(3) Where the reservoir is being constructed or is subject to alteration but is not being discontinued or abandoned, the construction engineer (subject to subsection (6)) may give the reservoir manager a safety report prepared in accordance with section 33.

(4) Where the reservoir is being restored to use, discontinued or abandoned, the construction engineer must give the reservoir manager a safety report.

(5) A safety report given under subsection (4) must (subject to subsection (6)) be given not later than 9 months after the construction engineer is appointed.

(6) Where the appointment of the construction engineer was required by notice from SEPA under section 63(2) (or is to be treated by virtue of section 65(2) as being an appointment by the reservoir manager), the construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed.

(7) A construction engineer must, not later than 28 days after giving a safety report under this section, give SEPA a copy of it.

33 Safety reports

(1) A safety report must—
   (a) specify any measures the construction engineer considers are necessary in the interests of the safety of the controlled reservoir,
   (b) direct the reservoir manager to ensure that any measures specified in the report are taken under the supervision of the construction engineer and within the period of time specified in the report,
   (c) include such other matters as the Scottish Ministers by regulations specify.

(2) Where a controlled reservoir—
   (a) is being restored to use, the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water,
   (b) is being discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure 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) is being abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.

34 Safety reports: compliance

(1) The reservoir manager of a controlled reservoir must (subject to section 57(3)) comply with any direction in a safety report issued to the manager.
(2) The construction engineer must, not later than 28 days after being satisfied that each measure directed in the safety report has been taken, give the reservoir manager a safety measure certificate.

(3) A safety measure certificate must specify—
   
   (a) the safety report to which it relates,
   
   (b) the measure taken,
   
   (c) any measure that has yet to be taken.

(4) A construction engineer must, not later than 28 days after giving a safety measure certificate under subsection (2), give SEPA a copy of it.

35 Preliminary certificates

(1) Where the construction engineer considers that the reservoir may safely be filled (wholly or partially) with water or that the level of water should be reduced, the engineer must, as soon as is reasonably practicable after being so satisfied, give the reservoir manager a preliminary certificate.

(2) A preliminary certificate must—
   
   (a) specify a level (the “specified level”) that water in the reservoir must not exceed,
   
   (b) require the reservoir manager to ensure that the level of water does not exceed the specified level,
   
   (c) specify any requirements the engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.

(3) A construction engineer must, not later than 28 days after giving a preliminary certificate, give SEPA a copy of it.

(4) A subsequent preliminary certificate applicable to the reservoir replaces any previous preliminary certificate applicable to the reservoir in respect of the relevant works.

(5) A preliminary certificate ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of those works.

36 Construction certificates

(1) The construction engineer must give the reservoir manager a construction certificate as soon as is reasonably practicable after being satisfied that the construction or (as the case may be) alteration has been completed to a satisfactory standard.

(2) The construction certificate must in any event be issued not later than the final certificate in respect of the works.

(3) A construction certificate must—
   
   (a) certify that the construction or (as the case may be) alteration has been executed effectively in accordance with the drawings and descriptions included in the annex to the certificate,
Reservoirs (Scotland) Bill
Part 1—Reservoirs

Chapter 5—Construction or alteration of controlled reservoirs

(b) include an annex containing detailed drawings and descriptions giving full information about the works for the construction or (as the case may be) the alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works,

5 (c) include such other information as the Scottish Ministers by regulations require.

(4) The construction engineer must, not later than 28 days after giving a construction certificate, give SEPA a copy of it.

37 Final certificates

10 (1) Where the controlled reservoir is being constructed or is subject to alteration but is not being 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)—

15 (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-risk 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,

20 (c) where the reservoir is a high-risk reservoir or medium-risk reservoir, must specify any matter the construction engineer considers should be monitored, until the first inspection of the reservoir under section 44, by the supervising engineer appointed in relation to the reservoir under section 47,

(d) impose the requirements mentioned in subsection (7).

(3) Where the reservoir is being discontinued, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—

25 (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,

30 (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—

35 (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 reservoir is being abandoned, the construction engineer must give the reservoir manager a final certificate, not later than 28 days after being satisfied—

40 (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) A copy of the construction certificate issued in respect of the construction or (as the case may be) alteration must be attached to the final certificate.

(9) The construction engineer must, not later than 28 days after issuing a final certificate, give SEPA a copy of the certificate.

(10) 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 SEPA a copy of the statement.

38 Preliminary and final certificates: compliance

The reservoir manager of a controlled reservoir must (subject to section 58(3)) comply with the requirements of any preliminary certificate or final certificate for the time being applicable to the reservoir.

39 Termination of supervision by construction engineer

The obligation of the reservoir manager to appoint a construction engineer in respect of the relevant works terminates when the construction engineer gives a copy of the final certificate issued by the engineer in respect of the works to SEPA in accordance with section 37(9).

40 Offences: construction or alteration

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—

(a) the requirements in section 31(1) (notice to SEPA of proposed relevant works),

(b) the requirements in section 31(2)(a) (appointment of construction engineer),

(c) the requirements in section 31(2)(b) (notice to SEPA of the appointment),

(d) the requirements in section 34(1) (compliance with direction as to taking of safety measure in safety report),
(e) the requirements in section 38 (compliance with preliminary certificate or final certificate).

(2) A reservoir manager guilty of an offence under subsection (1)(a) or (c)—

(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.

(3) A reservoir manager guilty of an offence under subsection (1)(b), (d) or (e) is liable on summary conviction—

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,

(b) in the sheriff court—

(i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,

(ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

41 Defence: offences under section 40(1)(d) or (e)

It is a defence to a charge in proceedings under section 40(1)(d) or (e) for the person to show both—

(a) that the failure to comply with the requirements concerned was as a result of 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

(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, and

(iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

42 Controlled reservoirs subject to relevant works on commencement

(1) Subsection (2) applies in relation to controlled reservoirs—

(a) which were, immediately before the commencement date, large raised reservoirs,

(b) which are, on that date, subject to relevant works.

(2) This Chapter, and sections 63 to 65, apply in relation to such controlled reservoirs on and after the commencement date as they apply in relation to controlled reservoirs which are subject to relevant works wholly on or after that date.
(3) Subsection (4) applies in relation to controlled reservoirs—

(a) which were not, immediately before the commencement date, large raised reservoirs,

(b) which are, on that date, subject to relevant works.

(4) This Chapter, and sections 63 to 65 apply on and after the commencement date in relation to such controlled reservoirs subject to the modifications mentioned in subsection (5).

(5) The modifications are—

(a) notice under section 31(1) of the relevant works must be given not later than 28 days after the commencement date,

(b) a construction engineer must be appointed under section 31(2)(a) not later than 28 days after the commencement date,

(c) notice under section 31(2)(b) of the appointment must be given not later than 28 days after the appointment,

(d) for section 32(3) to (6) substitute—

“(3) The construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed and in any event not later than 9 months after being appointed.”.

(6) In this section—

“the commencement date” means the date on which section 30 is commenced,

“large raised reservoir” has the same meaning as in section 1(1) of the 1975 Act.

CHAPTER 6

OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

43 Appointment of inspecting engineer etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir which is not under the supervision of a construction engineer must—

(a) appoint an inspecting engineer,

(b) not later than 28 days after the appointment, give notice of it to SEPA.

(2) An inspecting engineer is an engineer appointed under this section to carry out an inspection of the reservoir at each of the times required by section 44.

(3) An engineer may be appointed as an inspecting engineer if the engineer—

(a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,

(b) is not disqualified by virtue of subsection (4) from being so appointed in relation to the reservoir.

(4) An engineer is disqualified from being appointed as an inspecting engineer in relation to the reservoir if the engineer—

(a) is employed by any person who is a reservoir manager of the reservoir,
has previously been a construction engineer in relation to the reservoir,

(c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer in relation to the reservoir.

44 Inspections: timing

(1) Inspections of a high-risk reservoir must be carried out at each of the following times—

(a) before the end of the period of 2 years beginning with the date of any final certificate for the time being applicable to the reservoir,

(b) at any time recommended by the supervising engineer under section 48(3),

(c) at any time recommended in an inspection report under section 45,

(d) before the end of the period of 10 years beginning with the date of the latest inspection under that section.

(2) Inspections of a medium-risk reservoir must be carried out at such times as are recommended by the supervising engineer under section 48(3).

(3) In this section and section 45, references to “the supervising engineer” are references to the engineer appointed for the time being as such under section 47 in relation to the reservoir.

45 Inspections: duties of inspecting engineers etc.

(1) The inspecting engineer must—

(a) inspect the reservoir,

(b) give the reservoir manager, not later than 9 months after the completion of the inspection, an inspection report prepared in accordance with this section,

(c) give the reservoir manager certificates in accordance with section 46.

(2) The reservoir manager must give the inspecting engineer a copy of—

(a) any final certificate for the time being applicable to the reservoir,

(b) the inspection report of the latest inspection (if any) of the reservoir carried out under this section (“the latest report”).

(3) The inspection report—

(a) must specify—

(i) any measures the inspecting engineer considers should be taken in the interests of the safety of the reservoir,

(ii) any other measures the engineer considers should be taken to maintain the reservoir,

(b) must specify whether any measure specified in the inspection report was specified in the latest report,

(c) 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,
Reservoirs (Scotland) Bill
Part 1—Reservoirs
Chapter 6—Other requirements: high-risk reservoirs and medium-risk reservoirs

(4) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—

(a) SEPA,

(b) the supervising engineer (if a different person).

(5) In this section and section 46—

(a) references to “the inspecting engineer” are references to the engineer appointed for the time being as such under section 43 in relation to the reservoir,

(b) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.

46 Inspection reports: compliance

(1) The reservoir manager must (subject to section 57(3)) comply with any direction in an inspection report issued to the manager.

(2) The inspecting engineer must, not later than 28 days after being satisfied that a measure directed in the inspection report has been taken, give to the reservoir manager an interim inspection compliance certificate.

(3) An interim inspection compliance certificate must specify—

(a) the inspection report to which it relates,

(b) the measure taken,

(c) any measure that has yet to be taken.

(4) The inspecting engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report have been taken, give the reservoir manager an inspection compliance certificate.

(5) An inspection compliance certificate must specify—

(a) the inspection report to which it relates,

(b) that all of the measures directed in the report have been taken.

(6) An inspecting engineer must, not later than 28 days after giving an interim inspection compliance certificate or an inspection compliance certificate under this section, give SEPA a copy of it.

47 Appointment of supervising engineers etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir which is not under the supervision of a construction engineer must—

(a) appoint a supervising engineer,
Part 1—Reservoirs

Chapter 6—Other requirements: high-risk reservoirs and medium-risk reservoirs

(b) not later than 28 days after the appointment, give notice of it to SEPA.

(2) A supervising engineer is an engineer appointed under this section to supervise the reservoir in accordance with section 48 at all times when the reservoir is not under the supervision of a construction engineer.

(3) An engineer may be appointed as a supervising engineer if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section.

48 Supervising engineer and monitoring of reservoir

(1) The supervising engineer must supervise the reservoir in accordance with this section at all times when the reservoir is not under the supervision of a construction engineer.

(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 with the requirements of any final certificate for the time being applicable to the reservoir,

(c) monitor any matters specified in any such final certificate as matters that should be monitored by the supervising engineer until the first inspection of the reservoir required under section 44,

(d) supervise the implementation of any direction in the latest inspection report,

(e) give notice to the reservoir manager and SEPA of any failure to comply with any requirement of a final certificate referred to in paragraph (b) or with any direction referred to in paragraph (d),

(f) monitor any matters specified in the latest inspection report as matters that should be monitored by the supervising engineer until the next inspection of the reservoir required under section 44,

(g) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,

(h) monitor compliance by the reservoir manager with the requirements of section 49.

(3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 44(1)(b), the engineer must give the reservoir manager a written recommendation to that effect.

(4) The supervising engineer 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.

(5) The reservoir manager must comply with any direction under subsection (4).

(6) The reservoir manager must give notice to the supervising engineer of each such inspection and anything noticed in the course of it.

(7) 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 (f),
any measures taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,

(c) any failure to comply with—
   (i) a requirement in a final certificate referred to in subsection (2)(b),
   (ii) a direction referred to in subsection (2)(d),
   (iii) a recommendation by the supervising engineer under subsection (3),
   (iv) a direction by the supervising engineer under subsection (4).

(8) The supervising engineer must give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of an emergency and the supervising engineer being unavailable, a nominated representative of the engineer).

(9) The supervising engineer must, not later than 28 days after giving a written statement under subsection (7), give SEPA a copy of the statement.

(10) The Scottish Ministers may publish guidance about supervision of high-risk reservoirs and medium-risk reservoirs in accordance with this section.

(11) In this section—
   (a) “draw-down” means any intentional reduction in the water level,
   (b) references to “the supervising engineer” are references to the engineer appointed for the time being as such under section 47 in relation to the reservoir,
   (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section.

49 Recording of water levels etc. and record keeping

(1) The reservoir manager of a high-risk reservoir or medium-risk 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) leakages,
   (c) repairs,
   (d) settlements of walls or other works,
   (e) such other matters as the Scottish Ministers by regulations specify.

(2) The Scottish Ministers 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 construction engineer, an inspecting engineer or a supervising engineer appointed 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) 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.

(6) Sections 54 and 56 make further provision about records to be maintained by the reservoir managers of controlled reservoirs.

50 Offences: inspection, supervision, record keeping

(1) Failure by the reservoir manager of a high-risk reservoir or medium-risk reservoir to comply with any of the following requirements under this Chapter is an offence—

(a) the requirements of section 43(1)(a) and 44 (appointment of inspecting engineer and carrying out of required inspections),

(b) the requirements of section 43(1)(b) (notice of appointment to SEPA),

(c) the requirements of section 46(1) (compliance with direction as to taking of measure in inspection report),

(d) the requirements of section 47(1)(a) (appointment of supervising engineer),

(e) the requirements of section 47(1)(b) (notice of appointment to SEPA),

(f) the requirements of a direction under section 48(4) (compliance with direction of supervising engineer as to carrying out of visual inspection of reservoir),

(g) the requirements of section 49 (including any direction under subsection (3) of that section) (maintenance of record of water levels etc.).

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with the requirements of section 45(2) (giving inspecting engineer copy of final certificate and latest inspection report) commits an offence.

(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.

51 Defences: offence under section 50(1)(c)

It is a defence to a charge in proceedings under section 50(1)(c) 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 SEPA as soon as practicable after the failure arose.

CHAPTER 7

OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

52 Incident reporting

(1) The Scottish Ministers may by regulations make provision for the reporting to SEPA 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 SEPA 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 specified person to report incidents occurring at the reservoir,

(d) provide for an inspecting engineer, a supervising 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 SEPA or the Scottish Ministers,

(f) make provision for the publishing of incident reports,

(g) confer powers of entry on SEPA in connection with its functions under the regulations,

(h) create 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-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,

(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) Before making regulations under subsection (1), the Scottish Ministers must consult—
53 **Flood plans**

(1) The Scottish Ministers 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 they consider 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 as may be determined by the Scottish Ministers or SEPA,

(c) specifying—

(i) the form in which a flood plan is to be prepared,

(ii) what is to be included in a flood plan,

(d) requiring the person preparing a flood plan to have regard to any guidance that may be issued by SEPA or the Scottish Ministers as regards flood plans,

(e) requiring flood plans to be produced or submitted to SEPA (whether or not for approval) by such time as either—

(i) the regulations specify, or

(ii) the Scottish Ministers or SEPA may direct,

(f) as regards the approval of flood plans (whether by the Scottish Ministers, SEPA, inspecting engineers or supervising engineers),

(g) as regards the review and updating of flood plans,

(h) as regards the publication or distribution of copies of—

(i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,

(ii) flood plans,

(i) in connection with the testing of flood plans,

(j) in connection with the referral of matters to a referee,
(k) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is practicable to do so, to take action set out in the plan relating to the reservoir in the event of an emergency,

(l) providing that SEPA may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the expenses of doing so from the person,

(m) conferring powers of entry on SEPA in connection with its functions under the regulations,

(n) making provision in connection with paragraphs (j), (l) and (m) amending this Act (other than this section) or applying this Act with modifications,

(o) creating offences,

(p) providing that any offence created is triable only summarily,

(q) 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) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,

(c) the Institution of Civil Engineers,

(d) such other persons as they consider appropriate.

54 Maintenance of records

(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.

(3) Where the reservoir is a low-risk reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Scottish Ministers may require by regulations.

(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) an inspection report, interim inspection compliance certificate or inspection compliance certificate,
(iii) a notice under section 48(2)(a) or (e), recommendation under section 48(3) or statement under section 48(7) (by a supervising engineer),

(b) any drawings and descriptions of works annexed to construction certificates given in respect of the reservoir under the 1975 Act, drawings and descriptions annexed to certificates given under the Reservoirs (Safety Provisions) Act 1930 (c.51), charts, graphs and plans.

55 Display of emergency response information

(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 order by the Scottish Ministers.

(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 relating to 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-risk reservoir or medium-risk reservoir, the name and address of the reservoir’s supervising engineer and information for the purpose of enabling a person to contact the engineer in the event of an emergency.

(4) SEPA may give directions to reservoir managers of controlled reservoirs as to—

(a) the manner in which emergency response information is to be displayed,

(b) the location at which it is to be displayed.

(5) Directions under subsection (4) may be general or specific.

(6) The reservoir manager must comply with any directions by SEPA under subsection (4).

56 Offences: record keeping, display of emergency response information

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—

(a) the requirements of section 54 (maintenance of records),

(b) the requirements of section 55(1) and (6) (display of emergency response information).

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
CHAPTER 8
DISPUTE REFERRAL

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

(1) This section applies where—

(a) a safety report contains a direction by a construction engineer,

(b) an inspection report contains a direction by an inspecting engineer.

(2) The reservoir manager to whom the report is given may challenge the direction by referring it to a referee in accordance with regulations made under section 62.

(3) Where a referral is made under subsection (2), the direction is suspended until the reference has been determined or withdrawn.

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

(1) The reservoir manager to whom a preliminary certificate or final certificate is given may challenge any of the matters mentioned in subsection (2) by referring it to a referee in accordance with regulations made under section 62(1).

(2) The matters are—

(a) the level of water specified in the preliminary certificate in accordance with section 35(2)(a),

(b) any requirement specified in the preliminary certificate in accordance with section 35(2)(c),

(c) any recommendation contained in the final certificate in accordance with section 37(2)(b),

(d) any matter specified in the final certificate in accordance with section 37(2)(c),

(e) any requirement imposed in the final certificate in accordance with section 37(7)(a) or (c).

(3) Where a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.

59 Appointment of referee

(1) The referee must be an engineer appointed under this section either—

(a) by agreement between the reservoir manager and the relevant engineer, or

(b) where no agreement is reached, by the Scottish Ministers.

(2) An engineer may be appointed as a referee if the engineer—

(a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,

(b) is not disqualified by virtue of subsection (3) from being appointed under this section in relation to the reservoir concerned.

(3) An engineer is disqualified from being appointed under this section in relation to the reservoir if the engineer—
(a) is employed by any person who is a reservoir manager of the reservoir,

(b) has previously been a construction engineer or an inspecting engineer in relation to the reservoir,

(c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer or an inspecting engineer in relation to the reservoir.

(4) In this section and sections 60 and 61, “the relevant engineer" means the construction engineer or (as the case may be) inspecting engineer who gave the direction or (as the case may be) specified, recommended or imposed the matter which is the subject of the referral.

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

(1) This section applies where a referral is made under section 57(2).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the direction.

(3) Where the referee makes any such modification, the referee—

(a) must modify the report which contains the direction,

(b) where the report is a safety report, must make any necessary modification to any safety measure certificate given in relation to the report,

(c) where the report is an inspection report, must make any necessary modification to any interim inspection compliance certificate given in relation to the report.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—

(a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—

(i) whether the referee has modified the report,

(ii) any modification made,

(b) where the referee has modified the report or any safety measure certificate or interim inspection compliance certificate, to give the reservoir manager and the relevant engineer a copy of the modified report and any such modified certificate,

(c) to give SEPA a copy of the referral certificate and any modified report and any such modified safety measure certificate or interim inspection compliance certificate.

(6) A direction, report, safety measure certificate or interim inspection compliance certificate modified under this section has effect as so modified.

(7) In subsection (3)(b) and (c), “any necessary modification” means any modification the referee considers is necessary in relation to any measure specified in the certificate as a measure yet to be taken.
Powers of referee: referral under section 58(1)

(1) This section applies where a referral is made under section 58(1).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the matter referred.

(3) Where the referee makes any such modification, the referee must modify the certificate which contains the matter.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—

(a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—

(i) whether the referee has modified the certificate,
(ii) any modification made,

(b) where the referee has modified the certificate, to give the reservoir manager and the relevant engineer a copy of the modified certificate,

(c) to give SEPA a copy of the referral certificate and any modified preliminary certificate or final certificate.

(6) A preliminary certificate or final certificate modified under this section has effect as so modified.

Procedure

(1) Regulations by the Scottish Ministers may make provision as to—

(a) the time within which a referee may be appointed under section 59,
(b) the time within which a request to them for an appointment under that section may be made,
(c) the manner of the request,
(d) the procedure before the referee,
(e) the expenses of the investigation and proceedings (including the remuneration of the referee).

(2) The expenses of any investigation and proceedings are to be paid by the reservoir manager who makes the referral.
(b) the reservoir manager is required by section 43(1)(a) to appoint an inspecting engineer, but no inspecting engineer is for the time being appointed,

(c) the reservoir manager is required by section 47(1)(a) to appoint a supervising engineer, but no supervising engineer is for the time being appointed.

(2) SEPA may by notice require the reservoir manager of the reservoir—

(a) to make the relevant appointment before the end of the period of 28 days beginning with the day on which the notice is given (unless the reservoir manager has already made the relevant appointment),

(b) to give notice to SEPA of the appointment (whether it was made before or after the notice was given).

(3) In subsection (2)(a) and sections 65 and 66, “the relevant appointment” is the appointment of a construction engineer, an inspecting engineer or (as the case may be) a supervising engineer.

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

(1) Failure to comply with the requirements of a notice by SEPA under the following sections is an offence—

(a) section 63(2)(a) (requirement to appoint construction engineer, inspecting engineer or supervising engineer),

(b) section 63(2)(b) (notice of appointment to SEPA).

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

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,

(b) in the sheriff court—

(i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,

(ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

(3) A reservoir manager guilty of an offence under subsection (1)(b)—

(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.

65 **Appointment of engineer by SEPA**

(1) SEPA may make the relevant appointment where—

(a) it has by notice under section 63(2) required a reservoir manager to make the appointment,
(b) the reservoir manager has failed to make the appointment.

(2) An appointment by SEPA under this section is to be treated for the purposes of this Part as if the appointment were by the reservoir manager under section 31(2)(a), 43(1)(a) or (as the case may be) 47(1)(a).

(3) An appointment under this section has no effect if the reservoir manager has already made the relevant appointment.

(4) An appointment under this section terminates with effect from the date of a subsequent relevant appointment made by the reservoir manager.

(5) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in making an appointment under this section.

66 Appointment by SEPA: engineers’ reports, certificates, recommendations etc.

Where SEPA makes a relevant appointment under section 65, the following are to be given to SEPA (instead of being given to the reservoir manager) and copied to the reservoir manager not later than 28 days after being given to SEPA—

(a) where the relevant appointment is that of a construction engineer, any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate by the construction engineer,

(b) where the relevant appointment is that of an inspecting engineer, any inspection report, interim inspection compliance certificate or inspection compliance certificate by the inspecting engineer,

(c) where the relevant appointment is that of a supervising engineer, any notice under section 48(2)(a) or (e), recommendation under section 48(3) or statement under section 48(7).

Taking of safety and other measures

67 Enforcement notice: safety and other measures

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that the reservoir manager has failed to comply with—

(a) the manager’s duty under section 34(1) (to comply with a direction in a safety report),

(b) the manager’s duty under section 46(1) (to comply with a direction in an inspection report).

(2) SEPA may by notice require the reservoir manager to comply with the duty before the end of the period specified in the notice.

(3) SEPA must consult an engineer appointed by it under this section about the period to be specified in the notice.

(4) An engineer may be appointed under this section, or section 69, if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section or (as the case may be) that section.

(5) Notice under subsection (2) must—
(a) specify the measure that SEPA requires to be taken,
(b) state SEPA’s reasons for considering that this section applies,
(c) specify any particular steps SEPA considers must be taken to take the measure.

(6) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in connection with consultation under this section.

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

(1) Failure to comply with a notice by SEPA under section 67(2) is an offence.
(2) A reservoir manager guilty of an offence under subsection (1) is liable on summary conviction—
   (a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,
   (b) in the sheriff court—
      (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,
      (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

69 SEPA’s power to arrange taking of safety and other measures

(1) This section applies where SEPA 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) SEPA may arrange for the taking of the measure under the supervision of an engineer appointed 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 SEPA.
(4) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in making arrangements under this section.

70 Offences under sections 40(1)(d) and 50(1)(c): further remedies

(1) This section applies where a reservoir manager is convicted of an offence under—
   (a) section 40(1)(d) (failure to comply with direction in safety report),
   (b) section 50(1)(c) (failure to comply with direction in inspection report).
(2) The court may, in addition to or instead of imposing any penalty competent under section 40(3) or (as the case may be) 50(3), order the reservoir manager to take such steps as are specified in the order, within such period as is so specified—
   (a) to secure compliance with the direction concerned,
   (b) to secure the remedying or mitigating of the effects of the failure to comply with the direction.
(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.

\[72\]

Stop notices

(1) The Scottish Ministers may by order make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the manager has taken the steps specified in the notice.

(4) Provision under subsection (1) may confer power to give a stop notice only in relation to a case where each of the following applies—

(a) the reservoir manager is carrying on the activity,

(b) SEPA reasonably believes that the activity as carried on by the manager presents a significant risk of causing an uncontrolled release of water from the reservoir,

(c) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under this Part.

(5) The steps referred to in subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(b).

\[72\]

Stop notices: procedure

(1) Provision under section 71(1) must secure the results in subsection (2) in a case where a stop notice is given.

(2) The results are that—

(a) the stop notice must comply with subsection (3),

(b) the reservoir manager to whom it is given may appeal against the decision to issue it,

(c) where, after giving of the notice, SEPA is satisfied that the manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a “completion certificate”),

(d) the notice ceases to have effect on the giving of a completion certificate,

(e) the reservoir manager to whom the notice is given may at any time apply for a completion certificate,
(f) SEPA 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 was made,

(g) the reservoir manager to whom the notice is given may appeal against a decision not to give a completion certificate.

(3) To comply with this subsection a stop notice must include information as to—

(a) the grounds for giving the notice,
(b) rights of appeal,
(c) the consequences of non-compliance.

(4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA to give 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,
(e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given,
(f) the manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.

(5) Provision pursuant to that subsection may include provision—

(a) about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld,
(b) requiring SEPA to publish guidance on the appeal process.

(6) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA 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 unfair or unreasonable.

Stop notices: compensation

(1) Provision under section 71(1) must include provision for SEPA to compensate the reservoir manager for loss suffered as the result of the issue of the stop notice.

(2) Provision pursuant to subsection (1) may provide for compensation—

(a) only in cases specified (by the order under section 71(1)),
(b) only in relation to descriptions of loss so specified.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager to whom the stop notice is given may appeal against—
(a) a decision of SEPA not to award compensation,
(b) a decision of SEPA as to the amount of the compensation.

74 Stop notices: enforcement

(1) Provision under section 71(1) may provide that where a reservoir manager to whom a stop notice is given does not comply with it, the manager commits an offence and is liable on summary conviction—
(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,
(b) in the sheriff court—
   (i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,
   (ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

(2) Provision under section 71(1) must provide that it is a defence to a charge in proceedings for an offence created by the order for the person to show both—
(a) that the failure to comply with the stop notice 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
(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, and
   (iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

Emergency powers

75 Emergency powers

(1) This section applies where it appears to SEPA 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) SEPA 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) SEPA must—
(a) appoint 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 appointed engineer.

(4) An engineer may be appointed under this section if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section.

(5) SEPA must give notice to the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)—

(a) must be given as soon as practicable (which may be after any works have begun), but

(b) is not required if SEPA is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in the exercise of powers under this section.

76 Enforcement undertakings

(1) The Scottish Ministers may by order make provision—

(a) as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where SEPA has reasonable grounds to suspect that the manager has committed an offence under this Part,

(b) for the acceptance of the undertaking to have the consequences in subsection (5).

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) An “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking before the end of such period as may be so specified.

(4) The action specified in an enforcement undertaking must be—

(a) action to secure that the offence does not continue or recur,

(b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,

(c) action (including the payment of a sum of money) to benefit any person adversely affected by the offence,

(d) action of a description specified in the order.

(5) The consequences in this subsection are that, unless the reservoir manager from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

(a) the reservoir manager may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,

(b) SEPA may not impose on the manager any fixed monetary penalty which it would otherwise have power to impose by virtue of section 77(1) in respect of the act or omission,
(c) SEPA may not impose on the manager any further enforcement measure which it
would otherwise have power to impose by virtue of section 80(1) in respect of the
act or omission.

(6) Provision under subsection (1) may in particular include provision—

(a) as to the procedure for entering into an undertaking,
(b) as to the terms of an undertaking,
(c) as to the publication of an undertaking by SEPA,
(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 SEPA of compliance with an undertaking,
(g) as to the certification by SEPA that an undertaking has been complied with,
(h) for appeals against refusal to give such certification,
(i) 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,
(j) 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 of
any criminal or other sanction on the manager,
(k) 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,
(l) for the creation of offences,
(m) for any offence created to be triable only summarily,
(n) 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,
(o) for it to be a defence to a charge in proceedings for an offence created by the order
for a person to show both—
   (i) that the failure to comply with the requirements 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 SEPA as soon as practicable after the failure arose.
77 Fixed monetary penalties

(1) The Scottish Ministers may by order make provision about the imposition by SEPA of fixed monetary penalties on reservoir managers of controlled reservoirs in relation to offences under this Part.

5 (2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) Provision under subsection (1) must provide that—

(a) fixed monetary penalties may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,

(b) fixed monetary penalties are to be imposed by notice,

(c) the amount of the penalty which can be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for the offence.

15 (4) A fixed monetary penalty is a requirement to pay to SEPA a penalty of a specified amount (with payment attracting the results mentioned in paragraphs (a) and (b) of section 79(2)).

(5) For the purposes of this section and section 78 “specified” means specified in an order made under subsection (1).

78 Fixed monetary penalties: procedure

(1) Provision under section 77(1) must secure the results in subsection (2).

20 (2) The results are that—

(a) where SEPA proposes to impose a fixed monetary penalty on a reservoir manager, it must give the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),

(b) the notice of intent also offers 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 SEPA in relation to the proposed imposition of the fixed monetary penalty,  

(ii) SEPA must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where SEPA decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5),

(e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal against the decision to impose it.

30 (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 payment may be made,
(c) the effect of payment of the sum referred to in subsection (2)(b),
(d) the right to make written representations and objections,
(e) the circumstances in which SEPA 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 given,
(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 in subsection (2)(c)(ii)—
(a) must secure that SEPA 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 SEPA 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,
(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 SEPA 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 may include provision—
(a) about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld,
(b) requiring SEPA to publish guidance on the appeal process.

Fixed monetary penalties: criminal proceedings and conviction etc.

(1) Provision under section 77(1) must secure that, in a case where a notice of intent referred to in section 78(2)(a) is given to a reservoir manager—
(a) no criminal proceedings for the offence to which the notice relates may be
instituted against the manager in respect of the act or omission to which the notice
relates before the end of the period in which the manager may discharge liability
for the fixed monetary penalty pursuant to section 78(2)(b),

(b) SEPA may not before the end of that period give a stop notice to or impose a
further enforcement measure on the manager in respect of the act or omission
giving rise to the notice,

(c) if the manager so discharges liability—

(i) the manager may not at any time be convicted of the offence to which the
notice relates in relation to that act or omission,

(ii) SEPA may not give a stop notice to or impose a further enforcement
measure on the manager in respect of that act or omission.

(2) Provision under section 77(1) must also secure that, in a case where a fixed monetary
penalty is imposed on a reservoir manager—

(a) the manager may not at any time be convicted of the offence in relation to which
the penalty is imposed in respect of the act or omission giving rise to the penalty,

(b) SEPA may not give a stop notice to or impose a further enforcement measure on
the manager in respect of the act or omission giving rise to the penalty.

Further enforcement measures

(1) The Scottish Ministers may by order make provision about the imposition by SEPA on
reservoir managers of controlled reservoirs of one or more further enforcement
measures in relation to offences under this Part.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in
accordance with section 84.

(3) Provision under subsection (1)—

(a) must provide that further enforcement measures—

(i) may be imposed only where SEPA is satisfied beyond reasonable doubt
that a reservoir manager has committed an offence under this Part,

(ii) may not be imposed on a reservoir manager on more than one occasion in
relation to the same act or omission,

(iii) are to be imposed by notice,

(b) may provide that further enforcement measures may be imposed in addition to any
requirement referred to in section 63(2) or 67(2).

(4) A further enforcement measure is any of the following—

(a) a requirement to pay to SEPA a penalty of such amount as SEPA may in each
case determine,

(b) a requirement to take such steps as SEPA may specify, within such period as it
may specify, to secure that the offence does not continue or recur,

(c) a requirement to take such steps as SEPA may specify, within such period as it
may specify, to secure that the position is so far as possible restored to what it
would have been if the offence had not been committed.
(5) For the purposes of this Part—

a “variable monetary penalty” means a requirement referred to in subsection (4)(a),

a “restraint notice” means a requirement referred to in subsection (4)(b),

a “restoration notice” means a requirement referred to in subsection (4)(c).

81 Further enforcement measures: procedure

(1) Provision under section 80(1) must secure the results in subsection (2).

(2) The results are that—

(a) where SEPA proposes to impose a further enforcement measure on a reservoir manager, it must give 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 SEPA in relation to the proposed imposition,

(c) after the end of the period for making such representations and objections, SEPA must decide whether to—

(i) impose the further enforcement measure (with or without modifications),

(ii) impose any other further enforcement measure which SEPA may impose,

(d) where SEPA decides to impose a further enforcement measure, the notice (the “final notice”) complies with subsection (6),

(e) the reservoir manager on whom a further enforcement measure is imposed may appeal 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 further enforcement measure,

(b) the right to make representations and objections,

(c) the circumstances in which SEPA may not impose the further enforcement measures,

(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 is given.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that SEPA may not decide to impose a further enforcement measure 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 SEPA may not decide to impose a further enforcement measure.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

(a) the reservoir manager to whom the notice of intent is given to be able to offer an 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) SEPA to be able to accept or reject such an undertaking,
(c) SEPA 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 further enforcement measure,
(b) where the further enforcement measure is a variable monetary penalty—
   (i) how payment may be made,
   (ii) the period within which payment must be made,
   (iii) any early payment discounts or late payment penalties,
(c) rights of appeal,
(d) the consequences of non-compliance.

(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 SEPA include the following—
(a) that the decision was based on an error of fact,
(b) that the decision was wrong in law,
(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
(d) in the case of a restraint notice or a restoration notice, that the nature of the requirement is unreasonable,
(e) that the decision was unreasonable for any other reason.

(8) Provision to secure the result in that subsection may include provision—
(a) about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld,
(b) requiring SEPA to publish guidance on the appeal process.

Further enforcement measures: criminal proceedings and conviction

(1) Provision under section 80(1) must secure the result in subsection (2) in any of the following cases—
(a) where a further enforcement measure is imposed on a reservoir manager,
(b) where an undertaking referred to in section 81(5) is accepted from a reservoir manager.

(2) The result is that the reservoir manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the further enforcement measure or undertaking except in a case mentioned in subsection (3).

(3) The case is where each of the following applies—
(a) a restraint notice or restoration notice is imposed on the manager, or an undertaking referred to in section 81(5) is accepted from the manager,
(b) no variable monetary penalty is imposed,
(c) the manager fails to comply with the restraint notice, restoration notice or undertaking.

(4) Provision under section 80(1) may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the reservoir manager.

83 Further enforcement measures: enforcement

(1) Provision under section 80(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to SEPA if the manager fails to comply with any of the following—

(a) a restraint notice or restoration notice imposed on the manager,
(b) an undertaking referred to in section 81(5).

(2) Provision pursuant to subsection (1) may—

(a) specify the amount of the non-compliance penalty,
(b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,
(c) provide for the amount to be determined by SEPA,
(d) provide for the amount to be determined in any other way.

(3) Provision pursuant to subsection (1) must secure that—

(a) the non-compliance penalty is imposed by notice given by SEPA,
(b) the reservoir manager on whom it is imposed may appeal against the notice.

(4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection 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 unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).

(5) An order under section 80(1) may provide that where a reservoir manager on whom a non-compliance penalty is imposed does not pay the penalty, the penalty is enforceable in like manner as an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Miscellaneous

84 Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)

(1) The consultation required by sections—

(a) 71(2) (stop notices),
(b) 76(2) (enforcement undertakings),
(c) 77(2) (fixed monetary penalties),
(d) 80(2) (further enforcement measures),

is consultation with the persons and organisations mentioned in subsection (2).

(2) The persons are—

(a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the making of the proposed order,

(b) such other persons as the Scottish Ministers consider appropriate.

85 **Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures**

Where the Scottish Ministers make provision—

(a) by order under section 71(1) (giving by SEPA of stop notices),

(b) by order under section 76(1) (acceptance of enforcement undertakings by SEPA),

(c) by order under section 77(1) (imposition by SEPA of fixed monetary penalties),

(d) by order under section 80(1) (imposition by SEPA of further enforcement measures),

the order concerned must require SEPA to publish guidance about the use of the powers conferred on it by the order.

86 **Recovery by SEPA of expenses**

(1) Provision under section 71(1) or 80(1) may include provision for SEPA, by notice, to require a reservoir manager to whom a stop notice is given or on whom a further enforcement measure is imposed, to pay the amount of any expenses reasonably incurred by SEPA in relation to (and up to the time of) the giving of the notice or (as the case may be) imposition of the measure.

(2) In subsection (1), the reference to “expenses” includes in particular—

(a) investigation expenses,

(b) administration expenses,

(c) expenses of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager required to pay the expenses may appeal against—

(a) the decision of SEPA to impose the requirement to pay expenses,

(b) the decision of SEPA as to the amount of the expenses.

(4) Provision pursuant to that subsection may include provision—

(a) about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld,

(b) requiring SEPA to publish guidance on the appeal process.
Publication of enforcement action

(1) The Scottish Ministers may by order permit SEPA to publish such information as SEPA considers appropriate (in such manner as SEPA considers appropriate) as regards cases in which it has—

(a) appointed a construction engineer, an inspecting engineer or a supervising engineer under section 65,

(b) arranged for the taking of any measure under section 69.

(2) Where the Scottish Ministers make provision by order under—

(a) section 71(1) as to the issuing by SEPA of stop notices,

(b) section 77(1) as to the imposition by SEPA of fixed monetary penalties,

(c) section 80(1) as to the imposition by SEPA of further enforcement measures,

the order concerned may permit SEPA to publish such information as SEPA considers appropriate (in such manner as SEPA considers appropriate) as regards cases in which it has done what the order permits it to do.

(3) In subsection (2), the reference to cases in which SEPA has done what the order permits it to do does not include cases where the stop notice, fixed monetary penalty or (as the case may be) further enforcement measure has been imposed but overturned on appeal.

Powers of entry

(1) A person authorised by SEPA is entitled, at any reasonable time for any of the purposes in subsection (2), to enter—

(a) land on which a controlled reservoir is situated,

(b) land on which SEPA considers there is situated a structure or area (or combination) referred to in section 1(4) in relation to which SEPA is considering requesting the making an order under that subsection,

(c) land on which a structure or area (which previously at any time has been a controlled reservoir) is situated.

(2) The purposes are to carry out an inspection, survey or other operation—

(a) to determine whether any provision of this Part applies,

(b) for the purpose of assisting SEPA in giving the reservoir a provisional risk designation or risk designation, or reviewing its risk designation,

(c) to determine whether a measure directed in a safety report has been taken,

(d) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,

(e) to determine—

(i) whether a measure directed in an inspection report has been taken (whether before or after the giving of a notice under section 67),

(ii) the period to be specified in a notice under that section,

(f) to determine whether a direction by a supervising engineer under section 48(4) has been complied with,
(g) to determine whether the records required by sections 49 and 54 are being maintained,

(h) to determine whether incidents are being reported in accordance with regulations under section 52(1),

(i) to determine whether a flood plan is being prepared in accordance with regulations under section 53(1),

(j) for the purposes of section 69,

(k) to determine what (if any) emergency measures should be taken under section 75, or for any purpose connected with taking such measures,

(l) to assess whether any offence under this Part may be being committed.

89 Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right of entry under section 88 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath as to both of the following—

(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,

(b) that any of the following applies—

(i) the conditions in subsection (3) are satisfied,

(ii) the land is unoccupied, or

(iii) the case is one of urgency.

(3) The conditions referred to in subsection (2)(b)(i) are—

(a) that the person applying for the warrant has given notice under section 90(3)(a) of the person’s intention to exercise the right,

(b) that the notice period has expired,

(c) that either—

(i) permission to exercise the right in relation to the land has been refused, or

(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—

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

(b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

90 Powers of entry: supplementary

(1) Where entry under section 88 is for a purpose in subsection (2)(k) of that section the right to enter extends to any neighbouring land.

(2) A right to enter land conferred by section 88 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—
(a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person,

(b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(3) Except for a purpose referred to in section 88(2)(k), a person may not demand entry to land which is occupied unless either—

(a) at least 7 day’s notice has been given to the occupier, or

(b) the entry is authorised by a warrant under section 89.

(4) Notice under subsection (3)(a) must—

(a) specify the purpose for which entry is required,

(b) specify so far as practicable the nature of the proposed works on the land.

(5) A person authorised by virtue of section 88 to enter land must on request produce written evidence of the authorisation.

91 Offence: preventing or obstructing entry

(1) Any person who intentionally 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-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.

92 Compensation

(1) SEPA must pay compensation in accordance with this section 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.

(2) Compensation is to be paid in respect of the damage or disturbance to—

(a) a person with an interest in the land,

(b) a person whose enjoyment of the land is disturbed.

(3) Any dispute about compensation under this section is to be determined by the Lands Tribunal for Scotland.

(4) Compensation payable under this section is to be treated, for the purposes of recovery from the reservoir manager, as expense incurred by SEPA in the exercise of its powers under section 75.
93 Reports by SEPA to the Scottish Ministers

(1) SEPA must report to the Scottish Ministers about the steps it has taken to secure the compliance by reservoir managers of controlled reservoirs with the requirements of this Part.

(2) Reports under subsection (1) must—
   (a) be at such intervals and times as the Scottish Ministers direct,
   (b) contain such information as they direct.

94 Affording of reasonable facilities to engineers

(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 functions under this Part.

(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-risk reservoir or a medium-risk reservoir, the record maintained by the manager under section 49,
      (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 construction engineer, an inspecting engineer or a supervising engineer appointed for the time being in relation to the reservoir.

95 Power of SEPA to require information and assistance

(1) The reservoir manager of a controlled reservoir must, on being requested by SEPA, provide SEPA with such information and assistance as it may reasonably seek in connection with the exercise of its powers and duties under this Part.

(2) The reservoir manager in particular—
   (a) must, on being requested by SEPA, make available to it the records referred to in section 94(2)(a),
   (b) must, on being so requested, provide SEPA with such further information or particulars as SEPA may require, in such form and manner as SEPA may by notice require.

96 Offences: sections 94 and 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 94 (affording of reasonable facilities to engineers),
   (b) the requirements of section 95 (provision of information and assistance to SEPA).
(2) A reservoir manager of a controlled reservoir who intentionally alters, suppresses or destroys a document which the person has been required by virtue of either of those sections to produce commits an offence.

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 10
MISCELLANEOUS

97 Assessment of engineers’ reports etc.

(1) The Scottish Ministers may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Part by—

(a) construction engineers,

(b) inspecting engineers,

(c) supervising 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 SEPA and the Scottish Ministers,

(f) the steps that may be taken by SEPA or the Scottish Ministers following an assessment.

98 Notice to SEPA of revocation of appointment or resignation of engineer

(1) Where the reservoir manager of a controlled reservoir revokes the appointment of a construction engineer, an inspecting engineer or a supervising engineer appointed in relation to the reservoir, the manager must give SEPA notice of the revocation and of the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns such appointment—
(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 SEPA a copy of the notice.

(3) Notice under subsection (1) or subsection (2)(a) must be given not later than 28 days after the revocation or (as the case may be) 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-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.

(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 engineer’s resignation.

Form and content of notices, reports, certificates etc.

The Scottish Ministers may by regulations make provision as to—

(a) the form and content of any notice required under this Part,

(b) the form of any report or certificate by a construction engineer or an inspecting engineer or of any notice, written statement or recommendation by a supervising engineer under this Part.

Notices by SEPA

(1) Section 123 of the Environment Act 1995 (c.25) (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be given by SEPA as if it were authorised or required to be given (or served) under that Act.

(2) Where SEPA is unable after reasonable enquiry to ascertain the name or address of a reservoir manager of a controlled reservoir, a notice by SEPA under this Part is to be treated as given to the manager if either—

(a) it is left in the hands of a person who is or appears to be resident or employed at the site of the reservoir, or

(b) it is conspicuously affixed to a building or object at the site of the reservoir.

Change to the Institution of Civil Engineers

If the Institution of Civil Engineers ceases to exist, the Scottish Ministers may by order amend references in this Part to the Institution and to its President.

Civil liability

This Part does not confer a right to claim damages in respect of a breach of an obligation imposed by the Part.
PART 2

PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

103 Remedial and restoration measures regulations

(1) In section 22 (remedial and restoration measures) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3), in subsection (3), after paragraph (b) insert—

“(c) for any of the purposes specified in paragraphs 1 to 3 of schedule 2A.

(4) Paragraphs 4 and 5 of that schedule have effect for supplementing paragraphs 1 to 3.”.

(2) After schedule 2 to that Act insert—

“SCHEDULE 2A
(introduced by section 22)

REMEDIAL AND RESTORATION MEASURES REGULATIONS: OFFENCES

Offences

1 Creating offences and dealing with matters relating to such offences, including—

(a) the provision of defences, and

(b) evidentiary matters.

2 Enabling, where a person has been convicted of an offence under the regulations, a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment).

3 Making provision which, subject to any modification that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by section 157 or 158 of the Environmental Protection Act 1990 (c.43).

Supplementary

4 (1) The regulations may provide for any such offence as is mentioned in paragraph 1 to be triable—

(a) only summarily,

(b) either summarily or on indictment.

(2) The regulations may provide for such an offence which is triable only summarily to be punishable on conviction by—

(a) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or

(b) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale),

or both.

(3) The regulations may provide for any such offence which is triable either summarily or on indictment to be punishable—

(a) on summary conviction, by—
(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or
(ii) a fine not exceeding such amount as is specified (which must not exceed the statutory maximum),
or both,

(b) on conviction on indictment by—
   (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years), or
   (ii) a fine,
or both.

Interpretation

In this schedule—
“the regulations” means regulations under section 22,
“specified” means specified in the regulations.”.

PART 3

GENERAL

104 Crown application

(1) Part 1 of this Act binds the Crown and applies to any Crown land as it applies in relation to any other land.

(2) The modifications made by Part 2 bind the Crown to the extent that the enactment modified binds the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of SEPA or a person authorised by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 88 (whether those specified in that section or the ancillary powers referred to in section 90(1) or (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—
   (a) “Crown land” means land, an interest in which—
      (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
      (ii) belongs to an office-holder in the Scottish Administration or to a government department,
(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means the office-holder or government department.

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

105 Offences by bodies corporate

(1) Where—

(a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association,

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
Ancillary provision

(1) The Scottish Ministers may by order make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provisions of this Act.

(2) An order under subsection (1) may modify any enactment, instrument or document.

Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.

(2) Any such power includes power to make—

(a) in the case of an order under section 109(1) (commencement orders), such transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(b) in the case of any other order or any regulations—

(i) such supplemental, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(ii) different provision for different purposes.

(3) Unless subsection (4) provides otherwise, a statutory instrument containing an order (other than an order made under section 109(1)) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Parliament.

(4) An order or regulations must not be made under any of the following provisions unless a draft of the statutory instrument containing the order or (as the case may be) the regulations has been laid before, and approved by a resolution of, the Parliament—

(a) section 1(6)(a),

(b) section 21(4),

(c) section 52(1) or 53(1),

(d) section 71(1), 76(1), 77(1), 80(1) or 101,

(e) section 106(1) (if the order contains supplemental provision or provision which adds to, replaces or omits any part of the text of an Act).

Defined expressions

The expressions listed in the schedule are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

Commencement and short title

(1) The provisions of this Act, except this section and sections 1, 2, 3, 7, 107 and 108, come into force on such day as the Scottish Ministers by order appoint.

(2) This Act may be cited as the Reservoirs (Scotland) Act 2010.
### SCHEDULE

*(introduced by section 108)*

**INDEX OF DEFINED EXPRESSIONS**

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 the 1975 Act</td>
<td>section 8(1)</td>
</tr>
<tr>
<td>construction certificate</td>
<td>section 36</td>
</tr>
<tr>
<td>construction engineer</td>
<td>section 31(3)</td>
</tr>
<tr>
<td>controlled reservoir</td>
<td>sections 1 and 2</td>
</tr>
<tr>
<td>controlled reservoir being abandoned</td>
<td>section 30(7)(d) (see also section 30(6))</td>
</tr>
<tr>
<td>10 controlled reservoir being altered</td>
<td>section 30(7)(a) (see also section 30(4) to (6))</td>
</tr>
<tr>
<td>controlled reservoir being constructed</td>
<td>section 30(7)(a) (see also section 30(3))</td>
</tr>
<tr>
<td>controlled reservoir being discontinued</td>
<td>section 30(7)(c) (see also section 30(5))</td>
</tr>
<tr>
<td>controlled reservoir being restored to use</td>
<td>section 30(7)(b) (see also section 30(3))</td>
</tr>
<tr>
<td>15 controlled reservoirs register</td>
<td>section 9</td>
</tr>
<tr>
<td>emergency response information</td>
<td>section 55</td>
</tr>
<tr>
<td>enforcement undertaking</td>
<td>section 76(3)</td>
</tr>
<tr>
<td>final certificate</td>
<td>section 37</td>
</tr>
<tr>
<td>fixed monetary penalty</td>
<td>section 77(4)</td>
</tr>
<tr>
<td>20 flood plan</td>
<td>section 53</td>
</tr>
<tr>
<td>further enforcement measure</td>
<td>section 80(4)</td>
</tr>
<tr>
<td>high-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>incident</td>
<td>section 52</td>
</tr>
<tr>
<td>inspecting engineer</td>
<td>section 43(2)</td>
</tr>
<tr>
<td>25 inspection compliance certificate</td>
<td>section 46(4) and (5)</td>
</tr>
<tr>
<td>inspection report</td>
<td>section 45(1)(b) and (3)</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>interim inspection compliance certificate</td>
<td>section 46(2) and (3)</td>
</tr>
<tr>
<td>low-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>medium-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>panels of reservoir engineers</td>
<td>section 25</td>
</tr>
<tr>
<td>preliminary certificate</td>
<td>section 35</td>
</tr>
<tr>
<td>provisional risk designation</td>
<td>section 17(3)</td>
</tr>
<tr>
<td>relevant works</td>
<td>section 30(7)(e)</td>
</tr>
<tr>
<td>reservoir manager</td>
<td>section 3 (see also section 4)</td>
</tr>
<tr>
<td>risk designation</td>
<td>section 18(3)</td>
</tr>
<tr>
<td>safety measure certificate</td>
<td>section 34(2) and (3)</td>
</tr>
<tr>
<td>safety report</td>
<td>section 33 (see also section 32(3) to (6))</td>
</tr>
<tr>
<td>SEPA</td>
<td>section 7</td>
</tr>
<tr>
<td>stop notice</td>
<td>section 71(3)</td>
</tr>
<tr>
<td>supervising engineer</td>
<td>section 47(2)</td>
</tr>
</tbody>
</table>
An Act of the Scottish Parliament to make provision about the regulation of the construction, alteration and management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs, for the repeal and replacement of the Reservoirs Act 1975, about offences to facilitate the achievement of the environmental objectives set out in river basin management plans; and for connected purposes.

Introduced by: Richard Lochhead
On: 6 October 2010
Supported by: Roseanna Cunningham
Bill type: Executive Bill
RESERVOIRS (SCOTLAND) BILL

EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Reservoirs (Scotland) Bill introduced in the Scottish Parliament on 6 October 2010:

   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 55–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND – RESERVOIRS ACT 1975

4. The Reservoirs Act 1975 imposes duties on persons (referred to as “undertakers”) who own, operate or use large raised reservoirs. These duties regulate maintenance and inspection as well as structural changes to large raised reservoirs and, in most cases, they require the appointment of qualified civil engineers to inspect and supervise works on reservoirs and recommend safety measures. Where an engineer recommends measures under the 1975 Act, the undertaker generally has a duty to implement those measures. “Relevant authorities” (also referred to in the Act as “enforcement authorities”) then have duties to maintain registers of information about large raised reservoirs, powers and duties to secure that undertakers comply with their duties under the Act and duties to report to the Scottish Ministers. Enforcement action involves service of written notices on undertakers who have failed to appoint engineers or implement measures recommended by engineers. Failure to comply with a notice is a criminal offence and also triggers a power for the enforcement authority to carry out the work itself and recover the costs from the undertaker.

BACKGROUND – FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

5. Part 7 of the Flood Risk Management (Scotland) Act 2009 amended the Reservoirs Act 1975 by inserting provisions which:

- transfer the enforcement responsibility from 32 individual local authorities to Scottish Environment Protection Agency (SEPA);
- require the production of flood plans;
- introduce compulsory post incident reporting;
- extend the enforcement authority powers;
- apply the Reservoirs Act 1975 to the Crown.

6. These provisions have not yet been commenced.
BACKGROUND – WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

7. The Water Framework Directive 2000/60/EC ("WFD") established a framework in the field of water policy to drive improvements in Europe’s water environment. The River Basin Management Plan process identifies measures to deliver our objectives under the WFD to address the management of impacts on the water quality of our rivers, lochs, groundwater, transitional waters and wetlands. The Plans identify that around 40% of Scotland’s water bodies are not currently meeting the WFD’s “good status” objective, as a result of the significant number of impacts on waters resulting from historic activities. These waters now require restoration activity to restore them to good status, through an effectively managed and integrated restoration framework.

8. The Water Environment and Water Services (Scotland) Act 2003 ("WEWS") empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, WEWS did not provide for the creation of offences in respect of such regulations.

THE BILL – OVERVIEW

9. The Bill is separated into 3 Parts:
   • PART 1 sets out a new regulatory regime for the safe construction and operation of reservoirs in Scotland.
   • PART 2 provides for the creation of offences to support WEWS.
   • PART 3 includes general provisions.

10. Part 1 is the largest part of the Bill. It makes provision for the compulsory registration of all reservoirs to which the Bill applies (referred to in the Bill as “controlled reservoirs”). It provides for SEPA to assess the risk (in terms of adverse consequences and probability) of an uncontrolled release of water from each registered reservoir. Different regulatory controls apply to controlled reservoirs with different risk designations. It regulates the construction of reservoirs, imposing a system of inspections, reports and certificates overseen by an engineer appointed from an approved panel. Panels of appropriately qualified engineers are to be established by the Scottish Ministers. It also sets out requirements for the supervision and periodical inspection of controlled reservoirs, as well as creating incident reporting obligations and making provision about the retention of appropriate records. It gives SEPA the power to serve enforcement notices and to step in and take certain actions where reservoir managers have failed to do so, as well as giving SEPA the power to act in an emergency to protect people or property from an escape of water from a controlled reservoir. It also enables the Scottish Ministers to make provision for SEPA to use various civil enforcement measures, intended to enable SEPA to enforce the Bill in a proportionate manner.

11. Part 2 of the Bill amends the Water Environment and Water Services (Scotland) Act 2003 to enable the creation of criminal offences to support regulations to be made under section 22 of that Act concerning the remediation and restoration of the water environment.
12. Part 3 contains general provisions about matters such as ancillary provisions, the power to make regulations, crown application and the short title.

THE BILL – SECTION BY SECTION

PART 1 – RESERVOIRS

CHAPTER 1 – CONTROLLED RESERVOIRS, RESERVOIR MANAGERS ETC.

Section 1 – Controlled Reservoirs

13. The regulatory regime provided for in the Bill only applies to “controlled reservoirs” as defined by the Bill. The definition of a “controlled reservoir” is set out in sections 1 and 2 and includes structures designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Subsection (3) provides that combinations of such structures are to be treated as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can or does flow between them and that there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity and flow. This is intended to ensure that cascades or series of interlinked reservoirs are subject to control. Such combinations have the potential to cause a similar degree of risk to public safety as larger individual reservoirs, notwithstanding that the individual structures that comprise the combination might only hold a relatively small volume of water.

14. Subsection (4) enables Scottish Ministers to provide by order that a particular structure or combination of structures is to be treated as a controlled reservoir notwithstanding that it may not meet the criteria set out in subsection (2) or (3). When doing so the Scottish Ministers must take into account the potential adverse consequences of an uncontrolled release of water from the structure or combination and the probability of such a release. This provision enables Ministers to treat a smaller reservoir as a controlled reservoir if it is thought that, despite its smaller capacity, the risk that it poses is nevertheless a serious one.

15. Subsection (6) enables Scottish Ministers to make provision by order for a different volume of water to be substituted for the volume currently specified in sections 1(2), (3)(c) and (4)(b)(ii), sections 30(3) and (5), and sections 33(2)(b) and 37 (3)(b). This enables Ministers to alter the threshold above which reservoirs are deemed to be controlled reservoirs and therefore subject to the regulatory regime of the Bill. Subsection (6)(b) enables Scottish Ministers to determine in regulations when a loch or area is considered to be artificial or partly artificial, how the volume of water capable of being held is calculated, and the meaning of “natural level” and “surrounding land” for the purposes of this Part of the Bill.

Section 2 – Controlled reservoirs: supplementary

16. Section 2(1) sets out some of the elements that comprise a “controlled reservoir” to avoid any doubt about whether these elements are covered by the Bill. Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Bill.
Subsection (3) enables Scottish Ministers to define with more precision what structures are not controlled reservoirs and enables them to exclude other things from being (or being treated as) controlled reservoirs.

Section 3 – Reservoir Managers

17. Responsibility for complying with most of the requirements of the Bill is placed upon individuals referred to in the Bill as “reservoir managers”. Section 3 sets out who the reservoir manager of a controlled reservoir is for the purposes of the Bill.

18. Subsection (2) provides that Scottish Water is the reservoir manager for all controlled reservoirs that are managed or operated by it. Where Scottish Water is the reservoir manager on this basis, there can be no other reservoir managers of that reservoir.

19. Taken together, subsections (3) to (8) determine who the reservoir manager is where Scottish Water do not manage or operate the reservoir. Where the whole of the reservoir is used for a business, the business is the reservoir manager. If no business uses the reservoir, any lessee of the reservoir will be the reservoir manager. If there is no lessee, the responsibility of being reservoir manager falls to the owner (or owners) of the reservoir.

20. Where there is more than one business using the reservoir, each will be a reservoir manager (i.e. there will be more than one reservoir manager).

21. Where part only of the reservoir is used for a business, both the business and the lessee of the other part will be the reservoir manager. If the other part is not let, the owner of that part will be reservoir manager.

22. Where there are no relevant businesses for the whole of the controlled reservoir, and part only of the reservoir is let, the reservoir managers will be the lessees and the owner or owners of any unlet parts. Where there are no lessees, any owners will be the reservoir manager.

23. Subsection (9) provides that people with limited rights to use the reservoir for the catching of fish who have no responsibility for the management or operation of the reservoir cannot be reservoir managers under the Bill (unless they are lessees or owners of the reservoir and are reservoir managers by virtue of subsections (7) or (8)). Section 3 also determines who the reservoir manager of a reservoir under construction or being restored to use is and subsection (10) defines a “prospective controlled reservoir” for the purposes of the section.

Section 4 – Multiple reservoir managers: supplementary

24. Section 4 makes provision about the situation where there is more than one reservoir manager in relation to a controlled reservoir. Section 4(2) provides that the requirements of Part 1 of the Bill apply to each and every reservoir manager separately and any duties of the reservoir manager set out under the Bill have to be complied with by each of them. To avoid the duplication that this may cause and reduce the administrative burden placed on reservoir managers by the Bill, subsection (3) enables reservoir managers to nominate one of their number to fulfil any requirements of Part 1 to which they are all subject. Where such a nomination is
made, subsection (4) requires the nominating managers to give notice of the nomination to SEPA and to any engineer appointed in relation to the reservoir. Where such a nomination is made, SEPA may (if it so chooses) notify and consult only the nominated reservoir manager (to the exclusion of other reservoir managers of that reservoir) when required to consult the reservoir manager of that reservoir under the Bill. Similarly, engineers appointed under the Bill may give certificates and other documents that they are required to issue under the Bill to the nominated reservoir manager only.

Section 5 – Duty of multiple reservoir managers to cooperate

25. Section 5 requires reservoir managers, where there are 2 or more of them in respect of a controlled reservoir, to cooperate with each other as far as is necessary to enable all of the reservoir managers for the reservoir to comply with the provisions listed in Subsection (1). Subsection (2) makes it an offence not to cooperate under subsection (1). Subsections (3) and (4) set out the maximum penalties associated with that offence.

Section 6 – Guidance by SEPA: management of reservoirs

26. Section 6 enables Scottish Ministers to direct SEPA to publish guidance regarding the management of controlled reservoirs by reservoir managers and cooperation among multiple reservoir managers.

Section 8 – The 1975 Act and its repeal

27. The current regulatory regime governing the safety of reservoirs is provided by the Reservoirs Act 1975. The Bill is intended to replace that regime and so section 8(2) repeals the Reservoirs Act 1975 for Scotland.

CHAPTER 2 – REGISTRATION

Section 9 – Controlled reservoirs register

28. Section 9 requires SEPA to establish and maintain a register of controlled reservoirs.

29. Subsection (2) lists the information which must be included in the register for each controlled reservoir, which includes information such as the name and location of the reservoir, its maximum capacity, and the name and address of the reservoir manager, as well as copies of any reports, certificates and written statements relating to the reservoir, and a map showing where the water would be likely go in the event of an uncontrolled release of water from the reservoir. Subsection (3) enables Scottish Ministers to make further provision in regulations to require further information to be contained in the register and make provision about the manner in which information in the register is to be recorded in the register.

30. Subsection (4) requires SEPA to make the register available for public inspection and subsection (5) enables the Scottish Ministers by order to stipulate where it is to be kept.
Section 10 – Reservoir managers’ duty to register

31. This section requires the reservoir managers of controlled reservoirs to register their reservoirs with SEPA. Subsection (2) enables Scottish Ministers to make further provision in regulations about the information to be registered and the timing by which information, or any change to information has to be registered.

Section 11 – Controlled reservoirs required to be registered under the 1975 Act

32. This section requires controlled reservoirs which were previously “large raised reservoirs” under the 1975 Act (and therefore already registered under that Act) to be registered by SEPA within 6 months of the date of commencement of section 9 of the Bill.

Section 12 – Controlled reservoirs not required to be registered under the 1975 Act

33. This section enables Scottish Ministers to specify by order the date by which reservoirs which were not required to be registered under the 1975 Act have to be registered. Subsection (1) requires reservoir managers of these reservoirs to register the reservoir by the time specified in the order.

Section 13 – Controlled reservoirs which become controlled reservoirs after the relevant date

34. This section requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. Preliminary certificates are issued under section 35 when the construction engineer overseeing the construction of the reservoir considers that the reservoir may safely be filled (either wholly or partly) with water.

Section 14 – Registration: supplementary

35. Section 14(1) and (2) require reservoir managers to notify SEPA within 28 days of any change in the reservoir manager of a controlled reservoir and the date of that change. Where SEPA has been informed of a change in management of a reservoir under subsection (1) or (2), subsection (3) requires SEPA, as soon as reasonably practicable, to inform the new reservoir manager of the duties incumbent upon them under the Bill. Subsection (4) enables the Scottish Ministers to make regulations enabling SEPA to charge fees in relation to registration, and requiring SEPA to prepare and publish guidance on the registration process.

Section 15 – Transfer of information from existing relevant authorities

36. This section contains detailed provision about the transfer of information from local authorities (who are the enforcement authority under the 1975 Act) to SEPA (who will enforce the new regime under the Bill). Subsection (1) requires local authorities to hand over relevant registers, records and other relevant information to SEPA. Subsection (2) requires each local authority to give SEPA any assistance it may reasonably require for the purposes of taking over as enforcement authority. Subsections (3) to (6) contain transitional arrangements to ensure that acts by local authorities when they were enforcement authorities remain valid and to allow SEPA to take over responsibility for ongoing legal proceedings and other work.
Section 16 – Offences: registration

37. Section 16(1) provides that it is an offence for a reservoir manager to fail to comply with the specified registration requirements. Subsection (2) sets out that it is an offence to knowingly or recklessly give false information in relation to registration or changes of reservoir managers. Subsections (3), (4) and (5) set out the maximum penalties for anyone found guilty of an offence under this section.

CHAPTER 3 – RISK DESIGNATION

Section 17 – Provisional risk designation

38. The Bill is intended to create a risk-based regulatory regime with differing regulatory requirements for controlled reservoirs designated as being of different risk categories. The risk designation process is set out in sections 17 to 24.

39. Section 17 requires SEPA to give controlled reservoirs a provisional risk designation as soon as reasonably practicable after it has registered the reservoir.

40. The categories of risk provided for in the Bill are high, medium and low risk. Subsection (2) requires SEPA to take account of the matters in section 21 when giving the risk designation, which are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release.

41. Reservoir managers will have the opportunity to make representations to SEPA regarding the provisional designation. Subsection (4) provides for the giving of a notice by SEPA to the reservoir manager specifying the provisional risk designation, the reasons for it, how representations may be made in respect of it, and the time limit for making any such representations.

Section 18 – First risk designation

42. Following the giving of a provisional risk designation, SEPA must give the controlled reservoir a risk designation. Section 18 requires SEPA, when doing so, to take account of any representations made by the reservoir manager in response to the provisional risk designation. For this reason, SEPA may not give a risk designation under this section earlier than 2 months after notice of the provisional risk designation was given.

43. Reservoir managers have a right of appeal under section 22 against the risk designation and the notice issued by SEPA notifying the reservoir manager of the risk designation must inform the reservoir manager of that right.

Section 19 – Periodic review of risk designation

44. Section 19 requires SEPA to review the risk designation of a controlled reservoir should SEPA have reason to believe that the risk designation is no longer appropriate or, in any event, at least every 6 years. As with the initial risk designation, SEPA must provisionally determine the
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

risk designation that is under periodic review and the reservoir manager will have 2 months to make representations regarding the risk designation given as a result of the periodic review.

Section 20 – Decision following a periodic review

45. Section 20 requires SEPA after taking into account any representations made by the reservoir manager under Section 19(3) to either confirm the reservoirs designation has not changed or give the reservoir a new risk designation. Subsection (3) ensures that the reservoir manager has the full 2 months to make any representations under section 19(3) by preventing SEPA from making a decision about a risk designation before the end of the 2 month period. Subsection (4) requires SEPA to give the reservoir manager a notice specifying the risk designation, the reasons for the risk designation and giving information about the right to appeal under section 22.

Section 21 – Risk designation and periodic review: matters to be taken into account

46. Section 21 details the matters that SEPA is to take into account when making a provisional risk designation or a risk designation under sections 17(2), 18(2), 19(2) and 20(2). The matters SEPA must take into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out examples of the matters SEPA may take into account when assessing the probability of an uncontrolled release. Subsection (4) enables Scottish Ministers after consultation with SEPA and the Institution of Civil Engineers (ICE) to make regulations about any other matters SEPA should take into account when making a risk designation.

Section 22 – Review of SEPA’s decisions relating to risk designations

47. Section 22 enables reservoir managers to seek review of risk designations given by SEPA under sections 18(5) and 20(4). Subsection (2) requires applications for review to be made within 12 months of the date the notice of designation was given. Subsection (3) makes it explicit that the risk designations continue to apply until the review is completed. Subsection (4) provides that if the application for review is upheld then the original designation ceases to apply from the date of SEPA’s decision. Subsections (5) and (6) enable SEPA to charge a fee in relation to applications for review, provided the fee is returnable if the review results in the appeal being upheld.

Section 23 – Guidance by SEPA on risk designation

48. This section enables Scottish Ministers to direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs risk designations and reviewing risk designations.

Section 24 – High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

49. This section sets out that references in this Part to high-risk, medium risk and low risk reservoirs are references to controlled reservoirs designated as such under sections 18, 20 or if
subject to subsection (3) of section 22, section 22. Subsection (2) sets out that Chapter 6 makes provision about the requirements related to high and medium risk reservoirs.

CHAPTER 4 – PANELS OF RESERVOIR ENGINEERS

Section 25 – Panels of Engineers

50. Engineers play an important role in the system of supervision, inspection, certification and reporting established by the Bill. Section 25 obliges the Scottish Ministers to establish one or more panels of reservoir engineers for the purposes of the Bill and to appoint civil engineers who they consider fit and appropriately qualified to be members of those panels. Only engineers who are members of the appropriate panel may be appointed as engineers under the Bill.

Section 26 – Appointments and removal of panel members

51. Section 26 sets out detailed provisions for the appointment of engineers to (and their removal from) panels established under Section 25.

Section 27 – Dissolution of panels etc.

52. Section 27 enables Scottish Ministers to dissolve a panel established under section 25.

Section 28 – Review of decisions to appoint or remove civil engineers from panels etc

53. Section 28 enables civil engineers who have applied to the panel or been removed from a panel to apply to Scottish Ministers for a review of their decision.

Section 29 – Consultation with Institution of Civil Engineers

54. This section places a duty on Scottish Ministers to consult the President of the Institution of Civil Engineers before establishing a panel, making an appointment to a panel, or taking other specified steps in relation to panels. Subsection (2) enables Scottish Ministers to reimburse the Institution of Civil Engineers for any expenses they incur under this section.

CHAPTER 5 – CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Section 30 – Application of Chapter 5

55. Chapter 5 regulates the construction of controlled reservoirs by imposing a requirement upon reservoir managers to appoint a construction engineer to supervise the relevant works, and by imposing a system of reporting and certification in respect of the works. Section 30 sets out the works that are to be treated as construction of a controlled reservoir for the purposes of the Bill, which include restoration to use, alterations to capacity, discontinuance (i.e. reducing capacity below 10,000m³) and abandonment (i.e. rendering a reservoir incapable of containing water above the natural level of the surrounding land). Unless such works are being carried out, there is no requirement to appoint a construction engineer.
Section 31 – Notice to SEPA and appointment of construction engineer

56. This section requires reservoir managers of controlled reservoirs which are to be subject to relevant works to appoint a construction engineer to supervise the construction or alteration. At least 28 days before the works commence the reservoir manager must give SEPA notice of the proposed works and notice of the construction engineer’s appointment. A construction engineer is an engineer from the appropriate panel appointed to supervise the relevant works until a final certificate is issued in respect of the works. The persons listed in subsection (5) are disqualified from being appointed as a construction engineer in relation to a particular reservoir.

Section 32 – Inspection, reports, supervision of works etc. by construction engineer

57. Section 32 requires the construction engineer to supervise the reservoir and any relevant works until a final certificate is issued in respect of the works. Subsection (2) requires the engineer to inspect the reservoir and design any construction or alteration to the reservoir. Subsection (3) enables the construction engineer to issue a safety report to the reservoir manager prepared in accordance with Section 33. Where the reservoir is to be restored to use or abandoned, subsections (4) and (5) require the construction engineer to issue to the reservoir manager such a report no later than 9 months after appointment. Where a construction engineer has been appointed by SEPA under section 63(2), subsection (6) requires the construction engineer to give the reservoir manager a safety report as soon as practicable after their appointment. Subsection (7) requires the construction engineer who issues the report, to give SEPA a copy of the report within 28 days of issuing it.

Section 33 – Safety reports

58. Section 33 sets out the information which must be included in a safety report. Subsection (2) sets out particular information that the safety report must include where the reservoir is being restored to use, discontinued, or abandoned.

Section 34– Safety reports : Compliance

59. This section requires reservoir managers to comply with any direction in a safety report issued to the reservoir manager. Subsection (2) requires the engineer to issue a safety measure certificate to the reservoir manager within 28 days of being satisfied that a measure directed in the safety report has been taken. Subsection (3) requires safety measure certificates to specify the measures taken and any measures which are still to be taken. Subsection (4) requires the construction engineer to give SEPA a copy of the safety measure certificate no later than 28 days after issuing it.

Section 35 – Preliminary certificates

60. This section requires the construction engineer to issue a preliminary certificate when he or she considers that the reservoir that is subject to relevant works may be safely wholly or partially filled with water or (in the case of a reservoir that already contains water) that the level of water should be reduced. A preliminary certificate must specify a level that the water in the reservoir must not exceed, require the reservoir manager to ensure that the level of water remains below that level, and specify any other requirements the engineer considers appropriate about the
manner in which the water level may be increased or decreased. The reservoir manager of a controlled reservoir must (by virtue of section 38) comply with the requirements of any preliminary or final certificate for the time being applicable to the reservoir.

61. Subsection (3) requires the construction engineer to give a copy of the preliminary certificate to SEPA within 28 days of issuing it. Subsection (4) sets out that the most recent preliminary certificate issued supersedes any previous preliminary certificates applicable to the reservoir in respect of those works. Subsection (5) sets out that a final certificate applicable to the reservoir supersedes any preliminary certificates in respect of those works.

Section 36 – Construction certificates

62. This section requires the issue of construction certificates by the construction engineer as soon as is reasonably practicable, once he or she is satisfied that the construction or alteration has been completed to a satisfactory standard. Subsection (2) requires the construction certificate to be issued before or at the same time as the final certificate. Subsection (3) requires the construction certificate to certify that the construction has been carried out effectively in accordance with the drawings and descriptions included along with the certificate, to include an annex containing detailed drawings and descriptions of the works for the construction or alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works and any other matters specified by Scottish Ministers in regulations. Subsection (4) requires the construction engineer to give SEPA a copy of the report within 28 days of issuing it.

Section 37 – Final certificates

63. Where a controlled reservoir is being constructed or altered, except where it is being discontinued or abandoned, subsection (1) requires construction engineers to issue a final certificate to the reservoir manager within 28 days of being satisfied that the reservoir is sound and satisfactory and may be used safely for the collection and storage of water.

64. Where the final certificate relates to a high risk reservoir subsection (2)(b) requires the final certificate to recommend when an early inspection should take place (if the construction engineer considers one should be undertaken). If the reservoir is a high or medium risk reservoir, subsection (2)(c) requires the final certificate to specify any matter that the construction engineer considers should be monitored by the supervising engineer until the first inspection of the reservoir under section 44. Subsection (2)(d) requires the final certificate to impose requirements that the water level must not exceed the level specified in the certificate, that the reservoir manager must ensure that the level does not exceed that level, and that the engineer may set out requirements as to the manner in which water levels may be increased or decreased.

65. Subsection (3) requires the construction engineer of a controlled reservoir which is being discontinued, to issue a final certificate to the reservoir manager within 28 days of being satisfied that the discontinuance has been safely completed, that the resulting structure is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.
66. Subsection (4) requires where a reservoir is being discontinued that the final certificate must state whether the construction engineer considers that the discontinuance has been safely completed and 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 and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.

67. Subsection (5) requires the construction engineer, where a reservoir is being abandoned to issue a final certificate to the reservoir manager within 28 days of being satisfied that the abandonment has been safely completed and that the resulting structure is incapable of filling with water above the natural level of any part of the surrounding land.

68. Subsection (6) requires where a reservoir is being abandoned that the final certificate must state whether the construction engineer considers that the abandonment has been safely completed and that the resulting structure or area is incapable of filling above the natural level of any part of the surrounding land.

69. Subsection (8) requires that a copy of the construction certificate must be attached to the final certificate when the reservoir has been constructed or altered. Subsection (9) requires the construction engineer to give SEPA a copy of the final certificate within 28 days of issuing. If a final certificate has not been issued within 5 years of the issue of the preliminary certificate, subsection (10) requires the construction engineer to give the reservoir manager a written explanation of the reasons why within 28 days of the expiry of the 5 year period. Subsection (10)(b) requires the construction engineer to give the reservoir manager a written explanation of the reasons at 12 months intervals thereafter until the final certificate is issued and subsection (10)(c) requires the construction engineer to send each of the written statements to SEPA within 28 days of being given.

Section 38 – Preliminary and final certificates: Compliance

70. Section 38 requires reservoir managers to comply with the requirements of any preliminary and final certificates applicable to the controlled reservoir at that time.

Section 39 – Termination of supervision by construction engineer

71. This section makes it clear that the obligation of a reservoir manager to appoint a construction engineer in respect of relevant works to a controlled reservoir comes to an end when the engineer gives a copy of the final certificate to SEPA in accordance with Section 37(9). This step marks the normal end-point for the involvement of a construction engineer in relation to the relevant works.

Section 40 – Offences: construction, alteration, restoration to use, abandonment

72. This section makes it an offence to fail to comply with Section 31(1) or (2)(a), Section 31(2)(b), 34(1) Section 38. Subsection (2) and (3) set out the liabilities of anyone committing an offence under this section.
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the
Scottish Parliament on 6 October 2010

Section 41 – Defences: offences under section 10(1)(d) or (e)

73. Section 40 sets out acceptable defences to offences under section 40.

Section 42 – Controlled reservoirs subject to relevant works at commencement

74. Section 42 sets out transitional arrangements for the Bill to apply to controlled reservoirs already under construction or alteration when the Bill is commenced. Subsection (2) applies the whole of Chapter 5 and sections 63 to 65 to reservoirs which were previously “large raised reservoirs” within the meaning of the Reservoirs Act 1975 and which are subject to relevant works on commencement. Where a reservoir is not a large raised reservoir in terms of the 1975 Act and is subject to relevant works at commencement of the Bill, Chapter 5 and sections 63 to 65 apply except that the reservoir manager must notify SEPA of the works, appoint a construction engineer, and notify SEPA of that appointment, all within 28 days of commencement of section 30. The construction engineer must also give the reservoir manager a safety report as soon as reasonably practicable after being appointed and in any event within 9 months of appointment.

CHAPTER 6 – OTHER REQUIREMENTS : HIGH-RISK RESERVOIRS AND MEDIUM RISK RESERVOIRS

Section 43 – Appointment of inspecting engineer etc

75. This section requires managers of high risk and medium risk reservoirs (which are not being supervised by a construction engineer) to appoint an inspecting engineer. Subsection (1)(b) requires the reservoir manager to notify SEPA of the appointment within 28 days. Subsection (2) requires the appointed inspecting engineer to carry out inspections as set out in Section 44. Subsection (3) sets out who may be appointed and requires the engineer to be a member of a panel of reservoir engineers established under Section 25. Because inspecting engineers are intended to have a degree of independence from the reservoir manager that appoints them, subsection (4) sets out that an engineer is disqualified from being appointed as an inspecting engineer in relation to a particular reservoir if he or she is employed by a reservoir manager of that reservoir or if he or she has previously been (or is connected to) a construction engineer for the reservoir.

Section 44 – Inspections: timing

76. This section requires inspections of high risk reservoirs to be carried out within 2 years of a final certificate being issued for the reservoir, at any time recommended by the supervising engineer and within 10 years of the latest inspection. Subsection (2) requires medium risk reservoirs to be inspected at such times as the supervising engineer recommends. Subsection (3) defines the term “supervising engineer” for the purposes of Sections 45 and 47.

Section 45 – Inspections: duties of inspecting engineers etc.

77. This section requires the inspecting engineer to inspect the reservoir, issue an inspection report to the reservoir manager within 9 months of completing the inspection, and issue inspection compliance certificate in accordance with section 46. Subsection (2) requires the
reservoir manager to give the inspecting engineer a copy of the latest inspection report for the reservoir if they have one. Subsection (3) requires the inspection report to include any measures the inspecting engineer considers should be taken in the interest of safety and any measures the inspecting engineer considers should be taken to maintain the reservoir. It also requires the inspection report to specify whether any of the measures from the previous report are not included in the current report and why. Subsection (3)(c) requires the report to direct the reservoir manager to undertake the measures specified in the report within a specified period of time. Subsections (3)(d) and (e) require inspection reports to specify the timing of the next inspection and any matters that should be monitored by the supervising engineer until that inspection occurs.

78. Subsection (4) requires the inspecting engineer to give a copy of the report to SEPA and the supervising engineer within 28 days. Subsection(5) defines the terms “the inspecting engineer” and “the reservoir manager” for the purposes of section s 45 and 46.

Section 46 – Inspections reports: compliance

79. This section requires reservoir managers to comply with the directions in the inspection report. When measures in the inspection report have been completed. Subsection (2) requires the inspecting engineer to issue an interim compliance inspection certificate. Subsection (3) lists the things that are to be included in an interim inspection compliance certificate. When the inspecting engineer is satisfied all of the measures have been completed subsection (4) requires him or her to issue the reservoir manager with an inspection compliance certificate within 28 days. Subsection (5) lists the things which must be included in an inspection compliance certificate. Subsection (6) requires the engineer to give a copy of the certificates under this section to SEPA within 28 days of issue.

Section 47 – Appointment of supervising engineers etc.

80. If the reservoir is not under the supervision of a construction engineer, this section requires the reservoir manager of high and medium risk controlled reservoirs to appoint a supervising engineer and notify SEPA of the appointment within 28 days. A supervising engineer must be in place at all times unless the reservoir is under the supervision of a construction engineer. Subsection (2) defines a supervising engineer as being an engineer appointed under this section to supervise the reservoir at all times, when the reservoir is not under the supervision of a construction engineer. Subsection (3) requires the supervising engineer to be a member of a panel of reservoir engineers established under section 25 who is eligible to be appointed under this section. Unlike inspecting engineers, there is nothing to prevent a supervising engineer being an employee of the reservoir manager or having previously been a construction engineer in relation to the reservoir.

Section 48 – Supervising engineer and monitoring of reservoir

81. This section requires the appointed supervising engineer to supervise the reservoir. Subsection (2) lists the things he or she must do including notifying the reservoir manager of any matters which could affect the safety of the reservoir, monitor compliance with the final certificate, supervise the implementation of directions in the latest report, notify the reservoir manager and SEPA of any failure to comply with the final certificate, monitor any matter
specified in certificates or inspection reports, supervise any proposed draw-down of the reservoir and monitor the reservoir manager’s recording of water levels and record keeping.

82. Subsection (7) requires the supervising engineer to give the reservoir manager an annual written statement of the steps taken by the supervising engineer in relation to his or her responsibilities under subsection (2) (a) to (f) and any measures taken by the reservoir manager in the interest of safety or to maintain the reservoir. Subsection (9) requires the supervising engineer to send a copy of this written statement to SEPA within 28 days.

83. If the supervising engineer considers that a reservoir should be inspected, subsection (3) requires the supervising engineer to give a written recommendation to this effect to the reservoir manager. Subsections (4) and (5) require the reservoir manager to carry out physical inspections of the reservoir at specified intervals if directed by the supervising engineer and to notify the supervising engineer of these physical inspections and anything that may affect the safety of the reservoir which was identified during the inspection. Subsection (8) requires the supervising engineer to provide the reservoir manager with emergency contact details. Subsection (10) enables Scottish Ministers to publish guidance on the supervision of high and medium risk reservoirs. Subsection (11) defines the terms “draw-down”, “the supervising engineer” and “the reservoir manager” for the purposes of this section.

Section 49 – Recording of water levels etc and record keeping etc.

84. This section requires the reservoir manager of high and medium risk reservoirs to record and maintain specific matters in relation to the reservoir. Subsection (1) lists the matters to be recorded under this section. Subsection (2) enables Scottish Ministers to make further provision in regulations as to the information to be recorded by reservoir managers and the form of the record to be maintained. Subsection (3) enables construction engineers, inspecting engineers or supervising engineers appointed to a reservoir to direct the reservoir manager as to the manner in which the records are to be kept and how often they should be updated. Subsection (4) requires the reservoir manager to comply with any such directions. Subsection (5) requires the reservoir manager to install any instruments necessary to provide the information to be recorded under this section.

Section 50 – Offences: inspections, supervision, record keeping

85. This section makes it an offence to fail to comply with Sections 43(1)(a), 44, 43(1)(b), 46(1), 47(1)(a) and 47(1)(b). Directions under section 48(4) and section 49. Subsection (2) sets out the liabilities of anyone committing an offence under this section.

Section 51 – Defences: offence under section 49(1)(c)

86. Section 51 sets out certain defences to offences under section 50(1)(c).
CHAPTER 7 – OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

Section 52 – Incident reporting

87. This section enables the Scottish Ministers to make provision in regulations for reporting incidents which may affect the safety of controlled reservoirs.

88. Subsection (2) provides an indicative list of what regulations may cover.

89. Subsection (3) sets consultation requirements which the Scottish Ministers must comply with before making regulations.

Section 53 – Flood plans

90. This section enables the Scottish Ministers to make provision in regulations for the preparation of flood plans for controlled reservoirs. These plans would set out the action which the reservoir undertaker would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

91. Subsection (3) provides an indicative list of what the regulations may cover. Subsection (4) sets consultation requirements which the Scottish Ministers must comply with before making regulations.

Section 54 – Maintenance of records

92. This section requires reservoir managers of controlled reservoirs to maintain a record of relevant documents. Subsection (4) lists the documents which must be kept.

Section 55 – Display of emergency response information

93. This section requires reservoir managers of controlled reservoirs to ensure that emergency response information is displayed at or near the reservoir. Subsection (2) enables the Scottish Ministers to make further provision about the information which must be displayed in regulations. Subsection (3) lists the matters which, in particular, may be specified in the regulations under subsection (2). Subsection (4) enables SEPA to give directions to reservoir managers of controlled reservoirs as to the manner and location of the information to be displayed. Subsection (6) requires the reservoir manager to comply with any such directions from SEPA.

Section 56 – Offences: record keeping, display of emergency response information

94. This section makes it an offence to fail to comply with the requirements of section 54 and 55. Subsection (2) sets out the liabilities of anyone committing an offence under this section.
CHAPTER 8 – DISPUTE REFERRAL

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

95. Chapter 8 provides for a form of arbitration between reservoir managers and construction or inspecting engineers. If a reservoir manager disagrees with a direction in safety report or an inspection report, they can challenge that direction by referring it to a referee. Section 57(3) suspends any direction thus challenged until the reference is determined by the referee or withdrawn by the reservoir manager.

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

96. This section enables reservoir managers to challenge requirements in preliminary and final certificates. Subsection (2) lists the matters which can be challenged under this section. Subsection (3) suspends any direction challenged under this section until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 59 – Appointment of referee

97. This section requires referees appointed under this section to be appointed by agreement between the reservoir manager and the relevant engineer or, where no agreement can be reached by Scottish Ministers. Subsection (2) enables engineers to be appointed as referees if they are a member of a panel established under section 24 and is not disqualified from being appointed under this section in relation to the reservoir concerned. Subsection (3) lists the situations where an engineer would be disqualified from being appointed under this section. Subsection (4) defines “the relevant engineer” for the purposes of this section, section 60 and section 61.

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

98. This section enables the referee to modify the directions subject to referrals under section 57. Subsection (3) requires the referee to modify the report, any relevant safety measure certificates or interim inspection compliance certificates if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified reports if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision. Subsection (7) defines “any necessary modification”.

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

99. This section enables the referee to modify the directions subject to referrals under section 58(1). Subsection (3) requires the referee to modify the certificate if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified certificates if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision.
Section 62 – Procedure

100. This section enables Scottish Ministers to make provision in regulations as to the time, manner and procedure of referrals and expenses of the proceedings and investigations including the remuneration of the referee. Subsection (2) provides for the expenses of the referee to be paid by the reservoir manager.

CHAPTER 9 – CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Section 63 – Enforcement Notice: appointment of engineer

101. This section enables SEPA to serve an enforcement notice requiring the reservoir manager to appoint a construction, inspecting or supervising engineer, and notify SEPA of that appointment. Subsection (3) defines “the relevant appointment” for sections 65 and 66.

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

102. This section makes it an offence not to comply with notices under section 63(2). Subsection (2) sets out the liabilities of anyone committing an offence under this section.

Section 65 – Appointment of engineer by SEPA

103. This section enables SEPA to appoint a relevant engineer where the reservoir manager has failed to do so. This section applies when a notice served under Section 63 has not been complied with. SEPA will be able to reclaim any expenses directly from the reservoir manager.

Section 66 – Appointment by SEPA: engineer’s report, certificates, recommendations etc

104. This section applies when SEPA have made an appointment under Section 65. Any reports, statements or certificates are to be first given to SEPA by the relevant engineer, and subsequently copied to the reservoir manager no more than 28 days later. Paragraph (a) allows for the safety measure certificate to be provided by the construction engineer to SEPA where SEPA has appointed the construction engineer.

Section 67 – Enforcement Notice: safety and other measures

105. This section enables SEPA to serve an enforcement notice where a reservoir manager has failed to comply with the direction in either a safety report (under section 34(1)) or an inspection report (under section 46(1)). SEPA’s enforcement notice should specify a timeframe within which the reservoir manager must comply, the reasons for considering that this section applies and any steps SEPA consider must be taken to take the measure. A timeframe specified under subsection (2) should only be specified after consultation with a panel engineer under subsection (3).
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Section 68 – offence: failure to comply with notice under section 67(2)

106. This section makes it an offence not to comply with a notice under section 67(2). Subsection (2) sets out the liabilities of anyone committing an offence under this section.

Section 69 – SEPA’s power to arrange taking of safety and other measures

107. This section creates powers for SEPA to appoint a relevant engineer to oversee compliance with a measure previously specified in a report. This section applies when a notice served under section 67(2) has not been complied with. Subsection (4) requires the reservoir manager to pay any reasonably incurred expenses incurred by SEPA under this section.

Section 70 – Offences under section 40(1)(d) and 50(1)(c): further remedies

108. Section 70 enables the court, where a manager has committed an offence through failure to comply with directions in either a safety or inspection report, to order the reservoir manager to comply with the direction and to undertake any mitigating or remedial work deemed appropriate. Subsection (3) enables the court to extend the period for undertaking such work.

Section 71 – Stop notices

109. This section enables Scottish Ministers by order to allow SEPA to issue a stop notice to a reservoir manager. Subsection (3) defines a stop notice as a notice which contains instructions to a reservoir manager to stop an activity which SEPA believe could cause damage to the structure, or could cause any other kind of infringement. Subsection (4) lists the circumstances in which a stop notice can be issued.

Section 72 – Stop notices: procedure

110. This section specifies the conditions under which SEPA may issue a stop notice when the reservoir manager is carrying out activities which SEPA believe pose a significant risk of an uncontrolled release of water or the activity is an offence under the Bill. Subsection (3) specifies what information must be provided in any stop notice. Subsections (4) and (6) specify circumstances in which the reservoir manager is entitled to appeal against a stop notice and a completion certificate respectively. Subsection (5) enables Scottish Ministers to provide for SEPA to charge a fee in relation to appeals under this section which is returnable if the appeal is upheld and to publish guidance on the appeals process.

Section 73 – Stop notices: compensation

111. This section allows SEPA to provide financial compensation to a reservoir manager who has been negatively affected by a stop notice. Subsection (2) specifies that this must be ordered by the Scottish Ministers. Subsection (3) allows a reservoir manager to appeal against either a negative decision to compensate, or against how much money is awarded.
Section 74 – Stop notices: enforcement

112. This section makes it an offence not to comply with a stop notice and sets out the liabilities of anyone committing an offence under this section.

Section 75 – Emergency powers

113. This section enables SEPA to take emergency action to prevent an uncontrolled release of water that would cause harm to people or property. Subsection (2) enables SEPA to take any necessary action to prevent such an event, or to limit the effects. Subsection (3) requires SEPA to take any such measures in consultation with a panel engineer. Subsection (5) requires SEPA to notify the reservoir manager of any measures deemed necessary under this section.

Section 76 – Enforcement undertakings

114. This section enables Scottish Ministers to make provision by order allowing SEPA to receive an enforcement undertaking from a reservoir manager. Enforcement undertakings allow reservoir managers who may have committed an offence under the Bill to agree with SEPA that the reservoir manager will take such steps to rectify the situation as may be agreed in exchange for immunity from prosecution. Subsection (3) defines “enforcement undertaking” for the purposes of the Bill. Subsection (4) specifies the necessary contents of such an undertaking. Subsection (5) specifies the subsequent immunity from sanctions that a reservoir manager would receive, unless the reservoir manager does not deliver the promises specified in the undertaking. Subsection (6) lists the matters which in particular the Scottish Ministers may provide for in an order under subsection (1).

Section 77 – Fixed monetary penalties

115. This section allows Scottish Ministers to make provision by order about the imposition of fixed monetary penalties on reservoir managers in relation to offences under this Part. Subsection (2) requires Scottish Ministers to consult with representative organisations and such other persons Scottish Ministers consider appropriate under section 84 before making an order under this section. Subsection (3) lists the conditions required by provisions in any order made under subsection(1).

Section 78 – Fixed monetary penalties: procedure

116. This section sets out the process that must be followed when a fixed monetary penalty is issued. Subsection (2) allows a reservoir manager to initially pay a lesser amount of money to prevent a fixed monetary penalty from subsequently being issued. Subsection (3) specifies what information must be included in any notification to the reservoir manager. Subsection (4) requires the order under section 77(1) to include provision for SEPA not to impose a fixed monetary penalty if SEPA are either satisfied that the reservoir manager would not by reason of defence be liable to be convicted of the related offence or due to other circumstances. Subsection (5) lists the required contents of any final notice under this section. Subsection (6) sets out the circumstances under which a reservoir manager can appeal against a decision under this section. Subsection (7) enables Scottish Ministers to provide for SEPA to charge a fee in relation to
appeals under this section which is returnable if the appeal is upheld and to publish guidance on the appeals process.

Section 79 – Fixed monetary penalties: criminal proceedings and conviction

117. This section sets out a reservoir owner’s immunity from further proceedings upon payment of a fixed penalty. Subsection (2) specifies that this includes the issuing of stop notices or further enforcement measures.

Section 80 – Further enforcement measures

118. Subsection (1) enables Scottish Ministers to make provisions in an order in relation to offences under this Part regarding the imposition of any further enforcement measures in the event of non-compliance. Further enforcement measures may include variable monetary penalties (which will be punitive), restraint notices (which may require a reservoir manager to take steps to avoid recurrence of an offence), and restoration notices (which may require reservoir managers to take restorative action to rectify the consequences of an offence). Subsection (2) requires Scottish Ministers to consult with relevant organisations and other bodies it considers appropriate before making an order under this section. Subsection (3) specifies the conditions which further enforcement measures may be taken. Subsection (4) and (5) define what is meant by further enforcement measures.

Section 81 – Further enforcement measures: procedure

119. This section details steps that SEPA must take when taking further enforcement measures. Subsection (2) sets out a reservoir manager’s right to appeal on receipt of a notice of SEPA’s intent to take further measures. Subsection (3) specifies what information must be included in any notification of further action. Subsection (4) sets out the circumstances where SEPA may decide not to impose further enforcement measures. Subsection (5) requires provision in the order under section 79(1) to enable SEPA to accept or reject enforcement undertakings from the reservoir manager in relation to the offence. Subsection (6) specifies what information must be included in any final judgement. Subsection (7) sets out a reservoir manager’s right to appeal on receipt of a final notice. Subsection (8) enables Scottish Ministers to provide for SEPA to charge a fee in relation to appeals under this section which is returnable if the appeal is upheld and to publish guidance on the appeals process.

Section 82 – Further enforcement measures: criminal proceedings and conviction

120. This section sets out a reservoir manager’s immunity from further proceedings upon acceptance and completion of an enforcement undertaking. Subsection (3) sets out cases which are the exception to this condition.

Section 83 – Further enforcement measures: enforcement

121. This section enables SEPA to charge a reservoir manager a financial penalty if there is a case of non-compliance with a restraint notice, restoration notice or further enforcement undertaking. Subsection (2) details the conditions under which such a penalty may be issued. Subsection (3) requires the non-compliance penalty to be imposed by notice and that the
reservoir manager can appeal against the notice and subsection (4) sets out the grounds for appeal against such a penalty by a reservoir manager.

Section 84 – Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)

122. This section requires SEPA to consult relevant bodies before invoking provisions to issue stop notices, enforcement undertakings, fixed monetary penalties or further enforcement measures. Subsection (2) sets out the people and organisations that should be consulted.

Section 85 – Guidance on the use of stop notices, fixed monetary penalties or further enforcement measures

123. This section requires Scottish Ministers to ensure the orders providing for the use of stop notices, enforcement undertakings, fixed monetary penalties and further enforcement measures by SEPA require SEPA to publish guidance about the use of these powers in each order.

Section 86 – Recovery by SEPA of expenses

124. This section allows SEPA to reclaim costs incurred in issuing stop notices or imposing further enforcement measures. Subsection (2) defines what can be included in these expenses. Subsection (3) sets out the reservoir manager’s right to appeal against SEPA’s decision to reclain costs. Subsection (4) enables Scottish Ministers to provide for SEPA to charge a fee in relation to appeals under this section which is returnable if the appeal is upheld and to publish guidance on the appeals process.

Section 87 – Publication of enforcement action

125. This section enables the Scottish Ministers to make provisions regarding the publication of information regarding enforcement action including the non-appointment of engineers, the failure to take measures in the interests of safety, the issuing of stop notices, the issuing of fixed monetary penalties or the issue of further enforcement notices. Subsection (3) specifies that information must not be published where a stop notice, fixed monetary penalty or further enforcement notice has been successfully appealed.

Section 88 – Powers of entry

126. This section creates powers for SEPA to enter land for the purposes of carrying out some of their functions under the Bill. The power to enter land includes a power to enter buildings by virtue of the definition of “land” in the Interpretation and Legislative Reform (Scotland) Act 2010, which includes buildings and other structures. Subsection (2) lists SEPA’s activities to which this power of entry applies.

Section 89 – Warrants authorising entry

127. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 88 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (4)(a)).
128. Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the sheriff or justice of the peace to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent. Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant, SEPA must first have given notice that they intend to enter the land and the notice period must have expired. The notice periods are set out in section 89(3).

Section 90 – Powers of entry: supplementary

129. This section sets out additional scenarios when entry to land may be required. Subsection (1) applies the right to enter land in an emergency to any surrounding land as well. Subsection (2) sets out what additional materials and equipment can be taken onto the land in question. Subsection (3) details the approval that must be granted in cases other than when there is emergency work involved. Subsection (4) sets out what details must be included in any notice of entry.

Section 91 – Offence: preventing or obstructing entry

130. This section sets out that impeding entrance of a person appointed by SEPA under section 87 to land constitutes an offence. Subsection (2) sets out the maximum applicable penalty for such an offence.

Section 92 – Compensation

131. This section sets out scenarios where SEPA must pay compensation to landowners where SEPA has exercised the right to enter land under Section 87 and damages subsequently occur. Subsection (1) describes the scenarios which would render SEPA liable to pay compensation. Subsection (2) details who is entitled to compensation from SEPA in such circumstances. Subsection (3) determines that the Lands Tribunal for Scotland is responsible for ordering compensation. Subsection (4) sets out how such expenditure is to be treated from the SEPA point of view.

Section 93 – Reports by SEPA to the Scottish Ministers

132. This section requires SEPA to report to Scottish Ministers about the steps it has taken to secure compliance with this Part. Subsection (2) enables Scottish Ministers the power to direct SEPA as to the timing and content of the reports.

Section 94 – Affording of reasonable facilities to engineers

133. This section requires reservoir managers of controlled reservoirs to provide any relevant engineer with reasonable facilities in connection with the engineers functions under this Part of the Bill. Subsection (2) requires the reservoir manager to make their records and other information available in the form, manner and timing specified by the engineer to the relevant engineer when requested.
Section 95 – Power of SEPA to require information and assistance

134. This section requires the reservoir manager of controlled reservoirs to provide SEPA with any information and assistance reasonably sought in connection with SEPA’s functions under this Part of the Bill. Subsection (2) requires the reservoir manager to make their records available to SEPA when requested. Subsection (3) requires the reservoir manager to provide any further information reasonably requested by SEPA in the manner and form specified by SEPA.

Section 96 – Offences: sections 94 and 95

135. This section makes it an offence for a reservoir manager to fail to comply with sections 94 and 95. Subsection (2) sets out the liabilities of anyone committing an offence under this section.

CHAPTER 10 – MISCELLANEOUS

Section 97 – Assessment of engineers’ reports etc.

136. This section enables Scottish Ministers to make provision in regulations for the assessment of reports, written statements and certificates prepared by engineers as part of their functions under this Part of the Bill. Subsection (2) enables the regulations to make provision for a committee of members of the Institution of Civil Engineers to undertake this assessment and the conditions of membership for such a committee. Subsection (3) lists the things which the regulations may in particular provide for.

Section 98 – Notice to SEPA of revocation of appointment or resignation of engineer

137. This section requires reservoir managers to notify to SEPA when they have revoked the appointment of an engineer or when an engineer appointed by him or her notifies them of their resignation from appointment in relation to a controlled reservoir and the date it took affect. Subsection (2) requires engineers to notify the reservoir manager in writing when they have resigned from an appointment for a controlled reservoir and the date the resignation is effective from. Subsection (3) and (4) require the reservoir manager to notify SEPA within 28 days of the revocation or of being informed of the resignation. Subsection (5) makes it an offence for the reservoir manager to fail to comply with the requirements of this section. Subsection (6) sets out the liabilities of anyone committing an offence under this section.

Section 99 – Form and content of notices, reports, certificates etc

138. This section enables Scottish Ministers to make further provision in regulations in relation to the form and content of any notices, and the form of any report, certificate, written statement or recommendation under this Part.

Section 100 – Notices by SEPA

139. This section applies section 123 of the Environment Act 1995(c.25) (service of documents) to any documents authorised or required to be given by SEPA under this Bill. Section 123 of the Environment Act 1995 concerns methods of service of documents and
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

provides that any notice or document to be given or served may be given or served by delivering it to the person, leaving it at their last known address, or by sending it by post to their last known address. It also makes provision regarding service on companies and partnerships and provides for service on unoccupied premises or premises occupied by persons who cannot be identified.

Section 101 – Change to the Institution of Civil Engineers

140. Section 101 enables Scottish Ministers to amend references to ICE and its president if the institution ceases to exist.

Section 102 – Civil liability

141. Section 102 prevents civil proceedings for damages being pursued in respect of failures to comply with the duties imposed by Part 1.

PART 2 – PROTECTION OF THE WATER ENVIRONMENT - REMEDIAL AND RESTORATION MEASURES

Section 103 – Remedial and restoration measures regulations

142. This section gives an extension of the powers conferred by section 22 of the Water Environment and Water Services (S) Act 2003 in connection with remedial and restoration measures to achieve the environmental objectives of the Water Framework Directive (WFD). This inclusion is required as section 22 of WEWS failed to include provision for criminal offences relating to restoration measures.

143. Section 22 is amended and inserts a new schedule 2A in the 2003 Act, following the general scheme of section 20 of the 2003 Act in relation to the Controlled Activities Regulations (CAR). The new paragraph (c) inserted in section 22(3) by subsection (1) is the equivalent of paragraph 11(2) of schedule 2 in relation to the CAR. New schedule 2A is modelled on paragraphs 12, 13 and 20 of schedule 2. In paragraph 4 of new schedule 2A, provision equivalent to paragraph 13(b) of schedule 2 is not required, given that section 22(3)(b)(ii) already provides for this.

144. Paragraph 7 follows paragraph 20 of schedule 2, allowing for creation of offences triable either way, providing a summary conviction by imprisonment for a term not exceeding 12 months or by a fine not exceeding the statutory maximum, and on conviction on indictment, to imprisonment for a term not exceeding 2 years or by an (unlimited) fine. The level of the penalties set are modelled on the requirements of WEWS, and intended to reflect the seriousness of the offence.

145. In the absence of such provisions, SEPA would be unable to enforce the terms of the Regulations, which would affect the achievement of the water environment quality objectives of the Water Framework Directive (WFD).
PART 3 – GENERAL

Section 104 – Crown application

146. This section makes provision for the Bill to apply to the Crown in Scotland.

147. Subsections (3) and (4) provide that the Crown in Scotland will not be criminally liable for any contravention of the Bill’s provisions but allows the Court of Session to declare any act of the Crown in contravention of the Bill’s provisions unlawful, upon application by SEPA or office holder responsible for enforcing the provision in question.

148. Subsection (5) provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

149. Subsection (6) and (7) limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (7) defines “Crown land” and “appropriate authority” and subsection (9) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.

Section 105 – Offences by bodies corporate

150. This section provides that where an offence under the Bill has been committed by a corporate body, Scottish partnership or other unincorporated association and the offence was committed with the consent or connivance of a “relevant individual”, both the body and the individual can be prosecuted.

151. Subsection (2) defines “relevant individual” and includes directors and other officers of companies, partners and individuals who manage or control other unincorporated associations.

Section 106 – Ancillary provision

152. This section enables the Scottish Ministers by order to make incidental, supplementary, consequential, transitional, transitory or saving provision, if appropriate.

Section 107 – Orders and regulations

153. This section provides the procedure for making of orders and regulations under the Bill.

154. Subsection (2) provides that all orders and regulations, except a commencement order, made under the Bill are subject to negative procedure unless they are listed in subsection (3). Orders and regulations which fall under subsection (3) are subject to affirmative procedure.

Section 109– Commencement and short title

155. This section makes the usual provision that all of the provisions of the Bill, except those containing definitions and providing where procedure is required for orders and regulations, are
to come into force on a day set by the Scottish Ministers by order. The section also provides for the short title of the Bill.

Schedule – Index of defined expressions

156. The Schedule sets out the location of the definitions of the listed terms in the Bill.

FINANCIAL MEMORANDUM

INTRODUCTION

157. This document sets out the financial implications of the Reservoirs (Scotland) Bill. It should be read in conjunction with the Policy Memorandum and the Bill itself. The Policy Memorandum, which is published separately, explains in detail the policy intentions of the Bill.

158. The aim of the Reservoirs (Scotland) Bill is to protect the public from flooding from reservoirs by modernising the reservoir safety regime in Scotland. The Bill makes substantive provision to introduce a risk based approach. It also makes provision to require managers of reservoirs greater than 10,000 cubic metres in capacity to register their reservoirs, for SEPA to classify reservoirs according to the risk they pose and for reservoir managers to comply with the requirements of each risk category which can include the appointment of engineers to supervise and inspect the reservoirs depending on the risk category. The costs and savings outlined in this memorandum are those costs and savings that are directly attributable to responsibilities and tasks set out in the Bill. The provisions in the Bill will set out the roles and responsibilities of Scottish Ministers, SEPA, panel engineers and reservoir managers in managing the risk of flooding from reservoirs in Scotland. This will result in improvements to the safety of Scotland’s dams, which will ultimately lead to the reduction in economic costs to businesses, domestic properties and infrastructure and the improvement of the social well-being of people in at risk areas. The costs and savings identified in this Memorandum have been estimated in consultation with the bodies involved in implementation.

159. The costs identified are preliminary estimates until the Bill is enacted and the detail of new responsibilities that will be placed on reservoir managers, panel engineers and the enforcement authority are agreed and laid out in secondary legislation and guidance. The costs identified can be profiled with some degree of flexibility, depending on the approach to implementation adopted, for example, the costs estimates set out here are based on an implementation programme which will take around 5 years to fully implement the provisions in the Bill. This timetable could be extended or shortened if necessary.
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

160. The total cost of this Bill depends on a number of factors. For example; the exact number of new reservoirs which will come under the ambit of the Bill is not known. One of the safety issues that this Bill is designed to address is the lack of information on reservoirs over 10,000 cubic metres as, at the moment, no records are kept. Based on preliminary investigations and discussion with local authorities (the current enforcement authorities) the figure is estimated to be between 150 and 1000. Work is currently being undertaken to obtain a more accurate figure using GIS techniques, and we expect that to be completed by mid September. Preliminary figures from this work indicate that there are between 200 and 300 reservoirs of this size. However, even once this figure is available, until individual reservoirs are visited and their capacity measured, there will be an element of uncertainty about the exact number. The total cost will depend on how many reservoirs are affected by the Bill provisions.

161. The other variable which could cause the greatest fluctuation in costs will be the number of reservoirs classified as high, medium and low risk. The number of reservoirs classified as high medium and low risk will not be known until SEPA undertake the classification process set out in the Bill. An adjustment to the number of reservoirs classified as high risk, would result in a proportionate adjustment in the expected costs. The cost estimates presented in the Bill are, except for Scottish Water cost estimates, based on an assumption that 40% of reservoirs will be categorised as high risk, 30% will be categorised as medium risk and 30% as low risk and the estimated costs on reservoir owners collectively reflect this. Scottish Water has more detailed information available on its own reservoirs and the assumptions that have been used for Scottish Water cost estimates are set out in paragraph 185. In addition to the main variables, the number, scale or complexity of the measures which need to be taken in the interest of safety to address these risks will also have a significant influence on the cost.

162. Also included in the Reservoirs (Scotland) Bill are new provisions to create offences relating to the Water Environment and Water Services (Scotland) Act 2003 ("WEWS"). WEWS empowers Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. WEWS, however, did not provide for the creation of offences in respect of such regulations. Offence provisions are required to ensure the restoration regulations are effective and can deliver our objectives for Scotland’s water environment. These provisions can only be introduced through primary legislation, and the Reservoirs(Scotland) Bill has been identified as the best available vehicle for this purpose.

IMPLEMENTING THE RESERVOIR SAFETY PROVISIONS

163. Implementing the new reservoir safety regime will incur some additional costs mainly as a result of previously unregulated reservoirs being brought under a regulatory regime of supervision and inspection. There will also be savings to owners of reservoirs which are currently regulated but are classified as low or medium risk under the new system.

Costs on the Scottish Administration

164. Costs to the Scottish Government will be incurred as a result of the new Ministerial duties and powers set out in the Bill. These include powers to make further regulations and guidance and powers to make grants. All of these activities will require staff resources.
165. The Bill creates a power to make further regulations and guidance. The benefits and costs that arise from the changes proposed in the Bill will be influenced by any regulations made under the Bill, which will require their own Business & Regulatory Impact Assessment to assess potential costs. Additional costs associated with secondary legislation are expected to be minimal. Secondary legislation arising from the Bill includes for example:

- regulations to provide for the categorisation of risk;
- regulations to provide for the registration process;
- regulations relating to the establishment of panels of engineers.

166. In addition to the staff resources that will be required to take forward the development of the regulations, additional costs will be incurred through consultation exercises. These additional administrative tasks are expected to incur non-recurring revenue costs of approximately £0.1 million. Costs associated with secondary legislation that will fall on SEPA, Scottish Water and other reservoir owners are included within the estimated costs for these organisations generated under the Bill.

167. Two and a half full time members of staff including a B3, a B2 and a half a B1 (£46,000+35,000+15,000) will be required to carry out these additional duties at an estimated cost of £96,000 per annum from 2011 until 2016 based on 2009 average staff costs. This is based on the current staff required for developing secondary legislation for the Flood Risk Management (Scotland) Act 2009. This equates to an estimated £0.48 million (96,000 x 5 years) up until 2016.

168. Based on these figures, we predict that the total implementation costs for the Scottish Government lies in the region of £0.58 million (£0.48 million + £0.1 million consultation costs). Once the initial transitional period is completed, the costs incurred as a result of these provisions will be the staff costs required for monitoring and reviewing the implementation of the legislation. It is expected that one full time B3 member of staff will be required at a cost of £46,000 per annum.

**Savings for local authorities**

169. There will be small savings to local authorities as a result of the transfer of responsibility for enforcement of the Reservoirs Act to SEPA, which is likely to occur at the end of 2012. The enforcement role is generally a part-time activity in local authorities, and removal of this role unlikely to result in a reduction in staff numbers as these staff will continue to be required to cover their other functions. However, local authorities will be able to make some savings as these staff will be available to take on other duties and functions. Savings will be made as a result of no longer having to maintain a register of reservoirs, complete a biennial report for Scottish Ministers, carry out various administrative tasks involved with enforcement, or appoint engineers where reservoir undertakers have failed to appoint them. These savings are estimated to be approximately £7500 per annum for each local authority. This could vary between £5000 and £10,000 per annum depending on the number of reservoirs in their local authority area and the level of compliance with the 1975 Act. The estimated saving is therefore £0.24 million (32x£7500) for the local authorities in total. This could vary between £0.16 million (32x£5000) and £0.32 million (32x£10000) per annum.
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Costs on local authorities

170. The Bill will have cost implications for those local authorities who are also undertakers (reservoir managers) of reservoirs. 16 out of the 32 local authorities are the undertakers for one or more reservoirs under the 1975 Act with a total of 37 reservoirs between them. This is at a current estimated cost of £0.11 million per annum for local authorities collectively (this does not include the licence fees required under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) or existing non-mandatory maintenance costs of between £0.22 and £0.74 million, as these are not costs directly attributable to the Reservoirs Act 1975). This cost may vary between £0.09 and £0.13 million per year depending on the size and type of reservoirs, and any measures which have had to be taken in the interest of safety under the current legislation.

171. Despite the Scottish Government undertaking a desk based survey in 2009, it is not known exactly how many reservoirs between 10,000 and 25,000 cubic metres in capacity are owned by local authorities. It is one of the flaws of the current regulatory regime that there are no records of reservoirs under 25,000 cubic metres. For the purposes of this Memorandum, it is assumed an additional 8 reservoirs (20% more) will be subject to regulation following the proposed reduction in minimum capacity across all local authorities. It is also assumed that 40% of reservoirs will be classified as high risk, 30% as medium risk and 30% as low risk although the exact numbers in each category will not be known until SEPA have classified the reservoirs. These assumptions are based on the proportion of reservoirs falling under the current system of non statutory categories of A, B, C and D it is assumed Category A reservoirs will be high risk, Category B and some of Category C will be medium risk and remaining Category C and Category D reservoirs will be low risk. The categories are currently defined as follows:

- Category A – Where a breach could endanger lives in a community
- Category B – Where a breach could either endanger lives not in a community or could result in extensive damage
- Category C – Where a breach would pose negligible risk to life and cause limited damage
- Category D – No loss of life can be foreseen as a result of a breach and very little damage expected

172. The collective costs of managing reservoirs for all local authorities are expected to rise to approximately £0.28 million, although this figure could vary from between £0.12 to £0.5 million per annum depending on the number of reservoirs and their risk category (these figures include mandatory maintenance costs of between £0.10 and £0.42 million per annum but exclude any non mandatory maintenance costs). This is an estimated annual increase of £0.17 million although this could vary from £0.03 to £0.37 million per annum.

173. There will also be one off capital costs of around £0.23 million collectively for the preparation of reservoir flood plans and there are estimated to be additional costs of approximately £0.3 million to upgrade previously unregulated reservoirs to meet required safety
standards if recommended by inspecting engineers. This could vary between £0.12 and £0.48 million depending on the type and amount of structural work required. The total one off capital costs for local authorities collectively is estimated to be £0.53 million (£0.23 million + £0.3 million).

174. When the additional estimated costs incurred are compared with the estimated savings as a result of the removal of responsibility for enforcement, local authorities will make an annual saving collectively from 2013 of an estimated £70,000 (£0.17 million minus £0.24 million(paragraph 169)) per annum. This could vary between a saving of £0.29 million and a cost of £0.21 million. This amounts to an average annual saving of £2200 per individual local authority. However, individual local authorities may be better or worse off on balance depending on how many reservoirs they own between 10,000 and 25,000 cubic metres in capacity and whether these require upgrading.

175. A number of local authorities and CoSLA have been consulted as the policy has been developed. Discussions have been held with CoSLA and a number of local authorities directly about the financial implications. 4 local authorities are represented on the main stakeholder group. 17 local authorities responded to the public consultation with generally favourable responses and representatives of 13 local authorities attended the public meetings.

176. Based on these figures, we predict that the total implementation costs for local authorities collectively up to 2016 lie in the region of £0.32 million (£0.53 million costs – annual savings of £0.21 million (£0.07 million x 3 years)). Once the initial transitional period is completed, the estimated savings for local authorities collectively is £70,000 per annum.

Costs on other bodies, individuals and businesses

Costs on SEPA

177. SEPA will be identified as the enforcement authority for the Reservoirs (Scotland) Bill, which gives them the responsibility for enforcing the provisions set out in the Bill. These duties are likely to have both cost and resource implications for SEPA.

178. Specific tasks that SEPA must undertake include keeping a register of all reservoirs over 10,000 cubic metres and classifying them according to the risk they pose to the public, ensuring all high and medium risk reservoirs have a supervising engineer appointed, ensuring all high risk reservoirs are inspected every 10 years and that measures in the interest of safety identified in inspection reports are carried out by the specified time period. Until SEPA assesses and classifies Scotland’s reservoirs under their new duties under the Bill the exact proportion of reservoirs in each category is unknown. For the purposes of this Memorandum these cost estimates have been prepared on the assumption that 40% of reservoirs will be classified as high risk, 30% as medium risk and 30% as low risk. However due to the differing workloads associated with each category, the costs will vary considerably if the number of reservoirs in each category are significantly different.

179. The exact number of reservoirs which will be regulated under the Bill is not known. The costs set out in this memorandum for SEPA are based on an estimated total of 1150 reservoirs being subject to the Bill including approximately 500 currently unregulated reservoirs. These
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

figures are based on the initial estimate from the independent report – “Assessment of the Financial Implications for the Reservoir Safety Bill” commissioned by the Scottish Government. If the preliminary estimates from the Geographical Information System (GIS) project of 200 to 300 are confirmed, the costs will be closer to the lower estimates presented in this memorandum. It is estimated that SEPA will incur one off capital costs of approximately £2.3 million during the implementation phase between 2011 and 2016. This cost could vary between £1.7 to £2.9 million over this period depending on whether the number of additional reservoirs is closer to the lowest estimate of 150 reservoirs or to the higher estimate of 1000 reservoirs being regulated once the minimum is reduced to 10,000 cubic metres. These costs will be phased over this period with the majority being incurred during 2012/13 and 2013/14. This cost includes the estimated cost of the production of inundation maps for all reservoirs at an estimated cost of between £0.9 and £2.0 million, based on a similar exercise carried out in England and Wales by the Environment Agency, and setting up new IT programmes at a cost of approximately £0.4 to £0.5 million. Other one off capital costs include the transfer of data from local authorities, establishing a public register and the purchase of IT hardware.

180. It is estimated that during this period SEPA will require approximately 4 to 5 staff in 2011/12 and 2012/13 at an estimated cost of approximately £0.34 million in 2011/12 and £0.35 million in 2012/13. Staff numbers will rise to between 6 – 10 staff during 2013/14 to 2015/16 and result in an increase in costs to £0.5 million per annum during this period. This could vary between £0.40 to £0.77 million depending on the exact number of staff required. The skills and grade of the staff required will vary over the implementation period. They will require IT specialists, legal expertise, project managers and policy development staff initially and gradually replace these with regulatory and administrative staff once the new regime is in place. The estimated costs include staff salaries, national insurance and pension contributions, additional direct costs including mileage, protective clothing and training etc. and overheads including finance and corporate services, HR etc. This is an estimated total of £2.19 million (£0.34 million + £0.35 million + (£0.5 million x 3 years) up until 2015/16.

181. In future, a proportion of these costs may be passed on to reservoir owners as the Bill includes an enabling power which will, if Scottish Ministers direct, allow SEPA to charge a fee to reservoir owners in order to fund their administrative role and reduce the cost to the public purse. It is estimated that if the enabling power is used, the charge will be approximately £100 and £300 per reservoir for medium and high risk reservoirs respectively. This charge will not be introduced until 2013/14 for reservoirs 25,000 cubic metres and over and 2015 for reservoirs less than 25,000 cubic metres. Of 650 reservoirs currently regulated and based on the assumption that 40% will be high risk, 30% medium risk and 30% low risk, this will generate £97,500 ( 260 x £300 + 195 x £100) per annum in 2013/14 and 2014/15. Based on an estimated total of 1150 reservoirs being regulated from 2015 onwards, it is estimated that this would rise to £0.17 million per annum in 2015/16 (460 reservoirs x £300 + 345 reservoirs x £100). This will raise a total of £0.37 million (£97,500 + £97,500 + £0.17 million) from charges up until 2016. As a result, the resource costs for SEPA will be reduced to £1.82 million (£2.19 million - £0.37 million) for the period up to 2016.

182. Based on the figures set out in paragraphs 179, 180 and 181, the total costs on SEPA for implementing the Bill until 2016 are estimated to be in the region of £4.12 million (£2.3 million capital) + £2.19 million resource – £0.37 million ).
183. Once all new reservoirs have been brought under the new regime, which is not anticipated to be completed until 2016 to allow the reservoir managers time to adapt and undertake any necessary structural work, it is anticipated that SEPA will require approximately 3-6 staff to carry out their enforcement duties under the Bill at an estimated cost of £0.28 million per annum (\((1.25 \times £87,955) + (1.25 \times £59,256) + (2 \times £47,877)\)). It is anticipated that they will require approximately 1.25 Grade C (£87,955) equivalents, 1.25 Grade E (£59,256) equivalents and 2 Grade F (£47,877) equivalent. This includes legal and hydrology staff. There will also be ongoing IT support costs of approximately £70,000, training costs of approximately £10,000 and external engineering support costs of £50,000 per annum. The total ongoing costs once the regime is fully implemented is estimated to be £0.41 million (£0.28 million + £70,000 + £10,000 + £50,000) per annum. Taking the income from charges into account, we estimate that the annual cost for SEPA once the initial transitional period is completed in 2016 will be £0.24 million (£0.41 million costs – £0.17 million income from charges) although this may vary between £0.12 and £0.37 million.

Costs on Scottish Water

184. There will be costs to Scottish Water as they own or manage over 300 reservoirs in Scotland, 248 of which are currently regulated. It is estimated that Scottish Water will incur additional one off capital costs of £1.2 million for the production of reservoir flood plans (excluding inundation maps). This is based on 140 reservoirs being classified as high risk, 69 as medium risk and the remainder as low risk. This estimated cost could vary between £0.7 - £1.3 million depending on whether existing plans for 100 reservoirs meet the proposed plan requirements and if the number classified as high and medium risk reduces or increases by 20%.

185. It is estimated that Scottish Water’s annual costs will increase by £87,500 from 2013/14 as a result of reservoirs between 10,000 and 25,000 cubic metres in capacity being subject to regulation and the additional responsibilities including registration and incident reporting. This is based on the assumption of 140 of Scottish Water’s reservoirs being classified as high risk, 69 as medium risk and the remainder as low risk. The estimated cost could vary between £48,000 and £0.13 million. The increase in costs is relatively small as it takes account of the estimated savings of £34,800 per annum identified as a result of a number of currently regulated reservoirs being subject to a lower level of regulation. These savings may vary between £13,500 and £56,000 per annum depending on the percentage of reservoirs which are identified as high or medium risk. The total resource costs up until 2016 for Scottish Water are estimated to be £0.26 million (£87,500 x 3 years).

186. We estimate that the total implementation costs for Scottish Water up until 2016 will be in the region of £1.4 million (£0.26 million + £1.2 million). The annual cost to Scottish Water after 2016 is expected to be £0.09 million per annum.

Costs on private reservoir owners

187. All owners of reservoirs with a capacity greater than 10,000 cubic metres will be required to register their reservoir. Their reservoirs will then be classified by SEPA according to the risk they pose to the public, and the reservoir manager will be required to comply with the requirements of the category to which their reservoir is assigned. This may result in costs or savings to individual reservoir owners depending on whether the reservoir is currently regulated, whether it is categorised as high, medium or low risk and whether any upgrading is required to
be considered safe by professional independent engineers. Reservoirs are owned by a variety of individuals and organisations including Scottish Water, energy companies, local authorities, distilleries, angling clubs and private landowners.

188. The costs to private owners are based on the assumption that 950 reservoirs will be subject to the Bill provisions including 300 which are not currently regulated. Over 300 (248 over 25,000 cubic metres and 55 between 10,000 and 25,000 cubic metres) of these are owned by Scottish Water and it is estimated that local authorities have approximately 45 (37 over 25,000 cubic metres and 8 estimated between 10,000 and 25,000 cubic metres). The remainder are owned by private businesses, angling clubs and individuals. Some of these businesses will own a larger number than others, for example: Scottish and Southern Energy Ltd own over 70.

189. The cost incurred per reservoir will be site specific and will depend on a number of variables, particularly the risk category and the condition of the reservoir structure. However, there will be six distinct groups of reservoir owners who will be affected. Each group will incur different costs and savings as a result of the Bill provisions. The 6 groups of private reservoir owners are as follows:

- Owners of reservoirs $\geq 25,000$ m$^3$ categorised as low risk;
- Owners of reservoirs $\geq 25,000$ m$^3$ categorised as medium risk;
- Owners of reservoirs $\geq 25,000$ m$^3$ categorised as high risk;
- Owners of reservoirs $\geq 10,000$ m$^3$ and $< 25,000$ m$^3$ categorised as low risk;
- Owners of reservoirs $\geq 10,000$ m$^3$ and $< 25,000$ m$^3$ categorised as medium risk;
- Owners of reservoirs $\geq 10,000$ m$^3$ and $< 25,000$ m$^3$ categorised as high risk.

190. The estimated costs and savings for each of these groups are set out in the following paragraphs. The reservoirs which are currently regulated will be brought under the new regime first from 2013 onwards. Of the 650 reservoirs currently regulated, 365 are not owned by Scottish Water or a local authority. On the assumption that 40% of these are high risk, 30% are medium risk and 30% are low risk, this would amount to 146 high risk, 109 medium risk and 110 low risk reservoirs.

191. The 110 owners of reservoirs over 25,000 cubic metres, which are currently regulated, but are categorised as low risk under the Bill will make a saving of approximately £1000 per reservoir per annum from 2013 as a result of the reduction in supervision and inspection costs, although this could vary between £500 and £1400. This amounts to an estimated saving of £0.33 million (110 x £1000 x 3 years annual savings) up until 2015/16. However they will incur one off costs of approximately £250 per reservoir for the production of simple flood plans. This equates to a total one off cost of £27,500 (110 x £250) for all owners of low risk reservoirs.
greater than 25,000 m$^3$ in capacity. The estimated total savings for all privately owned low risk reservoirs over 25,000 cubic metres up to 2015/16 inclusive is \textbf{£0.3 million} (\£0.33 million minus \£27,500).

192. The 109 owners of medium risk reservoirs over 25,000 cubic metres will incur estimated additional annual costs of \textbf{£400} per reservoir through SEPA charges and reviewing and testing flood plans although this could vary between \textbf{£225} and \textbf{£600}. Under the Bill, medium risk reservoirs will no longer require ten-yearly inspections unless the supervising engineer recommends one. As a result they will make an estimated saving of \textbf{£400} per year per reservoir although this could vary from \textbf{£200} to \textbf{£600}. On this basis the annual costs are estimated to remain unchanged. They will incur one off costs for the production of flood plans of approximately \textbf{£1000} and erection of information boards of \textbf{£1000}. The estimated total cost for all privately owned medium risk reservoirs over 25,000 cubic metres up to 2015/16 inclusive is \textbf{£0.22 million} (109 x (1000 + 1000) capital costs).

193. The 146 owners of high risk reservoirs over 25,000 cubic metres will incur additional estimated annual costs per reservoir of \textbf{£1400} through SEPA charges and for reviewing and testing flood plans although this could vary between \textbf{£550} to \textbf{£2300} per annum. This equates to an estimated total cost up until 2015/16 of \textbf{£0.61 million} (146 x \£1400 x 3 years annual costs) for this group of reservoir owners. High risk reservoirs will also incur additional one off costs of approximately \textbf{£3000} per reservoir for the production of flood plans (excluding inundation maps) although this may vary between \textbf{£1500} and \textbf{£6500} depending on the complexity of the plan required and \textbf{£1000} for the erection of information boards. The total estimated one off costs for this group is \textbf{£0.58 million} (146 x (3000 +1000)). This excludes current maintenance costs. The estimated total additional cost for all privately owned high risk reservoirs over 25,000 cubic metres up to 2015/16 inclusive is \textbf{£1.19 million} (\£0.61 million + \£0.58 million).

194. The Scottish Government plan to bring reservoirs which are below 25,000 cubic metres under regulation from 2015 onwards. It is estimated that an additional 300 reservoirs will be brought under the legislation as a result of including reservoirs between 10,000 cubic metres and 25,000 cubic metres, 237 of which will be privately owned. Based on the assumption that 40% will be high risk, 30% medium risk and 30% low risk, this amounts to 95 high risk, 71 medium risk and 71 low risk reservoirs.

195. There will be minimal annual costs for owners of reservoirs between 10,000 cubic metres and 25,000 cubic metres which are categorised as low risk. It is estimated that there will be one off costs of \textbf{£150} per reservoir for the production of a simple flood plan and gathering information for registration for low risk reservoirs. This could vary between \textbf{£100} and \textbf{£250} per reservoir. The estimated total cost for all privately owned low risk reservoirs between 10,000 and 25,000 cubic metres up to 2015/16 inclusive is \textbf{£10,650} (71 x \£150 one off capital costs).

196. The annual costs for owners of medium risk reservoirs between 10,000 and 25,000 cubic metres are estimated to be \textbf{£1000} per reservoir per annum, which will only be incurred from 2015/16 onwards. This could vary between \textbf{£525} and \textbf{£1400} per annum. This includes supervision costs, reviewing and testing flood plans and SEPA fees. Medium risk reservoirs will not be subject to ten-yearly inspections unless requested by the supervising engineer. The
estimated total annual costs for medium risk reservoirs between 10,000 and 25,000 m3 up to 2015/16 is £71,000 (71 x £1000).

197. One off costs will be incurred by owners of medium risk reservoirs between 10,000 and 25,000 m3 for the production of flood plans and the erection of notice boards of approximately £2000. The estimated one off capital costs is £0.14 million (71 x £2000). The estimated total cost for all privately owned medium risk reservoirs between 10,000 and 25,000 cubic metres up to 2015/16 inclusive is £0.21 million (£0.14 million capital costs + (£71,000 annual costs)).

198. The annual cost for owners of high risk reservoirs between 10,000 and 25,000 cubic metres is expected to be approximately £13,000 per reservoir per annum, this includes supervision and inspection costs, mandatory maintenance costs, SEPA fees and reviewing and testing flood plans. This could vary from site to site from £6000 to £21,000 per reservoir per annum. Private owners will begin to incur these costs from 2015/16. The estimated total of these annual costs up to 2015/16 is £1.24 million (95 x £13,000).

199. There will be one off costs of approximately £3000 per reservoir for the production of flood plans (excluding inundation maps) although this may vary between £1500 and £6500 depending on the complexity of the plan required and £1000 for the erection of information boards. Depending on the previous maintenance, some of these smaller reservoirs may also require structural upgrading to meet safety standards when inspected. Where this is required, it is estimated to cost £20,000 per reservoir, although this could vary between £15,000 and £60,000. If an individual reservoir requires a new spillway or other more substantial structural work, this could cost as much as £1 million for a single reservoir, but this is likely to be a rare occurrence. The estimated one off capital costs for privately owned high risk reservoirs between 10,000 and 25,000 cubic metres up to 2015/16 inclusive is £2.28 million (95 x (3000 + 1000) + (95 x 20,000)).

200. The estimated total costs for all privately owned high risk reservoirs between 10,000 and 25,000 cubic metres up to 2015/16 inclusive is £3.52 million (£2.28 million capital costs + £1.24 million annual costs for 2015/16).

201. The total cost to private owners collectively from 2011 until 2016 is estimated to be £4.85 million ((-£0.3 million savings) + £0.22 million + £1.19 million + £10,650 +£0.21 million + £3.52 million). This includes total one off capital costs for the six categories of £3.26 million (£27,500 + £0.22 million + £0.58 million + £10,650 + £0.14 million + £2.28 million) and total resource costs of £1.59 million (- savings £0.33 million) + £0 + £0.61 million + £0 + £71,000 + £1.24 million) up until 2015/16.

202. After 2016 the estimated annual cost for privately owned low risk reservoirs irrespective of size is £150 per reservoir with a total annual cost to private owners of £27,150 ((110 + 71) x £150) per annum, for medium risk reservoirs is £1000 per reservoir with a total annual cost to private owners of £0.18 million ((109 + 71) x £1000) per annum, and for high risk reservoirs is £13,000 per reservoir with a total annual cost to private owners of £3.13 million ((146 + 95) x £13,000) per annum. This is a total estimated annual cost collectively on private owners of £3.34 Million (£27,150 + £0.18 million + £3.13 million).
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

WATER FRAMEWORK OFFENCES

203. The Water Framework Directive 2000/60/EC ("WFD") established a framework in water policy to drive improvements in Europe’s water environment. The River Basin Management Plans have identified that around 40% of Scotland’s water bodies are not currently meeting the WFD’s “good status” objective; with some 760 water bodies require restoration activities to restore them to good status. We have set an objective of good status by 2027 for all water bodies unless the disproportionate cost or technical feasibility tests of the WFD are met.

204. Many water environment impacts are regulated by the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR). However, WEWS and CAR alone are not sufficient to achieve WFD objectives. For instance, CAR does not cover impacts that result from the legacy of past engineering works. In these instances, restoration works may be necessary. WEWS provides for regulations to support restoration work, however, WEWS does not permit the creation of the required offence provisions for the Restoration Regulations.

205. It is intended that the Bill will make provision for the creation of offences, enabling courts to order remedial action and for SEPA to arrange for such action to be taken and to recover costs.

Costs

206. It is anticipated that there will no increase or new direct costs to the Scottish Government, local authorities, SEPA or landowners with the introduction of this legislation. However, for non compliance with existing legal obligations fees and charges will apply.
SUMMARY OF COSTS

Table 1: Summary of estimated costs

<table>
<thead>
<tr>
<th>Organisation</th>
<th>Scottish Gov. £ Million</th>
<th>Local authorities £ Million</th>
<th>SEPA £ Million</th>
<th>Scottish Water £ Million</th>
<th>Other Reservoir owners £ Million</th>
<th>Total £ Million</th>
</tr>
</thead>
<tbody>
<tr>
<td>One off capital costs from 2011 until 2016</td>
<td>0.1&lt;sup&gt;a&lt;/sup&gt;</td>
<td>0.53&lt;sup&gt;d&lt;/sup&gt;</td>
<td>2.3&lt;sup&gt;g&lt;/sup&gt;</td>
<td>1.2&lt;sup&gt;j&lt;/sup&gt;</td>
<td>3.26&lt;sup&gt;m&lt;/sup&gt;</td>
<td>7.39</td>
</tr>
<tr>
<td>Resource costs/(savings) from 2011 until 2016</td>
<td>0.48&lt;sup&gt;b&lt;/sup&gt;</td>
<td>(0.21)&lt;sup&gt;e&lt;/sup&gt;</td>
<td>1.82&lt;sup&gt;h&lt;/sup&gt;</td>
<td>0.26&lt;sup&gt;k&lt;/sup&gt;</td>
<td>1.59&lt;sup&gt;n&lt;/sup&gt;</td>
<td>3.94</td>
</tr>
<tr>
<td>Annual costs/(savings) after 2016</td>
<td>0.05&lt;sup&gt;c&lt;/sup&gt;</td>
<td>(0.07)&lt;sup&gt;f&lt;/sup&gt;</td>
<td>0.24&lt;sup&gt;i&lt;/sup&gt;</td>
<td>0.09&lt;sup&gt;l&lt;/sup&gt;</td>
<td>3.34&lt;sup&gt;o&lt;/sup&gt;</td>
<td>3.65</td>
</tr>
</tbody>
</table>

<sup>a</sup> Paragraph 166, <sup>b</sup> Paragraph 167, <sup>c</sup> Paragraph 168 (£46,000), <sup>d</sup> Paragraph 173, <sup>e</sup> Paragraph 174, <sup>f</sup> Paragraph 176, <sup>g</sup> Paragraph 179, <sup>h</sup> Paragraph 181, <sup>i</sup> Paragraph 183, <sup>j</sup> Paragraph 184, <sup>k</sup> Paragraph 185, <sup>l</sup> Paragraph 186, <sup>m</sup> Paragraph 201, <sup>n</sup> Paragraph 201, <sup>o</sup> Paragraph 202.

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

207. On 6 October, the Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Reservoirs (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

208. On 5 October, the Presiding Officer (Rt Hon Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Reservoirs (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
RESERVOIRS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Reservoirs (Scotland) Bill introduced in the Scottish Parliament on 6 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 55–EN.

POLICY OBJECTIVES OF THE BILL - GENERAL

2. This Bill is being brought forward as part of the Government’s objective of creating stronger, safer communities. It will create a legal and administrative framework for the construction and management of controlled reservoirs in a manner that reduces the risk of an uncontrolled release of water from reservoirs and the consequences of any subsequent flooding.

3. To deliver this framework, the Bill makes substantive provision in the following areas:
   - A requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be registered with SEPA;
   - Each reservoir is to be classified as high, medium or low risk according to whether it poses a threat to human life, property and/or critical infrastructure;
   - Each reservoir will be subject to a proportionate supervision and inspection regime dependent on its classification;
   - SEPA will be responsible for enforcing the provisions under this legislation. This is an administrative role;
   - Independent qualified civil engineers (known as panel engineers) will provide technical expertise with supervising and inspection roles within the framework.

BACKGROUND

4. Reservoirs are artificial structures which have been created to hold and store water above its natural level for a variety of purposes including drinking water, energy production, flood management and recreation. There are over 1000 reservoirs in Scotland. Of these just over 650 reservoirs currently come within the ambit of the Reservoirs Act 1975. About 80% of these are embankment dams, with the remainder being concrete dams and service reservoirs. The age of the dams ranges from the 12th century to dams which have been constructed in the last few years. Most of the dams in Scotland are over 100 years old.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

The 1975 Reservoirs Act

5. The safety of reservoirs in Scotland is currently governed by the Reservoirs Act 1975 (the “1975 Act”) which aims to reduce the risks posed to public safety from a reservoir or dam failure which may lead to flooding. The main features of the 1975 Act have not changed substantively from the Reservoirs (Safety Provisions) Act which was passed in 1930.

6. The responsibility for enforcement of the 1975 Act lies with local authorities, but provision has been made to transfer these functions to SEPA under the Flood Risk Management (Scotland) Act 2009 (the “2009 Act”). In addition, the 2009 Act gave enforcement authorities in Scotland the power to serve and enforce notices requiring reservoir undertakers to take measures in the interests of safety. The 2009 Act also introduced new enabling powers which allow the Scottish Government to put in place incident reporting regulations and require reservoir undertakers to prepare on-site flood plans for reservoirs.

7. The 1975 Act only applies to Large Raised Reservoirs which hold, or are capable of holding, more than 25,000 cubic metres of water above the natural level of the surrounding land. This threshold was chosen as it was on the basis of failures of reservoirs of this size in the 1920s which caused loss of life and prompted the introduction of the 1930 Act. The level of regulation does not take into account the level of risk posed by the reservoir. There is also no provision for smaller reservoirs to be supervised through their construction or operational phases, even though the failure of smaller reservoirs could have serious consequences if there are people living downstream.

8. There have been incidents at some smaller reservoirs which are not currently subject to regulation, such as the Maich fishery in Renfrewshire in 2008 where overtopping of the reservoir due to heavy rain nearly caused the failure of the dam. This required emergency response procedures to be activated and an area downstream of the dam had to be evacuated. Such incidents have reinforced the need to modernise the reservoir safety legislation and provide greater protection for the public. This is especially true given the increasing age of most of the dams in Scotland.

9. For these reasons, the Scottish Government has decided that the changes to the enforcement regime introduced in the 2009 Act, while important, do not go far enough in minimising the risk of flooding from reservoirs. The Government decided, therefore, to repeal and replace the 1975 Act in Scotland with a proportionate, targeted and risk-based approach to reservoir safety.

10. In order to maintain the current consistency of approach across Scotland, England and Wales, the provisions in this Bill are broadly in line with those in the Flood and Water Management Act 2010 which, when commenced, will update the reservoir safety regime in England and Wales. Maintaining a consistent approach is important because of the crucial role played by specialist reservoir engineers appointed to panels by the Secretary of State on the advice of the Institution of Civil Engineers (“ICE”). These panel engineers are the only group of individuals qualified to supervise and inspect controlled reservoirs and retaining their extensive knowledge will be essential to the success of any new regime. The number of panel engineers operating in Scotland is already limited, and any major difference in operating practices compared with England and Wales could further reduce this limited pool.
11. The Bill is separated into three parts:

- Part 1 creates a new regime for ensuring the risk from flooding from reservoirs in Scotland is managed appropriately.
  - Chapter 1 provides a definition of a controlled reservoir that would be captured by the new legislation. Chapter 1 also defines who is responsible for the safety of each reservoir, and repeals the Reservoirs Act 1975 for Scotland.
  - Chapter 2 sets out the process for registering a reservoir with SEPA, and how SEPA will manage the register.
  - Chapter 3 sets out the process for designating each reservoir as either high, medium or low risk.
  - Chapter 4 describes the process for establishing panels of reservoir engineers to carry out the construction, inspection and supervisory roles set out in more detail in chapters 5 and 6.
  - Chapter 5 establishes the process for constructing or altering controlled reservoirs, including the appointment of a relevant panel engineer to oversee the work and the associated supervision and inspection regime.
  - Chapter 6 sets out the supervision and inspection requirements for those reservoirs that are designated as either high or medium risk.
  - Chapter 7 sets out other general requirements in relation to controlled reservoirs. This includes a power to establish a new system for reporting incidents that affect safety at controlled reservoirs and a power to require the preparation of flood plans for controlled reservoirs.
  - Chapter 8 sets out the procedures for resolving disputes between reservoir owners and panel engineers.
  - Chapter 9 creates new civil enforcement powers that SEPA can use as an alternative to prosecution to enforce the requirements of the legislation. It also sets out the emergency powers that SEPA can use where it appears that immediate action is needed to protect people or property.
  - Chapter 10 makes provision for a number of miscellaneous technical matters including regulation making powers to enable Ministers to make provision about the assessment, form and content of the reports made by panel engineers.

- Part 2 creates an enabling power to create relevant and proportionate offences in relation to regulations made under The Water Environment and Water Services (Scotland) Act 2003 (“WEWS”) in connection with the remediation or restoration of the water environment.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

- Part 3 sets out general provisions relating to Crown application, ancillary provision, offences by bodies corporate and other technical matters.

12. The Bill does not make specific provision for emergency responses to major flooding events - this remains under the remit of the Civil Contingencies Act 2003. However, the expectation is that the improved information on the risk posed by controlled reservoirs, as well as any flood plans produced under this Bill will help emergency responders prepare and react to any potential reservoir breach. The Bill also does not cover wider health and safety aspects of reservoir management, as this comes under the auspices of the Health and Safety legislation.

PART 1

CHAPTER 1 - CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

Policy Objectives

13. The provisions set out in Chapter 1 of the Bill create the statutory framework within which reservoir safety in Scotland will be regulated. It establishes SEPA as the enforcement authority and defines what will constitute a controlled reservoir, and therefore the types of structures that would be subject to risk-based regulation.

Definition of a reservoir

14. As reservoirs which have a capacity of less than 25,000 cubic metres can pose similar dangers to the people living immediately downstream as those posed by larger reservoirs, the Bill defines a reservoir as a structure designed or used for collecting and storing water, or an artificial (or partly artificial) area capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land area. A reservoir includes certain technical features such as spillways, valves and pipes. Applying these definitions will ensure that no structures are captured inappropriately.

15. The 10,000 cubic metre minimum volume threshold above which a reservoir would be subject to regulation has been agreed in close consultation with the ICE. 10,000 cubic metres is considered to be the minimum volume at which a reservoir failure would, in most cases, pose a risk to human life. However, as one of the concerns about the 1975 Act was that it relied upon a strict volume criterion for determining the reservoirs that needed to be supervised, it was important that there should be some flexibility around any minimum volume threshold set in the Bill. Therefore, provision has been made to enable Scottish Ministers to treat particular reservoirs as controlled reservoirs, notwithstanding that they have a capacity of less than 10,000 cubic metres, where there are particular concerns about the risk posed by that reservoir. Ministers also have the power to change the minimum volume threshold above which all reservoirs are subject to regulation under the Bill should evidence suggest that a different volume threshold would be more appropriate.

16. Structures which are already covered by existing legislation, such as canals and inland waterways, are specifically excluded from regulation by provisions in the Bill.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Reservoir Managers

17. The Bill introduces a new term to describe the person or organisation which is legally responsible for all enforcement requirements relating to each reservoir. The term ‘reservoir undertaker’, which was used in the Reservoirs Act 1975 was unpopular and often misunderstood. It has therefore been replaced with the term ‘reservoir manager’. Scottish Water merits a specific mention as the largest reservoir owner in Scotland – Scottish Water owns 248 reservoirs regulated under the 1975 Act. The number of regulated Scottish Water reservoirs under the Bill will exceed 300 due to the lowering of the volume threshold to 10,000m³.

18. To reduce bureaucracy and duplication of effort, the Bill allows multiple owners of the same reservoir to either nominate one owner who is then responsible for either all or part of the enforcement requirements for that reservoir, or for all parties to be jointly responsible. There have been issues in the past relating to multiple owners where it has proven to be extremely difficult to assign responsibility for undertaking work, and this is an area where there has been widespread support for implementing change. Reservoir managers now have a duty to co-operate to enable them all to comply with the legislation. The practical consequence of this is that, at the most basic level, a reservoir manager has a duty not to act in a way which prevents another reservoir manager exercising functions under the Bill. The intention is to facilitate any disagreements between reservoir managers with mediation if necessary, which would be done through guidance.

CHAPTER 2 - REGISTRATION

Policy objectives

19. At the moment, there is no central database covering reservoirs in Scotland. Currently, each of the 32 Local Authorities in Scotland are responsible for regulating each reservoir within their respective areas, which leads to a fragmented and inconsistent approach to record keeping and enforcement across the country. The transfer of responsibility to one central enforcement body, SEPA, is a key aspect of the Bill, ensuring consistency of record keeping and a more cohesive, transparent approach. SEPA will, therefore, be responsible for creating the Controlled Reservoirs Register. The details to be held on each reservoir will include contact information for the owner and details of any currently appointed panel engineers; however, entries for Medium and High-risk reservoirs will include more detailed data appropriate to each risk level. The differing levels of detail to be stored on the central register reflect how reservoirs are to be treated proportionate to the level of risk they pose. SEPA will also be responsible for updating the register if there is a change in circumstances.

CHAPTER 3 – RISK DESIGNATION

20. One of the crucial elements of creating a risk-based safety regime is the categorisation of reservoirs as either High, Medium or Low risk. Each category will carry a different level of inspection requirements; reservoirs in the high risk category will be subject to a higher level of scrutiny and enforcement than those in lower risk classes. In categorising reservoirs, SEPA will give careful consideration to the potential impact that could result from an uncontrolled release of water; in particular the potential impact on public safety. As the enforcement body, SEPA are best-placed to assess the available evidence and arrive at a risk designation for each reservoir, even if this will be a novel process for them. If necessary, SEPA will be able to draw on the technical
expertise of panel engineers, which would also be provided independently.

21. As with other provisions in the Bill, it is important that the classification process should be flexible, so that the level of risk assigned to a particular reservoir can be adjusted if new information becomes available, or if circumstances change. As the risk designation assigned to a controlled reservoir will determine the level of supervision and inspection needed, and consequently the level of cost associated with maintaining that reservoir, it is crucial that there should be the opportunity for a reservoir manager to request a review of SEPA’s decision.

CHAPTER 4 – PANELS OF RESERVOIR ENGINEERS

Policy Objectives

22. As mentioned previously, the creation of panels of specialist reservoir engineers is an area where ensuring consistency with Defra’s Flood and Water Management Act 2010, wherever appropriate, will be crucial. The number of panel engineers operating in Scotland is already limited, and it is important that Scotland avoids any major differences in operating practices compared with England and Wales which could reduce this already limited pool.

23. The Bill necessarily involves the creation of separate Scottish panels of engineers; however, the intention is for the registration process to be the same as for the English and Welsh panels, so as not to create any unnecessary administrative hurdles for the ICE when making recommendations for appointments to the Scottish panels. The ICE will continue to play a crucial role in advising Scottish Ministers on the appointment or removal of engineers from the Scottish panels, and on any other aspects of the Scottish panel structure.

CHAPTER 5 - CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Policy Objectives

24. One of the crucial roles played by panel engineers is in ensuring the safe construction or alteration of a controlled reservoir. An important omission in the 1975 Act was that panel engineers were not required to be involved when the capacity of a reservoir was reduced, even though this is major work which the potential to impact on the safety of a reservoir, and which should not, therefore, be undertaken without the supervision of a panel engineer. The Bill now requires a relevant panel engineer to be appointed to be responsible for, and certify, any increase or reduction in capacity of any controlled reservoir or any other relevant work.

25. Chapter 5 also simplifies the system of certification provided by panel engineers when any work to construct or alter the capacity of a controlled reservoir is undertaken. Previously, a panel engineer would have to wait a minimum of 3 years after the issue of a ‘preliminary’ certificate to observe how the reservoir performed when filled before issuing a final certificate. In reality, this is not always necessary and the Bill seeks to take advantage of the expertise and judgement of panel engineers in determining when a final certificate should be issued. It may be the case that the panel engineer is satisfied that a reservoir is sound after a shorter period than 3 years, and would now be able to issue the final certificate accordingly.

26. Another simplification is the removal of the ‘interim’ certificate, which was previously issued to allow work to draw down a reservoir to a specified amount. In practice, this could be
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

onerous task (especially if a reservoir was being altered in stages); any such requirements involving a change in volume are now covered by the same preliminary certificate that would also be used if an engineer was seeking to test a structure during construction.

27. The requirement that SEPA must receive promptly any certificate issued in respect of any reservoir over 10,000 cubic metres will enable SEPA to monitor the ongoing construction and alteration of reservoirs in Scotland, highlight any outstanding points and take necessary action if the process is not followed. This will be yet another improvement to the level of data held on controlled reservoirs in Scotland.

CHAPTER 6 - OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

Policy Objectives

28. Under the 1975 Act, all reservoirs over 25,000 cubic metres are subject to the same inspection requirements – ongoing supervision by a panel engineer referred to as a “supervising engineer” and inspection once every ten years by a panel engineer referred to as an “inspecting engineer” (or whenever recommended by the supervising engineer). Chapter 6 of the Bill retains a similar system of inspection for High-risk reservoirs, whereas Medium-risk reservoirs are only inspected whenever recommended by the relevant panel engineer. Low-risk reservoirs have no inspection requirements at all.

29. This tiered system more accurately reflects the variable need for a fresh pair of eyes to review each reservoir. Though inspecting engineers provide a valuable and independent review of the ongoing work done by supervising engineers, it should not be necessary to make this mandatory in the case of Medium-risk reservoirs. Instead, the need for inspections will be determined by the expertise of the supervising engineer. In the case of Low-risk sites, the absence of consequences for any people or property negates the need for any supervisory requirements at all. This is very relevant in Scotland as many reservoirs are geographically remote. In these cases, the onus will appropriately be on each reservoir manager to properly maintain their own assets. This in turn will allow for a more considered allocation of limited engineering resources.

CHAPTER 7 - OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

Policy Objectives

30. Chapter 7 provides an enabling power for a mandatory incident reporting regime. Panel engineers are keen to receive data on any incident involving a reservoir. As many incidents currently go unreported (partly because of reservoir managers’ fears that reporting will lead to sanctions), the availability of such data has previously been extremely limited. Provision of any information, no matter how minor, will help panel engineers better understand some processes associated with reservoir maintenance. Where information is not willingly provided by reservoir managers, SEPA will have the power to investigate actively.

31. This section also provides an enabling power for the production of flood plans, specifying what action a reservoir manager would take in order to control or mitigate the effects of any flood. Such flood plans would not be appropriate to contribute to the process of risk designation, but they would be valuable in linking with offsite plans prepared separately and held by emergency services, providing a cohesive and complete picture of how all affected parties would respond in the event of
an uncontrolled release of water.

CHAPTER 8 – DISPUTE REFERRAL

Policy Objectives

32. In any regulatory system, it is important to have a mechanism in place to resolve disputes, particularly in areas that deal with public safety, so as to ensure that the dispute is resolved as quickly and as amicably as possible. Chapter 8, therefore, establishes a system, similar to the one which already exists under the 1975 Act, which allows reservoir managers to challenge any requirements set out by panel engineers in relation to their reservoir(s). In such cases, a suitably qualified referee will be appointed and, in order to ensure that the dispute is resolved to the satisfaction of both parties, referees must be appointed by agreement between the reservoir manager and the relevant panel engineer.

CHAPTER 9 - CIVIL ENFORCEMENT, RELATED OFFENCES AND EMERGENCY POWERS

Policy Objectives

33. Chapter 9 sets out a ‘toolkit’ of enforcement options available to SEPA in the event of non-compliance by reservoir managers. This includes stop notices, financial penalties, the ability to publish details of enforcement action, and further criminal proceedings, amongst other options. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so. Flexibility and common sense will be key aspects of how SEPA approach their enforcement duties, although legal sanctions will still be applied where it is viewed appropriate to do so.

34. SEPA will be able to invoke any of these civil sanctions without the involvement of a court, having formed its own judgement as to whether it considers, beyond reasonable doubt, that an offence under the Bill has been committed by a reservoir manager. This is a new process for SEPA, although in England and Wales, there is already provision for regulatory bodies such as the Environment Agency to use similar sanctions.

35. Chapter 9 also enables SEPA, in consultation with a panel engineer, to enter a site to take emergency action in order to deal with an immediate threat of uncontrolled release of water from a dam. In the Maich Fishery incident in 2008, it proved to be difficult to establish the legal acceptability of the enforcement authority entering the site to undertake urgent safety works (unusually, at one point legal permission had to be sought from the owner to remove the dam). The Bill seeks to remove any such obstacles to urgent remedial works being undertaken, thereby improving the safety of people and property at risk from a potential dam breach.

36. It was also necessary to provide SEPA with powers to enter a site to gain necessary information on a reservoir. This could be to assist with a risk classification, to verify if necessary work has been completed, or to determine if any work is needed. Such powers will enable SEPA to fully investigate any situations where information is unclear, allowing it to come to a fully informed decision about the course of action to take. As an independent body, SEPA must be seen to be transparent and thorough in its decision making. This section will allow them, when needed, to reasonably gain a full picture of events without obstruction.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

CHAPTER 10 – MISCELLANEOUS

37. Chapter 10 deals with a number of technical matters including regulation making powers to enable Ministers to make provision about the assessment, form and content of the reports made by panel engineers.

PART 2 – PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

Policy Objectives

38. This section concerns the second part of this two-purpose Bill. The Water Environment and Water Services (Scotland) Act 2003 (WEWS) empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, WEWS did not provide for the creation of offences in respect of such regulations. This section is necessary as it is currently difficult to enforce regulations where there are no offences in place.

39. The EC Water Framework Directive put in place a strategy for improving the water environment throughout Europe. Specifically, the River Basin Management Plans identify that around 40% of Scotland’s water bodies are not currently meeting the WFD’s “good status” objective; with some 760 water bodies needing some restoration activity to restore them to good status. The consultation documents Scotland’s Waters: Future Directions and Restoration of the water environment were published in January 2009 alongside the draft River Basin Management Plans, and ran until April 2009. These highlighted the gap in our delivery framework and proposed a strategic approach to restoration, underpinned by proposals for new regulatory powers. Responses to the consultations strongly supported new powers for SEPA to take action. The inclusion of an enabling power to create relevant and proportionate offences will greatly aid the delivery of Ministers’ obligations in this area.

PART 3 – GENERAL

40. Part 3 deals with ancillary provision, Crown application and other technical matters.

CONSULTATION – GENERAL

41. The consultation document Reservoir Safety in Scotland summarised the Scottish Government’s proposals for an improved regime to manage reservoir safety in Scotland. The consultation was published in January 2010, with the consultation period running from 25 January to 18 April 2010. The consultation was made available on the Scottish Government’s website and a wide range of stakeholders were invited by email or letter to respond to the consultation.

42. 67 organisations and individuals responded to the consultation. 21 responses were received from the private sector and 11 from consultants. A significant number of responses were received from Local Authorities (16), public bodies (11) and angling clubs (2). A report containing analysis of the responses to the consultation, together with the responses themselves (where permission was given to do so), was published on the Scottish Government’s website in July 2010.

43. In summary, responses generally supported proposals for reservoir flood plans, incident reporting and a risk-based approach to reservoir safety. There were some concerns about some of
the detail, such as the reasoning behind the minimum volume of 10,000 cubic metres, and the need to ensure that no restrictions are placed on engineers operating across borders after a Scottish panel of engineers is established. The Scottish Government used these comments to clarify some points where necessary. Generally, however the safety benefits of the proposed changes were accepted to be worthwhile and of value to public safety, and the vast majority of respondents supported the Scottish Government’s preferred implementation model.

RESERVOIR SAFETY STAKEHOLDERS GROUP

44. In July 2009 the Scottish Government set up the Reservoir Safety Stakeholder Group (RSSG). The role of this group was to advise the Scottish Government on the development of reservoir safety issues at a strategic level and assist with developing legislation in this area. The group is an informal forum which brings together professionals which bring together a wide range of stakeholders including SEPA, the Environment Agency and panel engineers, as well as undertakers such as Scottish Water, utility companies, SMEs and private individuals. To date there have been six meetings of the RSSG, with discussion topics selected for each that were relevant to the development of the legislation at that time.

PUBLIC WORKSHOPS

45. The Scottish Government hosted public meetings in Inverness, Edinburgh, New Galloway and Glasgow as an open forum for discussion on the legislative proposals. The workshops were attended by over 80 delegates and provided the opportunity for the policy proposals to be further explored, particularly by organisations not represented on the stakeholder group. Representatives from the Scottish Government Flooding Policy Team, SEPA and ICE panel engineers participated in the open question and answer sessions. The meetings were promoted with advertisements in the local press, Ministerial interviews and flyers. Local stakeholders were invited to attend and comment on the proposals for improving reservoir safety in Scotland. Data from all four meetings formed a substantial part of the analysis of consultation responses.

ALTERNATIVE APPROACHES

46. The alternatives to the Bill proposals are to retain the current enforcement regime, to retain the current regime with the changes introduced by the 2009 Act, the creation of a new reservoir licensing system or the deregulation of the reservoir safety regime.

Deregulation

47. Deregulation would have involved repealing the 1975 Act and relying on reservoir managers to maintain dams to a suitable standard. However, this was not considered to be a viable option as it would mean a reduction in the current control over reservoir safety in Scotland, and would be overly reliant on self-policing by the industry. Although many reservoirs are owned by public bodies, or by conscientious private companies that carry out regular inspection and maintenance regimes, there are many privately owned reservoirs about which little is known and which could have the potential to pose a risk to public safety.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Current Enforcement Regime

48. Currently, the enforcement of the 1975 Act in Scotland is the responsibility of the 32 Scottish local authorities. The biennial reports they submit indicate varying staffing and financial resource allocation to reservoir responsibilities amongst these authorities. This can be partly attributed to geography and topography; for example Highland Council has some 125 reservoirs which fall within the ambit of the 1975 Act, whilst Glasgow City Council has only 2. However, the enforcement role is considered an onerous burden which is disproportionate to the reservoirs located within many local authority areas. For example, two local authorities have responsibility for the enforcement of the 1975 Act for 21 reservoirs, some 1-2% of the total number of reservoirs in Scotland. However, both authorities experienced significant and lengthy problems in trying to establish ownership of one reservoir within each of their areas. The Scottish Government therefore concluded that a single enforcement authority will provide a more efficient and nationally consistent approach to the enforcement of the legislation that will ultimately enhance the safe operation of Scotland’s reservoirs.

49. The alternative to transferring the enforcement responsibilities to SEPA was to establish a completely new authority for reservoir safety in Scotland. The creation of a new body for reservoir safety would be very resource intensive. Creating yet another public body to take on a role that could be carried out by an existing organisation would also be contrary to the Scottish Government’s stated aim of having fewer, better structured arms length bodies at a national level; which receive clear and integrated strategic direction from Government, while at the same time given room to deliver.

Current Enforcement Regime with 2009 Act Changes

50. Once the decision had been made to retain a reservoir safety regime and to transfer the enforcement responsibilities to SEPA, consideration had to be given to the options for ensuring reservoir safety in Scotland. One option was retaining the 1975 Act, with the changes introduced by the 2009 Act. This would have ensured compliance of large raised reservoirs with volumes greater than 25,000 cubic metres through constant expert supervision. However, the system under the 1975 Act is not risk based, and does not take account of the impact of a dam failure on the downstream community. The Scottish Government concluded, therefore, that this option would not deliver a modern and robust system which protects the Scottish public from the risk of flooding from reservoirs.

Reservoir Licensing System

51. Another option was to move to a reservoir licensing system whereby those reservoir managers with a reservoir that has the capacity to hold 10,000 cubic metres or more would need an authorisation from SEPA. The registrations would contain a minimal number of standard conditions with which the reservoir manager would have to comply. These might include the need to appoint a supervising engineer, or undertake periodic visual inspections. However, requiring SEPA to set licence conditions would have meant a shift in responsibility for safety from suitably qualified panel engineers to SEPA. This would have required SEPA to recruit and employ, or buy in expertise to monitor and inspect compliance with the license conditions – a cost that would then be passed back to the reservoir manager via a charging scheme. The need for an additional license
in place of conditions set out in legislation was also considered to be an unnecessary layer of bureaucracy that did not comply with the Scottish Government’s aim of Better Regulation.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, AND SUSTAINABLE DEVELOPMENT ETC.

Impact on equal opportunities

52. Copies of the consultation paper on reservoir safety in Scotland were sent to all the main national equality groups and no equalities issues were raised during these consultations.

53. The Bill should not be considered in isolation from existing statutory obligations in relation to equal opportunities. Public authorities have relevant statutory obligations under the Race Relations Act (RRA), the Sex Discrimination Act (SDA) and the Disability Discrimination Act 1995 (DDA). All three Acts make discrimination in service provision unlawful. The RRA also places a general duty on public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between people of different racial groups. The Commission for Racial Equality produces codes of practice to provide practical guidance to public authorities on how to fulfil that duty. SEPA and the other responsible authorities will be obliged to carry out their functions relating to reservoir safety, including the provision of information to interested parties, in accordance with this legislation and in accordance with the Access to Environmental Information Regulations as well as the Freedom of Information (Scotland) Act 2002.

Impact on human rights

54. The Scottish Government considers that the provisions within the Bill are compatible with the European Convention on Human Rights.

Impact on island and rural communities

55. The purpose of the Bill is to improve reservoir safety for the whole of Scotland, including rural, island or urban settings. As such, communities and businesses in island or rural communities will benefit from this in the same way as those in other parts of Scotland.

Impact on Local Authorities

56. Local Authorities will no longer be the enforcement bodies for reservoirs once the responsibility is transferred to SEPA. In general, Local Authorities have been strongly supportive of this change, both in consultation and in subsequent discussions. Removal of the enforcement responsibility will result in a resource saving for those Local Authorities who currently have reservoirs in their area. However, some Local Authorities may own smaller reservoirs not currently covered by the 1975 Act, which will be brought under the new legislation with appropriate related costs.

57. When any new costs incurred are compared with the savings resulting from no longer being the enforcement authority, annual costs for Local Authorities collectively will remain relatively
unchanged. Those Local Authorities owning a significant number of smaller reservoirs may have a cost increase. The Scottish Government worked with both CoSLA and individual Local Authorities to establish and agree cost implications. The estimated costings were signed off by CoSLA’s Director of Finance.

**Impact on sustainable development**

58. The Scottish Government is committed to building a sustainable future and has published its Economic Strategy aimed at creating a more successful country with opportunities for all of Scotland to flourish. Increasing sustainable economic growth, which is defined as building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can also enjoy a better quality of life, is the central tenet of this strategy.

59. To deliver this Economic Strategy, the Scottish Government have identified five Strategic Objectives which map a Scotland that is *wealthier and fairer, smarter, healthier, safer and stronger*, and *greener*. The alignment of the Scottish Government’s work with these Strategic Objectives will help us to deliver the sustainable development that will increase the prosperity of Scotland.

60. This Bill will have an important role to play in driving forward the *Safer and Stronger* Strategic Objective which seeks to ensure that people live in well designed, sustainable places that are either urban or rural. This will be achieved through chapter 5, which aims to ensure reservoirs which pose a high risk are supervised and inspected to ensure the structures are consistently well maintained. This will accordingly ensure the safety of people, property and infrastructure in the vicinity of each reservoir.

61. The Bill also contributes to the *Wealthier and Fairer* objective. By categorising each reservoir according to the level of risk it poses and specifying inspection and maintenance requirements accordingly, reservoir owners and managers will be assessed in a responsible and sustainable way.
RESERVOIRS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Reservoirs (Scotland) Bill. 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 and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Reservoirs (Scotland) Bill is a two-purpose Bill, principally focusing on reservoir safety issues but also taking the opportunity to include powers to enable the creation of offences to support objectives set out in the Water Framework Directive.

4. The main purpose of the Reservoirs (Scotland) Bill is to provide better protection from the risk of flooding from reservoirs by replacing the Reservoirs Act 1975 with a proportionate, risk-based approach to reservoir safety.

5. The Bill has 3 parts:
   • Part 1 is separated into 10 chapters:
     o Chapter 1 sets out the structures which will be regulated under the Bill and defines them as “controlled reservoirs”. This chapter also sets out the individual, or individuals who are responsible for the reservoir and defines them as “reservoir managers”. This chapter also repeals the Reservoirs Act 1975 for Scotland.
     o Chapter 2 requires SEPA to establish and maintain a register of controlled reservoirs. It also requires reservoir managers to register their reservoirs with SEPA and inform them of any changes.
     o Chapter 3 requires SEPA to categorise all controlled reservoirs according to the risk they pose to human health and other factors such as the
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

environment and cultural heritage. It provides for three categories of risk: high, medium and low. Reservoir managers are provided with scope to make representations against a risk category and for these representations to be taken into consideration.

- Chapter 4 provides Scottish Ministers with the power to establish Scottish panels of engineers. Scottish Ministers can appoint or remove engineers to the panels or dissolve a panel completely. It also provides for civil engineers to seek review of the Scottish Ministers’ decisions on appointments and requires the Scottish Ministers to consult with the Institution of Civil Engineers before making decisions under this chapter.

- Chapter 5 provides for reservoir managers to appoint an engineer from an appropriate panel to supervise the construction or alteration of controlled reservoirs. It also provides for a system of certification and reporting to ensure the reservoir is constructed safely and is not used for the storage of water until the construction engineer determines that it is safe to do so.

- Chapter 6 sets out the duties of reservoir managers of high and medium risk reservoirs. It makes provision for the appointment of engineers to supervise and inspect reservoirs. It makes provision for the recording of water levels, repairs and other works and sets out the records which must be kept by reservoir managers.

- Chapter 7 enables provision to be made through regulations to introduce a system for reporting incidents which could affect the safety of reservoirs. It also enables Scottish Ministers to make provision in regulations for the preparation, review and testing of flood plans.

- Chapter 8 sets out provisions for reservoir managers to challenge decisions and recommendations made by panel engineers by referring them to an independent engineer.

- Chapter 9 provides for SEPA to either make use of new civil sanctions including stop notices, fixed monetary penalties and enforcement undertakings or pursue criminal proceedings following non-compliance by a reservoir manager. It also gives SEPA powers to publish details of non-compliance. This chapter also enables SEPA to take emergency action at a site in danger of an uncontrolled release of water and make appointments of appropriate engineers or undertake measures in the interest of safety if not undertaken by the reservoir manager. Expenses for such action will also be recoverable from the reservoir owner. It also sets out powers of entry and compensation provisions to support SEPA in exercising their statutory responsibilities under the Bill.

- Chapter 10 sets out provisions for the form and content of notices and other miscellaneous provisions.

- Part 2 provides for the creation of offences to support objectives set out in the Water Framework Directive (WFD). Scottish Ministers have already been empowered to make regulations relating to water environment through the Water Environment and Water Services (Scotland) Act 2003, but the ability to create offences in support of
These regulations can only be addressed through primary legislation. This Part of the Bill is being used for this purpose.

- Part 3 makes general provision for the making of orders and regulations under the Bill. It also makes provision about the application of the Bill to the Crown and commencement of the Bill.

6. Further information about the Bill’s provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 55—FM, and in the Policy Memorandum published separately as SP Bill 55—PM.

Rationale for subordinate legislation

7. The Bill contains a number of delegated powers provisions which are explained in more detail below. In deciding whether these provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has considered carefully the importance of each matter against the need to:-

- ensure sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation;
- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation;
- enable sufficient flexibility in the functions and roles of SEPA and civil engineers in the regulation of reservoirs in order to facilitate effective involvement of the Institution of Civil Engineers by taking into consideration their functions both in Scotland and in England and Wales.
- facilitate a smooth transfer of enforcement authority from the 32 local authorities under the Reservoirs Act 1975 to SEPA under the Bill.

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 Scottish Ministers to make the instrument, and no need for Parliament to be able to annul or approve it.

9. If subordinate legislation does implement Government policy then some form of parliamentary 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 Government on the importance of the matter delegated by Parliament.

General subordinate legislation provision

10. Section 107 (orders and regulations) contains the general subordinate legislation provisions. Subsection (1) provides that any power conferred on the Scottish Ministers to make orders or regulations must be exercised by statutory instrument. Subsection (2) allows different provisions to be made for different purposes and also permits the powers to be used to make incidental, supplemental, consequential, transitional, transitory or saving provisions. Subsection (3) provides that all of these powers are subject to negative resolution procedure except those listed in subsection (4), which are subject to affirmative procedure, and the commencement
provisions (section 109(1)) where no procedure is required. Subsection (4) provides for orders made under sections 1(6)(a), 21(4), 52(1) or 53(1), 71(1), 76(1), 77(1), 80(1), 101 or 106(1) to be subject to affirmative procedure, in the latter case only where the power is used to amend primary legislation.

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 Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

12. The Bill confers a number of powers on the Scottish Ministers which are set out below.

Section 1(4) - Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by statutory instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative resolution of the Scottish Parliament</td>
</tr>
</tbody>
</table>

Provision

13. Section 1(2) defines a “controlled reservoir” as being a structure designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Section 1(3) makes related provision for combinations of structures that could collectively release 10,000 cubic metres. Section 1(4) enables Scottish Ministers to make provision by order for a structure or combination of structures to be treated as a controlled reservoir notwithstanding that the requirements of subsections (2) or (3) are not met.

Reason for taking power

14. It is important that all reservoirs that have the potential to pose a risk to the public are regulated under the new legislation. The 10,000 cubic metre threshold above which a reservoir would be subject to regulation has been agreed in close consultation with ICE. However, as one of the concerns about the 1975 Act was that it relied upon a strict volume criterion for determining the reservoirs that needed to be supervised, regardless of the risk a reservoir actually posed, it was important to include a power to enable Scottish Ministers to exercise some discretion to include individual reservoirs or combinations of reservoirs that have the potential to pose a risk, even though they do not meet the basic volume threshold set in the Bill.

Choice of procedure

15. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The core provisions relating to controlled reservoirs and the default position that these should be capable of holding (or in the case of a combination, releasing) a minimum of 10,000 cubic metres of water are set out on the face of the Bill. Any provision for varying that figure would be likely to be based on detailed technical material on a case by case basis.
Section 1(6)(a) - Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision
16. Section 1(6)(a) allows Scottish Ministers, by order, to set a different volume threshold for controlled reservoirs from the 10,000 cubic metres currently specified.

Reason for taking power
17. At the moment, 10,000 cubic metres is considered to be the minimum volume of water which, if released as a result of a reservoir failure, would pose a risk to human life. However, as Scotland’s reservoirs’ age, and as our understanding of the risk they pose improves, it is possible that the engineering advice on the minimum threshold may change. The power to specify a different volume threshold therefore allows flexibility to take these changes into account.

Choice of procedure
18. The power under this section is a power to amend primary legislation. It is therefore considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 1(6)(b) - Power to specify when a loch or other area is to be considered artificial, how the volume of water capable of being held is to be calculated and the meaning of “natural level” and “surrounding land”

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
19. Section 1(6)(b) allows Scottish Ministers to specify when a loch or other area is considered to be artificial, how the volume of water capable of being held or released is calculated and also the meaning of “natural level” and “surrounding land” for the purposes of Section 1(2).

Reason for taking power
20. Many of Scotland’s reservoirs are over 100 years old, and it is not always obvious to an uninformed observer that a body of water is not a naturally occurring loch. For the avoidance of disputes in those cases where doubt arises about the nature of a body of water, it will be necessary to have clear guidelines on when a loch should be considered artificial (or partly artificial) and thus subject to the requirements of the Bill. There also needs to be clear and unambiguous guidelines on how reservoir managers should calculate the volume of their reservoirs, to determine whether they are above the minimum volume of 10,000 cubic metres and on the meaning of the terms “natural level” and “surrounding land”, otherwise the
registration process will be held up by unnecessary disputes over whether some reservoirs should be treated as controlled reservoirs for the purposes of the Bill.

Choice of procedure

21. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that the main provisions setting out what is to be considered a controlled reservoir is included in the main body of the Bill.

Section 2(3) – Power to make provisions as to what is to be considered a controlled reservoir

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

22. Section 2 provides additional information on what should and what should not be considered a controlled reservoir for the purposes of the Bill. Subsection (2) specifically excludes a number of structures and areas from being considered as a controlled reservoir. Subsection (3) allows Scottish Ministers to define the terms set out in subsection (2) and provide for other things not to be controlled reservoirs.

Reason for taking power

23. There are a number of structures that are specifically excluded from the Bill because they are already covered by existing legislation. These include road and railway embankments, canals and inland waterways. However, it may be necessary to supplement this list if it becomes clear that other structures are unintentionally captured by the Bill. Giving Scottish Ministers this power creates flexibility for them to specify additional elements that should not be considered as controlled reservoirs, and will also ensure that there is clarity over exactly which structures should be subject to the regulatory regime.

Choice of procedure

24. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature, given that the main provisions setting out what should, or should not be considered a controlled reservoir are included in the main body of the Bill.
Section 9(3) – Power to make provisions for further information or documents to be contained in the register and the time by which information is to be registered

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provisions

25. Section 9(3) enables Scottish Ministers to make provisions for further information or documents to be contained in the controlled reservoirs register, and the manner in which information included in the register should be recorded.

Reason for taking power

26. As the new enforcement regime for controlled reservoirs evolves, the Scottish Ministers may wish to use experience of the process to require new elements to be included in the register. Scottish Ministers may also wish to make sure that information is recorded in the register in a consistent manner. This power will allow the Scottish Ministers to act should this be required.

Choice of procedure

27. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.

Section 9(5) – Power to make provisions as to where the SEPA register is to be kept

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

28. Section 9 requires SEPA to make arrangements for the controlled reservoirs register to be available for inspection by any person at all reasonable times. Section 9(5) enables the Scottish Ministers to stipulate where the register is to be kept.

Reason for taking power

29. As the registration process is embedded, this power will provide flexibility in terms of where it would be useful to hold copies of the register. This will be informed by experience of using the new processes.

Choice of procedure

30. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of making the controlled reservoirs register available for inspection is already provided for within the primary legislation.
Section 10(2) – Power to make provisions for reservoir managers to provide SEPA with information

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
31. Section 10(2) enables Scottish Ministers, by regulations, to specify the information that a reservoir manager must provide to SEPA when registering a controlled reservoir, and the time by which any such information or change of information should be registered.

Reason for taking power
32. SEPA are required to establish and maintain a controlled reservoirs register. The information which is required to populate the register is held predominantly by reservoir managers. Scottish Ministers may wish to ensure SEPA have access to the appropriate information by requiring reservoir managers to provide SEPA with such information as necessary to populate the controlled reservoirs register. The Scottish Ministers may also wish to specify a time period in which the information or any changes of information should be provided by reservoir managers to SEPA.

Choice of procedure
33. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The principles relating to what should be included in a controlled reservoirs register are included in the Bill, and any regulations would provide supplementary detail only.

Section 12(1) – Power to specify when to register controlled reservoirs not required to be registered under the 1975 Act

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
34. Section 12(1) enables Scottish Ministers to specify the date on which reservoir managers must register those controlled reservoirs which were not previously required to be registered under the 1975 Act.

Reason for taking power
35. Under the new regime, the volume threshold will drop from 25,000 cubic metres to 10,000 cubic metres. This will mean there will be a number of reservoirs not registered under the 1975 Act, but which will be controlled reservoirs for the purposes of the Bill. In order to make the registration process proceed smoothly, the intention is to register all existing controlled reservoirs first, and then give the reservoir managers of newly identified controlled reservoirs time to gather the relevant information to enable registration at a later date.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Choice of procedure

36. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious, as the principle of requiring reservoir managers to register each controlled reservoir with SEPA is already provided for within the primary legislation.

Section 14(4) – Power to make provisions as to SEPA determining and charging fees in relation to registration and to prepare and publish guidance on registration

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

37. Section 14(4) allows Scottish Ministers, by regulations, to make provision for SEPA to determine the charging of fees in relation to registration. It also allows the Scottish Ministers to require SEPA to publish guidance on registration and to consult the Institution of Civil Engineers (ICE) before so doing.

Reason for taking power

38. The power will enable SEPA to charge reservoir managers a reasonable fee for registration in order to cover their administrative costs. It will also ensure that reservoir managers and others have a clear understanding of the registration process as a result of the guidance that would be prepared by SEPA in consultation with ICE.

Choice of procedure

39. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature.

Section 21(4) – Power to allow further matters to be taken into account by SEPA when deciding a reservoir’s risk categorisation

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

40. Section 21(4) allows Scottish Ministers, after consultation with ICE and SEPA, to make further provisions regarding the matters SEPA must take into consideration when making a risk designation for a controlled reservoir.

Reason for taking power

41. Although the process for assigning a risk designation set out in the Bill will ensure consistency of practice, this power allows changes to the matters to be taken into consideration,
if necessary, to ensure that the process is relevant, up to date and operates effectively. The Scottish Ministers need the flexibility to respond to feedback on the operation of the new risk designation process by amending the procedure if necessary, without having to resort to primary legislation.

**Choice of procedure**

42. The power under this section is a power to amend primary legislation. It is considered appropriate, therefore, that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

**Section 22(7) – Power to make further provision relating to reviews of risk designation**

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<td>Negative resolution of the Scottish Parliament</td>
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**Provision**

43. Section 22(7) allows the Scottish Ministers, by regulations, to make further provision in relation to the process for reviewing SEPA’s decision, relating to a reservoir’s risk classification.

**Reason for taking power**

44. The risk designation assigned to a controlled reservoir will determine the level of supervision and inspection needed, and consequently the level of cost associated with maintaining that reservoir. Giving Scottish Ministers these powers creates flexibility for reviewing and updating details of the application and review process for risk designation to make sure that it is fair and transparent.

**Choice of procedure**

45. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of allowing for a review of SEPA’s decisions on risk designations is already provided for within the primary legislation.

**Section 25 – Power to establish panels of reservoir engineers**

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**Provision**

46. Section 25 requires the Scottish Ministers, by order, to establish one or more panels of reservoir engineers and to specify the sections of Part 1 of the Bill, under which the members of any such panel may be appointed. It also requires the Scottish Ministers to appoint civil engineers whom they consider fit and appropriately qualified to be members of such panels.
Reason for taking power

47. The structure of the panels is a technical matter that will need to be worked out in liaison with ICE. Flexibility is required to be able to ensure some degree of coordination with (and take account of any changes to) the panel structure in England and Wales, to ensure that the process of seeking appointment to panels in the different jurisdictions of the United Kingdom is not unduly administratively burdensome for the limited pool of appropriately qualified engineers in the UK. Giving Scottish Ministers these powers creates the flexibility to shape the panel structure and associated processes following that consultation.

Choice of procedure

48. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The structure of the panels 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 primary legislation. The primary legislation imposes a duty upon the Scottish Ministers to consult ICE before making any order establishing a panel or making an appointment.

Section 26(7) – Power to specify what constitutes an appropriate application to a panel of engineers

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Provision

49. Section 26(7) enables the Scottish Ministers, by regulations, to make provision as to what will constitute an appropriate application to a panel of reservoir engineers. This will make sure that applications to the panel are correct, valid and submitted appropriately.

Reason for taking power

50. Any provision made under this power would be likely to be detailed and set out the form and content of an application, and to whom it should be submitted. These would require further consultation with ICE before being finalised. There should be flexibility to adjust provision made in the light of experience of completing an “appropriate application”, and possible changes to ICE.

Choice of procedure

51. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of enabling civil engineers to apply to be appointed to a panel is already provided for within the primary legislation.
Section 26(8) – Power to specify the charging of fees in connection with application from engineers for membership of a panel

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

52. Section 26(8) allows the Scottish Ministers, by regulations, to make provision for determining and charging fees in connection with applications for membership of a panel.

Reason for taking power

53. Civil engineers already pay a fee when making an application to a panel, and this practice will continue under the new legislation. At the moment, only one fee is paid, which covers the engineer’s application to act as a reservoir engineer in Scotland, England and Wales. The fee is intended to cover the costs of the ICE Reservoirs Committee, which currently advises the UK Government Ministers on appointments to panels of reservoir engineers. As the Bill requires Scottish Ministers to create new panels of reservoir engineers for Scotland, there needs to be some flexibility in determining the fee, in case the current arrangement with ICE should change in the future.

Choice of procedure

54. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of engineers paying a fee when applying to be appointed to a panel is widely accepted among the engineering community.

Section 28(2) – Power to review the decisions to appoint or remove a civil engineer from the panel

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

55. Section 28(2) allows the Scottish Ministers, by regulations, to make further provision about the right of civil engineers whose application to the panel have been rejected, or who have been removed from a panel, to apply to the Scottish Ministers for a review of their decision. The further provision may include the determination and charging of fees in connection with applications to the Scottish Ministers.

Reason for taking power

56. Any provision made under this power would be likely to be detailed and set out the form and content of an application for review, and how it should be submitted.
Choice of procedure

57. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. Any additional provisions would be largely procedural in nature. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.

Section 30(4)(b) – Power to specify any work in relation to a controlled reservoir that could constitute alteration of a reservoir

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

58. Section 30(4)(b) allows the Scottish Ministers, by regulation, to specify any work in relation to a controlled reservoir that could constitute alteration of the reservoir.

Reason for taking power

59. Reservoir managers are required to inform SEPA of any planned alteration to a controlled reservoir, and to appoint a construction engineer to supervise the works. In order to make sure that all appropriate works are undertaken under the supervision of a construction engineer, it will be necessary for Scottish Ministers to have the flexibility to specify what those works might be. These regulations would probably be technical in nature and may require adjustment from time to time to accommodate evolving developments in reservoir management. They would also require further consultation before being finalised.

Choice of procedure

60. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the general principles of what constitutes alteration of a controlled reservoir are already provided for within the primary legislation.

Section 33(1)(c) – Power to specify the content of the safety report

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

61. Section 33(1)(c) allows the Scottish Ministers, by regulations, to specify any additional matters that should be included in a safety report drawn up by a construction engineer.

Reason for taking power

62. A safety report must specify any measures the construction engineer considers should be taken in the interests of safety, and direct the reservoir manager to ensure that any such measures
are taken within a specified period. Giving Scottish Ministers these powers creates flexibility for adding details of further matters to be included in any safety report. These regulations would probably be technical in nature and would also require further consultation before being finalised.

Choice of procedure

63. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles of what should be contained in a safety report are already provided for within the primary legislation.

Section 36(3)(c) - Power to include information within a construction certificate

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

64. Section 36(3)(c) allows the Scottish Ministers by regulations, to specify any additional information that should be included in a construction certificate issued by a construction engineer.

Reason for taking power

65. The certificate must certify that the construction or alteration has been executed effectively and in accordance with the drawings and descriptions. Full details about the works for construction, the alteration, dimensions and water levels should also be included. The reason for taking this power is to include any other measures which may not appear on the certificate but may be required to ensure compliance and safety of the reservoir construction.

Choice of procedure

66. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles of what should be contained in a construction certificate are already provided for within the primary legislation.

Section 49(1)(e) – Power to specify other matters to be recorded by the reservoir manager

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

67. Section 49(1)(e) enables the Scottish Ministers, by regulations, to specify any additional information in respect of a controlled reservoir that should be recorded by the reservoir manager.
**Reason for taking power**

68. Recording of information on medium and high risk reservoirs is important to ensure an accurate safety record to ensure a high standard of maintenance. Although the obvious matters that should be recorded are included in the Bill, additional provision may be required to deal with developments in reservoir management techniques. These regulation making powers reflect the potential for these scenarios and provide the Scottish Ministers with a degree of flexibility.

**Choice of procedure**

69. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles of what information should be recorded by reservoir managers are already provided for within the primary legislation.

**Section 49(2) – Power to specify the form of the record to be maintained and the information to be recorded in relation to the reservoir**

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by Statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

**Provision**

70. Section 49(2) allows the Scottish Ministers to specify the form of the record to be maintained by the reservoir manager and the information to be recorded in relation to the recorded matters.

**Reason for taking power**

71. It is important that the form and content of every record kept by a reservoir manager is consistent, as this will ensure that panel engineers have access to a high standard of record keeping that will assist them in carrying out their duties in relation to the safety of the reservoir.

**Choice of procedure**

72. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.

**Section 52(1) – Power to make provision for reporting incidents to SEPA relating to reservoir safety**

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

**Provision**

73. Section 52(1) enables the Scottish Ministers to make provision in regulations for the reporting of incidents at any reservoir to SEPA which may affect the safety of controlled
reservoirs. In summary, these regulations may define what constitutes an incident, provide for the determination of whether an incident has occurred, require reservoir owners to report incidents occurring, make provision for the publishing of reports, create offences and penalties, and ensure remedial action is taken following an incident. Before making regulations, Scottish Ministers must consult with SEPA, the reservoir manager, ICE and any other person considered appropriate.

**Reason for taking power**

74. Incident reporting provides the basis for sharing important information on problems identified with particular reservoirs. Current levels of compliance with the voluntary post incident reporting regime are variable. This power would allow Scottish Ministers to set out detailed provisions in relation to the elements of incident reporting as summarised in section 52(2) of the Bill.

75. The power is being taken in order to introduce a compulsory system of incident reporting, but to do so after SEPA has been installed as single enforcement authority and has researched the matter and after Scottish Ministers have consulted on the matter.

**Choice of procedure**

76. As these regulations would establish a scheme from scratch, impose penalties and deal with SEPA enforcement powers, it is considered appropriate that regulations made under this power should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

**Section 53(1) – Power to make provision for preparing reservoir flood plans**

_Power conferred on:_ Scottish Ministers  
_Power exercisable by:_ Regulations made by statutory instrument  
_Parliamentary procedure:_ Affirmative resolution of the Scottish Parliament

**Provision**

77. Section 53(1) enables the Scottish Ministers to make provision in regulations for the preparation of flood plans in relation to reservoirs. A reservoir flood plan would set out action to be taken by the reservoir undertaker in order to control or mitigate the effects of flooding which could result if water escaped from the reservoir. In summary, the regulations may: establish criteria for determining which reservoirs need flood plans; require reservoir owners to produce plans for reservoirs which meet the criteria; specify the form and content of plans; provide for the approval, registration or publication of plans; impose duties on reservoir owners to implement plans in an emergency; create offences; and confer enforcement powers on SEPA. Before making regulations the Scottish Ministers would have to consult SEPA, ICE and reservoir managers whose reservoirs would be expected to require a flood plan.

**Reason for taking power**

78. Flood plans will set out the actions to be taken by reservoir managers in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.
This power would allow Scottish Ministers to set out detailed requirements in relation to the preparation of flood plans.

79. The power is being taken in order to require flood plans to be prepared for reservoirs in Scotland which meet criteria specified in regulations, but to do so after SEPA has been installed as single enforcement authority and has researched the matter and Scottish Ministers have carried out a full consultation on the subject.

**Choice of procedure**

80. This power could be used to impose new and potentially onerous obligations on reservoir managers, create criminal offences and confer enforcement powers on SEPA. It is therefore considered appropriate that regulations made under the power should be subject to the level of parliamentary scrutiny that affirmative procedure provides.

**Section 54(3) – Power to specify where a reservoir is low risk, the form by which information on repairs is to be recorded**

*Power conferred on:* Scottish Ministers  
*Power exercisable by:* Regulations made by statutory instrument  
*Parliamentary procedure:* Negative resolution of the Scottish Parliament  

**Provision**

81. Section 54(3) enables the Scottish Ministers to specify the form by which any information about repairs to a low risk reservoir should be recorded.

**Reason for taking power**

82. Although low risk reservoirs will not be subject to the same supervision and inspection regime as high risk reservoirs, it is important that reservoir managers maintain appropriate records so that the information can be passed on to a panel engineer should the reservoir’s risk designation change in the future.

**Choice of procedure**

83. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.
Section 55(2) - Power to specify emergency response information to be displayed at each reservoir site

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

84. Section 55(2) allows the Scottish Ministers to specify what emergency response information should be displayed at, or near, a controlled reservoir. Section 55(3) explains that such information may include the name of the reservoir, the registration number of the reservoir, the reservoir manager’s name, address and information for the purposes of an emergency, and for high and medium risk reservoirs, the supervising engineer’s details.

Reason for taking power

85. An information board should be displayed at each controlled reservoir site in case of emergencies. The power to specify what should be included on that information board by order is being taken, as this is a matter of detail, and the content may require to be adjusted over time.

Choice of procedure

86. Such an order will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.

Section 62(1) - Power to specify procedures for the appointment of a referee

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

87. Section 62(1) enables the Scottish Ministers to make provision, by regulations, as to the procedure for the appointment of referees including the time within which a referee may be appointed, the manner of the request, the procedure the referee should follow and the expenses of the investigation and proceedings.

Reason for taking power

88. As the new enforcement regime evolves, it is likely disputes will arise between reservoir managers and engineers who are appointed to supervise or inspect their reservoirs. This power enables Scottish Ministers to provide for these disputes to be resolved in a consistent manner by setting out the procedure in regulations. Any provision made under this power needs to be flexible and will be detailed in order to set out the steps involved in settling the dispute.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Choice of procedure

89. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles of the referee process are already provided for within the primary legislation.

Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

90. Section 71(1) allows the Scottish Ministers to make provision by order, to enable SEPA to issue stop notices to reservoir managers of controlled reservoirs. A stop notice is a notice prohibiting a reservoir manager from carrying on with a specified activity that SEPA reasonably believes is a risk to public safety. Certain procedural requirements are set out in section 72. The Scottish Ministers are required by section 84 to consult such organisations as appear to them to be representative of persons substantially affected by the making of the proposed order. Section 87(2) enables Ministers to permit SEPA to publicise enforcement action it has taken, including the use of stop notices in accordance with an order made under section 71(1).

Reason for taking power

91. This power would increase the enforcement options available to SEPA in the event of non-compliance by reservoir managers. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so.

Choice of procedure

92. The power under this section would enable the Scottish Ministers to confer on SEPA a new enforcement power that could be used to prevent a reservoir manager from carrying out his business. It is therefore considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

93. Section 76(1) allows the Scottish Ministers to make provision as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager and for the acceptance of such an undertaking 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; SEPA may not impose on the reservoir manager a fixed monetary penalty, and may not impose on the reservoir manager any further enforcement measure. By virtue of section 85, any order made under section 76(1) must require SEPA to issue guidance about the use of the powers conferred by the order.

94. Before making an order under section 76(1) the Scottish Ministers would have to consult stakeholders.

Reason for taking power

95. The power would increase the enforcement options available to SEPA in the event of non-compliance by reservoir managers. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so.

Choice of procedure

96. The power under this section could be used to confer new enforcement powers on SEPA that could lead to new and potentially onerous obligations on reservoir managers. It is therefore considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 77(1) – Power to impose fixed monetary penalties on reservoir managers

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Provision

97. Provisions under section 77(1) allow Scottish Ministers to make provision about the imposition of fixed monetary penalties on reservoir managers where SEPA is satisfied that the manager has committed an offence. Fixed monetary penalties are to be imposed by notice. The amount of the penalty which can be imposed in relation to the offence will not exceed the maximum amount of the fine that may be imposed on summary conviction of the offence, and section 79 introduces certain safeguards, including prevention of a reservoir manager being convicted of the offence where they discharge liability for the associated fixed monetary penalty. The Scottish Ministers are required, by section 84, to consult such organisations as appear to them to be representative of persons substantially affected by the making of the proposed order. By virtue of section 85, any order made under section 77(1) must require SEPA to issue guidance about the use of the powers conferred by the order. Section 87(2) enables Ministers to permit SEPA to publicise enforcement action it has taken, including the issue of fixed monetary penalties issued in accordance with an order made under section 77(1).

Reason for taking power

98. The power would increase the enforcement options available to SEPA in the event of non-compliance by reservoir managers. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so.
Choice of procedure

99. The power under this section could be used to confer new enforcement powers on SEPA that could lead to new and potentially onerous obligations on reservoir managers. Notwithstanding that certain procedural requirements are fixed by section 78, it is nevertheless considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

100. Section 80(1) allows the Scottish Ministers to make provisions about the imposition on reservoir managers of one or more further enforcement measures in relation to offences. Certain procedural requirements are set out in section 81. The Scottish Ministers are required, by section 84, to consult such organisations as appear to them to be representative of persons substantially affected by the making of the proposed order. By virtue of section 85, any order made under section 80(1) must require SEPA to issue guidance about the use of the powers conferred by the order. Section 87(2) enables Ministers to permit SEPA to publicise enforcement action it has taken, including the use of further enforcement measures in accordance with an order made under section 80(1).

Reason for taking power

101. The power would increase the enforcement options available to SEPA in the event of non-compliance by reservoir managers. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so.

Choice of procedure

102. Notwithstanding that the primary legislation sets out certain procedural requirements, the power under section 80 could be used to confer new enforcement powers on SEPA that could lead to new and potentially onerous obligations on reservoir managers. It is therefore considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.
Section 83(2)(b) – Power to make provision regarding non-compliance monetary penalties

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by Statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

**Provision**

103. Section 82(2) allows the Scottish Ministers to make provision regarding non-compliance penalties, payable if a reservoir manager fails to comply with a restraint notice, a restoration notice or an undertaking given under section 81(5). Section 83(2)(b) allows the Scottish Ministers to set criteria in relation to the calculation of the amount of the penalty.

**Reason for taking power**

104. The power would enable Scottish Ministers to make provision for (and to specify the criteria for the calculation of) monetary penalties to be issued by SEPA in the event of non-compliance with certain notices or undertakings. The power to specify what the criteria should be for these calculations by order is being taken as this is a matter of detail, and the content may require to be adjusted over time.

**Choice of procedure**

105. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles of the imposition of further enforcement measures are already provided for within the primary legislation.

Section 87(1) – Power to permit SEPA to publish information

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by Statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

**Provision**

106. Section 87(1) allows Scottish Ministers to permit SEPA to publish information which they deem appropriate about cases where SEPA have taken action to address non compliance by reservoir managers including appointment of engineers, arranging for measures in the interest of safety to be undertaken and where they have issued stop notices, imposed fixed monetary penalties or further enforcement measures.

**Reason for taking power**

107. The publication of enforcement actions taken in the event of non-compliance with the requirements of this Bill is intended to be an additional deterrent against non compliance particularly where the financial penalties may be insufficient to encourage the reservoir manager to comply. The power will enable the Scottish Ministers to permit SEPA to publish information about cases of non compliance by reservoir managers if it appears necessary to secure compliance with the Bill.
Choice of procedure

108. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles of publication of incidents of non compliance are already provided for within the primary legislation.

Section 97(1) - Power to make provisions for the assessment of the quality of reports and statements issued by engineers

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

109. Section 97(1) allows Scottish Ministers to make provision for the assessment of the quality of reports, written statements and certificates prepared by construction engineers, inspecting engineers and supervising engineers.

Reason for taking power

110. It is important that reports, statements and certificates written by construction, inspecting or supervising engineers, are of a consistent quality and meet certain standards to ensure the regulation of reservoirs can be carried out effectively. Giving Scottish Ministers the power to provide for a committee made up of members of ICE to assess the quality of these documents ensures the reports can be scrutinised by engineering experts and any shortcomings be identified. Giving the Scottish Ministers these powers also creates the flexibility for the procedure of the assessment process to be set out in detail, making sure that it is fair and transparent.

Choice of procedure

111. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.

Section 99 - Power to make provisions as to the form and content of notices, reports, certificates etc.

Power conferred on: Scottish Ministers  
Power exercisable by: Regulations made by statutory instrument  
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

112. Section 99 allows Scottish Ministers to make provisions as to the form and content of notices required under this Part of the Bill and any reports, certificates, written statements or recommendations issued by an engineer under this Part of the Bill.
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Reason for taking power

113. It is important that notices, reports, certificates and other written documentation produced by SEPA and engineers are consistent. Although the obvious matters that should be contained in these documents are included in the Bill, additional provision may be required to ensure the information is in an appropriate form and includes such additional information so that it can be clearly understood and serves its appropriate purpose. This power provides the Scottish Ministers with a degree of flexibility to ensure this is the case.

Choice of procedure

114. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles are already provided for within the primary legislation.

Section 101 – Power to amend references to the Institute of Civil Engineers if the Institute ceases to exist

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

115. Section 101 allows Scottish Ministers to amend references in the Bill to ICE if the Institution ceases to exist.

Reason for taking power

116. If at any point, the Institute of Civil Engineers ceases to exist and the responsibilities of that organisation under this Bill are transferred to another body, this power allows Scottish Ministers to amend any references to ICE in the Bill.

Choice of procedure

117. The power under this section is a power to amend primary legislation. It is therefore considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

Section 103 - Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specified liabilities

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

118. Section 103 allows Scottish Ministers, by amending section 22 of the Water Environment and Water Services (Scotland) Act 2003, to make provision for the offences inserted into that
This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

Act, to be triable only summarily or either summarily or on indictment and punishable on conviction by the means set out in subsections (2) and (3).

Reason for taking power

119. In the absence of such provisions, SEPA would be unable to enforce the terms of the Regulations, which would affect the achievement of the water environment quality objectives of the Water Framework Directive (WFD).

Choice of procedure

120. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The power is unlikely to be contentious as the principles are now provided for within the primary legislation.

Section 106 - Power to order any ancillary provisions

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative and (Affirmative) resolution of the Scottish Parliament

Provision

121. Section 106 allows Scottish Ministers to make supplemental, incidental or consequential and such transitional, transitory or savings provision they consider appropriate for the purposes of, or in connection with, matters relating to the Bill.

Reason for taking power

122. Any body of new law may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplemental and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters which require to be dealt with, to give full effect to the original Bill. That would not be an effective use of either the Parliament’s or the Government’s resources.

123. This power may also be used by Scottish Ministers for example; for making provision for preliminary or interim certificates issued under the 1975 Act to be accepted as preliminary certificates under the new legislation. This would help ensure a smooth transition from the regulatory regime under the 1975 Act, to the regime under the Bill for any reservoirs subject to construction or alteration when the Bill is commenced.

Choice of procedure

124. Where an order changes primary legislation, it is submitted that the affirmative procedure is appropriate. In any other situation, the negative procedure is considered appropriate for these powers.
Section 109 – Commencement

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: no Parliamentary procedure

Provision

125. This section provides that all of the provisions of the Bill, except certain provisions containing definitions and order-making powers, shall come into force on a day set by the Scottish Ministers by order.

Reason for taking power

126. The decision on when, and to what extent, the Bill is commenced is an administrative issue for the Scottish Ministers.

Choice of procedure

127. As the decision on commencement is a matter for the Scottish Ministers, and as is usual, the Scottish Government considers that the commencement powers should not be subject to any Parliamentary procedure.
Rural Affairs and Environment Committee

1st Report, 2011 (Session 3)

Stage 1 of the Reservoirs (Scotland) Bill

Published by the Scottish Parliament on 20 January 2011
Rural Affairs and Environment Committee

1st Report, 2011 (Session 3)

CONTENTS

Remit and membership

<table>
<thead>
<tr>
<th>Report</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report</td>
<td>1</td>
</tr>
<tr>
<td>Summary of conclusions and recommendations</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>7</td>
</tr>
<tr>
<td>Parliamentary scrutiny</td>
<td>7</td>
</tr>
<tr>
<td>Background to the Bill and overall policy aims</td>
<td>8</td>
</tr>
<tr>
<td>General issues and general principles of the bill</td>
<td>11</td>
</tr>
<tr>
<td>Outstanding technical issues</td>
<td>11</td>
</tr>
<tr>
<td>General principles</td>
<td>12</td>
</tr>
<tr>
<td>Policy Memorandum</td>
<td>15</td>
</tr>
<tr>
<td>Part 1: Main provisions</td>
<td>15</td>
</tr>
<tr>
<td>Reservoir managers</td>
<td>15</td>
</tr>
<tr>
<td>Definition of “controlled reservoir”</td>
<td>16</td>
</tr>
<tr>
<td>Risk designation</td>
<td>20</td>
</tr>
<tr>
<td>The controlled reservoirs register</td>
<td>28</td>
</tr>
<tr>
<td>Role of engineers under the Bill</td>
<td>29</td>
</tr>
<tr>
<td>Mitigation or prevention of flood damage</td>
<td>34</td>
</tr>
<tr>
<td>Enforcement of Part 1 provisions</td>
<td>36</td>
</tr>
<tr>
<td>Financial issues under part 1</td>
<td>40</td>
</tr>
<tr>
<td>Costs to SEPA</td>
<td>41</td>
</tr>
<tr>
<td>Costs falling on reservoir managers</td>
<td>42</td>
</tr>
<tr>
<td>Costs to Scottish Water</td>
<td>47</td>
</tr>
<tr>
<td>Part 2: Protection of the water environment</td>
<td>48</td>
</tr>
</tbody>
</table>

Annexe A – Report of Subordinate Legislation Committee 50

Annexe B – Report of Finance Committee 66
Rural Affairs and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries and rural development and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs and the Environment.

Membership:

Karen Gillon
Liam McArthur
Elaine Murray
Peter Peacock
John Scott (Deputy Convener)
Stewart Stevenson
Maureen Watt (Convener)
Bill Wilson

Committee Clerking Team:

Clerk to the Committee
Peter McGrath

Senior Assistant Clerk
Nick Hawthorne

Assistant Clerk
James Drummond

Committee Assistant
Iain Weston
Rural Affairs and Environment Committee

1st Report, 2011 (Session 3)

Stage 1 of the Reservoirs (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Consultation
1. The Committee is broadly content that there was sufficient consultation on the main aim of the Bill (reservoir safety). There appears to have been little or no pre-introduction consultation on the other aim of the Bill (restoration/remediation of the water environment). However, we note that this proposal was included in a prior legislative consultation in the relatively recent past. In addition, we are reassured that the Government will consult on any proposed regulations arising as a result of this other aim of the Bill receiving Parliamentary endorsement, and that it is the detail of the proposed regulations that most stakeholders will be interested in.

General principles and general considerations
2. The Committee recognises that the Bill is a technical one, on which some points of detail require to be resolved to the satisfaction of the main stakeholders, in particular representatives of civil engineers. The Committee would expect the Scottish Government, the Institution of Civil Engineers and others will maintain a dialogue at amending stages in order to resolve these concerns. We note also that stakeholders would welcome an agreed timetable for discussing and agreeing in draft form any guidance required under the Bill, so that it is ready in time for implementation.

3. The Committee supports the general principles of the Bill, to improve reservoir safety in Scotland by modernising the current regulatory regime.

4. The Committee notes concerns (discussed in more detail later in the report) that the Bill may place an increased, or entirely new, regulatory burden on some reservoir managers, and that a few of them may find this financially difficult. The Committee notes that the Scottish Government has tentatively indicated that it is willing to discuss providing some sort of support in those circumstances. Further details on this would be welcome.
5. The Committee considers that there should be greater clarity as to the role of engineers in providing advice to SEPA where SEPA is statutorily obliged to make a decision on technical matters.

6. The Committee notes the Minister for Environment and Climate Change’s assurances that the Bill is no more likely than the current legislation to lead to a conflict of interest in the seeking of technical engineering advice. However, we invite the Scottish Government to express a view on whether a local authority would be more likely to have access to such advice in-house than SEPA, which – as we understand it – is not likely to employ engineers to provide advice but will instead rely on panel engineers appointed under the Bill. If so, does the Government consider that this gives rise to concerns?

7. The Committee seeks assurances that the Bill will not inadvertently inhibit the development of sustainable flood management practices by imposing unduly rigorous requirements as to the construction or alteration of structures such as barrages on flood plains.

**Reservoir managers**

8. The Committee invites the Scottish Government to clarify whether a public body or charity undertaking an operation on a controlled reservoir, and which is not an owner or lessee of that reservoir is intended to be caught within the definition of “reservoir manager” and, if so, whether it is satisfied that the current definition does so.

9. The Scottish Government may wish to clarify that the duty of multiple reservoir managers to co-operate with each other would continue to apply even where they have appointed a nominee to exercise their responsibilities. The Committee also asks the Government whether it expects SEPA to take practical measures in the run-up to implementation to encourage effective working relationships between multiple reservoir managers.

**Threshold volume**

10. The case for 10,000m³ being the appropriate point at which to begin regulating reservoirs was not made especially clearly during Stage 1. However, the Committee notes the Institution of Civil Engineers’ professional advice that this volume is the point at which some risk assessment begins to become necessary, and also that this figure would maintain consistency with the rest of Great Britain. On that basis, we are content to support this being the volume set out in the Bill.

11. The Committee agrees with the Subordinate Legislation Committee that there is a case for expressly providing in the Bill that the Scottish Ministers should not lay an instrument proposing a different volume of water in the definition of “controlled reservoir” without first seeking expert advice.

**Definition of “controlled reservoir”**

12. The Committee recognises that the overall structural integrity of a reservoir might be compromised by defects in the artificial watercourses flowing in or out of it. At the same time, we note some stakeholders’ concerns that the inclusion of pipes, spillways, etc., in the definition of “controlled reservoir” might impose an unrealistic and costly duty of inspection on managers. We note that the
Government has considered these concerns and proposes to address them at Stage 2.

13. The Government may wish to consider whether “weirs” should be excluded without qualification from the definition of “controlled reservoir.”

14. The Committee agrees with the Subordinate Legislation Committee that the grounds on which a non-controlled reservoir may be deemed to be treated as a controlled reservoir should be more narrowly and prescriptively defined so as to ensure that the power is only used rarely and where necessary.

Risk designation

15. The Committee notes that there is a disagreement currently between the Scottish Government and the Institution of Civil Engineers as to whether it is possible to assess the risk of a reservoir failing by examining its structure and level of maintenance. The Committee considers that this is an important issue and would encourage the Institution and the Government to discuss the issue further as the Bill progresses. Technological advances should also, in time, make it easier for engineers to assess risks previously considered as unmeasurable.

16. The Committee notes that there is a power to exclude certain types of structure from the definition of “controlled reservoir” and that this might be used where it is clear that the risk level inherent in the type of structure is negligible. Given the apparent lack of consensus on this issue, we would not expect this power to be used much in the foreseeable future. We also note the Government’s assurance that the bureaucracy and cost associated with low-risk controlled reservoirs ought to be very low. If assurances, backed up by clearer communication on the likely low costs to managers were provided, this might be helpful.

17. The Committee notes the evidence it received that environmental factors caused or exacerbated by precipitation (e.g. landslip) can potentially be a factor in increasing the probability of failure, but notes that no express provision for this appears to be made in the Bill. The Committee seeks reassurance from the Scottish Government that it would expect such factors to be taken into account in any assessment of a risk posed by a reservoir.

18. The Committee expects that, in practice, danger to human life will be treated as the paramount consideration in any assessment of risk measured in terms of the consequence of reservoir failure, and considers this appropriate. However, the importance of other factors such as damage to the environment or to cultural heritage should not, as a consequence, be downplayed.

Compulsory public liability insurance

19. The Committee notes that the consequences of an uncontrolled outflow from a reservoir can be catastrophic, in terms of damage not only to human life but also to property. We also note that it is highly unlikely that all reservoir managers would be sufficiently well resourced to cover such losses out of their own pockets. On that basis, the Committee is in principle supportive of requiring reservoir managers to take out public liability insurance.
Risk designation: procedural points

20. The Committee welcomes the Scottish Government’s recent undertaking to bring forward an amendment to require SEPA to consult the Institution of Civil Engineers before publishing guidance on the risk designation process. The Committee further expects that SEPA would, in practice, always seek expert engineering advice before making a designation.

21. The Committee welcomes the indication from the Scottish Government that it proposes to put time constraints on SEPA to complete a reservoir risk designation. This would appear to be helpful, in the interests of effective regulatory governance. The Committee presumes that the time constraint will also apply to risk designations arising from a request for a review of a designation.

Interaction with planning system

22. The Committee notes that SEPA is a statutory consultee under planning law. It is to be hoped that this will help ensure that planning authorities will take full account of the consequences of there being an uncontrolled release of water from reservoirs in preparing local plans. The Committee also expects that planning guidance will in due course be updated to take account of the provisions in the Bill.

23. The Committee notes that, since risk is assessed under the Bill in terms of consequence as well as probability, this could lead to a reservoir receiving a higher risk designation as a result of a development downstream of the reservoir being approved. In most case, it would be unfair for the reservoir manager to have to bear any increased costs for this. We note the Minister for Environment and Climate Change’s view that she expects this matter to be played out via the planning process, with the developer being asked to agree to take on the liability for increased costs. Again, updating planning guidance to reflect this in due course would be helpful.

Registration

24. The Committee notes that SEPA proposes to take on the role of preparing all flood inundation maps required for registration, and agrees that this appears to be appropriate to ensure consistency of approach and standards. SEPA should take steps to communicate this to stakeholders over coming months.

Availability of panel engineers

25. The Committee is concerned by the steady decline in the number of available engineers to carry out regulatory duties, as well as the increase in the age profile. If these trends are left unchecked, there may be insufficient engineers left to carry out inspections, etc, in future. The Committee invites further views from the Scottish Government as to how this concern might be addressed.

Role of engineers: technical points

26. The Committee notes that following representations from the Institution of Civil Engineers the Scottish Government intends to amend the Bill to allow a reservoir’s construction engineer to be involved in subsequent alterations to the structure.
27. The Committee notes that the Government will also amend the Bill to clarify that an inspecting engineer may be appointed for the duration of the inspection only.

28. The Committee notes views expressed at Stage 1 that the Bill may go too far in apparently requiring reservoir managers to implement all recommendations included in an inspection report, even those that relate only to routine maintenance. The Committee welcomes the Scottish Government’s undertaking to address this concern at Stage 2.

29. The Committee considers that the rule on the supervision of water drawdown at higher risk reservoirs might have been drawn unintentionally widely, and welcomes the Scottish Government’s intention to lodge an amendment at Stage 2 to address this.

Flood plans and displays
30. The Committee would welcome an update from the Scottish Government, as the Bill proceeds, on progress made in discussions with the UK Government in agreeing the devolution of security measures in relation to flood plans.

31. The Committee welcomes the Government’s intention to amend section 55 so that it is SEPA’s contact details, rather than those of the supervising engineer, that will be displayed next to the reservoir.

SEPA powers: general
32. The Committee notes some concerns expressed at the breadth of the powers set out in Chapter 9 of the Bill. The Committee considers that it would provide assurance to stakeholders if the Scottish Government gave a clear undertaking that SEPA will consult fully on all guidance proposed under Chapter 9, and aim to have draft guidance agreed in time for implementation of the Bill.

33. The Committee draws the Scottish Government’s attention to the comments of the Subordinate Legislation Committee on the delegated powers set out in Chapter 9.

34. The Committee invites the Scottish Government to consider whether the power to enter into buildings on land adjacent to a reservoir is appropriate in all circumstances (for instance, where the reservoir is used to store drinking water).

SEPA’s power to charge fees
35. The Committee notes that all public sector regulatory organisations will be under increased financial pressure to do “more for less” in the coming years. In this context, the Committee notes, and welcomes, SEPA’s commitment, in all areas of its work, to implement a “new, simpler and stronger model for environmental regulation.”¹ In relation to SEPA’s new powers to charge fees under the Bill, the Committee supports these in the expectation that SEPA will charge for services only in order to recover costs incurred under an overall reservoir management regime that is “smart”, cost-effective, and as light touch as possible.

without compromising safety. We expect SEPA to consult fully on proposed powers under Chapter 9, including on likely fee levels and conditions.

Costs falling on reservoir managers

36. It would be helpful if the Scottish Government clarified, for the avoidance of doubt, that the onus is on SEPA to prove that a reservoir, not previously classed as a large raised reservoir, exceeds the threshold volume in the Bill, and that SEPA would bear the cost of surveying any such reservoir in order to ascertain whether it needs to be registered.

37. The Committee notes that the proposal to grant six month’s grace on payment of registration fees will be welcomed by reservoir managers. It would be helpful if the Scottish Government explained whether this supersedes the statement in the Financial Memorandum that SEPA will use its power to charge fees to offset its outlays.

38. The Committee presumes that reservoir managers will not have to pay for inundation maps prepared by SEPA provided they register within six months.

39. The Committee invites the Scottish Government to clarify whether, under the Bill, SEPA may charge for the risk designation process. Is it the Scottish Government’s policy that SEPA should be able to charge for this?

40. There is uncertainty over the status and likely level of annual or subsistence charges likely to arise under the Bill. The Committee recommends that this be addressed as a matter of urgency, so as to provide greater certainty to stakeholders, particularly those persons who anticipate becoming managers of medium or high-risk reservoirs under the Bill and who are confused by the financial implications of this.

41. The Committee seeks further clarification from the Scottish Government on the likely cost of a flood plan, in particular in relation to managers of low-risk reservoirs.

42. The Committee seeks clarification on the likely cost of displays under section 55. The figure of £1000 apparently quoted in the Financial Memorandum seems somewhat excessive. It is also not clear from the Memorandum whether managers of low-risk reservoirs would be expected to incur any costs at all, although section 55 does not expressly exclude them.

43. The Committee invites the Scottish Government to state whether it anticipates that, following implementation of the Bill, SEPA will require more rigorous standards in the construction or inspection of reservoirs and, if so, whether reservoir managers will therefore be liable to incur higher construction, alteration, or maintenance costs than previously.

Assistance for reservoir managers

44. The Committee notes the Minister for Environment and Climate Change’s recognition that the Bill might lead to difficulties for some reservoir managers, and welcomes her tentative indication that the Government might consider providing some sort of assistance in extreme cases. The Committee seeks further
clarification on what sort of assistance the Scottish Government might have in mind.

Costs to Scottish Water
45. The Committee welcomes the Minister for Environment and Climate Change’s recognition that should Scottish Water require further financial assistance to implement the Bill in full, a mechanism exists to help provide it.

Water Environment and Water Services (Scotland) Act
46. The Committee supports Part 2 of the Bill enabling the Scottish Ministers to create offences for failures to restore or remediate the water environment. We consider it important that there is full consultation with all stakeholders on any proposed offences and sanctions.

INTRODUCTION

Parliamentary scrutiny
47. The Reservoirs (Scotland) Bill\(^2\) was introduced into the Parliament on 6 October 2010. The Bureau designated the Rural Affairs and Environment Committee as lead committee. No secondary committees were designated.

48. The Committee issued a call for views\(^3\) shortly after introduction with a deadline of 25 November. Twenty responses were received.\(^4\) The Committee took evidence on the Bill at three meetings. On 1 December, we heard from the Scottish Government’s Bill Team. On 15 December, we heard from—

- The Scottish Environment Protection Agency (SEPA);
- The Institution of Civil Engineers (ICE);
- Scottish Water;
- John Reid (a reservoir undertaker running a fishery in South Lanarkshire);
- David Crichton (a chartered insurance practitioner); and
- Scottish and Southern Energy (SSE).

49. Finally, on 22 December, we took evidence from the Minister for Environment and Climate Change and her officials.

50. The Finance Committee considered the Bill’s Financial Memorandum. The Subordinate Legislation Committee considered the delegated powers created by

\(^2\) Reservoirs (Scotland) Bill. The Bill, accompanying documents, and a SPICE briefing on the Bill are available at: [http://www.scottish.parliament.uk/s3/bills/55-Reservoirs/index.htm](http://www.scottish.parliament.uk/s3/bills/55-Reservoirs/index.htm)


\(^4\) The Committee also received two submissions from David Crichton, a supplementary submission from SEPA, and letters from Bill team officials and from the Minister for Environment and Climate Change, following up on evidence they gave in person.
the Bill. Both Committees have reported to us,\(^5\) and we note and comment upon their findings at appropriate places in this report.

51. We are grateful to all those who contributed their time and expertise to provide evidence on the Bill.

**Background to the Bill and overall policy aims**

**Reservoir safety**

52. It is important to begin by stressing that, measured in terms of injuries, fatalities, or damage to property, Scotland has a good record in reservoir safety. There have been no fatalities in Scotland since the 1920s, although some small dams have occasionally failed.

53. It is the Reservoirs (Scotland) Act 1975 that currently governs the safety of Scotland’s reservoirs. The Scottish Government’s Policy Memorandum notes that “the main features of the 1975 Act have not changed substantively from the Reservoirs (Safety Provisions) Act which was passed in 1930.”\(^6\) Some changes intended to enhance reservoir safety were, however, incorporated into the 1975 Act, by means of the Flood Risk Management (Scotland) Act 2009, considered as a Bill by this Committee earlier in this Parliamentary session.\(^7\) However, the Scottish Government considers that these changes do not go far enough.

54. A key feature of the current legislation is that it only applies to so-called large raised reservoirs (reservoirs with a potential cubic capacity of 25,000m\(^3\) or more, which store water above the level of the surrounding area). The Policy Memorandum notes that—

“There have been incidents at some smaller reservoirs which are not currently subject to regulation, such as the Maich fishery in Renfrewshire in 2008 where overtopping of the reservoir due to heavy rain nearly caused the failure of the dam. This required emergency response procedures to be activated and an area downstream of the dam had to be evacuated. Such incidents have reinforced the need to modernise the reservoir safety legislation and provide greater protection for the public. This is especially true given the increasing age of most of the dams in Scotland.”\(^8\)

55. Another feature of the 1975 Act is that responsibility for the regulation of reservoirs rests with each individual local authority. The Policy Memorandum remarks that this has led to “a fragmented and inconsistent approach to record

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\(^5\) Reproduced at Annexes A and B to this report.


\(^7\) Part 7 has not yet been commenced. The Bill team clarified that, should the Scottish Parliament pass this Bill, it will supersede Part 7. (Scottish Parliament Rural Affairs and Environment Committee. *Official Report, 15 December 2010*, Col 3442).

keeping and enforcement across the country." Part 7 of the 2009 Act made provision to transfer responsibilities in relations to large raised reservoirs from local authorities to SEPA. The Bill restates that SEPA is to be the central coordinating body for reservoir safety and, in particular, gives the agency responsibility for maintaining a Controlled Reservoirs Register.

56. Another main aim of the Bill is to maintain broad consistency with the approach to reservoir safety taken elsewhere in Great Britain. The Policy Memorandum explains that—

“Maintaining a consistent approach is important because of the crucial role played by specialist reservoir engineers appointed to panels by the Secretary of State on the advice of the Institution of Civil Engineers ("ICE"). These panel engineers are the only group of individuals qualified to supervise and inspect controlled reservoirs and retaining their extensive knowledge will be essential to the success of any new regime. The number of panel engineers operating in Scotland is already limited, and any major difference in operating practices compared with England and Wales could further reduce this limited pool.”

Remediation or restoration of the water environment
57. The Bill has another quite separate aim, discussed much less extensively in the Policy Memorandum. Part 2 of the Bill (which consists of just section 103 of the Bill compared to the 102 sections making up Part 1), makes a small but significant amendment to the Water Environment and Water Services (Scotland) Act 2003. The 2003 Act creates a framework for the environmentally sustainable maintenance of the water environment. Section 22 of the 2003 Act enables the Scottish Ministers to make regulations for the remediation or restoration of the water environment of river basins. The regulation-making power set out in section 22 of the 2003 Act is not considered to include a power to create criminal penalties. Section 103 of the Bill would rectify this. The Policy Memorandum explains that “this section is necessary as it is currently difficult to enforce regulations where there are no offences in place.”

Other provisions
58. Part 3 of the Bill makes general provision on matters such as commencement and defined expressions, on which the Committee expresses no comment. Similarly, we note that Chapter 8 of Part 1, which concerns dispute resolution between engineers and reservoir managers, attracted practically no

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10 Reservoir safety in England and Wales will be regulated under the Flood and Water Management Act 2010, which is yet to be commenced.
comment from stakeholders, which we take to be indicative of a general endorsement of those provisions, and we make no further comment on them.

**Pre-introduction consultation on Bill proposals**

59. The Scottish Government published its consultation document *Reservoir Safety in Scotland*\(^\text{13}\) in January 2010. This sought views both on implementation of the changes made to reservoir management under the 2009 Act and on further proposals for reform, including—

- placing a requirement for all reservoirs which hold, or are capable of holding a new minimum volume capacity (10,000m\(^3\)) of water above the natural level of any part of the land adjoining the reservoir to be included on a SEPA register;
- requiring SEPA to classify each reservoir according to whether it poses a significant threat to human life, property and critical infrastructure, or meets technical conditions (to be specified);
- specifying the duties of reservoir undertakers; and
- specifying panel engineers’ duties in relation to those reservoirs based on the level of risk.

60. Sixty-seven responses were received, from a fairly wide-ranging cross-section of interests in both the private and public sectors. The Scottish Government Policy Memorandum notes that the proposals were generally well received, but that some concerns were expressed. To the extent that these concerns relate to proposals that were carried forward into the Bill they are discussed later in the report, when we discuss the evidence we received.

61. In relation to consultation on what became Part 2 of the Bill, the Policy Memorandum refers to two consultation documents issued early in 2009, which to some extent discuss some of the perceived weaknesses of the current regulatory regime.\(^\text{14}\) But neither appears to expressly propose the creation of a new offence provision.

62. A letter\(^\text{15}\) from Scottish Government officials sent during Stage 1 pointed out that proposals for an offence provision in relation to the restoration or remediation of the water environment were consulted upon prior to the introduction of what became the 2003 Act. It was an “oversight” that led to the offence provisions being excluded from the legislation. The letter also made the point that Part 2 amended a regulation-making power in the 2003 Act, and provided assurances that there would be consultation on draft regulations before they were laid.

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63. The Committee is broadly content that there was sufficient consultation on the main aim of the Bill (reservoir safety). There appears to have been little or no pre-introduction consultation on the other aim of the Bill (restoration/remediation of the water environment). However, we note that this proposal was included in a prior legislative consultation in the relatively recent past. In addition, we are reassured that the Government will consult on any proposed regulations arising as a result of this other aim of the Bill receiving Parliamentary endorsement, and that it is the detail of the proposed regulations that most stakeholders will be interested in.

GENERAL ISSUES AND GENERAL PRINCIPLES OF THE BILL

Outstanding technical issues

64. With 109 sections, the Bill is a fairly large one, but much of the detail is quite technical. It has been a challenge to scrutinise every aspect of it in the limited time available at Stage 1.

65. More so than is perhaps, typical, therefore, this is a Bill where ongoing dialogue between the Scottish Government and the main stakeholders during amending stages will be crucial. It is important that the Government keeps talking, in particular, to reservoir managers, SEPA and, above all, civil engineers, who will be in charge of determining much of the detail of how the regime operates in practice. When he gave evidence to the Committee, the ICE representative outlined some outstanding technical uncertainties with the Bill. We were not left with the impression that any of these were serious and incapable of resolution. But in response to a query as to whether the ICE was in continuing dialogue with the Government about such matters, the ICE representative replied—

“To my knowledge, we have no discussions on-going with the Government. We have said that we would like to be involved in further discussions and to have a chance to comment as regulations are developed or any amendments are proposed to the bill because, after all, the inspecting and supervising engineers, along with SEPA as the enforcement authority, will have to make this work in practice. We are keen that, whatever the final act looks like, everyone can fully understand and work with it.”

66. The Committee was, however, somewhat reassured to note that when the Minister for Environment and Climate Change gave evidence the following week she indicated that she was minded to have further discussions with representatives of civil engineers on particular matters. It might be helpful if this were widened out into a general commitment to have ongoing discussions with the ICE, and perhaps some of the larger reservoir managers, about all outstanding technical queries as to the Bill’s operation.

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67. A number of provisions under the Bill enable the preparation of guidance either by SEPA or the Scottish Government. Some, but not all, of these provisions require consultation with the ICE prior to the publication of the guidance. SSE’s representative was amongst stakeholders to highlight the importance of agreeing guidance that would help illuminate the meaning of terms used in the Bill and ensure that it was workable.

68. The Committee recognises that the Bill is a technical one, on which some points of detail require to be resolved to the satisfaction of the main stakeholders, in particular representatives of civil engineers. The Committee would expect the Scottish Government, the Institution of Civil Engineers and others will maintain a dialogue at amending stages in order to resolve these concerns. We note also that stakeholders would welcome an agreed timetable for discussing and agreeing in draft form any guidance required under the Bill, so that it is ready in time for implementation.

General principles

Extension of regulatory regime

69. The most important change made by the Bill would be to extend the regulatory regime to cover much smaller reservoirs than at present. The Bill also provides for three levels of risk, which would affect the level of regulation a reservoir is subject to. As well as restating SEPA’s role as central regulatory authority, the Bill also partly extends SEPA’s powers, along with its power to charge for its services. Anyone expressing a view on these main changes is, in effect, expressing a view on the general principles of the Bill.

70. Most witnesses or submissions to express a view appeared content with the concept of having gradations of risk, affecting the level of regulation. (There was some disagreement over the quantification of risk, which is discussed later.)

71. More contentious was the proposal to change the volume threshold for registration. There were many stakeholders who welcomed this, seeing it as a way of increasing public safety, since reservoirs of less than 25,000m³ can still be a threat to human health and property. A minority were, however, concerned that this would lead to more individuals and businesses being subject to greater bureaucratic and financial burdens. We heard some worrying evidence (discussed later) about the potential effect of the Bill on small businesses or not-for-profit organisations running reservoirs. We heard that meeting the cost of compliance could become difficult for those of limited resources, but that the cost of decommissioning could be excessive too, perhaps leaving some managers in a Catch-22 situation, where they had neither the money to maintain the reservoir nor to decommission it.

72. The Scottish Government’s response has been to indicate that it might be prepared to listen to calls for some sort of mechanism to help take reservoirs off

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18 These include guidance on diverse matters such as the management of reservoirs, registration, risk designation, supervision of high-risk reservoirs, and on various aspects of SEPA’s enforcement powers under Chapter 9 of Part 1 of the Bill.

smaller operators’ hands, although no firm commitment has been given. The Government has also argued that the Bill has the potential to lighten the administrative burden on some smaller operators. (This would be where a large raised reservoir under the 1975 Act is classified under the Bill as a low-risk controlled reservoir.)

Role of SEPA
73. The principle that there should be a single authority responsible for reservoir safety, and that that authority should be SEPA, as noted, has had relatively recent Parliamentary endorsement, following careful consideration, by this Committee in particular. Accordingly, we have not sought to reconsider this principle at Stage 1 of this Bill. (We note in passing, though, that a clear majority of stakeholders to have expressed a view in evidence on this Bill support or accept SEPA being the central authority.)

74. However, some concerns about SEPA’s role as set out in the Bill did come to our attention at Stage 1. One such concern relates to what the Scottish Government has described as the “toolkit” of civil enforcement measures provided to SEPA under Chapter 9 of the Bill. This issue is discussed later in this report, but in essence the concern was that the powers given to SEPA may be more widely drawn than is required. Another concern related to SEPA’s role in determining technical rather than purely administrative issues. The Bill gives SEPA a number of such responsibilities. For instance, it is SEPA that will make risk designations (i.e. determinations as to whether a reservoir is low, medium, or high risk). It might be expected that SEPA would take advice from engineers before doing so, which was confirmed in person by SEPA’s witness but this is not clear from the Bill or the Policy Memorandum. This led Scottish Water to call for “greater definition of SEPA’s role and how it will be conducted.”

75. Inasmuch as SEPA will seek engineering advice in order to adjudicate on technical matters, some concern was expressed about a potential conflict of interest. SEPA’s intention is not to rely on advice in-house but to obtain advice as an “intelligent customer” from civil engineers sitting on the panels appointed under the Bill with responsibilities under this Bill too. The Minister’s response to these concerns was that the Bill was essentially perpetuating a set-up that had been in existence for 35 years (but with SEPA taking the place of councils) and that there was no evidence that it had caused any problem in the past.

Conflict with sustainable management of freshwater environment?
76. The underlying aim of the 2009 Act was to promote sustainable flood management, working as far as possible with natural processes rather than against them. This might include, for instance devising flood management systems

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that would allow a flood plain to flood from time to time, in a relatively controlled
and predictable way, rather than seeking always to contain floods through “hard”
engineering solutions.

77. Some concerns were expressed that the Bill, by imposing a more rigorous
flood risk management regime for reservoirs, might inadvertently work against the
aims of the 2009 Act, and of other Acts or international conventions intended to
safeguard the freshwater environment. The RSPB stated that it was crucial that
regulations to be brought forward under the Bill should not result in excessive
regulatory and administrative burdens for owners of sites that are not considered
high risk and yet are important habitat for wetland and aquatic biodiversity. It went
on to argue that—

“grants should be given or fees waived for those owners who manage the
reservoir and surrounding land for wider public benefit, such as for
biodiversity. Thus, we suggest that a similar model to that for the Controlled
Activities Regulations (CAR) is implemented whereby charges are waived for
activities that provide an environmental service.”

78. The Macaulay Land Use Research Institute drew attention to a flood
alleviation project it was currently engaged with. The aim was to encourage
farmers to undertake sustainable flood risk management on their own land. This
included creating temporary flood storage areas. The Institute envisaged that there
was a possibility that some of these might be defined as controlled reservoirs
under the terms of the Bill. This gave rise to concerns as the cost-benefit ratio for
sustainable flood management was already proving problematic, and it looked
likely that the Bill would impose more onerous requirements on land managers,
not just for maintenance of existing reservoirs but also for construction of new
ones.

79. On this latter point in particular, it is difficult for the Committee to adjudicate
on its merits, since the Bill does not say whether or not it will be any more
expensive to build a dam under the new regulatory regime than under the current
one. Hopefully the concerns are groundless, but if so, it may be that the Scottish
Government and SEPA could benefit from being more vocal in dispelling them.

80. The Committee supports the general principles of the Bill, to improve
reservoir safety in Scotland by modernising the current regulatory regime.

81. The Committee notes concerns (discussed in more detail later in the
report) that the Bill may place an increased, or entirely new, regulatory
burden on some reservoir managers, and that a few of them may find this
financially difficult. The Committee notes that the Scottish Government has
tentatively indicated that it is willing to discuss providing some sort of
support in those circumstances. Further details on this would be welcome.

24 RSPB Scotland. Written Submission to the Rural Affairs and Environment Committee, 25
November 2010.
25 Macaulay Land Use Research Institute. Written Submission to the Rural Affairs and Environment
Committee, 25 November 2010.
82. The Committee considers that there should be greater clarity as to the role of engineers in providing advice to SEPA where SEPA is statutorily obliged to make a decision on technical matters.

83. The Committee notes the Minister for Environment and Climate Change’s assurances that the Bill is no more likely than the current legislation to lead to a conflict of interest in the seeking of technical engineering advice. However, we invite the Scottish Government to express a view on whether a local authority would be more likely to have access to such advice in-house than SEPA, which – as we understand it – is not likely to employ engineers to provide advice but will instead rely on panel engineers appointed under the Bill. If so, does the Government consider that this gives rise to concerns?

84. The Committee seeks assurances that the Bill will not inadvertently inhibit the development of sustainable flood management practices by imposing unduly rigorous requirements as to the construction or alteration of structures such as barrages on flood plains.

Policy Memorandum

85. Under Rule 9.6.3, the lead Committee must report on the Bill’s Policy Memorandum. We consider the memorandum an adequate document in explaining the policy behind the Bill, and the consultation on Part 1, although the discussion on the consultation (if any) on Part 2 was not perhaps as clear as it might have been. There is a short discussion on alternative approaches to Part 1 of the Bill but not, for some reason, to Part 2. The memorandum might also have benefited from being more expressly clear at times about the new policies introduced by the Bill and those already introduced by the 2009 Act and, as we understand, largely reiterated in the Bill (e.g. flood plans).

PART 1: MAIN PROVISIONS

Reservoir managers

86. It is “reservoir undertakers” who have responsibilities to comply with the current safety regime set out in the 1975 Act. Section 3 of the Bill replaces this terminology with “reservoir manager”. It is expressly stated that Scottish Water is the reservoir manager of any controlled reservoir that it manages or operates. In relation to any other controlled reservoir, the manager is—

- where the reservoir is used “for the purpose of a commercial undertaking”, the commercial undertaker;

- where the reservoir is not so used, any lessee or owner of the reservoir.

87. The drafting detail of this definition did not attract much comment at Stage 1, indicating that most witnesses did not appear to perceive it as problematic. However, British Waterways Scotland26 queried whether they, as a public

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26 British Waterways Scotland. Written Submission to the Rural Affairs and Environment Committee, 24 November 2010.
corporation, or whether a charity, would fit within the definition of “commercial undertaker.” The Committee invites the Scottish Government to clarify whether a public body or charity undertaking an operation on a controlled reservoir, and which is not an owner or lessee of that reservoir is intended to be caught within the definition of “reservoir manager” and, if so, whether it is satisfied that the current definition does so.

88. A reservoir might be used for more than one commercial operation (as where, for instance, it is used both for fishing and for watersports). Likewise, it might have multiple owners or lessees. The Bill clarifies that in such cases there may be multiple reservoir managers and that the rights and duties placed on managers by the Bill lie on all of them. It further provides that where there are two or more managers, one of them may be nominated to fulfil any of the rights or responsibilities imposed on them. Multiple managers are also placed under a duty to co-operate in order to secure compliance with the responsibilities they are placed under. Failing to co-operate is an offence.

89. A Bill team official told the Committee that the provisions had been worked out in close consultation with stakeholder groups, including likely reservoir managers, who considered them “sensible”. A general lack of critical comment at Stage 1 would indicate that that is the case. British Waterways Scotland, however, remarked that problems might arise where the relationship between managers is not clearly defined, whilst the Scottish Rural Property and Business Association said that it was unclear how multiple managers would be dealt with, since non-compliance by one manager could prevent compliance by the others.

90. It would appear to the Committee that the Bill has gone to some lengths to set out how the law should apply to multiple managers and to enable collaborative working, including the creation of a criminal sanction for non-co-operation. However, the Scottish Government may wish to clarify that the duty of multiple reservoir managers to co-operate with each other would continue to apply even where they have appointed a nominee to exercise their responsibilities. The Committee also asks the Government whether it expects SEPA to take practical measures in the run-up to implementation to encourage effective working relationships between multiple reservoir managers.

Definition of “controlled reservoir”

91. “Controlled reservoirs” are defined in section 1. A reservoir is a controlled reservoir if—

- it is capable holding 10,000m³ or more of water, and

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28 British Waterways Scotland. Written Submission to the Rural Affairs and Environment Committee.
29 Scottish Rural Property and Business Association. Written Submission to the Rural Affairs and Environment Committee.
holds such water above the natural level of any part of the surrounding land.\(^{30}\)

**Why 10,000 cubic metres?**

92. It is not yet clear now many new reservoirs will be brought within the scope of the regulatory regime. The Financial Memorandum notes that there is a lack of information as to the number of reservoirs of between 10,000 and 25,000 m\(^3\), but estimates that there are between 150 and 1000. Neither SEPA nor Scottish Government officials were, able during Stage 1, to make a more precise current estimate. (Surveying costs associated with determining whether a reservoir exceeds the threshold amount are discussed later.)

93. The Policy Memorandum explains that the 10,000m\(^3\) threshold was agreed “in close consultation with the ICE”\(^{31}\) and that this amount is “considered to be the minimum volume at which a reservoir failure would, in most cases, pose a risk to human health.” The Committee sought to pursue in more detail what was distinctive about this particular, and markedly round, figure, described in one submission\(^{32}\) as “arbitrary,” but did not get much further with witnesses. Alex Macdonald of the ICE commented that—

> “having looked at the results of various research studies in England and Wales, we believe that 10,000m\(^3\) is the appropriate de minimis figure to use for new legislation.”\(^{33}\)

94. The Minister for Environment and Climate Change made similar comments. She remarked that the ICE’s advice was that 10,000m\(^3\) was around about the point at which risk assessment was necessary.\(^{34}\)

95. However, one clear reason advanced for the 10,000m\(^3\) figure is that it would make the threshold consistent between Scotland and the rest of Great Britain. SEPA noted that—

> “This is particularly relevant to Panel Engineers as it is recognised that there is already a small pool of engineers operating within the UK and a common approach would contribute to most effectively utilising this limited resource.”\(^{35}\)

96. The case for 10,000m\(^3\) being the appropriate point at which to begin regulating reservoirs was not made especially clearly during Stage 1. However, the Committee notes the Institution of Civil Engineers’

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\(^{30}\) A combination of reservoirs with water flowing between which has the potential for an uncontrolled release of 10,000m\(^3\) or more of water is also to be treated as a controlled reservoir.


\(^{32}\) West Lothian Council. Written submission to the Rural Affairs and Environment Committee. 17 November 2010.


professional advice that this volume is the point at which some risk
assessment begins to become necessary, and also that this figure would
maintain consistency with the rest of Great Britain. On that basis, we are
content to support this being the volume set out in the Bill.

97. The Bill would enable the Scottish Ministers to specify a different volume.
The Subordinate Legislation Committee commented that it was content with this
proposed power in principle, but also observed that, since the Government might
be expected in practice to rely heavily on technical engineering advice, it might be
appropriate to expressly provide that the Scottish Ministers should only exercise
the power after having obtained such advice. The Scottish Government indicated
that it would consider this point.

98. The Committee agrees with the Subordinate Legislation Committee that
there is a case for expressly providing in the Bill that the Scottish Ministers
should not lay an instrument proposing a different volume of water in the
definition of “controlled reservoir” without first seeking expert advice.

Meaning of “controlled reservoir”

99. The Bill seeks to clarify exactly what is, and is not, a reservoir, or part of one.
A few concerns were expressed about specific aspects of the definition. Both the
ICE and SSE expressed concerns about the express inclusion of “basins,
spillways, valves and pipes” controlling the inflow, outflow or storage of water in a
controlled reservoir. Mark Noble of SSE told the Committee that there were
hundreds of kilometres of tunnel attached to SSE-managed reservoirs, plus large
catchment areas covered by pipes and aqueducts. He warned that—

“The Bill could extend the scale of inspection way beyond anything that is
really envisaged. With a lack of guidance, people could interpret the
provisions to mean all the extended catchments.”36

100. Mr Noble warned that small operators could particularly struggle to adhere to
the apparent requirement to inspect all water-bearing structures attached to a
controlled reservoir.

101. The Minister told the Committee that she was aware of the issue, which was
one of the matters she intended to consider at Stage 2 of the Bill.37 In subsequent
correspondence,38 she clarified that she intends to propose removing subsection
(1)(a) of section 2, which would mean that pipes, spillways, etc controlling the flow
of water into a controlled reservoir would not be deemed part of it for the purposes
of the Bill.

102. The Committee recognises that the overall structural integrity of a
reservoir might be compromised by defects in the artificial watercourses
flowing in or out of it. At the same time, we note some stakeholders’

2010, Col 3585.
37 Scottish Parliament Rural Affairs and Environment Committee. Official Report, 22 December
2010, Col 3613.
38 Scottish Government. Letter from the Minister for Environment and Climate Change to the Clerk
of the Rural Affairs and Environment Committee dated 12 January 2011.
concerns that the inclusion of pipes, spillways, etc., in the definition of “controlled reservoir” might impose an unrealistic and costly duty of inspection on managers. We note that the Government has considered these concerns and proposes to address them at Stage 2.

103. The Bill also expressly excludes some structures from the definition of “controlled reservoir”, for instance canals and embanked watercourses. (In relation to these two, the policy memorandum explains that this is because they are already covered by existing legislation. “Weirs” are also excluded. The ICE queried this, pointing out that weirs lying across a watercourse might create a body of water exceeding the threshold volume. The Government may wish to consider whether “weirs” should be excluded without qualification from the definition of “controlled reservoir.”

104. Hydropower schemes are not expressly excluded from the definition. The Minister for Environment and Climate Change and her officials told the Committee that they expected the majority of such schemes would not be caught within the definition as the water volume would be too small. Those that did would go through the same regulatory process as any other controlled reservoir.

105. In recent correspondence, the Minister indicated that the Scottish Government proposes to remove the exclusion of ash or silt lagoons from the Bill, in light of recent events in Hungary. The Committee looks forward to considering this proposal in more detail in due course.

106. The Bill also enables the Scottish Ministers to order (under the negative procedure) that particular water-holding structures that are not “controlled reservoirs” under the definition set out as above are to be treated as if they are controlled reservoirs. The Subordinate Legislation Committee considered this provision and decided that while it did not object in principle to it, the grounds on which the Scottish Ministers could make such an order were not sufficiently clear, specific and narrow.

107. The Committee can see the possible need for this provision. However, the Committee agrees with the Subordinate Legislation Committee that the grounds on which a non-controlled reservoir may be deemed to be treated as a controlled reservoir should be more narrowly and prescriptively defined so as to ensure that the power is only used rarely and where necessary.

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39 Institution of Civil Engineers (ICE). Written submission to the Rural Affairs and Environment Committee, 26 November 2010.
41 Scottish Government. Letter from the Minister for Environment and Climate Change to the Clerk of the Rural Affairs and Environment Committee dated 12 January 2011.
43 Those grounds are that “the potential adverse consequence of an uncontrolled release of water” and “the probability of such a release”. These also form the basis of the test used to determine the risk designation of a controlled reservoir.
Risk designation

Exclusion of “safe” reservoirs from the regulatory regime?

108. In written evidence, most stakeholders to express a view appeared willing to accept that should the new threshold of 10,000m³ come into force then all reservoirs should be subject to it. But there was also evidence that certain structures were considered much safer than others; covered reservoirs used for storing drinking water being one example (because Scottish Water had control over the inflow and outflow of these) or barrages designed as part of a flood attenuation scheme that would lie empty most of the time. This led the Committee to explore briefly in evidence whether there was any merit in seeking to amend the definition of “controlled reservoir” so as to exclude any types of structure that are considered to be so safe that the risk of failure can effectively be discounted.

109. The Minister pointed out that the Bill contained a power (at section 2(3)(b)) to exclude certain things from being considered as controlled reservoirs. (In other words, the power is a sort of mirror image of that referred to in paragraph 106 above.) She suggested that the power could be used where “it is considered that the risk is so small as to be negligible.” Pressed further on how this power might be used, the Minister counselled, however, against being “too obsessed” with it, adding that it was her “instinctive feeling” that it would be very hard to make an assessment that a reservoir above the threshold volume posed no risk at all. It might therefore only be a tiny handful of reservoirs that would be excluded using this power. The Minister also stressed that the intention of the Bill was, anyway, to provide for a light-touch regime for very low-risk reservoirs.

Risk designation – can probability of failure be measured?

110. The preceding discussion needs to be understood in the context of a wider debate, which emerged as one of the main issues in Stage 1 consideration. Section 21(1) of the Bill provides that in assessing risk, SEPA is required to take into account both the probability of an uncontrolled release of water and the consequences of it. This then leads to SEPA designating a controlled reservoir as low, medium or high risk, which determines the inspection regime, and also the level of costs, to which that reservoir would then be subject. Clearly, this is an important provision with potentially significant consequences for reservoir managers.

111. The Bill provides that in assessing probability, SEPA must further consider matters including the materials used to construct the reservoir, the way in which it was constructed, and how it is being maintained.

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45 Renfrewshire Council. Written Submission to the Rural Affairs and Environment Committee.


112. The Committee was initially surprised to note that some expert stakeholders had called for probability to be entirely discounted as a risk factor in making a risk designation. These included the ICE. The Institution argued—

“Other than in determining the breach characteristics and hence the flow of water in the event of failure we do not consider that it is necessary to consider any of these aspects [ie the matters mentioned in paragraph XXX above]. Despite studies having been undertaken in the UK into quantitative risk assessment for reservoirs, reliable and accepted tools are not yet available to the reservoir profession to determine the probability of failure of any structure. In view of this we reaffirm the strong view we expressed at consultation stage that only “Consequence” is important and that the Risk designation should be related to that and that alone. We would ask the SG to reconsider the drafting of this section.”

113. Alex Macdonald of the ICE reiterated these views when he gave evidence to the Committee, referring to the work of an expert group on quantitative risk assessment for UK dams—

“The bottom line of those studies was that there was not sufficient evidence to allow probability to be fully taken into account with regard to reservoir safety, and that consequence should be the key driver.”

114. SSE’s witness, a civil engineer with experience of supervising large raised reservoirs, largely endorsed this view.

115. The opposite view was taken by John Reid, a private reservoir undertaker running a small business—

“The real risk issue is the integrity of the structure, how it is managed, maintained, holding capacity, catchments area, and monitoring regime. Any categorisation should be based on these factors, which is a tried and tested system, or you automatically build in an unfair bias against reservoirs which are situated closer to people and property which may never have, or will posed a threat of any sort in the future.”

116. It is important to stress that in their evidence both the ICE and the SSE representative agreed that good reservoir maintenance was important. They also agreed that some types of structure do appear to be safer than others. For instance, concrete dams built on rock are probably safer than embankment dams. As the Committee understands it, the witnesses’s concerns related to

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48 Institution of Civil Engineers. Written submission to the Rural Affairs and Environment Committee, 26 November 2010.
50 In written evidence, British Waterways expressed similar views. (British Waterways. Written submission to the Rural Affairs and Environment Committee.)
51 Tinto Reservoirs, Mr John Reid. Written submission to the Rural Affairs and Environment Committee, 9 December 2010.
quantifying this different level of danger so as to be able to apply it meaningfully as part of a risk management regime.

Hazard
117. An insurance practitioner, David Crichton, proposed to the Committee that in assessing the probability of an uncontrolled release, account should also be taken of a further element missing from the current Bill, which he referred to as “hazard;” in this context, the frequency of rain events or storms. Even drought could be an element of hazard; a combination of drought followed by heavy rain could increase the risk of landslip, particularly so-called peat slides, which are not uncommon in Scotland.\(^53\) Mr Crichton suggested that climate change could increase the risk of hazard in future. He also suggested that panel engineers did not do enough to consider the risk of landslip or peat slide. This was disputed by engineers giving evidence to the Committee, who said that they were aware of the risk, and took account of it when supervising or inspecting reservoirs, but that the risks in Scotland were considered extremely low.\(^54\)

118. Mr Crichton also drew attention to the availability of transponders enabling satellite monitoring of minute movements in water level and in the topography around the reservoir. He said that these had become increasingly affordable and expressed surprise at their apparent limited use as a risk assessment and monitoring device in Scotland.\(^55\) Responses from reservoir managers indicated that there was some awareness of the existence of this technology, and that it was felt that it had it uses, but regular inspection in person remained the key consideration.\(^56\)

Government views on measuring probability of failure
119. The Minister for Environment and Climate Change pronounced herself surprised by the ICE’s views on the assessment of probability of reservoir failure. She told the Committee—

“We can come back and have a look at that, but I express some concern if the professional advice is that the engineers cannot give any assessment. I see that you are reading that evidence, and it is something that we will want to discuss directly with the institution. People will be surprised at that evidence—frankly, I am.”\(^57\)

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\(^{55}\) Scottish Parliament Rural Affairs and Environment Committee. Official Report, 15 December 2010, Col 3592. Mr Crichton provided further information on the technology in his supplementary written submission to the Rural Affairs and Environment Committee.


120. In subsequent correspondence, the Minister pointed out that the European Flood Directive requires consideration of probability when assessing all forms of flood risk. She added that she appreciated that there were inherent difficulties in making an assessment but that it was—

“sensible for the Bill to require SEPA to take into account basic factors such as the type of construction, the purpose of the reservoir, and actual conditions of each dam when assessing the probability of failure. As methods of assessing the probability of failure of reservoirs improve, such methods can then be utilised when categorising reservoirs if SEPA considers it appropriate to do so.

I must also stress that the Bill does not place obligations on engineers, or on the ICE, to provide a precise assessment of the statistical probability of failure. The obligation is on SEPA, and is only to “take account” of the probability of an uncontrolled release of water from the reservoir ... I do not believe that the Bill is placing unrealistic requirements on practitioners.”

121. The Committee notes that there is a disagreement currently between the Scottish Government and the Institution of Civil Engineers as to whether it is possible to assess the risk of a reservoir failing by examining its structure and level of maintenance. The Committee considers that this is an important issue and would encourage the Institution and the Government to discuss the issue further as the Bill progresses. Technological advances should also, in time, make it easier for engineers to assess risks previously considered to be unmeasurable.

122. The Committee notes that there is a power to exclude certain types of structure from the definition of “controlled reservoir” and that this might be used where it is clear that the risk level inherent in the type of structure is negligible. Given the apparent lack of consensus on this issue, we would not expect this power to be used much in the foreseeable future. We also note the Government’s assurance that the bureaucracy and cost associated with low-risk controlled reservoirs ought to be very low. If assurances, backed up by clearer communication on the likely low costs to managers (see later in report) were provided, this might be helpful.

123. The Committee notes the evidence it received that environmental factors caused or exacerbated by precipitation (e.g. landslip) can potentially be a factor in increasing the probability of failure, but notes that no express provision for this appears to be made in the Bill. The Committee seeks reassurance from the Scottish Government that it would expect such factors to be taken into account in any assessment of a risk posed by a reservoir.

Quantification of risk-measuring the consequences of reservoir failure

124. No one disputed that in making a risk designation for a controlled reservoir SEPA should take into account the consequences of an uncontrolled release. As noted, for some, this was the only element of risk that should be considered. The

58 Scottish Government. Letter from the Minister for Environment and Climate Change to the Clerk of the Rural Affairs and Environment Committee dated 12 January 2011.
only disputed points were as to which factors should be taken into account in doing so, and as to whether some factors should be considered more important than others. Section 21(2) lists a number of factors under five headings, plus a catch-all of “such other potential damage as SEPA considers relevant”. Damage to human health is listed among these factors but is not expressly identified as pre-eminent.

125. The ICE noted that in current legislation the only consequence that had to be considered was danger to human health (including the protection of medical facilities). The Institution went on to argue—

“We are strongly of the opinion that this is still appropriate and we would urge the SG to consider removing “Environment”, “Cultural Heritage” and “Other Social and Economic Interests” as aspects to be considered by SEPA when deciding on risk. Our concern is that these may be highly subjective and would give rise to disputes with the RM [reservoir managers] in view of the significant additional costs that would be incurred by a RM if the reservoir was placed in a higher risk category than that necessary from a public safety viewpoint.”

126. Scottish Water called on the Bill to give risk to human life precedence amongst the factors to be taken into account in determining the risk level.

127. The Minister for Environment clarified that she proposed to issue guidance to SEPA on the interpretation of this provision and that the risk to human life was extremely likely to be identified as the most important factor. She considered that this was sufficient. In a follow-up letter, she pointed out that the factors identified in the Bill were broadly consistent with those identified in the 2009 Act as the “potential adverse consequences” of a flood, which SEPA must take account of.

128. The Committee expects that, in practice, danger to human life will be treated as the paramount consideration in any assessment of risk measured in terms of the consequence of reservoir failure, and considers this appropriate. However, the importance of other factors such as damage to the environment or to cultural heritage should not, as a consequence, be downplayed.

Compulsory public liability insurance

129. The main arguments regarding perceived difficulties in the quantification of risk have been rehearsed above. For David Crichton, an insurance practitioner, the best solution was compulsory public liability insurance for all reservoir managers. This would leave the matter in the hands of the insurance industry, who were accustomed to dealing with the quantification of risk, and who were developing increasingly sophisticated methodological tools to do so. He suggested that we were reaching a point where the insurance industry was becoming as

59 Institution of Civil Engineers. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.
60 Scottish Water. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.
effective as the engineering sector in calibrating the risk of matters such as reservoir failure. Mr Crichton listed a number of other reasons for supporting compulsory public liability insurance, over and above any perceived advantage in handling quantification of risk issues. The clearest reason for requiring such insurance is of course that in the event of an inundation, those suffering any loss would be likely to be able to recover damages, regardless of the financial liquidity of the reservoir manager.

130. The Association of British Insurers does not, however, share Mr Crichton’s views. The Association has three objections. It considers that it would be difficult to enforce such a requirement; it considers that a mechanism would need to be devised for paying claims to the uninsured; and finally it considers that there would need to be a process to enable owners to take out insurance in situations where insurers had no market-driven desire to provide insurance cover. The very limited evidence the Committee took on this issue at Stage 1 suggests that it might be difficult for small businesses or individuals who will be reservoir managers under the Bill to obtain reasonably priced insurance, although it might be supposed that if reservoir failure insurance became a more mainstream sector of the insurance market (for instance as a result of a new requirement that insurance would have to be taken out), premiums might perhaps fall.

131. The Committee notes that the consequences of an uncontrolled outflow from a reservoir can be catastrophic, in terms of damage not only to human life but also to property. We also note that it is highly unlikely that all reservoir managers would be sufficiently well resourced to cover such losses out of their own pockets. On that basis, the Committee is in principle supportive of requiring reservoir managers to take out public liability insurance.

Role of civil engineers in risk designation

132. As already noted, the Bill does not expressly provide that SEPA must take advice from engineers before making a risk designation, although SEPA have indicated that that is what they propose to do. The ICE was among witnesses to argue that this should, however, be on the face of the Bill. A recent letter from the Minister indicates that there will be an amendment at Stage 2 to require SEPA to consult the ICE before publishing guidance on the risk designation process (but not to obtain engineering advice before making a risk designation).

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63 David Crichton. Supplementary written submission to the Rural Affairs and Environment Committee. 20 December 2010.
64 Bill team officials clarified that under the law of delict, liability is likely to be owed to anyone suffering damage as a result of inundation from a reservoir. (Scottish Parliament Rural Affairs and Environment Committee. Official Report, 1 December 2010, Col 3449). As the committee understands it, a successful claim in delict would require proof of negligence. The Committee is not clear whether the common law of nuisance might also provide a remedy.
65 David Crichton. Written submission to the Rural Affairs and Environment Committee. 9 December 2010.
67 Institution of Civil Engineers. Written evidence to the Rural Affairs and Environment Committee. 26 November 2010.
133. The Committee welcomes the Scottish Government’s recent undertaking to bring forward an amendment to require SEPA to consult the Institution of Civil Engineers before publishing guidance on the risk designation process. The Committee further expects that SEPA would, in practice, always seek expert engineering advice before making a designation.

Review of risk designation

134. The Bill provides that SEPA is to make a provisional risk designation for any newly registered reservoir. In so doing, SEPA must notify the reservoir manager of the designation, and inform the manager of their right to make representations on the designation within two months. Thereafter, SEPA must make a risk designation. From time to time (and not later than after a period of 6 years) SEPA must then review the designation.

135. Under section 22 of the Bill, a reservoir manager may call for a review of a risk designation made by SEPA. This must be made within 12 months of the designation being made, or a review of that designation being made. (In passing, the Committee notes that this dual use of “review” in this Chapter to denote both review undertaken by SEPA at its own behest and review at the behest of the manager is potentially confusing.)

136. The Bill does not provide for a date by which SEPA must complete the review. This was queried by Scottish Water, which argued that “this may cause reservoir managers unnecessary inconvenience and expense if a review takes a considerable time, then finally results in a low designation.” A recent letter from the Minister indicates that, at Stage 2, the Government proposes to put time constraints on SEPA to complete a risk designation.

137. The Committee welcomes the indication from the Scottish Government that it proposes to put time constraints on SEPA to complete a reservoir risk designation. This would appear to be helpful, in the interests of effective regulatory governance. The Committee presumes that the time constraint will also apply to risk designations arising from a request for a review of a designation.

Risk designation and interaction with the planning system

138. The Committee sought to explore what effect risk designation would have on the planning system, and vice versa. This discussion arose in particular from consideration of risk being defined by reference to consequences, in particular potential damage to human life. Perth & Kinross Council asked—

“How will the future development around a reservoir be managed? For example, if a reservoir is currently a low risk and a development is built downstream causing SEPA to reclassify its risk designation to Medium or

68 Concerns were raised as to the financial implications of reviewing a risk designation. We comment on these later in the report.

69 Scottish Water. Written submission to the Rural Affairs and Environment Committee. 26 November 2010

70 Scottish Government. Letter from the Minister for Environment and Climate Change to the Clerk of the Rural Affairs and Environment Committee dated 12 January 2011.
High, this will cause the Reservoir manager a financial burden. Therefore who is really liable for the costs? Or should development downstream of a reservoir be classed as undevelopable in order to avoid this scenario? There is no reference to this scenario in the Bill or supplementary notes. It is clear there is a need to ensure development plans take account of reservoirs.”

139. David Crichton, an insurer, proposed that planning authorities should have access to inundation maps (maps showing the area likely to be flooded if there were an uncontrolled release)72 and use them to ensure that new developments do not take place in the downstream hazard zone.73

140. The Minister for Environment acknowledged that if a development were built downstream of a low or medium risk controlled reservoir that could affect its designation when it is next reviewed.74 She was pressed further on who would bear any increased cost of the re-designation—

“There is a requirement to consult on development plans that involve developments downstream from reservoirs. I think that some authorities are already publishing main issues reports in relation to development plans. At that early stage, authorities are required to ensure that people who might be expected to comment are made aware of the consultation, which means that the reservoir manager ought to be made aware at an extremely early stage in the process and will be able to comment. Further, before anything happens, the Scottish Environment Protection Agency must be consulted. […] In the circumstance you describe, I think we expect that there would be a discussion with the developer about the developer taking on the liability for increased costs, because there would be a great degree of material change. However, that would be part of an early negotiation in the planning process. The discussion would not be entered into after the houses had been built or the plant had been installed. Developers are already expected to pick up costs for a variety of things, as you know. In the circumstance you describe, developers would be in the same position as they are at present with regard to various negotiations.”

141. A more general discussion ensued about the overall relationship between flood risk management downstream of reservoirs and planning. The Minister explained76 that talks were ongoing with planning officials about the consequence of the new register of controlled reservoirs on their work, but that it was to be

72 An inundation map is required for each reservoir entered in the controlled reservoir register; section 9(2)(g). Register entries are available for public inspection.
73 David Crichton. Written submission to the Rural Affairs and Environment Committee. 12 December 2010.
expected that planning authorities would need to take account of the issue. She also pointed out that SEPA is a statutory consultee under planning law.

142. The Committee notes that SEPA is a statutory consultee under planning law. It is to be hoped that this will help ensure that planning authorities will take full account of the consequences of there being an uncontrolled release of water from reservoirs in preparing local plans. The Committee also expects that planning guidance will in due course be updated to take account of the provisions in the Bill.

143. The Committee notes that, since risk is assessed under the Bill in terms of consequence as well as probability, this could lead to a reservoir receiving a higher risk designation as a result of a development downstream of the reservoir being approved. In most case, it would be be unfair for the reservoir manager to have to bear any increased costs for this. We note the Minister for Environment and Climate Change’s view that she expects this matter to be played out via the planning process, with the developer being asked to agree to take on the liability for increased costs. Again, updating planning guidance to reflect this in due course would be helpful.

The controlled reservoirs register

144. Under the Flood Risk Management (Scotland) Act 2009, responsibility for holding information on reservoirs falling within the scope of the 1975 Act is transferred from local authorities to SEPA. Section 9 of the Bill now provides that there is to be a single register of controlled reservoirs held by SEPA, which is to be publicly available for inspection. The Bill provides that the register must set out matters such as the name and location of the reservoir, the name and address of the reservoir manager, any documentation required under the Bill such as a safety report, and the reservoir’s risk designation.

145. Reservoir managers are under a duty to register the reservoir. In the case of reservoirs previously subject to the 1975 Act, this must be done within 6 months. For all other controlled reservoirs, the date is to be set out in subordinate legislation.

146. In its written evidence, SEPA commented—

“SEPA will endeavour to make the registration process as simple and straightforward as possible and will look to combine it with other appropriate processes such as the authorisation process for impoundment under the Water Environment (Controlled Activities)(Scotland) Regulations 2005. This should ensure an integrated process covering both sets of legislative requirements and therefore avoid duplication of information an applicant should supply, and also reduce the burden on public expenditure.”

147. The principle of SEPA taking over centralised control of registration has already been enshrined in the 2009 Act. Any comment on the register tended to focus on the likely costs, discussed later, rather than on the drafting detail. Some
witnesses\textsuperscript{77} called for more clarity on the requirement for there to be an inundation map in respect of each reservoir entered in the reservoir. The Committee hopes that SEPA’s evidence \textsuperscript{78} that it expects to take on the role of preparing these maps, in order to ensure consistency, will help address these concerns.

\begin{itemize}
\item The Committee notes that SEPA proposes to take on the role of preparing all flood inundation maps required for registration, and agrees that this appears to be appropriate to ensure consistency of approach and standards. SEPA should take steps to communicate this to stakeholders over coming months.
\end{itemize}

Role of engineers under the Bill

149. Chapters 4 to 6 set out some of the more technical provisions of the Bill. Chapter 4 concerns the establishment of panels of engineers to carry out functions under the Bill. This is to be done in consultation with the President of the ICE. Chapter 4 is largely a restatement of the current law. Chapter 5 sets out rules for the construction or alteration of controlled reservoirs (in particular in relation to the role of engineers and SEPA in overseeing or approving that work). Chapter 6 sets out particular requirement relating to the maintenance and inspection of medium and high-risk reservoirs.

150. The Bill to a large extent reiterates the current law in having different engineers performing different roles within the regulatory system:

\begin{itemize}
\item Construction engineers, to supervise works on a reservoir until completion;
\item Inspecting engineers, to inspect controlled reservoirs from time to time and make reports on them to reservoir managers; and
\item Supervising engineers, to supervise medium or high-risk reservoirs at all times when the reservoir is not under the supervision of a construction engineer.
\end{itemize}

Availability of qualified engineers

151. The number of civil engineers qualified to inspect reservoirs or to supervise work on them has been steadily decreasing for a number of years. Alex Macdonald of the ICE summarised the current position—

“The UK has 44 all-reservoir panel engineers, who are qualified to do any activity under the 1975 act. Eight of them are based in Scotland. The population of all the panel engineers is ageing. Of the eight who are based in Scotland, roughly six are over 60.

There are two smaller panels of engineers for non-impounding reservoirs and service reservoirs. The non-impounding reservoir panel has four members

\textsuperscript{77} E.g. Perth and Kinross Council. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.
\textsuperscript{78} SEPA. Written submission to the Rural Affairs and Environment Committee. 25 November 2010.
and the service reservoir panel has six members, and one member of each panel is based in Scotland.

The other major panel is the supervising engineer panel, which has 163 members. That population is ageing, too. At its peak, that panel had about 350 members, but it is now down to 163. Of those 163, 28 are based in Scotland. They are a mix of people who work for consultancies, for public bodies such as Scottish Water and for other private owners.

The institution believes that the number of all-reservoir panel engineers is probably sufficient for the foreseeable future, even if we allow for some people to retire from the panel, as some new members will always join. Our major concern is about the number of supervising engineers, which is declining. That issue will need to be addressed here and in England and Wales.

All-reservoir panel engineers operate throughout the UK, so I operate throughout the UK. Supervising engineers are probably a bit more geographically focused, because they are responsible for a reservoir at all times, as the 1975 act says. Supervising engineers tend to work in fairly narrow geographical areas.”

152. Some of the concerns arising from this evidence were put to the Minister. She cautioned against focussing too much on figures for Scotland alone, since in practice engineers from across the UK would be drawn on to sit on panels appointed under the Bill.79 (In passing, the Committee notes that per capita Scotland is in fact doing less badly than the rest of the UK in terms of overall numbers, although one submission80 informed us that there are only two consultancies offering panel engineering services in the whole of Scotland.) The Minister went on to argue that the underlying issue was about the recruitment of new entrants into engineering. This was not a matter directly for the Bill. She stressed that, notwithstanding any concerns about the downward trend, “the existing system seems to work.”81 She did however concede that it was not yet clear what stress the new legislation would put on the system. She indicated that she would be looking to have talks with the UK Department of Environment Food and Rural Affairs and with the ICE about the situation.

153. The Committee is concerned by the steady decline in the number of available engineers to carry out regulatory duties, as well as the increase in the age profile. If these trends are left unchecked, there may be insufficient engineers left to carry out inspections, etc., in future. The Committee invites further views from the Scottish Government as to how this concern might be addressed.

80 British Waterways Scotland. Written submission to the Rural Affairs and Environment Committee. 24 November 2010.
Role of construction engineers in supervising alterations to reservoirs

154. The ICE\(^82\) drew the Committee’s attention to a requirement set out in the Bill\(^83\) that a person appointed as the construction engineer for a new reservoir is subsequently prohibited from being involved in overseeing alterations to the dam and said that this was unhelpful. The Minister explained that it had not been intended that the rule should operate in this way and that the issue would be dealt with at Stage 2.\(^84\)

155. The Committee notes that following representations from the Institution of Civil Engineers the Scottish Government intends to amend the Bill to allow a reservoir’s construction engineer to be involved in subsequent alterations to the structure.

Inspecting engineers

156. Another concern raised by some stakeholders was about inspecting engineers. The Bill appears to provide that an inspecting engineer must be appointed permanently rather than as and when needed to carry out an inspection. It was suggested that this was unhelpful. For instance, the ICE stated—

“This is a major change to the current Act which only requires the appointment of the IE [inspecting engineer] at the time an inspection is required, that appointment terminating when the IE submits his report. The SE [supervising engineer] is the person with continuous responsibility for the reservoir. We consider the current system is effective and takes into account the fact that the senior members of the reservoir profession who are qualified to be IEs may frequently be unavailable due to international work commitments etc. RMs [reservoir managers] will also want the flexibility to call on the individual they consider most appropriate to address and subsequently certify any work identified in the interests of safety during an inspection. This may be a different person from the IE. Having an IE appointed at all times is likely to result in increased costs to the RM as there will be a tendency for SEs to seek advice from the IE between inspections. ICE would welcome further discussion with the SG on this section.”\(^85\)

157. The Minister subsequently explained that this was another issue that would be addressed at Stage 2.\(^86\)

158. The Committee notes that the Government will also amend the Bill to clarify that an inspecting engineer may be appointed for the duration of the inspection only.

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\(^{83}\) Section 43(4)(b).


\(^{85}\) ICE. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.

Compliance with directions in an inspection report

159. Under section 43, an inspecting engineer must be appointed for any medium or high-risk reservoir. In the case of a high-risk reservoir, inspections must take place at least once every ten years. In the case of a medium-risk reservoir, they take place whenever recommended by the reservoir’s supervising engineer.

160. The engineer must then prepare an inspection report, specifying any measures that the engineer considers the reservoir manager should take in the interests of reservoir safety, as along with “any other measures the engineer considers should be taken to maintain the reservoir.”87 The report must further direct the reservoir manager to ensure that any such measures are taken under the supervision of the supervising engineer within a specified time period.

161. The requirement to undertake corrective measures within a specified time period was welcomed88 by the ICE as an improvement on the current law, which refers to measures being undertaken “as soon as is reasonably practicable”. However, another aspect gave rise to some concerns. Alex Macdonald of the ICE compared what the Bill seemed to say with the current law—

“As drafted, the bill allows for enforcement to be applied to all measures that are recommended by an inspecting engineer. Under current legislation, however, enforcement can be applied to measures that an inspecting engineer recommends are required in the interests of safety or for future monitoring and supervision.

Any report that I write as an inspecting engineer will include a section on measures that are required in the interests of safety, setting out key concerns where studies or works require to be carried out to ensure the reservoir’s safety. The report will also have a section on other measures that are required but not in the interests of safety, which might include trimming the grass or removing a fish heck from in front of a spillway, and that will also have requirements for monitoring and supervision. In the bill, any measure that I recommend, be it in the interests of safety or just for general maintenance, is likely to be enforced. Our institution simply does not think that that is required.”89

162. It was put to Mr Macdonald that it might be a good thing if the Bill ensured that corrective work was undertaken sooner rather than later, since an issue that was not directly related to public safety (such as ensuring that grass is neatly trimmed around the dam to make changes in water level more visible to the naked eye) could well become one further down the line. Mr Macdonald replied that many measures set out in an inspection report “are relatively minor and are desirable rather than immediately essential” and are measures “for the reservoir’s ultimate wellbeing but are not of immediate concern.”90

87 Section 45(3)(a)(ii).
88 ICE. Written submission to the Rural Affairs and Environment Committee. 26 November.
163. The Minister was asked for a view. She indicated, on the one hand, that the Government intended to address at Stage 2 the apparent position that routine maintenance issues, and not just safety concerns, set out in an inspection report, must be addressed.\textsuperscript{91} However, she later went on to point out that not all so-called maintenance issues were trivial. For instance, failure to cut the grass around a dam could prevent engineers having a clear view. The Minister explained that “reservoir safety is tied to good maintenance, so we cannot exclude maintenance issues.”\textsuperscript{92} This later discussion took place in the context of SEPA’s enforcement powers under Chapter 9 of the Bill (discussed later) rather than this specific provision, but there is clearly a direct link between the two issues.

164. In a subsequent letter,\textsuperscript{93} the Minister explained that the Scottish Government proposed to amend the relevant provision to make it clearer that “routine maintenance which does not affect the safety of the reservoir is not compulsory in the same way as maintenance which can effect the safety of the reservoir is.”

165. The Committee notes views expressed at Stage 1 that the Bill may go too far in apparently requiring reservoir managers to implement all recommendations included in an inspection report, even those that relate only to routine maintenance. The Committee welcomes the Scottish Government’s undertaking to address this concern at Stage 2.

\textit{Draw-down of water levels}

166. Another provision that was queried was that in section 48(2)(g) requiring any draw-down\textsuperscript{94} of a high or medium-risk reservoir to be supervised by the supervising engineer or a person nominated by the engineer. It was suggested that this was over-rigorous. For instance, Mark Noble of SSE commented—

“If we have a pump storage scheme in which we have water going up and down nightly and if you read the bill in the way that we read it, that scheme will have to be monitored. The Government does not really mean that, but without any guidance that is what the bill means—we would have to supervise something that cannot be supervised because it happens 24 hours a day. We supervise the levels electronically. The data are collected and sent straight to our control room in Perth, so we can say what the level is almost to the second, but that is not what the bill is asking for; it asks us to supervise.

If a Pennine or clay-core dam in England is watered too quickly there can be slumps and all sorts of problems in the centre, which can be disastrous, but a concrete dam is designed to allow water levels to go up and down, and that is what we do.”

\textsuperscript{93} Scottish Government. Letter from the Minister for Environment and Climate Change to the Clerk of the Rural Affairs and Environment Committee dated 12 January 2011.
\textsuperscript{94} I.e. an intentional reduction in the water level.
167. This was another issue on which the Minister advised that there would be movement at Stage 2. In a subsequent letter to the Committee, she further advised that “day to day operational changes in water levels such as those changes as a result of switching on turbines in a hydro-electric scheme does not constitute a “proposed draw-down” under section 48(2)(g).

168. The Committee considers that the rule on the supervision of water drawdown at higher risk reservoirs might have been drawn unintentionally widely, and welcomes the Scottish Government’s intention to lodge an amendment at Stage 2 to address this.

Mitigation or prevention of flood damage

169. Chapter 7 is mainly concerned with measures to mitigate or prevent flood damage. This does not extend to setting out the civil protection powers of the emergency services; instead the emphasis is on the role of SEPA and reservoir managers.

Flood plans

170. Section 53 enables the Scottish Ministers to provide, by regulations, for the making of flood plans. A flood plan is described as “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.” The Government must consult SEPA, reservoir managers, the ICE, and such other persons as they consider appropriate before making regulations for flood plans.

171. The section 53 power is discretionary. However the Scottish Government’s policy will be to require the production of flood plans, following implementation of the Bill. The Policy Memorandum explains that flood plans—

“would not be appropriate to contribute to the process of risk designation, but they would be valuable in linking with offsite plans prepared separately and held by emergency services, providing a cohesive and complete picture of how all affected parties would respond in the event of an uncontrolled release of water.”

172. Flood plans were introduced under the 2009 Act, although that has not of course yet been implemented. The Government took the opportunity to consult further on the detail of flood plans in its pre-introductory consultation on the Bill. A significant majority of respondents expressed the view that the Government should provide some financial assistance in their preparation. At Stage 1, we picked up similar concerns (discussed later). There was also still uncertainty over what would actually be involved in preparing them. Perth & Kinross Council queried

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96 E.g. National Trust for Scotland. Written submission to the Rural Affairs and Environment Committee. 25 November 2010.
97 E.g. British Waterways Scotland. Written submission to the Rural Affairs and Environment Committee. 24 November 2010.
the timescale for implementation of flood plans and whether reservoir managers would be expected to test them.

**Flood plans and security**

173. Scottish Water called for further consultation on flood plans, commenting further—

“The Bill is unclear on the function that the flood plans will serve and who will have access to these flood plans. Our view is that flood plans, produced by reservoir managers, should identify the steps that are required to draw down a reservoir in the interests of safety in an emergency. However, we see this information as being part of good management of the reservoir and, in the interests of national security required by UK government, we cannot put this information into the public domain. Additionally, we acknowledge that reservoirs may be used to manage flow downstream in the interests of preventing flooding. It is not currently Scottish Water’s practice to actively operate reservoirs in the interests of flood prevention, nor are we currently financed to do so.”

174. SEPA’s representative told the Committee that under current controlled activities regulations they already held some information on water impoundments securely because of a security direction from the UK Government.

175. The issue was raised with the Minister. She replied—

“The difficulty is that there is potentially sensitive information to be considered. We think that the Westminster equivalent of a legislative consent motion will be required for the legislation that we are putting through, and we are discussing the matter. Most of the information in the register will be publicly available, but advice would need to be taken about inundation maps and certain other data, if it was considered to be a matter of national security. It is the same issue for England and Wales—it is all caught up. We have a principled agreement for a section 104 order, as it is known, which is the other side of the LCM coin. That matter has already been considered and dealt with, in a sense. It means, in any case, that not all the information will be publicly available.”

176. The Committee would welcome an update from the Scottish Government, as the Bill proceeds, on progress made in discussions with the UK Government in agreeing the devolution of security measures in relation to flood plans.

**Provision of public information**

177. Under section 55, the manager of a controlled reservoir must ensure that emergency response information is displayed at or near the reservoir. What constitutes such information is to be set out by order, but the Bill indicates that it

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96 Scottish Water. Written submission to Rural Affairs and Environment Committee. 26 November 2010.

may include matters such as the reservoir managers emergency contact details, as well as – in the case only of a medium or high-risk reservoir – the contact details of its supervising engineer. The ICE suggested that it should not be necessary to display this information provided contact details for the reservoir manager were set out. The ICE was concerned about hoax calls being made to the engineer, amongst other things.

178. A recent letter from the Minister indicates that the Government proposes to amend section 55 at Stage 2 to replace the requirement to display the supervising engineer’s details with a requirement to display SEPA’s contact details.

179. The Committee welcomes the Government’s intention to amend section 55 so that it is SEPA’s contact details, rather than those of the supervising engineer, that will be displayed next to the reservoir.

Enforcement of Part 1 provisions

180. Chapter 9 of the Bill is headed “civil enforcement, emergency powers and further offences.” Mainly it is about giving SEPA powers to enforce its regulatory regime. The Government’s Policy Memorandum explains—

“Chapter 9 sets out a ‘toolkit’ of enforcement options available to SEPA in the event of noncompliance by reservoir managers. This includes stop notices, financial penalties, the ability to publish details of enforcement action, and further criminal proceedings, amongst other options. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so. Flexibility and common sense will be key aspects of how SEPA approach their enforcement duties, although legal sanctions will still be applied where it is viewed appropriate to do so.

SEPA will be able to invoke any of these civil sanctions without the involvement of a court, having formed its own judgement as to whether it considers, beyond reasonable doubt, that an offence under the Bill has been committed by a reservoir manager. This is a new process for SEPA, although in England and Wales, there is already provision for regulatory bodies such as the Environment Agency to use similar sanctions.

Chapter 9 also enables SEPA, in consultation with a panel engineer, to enter a site to take emergency action in order to deal with an immediate threat of uncontrolled release of water from a dam. In the Maich Fishery incident in 2008, it proved to be difficult to establish the legal acceptability of the enforcement authority entering the site to undertake urgent safety works (unusually, at one point legal permission had to be sought from the owner to remove the dam). The Bill seeks to remove any such obstacles to urgent remedial works being undertaken, thereby improving the safety of people and property at risk from a potential dam breach.

It was also necessary to provide SEPA with powers to enter a site to gain necessary information on a reservoir. This could be to assist with a risk classification, to verify if necessary work has been completed, or to
determine if any work is needed. Such powers will enable SEPA to fully investigate any situations where information is unclear, allowing it to come to a fully informed decision about the course of action to take. As an independent body, SEPA must be seen to be transparent and thorough in its decision making. This section will allow them, when needed, to reasonably gain a full picture of events without obstruction.”

181. Chapter 9 is the longest chapter in the Bill, containing 34 sections. However, a considerable amount of it consists of “framework” provisions, giving the Scottish Ministers the power to create civil enforcement measures that may be undertaken by SEPA. Implementation of Part 9 will therefore be crucial. Scottish Water noted that the introduction of civil enforcement powers were not included in the Scottish Government’s consultation on reservoir safety and commented—

“The new Bill re-enacts a number of provisions relating to offences under the 1975 Act (although penalties may differ), and introduces a large number of new offences, for example, display of emergency information, incident reporting and flood plans. Additionally the Bill introduces new civil enforcement powers that SEPA will administer. We are keen that there is clarity over how SEPA will determine and administer the process for taking enforcement action. However, the Bill does not prioritise offences and enforcement in the interests of safety above other administrative matters. We raise this matter as we see it is essential that safety matters are the priority for enforcement action.”

182. In relation in particular to any power to charge financial penalties, Scottish Water commented that “we would not like to see civil enforcement penalties redirecting limited resources away from maintaining reservoirs in the interests of safety.”

Scottish Water, however, did consider the penalty of imprisonment for certain offences to be appropriate given the importance of public safety.

183. The ICE pointed out that Chapter 9 was longer than the entire 1975 Act. The Institution commented that “the impression is given of a heavy regulatory regime with, potentially, significant administrative costs” and sought assurances that the Scottish Government had critically reviewed the provisions to ensure that they were all necessary.

184. The Environmental Law Sub-Committee of the Law Society of Scotland, referring to a range of new measures set out in Chapter 9 (safety measures, stop notices, emergency powers and a group of measures such as enforcement undertakings and fixed monetary penalties under the heading “other civil enforcement measures”), commented that—

“some of these provisions are a piecemeal introduction of a range of “civil sanctions” contained in various regulatory regimes and specific reference is made to the Wildlife and Natural Environment (Scotland) Bill and the Regulatory Enforcement and Sanctions Act 2008. The Sub-Committee

100 Scottish Water. Written submission to Rural Affairs and Environment Committee. 26 November 2010.
101 Scottish Water. Written submission to Rural Affairs and Environment Committee. 26 November 2010.
suggests that there should be a consistent and principled enforcement mechanism across a number of regimes rather than what appears to be a fragmented and incomplete set of powers.”

185. As discussed in more detail later, some concerns were also expressed that constraints on resources might lead SEPA to use some of its new powers effectively as revenue-raising devices.

186. SEPA, however, strongly welcomed the overall thrust of Chapter 9, noting that it put into practice many of the recommendations in the Macrory report, which concluded that regulators needed more flexible and risk-based enforcement tools. SEPA stated—

“In the long term SEPA is keen that the most appropriate toolkit is developed for SEPA in the Scottish context across all the regimes that SEPA has regulatory responsibilities for.

SEPA also considers that the requirement in section 85 for SEPA to publish guidance on how it would use such powers, prior to actually utilising them in practice, provides the safeguard for reservoir managers of ensuring SEPA utilises these powers in a transparent and appropriate manner.”

187. SEPA’s representative gave further reassurance in person to the Committee that any proposed regulatory tools would be subject to discussion.

188. The Subordinate Legislation Committee made some technical observations on the delegated powers set out in Part 9, including that it was unusual that they did not leave it to the Parliament to determine the maximum amount of fixed penalty available.

189. The Minister defended the provisions set out in Chapter 9—

“First, we need to set what is proposed against what we currently have. Currently, in the event of non-compliance, local authorities have a choice between sending a stiffly worded letter and going to a criminal prosecution. There is nothing between those two extremes. The Bill fills that gap. With the Bill, we are going from a situation where people can either do nothing much at all or pursue a criminal prosecution, to having provision for a more proportionate response.”

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102 Law Society of Scotland. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.
104 SEPA. Written submission to the Rural Affairs and Environment Committee. 25 November 2010.
190. The Minister further argued that the Bill would enable SEPA to choose the most appropriate response in any given situation.\(^{107}\)

191. The Committee notes some concerns expressed at the breadth of the powers set out in Chapter 9 of the Bill. The Committee considers that it would provide assurance to stakeholders if the Scottish Government gave a clear undertaking that SEPA will consult fully on all guidance proposed under Chapter 9, and aim to have draft guidance agreed in time for implementation of the Bill.

192. The Committee draws the Scottish Government’s attention to the comments of the Subordinate Legislation Committee on the delegated powers set out in Chapter 9.

**Appeals**

193. In relation to most of the “framework” powers set out in Part 9 (i.e. those enabling the Scottish Ministers to empower SEPA to take certain enforcement measures), the Bill provides that the reservoir manager must be entitled to appeal any decision by SEPA to take the measure. Some further details are provided as to the appeals procedure – for instance that a fee may be charged for making an appeal – but not others – for instance, the identity of the person or tribunal to whom an appeal is to be made). This concerned some witnesses. John Reid of Tinto Reservoirs Ltd expressed alarm at the possibility of SEPA being empowered to hear appeals against its own decisions. He also argued that it was contrary to principles of natural justice to charge a fee for an appeal since it would mean that those who could not afford to appeal would not do so.\(^{108}\) (The possible amount of fees is discussed later.)

194. The Law Society of Scotland\(^{109}\) said that the Bill should state to whom appeals should be made, suggesting that the sheriff court might be the appropriate forum.

195. The Minister said that there would be “some clarification”\(^{110}\) of the appeals process at Stage 2.

**Powers of entry onto land**

196. Section 88(1)(a) enables SEPA to enter “land on which a controlled reservoir is situated.”\(^{111}\) This may be done for particular listed purposes connected to SEPA’s regulatory and enforcement role. Scottish Water queried whether this included the right to enter buildings. They expressed concerns about SEPA

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\(^{108}\) John Reid (Tinto Reservoirs Ltd). Written submission to the Rural Affairs and Environment Committee. 25 November 2010

\(^{109}\) The Law Society of Scotland. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.


\(^{111}\) Under the rest of section 88(1), SEPA may also enter onto land on which a former controlled reservoir is situated, or land on which there is situated a structure or area which not does not meet the definition of controlled reservoir under the Bill but in respect of which SEPA considers than an order might be made under section 1(4) whereby it would be deemed to be treated as one.
personnel having the right to enter into buildings holding water treated for drinking without appropriate supervision and safeguards. The Explanatory Notes to the Bill explain that (by virtue of the definition of “land”), this power will include the right to enter buildings.

197. The Law Society of Scotland suggested that the power of entry “should extend to land downstream of a reservoir in order to enable the assessment of risks in the event of any breach.”\(^{112}\) It would appear, however, that SEPA might already have this power, by virtue of subsection 53(3)(m) of section 53 (flood plans), assuming regulations are made under that section.

198. The Committee invites the Scottish Government to consider whether the power to enter into buildings on land adjacent to a reservoir is appropriate in all circumstances (for instance, where the reservoir is used to store drinking water).

**FINANCIAL ISSUES UNDER PART 1**

199. A number of costs arise under the Bill: notably on SEPA and reservoir managers. SEPA will have the power to charge fees for certain services, but some uncertainties arose at Stage 2 as to whether there was complete consistency between the Scottish Government’s, and SEPA’s, view of what fees SEPA would be able to charge and what is actually set out in the Bill. Various different costs could potentially fall on reservoir managers. Some would arise directly from provisions in the Bill. In relation to others, it is far more of a grey area whether presumed additional costs arose directly from anything in the Bill.

200. The Government was also understandably at pains to stress that some reservoir managers might be net gainers under the Bill; those who are currently reservoir undertakers under the 1975 Act might find that their bills go down if their reservoir is classified as low-risk. However, reservoir undertakers under current legislation who gave evidence to the Committee were concerned that the new law could give rise to considerable extra costs.

201. In relation to local authorities, their running costs ought to decrease since SEPA will take over their regulatory responsibilities,\(^ {113}\) but evidence to the Finance Committee indicated that this was not necessarily how authorities themselves saw it. Local authorities could of course also incur additional costs by becoming reservoir managers of a larger number of registered reservoirs than is the case under current legislation.

202. In short, the issue is complex. The Financial Memorandum appears to be relatively robust and detailed but does not provide answers to every uncertainty that arose at Stage 1, and provides fairly wide margins within some estimates. At times, it may also conflate changes under the 2009 Act with new changes arising from the Bill. The following discussion attempts to set out the main issues arising at Stage 1.

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\(^{112}\) The Law Society of Scotland. Written submission to the Rural Affairs and Environment Committee. 26 November 2010.  
\(^{113}\) Strictly speaking, this has already of course happened under Part 7 of the 2009 Act, although that has never been implemented and if this Bill is passed, it never will be.
Costs to SEPA

203. The current draft Scottish budget indicates that SEPA’s funding will be cut by £4.9m; 11% of its core budget. The Financial Memorandum estimates that costs on SEPA for implementing the Bill over the period from enactment until 2016 will be around £4.12m. Thereafter annual costs will be in the region of £240,000.

204. The Financial Memorandum notes that some costs “may be passed on to reservoir owners” as the Bill includes an enabling power which will, if Scottish Ministers direct, allow SEPA to charge a fee to reservoir owners in order to fund their administrative role and reduce the cost to the public purse.” (The Committee takes this to be a reference to “subsistence fees”, discussion of which arose at Stage 1, and which are discussed further below). This gave rise to some concerns. SSE commented—

“In these times of reduced budgets there is a real danger that the introduction of a new regime is taken as a revenue raising opportunity. SEPA have in past regimes (Controlled Activities Regulations) created self perpetuating work loads by interpretation of the Act’s intent without any demonstrable benefit to the water environment. This must not be allowed to happen with the standards for reservoir safety.”

205. West Lothian Council advised that the Scottish Parliament needed to be “mindful of the economically delicate nature of some of the businesses, which are now responsible for reservoirs and reservoir safety.” The Council also said that—

“The principal of charging for the regulation of reservoirs concerns the council. The proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of complying with said regulation. Given the changing dynamics of reservoir ownership in favour of small businesses such as fisheries and those promoting the shooting of game, this is not regarded as sustainable, particularly in the current economic climate.”

206. SEPA itself made some comment on the figures in the Financial Memorandum. It noted, first, that the costs were based on estimates, when the true situation on the number of registrable reservoirs, and how many of them would be high-risk was unknown. It confirmed that it expected to recoup some costs from charging fees (although it was separately confirmed that there would be a no-fees grace period for registration; see below). SEPA also stated that it anticipated fees paid for registering high-risk reservoirs to some extent subsidising the registration costs of lower risk reservoirs. Finally SEPA said that it remained concerned about its financial liability in the event of having to undertake

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114 Sic. In fact, costs will fall directly on reservoir managers, who may or may not be the owner.
115 Reservoirs (Scotland) Bill. Financial Memorandum, paragraph 181.
117 West Lothian Council. Written submission to the Rural Affairs and Environment Committee. 17 November 2010.
emergency repairs. (The Committee takes this to be a reference to section 75 of the Bill: emergency powers.)

207. The Committee notes that all public sector regulatory organisations will be under increased financial pressure to do “more for less” in the coming years. In this context, the Committee notes, and welcomes, SEPA’s commitment, in all areas of its work, to implement a “new, simpler and stronger model for environmental regulation.”118 In relation to SEPA’s new powers to charge fees under the Bill, the Committee supports these in the expectation that SEPA will charge for services only in order to recover costs incurred under an overall reservoir management regime that is “smart”, cost-effective, and as light touch as possible without compromising safety. We expect SEPA to consult fully on proposed powers under Chapter 9, including on likely fee levels and conditions.

Costs falling on reservoir managers

208. Despite the Scottish Government efforts to work through the implications of the Bill with stakeholders, it is clear that there is still considerable uncertainty abroad. In order to help provide some clarity, we have sought to separate out potential costs under separate heads:

209. Surveys; i.e., the cost of surveying a reservoir in order to ascertain whether it crosses the 10,000m³ regulatory threshold. There was a difference of views at Stage 1 as to how much this might cost. Some stakeholders predicted that establishing capacity would be difficult since most small artificial lakes are old and there were unlikely to be any available plans.119 However, SEPA’s representative told the Committee that assessing the capacity of a reservoir was “a well-known and well-rehearsed civil engineering process”120 and the ICE witness had a similar view. Estimates of possible surveying costs varied between £500121 and £3000122 per reservoir.

210. A number of stakeholders sought clarification on who should bear the cost of a survey. This issue does not appear to be expressly addressed in the Financial Memorandum. Moray Council suggested that it would be unfair for a reservoir manager to have to pay for a survey that established that a reservoir did not cross the threshold.123 A Bill team official told the Committee that the Bill sets out the criteria by which a reservoir is identified as having to be registered and that if the owner disagreed with SEPA’s designation, it would be up to the owner to prove it.124 However, in later evidence, SEPA’s representative said that they accepted

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119 E.g. East Lothian Council. Written submission to the Rural Affairs and Environment Committee.
123 Moray Council. Written submission to the Rural Affairs and Environment Committee.
that the onus would lie on them to establish whether or not a reservoir requires to be registered lies with them.\textsuperscript{125} It would seem to follow from this that they should then be expected to bear the cost of surveying, but it might be helpful if this were made expressly clear.

211. It would be helpful if the Scottish Government clarified, for the avoidance of doubt, that the onus is on SEPA to prove that a reservoir, not previously classed as a large raised reservoir, exceeds the threshold volume in the Bill, and that SEPA would bear the cost of surveying any such reservoir in order to ascertain whether it needs to be registered.

212. Registration; section 14(4) enables the Scottish Ministers, by regulations, to provide that SEPA may charge fees in relation to registration. As already noted, the Financial Memorandum indicates that SEPA will use this power to recoup some of its outlays, with fees in the region of £100 to £300. This is somewhat contradicted by the evidence we received at Stage 1 that SEPA does not intend to charge registration fees during the first six months of the Bill’s implementation or for the six months following the construction of a new controlled reservoir.

213. The Committee notes that the proposal to grant 6 month’s grace on payment of registration fees will be welcomed by reservoir managers. It would be helpful if the Scottish Government explained whether this supersedes the statement in the Financial Memorandum that SEPA will use its power to charge fees to offset its outlays.

214. Inundation maps: Some stakeholders queried who would pay for the preparation of inundation maps, required under section 9(2)(h). Since these are treated under the Bill as being part of the registration process, the Committee presumes these would be dealt with in the same way as other registration costs. In this connection, we note that SEPA indicated during Stage 1 that it expects to take on the role of preparing inundation maps, in the interest of assuring consistency. The Committee presumes that reservoir managers will not have to pay for inundation maps prepared by SEPA provided they register within 6 months.

215. Risk designation, and reviews of risk designation; section 22 enables the Scottish Ministers to provide that SEPA may charge for a review of a risk designation requested by a reservoir manager. It further provides that where a review results in a downgrade of risk, SEPA must return the fee.

216. It has been suggested to the Committee that it is fundamentally unfair to enable SEPA to charge for a review, since those who cannot afford the fee will be denied justice.\textsuperscript{126} However, it appears not unreasonable to the Committee that they SEPA should be able to charge a fee, provided it is minor and relates only to administrative costs.


\textsuperscript{126} John Reid (Tinto Reservoirs Ltd). Written submission to the Rural Affairs and Environment Committee. 9 December 2010.
217. Evidence received from SEPA\textsuperscript{127} appeared to indicate that SEPA might also charge for the risk designation process itself, as well as for a requested risk review. It is not clear, however, whether the Bill actually confers that authority. SEPA has an express power to charge for registration (which includes making a \textit{provisional} risk designation.\textsuperscript{128}) But there appears to be no such express power to charge for making an actual risk designation.

218. \textbf{The Committee invites the Scottish Government to clarify whether, under the Bill, SEPA may charge for the risk designation process. Is it the Scottish Government’s policy that SEPA should be able to charge for this?}

219. \textit{“Annual” or “subsistence” charges:} The Financial Memorandum makes reference to “annual costs” being incurred by reservoir managers – seemingly only by those managing medium or high-risk reservoirs. The Memorandum indicates that these costs are associated with matters such as “SEPA charges”, “supervision costs” and “reviewing and testing flood plans”. These extra charges under the Bill are set out as being in the region of £525 to £21,000 per annum.\textsuperscript{129} However, supplementary evidence from SEPA states that annual subsistence charges will be in the region of £100 to £300 – a vast disparity from the figures in the Memorandum.

220. The Committee was not initially clear what authority SEPA would have to charge these fees, since the Bill does not appear to set out a relevant power. A letter from Bill team officials sent during Stage 1 states—

\begin{quote}
“The intention is that SEPA will also be able to levy a subsistence charge that will be proportionate to the level of risk posed by the reservoir and therefore the level of administrative costs borne by SEPA. Under the new legislation, SEPA will have more statutory duties than local authorities have under the current legislation. SEPA will also have to enforce the legislation for a larger number of reservoirs. This subsistence charge was mentioned in the consultation paper, but was omitted from the Bill as introduced. There will be a Government amendment at stage 2 to rectify this omission. SEPA will be required to carry out a consultation exercise before implementing any charging scheme for reservoir owners, and any such scheme would have to be approved by Scottish Ministers.”
\end{quote}

221. In another letter to the Committee, the Minister confirmed that an amendment on would be lodged “to enable SEPA to charge an annual subsistence fee to reservoir managers to cover the costs of their administrative role. The cost of this has already been taken into account in the Financial Memorandum...”

222. \textbf{There is uncertainty over the status and likely level of annual or subsistence charges likely to arise under the Bill. The Committee recommends that this be addressed as a matter of urgency, so as to provide greater certainty to stakeholders, particularly those persons who anticipate

\textsuperscript{127} SEPA. Supplementary written submission to the Rural Affairs and Environment Committee. 20 December 2010.
\textsuperscript{128} Section 14(4).
\textsuperscript{129} Reservoirs (Scotland) Bill. Financial Memorandum. Paragraphs 192-198.
becoming managers of medium or high-risk reservoirs under the Bill and who are confused by the financial implications of this.

223. **Flood plans;** It is important to begin by stressing that provision for flood plans was originally made under the 2009 Act and is largely reiterated under the Bill. Costs arising from making flood plans that fall on reservoir undertakers under current legislation are not therefore really “new” costs, although the 2009 Act provisions have not yet been implemented. It was perhaps unhelpful that the financial memorandum did not make this clear. It appears to the Committee that the only truly “new” costs arising under the Bill will be for reservoirs of between 10,000 and 25,000m³ for which plans will now have to be prepared.

224. The Financial Memorandum sets out a sliding scale of estimated average costs for flood plans ranging from £150 for a small, low risk controlled reservoir to approximately £3000 per high-risk reservoir. Further evidence at Stage 1 from Scottish Government and SEPA officials indicated that the lowest cost for a flood plan might be in the region of £250. In relation to small, extremely low-risk reservoirs, this might seem a little on the high side.

225. The Committee seeks further clarification from the Scottish Government on the likely cost of a flood plan, in particular in relation to managers of low-risk reservoirs.

226. **Displays of emergency response information;** Under section 55, reservoir managers must ensure that emergency response information is displayed by the reservoir. It would appear from the financial memorandum that the cost of erecting notice boards is estimated at £1000. Although section 55 does not exclude managers of low-risk reservoirs, the memorandum excludes notice board costs from the costs associated with low-risk reservoirs.

227. The Committee seeks clarification on the likely cost of displays under section 55. The figure of £1000 apparently quoted in the Financial Memorandum seems somewhat excessive. It is also not clear from the Memorandum whether managers of low-risk reservoirs would be expected to incur any costs at all, although section 55 does not expressly exclude them.

228. **Construction or alteration costs;** It is already the case under the 1975 Act that undertakers are expected to carry out necessary repairs, in the interests of public safety, identified in an engineer’s report. It would therefore be wrong to characterise any costs arising from the similar operation of the law under the Bill as a “new” cost, at least as far as reservoirs over 25,000m³ is concerned.

229. The Macaulay Land Use Research Institute stated—

“The requirements related to controlled reservoirs in the Bill would increase the financial and transaction costs of building and maintaining these flood storage areas. We understand the design criteria would be more onerous than currently required and the build specification would require more
materials, thereby increasing the cost. The proposed requirement for annual inspections would incur further financial cost and administrative burden.\footnote{Macaulay Land Use Research Institute. Written submission to the Rural Affairs and Environment Committee. 25 November 2010.}

230. In fact, there is nothing in the Bill to expressly provide that construction standards will become more stringent under the new regulatory regime, or that existing reservoirs will be inspected to more rigorous standards than before. It could be argued that this can be assumed – how could anyone be against a new approach that will ensure that reservoirs are safer? On the other hand, if regulatory standards were to become higher (thus pushing up costs) without any commensurate benefit in terms of increased public safety, this would not be a desirable outcome. Either way, it might be helpful to have clarity as to Government policy.

231. \textbf{The Committee invites the Scottish Government to state whether it anticipates that, following implementation of the Bill, SEPA will require more rigorous standards in the construction or inspection of reservoirs and, if so, whether reservoir managers will therefore be liable to incur higher construction, alteration, or maintenance costs than previously.}\\

\textbf{Financial help for private reservoir managers?}\\

232. Another cost arguably associated with the Bill is that of decommissioning a reservoir. The Committee heard evidence\footnote{Tinto Reservoirs (Mr John Reid). Written submission to the Rural Affairs and Environment Committee. 9 December 2010.} from a reservoir undertaker under current legislation who considered that the Bill would risk making his fishery business unviable. However, he doubted that anyone would wish to take over ownership of his two reservoirs from him. He quoted a sobering figure of £300,000 per reservoir as the likely decommissioning cost. He suggested that he risked being put in an impossible position, where he could neither afford to maintain the reservoir nor to decommission it. The witness went on to make the wider point that he was not alone in being a private reservoir owner of relatively limited means; he had become a reluctant owner a few years earlier in order to protect his fishery business. There were others like him who had become reservoir owners as a result of the water authorities selling off redundant reservoirs to the general public. Other stakeholders referred to the Bill suddenly turning landowners or businesses of limited means into reservoir managers, by virtue of decreasing the threshold volume.\footnote{E.g. Scottish Rural Property and Business Association. Written submission to the Rural Affairs and Environment Committee, 25 November 2010.}

233. These points were put to the Minister. She said\footnote{Scottish Parliament Rural Affairs and Environment Committee. \textit{Official Report, 22 December 2010}, Col 3630.} that the decision whether to seek to decommission would be a personal one for any reservoir owner, and not something on which the Government could take a position. In any case, a permission could only be granted by SEPA under controlled activities regulations. She also stressed that, for some reservoir managers, costs were likely to fall under the Bill, and that these might include people such as the private undertaker from whom the Committee heard. (In this connection, the Committee notes that while...}
we fully appreciate the legitimate concerns of the reservoir owner, the cost estimates made by him in evidence appear to have been based on the most high-end estimates in the Financial Memorandum and might also possibly have included maintenance costs that he would have had to incur under the current regulatory regime.)

234. The Minister did, though, say that she accepted that “perhaps a discussion can be had on whether reservoirs ideally should be placed in private hands any more.” She continued—

“We would need to consider whether there could be a mechanism for assuming some kind of public control of reservoirs from private owners who no longer wished to be responsible for them once the risk assessments were done…”

235. The Minister added that the Government could look at “whether there would be a way to deal with extreme cases if the bill would cause enormous problems.”

236. The Committee notes the Minister for Environment and Climate Change’s recognition that the Bill might lead to difficulties for some reservoir managers, and welcomes her tentative indication that the Government might consider providing some sort of assistance in extreme cases. The Committee seeks further clarification on what sort of assistance the Scottish Government might have in mind.

Costs to Scottish Water

237. Larger organisation managing reservoirs (for instance energy companies) are also likely to be affected financially by the Bill, although it might be assumed that most will be able to cope. Scottish Water is a special case, given the very large number of controlled reservoirs it will manage under the Bill, and given also the level of resources it receives from the Scottish Government.

238. The Financial Memorandum estimates that Scottish Water will incur total implementation costs of some £1.4m. This was based in part on information provided by Scottish Water. However, the company now says that it has revised its estimates and thinks that implementation will cost £2.7m. Scottish Water has said that it has not been funded to cover the regulatory period up to 2015.

239. These points were put to the Minister. She pointed out that new reservoirs would not be brought under the Bill until 2015, which will allow a period of time to adapt. She added that—

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“I cannot sit here and promise funding to Scottish Water, because funding is considered through the budget process. Scottish Water is not funded through my department. We will go away and have a discussion with Scottish Water about what lies behind the issue, but the requirements for more money are many and various and we have to take a view on whether we consider providing more money to be the appropriate thing to do. Our view is that Scottish Water can manage this.”\footnote{\textit{Scottish Parliament Rural Affairs and Environment Committee. Official Report, 22 December 2010}, Col 3627.}

240. The Minister provided further information in a follow-up letter.\footnote{\textit{Scottish Parliament Rural Affairs and Environment Committee. Official Report, 22 December 2010}, Col 3628.} In relation to the difference in estimates of implementation costs, she wrote—

“I understand that the difference is largely due to a recent assessment Scottish Water have undertaken of the likely structural work they may have to undertake on the smaller, currently unregulated reservoirs in their portfolio. This assessment took place after Scottish Water had provided information to the Scottish Government on the potential costs of the Reservoirs Bill for inclusion in the financial memorandum.”

241. The Minister also suggested that the capital cost of Scottish Water producing flood plans under the Bill were likely to be around £0.5m lower than the estimate in the Financial Memorandum, since a lot of work had already been done. Finally, the Minister indicated that there were some flexibilities within the current funding mechanism for Scottish Water that could be made use of to help deal with any additional unfunded costs arising within the current regulatory period, which runs until 2015.

242. The Committee welcomes the Minister for Environment and Climate Change’s recognition that should Scottish Water require further financial assistance to implement the Bill in full, a mechanism exists to help provide it.

PART 2: PROTECTION OF THE WATER ENVIRONMENT

243. Part 2 of the Bill provoked very little comment at Stage 1. This is perhaps understandable as it will be regulations resulting from it that will be of most interest to stakeholders. No objections of principle were made about the proposed new power.

244. RSPB Scotland said that—

“We welcome the creation of criminal offences in relation to the remediation or restoration of the water environment. However, we seek reassurance that action is already underway to get restoration and remediation measures in

\footnotetext{Scottish Government. Letter from the Minister for Environment and Climate Change to the Clerk of the Rural Affairs and Environment Committee dated 12 January 2011.}
place so as to meet the environmental objectives set out in Scotland’s River Basin Management Plans.”  

245. SEPA also said that it welcomed Part 2, seeing it as playing an important role in the restoration regime envisaged under section 22 of the Water Environment and Water Services Act 2003.

246. The Committee asked Bill team officials to provide an example of an occasion when the availability of a criminal sanction would have been useful. This was in order to gain a better understanding of whether this perceived gap in the current law had actually led to any difficulties, and therefore whether the new power was necessary. A letter from officials explains—

“Regulations enabling compulsory restoration measures have not yet been made under s.22 of WEWS [the Water Environment and Water Services Act 2003], so it is not possible to give examples where having a prosecutable offence in connection with restoration measures would have helped achieve the environmental objectives of the WFD [Water Framework Directive; the EU directive that lies behind most of the Act] … The intention is that restoration notices issued under regulations made under s.22 of WEWS will identify specific remedial action that is needed. Such action could include, for example, the repair of a dam or weir on a property which may be impacting on fish stocks, or old mine workings which are discharging into a water body, impacting upon local biodiversity. The intention is that the person served with the notice should carry out the required work. Without the threat of a criminal sanction, there would be little or no incentive to incur the cost of complying with an improvement notice, compromising achievement of WFD objectives.”

247. The Bill team gave assurances that there would be consultation on the proposed new offences if the Bill were agreed to. The Minister indicated that the consultation would take place around autumn 2011.

248. The Committee supports Part 2 of the Bill enabling the Scottish Ministers to create offences for failures to restore or remEDIATE the water environment. We consider it important that there is full consultation with all stakeholders on any proposed offences and sanctions.

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140 RSPB Scotland. Written submission to the Rural Affairs and Environment Committee.
141 Scottish Government. Letter from the Reservoirs (Scotland) Bill Bill Team to the Convener of the Rural Affairs and Environment Committee dated 7 December 2010.
ANNEXE A - SUBORDINATE LEGISLATION COMMITTEE REPORT

Reservoirs (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 16 November and 7 December 2010, the Subordinate Legislation Committee considered the delegated powers provisions in the Reservoirs (Scotland) Bill at Stage 1. The Committee submits this report to the Rural Affairs and Environment Committee as the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Reservoirs (Scotland) Bill (“the Bill”) was introduced in the Parliament on 6 October 2010 by the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP.

3. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

4. Correspondence between the Committee and the Scottish Government is reproduced in the Annexe.


Delegated powers provisions

Section 1(4) - Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Negative resolution

6. Section 1(2) defines a “controlled reservoir” as being a structure designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land.

7. Section 1(3) makes related provision for combinations of structures that could collectively release 10,000 cubic metres. Section 1(4) enables the Scottish
Ministers to make provision by order for a structure or combination of structures to be treated as a controlled reservoir, notwithstanding that the requirements of subsections (2) or (3) are not met.

8. Before making any such order the Scottish Ministers must take into account (a) the potential adverse consequences of an uncontrolled release of water from the structure or area or (as the case may be) the combination, and (b) the probability of such a release. However, having taken these matters into account, the Bill does not require Ministers to apply a defined test before exercising their powers.

9. The Committee queried why the power by order in section 1(4) is subject to negative resolution procedure, when the power in section 1(6)(a) to vary the 10,000 metre threshold is subject to draft affirmative resolution procedure. The Committee notes that the effect of both orders would be to extend the scope of the Bill to include reservoirs (or combinations of them) in the Bill controls, though not meeting the 10,000 cubic metre threshold. The Committee also asked for an explanation why it is not considered appropriate to include any minimum cubic threshold, in section 1(4).

10. The Government DPM explains that it is important that all reservoirs that have the potential to pose a risk to the public are regulated under the new legislation. The 10,000 cubic metre threshold above which a reservoir would be subject to regulation has been agreed in close consultation with ICE (the Institution of Civil Engineers). One of the concerns about the 1975 Act was that it relied upon a strict volume criterion for determining the reservoirs that needed to be supervised, regardless of the risk a reservoir actually posed. It is therefore viewed as important to include a power to enable Scottish Ministers to exercise some discretion to include individual reservoirs or combinations of reservoirs that have the potential to pose risk, even though they do not meet the basic cubic metre threshold. The Committee accepts that explanation in justification for this delegated power.

11. In relation to the choice of negative procedure, the Scottish Government explains this is viewed as appropriate, as this power is intended only to be used in exceptional circumstances in relation to individual structures where, notwithstanding that the reservoir in question is below the volume threshold, a particular risk is identified.

12. The Committee accepts that a decision to include a reservoir within the Bill’s regime by means of an order under section 1(4) will involve professional or technical considerations.

13. On the other hand, an order under section 1(4) would extend the regulatory regime by providing that the reservoirs specified by the order would be “controlled reservoirs”, even though the 10,000 m3 threshold is not satisfied. While the Scottish Ministers would have regard to potential adverse consequences and the probability of flooding in terms of section 1(5), the Committee does not consider this imposes specific criteria for which reservoirs below the 10,000 m3 threshold could be included in any order.
14. The Committee is content that the delegated power to make orders under section 1(4) is acceptable in principle.

15. In relation to the choice of negative rather than draft affirmative procedure for the exercise of this power, the Committee notes that an order under section 1(4) could substantially extend the application of the Bill, by providing that the reservoirs specified by the order would be “controlled reservoirs”, even though the 10,000 cubic metre threshold is not satisfied.

16. Therefore for negative procedure to apply to this power to amend the Bill, the Committee considers that the criteria allowing such amendment should be drawn clearly, specifically and no wider than is necessary. The Committee does not consider that this is provided by section 1(5) as drafted. If clearer criteria are not set the Committee considers that the scope of the power merits draft affirmative procedure as was selected in relation to section 1(6)(a) described below.

17. The Committee asks the Scottish Government to consider that aspect further in advance of Stage 2 of the Bill.

Section 1(6)(a) - Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Draft affirmative

18. Section 1(6)(a) allows the Scottish Ministers to set a different volume threshold for controlled reservoirs from the 10,000 cubic metres specified in the Bill.

19. The Committee accepts from the explanation provided by the Scottish Government in the DPM that this power is justifiable in principle, and that it should be exercisable by draft affirmative procedure.

20. The Committee asked the Scottish Government why, although the power to change the 10,000 cubic metre threshold for controlled reservoirs may be required if engineering advice on the minimum threshold changes in the future, it is considered necessary to have an unqualified power to amend the Bill with any different volume, without—

(a) Any minimum or maximum threshold being stated, or

(b) any requirement to have regard to advice from the Institution of Civil Engineers ("ICE"), for example, or the safety matters set out in section 1(5).

21. The Scottish Government's response, in relation to point (a), explains that it would be difficult to state with any precision a volume below which no (safety or flooding) risk whatsoever could be posed, or the volume above which there will
always be a risk, without those figures being at such extreme ends of the spectrum as to be meaningless. The Committee accepts this explanation why no minimum or maximum threshold is specified within section 1(6)(a). The Committee is satisfied that this power shall be subject to draft affirmative resolution procedure.

22. In relation to point (b) above, the response confirms that the Government will consider amending the provision so that this order-making power is exercisable after having had regard to advice from ICE.

23. The Committee is content with the power in section 1(6)(a) in principle, and that it is subject to draft affirmative procedure. The Committee welcomes the Scottish Government’s proposal to consider amending this power, so that it is exercisable with regard to advice provided by ICE. The Committee will review this after Stage 2.

Section 25 – Power to establish panels of reservoir engineers

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Negative resolution

24. Section 25(a) requires the Scottish Ministers to establish one or more panels of reservoir engineers, and to specify by order the sections of Part 1 of the Bill, under which the members of any such panel may be appointed. The panels have an important function under the structure of the Bill. It is members of these panels which will conduct the supervision and inspection arrangements for controlled reservoirs.

25. The DPM explains that the structure of the various panels to be appointed is a technical matter that will need to be worked out in liaison with ICE. It will also need co-ordination with the panel structure in England and Wales. It is intended that this order-making power shall give the Scottish Ministers powers to shape the membership of the panels in light of that (by specifying the relevant sections at the appropriate times).

26. The Committee asked for further information as to how the panel structure will operate and in particular how the power in section 25 will facilitate that. The Committee was not clear whether the power was intended to provide for additional criteria for appointment or if it was restricted to allocating members of the panel or panels between the different technical functions under the Bill. The Scottish Government’s response states that “To be appointed under any of these sections, an engineer must be a member of a panel of engineers established under section 25 – and must also be entitled to be appointed under the particular section (sections 31(4)(a), 43(3)(a), 47(3), 75(4)) The intention is that an order under section 25 will determine entitlement to be appointed under any particular section, by specifying the sections of the Act under which members of any particular panel may be appointed.”
27. The response has been helpful in clarifying the Committee's understanding of the means by which panels are to be appointed and adopt functions under the Bill. The Committee notes that flexibility in the panel structure is required due to the limited number of persons in the UK with the necessary technical expertise to act as panel engineers. The Committee therefore accepts the need for the delegated power in principle.

28. As regards the procedure applicable to the exercise of the power the Committee recognises the need for Parliamentary scrutiny given the importance of the functions of panel engineers within the regulatory scheme. As the appointments will be based on technical criteria the Committee is content that negative resolution procedure is sufficient level of scrutiny.

29. The Committee considers that the power in section 25(a) is acceptable in principle and is content that the power is subject to negative resolution procedure.

Section 52(1) – Power to make provision for reporting incidents to SEPA relating to reservoir safety

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Draft Affirmative

30. Section 52(1) enables the Scottish Ministers to make provision in regulations for the reporting of incidents at any reservoir to SEPA. Section 52(2) states that the regulations can provide that SEPA or another person (i) may specify the criteria, or (ii) is to determine whether the reservoir meets the criteria for incidents to be reported on.

31. Section 52(2)(k) permits the regulations to make provision in connection with ensuring remedial action is taken after an incident report. This includes amending the Act itself (other than section 52), or applying the Act with modifications.

32. The Committee asked the Scottish Government in relation to section 52(2) –

(a) Why is it necessary to extend the power to make regulations to provide that another person (apart from SEPA operating the reporting scheme) may specify the criteria for incidents to be reported, or that that person may determine whether a reservoir meets the criteria?

(b) Why is it necessary for the provision in relation to ensuring remedial action is taken after an incident report, to include the power to amend the Act (apart from section 52) or to apply the Act with modifications. Could examples be provided as to how this power could be used?

33. The Scottish Government states: “The reason for providing that regulations may, among other things, provide that a person other than SEPA may specify the
criteria for incidents to be reported or may determine whether a reservoir meets
the criteria, is that ICE or panel engineers, rather than SEPA, have the necessary
experience and expertise to do so…”

34. The response also explains that section 52(2)(k) provides that the regulations
may include provision amending the Act or applying it with modifications because
as the Bill already contains certain provisions where reservoir managers can be
compelled to take action, if those provisions are to be applied (with or without
adaptation) to remedial action after an incident report, it may be necessary to
textually amend or modify the existing provisions.

35. The Committee accepts this further explanation, in justification of the proposed
powers. It also notes that if exercised, these powers are subject to draft affirmative
procedure.

36. The Committee is content with the powers in section 52(1) in principle,
and that they are subject to draft affirmative resolution procedure.

Section 53(1) – Power to make provision for preparing reservoir flood plans

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Draft Affirmative

37. Section 53(1) enables the Scottish Ministers to make provision in regulations
for the preparation of flood plans in relation to reservoirs. A reservoir flood plan
would set out action to be taken by the reservoir undertaker in order to control or
mitigate the effects of flooding which could result if water escaped. Examples of
what the regulations will cover are outlined in the list in section 53(3).

38. Section 53(3)(n) permits regulations to amend the Act (other than this section),
or to apply the Act with modifications. This is limited to the purposes of paragraphs
(j), (l) and (m) – making provisions to refer matters to a referee; providing that
SEPA may in specified circumstances do anything another person is required to
do in the regulations and recover the expenses, and conferring powers of entry on
SEPA in connection with its function in these regulations.

39. The Committee asked for an explanation why the power to amend the Act in
section 53(3)(n) is necessary, given that this section appears to make particular
provision for the preparation of flood plans for controlled reservoirs, and otherwise
it appears that flood plan provisions do not extend throughout the Bill.

40. The Scottish Government does not provide a specific example of how this
power to amend the Act could be exercised. However, it does provide a general
explanation that the Scottish Ministers may wish to make further provision,
specifically in the areas set out in section 53(3)(j), (l) and (m), when making
regulations in relation to reservoir flood plans. If it was decided to apply these
provisions in connection with flood plans, then textual amendment of them may be required.

41. The Committee accepts this explanation in justification of the proposed powers. It also notes that the power would be exercisable by draft affirmative procedure, and that it is restricted in scope to amendments in connection with the matters set out in section 53(3)(j), (l) and (m).

42. The Committee is content with the delegated power contained in section 53(1) in principle, and that it is subject to draft affirmative procedure.

Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs

Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Section 77(1) – Power to impose fixed monetary penalties on reservoir managers

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Draft affirmative

43. Sections 71(1), 76(1), 77(1) and 80(1) provide for a substantial structure of powers to enforce the controls over reservoirs in the rest of the Bill, particularly, enforcement powers of SEPA. Most of the required provisions are set out in these sections. But there are also areas of further detail that will be appropriate to be left to orders (and on which further consultation would be required).

44. The Committee asked the Scottish Government for an explanation as to why it is necessary or appropriate to provide for the enforcement measures set out in these sections in the form of discretionary order-making powers, which the Scottish Ministers can either implement as a whole, or partially, or not, as they determine. The Committee asked why the approach has been taken that Parliament is asked to approve all the provisions in these sections (and related sections) but thereafter the decision to implement the provisions will be discretionary, by order.

45. The Committee also asked, in relation to sections 80(4)(a) and 83(1), for an explanation why it is necessary to delegate powers to SEPA to impose penalties on reservoir managers which are potentially unlimited. In particular, the Committee asked why SEPA should be given discretion over the penalty amount, when they are not responsible directly to the Parliament?
46. The Scottish Government has responded as follows. Chapter 9 of the Bill is intended to set out the framework for SEPA’s civil enforcement powers in relation to reservoirs. It was not thought appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to immediately be able to deploy all of these enforcement powers. Rather, having obtained the approval of the Parliament in principle to the use of the various powers, the intention is that the Scottish Ministers will decide which powers to pass on to SEPA, having consulted such persons as they consider appropriate, under section 84. Ministers will do so in light of experience in England and Wales, where the Environment Agency has recently been given similar powers via the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010, and an equivalent order for Wales. The Scottish Parliament will have the opportunity to scrutinise any such Order using the affirmative procedure.

47. In relation to sections 80(4)(a) and 83(1) the Government explains that the reason for SEPA being able to determine the amount of the penalty is that SEPA is considered to be best-placed to determine this, as an appropriate deterrent for a particular offender (reservoir managers) in a particular case. However, the Government confirms that it will consider the insertion of appropriate maximum penalty amounts in the Bill.

48. The Committee draws the attention of the lead committee to sections 71(1), 76(1), 77(1) and section 80(1). The Committee notes that these provide powers to enforce Part 1 of the Bill in the form of discretionary order-making powers which the Scottish Ministers may either implement as a whole, or partially, or not, as they determine. While the Parliament will require to approve any delegation of these functions to SEPA when they are brought forward, the Parliament cannot require that any of the powers are conferred.

49. The Committee draws to the lead committee’s attention that it is normally considered the function of the Parliament to impose the maximum level of penalty which is to be imposed by a third party which is not accountable to the Parliament. The Committee therefore recommends that the Scottish Government considers the insertion of appropriate maximum penalty amounts, in relation to the powers contained in sections 80(4)(a) and 83(1), by amendment at Stage 2. The Committee will review these sections after Stage 2.

50. The Committee also draws to the attention of the lead committee, the Scottish Government’s explanation why SEPA is considered the appropriate body to determine any amounts of penalty under the powers in section 80(4)(a) and 83(1) to be imposed in a particular case.

Section 87(1) – Power to permit SEPA to publish information

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Negative resolution
51. Section 87(1) seeks to give the Scottish Ministers power to permit SEPA to publish information which they deem appropriate about enforcement action which SEPA has taken. However, it was not clear to the Committee what additional function the order making power was to have beyond commencing the power to publish. The Committee therefore asked the Scottish Government why this order-making power is necessary or appropriate, given that the power does not specify any further matters which could be set out in an order.

52. The Scottish Government has confirmed that the order-making power in section 87(1) was intended to give Ministers’ discretion whether or not to permit SEPA to publish information about enforcement action it has taken. The Government will consider amending the provision, so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken as Ministers may specify. That will enable Ministers to exercise more control over what SEPA publishes and allow Parliament the opportunity to scrutinise that control.

53. The Committee notes in relation to the powers in section 87(1) that the Scottish Government intends to clarify the scope of the power and in particular to amend this section at Stage 2, so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken, as Ministers may specify. The Committee will therefore review this section as amended after Stage 2.

Section 103 - Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specified liabilities

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: A choice of draft affirmative or negative resolution

54. Section 103 amends section 22 of the Water Environment and Water Services (Scotland) Act 2003. This allows regulations about remedial and restoration measures made under that section, to create offences, which may be triable only summarily, or either summarily or on indictment, and punishable on conviction by the means set out in subsections (2) and (3). This provision expands an existing delegated power to make regulations, rather than providing for a new power.

55. The Committee asked the Scottish Government for clarification whether the Delegated Powers Memorandum is correct to state that the power in section 103 is proposed to be subject to negative procedure. In the Committee’s view section 36(5) of the 2003 Act appears to provide that regulations under section 22 are subject to the “open” procedure affording the Scottish Ministers a choice of either negative or draft affirmative procedure.
56. The Committee also asked whether, given that regulations under this section of the Bill may create offences, including those triable on indictment and subject to a term of prison of up to 1 or 2 years (as the case may be), such provision should be subject to draft affirmative procedure.

57. The Scottish Government has confirmed that regulations under section 22 of the Water Environment and Water Services (Scotland) Act 2003 are, by virtue of section 36(5), subject to the “open” procedure of either negative resolution or draft affirmative. The Delegated Powers Memorandum was inaccurate in describing the provision as being subject to the negative resolution procedure.

58. The Government also confirms that the Scottish Ministers will give careful consideration to whether to utilise the draft affirmative procedure, if and when they make regulations that create offences under the powers introduced by section 103 of the Bill. It is not thought appropriate to restrict Ministers to the use of the affirmative procedure, given the inconsistency that this would introduce into the 2003 Act (where the “open procedure” applies), and given that the underlying policy of section 22 (to allow SEPA to require persons to undertake remedial or restoration measures) has already been approved by the Parliament.

59. The Committee notes that extending an existing power, so as to permit the creation of offences where one was not available previously, changes the character of the power significantly. The Committee therefore considers that it would be open to the Parliament to revisit the level of scrutiny appropriate to such a power should it wish to do so. However the Committee is content with the commitment given by the Government that it would consider carefully whether to adopt affirmative or negative procedure in any particular case.

60. The Committee is content with the delegated power in section 103, and that it is subject to a choice of draft affirmative or negative resolution procedure.

ANNEXE

Correspondence with the Scottish Government

Reservoirs (Scotland) Bill at Stage 1

Section 1(4) – Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

The Committee asks the Scottish Government to explain why this power by order is subject to negative resolution procedure, when the power in section 1(6)(a) is proposed to be subject to draft affirmative procedure, given that the effect of both orders would be to amend the Bill to include reservoirs (or combinations of them) in the Bill controls, though not meeting the 10,000 cubic metre threshold. The Committee asks why it is not considered appropriate to include any minimum cubic metre threshold.
The power in s.1(6)(a), if used, could significantly alter the number of reservoirs subject to the Act. Alterations to the volume threshold under that section would have universal application, potentially bringing a large number of reservoirs under the regime of the Act (if lowered) or excluding large numbers from it (if raised). That power is accordingly subject to affirmative procedure.

The power in s.1(4), by contrast, is intended only to be used in exceptional circumstances in relation to individual structures where, notwithstanding that the reservoir in question is below the volume threshold, a particular risk is identified.

I do not consider it appropriate to require an affirmative resolution of the Scottish Parliament to bring individual reservoirs within the regulatory regime of the Bill.

I do not consider it appropriate to specify a minimum cubic metre threshold because the purpose of the provision is to allow the Scottish Ministers to provide for individual exceptions to the minimum threshold of 10,000 cubic metres already set by section 1(2).

Section 1(6)(a) – Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

The Committee asks the Scottish Government why, although the power to change the 10,000 cubic metre threshold for controlled reservoirs may be required if engineering advice on the minimum threshold changes in future, it is considered necessary to have an unqualified power to amend the Bill with any different volume, without—

(a) any minimum or maximum threshold being stated, or

(b) any requirement to have regard to advice from ICE, for example, or the safety matters set out in section 1(5)

It is considered necessary to have the power to amend the Bill by the substitution of a different threshold volume to “future-proof” the Bill against changes in our understanding of the risk that reservoirs may pose. The ethos of the Bill is that regulation should be risk-based, so the Bill sets a relatively low threshold (in comparison to the 1975 Act) above which SEPA must carry out an assessment of the risk posed by each reservoir. However, scientific understanding of the risk reservoirs pose and public acceptance of levels of risk can change over time, so the power to alter the threshold has been included. The exercise of that power will be subject to Parliamentary scrutiny under the draft affirmative procedure.

It would be difficult to state with any precision the volume below which no risk whatsoever could be posed, or the volume above which there will always be a risk, without those figures being at such extreme ends of the spectrum as to be meaningless, so no maximum or minimum threshold has been specified.

Ministers would no doubt wish to consult the Institution of Civil Engineers or an equivalent body before making any such change. I am happy to consider
amending the Bill such that the power has to exercised with regard to advice from ICE.

Section 25 – Power to establish panels of reservoir engineers

The Committee asks the Scottish Government for further explanation of the intended effect of the power in section 25(a) to "specify by order the sections of this Part under which the members of any such panel may be appointed." The Committee asks if it is intended that the order may only specify the relevant sections, which then have effect for that purpose and, if so, if it can be clarified why negative procedure should apply to the power rather than no procedure. Or, the Committee asks, is it intended that the order may also specify the parameters within which the members of a particular panel may be appointed under section 26? If so, the Committee asks whether this could be made clearer.

The panel structure, and the specific functions under the Bill that engineers from a particular panel will be permitted to exercise, are yet to be determined. Flexibility is essential to allow coordination with the equivalent panel structure in England and Wales (failing which the limited pool of appropriately qualified UK-based engineers may be dissuaded from becoming members of the Scottish panels).

The Bill itself sets out the roles the panel engineers will fulfil – the purposes for which they will be appointed – for example as construction engineers (section 31), inspecting engineers (section 43), supervising engineers (section 47) and to make recommendations to SEPA about emergency measures to be taken (section 75). To be appointed under any of these sections, an engineer must be a member of a panel of engineers established under section 25 – and must also be entitled to be appointed under the particular section (sections 31(4)(a), 43(3)(a), 47(3), 75(4)). The intention is that an order under section 25 will determine entitlement to be appointed under any particular section, by specifying the sections of the Act under which members of any particular panel may be appointed. This will enable the Scottish Ministers to ensure that only panel engineers with the appropriate level of qualification and experience will be able to be appointed to particular roles.

Although a relatively technical matter, the panel structure and the roles that panel engineer are to perform are important elements of the regulatory regime, as they will determine the qualification and experience levels required to perform the various engineer roles that the Bill provides for. It is thought more appropriate to give the Parliament the opportunity to scrutinise these matters through the negative procedure rather than having no procedure.

I hope this clarifies the position for the Committee.

Section 52(1) – Power to make provision for reporting incidents to SEPA relating to reservoir safety

The Committee asks the Scottish Government, in relation to section 52(2)–

- why is it necessary to extend the power to make regulations to provide that another person (apart from SEPA operating the reporting scheme) may
specify the criteria for incidents to be reported, or that that person may determine whether a reservoir meets the criteria? Would it be possible or appropriate to restrict this power to another person acting for SEPA?

- why is it necessary for the provision in relation to ensuring remedial action is taken after an incident report, to include the power to amend the Act (apart from section 52) or to apply the Act with modifications? Could examples be provided as to how this power could be used?

Section 52(2) merely describes indicatively what regulations made under s.52(1) may provide for. It does not extend the power contained in s.52(1). The actual content of the regulations will be subject to Parliamentary scrutiny under the affirmative procedure.

The reason for providing that regulations made under s.52(1) may, among other things, provide that a person other than SEPA may specify the criteria for incidents to be reported or may determine whether a reservoir meets the criteria, is that ICE or panel engineers, rather than SEPA, have the necessary experience and expertise to do so. It is envisaged, for example, that an engineer may be engaged by SEPA to specify appropriate criteria, but it may be that Ministers will wish the regulations to provide that panel engineers will determine whether a reservoir meets the criteria for incident reporting – without any involvement of SEPA.

The reason for including in s.52(2)(k) that the regulations may include provision amending the Act or applying it with modifications is that the Bill already contains certain provisions where reservoir managers can be compelled to take action, and if those provisions are to be applied (with or without adaptation) to remedial action following an incident report, it may be necessary to textually amend or modify them.

Section 53(1) – Power to make provision for preparing reservoir flood plans

The Committee asks the Scottish Government for an explanation why the power to amend the Act or apply it with modifications in section 53(3)(n) is necessary, given that this section appears to make particular provision for the preparation of flood plans for controlled reservoirs, and otherwise it appears that flood plan provisions do not extend through the Bill.

The Act already provides for referral of certain matters to a referee (in Chapter 8), for SEPA to step in and take certain actions and recover costs (e.g. sections 65, 69, 75 and 86), and for SEPA to exercise powers of entry (s.88 et seq.). As Ministers may wish to make further provision in these areas when making regulations under s.53, it was thought desirable to allow for the possibility that Ministers may wish to amend or modify the Act as regards these matters. If it was decided to apply these provisions in connection with flood plans, textual amendment of them may be required.

Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs
Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Section 77(1) – Power to impose fixed monetary penalties on reservoir managers

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

The Committee asks the Scottish Government whether, generally, in relation to sections 71(1), 76(1), 77(1) and section 80(1), it can be explained and clarified why it is necessary or appropriate to provide for most of these enforcement measures, to enforce the rest of Part 1 of the Bill, in discretionary order-making powers which Scottish Ministers can either implement as a whole, or partially, or not, as they determine. The Committee asks why the approach has been taken that Parliament is asked to approve all the provisions in these sections (and related sections) but thereafter the decision to implement the provisions will be discretionary, by order.

The Committee asks, in relation to sections 80(4)(a) and 83(1), for an explanation why it is necessary to delegate powers in an order to SEPA to impose on reservoir managers (a) an amount of penalty as a further enforcement measure which is potentially unlimited by the enabling power, and (b) a non-compliance penalty which is again potentially unlimited? Could any maximum limits be specified? Can the Government provide any analogous examples of enforcement powers of SEPA (or other Scottish public bodies) which are potentially unlimited in amount?

In particular, can it be clarified why SEPA should be given discretion over the penalty amount, when they are not responsible directly to the Parliament?

I have considered the Committee’s various questions on the “civil sanctions” that the Bill proposes to create. Chapter 9 of the Bill is intended to set out the framework for SEPA’s civil enforcement powers in relation to reservoirs. It was not thought appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to immediately be able to deploy all of these enforcement powers. Rather, having obtained the approval of the Parliament in principle to the use of the various powers, the intention is that the Scottish Ministers will decide which powers to pass on to SEPA, having consulted such persons as they consider appropriate under s.84. Ministers will do so in light of experience in England and Wales, where the Environment Agency has recently been given similar powers via the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010 and an equivalent order for Wales. The Scottish Parliament will, of course, have the opportunity to scrutinise any such Order using the affirmative procedure.

In relation to s.80(4)(a) and 83(1) the reason for SEPA being able to determine the amount of the penalty is that SEPA is considered to be best-placed to determine the amount of the penalty that will act as an appropriate deterrent for a particular offender in a particular case. However, I am happy to consider the insertion of appropriate maximum penalty amounts.
Section 87(1) – Power to permit SEPA to publish information

In relation to section 87(1), the Committee asks the Scottish Government why this order-making power is necessary or appropriate, given that, in the Committee’s view, as drafted it permits SEPA to publish information and the power does not specify any further matters which could be set out in an order.

The order-making power in s.87(1) was intended to give Ministers discretion whether or not to permit SEPA to publish information about enforcement action it has taken.

I am happy to consider amending the provision so that it enables the Scottish Ministers to require SEPA to publish such information about the enforcement action it has taken as Ministers may specify. That will enable Ministers to exercise more control over what SEPA publishes and allow Parliament the opportunity to scrutinise that control.

Section 103 – Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specific liabilities

The Committee asks the Scottish Government for clarification whether the Delegated Powers Memorandum is correct to state that the power in section 103 is proposed to be subject to negative procedure, as section 36(5) of the 2003 Act appears to provide that regulations under section 22 are subject to the “open” procedure of either negative resolution or draft affirmative.

The Committee asks whether, given that regulations under this section of the Bill may create offences, including those triable on indictment and subject to a term of prison of up to 1 or 2 years (as the case may be), such provision should be subject to draft affirmative procedure.

The Committee are correct that regulations under s.22 of the Water Environment and Water Services (Scotland) Act 2003 are, by virtue of s.36(5), subject to the "open" procedure of either negative resolution or draft affirmative. The Delegated Powers Memorandum was inaccurate in describing the provision as being subject to the negative resolution procedure, although Ministers are free to choose whichever of the two Parliamentary procedures they consider appropriate when making regulations under s.22 of the 2003 Act.

The power to make regulations under s.20 of the 2003 Act includes the power to create offences but allows Ministers a choice of procedure. Rendering regulations creating offences under s.22 subject to affirmative procedure only would be inconsistent.

Ministers will, of course, give careful consideration as to whether to utilise the draft affirmative procedure if and when they make regulations that create offences under s.103 of the Bill, but it is not thought appropriate to restrict Ministers to the use of the affirmative procedure given the inconsistency that this would introduce into the 2003 Act and given that the underlying policy of s.22 (to allow SEPA
to require persons to undertake remedial or restoration measures) has already been approved by Parliament.

ROSEANNA CUNNINGHAM
ANNEXE B – FINANCE COMMITTEE REPORT

Report on the Financial Memorandum of the Reservoirs (Scotland) Bill

The Committee reports to the Rural Affairs and Environment Committee as follows—

INTRODUCTION

1. The Reservoirs (Scotland) Bill (“the Bill”) was introduced in the Parliament on 6 October 2010. The Rural Affairs and Environment Committee has been designated as the lead committee on the Bill at Stage 1.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

3. At its meeting on 26 October 2010, the Committee agreed to adopt level 2 scrutiny in relation to the FM (i.e. that it would take oral evidence from the bill team and seek written evidence from financially affected bodies). The Committee received written submissions from—

   • City of Edinburgh Council;
   • East Dunbartonshire Council;
   • Moray Council;
   • Scottish Environment Protection Agency (SEPA);
   • Scottish Water. and
   • West Lothian Council;

4. All submissions can be found as an annexe to this report. At its meeting on 23 November, the Committee took evidence from the bill team.\textsuperscript{142}

SUMMARY OF COSTS AS OUTLINED IN THE FINANCIAL MEMORANDUM

5. The Reservoirs (Scotland) Bill aims to protect the public from flooding from reservoirs by modernising the reservoir safety regime in Scotland.\textsuperscript{143} The FM estimates that the Bill will give rise to £7.39 million of one-off capital costs from


\textsuperscript{143} Financial Memorandum, paragraph 158.
2011 until 2016, and will result in annual resource costs of £3.94 million (from 2011 until 2016) and £3.65 million after 2016.**144**

**Costs on the Scottish Administration**

6. The new Ministerial duties and powers set out in the Bill will incur costs of approximately £0.58 million on the Scottish Government. These include non-recurring staff costs and administration costs of approximately £0.1 million.**145**

**Savings for local authorities**

7. The FM states the transfer of responsibility for enforcement of the Reservoirs Act to SEPA will produce small savings for local authorities, because they will no longer have responsibility for maintaining registers of reservoirs, compiling reports to Scottish Ministers and carrying out enforcement duties. However, as the FM explains, this was a small role for officials within local authorities and the shift is unlikely to result in a reduction in staffing.**146**

8. The FM calculates estimated savings for each local authority to be approximately £7500 per annum. The estimated total saving for all local authorities is £0.24 million.**147**

**Costs on local authorities**

9. The FM indicates the Bill will have cost implications for those local authorities who are reservoir managers. The accumulated estimated cost for local authorities is £0.11 million per annum which are expected to rise to around £0.28 million per annum.**148**

10. The FM sets out collective one-off costs of approximately £0.23 million for the preparation of reservoir flood plans and estimated additional costs of around £0.3 million to upgrade previously unregulated reservoirs.**149**

**Costs on other bodies, individuals and businesses**

**Costs on SEPA**

11. The FM states that under the new legislation SEPA will be identified as the enforcement authority for reservoirs, therefore, the Bill is likely to have cost and resource implications for SEPA.**150**

12. The FM explains that until SEPA can carry out its new duties under the Bill, the exact number of reservoirs and the exact proportion of reservoirs in each category is unknown.**151** All cost estimates for SEPA are calculated on the

**Footnotes:**

144 Financial Memorandum, table 1, page 39.
145 Financial Memorandum, paragraph 166.
146 Financial Memorandum, paragraph 169.
147 Financial Memorandum, paragraph 169.
149 Financial Memorandum, paragraph 173.
150 Financial Memorandum, paragraph 177.
151 Financial Memorandum, paragraph 178.
assumption that there is a total of 1150 reservoirs and that 40% of the reservoirs will be categorised as high risk, 30% as medium risk and 30% low risk.\footnote{Financial Memorandum, paragraph 178.}

13. Based on these assumptions, the FM predicts SEPA will incur one-off capital costs of approximately £2.3 million during the implementation phase.\footnote{Financial Memorandum, paragraph 179.} This figure could vary between £1.7 million to £2.9 million, depending on the exact number of reservoirs.\footnote{Financial Memorandum, paragraph 179.}

14. The FM estimates that during the implementation phase SEPA will require approximately four to five additional staff in 2011/12 and 2012/13, which will increase to between six to ten staff during 2013/14 to 2015/16. The FM calculates total staffing costs of £2.19 million for the implementation period up to 2016.\footnote{Financial Memorandum, paragraph 180.}

15. The FM sets out the possibility of allowing SEPA to charge fees to reservoir owners to fund their administration costs.\footnote{Financial Memorandum, paragraph 181.} The FM suggests these fees will range from £100 to £300 per reservoir for all medium to high risk reservoirs. The FM estimates £0.37 million will be generated from charges by 2016. This will result in the resource costs for SEPA being reduced to £1.82 million for the phase up to 2016.\footnote{Financial Memorandum, paragraph 181.} The FM predicts the total costs on SEPA for the implementation period of the Bill until 2016 are approximately £4.12 million.\footnote{Financial Memorandum, paragraph 182.}

16. The FM anticipates that after the implementation period, SEPA will require around three to six staff to carry out its enforcement duties under the Bill with an estimated cost of £0.41 million per annum.\footnote{Financial Memorandum, paragraph 183.} This figure includes the three to six staff, legal and hydrology staff, IT support, training costs and engineering costs. The FM takes into consideration the income from the charges and predicts annual costs to SEPA will be an estimated £0.24 million.\footnote{Financial Memorandum, paragraph 183.}

**Costs on Scottish Water**

17. Scottish Water owns or manages over 300 reservoirs, 248 of which are currently regulated.\footnote{Financial Memorandum, paragraph 184.} It is predicted that Scottish Water will have one-off capital costs of £1.2 million for the production of reservoir flood plans. This figure is based on the assumption that 140 reservoirs will be categorised as high risk, 69 as medium risk and the remainder as low risk.\footnote{Financial Memorandum, paragraph 185.}

18. The FM predicts that Scottish Water’s annual costs will increase by £87,500 from 2013-14; this estimate could vary between £48,000 and £0.13 million. The total estimated resource costs for Scottish Water until the year 2016 are £0.26 million.\footnote{Financial Memorandum, paragraph 185.}
19. The FM estimates that Scottish Water will incur total implementation costs of approximately £1.4 million. The annual cost to Scottish Water after this phase of the Bill is anticipated to be £0.09 million.  

Costs on private reservoir owners  
20. The FM estimates private owners will collectively incur costs in the region of £4.85 million for the implementation period of the Bill (see paragraphs 191 to 200 for this breakdown of the costs). \(^{165}\) After this period the FM indicates annual costs of approximately £3.34 million on private owners.  

### SUMMARY OF EVIDENCE

#### General issues

21. The FM states that the exact number of new reservoirs which will be regulated under the Bill is not known and that work is currently being carried out to achieve a more accurate figure. This task was due to be completed by mid September, but officials have advised that it is ongoing. \(^{167}\)

22. The Committee notes the lack of data. However, to get a clear idea of the financial impact of the Bill, it would have been helpful to the Committee’s scrutiny of the FM if this work had been completed prior to the Bill’s introduction.

23. The FM sets out the potential costs of the Bill to 2015/16. In light of the publication of *Scotland’s Spending Plans and Draft Budget 2011-12*, \(^{168}\) the Committee questioned how the Government was able to give cost estimates for the next parliamentary session, given that the Draft Budget is for one year. The bill team stated—

> “The costs that are set out are the resource costs that will be associated with implementing ministers’ intentions for the Bill. If the public sector landscape changes as a consequence of work such as the Christie commission, we will factor that into who takes responsibility. We have estimated the costs of implementing the Bill. In future spending reviews and budgets, we would seek to negotiate for that resource to support our objectives.” \(^{169}\)

#### Local authorities

24. The Bill sets out a revised threshold for regulated reservoirs and revised risk categories from 25,000 cubic metres to 10,000 cubic metres. In its submission, West Lothian Council expressed concerns about the potential

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164 Financial Memorandum, paragraph 186.  
165 Financial Memorandum, paragraph 201.  
166 Financial Memorandum, paragraph 202.  
increased costs if SEPA later indicates the reservoirs in local authorities to be within the high risk category—

“Because local authorities have limited means to raise additional income to offset these costs, the Scottish Government would be expected to provide funding to underwrite the additional cost pressures.”

25. During the evidence session, in response to the concerns raised, the bill team said—

“If a local authority has newly identified reservoirs of between 10,000m³ and 25,000m³, and those reservoirs are identified as being high risk, the authority’s costs could increase. At the same time, if any reservoir that it currently regulates is identified as being low risk, its costs could go down. There is a balance between the two in the legislation.”

26. In its submission, the City of Edinburgh Council was critical of the savings the FM set out for local authorities. They argued that under current conditions, local authorities do not receive any funding for carrying out enforcement duties, but under new proposals will be expected to pay SEPA charges, which is an increase rather than a saving. In response the bill team stated—

“As part of its block grant, the City of Edinburgh Council receives funding for enforcing reservoir safety, because that is a recognised local authority duty that is wrapped up in the block grant.”

The bill team continued—

“I understand why the council does not recall that the funding is bedded in, because the funding transfer to reflect that burden was undertaken more than two decades ago, when we dealt with the financial burden from the Reservoirs Act 1975.”

27. The Committee notes the response from the bill team, but highlights the concerns of local authorities regarding potential additional costs for the lead committee’s attention.

Scottish Environment Protection Agency

28. The FM sets out costs of £4.12 million for the implementation stage of the Bill for SEPA and annual on-going costs of £0.41 million. In its submission, SEPA acknowledged that the assumptions used in the FM reflect their understanding of the Bill. However, they highlighted that the exact financial implications for the organisation are not known at this stage in the process. They stated—

“The Financial Memorandum does note that the total number of reservoirs that would fall under this legislation is unknown and therefore the true costs

170 West Lothian Council, written submission to the Finance Committee.
associated with implementing and thereafter regulating the legislation are variable."\textsuperscript{174}

29. In its submission, SEPA also expressed concerns about the margins of uncertainty in the FM—

"If the situation occurs whereby the actual cost of undertaking the activity reflects SEPA's or the Scottish Government's upper estimates then it would mean a lack of funds being available if the CSR bid were tied to these estimates. This could have implications on SEPA's ability to undertake its regulatory role and protect the public."\textsuperscript{175}

30. The Draft Budget for the coming year shows a £4.9 million reduction for SEPA, while the implementation of the Bill gives rise to costs of approximately £4.12 million.\textsuperscript{176} The Committee questioned if the Bill was the correct priority when SEPA's budget is being reduced. The bill team stated—

"We are working closely with SEPA to develop the legislation. Significant costs are not expected from much of the work in the next financial year; as we discussed earlier, most of the costs that accrue to SEPA are in later years. We are working closely with SEPA to ensure that it understands ministers' priorities and that we are able to use the resource to protect the people of Scotland."\textsuperscript{177}

31. The bill team continued to explain that SEPA is currently carrying out significant structural changes and savings are being made as a result of this.

32. The Committee notes the concerns raised by SEPA and the response from the bill team, and invites the lead committee to pursue these issues with the Cabinet Secretary.

Scottish Water

33. Although, Scottish Water stated in its submission that the information they provided during the consultation exercise with the bill team was accurately reflected in the FM, they have now revised their estimates. The FM predicts that the total implementation costs for Scottish Water until 2016 are likely to be in the region of £1.4 million. The revised forecast by Scottish Water predicts the total implementation costs (if works have to be carried out by 2016) as £2.7 million.\textsuperscript{178}

34. This figure includes an additional estimate of a £1 million one off cost for complying with legislation for 34 newly designated reservoirs and a one off cost for display of emergency response information of £365,000.\textsuperscript{179} The Committee

\textsuperscript{174} SEPA, written submission to the Finance Committee.
\textsuperscript{175} SEPA, written submission to the Finance Committee.
\textsuperscript{176} Scottish Government (2010). Scotland's Spending Plans and Draft Budget 2011-12, table 11.06.
\textsuperscript{177} Scottish Parliament Finance Committee, Official Report, 23 November 2010, Col 2789.
\textsuperscript{178} Scottish Water, written submission to the Finance Committee.
\textsuperscript{179} Scottish Water, written submission to the Finance Committee
questioned the change in the estimated costs on Scottish Water. During the evidence session the bill team replied—

“The margin of error on all the costs in the financial memorandum is very much dependent on the number of reservoirs that come under the auspices of the Bill and on the number of reservoirs that are identified as being high risk. Those are variable factors in the Bill. The fact that we do not know the number of reservoirs that are between 10,000m³ and 25,000m³ is one reason for bringing forward the Bill.”  

35. In its submission, Scottish Water stated that they have not been financed for the requirements of the Bill within this regulatory period. They highlighted that Scottish Water is financed by customer charges and they will be including the requirements of the Bill in their business planning process for the regulatory period, commencing 2015, as they expect these requirements will be part of the Ministerial Direction to Scottish Water.  

36. The Committee notes the issues raised by Scottish Water and the response from the bill team and encourages the lead committee to pursue the change in the estimated costs on Scottish Water with the Cabinet Secretary.

CONCLUSION

37. The Committee directs the lead committee to the specific comments made throughout this report on certain aspects of the FM.

ANNEXE: WRITTEN EVIDENCE RECEIVED

SUBMISSION FROM CITY OF EDINBURGH COUNCIL

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes. Yes

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not sure.

3. Did you have sufficient time to contribute to the consultation exercise?

Consultation exercise yes.

181 Scottish Water, written submission to the Finance Committee
Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Our costs will probably fall within the estimated ranges, but these are very broad ranges. NOTE - Local Authorities received no grant aid for carrying out Enforcement duties, but are now expected to pay SEPA charges for doing so. That is a clear cost increase.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

The memorandum does not say whether the estimated costs will be made available to Local Authorities. Based on my experience that the savings from Enforcement Duties stated here appear to be overestimated, and the safety measures costs to be underestimated, then NO.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The margins appear broad enough

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comment

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Yes. There is provision for costs to be imposed by regulation – e.g. “manner in which information is to be recorded (para 49); or SEPA charges (CAR charges are considerably higher than first estimated)

SUBMISSION FROM EAST DUNBARTONSHIRE COUNCIL

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made? East Dunbartonshire did not make any submission to the consultation exercise.
2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

*Not applicable*

3. Did you have sufficient time to contribute to the consultation exercise?

*Yes*

### Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

*The assumption in terms of ‘average’ costs does not accurately reflect the implications for East Dunbartonshire Council. Our historical involvement has been fairly minor with only one reservoir and accordingly our costs have been significantly lower than the average quoted. The Council will not see any material difference or cost saving as a consequence of the change in legislation.*

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

*The Council will not have any material change in costs incurred but neither will it secure any cost savings.*

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

*No.*

### Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

*No considered view*

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

*No considered view*
It is planned that most of these duties will transfer to SEPA at some point but there is a financial implication with the proposal to drop the threshold from 25,000m³ down to 10,000m³.

Few of the reservoirs between 10,000 and 25,000 m³ will have as built record drawings. This in turn raises the cost of surveying them to establish their maximum possible capacity. If the measured volume is greater than 10,000 m³, then presumably the owner pays for the survey and all subsequent inspections. If this is correct, it should to be clearly stated so that owners are able to budget for the possible expenditure involved. (Prior to the survey, they do not know for certain if their reservoir is covered by the Bill or not.)

If a survey is carried out and the volume proves to be less than 10,000m³, it should also be clarified who pays for that survey. Presumably not the owner since their reservoir is not covered by the legislation. If it is some other body, they must be told in advance of these circumstances so that budget provision can be made.

As it stands, responsibility for these costs is not clear and this should be clarified before the Bill comes into force.

SUBMISSION FROM SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA)

Opening Remarks

The Scottish Environment Protection Agency (SEPA) welcomes the opportunity to respond to the Finance Committee on the Financial Memorandum of the Reservoirs (Scotland) Bill.

The Bill will create the framework that will ensure reservoirs in Scotland are regulated in a proportionate and risk-based regime to protect the people of Scotland from the risk of flooding from reservoirs, whilst limiting the burden on those owners whose sites pose minimal risk.

SEPA recognises the responsibilities associated with its new role and looks forward to the challenges it will bring. Success will depend on the powers and duties conferred by the legislation, the working relationships SEPA builds with the regulated sector and other key stakeholders and the resources that are made available.

To enable SEPA to provide cost estimates we have drawn on our experiences of implementing other recent legislation such as the Water Environment and Water Services (Scotland) Act 2003. By so doing we have attempted to build cost estimates based on working regulatory models and thereby reflect true and accurate figures.

We have also drawn on the experiences of the Environment Agency who in 2004 took over the enforcement role for reservoir safety in England & Wales. When doing so they encountered many similar issues that we envisage SEPA will face.
and so their knowledge and experience has been drawn upon, again to provide estimates based upon working systems and processes.

Wherever possible SEPA will look to incorporate this new regulatory duty within existing systems and processes to ensure efficiencies, but our ability to do so could be severely impacted by efficiency savings on SEPA’s overall budget. This will minimise the cost to the public purse and limit the charges which may be passed on to reservoir managers.

QUESTIONNAIRE

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Reservoirs (Scotland) Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes, SEPA has been involved with the Scottish Government throughout the consultation process. We have worked with the Reservoirs Bill Team during the Bill drafting process and provided comment on the wording of the provisions relevant to SEPA when requested.

SEPA formally responded to the Scottish Government consultation “Reservoir Safety in Scotland” in April 2010. We also assisted the Government in the stakeholder engagement process of this consultation by attending and sitting as panel members at public awareness raising workshops around the country. SEPA also sits on the Government’s ‘Reservoir Safety Stakeholder Group’, which comprises a cross section of the reservoir safety community, including individual owners, large reservoir owning organisations such as Scottish & Southern Energy, Local Authorities, Panel Engineers and Scottish Water.

SEPA worked closely with Scottish Government on the development of options and the range of financial assumptions made.

SEPA believes it has achieved the best it can to establish an estimate of the future resources required at each of the various stages of the Bill’s development, given the available knowledge at each stage of the process.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, the assumptions used in the Financial Memorandum reflected our understanding of the Bill.

3. Did you have sufficient time to contribute to the consultation exercise?
4. **If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.**

The Bill has significant financial implications for SEPA; in the Financial Memorandum these were presented as £4.12 million for the implementation stage, 2011 to 2016. Thereafter when the regulatory process becomes ‘business as usual’ it was estimated that SEPA’s annual on-going cost was £0.41 million.

The precise financial implications, both for the implementation stage and on-going business will depend on a number of factors. To a great extent costs will be determined by the number of new sites that will be captured by the legislation when the registration threshold is reduced from 25,000 cubic metres to 10,000 cubic metres. Also, as noted in the Financial Memorandum, there has been an assumption that 40% of reservoirs will be classified as high risk, 30% as medium risk and 30% as low risk. As the regulatory effort is dictated by the number of registered sites and the classification they receive, any variation on the assumptions made will impact upon the cost estimates. Until the exact number of sites is known and they have been classified, it is impossible to be precise about the level of the resource requirements and about other financial necessities such as the reservoir inundation mapping exercise and external engineering support.

The figures contained in the Financial Memorandum do try to take account of this variation where associated work elements will be impacted by these unknowns. For example the estimates for staff costs during the later part of the implementation period range from £0.40 to £0.77 million, with a figure of £0.5 million being used in the final calculation. This scenario is replicated in several other areas, such as costs for the production of inundation maps ranging from £0.9 to £2.0 million. As can be seen, the impact of these variations could have a significant bearing on the final costs.

The Bill also permits Scottish Ministers by regulations to make provisions for SEPA to implement a charging scheme, both for the registration of sites and annual on-going charges, to limit the cost to the public purse. It is proposed that those sites posing the greatest risk and therefore requiring a higher level of regulation will be charged at a higher level than those posing a medium risk, with low risk sites not receiving a charge. Estimates have been provided on the income that would be generated, £0.37 million, up until 2016.

This figure is less than that estimated for SEPA’s on-going regulatory activities as noted above. This situation has occurred because, when estimating possible charges, SEPA was advised to exclude from any cost
estimates those work elements that related to undertaking enforcement action. This was because the Scottish Government wanted to avoid passing on this cost to those undertakers who were compliant with the legislation. Powers have also been included in the Bill to reclaim expenses associated with appointing engineers, exercising their emergency powers and costs associated with the application of civil sanctions so that these costs are borne only by those who do not comply with the legislation.

Again these figures are reliant on the number of registered sites and the various risk classification levels that they fall under.

The financial implications outlined in the Financial Memorandum are in line with those submitted by SEPA, based on our understanding of the Bill at that time. We will continue to work with the Scottish Government and once we have a better understanding of how many reservoirs will be affected by the Bill we will have a better understanding of the possible scenarios for delivery of the Bill. In doing so we hope to be able to further refine our estimates of the resources required in light of the clearer guidance and assumptions made. However the exact costs of enforcing the Bill will not be known until SEPA carries out the risk assessment of each reservoir and categorises them.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, with the required Government funding but it will be challenging.

The majority of the implementation tasks that SEPA must complete to ensure that we are able to undertake this new regulatory duty are likely to fall within the next Comprehensive Spending Review (CSR) period (2011 – 2015) although we understand there are no set deadlines for implementing this legislation and the delivery period may be extended if necessary. SEPA will work with the Scottish Government to ensure all efficiencies and cost savings are captured in this CSR bid and where possible SEPA will look for efficiencies by integrating current and future reservoir safety regulatory work with our other duties.

Thereafter a proportion of SEPA’s on-going regulatory costs will be met by funds raised through a proposed charging scheme, with the remaining proportion being met by future CSR funding as outlined in the Financial Memorandum. Should the proposed charging provisions contained within the Bill not come into force then there will be a need for a higher level of funding through the CSR bid.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
The Financial Memorandum does note that the total number of reservoirs that would fall under this legislation is unknown and therefore the true costs associated with implementing and thereafter regulating the legislation are variable. It also states that an assumption has been made in regard to the proportion of sites falling into each of the three risk categories and acknowledges that if this changes then it will impact upon implementation and on-going costs.

The Financial Memorandum does include a range of costs for each activity which tries to take account of some of these unknowns. However, it then puts forward an estimated cost, which has subsequently been used to calculate the overall estimated cost to SEPA. If the situation occurs whereby the actual cost of undertaking the activity reflects SEPA’s or the Scottish Government’s upper estimates then it would mean a lack of funds being available if the CSR bid were tied to these estimates. This could have implications on SEPA’s ability to undertake its regulatory role and protect the public.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

SEPA has a significant role in reducing wider flood risk issues and is heavily involved with the Scottish Government and other stakeholders in implementing the Flood Risk Management (Scotland) Act 2009.

The Reservoirs (Scotland) Bill has, where appropriate, been drafted to align with this Act and will therefore help to deliver outcomes in a co-coordinated and efficient manner. An example of how the two pieces of legislation complement each other is demonstrated by that of the inundation mapping process. Those maps required under the Reservoirs (Scotland) Bill, to support the risk designation process, will subsequently be used to inform the work required of SEPA under the Flood Risk Management (Scotland) Act 2009.

In the financial memorandum that was produced for the Flood Risk Management (Scotland) Act 2009 the costs associated with regulating reservoir safety are shown as additional costs to the wider FRM costs and, as such, are reflected in the Reservoirs Bill Financial Memorandum.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

The Reservoirs (Scotland) Bill is a framework Bill that will lead to a significant amount of secondary legislation. Depending on the detail that emerges in this secondary legislation it could lead to extra costs for SEPA, but until this is drafted it is not possible to quantify these costs.
SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to respond to the Financial Memorandum for the Reservoir (Scotland) Bill. We are particularly interested in this proposed legislation, as we own and operate a large number of reservoirs across Scotland and, as such, we are a reservoir undertaker under the terms of the existing Reservoirs Act 1975.

- Scottish Water will own and be responsible for 365 reservoirs (defined under this Bill) which include service reservoirs and clear water tanks. 70 of these reservoirs are no longer operational. A number of sustainable urban drainage ponds (SUDS) ponds will now also be controlled under the Bill.

- The Bill will reduce the minimum volume for the definition of a reservoir to 10,000 cubic metres. This will introduce a further 95 reservoirs and water retaining structures to be controlled made up of 34 small reservoirs and 61 clear water tanks or service reservoirs. The additional 34 small reservoirs will incur a one off cost estimated to be almost £1m to comply with requirements of the Bill.

- Scottish Water welcomes the introduction of the risk designation of reservoirs as high, medium and low based upon the potential adverse consequences and the probability of an uncontrolled release of water thus allowing a proportionate supervision and inspection regime dependant on the risk designation of the reservoir.

- The new Bill will require Scottish Water to produce flood plans for all reservoirs and this may result in an additional one off cost in the region of £1m. However some flood plans have already been carried out by Scottish Water and if these are acceptable to the enforcement authority, then this cost may be reduced.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?


   - The Bill introduces additional responsibilities for Scottish Water and therefore additional costs. In our response to the consultation we highlighted that the risk designation should be based upon the potential adverse consequences and the probability of an uncontrolled release of water thus allowing a proportionate supervision and inspection regime dependant on the risk designation of the reservoir. Scottish Water believes that SEPA should be responsible for producing the inundation maps to ensure consistency throughout all reservoir owners. Scottish Water proposed that where owners had already prepared inundation maps these
could be used by SEPA and may result in a decision that there is no need to prepare a basic inundation map for that reservoir. This could provide best value for the Scottish Government.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

- Scottish Water provided financial information based upon the Consultation exercise, this was accurately reflected in the Financial Memorandum. Since this time Scottish Water has continued to work with the Government to better understand the implications for Scottish Water. We reviewed the Bill when it became available and revised some of our estimates accordingly.

3. Did you have sufficient time to contribute to the consultation exercise?

- Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

- Scottish Water believes that the Bill has material financial implications. As a result of reviewing the Bill we have revised our estimates.

- Scottish Water has revised our estimate of forecast annual operating costs as a result of the increased management time for regulatory matters within SEPA, as set out in the Bill, to approximately £100k per year from 2013/14.

- In addition to the costs set out in the Financial Memorandum Scottish Water has now included a one off cost for complying with the legislation in relation to the newly designated 34 small reservoirs which is expected to take effect from 2016 and is estimated to be almost £1m.

- Scottish Water has included an additional one off cost for display of emergency response information of approximately £365,000.

- Scottish Water has estimated that the one off cost of flood plans would be in the region of £1m for the initial draft for all reservoirs. The annual updating and testing of the flood plans has been included in our estimate within the forecast annual operating costs in bullet point 2.

Therefore the estimated additional cost of implementing the new Bill until 2016 compared with the Reservoirs Act 1975 is shown in the table below:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forecast additional annual operating costs</td>
<td>£0.3m</td>
</tr>
<tr>
<td>3 years from 2013 when transfer of enforcement to</td>
<td></td>
</tr>
</tbody>
</table>
Rural Affairs and Environment Committee, 1st Report, 2011 (Session 3) — Annexe B

<table>
<thead>
<tr>
<th>SEPA to 2016</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of complying for the 34 newly designated reservoirs</td>
<td>£1.0m</td>
</tr>
<tr>
<td>Display of emergency response information</td>
<td>£0.37m</td>
</tr>
<tr>
<td>Cost of preparing Flood Plans</td>
<td>£1.0m</td>
</tr>
<tr>
<td><strong>Total (if all work is required to be carried out by 2016)</strong></td>
<td><strong>£2.7m</strong></td>
</tr>
</tbody>
</table>

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

- Scottish Water has not been financed for the requirements of the Bill in this regulatory period (2010-15).
- Scottish Water is financed by customer charges. The priorities for expenditure are set by Government and Regulators through the Quality and Standards process for each five year regulatory period.
- Scottish Water will be including the requirements of this Bill into our business planning process for the next regulatory period. We expect that meeting the requirements of the Bill will be part of the Ministerial Direction to Scottish Water for the period SR15 (2015-20).

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

- Scottish Water has assumed that the margin of error is in the region of 20% and these are set out in the Scottish Water costing. Therefore the range for future forecast annual additional cost is £46,000 to £126,000. The cost of the flood plans range between £866,000 and £1,118,000.
- Scottish Water expect that reservoirs above 25,000 cubic metres will transfer to the new regime in 2013 when SEPA takes on the enforcement role. Scottish Water expects that the regulation of reservoirs between 10,000 and 25,000 cubic metres will be regulated by SEPA from 2016.

**Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

- The Flood Risk Management Act 2009 requires Scottish Water as a responsible authority to exercise their flood risk related functions with a view to reducing overall flood risk. Reservoirs may attenuate flooding. Where a reservoir is no longer used as a source of drinking water, Scottish Water still retains all obligations under Reservoir (Scotland) Act. Works we may undertake in the interests of safety (such as breaching a reservoir) may be contrary to management of flood risks. However, maintaining
reservoirs in the interests of flood risk management may be more costly than actions taken in the interests of safety. In this case, the additional costs to retain reservoir structures (in proper condition in the interests of safety) for the purpose of flood risk management, requires additional funding. We suggest that Scottish Water should be funded to maintain reservoirs for flood attenuation purposes where they are no longer required as a source of water.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

- The Bill includes many sections where additional guidance may be forthcoming in the future. It is our view that reservoir managers should be consulted early in the development of any guidance. Until the guidance is drafted it is difficult to anticipate additional costs. It is essential that any costs are proportionate to the risk posed.

- In addition there may be more sustainable urban drainage ponds (SUDS) that will be designated under the Bill.

- Scottish Water believes that when further information is available about the risk designation of the reservoirs, that a more accurate costing of the impact on Scottish Water can be produced.

- Under the proposed review process, every 6 years reservoirs may be redesignated for risk, for instance if redevelopment occurs downstream. Redesignations of this nature may result in additional costs for Scottish Water.

Scottish Water
15 November 2010

SUBMISSION FROM WEST LOTHIAN COUNCIL

1.0 Background & context

1.1 West Lothian Council currently has eight Large Raised Reservoirs in its administrative area, a number which has reduced sharply in recent years during which several have been taken outwith the ambit of the Act.

1.2 The council owns two reservoirs. Beecraigs is a Large Raised Reservoir, which currently falls within the ambit of the existing legislation. Eliburn Reservoir used to be a Large Raised Reservoir but was engineered by Livingston Development Corporation some years ago to limit its capacity. No flood plans have previously been prepared for either of these structures.

2.0 The Council’s views
2.1 The Council considers it critical that the cost of introducing new legislation and regulating the safety of reservoirs remains proportionate to the benefit to society at large. The more that relevant processes can therefore be integrated with the SEPA's existing activities, the better in terms of minimising duplication, reducing the number of processes and minimising regulatory costs.

2.2 The proposed approach to align reservoir safety legislation with the Water Environment Controlled Activities licensing arrangements should help minimise costs.

2.3 If SEPA later determines that reservoirs owned by local authorities were to constitute high-risk structures the additional statutory burden would result in significant revenue cost pressures. The Financial Memorandum estimates such costs to be between £2,500 and £25,000. Because local authorities have limited means to raise additional income to offset these costs, the Scottish Government would be expected to provide funding to underwrite the additional cost pressures.

2.4 The principal of charging for the regulation of reservoirs concerns the council. The proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of complying with said regulation. Given the changing dynamics of reservoir ownership in favour of small businesses such as fisheries and those promoting the shooting of game, this is not regarded as sustainable, particularly in the current economic climate. Increased risk associated with development downstream of the structure is outwith the control of reservoir operators and yet it is the operators that will have to pick up the additional costs in the event of a reservoir risk rating being changed when their license is reviewed by SEPA.

2.5 The number of occasions where the regulator needs to intervene in a practical way due to the failure of a reservoir operator is expected to be minimal. However, this might well increase over time given the changing dynamics of reservoir ownership and the age / condition of the structures and the maintenance regimes or absence of them. It is only right that the relevant reservoir operator meets the cost of personal or corporate failure. However, it is anticipated that the circumstances when such intervention will be necessary will relate to individuals with insufficient capital and recovery of costs could be challenging and potentially controversial. In promoting the Bill, the Scottish Parliament needs to be mindful of the economically delicate nature of some of the businesses, which are now responsible for reservoirs and reservoir safety. There are limited commercial returns from fishing and the shooting of game for example. Where landowners are not the reservoir undertakers, responsibility for the reservoir and compliance with reservoir safety legislation is often included in leases. The council considers that this might sometimes represent an unfair burden given the scale of investment that might potentially be necessary...
2.6 In considering the merits of the risk-based approach to reservoir safety and the introduction of enabling legislation, members of the Scottish Parliament need to be mindful of the fragile economic viability of some flood plans for example which the Financial Memorandum estimates will cost between £2.5K and £25K. Over recent years, water authorities and other public bodies have rationalised their asset base and divested themselves of unwanted assets to the highest bidder. Many structures have been purchased as fisheries or for the shooting of game. Many new owners and operators may struggle to meet the cost of preparing associated with a reservoir and necessary in the interests of safety. The added burden, particularly for those structures later deemed by SEPA to be high-risk in nature have the potential to undermine the viability of some business and leisure interests. Under the new legislation, actions by SEPA to recover any costs that it incurs in securing compliance could potentially send such businesses into administration.

2.7 There are wider concerns that the proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of compliance. Given the changing trends in reservoir ownership in favour of small businesses such as fisheries and for game shooting, this is not regarded as sustainable, particularly in the current economic climate.

3.0 Conclusion

3.1 The council is supportive of the general principles of the Bill but urges caution in terms of ensuring that the cost of administering the legislation remains in proportion to its benefit, that very careful consideration be given before passing on the regulator’s costs onto reservoir operators or otherwise significantly increasing the financial burden associated with compliance on local authorities and small / medium enterprises.
Reservoirs (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Neil Ritchie, Head of Natural Resources and Flooding Branch, Judith Tracey, Head of Flooding and Reservoir Safety Policy, and Stephen Rees, Solicitor, Food and Environment Division, Scottish Government.

Reservoirs (Scotland) Bill (in private): The Committee considered the evidence heard earlier in the meeting.
Present:

Karen Gillon  Liam McArthur
Elaine Murray  Peter Peacock
John Scott (Deputy Convener)  Maureen Watt (Convener)
Sandra White (Committee Substitute)  Bill Wilson

Apologies were received from Aileen Campbell.

**Reservoirs (Scotland) Bill**: The Committee took evidence on the Bill at Stage 1 from—

- Peter Farrer, Customer Service Delivery Director, Scottish Water;
- Tom Inglis, Chief Officer Operations, SEPA;
- Alex MacDonald, Member of the All Reservoirs Panel, Fellow of the Institution of Civil Engineers;
- David Crichton, Chartered Insurance Practitioner;
- Mark Noble, Generation Civil Operations and Maintenance Manager, Scottish and Southern Electric;
- John Reid, Reservoir Undertaker, Tinto Reservoirs Ltd.

John Scott MSP declared an interest as a farmer.

**Reservoirs (Scotland) Bill (in private)**: The Committee considered the evidence heard earlier in the meeting.
Present:

Karen Gillon          Liam McArthur
Elaine Murray        Peter Peacock
John Scott (Deputy Convener) Maureen Watt (Convener)
Sandra White (Committee Substitute) Bill Wilson

Apologies were received from Aileen Campbell.

Reservoirs (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Roseanna Cunningham MSP, Minister for Environment and Climate Change, Judith Tracey, Head of Flooding and Reservoir Safety Policy, Fiona Quinn, Reservoir Policy Manager, Joyce Carr, Head of Water Environment Policy, and Stephen Rees, Solicitor, Food and Environment Division, Scottish Government.
The Convener: I should make it clear that I have decided to go against the running order in the agenda and will now move to item 5, mainly to accommodate the Cabinet Secretary for Rural Affairs and the Environment, who has found it difficult to get back from Brussels where he has been for the past few days. He is here—I have seen him in the building—but I suggest that in the meantime we carry on with evidence taking from Government officials on the Reservoirs (Scotland) Bill.

I welcome from the Scottish Government Neil Ritchie, head of natural resources and flooding branch; Judith Tracey, head of flooding and reservoir safety policy; and Stephen Rees, solicitor in the food and environment division. I am grateful for your agreement to a change in the running order at such short notice and understand that you propose to make some comments on the bill in general, and in particular on chapter 1. Afterwards, we will move to questions.

Judith Tracey (Scottish Government Rural and Environment Directorate): The aim of the bill is to protect the public from flooding from reservoirs by modernising Scotland’s reservoir safety regime. It makes substantive provision to introduce a risk-based approach and to require managers of reservoirs greater than 10,000m$^3$ to register those reservoirs; for the Scottish Environment Protection Agency to classify reservoirs according to their risk; and for reservoir managers to comply with the requirements of each risk category, which can include the appointment of engineers to supervise and inspect the reservoirs.

Chapter 1 defines what is captured in the bill as “controlled reservoirs”, which include both individual reservoirs that are capable of holding more than 10,000m$^3$ and cascades of reservoirs where water could flow between the structures, resulting in a potential cumulative release of more than 10,000m$^3$. It also defines reservoir managers and therefore those who are responsible for complying with the bill’s requirements, and includes provisions to clarify how the bill’s duties apply where there is more than one reservoir manager. In such cases, the bill imposes on the multiple owners and managers a duty to cooperate.

For clarity, chapter 1 also makes it clear that individuals or organisations such as angling clubs that only have fishing rights on the water in a reservoir and have no responsibility for the...
operation and maintenance of the structure are not responsible for the reservoir under the bill.

The chapter also requires SEPA to produce guidance on the management of reservoirs and repeals the Reservoirs Act 1975.

The Convener: Why has it been decided that we need to do something about reservoirs of less than 25,000m$^3$?

Judith Tracey: A number of incidents over the past few years have shown that reservoirs of less than 25,000m$^3$ can pose a risk to the public. In 2008, overtopping at the Maich reservoir in Renfrewshire made the structure unsound, which could have resulted in quite a lot of damage to property and loss of life. In 2007, the potential for a serious incident at the Ulley reservoir in Yorkshire led to a large number of properties downstream being evacuated and the M1 being closed.

Although the existing legislation has ensured that reservoirs of more than 25,000m$^3$ are properly maintained, the fact is that some of those reservoirs pose quite a low risk to the public, particularly in Scotland. A large number of Scotland’s reservoirs are in very remote areas, and any breach would have a very low impact. However, quite a lot of reservoirs of between 10,000m$^3$ and 25,000m$^3$ would, if breached, have quite a high impact on the public. We want to move towards a more proportionate approach to managing reservoir safety in Scotland.

The Convener: How many reservoirs are currently regulated under the 1975 act?

Judith Tracey: Around 650.

The Convener: Have there been any incidents on any of those in the past five or 10 years?

Judith Tracey: There have been no serious incidents related to any reservoirs that are currently regulated. There are occasionally problems with reservoirs, but, because they are regulated, those problems are spotted and the reservoir manager has to resolve them.

The Convener: What are the shortcomings of the current system, particularly with regard to risk classification?

Judith Tracey: At the moment, the risk classification does not apply to how the reservoirs are regulated. The current legislation simply requires all reservoirs of more than 25,000m$^3$ to comply with the same regulatory and supervisory regime. No matter what risk the reservoir poses, it has to have the same level of inspection and supervision as every other reservoir.

Managers of reservoirs in the Highlands that are a long way from populated areas—which if breached might cause some damage to the environment and minor difficulties, but would cause no damage to property and would not risk lives—must ensure the same level of inspection and supervision as there is for reservoirs that are upstream of fairly major populated areas, any breaches of which could lead to major loss of life or loss of property. The current difficulty is that the approach is not proportionate.

The Convener: Part 7 of the Flood Risk Management (Scotland) Act 2009 transferred enforcement responsibility from local authorities to SEPA, required the production of flood plans and extended enforcement authority powers. I understand that part 7 has not yet commenced. Will it ever be commenced? Will the bill, if it is passed, supersede it?

Judith Tracey: If the bill is passed, it will supersede part 7 of the 2009 act. The provisions in the 2009 act have been incorporated into the bill.

Karen Gillon (Clydesdale) (Lab): My question is more to do with sludge than with water. I have had issues with sludge being discharged from reservoirs and causing significant environmental damage. How will that be affected by the bill? In my case, the sludge completely wiped out the fish stocks in two rivers.

Judith Tracey: Sludge reservoirs that hold back more than 10,000m$^3$ will be covered by the legislation. Is that right?

Stephen Rees (Scottish Government Legal Directorate): Yes.

Bill Wilson (West of Scotland) (SNP): You said that there have been no serious incidents with the regulated reservoirs. There was an incident with an overtopped reservoir in Renfrewshire, which I presume means that it ended up with more water than expected.

Judith Tracey: It does mean that, partly, but it also means that there was a problem with the dam—it was failing.

Bill Wilson: So there was a problem with the dam. Okay, I wanted to work out how regulation would have made a difference, but presumably if the dam was failing that answers my question.

Judith Tracey: Yes. The reservoir was not coping with the amount of water that had gone into it.

Bill Wilson: But it should have been able to cope with that amount of water.

Judith Tracey: Yes.

Peter Peacock (Highlands and Islands) (Lab): In trying to make the system more proportionate, what is the reason for moving to 10,000m$^3$ from...
the 25,000m³ limit? Is there a scientific reason for that?

**Judith Tracey:** It is based on advice from the Institution of Civil Engineers, which regulates the panel of reservoir engineers who are responsible for supervising and inspecting reservoirs throughout the United Kingdom. Its advice was that 10,000m³ was the limit at which a reservoir was likely to pose a risk to life or property if there was a breach.

10:15

**Peter Peacock:** And if it was close to property and population.

**Judith Tracey:** Yes.

**Peter Peacock:** Okay. I presume that that will bring into the regime a significant additional number of reservoirs.

**Judith Tracey:** It will bring in a number of additional reservoirs. We are carrying out an exercise to identify how many additional reservoirs that will be. At the moment, we do not know how many additional reservoirs of more than 10,000m³ there are in Scotland, which is one of the reasons for producing the bill.

**Peter Peacock:** What is the best estimate?

**Judith Tracey:** The current estimate is between 150 and 1,000. We are narrowing it down at the moment through a desk-based exercise that is looking at maps to identify bodies of water that may be greater than 10,000m³. We will then cross-refer those against SEPA’s controlled activities regulations database, as every impounding reservoir should have a CAR licence. That should give us a much better idea of the actual number.

**Peter Peacock:** Does SEPA currently have data on every reservoir or only on those of more than 25,000m³?

**Judith Tracey:** SEPA will have data on every reservoir that has an impoundment licence—a CAR licence.

**Peter Peacock:** What determines that? What requires a reservoir to have such a licence?

**Judith Tracey:** Any sort of impoundment or dam that has an impact on the water environment requires a CAR licence.

**Peter Peacock:** So, theoretically, every reservoir in the 10,000m³ category should be in that database.

**Judith Tracey:** Yes.

**Peter Peacock:** But we will find out.

**Judith Tracey:** Yes.

**Peter Peacock:** This may be a daft question, but how big is a 10,000m³ reservoir? I have no feel for that. It is a ridiculous question, as it depends on how deep the reservoir is. I assume that we are talking about very large bodies of water.

**Judith Tracey:** We are. Such a reservoir is the size of a number of Olympic swimming pools, but I cannot remember exactly how many.

**Peter Peacock:** It would be helpful if you provided that information for us.

**Judith Tracey:** I can do that.

**Peter Peacock:** That might give us a feel for it.

**Bill Wilson:** But then you would just ask what size an Olympic swimming pool is.

**Peter Peacock:** No, I know what size an Olympic swimming pool is—I have seen one. Thank you for that helpful suggestion.

A number of small hydro schemes are currently being created in Scotland; they are being encouraged for climate change reasons and to enable us to meet our renewables obligations. They are, however, generally pretty small, and I guess that they will fall outwith the regulation.

**Judith Tracey:** Generally, I think so, yes.

**Peter Peacock:** It has been reported that a lot of the original plans for the reservoirs, many of which are more than 100 years old, have been lost or no longer exist. What process will be followed to determine whether a reservoir falls into the new regulated category?

**Judith Tracey:** There is provision in the bill for regulations to be made on that. We will take advice from the Institution of Civil Engineers and from panel engineers on the best way of determining that.

**Peter Peacock:** Who will ultimately bear the cost of that? If the question arises whether a reservoir is in that category, who will bear the cost of determining that? Will it be the owner or the public authority?

**Judith Tracey:** Initially, we will do our best to identify all those reservoirs in Scotland. SEPA will probably then be required to visit some of the ones that we are not sure about, so the cost will fall on SEPA. If an owner disagrees with SEPA’s identification of their reservoir as being greater than 10,000m³, it will be up to them to prove that it is not. We will set out the criteria by which the identification will be made and the owner will have to show that the reservoir specifically does not fall within the criteria. The idea is to make the criteria as clear as possible.

**Peter Peacock:** Who, ultimately, will make the determination?
Judith Tracey: SEPA will decide, but there will be an appeals process.

Peter Peacock: To whom will appeals be made?

Judith Tracey: Initially to SEPA but, ultimately, to the Scottish ministers.

Peter Peacock: Okay. You have talked about wanting the system to become more proportionate. On the face of it, moving the threshold from 25,000m$^3$ down to 10,000m$^3$ will capture a lot more reservoirs. Has any consideration been given to the idea that low-risk reservoirs in that category might in some way be exempted from regulation because they are low risk?

Judith Tracey: If they are low risk, the impact of the bill will be very small. The owner will not have to appoint a supervising engineer or carry out inspections; all they will have to do is have emergency information on a board, in case there is a problem with the reservoir, so that people have a number to call if they think that there is a difficulty. The reservoir will also have to be registered, so that we know where it is, in case its status changes in the future.

Peter Peacock: If somebody wants their reservoir to be classified as low risk, and therefore for a less onerous regime to apply to them, what will be the process for their making that case? Will they make the case to SEPA?

Judith Tracey: They will make the case to SEPA in the first instance, and ultimately there will be an appeal process.

Peter Peacock: There is an issue about the natural level and the surrounding land and how that might apply to flood storage on agricultural land. Are you familiar with that issue? Are there difficulties with the definitions of the terms “natural level” and “surrounding land”?

Stephen Rees: There is a provision in the bill to allow those terms to be defined with more precision subsequently. However, I am not aware of any particular difficulty that has arisen with those terms.

Peter Peacock: Do you intend to clarify the terms, or is that provision in the bill simply as a fallback in case it is required?

Stephen Rees: It is a fallback in case further specification is needed.

Peter Peacock: How would that be done? Would it be by order or in guidance?

Stephen Rees: If you bear with me, I will check that.

Peter Peacock: Perhaps I can move on and you can come back to that.

Another feature of the bill is that, where reservoirs have multiple managers, one must be nominated to take the lead. That could be fairly onerous. There is a requirement to co-operate with other owners. What will happen if one of the other interests simply does not co-operate or take part? Will the nominated manager carry the can, so to speak, for that person?

Judith Tracey: No. The idea of having a nominated lead manager of a reservoir is to reduce bureaucracy, so that all the individual managers do not have to carry out the same work, which would be repetition. However, each individual manager will be responsible for their reservoir. The provision on a lead manager is just for the administrative purposes of informing SEPA and keeping it up to date.

Peter Peacock: I cannot imagine that there will be many volunteers for that.

Judith Tracey: You would be surprised, actually.

Peter Peacock: Yes, I would.

Judith Tracey: It depends on who is in that group. If a major organisation is involved, the chances are that it will be the obvious choice. For example, if Scottish Water was in a group with a number of small reservoir managers, I imagine that it would be the obvious choice.

Neil Ritchie (Scottish Government Rural and Environment Directorate): The issue arose at the reservoirs stakeholder group meeting in early July. The group consists of bodies such as local authorities with current enforcement responsibilities, SEPA and representatives of owners, ranging from small-scale private individuals to large-scale organisations such as Scottish and Southern Energy. There was general agreement that the provision is sensible and will generally work well. There will always be certain cases that stand out as different, but setting out the provision in legislation will make it easier for people to engage with one another to identify who should be the lead.

Peter Peacock: How will any difficulties be resolved? If, for particular reasons, nobody steps forward to take responsibility, how will that be resolved?

Judith Tracey: If the managers cannot reach agreement, they will all still have individual responsibility for their reservoir.

Peter Peacock: So that will simply mean that the bureaucracy will be multiplied by the number of people involved.
Judith Tracey: Yes. It is in their interests to work together.

Peter Peacock: Is it clear that failure to appoint a nominated person will mean that everybody remains liable?

Judith Tracey: Yes.

Peter Peacock: Fine—thank you.

John Scott (Ayr) (Con): I take you back to the issue of flood storage on agricultural land, for which, as I am sure you remember, provision was made in the Flood Risk Management (Scotland) Act 2009. How will the bill affect those temporary flood storage areas, many of which involve bodies of water a great deal bigger than 10,000m³?

Judith Tracey: Temporary flood attenuation reservoirs are covered by the bill if they are bigger than 10,000m³.

John Scott: What liabilities will attach to landowners in that regard?

Judith Tracey: If they own the reservoirs, they will have to undertake all the requirements of the bill. However, because most of the time a flood attenuation reservoir is empty, it is unlikely to be a high-risk reservoir.

John Scott: I suppose that that is self-evident. However, if a huge amount of bureaucracy is attached to such reservoirs when they contain water, that will be an additional burden for landowners that was not foreseen in the 2009 act.

Judith Tracey: I imagine that it is unlikely that flood attenuation reservoirs will fall into a high-risk category.

John Scott: Or a medium-risk category.

Judith Tracey: Yes. I cannot guarantee that until we consider the potential impact of a breach of water from those reservoirs, but they hold water only for short periods and only to reduce the impact of a flood downstream. If a flood attenuation reservoir were breached, the impact would be the same as the flood, so I cannot imagine that it would be considered to be a high-risk reservoir.

Sandra White (Glasgow) (SNP): In response to a question from Peter Peacock, you made a point about duplication and suggested that people should get together and put forward someone to speak on their behalf. However, there are both single and multiple managers. Will the guidance documents on the legislation have to be sent out and filled in by both single managers and organisations such as Scottish Water and local authorities? That would seem to be overprovision of information.

Judith Tracey: Everyone who manages a reservoir will be able to access guidance on the legislation, but not all of it will necessarily be sent out. However, everyone who manages a reservoir will be responsible for providing the documentation to enable it to be registered. It is entirely up to them to decide whether to provide that directly to SEPA or via a lead reservoir manager, if they are in a group.

Sandra White: Given that the bill provides for quite high penalties—we will come on to that issue—is it not incumbent on us as legislators to ensure that the guidance documents are given to people? On whom will the onus lie if someone with only a small interest in a reservoir that floods is fined under the bill and they say that they did not know the procedures because they were not sent guidance?

Judith Tracey: We can look at whether guidance should be sent to every reservoir manager. We will certainly ensure that every reservoir manager is informed that certain responsibilities go with that role. Every reservoir manager will be written to and informed that, because they own a reservoir that is over a certain size, they are required to register with SEPA by a certain date. I do not know whether they will want to read through a lot of guidance on what that means, but guidance on various aspects of the legislation will be available. Normal practice is to make it available through the internet, but it can be distributed in other ways if that is thought to be necessary.

10:30

The Convener: Ms Tracey, you said that you do not know how many reservoirs there are in the 10,000m³ to 25,000m³ category—there could be anything from 150 to 1,000 of them. Mr Ritchie, you mentioned that you have had a meeting with stakeholders. Correct me if I am wrong but, some time in the past, Scottish Water or some other organisation gave away smaller reservoirs, and it virtually had to plead with some people to take reservoirs that were on or near their land. Those people are probably completely unaware of the situation. Potentially, hundreds of people will come under the legislation and at some point in the future—perhaps after a breach—they will find out that they were responsible and are liable, despite not knowing about it beforehand. Is there not a big job to be done in that regard?

Neil Ritchie: You are right that there is a big job to be done. Taking the bill through will be an important tool for us to identify who those reservoir owners are, under the initial registration process. That will allow us to target information to those people and to identify what their responsibilities are. Most responsibilities for taking action will
involve best practice for what people should be doing with regard to their reservoirs anyway.

For the purposes of implementation, we will need to develop a communications strategy that allows us to maximise people’s awareness. This predates my time on this team, but a lot of work has been done on the development of the bill to engage with various representative organisations and other stakeholder groups through a series of public meetings. We are a fair way down the curve when it comes to communicating with people. When we have the legislation in place and are able to require the registration of people, we will have a better understanding of exactly whom we need to target. The desk-based work that is in hand builds on SEPA’s CAR registration processes, and that gives us a valuable tool.

We are doing everything that we can to identify who the people concerned are. At this stage, we cannot guarantee that we will pick everybody up, although we are doing our best. The new legislation will help us to take that work further.

Stephen Rees: There is a provision in the bill for the Scottish ministers to direct SEPA to publish guidance on the management of controlled reservoirs by reservoir managers. There is also provision for situations where there is a transfer of reservoir manager. Where a person ceases to be a reservoir manager, they must notify SEPA. Under the bill, SEPA will have a duty to take such steps as it considers appropriate to inform the new reservoir manager of their duties. That provision covers only part of the issue—it does not address the informing of existing reservoir managers when the bill comes into force, but it covers the issuing of guidance and dealing with the transfer of reservoir managers.

Bill Wilson: I have a point arising from the convener’s question about people becoming liable. Under the present law, if there was overtopping because of incorrect maintenance and damage was caused in, for example, Renfrewshire, would the owner of the reservoir be liable for that damage?

Stephen Rees: Regardless of the provisions of the bill?

Bill Wilson: In the present circumstances—before the bill comes into force. Let us say that a reservoir was not properly maintained and there was overtopping and damage to houses in the flood path. Under the present law, would the owner be liable for that damage?

Stephen Rees: My understanding is that they would be liable under the law of delict. If a body of water is held back, a duty of care is owed, I imagine, to those in its path, which means ensuring that the water is not released in such a way as to cause a danger to them. If damage were caused, that would be a breach of that duty of care.

Bill Wilson: So, although the bill places new duties on owners of reservoirs of more than 10,000m³, it does not impose a new liability, because the liability already exists.

Stephen Rees: That is correct. The intention of the bill is to ensure that such reservoirs are inspected so that, ideally, no water is released and no damage is caused. If there were a release of water, the ordinary delictual duties under the common law would apply.

Bill Wilson: Thanks.

The Convener: Can you give us some insight into chapters 2 and 3 please?

Judith Tracey: Chapter 2 requires SEPA to set up and maintain a comprehensive register of all controlled reservoirs in Scotland. The register is to include information such as location, risk designation, details of any appointed engineers, any reports and certificates, and an inundation map. In addition, every reservoir manager will be required to register their reservoir with SEPA and must notify SEPA of ownership or management changing hands. SEPA is then required to inform the new manager or owner of their duties under the bill. The chapter also requires local authorities to provide such information and assistance as is necessary to enable SEPA to take over the enforcement role. It also makes it an offence for reservoir managers not to register their reservoir.

The Convener: Is that chapters 2 and 3?

Judith Tracey: I am sorry; that was just chapter 2.

Chapter 3 sets out the framework for the risk-based approach to reservoir safety. Key to that will be SEPA’s requirement to assign each controlled reservoir in Scotland one of three risk categorisations—low, medium or high. The designation process will be a two-stage process. Initially, SEPA will give a provisional risk designation to each controlled reservoir. The bill sets out the matters that SEPA must take into account when making a designation, including the potential adverse consequences of an uncontrolled release of water, such as the damage to human health, the environment, infrastructure and cultural heritage, and the probability of such an event occurring. Scottish ministers can direct SEPA to produce guidance on the matters that it is to take into account.

A reservoir manager who has evidence to dispute the initial designation will have two months to present evidence to SEPA that the classification should be changed. SEPA will then make a final risk designation based on consideration of all the evidence, and the reservoir will then be subject to
the relevant level of inspection and supervision requirements that are set out in later chapters. If the reservoir manager is still unhappy, he or she will have the right to apply for a further review.

Chapter 3 also requires SEPA automatically to review each classification every six years, primarily to take account of any updated assessments, maps and plans that are produced under the Flood Risk Management (Scotland) Act 2009.

John Scott: How easy is it to calculate the probability of failure of a reservoir? Under what circumstances might it occur? I appreciate that there could be a million and one circumstances, but could you give a brief outline, please?

Judith Tracey: The probability of failure of a reservoir is very low in almost all cases. Reservoirs do not fail often, and this legislation is designed to avoid that even further.

The requirement to assess the risk of failure of a reservoir takes into account the consequences and the likelihood, but in almost all cases the likelihood of a reservoir failing is a lesser consideration than the consequence of that failure.

John Scott: That is the more important element of risk.

Judith Tracey: Yes.

John Scott: Could you tell me about planning applications on nearby developments? If a reservoir has hitherto been low or medium risk, and a planning application is granted that turns it into a high-risk reservoir, because of the increased level of building in the flood plain below it, who is responsible for that? Does it automatically become a burden on the owner of the reservoir?

Judith Tracey: If a development is given the go-ahead downstream of a reservoir that could have an impact on that reservoir’s category, the reservoir owner will have been able to object to the planning application during the planning process. Their reasons for objecting to the planning application would be the potential impact on the reservoir. We are in discussion with planning colleagues about whether that would require a change to the development regulations—I cannot remember the name.

Peter Peacock: They are general permitted development orders.

Judith Tracey: That is it. We do not think that a change would be required, because reservoir undertakers would have the same opportunity to object and to give good reasons for their objection. Because of SEPA’s new duties under the bill, we imagine that SEPA—which is a statutory consultee for planning purposes—will, when advising a planning authority on any proposed development, take into account the impact on a reservoir of a downstream development.

The new flood risk management planning process under the Flood Risk Management (Scotland) Act 2009 will deal with the potential impact of any flood risk on development. Development plans will have to consider the flood risk under a flood risk management plan.

We imagine that the combination of all those measures means that any new development’s potential impact on a reservoir’s risk status will be covered under planning legislation.

John Scott: The risk would be covered under planning legislation but, notwithstanding what you have said, if the main evaluation of risk is the consequence of a failure and if a low-risk reservoir were turned into a medium or high-risk reservoir, that would create definite burdens in the meantime, simply because a planning application might have been granted. If that burden is given to someone, how does that fit with the European convention on human rights and all such matters?

Judith Tracey: If a proposed development would lead to costly safety improvements because it would change a reservoir’s risk status, the planning authority would be expected to take that into account, or certainly to consider the reservoir operator’s views, and to be informed of any cost implications by SEPA.

We might have to consider further how any improvements to a reservoir because of a change in its risk status would be financed, if a development was given the go-ahead. We might have to consider whether the developer should be given the condition that the development can proceed only if it contributes financially to improving the upstream reservoir. No decision has been made on that, but we are discussing that with planning colleagues.

John Scott: That is helpful. To what extent is the proposed regime integrated with the Water Environment and Water Services (Scotland) Act 2003, controlled activities regulation and flood risk management? Do synergies exist?

Judith Tracey: Synergies certainly exist. I have said that the bill has been drafted to take into account the flood risk management planning process. That is why the review of the risk status will take place every six years, to take into account any change or information that has arisen via the flood risk management planning process.

SEPA is responsible for issuing controlled activities regulations licences, so it holds much information on the dams. That should make the registration process more straightforward, because SEPA will be able to use the information that it holds from the CAR licensing process when
setting up the register. We are aware of and trying to make the most of the links between the regimes.

**John Scott:** The intention is to integrate the regimes as fully as possible.

**Judith Tracey:** Yes.

**The Convener:** We will move on to chapters 4 and 5 of part 1.

**Judith Tracey:** Chapter 4 retains a successful and well understood aspect of the 1975 act—the involvement of specialist reservoir engineers. The chapter requires the Scottish ministers to set up panels of engineers for Scotland after consultation with the Institution of Civil Engineers. Suitably qualified engineers will be appointed to the panels by the Scottish ministers in consultation with the Institution of Civil Engineers. Under chapters 5 and 6, those engineers will be appointed by reservoir managers to carry out all necessary supervision and inspection of the construction and operation of reservoirs.

Chapter 5 sets out reservoir managers’ responsibilities when constructing or altering a reservoir. It requires them to give SEPA notice of the proposed works, to appoint a construction engineer and to notify SEPA of the appointment. The chapter requires the construction engineer to design, supervise and inspection the construction or alteration of a reservoir. The chapter sets out when the construction engineer can or must produce safety reports and requires the reservoir manager to comply with any such safety reports. The chapter also requires the reservoir manager to comply with any certificates and requires all certificates and reports to be copied to SEPA, which can maintain an accurate record of all on-going and outstanding work and deadlines as part of its register. It also makes it an offence for a reservoir manager not to comply with the requirements that are set out in chapter 5.

10:45

**Bill Wilson:** I presume that with 150 to 1,000 new reservoirs, we will need quite a few sufficiently qualified engineers. How many engineers are we liable to need?

**Judith Tracey:** There is already a panel of reservoir engineers. We would be using the reservoir engineers who are already on that panel.

**Bill Wilson:** So, is there no requirement for any new engineers, even given the expansion?

**Judith Tracey:** There should not be a requirement for new engineers. There is always a difficulty with panel engineers in that there is a very small pool of experience and we are conscious that we do not want to limit it any further. We have tried to align the bill as closely as possible with the legislation in England and Wales and to continue the operation of the panels through the ICE, so that the same pool of reservoir engineers who operate throughout the UK at the moment can continue to operate throughout the UK.

**Bill Wilson:** You said that you had tried to keep the bill as consistent as possible with the English legislation. However, I noticed that British Waterways Scotland said that some terms that are used in the bill, including “discontinuance” and “abandonment”, differ from terms that are used elsewhere in UK legislation.

**Judith Tracey:** They do, but we changed them because we felt that the terms as defined in the bill are clearer than those in the previous legislation.

**Bill Wilson:** Do you mean that the terms were not clear in England and Wales?

**Judith Tracey:** The terms that are used in England and Wales are the terms that were used under the existing 1975 act. They have not changed. England and Wales are still working with the 1975 act; they have made some amendments to it, but they have not brought in an entirely new bill. If they produce consolidating legislation at some point over the next few years, which I understand is the intention, the terms might well be changed.

**Bill Wilson:** That is okay, but if you require engineers from England—which you kind of implied you might end up doing—will that difference in language create any difficulties for them?

**Judith Tracey:** It should not. The engineers operate throughout the UK: there are panel engineers in Scotland who operate in England and Wales and vice versa and we do not want to restrict that practice. We are confident that, as it stands, the legislation is sufficiently close that it should not cause any difficulties.

**Bill Wilson:** The engineers have not expressed any reservations when you have spoken to them.

**Judith Tracey:** No.

**Bill Wilson:** How does the panel influence the construction, alteration and on-going supervision of controlled reservoirs? Do those engineers turn up and have a look at the reservoir?

**Judith Tracey:** The person who is appointed as the constructing engineer is responsible for ensuring that the reservoir is constructed properly.

**Bill Wilson:** Does the panel oversee that engineer, or is the panel engineer that engineer?

**Judith Tracey:** The panel engineer is that engineer.
Bill Wilson: Their role is hands on.

Judith Tracey: Yes. The panel is simply a panel of all the engineers in the UK who are suitably qualified to be a construction engineer, a supervising engineer or an inspecting engineer for reservoir safety purposes.

The Convener: Okay. Can you tell us about chapter 6, please?

Judith Tracey: Chapter 6 sets out the differing supervision and inspection requirements for reservoirs that are designated in the medium-risk and high-risk categories. Low-risk reservoirs have no regular supervision requirements. The chapter requires managers of medium-risk and high-risk reservoirs to appoint a supervising engineer at all times to monitor regularly the condition and performance of the reservoir. It sets out the duties of supervising engineers in relation to the reservoir and requires them to produce an annual written statement for the reservoir manager, which has to be copied to SEPA.

In addition, high-risk reservoirs must be inspected every 10 years by an independent inspecting engineer. Medium-risk sites need be inspected only when the supervising engineer recommends it. Chapter 6 sets out the duties of the inspecting engineer, including the production of an inspection report. The inspection report should include any measures the inspecting engineer considers need to be taken in the interests of safety, and any maintenance that is required. It also sets out the records that have to be kept by a reservoir manager.

John Scott: You have just drawn our attention to the fact that the bill appears to require a single inspecting engineer to be appointed “at all times”. How do you define “at all times”? Is that a resident engineer? Are ICE and SSE correct in their interpretation of section 43, which is in the evidence that they have submitted? Does that need to be addressed?

Judith Tracey: There are a couple of issues around the way in which we have defined when an inspecting engineer must be appointed, and we are addressing those. It is an unintentional consequence of the drafting. There must be a supervising engineer appointed at all times, but not an inspecting engineer.

John Scott: Is it wise to have just one person? I suppose that that is really what we are asking.

Judith Tracey: The supervising engineer will have responsibility for looking after the reservoir at all times. It will be their professional duty to ensure that the reservoir manager maintains the reservoir properly.

John Scott: The expression “at all times” seems a bit vague.

Judith Tracey: I am not sure that I understand.

John Scott: The resident engineer has to be—

Judith Tracey: The engineer is not “resident”. They are not on site at all times. It just means that that engineer is the person who is responsible for the reservoir, and will make a professional judgment about how often they need to look at the reservoir or visit it. They will certainly visit it if they think that there is a problem or that the reservoir manager is not carrying out appropriate maintenance. They will tell the reservoir manager whether they think that the reservoir manager is doing what needs to be done to ensure that the reservoir is maintained properly.

Neil Ritchie: The aim is to ensure that there is on-going access to professional support for the reservoir owners.

John Scott: Okay. Thank you.

The Convener: Can you give us a breakdown of chapters 7 and 8 now, please?

Judith Tracey: Chapter 7 covers some aspects of the bill that were previously specified in part 7 of the Flood Risk Management (Scotland) Act 2009. Those include provisions for Scottish ministers to make regulations to introduce a mandatory post-incident reporting regime, whereby any information relating to any incident concerning safety must be reported to SEPA. That will help panel engineers to understand better some processes that are associated with reservoir maintenance. Where information is not willingly provided by reservoir managers, SEPA will have the power to investigate actively.

Chapter 7 also enables Scottish ministers to make regulations that will set out requirements for flood plans, which would specify what action a reservoir manager would take in order to control or mitigate the effects of any flood caused by an uncontrolled release of water from a reservoir. The chapter includes a duty on all managers of controlled reservoirs—including those that are low risk—to keep a record of all relevant documents. Managers will be required to display at their reservoir a sign showing contact information that is to be used in the event of an emergency.

Chapter 8 enables an independent qualified third party to adjudicate in the event of a dispute between a reservoir manager and a panel engineer. Reservoir managers will be able to challenge certain requirements and directions, such as directions from an engineer in any safety or inspection report, and the referee will ultimately have the power to modify any requirements or directions, if it is deemed appropriate to do so. The chapter also enables Scottish ministers to make regulations setting out the procedure for referring the disputes to a referee.
Elaine Murray (Dumfries) (Lab): The requirements for the preparation of detailed flood plans will be set out in regulations and the Scottish ministers will have to consult on those. However, concern has been expressed by people who have responded to the consultation and to our call for evidence — this refers to the point that John Scott made earlier — that there could be a fair degree of bureaucracy and expense involved in the preparation of some of those plans. What different degrees of flood planning do you think will be required, depending on the level of risk of the reservoir?

Judith Tracey: A sliding scale of flood plans will be required. The flood plan will be minimal for a low-risk reservoir; it will probably just have contact details of who needs to be contacted in the event of a difficulty with the reservoir. Medium-risk reservoirs will require a more detailed flood plan. The idea of the flood plan is to ensure that if there is a potential risk or a potential breach to the reservoir, there are procedures to be followed regarding who needs to be contacted, who is the supervising engineer, when they need to be contacted, what process needs to be undertaken, whether there needs to be any draw-down of the reservoir and whether any work needs to be done to clear the spillway. Those are the sorts of things that will need to be put into any flood plan. It is very much an on-site flood plan, so it is very much to the benefit of reservoir managers to have plans for how to manage their reservoirs in the event of a problem.

Elaine Murray: Have you any idea of the cost that might be incurred? Obviously, that will be on a sliding scale as well.

Judith Tracey: We have a sliding scale of costs in the financial memorandum. Low-risk reservoirs are expected to have a one-off cost of about £250 per reservoir for the production of simple flood plans; medium-risk reservoirs will have annual costs of between £225 and £600; and high-risk reservoirs will have a cost of approximately £3,000 for the production of flood plans.

Elaine Murray: I must say that £250 seems to be rather expensive for just having the name and contact details of the person who must be contacted if there is a flood. It seems to imply that something a bit more bureaucratic is involved.

Judith Tracey: There may well have to be something more. That cost is just an average; it depends on what the reservoir manager deems would be necessary in the event of a potential breach.

Elaine Murray: It could put off, say, a farmer from using land as a flood plain if they felt that they would have to pay £250 or more to get their name on a piece of paper. One of the concerns is that there is a conflict between what we are trying to achieve in this bill and what was intended to be achieved in the Flood Risk Management (Scotland) Act 2009 and, indeed, through some of the biodiversity duties. There could be a temptation either not to create the flood plain or, indeed, to drain a reservoir rather than have the hassle of going through the flood plan procedure. Many reservoirs are important habitats for various creatures, so there could be a negative effect on a biodiversity duty.

Judith Tracey: The intention of the bill is to ensure the safety and the safe maintenance of reservoirs. A balance must be struck — there will be some cost for reservoir owners, but the bill is intended to be proportionate. It has been drafted in such a way as to try to ensure that any impact on reservoir managers is proportionate to the risk that the reservoir poses to the public.

Elaine Murray: Do you envisage a grant scheme that will give people financial assistance with the costs of preparing plans?

Judith Tracey: There is nothing in the bill at the moment in that regard, but it was something that we put in the consultation, so we could take it into consideration.

Elaine Murray: On the information that will be held in the flood plan, who will be able to access that? In the passing of the 2009 act, we recognised that there could be some sort of security risk sometimes in public access to information about reservoirs. How secure will the information be?

Elaine Murray: The security of reservoirs is deemed to be an issue of national security, which is a reserved matter. So, on any security issues, we will follow the advice that the Westminster Government gives to us.

Elaine Murray: Will that be the intention for whoever has access to the information in the flood plans and so on?

Judith Tracey: It could be.

11:00

John Scott: Given that we are talking about bodies of water that are sitting doing nothing, what the bill proposes will represent an increased burden, so some landowners might be tempted just to drain their reservoirs, but that might be incompatible with their biodiversity obligations as regards wildlife. Could a situation be envisaged in which Scottish Natural Heritage or the Scottish Government refused to allow an owner to drain a reservoir because, for example, it was a wintering ground for greylag geese? An owner might want to drain a reservoir but not be allowed to do so without having a further biodiversity financial...
obligation imposed on them. Is it unreasonable to envisage such a scenario?

**Judith Tracey:** There is a possibility that some small private reservoir owners may want to decommission their reservoirs, but that is not just a matter of draining them. A process has to be gone through. It is likely that a controlled activities regulations licence would have to be granted for that. The potential impact on the environment of a reservoir being decommissioned would have to be taken into account; it would not simply be a case of a reservoir manager deciding to drain it.

**Neil Ritchie:** I return to the point about the costs. The figures that we have provided are the best estimates that we could come up with on the basis of discussions with stakeholders. As part of the development of the bill, we will develop guidance on what will be required, as far as information is concerned, with a wide range of stakeholders. We will seek to draw into that process other bodies such as SNH and SEPA, which are working with us on the Flood Risk Management (Scotland) Act 2009 to ensure that wider interests are reflected and to make all the connections that are possible to issues such as sustainable flood management.

**Bill Wilson:** John Scott raised the possibility of someone draining a reservoir. Another possibility that occurs to me is that someone might decide to reduce the volume of their reservoir from 10,000 m³ to 8,000 m³ so that it would no longer be between 10,000 m³ and 25,000 m³ and therefore would be outwith the scope of the bill. Is that possible?

**Judith Tracey:** That is possible.

**Bill Wilson:** I presume that that would not require a controlled activities regulations licence.

**Judith Tracey:** Such a person would probably still need a controlled activities regulations licence because they would be carrying out work on a water body. If they brought the reservoir down to below 10,000 m³, the chances are that it would fall outwith the requirements of the bill.

**Bill Wilson:** I presume that a reduction of 1,000 m³ would not have a significant effect on biodiversity, but you cannot really answer that.

**Judith Tracey:** I add that if a landowner decided that they no longer wanted to have a flood attenuation reservoir because they felt that the requirements under the bill were too onerous, it would be open to them to enter into discussion with the local authority. Under the Flood Risk Management (Scotland) Act 2009, there will be a local flood risk management plan. If the local authority wanted to retain that flood attenuation reservoir, compensation arrangements could be discussed.

**The Convener:** Will you tell us about chapters 9 and 10, please?

**Judith Tracey:** Chapter 9 will enable Scottish ministers to make provision, by order, for SEPA to have access to a toolkit of sanctions in the event of non-compliance by reservoir managers, which will include stop notices, enforcement undertakings, fixed financial penalties, the ability to publish details of enforcement action and, when such measures are unsuccessful in securing compliance, the ability to take forward criminal proceedings.

The intention is that SEPA will be able to deal with each case on a specific and individual basis rather than have to follow a prescribed legal path when it might be inappropriate to do so. SEPA will also be able to appoint engineers if no engineer has already been appointed, and to recover any costs that are incurred as a result.

Chapter 9 will also enable SEPA, in consultation with a panel engineer, to enter a site to take emergency action to prevent an uncontrolled release of water from a dam. Subsequently, it will be possible for expenses to be recovered from the reservoir owner.

Chapter 9 also sets out SEPA’s powers of entry and powers to require the provision of reasonable assistance and information, places a requirement on reservoir managers to provide reasonable facilities to panel engineers and sets out offences under the chapter. In addition, it requires SEPA to provide reports to Scottish ministers on its enforcement actions.

Chapter 10 covers a variety of miscellaneous provisions, including procedures in circumstances in which a reservoir manager has revoked the appointment of an engineer or in which the Institution of Civil Engineers ceases to exist.

**Elaine Murray:** Chapter 9 expands SEPA’s enforcement powers, yet there were no direct questions on that in the consultation. Why not?

**Judith Tracey:** There was a general question about expanding the toolkit of options that are available to SEPA, but you are right to say that there was nothing specific about the sanctions. As we developed the bill, we wanted to ensure that we were acting along the lines of better regulation as set out by the Macrory report, and we felt that, in giving SEPA a toolkit of options that it could use for enforcement purposes, we were acting in line with the move towards better regulation.

Under the 1975 act, the enforcement authority has only two options if a reservoir undertaker is not complying with the regulation—to write a stiff letter to them, or to pursue criminal proceedings. We believe that it is not appropriate for those to be the only options for the enforcement authority and
that it will help for it to have other options. The options in the bill are in line with Professor Macrory’s recommendations. They would have to be made by order, and we would envisage having further consultation before an order was made.

Elaine Murray: What about local authorities? What powers do they have to enforce reservoir safety?

Judith Tracey: The only enforcement powers that they have are to write a letter or to follow criminal proceedings.

Elaine Murray: Could a case not be made that they should have access to a toolkit of other options as well?

Judith Tracey: If the bill is passed, local authorities will not be the enforcement authorities.

Elaine Murray: They will lose their role.

Judith Tracey: Yes. SEPA will be the enforcement authority.

Elaine Murray: Does SEPA have similar powers under existing legislation?

Judith Tracey: Yes. It does not have all the powers that we have included in the bill, but it has the power to issue fixed-penalty notices under the greenhouse gas emissions trading scheme regulations, the Environmental Protection Act 1990 and the Transfrontier Shipment of Waste Regulations 2007.

Elaine Murray: What will happen if a dispute arises? To whom will the dispute be referred if SEPA has a disagreement with a reservoir owner about what it has been doing?

Judith Tracey: If a reservoir owner decided not to comply with any of the civil sanctions, the matter would transfer to criminal—

Elaine Murray: But if the reservoir owner believes that SEPA is unjustified in what it is doing, will they have a mechanism to appeal?

Judith Tracey: Well, they would have the option not to comply. The matter would then have to go to court and a decision would be made there.

Sandra White: To follow up on Elaine Murray’s questions on enforcement, will you clarify under what authority in the bill SEPA will charge reservoir managers? That does not seem clear. The policy memorandum states:

“SEPA will be responsible for enforcing the provisions under this legislation. This is an administrative role”.

Is it under the Environmental Protection Act 1990 that SEPA will have the authority?

Judith Tracey: The authority is set out in the bill. SEPA will have the authority only if the bill is passed.

Sandra White: You mentioned that there will be some costs for reservoir classification and for work that requires to be done. Do you have a general idea of what the charges will be? It was mentioned that there would be some costs, but we did not get a definitive figure.

Judith Tracey: Do you mean the charges for registration?

Sandra White: No, I mean the charges for classification and for work that requires to be done under the new powers that SEPA will have if the bill is passed.

Judith Tracey: The cost of the work to be done will depend entirely on what the work is. It is not a matter of SEPA charging the reservoir manager to undertake work. If a supervising or inspecting engineer identifies that a certain amount of work needs to be done to bring a reservoir up to standard, the reservoir manager will have to pay for that work to be done. The payment will be made not to SEPA but to the contractor who does the work.

Stephen Rees: It is possible for SEPA to carry out the work if the reservoir manager fails to do so and to recover the costs from the reservoir manager.

Sandra White: Should the bill make provision for SEPA to advise reservoir managers to take out insurance policies?

Judith Tracey: It will certainly be open to reservoir managers to take out insurance policies. It is always advisable for those who own such assets to be properly insured. However, on the advice of the Association of British Insurers, we have not gone down the road of compulsory public liability insurance.

John Scott: Forgive me for butting in, but why has the Association of British Insurers said that those who own bodies of water should not have public liability insurance? I should have thought that that would be necessary.

Judith Tracey: Public liability insurance is available, but the association advised against making it compulsory, partly because it was not sure how many insurance providers would be willing or able to provide it and how such provision would be policed.

Neil Ritchie: In its evidence to the committee, the ABI set out three reasons why it did not think that compulsory liability cover would be helpful. They were:

1. Difficulty of enforcement of any compulsory insurance;
2. It would require a mechanism for paying claims for the uninsured;
3. It would require a mechanism for enabling owners to take out insurance in situations where insurers had no market-driven desire to insure them."

The Convener: I invite you to tell us quickly about parts 2 and 3 of the bill.

Judith Tracey: Part 2 allows offences to be set out in support of regulations that were specified in the Water Environment and Water Services (Scotland) Act 2003. Such regulations exist to enforce the European Community water framework directive’s requirement for water bodies to meet a “good status” objective. However, fully enforcing the regulations is difficult without offences to back them up. Such offences were omitted from the original piece of legislation. The bill has been identified as the most appropriate vehicle to introduce the necessary measures.

Part 3 applies the bill to the Crown and sets out provisions for regulations, orders and ancillary provisions.

Karen Gillon: I have some questions about the offences that are being created. Can you provide us with more detail on the type of offences that you propose to create?

Neil Ritchie: I apologise for the fact that we can go into only limited detail, as our expert on that front has been snowed in and has been unable to join us.

Karen Gillon: It would be useful if you could provide the committee with some written evidence on the issue.

Neil Ritchie: We will do that.

The Convener: As there are no further questions, I thank the witnesses for attending and for their evidence. We would be grateful if you could submit your written evidence to the clerks as soon as possible. I will suspend the meeting briefly to allow for a changeover of witnesses.

11:14

Meeting suspended.
The Convener: The main purpose of our business today is to take evidence on the Reservoirs (Scotland) Bill. We will hear from two panels of stakeholders.

For our first panel, I welcome to the committee: Peter Farrer, customer service delivery director at Scottish Water; Tom Inglis, chief officer operations at the Scottish Environment Protection Agency; and Alex Macdonald, member of the all-reservoir panel and fellow of the Institution of Civil Engineers. I thank the witnesses for their submissions from their organisations, which we have all considered with interest. To maximise the time available we will go straight to questions, which Peter Peacock will begin.

Peter Peacock (Highlands and Islands) (Lab): Good morning, gentlemen. You are obviously aware of the detail of the proposal that the size at which reservoirs are controlled under the legislation will change from 25,000m$^3$ to 10,000m$^3$.

First, is that the right size? Is it an appropriate figure or is it too big or small? Secondly, how many additional reservoirs do you expect to fall into the category of 10,000m$^3$?

Alex Macdonald (Institution of Civil Engineers): I can answer in relation to the 10,000m$^3$ capacity.

The figure of 10,000m$^3$ came from discussions that took place when legislation and changes to legislation were considered for England and Wales. The Environment Agency wanted to move towards a risk-based approach for reservoirs as opposed to an approach based on the straight 25,000m$^3$ capacity. It proposed various capacity figures that were subsequently discussed with the Institution of Civil Engineers. A figure as low as 5,000m$^3$ was talked about at one point. From ICE’s perspective, we felt that that would be too low. We believe that there is a case for moving down from the current 25,000m$^3$ figure and, having looked at the results of various research studies in England and Wales, we believe that 10,000m$^3$ is the appropriate de minimis figure to use for new legislation. My understanding is that it is the figure that is ultimately planned to be used in England and Wales, too.

Peter Farrer (Scottish Water): On the number of reservoirs, clearly I am speaking only about Scottish Water’s reservoirs. We currently have 270 reservoirs that are covered; a further 95 reservoirs are between 10,000m$^3$ and 25,000m$^3$ and will come under the new legislation. Of those 95, 34
are small dams and 61 are what we class as clear water tanks, which are treated drinking water tanks.

**Tom Inglis (Scottish Environment Protection Agency):** In the wider sphere, I understand that the existing legislation covers 650 reservoirs and that the Scottish Government is working on a geographic information system to find out how many other reservoirs might be covered with this reduction. At the moment, SEPA has guessed a total of 1,150. The final total could well be below or greater than that in due course, but all our financial planning has been based on that figure.

**Peter Peacock:** And that includes everything.

**Tom Inglis:** Yes. That is the national figure.

**Peter Peacock:** How many of those reservoirs have been classified or registered by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2005?

**Tom Inglis:** I cannot tell you right now, but I can certainly get you the figure.

**Peter Peacock:** Will it be a significant proportion?

**Tom Inglis:** It should be, but it all depends on the number of operators that have registered. The Scottish Government's work will help us to identify any existing gaps in the controlled activities regulations register and the need for further registration under the Reservoirs (Scotland) Bill. We expect to use the same database of information to deliver the requirements of both the CAR and the bill, simply by appending additional features to it.

**Peter Peacock:** As Mr Macdonald indicated, the bill moves towards a more risk-based approach. On the face of it, there will be a significant increase in the number of regulated or controlled reservoirs, which will add to administrative burdens, costs to owners and so on. Is there a case for taking a very light-touch approach to any very low-risk reservoirs that might now be covered in this category?

**Tom Inglis:** Having read the bill, I am quite clear that that is exactly the policy intent. On low-risk reservoirs, the obligation on the operator is far lower than that on an operator of a high-risk site. Equally, however, any risk is important, given that under the Flood Risk Management (Scotland) Act 2009 we have the responsibility of looking at a wide range of flood risk throughout a whole catchment. It is important to know that a reservoir of such a size exists but, as I have said, lesser regulation would apply than that for a high-risk reservoir.

**Peter Peacock:** In the wider environment, new small hydro schemes are being encouraged as part of our efforts to combat climate change. I am advised that 10,000m$^3$ is about the volume of four Olympic swimming pools, which is not that huge. Is there any danger that the legislation might catch in a new regulatory scheme the new small-scale hydro developments that the Government is encouraging or, in your experience, do the reservoirs for such developments tend to fall below the 10,000m$^3$ threshold?

**Alex Macdonald:** Many of the new small hydro schemes are what we call run-of-the-river schemes. It will all depend on the size of their head and intake works, but some might well have a capacity of greater than 10,000m$^3$ and therefore fall within the scope of the bill. I know that a 3MW or 5MW scheme that was recently built by Scottish and Southern Energy fell within the terms of the Reservoirs Act 1975. Although that is not huge, it is nevertheless covered by the current provisions and it is possible that some of the small hydro schemes to which you refer will come within the bill's scope.

**Peter Peacock:** Did you want to add anything, Mr Inglis?

**Tom Inglis:** I was simply going to highlight the difference between schemes with reservoirs and run-of-the-river schemes and say that the majority of new hydro schemes that we deal with are run-of-the-river schemes with very small storage elements.

**Peter Peacock:** I am advised that, over the decades, the original plans for some reservoirs have been lost—I take it that that is for reservoirs that are not natural. How easy is it to calculate that a reservoir is 10,000m$^3$? People whose reservoirs are on the border of that capacity will not want to get involved in more administration or responsibility if they can avoid it, so there is scope for debate on that. How will you proceed on that issue? Perhaps that is a question for SEPA, although I do not know.

**Tom Inglis:** It is an interesting question because, if SEPA wishes to take enforcement action against an individual for failing to register their reservoir under the proposed legislation, we will need to have evidence. So, the onus will fall back on to the regulator if it wishes to take enforcement action. Initially, we would wish to work with reservoir operators to assist them in identifying whether they fall into that category. We will have a two-stage approach. We wish to work with the operators to assist them in identifying the size of their reservoir but, at the end of the day, if we wish to take enforcement action, the onus will fall wholly on SEPA to demonstrate that there has been a failure to register.
**Peter Peacock:** Is it comparatively straightforward to get agreement on the size? I do not know, as I am not an engineer. Would the process ultimately be arbitrated?

**Tom Inglis:** There are proposals in the bill for regulation that sets out how to calculate the size of a reservoir, so that option is there. However, it is a surveying exercise that requires the profile of the bed of the reservoir to be surveyed and the total volume to be calculated, and it is very much a well-known and well-rehearsed civil engineering process.

**Peter Peacock:** What is your estimate of the potential cost to SEPA of doing that? Is it an expensive process?

**Tom Inglis:** I cannot give you an exact figure, but we have included that cost in our overall costings for the bill.

**Alex Macdonald:** I can give an indication of the cost, because the issue arises under current legislation when reservoirs border on 25,000m³. For a typical reservoir of that size, a bathymetric survey and calculation of the volume might cost between £500 and £1,000.

**Peter Peacock:** That is helpful.

**Liam McArthur (Orkney) (LD):** I will stick with the issue of cost. Mr Inglis talked about a desire to work collaboratively with reservoir owners and operators. I presume that part of the thinking behind the incentive of the six-month period of free registration is to give that signal. In your calculations, how many reservoir operators sit outwith CAR and are likely to have to be registered, and how many of those are likely to take advantage of the six-month grace period?

**Tom Inglis:** There is a difficulty in identifying that number. The existing legislation requires CAR impoundment operators to register with us, so we have a database with all the registered CAR activities. The exercise that the Scottish Government is undertaking is a map-based one and should identify the extent of the gap. As I do not know how many there are potentially, I do not know what the difference is between the number that we have and the total number that will come out of that exercise.

**Liam McArthur:** Will you start by approaching directly those who are CAR registered, for whom it is fairly clear that they fall under the bill and will be required to register? So it is simply those who are not CAR registered—

**Tom Inglis:** The issue is the gap between the total number of operators in Scotland and the number who have registered under CAR.

**Liam McArthur:** It strikes me that there is considerable uncertainty on the numbers. I understand why that is, but it is difficult to see how you could have done the modelling to arrive at costs for registration with any degree of certainty, given the number of unknowns in the process.

**Tom Inglis:** The figures that I have seen for the additional number range from 150 to 1,000. We have taken a midpoint, added to that the 650 that are registered under the current legislation and come up with a working number of 1,150. We have designed our processes for 1,150. If there are substantially more, we would have to rethink the costs.

**Liam McArthur:** At what level will the registration costs that you envisage be pitched? I presume that they will be somewhat short of the £500 to £1,000 that it would require to undertake the mapping exercise to which Mr Macdonald referred.

10:15

**Tom Inglis:** In the early stages—the six-month period—we would not see the applicant paying for that exercise.

**Liam McArthur:** What about thereafter?

**Tom Inglis:** Thereafter, we would recover our costs.

**Liam McArthur:** Do you have any idea what the applicant might have to pay in order for you to recover your costs, given the uncertainty that exists around the overall numbers and those who are likely to take advantage of the six-month grace period?

**Tom Inglis:** We have calculated estimated costs for each of the risk categories. I do not have them to hand, but they range from a few hundred pounds to a few thousand pounds, depending on the risk. I can present those figures to the committee in due course.

**Liam McArthur:** That would be helpful.

You will be writing to those people who are currently CAR registered, anyway. Are you satisfied that the work that SEPA will do will not overlap with the work that is already being done by the reservoir managers under CAR, in terms of the mapping of those reservoirs?

**Tom Inglis:** Our clear desire is to minimise duplication all the way down the line. That is why I indicated that we see a clear integration of the CAR-controlled activities regulations and the reservoirs legislation. We want to minimise bureaucracy wherever possible with regard to the themes of better regulation. That is an underlying principle of the bill.

**John Scott (Ayr) (Con):** In terms of risk assessment, ICE suggests that only
consequences should be taken into account, rather than the environment, cultural heritage and other social and economic interests. Do the other members of the panel agree?

Peter Farrer: Scottish Water’s submission says that we consider that risk is a product of consequence and probability. We have about 92 concrete clear water tanks that will fall under the legislation, and our view is that they are not subject to the same level of risk as an impounding dam is. We can control flows into a clear water tank, whereas an impounding reservoir is subject to weather conditions and flows of water into the reservoir that cannot be controlled, in a lot of cases.

Tom Inglis: I understand that the policy objective behind the inclusion of those parameters is to ensure consistency with the Flood Risk Management (Scotland) Act 2009, which also uses them. SEPA has to take those parameters into account in terms of its wider responsibilities under the 2009 act.

John Scott: Mr Macdonald, I presume that you are happy with your statement.

Alex Macdonald: Yes. The reservoirs legislation is primarily concerned with public safety, and public safety should be paramount. Our main concern on risk was to do with the assessment of some of the other aspects that were covered by the bill and whether, for example, maintenance and the form of the construction of the reservoir should be taken into account. We believe that it is difficult to assess the probability of the failure of structures such as impounding dams or embankment dams.

Extensive studies were conducted a number of years ago by the Department for Environment, Food and Rural Affairs—I chaired one of the steering groups—to consider the issue of quantitative risk assessment for United Kingdom dams. The bottom line of those studies was that there was not sufficient evidence to allow probability to be fully taken into account with regard to reservoir safety, and that consequence should be the key driver.

John Scott: Are there any specific types of dams that have failed elsewhere in the UK and worldwide and which are more prone to failure than others? Can you work out the probability from the type of dam construction, or is that simply not relevant?

Alex Macdonald: Looking worldwide is very difficult. Embankment dams are more prone to failure than concrete dams. However, there is not a lot of information worldwide. An issue in the UK is that our dams are older than many others because of our history, with the industrial revolution. Many of our dams are 100 to 150 years old, and we are only now starting to gather evidence on their ageing process and what the risks of ageing are. We can assess the likelihood of failure in terms of overtopping due to floods, because there is a lot of hydrological information, but there is hardly any information on aspects such as the internal erosion of dams, which is the second most common cause of failure, that will allow us to assess probability.

John Scott: It seems slightly unsatisfactory that we cannot do something because it is too difficult, but that could be the real world.

On the ICE evidence and SEPA essentially being the main regulatory body, is there a sufficient level of civil engineering expertise in SEPA to be able to police matters effectively?

Tom Inglis: The bulk of the bill sets out an administrative role for SEPA. There are exceptions in respect of stop notices and the assessment of risk, but we certainly wish to engage and use panel engineers where that engineering knowledge is required. We have enough knowledge to be able to be an intelligent customer for the panel engineers.

Bill Wilson (West of Scotland) (SNP): I want to know whether I understood Mr Farrer’s answer correctly. He seemed to say that one type of dam is safer because it can be opened up and allowed to drain off. Is that correct?

Peter Farrer: I was simply distinguishing between the earth embankment dams in impounding reservoirs that Alex Macdonald talked about and the concrete storage tanks that we use in the network for clear drinking water storage. In that case, water goes into and out of the tank through pipes that we control. We can control flows in and out of the tanks, in effect, and we consider that there is a different probability of failure for them than there is for an impounding reservoir, in which there is no control over weather conditions or upstream flows.

Bill Wilson: That implies that you tend to view risk more in relation to your ability to respond to something going wrong than in relation to something actually going wrong. Is that your view?

Peter Farrer: No. I have made it clear that we consider it as a product of consequence and—

Bill Wilson: I understand that; I was just considering the risk aspect, not the consequence aspect. You seemed to say that you have a lower risk because you can respond, whereas there is
not an effective response in other dams, which are therefore higher risk. That implies that you view risk in terms of your ability to respond rather than in terms of the possibility of failure. Am I overinterpreting what you said?

Peter Farrer: Yes. Basically, we are saying that there are proposals in the bill that use consequence and probability for the risk designation, and we agree with that.

John Scott: I want to return to the concept of an intelligent customer. Are there other precedents? The responsibility for managing reservoir and dam structures is being given to SEPA from local authorities. Many local authorities will have resident engineers who consider such matters. My degree is in civil engineering, so I have the highest respect for the Institution of Civil Engineers. Nonetheless, is it normal practice for a regulatory body such as SEPA to give over regulatory capacity to another body? In essence, you are depending on ICE and the panel of engineers to provide you with the regulatory interpretation that you will then enforce. Is that normal practice? Are there other areas of the regulatory world in which expertise is farmed out in that way?

Tom Inglis: We occasionally have to call in additional expertise. For example, we will seek to have elements of our decommissioning work at Dounreay reviewed by experts in that field. We will take their advice and come to a view on how to regulate on that basis. Such practice is not uncommon. We certainly respect the fact that the panel of engineers is the only place where we can find the expertise on reservoir safety that is essential for fulfilling the obligations under the legislation.

John Scott: Is SEPA content that it can successfully integrate the Water Environment and Water Services (Scotland) Act 2003, CAR, flood risk management and reservoir safety? Can all those responsibilities be pulled together in an integrated and cohesive way, or do you foresee problems?

Tom Inglis: I do not foresee any significant problems. We have the capacity at the moment to record the impoundments in the controlled activities regulations. That database will be essential to assist us with our flood risk management work. Obviously, an uncontrolled release from a reservoir will be an element in all our flood risk management work. So, there is a very sensible integration of all those responsibilities into a single body, which we hope will deliver a consistent approach across Scotland to all matters relating to flooding.

John Scott: Does anyone else foresee problems?

Peter Farrer: Our only concern is that the reservoirs that we operate are for drinking water purposes only. We do not operate those reservoirs for flood prevention purposes. Clearly, additional responsibilities are associated with the Flood Risk Management (Scotland) Act 2009, which may mean that some things have to be clarified further. For example, if a disused reservoir has to be abandoned under the legislation it may be better to keep that reservoir in action to prevent flooding downstream. There are complexities that still have to be ironed out.

John Scott: That leads us on nicely to the discussion of the costs, not only to public bodies but to individuals, of subsistence charging. Costs are likely to increase enormously, given the further overlay of regulation from the bill. Have you any comment to make on that? Are the costs financially sustainable?

Peter Farrer: We provided detailed costs as part of our submission to the Finance Committee. The indicative costs for us, bearing in mind that we have had to make some judgments on the risk designation categories for reservoirs, are roughly £95,000 per year additional operational costs, with a one-off cost of about £2 million.

John Scott: But you are currently not funded to do that, are you?

Peter Farrer: We are not funded to do that within the current regulatory period 2010 to 2015.

John Scott: So you are not funded to do it as a public body. For private individuals, too, the costs will be an additional burden that they must deal with. However, I think that we will take evidence on that from the next panel.

Will the wording of section 21(2) enable SEPA to treat public safety as the primary concern? Does the wording need to be changed? Are you happy with it, or do you think that amendments are needed?

10:30

The Convener: Section 21(2) talks about “potential damage to ... human health ... the environment” and “cultural heritage”.

John Scott: Have I already asked about that? Forgive me. I will move on to another subject.

The Convener: You had not asked the question before.

John Scott: I just thought that I had. I will leave it for now.

How many engineers are on the current panel? Is that sufficient to administer the new reservoir
safety regime adequately? Will engineers come from throughout the United Kingdom?

Alex Macdonald: I have figures that I have picked off the current list of panel engineers. The UK has 44 all-reservoir panel engineers, who are qualified to do any activity under the 1975 act. Eight of them are based in Scotland. The population of all the panel engineers is ageing. Of the eight who are based in Scotland, roughly six are over 60.

There are two smaller panels of engineers for non-impounding reservoirs and service reservoirs. The non-impounding reservoir panel has four members and the service reservoir panel has six members, and one member of each panel is based in Scotland.

The other major panel is the supervising engineer panel, which has 163 members. That population is ageing, too. At its peak, that panel had about 350 members, but it is now down to 163. Of those 163, 28 are based in Scotland. They are a mix of people who work for consultancies, for public bodies such as Scottish Water and for other private owners.

The institution believes that the number of all-reservoir panel engineers is probably sufficient for the foreseeable future, even if we allow for some people to retire from the panel, as some new members will always join. Our major concern is about the number of supervising engineers, which is declining. That issue will need to be addressed here and in England and Wales.

All-reservoir panel engineers operate throughout the UK, so I operate throughout the UK. Supervising engineers are probably a bit more geographically focused, because they are responsible for a reservoir at all times, as the 1975 act says. Supervising engineers tend to work in fairly narrow geographical areas.

John Scott: You said in your submission that you were not happy with the concept of an engineer being responsible at all times and that the responsibility should be more for one job and then another job. Am I right in saying that?

Alex Macdonald: That comment related to inspecting engineers, who we felt should have one job. At present, supervising engineers are responsible at all times, whereas inspecting engineers are appointed for an inspection, in the role of construction engineer or to supervise measures in the interests of safety—those are individual appointments. Supervising engineers are appointed at all times.

John Scott: Am I right in saying that you were not happy with the six-year inspection period and that you preferred a 10-year period?

Alex Macdonald: We felt that 10 years fitted in more with the inspection period. However, since writing the submission, I have come to understand that the period of six years is based on other legislation that relates to floods—that is the reason for the six-year period. We have no strong feelings; we just felt that 10 years would give reservoir managers more stability. They would know where they were for those 10 years.

John Scott: Does the United Kingdom panel have sufficient engineers for a six-year inspection regime?

Alex Macdonald: The requirement is not for the inspection regime to be every six years; it is the risk category that SEPA will assess every six years. The inspection regime will still be every 10 years.

Tom Inglis: The correlation with the six-year period is to ensure that, when SEPA reviews its flood risk plans, which it has a statutory responsibility to do, it should take account of any changes at that time and consider reservoir risk. The policy intent is not to have a full-blown review every time we come round on the six-year cycle but to have cognisance of reservoir safety in our overall responsibility for reviewing flood plans on a six-year programme.

John Scott: It is proposed that construction engineers are to be prevented from further involvement in a reservoir’s alteration. How might that be rectified? Is that a sensible proposal?

Tom Inglis: Personally, I do not think that it is a sensible proposal, as the construction engineer is probably one of the optimal people to look at any further work on a dam in whose core design they have been involved.

John Scott: That would seem to be the case to me, but there must be some raison d’être for the proposal.

Alex Macdonald: I am not sure what the reason is. Currently, construction engineers are not allowed to act as inspecting engineers when a reservoir in whose construction they were involved comes up for inspection. There is a good reason for that, which is to provide an independent review of the reservoir at the first inspection. However, we cannot see any reason for the original construction engineer to be excluded from involvement when a reservoir is being altered and is being enlarged in size. In fact, we think that it would be a very positive thing for that construction engineer to be involved.

John Scott: Finally, I will ask about the risk to reservoirs of peat slide and landslip, which is raised in particular in Professor Crichton’s evidence. Do you take those matters into account
when you evaluate the long-term safety of a structure?

Alex Macdonald: Yes, we do. Every inspection report that I write will have a section to do with a review of the reservoir basin and the banks. It is very rarely a problem and I have never known it to be a problem in Scotland. There was one very high-profile failure in Italy back in the late 1950s at Vaiont, where there was a major landslip, water went over the top of the dam to about 100m in height and many people were killed downstream.

I have never known landslip to be a major issue in the UK. There is a reservoir down in the peak district that I was involved in where there is an active landslip on the reservoir side. That is actively monitored and reported on in inspecting engineer reports, so it is taken into account.

John Scott: Professor Crichton suggests that the risk will increase, and we will quiz him about that later, but we have you here just now. Are the risks massive? He suggests that risk will increase because of climate change as there may be higher rainfall and more slip circle—I am scratching something out of my memory—clay subsidence. Is there increased risk because of climate change?

Alex Macdonald: There is certainly likely to be an increased risk of shallow failures in reservoir basins, due to the fact that, as we get intense rainfall, the ground may become saturated and may slip. We have seen that on some trunk roads in Scotland, where there have been some failures. On whether there is a serious risk, the failures are generally fairly small and shallow and the amount of material going down into most of our reservoirs will not cause a major problem; it will be absorbed in the body of the reservoir. The more deep-seated failures, certainly in a Scottish context, will tend to result from major faulting in rock or major slip areas in some of the rock strata. In Scotland, the risk of that is likely to be low.

John Scott: We talked about some of the structures in question being 100 to 150 years old. Is there no way of assessing the ageing process of those structures, except to say that they have almost aye been there, so they are likely to remain there? How do you propose to model the risk of that ageing process in future, or are dams static once they have been put in place?

Alex Macdonald: The highest-risk period for any dam is the first 10 years after construction and then, ultimately, as it starts to get really old. The intent of the Reservoirs Act 1975 was to introduce the concept of the supervising engineer, who would be responsible for a reservoir at all times. That was to try to ensure that someone with an engineering background would visit the reservoir. That might happen only once or twice a year, but at least the reservoir would be kept under observation and change would be monitored. The key factor that we look for in any dam that we inspect or supervise is change. Have the levels changed? Is settlement occurring in the dam? Are the drainage flows increasing? Is the drainage flow clear or is it coloured? With reservoirs, we rely on a lot of visual observation. Unless we heavily instrument dams—the cost of which, for the UK’s stock of dams, would be enormous and unjustified—we must rely on visual observation.

John Scott: Does anyone else have any views on that?

Peter Farrer: No, other than to add, as someone who has acted as a supervising engineer, that Alex Macdonald is right: it is about monitoring the change associated with dams. Even if small seepages occur, they can heal homogeneously over time. A supervising engineer’s duty is to monitor flows. We put in things such as V-notch weirs so that we can monitor flows to ensure that we can identify change as soon as it happens. It is a fairly robust process. The Reservoirs Act 1975 has served us well in allowing us to have a good handle on the stability of our assets.

Elaine Murray (Dumfries) (Lab): I want to move on to the provisions on the preparation of detailed flood plans. Concerns were expressed during the consultation period that such plans might be onerous to prepare. When the bill team appeared before us the other week, it suggested that what would be required would be determined by the level of risk that had been assessed as being associated with a reservoir. With a low-risk reservoir, it might simply be a case of making available the contact details of the person who was responsible for it. Do you agree with the estimates in the financial memorandum on the likely costs of preparing flood plans?

Tom Inglis: Yes, definitely. We were actively engaged in that work, so I agree with those estimates.

Elaine Murray: At the time, I felt that a cost of £250 for just providing a name and contact details sounded rather expensive.

Tom Inglis: We probably tried to err on the conservative side to ensure that we would not mislead anyone. I expect that we sat to the high end of any estimate just to be sure that we did not indicate to anyone that the cost might be £10.

There will be flood mitigation plans in place for most of the large raised reservoirs, which will show an understanding of how water would be released in a flood event. It will be known what sequence of valves, gates and so on is in place. The gap will be for the smaller reservoirs that are high risk. That is the area in which most of the additional work will arise.
Elaine Murray: Some smaller reservoirs that are of high risk might be owned by farmers, private landowners or sometimes charities. Some non-governmental organisations have land that is associated with work on wildlife and biodiversity. Is there a case for such organisations getting help, both financially and in guidance, with the preparation of flood plans?

10:45

Tom Inglis: We certainly expect them to get clear guidance. The best thing that we can do is to ensure that simple templates are available for them to use in developing the plans. There is nothing in the bill on financial support at present and I have no indication of whether the Government might be thinking of doing something along those lines in due course.

Alex Macdonald: A few years ago, DEFRA funded a research study into emergency planning for UK reservoirs, and a draft guide has been published on that. An Environment Agency research project is being planned that will take that work a bit further, with a view to providing definitive guidance. I compared the costs in the financial memorandum against my recollection of what was in the draft guide—I was involved in the steering group for that—and found that they are roughly in line. The financial memorandum gives reasonable figures.

Peter Farrer: Scottish Water is in favour of having emergency flood plans in place, because it is good operational practice to ensure that the right plans are in place. However, we have said that confusion might arise from calling them flood plans, because of the links to flood risk management plans and inundation flood plans. We propose that the name be changed to “on-site contingency plan” or something of that nature, just to be absolutely clear.

Elaine Murray: It might be of most concern to Scottish Water that there are security implications involved in making available information on reservoirs, particularly those that supply water to centres of population. Who should have access to such information? How much information should be public? How do we deal with the security implications of people being able to access information on reservoirs?

Peter Farrer: We have detailed our concerns on that because quite a number of our assets that will fall under the bill are under UK Government security arrangements. Therefore, we do not propose that the information should go into the public domain.

Tom Inglis: The existing controlled activities regulations require us to have information on those impoundments, and that information is held securely as a subset of our overall database, because we are required to respect that security direction from Westminster.

Elaine Murray: The Institution of Civil Engineers has expressed concern about the possibility of the supervising engineer’s contact details being available at a reservoir, as it believes that that might encourage people to make hoax calls about flooding incidents. The institution argues that it is sufficient to have the reservoir manager’s details and to state that, if the reservoir manager is not available, people should go to SEPA. How do you respond to that?

Peter Farrer: Scottish Water, as an undertaker of reservoirs and as a reservoir manager under the proposed legislation, agrees with that. The immediate action in the event of an emergency would be taken by the reservoir manager, implementing the contingency plans that we have just talked about. We agree with the ICE on that.

Tom Inglis: Taking a practical view, as the supervising engineer might not be in the locale, I think that there is a case for not including that name in the information that is required to be displayed at a particular site.

The Convener: Chapter 9 of the bill creates enforcement powers for SEPA. Is the proposed regulatory toolkit proportionate with the potential offences and the risks of breaching them?

Alex Macdonald: We have not responded in detail on chapter 9 other than to say that we feel that the enforcement regime that is set out is more extensive than in the current legislation. We just want to be sure that it has been considered critically to ensure that it is all required. We have no strong views on the matter.

Peter Farrer: We have laid out that we feel that the new civil enforcement powers in the bill are directed towards everything that would be in an engineer’s report, whereas, under the 1975 act, enforcement action is focused purely on safety matters. Our concern is that the new enforcement powers could be used for things that reservoir supervising engineers and inspection engineers put in their reports regularly in monitoring minor maintenance. We are concerned that the enforcement powers might be focused on more operational, administrative things rather than on—as they are at the moment—safety matters.

Tom Inglis: I recognise the concerns that Scottish Water has as a reservoir manager. However, as SEPA’s representative, I welcome the width, extent and variety of the tools that will be available to us. It is difficult and time consuming to mount civil cases in court, and chapter 9 gives us a range of opportunities for action on lesser offences. Those will, of course, be subject to discussion when regulations are
Karen Gillon (Clydesdale) (Lab): I am interested in why you have concerns and what kind of things you think will be brought into regulation that are not already there. Will the bill give SEPA more powers to tackle things through regulation when you think that there may be the potential for environmental damage?

Tom Inglis: That should sit with the controlled activities regulations. All our impoundments are authorised in some shape or form. If there are activities going on that pose a risk to the environment, those will rightly be covered by the controlled activities regulations.

Karen Gillon: What additional powers would the bill give you that you think would be beneficial? Convince us.

Tom Inglis: I do not think that we should necessarily be concerned with matters other than reservoir safety when we apply these enforcement tools, as Scottish Water has said. The controlled activities regulations will deliver the offence provisions that we require for environmental protection.

Karen Gillon: I am slightly confused as to why you think that the new powers are necessary. What additional benefits do they bring? What are you concerned about them doing? If we are to take a balanced view on whether they are right or wrong, we need to know why you have concerns about them and why you think that they are necessary.

Tom Inglis: For me, the powers should be used when the reservoir manager has, for instance, failed to take instruction from the inspecting engineer or failed to appoint an inspecting engineer. We feel that those are important concerns for public safety, and we want provision in the bill to allow enforcement action to be taken in such circumstances. We would like a proportionate approach to be taken to that, as is reflected in the bill, so that certain offences that are seen to pose a much higher risk to downstream residents are subject to a greater penalty than other offences.

Karen Gillon: That seems quite reasonable. What is the problem with that from Scottish Water’s perspective?

Peter Farrer: Under the bill, civil enforcement could be associated with minor issues of an operational or maintenance nature. However, we believe that, as Tom Inglis has suggested, it should be focused on matters in the interest of safety. With regard to civil enforcement and the question of fixed or variable penalties, there should be an appeals mechanism other than having to go to court if fixed penalties are going to be handed out.

Alex Macdonald: As drafted, the bill allows for enforcement to be applied to all measures that are recommended by an inspecting engineer. Under current legislation, however, enforcement can be applied to measures that an inspecting engineer recommends are required in the interests of safety or for future monitoring and supervision.

Any report that I write as an inspecting engineer will include a section on measures that are required in the interests of safety, setting out key concerns for general maintenance, is likely to be enforced. Our institution simply does not think that that is required.

Karen Gillon: Having a lot of issues to do with maintenance and so on might indicate to a layperson such as me that there is something wrong with a reservoir’s management and give me concern. I have seen what happens when reservoirs are not maintained properly. If the bill allows us to step in earlier, as a layperson, I cannot see anything wrong with that.

Alex Macdonald: The difference is that many of these measures are relatively minor and are desirable rather than immediately essential. As an inspecting engineer, I will look at what is required to ensure a reservoir’s safety for the next 10 years and my recommendations will be made accordingly. Under the 1975 act, the reservoir engineer is required to implement those measures as soon as is reasonably practicable. That has always been something of a weakness; the new bill requires inspecting engineers to stipulate a timescale within which measures should be carried out. I as an inspecting engineer and our institution in general believe that that is a positive step, because it gives SEPA the opportunity to work to a definite timescale within which it knows these things must be completed. The other maintenance measures are for the reservoir’s ultimate wellbeing but are not of immediate concern.

John Scott: I assume that you are still discussing with the Scottish Government the various other concerns that you raise in your submission.
Alex Macdonald: To my knowledge, we have no discussions on-going with the Government. We have said that we would like to be involved in further discussions and to have a chance to comment as regulations are developed or any amendments are proposed to the bill because, after all, the inspecting and supervising engineers, along with SEPA as the enforcement authority, will have to make this work in practice. We are keen that, whatever the final act looks like, everyone can fully understand and work with it.

John Scott: Of the various suggestions that you have made for amendments to the bill, are there two or three that you think are fundamental?

Alex Macdonald: The bill’s apparent requirement for inspecting engineers to be employed at all times, which we have already discussed, is not required and should be changed. We also believe that any enforcement should focus on measures in the interests of safety rather than on other aspects and, although we are keen about and very much support the move from a quantitative to a risk-based approach, we feel that the detail of the risk assessment is critical and think that we could provide valuable input to the Scottish Government on the matter either before the bill is finalised or as the regulations are drafted.

The Convener: As there are no further questions, I thank the witnesses for their evidence. If you have anything to add, please send it to the clerks as soon as possible.

11:01  Meeting suspended.

11:07  On resuming—

The Convener: I welcome our second panel, which comprises David Crichton, a chartered insurance practitioner; Mark Noble, generation civil operations and maintenance manager with Scottish and Southern Energy; and John Reid, reservoir undertaker with Tinto Reservoirs Ltd. I thank you all for providing your written submissions. We move straight to questions.

Peter Peacock: Those of you who were in for the previous evidence session will have heard our questions, and I am going to cover somewhat the same territory. The first question is whether you think that the new 10,000m$^3$ limit for controlled reservoirs is the right level.

Mark Noble (Scottish and Southern Energy): As a company, SSE has no real issues with the 10,000m$^3$ limit. We already interpret one or two reservoirs of less than 25,000m$^3$ as being under the provisions—we deem that good management.

Professor David Crichton: I have no problem with the figure of 10,000m$^3$. If there are different levels of risk—low, medium and high—that will take into account the differences in size.

John Reid (Tinto Reservoirs Ltd): Reservoirs of any capacity at all need to be monitored.

Peter Peacock: Is there much scope for dispute about the size of a reservoir?

Mark Noble: Yes.

Peter Peacock: How would the bill work in that regard?

Mark Noble: We did some costings on this. We have some reservoirs that would come under the provisions, but for some of them we do not know, and we would have to monitor and survey them. We would do a bathymetric survey if we did not have any other details on them, and costs would be associated with that. I have a cost of £25,000 written down. If 10 out of 20 reservoirs needed to be surveyed, that would mean £2,500 or £3,000 each, depending on the size and extent of the work.

Peter Peacock: And the location, no doubt.

Mark Noble: Absolutely—yes.

Peter Peacock: Do you have any thoughts about the scope for dispute regarding whether or not a reservoir is 10,000m$^3$? Are the provisions sufficient to resolve the matter?

Professor Crichton: It makes sense to have the same limit as England. If England is going for 10,000m$^3$, Scotland should be consistent with that—certainly, there should not be a lower standard.

Peter Peacock: It is interesting that you say that. I did not ask the question to the previous panel, although I have reflected on the matter. You could argue that many of Scotland’s geographical circumstances are significantly different from those south of the border, which might argue for a different conclusion. Is your recommendation proposed for reasons of consistency within the engineering profession, for insurance purposes and so on?

Professor Crichton: Consistency for insurance purposes, certainly.

Peter Peacock: And for a general understanding of what the provisions are across the country?

Professor Crichton: Yes.

Mark Noble: There would be disputes—not with ourselves, but with smaller owners. There would
also be fear, and people would think, “If these provisions are coming in, should I not run the digger through the dam?”—God forbid, but something like that could happen.

**John Scott:** Is there an argument to be made here? I accept your view that 10,000m$^3$ is a reasonable figure when it comes to standardisation, and it is particularly important for engineers to work to a consistent figure across the United Kingdom. Nonetheless, is there an argument to be made for low-risk reservoirs to be subject to a figure greater than 10,000m$^3$, perhaps in special cases?

**Mark Noble:** I am a supervising engineer, and I have been to quite a few British Dam Society conferences. The consensus at the BDS is that 10,000m$^3$ is a reasonable limit. There has to be a limit somewhere. If the risk is very low, the number of actions that the inspecting and supervising engineers and the reservoir owner will have to undertake will be minimal. In effect, the bill is tailored to the risks, however minimal. I do not see big issues with that. If a reservoir of 10,000m$^3$ or less is high risk, for whatever reason, be it the condition of the reservoir or the people who are downstream, that will be picked up.

**Peter Peacock:** Let me take you to another issue on which the Institution of Civil Engineers and Scottish and Southern Energy have raised concerns: how the bill could be interpreted as covering intakes and tunnels that supply reservoirs. Could you say a bit more about those issues and their implications?

**Mark Noble:** I will get some of these figures slightly wrong, but we have 200km of tunnels attached to reservoirs; there are extended catchments going from 10 square miles up to 30-odd square miles, all covered by open aqueducts, pipes and intakes. We interpret the bill to mean that all of those would come under the provisions, so they would need to be inspected. They are inspected anyway, obviously, because they are our revenue streams, but they are not strictly to do with dam safety.

In the past, we have taken as apertural structures anything that is attached to the dam, which is covered by legislation. As far as the mapping of floods is concerned, anything that comes into the dam is picked up. However, we do not inspect the structures. The bill could extend the scale of inspection way beyond anything that is really envisaged. With a lack of guidance, people could interpret the provisions to mean all the extended catchments.

**Peter Peacock:** Have you sought to clarify with Government officials whether that is the intention? I note that Scottish and Southern Energy and the ICE have come to the same conclusion about interpretation, but has the matter been checked out with the Government?

**Mark Noble:** We have asked. I have attended meetings at which we have asked about that, and we have been given assurances. As soon as someone uses the word “reasonable”, however, it becomes difficult—and there is no guidance. The Reservoirs Act 1975 has a fairly hefty tome on guidance, and it is essential for all supervising and inspecting engineers, as it wipes out any dubiety. It is really clear.

We do not have guidance with the bill, so the only way to find out whether the provisions are reasonable would be through a challenge, and challenges cost money and take time—time probably being even more important. If we do not get clarity on the issue, owners of small reservoirs will struggle. For us, it is essential to have an independent guidance document that interprets the provisions.

11:15

**Peter Peacock:** Can you see any rationale for including intakes and tunnels in any circumstances? Where does the thinking on that come from? What risk is attached to them?

**Mark Noble:** Generally, a pipe is not like a river. In most of our catchments, a pipe will take four or five times the average flow, and no more. In a flood situation, we know exactly how much can come through a tunnel, because it is a certain size. With a river, which is natural, we do not know that. When we analyse our floods, we can work out exactly what the flow in a peak storm would be, because only so much can get through the pipe. I struggle to think of areas where intakes and tunnels would be included. There may be some, but I cannot think of them at the moment.

**Peter Peacock:** Speaking as a layperson, I assume that the risk of the catastrophic collapse of pipes is a reason to inspect them to ensure that that does not happen. One could argue that a collapse in a pipe would diminish the intake risk, but one could also argue the opposite. What are the implications of a collapse?

**Mark Noble:** If a pipe fails, the water goes back to its natural catchment. It is as simple as that—it comes down the river.

**Peter Peacock:** That could increase the flow and overall volumes.

**Mark Noble:** Yes, in the river, but remember that we will not dry up those rivers anyway. In the majority of cases, the volume of water coming down the river will increase and it will be in storm conditions. In storm conditions, five times the average is not a big flow—it is a very small flow.
Peter Peacock: So your argument, which could be reflected, in part, in the committee’s report, is that the Government should clarify the intention of the provision and that, if there is a clear intention and a good underlying policy reason for the provision, adequate guidance should be provided to help everyone to interpret it. Is it fair to say that, subject to that, you are reasonably satisfied with the approach that is being taken, or would you like the matter to be clarified by having any dubiety removed from the bill?

Mark Noble: We would like to have a guidance document. That would clear up all the issues, because the meaning of “reasonable” would be clarified.

Professor Crichton: The Glendoe dam, which was opened by the Queen in June last year, was closed in August that year because of a rockfall. What were the implications of that? Why did the dam have to be shut down? I understand that the rockfall closed off a pipe. Was the pipe included in the inspection? I have yet to see a parliamentary report that discusses geology, landslip risk, peatslide risk or avalanche risk. So just last year, there was a good example of a rockfall, at one of the newest and biggest dams in Scotland.

Peter Peacock: We must be slightly careful about that, because I think that an inquiry is under way. If a remember rightly, there was a fatality.

Mark Noble: That was not related to the rockfall.

Peter Peacock: So it was a separate incident. Can you say anything about it?

Mark Noble: There is published information on many websites. There are 6km of pressure tunnel, which feeds from a distance away from the dam. The dam is separated from the intake by a good distance; I would hate to quote the figure, but it is hundreds of metres. Roughly halfway down the tunnel, there was a fall from a fault. When that was picked up, we shut the tunnel.

Peter Peacock: So there was no increased risk to or pressure on the reservoir capacity.

Mark Noble: No. The flows were nothing compared with flood risk, and the reservoir is designed to deal with flood risk.

Peter Peacock: I am thinking of another circumstance that is relevant to hydro, in a sense, although it does not involve Scottish and Southern Energy. In Kinlochleven and around Fort William, a large volume of water is supplied to smelters from tunnels and inlets all over the mountainsides. Could they be captured by the bill, or are they captured by other regulations?

Mark Noble: In the absence of guidance, the answer is yes, potentially. It is all potential. Guidance is needed.

Peter Peacock: Thank you for your helpful responses.

Bill Wilson: Are not some of the pipes in Kinlochleven overground? If those were fractured, presumably water would be lost coming down the hill.

Mark Noble: Yes. The bill specifically excludes external penstocks. I do not want to drift away too much here, but without the bill other legislation will catch us, such as the Health and Safety at Work etc Act 1974, under which the Health and Safety Executive could prosecute us. There is other legislation in the background. We have many other structures that pose a fire or explosion risk, such as pressurised containers, and they all fall under separate pieces of legislation. There are also the work equipment regulations. All that legislation exists to provide security for the workers and for members of the public.

Bill Wilson: So I am covered by the law if I come down the far end of the dell’s staircase.

John Scott: I want to develop the theme of risk, if I may. I will start with ICE’s contentious comments that

“reliable and accepted tools are not yet available ... to determine the probability of failure of any structure”

and that risk designation should focus only on consequences. Do you have views on that statement?

Mark Noble: I broadly agree with it. I know that BC Hydro spent more than 5 million Canadian dollars on a risk analysis of one of its major dams, and abandoned it at the end. It is difficult to quantify consequences at reasonable cost, even if they are easy to quantify. It should also be about the people below the dam.

We have some issues with the way in which dam breaks are analysed. If you look at the international situation, you can see that dams do not fail all at once; a dam is not there one minute and gone the next. A chunk comes out of it as if a bite has been taken out of it, and water comes through. It is difficult to quantify that water. It takes quite a lot of experience, time and judgment to be able to analyse that risk.

John Scott: Yes, but we are concerned with human safety here.

Mark Noble: Absolutely.

John Scott: That is self-evident. Do others have a different view? Should we make an effort to assess risk better than we do currently, no matter how difficult it is?
Professor Crichton: I was involved with the panel that looked at reservoir risks about 10 years ago. There is something like 2,500 to 3,000 reservoirs in the whole of the UK. If the probability of failure is, say, 1 in 1,000, that means that an average of three reservoirs will fail every year. We know that some reservoirs have a much higher probability of failure than 1 in 1,000 and some have a much lower probability. From an insurance point of view, if you have the whole book of business, you can expect so many failures per year. You might not know which ones will fail, but you know that a certain number will.

You then have to measure the consequences of that in terms of human life and property, which is fairly easy to do. The computer software to do that was produced by a European Union research project, and it is in the public domain. Unlike many inundation maps, which are secret, the software to generate those maps is not secret, and it is user-friendly. Insurers can therefore access it, and indeed under the EU solvency directive are obliged to access it and calculate the costs. I can see a time very soon when insurance companies will have a much better idea of the potential for reservoir failure than will the reservoir industry or Government, just because they are under pressure from the EU to have that.

John Scott: I take the academic point that you can analyse statistically that failures are likely to happen. The conundrum is how to find a practical way of dealing with that from an engineering perspective, and how to deliver it in a way that is compatible with that statistical analysis.

Professor Crichton: That is where public liability insurance comes in. There are a number of benefits to the public in having that; I can go through some of them if I have the time.

John Scott: Not all failures will be catastrophic, of course. A failure does not have to cause loss of life, but we must ultimately be concerned about human safety.

John Reid: I have two reservoirs. My background is not technical, but from a technical point of view I have a levelling survey done every few years and I have six-monthly inspections done by a supervising engineer. For all intents and purposes, I live on site, so the reservoirs are under constant supervision, which should come into the equation.

I could not afford to go down the line of taking geometric studies and getting equipment in, although I doubt very much that the big boys would have difficulty with that.

Mark Noble: We have 79 reservoirs: 36 of them are category As, 30 are Bs and some are Cs and Ds. Those risk categories are based on consequences. The bulk of our reservoirs are high risk, but they are concrete dams founded on rock, and they are not going anywhere.

I used to work for North West Water on Pennine clay-core dams. That involved looking at piping failure and all sorts of other mechanisms, which is very difficult. I know that I have concrete dams, whereas I do not know how the puddle clay was laid in the 1860s.

John Scott: So your joint view is that it would be reasonable to proceed on the basis of consequences, rather than what is suggested in the bill.

Mark Noble: We would not drift away from what the ICE suggests.

John Scott: You would support that.

How are subsistence charges likely to affect reservoir managers? Should there be alternatives to the charges? Are they proportionate? What would be the implications?

Mark Noble: One of my concerns is the testing of on-site and off-site flood plans. The bill states that testing should be “reasonable”, but there is no guidance on that, so how often should we do it?

British Waterways tested one of its flood plans. Someone went out at 2 in the morning, rang up the local attendant and said, “There’s a hole in your dam,” to see what happened. It was all organised. The company got out pumps and pulled out contractors with diggers to provide access for the pumps, and it put the pumps in place, just to ensure that everything that it had put in its plan would actually work. It was a fairly small dam, but the figure that we were quoted for the test was £15,000 for material costs. There was also the planning beforehand, the monitoring and the digestion of the results afterwards, so there will be costs for man-time on top of that figure. That was £15,000 for a relatively small site.

We have emergency plans, as you can imagine. Many of them are generic, but some are very specific, particularly on the big floodgate sites. We do yearly training on all the floodgate sites: 12 or 15 guys on site are trained every year, given the size of those structures. On some of the smaller structures, a proportion of that training will be done, but how often should we do it? At our drumgate sites we do it annually, and on the smaller sites we test valves on a regular basis. Is that classed as training or not? That leads us to a discussion about what is reasonable.

11:30

The figures that you were quoted on 1 December were something like £250 to £3,000 to produce a flood plan for each reservoir. That would probably write something, but I am not sure
that the sign that you would put up would cost £250—it would cost more than that. Quite a few costs start to build up. We have some fairly large dams, although we also have some very small ones, and our cost estimates are £5,984 per reservoir initially, plus an annual cost of £3,400 per reservoir across the stock. We have had to guess what is reasonable, because there is no guidance, so we have struggled a little. We have taken a fairly conservative view of what is reasonable. Some of the costs are already on our books anyway, such as the cost of the training that we do and the cost of the plans that we have. We also have control rooms, which have emergency plans as well, so we are fairly well covered.

We started to draft flood plans based on the Environment Agency guidance. It produced a list of things to do, but it takes a considerable effort to fill it out.

That is our view on the costs. There are costs, and they are big.

**John Scott:** What is the perspective from an individual owner?

**John Reid:** There are costs. It is difficult for me to quantify how much they would be, but at the end of the day it would be down to me to draw up the plan, probably in conjunction with my supervising engineer. I have an emergency plan as it is, and the panel engineer is quite satisfied with it. He sees room for improvement, so I have gone part of the way down that road, but how involved does it have to be? I have not yet looked at the Environment Agency guidance from England. I have a copy of it to work with, but to date I have not got round to preparing the plan.

**John Scott:** Your evidence suggests that the costs appear to fill you with, at least, apprehension.

**John Reid:** We do not know how we would be categorised in terms of risk. My supervising engineer takes the view that we would probably be rated as either a medium or high risk. Until we know how we are categorised, we will not know exactly what the amounts will be. I have taken the figures for the highest level, which is high risk. The costs work out at an initial one-off payment of about £15,000 and, including my normal maintenance, about £15,300 per annum.

**John Scott:** Large and small-scale operators do not necessarily make such an income. What are the likely consequences of the increased regulatory burden in terms of costs?

**John Reid:** I would seriously have to look at my whole position and consider where I stood. We would move on to the legislative side, but I would find myself in a very difficult position if I was burdened with two reservoir assets that were no longer of any great value. I have been quoted £300,000 to decommission and breach each dam, and I have two of them. There is no way that I could find £600,000.

**John Scott:** Quite. So we are moving towards an impossible situation where people who own reservoirs cannot afford to maintain them and cannot afford to decommission them either. Your evidence suggests that, in some cases, that could lead to insolvency. Do you agree with that, Mr Noble and Professor Crichton?

**Mark Noble:** If I step away from SSE, yes, I do.

**Professor Crichton:** If there was insolvency after a failure, there would be no compensation for the people who were injured by the failure, unless there was public liability insurance.

**John Reid:** I have public liability insurance, but I do not know how far it would stretch. Our neighbouring farm has some £750,000 in cattle on the hoof, not to mention their sheep.

**Professor Crichton:** To put the cost of making a flood plan into perspective, synthetic aperture radar transponders cost about £100. They give continuous protection by monitoring any movement in hillsides, embankments or dams, yet not a single reservoir owner in Scotland has installed them. They are installed in England and in Italy. Why do we not use new technology? It baffles me.

**The Convener:** What do you think the reason is? Why do reservoir owners in Scotland not use them?

**Professor Crichton:** I do not think that reservoir owners are aware of them. This is fairly new technology; it has been around for only 15 to 20 years. Engineers are probably not trained in earth observation science. It is an extremely powerful tool. Synthetic aperture radar satellites give you monitoring three times every 35 days, and can detect movement of less than 1mm a year up, down or sideways. That can all be done automatically. The cost per transponder is about £100.

**John Scott:** That is the actual cost, but to find the area most at risk, there would be geological surveying costs. Alex Macdonald, who was on the previous panel, suggested that the risk in Scotland was essentially low. The underlying geology in Italy might be completely different. I venture to suggest, as Peter Peacock did, that the underlying geology and structure of our water catchment areas in Scotland might be different from in England. Do you concur?

**Professor Crichton:** Indeed. Scotland and Ireland are subject to peat slides, which are fairly rare in England. Peat slides are independent of
the geology. We have had some really big ones in Scotland.

John Scott: I declare an interest as a farmer. I have areas of peat and I understand the concept of peat slides all too well. Are there well-documented examples of them affecting roads, trunk roads and/or reservoirs in Scotland?

Professor Crichton: Oh yes, certainly. In 2003 there were several major peat slides in Scotland and Northern Ireland. They were all due to a period of prolonged summer drought followed by a period of heavy rainfall. Those are the sort of weather conditions that we can expect more often with climate change. A large number of livestock in Scotland were killed by peat slides and buildings were knocked down. It made the BBC national news, which is unusual for a Scottish event.

John Scott: Alex Macdonald seemed to think that there is still a lower risk. Mr Noble, do you agree?

Mark Noble: We have been monitoring faults under the direction of inspecting engineers like Alex Macdonald, in some cases since 1949, with no movement whatever. We have monitored areas where we have scree slopes. As supervising engineers, we take photos and monitor. That is precautionary; it is not because we expect anything to happen. We take a very conservative attitude as supervising engineers. Have I seen peat slides? Yes, but not near reservoirs. They have been very localised and very small on wind farm sites, which I look after.

Professor Crichton: One of the peat slides in Scotland in 2003 was very close to a major reservoir. There is a town of about 20,000 people in the inundation area below that reservoir.

The Convener: I want to go back to the monitors: have Mr Noble and Mr Reid heard of them? Why are they not being used?

Mark Noble: At Cruachan, we put in a vibrating wire piezometer-type arrangement. It was a harmonic, state-of-the-art unit. It ran for the period of construction and post construction and was then taken out, if I remember rightly. I have certainly seen V-notches, which collect the water. If the dam is going to move, you often see it in leakage. Leakage paths under the dam come out at a certain point. I have seen automatic downloading of data coming out of these things. We have had lot of instrumentation put in dams over the years and we have taken a lot of it away after a time, certainly after the construction period, because the inspecting engineers have advised us to do so. Often, you are monitoring only one area when in fact, if you have a dam, you do not know where it will fail—you could have a nice solid bit up on the bank in one place with your measuring device, but the dam could fail at the other end. We take advice from the inspecting engineers. To say that we are not aware of these things is not quite true.

There is a hell of a lot of technology. For example, there are Willowstick devices for measuring leakage paths. Highly complicated computer-oriented devices are available for monitoring, but lots of experience has shown that their use has not been deemed practical or to give us any value. We take advice, by the way—we do not make that decision on our own.

John Scott: If there were any doubts, one would reasonably expect inspecting engineers to take advice from the British Geological Survey or—

Mark Noble: One of the most valuable things that we have is the local man who goes up to the dam once a week, or more often in some cases. He sees the whole dam; he does not see a spot on the dam.

Professor Crichton: With respect, a visual inspection cannot tell you that there has been a movement of 1mm over a period of a year. None of the devices that you are talking about uses earth observation satellites, which are a totally new way of observing dams. They are synthetic-aperture radar satellites that work at night and through heavy cloud base, and which are extremely accurate.

Bill Wilson: Compared with Mr Noble, Mr Reid represents a different scale of operation. It would be useful to hear Mr Reid’s comments on the matter.

John Reid: The supervising engineer has never mentioned the use of such devices to me. We have level surveys taken every two years. Pins, which are set out along the dam, are measured to datum points. We get fluctuations, but they are minimal. That will be to do with whether the ground is a wee bit drier or a wee bit wetter. In one instance, one of the reservoirs was drained for three years but there was no significant movement in the levels. They are monitored constantly.

Mr Noble makes the point that when you are out and about walking around reservoirs, you will notice patches. You are looking for patches that are particularly green compared with the rest of the grass. The dam faces should be cut at least two to three times a year so that there is a smooth surface that allows you to see any potential movement or slides or whatever. It is only by walking along the dam face that you can feel whether the ground under your feet is a wee bit soggier than it was the last time you walked on it.

I had to put in drains on the sides of one of the reservoirs as a monitoring tool to see whether any leakage came through into them. I monitor that. If
it was a dry period and water was coming out, that would give some cause for concern and would need to be investigated. There will be some private undertakers who do not do that and who might not see a reservoir from month to month.

John Scott: I presume that if it is an issue that the insurance industry is concerned about, before providing public liability insurance it could, if it wanted to, insist on the installation of the type of monitoring device that Professor Crichton mentioned. That would be reflected in the premium for public liability insurance thereafter. Is that a reasonable assessment of the situation?

Professor Crichton: Yes, that is very true. Insurers these days are very used to dealing with synthetic-aperture radar interferometry and with earth observation generally. That would be an extremely useful tool.

If we are talking about the publication of flood maps and inundation maps, it is important to mention that there will be a danger of blight among people who live in such danger zones if they cannot get insurance. If the reservoir owner has public liability insurance, people who live in such areas should be able to get household insurance because the household insurer will know that he can claim back from the reservoir owner, because in this country there is strict liability on reservoir owners.

John Scott: I will stop you there because we will discuss inundation maps later. I just want to finish my area of questioning, if I may, which is essentially predicated on SSE’s submission, which says:

“in introducing this new legislation there is a danger that the new process may actually reduce the effectiveness of the existing legislation by being overly bureaucratic.”

Can you justify that, please, Mr Noble?

11:45

Mark Noble: This comes back to guidance and interpretation. If we do not have guidance on how the legislation is to be interpreted, people will take different views on it. What is reasonable to me might not be reasonable to my colleague John Reid—there is a different scale of things. What it really comes down to is that, without guidance, there will be so much room for wiggle and movement.

John Scott: Can you give an example of how the bill might be less effective than the existing legislation?

Mark Noble: One example is the maintenance issues that Alex Macdonald raised. If we treat cutting the grass with the same degree of rigour as a safety matter, we will be reporting backwards and forwards on issues that may be relevant but are issues of good maintenance rather than dam safety. Alex Macdonald was exactly right.

Bill Wilson: I understood John Reid to say that he cuts the grass so that he can inspect the facility properly. Is that not part of safety?

Mark Noble: We have areas where we cut down scrub, grass and all sorts to get a certain level of swarth, which can be to prevent overtopping. Papers published by the Construction Industry Research and Information Association and through the British Dam Society set out the level of grass that is ideal to resist overtopping—water going over the top of a dam. In other cases, it can be that work makes the reservoir look good or tidy and gives a feeling that it is maintained. It could involve a coat of paint, which may not be essential but looks good. It can be a desirable thing to do as opposed to a matter in the interests of safety. That is what the issue really comes down to.

John Scott: Okay. I will revert to spends on reservoir safety in general. From both the large and small-scale perspective, how much do you spend on panel engineers? How much do you see yourself spending under the new regime?

John Reid: It is too difficult to say until we know exactly what is involved. The frequency of inspections might well have to go up, but it might go down in some instances. Whether the dam is high risk or low risk, there is not much difference at the end of the day: either could fail.

John Scott: Do you have costings of how much you spend on panel engineers at the moment?

Mark Noble: Not to hand. Generally, unless we call one in, we appoint panel engineers on a 10-year basis. Most of our large dams are visited by a supervising engineer at least twice a year. That work will increase because of the time involved in looking at the flood plans—the onsite plans, offsite plans and so on—and testing them on paper and outside. We do not know how often we will have to test them—I do not have the guidance—but we will have to test them in the office and then onsite for real at certain intervals. In our costings, we made estimates as to how often that would be. There will be a significant increase in supervising engineers’ time.

John Reid: My current bill per annum is £1,500. That covers both the six-monthly inspections and putting £600 aside for my 10-year inspection, which is £6,000 for a panel engineer.

John Scott: For one inspection?

John Reid: For two reservoirs, but they are linked.

John Scott: Thank you.
Elaine Murray: The first part of my question has been answered—on maintenance and safety—so I can hurry things on a wee bit.

Scottish and Southern Energy also has concerns about section 48(2)(g), which provides that a supervising engineer has to supervise any proposed drawdown in respect of a reservoir. You point out in your written evidence that the levels of reservoirs can alter everywhere, and I imagine that they go up and down with hydro schemes. Will you say a little more about that?

Mark Noble: If we have a pump storage scheme in which we have water going up and down nightly and if you read the bill in the way that we read it, that scheme will have to be monitored. The Government does not really mean that, but without any guidance that is what the bill means—we would have to supervise something that cannot be supervised because it happens 24 hours a day. We supervise the levels electronically. The data are collected and sent straight to our control room in Perth, so we can say what the level is almost to the second, but that is not what the bill is asking for; it asks us to supervise.

If a Pennine or clay-core dam in England is watered too quickly there can be slumps and all sorts of problems in the centre, which can be disastrous, but a concrete dam is designed to allow water levels to go up and down, and that is what we do.

Elaine Murray: So that issue requires clarification from the minister?

Mark Noble: Yes—absolutely.

John Reid: Part of an inspection might be that the supervising engineer wants you to drop the level by a metre or so, so that you can inspect the pitching at the water break line to make sure that there has been no extra erosion from wave action there.

Sandra White (Glasgow) (SNP): Some of my questions, particularly those on costs, have been answered. I would like to hear more from Mr Reid as his submission is excellent and raises several questions, but we will perhaps go through it later.

John Reid: It is maybe a bit too emotive.

Sandra White: No, it is a good submission. It tells us exactly what is happening on the ground, which is important.

I want to ask about site flood plans and inundation maps. Professor Crichton submitted written evidence regarding how the information should be held. We heard from the witnesses from the ICE and Scottish Water what they think about the issue. What is your take on how the information should be held and who should be able to access it? Could some of the information be a security risk? Would the information on inundation maps affect land use planning?

John Reid: It would be good if the inundation maps were readily available to almost anyone with an interest in the area, whether it be the farmer, someone who intends building a house further down the stream or people in a local hamlet. The maps should set out how serious the impact would be if there was a complete and total breach. That is the worst-case scenario—the whole dam disappears and a volume of water comes out. From my point of view, I would want to know how far the water would go before it dissipated and what effect it would have, but the knock-on effect might be that public liability is not available; there might not be any insurance companies prepared to underwrite it.

Professor Crichton: Inundation maps should be publicly available and integrated with general coastal and river flood maps, so that people can see the whole picture on a single flood map that shows the total flood hazard. That should be available on the web, in public libraries and even in local shopping centres.

John Reid: With river monitoring, the areas that are likely to flood are known, but reservoirs have never been put into that scenario.

Mark Noble: We have spent quite a bit of money and done inundation maps for all our major dams. We have maps showing one in 10,000 year floods, or probable maximum floods. That is a Noah’s ark or ice age flood—we will not see it. In certain areas, we have done maps showing one in 150 year floods, which is something that we could expect and might happen. SEPA has published on its website flood plans for rivers, which I think show one in 200 year floods. They are coarse, but very useful, as they give an indication. Such things exist.

When we say that we should publish plans, we need to ask what the plans should show. Should they be for a dam break, a one in 10,000, a one in 150 or a one in 200 year flood? We need to consider where the plan is going and who will use it. Security issues are involved: people might think, “Let’s go and blow up a dam and see what happens.” Are we going to publish that information? There are severe security issues.

Sandra White: So you agree with Scottish Water that the Scottish Government should consider the security risks in that respect?

Mark Noble: I absolutely agree with that.

Sandra White: What information is sufficient to be included on a panel at or near a reservoir? Previous witnesses said that the engineer’s contact details should not be available, basically
because that would invade their privacy. Exactly how much information should be on the panel?

Mark Noble: We are in a good position because we can give the number of our control room, which is staffed 24/7 all year round, but it will be quite difficult for a small reservoir owner.

Sandra White: John Scott touched on my last question, which is about the cost for reservoir managers should they be required to have public liability insurance for each reservoir. Is it even possible for them to have public liability insurance? The Association of British Insurers says that it is not. I would like your take on that.

Professor Crichton: It should be possible. A low-risk reservoir might require only a low limit of indemnity—say £250,000—and a high-risk reservoir might require a high limit of indemnity. There would be numerous benefits to reservoir managers having insurance. In addition to averting blight, which I mentioned, the manager would get an independent risk assessment of the reservoir by risk experts. Insurers have experts in flooding, geology, subsidence, GIS, earth observation and so on. There are other, economic, aspects, too. If every reservoir in Scotland was insured with the insurance industry, the public liability risk would be reinsured in the global reinsurance market, so if there were a series of major catastrophes in any one year, the load would not fall entirely on the Scottish economy; it would be spread over the global economy.

Another benefit is the fact that insurance companies can provide financial incentives to improve the risk—for example, incentives to install permanent scatter interferometric synthetic-aperture radar transponders and incentives to implement engineers’ recommendations—and disincentives not to do things that would increase the risk. That would be at zero cost to the taxpayer; they would not have to stump up any money. At the same time, the insurance industry would probably be working quite closely with SEPA, supporting SEPA with data, assistance, advice and moral support—as we do already on flood risks. In flood liaison advisory groups, we frequently find that it is SEPA and the insurance industry against everyone else. I hope that that provides SEPA with a certain amount of comfort.

There is always a risk of totally unforeseen events, which a panel engineer might not have thought about. Every panel engineer’s report that I have read has made no mention of landslip, avalanche or peatslide. I am sure that some engineers’ reports look into those things, but not the ones that I have seen. There are also other things such as rockfall, aircraft crash and earthquake. I know that the risk of earthquake in the UK is limited, but there was a case of a dam in England collapsing due to earthquake causing liquefaction. There is a range of unforeseen perils that it is pointless to try to foresee in detail, but a liability policy will cover any liability arising from the dam—it has to under our law, which requires strict liability on dam owners. Last but perhaps most important, if somebody is killed or injured in a dam break, you can be sure that they will get compensation even if the dam owner goes bankrupt.

Sandra White: How would it affect you, Mr Reid, as a small reservoir owner, if you had to have public liability insurance? People are saying that it is advantageous.

John Reid: SEPA has been looking at insurance in bonds. Whether that is from the point of view of SEPA underwriting itself or whether SEPA is looking to make that a requirement, I do not know.

12:00

Sandra White: Cost-wise to yourself, what would that be?

John Reid: It goes back to whether reservoirs are to be classified as low, medium or high risk—that would determine the premiums. I initially had difficulty getting public liability insurance. I managed to get it only through NFU Scotland. The trade-off was that it wanted all the buildings insurance as well.

Sandra White: That is another new angle to look at, I suppose.

John Scott: It is another market.

Sandra White: As John Scott says, as a farmer, it is another market. Mr Noble, do you have any comments to make on that?

Mark Noble: I do not think that most managers of reservoirs of 10,000m³, which will suddenly come under regulation, will have insurance.

John Reid: Nor do I.

Mark Noble: So there will be people looking for insurance and possibly not being able to find it. What will happen then? That is not an issue for us.

The Convener: Let us move on. Bill Wilson has a final question.

Bill Wilson: The bill proposes new civil enforcement powers. What does the panel think about the regulatory toolkit?

Mark Noble: In the lead-up to the bill, we have worked well with SEPA and understand SEPA’s aims. I come back to the point that there should be no great issues if we have guidance. As I keep saying, it comes back to the need for a guidance document and knowing where we all stand. The last thing we want to do is challenge what is
reasonable; the only way to challenge that is through dispute, and no ones wins at that.

The Convener: There are no further questions. Thank you for providing the committee with written submissions, and thank you for your oral evidence today. If, as a result of today’s meeting, you think of any further evidence that you would like to give us, please provide it to the clerks as soon as possible.

That concludes the public part of today’s meeting. I thank everyone in the public gallery for their attendance.

12:02

Meeting continued in private until 13:00.
Reservoirs (Scotland) Bill: Stage 1

10:05

The Convener: The next item of business is to take evidence on the Reservoirs (Scotland) Bill. We welcome the panel from which we will hear today. It consists of Roseanna Cunningham, the Minister for Environment and Climate Change; Judith Tracey, head of flooding and reservoir safety policy; Fiona Quinn, reservoir policy manager; Joyce Carr, head of water environment policy; and Stephen Rees, solicitor in the food and environment division. All of the witnesses are from the Scottish Government. The minister has indicated that she wishes to make a short opening statement.

The Minister for Environment and Climate Change (Roseanna Cunningham): Good morning. The Government included in the Flood Risk Management (Scotland) Act 2009 a key requirement to reduce the risk of flooding from all sources in Scotland. Today I have the opportunity to talk about the progress that we are making in an area that does not get much day-to-day attention—reservoir safety.

There are 662 reservoirs in Scotland that are currently regulated, but there are many more smaller reservoirs that have never been subject to mandatory supervision. That means that currently we have little or no information about many reservoirs that hold more than the equivalent of four Olympic-sized swimming pools of water. The fact that we do not have reliable data on reservoirs of between 10,000m$^3$ and 25,000m$^3$ is a good reason in itself for introducing new legislation. Gathering that information on a central database, to be maintained by the Scottish Environment Protection Agency, will enable the risk of flooding from reservoirs to be thoroughly and consistently managed.

Additionally, in recent years there have been incidents that have raised concerns about the potential impact of the failure of smaller reservoirs. One such incident affected the Maich fishery in Renfrewshire. The reservoir in question was not regulated, as it held less than 25,000m$^3$ of water, but in August 2008 there was a near failure of the dam that required the evacuation of residents downstream, the closure of roads and the activation of emergency works to prevent an uncontrolled release of water. There is no doubt but that near miss had the potential to cost lives, never mind to cause extensive damage to property and infrastructure. I consider the Reservoirs (Scotland) Bill a necessary step in our management of flood risk in Scotland that will help to ensure that nothing like the Maich incident happens again.

Although reservoirs are a key component of Scotland’s water supply regime, the bill is not about ensuring the quality of drinking water in Scotland. It is also not about stopping people falling in, as was rather humorously reported in the press. The focus of the bill is on stopping water getting out; that is the legislation’s primary concern.

Many of Scotland’s dams are more than 100 years old, and they are not getting any younger. The previous piece of reservoirs legislation, the Reservoirs Act 1975, was fine for its time, but clearly times have changed. The 1975 act made any reservoir of more than 25,000m$^3$ subject to the same level of inspection and supervision requirements as any other such reservoir. However, we think that that is an arbitrary approach and are looking to move away from it.

The bill is based on the level of risk that each reservoir may pose to people and property. That makes sense for two reasons. First, reservoirs that are situated close to houses and other infrastructure will be more rigorously assessed, providing the highest level of security and protection for nearby residents. Secondly, reservoir managers will be treated fairly and proportionately. It seems only fair that an isolated, remote reservoir deep in the countryside should be subject to fewer mandatory requirements than a reservoir that is situated above a city, for example.

The probability of any reservoir failing is very low, but the bill will reduce that risk even further. Simply put, it is a natural improvement on the current situation. Under the 1975 act, each of the 32 local authorities has responsibility for enforcement in its area. Their work over the years since then has been appreciated, and their widespread agreement on our proposals, when we consulted on the bill, was crucial to our going ahead, but there are significant advantages in having one central enforcement authority for reservoir safety.

SEPA will hold a central register of all reservoirs in Scotland, receive details of all on-going maintenance and construction work and hold a comprehensive database of flood maps; in short, it will take an holistic view. The agency will be able to take decisions in a consistent, open and well-informed way. However, even with that change we will retain aspects of the current system that have proven to be absolutely reliable over the years. Technical advice and supervision from reservoir engineers, who are appointed to specialist panels by ministers in consultation with the Institution of Civil Engineers, has been a central feature of reservoir safety for more than 30 years. The
process is well understood by everyone who is involved in the system. The engineers’ knowledge is second to none and will continue to be invaluable, not only to managers but to SEPA, which will rely on their specialist input to arrive at any technical decision. The engineers are the cornerstone of the system and we are lucky to have them.

The Reservoirs (Scotland) Bill represents a crucial step in our aspirations to manage effectively the risk of flooding throughout Scotland, whatever the source. We work constantly to do that to the very best of our abilities and the bill is as good an example as any of the continuing improvements that we are making across the board.

Peter Peacock (Highlands and Islands) (Lab): You mentioned that the level at which regulation will kick in under the bill is 10,000m³—four Olympic-sized swimming pools. Why is it four, not three or five? What is the logic of that? Is it simply a matter of judgment or is there a technical reason for it?

Roseanna Cunningham: That was the professional advice that we took on the size of reservoir that, if it was breached, could create the kinds of problems with which we are concerned. The Institution of Civil Engineers said that a smaller reservoir would not be likely to cause those problems and that 10,000m³ was the point at which it felt that some risk assessment was necessary.

Peter Peacock: We have picked up from evidence in the past couple of weeks—perhaps it was only last week—that one interpretation of a bit of the bill is that the regulation would cover inlets, pipes and so on into a reservoir. Scottish and Southern Energy, which manages many reservoirs, was concerned about that. There was a plea for that to be dealt with or clarified in guidance. Is it your intention to issue guidance to clarify those matters?

Roseanna Cunningham: We intend to lodge a number of stage 2 amendments—not a great number, as you might imagine, but some—and that is one of the matters that we will consider for stage 2. Do you want me to go into that any further?

Peter Peacock: No, that is fine. It seemed a legitimate concern that could be dealt with quite quickly.

There has also been a hint that there might be an argument for taking reservoirs that have a pretty stable structure, particularly those that have concrete storage dams, and are larger than 10,000m³ but below the current 25,000m³ threshold for regulation out of the regime in the bill because the risk is so low. Is there a case for exempting any such reservoirs? Has that been considered?

Roseanna Cunningham: We are talking about risk base, so the lower the risk, the lower the likely regulation. The bill allows for a power of exclusion if it is considered that the risk is so small as to be negligible.

Peter Peacock: So the implication of the low-risk regime would be that, so light would be the regulatory touch on reservoirs at the scale that I mentioned, there would be no practical effect?

Roseanna Cunningham: We are trying to move to a risk-based approach. An enormous variety of risk assessments will be involved and some reservoirs may be assessed as being so low risk that they do not require much regulation, despite their size.

My officials are busy searching through the bill to find the section for you.

Peter Peacock: Perhaps you can come back on that.

Roseanna Cunningham: It is section 2(3)(b). We have the capacity to assess the risk as being so minimal that we would, in effect, remove a reservoir from regulation, but we have to find the reservoirs to which we need to extend the risk assessment because, currently, reservoirs are all being assessed on their size, not their safety.

10:15

The Convener: Before Peter Peacock asks more questions, I will bring in Bill Wilson.

Bill Wilson (West of Scotland) (SNP): If somebody put up a new development downstream of a reservoir that you had declared minimal risk and more or less excluded from the requirements, would that bring the reservoir back into the requirements? Would it modify the risk in consequent assessments?

Roseanna Cunningham: Yes. On any sensible view that would have to be the case, although you would also want the planning authorities to look at the matter. If a reservoir is very low risk or no risk and there is a significant infrastructure or housing development in the area that would be caught by a breach, it would be reassessed.

Sandra White (Glasgow) (SNP): I am interested in the power of exclusion and how we get to the point at which reservoirs are identified for exclusion. Will the reservoirs be identified for exclusion before they have entered into new licensing arrangements? If reservoir managers, whether it be Scottish Water or individual reservoir managers, pay for a licence under the Reservoirs (Scotland) Bill, will the reservoirs be looked at and
the power of exclusion perhaps exercised before any money is parted with?

Roseanna Cunningham: There is no licence. There is a register but there is not a licence.

Sandra White: Yes, but people are having to pay money to put forward information—

Roseanna Cunningham: Registration is free for the first six months.

Sandra White: Yes, but will it be done within the first six months? I am talking about costs to people. We are talking about licensing all reservoirs over a certain size, but we are now being told that there is a power of exclusion if they are low risk.

Roseanna Cunningham: Can we not use “licensing”? I am sorry, but that is not what is happening.

Sandra White: But we were told by—

Roseanna Cunningham: The correct word is “registering”.

Sandra White: Sorry—registering.

Roseanna Cunningham: It is not quite the same as licensing.

Sandra White: Okay. Perhaps I have taken up the information that I was given about licensing, or registering, wrongly. The point I am trying to get to is this: given that you now have the power of exclusion under section 2, will that power be exercised before reservoirs are registered? Will the reservoir managers concerned be refunded retrospectively if money is paid?

Roseanna Cunningham: If the power of exclusion comes into play—let us not become too obsessed with the power of exclusion, because I do not know how many reservoirs would be excluded in these circumstances; it might be only a tiny handful—reservoir managers will be advised that reservoirs have been formally excluded and that, therefore, they are not required to register. The situation you describe would not come into it, because they would not have to register—because the reservoir would be excluded. They would not be on the register. A risk assessment has to be carried out, though, because, obviously, you cannot make an exclusion without first assessing the risk. Whatever the risk assessment involves, different reservoir managers will have to comply with whatever is then required. If there is no risk, there is no need to comply and there will be no registration if the reservoir is excluded.

We cannot estimate at this stage how many reservoirs might be excluded. My instinctive feeling is that it will be very hard to make a ruling that there is absolutely no risk from any reservoir breach, although a few reservoirs may be in that position. The exclusion that we are talking about is for types of reservoir, which goes back to the way Peter Peacock asked the question in the first place: there are some types of reservoir that one could take the view are so constructed that risk will never be an issue. It is not about a specific reservoir; it is about the kind of reservoir.

Sandra White: I understand.

Roseanna Cunningham: I also ought to say that, even if something is not excluded, if it is low risk little in the way of management is required. The regime is extremely light. The point of what we are doing is not to apply the same regime across the board; it is to apply a proportionate regime, depending on the risk assessment.

John Scott: You said that a risk assessment might change if there were a downstream development subsequent to the initial risk assessment. If the risk assessment changed from low to medium or high in such a situation, and that became a burden on the dam owners, who would be responsible for the increased costs?

Roseanna Cunningham: There is a requirement to consult on development plans that involve developments downstream from reservoirs. I think that some authorities are already publishing main issues reports in relation to development plans. At that early stage, authorities are required to ensure that people who might be expected to comment are made aware of the consultation, which means that the reservoir manager ought to be made aware at an extremely early stage in the process and will be able to comment. Further, before anything happens, the Scottish Environment Protection Agency must be consulted.

Forgive me: my officials are passing me advice on who would be liable for the increased costs that you are asking about.

In the circumstance you describe, I think we expect that there would be a discussion with the developer about the developer taking on the liability for increased costs, because there would be a great degree of material change. However, that would be part of an early negotiation in the planning process. The discussion would not be entered into after the houses had been built or the plant had been installed. Developers are already expected to pick up costs for a variety of things, as you know. In the circumstance you describe, developers would be in the same position as they are at present with regard to various negotiations.

Peter Peacock: Perhaps one of the first things you could do in relation to your new climate change responsibilities is set a quota for the number of Post-it notes officials may use in evidence sessions, to help us to meet our recycling targets. Leaving that to one side, I would
have thought that to help to meet our climate change targets you will promote small hydro schemes. Is there any conflict between encouraging more small-scale hydro and being caught up in new regulation, potentially, by this regime?

Roseanna Cunningham: I am sorry, I do not understand why you—

Peter Peacock: Under climate change legislation, we are encouraging hydro—

Roseanna Cunningham: Yes. I do not see why there would be a conflict.

Peter Peacock: Are many of those schemes likely to fall into the new regime of reservoir regulation?

Roseanna Cunningham: I suppose it depends on how small you think small-scale is. Some of the extremely small hydro schemes that I have seen could not possibly be included under the new regime, but others might be. If they are big enough to come into the scheme, they will do so.

Joyce Carr (Scottish Government Rural and Environment Directorate): The majority of small-scale hydros would not be looking at reservoirs of this nature, where there are no run-of-river schemes or existing small weirs. They are far below the threshold that we are talking about.

Peter Peacock: So encouragement of such electricity generation is likely to be done below the threshold; above the threshold there will simply be a risk-based approach?

Joyce Carr: Yes.

Roseanna Cunningham: They would simply be in the same position; the process will be risk based. I have not seen many small hydro schemes in locations where this would become a huge issue. If you are thinking of any in particular, you can say so.

Peter Peacock: I am simply trying to anticipate a policy point. That is fine.

You touched on the six-month free registration period in your response to questions from Sandra White. Will new reservoirs get a six-month grace period or will the charge apply from the date on which they are registered?

Roseanna Cunningham: The six months applies to everybody. Obviously, we expect brand-new reservoirs to be built in such a way that they are at low or zero risk. If a reservoir is over a certain size, people will know that it will be assessed for risk. The same six months will apply.

John Scott: I declare an interest as a past student member of the Institution of Civil Engineers.

Peter Peacock: He is an expert on Mohr’s circles.

John Scott: I am not an expert.

Should SEPA have to rely on input from the ICE to fulfil its duties, or should it employ relevantly qualified engineers? I see potential conflict in this area. SEPA says that it will be an “intelligent customer”—that was the phraseology it used last week—by buying in expert advice, but those engineers may also be panel engineers. How do you reconcile that? Should SEPA not have its own in-house expertise?

Roseanna Cunningham: Our view from the start has been that we do not want to replicate what already exists. That is why we have gone down the road of using the existing panel and not setting up a separate or alternative structure. There are lots of different ways in which to do this, but it seemed to us most sensible for SEPA’s first recourse to be to the existing pool of expertise. I suspect that it would end up employing from that pool if it were to employ its own engineers. I am not sure that SEPA would be in a different position or that it would get advice from any different source by employing engineers; the engineers that it would have to employ would be likely to be on the panel.

John Scott: You do not see any possibility of conflict of interest? Depending on the same people to fulfil both functions seems an inherent weakness in a regulatory body. Perhaps I am being naive.

Roseanna Cunningham: When it takes advice, SEPA will go to the experts. It will always be possible, at some point on some issue, for SEPA to red flag a conflict if it feels that that is necessary. At the moment, we do not expect there to be a problem. The regime that is in place is pretty long standing and well tested. There has never been a challenge in 35 years of the current system. Unless you have a concrete situation in mind where you can see clearly that a conflict might extraordinarily arise, after 35 years of no conflict, I have to accept that there will continue not to be that conflict.

John Scott: We are talking about what-if scenarios. We are proposing regulation where there was none of a similar sort. We are moving the regulatory burden from local authorities to SEPA. In asking SEPA to be the regulatory body, I see an inherent conflict in asking it to take advice wearing two different hats. Perhaps I am being naive.

10:30

Roseanna Cunningham: A local authority is in exactly the same position, and there has been no
conflict over the past 35 years. What-if scenarios can be helpful, but they are most helpful when one can suggest a concrete scenario that is likely to occur. I cannot think of such a scenario offhand and nobody has suggested one.

The Convener: We will come on to that; the disputes are resolved anyway.

John Scott: Thank you—I will move on. The bill considers environment, cultural heritage and key infrastructure to be as important as human safety. Does the minister intend to offer guidance on a hierarchy of those factors for the purpose of risk designation?

Roseanna Cunningham: Yes, there will be guidance.

John Scott: Will there be a hierarchy of risk?

Roseanna Cunningham: Well, I think that if there was a real risk to life, it would not take a genius to work out what the hierarchy would be.

John Scott: Thank you for the explanatory—albeit slightly patronising—answer. At present, the bill puts all those factors on an equal footing, but you are telling me that it will not take a genius to establish what the hierarchy is, so they will not necessarily be equal.

Roseanna Cunningham: I do not want to be patronising, but I am pretty certain that any guidance is unlikely to say that if there is a choice between a ruin and 100 human lives, we will go with the ruin and not the human lives. I would find that extraordinary, and I cannot envisage that the guidance would be drafted along those lines. I may be wrong, but my guess is that I am not.

John Scott: I think that we have both made our points.

What is your view on the argument by the Institution of Civil Engineers that the consequences of failure should be the most important—indeed, almost the only—way of assessing risk?

Roseanna Cunningham: The consequences of failure being the result if a dam is breached?

John Scott: Yes. The ICE, as I am sure you are well aware from its evidence, has said that that should be the overriding priority in risk assessment, to the exclusion of almost everything else.

Roseanna Cunningham: We have to start on the basis that the probability of flooding from any reservoir is really low. When we are talking about the risk, we are not working on the basis of imminent or near-imminent breaches at any reservoirs. We have been extraordinarily lucky—although I use the word “lucky” advisedly, as it is testament to the engineers that in Scotland we have not had much in the way of problems.

The risk to which the bill refers is probably wider than what the ICE is talking about, but that does not mean that the ICE’s argument would not be compelling. In any event, as we discussed in relation to the guidance, the biggest risk that we face is the risk to human life, and that will always be the case.

I suppose that that is what the ICE is thinking about, but probabilities are useful, too. It is not a question of having only one set of outcomes that we consider to be serious, and other sets of outcomes in which we have no interest. I am sure that that is not what the ICE meant, because it will be concerned about all potential outcomes. We are considering the question of probability, which includes probability of outcome not just probability of breach.

John Scott: It is the probability of breach that the ICE has said it finds so difficult to assess, which has led it to the viewpoint that only the consequences of failure should be taken into account. If you agree with that, should SEPA seek to quantify the apparent differences in probability of failure? From the evidence that we have heard, some types of structure are more likely to fail than others—for example, an embankment dam is statistically more likely to fail than a concrete dam. Do you intend to establish a hierarchy for the probability of failure, depending on the type of dam?

Roseanna Cunningham: We have already discussed the possibility that some categories of dam might be classified as capable of being excluded completely. Therefore, in a sense, some of that is already built into what we are proposing. An assessment will be made and, as was indicated earlier, some categories of dam may well be assessed as being such a non-risk that they can be completely excluded. Therefore, we start on that basis. There is then a risk assessment.

We are talking about a variable regime for regulation, and the risk assessment will have to assign a category of risk to sets of reservoirs at least in some broad fashion, even if the categories are as crude as high, medium, low and reservoirs that would be excluded. Obviously, there will be some categorisation of risk. It will not simply be said, “Well, there’s a risk there. Whatever.” In a sense, the bill would be pointless on that basis. We have to think about graduated risk. In the bill, risk is a combination of consequence and likelihood; there is not a simple tick-box scenario. There will have to be a proper professional assessment, but that assessment will take into account not only consequence but likelihood. Likelihood may be slightly harder to assess in the
circumstances, but that is why we have professionals to make such assessments.

John Scott: Indeed but, as I understand it, the professional advice from the Institution of Civil Engineers is that only the consequences of failure should be assessed, because it is so difficult to assess the risk that structures will fail.

Roseanna Cunningham: Probability of failure may be difficult to assess, but that does not mean that we should not consider and assess that probability. Basically, the more information we have, the better we are able to assess the risk. I would be a little worried if professional engineers told me that it was almost impossible to assess in advance whether a reservoir was a high risk. That would be a considerable concern. I have thought that professional engineers might be able to give a better assessment of that. I do not understand what their work would involve if they did not look at structures and assess them. After all, the reservoirs have to be assessed at some point, and proper management must involve assessing whether they need to be repaired or reinforced. I presume that that is an on-going process, which involves engineers saying, “Yes, there’s a weakness in the structure there now, and it will have to be reinforced.”

John Scott: I do not wish to labour the point, but reservoirs are inert structures, so assessing the likelihood of their failure is different from assessing the maintenance of an on-going situation. Structural failure concerns us all. It is impossibly difficult to assess embankment dams or dams with a puddled clay core in particular because of their construction. That is the point that the Institution of Civil Engineers has made. I am not trying to catch you out.

Roseanna Cunningham: I am trying to be diplomatic about professionalism and the capacity of professionals to make considered judgments. I am certain that the institution does not mean to give the impression that professional engineers are not capable of making a considered assessment of the safety or otherwise of reservoirs. I think that people would find it very alarming if they thought that that was what was being said, whether the bill was in place or not. I am sure that the institution does not intend to convey that impression.

John Scott: Nor do I intend to convey that impression. The issue is merely the difficulty of assessing the risk of failure. I will find the piece in a moment wherein the institution said that it would prefer to assess the risk of the consequence of failure rather than anything else.

The Convener: Can we come back to that?

John Scott: We can discuss it later.

Liam McArthur (Orkney) (LD): We will move on to the establishment of a panel or panels of specialist reservoir engineers, in particular the appointment of construction engineers to operate a system of inspection, reporting and supervision. We have had evidence from the Law Society of Scotland and the ICE expressing concern that the bill appears to prohibit a construction engineer who has previously been involved in work on a structure from being involved in subsequent alterations, such as the enlargement or discontinuance of a dam or similar structure. The point was well made to us that the expertise that they could bring to bear on such assessments is, perhaps rather arbitrarily, being lost. SEPA appears to sympathise with that concern. Have you had a chance to reflect on the issue?

Roseanna Cunningham: That was unintentional. We accept and understand the concerns that have been raised and we will deal with the issue at stage 2.

Liam McArthur: Thank you. Another point that was raised was about the demography of engineers. The institution noted that, at present, there are 128 supervising engineers in the UK, of whom 28 are based in Scotland, which is perhaps a higher per capita showing than we might have hoped for. Nevertheless, given the amount of work that the bill is likely to entail, the number of engineers available is not necessarily adequate for the job in hand. What consideration has the Government given to the need to actively encourage more engineers to come through the system to take up the roles that are being created?

Roseanna Cunningham: Obviously, that is not part of the bill.

Liam McArthur: But it is a consequence.

Roseanna Cunningham: I understand that. It is arguably the same kind of discussion that we had about hydrologists for the Flood Risk Management (Scotland) Bill. At the moment, we are not convinced that we can say that there are 28 supervising engineers for Scotland and 100 for the rest of the United Kingdom, because the panel sits for the whole UK. The expertise of any of those engineers can be called on.

Liam McArthur: Absolutely. This is not specifically a problem from a Scottish perspective. As I suggested, the fact that we have 28 supervising engineers appears to put us in a better position than other parts of the UK. Nevertheless, the overall number and the apparent trend suggest that, if there is not a problem just now, there may well be one in the future.
10:45

Roseanna Cunningham: That is part of a bigger issue to do with getting young people to think about engineering as a career. Maybe, given the numbers that you indicate, Scotland has done better in the past in that regard, but the issues are UK-wide. We will talk to the ICE and the Department for Environment, Food and Rural Affairs about the UK situation and whether we can do anything about it. At the moment, we do not have in mind the kind of scheme that we had with the hydrologists, but that is not to say that one might not come to a similar view in the future, depending on the prognosis for numbers coming through.

I confess that I do not know what the current throughput of relevant qualified engineers is, but we can try to find out whether it is possible to establish the likely throughput and, indeed, the number of engineers who might successfully apply for the panel. After all, decisions about those who get on to the panel are part and parcel of decisions about those who get through to the final 128. We can certainly consider the matter, but we have not dealt with it in the bill because the existing system seems to work. We are not yet clear about what stress the legislation will put on the system, or what impact it will have, because we are not getting that information back. That is why we need to have discussions with DEFRA and the ICE.

Elaine Murray (Dumfries) (Lab): According to Scottish and Southern Energy and the ICE, chapter 6 will require a single inspecting engineer to be appointed for a reservoir permanently rather than just for the duration of the inspection. Is that interpretation correct?

Roseanna Cunningham: That is another provision that we propose to amend at stage 2. It is just one of those issues that people overlook in the early stages.

It might be helpful if I indicate at this stage what our stage 2 proposals are. Would that short-circuit some of the questioning? At the moment, we are looking at—[Interruption.] Sorry—

The Convener: It might be better if you provided those details in writing afterwards.

Roseanna Cunningham: I was just thinking about the questions that are being asked, some of which relate to—

The Convener: Yes, but they need to go in the Official Report as well.

Roseanna Cunningham: Do they? I do not think that every stage 2 amendment has to go in the Official Report—does it? Surely that would preclude us from bringing forward anything we thought about between now and then.

The Convener: I mean the questions that we are asking to get things in the Official Report.

Carry on, Elaine.

Elaine Murray: I will push ahead.

According to Scottish and Southern Energy, section 46 requires compliance with any direction in an inspection report. Of course, this might be a matter of interpretation, but it says that the provision will cover routine maintenance as well as safety issues.

Roseanna Cunningham: That is another one for stage 2.

Elaine Murray: I thought that it might be.

SSE was also a little bit worried that the supervising engineer might be required to supervise any proposed draw-down of water levels.

Roseanna Cunningham: Stage 2.

Elaine Murray: With regard to chapter 7, there was some disagreement about the level of information that should be contained in flood plans and, indeed, whether such plans should be publicly available. What are you thinking of including in future regulation on the preparation of detailed flood plans?

Roseanna Cunningham: I think that that matter is reserved because of national security issues.

Elaine Murray: Right.

Roseanna Cunningham: The difficulty is that there is potentially sensitive information to be considered. We think that the Westminster equivalent of a legislative consent motion will be required for the legislation that we are putting through, and we are discussing the matter. Most of the information in the register will be publicly available, but advice would need to be taken about inundation maps and certain other data, if it was considered to be a matter of national security. It is the same issue for England and Wales—it is all caught up. We have a principled agreement for a section 104 order, as it is known, which is the other side of the LCM coin. That matter has already been considered and dealt with, in a sense. It means, in any case, that not all the information will be publicly available.

Elaine Murray: Concern was raised that the proposals seemed to imply that the details of the supervising engineer should be in the public domain. Some witnesses suggested that that could—

Roseanna Cunningham: That is another issue for stage 2.

The Convener: Chapter 9 deals with new civil enforcement powers for SEPA. In oral evidence,
Scottish Water expressed concern that the bill allows SEPA to take enforcement action on every recommendation in an engineer’s report, not just on safety recommendations, as is currently the case under the 1975 act. During our discussions, it was not immediately clear where the line between operational or administrative offences and safety breaches is. The example was given of not cutting the grass, which is to do with inspecting the safety of the dam, and whether that is an operational offence or a safety breach. Is the proposed regulatory toolkit proportionate with the potential offences? In light of the penalties that could be imposed, how can we ensure that a proportionate and even-handed approach is taken to enforcement by SEPA, particularly for operational or administrative offences?

Roseanna Cunningham: First, we need to set what is proposed against what we currently have. Currently, in the event of non-compliance, local authorities have a choice between sending a stiffly worded letter and going to a criminal prosecution. There is nothing between those two extremes. The bill fills that gap. With the bill, we are going from a situation where people can either do nothing much at all or pursue a criminal prosecution, to having provision for a more proportionate response.

The grass-cutting issue is not as trivial as it sounds. Engineers have to be able to see in order to make their assessments.

The Convener: I was not suggesting that it was trivial—grass cutting is important.

Roseanna Cunningham: Yes.

SEPA will be able to choose the most appropriate response in any given situation. Under the bill, there will be a much better range of potential ways of tackling situations than is the case now. The current set-up shows the weakness of the system.

Poor maintenance can indeed turn into a safety issue. However, I am not sure why Scottish Water should be concerned. Of all managers, it should be the most likely one to have good maintenance regimes. We hope to ensure that some of the currently less well-maintained reservoirs are brought up to a better maintenance standard. Reservoir safety is tied to good maintenance, so we cannot exclude maintenance issues.

The Convener: If disputes arise under the bill, how will they be examined, and who will they be referred to?

Roseanna Cunningham: SEPA is well placed to do that—it does criminal cases at the moment. We do not think that SEPA cannot do it. The Environment Agency is already able to use civil sanctions. SEPA is best placed to make a judgment call about what is appropriate, and we are not asking it to do anything that its sister agency down south is not already capable of doing. There can be an appeal against decisions, and there will be some clarification of the appeal process at stage 2.

The Convener: John Scott will ask about funding and costs.

John Scott: Before I do that, I want briefly to return to chapter 3, on risk, to try to express the concerns more elegantly. In essence, this is a request to you to reconsider the drafting of section 21(3) with regard to the point made by the Institution of Civil Engineers in both its written submission and the oral evidence that was given to the committee by Alex Macdonald. It stated:

“Despite studies having been undertaken in the UK into quantitative risk assessment for reservoirs, reliable and accepted tools are not yet available to the reservoir profession to determine the probability of failure of any structure. In view of this we reaffirm the strong view we expressed at consultation stage that only “Consequence” is important and that the Risk designation should be related to that and that alone.”

That is the point that I was trying to make. Will you consider redrafting section 21(3) in conjunction with advice from the institution?

Roseanna Cunningham: We can come back and have a look at that, but I express some concern if the professional advice is that the engineers cannot give any assessment. I see that you are reading that evidence, and it is something that we will want to discuss directly with the institution. People will be surprised at that evidence—frankly, I am.

John Scott: I was too, I must say.

Roseanna Cunningham: There needs to be a discussion of what lies behind it.

John Scott: I move on to the financial aspects and costs of the bill. I will start with Scottish Water’s position and the fact that it is not funded under the current regime to do anything under the bill before 2015. What further consideration will you give to Scottish Water’s funding for redundant reservoirs that are retained specifically for flood management?

Roseanna Cunningham: As you know, matters of funding for Scottish Water are not in my gift. All budget decisions are taken on the basis of an assessment of the needs and requirements of each department and agency, and that will be no different for Scottish Water. I cannot sit here and say that there will be X amount of funding specifically in relation to the bill; that is not how the funding works.

I should say that new reservoirs will not be brought under the bill until 2015, which will allow a period of time to adapt at least in a certain sense. I
do not anticipate that Scottish Water’s management regime of its reservoirs—which I presume is what it is concerned about—is likely to be a matter of the greatest concern. I expect Scottish Water’s management regime to be what it already does as a matter of course.

John Scott: In evidence to us, Scottish Water has said that it has not been financed for the requirements of the bill in the regulatory period between 2010 and 2014 and that it is currently financed only by customer charges. Again, we can provide the evidence to you, but this is an issue that perhaps needs to be looked at more closely.

Roseanna Cunningham: We can discuss with Scottish Water what it means by that. It sounds to me as if it is saying, “We are not bothering now and, if we are required to bother by the bill, that will cost us money.” I do not believe that it is not bothering now—that cannot be its starting position. If it is talking about building new reservoirs between now and whenever, the bill allows for those not to be brought into regulation under the bill until 2015. Any new reservoirs that Scottish Water is currently building will not be included until then. However, it must be managing, maintaining and looking after its reservoirs right now. It is not clear to me what it believes the huge difference will be in relation to well-managed reservoirs.

11:00

John Scott: Your financial memorandum predicts:

“the total implementation costs for Scottish Water up until 2016 will be in the region of £1.4 million”.

However, Scottish Water predicts that the total implementation costs—I presume for that period—will be £2.7 million. The point that I am making is the point that Scottish Water is making to us—that it has not been financed for that. That needs to be addressed.

There seems to be a disparity between the additional cost in the financial memorandum and Scottish Water’s prediction of what it is likely to cost the company. In fact, there are three different views. There is Scottish Water’s view that it will cost £2.7 million, the financial memorandum’s statement that it will cost £1.4 million and your view that it is not a problem. Those three points of view need to be reconciled.

Roseanna Cunningham: As you perfectly well know, I cannot sit here and promise funding to Scottish Water, because funding is considered through the budget process. Scottish Water is not funded through my department. We will go away and have a discussion with Scottish Water about what lies behind the issue, but the requirements for more money are many and various and we have to take a view on whether we consider providing more money to be the appropriate thing to do. Our view is that Scottish Water can manage this.

John Scott: All I am saying is that, to put the matter at its simplest, your financial memorandum predicts that the total implementation costs until 2016 will be £1.4 million—

Roseanna Cunningham: Yes, but that is over six years.

John Scott: So it is not a problem, then.

Roseanna Cunningham: I am not saying that it is not a problem, but we are talking about a cost over six years. The cheque will not be written tomorrow. The cost can be managed into budgets over that period of time.

John Scott: Okay. Would you like to give us more information on the charging regime under the bill, including registration costs, annual subsistence charges, flood plan preparation costs, and annual engineer inspection and supervision costs? When will those apply, and do you believe that private businesses should incur multiple costs for wider public benefit?

Roseanna Cunningham: You will need to outline each of those again. However, I do not think that we have information on the specific charges.

John Scott: When will they apply? What will they be? Is it reasonable that private businesses should incur multiple costs for public benefit?

Roseanna Cunningham: I remind you that the outcome of the bill will be that many private businesses will have reduced costs, because many reservoirs that are currently risk assessed will be taken out of the system—the ones that represent reduced risks. We are not talking simply about adding costs. We are talking about many reservoir owners and managers finding that their management regime can be reduced, so a lot of their costs will reduce.

I can give you a likely classification and numbers if that would help, but I do not have the precise costs as they have not been developed yet. I will give you the rough figures for the reservoir categories, but I stress that this is rough. I do not want the figures to be taken as absolute.

We have four categories. We think that there are currently 302 in category A, which means that lives in a community would be endangered. Endangering individual lives or causing extensive damage is category B and there are 173 reservoirs in that category. Category C is negligible risk to life and limited damage, and there are 128 in that category. In category D, no loss is foreseen and minimal damage is predicted, and there are 27 reservoirs in that category.
Categories C and D are therefore either medium or low risk.

Of the 662 currently regulated reservoirs, 205 are likely to be subject to a lower level of regulation than they are at present. I ask you to balance that against the way in which you have framed your question. On our broad assessment, the likelihood is that something like one third of the currently regulated reservoirs will be at medium or very low risk and will therefore incur fewer costs.

John Scott: Of course, it would be churlish of me not to welcome that predicted improvement in the financial burden of maintaining medium and low-risk reservoirs. Nonetheless, by my reckoning, that leaves 475 reservoirs that are likely to face a significantly greater cost burden as a result of the bill. There will therefore be winners and losers.

Roseanna Cunningham: Yes, there might well be winners and losers, but we have to look at the overall situation.

John Scott: I am trying to establish the additional costs that the losers are likely to have to bear.

Roseanna Cunningham: The cost regime will be developed, and SEPA will consult on it. It is not reasonable to expect us to be able to give you precise costs. We think that the cost might be somewhere between £100 and £300, but SEPA will consult on developing that cost regime.

John Scott: A particular issue that has been raised with us is the likelihood of reservoirs being decommissioned as a result of the increased burden of costs. One figure that was given to us was £300,000 for the decommissioning and drawing down of a reservoir. Self-evidently, individual owners of private reservoirs might not have £300,000 for that, so they could become insolvent as a result of not being able to meet the requirements that the bill will impose on them and trying to decommission. Have you any pointers on that conundrum? You previously asked for examples of problems. How should that be dealt with?

Roseanna Cunningham: Decommissioning is not a quick fix, and it would be a huge mistake to see it as such. Apart from anything else, the owner would need a licence to carry out that work. They cannot just pull a plug out and let it go. The work that would be required to decommission a reservoir would require a controlled activities regulations licence; I suspect many members are already familiar with those from different areas. That requirement would involve looking at a variety of issues, including other concerns about decommissioning, such as the environmental impact.

Ultimately, decommissioning will always be a decision for the private owner. We will not be in the position of making that decision for owners. However, owners would have to assess the cost of decommissioning against the likely savings.

John Scott: Perhaps I was not clear about what I meant. In a worst-case scenario, if an owner could not afford to maintain a reservoir, because of the cost of the new legislative burden—we established that there will be 475 losers as a result of the bill—or to draw down the reservoir, the only option would be for him to become bankrupt. There would be a problem. Who would pick up the tab? How would the issue be dealt with?

Roseanna Cunningham: Home owners are in that position all the time—

John Scott: Home owners?

Roseanna Cunningham: Home owners. Any owner of property has to make decisions when things change. People are often faced with things that they cannot afford.

Bankruptcy is in no-one’s best interests. We could consider including in the bill provision for financial assistance in extreme circumstances. However, such an approach would put a cost on the public purse, so careful consideration would have to be given to whether it was the right way to go. We can consider the matter.

John Scott: I would have thought that you would already have considered the implications of such a scenario for a private owner, but I am grateful to you for putting forward the view that emergency help might be provided.

Roseanna Cunningham: However, if people own reservoirs that they cannot afford to maintain, there is a conundrum, which is not just about the possibility of their wanting to decommission and facing bankruptcy. There is a problem to do with the maintenance of reservoirs.

John Scott: The proposed approach in the bill would put people into insololvency. That is the conundrum.

Liam McArthur: By way of an example of what Mr Scott is talking about, at last week’s meeting the committee heard from a gentleman who came into the ownership of reservoirs almost against his wishes. I think that a threat to his fishing rights resulted in his having to purchase the reservoirs.

I suppose that the committee is faced with a more philosophical proposition. Given the implications of the bill in relation to the costs of not just registration but insurance, private ownership of reservoirs might not be feasible for many people who currently possess them. Unlike a person’s home, a reservoir is not a desirable asset. The issue is whether the state will require to intervene
to take reservoirs back into public ownership—I am not expressing a view on that, but the example that we heard seemed to throw that up as a credible scenario. Some private reservoir owners might be keen on or prepared to consider gifting their reservoir to the state, because the consequences of retaining ownership would be too onerous.

11:15

Roseanna Cunningham: Perhaps a discussion can be had on whether reservoirs ideally should be placed in private hands any more.

I remind everyone that the bill is about public safety. Anyone who owns a reservoir that is not safe and causes a problem will, by virtue of their ownership, likely face costs that are higher than the cost of maintenance. It is not as simple as saying, “Private owners can’t necessarily afford this,” because in some cases you might have to say to private owners, “Well, you can’t afford not to, either.” I understand your bigger philosophical question. The bill would be very different if it was the compulsory acquisition of reservoirs bill, but it is not.

We would need to consider whether there could be a mechanism for assuming some kind of public control of reservoirs from private owners who no longer wished to be responsible for them once the risk assessments were done, but let us not rush to the conclusion that—

Liam McArthur: To be fair to the gentleman we heard from last week, he was seized of the importance of public safety. Anyone who owns a reservoir that is not safe and causes a problem will, by virtue of their ownership, likely face costs that are higher than the cost of maintenance. It is not as simple as saying, “Private owners can’t necessarily afford this,” because in some cases you might have to say to private owners, “Well, you can’t afford not to, either.” I understand your bigger philosophical question. The bill would be very different if it was the compulsory acquisition of reservoirs bill, but it is not.

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Roseanna Cunningham: I assume that his reservoir is big enough to fall within the scope of the bill. It might be assessed as being of such a low risk that it is not an issue anyway. It might be given a risk assessment that does not create huge problems for him. I do not know how big his reservoir is. My official advises me that it is already assessed as being low risk, he might end up better off under the bill. We do not know that because we have not done a pre-emptive risk assessment, but let us not forget that it is just as likely that some private owners will find their burdens reduced. Since that gentleman’s reservoir is big enough to be under regulation already, I assume that he is already bearing a cost burden.

Liam McArthur: What you say might be a welcome Christmas present for him, and I am sure that he is watching today’s proceedings with interest. His evidence threw up a potential issue that the committee found intriguing, but I am not sure that we necessarily have a way through the problem.

Roseanna Cunningham: I understand that. We can look at whether there would be a way to deal with extreme cases if the bill would cause enormous problems. However, because the reservoir in your example is already regulated, which I therefore presume already costs the owner, there is at least a possibility—although I cannot say for sure without knowing the reservoir—that the bill will introduce a system that improves his situation, rather than making it worse.

People must not assume that the situation will be made worse, because many reservoirs that are currently assessed as being in a particular risk category will be assessed as being lower risk. Wherever that gentleman’s reservoir is, because of its size it will currently be assessed as posing the same risk as one that sits above Glasgow, which patently is silly—I assume that it is not one of those.

The Convener: We need to deal with that matter in our stage 1 report. Sandra, do you have something to add?

Sandra White: It is similar to the points that Liam McArthur and John Scott raised, so I will leave it at that, but I am pleased that the minister is looking at costs.

John Scott: I have a final question on the cost to SEPA. As you are aware, the draft budget suggests a reduction of £4.9 million in SEPA’s budget this year. The bill’s implementation will cost SEPA a further £4.12 million. Given those figures, are you confident that SEPA will be adequately resourced to carry out its functions under the bill?

Roseanna Cunningham: Yes. I am in constant discussion with SEPA about what it is doing and how it is managing the current situation. We have every confidence that SEPA can do it.

John Scott: And SEPA is confident too.

Bill Wilson: Assuming that engineers can identify risk as against consequence, is the designation of a reservoir as high risk liable to affect nearby planning developments?

Roseanna Cunningham: I anticipate that the designation of a reservoir as high risk will give planners pause for thought. It would be extraordinary if planners did not take cognisance of that when making their decisions. We are talking to planning officials about the consequences of the register for their work, but I anticipate that planning authorities will need to take the issue into consideration. SEPA is a
statutory consultee, so its views will input into the process.

John Scott: What timescale do you propose for bringing forward further consultation and subordinate legislation? If the bill is passed, which regulations will be consulted on?

Roseanna Cunningham: There is not yet a programme timetable, as stage 3 is scheduled for the day on which Parliament rises.

John Scott: I see. Are you afraid that the royal wedding will influence the outcome of the bill?

Roseanna Cunningham: No, we are just not yet at the point of having a timetable for issuing guidance and subordinate legislation. Most of what we are talking about is directed towards 2015, so it is quite long term. We have quite a period of time in which to do anything that comes in. We are not expecting implementation to require to be rushed. As soon as we have a rough sense of the timescale, we will let the committee know.

John Scott: We will be the first to know.

Roseanna Cunningham: Given where we are in the four-year cycle, advising the membership of this committee would probably not be of enormous interest, as there may be new committee personnel after the election.

John Scott: As you would expect, we want to leave things shipshape and tidy for the next committee by providing legacy reports and so on, so that it knows what to expect.

Roseanna Cunningham: It can expect statutory instruments and draft guidance.

John Scott: Is there likely to be single or multiple guidance?

Roseanna Cunningham: I cannot say at this stage what the extent of the guidance will be.

Judith Tracey (Scottish Government Rural and Environment Directorate): You will have to excuse me, as I am losing my voice slightly. We will co-ordinate the introduction of the statutory instruments and guidance under the bill with that of the statutory instruments and guidance under the Flood Risk Management (Scotland) Act 2009, to ensure that whatever we do under the bill does not cause difficulties with the 2009 act. SEPA is doing a lot of work on both pieces of legislation, so we will co-ordinate that work closely. We will look at the implementation timetable for the 2009 act and schedule implementation of the bill accordingly. There will be more than one statutory instrument, but we will do our best to provide a comprehensive guidance document, rather than lots of bits of guidance.

Sandra White: Part 2 allows ministers to make regulations in connection with the creation of offences under the Water Environment and Water Services (Scotland) Act 2003. Those provisions were consulted on as part of the WEWS bill in 2001 but were omitted from the 2003 act. Minister, you were not in government at the time. Will there be further consultation on the proposed regulations? What is the timescale for bringing them forward?

Roseanna Cunningham: Next autumn.

Sandra White: Okay. Thank you.

The Convener: I think that we have exhausted our questions, so I thank the witnesses for their attendance and ask them to forward any information that they agreed to provide to the clerks as soon as they can.

I suspend the meeting to allow for a changeover of witnesses and a comfort break.

11:25

Meeting suspended.
The ABI is the voice of the UK’s insurance, investment and long-term savings industry. It has over 300 members, which together account for around 90% of premiums in the UK domestic market. The UK insurance industry is the third largest in the world and the largest in Europe. Employing more than 300,000 people in the UK alone, it is an important contributor to the UK economy and manages investments of £1.5 trillion, over 20% of the UK’s total net worth.

Flood risk management is an important issue for Scottish Government, local authorities, the Scottish Environment Protection Agency, householders and businesses. The ABI supports the Flood Risk Management (Scotland) Act 2009. The Reservoirs (Scotland) Bill will play a part in managing the upstream flood risk from smaller reservoirs and is to be welcomed.

The key policy objective of the Bill is to create a legal and administrative framework for the construction and management of controlled reservoirs in a manner that reduces the risk of an uncontrolled release of water from reservoirs and the consequences of any subsequent flooding.

The ABI believes that an appropriate framework for managing the risk of flooding from reservoirs is important and therefore supports this objective.

We agree that an arbitrary threshold of 25,000m³ above which reservoirs would be regulated does not reflect the potential for smaller reservoirs to pose risks to the public and to property. We therefore support the switch to a 10,000m³ threshold along with the provision that Ministers may take the decision to regulate even smaller reservoirs if the risk is deemed significant enough.

Some parties have suggested previously that reservoir owners should be subject to compulsory liability insurance. We believe that this would be unhelpful for the following reasons:

1. Difficulty of enforcement of any compulsory insurance;
2. It would require a mechanism for paying claims for the uninsured;
3. It would require a mechanism for enabling owners to take out insurance in situations where insurers had no market-driven desire to insure them.

We would be happy to provide any further information that the Committee might find useful.

Association of British Insurers
25 November 2010
Thank you for the opportunity to submit our views on the general principles of the Reservoirs (Scotland) Bill to be considered by the Rural Affairs and Environment Committee.

Background
BW is currently a cross-border public corporation sponsored in Scotland by the Scottish Government, delivering a valuable contribution to their strategic objectives – smarter, wealthier & fairer, healthier, safer & stronger and greener - essential to enhancing the quality of life in Scotland. In England & Wales BW is sponsored by the Department for Environment, Food and Rural Affairs.

We manage and care for over 2000 miles (3200 km) of canals and navigable natural water bodies (rivers and lochs) in Britain as a whole, of which 137.5 miles (220 km) are in Scotland. British Waterways Scotland (BWS) is responsible for five canals in Scotland: the Forth & Clyde, Union and Monkland Canals in the Lowlands, the Crinan Canal in Argyll, and the Caledonian Canal in the Highlands. BW is also responsible for 93 'large raised reservoirs' (as per the Reservoir Act 1975 definition) 21 of which are in Scotland.

General Commentary on the Bill
We support the replacement of the Reservoirs Act 1975 rather than a piecemeal approach to amending the 1975 Act. As the owner of a significant number of reservoirs UK wide, we are pleased to note that the Bill broadly reflects the legislative changes for England and Wales set out in the Flood & Water Management Act 2010. We consider such parity to be of great importance and will avoid the confusion which would result from two different approaches.

Specific Comments:

1. Controlled Reservoirs
   We have no specific comments, all our present reservoirs will remain registered.

2. Controlled Reservoirs; Supplementary
   2(1) We note that the definition of a reservoir is wider than in the 1975 Act. Feeders such as the Colzium Cut near Kilsyth will be defined as part of the reservoir. Whilst such infrastructure does present a flooding risk, it is of a lesser order than that presented by a reservoir and is adequately managed by British Waterways' asset management procedures. Whilst we would expect Inspecting Engineers to examine the means of diverting water to reservoirs, as they do at present, in order to understand the inflows into the reservoir, there is no benefit in asking Inspecting Engineers to consider the consequences of extreme events on feeders and catchwater systems.
2(2) We are pleased to note that canals are excluded. They present a different sort of flooding risk to reservoirs. These risks are managed under British Waterways’ asset management procedures.

3 Reservoir Managers
3(4) British Waterways is a public corporation and may not come under the definition of a ‘commercial undertaker’. Similarly a charity such as the National Trust for Scotland, might fall outside the definition of a Reservoir Manager. British Waterways does not always own its reservoirs and we are concerned that the unexpected consequence of the wording may be to make the freeholder the reservoir manager.

4 Duty of multiple reservoir managers to co-operate
British Waterways is at present a joint undertaker for several reservoirs. This does not present a problem but the relationship between each undertakers is clearly defined. This will not invariably be the case for other reservoirs.

6, 7, 8 no comment

9 to 14 Register
no comment

15 Transfer of information
no comment

16 Offences
no comment

17-24 Risk Designation
We would be interested to learn more about the mechanism that SEPA will use to designate the risk categories. In England and Wales, it is expected that ‘risk’ will be defined by consequence and not by likelihood. This is relatively straightforward. In this Bill, elements such as age of the dam and its standard of maintenance have been included. These are much less easy to quantify and are variable in the case of maintenance standards.

25-29 Panels
We would hope that Panel Engineers will be able to submit a single application for the English Welsh and Scottish Panels.

30-42 Construction
We note the term includes enlargement and reduction as well as new build. It mostly follows present practice in general terms.

30(5) We note that definition of the terms ‘discontinuance’ and ‘abandonment’ have changed from those used in the 1975 Act. There is a risk of confusion. We would wish to see consistent definitions used across the UK.

43 etc Inspection
43(1) This clause says that high and medium risk reservoirs will need inspection. This seems to be in contradiction to 44(2) which requires only high risk reservoirs to be inspected unless the Supervising Engineer requests that one be carried out.

43(4)(c) We support the principle of the independence of Panel Engineers performing separate functions. There are, however, only two consultancies in Scotland (Jacobs and AECOM) providing these services.

44(2) See comments on 43(1)

45(1)(b) We support the principle of timely reporting.

45(3)(d) Under the 1975 Act, recommendations in the interests of safety must be carried out under the supervision of a 'qualified civil engineer' from the All Reservoir Panel. This clause transfers the duty to the Supervising Engineer, although clause 46 leaves the responsibility for signing off these works with the Inspecting Engineer. Whilst at present, the Supervising Engineer will often act as the eyes and ears of the 'qualified civil engineer', the responsibility remains solely with the 'qualified civil engineer'.

46 As drafted, recommendations in the interests of safety must be certified by the Inspecting Engineer and not by a different Panel Engineer. This is the most common practice but is restrictive and cannot be achieved if the original Inspecting Engineer is unable to carry out the role for any reason.

47&48 Supervision
47(1) We note that no Supervising Engineer is needed for low risk reservoirs as will be the case in England and Wales.

48(2)(d) See comments above relating to the supervision of safety work by the Supervising Engineer.

48(2)(g) As drafted, the Supervising Engineer has to supervise any lowering of levels including routine operational changes. British Waterways’ reservoirs are in constant use to feed the canals. It is impractical and unnecessary to require the Supervising Engineer to oversee such routine operations.

48(4) There may be a problem with routine surveillance of reservoirs between Supervising Engineer’s visits. This clause will give a facility to address this. Bodies such as British Waterways have procedures to ensure surveillance takes place by competent persons so that change can be identified at an early stage. Typically reservoirs are checked once or twice a week, including during holiday periods. British Waterways’ Supervising Engineers, being responsible for large numbers of reservoirs are appraised of the results of such surveillance only when change which may be of significance is identified. It is not necessary, practical nor timely for the Supervising Engineer to be sent all the surveillance sheets.

49 Monitoring
   No comments
52 **Incident Reporting**
We support the concept of incident reporting and make voluntary reports through the current channels. It is important that the Environment Agency and SEPA share the information.

53 **Flood Plans**
We expect that there will be more detail provided about Flood Plans in Statutory Instruments.

54 **Records**
No comments

54 **Display of Emergency response information**
We support the concept of providing emergency contact details on site. We consider that the most appropriate contact numbers to give are the office number and the out of hours number. Our emergency procedures will call out the Supervising Engineer at an early stage of an incident.

Members of the public may well be alarmed to read that they live below a high risk reservoir, without the understanding of what this means.

59(3)(c) **Disputes**
As noted above, there are only two Scottish consultancies in the reservoir field.

60 and onwards
No detailed comments

Steve Dunlop
Director, Scotland
24 November 2010
Consultation on a Risk Based Reservoir Safety Regime for Scotland

Affiliations
- Hon. Visiting Professor, AON Benfield Hazard Research Centre, University College London.
- Hon. Visiting Professor, Middlesex University Flood Hazard Research Centre, London,
- Hon. Research Fellow, University of Dundee,
- Fellow of the Chartered Insurance Institute.
- Chartered Insurance Practitioner.

Any opinions expressed are the author’s own.

Please note:
This paper contains public information (shown in italics) obtained by my own site inspections and from freedom of information enquiries. All of the examples are in the UK. To avoid causing public concern, I am not prepared to disclose the sites referred to, but I have discussed each case with the relevant local emergency planning officers and recommended action.

Planning
All reservoirs should have published inundation maps which can be used by land use planners to ensure that new developments do not take place in the hazard zones.

I know of one large dam where housing has been built right up to the dam wall and there is a housing estate and sports centre in the middle of the inundation zone. The local authority is planning a new primary school and hospital there. The concrete dam wall shows cracks which have not been repaired.

Emergency plans should be drawn up for any reservoir where there is existing property in the hazard zone.

Consideration might be given to using insurance risk assessment techniques in drawing up such plans. For example, the “Crichton Risk Triangle” ¹, was designed for use by the insurance industry for catastrophe modelling (see Figure). Catastrophe models work on the basis that “risk” is a function of hazard, exposure and vulnerability, and each factor needs to be considered independently. Risk is represented by the area of an acute angled triangle.

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Hazard
In the case of flooding, “Hazard” represents the frequency and severity of rainfall events or storms. Climate change predictions indicate an increasing hazard over which society has little immediate control other than to clean watercourses, provide adequate drainage, and adopt natural flood management practices\(^2\).

Climate change will produce more droughts leading to subsidence and more severe precipitation leading to heave and overtopping making embankments vulnerable.

*I know of one reservoir where the embankment has subsided in many places due to mining subsidence and burrowing animals. Movement detectors were disconnected by the reservoir owner because they showed the embankments moving.*

Panel engineers do examine many of the engineering hazards, but not all. In particular, avalanche, landslip and peat slide risk could swamp reservoirs as in the Vaiont disaster yet how many panel engineers are qualified to comment on this hazard?

*I know of one reservoir where the surrounding hillsides are steep and covered with peat. Less than twenty miles away, a similar hillside suffered a major peat slide in 2003 due to heavy rainfall following an extended drought.*

Exposure
This represents the density and value of property located in flood hazard areas such as near rivers, the coast, below dams, or on low lying land, especially at the foot of a slope. Even if there are few buildings, the presence of people can still occur, for example in river side camp sites.

*10,000 people were in a river bank camp site for a motor cycle rally below a dam until 12 hours before it failed in 2005. Many were intoxicated. Fortunately the*
campers had moved before the water arrived, but six stewards who were collecting litter were washed away.

Typical household and business premises contents are more valuable and more vulnerable than ever before. Population growth, migration, and smaller, often single person, households have meant a huge demand for land for development in many countries. Climate change and the “heat island” effect of densely populated areas can increase the frequency and severity of localised rainstorms in urban areas leading to more flash floods\(^3\). Also exposure of property and critical infrastructure should be taken into account.

**Vulnerability**

This refers to the resilience of the properties insured and depends on the design and construction and the extent to which people and property exposed to the hazard could be resilient to it. This would depend on depth and velocity of likely flood and extent of warning available. The existence of warning systems and evacuation practices would help to reduce vulnerability.

In a current EU funded research project, Scotland has been held up as an example to the rest of Europe in work on making cities more resilient\(^4\), yet when it comes to evacuation procedures for reservoirs, Scotland is well behind countries such as France.

**Informing the public**

Everyone should have access to flood plans including inundation maps.

*I know of one reservoir where the designated disaster shelter was in the centre of the inundation map because the emergency planning officer had not been shown the inundation map.*

Any landslip or peat slide in the surrounding hillsides should be reported. Also any works which might affect the drainage or stability of these hillsides. There should be a consultation with the insurance industry to reach an agreement on the maintenance of flood insurance cover for such properties to prevent insurance blight. Insurers will be prepared to do this if they can be sure that the owner of the reservoir has adequate funds to meet subrogation claims (see public liability below).

**Warning systems**

Reservoir owners should be encouraged to install permanent scatterer synthetic aperture radar interferometry (PS InSAR) transponders especially for high risk reservoirs. These cost around £100 each and enable sub millimetre movements of


\(^4\) For more information about the Flood Resilient Cities project, see: [www.floodresiliency.eu](http://www.floodresiliency.eu) accessed 7 September 2010
dams and embankments to be constantly monitored from satellites. Thames Water has used this technology in London. Such systems can give early warning of movement of hillsides, dams and embankments.

All people at risk should receive instruction on a regular basis on the risks and how to react. Some mechanism such as sirens could perhaps be used to warn of evacuation and the public could be advised to keep a bag handy to leave home at short notice. There should be shelters designated and measures taken to evacuate domestic pets and livestock.

Public Liability Insurance
The law relating to reservoirs owners is clear; there is strict liability for any injury or damage caused by the escape of water under the rule in Rylands v Fletcher. However compensation to those suffering from such an escape depends on the reservoir owner having the money to pay. Public liability insurance is already compulsory for motorists, riding schools and labour only sub contractors in the construction industry. In the Channel Islands it is also compulsory for speedboat owners. Many reservoirs are owned by fishing and sailing clubs which may not have the resources to pay compensation following a disaster. Also they may not have the resources to properly maintain or inspect the structure.

Public liability insurance for a limit of say £250,000 should not be expensive, and higher limits could be required for cases where there is more property at risk. If such insurance was in force, the insurance industry could act as a further check on the standards of maintenance and inspection. Regular independent risk assessments and inspections by insurance company experts will increase safety at no cost to the taxpayer.

Insurers could also review panel engineers’ reports and these should be published. Some are more detailed than others. Panel engineers’ inspections should cover a laid down set of criteria to be covered. At present there is no obligation on reservoir owners to implement recommendations.

I know of one dam where engineers have been making the same safety recommendations for 20 years and they have still not been implemented.

Application
The Reservoirs Act 1975 does not apply to below ground reservoirs, tidal barrages, the Thames Barrier, canals, or reservoirs in Mines and Quarries (such as the slurry dam at Stoney Middleton in the Peak District, which collapsed on 22 January 2007), which are the responsibility of the Health and Safety Executive. Are there any plans to deal with these? (I appreciate that health and safety is reserved).

5 Rylands v Fletcher [1868] LR 3 HL 330, HL
Part 1 – Reservoir Safety and Management

1. The Council agree to the creation of a statutory framework for regulating reservoir safety supervised by the Scottish Environment Protection Agency (SEPA) to ensure consistency of record keeping and enforcement.

2. The Council agree to the requirement for reservoirs above a minimum volume capacity to be registered with SEPA.

3. Comment – To establish the capacity of a reservoir containing a minimum volume of 10,000 cubic metres with any degree of accuracy will be difficult and expensive. As most of these small artificial lakes are old and are presently and primarily used for industrial, agricultural, amenity or leisure activities it is most unlikely that any records exist on the topography lying below the surface, therefore, it will be necessary to undertake detailed surveys to establish the actual capacity prior to entry onto the register.

As the owner is unlikely to agree to voluntarily undertake this work, this duty is likely to fall to SEPA, including an assessment on its safety prior to entry onto the register.

4. The Council agree to the establishment of a reservoir classification system with high, medium or low risk categories to the degree to which a reservoir poses a threat to human life, property and/or critical infrastructure.

5. The Council agree to a tiered supervision and inspection regime depending on reservoir classification.

6. The Council agree that an independent panel of Chartered Civil Engineers will be formed to provide technical expertise on the supervisory and inspection requirements created under this new framework.

Comment – All Civil Engineers will have expertise in all aspects to appraising water retaining structures.

MH/CC
24 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
RESERVOIRS (SCOTLAND) BILL
WRITTEN SUBMISSION FROM INSTITUTION OF CIVIL ENGINEERS (ICE)

1. General

ICE welcomes the initiative taken by the Scottish Government (SG) to update reservoir safety legislation and we are pleased to see that some of the comments made by ICE at the consultation stage have been taken into account. However, there are still a number of aspects of the Bill which give us cause for concern. In view of the fact that ICE will have significant responsibility under certain sections of the Bill we feel that it is appropriate to highlight these before the Bill passes into legislation. In formulating this response the views of the ICE Reservoirs Committee and the ICE Reservoir Safety Consultative Group, which advises Defra on the Flood and Water Management Act 2010 have been sought, as well as the views of a number of Panel Engineers living and working in Scotland.

We note that the Bill requires various Regulations to be made. ICE would welcome the opportunity to advise SG, where appropriate, on the drafting of the Regulations. We look forward to working with the SG to address these critical aspects of the legislation as experience with the current legislation is that these Regulations help to clarify the way that it works in practice. To this end, and also to try to resolve any remaining aspects of concern to us in the current drafting of the Bill, we would suggest that it may be appropriate to set up a small Liaison Group in the very near future, possibly consisting of representatives from the SG, SEPA, and ICE.

Throughout this response “Act” is used to refer to the Reservoirs Act 1975 and “Bill” is used to refer to the Reservoirs (Scotland) Bill.

2. Chapter 1 – Controlled Reservoirs, Reservoir Managers etc

Section 2(1) – The definition should include the “dam”. By the definition given, a Controlled Reservoir would include all tunnels and aqueducts transferring water into the reservoir from another catchment. In Scotland this would include many kilometres of transfer tunnels on hydro-electric projects. We do not consider this to be appropriate as it is not directly related to reservoir safety and we suggest the definition be amended.

Section 2(2) – As a general point, we wonder whether it would be more prudent not to detail in primary legislation the structures or areas to be covered by subsection 2, since subsection 3 provides for them to be covered by regulation.

Section 2(2)(c) – Within Scotland there are many weirs across rivers at the outlets from existing lochs, the purpose of which is to raise the water level in the loch for additional storage. We consider that these should come under the Bill and some clarification may therefore be required on the definition of a “weir”.

Section 2(2)(g) – On occasions, road and railway embankments can be used for the purpose of flood defence. In such cases they would form part of a flood storage reservoir and the definition should allow for this.
3. Chapter 3 – Risk Designation

Section 17(1) and 21 – We suggest that there should be a requirement for SEPA to consult with an Engineer from the appropriate Panel before determining the risk designation for any reservoir. This should hopefully prevent too many cases of Reservoir Managers (RM) challenging the designation given by SEPA.

Section 17(3) - This introduces the concept of High, Medium and Low Risk Reservoirs. We note that the detailed requirements within each designation have still to be worked up. However we suggest that unless a reservoir failure would lead to negligible or no risk to life the category would be ‘High’. Medium Risk could then be categorised as negligible risk to life and Low Risk as no perceivable risk to life. We believe this is consistent with the current views of the Environment Agency.

Section 19(1) – We note that the risk designation is to be reviewed at least every six years. This seems to be an unnecessarily onerous requirement and we suggest that at least every 10 years may be more appropriate to allow a degree of stability for both SEPA and the RM.

Section 21(2)(a) – We note that “Environment”, “Cultural Heritage” and “Other Social and Economic Interests” are issues to be considered in determining the Consequences of failure and hence the risk designation. To date reservoir safety legislation in Great Britain has only been concerned with public safety. (We are content for medical facilities, etc, to remain, as these impinge directly upon public health and safety). We are strongly of the opinion that this is still appropriate and we would urge the SG to consider removing “Environment”, “Cultural Heritage” and “Other Social and Economic Interests” as aspects to be considered by SEPA when deciding on risk. Our concern is that these may be highly subjective and would give rise to disputes with the RMs in view of the significant additional costs that would be incurred by a RM if the reservoir was placed in a higher risk category than that necessary from a public safety viewpoint.

Section 21(3) – This introduces the probability of release of water and notes four factors to be taken into account in determining probability. These include purpose for which the reservoir is to be used, materials used in its construction, maintenance and the way the reservoir was constructed. Other than in determining the breach characteristics and hence the flow of water in the event of failure we do not consider that it is necessary to consider any of these aspects. Despite studies having been undertaken in the UK into quantitative risk assessment for reservoirs, reliable and accepted tools are not yet available to the reservoir profession to determine the probability of failure of any structure. In view of this we reaffirm the strong view we expressed at consultation stage that only ‘Consequence’ is important and that the Risk designation should be related to that and that alone. We would ask the SG to reconsider the drafting of this section.

4. Chapter 5 - Construction or Alteration of Controlled Reservoirs

It is noted that the requirements of this Chapter appear to relate to all reservoirs of over 10,000 cu. m. capacity regardless of the risk designation. We assume that this is the intent and we would support this.

Section 30(6) – In the case of a covered service reservoir filled by inlet pipework it would be possible to render it incapable of holding water by cutting and capping the pipework. The current drafting of this section would not seem to allow this as it specifically mentions reducing capacity.

Section 31(5)(b) and (c) – We are not clear why previous involvement as Construction Engineer (ConE) with a reservoir should prohibit a person from acting as ConE on the reservoir’s alteration, which includes enlargement, discontinuance and abandonment. If that individual is still on the appropriate Panel then that Engineer or his successors within his firm may actually be the best
person to be ConE in view of the knowledge he has of the original construction. We suggest these subsections be deleted.

Section 32(1) – Under the Act the term Construction Engineer was reserved for the Qualified Civil Engineer (QCE) appointed to design and supervise the Works related to the construction of new reservoirs or the alteration of existing ones. The Bill widens this to include aspects such as Abandonment and Discontinuance as well as other Alterations to be determined by Regulation. Under the Act the Supervising Engineer (SE) did not assume responsibility for the reservoir until the Final Certificate was issued. However for reservoirs being Discontinued or Abandoned a SE will already be in post. We are of the opinion that in such cases the SE should continue to carry out his duties and the ConE should be only be responsible for the design and construction of the Works. This will ensure continuity by a SE who is familiar with the reservoir during what, on occasions, can be an extended period between the decision being taken to Discontinue and Works actually being undertaken.

Section 32(30) and (4), Section 33, Section 34 – This is a requirement not included in the Act and we are unsure as to the reasons for requesting Safety Reports and Safety Measure Certificates, particularly as these only seem to be mandatory where the reservoir is being restored to use, abandoned or discontinued. We believe that these sections need further discussion with ICE to allow us to understand their intent which would allow us to advise further.

5. Chapter 6 – Other Requirements: High-Risk Reservoirs and Medium-Risk Reservoirs

Section 43(1)(a) – The wording of this section would seem to indicate that an Inspecting Engineer (IE) would be appointed to all Medium and High Risk Reservoirs at all times that the reservoir was not under the supervision of a ConE. This is a major change to the current Act which only requires the appointment of the IE at the time an inspection is required, that appointment terminating when the IE submits his report. The SE is the person with continuous responsibility for the reservoir. We consider the current system is effective and takes into account the fact that the senior members of the reservoir profession who are qualified to be IEs may frequently be unavailable due to international work commitments etc. RMs will also want the flexibility to call on the individual they consider most appropriate to address and subsequently certify any work identified in the interests of safety during an inspection. This may be a different person from the IE. Having an IE appointed at all times is likely to result in increased costs to the RM as there will be a tendency for SEs to seek advice from the IE between inspections. ICE would welcome further discussion with the SG on this section.

Section 45(3)(d) – This requires the IE to direct the RM to ensure that any measures specified in the inspection report are taken under the supervision of the SE within the period of time specified in the inspection report. This puts a time requirement not just on measures in the interests of safety but also on any other measures specified. We believe that the requirement on IEs to specify time limits for measures in the interests of safety is appropriate and is to be welcomed but would question the value of being specific with other measures. In addition the requirement for the measures to be taken under the supervision of the SE is open to interpretation. At present a SE would “monitor” measures recommended in an inspection report and would advise the RM and Enforcement Authority if these were not being carried out. However he does not have a “supervision” responsibility and, dependent on the experience of the SE, he may not have the knowledge to be able to undertake such a task. Further clarity is required on this section.

Section 46 – This requires Interim Inspection Compliance Certificates (which are welcomed) and Inspection Compliance Certificates to be issued by the IE for all directions he gives in his report. These are not just related to measures in the interests of safety but would appear to cover minor
maintenance requirements, monitoring etc. In the case of monitoring, this is ongoing and hence it will not be possible to issue a certificate to state that it has been completed. We strongly suggest that these certificates be restricted to measures in the interests of safety. In addition, the section is probably based on the assumption that the same IE will be involved in certifying these as undertook the inspection, presumably under the same appointment contract as for the inspection. This ties in with the requirement for the appointment of the IE contained in Section 43(1)(a) which we have already commented on. While this might be desirable, we do not consider it essential and in a number of cases will be impractical. For example, an IE might have retired by the time the measures are completed; has not been re-appointed to the Panel; or be on a long term international posting. The Act only requires a QCE to be appointed to certify that measures in the interests of safety have been completed. The RM is then free to appoint anyone who is on the appropriate Panel. As for Section 43(1)(a), we would welcome further discussion on this.

Section 48(1) – Refer to our comments on Section 32(1) and our recommendation that a SE should be appointed at all times unless the reservoir is under the supervision of a ConE for the construction of new reservoirs, the enlargement of existing ones, or bringing a discontinued reservoir back into service as a Controlled Reservoir. The SE would then still be responsible for reservoirs that were being discontinued or abandoned up to the time that the Final Certificate had been issued for the work.

Section 48(2)(d) – Under this section we believe that the SE should “monitor” but not “supervise”. Refer to our comments on Section 45(3)(d).

Section 48(2)(g) – This requires the SE to supervise (or ensure that a nominated representative of the engineer supervises) any proposed drawdown of the reservoir. “Drawdown” is defined in Section 48(11)(a) as any intentional reduction in water level. It would therefore include reductions in water level that were made as part of the normal operation of the reservoir for supply purposes. This is impractical and we recommend that the duty to supervise be restricted to any drawdown of the reservoir directed by an IE (or an engineer appointed to the relevant Panel) or the SE.

Section 48(4),(5), and (6) – This could be an onerous requirement on RMs as a SE could direct that the reservoir be visited on (say) a weekly basis for the purpose of carrying out a visual inspection to identify anything that might affect the safety of the reservoir. A requirement such as this would not be abnormal and, in fact, would be good practice on any reservoir. However if the SE directs this, the RM is then required to give notice to the SE of each inspection and anything noticed in the course of it. We would suggest that it would be sufficient for a record of each visit to be maintained by the RM and made available to the SE at the time of his visits to the reservoir, but that the RM should have a duty to bring to the attention of the SE as soon as possible any change in the nature of the reservoir which could be indicative of a safety issue.

6. Chapter 7: Other Requirements: Controlled Reservoirs

Section 55(3)(d) – We do not believe it is necessary or appropriate for the name, address and telephone number of the SE to be on display for any member of the public to see. This could lead to intrusion on the privacy of the SE through hoax calls. The SE may be located many hours away from the site and not in a position to assess if the threat to the reservoir is real or not. In an emergency the RM is the person who should be contacted and these should be the contact details given. In addition, and with the rider that it should only be used if the RM is unavailable, the contact details of SEPA should be given. It could be a requirement on the RM to provide SEPA with the contact details of the SE for use in an emergency. This information will be available in the Prescribed Form of Record in any case.
7. Chapter 9: Civil Enforcement, Emergency Powers and Further Offences

We note that there are 40 Sections in this Chapter out of a total of 109 in the Bill. This compares to 30 Sections in total in the Act. We have not reviewed Chapter 9 in detail and assume that this has been critically reviewed by the SG to ensure that all Sections in this Chapter are necessary. The impression is given of a heavy regulatory regime with, potentially, significant administrative costs.

ICE
26 November 2010
INTRODUCTION
The Environmental Law Sub-Committee of the Law Society of Scotland (the Sub-Committee) welcomes the opportunity to comment upon the general principles of the Reservoirs (Scotland) Bill which was introduced into the Scottish Parliament on 6 October 2010 and should like to respond to the Scottish Parliament’s Rural Affairs and Environment Committee’s call for written evidence upon the general principles of the Bill in the following terms.

General Comments
The Society notes that the Bill makes substantive provision in the following areas:

- A requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be registered with the Scottish Environmental Protection Agency.
- Each reservoir is to be classified as high, medium or low risk according to whether it poses a threat to human life, property and/or critical infrastructure.
- Each reservoir will be subject to a proportionate supervision and inspection regime dependent on its classification.
- The Scottish Environmental Protection Agency will be responsible for enforcing the provisions under this legislation.
- Independent Qualified Engineers (known as Panel Engineers) will provide technical expertise with supervising and inspection roles within the framework.

General Comments
The Society welcomed the proposal to transfer enforcement of responsibilities to SEPA and note at paragraph 49 of the Scottish Government’s policy memorandum accompanying the Bill that the creation of a new body for reservoir safety would be very resource intensive. The Sub-Committee trusts that sufficient resources will be afforded to SEPA in order to discharge their obligations in terms of this Bill.

The Sub-Committee should like to make the following specific comments:-

Section 2 – Control of Reservoirs: Supplementary
The Sub-Committee notes the list at Section 2(2) of the Bill, being structures or areas which are not controlled reservoirs and questions how risks associated with the failure of canals or other inland waterways, weirs and salted ash lagoons will be controlled. This also applies to the definition of “controlled reservoir” at section 1 of the Bill, given the reduction in size of controlled reservoirs.

Section 32 – Inspection, Reports, Supervision of Works etc by Construction Engineer
The Sub-Committee suggests that it would be more appropriate that the construction engineer approves a design rather than actually design any construction or alteration as provided for at Section 32 (2) of the Bill as this would no doubt result in the practical problem
of an engineer being precluded from working in a team which is tasked with designing any construction or alteration.

**Section 54 – Maintenance of Records**
The Sub-Committee would suggest that, on the basis that it is not provided elsewhere, flood plans should be included in the record of relevant documents.

**Section 57 – Referral to Referee – Directions in Safety Report or Inspection Report**
The Sub-Committee questions whether any issues with regard to the possibility of arbitration are relevant.

**Section 65 – Appointment of Engineer by SEPA**
The Sub-Committee notes that there is no provision as to who is liable for the fees of an engineer appointed by SEPA. In terms of Section 65, the Sub-Committee notes that the cost of the appointment process is covered in terms of Section 65(5) of the Bill but questions whether Section 65(2) is sufficient to make clear that the reservoir manager is responsible for the actual fees of the appointment.

**Sections 67 – 83 Taking of Safety and Other Measures, Stop Notices, Emergency Powers and other Civil Enforcement Measures**
The Sub-Committee notes that some of these provisions are a piecemeal introduction of a range of “civil sanctions” contained in various regulatory regimes and specific reference is made to the Wildlife and Natural Environment (Scotland) Bill and the Regulatory Enforcement and Sanctions Act 2008. The Sub-Committee suggests that there should be a consistent and principled enforcement mechanism across a number of regimes rather than what appears to be a fragmented and incomplete set of powers.

**Section 72**
The Sub-Committee suggests that the Bill should specify to whom the appeal should be made.

With particular reference to the grounds in which a reservoir manager may appeal against the decision of SEPA as outlined at Section 72 (4) of the Bill, the Sub-Committee suggests that the appropriate forum should be the Sheriff Court.

**Section 75 – Emergency Powers**
The Sub-Committee questions whether there should be a provision giving emergency action authorisation under the Controlled Activities Regulations.

**Section 76 – Enforcement Undertakings**
The Sub-Committee is of the view that there should be a relevant amount of publicity from the Scottish Ministers with regard to enforcement action as this is important in order to maintain public confidence.

**Section 87 – Publication of Enforcement Action**
The Sub-Committee refers to its comments at Section 76 above.
Section 88 – Powers of Entry
The Sub-Committee questions whether the Power of Entry should extend to land downstream of a reservoir in order to enable the assessment of risks in the event of any breach.

Section 104 – Crown Application
The Sub-Committee questions whether this section is necessary given Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 105 – Offences by Bodies Corporate
The Sub-Committee highlights the practical issues of offences being committed by unincorporated associations which cannot be defined as legal persons.

Law Society of Scotland
25 November 2010
The Macaulay Land Use Research Institute is an international centre for research and consultancy on the environmental and social consequences of rural land uses. We carry out interdisciplinary research across the environmental and social sciences aiming to support the protection of natural resources, the creation of integrated land use systems, and the development of sustainable rural communities. In April 2011 we will join with the Scottish Crop Research Institute to become The James Hutton Institute.

We are concerned about the potential negative impact the Reservoir (Scotland) Bill might have on the implementation of sustainable flood management, which was a key component of the Flood Risk Management (Scotland) Act 2009.

This concern is based on research carried out as part of the Aquarius project. In this project we have been working in partnership with Aberdeenshire Council and Landcare North-East project to look at how to encourage farmers to manage water and to develop flood alleviation measures. One of the flood alleviation measures we are considering is the use of temporary flood storage areas on agricultural land to alleviate flooding in downstream residential areas. We are concerned that the new minimum size for a controlled reservoir set out in section 1 of the Bill (10,000 cubic metres) could now include these temporary flood storage areas.

Our research involves implementing sustainable flood management measures in the Tarland catchment with the aim of protecting Tarland and/or Aboyne from flooding. Initial scoping work for the Tarland catchment suggested 15 sites that might be suitable for temporary flood storage to protect downstream areas from flooding. Thirteen of these proposed sites have a volume in excess of 10,000 cubic metres, and therefore seem to fall within the definition of a controlled reservoir as set out in the Bill. The smallest site would store 7,379 cubic metres and the largest 703,914 cubic metres.

The requirements related to controlled reservoirs in the Bill would increase the financial and transaction costs of building and maintaining these flood storage areas. We understand the design criteria would be more onerous than currently required and the build specification would require more materials, thereby increasing the cost. The proposed requirement for annual inspections would incur further financial cost and administrative burden.

Our initial findings on the financial incentives for temporary flood storage on agricultural land suggest that the cost-benefit ratio is already problematic and any increase in costs may make such measures unattractive and uneconomic. Although all the stakeholders were aware of the need to ensure
the safety of impoundments, they believe that the proposed requirements in the Bill may be too onerous for temporary flood storage areas. Such areas would not be permanently filled with water, so the risks of failure may be lower.

We are unable at this time to be precise about how often these storage areas would be filled with water, and for how long. We hope to conduct further research as part of the Aquarius project to establish these benchmarks, and examine differences in risk between controlled reservoirs with permanent storage and temporary water storage areas. However, this work depends on a number of factors and will not be available in time to inform scrutiny of the Bill.

The Committee may wish to consider whether the arrangements set out in the Bill for controlled reservoirs are appropriate for temporary flood storage areas which are designed to alleviate residential flooding downstream.

Dr Kirsty Blackstock
Macaulay Land Use Research Institute
25 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM MORAY COUNCIL

It is planned that most of these duties will transfer to SEPA at some point but there is a financial implication with the proposal to drop the threshold from 25,000m³ down to 10,000m³.

Few of the reservoirs between 10,000 and 25,000 m³ will have as built record drawings. This in turn raises the cost of surveying them to establish their maximum possible capacity. If the measured volume is greater than 10,000 m³, then presumably the owner pays for the survey and all subsequent inspections. If this is correct, it should be clearly stated so that owners are able to budget for the possible expenditure involved. (Prior to the survey, they do not know for certain if their reservoir is covered by the Bill or not.)

If a survey is carried out and the volume proves to be less then 10,000m³, it should also be clarified who pays for that survey. Presumably not the owner since their reservoir is not covered by the legislation. If it is some other body, they must be told in advance of these circumstances so that budget provision can be made.

As it stands, responsibility for these costs is not clear and this should be clarified before the Bill comes into force.

Moray Council
15 November 2010
General summary of what the act means to Perth & Kinross Council (PKC)
PKC currently operates two ‘dry’ reservoirs, North Muirton and South Inch, under existing legislation. The new Reservoirs Act will incorporate a further two reservoirs under the act of which will include the ‘wet broxden pond’ and a further ‘dry broxden pond’ which were both required as part of the Perth Flood Prevention Scheme. It is envisaged by PKC that the 3 dry reservoirs will be classed as low risk and the Wet Broxden Reservoir will be classed as either medium or high risk. On this basis, we believe that annual costs for the 4 reservoirs will equate to either a cost neutral or slight saving in comparison to what is operated under the existing act; and the time/resources saved by the transfer of Reservoirs Register to SEPA. The only cost envisaged by the new Act is from the one-off payment for the production of Flood Plans. Obviously, if the 3 ‘dry’ reservoirs are categorised as medium risk then there will be cost implications for PKC but this is not expected as they are empty for 99% of the year.

Therefore, the financial memorandum costings are likely to be within the correct region for costs realised by PKC under the new Reservoirs Act.

(Section 19) Periodic review of risk designations
Will there be a cost associated with the review of risk designations for reservoirs every 6 years? I would expect there should not be as the likelihood for it changing should be minimal and the basis of the risk designation was carried out during the original decision. Therefore, the workload for SEPA should be minimal for these reviews.

Inundation Maps
The only reference to Inundation Maps within the new Reservoirs Act is under Section 9(h) where it states that this should form part of the reservoir register for the said reservoir. However, it is never again mentioned throughout the rest of the Act. Why is there not a section relating to this in order to state its requirement and who will produce the maps?

Under Section 179 of the financial memorandum, it does state in line 13 that SEPA will incur the costs of inundation maps and in Section 181 that the costs will eventually be passed on to the Reservoir Owners. Therefore, I presume the cost of these maps will be incorporated into the annual fee levied by SEPA and there won’t be an additional one-off charge?
Flood Plans
Is there likely to be a timeframe for implementation of a flood plan? i.e. must be complete by 2015?

Will there be a requirement for reservoir managers to test the plans and if so how often?

Display Emergency Response Information
The emergency boards that will be required to be displayed would be more effective if they all aligned to a single format, perhaps SEPA should provide a template to determine the layout and information required on them.

Future Development around a Reservoir
How will the future development around a reservoir be managed? For example, if a reservoir is currently a low risk and a development is built downstream causing SEPA to reclassify its risk designation to Medium or High, this will cause the Reservoir manager a financial burden. Therefore who is really liable for the costs? Or should development downstream of a reservoir be classed as undevelopable in order to avoid this scenario? There is no reference to this scenario in the Bill or supplementary notes. It is clear there is a need to ensure development plans take account of reservoirs.

Additional Comment:
There will be a need in the future to ensure any increase in costs for the regulation of the Reservoirs does not become excessive and can be justified.

Perth and Kinross Council
19 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM RAMBLERS SCOTLAND

Ramblers Scotland notes that the Reservoirs (Scotland) Bill is concerned with the management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs. However, we would like to suggest that the Committee gives consideration to widening the scope of the bill to include the management of public access across dams.

Over recent years we have identified that there is a problem relating to the loss of longstanding public access across dams. These dams have been or are going to be closed following risk assessments undertaken by the operators, but with no widespread public consultation.

One recent example of this is the Torr Achilty dam across the River Conon which was closed following a risk assessment by Scottish and Southern Energy (SSE) in the summer of 2010. Public access had been taken across this dam for decades, and at one stage it was clearly encouraged in order to enable people to view a salmon ladder. However, the operators claimed that they were concerned about the potential risk of vandalism and possible damage to their equipment, and so they decided to close the dam and advertised this closure in the local press. There was no public consultation as regards the justification for this closure, its potential impacts on access takers or possible mitigation measures.

Under the Land Reform (Scotland) Act 2003, access rights do not apply to structures such as dams. However, the Scottish Outdoor Access Code makes it clear that where access rights apply on land which is contiguous to those areas where statutory rights do not apply, land managers should continue to support this customary access. In relation to dams, the Code states “Owners are encouraged to support access across dams if there are no specific safety issues. Take steps to advise people of any water discharges likely to cause a hazard.” (p.82)

In this case, SSE did advise the local authority access officer of the decision to close access across the dam but there was no wider consultation on the implications of this decision. There has subsequently been an adverse reaction from access takers who regard the consequential restrictions on access and associated diversion onto a public road with no pavements as detrimental to enjoyment of the surrounding area. The Highland Council access officer has indicated to us that other places where dams have been closed or are shortly to be closed include Aigas, Kilmorack, Invergarry and Strathfarrar. These closures could significantly affect access in remote areas and in some cases lead to greater hazards of health and safety as walkers try to cross rivers without the help of the dams or to use roads instead of paths.

Ramblers Scotland is therefore seeking an amendment to the Reservoirs Bill which requires any proposed closure to be subject to public advert and consultation, with Scottish Ministers having the final say as to whether a closure should be permitted and if so, whether the closure should be subject to compensatory mitigation measures. We believe this minor modification to the Bill would safeguard public access interests without compromising safety and would be more straightforward than seeking changes to the Land Reform (Scotland) Act 2003 to ensure that statutory access rights applied across all dam structures.
We are grateful to the Committee for considering this request and would be happy to give further information on this issue if requested.

Dave Morris
Director
22 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM RENFREWSHIRE COUNCIL

Firstly, I commend the principles, extended scope and improved risk based control measures of the new Bill, especially given Renfrewshire's recent history at Maich. These measures will no doubt reduce risk to human health, economic activity, the environment and roads / infrastructure, as the Bill intends.

At least one reservoir in Renfrewshire will now be controlled by the new Bill, where not currently controlled by the existing Reservoirs Act (Glentayan at Kilbarchan) the control of which will, as stated above, no doubt reduce risk to human health, economic activity, the environment and roads / infrastructure. We should however be careful that the proposed Bill does not allow reservoir owners / managers as designated under the proposed Bill to abandon or discontinue such newly registered reservoirs below 25,000 cub m, as this could increase downstream flood risk. The Bill appears to address this issue, but perhaps further legal scrutiny in this regard would be prudent, given the potential adverse consequences of such resultant increased downstream flood risk and likelihood of such Private owners doing so given the new costs of Bill compliance being likely to be as high as in the ten's of thousands up front. Such legal scrutiny is important for Renfrewshire as the downstream catchment is Kilbarchan which is subject to historic flooding from all sources and a high level of theoretical flood risk from all sources, mitigated in part by the reservoirs existence.

We currently have a dry off line attenuation reservoir in Paisley (Moredun) which the Council constructed and own which is currently registered as a large raised reservoir on the current Reservoirs register, with final construction engineer certification, required under the existing Reservoirs Act. We do not currently have an Inspecting or Supervising Engineer appointed, as the reservoir is still under control of the Construction Engineer, however the Bill proposals cater for this scenario in all critical matters addressed by the Bill, i.e registration, risk designation, manager allocation and duties, construction, alteration and emergency powers.

In relation to Chapter 3, Section 21, Subsection (3) of the Bill: "Risk Designation and Periodic Review, Matters to be taken into account". I suggest that reservoirs such as the dry off line attenuation reservoir in Paisley (Moredun), mentioned above, have cognisance of their generally "dry" status in the risk assessment process, i.e as they are not full or impounded at all generally then this fact should potentially then reduce the assessed risk level of the reservoir as compared to a normal impounding reservoir in the same circumstances. To address this concern I suggest adding a subsection 3 (e) "If the reservoir is not an impounding reservoir, the design frequency of impoundment" to the matters to be addressed when assessing the probability of release in the risk assessment and designation process. Given the likely costs of compliance to the new
Bill for current undertakers such as Renfrewshire Council for medium and high risk reservoirs especially and the budgetary constraints on all Scottish Local Authorities any appropriate reduction in duties would be welcomed through cognisance of such "dry" reservoir status in initial risk designation.

If you wish to discuss any of the above comments, or are unclear on any of the points raised, please feel free to call me on 0141 842 5453 and I will be happy to discuss matters with you.

Renfrewshire Council
25 November 2010
Overview
RSPB Scotland welcomes the opportunity to respond to the Rural Affairs and Environment Committee’s call for evidence on the general principles of the Reservoirs (Scotland) Bill. We fully recognise the need for a Bill that modernises current reservoir legislation to ensure that a regulatory regime is in place to manage risks to human life and critical infrastructure, and we welcome the risk-based approach that is proposed by the Bill. Scottish Government, SEPA and Scottish Water must be mindful of their duty to further the conservation of biodiversity in exercising their functions, as per the Nature Conservation (Scotland) Act 2004. The Bill states that details regarding the definition and classification of reservoirs will be set out at a later stage. We have some concerns that those regulations will not be subject to the same level of scrutiny as the Bill. It is also crucial that the regulations will not result in excessive regulatory and administrative burden for owners of sites that are not considered high risk and yet are important habitat for wetland and aquatic biodiversity. We welcome the provisions in the Bill to create offences for failing to carry out remedial and restoration measures to protect the water environment and look forward to these being utilised to ensure protection and improvement of Scotland’s water environment.

Background
RSPB Scotland is part of the RSPB, which speaks out for birds and wildlife, tackling the problems that threaten our environment, and promotes the conservation of wild birds and their habitats. We are supported by 88,131 members in Scotland, with a strong membership base in rural areas as well as in towns and cities. We have practical experience of managing land for conservation, farming and other enterprises, and of providing advice to land managers. We manage 68,240 hectares of land across Scotland, much in management agreements with local farmers, crofters and graziers, and much of this is associated with aquatic habitats such as lochs, freshwater wetlands and coastline. This encompasses some internationally and nationally important areas that have been designated as Special Protection Areas, Special Areas of Conservation, Ramsar sites and Sites of Special Scientific Interest for the priority bird species and/or habitats that they support.

Reservoir definition and classification
A number of aspects of the Bill are to be considered through further regulations and, thus, we have some concerns that they may not be subject to the same level of scrutiny. We highlight below those areas that will be of interest to RSPB Scotland and other potential reservoir owners:

- Section 1(6) allows provision for regulations to set out how the volume of water capable of being held or released is to be calculated, and on the meaning of ‘natural level’ and ‘surrounding land’. This should be subject to adequate consultation and give due consideration to circumstances that do not result in unnecessary classification resulting in excessive cost and administrative burden, nor should it lead to disincentives for biodiversity management e.g. wetland creation.

- Scottish Government has assured us that the retention structure of a water body (e.g. sluice versus a fixed wall) will not be taken into consideration when designating reservoirs. However, we understand that retention structure may affect the risk category that is placed on a reservoir. We hope that a pragmatic approach will be taken when considering retention structure in the assignment of the risk category so that wetlands that are managed with sluices and that pose little risk of an uncontrolled release, will be assigned a low risk accordingly.

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• Section 2(2) of the Bill, which lists structures and areas that would be exempt from being classified as controlled reservoirs, includes “structures or areas of water designed to protect land from the sea”. Indeed, Scottish Government has stated that it is not the intention for coastal realignment sites to be classed as reservoirs under this legislation, which we would welcome. However, as this will be clarified through further regulation (Section 2(3)), we hope that this is fully reflected in these regulations. Climate change is predicted to cause sea level rise and increased storminess in some parts of Scotland\(^1\), which could result in extensive areas of the coast being lost to ‘coastal squeeze’ whereby the intertidal land is eroded as it is progressively squeezed between rising sea levels and hard sea defences. Coastal realignment is an important mechanism for enabling Scotland to adapt to a changing climate and any associated flood risk, while also delivering benefits such as intertidal habitat for important migratory and wintering wetland bird species and offering recreational opportunities around coastal areas. We would like to reiterate that we believe it would be negative to disincentivise coastal realignment projects as a result of regulatory burden through the reservoirs legislation.

**Grants and fees for reservoir managers**

We note that there is no provision for grant-making powers in the bill and urge that this is put in place. This could be essential for many small reservoir owners who require financial assistance to meet the costs of adhering to the regulatory regime. **In particular, we believe that grants should be given or fees waived for those owners who manage the reservoir and surrounding land for wider public benefit, such as for biodiversity.** Thus, we suggest that a similar model to that for the Controlled Activities Regulations (CAR) is implemented whereby charges are waived for activities that provide an environmental service.

**Remedial and restoration measures regulations**

Section 22(1) of the Water Environment and Water Services (Scotland) Act 2003 (WEWS) states that “The Scottish Ministers may by regulations make such provision for or in connection with remedial or restoration measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans”. Therefore, we welcome the provision in this Bill to amend the WEWS Act to allow the creation of criminal offences in relation to remediation and restoration of the water environment. However, we seek reassurance that action is already underway to get restoration and remediation measures in place so as to meet the environmental objectives set out in Scotland’s River Basin Management Plans.

RSPB Scotland
24 November 2010

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Thank you for allowing us the opportunity to contribute to this consultation.

The Scotch Whisky Association is the leading representative body in the spirits sector. Our 56 member companies – distillers, blenders, bottlers and brokers of Scotch Whisky – account for over 90% of the Scotch Whisky industry by production. Scotch Whisky operates in a highly competitive and international market. Over 90% of Scotch Whisky sales are abroad – exports reached a record of £3.13 billion in 2009. This figure accounts for around 20% of Scotland’s manufacturing exports, thus highlighting the industry’s significant role in the Scottish economy.

As discussed previously, the Association provided a short response to the Scottish Government consultation on 'Reservoir Safety in Scotland' in April this year.

Our industry experts have now reviewed the Bill itself and its overarching aims. The Association supports the general principles of the Bill and, at this stage no issues have emerged from our examination of its provisions. Rather, we are pleased to see that many of the points in our original consultation response have been embedded into the Bill.

In light of this, we support the development of this Bill and will watch with interest as the Bill moves through its different stages to gain assent.

Morag Garden
Environmental & Scientific Affairs Manager
24 November 2010
Scottish Water welcomes the opportunity to provide evidence to the Rural Affairs and Environment Committee concerning the Reservoirs (Scotland) Bill. We are particularly interested in this proposed legislation, as we own and operate a large number of reservoirs across Scotland and, as such, we are a reservoir undertaker under the terms of the existing Reservoirs Act 1975.

Introduction and background
The Bill will reduce the minimum volume for the definition of a reservoir to 10,000 cubic metres. Under the proposed Bill, Scottish Water will own and operate 365 reservoirs for the supply of drinking water. This total includes 95 reservoirs that currently do not fall under the Reservoirs Act 1975. These additional reservoirs comprise of 34 small reservoirs and 61 treated drinking water storage tanks. A small number of sustainable urban drainage (SUDS) systems may also now be controlled under the Bill.

70 of the 365 reservoirs are no longer used operationally.

Primarily, our reservoirs are or were used as sources to supply drinking water for Scotland. We do acknowledge that reservoirs may additionally provide flood management, biodiversity and recreational benefits. Many of our reservoirs are regarded as historic features and focal points in the Scottish landscape. However, it remains our view that reservoir safety is of paramount importance at all times, taking priority over other interests.

The future of reservoir safety legislation in Scotland is of high importance to Scottish Water as it affects the provision of drinking water to our customers. We take this opportunity to provide comments on the current proposals in the interests of ensuring that the new reservoir safety regime is effective and proportionate in terms of safety and enforcement action, and that the proposals are fair and not administratively burdensome to reservoir managers.

Risk designation
Scottish Water welcomes the introduction of the risk designation (section 21) for reservoirs as high, medium and low based upon the potential adverse consequences and the probability of an uncontrolled release of water. This allows a proportionate supervision and inspection regime dependant on the risk designation of the reservoir. We suggest that section 21 (3) items (a) – (d) should all form part of the risk designation, where the information is available, and SEPA shall (as opposed to may) take these items into account. We also suggest that to give consistency with the Reservoirs Act 1975, greater emphasis should be placed on human life and safety of people over the other items listed in section 21 (2) (a).

In order to ensure that the risk designation process by SEPA is conducted effectively, we suggest that the Bill should make provision for any guidance, which
may be issued by SEPA under section 23, to be subject to consultation with reservoir managers and others as appropriate.

With respect to review of risk designations under section 23, there is no timescale specified for SEPA to respond to an application for review. This may cause reservoir managers unnecessary inconvenience and expense if a review takes a considerable time, then finally results in a low designation.

The Bill makes provision for SEPA to charge any fee it determines for risk designation review. We suggest that this neither provides any incentive for SEPA to get the designation correct first time or encouragement for reservoir managers to make appeals where they have legitimate concerns, which may introduce economic inefficiencies into the procedures. The review process under section 22 could perhaps be included within Chapter 8.

**Arrangements for inspection and construction of reservoirs**

Scottish Water retains supervising Panel Engineers to ensure safety at all our reservoirs. Scottish Water also has framework contracts for inspecting engineers and supervising engineers to carry out the duties of the Reservoir Act 1975 across Scotland.

Scottish Water considers that the Bill proposes a number of new requirements which result in both an inspecting engineer and a supervising engineer being involved in carrying out an activity, which currently is conducted by a inspecting engineer, for example “supervision of the implementation of any directions given by inspecting engineer” under section 48(2)(d). In the 1975 Act there was no requirement for the Supervising Engineer to be involved in the work that is carried out following the Inspecting Engineer’s report. This will increase costs to the reservoir managers.

**Flood Plans**

Reservoir managers will be required to produce flood plans for some or all controlled reservoirs. The Bill is unclear on the function that the flood plans will serve and who will have access to these flood plans. Our view is that flood plans, produced by reservoir managers, should identify the steps that are required to draw down a reservoir in the interests of safety in an emergency. However, we see this information as being part of good management of the reservoir and, in the interests of national security required by UK government, we cannot put this information into the public domain. Additionally, we acknowledge that reservoirs may be used to manage flow downstream in the interests of preventing flooding. It is not currently Scottish Water’s practice to actively operate reservoirs in the interests of flood prevention, nor are we currently financed to do so.

Scottish Water would like clarification on the content and purpose of the flood plans and looks forward to further consultation on this subject.

Under the Flood Risk Management Act there will be Flood Risk Management Plans and local Flood Risk Management Plans. To avoid confusion, we suggest that a more appropriate wording for flood plans under this Bill would be an “on site contingency plan”.

2
SEPA’s role
It is understood that SEPA’s role as the new enforcement authority is to be responsible for enforcing the provisions under this legislation and that this is an administrative role. Technical expertise will be provided by independent qualified civil engineers (known as panel engineers) who will provide supervising and inspection roles within the framework.

We note, however, that many of the provisions in the Bill clearly imply that SEPA will be required to exercise technical expertise and professional reservoir engineering knowledge, in order to conduct the statutory procedures. For instance: regarding the employment of panel engineers to conduct services on their behalf; awareness of which market rates represent good value; use of Stop Notices; development of Flood Plans; Risk Designations; identifying matters that are central to safety (not merely operational) and producing guidance, all require knowledge of reservoir engineering beyond an administrative capability. We note also that SEPA will need to use technical knowledge in order to justify criminal prosecution and imposition of civil enforcement measures.

Scottish Water would welcome greater definition of SEPA’s role and how it will be conducted. We are also seeking a proportionate and even handed approach to enforcement, where matters in the interests of safety are the central focus.

Offences and civil enforcement powers
The new Bill re-enacts a number of provisions relating to offences under the 1975 Act (although penalties may differ), and introduces a large number of new offences, for example, display of emergency information, incident reporting and flood plans. Additionally the Bill introduces new civil enforcement powers that SEPA will administer. We are keen that there is clarity over how SEPA will determine and administer the process for taking enforcement action. However, the Bill does not prioritise offences and enforcement in the interests of safety above other administrative matters. We raise this matter as we see it is essential that safety matters are the priority for enforcement action.

We draw to your attention that enforcement action under the Reservoirs Act 1975 is carried out in the interest of safety only. Scottish Water notes that the precise wording of the Bill, section 34(1) safety report compliance and 46(1) inspection reports compliance, is “The reservoir manager must (subject to section 57(3)) comply with any direction in a safety report issued to the manager”. It should be noted that safety reports may contain a range of information relating to a reservoir, including operational and administrative matters. We suggest the Bill should provide that an offence would only arise out of a failure to implement a direction relating to a safety measure. This current wording of the Bill gives SEPA enforcement powers in relation to administrative, operational and others matters.

We draw your attention to the point that the introduction of civil enforcement powers were not included within the consultation “Reservoir Safety in Scotland”. We note that in England and Wales the introduction of civil enforcement powers for use by the Environment Agency was subject to public consultation in July 2009, by DEFRA in “Fairer and Better Environmental Enforcement, – consultation on proposals to improve environmental enforcement”. We anticipate full involvement in discussions
relating to the deployment of civil enforcement powers by SEPA. We would not like to see civil enforcement penalties redirecting limited resources away from maintaining reservoirs in the interest of safety.

We consider that further refinements to the proposals for civil enforcement are necessary and we would like to contribute to these discussions.

**Criminal offences**
Given the potentially serious nature of failure of safety at a reservoir, the inclusion of imprisonment as a new penalty for certain offences does appear appropriate.

**Need for third party appeal mechanism**
At present the Bill does not provide for an appeal mechanism to a third party (such as Scottish Ministers, a Sheriff or other independent arbiter) against civil enforcement measures imposed by SEPA. We propose that the Bill must secure a right of appeal to such a third party to ensure just and proportionate application of such powers, fairness for reservoir managers and consistency with other legislative regimes. In all cases where civil enforcement is imposed, there must be recourse to appeal the level of any penalty imposed, any timescale or any other condition where it is unreasonable in the view of the reservoir manager.

**Powers of entry onto land**
The Bill (section 88) gives SEPA the powers of entry onto land. We are seeking clarification whether the definition of land in the Bill also includes buildings, as some of our reservoirs are within buildings. Our concern is that visitors could potentially affect the quality of the drinking water supply, at service reservoirs and clear water tanks which hold treated water. Permitted access can be given to Restricted and Non-Restricted Areas provided that visitors are properly supervised by a competent Scottish Water employee and arrangements are implemented to ensure that the recommendations of our Hygiene Code of Practice are not compromised. This would include a risk assessment of any proposed activity to be carried out by the nominated Responsible Person.

**Guidance**
The Bill includes sections (notably sections 6 and 21) where additional guidance may be forthcoming in the future. It is our view that reservoir managers should be consulted early in the development of any guidance and that this should form a general requirement of the Bill. Reservoir managers may have both knowledge and experience that is relevant, and their input into guidance will help ensure that procedures are effective in the interests of safety and not administratively over burdensome.

**Interests of National Security**
In the interests of national security required by UK Government, Scottish Water is required to limit the availability of certain information relating to large drinking water storage reservoirs such as service reservoirs and clear water tanks.

**Reservoir safety and the interaction with other legislative frameworks**
The Flood Risk Management (Scotland) Act 2009 requires Scottish Water as a responsible authority to exercise their flood risk related functions with a view to
Reducing overall flood risk. Reservoirs may attenuate flooding. Where a reservoir is no longer used as a source of drinking water, Scottish Water still retains all obligations under Reservoirs Act 1975. Works we may undertake in the interests of safety (such as breaching a reservoir) may be contrary to management of flood risks. However, maintaining reservoirs in the interests of flood risk management may be more costly than actions taken in the interests of safety. In this case, the additional costs to retain reservoir structures (in proper condition in the interests of safety) for the purpose of flood risk management, requires additional funding. We suggest that Scottish Water should be financed to maintain reservoirs for flood attenuation purposes where they are no longer required as a source of water.

Financing for provisions of the Bill
Scottish Water will be including the requirements of this Bill into our business planning process for the next regulatory period. We expect that meeting the requirements of the Bill will be part of the Ministerial Direction to Scottish Water for the period SR15 (2015-20). As stated in the introduction, we see that ensuring reservoir safety as a fundamental duty. We shall take steps to ensure that we are properly financed in future periods to deliver the requirements of the new legislative requirements. As submitted to the Finance Committee, we are not financed in the current period for additional costs that may emerge from the new legislative regime during the 2010-2015 period.

Part 2 – Remedial and Restoration Measures
Scottish Water submits no comments on this Part.

Scottish Water
25 November 2010
1. Opening Remarks

The Scottish Environment Protection Agency (SEPA) welcomes the opportunity to give its views on the general principles of the Reservoirs (Scotland) Bill to the Rural Affairs & Environment Committee.

The Bill will create the framework that will ensure reservoirs in Scotland are regulated in a proportionate and risk-based regime to protect the people of Scotland from the risk of flooding from any reservoir failure, whilst limiting the burden on those owners whose sites pose minimal risk.

SEPA recognises the responsibilities associated with its new role and looks forward to the challenges it will bring. Success will depend on the powers and duties conferred by the legislation, the working relationships SEPA builds with the regulated sector and other key stakeholders and the resources that can be made available.

When commenced, Part 7 of the Flood Risk Management (Scotland) Act 2009 will transfer responsibility for regulating reservoir safety in Scotland from the Local Authorities to SEPA.

The Reservoirs (Scotland) Bill will supersede the existing reservoir safety legislation, Reservoirs Act 1975, and bring with it additional regulatory requirements as well as a stronger tool kit to enable SEPA to carry out its enforcement duties.

SEPA has been involved with the Scottish Government throughout the consultation process. We have worked with the Reservoirs Bill Team during the Bill drafting process and provided comment on the wording of the provisions relevant to SEPA when requested.

SEPA formally responded to the Scottish Government consultation “Reservoir Safety in Scotland” in April 2010. We also assisted the Government in the stakeholder engagement process of this consultation by attending and sitting as panel members at public awareness raising workshops around the country. SEPA also sits on the Government’s ‘Reservoir Safety Stakeholder Group’, which comprises a cross section of the reservoir safety community, individual owners, large reservoir owning organisations such as Scottish & Southern Energy, Local Authorities, Panel Engineers and Scottish Water.

2. Reservoirs (Scotland) Bill Part 1 - General Comments

The Reservoirs (Scotland) Bill contains a number of significant changes from the existing UK based legislation, the Reservoirs Act 1975. These changes are included to make the new legislation risk-based and proportionate, to ensure that those sites
posing the greater risk receive a higher level of monitoring and regulation whilst ensuring minimal impacts on managers of sites considered to be low risk sites.

SEPA welcomes this risk-based legislation which complements SEPA’s on-going ‘Better Regulation’ programme. Through this programme SEPA will facilitate those who are willing to comply and ensure that burdens on them are minimised. This will allow us to focus our resources on those who pose a higher risk to the environment or to human health.

Where possible, SEPA will look to incorporate this new regulatory duty into existing processes and systems to ensure efficiencies and minimise any costs that may be passed on to reservoir managers.

The regime proposed in the Bill will largely be self regulating and SEPA’s role will primarily be to monitor compliance with the regime and take action in the event of non-compliance.

This follows on from the existing system and ensures that the experience, knowledge and expertise of the civil engineers (Panel Engineers) currently engaged in reservoir safety inspections is retained and utilised in the most appropriate way to ensure reservoir safety.

2.1 Definition of a ‘Controlled Reservoir’

Section 1 of the Bill outlines what is deemed to be a ‘Controlled Reservoir’ and thereby regulated by this legislation. The major change contained in this section, when compared to the Reservoirs Act 1975, is the altering of the threshold above which a reservoir is deemed to be a ‘Controlled Reservoir’ and therefore must comply with the relevant sections of the legislation.

Currently reservoirs capable of holding 25,000 cubic metres or more are deemed to be ‘Controlled Reservoirs’ and all must comply uniformly with the legislation regardless of the degree of risk they pose. The Bill proposes to lower this threshold to 10,000 cubic metres as it is recognised that there are structures which have a capacity to have a detrimental impact, due to flooding, on human health which are currently excluded from the current reservoir safety legislation due to their capacity being less than 25,000 cubic metres.

An example which illustrates why this new threshold is important is the Maich Dam in Renfrewshire, where in 2008 an emergency arose due to severe damage to the dam following overtopping of the structure. This was due to a period of heavy rainfall. This structure held approximately 24,000 cubic metres which meant it was not inspected and monitored under the current legislation.

SEPA understands that the revised threshold of 10,000 cubic metres has been selected in consultation with the Environment Agency and the Institution of Civil Engineers and that this volume was the amount of water that was likely to cause serious harm if released quickly into a downstream channel.

The revised threshold of 10,000 cubic metres has been included in the Flood & Water Management Act 2010 for England & Wales. If this figure remains within the Bill it will
provide consistency across the UK which will aid those engineers and organisations that operate under both Acts. This is particularly relevant to Panel Engineers as it is recognised that there is already a small pool of engineers operating within the UK and a common approach would contribute to most effectively utilising this limited resource.

SEPA supports this revised threshold as it will provide greater protection for people downstream of smaller dam structures, which would otherwise be exempt from inspections and monitoring. However, this could capture a significant number of sites that have not been regulated before and will require appropriate resources if SEPA is to ensure all owners of these newly regulated sites are aware of their responsibilities and duties under the Bill and provide appropriate data during the registration process.

SEPA will endeavour to make the registration process as simple and straightforward as possible and will look to combine it with other appropriate processes such as the authorisation process for impoundment under the Water Environment (Controlled Activities)(Scotland) Regulations 2005. This should ensure an integrated process covering both sets of legislative requirements and therefore avoid duplication of information an applicant should supply, and also reduce the burden on public expenditure.

2.2 Risk Classification Process
As noted in 2.1, all reservoirs with a capacity for holding 10,000 cubic metres of water will be required to register under the new Act. Thereafter, SEPA will be required to undertake a risk classification process as laid out in Section 21, assigning a designation of ‘high’, ‘medium’ or ‘low’ risk for all sites. The risk designation process will take two aspects into consideration: the potential adverse consequence of an uncontrolled release of water and the probability of such a release.

When considering the potential adverse consequence, SEPA will be required to consider the potential damage to, human health, the environment, cultural heritage, medical facilities, power supplies, transport, the supply of water for consumption and anything connected with such matters, other social or economic interests and such other potential damage as SEPA considers relevant. These considerations are consistent with those issues that must be taken into account for wider flooding issues contained within the Flood Risk Management (Scotland) Act 2009 and can be stipulated in guidance or regulations, making a risk assessment based on consequences an objective process. To take account of probabilities of an uncontrolled release is much more subjective and open to challenge which would result in more work and more costs to SEPA and the reservoir manager. Such probabilities are controlled through ensuring the inspection and repair requirements are enforced.

The three risk designations will be subject to proportionate levels of supervision and monitoring, ensuring that costs to the reservoir managers will be proportionate to the risk the reservoirs pose; in particular to human life. Low risk sites will incur minimal costs. This will also enable SEPA to focus its efforts where needed, on those sites posing most risk, which aligns itself with the principles of ‘Better Regulation’.

To enable SEPA to undertake this process it will be necessary for each site to have a flood inundation map produced to indicate areas that would be flooded should there
be an uncontrolled release of the water stored behind the impoundment. In the initial period when SEPA will be required to undertake the risk designation process for those sites covered under the existing legislation, and thereafter for an initial period for those newly regulated sites, it would be advantageous if SEPA produced these maps. In this way, it would ensure that the maps would be produced in a standard and consistent manner, thereby reducing the effort required by SEPA that would otherwise be needed to ensure each site owner provided a viable and usable map within stated timescales.

2.3 Civil Sanctions
With regard to the civil enforcement powers contained in Chapter 9 of the Bill, SEPA has studied with great interest the 2006 report by Professor Richard Macrory entitled “Regulatory Justice: Making Sanctions Effective”. This report (which developed some themes contained within Sir Phillip Hampton’s earlier report “Reducing Administrative Burdens: Effective Inspection and Enforcement”) concluded that regulators needed more flexible and risk based enforcement tools. Professor Macrory recommended the introduction of more flexible tools, similar to many of those proposed in the draft Bill. SEPA is also aware of the Regulatory Enforcement and Sanctions Act 2005 which sets out an extended toolkit for regulators in England and Wales based on the recommendations of Macrory.

SEPA agrees additional enforcement tools would enhance our ability to take effective and proportionate enforcement action; this fits well with better regulation principles. SEPA also agrees with Professor Macrory’s analysis that the availability of such a flexible toolkit would assist in ensuring prosecution is targeted on those who have little evident concern for managing and preventing risks, thereby helping ensure the regulatory response is proportionate to the offence and easing the workload of the criminal courts.

In general terms therefore, SEPA is supportive of the proposals in the Bill regarding the regulatory toolkit. We consider the proposal to only grant SEPA the ability to serve fixed monetary penalties, variable monetary penalties, restraint and restoration notices by order of the Scottish Ministers following consultation is sensible, as it will give the opportunity to consider in detail how these will operate in practice – for example what the relevant appeals mechanisms should be. In the long term SEPA is keen that the most appropriate toolkit is developed for SEPA in the Scottish context across all the regimes that SEPA has regulatory responsibilities for.

SEPA also considers that the requirement in section 85 for SEPA to publish guidance on how it would use such powers, prior to actually utilising them in practice, provides the safeguard for reservoir managers of ensuring SEPA utilises these powers in a transparent and appropriate manner.

2.4 Costs
The Scottish Government’s Financial Memorandum lays out the estimated on-going cost to SEPA of carrying out its new regulatory duties under the Bill. This cost is approximately £0.41 million per annum. This cost includes estimates for support staff, training and external engineering support, but the majority of the cost relates to regulatory staff costs. The number of staff required within the regulatory team will be dictated by the number of overall reservoirs that must register and thereafter by the risk classification that they fall into. In the Financial Memorandum it states that SEPA
cost estimates are based on a figure of 1150 reservoirs being required to be regulated, of which 500 are currently unregulated reservoirs. Of these 1150 reservoirs an assumption has been made that 40% will be classified as ‘high risk’, 30% as ‘medium risk’ and 30% as ‘low risk’. If either the number of sites required to register or the split between risk categories altered then this would impact on the cost estimates. These costs include the additional duties SEPA will have when compared to those undertaken by local authorities under the 1975 Act, and the increase in number of reservoirs that will be regulated.

As noted in 2.2 above, the risk designation process is detailed and the requirement to review the risk designation of every controlled reservoir at least every 6 years could affect the overall number of staff required, depending on the complexity of the classification scheme.

A significant proportion of SEPA’s on-going costs should be recoverable as the Bill provides for Scottish Ministers by regulations to make provisions for SEPA to implement a charging scheme, both for the registration of sites and annual on-going charges, to limit the cost to the public purse. It is proposed that those sites posing the greatest risk and therefore requiring a higher level of regulation will be charged at a higher level than those posing a medium risk, with low risk sites not receiving a charge. However, this may result in higher risk sites subsidising the cost of the risk designation review process which currently applies to all sites.

SEPA remains concerned about the potential financial liability in the event of having to undertake emergency repairs and discussions are continuing with Scottish Government.

3 Reservoirs (Scotland) Bill Part 2 - General Comments

SEPA welcomes the draft Part 2 and that enactment of the provisions will play an important role in the restoration regime that is envisaged by section 22 of Water Environment and Water Services (Scotland) Act 2003.

James C Curran
Director of Science and Strategy
25 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

South Lanarkshire Council requests the Committee take cognisance of the following points whilst considering the proposed Bill;

1. Within the Bill SEPA will assume the role of enforcement authority, where local authorities are reservoir undertaker will there be charge by SEPA?

2. There is a proposal to reduce the reservoir threshold level from 25000m3 to 10000m3. Who will fund the capturing of this data?

3. With regard to the proposed classification system, how will this interact with future planning proposals which may fall within the catchment of an uncontrolled discharge from a reservoir?

4. An explanation of how a tiered supervision and inspection regime is funded is required.

David Beaton
Engineer Officer
25 November 2010
The SRPBA is grateful for the opportunity to contribute to the Rural Affairs and Environment Committee’s discussions on the future of agricultural support in Scotland. The vast majority of our members own and/or manage agricultural land in Scotland so the development of CAP policies is crucial to all of their businesses.

The SRPBA is an active member of the European Landowners’ Organisation (ELO) and our comments reflect the submission made by ELO to the recent European Commission consultation and impact assessment on CAP towards 2020.

Budget

At the outset it must be noted that it is almost impossible to make meaningful comment on the future of agricultural support in the EU when we are doing so in the absence of budgetary information. First and foremost the CAP must be adequately funded for the goals it sets out to achieve. Land management businesses cannot promise to deliver unaffordable outcomes.

The SRPBA believes it is perfectly rational that the EU should devote up to 0.5% of its GDP to the policy which seeks to ensure a sustainable food production base and high standards of environmental and management across 70% of its territory which is agricultural and forest land. We defend this even in circumstances of tight public budgets.

The policy must however show that it is well-tuned to achieving what the public want and expect and that its measures are implemented in a cost effective way to achieve these objectives.

Key Points

For the SRPBA (and ELO) the key points in the reform are:-

- Changes to the CAP should not undermine the goal of increased market orientation. Farmers should not be making decisions based purely on chasing public funding but should be aiming for market orientation.
- The CAP must be adequately funded for the goals it sets out to achieve.
- Funds should be distributed to enable an end to modulation in 2013.
- Redistribution of CAP resources should be forward looking and objectively based; we support the shift to regional average payments – suitably phased in.
- Once the move to area based payments is underway there is no useful role for separate payment entitlements and this will remove the “slipper farmer” issue.
- Some kind of basic payments decoupled from agricultural products and prices should be a continuing part of the CAP. The justifications offered are:-
  - They provide the basis for keeping agricultural land in good agricultural and environmental condition which is an intelligent contribution to food security
They provide some surety and stability for farmers’ incomes
- They compensate for higher regulatory costs
- To pay for public goods provision

- The additional focus on public goods should be done by more explicitly purchasing environmental goods through Pillar 1.
- Any greening of Pillar 1 must involve actions which are simple to perform and complement rather than undermine existing agri-environment schemes.
- The reform has to put support for marginal areas onto a firmer more durable basis and this would be helped by moving from the negative concept of Less Favoured Areas (LFA) to the positive concept of Environmentally Favoured Areas (EFA).
- Co-financing should be more flexible in future.
- Payment capping is not necessary and will inhibit needed farm restructuring.
- Inactive, non-farmers should not be receiving CAP payments but narrowing the definition of “active farmers” is unnecessary and will introduce unnecessary bureaucracy. The SRPBA believes that active land management is a more appropriate term than active farming.
- We should not make a religion out of the 2 pillars. It is unhelpful to suggest that Pillar 2 is the virtuous part of the CAP to be preserved for ever and Pillar 1 to be phased out. There has been a mixing of functions between the 2 Pillars but the distinction should be retained. We should avoid splitting similar measures between Pillar 1 and Pillar 2.
- The current audit system must be reformed to ensure greater fairness and penalties which are proportionate and targeted and incorporate more room for discretion and flexibility.
- If there is to be equity in terms of the distribution of the CAP budget, especially to New Member States, then we must ensure that this policy of equity extends to Scotland particularly in relation to Pillar 2.

With reference to the Pack Inquiry reports recommendations, the SRPBA suggests that rather than focusing on the detail of each recommendations, we must ensure that the Scottish Government and the industry is in agreement with the general principles of the recommendation.

SRPBA
February 2011
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE
RESERVOIR (SCOTLAND) BILL
WRITTEN SUBMISSION FROM SSE GENERATION LTD

We refer to your recent call for comments on the draft Reservoir (Scotland) Bill regarding proposed changes to reservoir safety legislation. We have provided a response below.

SSE is the largest renewable energy generator in the UK. 61% of this energy comes from our hydro assets located in the North of Scotland. We operate some 80 reservoirs which come under the Reservoirs Act 1975.

SSE has taken an active role in the review consultation but finds itself repeating the same issues in an attempt to avoid allocating resource to feed duplicated Regulatory Authority processes. The focus should be to introduce these legislative changes without burdening existing responsible owners with excessive regulation, overly complex processes and additional costs. The current process has successfully regulated large dams for many years, in introducing this new legislation there is a danger that the new process may actually reduce the effectiveness of the existing legislation by being overly bureaucratic.

It is essential that these points are recognised and the principals of Better Regulation are followed. An example of where resources and costs are in danger of escalating is the testing of Flood Plans for reservoirs. The current proposals will cost industry many tens of thousands of pounds per site to develop and repeatedly test.

SEPA will administer the new system and should be given an explicit responsibility to minimise costs to industry by proving they have introduced a regime which follows the principals of Better Regulation. In these times of reduced budgets there is a real danger that the introduction of a new regime is taken as a revenue raising opportunity. SEPA have in past regimes (Controlled Activities Regulations) created self perpetuating work loads by interpretation of the Act’s intent without any demonstrable benefit to the water environment. This must not be allowed to happen with the standards for reservoir safety.

We are generally supportive of the key element of the proposed changes in reservoir safety legislation i.e. to introduce a more risk based approach to reservoir safety.

M.Noble
Generation civil O&M Manager
25 November 2010
## SSE Response to Reservoirs (Scotland) Bill

### Introduction
For clarity the issues of greatest concern have been tabularised.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Definition</th>
<th>Interpretation</th>
<th>Impact</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(1)</td>
<td>Definition of a reservoir includes spillways valves pipes and any other thing which controls the collection of water into the reservoir</td>
<td>Technically this would mean all intakes and tunnels in an extended catchment. A significant change to 1975 Res Act</td>
<td>Not feasible to inspect many miles of tunnel and pipe not directly related to dam safety. Duplicates HSE remit.</td>
<td>Restrict to 'dam and appurtenant structures'</td>
</tr>
<tr>
<td>17-22</td>
<td>SEPA undertake risk evaluation independent of Inspecting Engineer</td>
<td>A current low risk reservoir may be assigned high risk by SEPA then an inspecting engineer tries to apply current flood categorisation.</td>
<td>Significant works required to meet a SEPA requirement disputed by the inspecting Engineer.</td>
<td>Guidance for Inspecting Engineers and SEPA (rewrite the Guide to the Reservoirs Act 1975)</td>
</tr>
<tr>
<td>17-22</td>
<td>SEPA undertake risk evaluation including Environment and Cultural Heritage</td>
<td>This is a significant change from the 1975 Act, duplicating the risk process in CAR licensing agreements.</td>
<td>Not directly related to dam safety and people. Significant works required</td>
<td>Remove these terms from the Bill.</td>
</tr>
<tr>
<td>43 - 46</td>
<td>Inspecting Engineer is appointed at all times</td>
<td>Currently only appointed for one inspection at a time.</td>
<td>Difficult to administer especially Inspecting Engineers often out of country</td>
<td>Remove requirement to appoint at all times</td>
</tr>
</tbody>
</table>
| 43 - 46| Requirement to comply with any direction in an Inspection Report | Maintenance issues are treated the same as matters in the interests of safety diluting the effectiveness of directions. | Grass cutting maintenance could have the same impact as structural instability, and prove. | Remove maintenance as a statutory requirement. Keep as current as a matter to be }
| 48 (2g) | Supervising Engineer to supervise any proposed drawdown | Levels in reservoirs move up and down on a regular basis | Could impose unnecessary restrictions on normal hydro operation. Duplicates restrictions through CAR | Need to introduce the words “unexpected or significant drawdown”. Already identified in CAR |
| General comment | Guidance is required for users and the existing “Guidance to the Reservoirs Act 1975” should be rewritten. | | | |
The Reservoirs (Scotland) Bill is proposed legislation to replace the current regulatory regime for reservoirs which is contained in the Reservoirs Act 1975. As the legislation currently stands the Reservoirs Act is administered and enforced by local authorities, in the case of Stirling Council the duties are undertaken by Environmental Health.

The proposals in the Bill would reduce the size of reservoirs coming within the scope of the control legislation from 25000 cubic metres to 10000 cubic metres and roll out a number of additional control measures in relation to registration of reservoirs, day to day management, risk designation and flood control measures.

The principal change in the proposed legislation is the transfer of enforcement responsibility from the thirty two Scottish local authorities to the Scottish Environment Protection Agency.

As the work which Stirling Council currently carries out as a result of the enforcement duties is not income generating the proposals will remove a small work stream without any financial penalty.

It is recommended therefore that in response to the consultation Stirling Council endorse and approve the proposals.

Stirling Council
7 December 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM TINTO RESERVOIRS LTD

GENERAL POINTS:

Tinto Reservoirs Ltd own two reservoirs registered under the 1975 Act.
Both reservoirs form a small fishery business established in 1992.

Since taking ownership of the reservoirs in 2002, I have diligently complied with all the legal requirements imposed by the current legislation. Appointed a Supervising engineer who carries out 6 monthly inspections and an inspection every 10 years carried out by a Panel Engineer. To say that these inspections are not risk based is misleading.

The very nature of the inspection is to identify possible safety problems in relation to the integrity of the structures and to advise the undertaker of work to be undertaken in the interest of safety, maintenance and monitoring.

An emergency plan is already in place, however an inundation plan would be a valuable tool to establish the effects of a serious breach on the surrounding area and whether the emergency plan requires to be revised.

While I agree with improvement in reservoir safety, the Bill changes the whole concept of the regulatory enforcement, placing an unfair burden on undertakers with private owners paying a disproportionate amount compared to the public bodies, who are publicly funded, so in effect the extra financial costs really don’t effect them in reality. The public purse will pick up any added costs either directly or indirectly.

Not so in the case of the private owners, in particular the small rural business linked to the leisure/tourism industry/angling clubs/associations/micro hydro generation.

Larger business like energy companies etc will be able to recover any extra costs via their much larger customer base.

It is interesting to note that Scottish Water and Local Authorities share will be lower apparently with the full agreement of COSLA, and the private sector left with the highest burden.

SMALL/MICRO FIRMS IMPACT TEST

While there was reference in the Regulatory Impact Assessment about significant effects on small business or micro business, there is no indication in the Bill of any measures to assist private owners who just don’t have the resources to finance the added expense that the Bill will impose.
LEGAL AID IMPACT TEST:
The proposed appeal mechanism indicated in the Bill will be at a cost. Fees associated with lodging an appeal are only returnable if the appeal is upheld. Presumably legal aid will only be available to parties with no resources or the undertaker is faced with legal costs.

COMPETITION ASSESSMENT
No mention of mechanisms to help business and individuals are included in the Bill.

No mention of a burden being put on land values which will have a detrimental effect on the sale of capital assets.

FINANCIAL IMPACT OF INTRODUCING LICENCING SYSTEM FOR SMALL BUSINESS under this Bill,

Increased financial burden on small business:
Diminution in business and property values of reservoirs and associated business:
Total Loss of Capital Assets: (Decommissioning or Abandonment scenario)

***
Disadvantaging one section of business against another:
Presents a threat to owner’s rights and livelihood:

*** This could occur where an undertaker is unable to meet the costs abandons the reservoirs, in effect being forced into liquidation/bankruptcy. My understanding is that SEPA would have to pick up the costs to either undertake the remedial work or pay for Decommissioning/Breaching. Given that the company is no longer in being, who then are SEPA going to recover the cost from.

Footnote:
The undertaker finishes up with a criminal record, fined and/or imprisoned for not complying with enforcement notices because he hasn't the financial means to undertake the work, when did being insolvent become a criminal offence.

(This proposed legislation may infringe both my civil and human rights)

Through no fault of my own, my property assets are seized, which in my case is a pension plan to supplement my income in retirement by selling the business and property assets.

Impossible Situation
Provision requires to be made regarding this impossible situation, either in the form of grants/loans to the undertaker or an option for small business/angling clubs etc to be compensated by means of compulsory purchase or buyback.
scheme, taking the reservoirs back into public ownership. (see: Failure of Government)

**Decommissioning Costs**  
Estimated cost, of decommission a reservoir of similar size to mine £300,000.

**Costs Projection: on high risk category reservoirs 25K & above.**  
Estimated One Off costs £15,000  
Estimated Annual costs £15,300  
The business wouldn’t be able to meet these costs and would probably lead to administration as my only option, so as to avoid prosecution for non compliance.

**Failure of Government**  
This situation was going to happen sooner or later as a result of the Water Authorities being allowed to sell of redundant reservoirs to the general public, people with limited resources, was always going to be a recipe for disaster. They should have been decommissioned or breached by the water authorities and where this was not possible because of possible effects on ecological grounds etc, then transferred to Scottish Natural Heritage or some other publicly funded body, keeping them in the public ownership.

A public resource was given away for a pittance, due in the main to the lack of maintenance over the years by the previous water authorities to a stage that remedial costs then became the over riding factor and rather than address this, the easy option was get rid of them.

**For Background Information:**  
I didn’t buy the reservoirs at auction, I knew exactly what the responsibilities were and didn’t want anything to do with them. I already owned the fishing and wildfowling rights, I had nothing to gain, however they were purchased by a third party not aware of what he was taking on, once he realised his error, he then tried offloading to anyone he could and I was faced with a situation where prospective purchasers were making backhanded threat of what they would do and wouldn’t.

The threats would have impacted on my fishery business, so in effect had little choice other than to purchase to avoid a constant conflict and protect my business interest.

I have spent the last 8 years undertaking the remedial work and spending in the region of 75% of my annual income from the business, bring the reservoirs up to the required standard that they were able to pass the 10 year inspection in 2009 and there being no safety issues arising from that inspection.

Now I maybe faced with closure, because I am unable to meet the proposed new financial burden and with the possibility of losing my property.
No I am not a happy citizen by any means, when the state can undermine my livelihood, disadvantage me, makes me a potential criminal, possible bankruptcy and infringe my basic rights.

THESE ARE ISSUES THAT REQUIRE IMMEDIATE INVESTIGATION PRIOR TO THE BILL BEING INACTED INTO LAW.

I WOULD ALSO SUGGEST THAT GOVERNMENT TAKE ACTION TO ENSURE THAT NO OTHER REDUNDANT RESERVOIR IN PUBLIC OWNERSHIP, ARE DISPOSED OFF IN THIS WAY. (This would be a positive action to reduce the risk factor in the future)

CIVIL ENFORCEMENT, RELATED OFFENCES AND EMERGENCY POWERS
I have grave concerns about the powers being devolved to SEPA in effect the transfer of power from the courts. SEPA will determine what is “beyond reasonable doubt”

No mention of mitigating circumstance for non compliance.

Not clear who will hear the appeal, but given that a fees will be payable to SEPA, then it’s fair to assume that they will administer the appeals procedure themselves
This being the case, surely there is a conflict of interest in hearing appeals against their own decisions.

To appeal a decision, a fee is charged, presumably, NO FEE, equate to NO APPEAL
Equates to denial of NATURAL JUSTICE: SEPA effectively becomes judge & jury in the first instance.

Many small business and angling clubs etc, will not have the resources to meet legal fees in defending themselves, there are no provision in the Bill making legal aid available in these cases.

Inundation Plans
There is no mention in the costing for inundation plans being prepared. The cost in England/Wales was £2.3M to undertake 2092 reservoirs. Scotland with 950 will equate to £1.4m. There are no reference to the actual costs for inundation plans in the documents which is surprising given the current financial constrains government is facing.

Flood Prevention: £32.1m spent 2007/08 of public money on flood prevention etc in Scotland, how much of this was spent on reservoirs, if they present such a threat.

Reservoir Safety
It is perceived now that all reservoirs present a threat, follow the Ulley incident, but would respectively point out the dam didn't fail and there have been no such instances in the past 80 years. The proposed system of High,
Medium or Low risk categories is based on the loss of life; damage etc is a false premise to start from and may actually be misleading. Categorising is no guarantee that a low risk reservoir won’t fail.

The real RISK ISSUE is the integrity of the structure, how it is managed, maintained, holding capacity, catchments area, and monitoring regime. Any categorisation should be based on these factors, which is a tried and tested system, or you automatically build in an unfair bias against reservoirs which are situated closer to people and property which may never have, or will posed a threat of any sort in the future.

No matter how well reservoirs are maintained or how they are categorised there is the unknown factor of what mother-nature will deliver and no amount of Risk Assessment is ever going to outwit her, as is the case in river and costal flooding, earth quakes etc.

Emergency Planning:
On checking with my Local Emergency Planning Dept, indicated we don’t even figure in their plans as reservoirs are considered a low risk.

Unfair Competition:
When we opened 18 years ago, there was only one other commercial fishery in the area, but with farm diversification scheme (government funded) commercial fisheries start popping up all over the country. No consideration was given to the financial impact that this would have on existing fisheries.

Scottish Water (government funded) decided rather than provide the fishing themselves, they leased these out to members of the public adding again to the number of commercial fisheries (again no financial impact assessment on existing business) as a public body they should have been duty bound to do so.
I have no objection to leases to constituted angling clubs or associations which are run on a non profit basis. This course of action would have at least lessened any impact on existing business.

The rural grant system doesn’t as far as I can ascertain offer substantive support to businesses like mine, but at the same time farm diversification grants cut across area’s that reservoir undertakers could benefit from.

Example: boundary stock fencing, hydro, holiday letting accommodation, conservation measures and leisure activities to mention only a few.

If we wish to diversify, then we have to do it with our own resources. I would categories this as unfair competition instigated but government.

I cannot equate the government policy of a wealthier and fairer Scotland having been applied in these instances, not from my perspective.
The proposed changes in legislation, **pose a serious threat to my rights, livelihood, business and property values** and would respectfully request that the members of the Committee take due cognisance of the points made.

I have tried to be positive in my approach to the proposal and while I fundamentally agree that safety of reservoirs is an important issue. The introduction of this legislation without some provision for small business would be inequitable.

No specific mention is made about Impact on small businesses in the Policy Memorandum and would draw your attention to

9.2 Regulatory Impact Assessment:

“These proposals are unlikely to have significant impact on competition. We accept that certain reservoirs may initially require more expensive measures to be undertaken to secure compliance. However, mechanisms to help business and individuals are being investigated to minimise the impact of this”

Two questions: UNLIKELY: for who? MECHANISMS: none are mentioned, why not?

An aspect not mentioned in the Memorandum but which appear in SEPA Board Meeting Minute, dated 9/11/2010 Ref. 50/10 par. 3/4 makes reference to Compulsory Insurance, Bonds. Will this be another financial burden placed on all reservoir undertakers, or just the one’s in private ownership.

I make no apology for deviating from the specific contents of the Bill. I feel the issues highlighted are real and very serious one’s and will afford the Committee a fuller understanding of the impact of the new legislation on small business and angling bodies etc. which the Policy Memorandum fails to address.

I would respectfully urge Members of the Committee to consider some form of financial assistance to small business, angling clubs as well as owners in the category 10K to 25K who are being brought into the regime for the first time.

John Reid, Director
Tinto Reservoirs Ltd.
25 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

WRITTEN SUBMISSION FROM WEST LOTHIAN COUNCIL

West Lothian Council's draft response to the Scottish Parliament’s Rural Affairs and Environment Committee's call for views on the Reservoirs (Scotland) Bill.

1.0 Introduction & background

1.1 West Lothian Council currently has eight Large Raised Reservoirs in its administrative area, a number which has reduced in recent years during which several have been taken outwith the ambit of the Act following engineering work to render them incapable of holding more than the statutory 25,000 cubic metres of water. These actions have generally been taken by operators to minimise the very significant costs associated with the supervision and inspection of reservoirs, which exceed the current statutory threshold.

1.2 The council owns two reservoirs. Beecraigs is a Large Raised Reservoir, which currently falls within the ambit of the existing legislation. Eliburn Reservoir used to be a Large Raised Reservoir but was engineered by Livingston Development Corporation some years ago to limit its capacity. No flood plans have previously been prepared for either of these structures.

2.0 The Council's Views

2.1 The council agrees with the proposal to transfer its current role as ‘Enforcement Authority’ under the Reservoirs Act 1975 and that of other local authorities in Scotland to SEPA. Its support is with the aim of promoting consistency and, in particular, to ensure that Scottish Water, a national organisation and the largest owner and operator of reservoirs in Scotland, is regulated fairly and consistently.

2.2 The principle of revised and risk-based reservoir safety legislation is strongly supported. The need to review the existing legislation is overdue particularly in the context of changing trends in the ownership of Large Raised Reservoirs in Scotland, the impact of our changing climate and the ageing nature of these important and potentially dangerous structures.

2.3 The proposed requirement for reservoir undertakers to produce on-site flood plans is supported. The council considers the risk-based approach to be well reasoned given the potential impact of an uncontrolled release of water from such structures however small that risk might be.
2.4 The proposed approach to align reservoir safety legislation with the Water Environment Controlled Activities licensing arrangements should help minimise costs.

2.5 The Council considers it critical that the cost of introducing new legislation and regulating the safety of reservoirs remains proportionate to the benefit to society at large. The more that relevant processes can therefore be integrated with the SEPA’s existing activities, the better in terms of minimising duplication, reducing the number of processes and minimising regulatory costs.

2.6 If SEPA later determines that either of the reservoirs owned by local authorities or Scottish Water were to constitute high-risk structures, the additional statutory burden would result in a significant revenue cost pressures.

The Scottish Government would be expected to provide additional funding to offset the cost of additional regulatory burdens particularly where these are associated with the more stringent regulatory requirements associated with structures later deemed by SEPA to present a high-risk.

2.7 Flood plans must, as a minimum, include a reasonably accurate representation of infrastructure that would potentially be at risk downstream, the sensitivity of these receptors and the political, economic, social and environmental implications of inundation.

Where serious risk of infrastructure or proposed development identified within Local Plans is identified, careful consideration would need to be given to the potential impact. Guidance is needed as to how situations such as this should be handled by planning authorities.

2.8 The proposed new 10,000 cubic metre statutory volume is considered arbitrary. Risk has as much to do with location, head and velocity than volume alone. Risk may equally be posed by localised rainfall exceeding the capacity of a structure as assumed failure. The latter has no bearing on permanent capacity.

Determining the actual volume of a reservoir can be challenging in the absence of construction drawings or a plumbed-depth survey. Most reservoir undertakers no longer have construction drawings for their reservoirs.

2.9 The principal of charging for the regulation of reservoirs concerns the council. The proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of complying with said regulation. Given the changing dynamics of reservoir ownership in favour of small businesses such as fisheries and those
promoting the shooting of game, this is not regarded as sustainable, particularly in the current economic climate.

Increased risk associated with development downstream of the structure is outwith the control of reservoir operators and yet it is the operators that will have to pick up the additional costs in the event of a reservoir risk rating being changed when their license is reviewed by SEPA.

2.10 The number of occasions where the regulator needs to intervene in a practical way due to the failure of a reservoir operator is expected to be minimal. However, this might well increase over time given the changing dynamics of reservoir ownership and the age / condition of the structures and the maintenance regimes or absence of them. It is only right that the relevant reservoir operator meets the cost of personal or corporate failure. However, it is anticipated that the circumstances when such intervention will be necessary will relate to individuals with insufficient capital and recovery of costs could be challenging and potentially controversial.

In promoting the Bill, the Scottish Parliament needs to be mindful of the economically delicate nature of some of the businesses, which are now responsible for reservoirs and reservoir safety. There are limited commercial returns from fishing and the shooting of game for example.

Where landowners are not the reservoir undertakers, responsibility for the reservoir and compliance with reservoir safety legislation is often included in leases. The council considers that this might sometimes represent an unfair burden given the scale of investment that might potentially be necessary when work becomes necessary in the interests of safety.

In considering the merits of the risk-based approach to reservoir safety and the introduction of enabling legislation, members of the Scottish Parliament need to be mindful of the fragile economic viability of some flood plans for example which the Financial Memorandum estimates will cost between £2.5K and £25K. Over recent years, water authorities and other public bodies have rationalised their asset base and divested themselves of unwanted assets to the highest bidder. Many structures have been purchased as fisheries or for the shooting of game. Many new owners and operators may struggle to meet the cost of preparing associated with a reservoir and necessary in the interests of safety. The added burden, particularly for those structures later deemed by SEPA to be high-risk in nature have the potential to undermine the viability of some business and leisure interests. Under the new legislation, actions by SEPA to recover any costs that it incurs in securing compliance could potentially send such businesses into administration.
2.12 There are wider concerns that the proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of compliance. Given the changing trends in reservoir ownership in favour of small businesses such as fisheries and for game shooting, this is not regarded as sustainable, particularly in the current economic climate.

3.0 Conclusion

3.1 The council is supportive of the general principles of the Bill. In its response to both this and the Financial Memorandum it urges caution in terms of ensuring that the cost of administering the legislation remains in proportion to its benefit, that very careful consideration be given before passing on the regulator’s costs onto reservoir operators or otherwise increasing the financial burden associated with compliance on local authorities and small / medium enterprises.

West Lothian Council
15 November 2010
This supplementary response expands on issues which seemed to interest members of the committee.

My relevant experience in this field.

- I am a former member of the Natural Environment Research Council’s Earth Observation Expert Group and the DTI’s Earth Observation Programme Board which was responsible for funding the UK's earth observation research programme.
- I also represented the insurance industry on the steering committee of a major project which looked at all aspects of reservoir risk management. ¹
- I am the sole author of a 1,600 page, four volume text book on liability insurance and the author of the Chartered Insurance Institute’s “Flood Fact File”.

Compulsory public liability insurance

In the UK the operators of reservoirs have a strict legal liability for any injury, loss or damage resulting from escape of water. ² This means they have no defence to a legal action for compensation.

Compulsory public liability insurance would have at least eight major benefits:

1. Blight would be avoided when dambreak inundation maps are published, because home and motor insurers would know that they could recover their claims costs from the reservoir owner.
2. Independent risk assessment and monitoring could be carried out by experts in risk, especially flood and subsidence.
3. Insurers would spread the risk globally using reinsurance. Thus the cost of a major disaster would be spread over the world economy and not carried solely within Scotland.
4. Financial incentives could be offered to reservoir owners to cooperate, provide information, and to reduce risk.

¹ Hughes, A; Hewlett, H W M; Samuels, P G; Morris, M; Sayers, P; Moffat, I; Harding, A; and Tedd, P. 2000 “Risk Management for UK Reservoirs.” Construction Industry Research and Information Association (CIRIA) Research project report C542. London.
5. Bigger insurers could give advice, data, and assistance to SEPA and reservoir owners on their experience in the use of the latest satellite and aerial survey technology, such as synthetic aperture radar and LiDAR\(^3\).

6. Zero cost to taxpayer.

7. Unforeseen events would be covered, including aircraft crash, avalanche, landslip and peat slide. Insurers can also access the terrorism insurance pool.

8. Liability compensation payment is guaranteed (subject to policy conditions), even if the reservoir owner becomes bankrupt.

Other benefits:

1. Flexible. Limit of indemnity can be varied for different levels of risk or different sizes of operator. Ideal for “light touch” cases to save work for SEPA. Suggested minimum £250,000. Amounts up to £10m or more should not be a problem.

2. Most operators will have public liability insurance already so added costs would only be incurred by less responsible owners. The annual premium for a small reservoir should be much less than a panel engineer’s fee.

3. Fishing or sailing clubs etc can have an indemnity to individual committee members for personal liability.

4. Public liability insurance can be extended in suitable cases to cover environmental impairment liability (for example, gradual pollution) under the EU’s Environment Liability directive.

5. Insurance experts could support and work in alliance with SEPA to help each other to resolve problems as already happens with flood in Flood Liaison and Advice Groups.

6. Access to insurers’ risk management expertise, GIS capabilities and surveyors.

7. Speedy resolution of claims settlements.

8. Access to the British flood insurance claims database\(^4\) for assistance in calculating estimated maximum probable loss.

However, in order to comply with the EU Solvency Directive, insurers would need complete freedom of access to inundation maps and engineers’ reports.

It is possible that some reservoirs may be found to be in such a dangerous state of repair that they are uninsurable. In such cases, SEPA may wish to consider ordering decommissioning.

**Dam failures.**

In the USA the rate of dam removal has exceeded the rate of construction for the last ten years with 80 dams removed in recent years mainly for safety reasons\(^5\). The

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\(^3\) Laser instrument detection and ranging.

\(^4\) This is probably the largest such database in the world, containing flood insurance claims from 25 major insurance companies. It was established by me in 1995 and is held at Dundee University.

Environment Agency has produced a report\(^6\) which claims that 69% of large dams in England pose a threat to human life, but it does not identify which dams. In addition, the Environment Agency say that each year there are on average six emergency draw downs in England to reduce water levels to prevent collapse\(^7\).

According to a report for Government\(^8\), climate change will increase the risk of failure of the 5,000 dams in the UK for a number of reasons:
- Summer droughts will lead to more subsidence of earth embankments.
- Stronger winds will lead to increased wave activity in reservoirs which could lead to overtopping and erosion.
- More severe rainfall events will lead to sudden loadings on embankments and spillways.

There is a big danger of complacency when dealing with reservoir safety. Dams do fail, and often the results are catastrophic.\(^9\) The most serious disasters have been due to landslip.

**Avalanche, landslip, peat slide, rockfall, earthquake and erosion risks.**

Not one of the panel engineers’ reports I have studied makes any mention of these risks and witnesses seemed to play down their importance, despite the lessons from the Vaiont disaster in Italy in 1963 when 2,600 people died from a landslip into a reservoir.

Peat slides are a particular problem in Scotland and it is concerning that other witnesses did not seem to be aware of this. It is true that peat slides are rare in other countries, but they are common in the British Isles. Almost all peat slides involve blanket peat\(^10\). The British Isles have approximately 10 per cent of global blanket peat deposits, and most of these are in Scotland.

I made reference to a Scottish peat slide in 2003 which was near a reservoir which is surrounded by blanket peat on a steep slope. Some 20,000 people live in the inundation zone and the 150 year old dam wall is cracked. The panel engineer’s reports for this reservoir make no reference at all to the peat slide risk.

\(^{10}\) Dykes A P (in press) “Tensile strength of peat: laboratory measurement and role in Irish blanket bog failures.” Landslides: Journal of International Consortium on Landslides
In 2003 following a prolonged drought, two unrelated rainfall events in northern Scotland and western Ireland on the same day each triggered numerous peat failures causing over £500,000 of damage, including the loss of large numbers of livestock and buildings. Film of the event was shown on national television news. Only four weeks later a major peat flow of around 450,000 m$^3$ volume was triggered by engineering work to prepare the site for a wind turbine at an Irish wind farm development.

The Glen Doe dam was opened by the Queen in June 2009. It was the biggest hydro electric dam built for nearly 50 years in Scotland. It was claimed that it was designed to last for 75 years. Glen Doe had the highest head – the drop from the reservoir to the turbine – of any hydro station in the UK, allowing it to generate more energy from every cubic metre of water than any other facility in the country. The huge dam wall is 950m long.

In August 2009, only three months after opening, it was the subject of a major rock fall and no longer produces power. It is still under repair at the time of writing. One wonders why the rock fall risk was not anticipated by the engineers who constructed it? The Glen Doe web site has now been closed down.

While UK earthquakes are usually of too short a duration to cause liquefaction\textsuperscript{11}, there is a case of an embankment dam failing altogether following an earthquake, namely the Earl's Burn dam\textsuperscript{12} in 1839, fortunately with no loss of life.

Visual inspections are not enough to give early warning of ground movement. Traditional piezo electric sensors do not usually have adequate telemetry and require site visits. Traditional movement sensors can and have been disconnected by the supervising engineer if they show movement.

One answer is:

**PS InSAR transponders.**

“Permanent Scatterer Synthetic Aperture Radar Interferometry” uses data from radar satellites such as RADARSAT 1, RADARSAT 2, or ENVISAT to detect sub millimetre movements on the ground. They can detect:

- Reflections from hard surfaces such as concrete walls or dams,
- Reflections from specially designed metal corner reflectors (about the size of a satellite dish)
- Signals from a dedicated transponder (cost around £100 each). Ideal for soft ground or snow or peat surfaces.

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PS InSAR is already used by Thames Water in London and the transport industry has shown interest for railway embankments. The orbits of the three satellites ensure that there is complete coverage of every part of Scotland at least once every 35 days. The results can be recorded and mapped in a central point and archived, thus avoiding the risk of interference from the reservoir operator or the need for site visits. Most importantly, the satellites can give early warning of tiny movements in any axis. This early warning can allow remedial action to be taken before there is a failure.

If you are interested, I can provide further information, including images showing the capabilities of PS InSAR. (I am not connected financially with any suppliers of this technology. I simply think it is in the public interest to use it.)

**Flood Mapping**
Larger insurers are experts in flood mapping and have helped SEPA already. An EU research project has developed user friendly software to help with dambreak inundation mapping and this is in the public domain. If there was a compulsory public liability regime, this would encourage insurers to assist SEPA with the preparation of inundation maps, using airborne LiDAR surveys and British Geological Survey data.

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13 See http://www.hrwallingford.co.uk/projects/IMPACT/
Or see http://www.samui.co.uk/impact-project/
Some case studies

Ulley Reservoir is a 35 acre reservoir, up to 10 metres deep and holding 580 million litres of water. It was built in the 1870s to provide a water supply for Rotherham. Latterly it has been used for fishing and sailing. The 25th June recorded the highest ever June rainfall in a single day and the dam was declared in “imminent danger” of collapse. 13 pumps were brought in from surrounding areas for an emergency “draw down” to reduce water levels in the reservoir. It is not known why they did not open the sluice gates to reduce the water levels more quickly. It could well be that they were jammed. According to Mr Milliband (Commons statement on 26th June 2007) on this occasion the fire service used their new high volume pumps supplied by DCLG to some brigades in England. Despite this they were initially unable to keep pace with the amount of water flowing into the reservoir.

Press reports state that in the morning of the 26th June, 700 people were evacuated from the villages of Treeton, Catliffe and Whiston. Some evacuees claim that they were woken without warning at 2.30 am and given 5 minutes to get dressed and go to waiting coaches. Many did not have time to take essential medication with them let alone pack sentimental items. It is not known why they could not have been given more notice, for example at the time the coaches were ordered. Press reports indicate that some evacuees were apparently ignorant that they lived in the danger zone of the reservoir and never expected an evacuation.

Boltby England, 2005. Embankment failure
Boltby reservoir was constructed in 1880 near Thirsk. It had a 20m high earth embankment. At the time of the River Rye floods in Yorkshire on 19th June 2005 the embankment and spillway suffered extensive damage from overflow discharge. Engineers do not call it a failure, but the village of Boltby was flooded with fast moving water to a depth of about a metre. The reservoir had not been used for water supplies for many years, but it was not emptied. Work was carried out to lower the retained water level in 2007, and the reservoir is no longer big enough to be subject to the Reservoirs Act 1975.

On 9 January 2002 there was very nearly a major disaster involving the Upper Rivington Reservoir near Manchester. One of the 12m-high earth embankments of the 150-year-old reservoir sprung a major leak and emergency action had to be taken to empty the million-cubic-metre reservoir before it collapsed sending torrents of water over an area occupied by 100,000 people. Large pumps were brought in from all over the country to pump the water out, because the emergency sluices did not work, and this took three days. Warnings were issued to only 57 homes.

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16 Dr Andy Hughes, June 2007, personal communication
Dolgarrog, Wales, 1925  Landslip
This involved sequential failure in a cascade of dams. No lives have been lost in the UK since the failure of the Eigiau dam near Dolgarrog in North Wales in 1925, when 10 adults and six children died. The death toll would have been much worse had not most of the population been attending the weekly film show in the village assembly hall, or working in the aluminium smelting plant.

Dale Dykes, England, 1864. Dam break
The worst dam disaster in the UK was the collapse of the Dale Dykes dam near Sheffield in 1864, when 250 people died and 415 homes were destroyed. This disaster was followed by legislation to create strict liability on the part of reservoir owners. This means that they have no defence at law against legal actions for damages.

In 1852 the Bilberry dam failed at Holmfirth, leading to 81 deaths and the destruction of 244 properties.

Others
- In 1959 when the Malpasset dam in France failed, 421 people died.
- In 1963, overtopping of the new Vaiont dam in Italy caused by a landslide resulted in 2,600 deaths, even though the dam itself remained intact.
- In 1972, a dam in West Virginia, USA failed causing 125 deaths.
- In 1976, the Teton dam in Idaho, USA, failed during its initial filling, killing at least 11 people.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

SUPPLEMENTARY WRITTEN SUBMISSION FROM SEPA

Further to my oral evidence that was provided to the Committee on 15th December 2010 I would like to take this opportunity to provide the further information that was requested.

Firstly whilst giving evidence I was questioned on the level of any proposed annual subsistence fee that may be levied on reservoir managers. Work has been undertaken to try to provide an estimate of these costs, based on the proposed three risk designation levels. Currently it is envisaged that there will not be an annual charge for those sites deemed to be ‘low risk’ as it is thought that there will not be a requirement for SEPA to undertake any regulatory work connected to these sites.

Thereafter those sites deemed to be ‘medium’ or ‘high’ risk will require varying levels of regulatory work. Subsequently the estimated annual subsistence charge reflects this differing level of work requirement per risk designation, with an estimated annual charge of approximately £100.00 per site for ‘medium’ risk sites and £300.00 per site for ‘high’ risk sites. These charging estimates have been included in the Financial Memorandum that was produced by the Scottish Government to accompany the Reservoirs (Scotland) Bill.

Work has also been undertaken to investigate the likely registration fee that could be required for SEPA to recover its cost in carrying out this process. If the registration charge only covers the initial registration process the estimated cost is £150.00 to £550.00.

The cost estimate increases to £350 to £1,000.00 if the registration charge includes the costs from the risk classification process in addition to the initial registration process. No decision as yet has been taken as to what will be required during the registration process and therefore these costs are only estimates based on current assumptions.

All of the financial estimates contained above are based on 2010/11 costs and SEPA’s current understanding of their regulatory role and associated work requirements that are contained within the Bill.

It should also be noted that SEPA would be required to hold a public consultation on any proposed charging scheme and that Scottish Ministers would be required to sign off the final proposal.

With regard to the number of reservoirs that are registered with SEPA under the Controlled Activities Regulations (CAR), I can confirm that there are approximately 950 CAR licenses that contain approximately 3,000 impoundment activities. It should be noted that a licensed impoundment activity can range from an existing managed weir of less than 1 meter in height to those dam structures exceeding 20 meters in height.

SEPA
20 December
Thank you for your e-mail following on from the RAE Committee meeting on 1 December 2010 at the Scottish Parliament, where Environmental Quality Division officials gave Stage 1 evidence on the Reservoirs (Scotland) Bill. These specific questions were helpful given that the weather difficulties had prevented the policy lead on Part 2 of the Bill making the session.

In your e-mail you asked for the following further information on part 2 of the Bill.

**What will the proposed new offences under WEWS actually be?**

The proposed Restoration Regulations to be made under section 22 of Water Environment and Water Services (Scotland) Act 2003 (WEWS) will provide new powers to help SEPA and the other Responsible Authorities (such as local authorities and Scottish Natural Heritage) take forward restoration measures to improve the quality of the water environment, further supporting Scottish Ministers’ aims and objectives with regard to the Water Framework Directive. These Regulations will give new powers to SEPA and other responsible authorities to issue notices to land owners identifying specific remedial action required to restore water bodies adversely impacted by past human activities. Whilst WEWS provides primary powers to make regulations for this purpose, it provides no basis to allow supporting offence provisions to be introduced. Without such powers, the regulations cannot compel the carrying out of restoration works, putting their usefulness in question. It is therefore anticipated that the new offences to be offences in connection with failure to comply with a restoration notice. The proposed powers to create offence provisions follow the model of the similar power in s.20 and Schedule 2 of WEWS, and subsequently used to create offences in the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR), which is the principal regulatory tool for delivering Ministers’ obligations in respect of the water environment. In the proposed restoration regulations, which will complement CAR, it is expected that similar offences may be adopted.

The outcome of such water restoration work will help support Scottish Ministers’ obligations under the Water Framework Directive, and improve the quality of Scotland’s water environment. Whilst we would hope that land owners will accept the need for remedial action where identified there may be some occasions where enforcement action is required. Part 2 of the Bill would, if enacted, allow us to introduce such actions.
Why were no questions in either of the consultations investigated directly, i.e. the possible expansion of enforcement powers, and will further consultation be carried out?

The question of water restoration enforcement powers did not feature in the public consultation on the Reservoirs Bill as it had been carried out in a separate context. The primary legislation proposed in the Reservoirs Bill consultation was identified a suitable vehicle to provide the offence provision.

Such provisions should have been included in WEWS. The offence provision was included in the original consultation on the WEWS Bill but due to an oversight were not included in what became the Act. In addition a specific consultation on water restoration measures was conducted in 2009 (http://www.scotland.gov.uk/Publications/2008/12/18145403/0) which highlighted the need for new powers as part of the package of initiatives to deliver improvements to the water environment. Responses to these consultations were supportive recognising their need to form part of the toolkit to promote improvements in the water environment. Offence provisions were not specifically mentioned in the consultation as they were considered an integral part of the package of new powers.

Restoration Regulations cannot be made until the Reservoirs Bill is passed, which will put offence provisions in place to enforce them. Should these offence powers be made in this Bill we will consult on the draft Restoration Regulations before they are brought to the Parliament.

Give examples of when, since WEWS came into force, having a prosecutable offence would have helped achieve the environmental objectives of the WFD

WEWS and regulations made under WEWS are currently focused on preventing damage to the water environment, rather than restoring it. Regulations enabling compulsory restoration measures have not yet been made under s.22 of WEWS, so it is not possible to give examples where having a prosecutable offence in connection with restoration measures would have helped achieve the environmental objectives of the WFD (although prosecutable offences under CAR do support the CAR licencing regime, helping to ensure that licences are complied with so that deterioration of the water environment is prevented). Prevention of further deterioration will not be sufficient to achieve the WFD’s environmental objectives, however. Restoration work is required to meet those objectives. The intention is that restoration notices issued under regulations made under s.22 of WEWS will identify specific remedial action that is needed. Such action could include, for example, the repair of a dam or weir on a property which may be impacting on fish stocks, or old mine workings which are discharging into a water body, impacting upon local biodiversity. The intention is that the person served with the notice should carry out the required work. Without the threat of a criminal sanction, there would be little or no incentive to incur the cost of complying with an improvement notice, compromising achievement of WFD objectives.
Where in the Bill is evidence of SEPA’s authority to charge reservoir managers under the Bill?

Section 14(4) provides powers that would enable SEPA to make charges for registration or (through 22(5)) to charge a fee for a review of a reservoirs risk assessment. (Section 22(6) specifies that this would be refundable if the review was successful). These are enabling powers and any use would be subject to consultation and the agreement of Scottish Ministers. It should also be noted that the policy intent is that registration would be free, at least for an initial 6 month period to encourage early registration.

Please give some more information about SEPA’s proposed general charging policy for reservoir classification and for requiring works to be done.

No charges would be made by SEPA for the classification of reservoirs. Any remedial work required in the interests of safety would be on the advice of the supervising engineer or direction of the inspecting engineer. Reservoir owners would be expected to undertake actions identified by the engineer to ensure that the reservoir meets required standards and is not a risk to public safety. As an exceptional matter sections 65 and 69 of the Bill provide SEPA with powers to appoint an engineer or to have emergency work undertaken and to recover the costs from the reservoir owner.

The intention is that SEPA will also be able to levy a subsistence charge that will be proportionate to the level of risk posed by the reservoir and therefore the level of administrative costs borne by SEPA. Under the new legislation, SEPA will have more statutory duties than local authorities have under the current legislation. SEPA will also have to enforce the legislation for a larger number of reservoirs. This subsistence charge was mentioned in the consultation paper, but was omitted from the Bill as introduced. There will be a Government amendment at stage 2 to rectify this omission. SEPA will be required to carry out a consultation exercise before implementing any charging scheme for reservoir owners, and any such scheme would have to be approved by Scottish Ministers.

In addition to the above we agreed to respond to a number of specific points raised by the Committee:

What is the nature of Scottish Ministers’ power to define the meaning of “natural level” and “surrounding land”:

The Scottish Ministers can do so under s.1(6)(b) of the Bill. The power is to be exercised by regulations. The power to make regulations under section 1(6)(b) can also be used to make provision concerning when a loch or other area is to be considered artificial or partly artificial and to make provision about how the volume of water capable of being held is to be calculated. The intention is that s.1(6)(b) can, if necessary, be used to clarify these issues should disputes arise as to the appropriate method of calculation of reservoir volume (whether those disputes turn on the interpretation of “natural level of the surrounding land” or otherwise).
What does 10,000 cubic meters look like?

Clarification was also sought by committee members as to what 10,000 cubic meters meant in reality and we agreed on an Olympic size swimming pool as the metric. An Olympic-sized swimming pool contains 2,500 cubic metres of water. Therefore, a reservoir of 10,000m³ (the threshold above which all reservoirs will be captured by the new legislation) is equivalent to the volume of water contained in four Olympic swimming pools.

Sludge

The Committee also asked whether a reservoir leaking sludge would be regulated by the Bill. The position under the Bill is that any structure or area that is capable of holding 10,000m³ or more of water above the natural level of any part of the surrounding land is a controlled reservoir under the Bill. The intention is that this could potentially cover a reservoir that contained, whether wholly or partly, sludge, if the total capacity exceeded 10,000m³. However, there are some express exclusions under s.2 (2) of the Bill and these exclusions include "ponds within extractive waste sites or waste facilities" and "sewage sludge lagoons". If the reservoir in question is such a pond or sewage sludge lagoon, it will not be subject to the regulatory regime of the Bill. The regulation of mining waste is regulated under “The Management of Extractive Waste (Scotland) Regulations 2010” and sewage sludge lagoons are regulated under the Waste Management Licensing Regulations 1994 as amended by the “Waste Management Licensing Amendment (Scotland) Regulations 2003 “.

However, any discharge or leaking of sludge from a reservoir (whether or not a controlled reservoir under the Bill) into the water environment would most likely be prohibited under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 ("CAR") as an activity liable to cause pollution of the water environment. If it did, or was liable to, pollute the water environment, such a discharge or leak would be a criminal offence under CAR (unless the discharge was authorised by SEPA under a CAR licence).

I hope you find this additional information helpful.

Neil Ritchie
Head of Natural Resources and Flooding Branch
Scottish Government
I am writing following the RAE Committee meeting on 22 December 2010 at the Scottish Parliament, during which I gave Stage 1 evidence on the Reservoirs (Scotland) Bill. I agreed to provide the Committee with some further information on a number of points raised during the session.

**How many appointments and re-appointments are typically made to the current panels of reservoir engineers by the ICE on an annual basis?**

In 2010, 60 people have been appointed or reappointed to the reservoir panels. Two of the 60 were unsuccessful in applying to the All Reservoirs Panel, and so were reappointed to their existing panel (one to Supervising, one to Non-impounding). The numbers are as follows -

<table>
<thead>
<tr>
<th>Panel</th>
<th>Reappointments</th>
<th>Appointments</th>
<th>(Unsuccessful)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Reservoirs panel</td>
<td>12</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Non-impounding panel</td>
<td>1 (Unsuccessful All Reservoirs Panel application)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervising panel</td>
<td>36 (Inc. one unsuccessful All Reservoirs Panel application)</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

Total: 60

The figures for 2010 are slightly higher than the average of 40 a year (there are around 200 panel engineers who must re-apply on a 5-year cycle). This, of course, depends on when the initial application was made.

**Use of the term ‘risk’**

In this legislation, ‘risk’ means a combination of the consequence and probability of a dam failure. The committee has discussed at length the appropriateness of including probability; however, SEPA is bound by the Flood Risk Management (Scotland) Act 2009 which implements the European Floods Directive to consider probability when assessing all forms of flood risk. This extends to flood risk from reservoirs and, as a result, will give a consistent, holistic picture of flood risk in Scotland. The 2009 Act states that –
“Flood risk” means the combination of the probability of a flood and of the potential adverse consequences, associated with a flood, for human health, the environment, cultural heritage and economic activity.”

The probability of the failure of any reservoir is very likely to be assessed as ‘low’. However, whilst I fully appreciate the difficulties inherent in these assessments, as reliable methods of scientifically assessing such risk are still in development, I consider that it is sensible for the Bill to require SEPA to take into account basic risk factors such as the type of construction, the purpose of the reservoir, and actual condition of each dam when assessing the probability of failure.

As methods of assessing the probability of failure of reservoirs improve, such methods can then be utilised when categorising reservoirs if SEPA considers it appropriate to do so. Alternatively, the Scottish Ministers can (by virtue of s.21(4)) by regulations make further provision about what is to be taken into account when assessing risk, should a recognised method of assessing probability emerge in future.

I must also stress that the Bill does not place obligations on engineers, or the ICE, to provide a precise assessment of the statistical probability of failure. The obligation is on SEPA, and is only to “take account” of the probability of an uncontrolled release of water from the reservoir (as well as the potential adverse consequences). I do not believe that the Bill is placing unrealistic requirements on the practitioners.

With these factors in mind, I consider that the inclusion of a requirement for SEPA to consider probability of flooding from reservoirs is crucial to maintaining consistency in how we assess flood risk in Scotland.

Scottish Water costs

The committee raised concerns about the difference in costs presented to the committee by Scottish Water with those set out in the Financial Memorandum. I understand that the difference is largely due to a recent assessment Scottish Water have undertaken of the likely structural work they may have to undertake on the smaller, currently unregulated reservoirs in their portfolio. This assessment took place after Scottish Water had provided information to the Scottish Government on the potential costs of the Reservoirs Bill for inclusion in the financial memorandum. In their current maintenance programmes, Scottish Water have prioritised the maintenance of their operational reservoirs and statutory obligations under the existing legislation. A number of their smaller reservoirs are no longer operational and have, following assessment, been found to be in need of repairs in order to meet the requirements of the Reservoirs Bill.

The committee also raised concerns about the estimated capital costs of £1.2 million for Scottish Water set out in the Financial Memorandum during the evidence session. This is the estimated costs of the production of reservoir flood plans. I would like to highlight that Scottish Water has already produced reservoir flood plans for 100 reservoirs and it is likely these plans will only require minor modifications to meet the new requirements under the Bill. If this is the case, the cost is likely to be closer to the lower end of the range at £0.7 million. This cost will be incurred over a number of years between now and 2016 as set out in the Financial Memorandum.

With regards to Scottish Water funding, the amount of finance it requires over a regulatory period is set by the independent economic regulator, the Water Industry Commission for Scotland. The current regulatory period runs from 2010-15 and the Water Industry...
Commission for Scotland issued its Final Determination in November 2009. The Determination, by necessity, includes a number of assumptions regarding Scottish Water’s costs. There are regulatory mechanisms that enable deviations in cost (arising, for example, because of inflation) and new statutory obligations, that were not foreseen at the time of the Determination, to be accommodated.

If additional unfunded costs are placed on Scottish Water, for example as a result of the Reservoirs Bill, these mechanisms can be utilised to ensure that Scottish Water can deliver its new statutory obligations.

**Stage 2 amendments**

As I indicated during the session on 22 December, my officials are currently working on a number of Stage 2 amendments to resolve some of the concerns that have been raised by stakeholders since introduction of the Bill in its current form.

We are considering-

- removing the exclusion of ash and silt lagoons from the legislation in light of the recent incident in Hungary.

- the removal of Section 2(1)(a) in response to concerns raised by stakeholders that it may unintentionally capture extensive pipe networks which feed water into reservoirs, but do not affect the safety of the reservoir.

- an amendment which will enable SEPA to charge an annual subsistence fee to reservoir managers to cover the costs of their administrative role. The cost of this has already been taken into account in the Financial Memorandum as its omission from the Bill at introduction was not intended.

- an amendment which will put time constraints on SEPA when completing a reservoirs risk designation.

- an amendment which will require SEPA to consult and have regard to advice from ICE before publishing guidance on the risk designation process.

- an amendment to the disqualification criteria for construction engineers in Section 31(5) to address concerns raised by stakeholders.

- an amendment which will remove the requirement for an Inspecting Engineer to be appointed at all times in response to concerns raised. In addition we are also considering an amendment which will require measures in the interest of safety to be supervised by an Inspecting Engineer as is currently the case under the 1975 Act.

- amending Section 46 so that it is clearer that routine maintenance which does not affect the safety of the reservoir is not compulsory in the same way as maintenance which can affect the safety of the reservoir is.

- an amendment to clarify that day to day operational changes in water levels such as those changes as a result of switching on turbines in a hydro-electric scheme does not constitute a “proposed draw-down” under Section 48 (2)(g) and will not require the supervision of a supervising engineer.
• an amendment to remove the requirement for the supervising engineer’s details to be displayed on emergency information boards and replace this with SEPA’s contact details.

• A number of other minor amendments including a small number we have agreed to in response to concerns raised by the Subordinate Legislation Committee in it’s Stage 1 report.

I would also like to take this opportunity to inform you that the Cabinet Secretary for Rural Affairs and the Environment will be taking over lead responsibility for the Reservoirs (Scotland) Bill from now on.

I hope you find this additional information helpful.

Roseanna Cunningham
Minister for Environment and Climate Change
12 January 2011
Reservoirs (Scotland) Bill: The Committee took evidence on the Financial Memorandum of the Reservoirs (Scotland) Bill from—

Neil Ritchie, Head of Protecting Land, Water and Air Quality and Managing Flood Risk Branch, Ross Scott, Rural Affairs and Environment Finance, and Judith Tracey, Head of Flooding and Reservoir Safety Policy, Scottish Government.
On resuming—

Reservoirs (Scotland) Bill: Financial Memorandum

The Convener: Item 6 is evidence on the financial memorandum to the Reservoirs (Scotland) Bill. I welcome the following Scottish Government officials: Neil Ritchie, head of the protecting land, water and air quality and managing flood risk branch; Ross Scott from rural affairs and environment finance; and Judith Tracey, head of flooding and reservoir safety policy.

I invite questions from members.

Malcolm Chisholm: In its submission, the City of Edinburgh Council criticises the savings that the financial memorandum sets out for local authorities. The council argues that, under current conditions, local authorities receive no funding for carrying out enforcement duties but, under the new proposals, they will be expected to pay Scottish Environment Protection Agency charges, which they argue will be an increase in cost rather than a saving. I have a local interest in the council’s concerns, apart from anything else. What is the officials’ response to the council’s comments?

Judith Tracey (Scottish Government Rural and Environment Directorate): As part of its block grant, the City of Edinburgh Council receives funding for enforcing reservoir safety, because that is a recognised local authority duty that is wrapped up in the block grant.

Malcolm Chisholm: Okay—it is obvious that the council has taken a different view, but I am sure that we shall ask the council for its comments on what you have said.

Neil Ritchie (Scottish Government Rural and Environment Directorate): I understand why the council does not recall that the funding is bedded in, because the funding transfer to reflect that burden was undertaken more than two decades ago, when we dealt with the financial burden from the Reservoirs Act 1975.

Jeremy Purvis: Am I right in thinking that the financial memorandum gives costs up to 2015-16?

Judith Tracey: Yes.

Jeremy Purvis: How is that possible?

Judith Tracey: Sorry?

Jeremy Purvis: The Scottish budget is for one year. Everything else is for the Christie commission, which will consider the configuration of public services—I assume that SEPA will be part of that. How can the Government give cost estimates until well into the next parliamentary session for agencies that might be reformed or abolished or whose responsibilities might be transferred, when the Scottish budget does not allow that?

Neil Ritchie: The costs that are set out are the resource costs that will be associated with implementing ministers’ intentions for the bill. If the public sector landscape changes as a consequence of work such as the Christie commission, we will factor that into who takes responsibility. We have estimated the costs of implementing the bill. In future spending reviews and budgets, we would seek to negotiate for that resource to support our objectives.

Jeremy Purvis: Why has the bill been introduced now, given the Government’s on-going and long-term cost estimates?

16:00

Neil Ritchie: The financial memorandum was drafted before we saw the UK spending review. Ministers took decisions on how budgets would be developed in those terms. It is not unusual, particularly with primary legislation, to have to identify costs across a number of spending review periods.

Jeremy Purvis: I do not want to labour the point, but that cannot be the case. Costs are predicated on the way in which SEPA, the local authorities and Scottish Water are structured. If those bodies changed, the figures would be radically different.

Neil Ritchie: We accept that these are the best estimates that we are able to produce at this time. If there are changes in the landscape, there will, hopefully, be scope for efficiencies, but if there were changes in costs, we would need to negotiate that in future spending reviews. These are the best cost estimates that we have available at this time.

Jeremy Purvis: Scottish Water has said about the costings that "the margin of error is in the region of 20%".

That is one hell of a margin of error. How do you explain the revised Scottish Water figures, which represent a radical change in the estimated costs on that body? As Scottish Water says, its source of income is the bill payer.

Judith Tracey: The margin of error on all the costs in the financial memorandum is very much dependent on the number of reservoirs that come under the auspices of the bill and on the number of reservoirs that are identified as being high risk. Those are variable factors in the bill. The fact that
we do not know the number of reservoirs that are between 10,000m³ and 25,000m³ is one reason for bringing forward the bill.

**Tom McCabe:** My question is along similar lines. Given the time for which we have had all these resources, I am a bit surprised that we do not have that information, but if that is the case, that is the case.

I turn to an issue that is raised in the West Lothian Council submission. Let us say that SEPA, operating on the precautionary principle, finds a greater number of high-risk reservoirs in West Lothian. Given that, as I understand it from the submission, SEPA will be the regulator but the local authority will remain the owner, am I right in thinking that, if SEPA takes the precautionary approach in those circumstances, it could ratchet up costs for the local authority?

**Judith Tracey:** If a local authority has newly identified reservoirs of between 10,000m³ and 25,000m³, and those reservoirs are identified as being high risk, the authority’s costs could increase. At the same time, if any reservoir that it currently regulates is identified as being low risk, its costs could go down. There is a balance between the two in the legislation.

**Tom McCabe:** I assume that local authorities are entitled to be cautious. Frankly, SEPA does not have a very good reputation when it comes to worrying about other people’s costs. An authority could easily find itself on the wrong end of SEPA’s exuberance.

**Judith Tracey:** A reservoir will be regulated only if its volume is proved to be over 10,000m³. The Institution of Civil Engineers has identified that that size of reservoir is the level at which an escape of water would cause a risk to life or property. If a local authority has a reservoir in its area that is a risk to life and property, the reservoir has to be regulated properly.

**Tom McCabe:** Is all this predicated on the fact that reservoirs are not regulated properly at the moment?

**Judith Tracey:** Yes, it is. We do not know where all the reservoirs between 10,000m³ and 25,000m³ are in Scotland. They are not currently regulated, and we do not know whether all of them are well looked after and maintained. In the past, there have been incidents at reservoirs that are less than 25,000m³. For example, there was a fairly major incident at the Maich reservoir that had the potential to cause a lot of damage to property, close a main road and cause loss of life. It was at severe risk of breach, and it was not being regulated under the current regulation. There have been a few such incidents across the country that have made us realise that we need to find out where the reservoirs are and ensure that they are properly looked after.

**Tom McCabe:** Do all the reservoirs contribute to the public water supply?

**Judith Tracey:** No.

**Jeremy Purvis:** The committee has been provided with the information that Scottish Water owns or manages more than 300 reservoirs, and there is an assumption that 140 of them—nearly half—will be categorised as high risk. How could that possibly be the case?

**Judith Tracey:** That is based on the current categorisation of the reservoirs that Scottish Water owns. Reservoirs are categorised by the Environment Agency as being A, B, C or D, with A being high risk. The figure in the financial memorandum is based on the number of high-risk reservoirs that Scottish Water owns. Scottish Water owns a disproportionately high number of high-risk reservoirs because they are part of the public water supply, and many of the reservoirs are up stream of major conurbations.

**Jeremy Purvis:** Given that two major ones are in my constituency, I find that alarming.

The budget for SEPA for the coming year shows a £4.9 million reduction from £44.3 million to £39.4 million, but the additional costs to SEPA up to 2016 for implementation of the bill are £4.12 million. Is this new legislation the right priority when SEPA’s budget is already being reduced? Is funding for the bill not predicated on considerably higher charges to the users that SEPA regulates?

**Neil Ritchie:** Ministers identified the need for the Reservoirs (Scotland) Bill in order to recognise the impact that a reservoir collapse could have on communities across Scotland. Ministers will appear before the Rural Affairs and Environment Committee—next week, I think—when they will discuss with the committee their priorities in the current settlement for the allocation in the rural affairs and environment portfolio.

**Jeremy Purvis:** But, as far as you are concerned, no element of SEPA’s budget will be cut to pay for the implementation of the bill. In the coming year, its budget is being reduced by £5 million.

**Neil Ritchie:** We are working closely with SEPA to develop the legislation. Significant costs are not expected from much of the work in the next financial year; as we discussed earlier, most of the costs that accrue to SEPA are in later years. We are working closely with SEPA to ensure that it understands ministers’ priorities and that we are able to use the resource to protect the people of Scotland.
I do not know whether Ross Scott wants to add something from the finance portfolio perspective.

Ross Scott (Scottish Government Finance Directorate): SEPA is undergoing a major organisational restructuring, and savings are being cut, and it is restructuring to accommodate that. As Neil Ritchie has said, the directorate is working with SEPA on forward work plans, and one can only assume that the requirements of the bill are built into the restructuring.

The Convener: Final question to Linda Fabiani.

Linda Fabiani: In at last.

The Convener: Be grateful!

Linda Fabiani: Most of what I was going to ask has been covered by my colleagues interrupting at every opportunity. However, what I have picked up from answers to the questions from Tom McCabe and Jeremy Purvis is quite alarming. I have read the information and listened to your answers, and I have recently discussed the issue with a retired civil engineer who is involved in some reservoir work. Am I right in thinking that the reservoirs in Scotland have never been mapped? That would seem to be backed up by Judith Tracey’s comment that we do not know where they all are. I find that really peculiar.

Judith Tracey: We know where all the reservoirs over 25,000m$^3$ are but not where all the reservoirs of less than that volume are. Big companies such as Scottish Water and Scottish and Southern Energy will know where their reservoirs are but, because they have never been required to be regulated, there has never been any reason to map them.

Linda Fabiani: That information has never been held centrally.

Judith Tracey: No, not on anything less than 25,000m$^3$.

Linda Fabiani: You said that the reservoirs under Scottish Water are for the public water supply. How are the other reservoirs—the ones you know about, that is—used?

Judith Tracey: Reservoirs are used for all sorts of things including recreation, boating and so on. One concern—and, indeed, one of the reasons for introducing the bill—is that certain bodies of water are thought of not as reservoirs but as local lochs; in fact, they are impounded and, unless the impoundment is properly maintained, there could be a risk.

Linda Fabiani: People could be quite blithely sailing, fishing and swimming in reservoirs that might in fact be high risk.
has had to do the work about it, if you like, but it will give us a much better idea of the bodies of water.

So far, the results are in line with what we were expecting. The number of bodies of water that we are identifying through the geographical information system exercise are higher than the number we expect to have at the end because we will cross-reference them against every body of water with an impoundment licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2005. That should give us a better idea of the number of reservoirs across Scotland.

Linda Fabiani: Thank you. I was unprepared for how interesting this item would be.

The Convener: The questions appear to have ceased but it is quite obvious that the more successful you are in your work, the safer our environment will be. The committee might not be all that keen on spending in general, but we are very keen on preventative spending and the bill will clearly improve the safety and security of reservoirs across Scotland. We wish you well in your work.

Do you have any final comments?

Judith Tracey: No.

The Convener: In that case, I thank you for attending the meeting and giving your evidence.

Decision on Taking Business in Private

16:15

The Convener: Item 7 is to decide whether to consider our draft report on the financial memorandum to the Reservoirs (Scotland) Bill in private at a future meeting. I suggest that we do so. Are members agreed?

Members indicated agreement.
RESERVOIRS (SCOTLAND) BILL – RESPONSE TO THE STAGE 1 REPORT ON DELEGATED POWERS

I am writing following publication of the Subordinate Legislation Committee’s 68th report of 2010 (Session 3), which concerns the delegated powers contained in the Reservoirs (Scotland) Bill, received on 7th December 2010. This letter updates the response that the Minister for Environment and Climate Change sent to you on 24th November 2010 regarding the Committee’s recommendations.

Section 1(4) - Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

I am pleased that the Committee is now content that the delegated power to make orders under section 1(4) is acceptable in principle.

In relation to the choice of negative rather than draft affirmative procedure for the exercise of this power, I note that the Committee considers that an order under section 1(4) could substantially extend the application of the Bill (by providing that the reservoirs specified by the order are “controlled reservoirs”, even although the 10,000 cubic metre threshold is not satisfied) and that the Committee considers that, in the absence of clearly drawn criteria for the exercise of this power, the scope of the power merits draft affirmative procedure.

Following further consideration, I am happy to consider amending this power so that it is subject to draft affirmative procedure.

Section 1(6)(a) - Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

I note that the Committee is content with the power in section 1(6)(a) in principle, and with the fact that it is subject to draft affirmative procedure, but continues to take the view that it should be exercisable with regard to advice provided by ICE.

As detailed in the previous response of 24th November 2010, I confirm that the intention is still to amend this power to that effect at Stage 2.

Section 25 – Power to establish panels of reservoir engineers

I am pleased to note that the Committee considers that the power in section 25(a) is acceptable in principle and is content that the power is subject to negative resolution procedure.

Section 52(1) – Power to make provision for reporting incidents to SEPA relating to reservoir safety

I am pleased to note that the Committee is content with the powers in section 52(1) in principle, and with the fact that they are subject to draft affirmative resolution procedure.
Section 53(1) – Power to make provision for preparing reservoir flood plans

I am pleased to note that the Committee is content with the delegated power contained in section 53(1) in principle, and with the fact that it is subject to draft affirmative procedure.

Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs

Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Section 77(1) – Power to impose fixed monetary penalties on reservoir managers

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

The Committee has drawn the attention of the lead committee to sections 71(1), 76(1), 77(1) and section 80(1) and noted that these sections provide powers to enforce Part 1 of the Bill in the form of discretionary order-making powers which the Scottish Ministers may either implement as a whole, partially, or not, as they determine. The Committee observes that, while the Parliament will require to approve any delegation of these functions to SEPA when they are brought forward, the Parliament cannot require that any of the powers are conferred.

The Committee has also drawn to the lead committee’s attention that it is normally considered the function of the Parliament to impose the maximum level of penalty which is to be imposed by a third party which is not accountable to the Parliament. The Committee has therefore recommended that the Scottish Government consider the insertion of appropriate maximum penalty amounts, in relation to the powers contained in sections 80(4)(a) and 83(1), by amendment at Stage 2.

The Committee has also drawn to the attention of the lead committee, the Scottish Government’s explanation why SEPA is considered the appropriate body to determine any amounts of penalty under the powers in section 80(4)(a) and 83(1) to be imposed in a particular case.

I have considered the Committee’s various questions on these “civil sanctions” that the Bill proposes to create. Chapter 9 of the Bill is intended to set out the framework for SEPA's civil enforcement powers in relation to reservoirs. It is not thought appropriate for the Bill to directly empower SEPA, which is not directly accountable to Parliament, to immediately be able to deploy all of these enforcement powers. Rather, having obtained the approval of the Parliament in principle to the use of the various powers, the intention is that the Scottish Ministers will decide which powers to pass on to SEPA, having consulted in accordance with s.84, and will do so by Order. Before doing so, the Scottish Ministers will take account of experience in England and Wales, where the Environment Agency has recently been given similar powers through the Regulatory Enforcement and Sanctions Act 2008 as implemented by the Environmental Civil Sanctions (England) Order 2010, and an equivalent order for Wales. The Scottish Parliament will have the opportunity to scrutinise any such Order using the affirmative procedure.

In relation to s.80(4)(a) and 83(1), I consider SEPA to be best-placed to determine the appropriate penalty amount that will act as a proportionate deterrent for a particular offender in a particular case. However, in light of the Committee’s concerns about potentially
unlimited penalties being issued by SEPA, I am happy to consider the insertion of appropriate maximum penalty amounts at Stage 2.

**Section 87(1) – Power to permit SEPA to publish information**

I have noted the Committee’s previously expressed concerns about the use of an order-making power, provided for in section 87(1), to enable SEPA to publish information about enforcement action it has taken under the Bill.

As was previously indicated, I am happy to consider amending this provision so that it enables the Scottish Ministers to *require* SEPA to publish such information about the enforcement action it has taken as Ministers may specify. That will enable Ministers to exercise more control over what SEPA publishes and allow Parliament the opportunity to scrutinise that control.

**Section 103 - Power to make offences inserted into section 22 of the Water Environment and Water Services (Scotland) Act 2003 to be triable and subject to specified liabilities**

I am pleased to note that the Committee is content with the commitment given by the Government that it would consider carefully whether to adopt affirmative or negative procedure in any particular case.

I am happy to note that the Committee is content with the delegated power in section 103, and with the fact that it is subject to a choice of draft affirmative or negative resolution procedure.

**RICHARD LOCHHEAD**

**JANUARY 2011**
Note: (DT) signifies a decision taken at Decision Time.

**Reservoirs (Scotland) Bill:** The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead) moved S3M-7769—That the Parliament agrees to the general principles of the Reservoirs (Scotland) Bill.

After debate, the motion was agreed to (DT).

**Reservoirs (Scotland) Bill:** Financial Resolution: The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead) moved S3M-7704—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Reservoirs (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament's Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
Scottish Parliament

Thursday 27 January 2011

[The Presiding Officer opened the meeting at 09:15]

Reservoirs (Scotland) Bill: Stage 1

The Presiding Officer (Alex Fergusson): Good morning. The first item of business is a debate on motion S3M-7769, in the name of Richard Lochhead, on the Reservoirs (Scotland) Bill.

09:15

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): The Reservoirs (Scotland) Bill will introduce a new regime to better protect the people of Scotland from the risk of flooding from reservoirs.

In recent years, incidents at reservoirs here and in other countries have led us to review Scotland’s legislative framework for reservoir safety. For instance, in August 2008, a near failure of the dam at the Maich fishery in Renfrewshire required the evacuation of residents downstream, the closure of public roads and the activation of emergency works to prevent an uncontrolled release of water. That near miss had the potential to cost lives and to cause extensive damage to property and infrastructure but, as the Maich was less than 25,000m³ in capacity, it was not regulated under the Reservoirs Act 1975.

The 1975 act is based solely on capacity. Under it, all reservoirs of more than 25,000m³ in capacity have the same inspection and supervision requirements. The bill will introduce a new system of regulation that is based on the level of risk that each reservoir poses. That makes sense for two reasons. First, reservoirs with no communities downstream will be subject to less regulation and will benefit from significant savings. Secondly, reservoirs that are close to businesses and communities will be more rigorously assessed to provide the highest level of protection.

We have set the minimum volume for regulation at 10,000m³ on advice from the Institution of Civil Engineers that that is the level above which an uncontrolled release of water could cause injury or death. All managers of reservoirs that have a capacity of more than 10,000m³ will have to register their reservoir with the Scottish Environment Protection Agency. Registration will be free for the first six months to encourage reservoir managers to register early. Once a reservoir has been registered, SEPA will classify it as high, medium or low risk. If reservoir managers are unhappy with the risk classification of their reservoir, they can appeal.

Managers of low-risk reservoirs will need only to register, to keep basic records, to put up an emergency information board and to produce a simple flood plan. Managers of medium-risk reservoirs will, in addition, have to appoint a qualified civil engineer to supervise the reservoir and will have to have the reservoir inspected when that is recommended by the supervising engineer.

High-risk reservoirs will have to be inspected regularly. With high and medium-risk reservoirs, the reservoir manager will have to carry out any mandatory repairs and maintenance works that are specified by the inspecting engineer to maintain the safety of the reservoir.

The role of the Institution of Civil Engineers has been a central feature of reservoir safety for more than 30 years. The knowledge of the engineers will continue to be invaluable to reservoir managers and to SEPA, which will take on the enforcement role for reservoir safety from local authorities. SEPA will hold a central register of all reservoirs in Scotland and will receive details of any maintenance and construction work that is taking place from the appointed engineers.

Under the 1975 act, local authorities are constrained by the limited enforcement mechanisms that are available to them. Professor Richard Macrory’s 2006 review on improving regulatory compliance found that, in many cases, criminal prosecution may not be the most effective sanction. The report concluded that flexible and risk-based tools were more likely to achieve the desired outcome. That is why we are creating a more flexible and dynamic system of enforcement, in line with the Scottish Government’s aim of better regulation. That will give SEPA access to a more appropriate and effective range of tools to encourage compliance, which should further guarantee the safety of the public.

During the bill’s development, we have taken steps to engage with the public, key stakeholders and other experts. The overwhelming majority of respondents to our public consultation were in favour of the implementation model that is set out in the bill. Our reservoir safety stakeholder group has provided crucial insight into reservoir safety issues and has contributed to the bill’s development.

I take the opportunity to thank the Rural Affairs and Environment Committee for its diligent scrutiny of the bill and for its support for the bill’s general principles. I also thank the many individuals and organisations who gave evidence to the committee. I would like to mention some of the key points that the committee raised in its
stage 1 report and some of the amendments that the Government intends to lodge at stage 2.

The committee highlighted the potential costs that may be incurred by individuals, but the cost of maintaining a reservoir properly should be balanced against the potential cost to a reservoir manager of dealing with the consequences of the failure of a poorly maintained dam. The bill is designed to reduce the risk to the public and to reservoir managers.

We are open to considering whether provision for financial assistance should be made but, for the reasons that I have mentioned, we will do so only in the limited circumstances in which the costs of bringing a reservoir up to the required standard are clearly impossible for a small business owner to pay.

The committee also highlighted areas in which some unintended practical problems could arise as a result of the current drafting. To that end, I confirm that we are considering lodging amendments at stage 2 to resolve those issues. The proposed amendments will, for example, require SEPA to consult the ICE before publishing guidance on the risk designation process; remove the requirement for an inspecting engineer to be appointed at all times; and make it clearer that routine maintenance that does not affect the safety of a reservoir is not mandatory.

I have given a rapid account of the bill’s main features and some of the key changes that we expect to introduce at stage 2. We will work closely with local authorities, SEPA, Scottish Water and others to put in place the appropriate regulations, guidance and resourcing to take that forward.

In conclusion, the Reservoirs (Scotland) Bill represents a crucial step towards achieving our aspiration of managing effectively the risk of flooding in Scotland. Through the bill, Scotland will introduce a modern system of risk-based reservoir management that puts public safety first.

I move,

That the Parliament agrees to the general principles of the Reservoirs (Scotland) Bill.

The Presiding Officer: At this stage, I advise members that I am in a generous mood and can offer all speakers an extra minute.

I call John Scott to speak on behalf of the Rural Affairs and Environment Committee.

09:22

John Scott (Ayr) (Con): Every so often, a committee of the Parliament has the privilege of considering a bill that captures the imagination of the Scottish people and provokes excited debate across the land but, on other occasions, a committee considers a bill such as the Reservoirs (Scotland) Bill. In case that sets too flippant an opening tone, let me add that it is undoubtedly a very important bill that one day might save lives. It is also a bill with possible drawbacks, including the challenging financial implications that it might have for some individuals. That is a serious business, to which I will return later.

I can sincerely declare that I enjoyed the stage 1 scrutiny, in part because of the illuminating testimony of our expert witnesses and in part because I am a civil engineer by training and find such matters fascinating anyway. I got the impression, though, that other committee members perhaps enjoyed themselves more than they had expected to, tapping into hitherto unexploited reserves of enthusiasm on issues such as the relative merits of concrete and puddle-clay dams, and the statistical probability of a peat slide. I expect that some members will wish to refer to such issues in more detail, and we all look forward to that.

The committee has produced a thorough report, and I thank my colleagues for their diligence. I thank Maureen Watt, who chaired proceedings in her usual efficient and good-humoured way. As she is away on parliamentary business this week, I have stepped into her shoes, as it were. I also thank the Scottish Parliament information centre and the clerks, who, as usual, have done a sterling job.

The committee took evidence from SEPA, Scottish Water, the Institution of Civil Engineers, an energy company, an angling club operator, an insurer and the Minister for the Environment and Climate Change and her officials. We received more than 20 written submissions from councils, charities, landowners and large and small businesses, for which I thank them all. I reiterate that our scrutiny of what is a long and technical bill has been thorough.

In evidence, engineers, in particular, raised concerns about various technical issues. I did not sense that any of them was hugely important, but they underline a key recommendation of the committee, which is that the Government must maintain a dialogue with the ICE during the amending stages and, if the bill is passed, in the lead-up to implementation. It is crucial that the technical provisions—the nuts and bolts of the legislation—appear to be workable to the people who rely on them. It is only fair to add that the Government has so far demonstrated a willingness to listen, which is encouraging.

It is also important for the Government to maintain a dialogue with reservoir managers. I appreciate that there is a stakeholder working group that serves as a forum for stakeholders to
air their views and as a conduit for the Government to relay information. I suggest that the information-relaying role needs to be stepped up, particularly in relation to the cost implications for reservoir managers, because there are some worried people out there.

One of our witnesses was a gentleman who runs an angling business. He ended up owning a reservoir as an indirect result of water authorities selling off redundant reservoirs to the public some years ago. He raised the prospect of the bill leaving people like him unable to meet the maintenance costs that will arise under the new regime, and equally unable to afford the eye-watering one-off cost of reservoir decommissioning. Our report described that as a catch-22 situation. We might also have said that such people are damned if they do and damned if they don’t. I hope that the minister will be able to address that issue. It is to be hoped that only a tiny minority of reservoir owners will be in that position, in which case the way might be open for the Government to provide help, as the minister hinted in the committee and—if I heard him correctly—commented this morning. I would certainly welcome that.

As the minister was keen to stress, most reservoir managers might not incur significant extra costs and, in some cases, bills might go down. I certainly hope so, but the stage 1 evidence was contradictory on the point. An example is the annual subsistence fees that SEPA proposed to charge reservoir managers. It emerged that the authority to charge those fees is missing from the bill. There is also uncertainty about the level of fees. SEPA indicated the low hundreds of pounds, but the financial memorandum suggested a far greater range. There is a slight sense of policy being made on the hoof, which also concerned the committee.

I conclude by noting that Scotland has a good reservoir safety record, with no fatalities in almost a century. That is despite having some of the oldest working dams in the world—splendid feats of engineering such as Loch Thom and the Greenock Cut above the Firth of Clyde. That is a tribute to generations of Scottish engineers and, I suppose, an indication that the current legislation has not served us too badly. However, the committee has been persuaded that the bill should proceed on the basis that it will take a more flexible approach, with the level of risk matching the level of inspection. As our report says, we expect SEPA’s overall regulatory regime to be "as light touch as possible without compromising safety", so that costs to managers are driven down.

I note that the minister expressed an interest in lodging stage 2 amendments. I restate the importance of on-going Government dialogue with the experts in order to improve the bill. I hope that that leads to a steady trickle of Government amendments rather than an uncontrolled dam burst but, either way, the committee looks forward to reconsidering the bill at stage 2.

09:28

Elaine Murray (Dumfries) (Lab): Labour members, too, support the general principles of the bill, which requires all reservoirs with a capacity of more than 10,000m³—we were told that that is four Olympic swimming pools—that lie above the natural level of any part of the surrounding land to be risk assessed and categorised by SEPA according to risk. The bill maintains consistency with the United Kingdom Flood and Water Management Act 2010 and modernises the regulatory regime, which is currently fragmented. Although there have been no fatalities in Scotland due to reservoir flooding since the 1920s, there have been serious incidents, as the cabinet secretary said. Climate change and increased precipitation will also increase risk, so a more consistent approach is to be welcomed.

As others have said, the bill is technical and does not involve many policy issues. However, because of its size and technicality, a number of drafting issues were picked up by witnesses who gave evidence to the committee and they will have to be clarified by amendment at stage 2. For example, the bill appears to require all water-bearing structures that are attached to a controlled reservoir to be inspected, which could be interpreted as meaning that all the kilometres of tunnels that are attached to a reservoir are also to be inspected, which would be very onerous. It is important that those drafting issues are rectified at stage 2. It is also a matter of concern that they were picked by external consultees and not by the bill team. I seek the cabinet secretary’s assurance that all amendments will be thoroughly checked for any further inconsistencies. I realise that we are all galloping towards 22 March, but it is important to get the bill right.

The committee debated the proposal from some witnesses that the only factor that should be considered is the risk to human life. Although that should be paramount, Labour members strongly support the retention of environmental and cultural heritage as aspects that must be considered. I would be concerned if risk to the environment were excluded from consideration when assessing how the risk of a reservoir should be categorised.

The bill will have implications for some reservoir owners who are currently excluded from the 1975 act but who will be caught by the new legislation. Some reservoir owners might be uncertain about
whether their reservoir exceeds the threshold volume and the bill is not clear about who will pay for the inspection that will be required to assess whether the reservoir requires to be risk assessed. We would welcome clarification on whether SEPA will provide that service and, if it will, what the financial implications are for SEPA, as they are not included in the financial memorandum.

The Minister for the Environment and Climate Change also suggested that there might be some financial support for owners, and the cabinet secretary referred to that again today. There might be assistance for some reservoirs that are included in the regulation for the first time and I am interested to learn further what those provisions might be. I appreciate that such assistance should be available only in particular limited circumstances when the reservoir owner cannot afford the cost of registration or the cost of decommissioning the reservoir.

I would also like to see some consideration of SEPA’s budget. We know from the draft budget that SEPA’s budget will decrease in 2011-2012 by 11 per cent to £4.9 million. I know that SEPA is in the process of consulting on better environmental regulation with the aim of developing a proportionate risk-based approach that would reduce complexity and introduce efficiencies. I support that approach in principle and I wish SEPA every success with the consultation and further implementation of its approach. However, a budget reduction of 11 per cent when SEPA has already been given additional responsibilities in flood risk management, for example, will make things difficult.

The financial memorandum states that the costs to SEPA are difficult to estimate at the moment because we do not know how many new reservoirs will be included under the legislation or what category they might fall into. It estimates that there will be a one-off cost of between £1.7 million and £2.9 million, and staffing costs of £2.19 million for the implementation period up to 2016. Thereafter, there will be revenue costs of £0.41 million per year. SEPA will be able to charge reservoir owners to fund its administration costs, but the financial memorandum still estimates that the cost to SEPA could be around £4.12 million until 2016. That is almost as much as next year’s budget reduction, so I would welcome reassurance from the cabinet secretary that the money can be found without detracting from SEPA’s other responsibilities, which are quite onerous in some respects.

Overall, we are supportive of the bill. I suppose that we are looking forward to stage 2, although I suspect that it might be a rather technical process.

09:34

Jamie McGrigor (Highlands and Islands) (Con): I am pleased to speak for the Scottish Conservatives in the debate. It might not be the most controversial debate, but it is important. I put on record my thanks to the members of the Rural Affairs and Environment Committee, including my friend the deputy convener, John Scott, for a thorough and useful stage 1 report, which has helped me to prepare for the debate. Thanks should also be recorded to the committee’s clerking and support team, and to all those individuals and organisations who gave written or oral evidence to the committee. SPICE’s Alasdair Reid produced a helpful briefing paper on the bill and the Law Society of Scotland also submitted a briefing for the debate.

The Scottish Conservatives share the Scottish Government’s recognition of the specific need to enhance reservoir safety and to seek a clear legal and administrative framework for the construction and management of controlled reservoirs so that the risk of uncontrolled releases of water and their consequences can be reduced.

The debate is of particular importance to my region of the Highlands and Islands. The Highland Council area has the highest number in Scotland of reservoirs holding 25,000m³ or more of water—127—while my native Argyll and Bute has the second highest number, at 76. I expect that both areas will remain near the top of the tables for the most reservoirs when the bill brings all the smaller reservoirs above 10,000m³ under the auspices of the new system. With the push towards new hydro schemes, there may also be pump storage areas that are made into new reservoirs.

I will ask the minister to comment in more detail on two specific areas. The first relates to whether the probability of an uncontrolled release of water from a reservoir or just the consequences of such a release should be considered. Alex Macdonald of the Institution of Civil Engineers raised the issue in his evidence to the committee, and I have sympathy with the view that the consequence should be the key driver.

Secondly, given the concerns that have been expressed about the impact on small businesses and not-for-profit organisations that run reservoirs from both compliance and decommissioning costs, what if any costings has the Scottish Government done on the options for taking reservoirs off small operators’ hands? I was interested in the committee’s comments on the issue in its report. At paragraph 40, it states:

“There is uncertainty over the status and likely level of annual or subsistence charges likely to arise under the Bill. The Committee recommends that this be addressed as a matter of urgency, so as to provide greater certainty to stakeholders, particularly those persons who anticipate
becoming managers of medium or high-risk reservoirs under the Bill and who are confused by the financial implications of this.”

At paragraph 44, it states:

“The Committee notes the Minister for Environment and Climate Change’s recognition that the Bill might lead to difficulties for some reservoir managers, and welcomes her tentative indication that the Government might consider providing some sort of assistance in extreme cases.”

Like the committee, I seek further clarification on what sort of assistance the minister and the Scottish Government might have in mind.

09:37

Jim Hume (South of Scotland) (LD): I am pleased to contribute to the debate. I should probably begin by declaring an interest as I live just a few miles downstream from the Megget reservoir, which has a capacity of 61,400,000 m$^3$ and, being nearly 1,100 ft deep, is deeper than any Scottish loch or British lake. I take more than a passing interest in reservoir safety as any breach of the Megget would most likely result in my home ending up at Berwick-upon-Tweed.

Joking aside, I note that the regulation of our numerous reservoirs is an important matter due to our reliance on many of them and the close proximity of settlements to some of them. Indeed, the example that the cabinet secretary gave of the Maich fishery in Renfrewshire is cited in the policy memorandum and serves as a reminder that complacency on reservoir safety is not an option. In that regard, I welcome the Government’s attempt to look more closely at the matter.

The bill has particular relevance to my region, the South of Scotland. I believe that all of Edinburgh’s water comes from the region, and there are numerous reservoirs dotted around the area, with 38 in Dumfries and Galloway and 26 in the Borders. Of course, not all reservoirs are used for drinking water and many of them are utilised for recreation. As members will know, Penwhirn near Stranraer and Alemoor near Hawick are both excellent fishing locations that are enjoyed by many.

I plan to touch on a few aspects of the bill that I feel are worth highlighting, the first of which is the relatively contentious issue of the proposed threshold volume. Members will be aware that the Reservoirs Act 1975 is largely responsible for setting the current safety requirements surrounding large raised reservoirs. It was that legislation that introduced the 25,000 m$^3$ threshold but, interestingly, the act still did not cover the Skelmorlie reservoir in Ayrshire, the failure of which in 1925 resulted in the sad loss of five people.

The bill puts an extra burden on to SEPA and, as Elaine Murray said, there will be a cost to that organisation. The cost is estimated at more than £4 million in the next five years, so I would be interested in hearing how the cabinet secretary foresees funding that cost, especially in the light of SEPA’s diminishing budget. Will we see an increase in fees from SEPA across the board, or will an extra burden be passed on to consumers through water rates?

Clearly, a reservoir need not be greater than 25,000 m$^3$ to have the ability to cause great harm to life and property. The Government has realised that and sought to address the issue in the bill, for which I am grateful. I am aware that RSPB Scotland and the Association of British Insurers have opposed the lowering of the threshold, but I think that we need to be guided by those who have direct experience in the field. That is why I am comfortable supporting a threshold that was set largely thanks to professional advice from the Institution of Civil Engineers and which has been supported by SEPA, local authorities and even the Scotch Whisky Association.

I note that the committee supports the lowering of the threshold, but I share its concerns that the Government failed during stage 1 to articulate adequately the rationale behind the use of the 10,000 m$^3$ figure. The fact is that each reservoir is unique, and increased capacity of a reservoir does not equate to greater risk. Indeed, some reservoirs in excess of 25,000 m$^3$ will pose no risk to life or infrastructure because of their remoteness, but a 10,000 m$^3$ reservoir that is being held back by an embankment dam near a village certainly does pose a risk.

The Liberal Democrats support the bill at stage 1, but I look forward to some clarifications in the minister’s summing up.

09:41

Bill Wilson (West of Scotland) (SNP): At the start, let me comment on and condemn the inconsiderate behaviour of the cabinet secretary towards the back benchers who will speak in the debate. There has been little disagreement on the bill: all parties are supportive and there are but a limited number of points on which there is any disagreement. There were of course some technical issues, but the cabinet secretary has already informed the committee of steps that will be taken to resolve several of them.

When there is little disagreement and therefore only a limited number of discussion points, is it not rather inconsiderate of the cabinet secretary to reduce further the discussion points by agreeing with the committee’s proposals? A cabinet secretary who listens to the committee can clearly
make it very difficult for humble back benchers such as me to find points of discussion.

Although the bill is uncontroversial, recent events in Renfrewshire show the importance of reservoir safety: four Olympic swimming pools can do a fair bit of damage.

It is fair to say that, barring a few quibbles here and there, we all broadly agree on the bill. Therefore, let us quibble.

It was suggested by some witnesses that, in determining the risk status of a reservoir, only human life should be considered and that other factors—cultural, archaeological and ecological—should not feature in the calculations. I note that the Government has given an assurance that risk to life will be the paramount consideration, and rightly so. However, I believe that there is no need to specify that in the bill. It would be necessary to do so only should there be a possible conflict between the needs to protect archaeological, ecological or cultural sites and human life, but such a conflict clearly cannot arise. At least, it should not arise, and it is certainly easy to ensure that it does not do so.

In order for such a conflict to arise, it would have to be the case that a low level of hazard to ecological or cultural factors would result in a downgrading of risk. In effect, we would balance disparate factors in a form of arithmetic, giving so many points for each factor and subtracting points if there is little risk to any given factor. That would surely not be a logical way to determine the aspect of risk, and I am sure that it is not one that would be used by those doing so.

If a substantial number of people live in the inundation area, the risk category should be high, regardless of the lack of risk to other factors. However, if there are few or no people living within the inundation area, should the reservoir automatically be low risk, even if a major archaeological site lies in the inundation area? Let us imagine a dam built near Skara Brae. Even though no lives might be at risk, is the risk to such a major archaeological site not enough to raise the level of risk by which the dam is defined? There is a real possibility that specifically raising one factor higher than all the others might result in the other factors being downgraded. That would be necessary if there were a potential conflict between the factors, but there is not and nor should there be.

A second point of concern for me is the designation of reservoirs as posing a low, medium or high risk. Risk is determined by two factors: the probability of the dam failing and the likelihood of the loss of human life or damage to significant sites within the inundation area. Herein lies the problem. When people see the word “risk”, they are likely to think of the risk of dam failure. What will be the impact on those who live below a dam if they suddenly find that the dam is labelled as high risk? One morning, they think that they are safe; the next morning, they are told that the dam above them is a high-risk dam. Of course, a high-risk dam may have an almost zero probability of failure; indeed, our history of limited dam failures suggests that is the case. However, inadequate or malicious reporting—far be it from me to suggest that our press ever report inadequately or maliciously, but let us imagine for a second that some might—could easily result in an unpleasant psychological shock to those living below the dam.

I therefore urge the cabinet secretary to reconsider the use of the word “risk”. If the dams were labelled as category 1, 2 or 3, any reporting of a dam’s category would have to be accompanied by a clear explanation of how a categorisation is arrived at. Furthermore, a label such as category 1, 2 or 3 would not of itself be alarming, as opposed to someone suddenly finding that they are living below a dam that is described as high risk—which might prove very alarming indeed. I appreciate that this may seem a rather minor point, but it is one with considerable potential to impact both on an individual’s sense of security and on house prices.

This is a worthy bill and the committee is agreed that it is a commonsense bill. I have chosen to concentrate on a few specific areas mainly because, to be brutally frank, there is not much to be terribly excited about. It is a sensible bill containing sensible, uncontroversial measures. I urge the cabinet secretary to try not to introduce too many of them—it does not make for exciting debate.
As Bill Wilson said, Governments would generally not introduce such a bill unless there were an absolute need to do so—the Scottish Government has certainly not done it for fun. In many respects, it is just a technical bill, and there is no reason why we should not support it. In so doing, however, it is our job to point out areas where further clarity may be required, such as the definitions in the bill. Bill Wilson made a rather interesting point about the risk categories that are used in the bill. That is one of the areas that the Government might have another think about.

As Jamie McGrigor said, the Highlands and Islands region that I represent has more reservoirs than any other part of Scotland—indeed, any other part of the United Kingdom, I imagine—because of our history and topography. Therefore, the implications of the bill are of particular interest for the region that I represent.

As John Scott rightly said, the industrial revolution gave rise to the creation of many of the structures that we are now having to regulate and think more about. He mentioned Greenock, which has a number of reservoirs around it that fed power to industries there. In today’s world, however, those structures, which were originally conceived and constructed for engineering purposes and to drive industry, have assumed new significance in society and are used for recreational purposes, principally fishing. They have also become havens for wildlife and for improving biodiversity. In maintaining those functions, the current reservoir managers face different challenges.

Also, as Bill Wilson and John Scott have pointed out, since the construction of many of the reservoirs we have built housing and other forms of occupation below them, potentially in inundation areas, if there were to be any catastrophic breaches of the reservoirs in the future. Given that history and the age of the structures, some of which are 150 years old or older, it is important that we review our laws to make sure that we have the required protection to ensure people’s safety into the future.

As other members have said, the bill takes a risk-based approach, whereby the higher the risk, as defined by the number of people who would be affected by a breach or any other problem with the dam, the more regulation is imposed. The lower the risk, the more light-touch the regulation will be. That seems entirely appropriate as a way of dealing with the matter.

The size of the reservoirs that are to be regulated is coming down from 25,000m³ to 10,000m³. I probed that in the committee and, on the basis of the evidence that we received, it seems to be an entirely reasonable level for regulation—nobody particularly disagreed with it. I was concerned that there might be implications for the promotion of modern small hydro schemes as part of our renewables drive, which might be caught up in unnecessary regulation that would add cost and be a disincentive to the creation of more of those schemes. However, I am glad to say that I have been reassured, through the committee’s scrutiny of the bill, that that will not be the case for the most part.

Elaine Murray raised an important point about the nature and extent of the inspection regime. Scottish and Southern Energy gave us evidence on the potential interpretation of the current provisions, which could include all pipes and inlets to a reservoir. If that were the case, that could cause significant difficulty for SSE and other energy companies. When the Minister for Environment and Climate Change gave evidence, however, she indicated that the Government will consider issuing guidance on the matter, which is what Scottish and Southern Energy is looking for. That guidance will be provided and will helpfully clarify the situation.

The thing that I found most difficult to come to terms with in the bill, if that is the right way of putting it, was the problem that was identified by one witness who inherited a reservoir and is looking after it so that it can be used for recreational purposes. That is a laudable social objective, as the reservoir provides good recreational enjoyment for many people. Suddenly, however, that person could be faced with bills that they would find difficult to contend with. The best option for them might be to decide not to continue to allow use of the reservoir and to decommission it. However, they would then find themselves in the catch-22 situation to which John Scott referred, as they would not have the cash to do that either. That is a genuine problem, and I hope that the cabinet secretary will continue to explore ways of solving it.

Presiding Officer, I am happy to stop now, but I am also happy to continue if you want me to fill more time.

The Presiding Officer: I am happy for you to have another minute, Mr Peacock.

Peter Peacock: In that case, I will make another couple of points.

Another point that was raised with the committee was the significance of the planning authority in giving consent for development below existing reservoirs or for reservoirs to be constructed above existing developments. There was quite a lot of debate about the need for the right balance to be struck. I take the view that planning authorities would act responsibly and would always take into account the increased risk either in constructing properties below a high-risk
reservoir or in allowing development to take place in circumstances in which there would be a risk to people. We should leave it to the good judgment of planning authorities to make the right decisions. Nevertheless, I would not be against further guidance being issued to planning authorities in the light of the bill to ensure that they correctly interpret their duties.

The bill is a sensible measure and I am happy to support its general principles.

09:54

Rob Gibson (Highlands and Islands) (SNP): As we know, the Reservoirs (Scotland) Bill is a technical bill that has been drawn up through need. For example, there is no central database covering reservoirs in Scotland. Currently, each of the 32 local authorities in Scotland is responsible for regulating the reservoirs in its area, which has led to a fragmented and inconsistent approach to record keeping and enforcement across the country. However, given the fact that we are in the business of making sure that registration leads to regulation, we must be careful that the bill does not add to the costs of reservoir owners and users. At the same time, we should not increase the bureaucracy that is likely to arise from classification, enforcement and giving advice.

We all recognise that the committee's work on the bill has been carried out with a desire to ensure that people are safe, that the reservoir structures, which are quite old, are well maintained and that we can find ways in which to incorporate reservoirs as a natural part of how Scotland looks. We must recognise that, although some of their uses have changed, reservoirs are very much a part of the landscape of Scotland.

Concerns about flooding and the potential for breaches in dams cannot be too far from the minds of those of us in the Highlands. For example, anyone who drives on the road between Dingwall and Ullapool and passes Loch Glascarnoch dam—one of the great hydro dams of the 1950s—will recognise that the houses and the inn at Aultguish that are just below the dam are in the kind of place that Peter Peacock talked about, which was not covered by detailed planning regulations when the dam was constructed. I am not saying for one minute that there are dangers in the structures there, as they are well maintained, but it is important to recognise that there has to be a clear understanding in civil engineering terms of the capacity of the relevant dams.

The fact that the bill will increase the number of dams that Scottish and Southern Energy has responsibility for from 80 to 90 means that the structure of and safety issues around more and more structures will be examined. I welcome that. Most people recognise, when they drive along the roads, that a lot of the structures are quite old, and we all hope that they are maintained in the best possible fashion.

It is interesting that people are creating new dams. I want to speak about an example of one such dam, although I am not sure whether I can confirm that it is the size of four Olympic swimming pools. Last summer, Lighthouse Caledonia, one of Europe’s leading producers of farmed salmon, wanted to safeguard water supplies to its salmon hatchery at Loch Carron, on the Applecross peninsula, and lower rainfall meant that it wanted to increase the size of the reservoir by 30 per cent. It was able to carry out the necessary work, including the installation of a new pipe system, in six weeks. It is a fairly small dam, but it has an effect on the areas around it, and its environmental impact will be measured. I am delighted that it will be possible for us to ask SEPA to consider such developments, as the relevant parliamentary committee in future will be able to consider how the process of regulation, registration and enforcement is taken forward. The bill will allow that to happen, and I am delighted that we will be able to place something on the statute book before the end of March—I hope—that will be of use to many people across the country.

09:58

Sarah Boyack (Edinburgh Central) (Lab): Like other colleagues, I thank the committee’s witnesses and clerks, as well as the committee members, for their work on the bill. We also had some useful briefings from the Royal Society for the Protection of Birds and Scottish and Southern Energy.

Although, as everyone has said, the bill is technical, that does not mean that it is not important, and there is a job to be done over the coming weeks to ensure that the issues that colleagues and witnesses have raised are dealt with.

Elaine Murray acknowledged the importance of climate change, noting that we will have stormier and more unpredictable weather. We therefore need to examine structures that people might not have thought about for decades and ensure that risks are properly assessed.

The background to and purpose of the bill are straightforward. What emerges from the committee’s report is the range of details that need to be pinned down at stage 2. That will be a difficult job because of the short time available. The committee makes the striking point that it was a challenge to scrutinise every aspect of the bill in the limited time that was available to it. The fact
that the bill is not seen as being exciting does not mean that that scrutiny does not need to take place, so I hope that that will happen. I ask the cabinet secretary to make clear before stage 2 what he believes will need to be changed at stage 2. Ministers have not had much time to consider that since the report was published last week. We all took notes during the cabinet secretary’s opening speech, but a written comment would be helpful.

I will focus on the questions that are not answered in the committee’s report. It would not be surprising if those who own or manage reservoirs were nervous about the implications of the report, some of which are fundamental to their work, such as knowing whether a reservoir is or is not within the threshold. Having a threshold seems eminently sensible, but it will be challenging for people to find out whether they have crossed it. Other important issues include timescales and the cost of studies. There will be costs to people who manage reservoirs, and we could do with more clarity from ministers about that.

There are particular issues about responsibility. Responsible owners will manage their reservoirs well and ensure that they are kept to a high standard. However, we should understand people being nervous about the process. Like Elaine Murray, I agree that giving SEPA responsibility for managing the process makes a huge amount of sense, because of its existing flooding expertise, the fact that flood maps are already being drawn up for river basins and the fact that flood catchment areas are being extended. However, as Elaine Murray pointed out, SEPA is undergoing cuts, and even though, in the big scheme of things, it does not seem that the work that the bill will give to SEPA will involve a lot of money, it will either push other priorities aside or it will require changes to be made. We would like ministers to confirm that they do not think that the new responsibilities will be a problem for SEPA or that they will dislodge other important work.

There are concerns about the cost of the legislation. We need to make clear exactly what financial support the Government is prepared to offer. The cabinet secretary mentioned that in his opening remarks, and I would welcome more detail. For example, there is a need to pin down exactly what the cost implications would be for community groups in situations in which Scottish Water offered a community a reservoir that it no longer needed but which the community wanted in order to take advantage of the recreational opportunities that it provided. In that situation, would there be a dowry from Scottish Water? Who would be responsible for registration and for any works that happened after the reservoir was transferred? Such communities would need to be aware of the financial implications. There is also a question about smaller businesses that exist on a shoestring and do not make a lot of profit. John Scott and Peter Peacock spoke effectively about that.

This is a technical bill. I remember sitting through the debates on the Water Environment (Controlled Activities) (Scotland) Regulations 2005, which involved discussions of the cost of implementing the regulations. Such matters might not look huge in the big scheme of things, but the related issues of costs and timescales can be important to those who are affected by them. We need clarity about such matters before stage 2.

I want to end on planning issues. If developments are built downstream, there is a question about costs and who takes on the bigger risk. That is fundamental. The committee is clear that the developer should be responsible and that there should be clear planning guidance. We all know that planning guidance cannot be wished out of a hat instantly. Dealing with such issues takes time. In implementing the bill, consideration must be given to responsibilities. From the minister’s evidence to the committee, it seems that the Scottish Government’s view is that, once the regime is in place and reservoirs that are over the 10,000m³ threshold are covered, it will be up to those who build below a reservoir to take on the risk. I take Bill Wilson’s point about the word “risk” flagging up concerns, but I think that developers will have to factor that into new developments. People must consider the issues carefully.

I am concerned that, because the bill has been labelled as technical, everyone thinks that it can be rushed through Parliament. The fact that we were all delighted to hear that another debate was being scheduled for this morning exposes that view. However, stage 2 of the bill will be important in teasing out the issues that I have mentioned, which are important to those who will be affected. The committee has recorded that it felt rushed at stage 1. I hope that we can make stage 2 a meaningful stage in the progress of the bill, so that we can get the detail right. In that regard, it would be helpful if, before then, ministers were up front about the amendments that they intend to make and their views of the committee’s recommendations.

Once stage 2 has begun, it is hard for members to plug gaps if the Government does not deal with matters that it has been assumed it will deal with. Anything that the cabinet secretary can do today to allay people’s fears, clarify points of detail and give the committee more certainty before it gets into the nitty-gritty of stage 2 will do the Parliament and the owners and managers of reservoirs a great service.
10:05

**Jim Hume:** This has been a productive and fairly consensual debate, with some worthy contributions from members on all sides of the chamber. Peter Peacock, Rob Gibson and Jamie McGrigor all mentioned that reservoir safety is very important in the Highlands and Islands. I noted its relevance to my own region of the South of Scotland, which has many reservoirs that feed Edinburgh, and thereby affect Sarah Boyack’s constituency.

Sarah Boyack and Elaine Murray mentioned climate change and its effect on reservoir safety. To go back to my example of the Megget reservoir, the earth dam there was recently reinforced with more stone, because the winds and waves have been higher and stronger than originally calculated when the dam was built.

Several members have noted that when the bill receives royal assent, SEPA will acquire many additional powers as the recognised enforcement authority for reservoirs. Those powers will include serving enforcement notices on reservoir managers, appointing relevant engineers and imposing monetary penalties when an offence has been committed.

It is clear that SEPA will be burdened with many new responsibilities on top of its already extensive remit, and that will be costly, as Elaine Murray, Sarah Boyack and I pointed out. The Government’s own figures reveal that the full implementation of the bill will cost SEPA £4.2 million in the period up to 2016. It is expected that £0.34 million of that will be spent in the next financial year alone on recruiting just five new staff members—I hope that that is not an example of high pay coming into Government again. I am interested to hear from the cabinet secretary the Government’s plans for how SEPA will meet those additional costs. That is important, particularly when one considers that the spring budget revision for 2010-11 showed that SEPA’s spending was £48.2 million, and its budget for 2011-12 is £10.4 million less than that.

I am aware that an enabling power could allow Scottish ministers to let SEPA recover some revenue by transferring some of the costs to reservoir managers. However, that would only slightly reduce SEPA’s resource figure, and it would risk higher water rates. I would be grateful if the cabinet secretary addressed that point.

There is a wider issue in terms of burdening managers of reservoirs that are not regulated by the 1975 act with costs that they will find difficult to meet. Now that the threshold will rightly be lowered, many smaller and perhaps privately owned reservoirs that are used for angling will be included. Peter Peacock gave examples of such reservoirs, and I mentioned some that exist in my own region.

A glance at the committee’s recommendations in its report reveals that it is awaiting clarification on a number of points relating to costs. It would be unfair to expect some reservoir managers to absorb all the costs without assistance, and I am glad that the cabinet secretary has stated that the Government is considering assistance in certain cases. I would like to know where we are with that. Many of those reservoir managers operate without the luxury of extensive resources or deep pockets, and we must be mindful of overburdening them. Like the committee, I await further clarification.

However, there is certainly much to be lauded in the bill, and it has clearly benefited from a consultation exercise with high-quality responses. The bill is important for safety. Peter Peacock mentioned that many dams are more than 50 years old. In fact, many are more than 100 years old. Lowering the threshold and creating a central register of reservoirs are sensible ideas.

Ultimately, I support the general principles of the bill. However, we require further clarification from the Government on a few issues, with a particular focus on whether assistance will be provided to reservoir managers and how SEPA will operate as an enforcement authority despite the cuts to its budget. I look forward to scrutinising the bill as it progresses through the Parliament, and I will support it at stage 1.

10:10

**Jamie McGrigor:** This short debate has been useful, and has contained some good speeches. As I suspected at the beginning, it has been consensual, as befits the subject. However, I am sure that the cabinet secretary will want to address a few points.

Reservoir safety is the key aim of the bill. I live on Loch Aweside in Argyll, and I well remember the events of 1992, when a combination of circumstances led to an 18ft wall of water being released from the Loch Awe barrage dam. A dam does not have to break to cause damage—there can just be an exceptional release. In that case, it washed away a three-arch-span Thomas Telford bridge and did untold damage to the banks of the river and to angling interests. The rubble of the bridge and the damage to the banks can still be seen today.

We have seen the power of water and flooding recently in news bulletins from Australia and South America, and we must not forget the collapse of the reservoir that held toxic waste in Hungary. Those incidents must all make us very aware of the danger of the collapse of reservoirs, and the bill is important in that respect.
I will not add a great deal to my earlier remarks, but I ask the cabinet secretary to give a clear assurance—for which the Rural Affairs and Environment Committee has also asked—that the Government remains committed to substantial dialogue with the Institution of Civil Engineers and other key stakeholders in the subsequent stages of the bill.

On the finances, and the extra charges that may come from the bill, there seems to be a huge discrepancy. According to the financial memorandum, the SEPA charges and costs for supervision and reviewing and testing flood plans vary from £525 to £21,000. Supplementary evidence from SEPA states that the annual subsistence charges will be in the region of £100 to £300. There is a vast disparity in the figures, and I hope that the cabinet secretary can clarify what the charges for small businesses—which they have not previously had to pay—are likely to be.

The Scottish Conservatives are otherwise happy to support the bill and to allow it to move to stage 2.

10:13

Elaine Murray: Peter Peacock referred in his speech to John Scott’s role on the committee, given his experience as a civil engineer. I concur with those remarks: John Scott exhibited an enthusiasm for the bill that was possibly not mirrored by all his colleagues on the committee, and he certainly brought some extremely useful expertise. I also acknowledge the role that Peter Peacock and Sarah Boyack played in filling up some of the time in this debate by exceeding their five minutes.

The bill is technical, and generally consensual. However, Jamie McGrigor was quite right to remind us in his closing speech of the serious consequences of flooding that we have seen across the world, even in the past year. It is easy to be flippant about consensual matters, but the issue at stake is serious, and we should bear that in mind.

Sarah Boyack, Peter Peacock, John Scott and other members referred to the concerns of reservoir owners. It is not just big companies that own reservoirs; private individuals, small groups and non-governmental organisations are also among those that do. Owners are worried that the bill will place new regulatory burdens on them if they happen to have one of the estimated 1,150 new reservoirs that are likely to come into its scope. That is not a reason to oppose the bill, but RSPB Scotland, in its briefing for the debate, points out that some bodies of water that will be captured by the bill are managed for wider public benefits such as biodiversity, rather than for commercial gain.

As the cabinet secretary said, consideration is being given to how to assist reservoir owners, but has consideration been given to some sort of scale of charges for different types of reservoirs that are managed for different reasons? Sarah Boyack mentioned that community groups have taken on land, including reservoirs, from Scottish Water, without realising that there might be extra financial burdens.

Public liability insurance has not been mentioned in this debate, but we considered it in the committee. There was general agreement in the committee that reservoir owners should be encouraged to take out public liability insurance if at all possible, and should possibly even be obliged to do so. The costs of that should decrease and the availability of insurance should increase if all reservoirs in Scotland are in such a scheme. Currently, 662 reservoirs are regulated under the 1975 act. As I said, the bill’s financial memorandum estimates that 1,150 reservoirs will fall under the scope of the new regulation. That number of reservoirs could be the basis for an insurance scheme, which would assist reservoir owners and those who might be affected by the consequences of any breach of regulation.

Bill Wilson, Peter Peacock and Sarah Boyack made important points about planning. Bill Wilson was concerned about the consequences of designation and Peter Peacock talked about the consequences for subsequent development. It is unclear how the designation of a reservoir will affect subsequent planning decisions or how subsequent development might affect the designation of a reservoir. A reservoir might become higher risk if somebody builds downstream of it, which could result in the reservoir owner incurring additional expenditure through no fault of their own. We would like clarification of whether a developer would be liable for the additional costs if a development caused an increase in costs to a reservoir owner. The committee suggested that that would be a good idea.

We also touched on the assessment of the risk of failure. Jamie McGrigor asked whether it is the probability of failure or the consequences of failure that have to be taken into account, or whether it is a combination of the two, and, if so, how those are weighted. There was disagreement during the evidence sessions about whether examination of the structures of a reservoir and its maintenance are sufficient to assess risk appropriately. We have talked a little about climate change. Climatic factors such as increased rainfall and events such as peat slides, which we were advised are fairly
common in Scotland, can change the level of risk that is associated with a reservoir.

Jim Hume touched on the consultation on the guidance. Chapter 9 of the bill, which is entitled “Civil Enforcement, Emergency Powers and Further Offences”, gives SEPA the powers that it requires to enforce regulations. Many of the provisions are framework ones that give ministers the powers to create civil enforcement measures. Section 85 requires SEPA to publish guidance on how it will use the powers. Several organisations expressed concern about the breadth of the powers and said that they would welcome consultation on their implementation. As I think John Scott said, it would be helpful if SEPA consulted civil engineers and others before publication of the guidance so that, when the act is implemented, the guidance is available and stakeholders and reservoir owners are aware of their responsibilities.

I have probably used up my time, Presiding Officer.

The Deputy Presiding Officer (Alasdair Morgan): There is no necessity to speak for the sake of it.

Elaine Murray: I was wondering about that.

I look forward to stage 2, when I hope we will address the various technical issues that have been raised.

10:19

Richard Lochhead: I have been instructed to speak slowly, so I am sure that this will be at a good pace, Presiding Officer.

I am pleased that we have had an opportunity to debate the Reservoirs (Scotland) Bill, which ultimately will make Scotland’s reservoirs much safer. We have more than 1,000 reservoirs in Scotland, of which about 660 are currently regulated. The bill will capture many of those that are not currently regulated, to protect the public.

As John Scott said, we all like bills that capture the public’s imagination. Although we cannot pretend that this bill does so, the consensus is that it is an important bill nevertheless, given the consequences of flooding for communities and property. In the past few days and weeks, we have seen such consequences from around the world on television. When a reservoir collapses or is breached, it can devastate communities, as we know from our history and from events around the world, most recently in Hungary, where there was the dreadful incident to which members have referred.

As Elaine Murray said, the bill complements the Flood Risk Management (Scotland) Act 2009. That shows that the Scottish Parliament is taking account of extreme weather conditions, our changing climate and the potential impact of flooding. Wherever possible, we must provide a safeguard against those.

I am pleased with the debate and I am grateful to all the members who have spoken for their insights. I assure the Rural Affairs and Environment Committee that the Government and I, as the cabinet secretary, will respond to its stage 1 report. As Sarah Boyack said, we have not had much time to do so, as the debate has happened rather soon after the publication of the report. The debate has been helpful, but I intend to give a much more detailed response to the committee in the coming days. I hope that that gives members some comfort.

I am confident that our proposed stage 2 amendments will go a long way towards meeting the majority of the committee’s remaining concerns. It has been good to explore some of those concerns in more detail during the debate. We will reflect on the concerns that have been expressed as we prepare the stage 2 amendments.

Further thanks are due to the various stakeholders who have helped to shape the bill through their expertise and active participation in the consultation process and all the meetings that have taken place. All that good work emphasises the widespread support for the bill, which is important, and the agreement on the need to put in place a new and robust system for managing reservoir safety in Scotland. As members have requested, we will continue to work with all stakeholders as we proceed.

I will address some of the issues that members have raised. The issue of costs crept up in a number of speeches and we heard about the potential for those who own or run reservoirs to incur more costs. I am keen to point out that, if someone cannot afford to maintain their reservoir in a safe condition, they should perhaps not own a reservoir in the first place. As a society, we want only those who can afford to own and run reservoirs to do so—they need to be able to put in place the measures that must be taken to protect the public and local communities. If someone cannot do that, perhaps they should not own a reservoir in the first place.

The new regime will help reservoir owners who, because their reservoir is low risk, have perhaps been paying a bit more than they need to. They might not have to pay so much in regulatory costs in future because the new regime will be risk based. Whereas some people will have lower costs, others who are brought into the regime will face costs for the first time. We do not want any business to go bankrupt because of the potential
costs of keeping a reservoir safe. That is why I indicated in my opening speech that, as the Minister for the Environment and Climate Change said to the Rural Affairs and Environment Committee, we will consider whether there is a case for assisting people in the specific circumstances in which they have a small business that would be made bankrupt because of the regulatory costs that they have to pay.

John Scott: If a risk designation changes from low to high because of the bill, who will be responsible for the extra cost burden?

Richard Lochhead: There will be costs for owners and managers of reservoirs that have a higher risk designation under the new regime. SEPA will work with all owners of reservoirs to address issues of extra cost. Much effort will be put in to ensure that we minimise the costs, but someone has to pay somewhere.

Many members mentioned the financial burden on SEPA of taking on board responsibility for the bill. The Government will work closely with SEPA to ensure that it has the necessary resources. As we all know, SEPA has been going through several changes in recent months and years. In effect, those changes are making it a good-value and hyper-efficient organisation, which is what we all want.

Jamie McGrigor: Will the cabinet secretary clarify whether SEPA will pick up the cost of the initial risk assessment?

Richard Lochhead: A lot of work is taking place between SEPA and the Government. Much of the cost to which the member refers will be picked up by SEPA and the Government. However, as the member knows, SEPA will be able to recover much of those costs from reservoir owners and managers—that is only right—and the fee scales are laid out in the bill’s financial memorandum.

Elaine Murray: I have a lot of sympathy with the cabinet secretary’s arguments about the need for people to be able to pay for the maintenance of their reservoirs. However, the issue is to do with those people who do not know whether their reservoir holds 10,000m$^3$ or less. Who pays for the assessment of whether they need to be captured by regulation—SEPA or the reservoir owner?

Richard Lochhead: I know that costs are of great importance to many committee members. I will clarify that point, as well as the numerous individual debates within it, when I write to the committee in response to its stage 1 report.

Bill Wilson said that there was total agreement on all issues between the Government and members in the chamber. It was perhaps unfair of him to say that, because it meant that we did not have much to debate. However, I assure him that, although I welcome the positive stage 1 report, there are a couple of issues in it on which the Government does not agree.

The first is recommendation 13, which suggests that weirs “should be excluded without qualification”.

We do not think that that is appropriate because in Scotland, certain large structures that hold back large quantities of water are commonly described as weirs rather than dams. We do not want weirs to escape regulation so it is important that we do not rule them out.

The second is recommendation 19. In response, I note that although we would encourage reservoir managers to take out public liability insurance, we do not support making that compulsory because it would place additional ancillary costs on some reservoir managers. Indeed, our position is supported by the Association of British Insurers. I say to Bill Wilson that there are some issues on which there are grounds for debate in the weeks ahead.

Peter Peacock discussed the implications of the bill for the planning system in respect of the role of reservoirs. “Scottish Planning Policy” already states:

“Planning authorities must take ... flooding from all sources ... into account when preparing development plans and determining planning applications.”

Reservoir flood inundation maps and flood risk management plans will therefore inform decisions alongside other planning considerations. We have to keep a close eye on that. If there is further need to update guidance to local authorities, we will ensure that that happens.

Bill Wilson discussed the weighting of the various criteria that are considered when the level of risk posed by any individual reservoir is being looked at. I put it on record that risk to life will always be of paramount consideration, but environmental and cultural heritage also have to be considered because they are important factors when the risk posed by any individual reservoir is looked at.

Jim Hume mentioned the threshold of 10,000m$^3$ and asked how that threshold was decided and what its significance is. The threshold is based on advice from the Institution of Civil Engineers and others, but regulations under the bill will allow any reservoirs with a smaller capacity to be brought within the bill’s ambit.

We do not want to bring reservoirs into public ownership—Jamie McGrigor touched on that, among other issues. We prefer reservoirs to be owned and managed by the private sector, organisations or individuals, as long as they are
aware of their responsibilities to keep their reservoirs safe. That is the really important point.

Ironically, I see the Presiding Officer indicating that I am now running out of time, so I will finish. We all recognise that the bill is an important one that will protect the public. We recognise that work is still to be done, which is why the bill will be implemented in a couple of stages and why the new reservoirs that it will capture have until 2015 to be registered—we have a few years between now and then to capture them.

The bill is also about taking on board the potentially devastating consequences for communities, life and property of flooding caused by a breach or collapse of a reservoir.

I commend the bill to Parliament and thank members for their contributions today.

Reservoirs (Scotland) Bill: Financial Resolution

10:29

The Deputy Presiding Officer (Alasdair Morgan): The next item of business is consideration of motion S3M-7704, in the name of John Swinney, on the financial resolution to the Reservoirs (Scotland) Bill. The question on the motion will be put at decision time.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Reservoirs (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act—[Richard Lochhead.]
Decision Time

17:01

The Presiding Officer (Alex Fergusson): There are five questions to be put as a result of today's business. The first question is, that motion S3M-7769, in the name of Richard Lochhead, on the Reservoirs (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Reservoirs (Scotland) Bill.

The Presiding Officer: The second question is, that motion S3M-7704, in the name of John Swinney, on the financial resolution for the Reservoirs (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Reservoirs (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b)(iii) of Rule 9.12 of the Parliament's Standing Orders arising in consequence of the Act.
Scottish Government response to the Rural Affairs and Environment Committee’s Stage 1 report on the Reservoirs (Scotland) Bill 2 February 2010
Scottish Government response to stage 1 recommendations

The Scottish Government welcomes the Rural Affairs and Environment Committee’s Stage 1 report on the Reservoirs (Scotland) Bill. We have considered the Committee’s recommendations and responded to each point as follows;

Consultation

Recommendation 1: The Committee is broadly content that there was sufficient consultation on the main aim of the Bill (reservoir safety). There appears to have been little or no pre-introduction consultation on the other aim of the Bill (restoration/remediation of the water environment). However, we note that this proposal was included in a prior legislative consultation in the relatively recent past. In addition, we are reassured that the Government will consult on any proposed regulations arising as a result of this other aim of the Bill receiving Parliamentary endorsement, and that it is the detail of the proposed regulations that most stakeholders will be interested in.

The Scottish Government welcomes the Committee’s recognition of the consultation undertaken by the Scottish Government in relation to Part 1 of the Bill. The Scottish Government would like to reassure the Committee that the Government will consult on any proposed regulations under Part 2. In addition, the Scottish Government would like to thank the Committee for taking account of information provided by the Scottish Government when formulating their Stage 1 report.

General principles and general considerations

Recommendation 2: The Committee recognises that the Bill is a technical one, on which some points of detail require to be resolved to the satisfaction of the main stakeholders, in particular representatives of civil engineers. The Committee would expect the Scottish Government, the Institution of Civil Engineers and others will maintain a dialogue at amending stages in order to resolve these concerns. We note also that stakeholders would welcome an agreed timetable for discussing and agreeing in draft form any guidance required under the Bill, so that it is ready in time for implementation.

The Scottish Government recognises that there are a small number of technical issues that have arisen as a result of the drafting of the Bill at Introduction. The concise written and oral submissions from stakeholders to the Committee provided an important source of information for both the Committee and the Scottish Government. The Scottish Government is working with stakeholders including the Institution of Civil Engineers in order to resolve these concerns and intends to bring forward a small number of amendments which should address any remaining issues.
The Scottish Government is aware of the importance of providing clear guidance on the implementation of the Bill and any supporting secondary legislation, and will work in close consultation with SEPA and ICE in particular, together with other stakeholders, to ensure it is published in time to support implementation of the legislation.

**Recommendation 3:** The Committee supports the general principles of the Bill, to improve reservoir safety in Scotland by modernising the current regulatory regime.

The Scottish Government welcomes the Committee’s support for the general principles of the Bill.

**Recommendation 4:** The Committee notes concerns (discussed in more detail later in the report) that the Bill may place an increased, or entirely new, regulatory burden on some reservoir managers, and that a few of them may find this financially difficult. The Committee notes that the Scottish Government has tentatively indicated that it is willing to discuss providing some sort of support in those circumstances. Further details on this would be welcome.

The priority must be to protect people and property from the risk of flooding. Ultimately, reservoir owners are likely to be liable to pay damages to those who suffer injury or damage in the event of a failure of a dam. Therefore, the cost of maintaining a reservoir properly should be balanced against the potential cost of dealing with the consequences of the failure of a poorly maintained dam, and this legislation is designed to reduce the risk to both the public and the reservoir manager. While we want to make sure that reservoirs are owned or managed by those who can afford to maintain them in a safe and proper manner, the Scottish Government could consider the inclusion of provision in the Bill for financial assistance to prevent financial difficulties for individuals or small businesses. Bankruptcy of small businesses is in nobody’s interests, and might result in the cost of any required works falling on the public purse in any case.

Any such assistance is unlikely to be required before 2015 at the earliest, when the risk category of reservoirs between 10,000 and 25,000 cubic metres has been assessed and the scale of any remedial action is known. Any such funding mechanism would be a temporary measure to enable reservoir managers to adapt to the new safety regime under the Bill.

**Recommendation 5:** The Committee considers that there should be greater clarity as to the role of engineers in providing advice to SEPA where SEPA is statutorily obliged to make a decision on technical matters.

The reservoir safety regime of supervision and inspection has proven to be robust and is well understood. The key elements of the regime under the 1975 Act are being continued under the Bill. To a large degree, it relies on the professional integrity of the panel engineers, who will be appointed to panels by the Scottish Ministers after consultation with the Institution of Civil
Engineers (ICE). The independent engineers are then appointed directly by the reservoir owner to either supervise or inspect the reservoir, and this results in a relatively self regulatory regime focused on the relationship between the owner and engineer.

SEPA’s duties will largely involve the administrative monitoring of any ongoing reservoir activity. It is an administrative role, with independent technical advice from ICE and panel engineers being brought in wherever necessary. SEPA will not make decisions related to technical safety without engineering input.

**Recommendation 6:** The Committee notes the Minister for Environment and Climate Change’s assurances that the Bill is no more likely than the current legislation to lead to a conflict of interest in the seeking of technical engineering advice. However, we invite the Scottish Government to express a view on whether a local authority would be more likely to have access to such advice in-house than SEPA, which – as we understand it – is not likely to employ engineers to provide advice but will instead rely on panel engineers appointed under the Bill. If so, does the Government consider that this gives rise to concerns?

The Scottish Government strongly supports the principle that there should be no conflict of interest when SEPA seeks technical engineering advice. The Scottish Government takes the view that although a local authority may have access to general engineering advice, they would be no more likely to have access to such specialist, reservoir-related advice in-house than SEPA.

SEPA will not rely on panel engineers appointed by reservoir managers under the Bill for technical engineering advice. They are more likely to enter into specific contracts with businesses or consultancy firms who employ reservoir panel engineers for the purpose of providing reservoir technical expertise on an ongoing basis.

**Recommendation 7:** The Committee seeks assurances that the Bill will not inadvertently inhibit the development of sustainable flood management practices by imposing unduly rigorous requirements as to the construction or alteration of structures such as barrages on flood plains.

The Scottish Government would like to reassure the Committee that the Bill will not inadvertently inhibit the development of sustainable flood management practices.

Flood attenuation reservoirs will be covered under the Bill as they are under the 1975 Act. However, it is likely that most of these reservoirs will be low risk due to the fact that they are empty most of the time. The costs associated with the maintenance of low risk reservoirs will be relatively low and unlikely to be a disincentive to land owners. This is particularly the case now that, under the Flood Risk Management (Scotland) Act 2009, local authorities can enter into new management agreements and can compensate land owners if a flood
attenuation reservoir is identified as being beneficial to the reduction of flood risk in a local flood risk management plan.

As to imposing unduly rigorous requirements relating to the construction or alteration of structures such as barrages on flood plains, there is no intention that anything other than reservoirs will be captured by the legislation. The Scottish Government is happy to consider whether this can be clarified in the Bill.

**Reservoir Managers**

**Recommendation 8:** The Committee invites the Scottish Government to clarify whether a public body or charity undertaking an operation on a controlled reservoir, and which is not an owner or lessee of that reservoir is intended to be caught within the definition of “reservoir manager” and, if so, whether it is satisfied that the current definition does so.

The Scottish Government can confirm that it is intended that a public body or charity undertaking an operation on a controlled reservoir, and which is not an owner or lessee of that reservoir, will be caught within the definition of “reservoir manager”. Consideration is being given to whether an amendment is required to clarify this point.

**Recommendation 9:** The Scottish Government may wish to clarify that the duty of multiple reservoir managers to co-operate with each other would continue to apply even where they have appointed a nominee to exercise their responsibilities. The Committee also asks the Government whether it expects SEPA to take practical measures in the run-up to implementation to encourage effective working relationships between multiple reservoir managers.

The Scottish Government is happy to confirm that the duty of multiple reservoir managers to co-operate with each other continues to apply even when they have nominated a representative to exercise their responsibilities under Part 1 of the Bill.

The Scottish Government does expect SEPA to take practical steps prior to implementation to encourage effective and positive working relationships between reservoir managers. In addition, Scottish Ministers may direct SEPA to publish guidance on cooperation amongst reservoir managers of controlled reservoirs where there is more than one reservoir manager.

The Scottish Government understands that SEPA will look to produce this guidance as soon as practically possible to give clear and concise guidance on how multiple reservoir managers can work together. SEPA will also consider how this guidance can be disseminated to those concerned, for example through a dedicated reservoir safety page on SEPA’s internet site.
Threshold Volume

**Recommendation 10:** The case for 10,000m³ being the appropriate point at which to begin regulating reservoirs was not made especially clearly during Stage 1. However, the Committee notes the Institution of Civil Engineers’ professional advice that this volume is the point at which some risk assessment begins to become necessary, and also that this figure would maintain consistency with the rest of Great Britain. On that basis, we are content to support this being the volume set out in the Bill.

The Scottish Government welcomes the Committee’s support for 10,000 cubic metres as being the appropriate point at which to begin regulating reservoirs, given that the Institution of Civil Engineers advise that this volume is the point at which some risk assessment becomes necessary.

**Recommendation 11:** The Committee agrees with the Subordinate Legislation Committee that there is a case for expressly providing in the Bill that the Scottish Ministers should not lay an instrument proposing a different volume of water in the definition of “controlled reservoir” without first seeking expert advice.

The Scottish Government accepts this recommendation and consideration is being given to an amendment to address this point.

**Definition of “Controlled Reservoir”**

**Recommendation 12:** The Committee recognises that the overall structural integrity of a reservoir might be compromised by defects in the artificial watercourses flowing in or out of it. At the same time, we note some stakeholders’ concerns that the inclusion of pipes, spillways, etc., in the definition of “controlled reservoir” might impose an unrealistic and costly duty of inspection on managers. We note that the Government has considered these concerns and proposes to address them at Stage 2.

The Scottish Government recognises the concerns raised and consideration is being given to an amendment to address this point.

**Recommendation 13:** The Government may wish to consider whether “weirs” should be excluded without qualification from the definition of “controlled reservoir.”

The Scottish Government does not think it is appropriate to exclude “weirs” without qualification from the definition of controlled reservoir because certain large structures which hold back quantities of water well in excess of the 10,000 cubic metre minimum can commonly be described as “weirs” rather than “dams”.
However, it is not intended that smaller river weirs should be captured under the Bill. For the avoidance of doubt, we think it is important that the exclusion of “weirs” can be qualified in regulations.

**Recommendation 14:** The Committee agrees with the Subordinate Legislation Committee that the grounds on which a non-controlled reservoir may be deemed to be treated as a controlled reservoir should be more narrowly and prescriptively defined so as to ensure that the power is only used rarely and where necessary.

The power in section 1(4) is intended only to be used in exceptional circumstances in relation to individual structures where, notwithstanding that the reservoir in question is below the volume threshold, a particular risk is identified.

The Scottish Government do not consider it appropriate to specify a minimum cubic metre threshold because the purpose of the provision is to allow the Scottish Ministers to provide for individual exceptions to the minimum threshold of 10,000 cubic metres already set by section 1(2).

**Risk Designation**

**Recommendation 15:** The Committee notes that there is a disagreement currently between the Scottish Government and the Institution of Civil Engineers as to whether it is possible to assess the risk of a reservoir failing by examining its structure and level of maintenance. The Committee considers that this is an important issue and would encourage the Institution and the Government to discuss the issue further as the Bill progresses. Technological advances should also, in time, make it easier for engineers to assess risks previously considered as unmeasurable.

The Scottish Government is happy to discuss the assessment of risk of a reservoir failing with the Institution of Civil Engineers as the Bill progresses.

ICE are now represented on the reservoir safety stakeholder group in addition to the panel engineers based in Scotland who have already been involved in extensive discussions on the risk assessment process and other matters.

The Scottish Government would like to remind the Committee that SEPA have a duty to assess the risk of flooding from all sources under the Flood Risk Management (Scotland) Act 2009 (“the FRM Act”). ‘Risk’ is defined under the FRM Act as a combination of likelihood and consequence.

The use of ‘risk’ under the Reservoirs Bill reflects the fact that SEPA are already obligated to gather this data under the FRM Act. The Scottish Government considers that it would be short-sighted not to take this into account when classifying reservoirs under the Bill.
Recommendation 16: The Committee notes that there is a power to exclude certain types of structure from the definition of “controlled reservoir” and that this might be used where it is clear that the risk level inherent in the type of structure is negligible. Given the apparent lack of consensus on this issue, we would not expect this power to be used much in the foreseeable future. We also note the Government’s assurance that the bureaucracy and cost associated with low-risk controlled reservoirs ought to be very low. If assurances, backed up by clearer communication on the likely low costs to managers were provided, this might be helpful.

The Scottish Government would not expect to use this power unless significant evidence was presented to support the exclusion of any individual type of structure.

The cost of implementing the Bill’s requirements for a low risk reservoir will be relatively low. Reservoir managers will be required to register, keep basic records, erect an emergency information board and produce a simple flood plan.

The Financial Memorandum sets out the estimated costs to managers of low risk reservoirs as being between £100 and £250 in one off costs, plus up to £1000 to erect an emergency information board, although the cost of erecting a board is likely to be much lower. However, if the cost of erecting an emergency information board for a low risk reservoir is more than the registration fee, then the costs would outweigh the benefits. In these situations, the requirement to erect a notice board would be waived. Provision for this can be set out in the order under Section 55(2) which enables Scottish Ministers to specify the emergency information which should be displayed.

Recommendation 17: The Committee notes the evidence it received that environmental factors caused or exacerbated by precipitation (e.g. landslip) can potentially be a factor in increasing the probability of failure, but notes that no express provision for this appears to be made in the Bill. The Committee seeks reassurance from the Scottish Government that it would expect such factors to be taken into account in any assessment of a risk posed by a reservoir.

The Scottish Government can reassure the Committee that other factors which may increase the probability of failure can be taken into account when assessing the risk posed by the reservoir. Scottish Ministers can make further provision in regulations under section 21(4) about the matters that SEPA can take into account when assessing the risk of flooding from a reservoir.

Recommendation 18: The Committee expects that, in practice, danger to human life will be treated as the paramount consideration in any assessment of risk measured in terms of the consequence of reservoir failure, and considers this appropriate. However, the importance of other factors such as damage to the environment or to cultural heritage should not, as a consequence, be downplayed.
The Scottish Government supports this recommendation and would like to assure the Committee that danger to human life will be treated as the paramount consideration in any assessment of risk. We have, though, included a requirement for SEPA to consider other matters such as damage to the environment or cultural heritage as we believe it is important that they are taken into account. The regulations under section 21(4) will set out in more detail how these matters should be assessed.

Compulsory public liability insurance

**Recommendation 19:** The Committee notes that the consequences of an uncontrolled outflow from a reservoir can be catastrophic, in terms of damage not only to human life but also to property. We also note that it is highly unlikely that all reservoir managers would be sufficiently well resourced to cover such losses out of their own pockets. On that basis, the Committee is in principle supportive of requiring reservoir managers to take out public liability insurance.

The Scottish Government will work with the ABI and SEPA to encourage reservoir managers to take out public liability insurance. However, we do not consider that there is any justification for compulsory public liability insurance. It would not make reservoirs safer, which is the purpose of this legislation. In addition, it would place additional costs on the insurance industry in terms of record keeping and reporting, and subsequently these costs would be passed onto reservoir managers in terms of higher premiums.

Risk designation: procedural points

**Recommendation 20:** The Committee welcomes the Scottish Government’s recent undertaking to bring forward an amendment to require SEPA to consult the Institution of Civil Engineers before publishing guidance on the risk designation process. The Committee further expects that SEPA would, in practice, always seek expert engineering advice before making a designation.

The Scottish Government is happy to note the Committee’s support for the requirement to be placed on SEPA to consult the ICE before publishing guidance on the risk assessment process. The Bill already requires Scottish Ministers to consult with both SEPA and the ICE before making regulations under Section 21(4).

The Scottish Government would also expect SEPA to seek advice from the ICE whilst developing the methodology and procedures for undertaking the risk designation process.

Once this methodology has been produced, agreed and guidance has been issued, SEPA would not be expected to consult with ICE on every risk designation that it carried out.
If a reservoir manager disagrees with SEPA’s initial risk designation for their reservoir, the Bill includes provision for supporting evidence to be submitted and considered before a final designation is made. This evidence can include assessments from a qualified panel engineer.

**Recommendation 21:** The Committee welcomes the indication from the Scottish Government that it proposes to put time constraints on SEPA to complete a reservoir risk designation. This would appear to be helpful, in the interests of effective regulatory governance. The Committee presumes that the time constraint will also apply to risk designations arising from a request for a review of a designation.

The Scottish Government welcomes the Committee’s support for the proposed time constraints and would like to reassure the Committee the constraints will also apply to risk designations arising from a request for a review of a designation.

**Interaction with the planning system**

**Recommendation 22:** The Committee notes that SEPA is a statutory consultee under planning law. It is to be hoped that this will help ensure that planning authorities will take full account of the consequences of there being an uncontrolled release of water from reservoirs in preparing local plans. The Committee also expects that planning guidance will in due course be updated to take account of the provisions in the Bill.

The Scottish Government supports the committee’s view that, as SEPA is a statutory consultee and so must be consulted on any issue of planning where flood risk is a factor, the status of SEPA as enforcement authority for all reservoirs should result in a cohesive, joined up process where the proximity of a reservoir would always be taken into account when a planning application is made.

Furthermore, it is currently the intention of the Scottish Government’s Directorate for the Built Environment to update Planning Advice Note 69 - 'Planning and Building Standards Advice on Flooding' (PAN 69) during 2011. As part of this update, the potential issues relating to planning authorities taking account of reservoirs when preparing development plans and determining planning applications will be examined in more detail. Where relevant, the updated PAN will contain guidance which sets out to address these issues.

**Recommendation 23:** The Committee notes that, since risk is assessed under the Bill in terms of consequence as well as probability, this could lead to a reservoir receiving a higher risk designation as a result of a development downstream of the reservoir being approved. In most case, it would be unfair for the reservoir manager to have to bear any increased costs for this. We note the Minister for Environment and Climate Change’s view that she
expects this matter to be played out via the planning process, with the developer being asked to agree to take on the liability for increased costs. Again, updating planning guidance to reflect this in due course would be helpful.

The Scottish Government is aware of stakeholders concerns in regard to this matter and would like to reassure the Committee that all efforts will be made to ensure that reservoir managers are treated fairly and proportionately in such cases.

Scottish Planning Policy states that planning authorities must take flooding from all sources into account when preparing development plans and determining planning applications. Reservoir flood inundation maps and flood risk management plans will therefore inform decisions alongside other planning considerations.

If a proposed development might lead to costly safety improvements for the reservoir manager, the planning authority would be expected to take account of the views of the reservoir operator and be informed of any cost implications by SEPA. Consideration would have to be given to how this could be financed and through what mechanism this is achieved. If the planning authority considered this to be a significant issue that could not be overcome they would have the option of refusing the development or imposing conditions to reduce the risk and hence the costs.

Registration

Recommendation 24: The Committee notes that SEPA proposes to take on the role of preparing all flood inundation maps required for registration, and agrees that this appears to be appropriate to ensure consistency of approach and standards. SEPA should take steps to communicate this to stakeholders over coming months.

The Scottish Government welcomes the Committee’s support for the proposal that SEPA prepare reservoir inundation maps in an initial one-off exercise. As the Committee understands, this will ensure the maps are prepared using a consistent approach and standard. The maps will be a key source of information which will be taken into account during the risk designation process. As part of SEPA’s on-going communication and engagement with reservoir owners during the Bill’s implementation, SEPA would be expected to explain the purpose of the maps and the importance of a standardised approach.

Availability of panel engineers

Recommendation 25: The Committee is concerned by the steady decline in the number of available engineers to carry out regulatory duties, as well as the increase in the age profile. If these trends are left unchecked, there may be insufficient engineers left to carry out inspections, etc, in future. The
Committee invites further views from the Scottish Government as to how this concern might be addressed.

The Scottish Government believes that the number of all-reservoir panel engineers is sufficient for the foreseeable future, even if allowance is made for future retirements from the panel, as some new members will always join. The All-reservoir panel engineers operate throughout the UK.

Supervising engineers are likely to be more geographically focused, as they are responsible for particular reservoirs at all times. The Scottish Government will work with ICE and with our counterparts in England and Wales to ensure there are sufficient engineers available to carry out the roles and responsibilities set out under the Bill in the future.

**Role of engineers: technical points**

**Recommendation 26:** The Committee notes that following representations from the Institution of Civil Engineers the Scottish Government intends to amend the Bill to allow a reservoir’s construction engineer to be involved in subsequent alterations to the structure.

The Scottish Government recognises the Institution’s concerns and consideration is being given to an amendment to address this point.

**Recommendation 27:** The Committee notes that the Government will also amend the Bill to clarify that an inspecting engineer may be appointed for the duration of the inspection only.

The Scottish Government is aware of the concerns raised by stakeholders in relation to the current drafting regarding the appointment of inspecting engineers. Consideration is being given to an amendment to address this point.

**Recommendation 28:** The Committee notes views expressed at Stage 1 that the Bill may go too far in apparently requiring reservoir managers to implement all recommendations included in an inspection report, even those that relate only to routine maintenance. The Committee welcomes the Scottish Government’s undertaking to address this concern at Stage 2.

The Scottish Government understands the concerns expressed by Stakeholders and consideration is being given to an amendment to address this point.

**Recommendation 29:** The Committee considers that the rule on the supervision of water drawdown at higher risk reservoirs might have been drawn unintentionally widely, and welcomes the Scottish Government’s intention to lodge an amendment at Stage 2 to address this.
The Scottish Government recognises the concerns raised and consideration is being given to an amendment to address this point.

Flood plans and displays

**Recommendation 30:** The Committee would welcome an update from the Scottish Government, as the Bill proceeds, on progress made in discussions with the UK Government in agreeing the devolution of security measures in relation to flood plans.

The Scottish Government has secured an in principle agreement from UK Ministers to a section 104 Order under the Scotland Act in relation to the storage of reservoir information including maps and on site flood plans which may be regarded as an issue of national security.

The Scottish Government intends to adopt the current protocol already in place in England and Wales and will be happy to update the Committee on progress made in these discussions as the Bill progresses.

**Recommendation 31:** The Committee welcomes the Government’s intention to amend section 55 so that it is SEPA’s contact details, rather than those of the supervising engineer, that will be displayed next to the reservoir.

The Scottish Government understands the concerns expressed by stakeholders in relation to this issue and consideration is being given to an amendment to address this point.

SEPA powers: general

**Recommendation 32:** The Committee notes some concerns expressed at the breadth of the powers set out in Chapter 9 of the Bill. The Committee considers that it would provide assurance to stakeholders if the Scottish Government gave a clear undertaking that SEPA will consult fully on all guidance proposed under Chapter 9, and aim to have draft guidance agreed in time for implementation of the Bill.

The Scottish Government recognises the Committee’s concerns and would like to reassure the Committee that before giving SEPA the power to serve any stop notices (including the ability for SEPA to recover some of its costs), accept enforcement undertakings, impose fixed monetary penalties or impose further enforcement measures (including the ability for SEPA to recover some of its costs), Scottish Ministers would consult on these proposals.

Where Scottish Ministers grant SEPA these powers under Chapter 9, section 85 requires SEPA to publish guidance about the use of such powers.
The Scottish Government would expect SEPA to consult on draft guidance about how it proposes to use such powers, prior to finalising and publishing the guidance. However, SEPA would not be expected to undertake a significant amount work in drafting such guidance ahead of being granted the power to issue such sanctions. Any consultation by SEPA prior to then would be premature given SEPA might not be granted such powers, and it would be unclear what, if any, conditions would be attached to the order granting SEPA such powers in light of the Scottish Minister’s own consultation.

**Recommendation 33:** The Committee draws the Scottish Government’s attention to the comments of the Subordinate Legislation Committee on the delegated powers set out in Chapter 9.

The Scottish Government accepts this recommendation and consideration is being given to an amendment to address this point.

**Recommendation 34:** The Committee invites the Scottish Government to consider whether the power to enter into buildings on land adjacent to a reservoir is appropriate in all circumstances (for instance, where the reservoir is used to store drinking water).

The Scottish Government anticipates that the power to enter nearby land and buildings would only be used in extreme cases, such as an emergency situation where the reservoir manager could not be located, and only in strict accordance with the procedures specified in the Bill. It is not anticipated that there would be any conflict with the regular operational protocol of companies such as Scottish Water.

**SEPA’s power to charge fees**

**Recommendation 35:** The Committee notes that all public sector regulatory organisations will be under increased financial pressure to do “more for less” in the coming years. In this context, the Committee notes, and welcomes, SEPA’s commitment, in all areas of its work, to implement a “new, simpler and stronger model for environmental regulation.” In relation to SEPA’s new powers to charge fees under the Bill, the Committee supports these in the expectation that SEPA will charge for services only in order to recover costs incurred under an overall reservoir management regime that is “smart”, cost-effective, and as light touch as possible without compromising safety. We expect SEPA to consult fully on proposed powers under Chapter 9, including on likely fee levels and conditions.

The Scottish Government welcomes the Committee’s support for SEPA’s commitment to improved regulation. The Scottish Government would like to reassure the Committee that SEPA will only charge for services in order to recover costs incurred under a reservoir management regime that is proportionate and cost effective.
The Scottish Government would like to reassure the committee that SEPA will be expected to consult widely on any proposed charging scheme. Scottish Ministers will be able, through regulations, to require any such charging scheme to be signed off by Scottish Ministers.

**Costs falling on reservoir managers**

**Recommendation 36:** It would be helpful if the Scottish Government clarified, for the avoidance of doubt, that the onus is on SEPA to prove that a reservoir, not previously classed as a large raised reservoir, exceeds the threshold volume in the Bill, and that SEPA would bear the cost of surveying any such reservoir in order to ascertain whether it needs to be registered.

The Scottish Government would like to clarify that the number of reservoir managers who are likely to query the volume contained within their reservoir is expected to be small.

Where this situation does occur, SEPA would be required to adopt the prescribed method for calculating volumes that will be contained in regulations brought forward by Scottish Ministers, as stated in Section 1 (6) (b) (ii) of the Bill.

The technical methodology to establish the volume of water held in a reservoir is currently being developed as part of a project being undertaken by Defra and the Environment Agency, in consultation with the Institution of Civil Engineers. The Scottish Government intends to adopt the methodology which is being developed in consultation with the Institution of Civil Engineers, thereby ensuring a recognised and consistent approach to calculating volume throughout Great Britain.

If SEPA have used this methodology to calculate a volumetric figure for the reservoir capacity, and the reservoir manager still disagrees with the assigned volume, the onus will be on the reservoir manager to provide evidence to prove otherwise.

**Recommendation 37:** The Committee notes that the proposal to grant six month’s grace on payment of registration fees will be welcomed by reservoir managers. It would be helpful if the Scottish Government explained whether this supersedes the statement in the Financial Memorandum that SEPA will use its power to charge fees to offset its outlays.

The Scottish Government confirms that its intention is that registration fees will be waived for an initial six month period to encourage early registration. This is consistent with the estimated costs set out in the Financial Memorandum which only included estimated fees relating to subsistence costs (annual fees) to cover SEPA’s ongoing administrative costs and not initial registration costs.
Registration fees were not included in the Financial Memorandum as it had already been decided to include six months’ grace on the payment of registration fees.

It is envisaged that by having a six month grace period, managers of reservoirs required to be registered for the first time will come forward and register their reservoir. After the six month period, it is hoped only a minimal number of sites will still be required to register.

**Recommendation 38:** The Committee presumes that reservoir managers will not have to pay for inundation maps prepared by SEPA provided they register within six months.

The Scottish Government would like to confirm that reservoir managers will not be expected to pay for inundation maps if they register within the first six months. The Financial Memorandum set out the expectation that the cost of this will be borne by SEPA.

Reservoir managers who do not register after the initial six month registration period will still be required to register and may be required to produce inundation maps at their own expense.

**Recommendation 39:** The Committee invites the Scottish Government to clarify whether, under the Bill, SEPA may charge for the risk designation process. Is it the Scottish Government’s policy that SEPA should be able to charge for this?

SEPA may recover part of its costs for the risk designation process through its annual subsistence charge.

SEPA’s subsistence charges will be set on a cost recovery basis for the ongoing work that they are required to undertake. To reflect the amount of effort required from SEPA to regulate sites in each risk category, the fee will be based on the reservoir’s risk designation, with high risk sites requiring more effort than medium risk sites, the associated charges will reflect this, with high risk sites receiving a higher charge than medium risk sites. There will be no charge for low risk sites.

Some preliminary work has already been carried out to investigate the level of possible charges, but to be able to start to provide certainty regarding the level of charge, SEPA needs to fully understand the full extent of their duties. Once the Bill is passed and the secondary legislation required to support it has been developed, then SEPA will be better able to identify the costs it is likely to incur.

The Scottish Government would like to reassure the Committee that SEPA will be required to consult widely on any proposed charging scheme. Ultimately it will be for Scottish Ministers to sign off the final charging scheme.
Recommendation 40: There is uncertainty over the status and likely level of annual or subsistence charges likely to arise under the Bill. The Committee recommends that this be addressed as a matter of urgency, so as to provide greater certainty to stakeholders, particularly those persons who anticipate becoming managers of medium or high-risk reservoirs under the Bill and who are confused by the financial implications of this.

The Scottish Government estimates that any subsistence charges made by SEPA will be on a relatively small scale. The Scottish Government’s working estimates are that low risk reservoirs would not be subject to any annual fee, medium risk reservoirs would be subject to an annual fee of around £100, and that high risk reservoirs would be subject to an estimated annual fee of around £300.

The Scottish Government would like to reassure the Committee that SEPA will be required to consult widely on any proposed charging scheme. Ultimately it will be for Scottish Ministers to sign off the final charging scheme.

Recommendation 41: The Committee seeks further clarification from the Scottish Government on the likely cost of a flood plan, in particular in relation to managers of low-risk reservoirs.

The Scottish Government’s estimates as set out in the Financial Memorandum of the cost of producing a flood plan are between £100 and £250 for a low risk reservoir, between £1000 and £2000 for a medium risk reservoir, and between £1500 and £6500 for a high risk reservoir.

Recommendation 42: The Committee seeks clarification on the likely cost of displays under section 55. The figure of £1000 apparently quoted in the Financial Memorandum seems somewhat excessive. It is also not clear from the Memorandum whether managers of low-risk reservoirs would be expected to incur any costs at all, although section 55 does not expressly exclude them.

The Scottish Government accepts that this estimate is on the high side but the figure provided has taken into account the potential costs for such factors as transportation of the sign to remote sites, and the staff time needed to erect such a display.

The Scottish Government does anticipate that in many cases, the cost of erecting a display will be much lower.

The Scottish Government can confirm that the requirement to display information about the reservoir applies to low-risk reservoirs too. However, if the cost of erecting an emergency information board for a low risk reservoir is more than the registration fee, then the costs would outweigh the benefits. In these situations, the requirement to erect a notice board would be waived. Provision for this can be set out in the order under Section 55(2) which enables Scottish Ministers to specify the emergency information which should be displayed.
**Recommendation 43:** The Committee invites the Scottish Government to state whether it anticipates that, following implementation of the Bill, SEPA will require more rigorous standards in the construction or inspection of reservoirs and, if so, whether reservoir managers will therefore be liable to incur higher construction, alteration, or maintenance costs than previously.

The Scottish Government can assure the committee that the legislation does not permit SEPA to set standards in the construction or alteration of structures.

SEPA’s role as the enforcement authority for the Reservoirs (Scotland) Bill will be to ensure that reservoir managers comply with the legislation. Therefore, where details of, for example, the level or frequency of inspections are contained within the legislation, SEPA will look to ensure they are met. Additionally, where Inspecting Engineers specify measures to be taken to maintain the reservoir, SEPA will ensure these are undertaken as specified by the Inspecting Engineer.

Therefore there should not be an increase in costs to reservoir managers related to construction, alteration or maintenance of a safe dam.

**Assistance for reservoir managers**

**Recommendation 44:** The Committee notes the Minister for Environment and Climate Change’s recognition that the Bill might lead to difficulties for some reservoir managers, and welcomes her tentative indication that the Government might consider providing some sort of assistance in extreme cases. The Committee seeks further clarification on what sort of assistance the Scottish Government might have in mind.

Provision for financial assistance is something that the Scottish Government could consider including in the Bill to help in extreme cases. This may be a way of preventing financial difficulties; as bankruptcy of a small business is in nobody’s interests, and might result in the costs of required maintenance falling on the public purse in any case.

Any such assistance would not be required before 2015 at the earliest, when the risk category of reservoirs between 10,000 and 25,000 cubic metres has been assessed and the scale of any necessary remedial action is known.

Financial assistance would be a temporary measure to assist with any capital investment required to bring the reservoir up to a satisfactory standard. Thereafter Reservoir managers should be able to maintain their reservoirs to ensure to a safe standard. If not they should consider whether they still wish to own or manage the reservoir.
Costs to Scottish Water

Recommendation 45: The Committee welcomes the Minister for Environment and Climate Change’s recognition that should Scottish Water require further financial assistance to implement the Bill in full, a mechanism exists to help provide it.

The amount of finance Scottish Water requires over a regulatory period is set by the independent economic regulator, the Water Industry Commission for Scotland. The current regulatory period runs from 2010-15 and the Water Industry Commission for Scotland issued its Final Determination in November 2009. The Determination, by necessity, includes a number of assumptions regarding Scottish Water’s costs. There are regulatory mechanisms that enable deviations in cost (arising, for example, because of inflation) and new statutory obligations, which were not foreseen at the time of the Determination, to be accommodated.

If additional unfunded costs are placed on Scottish Water, as a result of the Reservoirs Bill, these mechanisms can be utilised to ensure that Scottish Water can deliver its new statutory obligations.

Water Environment and Water Services (Scotland) Act

Recommendation 46: The Committee supports Part 2 of the Bill enabling the Scottish Ministers to create offences for failures to restore or remediate the water environment. We consider it important that there is full consultation with all stakeholders on any proposed offences and sanctions.

The Scottish Government welcomes the Committee’s support for Part 2 of the Bill. The Scottish Government intends to fully consult on the draft Restoration Regulations before they are brought to the Parliament, including any offences and sanctions.
Reservoirs (Scotland) Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 108 Schedule
Section 109 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Richard Lochhead

1 In section 1, page 2, line 20, at end insert—

<( ) Before making an order under subsection (6)(a) the Scottish Ministers must consult the Institution of Civil Engineers about the volume of water which should be specified in the order.>

Section 2

Richard Lochhead

2 In section 2, page 2, leave out line 24

Richard Lochhead

3 In section 2, page 2, line 25, leave out <water out of it> and insert <the water>

Richard Lochhead

4 In section 2, page 2, leave out line 36

Section 3

Richard Lochhead

5 In section 3, page 3, line 9, leave out subsections (2) to (10) and insert—

<(2) Scottish Water is the reservoir manager of a controlled reservoir which is managed or operated by it.

(3) The reservoir manager of a controlled reservoir for which Scottish Water is not the reservoir manager by virtue of subsection (2) 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).>
(4) In this section—

(a) managing or operating a reservoir (without prejudice to the generality of that expression) includes controlling of the flow of water in or out of the reservoir, and

(b) a reference to managing or operating a reservoir is, in relation to a reservoir which is being constructed or restored to use (within the meaning of Chapter 5), to be read as referring to proposing to manage or operate the reservoir.

Section 6

Richard Lochhead

6 In section 6, page 5, line 24, leave out <The Scottish Ministers may direct SEPA to> and insert <SEPA must, by such date as the Scottish Ministers direct,>

Richard Lochhead

7 In section 6, page 5, line 27, at end insert—

<( ) Before publishing guidance under subsection (1), SEPA must consult—

(a) the Institution of Civil Engineers,

(b) such other persons as it considers appropriate.>

Section 9

Richard Lochhead

8 In section 9, page 6, line 15, after second <engineer> insert <, other qualified engineer>

Richard Lochhead

9 In section 9, page 6, line 25, after <any> insert <written recommendation or>

Richard Lochhead

10 In section 9, page 6, line 25, leave out <48(7)> and insert <48(3) or (7)>

After section 13

Richard Lochhead

11 After section 13, insert—

<Fees: registration and administration

(1) The Scottish Ministers may by regulations make provision allowing SEPA to charge reservoir managers of controlled reservoirs, and requiring reservoir managers to pay—

(a) fees in relation to registration, and

(b) other annual or recurring fees in relation to the performance of functions by SEPA under this Part.>
In making regulations under subsection (1) the Scottish Ministers must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.

Regulations made under subsection (1) must include provision—
(a) specifying how SEPA is to determine and charge fees,
(b) requiring SEPA—
   (i) to set out its fees in a published charging scheme,
   (ii) to consult such persons as SEPA considers likely to be affected by the scheme before it publishes (or revises) a scheme.

Regulations made under subsection (1) may include such other matters as the Scottish Ministers consider appropriate, including provision specifying—
(a) the maximum amount of any fee,
(b) the circumstances in which any fee is payable,
(c) different fees to be imposed in respect of different reservoirs or in other different cases or classes of case, and
(d) how fees may be collected and recovered.

Section 14

Richard Lochhead
12 In section 14, page 7, leave out lines 36 and 37

Section 18

Richard Lochhead
13 In section 18, page 9, line 25, leave out from <having> to <17(4)> in line 26 and insert <as soon as is reasonably practicable after the end of the period referred to in section 17(4)(d) and having taken into account any representations made in that period>

Section 20

Richard Lochhead
14 In section 20, page 11, line 1, leave out <appeal> and insert <review>

Section 22

Richard Lochhead
15 In section 22, page 11, line 36, at end insert—
   <(4A) SEPA gives its decision in the review by giving the reservoir manager notice—
   (a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,
(b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,
(c) specifying the reasons for its decision,
(d) giving information about the right of appeal under section (Appeal to the Scottish Ministers following SEPA’s review) against the risk designation following the review.

Richard Lochhead

16 In section 22, page 11, line 37, after <a> insert <reasonable>

After section 22

Richard Lochhead

17 After section 22, insert—

Appeal to the Scottish Ministers following SEPA’s review

1 A reservoir manager of a controlled reservoir who is given notice of SEPA’s decision in a review under section 22 may appeal to the Scottish Ministers against that decision.

2 Any such appeal must be made before the end of the period of 12 months beginning with the date on which the notice under section 22(4A) was given.

3 Subject to subsection (5), a risk designation in respect of which an appeal is made under this section continues to have effect despite the appeal.

4 Before determining an appeal the Scottish Ministers must—

(a) consult the Institution of Civil Engineers, and
(b) take into account the matters mentioned in section 21.

5 The Scottish Ministers must notify their determination of the appeal by giving the reservoir manager and SEPA notice—

(a) specifying whether they confirm the risk designation or give the reservoir a different risk designation,
(b) where they give the reservoir a different risk designation, specifying which one of the other types referred to in paragraphs (a) to (c) of section 17(3) is the different risk designation,
(c) specifying the reasons for their decision.

6 Any fee charged by SEPA under section 22(5) must be returned by it to the reservoir manager in the following circumstances—

(a) where the risk designation which was the subject of the appeal was as a high-risk reservoir and the Scottish Ministers’ decision in the appeal is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,
(b) where the risk designation which was the subject of the appeal was as a medium-risk reservoir and the Scottish Ministers’ decision in the appeal is to give a risk designation as a low-risk reservoir.

7 The Scottish Ministers may by regulations make further provision in relation to appeals under this section.
Section 23

Richard Lochhead

18 In section 23, page 12, line 14, at end insert—

<( ) Where the Scottish Ministers give a direction under this section SEPA must, before publishing its guidance, consult and have regard to any advice given to it by the Institution of Civil Engineers.>

Section 24

Richard Lochhead

19 In section 24, page 12, line 19, leave out from <or> to end of line 20 and insert <, 22 (subject to subsection (3) of that section) or, as the case may be, (Appeal to the Scottish Ministers following SEPA’s review) (subject to subsection (3) of that section).>

Section 27

Richard Lochhead

20 In section 27, page 13, line 18, after <engineer> insert <or was the other qualified engineer in relation to a reservoir (see section 45(5))>

Section 30

Richard Lochhead

21 In section 30, page 14, line 15, leave out <the capacity of>

Richard Lochhead

22 In section 30, page 14, line 16, leave out <had the capacity to hold> and insert <been capable of holding>

Richard Lochhead

23 In section 30, page 14, line 17, leave out <to that capacity> and insert <so that it is capable of so holding such amount of water>

Richard Lochhead

24 In section 30, page 14, line 26, leave out from <reducing> to <is> and insert <making the reservoir>

Richard Lochhead

25 In section 30, page 14, line 28, leave out <is>
Richard Lochhead

26 In section 30, page 14, line 31, leave out from <reducing> to <is> in line 32 and insert <making the reservoir>

Section 31

Richard Lochhead

27 In section 31, page 15, line 18, leave out <and the reservoir>

Richard Lochhead

28 In section 31, page 15, leave out lines 27 to 30

Section 32

Richard Lochhead

29 In section 32, page 15, line 37, leave out <and the controlled reservoir>

Section 33

Richard Lochhead

30 In section 33, page 16, line 24, at end insert—

<( ) where the reservoir manager is required to appoint a supervising engineer (see section 47), specify any matters that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,>

Section 40

Richard Lochhead

31 In section 40, page 20, line 3, after <(1)(a)> insert <, (b)>

Richard Lochhead

32 In section 40, page 20, line 9, leave out from <(1)(b)> to <(i)>, in line 19 and insert <(1)(d) or (e) is liable—

( ) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
( ) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum,
Section 43

Richard Lochhead
33 In section 43, page 21, line 25, leave out from <which> to <engineer> in line 26

Richard Lochhead
34 In section 43, page 21, line 27, at end insert <to carry out an inspection of the reservoir at each of the times required by section 44>

Richard Lochhead
35 In section 43, page 21, line 29, leave out subsection (2)

Richard Lochhead
36 In section 43, page 22, leave out lines 2 to 4

Section 44

Richard Lochhead
37 In section 44, page 22, line 6, leave out subsections (1) and (2) and insert—

<(1) Subject to subsection (2A), inspections of a high-risk reservoir must be carried out—
   (a) before the end of the period of 2 years beginning with the date of any final certificate for the time being applicable to the reservoir, and
   (b) at each of the following times—
      (i) at any time recommended by the supervising engineer under section 48(3),
      (ii) at any time recommended in an inspection report under section 45,
      (iii) before the end of the period of 10 years beginning with the date of the latest inspection.

(2) Subject to subsection (2A), inspections of a medium-risk reservoir must be carried out at each time recommended by the supervising engineer under section 48(3).

(2A) Where a construction engineer is appointed to supervise relevant works at a high-risk reservoir or a medium-risk reservoir—
   (a) each inspection which, at the date of the appointment, is due to be carried out is cancelled, and
   (b) the next inspection must be carried out—
      (i) in the case of a high-risk reservoir, in accordance with subsection (1)(a),
      (ii) in the case of a medium-risk reservoir, at any time recommended by the supervising engineer under section 48(3) which is after the end of the period of 2 years beginning with the date of the final certificate for the relevant works.>
Section 45

Richard Lochhead

38 In section 45, page 22, line 31, at end insert <(including measures for the maintenance of the reservoir)>

Richard Lochhead

39 In section 45, page 22, leave out lines 32 and 33

Richard Lochhead

40 In section 45, page 23, line 2, leave out <supervising> and insert <inspecting engineer or the other qualified>

Richard Lochhead

41 In section 45, page 23, line 6, at end insert—

<( ) may include recommendations on other matters which the inspecting engineer considers relevant to the maintenance of the reservoir but in relation to which the engineer does not specify a measure to be taken under paragraph (a).>

Richard Lochhead

42 In section 45, page 23, line 13, at end insert—

<( ) references to “the other qualified engineer” are references to the engineer appointed for the time being as such under section 46 in relation to the reservoir,>

Section 46

Richard Lochhead

43 In section 46, page 23, line 17, leave out <comply with> and insert <ensure that>

Richard Lochhead

44 In section 46, page 23, line 18, at end insert <is complied with>

Richard Lochhead

45 In section 46, page 23, line 18, at end insert—

<(1A) The reservoir manager—

(a) may appoint any other qualified engineer (being a person eligible to be appointed as an inspecting engineer for the reservoir) to supervise any of the measures specified in the inspection report, and

(b) must, as soon as practicable after making any such appointment, give notice of it to SEPA and the inspecting engineer.>
Richard Lochhead
46 In section 46, page 23, line 19, leave out subsection (2) and insert—

<(2) Not later than 28 days after being satisfied that a measure directed in the inspection report has been taken—

(a) the inspecting engineer, or

(b) in relation to any measure for which the other qualified engineer is appointed, the other qualified engineer,

must give to the reservoir manager an interim inspection compliance certificate.

(2A) Where the other qualified engineer gives an interim inspection compliance certificate in relation to any measure—

(a) the other qualified engineer must—

(i) at the same time as giving the certificate to the reservoir manager, give the inspecting engineer a copy of it, and

(ii) not later than 28 days after giving the certificate, give SEPA a copy of it, and

(b) the inspecting engineer must take the certificate to be conclusive of that measure having been taken.>

Richard Lochhead
47 In section 46, page 23, line 25, after <measure> insert <for which the person giving the certificate is responsible for supervising>

Richard Lochhead
48 In section 46, page 23, line 34, at end insert—

<( ) Where an inspection report directs a measure for the maintenance of the reservoir to be taken in the interests of the safety of the reservoir (specified in accordance with section 45(3)(a))—

(a) no interim inspection compliance certificate is required for that measure, and

(b) no account of that measure is to be taken for the purposes of subsections (3)(c), (4) and (5)(b).>

Section 47

Richard Lochhead
49 In section 47, page 23, line 36, leave out from <which> to <engineer> in line 37

Richard Lochhead
50 In section 47, page 23, line 38, at end insert <to supervise the reservoir in accordance with section 48 at all times other than the period mentioned in subsection (2)>

Richard Lochhead
51 In section 47, page 24, line 2, leave out subsection (2) and insert—
<(2) A reservoir manager of a controlled reservoir which is being constructed or restored to use (within the meaning of Chapter 5) need not appoint a supervising engineer before a final certificate is issued in respect of the relevant works (see section 37).>

Section 48

Richard Lochhead

52 In section 48, page 24, line 9, leave out from <at> to end of line 10

Richard Lochhead

53 In section 48, page 24, line 13, at end insert—

<(aa) monitor any matters specified in a safety report as matters to be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,

(ab) monitor compliance by the reservoir manager with the requirements of any preliminary certificate for the time being applicable to the reservoir,>

Richard Lochhead

54 In section 48, page 24, leave out line 19

Richard Lochhead

55 In section 48, page 24, line 21, after <of> insert <—

(i) a safety report referred to in paragraph (aa),

(ii) a preliminary certificate referred to in paragraph (ab), or

(iii)>

Richard Lochhead

56 In section 48, page 24, line 21, leave out from <or> to end of line 22

Richard Lochhead

57 In section 48, page 24, line 30, leave out <44(1)(b)> and insert <45>

Richard Lochhead

58 In section 48, page 24, line 31, at end insert <specifying when the inspection should take place, and

( ) not later than 28 days after giving the written recommendation, give SEPA a copy of it.>

Richard Lochhead

59 In section 48, page 24, line 36, leave out from <give> to end of line 37 and insert <—

(a) maintain a written record of each visual inspection carried out in pursuance of a direction under subsection (4),>
(b) make that record available on request to the supervising engineer, and
(c) give notice to the supervising engineer of anything identified during such an
inspection which might affect the safety of the reservoir.

( ) Notice under subsection (6)(c) must be given as soon as reasonably practicable after the
inspection during which the thing was identified.>

Richard Lochhead

60 In section 48, page 25, line 3, at end insert—

< ( ) a requirement in a safety report referred to in subsection (2)(aa),
( ) a requirement in a preliminary certificate referred to in subsection (2)(ab),>

Richard Lochhead

61 In section 48, page 25, leave out line 5

Richard Lochhead

62 In section 48, page 25, line 16, at end insert <except where done in accordance with the routine
operation of the reservoir>

Section 50

Richard Lochhead

63 In section 50, page 26, line 17, at end insert—

< ( ) the requirements of section 48(6)(c) (notice of identification of thing which might
affect the safety of the reservoir),>

Section 53

Richard Lochhead

64 In section 53, page 28, line 18, at end insert—

< ( ) allowing a single flood plan to be prepared in respect of two or more controlled
reservoirs between which water does (or could) flow,>

Section 54

Richard Lochhead

65 In section 54, page 30, line 6, at end insert <, and

( ) any flood plan produced in respect of the reservoir in pursuance of regulations
made under section 53.>
Section 55

Richard Lochhead

66 In section 55, page 30, line 18, leave out from second <the> to <engineer> in line 20 and insert <information for the purpose of enabling a person to contact SEPA>.

Section 59

Richard Lochhead

67 In section 59, page 32, leave out lines 4 to 6.

Section 64

Richard Lochhead

68 In section 64, page 34, line 20, leave out from <is> to end of line 36 and insert <or (b) is liable—

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

(  ) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.>

Section 65

Richard Lochhead

69 In section 65, page 35, line 10, leave out <making an appointment> and insert <pursuance of the exercise of powers>.

Section 67

Richard Lochhead

70 In section 67, page 36, line 5, at end insert—

<(7) The Scottish Ministers may by order make provision allowing a reservoir manager to whom notice is given under subsection (2)—

(a) to apply to SEPA for a review of its decision to give the notice,

(b) to appeal to the Scottish Ministers against the decision to give the notice.

(8) Any such order—

(a) must, where it includes provision for—

(i) a right of review, specify the period within which a review may be made,

(ii) a right of appeal, specify the period within which an appeal may be made, and

(b) may make further provision in relation to reviews and appeals in relation to notices given under subsection (2).>
Section 68

Richard Lochhead

71 In section 68, page 36, line 7, at end insert—

<(  ) Where a reservoir manager has a right of review in accordance with an order made under section 67(7), non-compliance is an offence only if—

(a) the period within which an application for review may be made has expired, or
(b) where such an application has been made, it has been withdrawn or determined.

(  ) Where a reservoir manager has a right of appeal in accordance with an order made under section 67(7), non-compliance is an offence only if—

(a) the period within which an appeal may be made has expired, or
(b) where such an appeal has been made, it has been withdrawn or determined.>

Richard Lochhead

72 In section 68, page 36, line 8, leave out from <on> to <(i),> in line 18 and insert <—

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

(  ) on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum,>
Section 72

Richard Lochhead

76 In section 72, page 38, line 4, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

77 In section 72, page 38, leave out line 25

Section 73

Richard Lochhead

78 In section 73, page 38, line 39, after <appeal> insert <to the Scottish Ministers>

Section 76

Richard Lochhead

79 In section 76, page 41, line 13, leave out <for appeals> and insert <allowing an application for a review by SEPA before an appeal to the Scottish Ministers>

Section 78

Richard Lochhead

80 In section 78, page 42, line 36, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

81 In section 78, page 43, leave out line 34

Section 80

Richard Lochhead

82 In section 80, page 44, line 36, at end insert <(but not exceeding the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction)>

Section 81

Richard Lochhead

83 In section 81, page 45, line 21, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

84 In section 81, page 46, leave out line 24
Section 83

Richard Lochhead

85 In section 83, page 47, line 17, at end insert <,
but 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 concerned may be made liable on summary conviction.>

Richard Lochhead

86 In section 83, page 47, line 20, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

87 In section 83, page 47, line 30, leave out <enforceable in like manner as> and insert <recoverable as if it were payable under>

Section 86

Richard Lochhead

88 In section 86, page 48, line 28, after <appeal> insert <to the Scottish Ministers>

Richard Lochhead

89 In section 86, page 48, leave out line 35

After section 86

Richard Lochhead

90 After section 86, insert—

<Guidance: appeals
The Scottish Ministers must publish guidance on the process of making appeals in pursuance of sections 67, 72, 73, 76, 78, 81, 83 and 86.>

Section 87

Richard Lochhead

91 In section 87, page 49, line 2, leave out from <permit> to second <appropriate> in line 3 and insert <require SEPA to publish such information as may be specified in the order>

Richard Lochhead

92 In section 87, page 49, line 12, leave out from <permit> to second <appropriate> in line 13 and insert <require SEPA to publish such information as may be specified in the order>
Before section 97

Richard Lochhead

93 Before section 97, insert—

<Grants

(1) The Scottish Ministers may pay grants to a reservoir manager for the purposes of enabling or assisting the reservoir manager to comply with any obligation arising under or by virtue of this Part.

(2) Grants are payable only where the reservoir concerned—

(a) is a high-risk reservoir or a medium-risk reservoir, and

(b) was not a “large raised reservoir” for the purposes of section 1 of the 1975 Act on the date immediately before that section was repealed.

(3) Grants may be subject to such conditions (including conditions on repayment) as the Scottish Ministers think fit.>

Peter Peacock

101 Before section 97, insert—

<Guidance

(1) SEPA must prepare and publish guidance on this Part.

(2) Guidance under subsection (1) must in particular—

(a) include guidance on the provision made by any orders or regulations under this Part which have been made, and

(b) incorporate any guidance required or permitted by any other provision of this Part to be prepared (whether by SEPA or the Scottish Ministers) which has been prepared,

at the time the guidance under subsection (1) is to be published.

(3) The first guidance under subsection (1) must be prepared and published by such date (not later than 2 years after the day on which the Bill for this Act receives Royal Assent) as the Scottish Ministers direct.

(4) Subsequent guidance under subsection (1) must be prepared and published—

(a) as soon as reasonably practicable (and in any case not later than one year) after the making of any orders or regulations under this Part,

(b) at such other times as the Scottish Ministers direct.>

After section 98

Richard Lochhead

94 After section 98, insert—

<SEPA: Ministerial directions

SEPA must, in carrying out its functions under this Part, act subject to and in accordance with such directions as may be given by the Scottish Ministers.>
After section 105

Richard Lochhead

95 After section 105, insert—

<Consequential amendment and repeals

(1) In section 14(2)(a) of the Local Government and Planning (Scotland) Act 1982 (c.43), for “(within the meaning of the Reservoirs Act 1975)” substitute “(within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00) but irrespective of the volume of water held in the reservoir)”.

(2) Paragraph 98 of schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) is repealed.

(3) Paragraph 7 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3) is repealed.

(4) In section 55(2)(f) of the Building (Scotland) Act 2003 (asp 8), for “large raised reservoir within the meaning of the Reservoirs Act 1975 (c.23)” substitute “controlled reservoir within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00)”.

(5) Part 7 of the Flood Risk Management (Scotland) Act 2009 (asp 6) is repealed.>

Section 107

Richard Lochhead

96 In section 107, page 58, line 23, at end insert—

<( ) section 1(4),>

Richard Lochhead

97 In section 107, page 58, line 26, at end insert—

<( ) section 67(7),>

Schedule

Richard Lochhead

98 In the schedule, page 59, line 24, leave out <43(2)> and insert <43(1)>

Richard Lochhead

99 In the schedule, page 60, line 4, at end insert—

<other qualified engineer section 46(1A) (see also section 45(5))>

Richard Lochhead

100 In the schedule, page 60, line 15, leave out <47(2)> and insert <47(1)>
Section 109

Peter Peacock

In section 109, page 58, line 34, after <7,> insert <(Guidance),>
Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Orders under section 1: consultation and procedure**
1, 96

**Meaning of “controlled reservoir”**
2, 3, 4

**Meaning of “reservoir manager”**
5

**Guidance on management of reservoirs**
6, 7

**Supervision of measures specified in inspection report**
8, 20, 40, 42, 45, 46, 47, 54, 56, 61, 99

**Recommendation by supervising engineer that reservoir should be inspected: notice to SEPA and inclusion in controlled reservoirs register etc.**
9, 10, 57, 58

**Fees for registration and administration**
11, 12

**Risk designation by SEPA: initial designation, review and appeals**
13, 14, 15, 16, 17, 18, 19

**Application of Chapter 5**
21, 22, 23, 24, 25, 26
Construction engineers, inspecting engineers and supervising engineers: respective duties and timing of appointments and inspections
27, 29, 30, 33, 34, 35, 37, 49, 50, 51, 52, 53, 55, 60, 98, 100

Eligibility to be construction engineer, inspecting engineer or referee
28, 36, 67

Penalties: offences and civil enforcement measures
31, 32, 68, 72, 82, 85

Inspection reports: recommendations as to maintenance of reservoirs
38, 39, 41, 48

Minor technical amendments
43, 44, 69, 87

Visual inspection of reservoir by reservoir manager
59, 63

Meaning of “draw-down”
62

Flood plans
64, 65

Emergency response information
66

Civil enforcement measures: review and appeals
70, 71, 76, 77, 78, 79, 80, 81, 83, 84, 86, 88, 89, 90, 97

Power to give stop notices
73, 74, 75

Publication of enforcement action
91, 92

Grants
93

General guidance on Part 1
101, 102

SEPA: Ministerial directions
94

Consequential amendment and repeals
95
Present:

Karen Gillon         Liam McArthur
Elaine Murray       Peter Peacock
John Scott (Deputy Convener)   Stewart Stevenson
Maureen Watt (Convener)   Bill Wilson

Reservoirs (Scotland) Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100.

Amendment 101 was moved and, with the agreement of the Committee, withdrawn.

The following amendments were not moved: 36, 67 and 102.

Sections 4, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, 19, 21, 25, 26, 28, 29, 34, 35, 36, 37, 38, 39, 41, 42, 49, 51, 52, 56, 57, 58, 59, 60, 61, 62, 63, 66, 69, 70, 74, 75, 77, 79, 82, 84, 85, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108 and 109 and the long title were agreed to without amendment.

Sections 1, 2, 3, 6, 9, 14, 18, 20, 22, 23, 24, 27, 30, 31, 32, 33, 40, 43, 44, 45, 46, 47, 48, 50, 53, 54, 55, 64, 65, 67, 68, 71, 72, 73, 76, 78, 80, 81, 83, 86, 87 and 107 and the schedule were agreed as amended.

The Committee completed Stage 2 consideration of the Bill.
On resuming—

Reservoirs (Scotland) Bill: Stage 2

The Convener: Item 3 is consideration of stage 2 amendments to the Reservoirs (Scotland) Bill. Members should have in front of them their copies of the bill, the marshalled list of amendments and the groupings list. Richard Lochhead remains with us, as he will for most of today’s meeting. I welcome his officials for this part of the meeting. I remind members that officials cannot participate in the debate.

Section 1—Controlled reservoirs

The Convener: The first group of amendments is on orders under section 1: consultation and procedure. Amendment 1, in the name of the cabinet secretary, is grouped with amendment 96.

Richard Lochhead: These amendments have been drafted in response to concerns raised by the committee and they address issues relating to how a controlled reservoir is defined under the bill.

Amendment 1 addresses recommendation 11 in the committee’s stage 1 report. It ensures that, before making any change to the minimum volume threshold of 10,000m³, ministers must consult the Institution of Civil Engineers. That will ensure that any change is based on sound technical advice and is supported by the practitioners.

The Scottish Government agreed to lodge amendment 96 in response to a recommendation from the Subordinate Legislation Committee so that the power in section 1(4) should be subject to affirmative procedure.

I move amendment 1.

Amendment 1 agreed to.

Amendments 3 and 4 moved—[Richard Lochhead]—and agreed to.

Section 2—Controlled reservoirs: supplementary

The Convener: The next group is on the meaning of “controlled reservoir”. Amendment 5, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: In recommendation 8 of its stage 1 report, the committee raised concerns about whether the definition of “reservoir manager” captured all the appropriate parties. We have taken the opportunity to review the definition. Amendment 5 simplifies and clarifies how a reservoir manager is defined under the bill. It applies a clear test to all persons “managing or operating a reservoir”, and that test applies to Scottish Water and to any other person, irrespective of their status. A public or charitable body would be a reservoir manager if it managed or operated a reservoir.

That approach ensures that someone who only rents or uses the reservoir is not defined as the reservoir manager in cases where they do not have the power to manage or operate it. An angling club or another organisation might use or lease the reservoir only for recreational purposes, and the amendment ensures that it is not made responsible for supervision and maintenance requirements under the bill, unless it has the power to operate the dam.

I move amendment 5.

Amendment 5 agreed to.

Section 3—Reservoir managers

The Convener: The next group is on the meaning of “reservoir manager”. Amendment 5, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: In recommendation 8 of its stage 1 report, the committee raised concerns about whether the definition of “reservoir manager” captured all the appropriate parties. We have taken the opportunity to review the definition. Amendment 5 simplifies and clarifies how a reservoir manager is defined under the bill. It applies a clear test to all persons “managing or operating a reservoir”, and that test applies to Scottish Water and to any other person, irrespective of their status. A public or charitable body would be a reservoir manager if it managed or operated a reservoir.

That approach ensures that someone who only rents or uses the reservoir is not defined as the reservoir manager in cases where they do not have the power to manage or operate it. An angling club or another organisation might use or lease the reservoir only for recreational purposes, and the amendment ensures that it is not made responsible for supervision and maintenance requirements under the bill, unless it has the power to operate the dam.

I move amendment 5.

Amendment 5 agreed to.

Section 3, as amended, agreed to.

Sections 4 and 5 agreed to.

Section 6—Guidance by SEPA: management of reservoirs
The Convener: The next group concerns guidance on the management of reservoirs. Amendment 6, in the name of the cabinet secretary, is grouped with amendment 7.

Richard Lochhead: Amendments 6 and 7 require the Scottish Environment Protection Agency to publish “by such date as the Scottish Ministers direct” guidance on the management of controlled reservoirs and guidance on how multiple owners of reservoirs should co-operate. The measures require SEPA to consult the Institution of Civil Engineers and others before publishing the guidance. The amendments ensure that the guidance is appropriate and technically well founded, and is agreed with the practitioners of the legislation. Such guidance will provide clarity on the new reservoir safety process, both for practitioners and for reservoir managers.

I move amendment 6.

Amendment 6 agreed to.

Amendment 7 move — [Richard Lochhead] — and agreed to.

Section 6, as amended, agreed to.

Sections 7 and 8 agreed to.

Section 9—Controlled reservoirs register

The Convener: The next group is on the supervision of measures specified in inspection reports. Amendment 8, in the name of the cabinet secretary, is grouped with amendments 20, 40, 42, 45 to 47, 54, 56, 61 and 99.

Richard Lochhead: These amendments have been lodged to improve the process for the supervision of any safety measure that is specified in a reservoir inspection report. The reservoir manager must ensure that such safety measures are carried out under supervision. Amendments 40, 54, 56 and 61 give persons who are qualified to be inspecting engineers the responsibility for supervising safety measures in an inspection report. The bill as introduced places that responsibility on supervising engineers. That is a change from the current responsibilities under the Reservoirs Act 1975, and the amendments address concerns that were raised by a number of stakeholders about the appropriate roles for supervising and inspecting engineers.

Amendments 8, 20, 42, 45 to 47 and 99 introduce the concept of “other qualified engineer”. Such an engineer, who must be qualified to be an inspecting engineer, can be appointed by a reservoir manager to supervise the measures that are specified by the inspecting engineer. Avoiding the situation where the measures must be supervised by the inspecting engineer will allow reservoir managers to benefit from competition between different tenders for the required work.

I move amendment 8.

Amendment 8 agreed to.

The Convener: The next group is on the recommendation by a supervising engineer that a reservoir should be inspected: notice to SEPA and inclusion in controlled reservoirs register etc. Amendment 9, in the name of the cabinet secretary, is grouped with amendments 10, 57 and 58.

Richard Lochhead: These amendments make minor changes to the process whereby a supervising engineer recommends inspection of a reservoir. Amendment 58 inserts a requirement on the supervising engineer to include in any inspection recommendation a date for when the inspection should take place. It also requires the supervising engineer to copy the recommendation to SEPA.

Amendments 9 and 10 are consequential to amendment 58 and require SEPA to include any such recommendations in its controlled reservoirs register. SEPA can then monitor whether the inspection has taken place. The amendments will ensure that SEPA holds a complete, holistic view of the current status of all reservoirs in Scotland.

Amendment 57 is a minor drafting change.

I move amendment 9.

Amendment 9 agreed to.

Amendment 10 moved — [Richard Lochhead] — and agreed to.

Section 9, as amended, agreed to.

Sections 10 to 13 agreed to.

After section 13

The Convener: The next group is on fees for registration and administration. Amendment 11, in the name of the cabinet secretary, is grouped with amendment 12.

Richard Lochhead: As was set out during stage 1, despite the cost of subsistence fees being accounted for in the financial memorandum, the power to charge such fees was omitted in error from the bill as introduced. Amendments 11 and 12 have been lodged to correct that omission. Amendment 11 inserts a power for the Scottish ministers to provide for SEPA to introduce any such charging scheme for both registration and an annual fee in regulations. Amendment 12 is a consequential, technical amendment.

I move amendment 11.

Amendment 11 agreed to.
Section 14—Registration: supplementary
Amendment 12 moved—[Richard Lochhead]—and agreed to.
Section 14, as amended, agreed to.
Sections 15 to 17 agreed to.

Section 18—First risk designation
The Convener: The next group is on risk designation by SEPA: initial designation, review and appeals. Amendment 13, in the name of the cabinet secretary, is grouped with amendments 14 to 19.

Richard Lochhead: These amendments address issues that were raised by stakeholders concerning the method by which SEPA awards and reviews risk designations. They build a safeguard into the bill so that SEPA must give risk designations as soon as is reasonably practicable, they clarify the date by which a risk designation takes effect after a review, and they specify that SEPA may charge only a reasonable fee in relation to any application for a review of a risk designation.

Amendment 17 allows the reservoir manager to appeal to the Scottish ministers if he or she remains unhappy with the results of SEPA's initial review of a risk designation. Given the importance of risk designation in determining the level of supervision and inspection that a reservoir will be subject to, the Scottish Government felt that it was important to ensure that reservoir managers will have recourse to an independent appeal if they still have concerns after the option for review of the first risk designation has been exhausted.

We have lodged amendment 18 in response to a request from the Institution of Civil Engineers that SEPA should seek advice from it before publishing any guidance on risk designation. That will ensure that the guidance takes account of the most up-to-date advice from the professional body representing appropriately qualified reservoir panel engineers.

I move amendment 13.

Stewart Stevenson (Banff and Buchan) (SNP): Would the cabinet secretary care to explain further what might be meant by the phrase "reasonable fee"?

Richard Lochhead: We would like SEPA to take cognisance in the level of fee that it applies that this is not a cost-generating exercise. We want SEPA to be conscious of that and therefore feel that it is important to mention it in the regulations.

Stewart Stevenson: In essence, the fee will cover the costs and no more.

Richard Lochhead: That is the intention. Amendment 13 agreed to.
Section 18, as amended, agreed to.
Section 19 agreed to.

Section 20—Decision following a periodic review
Amendment 14 moved—[Richard Lochhead]—and agreed to.
Section 20, as amended, agreed to.
Section 21 agreed to.

Section 22—Review of SEPA's decisions giving risk designations
Amendments 15 and 16 moved—[Richard Lochhead]—and agreed to.
Section 22, as amended, agreed to.

After section 22
Amendment 17 moved—[Richard Lochhead]—and agreed to.

Section 23—Guidance by SEPA: risk designation
Amendment 18 moved—[Richard Lochhead]—and agreed to.
Section 23, as amended, agreed to.

Section 24—High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision
Amendment 19 moved—[Richard Lochhead]—and agreed to.
Section 24, as amended, agreed to.
Sections 25 and 26 agreed to.

Section 27—Dissolution of panels etc
Amendment 20 moved—[Richard Lochhead]—and agreed to.
Section 27, as amended, agreed to.
Sections 28 and 29 agreed to.

Section 30—Application of Chapter 5
The Convener: Amendment 21, in the name of the cabinet secretary, is grouped with amendments 22 to 26. I point out that there is a small error in amendment 24 as it appears on the marshalled list. It should read “leave out from <reducing> to the second <is>”.

422
Richard Lochhead: I am trying to work out whether that means that stage 3 amendments are in the offing.

Amendments 21 to 26 are technical amendments to address issues that were raised by stakeholders about how the definitions of abandonment and discontinuance are met. Abandonment and discontinuance are alterations to which chapter 5 of part 1 of the bill applies.

A reservoir can be altered so that it is incapable of filling with water without reducing its capacity. For example, a service reservoir that is filled by pipes could be prevented from filling merely by cutting or capping those pipes. These amendments will ensure that the definitions of construction and alteration in section 30 take account of that possibility. Chapter 5 will therefore apply when works affect the capability of a reservoir to hold water, regardless of whether its capacity is altered.

I move amendment 21.

Amendment 21 agreed to.

Amendments 22 to 26 moved—[Richard Lochhead]—and agreed to.

Section 30, as amended, agreed to.

Section 31—Notice to SEPA and appointment of construction engineer

10:00

The Convener: The next group is on construction engineers, inspecting engineers and supervising engineers, their respective duties and the timing of appointments and inspections. Amendment 27, in the name of the cabinet secretary, is grouped with amendments 29, 30, 33 to 35, 37, 49, 50 to 53, 55, 60, 98 and 100.

Richard Lochhead: The amendments make a number of changes to the respective roles and responsibilities of construction engineers, inspecting engineers and supervising engineers. Amendments 27, 29, 49 and 52 amend the bill so that, during alteration works, the supervising engineer is responsible for the supervision of the reservoir. As drafted, the bill transfers the responsibility for supervision of the entire reservoir to the construction engineer who is in charge of the works. However, following consultation with ICE, the Government feels that it is preferable to retain the expertise and familiarity of the supervising engineer during that period and to leave the construction engineer to be responsible only for the works.

Amendment 33 is a consequential change.

Amendments 34, 35, 37 and 98 relate to the appointment of an inspecting engineer.

Amendment 37 amends the times at which an inspection of a medium or high-risk reservoir should be carried out. The new provision will ensure that there are no inspections during a period of alteration when the reservoir will be under the supervision of a construction engineer. The other amendments remove any implication in the bill that the manager of a high or medium-risk reservoir must have an inspecting engineer appointed at all times. The inspecting engineer need only be appointed for each inspection.

Amendments 30, 50, 51, 53, 55, 60 and 100 are about the appointment and duties of supervising engineers. Amendments 50, 51 and 100 require the appointment of a supervising engineer at all times, except when a reservoir is being constructed or restored to use. The other amendments specify additional matters that the supervising engineer is to monitor and report on during his or her appointment.

I move amendment 27.

Amendment 27 agreed to.

Richard Lochhead: The committee and stakeholders have raised concerns that, as drafted, the disqualification criteria for construction engineers are unworkable because of the small pool of specialist firms that deal with reservoir safety. The Scottish Government agreed to lodge an amendment at stage 2 to address those concerns.

Amendment 28 removes the disqualification of an engineer who has previously acted as the construction engineer for the same reservoir. It also removes the disqualification of an engineer who is professionally associated with a former construction engineer of the reservoir. We considered that similar issues might also apply to the disqualification criteria for inspecting engineers and referees, so we lodged amendments 36 and 67 to amend the relevant criteria in sections 43 and 59.

However, after further discussions with ICE, I will not move amendments 36 and 67 when they are called. ICE has subsequently confirmed its view that the disqualification criteria in sections 43 and 59 of the bill should be retained. That leaves the position consistent with that of the 1975 act, so that inspecting engineers and referees are as independent from the original construction engineer as they would be under the 1975 act.

I move amendment 28.

Amendment 28 agreed to.

Section 31, as amended, agreed to.
Richard Lochhead: The basis for the changes is that there should be a ceiling on the fines that SEPA can impose. Currently, there is no ceiling, which we feel is inappropriate. The Subordinate Legislation Committee raised that point with us.

Another change relates to the situation south of the border. Some owners of large reservoirs might own reservoirs south and north of the border. We do not want there to be more severe penalties south of the border than in Scotland, as that might make owners think that it was more important to look after reservoirs south of the border. We therefore want to ensure that the penalties north and south of the border are aligned.

Karen Gillon: I am slightly confused. I took it from what you said that amendment 31 will lower the penalties for offences, rather than increase them, which gives me cause for concern. I do not have a problem with amendment 32, which will increase penalties for offences, but I understand the purpose of amendment 31 as being to reduce rather than increase penalties.

Richard Lochhead: We are talking about relatively minor offences compared to other offences that could be committed under the bill.

Karen Gillon: I understand that, but I want to know the rationale for reducing the penalties. If we have an offence in the bill and we are asked to reduce the penalty, I want to know what the rationale is for doing so.

Richard Lochhead: We want the bill to reflect the scale of the offence. There are minor offences and more serious ones. The level of fine that can be imposed should reflect the nature of the offence.

Karen Gillon: Can you tell us what the difference is in the level of fines?

Richard Lochhead: The bill provides for the summary criminal procedure only, with a maximum penalty in the justice of the peace court of three months’ imprisonment or a level 4 fine of £2,500. In the sheriff court, the maximum for a first offence is three months’ imprisonment or the prescribed sum, which is currently £10,000, and for a second offence, it is six months or the prescribed sum. I will just find out the exact figures for comparison. [ Interruption. ] The previous statutory maximum fine was £10,000. If the offence were taken down to level 5, it would be £5,000, and if it were taken down to level 4, it would be £2,500.

Karen Gillon: Essentially, you are seeking to reduce the fines and remove the courts’ ability to send someone to prison for these offences.

Richard Lochhead: We are just trying to ensure that what are deemed more minor offences have similar penalties.
Karen Gillon: I am trying to clarify what this amendment is seeking to do. At the moment, a person who commits this offence could, under the bill, go to prison or face a high maximum fine of £10,000. If it is made a level 4 offence, that person would pay a lower fine and would not be sent to prison. Is that right?

Richard Lochhead: Yes.

Karen Gillon: That is fine.

Amendment 31 agreed to.

Amendment 32 moved—[Richard Lochhead]—and agreed to.

Section 40, as amended, agreed to.

Sections 41 and 42 agreed to.

Section 43—Appointment of inspecting engineer etc

Amendments 33 to 35 moved—[Richard Lochhead]—and agreed to.

Amendment 36 not moved.

Section 43, as amended, agreed to.

Section 44—Inspections: timing

Amendment 37 moved—[Richard Lochhead]—and agreed to.

Section 44, as amended, agreed to.

Section 45—Inspections: duties of inspecting engineers etc

The Convener: The next group is on recommendations in inspection reports as to the maintenance of reservoirs. Amendment 38, in the name of the cabinet secretary, is grouped with amendments 39, 41 and 48.

Richard Lochhead: These amendments seek to deal with a concern expressed by ICE and clarify that the only maintenance measures that should be specified in inspection reports are those that the inspecting engineer considers to be necessary for safety. Such measures are compulsory under section 46(1) but, because of their on-going nature, they have been kept out of the compliance certification regime set out in section 46. An inspecting engineer can still make recommendations on maintenance but if the maintenance does not affect safety it will not be compulsory to follow the recommendation.

I move amendment 38.

Amendment 38 agreed to.

Amendments 39 to 42 moved—[Richard Lochhead]—and agreed to.

Section 45, as amended, agreed to.

Section 46—Inspection reports: compliance

10:15

The Convener: The next group is on minor technical amendments. Amendment 43, in the name of the cabinet secretary, is grouped with amendments 44, 69 and 87.

Richard Lochhead: These amendments seek to make a number of minor technical changes to sections 46, 65 and 83 in response to comments from the Law Society and others.

I move amendment 43.

Amendment 43 agreed to.

Amendments 44 to 48 moved—[Richard Lochhead]—and agreed to.

Section 46, as amended, agreed to.

Section 47—Appointment of supervising engineers etc

Amendments 49 to 51 moved—[Richard Lochhead]—and agreed to.

Section 47, as amended, agreed to.

Section 48—Supervising engineer and monitoring of reservoir

Amendments 52 to 58 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on the visual inspection of the reservoir by the reservoir manager. Amendment 59, in the name of the cabinet secretary, is grouped with amendment 63.

Richard Lochhead: Amendments 59 and 63 seek to remove the onerous and bureaucratic requirement on reservoir managers to notify the supervising engineer of every visual inspection of a reservoir that they are directed to undertake. Amendment 59 seeks to replace that requirement with a lesser requirement simply to record inspections and to notify the supervising engineer only of anything identified during the inspection that might affect the reservoir’s safety. Amendment 63 seeks to add a failure to notify safety matters to the list of offences in section 50.

I move amendment 59.

Amendment 59 agreed to.

Amendments 60 and 61 moved—[Richard Lochhead]—and agreed to.

The Convener: The next group is on the meaning of “draw-down”. Amendment 62, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 62 seeks to clarify that supervision of any draw-down of the
reservoir by a supervising engineer is not required if it is done in accordance with the reservoir’s routine operation.

I move amendment 62.

Amendment 62 agreed to.

Section 48, as amended, agreed to.

Section 49 agreed to.

Section 50—Offences: inspection, supervision, record keeping

Amendment 63 moved—[Richard Lochhead]—and agreed to.

Section 50, as amended, agreed to.

Sections 51 and 52 agreed to.

Section 53—Flood plans

The Convener: Amendment 64, in the name of the cabinet secretary, is grouped with amendment 65.

Richard Lochhead: Stakeholders raised concerns that, where there are a number of reservoirs in a cascade, the flood plans for each reservoir could contain a lot of duplication. They suggested that it would be better if it were possible to prepare a single plan for the cascade, as many of the issues to be addressed would be similar. The actions taken in the event of the failure of one reservoir in a cascade would likely need to be coordinated with actions at the other reservoirs in the cascade in the event of an uncontrolled release. The best way to prepare for that would be through the production of a single plan.

Amendment 64 allows for a single flood plan for one or more reservoirs in a cascade, irrespective of their capacity. That will reduce the costs on reservoir managers and remove any unnecessary duplication. Amendment 65 adds flood plans to the list of documents that reservoir managers must include under section 54 in the register of relevant documents. That will ensure that the reservoir manager is aware of relevant issues or difficulties that might exist when dealing with a potential failure.

I move amendment 64.

Amendment 64 agreed to.

Section 53, as amended, agreed to.

Section 54—Maintenance of records

Amendment 65 moved—[Richard Lochhead]—and agreed to.

Section 54, as amended, agreed to.

Section 55—Display of emergency response information

The Convener: Amendment 66, in the name of the cabinet secretary, is in a group on its own.

Richard Lochhead: The committee and a number of stakeholders raised concerns about the requirement for the name, address and contact details of the supervising engineer to be displayed on the emergency information boards to be erected at each controlled reservoir. The concerns raised were primarily about the privacy of the supervising engineers and the possibility of malicious calls.

The Scottish Government has considered those concerns and has lodged amendment 66 to remove that requirement and replace it with one to display SEPA’s contact details. SEPA can then contact the supervising engineer if an incident has occurred, as SEPA will hold engineers’ contact details in the register. I hope that that addresses the committee’s concerns and does not lead to any malicious calls to SEPA.

I move amendment 66.

Amendment 66 agreed to.

Section 55, as amended, agreed to.

Sections 56 to 58 agreed to.

Section 59—Appointment of referee

Amendment 67 not moved.

Section 59 agreed to.

Sections 60 to 63 agreed to.

Section 64—Offence: failure to comply with notice under section 63(2)

Amendment 68 moved—[Richard Lochhead]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Appointment of engineer by SEPA

Amendment 69 moved—[Richard Lochhead]—and agreed to.

Section 65, as amended, agreed to.

Section 66 agreed to.

Section 67—Enforcement notice: safety and other measures

The Convener: The next group is on civil enforcement measures: review and appeals. Amendment 70, in the name of the cabinet secretary, is grouped with amendments 71, 76 to 81, 83, 84, 86, 88 to 90 and 97.
Richard Lochhead: Amendment 70 inserts an order-making power for the Scottish ministers. The power allows reservoir managers to be given the right to apply for a review of a SEPA enforcement notice under section 67, and to appeal to the Scottish ministers after such a review. Amendment 97 makes any such order subject to draft affirmative procedure, and amendment 71 modifies the offence provisions in section 68 to take account of any right of review or appeal.

Amendments 76, 78, 80, 83, 86 and 88 simply clarify that appeals against decisions made by SEPA to impose civil enforcement measures under chapter 9 of the bill can be made to the Scottish ministers.

Amendment 79 allows regulations under section 76 to provide for appeals to the Scottish ministers after a SEPA review.

Amendments 77, 81, 84 and 89 remove specific requirements on SEPA to publish guidance on appeals under specific sections in chapter 9. Those requirements are replaced by a new duty, imposed by amendment 90, on the Scottish ministers to publish guidance on the process of making appeals under all relevant sections in chapter 9.

I move amendment 70.

Amendment 70 agreed to.

Section 67, as amended, agreed to.

Section 68—Offence: failure to comply with notice under section 67(2)

Amendments 71 and 72 moved—[Richard Lochhead]—and agreed to.

Section 68, as amended, agreed to.

Sections 69 and 70 agreed to.

Section 71—Stop notices

The Convener: The next group is on the power to give stop notices. Amendment 73, in the name of the cabinet secretary, is grouped with amendments 74 and 75.

Richard Lochhead: Where a reservoir manager is carrying out an activity that causes a significant risk of an uncontrolled release of water from a reservoir, but that activity is not an offence, SEPA is currently unable to issue the reservoir manager with a stop notice. Amendments 73 and 74 address that issue by widening the scope of the stop notice power. SEPA would be able to issue a stop notice where it considers that an activity is an offence; SEPA would also be able to issue a stop notice where an activity is not an offence, provided that it reasonably believes that the activity presents a significant safety risk.

Amendment 75 requires SEPA to consult ICE before it issues a stop notice in relation to an activity that is not an offence, and to notify the Scottish ministers at the earliest opportunity after issuing the notice. The amendment also requires that the steps specified in any such notice be steps to remove or reduce the risk of an uncontrolled release of water.

I move amendment 73.

John Scott: If someone were to release water, when would it be an offence and when would it not be an offence? I do not quite understand.

Richard Lochhead: SEPA has advised us that there are examples of activities that are not offences—they are not illegal—but which could impact on reservoirs. One example is speedboating, which could cause waves that overtop the dam and cause general erosion, leading to various consequences. In certain combinations of circumstances, activities that are not an offence could impact on the safety of a reservoir. In such circumstances, the amendments in this group give powers to SEPA.

John Scott: To stop speedboating, if it could cause damage—

Richard Lochhead: In specific combinations of circumstances, that could lead to dangerous situations arising.

John Scott: Fine, thank you.

Amendment 73 agreed to.

Amendments 74 and 75 moved—[Richard Lochhead]—and agreed to.

Section 71, as amended, agreed to.

Section 72—Stop notices: procedure

Amendments 76 and 77 moved—[Richard Lochhead]—and agreed to.

Section 72, as amended, agreed to.

Section 73—Stop notices: compensation

Amendment 78 moved—[Richard Lochhead]—and agreed to.

Section 73, as amended, agreed to.

Sections 74 and 75 agreed to.

Section 76—Enforcement undertakings

Amendment 79 moved—[Richard Lochhead]—and agreed to.

Section 76, as amended, agreed to.

Section 77 agreed to.
Section 78—Fixed monetary penalties: procedure

Amendments 80 and 81 moved—[Richard Lochhead]—and agreed to.

Section 78, as amended, agreed to.

Section 79 agreed to.

Section 80—Further enforcement measures

Amendment 82 moved—[Richard Lochhead]—and agreed to.

Section 80, as amended, agreed to.

Section 81—Further enforcement measures: procedure

Amendments 83 and 84 moved—[Richard Lochhead]—and agreed to.

Section 81, as amended, agreed to.

Section 82 agreed to.

Section 83—Further enforcement measures: enforcement

Amendments 85 to 87 moved—[Richard Lochhead]—and agreed to.

Section 83, as amended, agreed to.

Sections 84 and 85 agreed to.

Section 86—Recovery by SEPA of expenses

Amendments 88 and 89 moved—[Richard Lochhead]—and agreed to.

Section 86, as amended, agreed to.

After section 86

Amendment 90 moved—[Richard Lochhead]—and agreed to.

Section 87—Publication of enforcement action

The Convener: The next group is on the publication of enforcement action. Amendment 91, in the name of the cabinet secretary, is grouped with amendment 92.

Richard Lochhead: I see that the section numbers are catching up with the amendment numbers, which means that I have to pay very close attention.

The Subordinate Legislation Committee raised concerns that the bill as drafted did not allow the Scottish ministers any control over what information SEPA may publish in the case of non-compliance by reservoir managers. The Scottish Government agreed to strengthen those powers and has lodged amendments 91 and 92 to achieve that.

Amendment 91 will give Scottish ministers the power to direct SEPA by order to publish information in relation to enforcement action that SEPA has taken in response to non-compliance by a reservoir manager, where SEPA has had to appoint an engineer or arrange for measures to be undertaken in the interests of safety.

Amendment 92 will give Scottish ministers the same power to direct SEPA to publish information where SEPA has issued a stop notice or a fixed monetary penalty or has imposed further enforcement measures.

Amendments 91 and 92 will strengthen the publication powers in section 87, which will result in a stronger deterrent against non-compliance.

I move amendment 91.

Amendment 91 agreed to.

Amendment 92 moved—[Richard Lochhead]—and agreed to.

Section 87, as amended—[Richard Lochhead]—and agreed to.

Sections 88 to 96 agreed to.

Before section 97

The Convener: The next group is on grants. Amendment 93, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: The committee raised a number of concerns at stage 1 about the financial impact of the bill on small businesses, angling clubs and individuals. The concerns related largely to the potential cost of any structural work that might be required to make reservoirs safe and the cost of preparing flood plans.

The Scottish Government agreed to consider whether provision could be made for financial assistance for reservoir managers who cannot afford to implement the requirements of the bill. Amendment 93 will give Scottish ministers the power to issue grants to reservoir managers. The grants may be made to managers of medium or high-risk reservoirs that are not currently regulated under the 1975 act for the purposes of assisting or enabling them to comply with any obligations under part 1 of the bill.

The grants will be subject to such conditions as the Scottish ministers think appropriate. It is expected that providing any such grants will be a temporary measure and will not be required until 2015 at the earliest, when the previously unregulated reservoirs are expected to be brought under the auspices of the bill.
I believe that amendment 93 will address the committee's concerns and I welcome the committee’s support for it.

I move amendment 93.

John Scott: I welcome your consideration of our report and the bringing forward of grants to mitigate the effects on owners. What level of grant might be available? What effect will that have on the financial memorandum? I notice that you used the phrase “as the Scottish ministers think appropriate”. Is that an open-ended commitment? I would like clarification of that.

Richard Lochhead: That is a fair question, but all I can really do at this point is indicate what we would take into account in determining the level of grant, rather than say what the level of grant would be, which we will decide in due course.

The level of grant would depend on the risk posed by each reservoir, the structural integrity of the dam and the level of maintenance that would have to be undertaken. Those factors would have to be taken into account in determining the level of grants. Until SEPA has given a risk designation to the reservoirs that are not currently regulated, we simply will not know how many of them are high or medium risk and what condition they are in, which would determine the level of work required to make them safe.

Liam McArthur: I have a similar question. Like John Scott, I welcome the approach that has been taken. We certainly wrestled with the issue, and I do not think that we came up with a magic bullet for dealing with it, but what the cabinet secretary proposes looks like a fair stab at it. Are you working with a ballpark figure for the likely liability? Will the criteria for payback be the mechanism whereby you ensure that the liability to Government is not open-ended? Although I think that all of us on the committee welcome amendment 93, we need reassurance that the burden on future Governments will not be likely to escalate quickly.

Richard Lochhead: Again, I am unable to give a ballpark figure. We should certainly take on board the points that you make. There is a bit of work to be done before we use the enabling power to introduce a scheme in the next few years. The intention would be to contribute towards the capital costs of work that has to be undertaken, so a contribution of some form towards those costs is the most likely outcome of the kind of grant scheme that we are thinking about. However, we will discuss the scheme with stakeholders, the committee and others to determine its exact nature.

Peter Peacock (Highlands and Islands) (Lab): I welcome amendment 93. The Government has moved on the matter in an appropriate way, giving ministers wide discretion to do the right thing in the right circumstances. That is entirely correct, given the evidence that we have received.

John Scott: The cabinet secretary mentioned funding to cover capital costs. Would the grants cover repair costs, which are not usually treated as capital costs?

Richard Lochhead: Our intention is to be sympathetic towards that.

Amendment 93 agreed to.

The Convener: The next group is on general guidance on part 1. Amendment 101, in the name of Peter Peacock—[Interjection.] Yes, we have a break from the cabinet secretary. Amendment 101 is grouped with amendment 102.

Peter Peacock: A fair amount of the evidence that we took at stage 1 revolved around guidance. Witnesses required clarity on the bill’s implications. Amendment 101 simply tries to ensure that, as time goes on and events evolve, there will be clarity on the interpretation of the bill and that the responsibilities of all concerned will be spelled out.

Under the bill, there will be many new managers of small reservoirs, and they will be required to comply with the new and necessary measures that are set out in it. It will be important to avoid confusion and ensure that there is clarity for everyone during the transition from the current situation to the new provisions under the bill.

I have here a substantial piece of guidance, which I am happy to lend to members to read. It relates to the 1975 act, and it took about 25 years to get to its current stage. It demonstrates how complex the interpretation of such acts is.

Amendment 101 tries to ensure that a similar approach will be taken to the one that was taken towards building up guidance under the 1975 act over those 25 years. Although there will not be a need for specific guidance because of the way that the act will commence and because various regulations and other secondary legislation will come into play further down the line, there needs to be a document that explains the bill and how it differs from the current situation. As time goes on, it could be added to—as in the case of the guidance under the 1975 act—as the secondary legislation is introduced.

That approach would be particularly important for owners who are brought into the system because of the bill. The base document could set out what the legislation expects and be added to by the secondary legislation and guidance over time. That would happen from about 2014 or 2015 onwards. It seems to me that there will be sufficient time between now and the
commencement of some of the provisions for that guidance to be produced.

I am aware that the experience of reservoir managers—particularly Scottish and Southern Energy, which is one of the biggest, most strategic and most significant reservoir managers and operators in the country—with regulation in general is that, unless there is a statutory requirement to produce guidance, uncertainty can arise and there is potential for an ad hoc and haphazard approach to interpretation. Amendment 101 seeks to ensure that the regulations and other secondary legislation that come into play will be accompanied by guidance so that people working in the field have absolute clarity.

I fully accept that amendment 101 may not be formulated perfectly, and I am happy to address any concerns that the minister has. Indeed, if he wants to adopt the principle and do something at stage 3, that will be fine. If he wants to support amendments 101 and 102, that will be even better. However, I will listen to what he has to say.

Amendment 102 is simply consequential on amendment 101.

I move amendment 101.

10:45

Richard Lochhead: Peter Peacock raises important issues. I am happy to respond to amendments 101 and 102. I congratulate him on getting them in under the wire for today’s deliberations.

Committee members will be aware that the bill is technical in nature and contains a large number of delegated powers. The bill creates the framework for a new reservoir safety regime, but its full and effective commencement will require subordinate legislation to set out the procedures and many of the details.

The bill already contains a number of guidance provisions for SEPA and ministers in relation to specific parts. I acknowledge that comprehensive guidance on interpretation of the act will be essential to assist reservoir managers, panel engineers and SEPA with their understanding of the duties and responsibilities under it, as it commences. In light of that, I assure the committee that the Scottish Government intends to commission such guidance to support the new regime and will consult fully SEPA, the Institution of Civil Engineers and other key stakeholders, such as some of the companies that Peter Peacock mentioned, before producing it. That comprehensive guidance will be supplemented by the specific SEPA and ministerial guidance for which specific parts of the bill already provide.

Amendments 101 and 102 require the publishing of holistic guidance by a certain date after royal assent. That may set a deadline that comes well before key elements of the bill are commenced, which would jeopardise the quality of the guidance and might render it unfit for purpose at the time. It would be much more sensible to produce guidance for each part of the bill as it is commenced and as the supporting secondary legislation is further developed.

For those reasons, I ask Peter Peacock to withdraw amendment 101 and not to move amendment 102. However, if the member still feels that it is necessary for the bill to refer to such guidance, I will be happy to speak to him and to the committee about a stage 3 amendment.

Peter Peacock: I welcome the minister’s comments and accept his assurance that the Government will commission guidance and consult a wide range of parties. I also take the point that the deadline may be too tight. I will not press amendment 101, but I will take the opportunity to discuss the matter with the minister or his officials prior to stage 3, to see whether some reference may be included in the bill to strengthen it and to give the reassurance that others are seeking.

Amendment 101, by agreement, withdrawn.

Sections 97 and 98 agreed to.

After section 98

The Convener: The next group is on SEPA: ministerial directions. Amendment 94, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 94 simply requires SEPA to act in accordance with directions provided by Scottish ministers, while carrying out its functions under the legislation. That gives Scottish ministers the power to direct SEPA as to the manner in which it accomplishes its obligations under the bill.

I move amendment 94.

Amendment 94 agreed to.

Sections 99 to 105 agreed to.

After section 105

The Convener: The next group is on consequential amendment and repeals. Amendment 95, in the name of the cabinet secretary, is the only amendment in the group.

Richard Lochhead: Amendment 95 is consequential on the repeal of the Reservoirs Act 1975 for Scotland. It repeals or replaces references to the 1975 act in other acts, where appropriate, with references to the bill.
I move amendment 95.
Amendment 95 agreed to.
Section 106 agreed to.

**Section 107—Orders and regulations**
Amendments 96 and 97 moved—[Richard Lochhead]—and agreed to.
Section 107, as amended, agreed to.
Section 108 agreed to.

**Schedule—Index of defined expressions**
Amendments 98 to 100 moved—[Richard Lochhead]—and agreed to.
Schedule, as amended, agreed to.

**Section 109—Commencement and short title**
Amendment 102 not moved.
Section 109 agreed to.
Long title agreed to.

**The Convener:** That ends stage 2 consideration of the Reservoirs (Scotland) Bill. I suspend the meeting for five minutes.

10:51

*Meeting suspended.*
Reservoirs (Scotland) Bill
[AS AMENDED AT STAGE 2]

CONTENTS

Section

PART 1
RESERVOIRS

CHAPTER 1
CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs
2 Controlled reservoirs: supplementary
3 Reservoir managers
4 Multiple reservoir managers: supplementary
5 Duty of multiple reservoir managers to co-operate
6 Guidance by SEPA: management of reservoirs
7 SEPA
8 The 1975 Act and its repeal

CHAPTER 2
REGISTRATION

9 Controlled reservoirs register
10 Reservoir managers’ duty to register with SEPA
11 Controlled reservoirs required to be registered under the 1975 Act
12 Controlled reservoirs not required to be registered under the 1975 Act
13 Structures or areas which become controlled reservoirs after the relevant date
13A Fees: registration and administration
14 Registration: supplementary
15 Transfer of information from existing relevant authorities
16 Offences: registration

CHAPTER 3
RISK DESIGNATION

17 Provisional risk designation
18 First risk designation
19 Periodic review of risk designations
20 Decision following a periodic review
21 Risk designation and periodic review: matters to be taken into account
22 Review of SEPA’s decisions giving risk designations
22A Appeal to the Scottish Ministers following SEPA’s review
23 Guidance by SEPA: risk designation
24 High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

CHAPTER 4
PANELS OF RESERVOIR ENGINEERS

25 Panels of reservoir engineers
26 Appointment and removal of panel members
27 Dissolution of panels etc.
28 Review of decisions to appoint or remove civil engineers from panels etc.
29 Consultation with Institution of Civil Engineers

CHAPTER 5
CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

30 Application of Chapter 5
31 Notice to SEPA and appointment of construction engineer
32 Inspection, reports, supervision of works etc. by construction engineer
33 Safety reports
34 Safety reports: compliance
35 Preliminary certificates
36 Construction certificates
37 Final certificates
38 Preliminary and final certificates: compliance
39 Termination of supervision by construction engineer
40 Offences: construction or alteration
41 Defences: offences under section 40(1)(d) or (e)
42 Controlled reservoirs subject to relevant works on commencement

CHAPTER 6
OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

43 Appointment of inspecting engineer etc.
44 Inspections: timing
45 Inspections: duties of inspecting engineers etc.
46 Inspection reports: compliance
47 Appointment of supervising engineers etc.
48 Supervising engineer and monitoring of reservoir
49 Recording of water levels etc. and record keeping
50 Offences: inspection, supervision, record keeping
51 Defences: offence under section 50(1)(c)

CHAPTER 7
OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

52 Incident reporting
53 Flood plans
54 Maintenance of records
55 Display of emergency response information
56 Offences: record keeping, display of emergency response information
CHAPTER 8

DISPUTE REFERRAL

57 Referral to referee: directions in safety report or inspection report
58 Referral to referee: requirements in preliminary certificate or final certificate
59 Appointment of referee
60 Powers of referee: referral under section 57(2)
61 Powers of referee: referral under section 58(1)
62 Procedure

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Appointment of engineers

63 Enforcement notice: appointment of engineer
64 Offence: failure to comply with notice under section 63(2)
65 Appointment of engineer by SEPA
66 Appointment by SEPA: engineers’ reports, certificates, recommendations etc.

Taking of safety and other measures

67 Enforcement notice: safety and other measures
68 Offence: failure to comply with notice under section 67(2)
69 SEPA’s power to arrange taking of safety and other measures
70 Offences under sections 40(1)(d) and 50(1)(c): further remedies

Stop notices

71 Stop notices
72 Stop notices: procedure
73 Stop notices: compensation
74 Stop notices: enforcement

Emergency powers

Other civil enforcement measures

76 Enforcement undertakings
77 Fixed monetary penalties
78 Fixed monetary penalties: procedure
79 Fixed monetary penalties: criminal proceedings and conviction etc.
80 Further enforcement measures
81 Further enforcement measures: procedure
82 Further enforcement measures: criminal proceedings and conviction
83 Further enforcement measures: enforcement

Miscellaneous

84 Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)
85 Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures
86 Recovery by SEPA of expenses
86A Guidance: appeals
87 Publication of enforcement action
CHAPTER 10

MISCELLANEOUS

96A  Grants
97   Assessment of engineers’ reports etc.
98   Notice to SEPA of revocation of appointment or resignation of engineer
98A  SEPA: Ministerial directions
99   Form and content of notices, reports, certificates etc.
100  Notices by SEPA
101  Change to the Institution of Civil Engineers
102  Civil liability

PART 2

PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

103  Remedial and restoration measures regulations

PART 3

GENERAL

104  Crown application
105  Offences by bodies corporate
105A Consequential amendment and repeals
106  Ancillary provision
107  Orders and regulations
108  Defined expressions
109  Commencement and short title

Schedule—Index of defined expressions
Reservoirs (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the regulation of the construction, alteration and management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs, for the repeal and replacement of the Reservoirs Act 1975, about offences to facilitate the achievement of the environmental objectives set out in river basin management plans; and for connected purposes.

PART 1
RESERVOIRS

CHAPTER 1
CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs

(1) This section (and section 2) determine what is a “controlled reservoir” for the purposes of this Part.

(2) A controlled reservoir is any of the following structures or areas which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land—

(a) a structure designed or used for collecting and storing water,
(b) an artificial (or partly artificial) loch or other artificial (or partly artificial) area.

(3) A combination of more than one of the structures or areas referred to in paragraph (a) or (b) of subsection (2) is to be treated as a controlled reservoir where—

(a) none of the individual structures or areas is a controlled reservoir under that subsection, but
(b) water does (or could) flow between them, and
(c) there could be an uncontrolled release of 10,000 cubic metres or more of water from the combination.

(4) The Scottish Ministers, having taken into account the matters mentioned in subsection (5), may by order provide that any of the following is to be treated as a controlled reservoir—
(a) a structure or area referred to in paragraph (a) or (b) of subsection (2) which is not a controlled reservoir,

(b) a combination of more than one such structure or area—

(i) between which water does (or could) flow, but

(ii) which does not fall within subsection (3) because there could not be an uncontrolled release of 10,000 cubic metres or more of water from the combination.

The matters are—

(a) the potential adverse consequences of an uncontrolled release of water from the structure or area or (as the case may be) the combination,

(b) the probability of such a release.

The Scottish Ministers may—

(a) by order substitute a different volume of water for the volume for the time being specified in subsections (2), (3)(c) and (4)(b)(ii) and sections 30(3) and (5), 33(2)(b) and 37(3)(b),

(b) by regulations make provision for the purposes of this Part as to—

(i) when a loch or other area is considered to be artificial or partly artificial,

(ii) how the volume of water capable of being held or released is to be calculated,

(iii) the meaning of “natural level” and “surrounding land”.

Before making an order under subsection (6)(a) the Scottish Ministers must consult the Institution of Civil Engineers about the volume of water which should be specified in the order.

A controlled reservoir includes its basin, spillways, valves, pipes and any other thing which—

(b) controls the flow of the water,

(c) facilitates the storage of water in it,

(d) supports such control or storage.

The following structures or areas are not controlled reservoirs (and are not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4))—

(a) ponds within extractive waste sites or waste facilities,

(b) canals or other inland waterways,

(c) weirs,

(d) structures or areas of water designed to protect land from the sea,

(e) sewage sludge lagoons,

(g) road and railway embankments,
(h) embanked watercourses.

(3) Regulations by the Scottish Ministers may make provision as to—
   (a) what constitutes any of the structures or areas referred to in subsection (2),
   (b) what other thing (if any) described in the regulations is not a controlled reservoir
       (and is not to be taken into account in relation to what is to be treated as a
       controlled reservoir for the purposes of section 1(3) or (4)).

3 Reservoir managers

(1) This section determines who is the reservoir manager of a controlled reservoir for the
    purposes of this Part.

(2) Scottish Water is the reservoir manager of a controlled reservoir which is managed or
    operated by it.

(3) The reservoir manager of a controlled reservoir for which Scottish Water is not the
    reservoir manager by virtue of subsection (2) 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).

(4) In this section—
    (a) managing or operating a reservoir (without prejudice to the generality of that
        expression) includes controlling of the flow of water in or out of the reservoir, and
    (b) a reference to managing or operating a reservoir is, in relation to a reservoir which
        is being constructed or restored to use (within the meaning of Chapter 5), to be
        read as referring to proposing to manage or operate the reservoir.

4 Multiple reservoir managers: supplementary

(1) This section applies where by virtue of section 3 there is more than one reservoir
    manager of a controlled reservoir.

(2) The requirements of this Part apply in relation to each of the reservoir managers
    (whether or not they make a nomination under subsection (3)).

(3) Any of the reservoir managers (“the nominating manager”) may nominate another of the
    reservoir managers (“the nominee”) to do any of the following—
    (a) fulfil on behalf of the nominating manager any requirements of this Part to which
        the nominating manager is subject and which are specified in the nomination,
    (b) exercise any rights the nominating manager has under this Part and which are so
        specified.

(4) Where a nomination is made under subsection (3)—
    (a) the nominating manager must give notice of the nomination to—
        (i) SEPA,
        (ii) any construction engineer, inspecting engineer or supervising engineer
            appointed in relation to the reservoir,
(b) SEPA may notify and consult the nominee in accordance with the nomination,
(c) any construction engineer, inspecting engineer or supervising engineer appointed
    in relation to the reservoir may give any notice, report, certificate or other
document (required by this Part to be given to the reservoir manager of the
reservoir) to the nominee in accordance with the nomination.

5 Duty of multiple reservoir managers to co-operate

(1) Where, by virtue of section 3, there is more than one reservoir manager of a controlled
    reservoir, each of the reservoir managers must co-operate with the other reservoir
    manager (or managers) of the reservoir so far as is necessary to enable all of the
    reservoir managers to comply with the requirements to which they are subject under—
    (a) section 31(2)(a) or 63(2)(a) (appointment etc. of construction engineer),
    (b) section 34(1) or 67(2) (directions of construction engineer as to taking of
        measures in safety report),
    (c) section 38 (compliance with preliminary certificate or final certificate),
    (d) section 43(1)(a) or 63(2)(a) (appointment etc. of inspecting engineer to carry out
        inspections in accordance with section 44),
    (e) section 45(2) (giving inspecting engineer copy of final certificate and latest
        inspection report),
    (f) section 46(1) or 67(2) (directions of inspecting engineer as to taking of measures
        in inspection report),
    (g) section 47(1)(a) or 63(2)(a) (appointment etc. of supervising engineer),
    (h) section 48(4) (direction by supervising engineer as to carrying out visual
        inspection of reservoir),
    (i) section 49 (recording of certain matters),
    (j) regulations under section 52(1) (reporting of incidents),
    (k) regulations under section 53(1) (preparation of flood plans),
    (l) section 54 (maintenance of records for controlled reservoirs),
    (m) section 55 (display of safety information),
    (n) section 94 (affording reasonable facilities to engineers),
    (o) section 95 (providing information or assistance to SEPA).

(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, designated as a high-risk
    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.
Guidance by SEPA: management of reservoirs

(1) SEPA must, by such date as the Scottish Ministers direct, publish guidance on—
   (a) the management of controlled reservoirs by reservoir managers,
   (b) co-operation among reservoir managers of controlled reservoirs where a
       controlled reservoir has more than one reservoir manager.

(2) Before publishing guidance under subsection (1), SEPA must consult—
   (a) the Institution of Civil Engineers,
   (b) such other persons as it considers appropriate.

SEPA

In this Act “SEPA” means the Scottish Environment Protection Agency.

The 1975 Act and its repeal

(1) “The 1975 Act” means the Reservoirs Act 1975 (c.23).

(2) The 1975 Act is repealed.

CHAPTER 2

REGISTRATION

Controlled reservoirs register

(1) SEPA must establish and maintain a controlled reservoirs register.

(2) The controlled reservoirs register is a register containing the following information and
documents in relation to each controlled reservoir—
   (a) the name (if any) and location of the reservoir,
   (b) the maximum volume of water capable of being held in the reservoir,
   (c) the name and address of the reservoir manager,
   (d) the risk designation for the time being of the reservoir (and the date on which the
designation was given) (see sections 18 and 20),
   (e) any different risk designation the reservoir may have had in the past (and where it
    has had a different risk designation, the dates on which such designation was
    given and changed),
   (f) the name of any construction engineer, inspecting engineer, other qualified
    engineer or supervising engineer appointed at any time in relation to the reservoir
    (and the period of any such appointment),
   (g) a copy of—
      (i) any safety report, safety measure certificate, preliminary certificate,
    construction certificate or final certificate in relation to a controlled
    reservoir which is copied to SEPA (or given to it pursuant to section 66),
(ii) any inspection report, interim inspection compliance certificate or inspection compliance certificate in relation to a controlled reservoir which is so copied (or given),

(iii) any written recommendation or written statement by a supervising engineer under section 48(3) or (7) in relation to a controlled reservoir which is so copied (or given),

(h) a map showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded.

(3) The Scottish Ministers may by regulations—

(a) require further information or documents specified in the regulations to be contained in the register,

(b) make provision as to the manner in which the information to be contained in the register is to be recorded there.

(4) SEPA must make arrangements for the controlled reservoirs register (or a copy of it) to be available for inspection by any person at all reasonable times.

(5) The Scottish Ministers may by order make provision as to the place (or places) in which the register is (or copies of it are) to be kept.

10 Reservoir managers’ duty to register with SEPA

(1) The reservoir manager of each controlled reservoir must register the reservoir with SEPA in accordance with sections 11 to 13.

(2) The Scottish Ministers may by regulations make provision as to—

(a) the information to be registered,

(b) the time by which information, or any change to information, must be registered.

11 Controlled reservoirs required to be registered under the 1975 Act

(1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place before the end of the period of 6 months beginning with the relevant date.

(2) This subsection applies to controlled reservoirs which were, immediately before the relevant date, required to be registered in a large raised reservoirs register.

(3) In this section and sections 12, 13 and 15—

a “large raised reservoirs register” means a register maintained under section 2(2) of the 1975 Act,

“the relevant date” means the date of commencement of section 9.

12 Controlled reservoirs not required to be registered under the 1975 Act

(1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place by such time as the Scottish Ministers by order specify.
(2) This subsection applies to controlled reservoirs which are controlled reservoirs on the relevant date but which were not, immediately before that date, required to be registered in the large raised reservoirs register.

13 Structures or areas which become controlled reservoirs after the relevant date

Registration of a controlled reservoir which becomes a controlled reservoir after the relevant date must take place not later than 28 days after the day on which a preliminary certificate is given in relation to it for the first time.

13A Fees: registration and administration

(1) The Scottish Ministers may by regulations make provision allowing SEPA to charge reservoir managers of controlled reservoirs, and requiring reservoir managers to pay—
(a) fees in relation to registration, and
(b) other annual or recurring fees in relation to the performance of functions by SEPA under this Part.

(2) In making regulations under subsection (1) the Scottish Ministers must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.

(3) Regulations made under subsection (1) must include provision—
(a) specifying how SEPA is to determine and charge fees,
(b) requiring SEPA—
(i) to set out its fees in a published charging scheme,
(ii) to consult such persons as SEPA considers likely to be affected by the scheme before it publishes (or revises) a scheme.

(4) Regulations made under subsection (1) may include such other matters as the Scottish Ministers consider appropriate, including provision specifying—
(a) the maximum amount of any fee,
(b) the circumstances in which any fee is payable,
(c) different fees to be imposed in respect of different reservoirs or in other different cases or classes of case, and
(d) how fees may be collected and recovered.

14 Registration: supplementary

(1) Where a person ceases to be a reservoir manager of a controlled reservoir, the person must, not later than 28 days after ceasing to be reservoir manager, give notice to SEPA of that fact and the date on which the person ceased to be reservoir manager.

(2) A person who becomes a reservoir manager of a controlled reservoir must, not later than 28 days after becoming reservoir manager, give notice to SEPA of that fact and the date on which the person became reservoir manager.
(3) Where SEPA receives notice under subsection (1) or (2), it must take such steps as it considers are reasonably required to inform the new reservoir manager, as soon as is reasonably practicable, of the duties of reservoir managers of controlled reservoirs under this Part.

(4) The Scottish Ministers may by regulations make provision requiring SEPA—

(a) to prepare and publish guidance on registration,

(b) to consult the Institution of Civil Engineers in relation to the preparation of such guidance.

15 Transfer of information from existing relevant authorities

(1) Each existing relevant authority must, as soon as practicable after the relevant date, give to SEPA—

(a) the large raised reservoirs register maintained by the authority,

(b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of the 1975 Act (referred to in this section as its “enforcement functions”).

(2) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority’s enforcement functions.

(3) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the relevant date.

(4) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority’s enforcement functions and is in the process of being done by or in relation to the authority immediately before the relevant date.

(5) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the relevant date has effect as if done by SEPA.

(6) An existing relevant authority is a body which, immediately before the relevant date, is a relevant authority in Scotland for the purposes of the 1975 Act.

16 Offences: registration

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter relating to registration is an offence—

(a) the requirements of section 10(1) or of regulations made under section 10(2),

(b) the requirements of section 11(1), 12(1) or 13,

(c) the requirements of section 14(1) or (2).

(2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives information 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-risk 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.

CHAPTER 3

RISK DESIGNATION

17 Provisional risk designation

(1) SEPA must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a provisional risk designation.

(2) In giving a provisional risk designation, SEPA must take into account the matters mentioned in section 21.

(3) A provisional risk designation is a provisional designation of the reservoir as one of the following types—

(a) a high-risk reservoir,

(b) a medium-risk reservoir,

(c) a low-risk reservoir.

(4) SEPA gives a controlled reservoir a provisional risk designation by giving the reservoir manager notice specifying—

(a) the provisional risk designation it has given the reservoir,

(b) the reasons for the provisional risk designation,

(c) how representations may be made to SEPA,

(d) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

18 First risk designation

(1) SEPA must, as soon as is reasonably practicable after the end of the period referred to in section 17(4)(d) and having taken into account any representations made in that period, give the controlled reservoir a risk designation.

(2) In giving a risk designation, SEPA must take into account the matters mentioned in section 21.

(3) A risk designation is a designation of the reservoir as one of the types referred to in paragraphs (a) to (c) of section 17(3).

(4) SEPA may not give the reservoir a risk designation before the end of the period during which representations may be made under section 17(4).
(5) SEPA gives the reservoir a risk designation by giving the reservoir manager notice—
   (a) specifying the risk designation given,
   (b) specifying the reasons for the risk designation,
   (c) giving information about the right under section 22 to apply for a review of the risk designation.

19 Periodic review of risk designations

(1) SEPA must review the risk designation for the time being of a controlled reservoir—
   (a) at any time SEPA considers the designation may have ceased to be appropriate,
   (b) where the designation was given under section 18 and has not been reviewed
       under paragraph (a) during the period of 6 years after it was given (whether or not it has been reviewed under section 22), by the end of that period,
   (c) by the end of the period of 6 years after each review under this section.

(2) In reviewing the risk designation, SEPA must, having taken into account the matters mentioned in section 21, either—
   (a) provisionally confirm the risk designation, or
   (b) provisionally give the reservoir a risk designation as one of the other types referred to in paragraphs (a) to (c) of section 17(3).

(3) SEPA does as is specified in paragraphs (a) and (b) of subsection (2) in relation to a controlled reservoir by giving the reservoir manager notice specifying—
   (a) whether it provisionally confirms the risk designation or provisionally gives the reservoir a different risk designation,
   (b) where it provisionally gives the reservoir a different risk designation, the different risk designation concerned,
   (c) the reasons for its decision,
   (d) how representations may be made to SEPA,
   (e) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

20 Decision following a periodic review

(1) SEPA must, having taken into account any representations made in accordance with section 19(3), either—
   (a) confirm the risk designation the reservoir had immediately before the review, or
   (b) give the reservoir a risk designation as one of the other types referred to in paragraphs (a) to (c) of section 17(3).

(2) In doing so, SEPA must take into account the matters mentioned in section 21.

(3) SEPA may not make a decision under subsection (1) before the end of the period during which representations may be made under section 19(3).

(4) SEPA does as is specified in paragraph (a) or (b) of subsection (1) by giving the reservoir manager notice—
Part 1—Reservoirs
Chapter 3—Risk designation

(a) specifying whether it confirms the risk designation or gives the reservoir a
different risk designation,
(b) where it gives the reservoir a different risk designation, specifying the different
risk designation concerned,
(c) specifying the reasons for its decision,
(d) giving information about the right of review under section 22 against the risk
designation.

21 Risk designation and periodic review: matters to be taken into account

(1) The matters SEPA is required by sections 17(2), 18(2), 19(2) and 20(2) to take into
account are—
(a) the potential adverse consequences of an uncontrolled release of water from the
reservoir,
(b) the probability of such a release.

(2) For the purposes of subsection (1)(a), potential adverse consequences include—
(a) potential damage to—
(i) human health,
(ii) the environment,
(iii) cultural heritage,
(iv) medical facilities, power supplies, transport, the supply of water for
consumption and anything connected with such matters,
(v) other social or economic interests,
(b) such other potential damage as SEPA considers relevant.

(3) The matters which SEPA may take into account in assessing under subsection (1)(b) the
probability of an uncontrolled release of water from a reservoir include—
(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 maintenance of the reservoir.

(4) The Scottish Ministers may, after consulting SEPA and the Institution of Civil
Engineers, by regulations make further provision about the matters SEPA is to take into
account under sections 17(2), 18(2), 19(2) and 20(2).

22 Review of SEPA’s decisions giving risk designations

(1) A reservoir manager of a controlled reservoir who is given notice of a risk designation
(under section 18(5) or 20(4)) may apply to SEPA for a review of the designation.

(2) Any such application must be made before the end of the period of 12 months beginning
with the date on which the notice was given.

(3) Subject to subsection (4), a risk designation in respect of which an application is made
under this section continues to have effect despite the application and the review.
(4) Where as a result of the review SEPA gives the controlled reservoir a different risk designation, the designation which is the subject of the application ceases to have effect from the date on which SEPA gives its decision.

(4A) SEPA gives its decision in the review by giving the reservoir manager notice—
(a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,
(b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,
(c) specifying the reasons for its decision,
(d) giving information about the right of appeal under section 22A against the risk designation following the review.

(5) SEPA may charge a reasonable fee of such amount as it determines in relation to an application for review under this section.

(6) Any fee charged by SEPA under subsection (5) must be returned by it to the reservoir manager in the following circumstances—
(a) where the risk designation which was the subject of the application was as a high-risk reservoir and SEPA’s decision in the review is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,
(b) where the risk designation which was the subject of the application was as a medium-risk reservoir and SEPA’s decision in the review is to give a risk designation as a low-risk reservoir.

(7) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section.

22A Appeal to the Scottish Ministers following SEPA’s review

(1) A reservoir manager of a controlled reservoir who is given notice of SEPA’s decision in a review under section 22 may appeal to the Scottish Ministers against that decision.

(2) Any such appeal must be made before the end of the period of 12 months beginning with the date on which the notice under section 22(4A) was given.

(3) Subject to subsection (5), a risk designation in respect of which an appeal is made under this section continues to have effect despite the appeal.

(4) Before determining an appeal the Scottish Ministers must—
(a) consult the Institution of Civil Engineers, and
(b) take into account the matters mentioned in section 21.

(5) The Scottish Ministers must notify their determination of the appeal by giving the reservoir manager and SEPA notice—
(a) specifying whether they confirm the risk designation or give the reservoir a different risk designation,
(b) where they give the reservoir a different risk designation, specifying which one of the other types referred to in paragraphs (a) to (c) of section 17(3) is the different risk designation,
(c) specifying the reasons for their decision.

(6) Any fee charged by SEPA under section 22(5) must be returned by it to the reservoir manager in the following circumstances—

(a) where the risk designation which was the subject of the appeal was as a high-risk reservoir and the Scottish Ministers’ decision in the appeal is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,

(b) where the risk designation which was the subject of the appeal was as a medium-risk reservoir and the Scottish Ministers’ decision in the appeal is to give a risk designation as a low-risk reservoir.

(7) The Scottish Ministers may by regulations make further provision in relation to appeals under this section.

23 Guidance by SEPA: risk designation

(1) The Scottish Ministers may direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs provisional risk designations and risk designations and in reviewing risk designations.

(2) Where the Scottish Ministers give a direction under this section SEPA must, before publishing its guidance, consult and have regard to any advice given to it by the Institution of Civil Engineers.

24 High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

(1) References in this Part to a “high-risk reservoir”, “medium-risk reservoir” or “low-risk reservoir” are references to a controlled reservoir designated as such for the time being under section 18, 20, 22 (subject to subsection (3) of that section) or, as the case may be, 22A (subject to subsection (3) of that section).

(2) Chapter 6 of this Part makes provision about requirements for inspection, supervision and recording of particular matters in relation to high-risk reservoirs and medium-risk reservoirs.

CHAPTER 4

PANELS OF RESERVOIR ENGINEERS

25 Panels of reservoir engineers

The Scottish Ministers must—

(a) establish one or more panels of reservoir engineers for the purposes of this Part and specify by order the sections of this Part under which the members of any such panel may be appointed,

(b) appoint civil engineers who they consider to be fit and qualified for appointment to such panels to be members of such of the panels as they consider appropriate.

26 Appointment and removal of panel members

(1) A civil engineer who wishes to be appointed to a panel under section 25 must make an appropriate application.
(2) An appointment is for such period as the Scottish Ministers determine.

(3) A civil engineer appointed to a panel is eligible for re-appointment.

(4) The Scottish Ministers may remove an engineer from a panel where they are satisfied that the engineer is not fit or qualified to remain on it.

(5) The Scottish Ministers must give an engineer removed from a panel under subsection (4) notice of the removal.

(6) Notice under subsection (4) must specify the grounds on which the engineer has been removed from the panel.

(7) In this section, “an appropriate application” is an application made in accordance with regulations made by the Scottish Ministers.

(8) The Scottish Ministers may by regulations make provision for the determining and charging of fees in connection with applications for membership of panels established by them under section 25.

27 Dissolution of panels etc.

(1) The Scottish Ministers may dissolve a panel established under section 25.

(2) Before doing so, the Ministers must give reasonable notice to the members of the panel.

(3) Where the Scottish Ministers dissolve a panel whose members might, by virtue of an order under section 25, (if not for the dissolution) still be appointed as construction engineers or inspecting engineers, the Scottish Ministers may allow an engineer who immediately before the dissolution was such an engineer or was the other qualified engineer in relation to a reservoir (see section 45(5)), to continue to act as such in relation to the controlled reservoir concerned for a period of 4 years.

(4) The Scottish Ministers may, by notice, direct that an engineer is no longer entitled to act under subsection (3) where they are satisfied that the engineer is not fit or qualified to do so.

(5) Notice under subsection (4) must specify the grounds on which the engineer has been removed under that subsection.

28 Review of decisions to appoint or remove civil engineers from panels etc.

(1) A civil engineer—

(a) whose application for appointment to a panel established under section 25 is rejected,

(b) who is removed from a panel under section 26(4),

(c) who is given a direction under section 27(4),

may apply to the Scottish Ministers for a review of their decision.

(2) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section, including provision as to determining and charging fees in connection with applications for review under this section.
Consultation with Institution of Civil Engineers

(1) The Scottish Ministers must consult the President of the Institution of Civil Engineers (or, if that Institution appoints a committee for the purpose, that committee), before—
   (a) establishing a panel under section 25,
   (b) making an order under that section,
   (c) making an appointment to a panel under that section,
   (d) removing an engineer from a panel under section 26(4),
   (e) dissolving a panel under section 27(1),
   (f) directing that an engineer is no longer entitled to act under section 27(4),
   (g) making a decision in a review under section 28.

(2) The Scottish Ministers may reimburse the Institution of Civil Engineers for any expenses incurred by it by virtue of this section.

CHAPTER 5
CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Application of Chapter 5

(1) This Chapter applies where a controlled reservoir is to be constructed or subject to alteration.

(2) Subsections (3) to (7) have effect for the purposes of this Chapter.

(3) Any work for the purpose of restoring an existing structure or area (which has previously at any time been capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land) so that it is capable of so holding such amount of water is to be treated as construction of a controlled reservoir.

(4) Alteration of a controlled reservoir includes—
   (a) any work for the purpose of increasing or decreasing the capacity of a controlled reservoir,
   (b) any other work in relation to the reservoir (including work which the Scottish Ministers are satisfied might affect its safety) which the Scottish Ministers by regulations specify.

(5) Alteration of a controlled reservoir amounts to discontinuance of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (but still capable of holding water above the natural level of any part of that land).

(6) Alteration of a controlled reservoir amounts to abandonment of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of filling with water above the natural level of any part of the surrounding land.

(7) Any reference to—
   (a) a controlled reservoir being constructed or subject to alteration is to be construed in accordance with this section,
(b) a controlled reservoir being restored to use is to be construed as a reference to a controlled reservoir being constructed as mentioned in subsection (3),

(c) a controlled reservoir being discontinued is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (5),

(d) a controlled reservoir being abandoned is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (6),

(e) “relevant works” is a reference to any works carried out for the purpose of the construction or alteration of a controlled reservoir.

31 Notice to SEPA and appointment of construction engineer

(1) 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 SEPA of the proposed works.

(2) The reservoir manager must, not later than 28 days before the proposed relevant works begin—

(a) appoint a construction engineer,

(b) give notice to SEPA of the appointment.

(3) “A construction engineer” is an engineer appointed under this section to supervise the relevant works until a final certificate is issued in respect of the works.

(4) An engineer may be appointed as a construction engineer if the engineer—

(a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,

(b) is not disqualified by virtue of subsection (5) from being appointed as a construction engineer in relation to the reservoir.

(5) An engineer is disqualified from being appointed as a construction engineer in relation to the reservoir if the engineer is employed by any person who is a reservoir manager of the reservoir.

(6) In sections 32 to 39—

(a) references to “the construction engineer” are references to the engineer appointed for the time being as such under this section in respect of the relevant works,

(b) references to “the reservoir manager” are references to the reservoir manager of the controlled reservoir which is the subject of the relevant works.

32 Inspection, reports, supervision of works etc. by construction engineer

(1) The construction engineer must supervise the relevant works in accordance with this section until a final certificate is issued in respect of the works.

(2) The engineer must—

(a) inspect the reservoir,

(b) design any construction or alteration.
Where the reservoir is being constructed or is subject to alteration but is not being discontinued or abandoned, the construction engineer (subject to subsection (6)) may give the reservoir manager a safety report prepared in accordance with section 33.

Where the reservoir is being restored to use, discontinued or abandoned, the construction engineer must give the reservoir manager a safety report.

A safety report given under subsection (4) must (subject to subsection (6)) be given not later than 9 months after the construction engineer is appointed.

Where the appointment of the construction engineer was required by notice from SEPA under section 63(2) (or is to be treated by virtue of section 65(2) as being an appointment by the reservoir manager), the construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed.

A construction engineer must, not later than 28 days after giving a safety report under this section, give SEPA a copy of it.

33 Safety reports

A safety report must—

(a) specify any measures the construction engineer considers are necessary in the interests of the safety of the controlled reservoir,

(b) direct the reservoir manager to ensure that any measures specified in the report are taken under the supervision of the construction engineer and within the period of time specified in the report,

(ba) where the reservoir manager is required to appoint a supervising engineer (see section 47), specify any matters that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,

(c) include such other matters as the Scottish Ministers by regulations specify.

Where a controlled reservoir—

(a) is being restored to use, the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water,

(b) is being discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure 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) is being abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.

34 Safety reports: compliance

The reservoir manager of a controlled reservoir must (subject to section 57(3)) comply with any direction in a safety report issued to the manager.
(2) The construction engineer must, not later than 28 days after being satisfied that each measure directed in the safety report has been taken, give the reservoir manager a safety measure certificate.

(3) A safety measure certificate must specify—

(a) the safety report to which it relates,

(b) the measure taken,

(c) any measure that has yet to be taken.

(4) A construction engineer must, not later than 28 days after giving a safety measure certificate under subsection (2), give SEPA a copy of it.

35 Preliminary certificates

(1) Where the construction engineer considers that the reservoir may safely be filled (wholly or partially) with water or that the level of water should be reduced, the engineer must, as soon as is reasonably practicable after being so satisfied, give the reservoir manager a preliminary certificate.

(2) A preliminary certificate must—

(a) specify a level (the “specified level”) that water in the reservoir must not exceed,

(b) require the reservoir manager to ensure that the level of water does not exceed the specified level,

(c) specify any requirements the engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.

(3) A construction engineer must, not later than 28 days after giving a preliminary certificate, give SEPA a copy of it.

(4) A subsequent preliminary certificate applicable to the reservoir replaces any previous preliminary certificate applicable to the reservoir in respect of the relevant works.

(5) A preliminary certificate ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of those works.

36 Construction certificates

(1) The construction engineer must give the reservoir manager a construction certificate as soon as is reasonably practicable after being satisfied that the construction or (as the case may be) alteration has been completed to a satisfactory standard.

(2) The construction certificate must in any event be issued not later than the final certificate in respect of the works.

(3) A construction certificate must—

(a) certify that the construction or (as the case may be) alteration has been executed effectively in accordance with the drawings and descriptions included in the annex to the certificate,
(b) include an annex containing detailed drawings and descriptions giving full information about the works for the construction or (as the case may be) the alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works,

(c) include such other information as the Scottish Ministers by regulations require.

(4) The construction engineer must, not later than 28 days after giving a construction certificate, give SEPA a copy of it.

37 Final certificates

(1) Where the controlled reservoir is being constructed or is subject to alteration but is not being 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-risk 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-risk reservoir or medium-risk reservoir, must specify any matter the construction engineer considers should be monitored, until the first inspection of the reservoir under section 44, by the supervising engineer appointed in relation to the reservoir under section 47,

(d) impose the requirements mentioned in subsection (7).

(3) Where the reservoir is 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 reservoir is 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) A copy of the construction certificate issued in respect of the construction or (as the case may be) alteration must be attached to the final certificate.

(9) The construction engineer must, not later than 28 days after issuing a final certificate, give SEPA a copy of the certificate.

(10) 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 SEPA a copy of the statement.

38 Preliminary and final certificates: compliance

The reservoir manager of a controlled reservoir must (subject to section 58(3)) comply with the requirements of any preliminary certificate or final certificate for the time being applicable to the reservoir.

39 Termination of supervision by construction engineer

The obligation of the reservoir manager to appoint a construction engineer in respect of the relevant works terminates when the construction engineer gives a copy of the final certificate issued by the engineer in respect of the works to SEPA in accordance with section 37(9).

40 Offences: construction or alteration

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—
   (a) the requirements in section 31(1) (notice to SEPA of proposed relevant works),
   (b) the requirements in section 31(2)(a) (appointment of construction engineer),
   (c) the requirements in section 31(2)(b) (notice to SEPA of the appointment),
   (d) the requirements in section 34(1) (compliance with direction as to taking of safety measure in safety report),
(e) the requirements in section 38 (compliance with preliminary certificate or final certificate).

(2) A reservoir manager guilty of an offence under subsection (1)(a), (b) or (c)—

(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.

(3) A reservoir manager guilty of an offence under subsection (1)(d) or (e) 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 12 months, or to a fine not exceeding the statutory maximum, or to both.

41 Defences: offences under section 40(1)(d) or (e)

It is a defence to a charge in proceedings under section 40(1)(d) or (e) for the person to show both—

(a) that the failure to comply with the requirements concerned was as a result of 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

(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, and

(iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

42 Controlled reservoirs subject to relevant works on commencement

(1) Subsection (2) applies in relation to controlled reservoirs—

(a) which were, immediately before the commencement date, large raised reservoirs,

(b) which are, on that date, subject to relevant works.

(2) This Chapter, and sections 63 to 65, apply in relation to such controlled reservoirs on and after the commencement date as they apply in relation to controlled reservoirs which are subject to relevant works wholly on or after that date.

(3) Subsection (4) applies in relation to controlled reservoirs—

(a) which were not, immediately before the commencement date, large raised reservoirs,

(b) which are, on that date, subject to relevant works.
(4) This Chapter, and sections 63 to 65 apply on and after the commencement date in relation to such controlled reservoirs subject to the modifications mentioned in subsection (5).

(5) The modifications are—

(a) notice under section 31(1) of the relevant works must be given not later than 28 days after the commencement date,

(b) a construction engineer must be appointed under section 31(2)(a) not later than 28 days after the commencement date,

(c) notice under section 31(2)(b) of the appointment must be given not later than 28 days after the appointment,

(d) for section 32(3) to (6) substitute—

“(3) The construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed and in any event not later than 9 months after being appointed.”.

(6) In this section—

“the commencement date” means the date on which section 30 is commenced,

“large raised reservoir” has the same meaning as in section 1(1) of the 1975 Act.

CHAPTER 6

OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

43 Appointment of inspecting engineer etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—

(a) appoint an inspecting engineer to carry out an inspection of the reservoir at each of the times required by section 44,

(b) not later than 28 days after the appointment, give notice of it to SEPA.

(3) An engineer may be appointed as an inspecting engineer if the engineer—

(b) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,

(c) is not disqualified by virtue of subsection (4) from being so appointed in relation to the reservoir.

(4) An engineer is disqualified from being appointed as an inspecting engineer in relation to the reservoir if the engineer—

(a) is employed by any person who is a reservoir manager of the reservoir,

(b) has previously been a construction engineer in relation to the reservoir,

(c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer in relation to the reservoir.

44 Inspections: timing

(1) Subject to subsection (2A), inspections of a high-risk reservoir must be carried out—
Part 1—Reservoirs

Chapter 6—Other requirements: high-risk reservoirs and medium-risk reservoirs

(a) before the end of the period of 2 years beginning with the date of any final certificate for the time being applicable to the reservoir, and

(b) at each of the following times—

(i) at any time recommended by the supervising engineer under section 48(3),

(ii) at any time recommended in an inspection report under section 45,

(iii) before the end of the period of 10 years beginning with the date of the latest inspection.

(2) Subject to subsection (2A), inspections of a medium-risk reservoir must be carried out at each time recommended by the supervising engineer under section 48(3).

(2A) Where a construction engineer is appointed to supervise relevant works at a high-risk reservoir or a medium-risk reservoir—

(a) each inspection which, at the date of the appointment, is due to be carried out is cancelled, and

(b) the next inspection must be carried out—

(i) in the case of a high-risk reservoir, in accordance with subsection (1)(a),

(ii) in the case of a medium-risk reservoir, at any time recommended by the supervising engineer under section 48(3) which is after the end of the period of 2 years beginning with the date of the final certificate for the relevant works.

(3) In this section and section 45, references to “the supervising engineer” are references to the engineer appointed for the time being as such under section 47 in relation to the reservoir.

45 Inspections: duties of inspecting engineers etc.

(1) The inspecting engineer must—

(a) inspect the reservoir,

(b) give the reservoir manager, not later than 9 months after the completion of the inspection, an inspection report prepared in accordance with this section,

(c) give the reservoir manager certificates in accordance with section 46.

(2) The reservoir manager must give the inspecting engineer a copy of—

(a) any final certificate for the time being applicable to the reservoir,

(b) the inspection report of the latest inspection (if any) of the reservoir carried out under this section (“the latest report”).

(3) The inspection report—

(a) must specify any measures the inspecting engineer considers should be taken in the interests of the safety of the reservoir (including measures for the maintenance of the reservoir),

(b) must specify whether any measure specified in the inspection report was specified in the latest report,
Reservoirs (Scotland) Bill
Part 1—Reservoirs

Chapter 6—Other requirements: high-risk reservoirs and medium-risk reservoirs

(c) 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,

d) must direct the reservoir manager to ensure that any measures specified in the inspection report are taken under the supervision of the inspecting engineer or the other qualified engineer within the period of time specified in the inspection report,

e) must specify when the next inspection of the reservoir should take place,

(f) must specify any matters that the inspecting engineer considers should be monitored by the supervising engineer until the next inspection,

g) may include recommendations on other matters which the inspecting engineer considers relevant to the maintenance of the reservoir but in relation to which the engineer does not specify a measure to be taken under paragraph (a).

(4) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—

(a) SEPA,

(b) the supervising engineer (if a different person).

(5) In this section and section 46—

(a) references to “the inspecting engineer” are references to the engineer appointed for the time being as such under section 43 in relation to the reservoir,

(aa) references to “the other qualified engineer” are references to the engineer appointed for the time being as such under section 46 in relation to the reservoir,

(b) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.

46 Inspection reports: compliance

(1) The reservoir manager must (subject to section 57(3)) ensure that any direction in an inspection report issued to the manager is complied with.

(1A) The reservoir manager—

(a) may appoint any other qualified engineer (being a person eligible to be appointed as an inspecting engineer for the reservoir) to supervise any of the measures specified in the inspection report, and

(b) must, as soon as practicable after making any such appointment, give notice of it to SEPA and the inspecting engineer.

(2) Not later than 28 days after being satisfied that a measure directed in the inspection report has been taken—

(a) the inspecting engineer, or

(b) in relation to any measure for which the other qualified engineer is appointed, the other qualified engineer,

must give to the reservoir manager an interim inspection compliance certificate.
(2A) Where the other qualified engineer gives an interim inspection compliance certificate in relation to any measure—

(a) the other qualified engineer must—

(i) at the same time as giving the certificate to the reservoir manager, give the inspecting engineer a copy of it, and

(ii) not later than 28 days after giving the certificate, give SEPA a copy of it, and

(b) the inspecting engineer must take the certificate to be conclusive of that measure having been taken.

(3) An interim inspection compliance certificate must specify—

(a) the inspection report to which it relates,

(b) the measure taken,

(c) any measure for which the person giving the certificate is responsible for supervising that has yet to be taken.

(4) The inspecting engineer must, not later than 28 days after being satisfied that all of the measures directed in the inspection report have been taken, give the reservoir manager an inspection compliance certificate.

(5) An inspection compliance certificate must specify—

(a) the inspection report to which it relates,

(b) that all of the measures directed in the report have been taken.

(6) An inspecting engineer must, not later than 28 days after giving an interim inspection compliance certificate or an inspection compliance certificate under this section, give SEPA a copy of it.

(7) Where an inspection report directs a measure for the maintenance of the reservoir to be taken in the interests of the safety of the reservoir (specified in accordance with section 45(3)(a))—

(a) no interim inspection compliance certificate is required for that measure, and

(b) no account of that measure is to be taken for the purposes of subsections (3)(c), (4) and (5)(b).

47 Appointment of supervising engineers etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—

(a) appoint a supervising engineer to supervise the reservoir in accordance with section 48 at all times other than the period mentioned in subsection (2),

(b) not later than 28 days after the appointment, give notice of it to SEPA.

(2) A reservoir manager of a controlled reservoir which is being constructed or restored to use (within the meaning of Chapter 5) need not appoint a supervising engineer before a final certificate is issued in respect of the relevant works (see section 37).

(3) An engineer may be appointed as a supervising engineer if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section.
48 Supervising engineer and monitoring of reservoir

(1) The supervising engineer must supervise the reservoir 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,

(aa) monitor any matters specified in a safety report as matters to be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,

(ab) monitor compliance by the reservoir manager with the requirements of any preliminary certificate for the time being applicable to the reservoir,

(b) monitor compliance by the reservoir manager with the requirements of any final certificate for the time being applicable to the reservoir,

(c) monitor any matters specified in any such final certificate as matters that should be monitored by the supervising engineer until the first inspection of the reservoir required under section 44,

(e) give notice to the reservoir manager and SEPA of any failure to comply with any requirement of—

(i) a safety report referred to in paragraph (aa),

(ii) a preliminary certificate referred to in paragraph (ab), or

(iii) a final certificate referred to in paragraph (b),

(f) monitor any matters specified in the latest inspection report as matters that should be monitored by the supervising engineer until the next inspection of the reservoir required under section 44,

(g) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,

(h) monitor compliance by the reservoir manager with the requirements of section 49.

(3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 45, the engineer must—

(a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place, and

(b) not later than 28 days after giving the written recommendation, give SEPA a copy of it.

(4) The supervising engineer 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.

(5) The reservoir manager must comply with any direction under subsection (4).

(6) The reservoir manager must—

(a) maintain a written record of each visual inspection carried out in pursuance of a direction under subsection (4),

(b) make that record available on request to the supervising engineer, and
Reservoirs (Scotland) Bill

Part I—Reservoirs

Chapter 6—Other requirements: high-risk reservoirs and medium-risk reservoirs

(c) give notice to the supervising engineer of anything identified during such an inspection which might affect the safety of the reservoir.

(6A) Notice under subsection (6)(c) must be given as soon as reasonably practicable after the inspection during which the thing was identified.

(7) 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 (f),

(b) any measures taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,

(c) any failure to comply with—

(ai) a requirement in a safety report referred to in subsection (2)(aa),

(bi) a requirement in a preliminary certificate referred to in subsection (2)(ab),

(i) a requirement in a final certificate referred to in subsection (2)(b),

(iii) a recommendation by the supervising engineer under subsection (3),

(iv) a direction by the supervising engineer under subsection (4).

(8) The supervising engineer must give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of an emergency and the supervising engineer being unavailable, a nominated representative of the engineer).

(9) The supervising engineer must, not later than 28 days after giving a written statement under subsection (7), give SEPA a copy of the statement.

(10) The Scottish Ministers may publish guidance about supervision of high-risk reservoirs and medium-risk reservoirs in accordance with this section.

(11) 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 supervising engineer” are references to the engineer appointed for the time being as such under section 47 in relation to the reservoir,

(c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section.

Recording of water levels etc. and record keeping

(1) The reservoir manager of a high-risk reservoir or medium-risk 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) leakages,

(c) repairs,

(d) settlements of walls or other works,
(e) such other matters as the Scottish Ministers by regulations specify.

(2) The Scottish Ministers 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 construction engineer, an inspecting engineer or a supervising engineer appointed 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) 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.

(6) Sections 54 and 56 make further provision about records to be maintained by the reservoir managers of controlled reservoirs.

50 Offences: inspection, supervision, record keeping

(1) Failure by the reservoir manager of a high-risk reservoir or medium-risk reservoir to comply with any of the following requirements under this Chapter is an offence—
(a) the requirements of section 43(1)(a) and 44 (appointment of inspecting engineer and carrying out of required inspections),
(b) the requirements of section 43(1)(b) (notice of appointment to SEPA),
(c) the requirements of section 46(1) (compliance with direction as to taking of measure in inspection report),
(d) the requirements of section 47(1)(a) (appointment of supervising engineer),
(e) the requirements of section 47(1)(b) (notice of appointment to SEPA),
(f) the requirements of a direction under section 48(4) (compliance with direction of supervising engineer as to carrying out of visual inspection of reservoir),
(fa) the requirements of section 48(6)(c) (notice of identification of thing which might affect the safety of the reservoir),
(g) the requirements of section 49 (including any direction under subsection (3) of that section) (maintenance of record of water levels etc.).

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with the requirements of section 45(2) (giving inspecting engineer copy of final certificate and latest inspection report) commits an offence.

(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.
Defences: offence under section 50(1)(c)

It is a defence to a charge in proceedings under section 50(1)(c) 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 SEPA as soon as practicable after the failure arose.

Chapter 7

OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

Incident reporting

(1) The Scottish Ministers may by regulations make provision for the reporting to SEPA 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 SEPA 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 specified person to report incidents occurring at the reservoir,

(d) provide for an inspecting engineer, a supervising 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 SEPA or the Scottish Ministers,

(f) make provision for the publishing of incident reports,

(g) confer powers of entry on SEPA in connection with its functions under the regulations,

(h) create offences,

(i) provide that any offence created is triable only summarily,

(j) provide for any offence created—
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,

(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) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) the reservoir managers of controlled reservoirs to which they consider the
regulations will apply,

(c) the Institution of Civil Engineers,

(d) such other persons as they consider appropriate.

53 Flood plans

(1) The Scottish Ministers 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 they consider 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 as may be determined by the Scottish Ministers or
SEPA,

(ba) allowing a single flood plan to be prepared in respect of two or more controlled
reservoirs between which water does (or could) flow,

(c) specifying—

(i) the form in which a flood plan is to be prepared,

(ii) what is to be included in a flood plan,

(d) requiring the person preparing a flood plan to have regard to any guidance that
may be issued by SEPA or the Scottish Ministers as regards flood plans,

(e) requiring flood plans to be produced or submitted to SEPA (whether or not for
approval) by such time as either—

(i) the regulations specify, or

(ii) the Scottish Ministers or SEPA may direct,
(f) as regards the approval of flood plans (whether by the Scottish Ministers, SEPA, inspecting engineers or supervising engineers),

(g) as regards the review and updating of flood plans,

(h) as regards the publication or distribution of copies of—

(i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,

(ii) flood plans,

(i) in connection with the testing of flood plans,

(j) in connection with the referral of matters to a referee,

(k) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is practicable to do so, to take action set out in the plan relating to the reservoir in the event of an emergency,

(l) providing that SEPA may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the expenses of doing so from the person,

(m) conferring powers of entry on SEPA in connection with its functions under the regulations,

(n) making provision in connection with paragraphs (j), (l) and (m) amending this Act (other than this section) or applying this Act with modifications,

(o) creating offences,

(p) providing that any offence created is triable only summarily,

(q) 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) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,

(c) the Institution of Civil Engineers,

(d) such other persons as they consider appropriate.

54 **Maintenance of records**

(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.
(3) Where the reservoir is a low-risk reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Scottish Ministers may require by regulations.

(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) an inspection report, interim inspection compliance certificate or inspection compliance certificate,

(iii) a notice under section 48(2)(a) or (e), recommendation under section 48(3) or statement under section 48(7) (by a supervising engineer),

(b) any drawings and descriptions of works annexed to construction certificates given in respect of the reservoir under the 1975 Act, drawings and descriptions annexed to certificates given under the Reservoirs (Safety Provisions) Act 1930 (c.51), charts, graphs and plans, and

(c) any flood plan produced in respect of the reservoir in pursuance of regulations made under section 53.

55 Display of emergency response information

(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 order by the Scottish Ministers.

(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 relating to 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-risk reservoir or medium-risk reservoir, information for the purpose of enabling a person to contact SEPA in the event of an emergency.

(4) SEPA may give directions to reservoir managers of controlled reservoirs as to—

(a) the manner in which emergency response information is to be displayed,

(b) the location at which it is to be displayed.

(5) Directions under subsection (4) may be general or specific.

(6) The reservoir manager must comply with any directions by SEPA under subsection (4).
Offences: record keeping, display of emergency response information

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—

(a) the requirements of section 54 (maintenance of records),

(b) the requirements of section 55(1) and (6) (display of emergency response information).

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 8
DISPUTE REFERRAL

Referral to referee: directions in safety report or inspection report

(1) This section applies where—

(a) a safety report contains a direction by a construction engineer,

(b) an inspection report contains a direction by an inspecting engineer.

(2) The reservoir manager to whom the report is given may challenge the direction by referring it to a referee in accordance with regulations made under section 62.

(3) Where a referral is made under subsection (2), the direction is suspended until the reference has been determined or withdrawn.

Referral to referee: requirements in preliminary certificate or final certificate

(1) The reservoir manager to whom a preliminary certificate or final certificate is given may challenge any of the matters mentioned in subsection (2) by referring it to a referee in accordance with regulations made under section 62(1).

(2) The matters are—

(a) the level of water specified in the preliminary certificate in accordance with section 35(2)(a),

(b) any requirement specified in the preliminary certificate in accordance with section 35(2)(c),

(c) any recommendation contained in the final certificate in accordance with section 37(2)(b),

(d) any matter specified in the final certificate in accordance with section 37(2)(c),

(e) any requirement imposed in the final certificate in accordance with section 37(7)(a) or (c).

(3) Where a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.
Appointment of referee

(1) The referee must be an engineer appointed under this section either—
   (a) by agreement between the reservoir manager and the relevant engineer, or
   (b) where no agreement is reached, by the Scottish Ministers.

(2) An engineer may be appointed as a referee if the engineer—
   (a) is a member of a panel of reservoir engineers established under section 25 who
       may (by virtue of an order under that section) be appointed under this section,
   (b) is not disqualified by virtue of subsection (3) from being appointed under this
       section in relation to the reservoir concerned.

(3) An engineer is disqualified from being appointed under this section in relation to the
    reservoir if the engineer—
   (a) is employed by any person who is a reservoir manager of the reservoir,
   (b) has previously been a construction engineer or an inspecting engineer in relation
       to the reservoir,
   (c) is connected (as a partner, employer, employee or fellow employee in a civil
       engineering business) with a person who has previously been a construction
       engineer or an inspecting engineer in relation to the reservoir.

(4) In this section and sections 60 and 61, “the relevant engineer” means the construction
    engineer or (as the case may be) inspecting engineer who gave the direction or (as the
    case may be) specified, recommended or imposed the matter which is the subject of the
    referral.

Powers of referee: referral under section 57(2)

(1) This section applies where a referral is made under section 57(2).

(2) The referee may make such modifications (if any) as the referee considers appropriate to
    the direction.

(3) Where the referee makes any such modification, the referee—
   (a) must modify the report which contains the direction,
   (b) where the report is a safety report, must make any necessary modification to any
       safety measure certificate given in relation to the report,
   (c) where the report is an inspection report, must make any necessary modification to
       any interim inspection compliance certificate given in relation to the report.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after
    making a decision under subsection (2).

(5) The steps are—
   (a) to give the reservoir manager and the relevant engineer a certificate (a “referral
       certificate”) stating—
       (i) whether the referee has modified the report,
       (ii) any modification made,
(b) where the referee has modified the report or any safety measure certificate or interim inspection compliance certificate, to give the reservoir manager and the relevant engineer a copy of the modified report and any such modified certificate,

c) to give SEPA a copy of the referral certificate and any modified report and any such modified safety measure certificate or interim inspection compliance certificate.

(6) A direction, report, safety measure certificate or interim inspection compliance certificate modified under this section has effect as so modified.

(7) In subsection (3)(b) and (c), “any necessary modification” means any modification the referee considers is necessary in relation to any measure specified in the certificate as a measure yet to be taken.

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

(1) This section applies where a referral is made under section 58(1).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the matter referred.

(3) Where the referee makes any such modification, the referee must modify the certificate which contains the matter.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—

(a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—

(i) whether the referee has modified the certificate,

(ii) any modification made,

(b) where the referee has modified the certificate, to give the reservoir manager and the relevant engineer a copy of the modified certificate,

(c) to give SEPA a copy of the referral certificate and any modified preliminary certificate or final certificate.

(6) A preliminary certificate or final certificate modified under this section has effect as so modified.

62 Procedure

(1) Regulations by the Scottish Ministers may make provision as to—

(a) the time within which a referee may be appointed under section 59,

(b) the time within which a request to them for an appointment under that section may be made,

(c) the manner of the request,

(d) the procedure before the referee,

(e) the expenses of the investigation and proceedings (including the remuneration of the referee).
(2) The expenses of any investigation and proceedings are to be paid by the reservoir manager who makes the referral.

**CHAPTER 9**

**CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES**

*Appointment of engineers*

**63 Enforcement notice: appointment of engineer**

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that—

(a) the reservoir manager is required by section 31(2)(a) to appoint a construction engineer, but no construction engineer is for the time being appointed,

(b) the reservoir manager is required by section 43(1)(a) to appoint an inspecting engineer, but no inspecting engineer is for the time being appointed,

(c) the reservoir manager is required by section 47(1)(a) to appoint a supervising engineer, but no supervising engineer is for the time being appointed.

(2) SEPA may by notice require the reservoir manager of the reservoir—

(a) to make the relevant appointment before the end of the period of 28 days beginning with the day on which the notice is given (unless the reservoir manager has already made the relevant appointment),

(b) to give notice to SEPA of the appointment (whether it was made before or after the notice was given).

(3) In subsection (2)(a) and sections 65 and 66, “the relevant appointment” is the appointment of a construction engineer, an inspecting engineer or (as the case may be) a supervising engineer.

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

(1) Failure to comply with the requirements of a notice by SEPA under the following sections is an offence—

(a) section 63(2)(a) (requirement to appoint construction engineer, inspecting engineer or supervising engineer),

(b) section 63(2)(b) (notice of appointment to SEPA).

(2) A reservoir manager guilty of an offence under subsection (1)(a) or (b) 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 12 months, or to a fine not exceeding the statutory maximum, or to both.

**65 Appointment of engineer by SEPA**

(1) SEPA may make the relevant appointment where—

(a) it has by notice under section 63(2) required a reservoir manager to make the appointment,
(b) the reservoir manager has failed to make the appointment.

(2) An appointment by SEPA under this section is to be treated for the purposes of this Part as if the appointment were by the reservoir manager under section 31(2)(a), 43(1)(a) or (as the case may be) 47(1)(a).

(3) An appointment under this section has no effect if the reservoir manager has already made the relevant appointment.

(4) An appointment under this section terminates with effect from the date of a subsequent relevant appointment made by the reservoir manager.

(5) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in pursuance of the exercise of powers under this section.

66 Appointment by SEPA: engineers’ reports, certificates, recommendations etc.

Where SEPA makes a relevant appointment under section 65, the following are to be given to SEPA (instead of being given to the reservoir manager) and copied to the reservoir manager not later than 28 days after being given to SEPA—

(a) where the relevant appointment is that of a construction engineer, any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate by the construction engineer,

(b) where the relevant appointment is that of an inspecting engineer, any inspection report, interim inspection compliance certificate or inspection compliance certificate by the inspecting engineer,

(c) where the relevant appointment is that of a supervising engineer, any notice under section 48(2)(a) or (e), recommendation under section 48(3) or statement under section 48(7).

Taking of safety and other measures

67 Enforcement notice: safety and other measures

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that the reservoir manager has failed to comply with—

(a) the manager’s duty under section 34(1) (to comply with a direction in a safety report),

(b) the manager’s duty under section 46(1) (to comply with a direction in an inspection report).

(2) SEPA may by notice require the reservoir manager to comply with the duty before the end of the period specified in the notice.

(3) SEPA must consult an engineer appointed by it under this section about the period to be specified in the notice.

(4) An engineer may be appointed under this section, or section 69, if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section or (as the case may be) that section.

(5) Notice under subsection (2) must—
(a) specify the measure that SEPA requires to be taken,
(b) state SEPA’s reasons for considering that this section applies,
(c) specify any particular steps SEPA considers must be taken to take the measure.

(6) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in connection with consultation under this section.

(7) The Scottish Ministers may by order make provision allowing a reservoir manager to whom notice is given under subsection (2)—
   (a) to apply to SEPA for a review of its decision to give the notice,
   (b) to appeal to the Scottish Ministers against the decision to give the notice.

(8) Any such order—
   (a) must, where it includes provision for—
      (i) a right of review, specify the period within which a review may be made,
      (ii) a right of appeal, specify the period within which an appeal may be made, and
   (b) may make further provision in relation to reviews and appeals in relation to notices given under subsection (2).

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

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

(1A) Where a reservoir manager has a right of review in accordance with an order made under section 67(7), non-compliance is an offence only if—
   (a) the period within which an application for review may be made has expired, or
   (b) where such an application has been made, it has been withdrawn or determined.

(1B) Where a reservoir manager has a right of appeal in accordance with an order made under section 67(7), non-compliance is an offence only if—
   (a) the period within which an appeal may be made has expired, or
   (b) where such an appeal has been made, it has been withdrawn or determined.

(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 12 months, or to a fine not exceeding the statutory maximum, or to both.

69 SEPA’s power to arrange taking of safety and other measures

(1) This section applies where SEPA 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) SEPA may arrange for the taking of the measure under the supervision of an engineer appointed 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 SEPA.

(4) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in making arrangements under this section.

70 Offences under sections 40(1)(d) and 50(1)(c): further remedies

(1) This section applies where a reservoir manager is convicted of an offence under—
   (a) section 40(1)(d) (failure to comply with direction in safety report),
   (b) section 50(1)(c) (failure to comply with direction in inspection report).

(2) The court may, in addition to or instead of imposing any penalty competent under section 40(3) or (as the case may be) 50(3), order the reservoir manager to take such steps as are specified in the order, within such period as is so specified—
   (a) to secure compliance with the direction concerned,
   (b) to secure the remedying or mitigating of the effects of the failure to comply with the direction.

(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.

Stop notices

71 Stop notices

(1) The Scottish Ministers may by order make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the manager has taken the steps specified in the notice.

(4) Provision under subsection (1) may confer power to give a stop notice only in relation to a case where the reservoir manager is carrying on the activity and either—
   (b) SEPA reasonably believes that the activity as carried on by the manager presents a significant risk of causing an uncontrolled release of water from the reservoir, or
   (c) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under this Part.

(5) Where provision under subsection (1) confers power to give a stop notice in a case falling within subsection (4)(b)—
(a) SEPA must consult the Institution of Civil Engineers before it exercises the power,
(b) the steps specified in any such stop notice in pursuance of subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(b),
(c) SEPA must give the Scottish Ministers notice of each occasion on which it exercises the power as soon as reasonably practicable after doing so.

72 Stop notices: procedure

(1) Provision under section 71(1) must secure the results in subsection (2) in a case where a stop notice is given.

(2) The results are that—
(a) the stop notice must comply with subsection (3),
(b) the reservoir manager to whom it is given may appeal against the decision to issue it,
(c) where, after giving of the notice, SEPA is satisfied that the manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a “completion certificate”),
(d) the notice ceases to have effect on the giving of a completion certificate,
(e) the reservoir manager to whom the notice is given may at any time apply for a completion certificate,
(f) SEPA 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 was made,
(g) the reservoir manager to whom the notice is given may appeal to the Scottish Ministers against a decision not to give a completion certificate.

(3) To comply with this subsection a stop notice must include information as to—
(a) the grounds for giving the notice,
(b) rights of appeal,
(c) the consequences of non-compliance.

(4) Provision pursuant to subsection (2)(b) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA to give 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,
(e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given,
(f) the manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.
Part I—Reservoirs

Chapter 9—Civil enforcement, emergency powers and further offences

(5) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

(6) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA 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 unfair or unreasonable.

73 Stop notices: compensation

(1) Provision under section 71(1) must include provision for SEPA to compensate the reservoir manager for loss suffered as the result of the issue of the stop notice.

(2) Provision pursuant to subsection (1) may provide for compensation—

(a) only in cases specified (by the order under section 71(1)),

(b) only in relation to descriptions of loss so specified.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager to whom the stop notice is given may appeal to the Scottish Ministers against—

(a) a decision of SEPA not to award compensation,

(b) a decision of SEPA as to the amount of the compensation.

74 Stop notices: enforcement

(1) Provision under section 71(1) may provide that where a reservoir manager to whom a stop notice is given does not comply with it, the manager commits an offence and is liable on summary conviction—

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,

(b) in the sheriff court—

(i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,

(ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

(2) Provision under section 71(1) must provide that it is a defence to a charge in proceedings for an offence created by the order for the person to show both—

(a) that the failure to comply with the stop notice 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

(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, and

(iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

**Emergency powers**

75 Emergency powers

(1) This section applies where it appears to SEPA 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) SEPA 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) SEPA must—

   (a) appoint 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 appointed engineer.

(4) An engineer may be appointed under this section if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section.

(5) SEPA must give notice to the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)—

   (a) must be given as soon as practicable (which may be after any works have begun), but

   (b) is not required if SEPA is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in the exercise of powers under this section.

**Other civil enforcement measures**

76 Enforcement undertakings

(1) The Scottish Ministers may by order make provision—

   (a) as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where SEPA has reasonable grounds to suspect that the manager has committed an offence under this Part,

   (b) for the acceptance of the undertaking to have the consequences in subsection (5).
(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) An “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking before the end of such period as may be so specified.

(4) The action specified in an enforcement undertaking must be—
   (a) action to secure that the offence does not continue or recur,
   (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,
   (c) action (including the payment of a sum of money) to benefit any person adversely affected by the offence,
   (d) action of a description specified in the order.

(5) The consequences in this subsection are that, unless the reservoir manager from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
   (a) the reservoir manager may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,
   (b) SEPA may not impose on the manager any fixed monetary penalty which it would otherwise have power to impose by virtue of section 77(1) in respect of the act or omission,
   (c) SEPA may not impose on the manager any further enforcement measure which it would otherwise have power to impose by virtue of section 80(1) in respect of the act or omission.

(6) Provision under subsection (1) may in particular include provision—
   (a) as to the procedure for entering into an undertaking,
   (b) as to the terms of an undertaking,
   (c) as to the publication of an undertaking by SEPA,
   (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 SEPA of compliance with an undertaking,
   (g) as to the certification by SEPA that an undertaking has been complied with,
   (h) allowing an application for a review by SEPA before an appeal to the Scottish Ministers against refusal to give such certification,
   (i) 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,
   (j) 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 of any criminal or other sanction on the manager,
   (k) 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,
(l) for the creation of offences,

(m) for any offence created to be triable only summarily,

(n) 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,

(o) for it to be a defence to a charge in proceedings for an offence created by the order for a person to show both—

(i) that the failure to comply with the requirements 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 SEPA as soon as practicable after the failure arose.

20 Fixed monetary penalties

(1) The Scottish Ministers may by order make provision about the imposition by SEPA of fixed monetary penalties on reservoir managers of controlled reservoirs in relation to offences under this Part.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) Provision under subsection (1) must provide that—

(a) fixed monetary penalties may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,

(b) fixed monetary penalties are to be imposed by notice,

(c) the amount of the penalty which can be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for the offence.

(4) A fixed monetary penalty is a requirement to pay to SEPA a penalty of a specified amount (with payment attracting the results mentioned in paragraphs (a) and (b) of section 79(2)).

(5) For the purposes of this section and section 78 “specified” means specified in an order made under subsection (1).

78 Fixed monetary penalties: procedure

(1) Provision under section 77(1) must secure the results in subsection (2).
(2) The results are that—

(a) where SEPA proposes to impose a fixed monetary penalty on a reservoir manager, it must give the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),

(b) the notice of intent also offers 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 SEPA in relation to the proposed imposition of the fixed monetary penalty,

(ii) SEPA must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where SEPA decides to impose the fixed monetary penalty, the notice imposing it (“the final notice”) complies with subsection (5),

(e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Scottish Ministers 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 payment may be made,

(c) the effect of payment of the sum referred to in subsection (2)(b),

(d) the right to make written representations and objections,

(e) the circumstances in which SEPA 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 given,

(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 in subsection (2)(c)(ii)—

(a) must secure that SEPA 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 SEPA 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,

(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 SEPA 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 may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

79 Fixed monetary penalties: criminal proceedings and conviction etc.

(1) Provision under section 77(1) must secure that, in a case where a notice of intent referred to in section 78(2)(a) is given to a reservoir manager—

(a) no criminal proceedings for the offence to which the notice relates may be instituted against the manager in respect of the act or omission to which the notice relates before the end of the period in which the manager may discharge liability for the fixed monetary penalty pursuant to section 78(2)(b),

(b) SEPA may not before the end of that period give a stop notice to or impose a further enforcement measure on the manager in respect of the act or omission giving rise to the notice,

(c) if the manager so discharges liability—

(i) the manager may not at any time be convicted of the offence to which the notice relates in relation to that act or omission,

(ii) SEPA may not give a stop notice to or impose a further enforcement measure on the manager in respect of that act or omission.

(2) Provision under section 77(1) must also secure that, in a case where a fixed monetary penalty is imposed on a reservoir manager—

(a) the manager may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,

(b) SEPA may not give a stop notice to or impose a further enforcement measure on the manager in respect of the act or omission giving rise to the penalty.

80 Further enforcement measures

(1) The Scottish Ministers may by order make provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures in relation to offences under this Part.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) Provision under subsection (1)—
(a) must provide that further enforcement measures—
   (i) may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,
   (ii) may not be imposed on a reservoir manager on more than one occasion in relation to the same act or omission,
   (iii) are to be imposed by notice,

(b) may provide that further enforcement measures may be imposed in addition to any requirement referred to in section 63(2) or 67(2).

(4) A further enforcement measure is any of the following—

   (a) a requirement to pay to SEPA a penalty of such amount as SEPA may in each case determine (but not exceeding the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction),
   (b) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the offence does not continue or recur,
   (c) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the position is so far as possible restored to what it would have been if the offence had not been committed.

(5) For the purposes of this Part—

   a “variable monetary penalty” means a requirement referred to in subsection (4)(a),
   a “restraint notice” means a requirement referred to in subsection (4)(b),
   a “restoration notice” means a requirement referred to in subsection (4)(c).

**Further enforcement measures: procedure**

(1) Provision under section 80(1) must secure the results in subsection (2).

(2) The results are that—

   (a) where SEPA proposes to impose a further enforcement measure on a reservoir manager, it must give 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 SEPA in relation to the proposed imposition,
   (c) after the end of the period for making such representations and objections, SEPA must decide whether to—
      (i) impose the further enforcement measure (with or without modifications),
      (ii) impose any other further enforcement measure which SEPA may impose,
   (d) where SEPA decides to impose a further enforcement measure, the notice (the “final notice”) complies with subsection (6),
   (e) the reservoir manager on whom a further enforcement measure is imposed may appeal to the Scottish Ministers 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 further enforcement measure,
(b) the right to make representations and objections,
(c) the circumstances in which SEPA may not impose the further enforcement measures,
(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 is given.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that SEPA may not decide to impose a further enforcement measure 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 SEPA may not decide to impose a further enforcement measure.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

(a) the reservoir manager to whom the notice of intent is given to be able to offer an 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) SEPA to be able to accept or reject such an undertaking,
(c) SEPA 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 further enforcement measure,
(b) where the further enforcement measure is a variable monetary penalty—
   (i) how payment may be made,
   (ii) the period within which payment must be made,
   (iii) any early payment discounts or late payment penalties,
(c) rights of appeal,
(d) the consequences of non-compliance.

(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 SEPA include the following—

(a) that the decision was based on an error of fact,
(b) that the decision was wrong in law,
(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
(d) in the case of a restraint notice or a restoration notice, that the nature of the requirement is unreasonable,
(e) that the decision was unreasonable for any other reason.
(8) Provision to secure the result in that subsection may include provision about the
determining by or under the order of a fee, and the charging of any fee so determined, in
connection with an appeal and may require the return of a fee paid in relation to an
appeal which is upheld.

82 Further enforcement measures: criminal proceedings and conviction

(1) Provision under section 80(1) must secure the result in subsection (2) in any of the
following cases—

(a) where a further enforcement measure is imposed on a reservoir manager,
(b) where an undertaking referred to in section 81(5) is accepted from a reservoir
manager.

(2) The result is that the reservoir manager may not at any time be convicted of the offence
in respect of the act or omission giving rise to the further enforcement measure or
undertaking except in a case mentioned in subsection (3).

(3) The case is where each of the following applies—

(a) a restraint notice or restoration notice is imposed on the manager, or an
undertaking referred to in section 81(5) is accepted from the manager,
(b) no variable monetary penalty is imposed,
(c) the manager fails to comply with the restraint notice, restoration notice or
undertaking.

(4) Provision under section 80(1) may for the purposes of the case referred to in subsection
(3) extend any period within which criminal proceedings may be instituted against the
reservoir manager.

83 Further enforcement measures: enforcement

(1) Provision under section 80(1) may include provision for a reservoir manager to pay a
monetary penalty (a “non-compliance penalty”) to SEPA if the manager fails to comply
with any of the following—

(a) a restraint notice or restoration notice imposed on the manager,
(b) an undertaking referred to in section 81(5).

(2) Provision pursuant to subsection (1) may—

(a) specify the amount of the non-compliance penalty,
(b) provide for the amount to be calculated by reference to criteria specified by order
by the Scottish Ministers,
(c) provide for the amount to be determined by SEPA,
(d) provide for the amount to be determined in any other way,

but 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 concerned 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 given by SEPA,
(b) the reservoir manager on whom it is imposed may appeal to the Scottish Ministers against the notice.

(4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection 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 unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).

(5) An order under section 80(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 an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Miscellaneous

84 Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)

(1) The consultation required by sections—

(a) 71(2) (stop notices),
(b) 76(2) (enforcement undertakings),
(c) 77(2) (fixed monetary penalties),
(d) 80(2) (further enforcement measures),

is consultation with the persons and organisations mentioned in subsection (2).

(2) The persons are—

(a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the making of the proposed order,
(b) such other persons as the Scottish Ministers consider appropriate.

85 Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures

Where the Scottish Ministers make provision—

(a) by order under section 71(1) (giving by SEPA of stop notices),
(b) by order under section 76(1) (acceptance of enforcement undertakings by SEPA),
(c) by order under section 77(1) (imposition by SEPA of fixed monetary penalties),
(d) by order under section 80(1) (imposition by SEPA of further enforcement measures),

the order concerned must require SEPA to publish guidance about the use of the powers conferred on it by the order.
86 **Recovery by SEPA of expenses**

(1) Provision under section 71(1) or 80(1) may include provision for SEPA, by notice, to require a reservoir manager to whom a stop notice is given or on whom a further enforcement measure is imposed, to pay the amount of any expenses reasonably incurred by SEPA in relation to (and up to the time of) the giving of the notice or (as the case may be) imposition of the measure.

(2) In subsection (1), the reference to “expenses” includes in particular—
   (a) investigation expenses,
   (b) administration expenses,
   (c) expenses of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager required to pay the expenses may appeal to the Scottish Ministers against—
   (a) the decision of SEPA to impose the requirement to pay expenses,
   (b) the decision of SEPA as to the amount of the expenses.

(4) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

86A **Guidance: appeals**

The Scottish Ministers must publish guidance on the process of making appeals in pursuance of sections 67, 72, 73, 76, 78, 81, 83 and 86.

87 **Publication of enforcement action**

(1) The Scottish Ministers may by order require SEPA to publish such information as may be specified in the order as regards cases in which it has—
   (a) appointed a construction engineer, an inspecting engineer or a supervising engineer under section 65,
   (b) arranged for the taking of any measure under section 69.

(2) Where the Scottish Ministers make provision by order under—
   (a) section 71(1) as to the issuing by SEPA of stop notices,
   (b) section 77(1) as to the imposition by SEPA of fixed monetary penalties,
   (c) section 80(1) as to the imposition by SEPA of further enforcement measures,

   the order concerned may require SEPA to publish such information as may be specified in the order as regards cases in which it has done what the order permits it to do.

(3) In subsection (2), the reference to cases in which SEPA has done what the order permits it to do does not include cases where the stop notice, fixed monetary penalty or (as the case may be) further enforcement measure has been imposed but overturned on appeal.
Powers of entry

(1) A person authorised by SEPA is entitled, at any reasonable time for any of the purposes in subsection (2), to enter—

(a) land on which a controlled reservoir is situated,

(b) land on which SEPA considers there is situated a structure or area (or combination) referred to in section 1(4) in relation to which SEPA is considering requesting the making an order under that subsection,

(c) land on which a structure or area (which previously at any time has been a controlled reservoir) is situated.

(2) The purposes are to carry out an inspection, survey or other operation—

(a) to determine whether any provision of this Part applies,

(b) for the purpose of assisting SEPA in giving the reservoir a provisional risk designation or risk designation, or reviewing its risk designation,

(c) to determine whether a measure directed in a safety report has been taken,

(d) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,

(e) to determine—

(i) whether a measure directed in an inspection report has been taken (whether before or after the giving of a notice under section 67),

(ii) the period to be specified in a notice under that section,

(f) to determine whether a direction by a supervising engineer under section 48(4) has been complied with,

(g) to determine whether the records required by sections 49 and 54 are being maintained,

(h) to determine whether incidents are being reported in accordance with regulations under section 52(1),

(i) to determine whether a flood plan is being prepared in accordance with regulations under section 53(1),

(j) for the purposes of section 69,

(k) to determine what (if any) emergency measures should be taken under section 75, or for any purpose connected with taking such measures,

(l) to assess whether any offence under this Part may be being committed.

Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right of entry under section 88 to do so, if necessary using reasonable force, in accordance with the warrant.

(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath as to both of the following—

(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,
Part 1—Reservoirs

Chapter 9—Civil enforcement, emergency powers and further offences

(b) that any of the following applies—

(i) the conditions in subsection (3) are satisfied,
(ii) the land is unoccupied, or
(iii) the case is one of urgency.

(3) The conditions referred to in subsection (2)(b)(i) are—

(a) that the person applying for the warrant has given notice under section 90(3)(a) of the person’s intention to exercise the right,
(b) that the notice period has expired,
(c) that either—

(i) permission to exercise the right in relation to the land has been refused, or
(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—

(a) does not entitle a person to use force against an individual,
(b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

90  Powers of entry: supplementary

(1) Where entry under section 88 is for a purpose in subsection (2)(k) of that section the right to enter extends to any neighbouring land.

(2) A right to enter land conferred by section 88 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—

(a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person,
(b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(3) Except for a purpose referred to in section 88(2)(k), a person may not demand entry to land which is occupied unless either—

(a) at least 7 day’s notice has been given to the occupier, or
(b) the entry is authorised by a warrant under section 89.

(4) Notice under subsection (3)(a) must—

(a) specify the purpose for which entry is required,
(b) specify so far as practicable the nature of the proposed works on the land.

(5) A person authorised by virtue of section 88 to enter land must on request produce written evidence of the authorisation.
91 **Offence: preventing or obstructing entry**

(1) Any person who intentionally 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-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.

92 **Compensation**

(1) SEPA must pay compensation in accordance with this section 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.

(2) Compensation is to be paid in respect of the damage or disturbance to—

(a) a person with an interest in the land,

(b) a person whose enjoyment of the land is disturbed.

(3) Any dispute about compensation under this section is to be determined by the Lands Tribunal for Scotland.

(4) Compensation payable under this section is to be treated, for the purposes of recovery from the reservoir manager, as expense incurred by SEPA in the exercise of its powers under section 75.

93 **Reports by SEPA to the Scottish Ministers**

(1) SEPA must report to the Scottish Ministers about the steps it has taken to secure the compliance by reservoir managers of controlled reservoirs with the requirements of this Part.

(2) Reports under subsection (1) must—

(a) be at such intervals and times as the Scottish Ministers direct,

(b) contain such information as they direct.

94 **Affording of reasonable facilities to engineers**

(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 functions under this Part.

(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-risk reservoir or a medium-risk reservoir, the record maintained by the manager under section 49,

(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 construction engineer, an inspecting engineer or a supervising engineer appointed for the time being in relation to the reservoir.

95 Power of SEPA to require information and assistance

(1) The reservoir manager of a controlled reservoir must, on being requested by SEPA, provide SEPA with such information and assistance as it may reasonably seek in connection with the exercise of its powers and duties under this Part.

(2) The reservoir manager in particular—

(a) must, on being requested by SEPA, make available to it the records referred to in section 94(2)(a),

(b) must, on being so requested, provide SEPA with such further information or particulars as SEPA may require, in such form and manner as SEPA may by notice require.

96 Offences: sections 94 and 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 94 (affording of reasonable facilities to engineers),

(b) the requirements of section 95 (provision of information and assistance to SEPA).

(2) A reservoir manager of a controlled reservoir who intentionally alters, suppresses or destroys a document which the person has been required by virtue of either of those sections to produce commits an offence.

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 10

MISCELLANEOUS

96A Grants

(1) The Scottish Ministers may pay grants to a reservoir manager for the purposes of enabling or assisting the reservoir manager to comply with any obligation arising under or by virtue of this Part.
(2) Grants are payable only where the reservoir concerned—
(a) is a high-risk reservoir or a medium-risk reservoir, and
(b) was not a “large raised reservoir” for the purposes of section 1 of the 1975 Act on
the date immediately before that section was repealed.

(3) Grants may be subject to such conditions (including conditions on repayment) as the
Scottish Ministers think fit.

97 **Assessment of engineers’ reports etc.**

(1) The Scottish Ministers may by regulations make provision for the assessment of the
quality of reports, written statements and certificates given under this Part by—
(a) construction engineers,
(b) inspecting engineers,
(c) supervising 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 SEPA and the Scottish Ministers,
(f) the steps that may be taken by SEPA or the Scottish Ministers following an
assessment.

98 **Notice to SEPA of revocation of appointment or resignation of engineer**

(1) Where the reservoir manager of a controlled reservoir revokes the appointment of a
construction engineer, an inspecting engineer or a supervising engineer appointed in
relation to the reservoir, the manager must give SEPA notice of the revocation and of
the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns such appointment—
(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 SEPA a copy of the notice.

(3) Notice under subsection (1) or subsection (2)(a) must be given not later than 28 days
after the revocation or (as the case may be) 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-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.

(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 engineer’s resignation.

98A SEPA: Ministerial directions
SEPA must, in carrying out its functions under this Part, act subject to and in accordance
with such directions as may be given by the Scottish Ministers.

99 Form and content of notices, reports, certificates etc.
The Scottish Ministers may by regulations make provision as to—
   (a) the form and content of any notice required under this Part,
   (b) the form of any report or certificate by a construction engineer or an inspecting
       engineer or of any notice, written statement or recommendation by a supervising
       engineer under this Part.

100 Notices by SEPA
   (1) Section 123 of the Environment Act 1995 (c.25) (service of documents) applies to any
document authorised or required by virtue of any provision of this Act to be given by
SEPA as if it were authorised or required to be given (or served) under that Act.
   (2) Where SEPA is unable after reasonable enquiry to ascertain the name or address of a
reservoir manager of a controlled reservoir, a notice by SEPA under this Part is to be
   treated as given to the manager if either—
       (a) it is left in the hands of a person who is or appears to be resident or employed at
           the site of the reservoir, or
       (b) it is conspicuously affixed to a building or object at the site of the reservoir.

101 Change to the Institution of Civil Engineers
If the Institution of Civil Engineers ceases to exist, the Scottish Ministers may by order
amend references in this Part to the Institution and to its President.

102 Civil liability
This Part does not confer a right to claim damages in respect of a breach of an obligation
imposed by the Part.
PART 2

PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

103 Remedial and restoration measures regulations

(1) In section 22 (remedial and restoration measures) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3), in subsection (3), after paragraph (b) insert—

“(c) for any of the purposes specified in paragraphs 1 to 3 of schedule 2A.

(4) Paragraphs 4 and 5 of that schedule have effect for supplementing paragraphs 1 to 3.”.

(2) After schedule 2 to that Act insert—

“SCHEDULE 2A
(introduced by section 22)

REMEDIAL AND RESTORATION MEASURES REGULATIONS: OFFENCES

Offences

1 Creating offences and dealing with matters relating to such offences, including—

(a) the provision of defences, and

(b) evidentiary matters.

2 Enabling, where a person has been convicted of an offence under the regulations, a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment).

3 Making provision which, subject to any modification that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by section 157 or 158 of the Environmental Protection Act 1990 (c.43).

Supplementary

4 (1) The regulations may provide for any such offence as is mentioned in paragraph 1 to be triable—

(a) only summarily,

(b) either summarily or on indictment.

(2) The regulations may provide for such an offence which is triable only summarily to be punishable on conviction by—

(a) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or

(b) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale),

or both.

(3) The regulations may provide for any such offence which is triable either summarily or on indictment to be punishable—

(a) on summary conviction, by—
(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or

(ii) a fine not exceeding such amount as is specified (which must not exceed the statutory maximum),

or both,

(b) on conviction on indictment by—

(i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years), or

(ii) a fine,

or both.

Interpretation

5 In this schedule—

“the regulations” means regulations under section 22,

“specified” means specified in the regulations.”.

PART 3

GENERAL

104 Crown application

(1) Part 1 of this Act binds the Crown and applies to any Crown land as it applies in relation to any other land.

(2) The modifications made by Part 2 bind the Crown to the extent that the enactment modified binds the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of SEPA or a person authorised by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 88 (whether those specified in that section or the ancillary powers referred to in section 90(1) or (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—

(a) “Crown land” means land, an interest in which—

(i) belongs to Her Majesty in right of the Crown or in right of Her private estates,

(ii) belongs to an office-holder in the Scottish Administration or to a government department,
(iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,

(b) “appropriate authority”, in relation to any land—

(i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,

(ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,

(iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,

(iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means the office-holder or government department.

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

105 Offences by bodies corporate

(1) Where—

(a) an offence under this Part has been committed by a body corporate or a Scottish partnership or other unincorporated association,

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
105A Consequential amendment and repeals

(1) In section 14(2)(a) of the Local Government and Planning (Scotland) Act 1982 (c.43), for “(within the meaning of the Reservoirs Act 1975)” substitute “(within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00) but irrespective of the volume of water held in the reservoir)”.

(2) Paragraph 98 of schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) is repealed.

(3) Paragraph 7 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3) is repealed.

(4) In section 55(2)(f) of the Building (Scotland) Act 2003 (asp 8), for “large raised reservoir within the meaning of the Reservoirs Act 1975 (c.23)” substitute “controlled reservoir within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00)”.

(5) Part 7 of the Flood Risk Management (Scotland) Act 2009 (asp 6) is repealed.

106 Ancillary provision

(1) The Scottish Ministers may by order make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provisions of this Act.

(2) An order under subsection (1) may modify any enactment, instrument or document.

107 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.

(2) Any such power includes power to make—

(a) in the case of an order under section 109(1) (commencement orders), such transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(b) in the case of any other order or any regulations—

(i) such supplemental, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(ii) different provision for different purposes.

(3) Unless subsection (4) provides otherwise, a statutory instrument containing an order (other than an order made under section 109(1)) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Parliament.

(4) An order or regulations must not be made under any of the following provisions unless a draft of the statutory instrument containing the order or (as the case may be) the regulations has been laid before, and approved by a resolution of, the Parliament—

(za) section 1(4),

(a) section 1(6)(a),

(b) section 21(4),

(c) section 52(1) or 53(1),

(ca) section 67(7),
(d) section 71(1), 76(1), 77(1), 80(1) or 101,
(e) section 106(1) (if the order contains supplemental provision or provision which adds to, replaces or omits any part of the text of an Act).

108 Defined expressions
The expressions listed in the schedule are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

109 Commencement and short title
(1) The provisions of this Act, except this section and sections 1, 2, 3, 7, 107 and 108, come into force on such day as the Scottish Minsters by order appoint.
(2) This Act may be cited as the Reservoirs (Scotland) Act 2011.
# SCHEDULE

*(introduced by section 108)*

**INDEX OF DEFINED EXPRESSIONS**

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>the 1975 Act</td>
<td>section 8(1)</td>
</tr>
<tr>
<td>construction certificate</td>
<td>section 36</td>
</tr>
<tr>
<td>construction engineer</td>
<td>section 31(3)</td>
</tr>
<tr>
<td>controlled reservoir</td>
<td>sections 1 and 2</td>
</tr>
<tr>
<td>controlled reservoir being abandoned</td>
<td>section 30(7)(d) (see also section 30(6))</td>
</tr>
<tr>
<td>controlled reservoir being altered</td>
<td>section 30(7)(a) (see also section 30(4) to (6))</td>
</tr>
<tr>
<td>controlled reservoir being constructed</td>
<td>section 30(7)(a) (see also section 30(3))</td>
</tr>
<tr>
<td>controlled reservoir being discontinued</td>
<td>section 30(7)(c) (see also section 30(5))</td>
</tr>
<tr>
<td>controlled reservoir being restored to use</td>
<td>section 30(7)(b) (see also section 30(3))</td>
</tr>
<tr>
<td>controlled reservoirs register</td>
<td>section 9</td>
</tr>
<tr>
<td>emergency response information</td>
<td>section 55</td>
</tr>
<tr>
<td>enforcement undertaking</td>
<td>section 76(3)</td>
</tr>
<tr>
<td>final certificate</td>
<td>section 37</td>
</tr>
<tr>
<td>fixed monetary penalty</td>
<td>section 77(4)</td>
</tr>
<tr>
<td>flood plan</td>
<td>section 53</td>
</tr>
<tr>
<td>further enforcement measure</td>
<td>section 80(4)</td>
</tr>
<tr>
<td>high-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>incident</td>
<td>section 52</td>
</tr>
<tr>
<td>inspecting engineer</td>
<td>section 43(1)</td>
</tr>
<tr>
<td>inspection compliance certificate</td>
<td>section 46(4) and (5)</td>
</tr>
<tr>
<td>inspection report</td>
<td>section 45(1)(b) and (3)</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>interim inspection compliance certificate</td>
<td>section 46(2) and (3)</td>
</tr>
<tr>
<td>low-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>medium-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>other qualified engineer</td>
<td>section 46(1A) (see also section 45(5))</td>
</tr>
<tr>
<td>panels of reservoir engineers</td>
<td>section 25</td>
</tr>
<tr>
<td>preliminary certificate</td>
<td>section 35</td>
</tr>
<tr>
<td>provisional risk designation</td>
<td>section 17(3)</td>
</tr>
<tr>
<td>relevant works</td>
<td>section 30(7)(e)</td>
</tr>
<tr>
<td>reservoir manager</td>
<td>section 3 (see also section 4)</td>
</tr>
<tr>
<td>risk designation</td>
<td>section 18(3)</td>
</tr>
<tr>
<td>safety measure certificate</td>
<td>section 34(2) and (3)</td>
</tr>
<tr>
<td>safety report</td>
<td>section 33 (see also section 32(3) to (6))</td>
</tr>
<tr>
<td>SEPA</td>
<td>section 7</td>
</tr>
<tr>
<td>stop notice</td>
<td>section 71(3)</td>
</tr>
<tr>
<td>supervising engineer</td>
<td>section 47(1)</td>
</tr>
</tbody>
</table>
Reservoirs (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the regulation of the construction, alteration and management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs, for the repeal and replacement of the Reservoirs Act 1975, about offences to facilitate the achievement of the environmental objectives set out in river basin management plans; and for connected purposes.

Introduced by: Richard Lochhead
On: 6 October 2010
Supported by: Roseanna Cunningham
Bill type: Executive Bill
RESERVOIRS (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Reservoirs (Scotland) Bill (introduced in the Scottish Parliament on 6 October 2010) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sideling in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill as amended at Stage 2. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND – RESERVOIRS ACT 1975

4. The Reservoirs Act 1975 imposes duties on persons (referred to as “undertakers”) who own, operate or use large raised reservoirs. These duties regulate maintenance and inspection as well as structural changes to large raised reservoirs and, in most cases, they require the appointment of qualified civil engineers to inspect and supervise works on reservoirs and recommend safety measures. Where an engineer recommends measures under the 1975 Act, the undertaker generally has a duty to implement those measures. “Relevant authorities” (also referred to in the Act as “enforcement authorities”) then have duties to maintain registers of information about large raised reservoirs, powers and duties to secure that undertakers comply with their duties under the Act and duties to report to the Scottish Ministers. Enforcement action involves service of written notices on undertakers who have failed to appoint engineers or implement measures recommended by engineers. Failure to comply with a notice is a criminal offence and also triggers a power for the enforcement authority to carry out the work itself and recover the costs from the undertaker.
BACKGROUND – FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

5. Part 7 of the Flood Risk Management (Scotland) Act 2009 amended the Reservoirs Act 1975 by inserting provisions which:

- transfer the enforcement responsibility from 32 individual local authorities to Scottish Environment Protection Agency (SEPA);
- require the production of flood plans;
- introduce compulsory post incident reporting;
- extend the enforcement authority powers;
- apply the Reservoirs Act 1975 to the Crown.

6. These provisions have not yet been commenced.

BACKGROUND – WATER ENVIRONMENT AND WATER SERVICES (SCOTLAND) ACT 2003

7. The Water Framework Directive 2000/60/EC ("WFD") established a framework in the field of water policy to drive improvements in Europe’s water environment. The River Basin Management Plan process identifies measures to deliver our objectives under the WFD to address the management of impacts on the water quality of our rivers, lochs, groundwater, transitional waters and wetlands. The Plans identify that around 40% of Scotland’s water bodies are not currently meeting the WFD’s “good status” objective, as a result of the significant number of impacts on waters resulting from historic activities. These waters now require restoration activity to restore them to good status, through an effectively managed and integrated restoration framework.

8. The Water Environment and Water Services (Scotland) Act 2003 ("WEWS") empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, WEWS did not provide for the creation of offences in respect of such regulations.

THE BILL – OVERVIEW

9. The Bill is separated into 3 Parts:

- PART 1 sets out a new regulatory regime for the safe construction and operation of reservoirs in Scotland.
- PART 2 provides for the creation of offences to support WEWS.
- PART 3 includes general provisions.

10. Part 1 is the largest part of the Bill. It makes provision for the compulsory registration of all reservoirs to which the Bill applies (referred to in the Bill as “controlled reservoirs”). It provides for SEPA to assess the risk (in terms of adverse consequences and probability) of an
uncontrolled release of water from each registered reservoir. Different regulatory controls apply to controlled reservoirs with different risk designations. It regulates the construction of reservoirs, imposing a system of inspections, reports and certificates overseen by an engineer appointed from an approved panel. Panels of appropriately qualified engineers are to be established by the Scottish Ministers. It also sets out requirements for the supervision and periodical inspection of controlled reservoirs, as well as creating incident reporting obligations and making provision about the retention of appropriate records. It gives SEPA the power to serve enforcement notices and to step in and take certain actions where reservoir managers have failed to do so, as well as giving SEPA the power to act in an emergency to protect people or property from an escape of water from a controlled reservoir. It also enables the Scottish Ministers to make provision for SEPA to use various civil enforcement measures, intended to enable SEPA to enforce the Bill in a proportionate manner.

11. Part 2 of the Bill amends the Water Environment and Water Services (Scotland) Act 2003 to enable the creation of criminal offences to support regulations to be made under section 22 of that Act concerning the remediation and restoration of the water environment.

12. Part 3 contains general provisions about matters such as ancillary provisions, the power to make regulations, crown application and the short title.

THE BILL – SECTION BY SECTION

PART 1 – RESERVOIRS

CHAPTER 1 – CONTROLLED RESERVOIRS, RESERVOIR MANAGERS ETC.

Section 1 – Controlled Reservoirs

13. The regulatory regime provided for in the Bill only applies to “controlled reservoirs” as defined by the Bill. The definition of a “controlled reservoir” is set out in sections 1 and 2 and includes structures designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Subsection (3) provides that combinations of such structures are to be treated as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can or does flow between them and that there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity and flow. This is intended to ensure that cascades or series of interlinked reservoirs are subject to control. Such combinations have the potential to cause a similar degree of risk to public safety as larger individual reservoirs, notwithstanding that the individual structures that comprise the combination might only hold a relatively small volume of water.

14. Subsection (4) enables Scottish Ministers to provide by order that a particular structure or combination of structures is to be treated as a controlled reservoir notwithstanding that it may not meet the criteria set out in subsection (2) or (3). When doing so the Scottish Ministers must take into account the potential adverse consequences of an uncontrolled release of water from the structure or combination and the probability of such a release. This provision enables Ministers
to treat a smaller reservoir as a controlled reservoir if it is thought that, despite its smaller capacity, the risk that it poses is nevertheless a serious one.

15. Subsection (6)(a) enables the Scottish Ministers to make provision by order for a different volume of water to be substituted for the volume currently specified in sections 1(2), (3)(c) and (4)(b)(ii), sections 30(3) and (5), and sections 33(2)(b) and 37(3)(b). This enables Ministers to alter the threshold above which reservoirs are deemed to be controlled reservoirs and therefore subject to the regulatory regime of the Bill. Subsection (6)(b) enables Scottish Ministers to determine in regulations when a loch or area is considered to be artificial or partly artificial, how the volume of water capable of being held is calculated, and the meaning of “natural level” and “surrounding land” for the purposes of this Part of the Bill. Subsection (7) requires the Scottish Ministers to consult the Institution of Civil Engineers about the volume of water which should be specified in an order under subsection (6)(a) before making the order.

Section 2 – Controlled reservoirs: supplementary

16. Section 2(1) sets out some of the elements that comprise a “controlled reservoir” to avoid any doubt about whether these elements are covered by the Bill. Subsection (2) lists particular things that are not controlled reservoirs and therefore not subject to regulation under the Bill. Subsection (3) enables Scottish Ministers to define with more precision what structures are not controlled reservoirs and enables them to exclude other things from being (or being treated as) controlled reservoirs.

Section 3 – Reservoir Managers

17. Responsibility for complying with most of the requirements of the Bill is placed upon individuals referred to in the Bill as “reservoir managers”. Section 3 sets out who the reservoir manager of a controlled reservoir is for the purposes of the Bill.

18. Subsection (2) provides that Scottish Water is the reservoir manager for all controlled reservoirs that are managed or operated by it. Where Scottish Water is the reservoir manager on this basis, there can be no other reservoir managers of that reservoir.

19. Taken together, subsections (3) and (4) determine who the reservoir manager is where Scottish Water do not manage or operate the reservoir. Where the reservoir or any part of the reservoir is managed or operated by a particular person where they are not the owner of the reservoir or that part of it, that person is the reservoir manager. If no person other than the owner manages or operates the reservoir, or any part of it, the responsibility of being reservoir manager falls to the owner (or owners) of the reservoir or parts of the reservoir.

20. Where there is more than one person managing or operating the reservoir, each will be a reservoir manager (i.e. there will be more than one reservoir manager).

21. Where part only of the reservoir is managed or operated by a person other than an owner, both that person and the owner of the other part will be the reservoir managers.

22. Subsection (4)(a) sets out that managing or operating a reservoir includes controlling the flow of water in or out of the reservoir. Subsection (4)(b) provides that references to managing or
Section 4 – Multiple reservoir managers: supplementary

23. Section 4 makes provision about the situation where there is more than one reservoir manager in relation to a controlled reservoir. Section 4(2) provides that the requirements of Part 1 of the Bill apply to each and every reservoir manager separately and any duties of the reservoir manager set out under the Bill have to be complied with by each of them. To avoid the duplication that this may cause and reduce the administrative burden placed on reservoir managers by the Bill, subsection (3) enables reservoir managers to nominate one of their number to fulfil any requirements of Part 1 to which they are all subject. Where such a nomination is made, subsection (4) requires the nominating managers to give notice of the nomination to SEPA and to any engineer appointed in relation to the reservoir. Where such a nomination is made, SEPA may (if it so chooses) notify and consult only the nominated reservoir manager (to the exclusion of other reservoir managers of that reservoir) when required to consult the reservoir manager of that reservoir under the Bill. Similarly, engineers appointed under the Bill may give certificates and other documents that they are required to issue under the Bill to the nominated reservoir manager only.

Section 5 – Duty of multiple reservoir managers to cooperate

24. Section 5 requires reservoir managers, where there are 2 or more of them in respect of a controlled reservoir, to cooperate with each other as far as is necessary to enable all of the reservoir managers for the reservoir to comply with the provisions listed in Subsection (1). Subsection (2) makes it an offence not to cooperate under subsection (1). Subsections (3) and (4) set out the maximum penalties associated with that offence.

Section 6 – Guidance by SEPA: management of reservoirs

25. Section 6 requires SEPA to publish guidance regarding the management of controlled reservoirs by reservoir managers and cooperation among multiple reservoir managers by such date as the Scottish Ministers direct. Subsection (2) requires SEPA to consult the Institution of Civil Engineers and any other persons it considers appropriate before publishing such guidance.

Section 8 – The 1975 Act and its repeal

26. The current regulatory regime governing the safety of reservoirs is provided by the Reservoirs Act 1975. The Bill is intended to replace that regime and so section 8(2) repeals the Reservoirs Act 1975 for Scotland.

CHAPTER 2 – REGISTRATION

Section 9 – Controlled reservoirs register

27. Section 9 requires SEPA to establish and maintain a register of controlled reservoirs.

28. Subsection (2) lists the information which must be included in the register for each controlled reservoir, which includes information such as the name and location of the reservoir,
its maximum capacity, and the name and address of the reservoir manager, as well as copies of any reports, certificates and written statements relating to the reservoir, and a map showing where the water would be likely go in the event of an uncontrolled release of water from the reservoir. Subsection (3) enables Scottish Ministers to make further provision in regulations to require further information to be contained in the register and make provision about the manner in which information in the register is to be recorded in the register.

29. Subsection (4) requires SEPA to make the register available for public inspection and subsection (5) enables the Scottish Ministers by order to stipulate where it is to be kept.

Section 10 – Reservoir managers’ duty to register

30. This section requires the reservoir managers of controlled reservoirs to register their reservoirs with SEPA. Subsection (2) enables Scottish Ministers to make further provision in regulations about the information to be registered and the timing by which information, or any change to information has to be registered.

Section 11 – Controlled reservoirs required to be registered under the 1975 Act

31. This section requires controlled reservoirs which were previously “large raised reservoirs” under the 1975 Act (and therefore already registered under that Act) to be registered by SEPA within 6 months of the date of commencement of section 9 of the Bill.

Section 12 – Controlled reservoirs not required to be registered under the 1975 Act

32. This section enables Scottish Ministers to specify by order the date by which reservoirs which were not required to be registered under the 1975 Act have to be registered. Subsection (1) requires reservoir managers of these reservoirs to register the reservoir by the time specified in the order.

Section 13 – Controlled reservoirs which become controlled reservoirs after the relevant date

33. This section requires new controlled reservoirs to be registered within 28 days of the first issue of a preliminary certificate. Preliminary certificates are issued under section 35 when the construction engineer overseeing the construction of the reservoir considers that the reservoir may safely be filled (either wholly or partly) with water.

Section 13A – Fees: registration and administration

34. Section 13A enables the Scottish Ministers to make regulations enabling SEPA to charge reservoir managers fees in relation to registration and other annual or recurring fees in relation to the performance of SEPA’s functions under Part 1 of the Bill. Subsection (2) requires the Scottish Ministers to have regard to the reasonable cost of exercising the functions in relation to which the fees are to be charged. Subsection (3) requires the regulations to specify how SEPA is to determine and charge fees and to require SEPA to set out its fees in a charging scheme and consult persons affected by the fees before it publishes or revises the charging scheme. Subsection (4) enables the Scottish Ministers to include such other matters in the regulations as they deem appropriate and sets out examples of what those matters may be.
Section 14 – Registration: supplementary

35. Section 14(1) and (2) require reservoir managers to notify SEPA within 28 days of any change in the reservoir manager of a controlled reservoir and the date of that change. Where SEPA has been informed of a change in management of a reservoir under subsection (1) or (2), subsection (3) requires SEPA, as soon as reasonably practicable, to inform the new reservoir manager of the duties incumbent upon them under the Bill. Subsection (4) enables the Scottish Ministers to make regulations requiring SEPA to prepare and publish guidance on registration and to consult the Institution of Civil Engineers before preparing such guidance.

Section 15 – Transfer of information from existing relevant authorities

36. This section contains detailed provision about the transfer of information from local authorities (who are the enforcement authority under the 1975 Act) to SEPA (who will enforce the new regime under the Bill). Subsection (1) requires local authorities to hand over relevant registers, records and other relevant information to SEPA. Subsection (2) requires each local authority to give SEPA any assistance it may reasonably require for the purposes of taking over as enforcement authority. Subsections (3) to (6) contain transitional arrangements to ensure that acts by local authorities when they were enforcement authorities remain valid and to allow SEPA to take over responsibility for ongoing legal proceedings and other work.

Section 16 – Offences: registration

37. Section 16(1) provides that it is an offence for a reservoir manager to fail to comply with the specified registration requirements. Subsection (2) sets out that it is an offence to knowingly or recklessly give false information in relation to registration or changes of reservoir managers. Subsections (3), (4) and (5) set out the maximum penalties for anyone found guilty of an offence under this section.

CHAPTER 3 – RISK DESIGNATION

Section 17 – Provisional risk designation

38. The Bill is intended to create a risk-based regulatory regime with differing regulatory requirements for controlled reservoirs designated as being of different risk categories. The risk designation process is set out in sections 17 to 24.

39. Section 17 requires SEPA to give controlled reservoirs a provisional risk designation as soon as reasonably practicable after it has registered the reservoir.

40. The categories of risk provided for in the Bill are high, medium and low risk. Subsection (2) requires SEPA to take account of the matters in section 21 when giving the risk designation, which are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release.

41. Reservoir managers will have the opportunity to make representations to SEPA regarding the provisional designation. Subsection (4) provides for the giving of a notice by SEPA to the reservoir manager specifying the provisional risk designation, the reasons for it, how
representations may be made in respect of it, and the time limit for making any such representations.

Section 18 – First risk designation

42. Following the giving of a provisional risk designation, SEPA must give the controlled reservoir a risk designation. Section 18 requires SEPA to do this as soon as is reasonably practicable after taking into account any representations made by the reservoir manager in response to the provisional risk designation within the period specified in section 17(4)(d). SEPA may not give a risk designation under this section earlier than 2 months after notice of the provisional risk designation was given to allow the reservoir manager to make representations within this period.

43. Reservoir managers have a right of review under section 22 against the risk designation and the notice issued by SEPA notifying the reservoir manager of the risk designation must inform the reservoir manager of that right. Following a review there is a right of appeal under section 22A.

Section 19 – Periodic review of risk designation

44. Section 19 requires SEPA to review the risk designation of a controlled reservoir should SEPA have reason to believe that the risk designation is no longer appropriate or, in any event, at least every 6 years. As with the initial risk designation, SEPA must provisionally determine the risk designation that is under periodic review and the reservoir manager will have 2 months to make representations regarding the risk designation given as a result of the periodic review.

Section 20 – Decision following a periodic review

45. Section 20 requires SEPA after taking into account any representations made by the reservoir manager under Section 19(3) to either confirm the reservoir’s designation has not changed or give the reservoir a new risk designation. Subsection (3) ensures that the reservoir manager has the full 2 months to make any representations under section 19(3) by preventing SEPA from making a decision about a risk designation before the end of the 2 month period. Subsection (4) requires SEPA to give the reservoir manager a notice specifying the risk designation, the reasons for the risk designation and giving information about the right to review under section 22.

Section 21 – Risk designation and periodic review: matters to be taken into account

46. Section 21 details the matters that SEPA is to take into account when making a provisional risk designation or a risk designation under sections 17(2), 18(2), 19(2) and 20(2). The matters SEPA must take into account are the potential adverse consequences of an uncontrolled release of water from the reservoir and the probability of such a release. Subsection (2) sets out examples of the potential adverse consequences and subsection (3) sets out examples of the matters SEPA may take into account when assessing the probability of an uncontrolled release. Subsection (4) enables Scottish Ministers after consultation with SEPA and the Institution of Civil Engineers (ICE) to make regulations about any other matters SEPA should take into account when making a risk designation.
Section 22 – Review of SEPA’s decisions relating to risk designations

47. Section 22 enables reservoir managers to seek review of risk designations given by SEPA under sections 18(5) and 20(4). Subsection (2) requires applications for review to be made within 12 months of the date the notice of designation was given. Subsection (3) makes it explicit that the risk designations continue to apply until the review is completed. Subsection (4) provides that if the application for review is upheld then the original designation ceases to apply from the date of SEPA’s decision. Subsection (4A) sets out how SEPA gives its decision on a review of a risk designation. Subsections (5) and (6) enable SEPA to charge a reasonable fee in relation to applications for review, provided the fee is returnable if the review results in the appeal being upheld.

Section 22A – Appeal to the Scottish Ministers following SEPA’s review

48. Section 22A enables reservoir managers to make an appeal to the Scottish Ministers following a review by SEPA under section 22. Subsection (2) requires appeals to be made within 12 months of SEPA’s decision. Subsection (3) makes it explicit that the risk designation continues to apply until the appeal is completed. Subsection (4) requires the Scottish Ministers to consult the Institution of Civil Engineers and take into account the matters set out in section 21 before determining an appeal. Subsection (5) requires the Scottish Ministers to notify the reservoir manager and SEPA of the outcome of the appeal against a decision made by SEPA in a review of a risk designation and lists the matters that must be specified in the notice.

49. Subsection (6) sets out the circumstances under which the fees charged by SEPA for a review of a decision on a risk designation must be returned to the reservoir manager if the Scottish Ministers give a reservoir a different risk designation. Subsection (7) enables the Scottish Ministers to make further provision relating to appeals under this section in regulations.

Section 23 – Guidance by SEPA on risk designation

50. Subsection (1) enables Scottish Ministers to direct SEPA to publish guidance on the matters it takes into account in giving controlled reservoirs risk designations and reviewing risk designations. Subsection (2) requires SEPA to consult and have regard to advice from the Institution of Civil Engineers before publishing guidance on the matters it takes into account in giving controlled reservoirs risk designations.

Section 24 – High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

51. This section sets out that references in this Part to high-risk, medium risk and low risk reservoirs are references to controlled reservoirs designated as such under sections 18, 20, 22 (subject to subsection (3) of that section) or 22A (subject to subsection (3) of that section). Subsection (2) sets out that Chapter 6 makes provision about the requirements related to high and medium risk reservoirs.
CHAPTER 4 – PANELS OF RESERVOIR ENGINEERS

Section 25 – Panels of Engineers

52. Engineers play an important role in the system of supervision, inspection, certification and reporting established by the Bill. Section 25 obliges the Scottish Ministers to establish one or more panels of reservoir engineers for the purposes of the Bill and to appoint civil engineers who they consider fit and appropriately qualified to be members of those panels. Only engineers who are members of the appropriate panel may be appointed as engineers under the Bill.

Section 26 – Appointments and removal of panel members

53. Section 26 sets out detailed provisions for the appointment of engineers to (and their removal from) panels established under Section 25.

Section 27 – Dissolution of panels etc.

54. Section 27 enables Scottish Ministers to dissolve a panel established under section 25.

Section 28 – Review of decisions to appoint or remove civil engineers from panels etc

55. Section 28 enables civil engineers who have applied to the panel or been removed from a panel to apply to Scottish Ministers for a review of their decision.

Section 29 – Consultation with Institution of Civil Engineers

56. This section places a duty on Scottish Ministers to consult the President of the Institution of Civil Engineers before establishing a panel, making an appointment to a panel, or taking other specified steps in relation to panels. Subsection (2) enables Scottish Ministers to reimburse the Institution of Civil Engineers for any expenses they incur under this section.

CHAPTER 5 – CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Section 30 – Application of Chapter 5

57. Chapter 5 regulates the construction of controlled reservoirs by imposing a requirement upon reservoir managers to appoint a construction engineer to supervise the relevant works, and by imposing a system of reporting and certification in respect of the works. Section 30 sets out the works that are to be treated as construction of a controlled reservoir for the purposes of the Bill, which include restoration to use, alterations to capacity, discontinuance (i.e. reducing the level of water the reservoir is able to hold below 10,000m³) and abandonment (i.e. rendering a reservoir incapable of containing water above the natural level of the surrounding land). Unless such works are being carried out, there is no requirement to appoint a construction engineer.

Section 31 – Notice to SEPA and appointment of construction engineer

58. This section requires reservoir managers of controlled reservoirs which are to be subject to relevant works to appoint a construction engineer to supervise the construction or alteration.
At least 28 days before the works commence the reservoir manager must give SEPA notice of the proposed works and notice of the construction engineer’s appointment. A construction engineer is an engineer from the appropriate panel appointed to supervise the relevant works until a final certificate is issued in respect of the works. Subsection (5) disqualifies an engineer employed by the reservoir manager from being appointed as a construction engineer in relation to a particular reservoir.

Section 32 – Inspection, reports, supervision of works etc. by construction engineer

59. Section 32 requires the construction engineer to supervise any relevant works until a final certificate is issued in respect of the works. Subsection (2) requires the engineer to inspect the reservoir and design any construction or alteration to the reservoir. Subsection (3) enables the construction engineer to issue a safety report to the reservoir manager prepared in accordance with Section 33. Where the reservoir is to be restored to use or abandoned, subsections (4) and (5) require the construction engineer to issue to the reservoir manager such a report no later than 9 months after appointment. Where a construction engineer has been appointed by SEPA under section 63(2), subsection (6) requires the construction engineer to give the reservoir manager a safety report as soon as practicable after their appointment. Subsection (7) requires the construction engineer who issues the report, to give SEPA a copy of the report within 28 days of issuing it.

Section 33 – Safety reports

60. Section 33 sets out the information which must be included in a safety report. Subsection (2) sets out particular information that the safety report must include where the reservoir is being restored to use, discontinued, or abandoned.

Section 34 – Safety reports: Compliance

61. This section requires reservoir managers to comply with any direction in a safety report issued to the reservoir manager. Subsection (2) requires the engineer to issue a safety measure certificate to the reservoir manager within 28 days of being satisfied that a measure directed in the safety report has been taken. Subsection (3) requires safety measure certificates to specify the measures taken and any measures which are still to be taken. Subsection (4) requires the construction engineer to give SEPA a copy of the safety measure certificate no later than 28 days after issuing it.

Section 35 – Preliminary certificates

62. This section requires the construction engineer to issue a preliminary certificate when he or she considers that the reservoir that is subject to relevant works may be safely wholly or partially filled with water or (in the case of a reservoir that already contains water) that the level of water should be reduced. A preliminary certificate must specify a level that the water in the reservoir must not exceed, require the reservoir manager to ensure that the level of water remains below that level, and specify any other requirements the engineer considers appropriate about the manner in which the water level may be increased or decreased. The reservoir manager of a controlled reservoir must (by virtue of section 38) comply with the requirements of any preliminary or final certificate for the time being applicable to the reservoir.
63. Subsection (3) requires the construction engineer to give a copy of the preliminary certificate to SEPA within 28 days of issuing it. Subsection (4) sets out that the most recent preliminary certificate issued supersedes any previous preliminary certificates applicable to the reservoir in respect of those works. Subsection (5) sets out that a final certificate applicable to the reservoir supersedes any preliminary certificates in respect of those works.

**Section 36 – Construction certificates**

64. This section requires the issue of construction certificates by the construction engineer as soon as is reasonably practicable, once he or she is satisfied that the construction or alteration has been completed to a satisfactory standard. Subsection (2) requires the construction certificate to be issued before or at the same time as the final certificate. Subsection (3) requires the construction certificate to certify that the construction has been carried out effectively in accordance with the drawings and descriptions included along with the certificate, to include an annex containing detailed drawings and descriptions of the works for the construction or alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works and any other matters specified by Scottish Ministers in regulations. Subsection (4) requires the construction engineer to give SEPA a copy of the report within 28 days of issuing it.

**Section 37 – Final certificates**

65. Where a controlled reservoir is being constructed or altered, except where it is being discontinued or abandoned, subsection (1) requires construction engineers to issue a final certificate to the reservoir manager within 28 days of being satisfied that the reservoir is sound and satisfactory and may be used safely for the collection and storage of water.

66. Where the final certificate relates to a high risk reservoir subsection (2)(b) requires the final certificate to recommend when an early inspection should take place (if the construction engineer considers one should be undertaken). If the reservoir is a high or medium risk reservoir, subsection (2)(c) requires the final certificate to specify any matter that the construction engineer considers should be monitored by the supervising engineer until the first inspection of the reservoir under section 44. Subsection (2)(d) requires the final certificate to impose requirements that the water level must not exceed the level specified in the certificate, that the reservoir manager must ensure that the level does not exceed that level, and that the engineer may set out requirements as to the manner in which water levels may be increased or decreased.

67. Subsection (3) requires the construction engineer of a controlled reservoir which is being discontinued, to issue a final certificate to the reservoir manager within 28 days of being satisfied that the discontinuance has been safely completed, that the resulting structure is incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.

68. Subsection (4) requires where a reservoir is being discontinued that the final certificate must state whether the construction engineer considers that the discontinuance has been safely completed and 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 and that the resulting structure is sound and satisfactory and may be safely used for the collection and storage of water.

69. Subsection (5) requires the construction engineer, where a reservoir is being abandoned to issue a final certificate to the reservoir manager within 28 days of being satisfied that the abandonment has been safely completed and that the resulting structure is incapable of filling with water above the natural level of any part of the surrounding land.

70. Subsection (6) requires where a reservoir is being abandoned that the final certificate must state whether the construction engineer considers that the abandonment has been safely completed and that the resulting structure or area is incapable of filling above the natural level of any part of the surrounding land.

71. Subsection (8) requires that a copy of the construction certificate must be attached to the final certificate when the reservoir has been constructed or altered. Subsection (9) requires the construction engineer to give SEPA a copy of the final certificate within 28 days of issuing. If a final certificate has not been issued within 5 years of the issue of the preliminary certificate, subsection (10) requires the construction engineer to give the reservoir manager a written explanation of the reasons why within 28 days of the expiry of the 5 year period. Subsection (10)(b) requires the construction engineer to give the reservoir manager a written explanation of the reasons at 12 months intervals thereafter until the final certificate is issued and subsection (10)(c) requires the construction engineer to send each of the written statements to SEPA within 28 days of being given.

Section 38 – Preliminary and final certificates: Compliance

72. Section 38 requires reservoir managers to comply with the requirements of any preliminary and final certificates applicable to the controlled reservoir at that time.

Section 39 – Termination of supervision by construction engineer

73. This section makes it clear that the obligation of a reservoir manager to appoint a construction engineer in respect of relevant works to a controlled reservoir comes to an end when the engineer gives a copy of the final certificate to SEPA in accordance with Section 37(9). This step marks the normal end-point for the involvement of a construction engineer in relation to the relevant works.

Section 40 – Offences: construction, alteration, restoration to use, abandonment

74. This section makes it an offence to fail to comply with section 31(1) or (2)(a), section 31(2)(b), 34(1) or section 38. Subsection (2) and (3) set out the penalties for anyone committing an offence under this section.

Section 41 – Defences: offences under section 10(1)(d) or (e)

75. Section 40 sets out acceptable defences to offences under section 40.
Section 42 – Controlled reservoirs subject to relevant works at commencement

76. Section 42 sets out transitional arrangements for the Bill to apply to controlled reservoirs already under construction or alteration when the Bill is commenced. Subsection (2) applies the whole of Chapter 5 and sections 63 to 65 to reservoirs which were previously “large raised reservoirs” within the meaning of the Reservoirs Act 1975 and which are subject to relevant works on commencement. Where a reservoir is not a large raised reservoir in terms of the 1975 Act and is subject to relevant works at commencement of the Bill, Chapter 5 and sections 63 to 65 apply except that the reservoir manager must notify SEPA of the works, appoint a construction engineer, and notify SEPA of that appointment, all within 28 days of commencement of section 30. The construction engineer must also give the reservoir manager a safety report as soon as reasonably practicable after being appointed and in any event within 9 months of appointment.

CHAPTER 6 – OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM RISK RESERVOIRS

Section 43 – Appointment of inspecting engineer etc

77. This section requires managers of high risk and medium risk reservoirs to appoint an inspecting engineer to carry out an inspection of the reservoir at each of the times specified in section 44. Subsection (1)(b) requires the reservoir manager to notify SEPA of the appointment within 28 days. Subsection (3) sets out who may be appointed and requires the engineer to be a member of a panel of reservoir engineers established under Section 25. Because inspecting engineers are intended to have a degree of independence from the reservoir manager that appoints them, subsection (4) sets out that an engineer is disqualified from being appointed as an inspecting engineer in relation to a particular reservoir if he or she is employed by a reservoir manager of that reservoir or if he or she has previously been (or is connected to) a construction engineer for the reservoir.

Section 44 – Inspections: timing

78. This section requires, except where a construction engineer is appointed to supervise relevant works at a reservoir, inspections of high risk reservoirs to be carried out within 2 years of a final certificate being issued for the reservoir, at any time recommended by the supervising engineer or recommended in an inspection report and within 10 years of the latest inspection. Subsection (2) requires medium risk reservoirs to be inspected at such times as the supervising engineer recommends except where a construction engineer is appointed to supervise relevant works at the reservoir.

79. Subsection (2A)(a) cancels inspections which are due to be carried out where a construction engineer is appointed to supervise relevant works. Subsection (2A)(b) requires subsequent inspections to be carried out for high risk reservoirs before the end of the period of 2 years beginning with the date of any final certificate applicable to the reservoir. It also requires subsequent inspections to be carried out for medium risk reservoirs at any time recommended by the supervising engineer, although the time recommended must be at least 2 years following the issue of the final certificate for the relevant works. Subsection (3) defines the term “supervising engineer” for the purposes of Sections 45 and 47.
Section 45 – Inspections: duties of inspecting engineers etc.

80. This section requires the inspecting engineer to inspect the reservoir, issue an inspection report to the reservoir manager within 9 months of completing the inspection, and issue inspection compliance certificate in accordance with section 46. Subsection (2) requires the reservoir manager to give the inspecting engineer a copy of the latest inspection report for the reservoir if they have one. Subsection (3) requires the inspection report to include any measures the inspecting engineer considers should be taken in the interest of safety including any measures for the maintenance of the reservoir. It also requires the inspection report to specify whether any of the measures from the previous report are not included in the current report and why. Subsection (3)(d) requires the report to direct the reservoir manager to undertake the measures specified in the report within a specified period of time under the supervision of the inspecting engineer or other qualified engineer (as may be appointed under section 46(1A)). Subsections (3)(e) and (f) require inspection reports to specify the timing of the next inspection and any matters that should be monitored by the supervising engineer until that inspection occurs. Subsection (3)(g) enables the inspection report to include recommendations on other matters relevant to the maintenance of the reservoir which do not require measures to be specified under subsection (3)(a).

81. Subsection (4) requires the inspecting engineer to give a copy of the report to SEPA and the supervising engineer within 28 days. Subsection (5) defines the terms “the inspecting engineer”, “the other qualified engineer” and “the reservoir manager” for the purposes of sections 45 and 46.

Section 46 – Inspections reports: compliance

82. This section requires reservoir managers to comply with the directions in the inspection report (either themselves or by ensuring that the measures are taken). Subsection (1A) enables the reservoir manager to appoint any “other qualified engineer” who is an engineer eligible to be an inspecting engineer. That “other qualified engineer” can be appointed to supervise any of the measures specified in the inspection report. If an appointment is made the manager must notify SEPA and the inspecting engineer as soon as practicable after making the appointment. Subsection (2) requires the inspecting engineer or the other qualified engineer to issue interim compliance inspection certificates for completed measures they are responsible for supervising, except where the measure is for maintenance of the reservoir.

83. Subsection (2A) requires the other qualified engineer to give the inspecting engineer a copy of any interim inspection compliance certificates they issue to the reservoir manager and give SEPA a copy within 28 days. The inspecting engineer is to take that certificate as conclusive of the measure having been taken. Subsection (3) lists the things that are to be included in an interim inspection compliance certificate. When the inspecting engineer is satisfied all of the measures have been completed, subsection (4) requires him or her to issue the reservoir manager with an inspection compliance certificate within 28 days. Subsection (5) lists the things which must be included in an inspection compliance certificate. Subsection (6) requires the engineer to give a copy of the certificates under this section to SEPA within 28 days of issue. Subsection (7) makes it clear that measures for the maintenance of the reservoir to be taken in the interests of safety do not require interim inspection compliance certificates and do not need to be taken into account in the inspection compliance certificate.
Section 47 – Appointment of supervising engineers etc.

84. If the reservoir is not being constructed or restored to use, this section requires the reservoir manager of high and medium risk controlled reservoirs to appoint a supervising engineer to supervise the reservoir in accordance with section 48 and notify SEPA of the appointment within 28 days. A supervising engineer must be in place at all times unless the reservoir is being constructed or restored to use. Subsection (2) makes it clear that a reservoir manager does not need to appoint a supervising engineer before a final certificate is issued for the reservoir where it is being constructed or restored to use. Subsection (3) requires the supervising engineer to be a member of a panel of reservoir engineers established under section 25 who is eligible to be appointed under this section. Unlike inspecting engineers, there is nothing to prevent a supervising engineer being an employee of the reservoir manager or having previously been a construction engineer in relation to the reservoir.

Section 48 – Supervising engineer and monitoring of reservoir

85. This section requires the appointed supervising engineer to supervise the reservoir. Subsection (2) lists the things he or she must do including notifying the reservoir manager of any matters which could affect the safety of the reservoir, monitor compliance with any relevant safety report, preliminary certificate or the final certificate, notify the reservoir manager and SEPA of any failure to comply with any relevant safety report, preliminary certificate or the final certificate, monitor any matter specified in certificates or inspection reports, supervise any proposed draw-down of the reservoir and monitor the reservoir manager’s recording of water levels and record keeping.

86. Subsection (7) requires the supervising engineer to give the reservoir manager an annual written statement of the steps taken by the supervising engineer in relation to his or her responsibilities under subsection (2)(a) to (f) and any measures taken by the reservoir manager in the interest of safety or to maintain the reservoir. Subsection (9) requires the supervising engineer to send a copy of this written statement to SEPA within 28 days.

87. If the supervising engineer considers that a reservoir should be inspected, subsection (3) requires the supervising engineer to give a written recommendation to this effect to the reservoir manager which specifies when the inspection should take place and give SEPA a copy of the recommendation within 28 days of issuing it. Subsections (4) and (5) require the reservoir manager to carry out physical inspections of the reservoir at specified intervals if directed by the supervising engineer. Subsection (6) requires the reservoir manager to keep a record of these physical inspections to be made available to the supervising engineer on request. Subsections (6) and (6A) also require the reservoir manager to notify the supervising engineer of anything that may affect the safety of the reservoir which was identified during the inspections as soon as reasonably practical after the inspection. Under section 50(1)(fa) it is an offence not to do so. Subsection (8) requires the supervising engineer to provide the reservoir manager with emergency contact details. Subsection (10) enables Scottish Ministers to publish guidance on the supervision of high and medium risk reservoirs. Subsection (11) defines the terms “draw-down”, “the supervising engineer” and “the reservoir manager” for the purposes of this section.
Section 49 – Recording of water levels etc and record keeping etc

88. This section requires the reservoir manager of high and medium risk reservoirs to record and maintain specific matters in relation to the reservoir. Subsection (1) lists the matters to be recorded under this section. Subsection (2) enables Scottish Ministers to make further provision in regulations as to the information to be recorded by reservoir managers and the form of the record to be maintained. Subsection (3) enables construction engineers, inspecting engineers or supervising engineers appointed to a reservoir to direct the reservoir manager as to the manner in which the records are to be kept and how often they should be updated. Subsection (4) requires the reservoir manager to comply with any such directions. Subsection (5) requires the reservoir manager to install any instruments necessary to provide the information to be recorded under this section.

Section 50 – Offences: inspections, supervision, record keeping

89. This section makes it an offence to fail to comply with sections 43(1)(a), 44, 43(1)(b), 46(1), 47(1)(a) and 47 (1)(b), directions under section 48(4), the requirements of section 48(6)(c) and section 49. Subsection (2) sets out the liabilities of anyone committing an offence under this section.

Section 51 – Defences: offence under section 49(1)(c)

90. Section 51 sets out certain defences to offences under section 50(1)(c).

CHAPTER 7 – OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

Section 52 – Incident reporting

91. This section enables the Scottish Ministers to make provision in regulations for reporting incidents which may affect the safety of controlled reservoirs.

92. Subsection (2) provides an indicative list of what regulations may cover.

93. Subsection (3) sets consultation requirements which the Scottish Ministers must comply with before making regulations.

Section 53 – Flood plans

94. This section enables the Scottish Ministers to make provision in regulations for the preparation of flood plans for controlled reservoirs. These plans would set out the action which the reservoir undertaker would take to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.

95. Subsection (3) provides an indicative list of what the regulations may cover. Subsection (4) sets consultation requirements which the Scottish Ministers must comply with before making regulations.
Section 54 – Maintenance of records

96. This section requires reservoir managers of controlled reservoirs to maintain a record of relevant documents. Subsection (4) lists the documents which must be kept.

Section 55 – Display of emergency response information

97. This section requires reservoir managers of controlled reservoirs to ensure that emergency response information is displayed at or near the reservoir. Subsection (2) enables the Scottish Ministers to make further provision about the information which must be displayed in regulations. Subsection (3) lists the matters which, in particular, may be specified in the regulations under subsection (2). Subsection (4) enables SEPA to give directions to reservoir managers of controlled reservoirs as to the manner and location of the information to be displayed. Subsection (6) requires the reservoir manager to comply with any such directions from SEPA.

Section 56 – Offences: record keeping, display of emergency response information

98. This section makes it an offence to fail to comply with the requirements of section 54 and 55. Subsection (2) sets out the liabilities of anyone committing an offence under this section.

CHAPTER 8 – DISPUTE REFERRAL

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

99. Chapter 8 provides for a form of arbitration between reservoir managers and construction or inspecting engineers. If a reservoir manager disagrees with a direction in safety report or an inspection report, they can challenge that direction by referring it to a referee. Section 57(3) suspends any direction thus challenged until the reference is determined by the referee or withdrawn by the reservoir manager.

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

100. This section enables reservoir managers to challenge requirements in preliminary and final certificates. Subsection (2) lists the matters which can be challenged under this section. Subsection (3) suspends any direction challenged under this section until the reference is determined by the referee or withdrawn by the reservoir manager.

Section 59 – Appointment of referee

101. This section requires referees appointed under this section to be appointed by agreement between the reservoir manager and the relevant engineer or, where no agreement can be reached by Scottish Ministers. Subsection (2) enables engineers to be appointed as referees if they are a member of a panel established under section 24 and is not disqualified from being appointed under this section in relation to the reservoir concerned. Subsection (3) lists the situations where an engineer would be disqualified from being appointed under this section. Subsection (4) defines “the relevant engineer” for the purposes of this section, section 60 and section 61.
Section 60 – Powers of referee: referral under section 57(2)

102. This section enables the referee to modify the directions subject to referrals under section 57. Subsection (3) requires the referee to modify the report, any relevant safety measure certificates or interim inspection compliance certificates if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified reports if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision. Subsection (7) defines “any necessary modification”.

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

103. This section enables the referee to modify the directions subject to referrals under section 58(1). Subsection (3) requires the referee to modify the certificate if they make any modifications to the direction. Subsections (4) and (5) require the referee to give the reservoir manager and relevant engineer a referral certificate along with any modified certificates if required within 28 days of making a decision on the direction. Subsection (5)(c) requires the referee to give a copy of the report to SEPA within 28 days of the decision.

Section 62 – Procedure

104. This section enables Scottish Ministers to make provision in regulations as to the time, manner and procedure of referrals and expenses of the proceedings and investigations including the remuneration of the referee. Subsection (2) provides for the expenses of the referee to be paid by the reservoir manager.

CHAPTER 9 – CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Section 63 – Enforcement Notice: appointment of engineer

105. This section enables SEPA to serve an enforcement notice requiring the reservoir manager to appoint a construction, inspecting or supervising engineer, and notify SEPA of that appointment. Subsection (3) defines “the relevant appointment” for sections 65 and 66.

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

106. This section makes it an offence not to comply with notices under section 63(2). Subsection (2) sets out the penalties for anyone committing an offence under this section.

Section 65 – Appointment of engineer by SEPA

107. This section enables SEPA to appoint a relevant engineer where the reservoir manager has failed to do so. This section applies when a notice served under Section 63 has not been complied with. SEPA will be able to reclaim any expenses directly from the reservoir manager.
Section 66 – Appointment by SEPA: engineer’s report, certificates, recommendations etc

108. This section applies when SEPA have made an appointment under Section 65. Any reports, statements or certificates are to be first given to SEPA by the relevant engineer, and subsequently copied to the reservoir manager no more than 28 days later. Paragraph (a) allows for the safety measure certificate to be provided by the construction engineer to SEPA where SEPA has appointed the construction engineer.

Section 67 – Enforcement Notice: safety and other measures

109. This section enables SEPA to serve an enforcement notice where a reservoir manager has failed to comply with the direction in either a safety report (under section 34(1)) or an inspection report (under section 46(1)). SEPA’s enforcement notice should specify a timeframe within which the reservoir manager must comply, the reasons for considering that this section applies and any steps SEPA consider must be taken to take the measure. A timeframe specified under subsection (2) should only be specified after consultation with a panel engineer under subsection (3).

110. Subsection (7) enables the Scottish Ministers by order to provide for reservoir managers to apply to SEPA for a review of its decision to give an enforcement notice and to appeal to the Scottish Ministers against a decision by SEPA to give an enforcement notice. Subsection (8) requires any order to specify the time period within which any review or appeal may be made where the order gives the right of review or appeal. It also enables the Scottish Ministers to make further provision in relation to reviews and appeals under this section.

Section 68 – offence: failure to comply with notice under section 67(2)

111. This section makes it an offence not to comply with a notice under section 67(2) except where the reservoir manager has a right of review or appeal under an order under section 67 and the period for making an application for a review or an appeal has not yet expired or a request for a review or appeal has been made but it has not yet been withdrawn or determined. Subsection (2) sets out the penalties for anyone committing an offence under this section.

Section 69 – SEPA’s power to arrange taking of safety and other measures

112. This section creates powers for SEPA to appoint a relevant engineer to oversee compliance with a measure previously specified in a report. This section applies when a notice served under section 67(2) has not been complied with. Subsection (4) requires the reservoir manager to pay any reasonably incurred expenses incurred by SEPA under this section.

Section 70 – Offences under section 40(1)(d) and 50(1)(c): further remedies

113. Section 70 enables the court, where a manager has committed an offence through failure to comply with directions in either a safety or inspection report, to order the reservoir manager to comply with the direction and to undertake any mitigating or remedial work deemed appropriate. Subsection (3) enables the court to extend the period for undertaking such work.
Section 71 – Stop notices

114. This section enables Scottish Ministers by order to allow SEPA to issue a stop notice to a reservoir manager. Subsection (3) defines a stop notice as a notice which contains instructions to a reservoir manager to stop an activity which SEPA believe could cause damage to the structure, or could cause any other kind of infringement. Subsection (4) lists the circumstances in which a stop notice can be issued. Before SEPA can issue a stop notice to someone carrying out an activity which SEPA believes presents a significant risk of causing an uncontrolled release of water from the reservoir but which is not an offence, subsection (5) requires SEPA to consult the Institution of Civil Engineers. It also requires SEPA to specify only steps to remove or reduce the risk of an uncontrolled release of water in any such stop notice and to notify the Scottish Ministers as soon as reasonably practicable of each occasion on which such a notice is given.

Section 72 – Stop notices: procedure

115. This section specifies the conditions under which SEPA may issue a stop notice when the reservoir manager is carrying out activities which SEPA believe pose a significant risk of an uncontrolled release of water or the activity is an offence under the Bill. Subsection (3) specifies what information must be provided in any stop notice. Subsections (4) and (6) specify circumstances in which the reservoir manager is entitled to appeal to the Scottish Ministers against a stop notice and a completion certificate respectively. Subsection (5) enables Scottish Ministers to provide for SEPA to charge a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 73 – Stop notices: compensation

116. This section allows SEPA to provide financial compensation to a reservoir manager who has been negatively affected by a stop notice. Subsection (2) specifies that this must be ordered by the Scottish Ministers. Subsection (3) allows a reservoir manager to appeal to the Scottish Ministers against either a negative decision to compensate, or against how much money is awarded.

Section 74 – Stop notices: enforcement

117. This section makes it an offence not to comply with a stop notice and sets out the liabilities of anyone committing an offence under this section.

Section 75 – Emergency powers

118. This section enables SEPA to take emergency action to prevent an uncontrolled release of water that would cause harm to people or property. Subsection (2) enables SEPA to take any necessary action to prevent such an event, or to limit the effects. Subsection (3) requires SEPA to take any such measures in consultation with a panel engineer. Subsection (5) requires SEPA to notify the reservoir manager of any measures deemed necessary under this section.

Section 76 – Enforcement undertakings

119. This section enables Scottish Ministers to make provision by order allowing SEPA to receive an enforcement undertaking from a reservoir manager. Enforcement undertakings allow
reservoir managers who may have committed an offence under the Bill to agree with SEPA that the reservoir manager will take such steps to rectify the situation as may be agreed in exchange for immunity from prosecution. Subsection (3) defines “enforcement undertaking” for the purposes of the Bill. Subsection (4) specifies the necessary contents of such an undertaking. Subsection (5) specifies the subsequent immunity from sanctions that a reservoir manager would receive, unless the reservoir manager does not deliver the promises specified in the undertaking. Subsection (6) lists the matters which in particular the Scottish Ministers may provide for in an order under subsection (1).

Section 77 – Fixed monetary penalties

120. This section allows Scottish Ministers to make provision by order about the imposition of fixed monetary penalties on reservoir managers in relation to offences under this Part. Subsection (2) requires Scottish Ministers to consult with representative organisations and such other persons Scottish Ministers consider appropriate under section 84 before making an order under this section. Subsection (3) lists the conditions required by provisions in any order made under subsection (1).

Section 78 – Fixed monetary penalties: procedure

121. This section sets out the process that must be followed when a fixed monetary penalty is issued. Subsection (2) allows a reservoir manager to initially pay a lesser amount of money to prevent a fixed monetary penalty from subsequently being issued. Subsection (3) specifies what information must be included in any notification to the reservoir manager. Subsection (4) requires the order under section 77(1) to include provision for SEPA not to impose a fixed monetary penalty if SEPA are either satisfied that the reservoir manager would not by reason of defence be liable to be convicted of the related offence or due to other circumstances. Subsection (5) lists the required contents of any final notice under this section. Subsection (6) sets out the circumstances under which a reservoir manager can appeal to Scottish Ministers against a decision under this section. Subsection (7) enables Scottish Ministers to provide for the charging of a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 79 – Fixed monetary penalties: criminal proceedings and conviction etc

122. This section sets out a reservoir owner’s immunity from further proceedings upon payment of a fixed penalty. Subsection (2) specifies that this includes the issuing of stop notices or further enforcement measures.

Section 80 – Further enforcement measures

123. Subsection (1) enables Scottish Ministers to make provisions in an order in relation to offences under this Part regarding the imposition of any further enforcement measures in the event of non-compliance. Further enforcement measures may include variable monetary penalties (which will be punitive), restraint notices (which may require a reservoir manager to take steps to avoid recurrence of an offence), and restoration notices (which may require reservoir managers to take restorative action to rectify the consequences of an offence). Subsection (2) requires Scottish Ministers to consult with relevant organisations and other bodies it considers appropriate before making an order under this section. Subsection (3) specifies the
conditions which further enforcement measures may be taken. Subsection (4) and (5) define what is meant by further enforcement measures.

Section 81 – Further enforcement measures: procedure

124. This section details steps that SEPA must take when taking further enforcement measures. Subsection (2) sets out a reservoir manager’s right to appeal on receipt of a notice of SEPA’s intent to take further measures. Subsection (3) specifies what information must be included in any notification of further action. Subsection (4) sets out the circumstances where SEPA may decide not to impose further enforcement measures. Subsection (5) requires provision in the order under section 79(1) to enable SEPA to accept or reject enforcement undertakings from the reservoir manager in relation to the offence. Subsection (6) specifies what information must be included in any final judgement. Subsection (7) sets out a reservoir manager’s right to appeal to the Scottish Ministers on receipt of a final notice. Subsection (8) enables the Scottish Ministers to provide for the charging of a fee in relation to appeals under this section which is returnable if the appeal is upheld.

Section 82 – Further enforcement measures: criminal proceedings and conviction

125. This section sets out a reservoir manager’s immunity from further proceedings upon acceptance and completion of an enforcement undertaking. Subsection (3) sets out cases which are the exception to this condition.

Section 83 – Further enforcement measures: enforcement

126. This section enables SEPA to charge a reservoir manager a financial penalty if there is a case of non-compliance with a restraint notice, restoration notice or further enforcement undertaking. Subsection (2) details the conditions under which such a penalty may be issued. Subsection (3) requires the non-compliance penalty to be imposed by notice and that the reservoir manager can appeal to the Scottish Ministers against the notice and subsection (4) sets out the grounds for appeal against such a penalty by a reservoir manager.

Section 84 – Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)

127. This section requires SEPA to consult relevant bodies before invoking provisions to issue stop notices, enforcement undertakings, fixed monetary penalties or further enforcement measures. Subsection (2) sets out the people and organisations that should be consulted.

Section 85 – Guidance on the use of stop notices, fixed monetary penalties or further enforcement measures

128. This section requires Scottish Ministers to ensure the orders providing for the use of stop notices, enforcement undertakings, fixed monetary penalties and further enforcement measures by SEPA require SEPA to publish guidance about the use of these powers in each order.

Section 86 – Recovery by SEPA of expenses

129. This section allows SEPA to reclaim costs incurred in issuing stop notices or imposing further enforcement measures. Subsection (2) defines what can be included in these expenses.
Subsection (3) sets out the reservoir manager’s right to appeal to the Scottish Ministers against SEPA’s decision to reclaim costs. Subsection (4) enables the Scottish Ministers to provide for the charging of a fee in relation to appeals under this section which is returnable if the appeal is upheld.

**Section 86A – Guidance: appeals**

130. This section requires the Scottish Ministers to publish guidance on the process of making appeals under sections 67, 72, 73, 76, 78, 81, 83 and 86.

**Section 87 – Publication of enforcement action**

131. This section enables the Scottish Ministers by order to require SEPA to publish specified information regarding enforcement action including the non-appointment of engineers, the failure to take measures in the interests of safety, the issuing of stop notices, the issuing of fixed monetary penalties or the issue of further enforcement notices. Subsection (3) specifies that information must not be published where a stop notice, fixed monetary penalty or further enforcement notice has been successfully appealed.

**Section 88 – Powers of entry**

132. This section creates powers for SEPA to enter land for the purposes of carrying out some of their functions under the Bill. The power to enter land includes a power to enter buildings by virtue of the definition of “land” in the Interpretation and Legislative Reform (Scotland) Act 2010, which includes buildings and other structures. Subsection (2) lists SEPA’s activities to which this power of entry applies.

**Section 89 – Warrants authorising entry**

133. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 88 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (4)(a)).

134. Subsections (2) and (3) set out the circumstances in which a warrant may be granted. These require the sheriff or justice of the peace to be satisfied by evidence on oath that there are reasonable grounds for seeking entry to the land, that permission to enter has been refused or a refusal is reasonably expected, the land is unoccupied, or where the case is urgent. Where the case is not urgent and a warrant is sought on the basis that permission to enter has been refused or a refusal is expected then the applicant, SEPA must first have given notice that they intend to enter the land and the notice period must have expired. The notice periods are set out in section 89(3).

**Section 90 – Powers of entry: supplementary**

135. This section sets out additional scenarios when entry to land may be required. Subsection (1) applies the right to enter land in an emergency to any surrounding land as well. Subsection (2) sets out what additional materials and equipment can be taken onto the land in question. Subsection (3) details the approval that must be granted in cases other than when there is
emergency work involved. Subsection (4) sets out what details must be included in any notice of entry.

**Section 91 – Offence: preventing or obstructing entry**

136. This section sets out that impeding entrance of a person appointed by SEPA under section 87 to land constitutes an offence. Subsection (2) sets out the maximum applicable penalty for such an offence.

**Section 92 – Compensation**

137. This section sets out scenarios where SEPA must pay compensation to landowners where SEPA has exercised the right to enter land under Section 87 and damages subsequently occur. Subsection (1) describes the scenarios which would render SEPA liable to pay compensation. Subsection (2) details who is entitled to compensation from SEPA in such circumstances. Subsection (3) determines that the Lands Tribunal for Scotland is responsible for ordering compensation. Subsection (4) sets out how such expenditure is to be treated from the SEPA point of view.

**Section 93 – Reports by SEPA to the Scottish Ministers**

138. This section requires SEPA to report to Scottish Ministers about the steps it has taken to secure compliance with this Part. Subsection (2) enables Scottish Ministers the power to direct SEPA as to the timing and content of the reports.

**Section 94 – Affording of reasonable facilities to engineers**

139. This section requires reservoir managers of controlled reservoirs to provide any relevant engineer with reasonable facilities in connection with the engineers functions under this Part of the Bill. Subsection (2) requires the reservoir manager to make their records and other information available in the form, manner and timing specified by the engineer to the relevant engineer when requested.

**Section 95 – Power of SEPA to require information and assistance**

140. This section requires the reservoir manager of controlled reservoirs to provide SEPA with any information and assistance reasonably sought in connection with SEPA’s functions under this Part of the Bill. Subsection (2) requires the reservoir manager to make their records available to SEPA when requested. Subsection (3) requires the reservoir manager to provide any further information reasonably requested by SEPA in the manner and form specified by SEPA.

**Section 96 – Offences: sections 94 and 95**

141. This section makes it an offence for a reservoir manager to fail to comply with sections 94 and 95. Subsection (2) sets out the liabilities of anyone committing an offence under this section.
CHAPTER 10 – MISCELLANEOUS

Section 96A – Grants

142. This section enables the Scottish Ministers to pay grants to reservoir managers for the purposes of enabling or assisting them to comply with any obligation under Part 1 of the Bill. Subsection (2) sets out the circumstances in which such grants can be made. Subsection (3) enables the Scottish Ministers to impose such conditions to the grants as they see fit.

Section 97 – Assessment of engineers’ reports etc.

143. This section enables Scottish Ministers to make provision in regulations for the assessment of reports, written statements and certificates prepared by engineers as part of their functions under this Part of the Bill. Subsection (2) enables the regulations to make provision for a committee of members of the Institution of Civil Engineers to undertake this assessment and the conditions of membership for such a committee. Subsection (3) lists the things which the regulations may in particular provide for.

Section 98 – Notice to SEPA of revocation of appointment or resignation of engineer

144. This section requires reservoir managers to notify to SEPA when they have revoked the appointment of an engineer or when an engineer appointed by him or her notifies them of their resignation from appointment in relation to a controlled reservoir and the date it took affect. Subsection (2) requires engineers to notify the reservoir manager in writing when they have resigned from an appointment for a controlled reservoir and the date the resignation is effective from. Subsection (3) and (4) require the reservoir manager to notify SEPA within 28 days of the revocation or of being informed of the resignation. Subsection (5) makes it an offence for the reservoir manager to fail to comply with the requirements of this section. Subsection (6) sets out the liabilities of anyone committing an offence under this section.

Section 98A – SEPA: Ministerial directions

145. This section requires SEPA to act in accordance with any directions given to it by the Scottish Ministers when carrying out its functions under Part 1 of the Bill.

Section 99 – Form and content of notices, reports, certificates etc

146. This section enables Scottish Ministers to make further provision in regulations in relation to the form and content of any notices, and the form of any report, certificate, written statement or recommendation under this Part.

Section 100 – Notices by SEPA

147. This section applies section 123 of the Environment Act 1995(c.25) (service of documents) to any documents authorised or required to be given by SEPA under this Bill. Section 123 of the Environment Act 1995 concerns methods of service of documents and provides that any notice or document to be given or served may be given or served by delivering it to the person, leaving it at their last known address, or by sending it by post to their last known
address. It also makes provision regarding service on companies and partnerships and provides for service on unoccupied premises or premises occupied by persons who cannot be identified.

Section 101 – Change to the Institution of Civil Engineers

148. Section 101 enables Scottish Ministers to amend references to ICE and its president if the institution ceases to exist.

Section 102 – Civil liability

149. Section 102 prevents civil proceedings for damages being pursued in respect of failures to comply with the duties imposed by Part 1.

PART 2 – PROTECTION OF THE WATER ENVIRONMENT - REMEDIAL AND RESTORATION MEASURES

Section 103 – Remedial and restoration measures regulations

150. This section gives an extension of the powers conferred by section 22 of the Water Environment and Water Services (S) Act 2003 in connection with remedial and restoration measures to achieve the environmental objectives of the Water Framework Directive (WFD). This inclusion is required as section 22 of WEWS failed to include provision for criminal offences relating to restoration measures.

151. Section 22 is amended and inserts a new schedule 2A in the 2003 Act, following the general scheme of section 20 of the 2003 Act in relation to the Controlled Activities Regulations (CAR). The new paragraph (c) inserted in section 22(3) by subsection (1) is the equivalent of paragraph 11(2) of schedule 2 in relation to the CAR. New schedule 2A is modelled on paragraphs 12, 13 and 20 of schedule 2. In paragraph 4 of new schedule 2A, provision equivalent to paragraph 13(b) of schedule 2 is not required, given that section 22(3)(b)(ii) already provides for this.

152. Paragraph 7 follows paragraph 20 of schedule 2, allowing for creation of offences triable either way, providing a summary conviction by imprisonment for a term not exceeding 12 months or by a fine not exceeding the statutory maximum, and on conviction on indictment, to imprisonment for a term not exceeding 2 years or by an (unlimited) fine. The level of the penalties set are modelled on the requirements of WEWS, and intended to reflect the seriousness of the offence.

153. In the absence of such provisions, SEPA would be unable to enforce the terms of the Regulations, which would affect the achievement of the water environment quality objectives of the Water Framework Directive (WFD).

PART 3 – GENERAL

Section 104 – Crown application

154. This section makes provision for the Bill to apply to the Crown in Scotland.
155. Subsections (3) and (4) provide that the Crown in Scotland will not be criminally liable for any contravention of the Bill’s provisions but allows the Court of Session to declare any act of the Crown in contravention of the Bill’s provisions unlawful, upon application by SEPA or office holder responsible for enforcing the provision in question.

156. Subsection (5) provides that any provision made by or under this Bill applies to persons in the service of the Crown as it applies to other persons.

157. Subsection (6) and (7) limit powers of entry to Crown land by requiring the consent of an appropriate authority to be obtained before the powers can be exercised. Subsection (7) defines “Crown land” and “appropriate authority” and subsection (9) provides for the Scottish Ministers to determine any questions about who the appropriate authority is in relation to any land.

Section 105 – Offences by bodies corporate

158. This section provides that where an offence under the Bill has been committed by a corporate body, Scottish partnership or other unincorporated association and the offence was committed with the consent or connivance of a “relevant individual”, both the body and the individual can be prosecuted.

159. Subsection (2) defines “relevant individual” and includes directors and other officers of companies, partners and individuals who manage or control other unincorporated associations.

Section 105A – Consequential amendment and repeals

160. This section contains consequential amendments and repeals to other Acts.

Section 106 – Ancillary provision

161. This section enables the Scottish Ministers by order to make incidental, supplementary, consequential, transitional, transitory or saving provision, if appropriate.

Section 107 – Orders and regulations

162. This section provides the procedure for making of orders and regulations under the Bill.

163. Subsection (3) provides that all orders and regulations, except a commencement order, made under the Bill are subject to negative procedure unless they are listed in subsection (4). Orders and regulations which fall under subsection (4) are subject to affirmative procedure.

Section 109 – Commencement and short title

164. This section makes the usual provision that all of the provisions of the Bill, except those containing definitions and providing where procedure is required for orders and regulations, are to come into force on a day set by the Scottish Ministers by order. The section also provides for the short title of the Bill.
Schedule – Index of defined expressions

165. The Schedule sets out the location of the definitions of the listed terms in the Bill.
RESERVOIRS (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. This supplementary Financial Memorandum has been prepared by the Scottish Government to accompany the Reservoirs (Scotland) Bill following Stage 2 consideration of that Bill. It has been produced in accordance with Rule 9.7.8B of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new provisions included in the Bill following Stage 2 amendments. The majority of the amendments are technical and do not affect the assumptions in the original Financial Memorandum. This document therefore addresses the new elements of policy introduced to the Bill. These are the provision of financial assistance to reservoir managers in specific circumstances, the insertion of a right of appeal to Scottish Ministers following a review of a risk designation and the provision which enables a single flood plan to be prepared in respect of two or more reservoirs if they are in a cascade.

GRANTS TO RESERVOIR MANAGERS

3. New section 96A of the Bill inserts an enabling power into the Bill which allows Scottish Ministers to pay grants to reservoir managers for the purposes of enabling or assisting reservoir managers to comply with the requirements set out under Part 1 of the Bill.

4. The grants will only be payable in respect of high and medium risk reservoirs which were not regulated under the 1975 Act. The Scottish Ministers may determine the conditions attached to the grants, the amount payable and the basis on which those amounts are determined and the circumstances in which the grants may or may not be made.

Costs on the Scottish Administration

5. The cost of any such grants would fall on the Scottish Government. The cost to the Scottish Government will depend on the scope of any such grant scheme introduced by the Scottish Ministers as well as the level of demand from reservoir managers. It is anticipated that any such grant scheme would be a temporary measure in that it would only be available for a short time period to assist with the capital cost of adapting to the new requirements under the Bill. We anticipate that this will be no more than three years, i.e. encompassing one spending review period.
6. It is important to stress that grants do not cover recurring maintenance costs – only one-off costs incurred by managers of newly captured reservoirs.

7. The grants can only be paid to managers of reservoirs which are classified as medium or high risk and were not previously “large raised reservoirs” under the Reservoirs Act 1975. The number of eligible reservoirs will not be known until SEPA have completed exercises to identify, map and classify reservoirs between 10,000 and 25,000 cubic metres in capacity. This is not expected to be completed until 2015 at the earliest.

8. The Scottish Government has undertaken an initial desk-based mapping exercise to determine the possible location of reservoirs that may be newly captured. This has provided an initial number of up to 840 bodies of water that may be captured by the legislation. However, this data will have to be thoroughly cross-checked before the total number is certain. This will include physical site visits to check some cases where there is doubt over whether the site is captured under the Bill. Once all sites have been identified, it will be possible to identify the reservoir managers for these reservoirs and their ability to afford their new obligations.

9. In August 2010, the Scottish Government commissioned an independent financial report from Atkins Limited. This report used case studies to provide estimated costs of the new legislation to both reservoir managers currently captured under the 1975 Act (i.e. reservoirs over 25,000 cubic metres), and reservoir managers who would be newly captured by the requirements of the Bill (i.e. reservoirs between 10,000 cubic metres and 25,000 cubic metres). The author of the report is an All Reservoirs panel engineer with considerable experience and expertise in the field of reservoir safety.

10. For illustrative purposes, this Memorandum sets out estimates of one-off costs to reservoir managers of reservoirs between 10,000 cubic metres and 25,000 cubic metres that would be brought under the auspices of the Bill based on the report referred to in paragraph 9. The following cost estimates cover potential initial repair and maintenance works—

- **Medium risk** - £0 - £30,000
- **High risk** - £15,000 - £60,000

11. In addition, should major works be required on a newly designated high risk reservoir (in particular, upgrading a spillway to meet safety requirements), the costs may range from £300,000 to £1,000,000.

12. The cost of repairing and replacing valves is estimated as being between £75,000 and £150,000 depending on the circumstances of each site.

13. These costs are in addition to the estimated cost for the preparation of a flood plan which were set out in paragraph 199 of the original Financial Memorandum for newly regulated reservoirs—

- **Medium risk reservoir** - £1000
- **High risk reservoir** - £1500 - £6500 (depending on the complexity of the plan)
14. Therefore, the potential cost for reservoirs managers of newly regulated reservoirs are as follows—

- Medium risk reservoir between 10,000m³ and 25,000m³: £0 - £581,000
- High risk reservoir between 10,000m³ and 25,000m³: £16,500 - £1,216,500

15. The high-end estimate for a high risk reservoir is based on an assumption of the maximum cost of one-off works and flood plans, combined with the maximum cost of a spillway upgrade and the maximum cost of repairing and replacing valves as stipulated in the independent financial report.

16. The high end estimate for a medium risk reservoir is based on an assumption of the maximum cost of one-off works and flood plans, combined with the maximum cost of repairs to an existing spillway, and the maximum cost of repairing and replacing valves as stipulated in the independent financial report.

17. The Scottish Government considers that it is appropriate to insert a minimum amount, below which it would not be cost effective to administer any payment. The working assumption is that the minimum grant payable would be £1000.

18. The potential cost to the public purse for an individual grant could, therefore, range from £1000 to £1.2 million if the grant covered the full cost of adaptation. However before deciding to use the powers for issuing grants the Scottish Ministers would assess the affects that their actions would have, taking into account economic, social and environmental considerations and may decide that issuing grants is not a viable option.

19. It is considered likely that administering any grant scheme will result in a small temporary increase in work for the Scottish Government during the period where newly regulated reservoir managers are eligible to apply. The introduction of a grant scheme has been a popular amendment to this Bill, and the Scottish Government would expect a reasonable level of interest. The staff resource identified in paragraph 167 of the original Financial Memorandum would be sufficient to absorb the additional work incurred as a result of any grant scheme, and therefore no additional costs are anticipated.

20. It is anticipated that costs to the Scottish Government would be met from the budget of the Rural Affairs and Environment portfolio.

Costs on local authorities

21. This power to pay grants will not have any financial impacts on local authorities. Local authorities will receive any funding for their duties and responsibilities under the Bill through the local government settlement and will not be eligible for financial assistance through the grant mechanism.

Costs on SEPA

22. The power to pay grants will not have any financial impact on SEPA.
Savings for other bodies, individuals and businesses

23. This power will result in savings equivalent to the grant paid for individual reservoir managers, small businesses and charitable organisations who own or manage reservoirs which were not previously regulated under the 1975 Act and are brought under the Bill’s regulatory regime by virtue of their capacity and are identified as medium or high risk.

Appeals to the Scottish Ministers Following SEPA’s Review of a Risk Designation

Costs on the Scottish Administration

24. The new provision for appeals to the Scottish Ministers in section 22A will result in a small temporary increase in work for the Scottish Government during the initial classification exercise undertaken by SEPA. It is not anticipated that large numbers of reservoir managers will make appeals to the Scottish Ministers against their reservoirs risk designation, once they have applied for a review by SEPA of their original decision. The staff resource identified in paragraph 167 of the original Financial Memorandum would be sufficient to absorb the additional work incurred as a result of any appeals and therefore no additional costs are anticipated.

Costs on local authorities

25. It is not anticipated that this amendment will have any financial impacts on local authorities.

Costs on other bodies, individuals and businesses

26. It is not anticipated that this amendment will have any financial impacts on other bodies, individuals or businesses.

Single Flood Plans for Multiple Reservoirs in a Cascade

Savings for local authorities

27. Section 53(3) of the Bill now enables regulations on flood plans to allow reservoir managers to prepare a single flood plan for two or more controlled reservoirs in a cascade, where each individual reservoir is over 10,000 cubic metres in capacity. This is a change from the Bill as introduced, which required a plan to be prepared for each reservoir and will potentially result in cost savings for local authorities where they own reservoirs in a cascade.

28. For illustrative purposes, the Greenock cut is an example where this will result in potential savings for a local authority. Inverclyde Council are responsible for six reservoirs along the Greenock Cut, and Scottish Water manage one. The cost of an individual flood plan for medium and high risk reservoirs is estimated to be between £1000 and £6500. If the local authority and Scottish Water work together to produce a single flood this could result in a saving of up to £39,000 (6 x £6500) collectively.
Savings for other bodies, individuals and businesses

29. There will be potential savings for reservoir managers of reservoirs in a cascade owned by private businesses, individuals and other bodies such as Scottish Water. It is not possible to estimate how much may be saved collectively by other bodies, individuals or businesses until the number of eligible reservoirs is known once SEPA have completed exercises to identify, map and classify reservoirs between 10,000 and 25,000 cubic metres in capacity.

OTHER NEW PROVISIONS

30. The other amendments made to the Bill are not expected to create significant additional costs on either the Scottish Government or any other bodies. For clarification, the power inserted into the Bill in new section 13A, which enables SEPA to charge subsistence fees was omitted in error from the Bill at introduction. The estimated savings to SEPA and the estimated cost to reservoir managers in relation to these subsistence fees are both set out in paragraph 181 of the original Financial Memorandum.

TOTAL ESTIMATED COSTS OF NEW PROVISIONS

31. It is customary for a supplementary Financial Memorandum to provide a table detailing the total likely spend on the Scottish Administration. In this case, however, the Scottish Government has deemed that it would be inappropriate to include a definitive estimate of the cost of the new provisions. This is due to the considerable uncertainties as described in this Memorandum. A table showing total estimated costs has therefore not been included in this document.
RESERVOIRS (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the Reservoirs (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or substantially amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

3. In deciding whether to adopt negative or affirmative resolution procedure, careful consideration has been given to the degree of Parliamentary scrutiny that is felt to be required, balancing the need for the appropriate level of scrutiny with the need to avoid using up Parliamentary time unnecessarily.

4. During Stage 2 proceedings, new powers were introduced and a number of the delegated powers were modified. These changes give Parliament a greater role in scrutinising some of the subordinate legislation made under the Bill and respond positively to the comments made in both the Subordinate Legislation Committee and the Rural Affairs and Environment Committee. The procedure applicable to one power has been altered from negative resolution procedure to affirmative resolution procedure. Outlined below are descriptions of the relevant powers which have been added or modified and explanations of and as to why the additions, amendments or alterations have been made and are considered appropriate.
PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION
INTRODUCED OR AMENDED AT STAGE 2

Section 1(4) - Power to specify whether individual structures or combinations of structures are to be treated as a controlled reservoir

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision
5. Section 1(2) defines a “controlled reservoir” as being a structure designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Section 1(3) makes related provision for combinations of structures that could collectively release 10,000 cubic metres. Section 1(4) enables Scottish Ministers to make provision by order for a structure or combination of structures to be treated as a controlled reservoir notwithstanding that the requirements of subsections (2) or (3) are not met.

Reason for taking power
6. This remains the same as in the original Delegated Powers Memorandum.

Choice of procedure
7. The Subordinate Legislation Committee recommended in its Stage 1 report to the Rural Affairs and Environment Committee that this power should be subject to affirmative rather than negative procedure. The Scottish Ministers accept this recommendation that regulations made under the power should be subject to the level of Parliamentary scrutiny that affirmative procedure provides. An amendment to section 107 has been made to effect this change.

Section 1(6)(a) - Power to substitute a different volume of water to the 10,000 cubic metres of water currently specified

Power conferred on: Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision
8. Section 1(6)(a) allows the Scottish Ministers, by order, to set a different volume threshold for controlled reservoirs from the 10,000 cubic metres currently specified. A Scottish Government amendment inserted a new subsection (7) at Stage 2. The new subsection requires the Scottish Ministers to consult the Institution of Civil Engineers before making an order under subsection (6)(a).
Reason for taking power

9. The reasons for taking the power are the same as set out in the original Delegated Powers Memorandum. The Subordinate Legislation Committee recommended in its Stage 1 report to the Rural Affairs and Environment Committee that this power should be exercised after consultation with the Institution of Civil Engineers. The Scottish Ministers accepted this recommendation that orders made under the power should be subject to consultation with the Institution.

Choice of procedure

10. This remains the same as in the original Delegated Powers Memorandum.

Section 13A(1) – Fees: registration and administration

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

11. A Scottish Government amendment inserted section 13A at Stage 2. It partially replaces the power in section 14(4) which enabled the Scottish Ministers to make provision in regulations as to SEPA determining and charging fees to reservoir managers for registration. It is now a wider power which enables SEPA to charge a fee in relation not only to registration, but also to annual or recurring fees relating to the performance of its functions under this Part.

12. Subsection 13A(1) enables the Scottish Ministers to provide in regulations the power for and the way in which SEPA can determine and charge fees. Subsection (2) requires the Scottish Ministers to have regard to the cost of the exercise of SEPA’s functions in respect of the fees being charged when making such provision. Regulations made under this section must make provision about how SEPA is to determine and charge fees and must require SEPA to set out its fees in a published charging scheme after it has consulted those people it considers likely to be affected by the scheme. The regulations may also set out the maximum amount of the fee, the circumstances in which the fees are payable, for different fees to be imposed in respect of different reservoirs, how they may be collected and recovered and any other matters the Scottish Ministers consider appropriate.

Reason for taking power

13. The power will enable SEPA to charge reservoir managers a reasonable fee for both registration and an annual subsistence fee in order to cover their administrative costs. The power to charge an annual fee for ongoing administration costs was omitted in error from the Bill at introduction. The costs to reservoir managers of such fees, however, was taken into account in the Financial Memorandum.

Choice of procedure

14. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature.
Section 14(4) – Power to make provisions as to SEPA preparing and publishing guidance on registration

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

15. Section 14(4) allows Scottish Ministers, by regulations, to make provision for SEPA to publish guidance on registration and to consult the Institution of Civil Engineers (ICE) before so doing. However, the power to provide for regulations to determine and charge fees to reservoir managers in relation to registration has been deleted from this section. It has been replaced by the wider power to charge for both registration and an annual fee to cover SEPA’s administrative costs in section 13A, as noted above.

Reason for taking power

16. The power will ensure that reservoir managers and others have a clear understanding of the registration process as a result of the guidance that would be prepared by SEPA in consultation with the ICE.

Choice of procedure

17. Such regulations will continue to be subject to annulment in pursuance of a resolution of the Scottish Parliament. The negative resolution procedure is considered to offer an appropriate balance between flexibility and the need for scrutiny for a provision of this nature.

Section 22A(7) – Appeal to the Scottish Ministers following SEPA’s review

Power conferred on: Scottish Ministers
Power exercisable by: Regulations made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

18. Section 22A provides for reservoir managers to be able to appeal to the Scottish Ministers against decisions made by SEPA in a review of the risk designation given to a reservoir. Section 22A sets out the time period by which appeals under this section must be made and provides that the risk designation given prior to the appeal applies until the conclusion of the appeal. Subsection (4) requires the Scottish Ministers to consult with ICE and to have regard to matters set out in Section 21 before determining an appeal. Subsection (5) sets out how the determination must be notified to the reservoir manager and SEPA. Subsection (6) sets out when a fee charged in relation to the review under section 22 must be returned to the reservoir manager.

19. Section 22A(7) allows the Scottish Ministers, by regulations, to make further provision in relation to appeals following a review by SEPA of a decision relating to a reservoir’s risk classification.
Reason for taking power

20. The risk designation assigned to a controlled reservoir will determine the level of supervision and inspection needed, and consequently the level of cost associated with maintaining that reservoir. Giving Scottish Ministers these powers creates flexibility for reviewing and updating details of the appeal process for risk designations to make sure that it is fair and transparent.

Choice of procedure

21. Such regulations will be subject to annulment in pursuance of a resolution of the Scottish Parliament. This power is thought unlikely to be contentious as the principle of allowing for an appeal to Scottish Ministers against SEPA’s decisions on risk designations is provided for within the primary legislation.

Section 53(1) – Power to make provision for preparing reservoir flood plans

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>Regulations made by statutory instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative resolution of the Scottish Parliament</td>
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Provision

22. Section 53 was amended at Stage 2. Section 53(1) enables the Scottish Ministers to make provision in regulations for the preparation of flood plans in relation to reservoirs. A reservoir flood plan would set out action to be taken by the reservoir manager in order to control or mitigate the effects of flooding which could result if water escaped from the reservoir. In summary, the regulations may: establish criteria for determining which reservoirs need flood plans; require reservoir owners to produce plans for reservoirs which meet the criteria; specify the form and content of plans; provide for the approval, registration or publication of plans; impose duties on reservoir owners to implement plans in an emergency; create offences; and confer enforcement powers on SEPA. Before making regulations, the Scottish Ministers would have to consult SEPA, the ICE and reservoir managers whose reservoirs would be expected to require a flood plan.

23. At Stage 2, subsection (3) was amended to enable reservoir managers to produce a single flood plan for 2 or more controlled reservoirs in a cascade.

Reason for taking power

24. This remains the same as set out in the original Delegated Powers Memorandum. The reason for amending this power is to enable reservoir managers of reservoirs to produce a single flood plan for two or more reservoirs which are connected in so far as water can flow between them. This will avoid unnecessary duplication and reduce costs on the reservoir manager.

Choice of procedure

25. The reasons for the choice of procedure remain the same as set out in the original Delegated Powers Memorandum.
Section 54(3) – Power to specify where a reservoir is low risk, the form by which information on repairs is to be recorded

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

**Provision**

26. This section was amended at Stage 2. Section 54(3) enables the Scottish Ministers to specify the form by which any information about repairs to a low risk reservoir should be recorded. A new paragraph was inserted which enables the Scottish Ministers to specify the form of any flood plan produced under section 53 to be recorded.

Reason for taking power and choice of procedure

27. These remain the same as set out in the original Delegated Powers Memorandum.

Section 55(2) - Power to specify emergency response information to be displayed at each reservoir site

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by statutory instrument  
**Parliamentary procedure:** Negative resolution of the Scottish Parliament

**Provision**

28. Section 55 was amended at Stage 2. Section 55(2) allows the Scottish Ministers to specify what emergency response information should be displayed at, or near, a controlled reservoir. Section 55(3) explains that such information may include the name of the reservoir, the registration number of the reservoir, the reservoir manager’s name address and information for the purposes of an emergency. As a result of a Stage 2 amendment, this section now provides that, for high and medium risk reservoirs, this may include a requirement for SEPA’s contact details to be displayed (rather than the supervising engineers details, as was the case in the Bill as introduced).

Reason for taking power and choice of procedure

29. These remain the same as set out in the original Delegated Powers Memorandum.

Section 67(7) – Power to make provision for reservoir managers of controlled reservoirs to apply for reviews and appeals against enforcement notices

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order made by Statutory instrument  
**Parliamentary procedure:** Affirmative resolution of the Scottish Parliament

**Provision**

30. Section 67(7) was inserted at Stage 2 and allows the Scottish Ministers to make provision by order to enable reservoir managers of controlled reservoirs to apply to SEPA for a review of SEPA’s decision to issue an enforcement notice, or to appeal against an enforcement notice to
the Scottish Ministers. An enforcement notice is a notice requiring a reservoir manager to comply with their duty under section 34(1) (compliance with a direction in a safety report) or their duty under section 46(1) (compliance with a direction in an inspection report). Section 67(8) requires any such order to specify the time period for such a review or appeal to be made. It also allows Scottish Ministers to make further provision relating to reviews and appeals in the order.

**Reason for taking power**

31. This power would give reservoir managers a right of review and a right of appeal against enforcement notices. The intention is that the order would set out the details of the process for applying for reviews to SEPA or making any such appeals.

**Choice of procedure**

32. The power under this section would enable the Scottish Ministers to confer on reservoir managers a right of appeal against enforcement notices. This is similar to appeal rights under orders made under sections 71(1), 76(1), 77(1) and 80(1). It is therefore considered appropriate that any order made under these provisions should be subject to the level of parliamentary scrutiny that the affirmative procedure provides.

**Section 71(1) – Power to make provision for SEPA to give stop notices to reservoir managers of controlled reservoirs**

*Power conferred on:* Scottish Ministers  
*Power exercisable by:* Order made by Statutory instrument  
*Parliamentary procedure:* Affirmative resolution of the Scottish Parliament

**Provision**

33. Section 71 was amended at Stage 2. Section 71 allows the Scottish Ministers to make provision by order to enable SEPA to issue stop notices to reservoir managers of controlled reservoirs. A stop notice is a notice prohibiting a reservoir manager from carrying on an activity that SEPA reasonably believes is a risk to public safety. Certain procedural requirements are set out in section 72. The Scottish Ministers are required by section 84 to consult such organisations as appear to them to be representative of persons substantially affected by the making of the proposed order.

34. Section 71 was amended at Stage 2 so that it now allows stop notices to be issued to reservoir managers where the activity they are carrying out is either (a) an offence under Part 1; or (b) not an offence but is considered by SEPA to present a significant risk of causing an uncontrolled release of water from the reservoir. Before issuing a non-offence notice, SEPA will be required to consult with the Institution of Civil Engineers and the notice must include steps to remove or reduce the risk. SEPA are also required to notify Scottish Ministers of each occasion where they have issued a stop notice in these circumstances. In addition, Stage 2 changes to sections 72 and 73 clarify that any appeals made under the order made under Section 71(1) can be made to Scottish Ministers.

**Reason for taking power and choice of procedure**

35. These remain the same as set out in the original Delegated Powers Memorandum.
Section 76(1) – Power to make provisions for SEPA to accept an enforcement undertaking from a reservoir manager

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

36. Section 76 allows the Scottish Ministers to make provision as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager. An enforcement undertaking is an undertaking given to SEPA by a reservoir manager that the reservoir manager will take certain specified actions. The acceptance of such an undertaking will 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; SEPA may not impose on the reservoir manager a fixed monetary penalty, and may not impose on the reservoir manager any further enforcement measure. By virtue of section 85, any order made under section 76(1) must require SEPA to issue guidance about the use of the powers conferred by the order. Before making an order under section 76(1) the Scottish Ministers would have to consult stakeholders.

37. Section 76 was amended at Stage 2 to enable an order under section 76(1) to make provision for reservoir managers to apply for a review by SEPA before an appeal can be made to the Scottish Ministers.

Reason for taking power and choice of procedure

38. These remain the same as set out in the original Delegated Powers Memorandum.

Section 80(1) – Power to make provisions about the imposition of further enforcement measures on reservoir managers

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision

39. Section 80 allows the Scottish Ministers to make provisions about the imposition on reservoir managers of one or more further enforcement measures in relation to offences. Certain procedural requirements are set out in section 81. The Scottish Ministers are required by section 84 to consult such organisations as appear to them to be representative of persons substantially affected by the making of the proposed order. By virtue of section 85, any order made under section 80(1) must require SEPA to issue guidance about the use of the powers conferred by the order. Section 87(2) enables Ministers to permit SEPA to publicise enforcement action it has taken, including the use of further enforcement measures in accordance with an order made under section 80(1).

40. The power in section 80 was amended at Stage 2 so that any fine imposed by SEPA under this section cannot exceed the maximum fine for which a person convicted of the offence may be liable on summary conviction.
Reason for taking power and choice of procedure
41. These remain the same as set out in the original Delegated Powers Memorandum.

Section 83– Power to make provision regarding non-compliance monetary penalties

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Affirmative resolution of the Scottish Parliament

Provision
42. Section 83(1) allows the Scottish Ministers to make provision under section 80(1) regarding non-compliance penalties payable if a reservoir manager fails to comply with a restraint notice, a restoration notice or an undertaking given under s.81(5). Section 83(2)(b) allows the Scottish Ministers to set criteria in relation to the calculation of the amount of the penalty.

43. The power in section 83 was amended at Stage 2 so that any fine imposed by SEPA under this section cannot exceed the maximum fine for which a person convicted of the offence may be liable on summary conviction. In addition, Stage 2 changes were made to (a) section 83(3)(b) to clarify that appeals required for non-compliance penalties are to be made to Scottish Ministers, and (b) section 83(5) to clarify technicalities of the recovery process for non-compliance penalties.

Reason for taking power and choice of procedure
44. These remain the same as set out in the original Delegated Powers Memorandum.

Section 87(1) – Power to require SEPA to publish information

Power conferred on: Scottish Ministers
Power exercisable by: Order made by Statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision
45. Section 87(1) was amended at Stage 2 to allow the Scottish Ministers by order to require (rather than merely enable) SEPA to publish such information as may be specified in the order about cases where SEPA have taken action to address non-compliance by reservoir managers. Such cases may include those where SEPA has had to step in to appoint engineers or arrange for measures in the interest of safety to be undertaken, and those where they have issued stop notices, imposed fixed monetary penalties or imposed further enforcement measures. The amendment is intended to clarify the issue about the scope of the power raised by the Committee at Stage 1.

Reason for taking power and choice of procedure
46. These remain the same as set out in the original Delegated Powers Memorandum.
Subordinate Legislation Committee

Remit and membership

Remit:

1. The remit of the Subordinate Legislation Committee is to consider and report on-

(a) any-

(i) subordinate legislation laid before the Parliament;

(ii) Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter;

(iii) Pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation; and

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Bob Doris (Deputy Convener)
Helen Eadie
Rhoda Grant
Alex Johnstone
Ian McKee
Elaine Smith
Jamie Stone (Convener)
Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Jake Thomas

Support Manager
Lori Gray
1. At its meeting on 8 March 2011, the Subordinate Legislation Committee considered the delegated powers provisions in the Reservoirs (Scotland) Bill as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill (“the supplementary DPM”)\(^1\).

**Delegated Powers Provisions**

3. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the powers contained in sections: 1(6)(b), 2(3), 6, 9(3), 9(5), 10(2), 12(1), 14(4), 21(4), 22(7), 23, 25(a), 26(7) and (8), 27(4), 28(2), 30(4)(b), 33(1)(c), 36(3)(c), 48(10), 49(1)(e), 49(2), 54(3), 55(2), 55(4), 62(1), 71(1), 83(2)(b), 97(1), 99, 101, 106 and 109.

4. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new, or substantially amended, powers in sections 1(4), 1(6)(a), 13A, 14(4), 22A(7), 53(3)(ba), 55(3)(d), 67(7), 71(4), 76(6), 80(4), 83(2), and 87(1).

5. The Committee also notes and welcomes that the Bill has been amended at Stage 2 to implement recommendations of the Committee in relation to the following sections – 1(4), 1(6)(a), 80(4)(a), 83(2), and 87(1).

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\(^1\) [Supplementary Delegated Powers Memorandum](#)
Reservoirs (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 109  Schedule
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 22A

Richard Lochhead

1 In section 22A, page 12, line 29, leave out <Subject to subsection (5),>

Richard Lochhead

2 In section 22A, page 12, line 30, leave out <despite the appeal> and insert <while the appeal is pending>

Richard Lochhead

3 In section 22A, page 12, line 31, leave out from <must> to <account> in line 33 and insert <—

( ) may, at their own expense, appoint to make recommendations about the risk designation an engineer who is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this subsection, and

( ) must take into account—

(i) a recommendation by any engineer appointed under this subsection, and

(ii)>

Section 26

Richard Lochhead

4 In section 26, page 14, line 7, leave out <(4)> and insert <(5)>

Section 45

Richard Lochhead

5 In section 45, page 24, line 4, leave out <that any> and insert <—

(i) that any measures specified in the inspection report for the maintenance of the reservoir are monitored by the supervising engineer, and
(ii) that the other>

**Section 46**

Richard Lochhead

6 In section 46, page 25, line 1, leave out subsection (2A)

Richard Lochhead

7 In section 46, page 25, line 15, after <engineer> insert <or the other qualified engineer>

Richard Lochhead

8 In section 46, page 25, line 17, at end insert—

<(  ) The engineer giving an inspection compliance certificate must take an interim compliance certificate given by another engineer under this section to be conclusive of that measure having been taken.>

Richard Lochhead

9 In section 46, page 25, line 21, leave out <An inspecting> and insert <The inspecting engineer or the other qualified >

**Section 48**

Richard Lochhead

10 In section 48, page 26, line 15, at end insert—

<(ca) monitor compliance by the reservoir manager with the requirements of any direction given in the latest inspection report by virtue of section 45(3)(d)(i).>

Richard Lochhead

11 In section 48, page 26, line 20, at end insert—

<(  ) a direction referred to in paragraph (ca).>

Richard Lochhead

12 In section 48, page 27, line 14, at end insert—

<(  ) a direction referred to in subsection (2)(ca).>

**Section 67**

Richard Lochhead

13 In section 67, page 37, line 39, leave out <that section> and insert <section 69>
Section 71

Richard Lochhead
14 In section 71, page 40, line 1, leave out from <consult> to end of line 2 and insert <, before it exercises the power—

( ) at its own expense appoint an engineer who is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this subsection, and

( ) take into account recommendations made by that engineer about the stop notice,>

Section 72

Richard Lochhead
15 In section 72, page 40, line 12, after <appeal> insert <to the Scottish Ministers>

Section 94

Richard Lochhead
16 In section 94, page 55, line 8, after first <engineer> insert <, an other qualified engineer>

Before section 96A

Richard Lochhead
17 Before section 96A, insert—

<Guidance

(1) The Scottish Ministers must publish guidance on the operation of this Part.

(2) Guidance under subsection (1) must in particular—

(a) include guidance on any orders or regulations which have been made under this Act and which affect the operation of this Part, and

(b) incorporate any guidance which has been issued or published under any other provision of this Part (whether by SEPA or the Scottish Ministers).

(3) The Scottish Ministers must keep the guidance under this section under review with a view to revising and re-publishing the guidance with such revisions as they think appropriate.

(4) Before publishing or re-publishing any guidance under this section, the Scottish Ministers must consult—

(a) SEPA,

(b) the Institution of Civil Engineers,

(c) such other persons as they consider appropriate.>
Section 97

Richard Lochhead

18 In section 97, page 56, line 11, at end insert—

<( ) other qualified engineers,>

Section 98

Richard Lochhead

19 In section 98, page 56, line 29, after second <engineer> insert <, an other qualified engineer>

Section 105

Richard Lochhead

20 In section 105, page 60, line 23, leave out <Part> and insert <Act>
Reservoirs (Scotland) Bill

Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 proceedings, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Note:** The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on all of the groups must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Minor amendments**
1, 2, 4, 13, 15, 20

**Group 2: Risk designation appeals and stop notices – appointment of engineer to advise**
3, 14

**Group 3: Monitoring of measures for maintenance of reservoir**
5, 10, 11, 12

**Group 4: Interim inspection compliance certificates and inspection compliance certificates**
6, 7, 8, 9

**Group 5: Application of certain provisions to other qualified engineers**
16, 18, 19

**Group 6: General guidance on Part 1**
17

Debate to end no later than 15 minutes after proceedings begin
Business Motion: Reservoirs (Scotland) Bill: Bruce Crawford, on behalf of the Parliamentary Bureau, moved S3M-8118—That the Parliament agrees that, during Stage 3 of the Reservoirs (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the Stage being called) or otherwise not in progress:

Groups 1 to 6: 15 minutes.

The motion was agreed to.

Reservoirs (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

Reservoirs (Scotland) Bill - Stage 3: The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead) moved S3M-8110—That the Parliament agrees that the Reservoirs (Scotland) Bill be passed.

After debate, the motion was agreed to (DT).
Reservoirs (Scotland) Bill: Stage 3

16:59

The Deputy Presiding Officer (Trish Godman): The next item of business is stage 3 proceedings on the Reservoirs (Scotland) Bill. In dealing with amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings, which the Presiding Officer has agreed. As usual, the division bell will sound and proceedings will be suspended for five minutes for the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate, and all other divisions will be 30 seconds.

Section 22A—Appeal to the Scottish Ministers following SEPA’s review

The Deputy Presiding Officer: Group 1 is on minor amendments. Amendment 1, in the name of the cabinet secretary, is grouped with amendments 2, 4, 13, 15 and 20.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): We have taken this final opportunity to propose a few minor drafting adjustments to the bill to tidy up some loose ends. Amendments 1 and 2 amend section 22A(3) to remove any doubt that the risk designation that is given by the Scottish Environment Protection Agency continues to apply during any appeal to the Scottish ministers against that risk designation.

Amendment 4 simply corrects the reference in section 26(6) to notices under subsection (4), which is incorrect, to notices under subsection (5). Amendment 13 makes section 67(4) clearer by inserting a specific reference to section 69, which is already referred to, rather than retaining a slightly opaque reference to that section. Amendment 15 simply clarifies that appeals against the issuing of stop notices may be made to the Scottish ministers against that risk designation.

Amendment 20 corrects a reference in section 105 so that it refers to the whole of the act as intended, rather than just part 3.

I trust that members will support those amendments, and I move amendment 1.

Amendment 1 agreed to.

Amendment 2 moved—[Richard Lochhead]—and agreed to.

The Deputy Presiding Officer: Group 2 is on risk designation appeals and stop notices—appointment of engineer to advise. Amendment 3, in the name of the cabinet secretary, is grouped with amendment 14.

Richard Lochhead: Section 22A was inserted at stage 2 to enable reservoir managers to make appeals to the Scottish ministers against SEPA risk designations. An appeal may be made after a SEPA review of its initial risk designation for a reservoir.

The Institution of Civil Engineers raised concerns about the consultation requirement in section 22A. Section 22A requires the ICE to be consulted before ministers determine an appeal, but the ICE does not think that it is appropriate that it should be consulted on individual cases. As a result, we agreed to lodge an amendment to address its concerns.

Amendment 3 removes the consultation requirement, and in its place enables ministers, when considering risk designation appeals, to appoint—at their own expense—an engineer to make a recommendation on the risk categorisation. The appointed engineer must be a member of an appropriate panel. That ensures that engineering expertise can still be sought by ministers if circumstances warrant it.

A similar issue arose after stage 2 in relation to the amended section 71. The power in section 71 was altered at stage 2 to allow SEPA to issue stop notices to reservoir managers who are carrying out an activity that is causing a risk of an uncontrolled release of water, even when the activity itself is not an offence. To ensure that stop notices in those circumstances are issued only when it is necessary, the bill was amended to require SEPA to seek expert engineering advice before issuing such a stop notice, by consulting the Institution of Civil Engineers.

The ICE has concerns about that consultation provision that are similar to those that I have just mentioned in relation to section 22A appeals. Amendment 14 therefore replaces the requirement to consult the ICE with a requirement to appoint a suitably qualified engineer to make recommendations about a stop notice. It also requires SEPA to take into account any recommendations that are made by that engineer.

We have consulted the ICE on amendments 3 and 14, and it is content with the proposed changes.

I move amendment 3.

Amendment 3 agreed to.

Section 26—Appointment and removal of panel members
Amendment 4 moved—[Richard Lochhead]—and agreed to.

Section 45—Inspections: duties of inspecting engineers etc

The Deputy Presiding Officer: Group 3 is on monitoring of measures for maintenance of reservoir. Amendment 5, in the name of the cabinet secretary, is grouped with amendments 10 to 12.

Richard Lochhead: During our continuous dialogue with the Institution of Civil Engineers, a number of final adjustments to sections 45 and 48 were identified as necessary to ensure that the different types of measures in the interests of safety are appropriately supervised, monitored and reported on.

Amendment 5 separates the supervision of maintenance safety measures from other safety measures and places them under the monitoring regime of the supervising engineer rather than the inspecting engineer. As required maintenance measures in the interests of safety are likely to be on-going, we believe that monitoring by the supervising engineer is more appropriate.

The remaining amendments in the group are consequential on that change. Amendment 10 makes it a duty for the supervising engineer to monitor the reservoir manager’s compliance with any maintenance safety measures that are specified in an inspection report. As required maintenance measures in the interests of safety are likely to be on-going, we believe that monitoring by the supervising engineer is more appropriate.

The remaining amendments in the group are consequential on that change. Amendment 10 makes it a duty for the supervising engineer to monitor the reservoir manager’s compliance with any maintenance safety measures that are specified in an inspection report. As required maintenance measures in the interests of safety are likely to be on-going, we believe that monitoring by the supervising engineer is more appropriate.

I move amendment 5.

Amendment 5 agreed to.

Section 46—Inspection reports: compliance

The Deputy Presiding Officer: Group 4 is on interim inspection compliance certificates and inspection compliance certificates. Amendment 6, in the name of the cabinet secretary, is grouped with amendments 7 to 9.

Richard Lochhead: We amended the bill at stage 2 to enable a different suitably qualified engineer to supervise specific measures in the interest of safety that are set out by an inspecting engineer in an inspection report. That will allow flexibility for a reservoir manager to appoint an engineer who is different from the inspecting engineer to perform a particular task. That is intended to promote competition and best value for the benefit of the reservoir manager. If another engineer is appointed by a reservoir manager, that engineer will be known as the “other qualified engineer”, as stated in the bill.

Although the stage 2 changes were made in collaboration with the Institution of Civil Engineers, it has suggested a number of final adjustments to section 46 to enable the new provisions to work more effectively in practice, and we believe that the amendments are appropriate.

Amendment 7 enables the other qualified engineer to issue the final compliance certificate as well as the interim compliance certificate. A final certificate is issued when all the measures that are specified in the inspection report have been undertaken by the reservoir manager. Amendment 7 means that either the original inspecting engineer or the other qualified engineer can issue the final certificate.

Amendment 8 allows a single final certificate to be issued that covers interim certificates that were given by different engineers.

Amendment 9 makes it a requirement for the inspecting engineer or the other qualified engineer to send copies of interim and final inspection compliance certificates to SEPA.

Amendment 6 is simply a consequential amendment. It deletes section 46(2A), the content of which is included in amendments 8 and 9.

I stress that the amendments in the group do not alter the basic requirements that are already on reservoir managers to ensure that the safety measures that are identified in an inspection report are taken. The amendments simply adjust the procedures for their supervision and the certification of their compliance.

I move amendment 6.

Amendment 6 agreed to.

Amendments 7 to 9 moved—[Richard Lochhead]—and agreed to.

Section 48—Supervising engineer and monitoring of reservoir

Amendments 10 to 12 moved—[Richard Lochhead]—and agreed to.

Section 67—Enforcement notice: safety and other measures

Amendment 13 moved—[Richard Lochhead]—and agreed to.

Section 71—Stop notices

Amendment 14 moved—[Richard Lochhead]—and agreed to.

Section 72—Stop notices: procedure

Amendment 15 moved—[Richard Lochhead]—and agreed to.
Section 94—Affording of reasonable facilities to engineers

The Deputy Presiding Officer: Group 5 is on the application of certain provisions to other qualified engineers. Amendment 16, in the name of the cabinet secretary, is grouped with amendments 18 and 19.

Richard Lochhead: As I explained in relation to the previous group, stage 2 amendments to the bill enabled a different suitably qualified engineer, who is known as the other qualified engineer, to supervise specific safety measures in an inspection report. The amendments in the previous group enhance the role of the other qualified engineer, allowing them to issue the final compliance certificate as well as interim compliance certificates.

To reflect the stage 2 amendments and the stage 3 amendments in the previous group, amendments 16, 18 and 19 have been identified as desirable consequential amendments to recognise the role of the other qualified engineer. They amend sections 94, 97 and 98 to give other qualified engineers facilities to carry out their functions, to allow ministers to make regulations about their role, and to require SEPA to be notified about any revocation of their appointment.

I move amendment 16.

Amendment 16 agreed to.

Before section 96A

The Deputy Presiding Officer: Group 6 is on general guidance on part 1. Amendment 17, in the name of the minister, is the only amendment in the group.

Richard Lochhead: Thank you, Presiding Officer. I am doing my best to keep up here.

Amendment 17 seeks to address concerns that were raised at stage 2 by Peter Peacock and the Rural Affairs and Environment Committee about ensuring that appropriate guidance is in place to assist with the bill’s implementation. I agree that guidance will be essential to successful implementation and have therefore lodged amendment 17, which seeks to place a duty on the Scottish ministers to produce guidance on part 1, including guidance on any orders or regulations. The Scottish ministers must also keep the guidance up to date and, after a review, republish the guidance with appropriate revisions. Moreover, before the publication or republication of guidance, ministers must consult SEPA, the ICE and any appropriate persons. I hope that the amendment addresses Peter Peacock’s concerns and I ask Parliament to support it.

I move amendment 17.

Peter Peacock (Highlands and Islands) (Lab): I place on record my thanks to the cabinet secretary for having taken account of the point that I made at stage 2 and I thank him and his officials for lodging this splendid amendment.

The Deputy Presiding Officer: I guess that you have nothing to add, cabinet secretary.

Richard Lochhead: I just want to thank Peter Peacock for contributing to the debate.

Amendment 17 agreed to.

Section 97—Assessment of engineers’ reports etc

Amendment 18 moved—[Richard Lochhead]—and agreed to.

Section 98—Notice to SEPA of revocation of appointment or resignation of engineer

Amendment 19 moved—[Richard Lochhead]—and agreed to.

Section 105—Offences by bodies corporate

Amendment 20 moved—[Richard Lochhead]—and agreed to.

The Deputy Presiding Officer: That concludes consideration of amendments.
Reservoirs (Scotland) Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-8110, in the name of Richard Lochhead, on the Reservoirs (Scotland) Bill.

17:11

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): If only the passage of all bills were as smooth, Presiding Officer.

I am, of course, delighted to open the debate. I hope that all members are still feeling bright and breezy after stage 3 and I look forward to their speeches in this closing debate on a bill that has been with us for a number of months now.

We are putting the finishing touches to what will prove to be an essential long-term piece of legislation for Scotland. A particular spirit of collaboration has led to the bill passing through Parliament in a very constructive and positive way. Because of its very technical nature, there have been more than a few opportunities for humour at various stages of the process, but that has not prevented the members of the Rural Affairs and Environment Committee from recognising the real impact that the bill will have on public safety in Scotland. Their diligent scrutiny should be roundly praised. At this point, I record my thanks for the hard work that has been put in from all quarters. The resulting legislation will equip Scotland with a modern, innovative approach to regulating reservoirs without placing unnecessary burdens and additional bureaucracy on reservoir managers.

We must recognise the truly catastrophic impact that the failure of a reservoir could have. In the very same week in October 2010 that the bill was introduced, a breach of a dam in Hungary cost 10 lives and injured a further 120 people. Although the impact of the Hungarian incident was exacerbated by the fact that the dam was holding back a vast quantity of toxic sludge—something that would not be held in reservoirs in this country—the sheer volume of liquid released was, on its own, enough to cause considerable damage.

Moreover, I remind members, if anyone needs reminding, that in 2008 we had our own near failure of a dam at the Maich fishery in Renfrewshire. A disaster that had the very real potential to cost lives and cause extensive damage to infrastructure was only narrowly averted but, even so, people still had to be evacuated. The Maich fishery was not regulated because it was below 25,000m³ in capacity; that would have been remedied by just one of the significant and necessary changes to reservoir legislation that are made by this bill.

The incidents in Hungary and Renfrewshire, to name but two, provide stern warnings that we must do everything in our power to stop anything like that ever happening in Scotland. I have no doubt that this legislation will do exactly that. It will promote a safer, stronger and more secure environment for the people of Scotland. It might sound like a cliché, but it is entirely true: this bill will help to protect lives.

At this point, I am required to signify Crown consent for the bill. Before proceeding, and for the purposes of rule 9.11 of the standing orders, I wish to advise the Parliament that Her Majesty, having been informed of the purport of the Reservoirs (Scotland) Bill, has consented to place her prerogative and interests, so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill.

I express my gratitude to all those who have been involved in the bill’s development. We have had vital input from many individuals, organisations and public bodies. I thank specifically the members of the reservoir safety stakeholder group, who have been a major influence in shaping the bill. I am sure that that influence will continue throughout the implementation stages. Their expert advice has been very valuable.

I thank my colleague Roseanna Cunningham, the Minister for the Environment and Climate Change, for the considerable progress that she made with the bill, and record my appreciation of the work that has been done by the members of the Finance Committee and the Subordinate Legislation Committee, and particularly the members of the Rural Affairs and Environment Committee. Their scrutiny of the bill has been thorough, well thought out and constructive, and I was pleased that we all agreed on most—indeed all—of the issues at stage 2. I also thank the clerks, who have worked diligently to support the bill and all the work of their respective committees.

Finally, I place on record my sincere thanks to my officials in the bill team and the Government and parliamentary legal teams. They have worked extremely hard on a demanding technical bill with a challenging timetable. I am sure that dissolution of the Parliament cannot happen soon enough for our committee and Government officials and that they are looking forward to the six-week break that is just around the corner.

I am confident that everyone who has worked on the bill agrees that the collaborative approach that has been taken with stakeholders and across party lines has been central to its successful development. I will outline some of the bill’s key
elements, although I am sure that many members are familiar with them by now.

The bill will introduce a risk-based system of regulation. Reservoirs with no communities living downstream of them will be subject to less enforcement and will benefit from the reduced costs that that will deliver. Reservoirs that are close to communities and businesses will be more meticulously assessed to provide the highest possible level of protection.

We have reduced the minimum volume for regulation to 10,000m$^3$. That change has been based on the most up-to-date technical advice available from the Institution of Civil Engineers. All managers of reservoirs of more than 10,000m$^3$ will be required to register their reservoir with the Scottish Environment Protection Agency. That registration will be free to reservoir managers for the first six months. Once the reservoir manager has registered, SEPA will categorise the reservoir as high, medium or low risk. The categorisation will determine the level of regulation.

The enforcement role will pass from local authorities to SEPA, which will hold the details in a central register of all reservoirs in Scotland and will receive details of maintenance and construction work from the appointed engineers and reservoir managers.

Finally, we have retained the role of the Institution of Civil Engineers, which has been a crucial feature of reservoir safety for more than 30 years. Its knowledge will continue to be invaluable to reservoir managers and, of course, SEPA.

To conclude, I believe that the bill will position Scotland’s system at the forefront of risk-based systems of reservoir safety and that it will make a significant and lasting difference to those who are at risk of flooding from reservoirs. It will protect Scotland’s people and property for many years to come, and I believe that it deserves the support of every member.

I am pleased to move,

That the Parliament agrees that the Reservoirs (Scotland) Bill be passed.

17:18

Elaine Murray (Dumfries) (Lab): The bill’s passage through Parliament has been relatively fast. It was introduced only five months ago, and the stage 1 debate was only six weeks ago. That is rather unfortunate, as it rules out the possibility of my simply repeating the speeches that I made at that stage. People might remember what I said six weeks ago. Several committee members had the foresight to visit Malawi then, of course. Unfortunately for them, they have no such excuse not to be here today.

Despite 102 amendments being lodged at stage 2, that stage was completed in one hour and nine minutes. All but two of the amendments were in the name of the cabinet secretary. Twenty more amendments have been passed this afternoon in probably less than 15 minutes. That does not indicate that the subject of the bill is unimportant; it is far from being so. As the cabinet secretary mentioned and as Jamie McGrigor mentioned in the stage 1 debate, the effects of failure can be catastrophic. They have both referred to the terrible events in Hungary at the time of the bill being introduced.

The bill requires the registration of all reservoirs with a capacity of more than 10,000m$^3$ and the assessment by SEPA of the risks of the probability of flooding and the consequences of an uncontrolled release of water. In everyday language, we would refer to that as flooding, which can be very serious. Many reservoirs are situated above population centres; in those circumstances, flooding can be extremely serious. Before the bill was introduced, reservoirs of less than 25,000m$^3$ did not have to be registered and their risk was not required to be assessed or categorised.

The Reservoirs Act 1975 was amended by the Flood Risk Management (Scotland) Act 2009, which, among other provisions, transferred the enforcement duties from local authorities to SEPA and required the production of flood plans. Those provisions have not yet been commenced, but the bill will link in with them. The bill will also enable offences to be created under the Water Environment and Water Services (Scotland) Act 2003, which I am sure we all recall with affection.

In the stage 1 debate, members noted that the bill was specialised and that a number of drafting errors had been made. Expert witnesses from bodies such as the Institution of Civil Engineers, Scottish Water and Scottish and Southern Energy raised other technical concerns. The cabinet secretary undertook to lodge amendments at stage 2, which addressed many points that the committee made. For example, the definition of a reservoir manager could have been interpreted to include organisations such as angling clubs that used or leased a reservoir for recreational purposes. A stage 2 amendment made it clear that such organisations would be responsible for supervision and maintenance only if they also had the power to operate the dam.

The bill’s financial impact on individuals, small businesses and charitable organisations that might now be caught by legislation because they have on their land a reservoir with a capacity of between 10,000m$^3$ and 25,000m$^3$ was discussed at stage 1. Committee members were concerned that some reservoir owners might be unable to afford to register, to undertake required
maintenance work or to decommission a reservoir if they could not afford maintenance. Committee members therefore welcomed the amendments that enabled the Scottish ministers to provide grants under conditions that they consider appropriate.

A couple of financial issues cannot be resolved now but should be monitored after the bill is enacted. In the stage 1 debate, I and others raised SEPA’s ability to undertake its additional responsibilities when its budget is being substantially reduced. SEPA’s budget is due to reduce by £4.9 million—11 per cent—in the next financial year, while implementing the bill could involve one-off costs of up to £2.9 million and staffing costs of £2.19 million up to 2016. Those figures were estimated in the financial memorandum before the welcome decision was taken to give ministers grant-making powers. I assume that SEPA will issue grants on ministers’ behalf, as SEPA will register reservoirs and could require maintenance work to be undertaken. If I am incorrect, I am sure that the cabinet secretary can correct me.

The new planning regime has changed SEPA’s role in relation to planning applications. In addition, SEPA has consulted on introducing a more efficient and risk-based regulatory regime. Budget savings from those sources are probably to be expected. However, the cost of implementing the bill is difficult to estimate, so it should be monitored once the bill is enacted.

I assume that the bill’s close fit with other legislation, such as the 2009 act, could enable work under the bill to be undertaken in conjunction with duties under other acts. I would welcome the cabinet secretary’s views on how the bill’s budget implications will be monitored and published.

Overall, Labour members and I welcome the bill’s final stage. We look forward to the bill’s progress to being enacted. It will be important legislation, despite the jokes that we all made about it during its passage through Parliament.

17:23

John Scott (Ayr) (Con): I thank all those who have been involved in the bill’s creation and passage. I, too, thank all the respondents to the consultation, the witnesses who gave evidence to the Government and to the Rural Affairs and Environment Committee, and in particular the Institution of Civil Engineers. I also thank the committee’s clerks, Alasdair Reid from the Scottish Parliament information centre and the minister for responding readily to the issues that the committee and other stakeholders raised.

Today, after considering 122 amendments at stages 2 and 3, we will pass into law a bill that creates a legal and administrative framework for the construction and management of controlled reservoirs to deal with the risk of uncontrolled releases of water and their consequences of flooding. The bill also, perhaps rather incongruously, provides for the creation of offences to support the Water Environment and Water Services (Scotland) Act 2003, as those were omitted from the 2003 act.

Peter Peacock (Highlands and Islands) (Lab): At stage 1, Mr Scott raised a very interesting point about a Mohr’s slip circle. Is he satisfied that, in the unfortunate event of the occurrence of a Mohr’s slip circle, people will be better protected as a result of the bill?

John Scott: Naturally I welcome, as ever, Peter Peacock’s well-thought-out intervention. That is a matter that I, coincidentally, expect to come to later, but I nonetheless welcome his intervention.

Scottish Conservatives welcome the bill, which seeks primarily to make Scotland a safer place in terms of reservoir safety. Given the age of our Scottish reservoirs, many of which are more than 100 years old, and the recent incident at the Maich fishery in Renfrewshire, the bill is certainly necessary and timeous. It will place some new burdens on owners who had none before and, in a few cases, it will reduce the burden on other owners.

In particular, the bill will introduce, for the first time, reservoirs of 10,000 m$^3$ capacity and move them into the regulations. However, limited users of the reservoirs, such as fishermen and angling clubs, will be exempt from the burden of regulation unless they are owners or lessees of reservoirs. I know that many fishermen and angling clubs will welcome that exemption.

Registration of reservoirs will now be mandatory to allow SEPA to maintain a register of controlled reservoirs. I urge those who are required to register to do so within the six-month period of grace after the bill is passed, when no charge will be incurred.

Like other members, I welcome the move towards a risk and consequences-based assessment of reservoirs. The six-year periodic review will keep the evaluation fresh and current. I welcome, too, the recent dialogue between ICE and the Government on how best to assess the risk of failure of essentially inert structures that are more than 100 years old and the inclusion of ICE, along with panel engineers, on the reservoir safety stakeholder group. That is perhaps a belt-and-braces approach, but it is better to be safe than sorry.

However, one concern that I have is the possible emerging threat of extreme weather events caused by climate change. Combinations
of high rainfall and high winds, perhaps combined with a landslip, which could perhaps be caused by a Mohr's slip circle, could lead to overtopping, and a combination of some or all of those events could threaten the stability of older reservoirs. A weather eye, so to speak, must be kept open for new combinations of dangerous events, perhaps not previously experienced and not individually threatening but which, if taken together, could be dangerous to some of our older structures.

On the risk category of established reservoirs being raised due to downstream development or the reduction in capacity from 25,000m³ to 10,000m³, I welcome the Government's clarification and recognition of the cost implications for reservoir owners. The Government's entirely correct intention to treat reservoir managers fairly and proportionately in such cases, and the provision of grants to address funding issues in those or other circumstances, are welcome. Furthermore, the issuing of guidance on the subject, which was agreed to today at Peter Peacock's request, is welcome. It is important that the guidance should cover the widest range of reasonable circumstances. It is just as important that such grant aid is adequately funded. I know that that may well be difficult in the financially straitened times in which we find ourselves. Elaine Murray raised a concern, which I share, about SEPA's funding to carry out the work.

This is a vital and necessary piece of legislation, which will reduce risk to human life, heritage and property and which Scottish Conservatives will support at decision time.

17:29

Liam McArthur (Orkney) (LD): I declare at the outset that I was one of the renegade members of the Rural Affairs and Environment Committee that met in exile in Malawi, but Elaine Murray should not labour under the misapprehension that we were not paying close attention to what was happening at stage 1. I am sure that I speak for Karen Gillon and Maureen Watt when I say that one of the first things we did on returning from Lilongwe was scrutinise the Official Report.

As other members have suggested, the Reservoirs (Scotland) Bill may have suffered a little from living under the shadow of the Wildlife and Natural Environment (Scotland) Bill, which was progressing through its various stages in committee and the chamber almost simultaneously. However, as Elaine Murray said, that is no reflection on the bill's importance. As all speakers have indicated, this afternoon we are deliberating on a sensible, proportionate and important piece of legislation. Its general approach, which is based on risk and, as John Scott suggested, on consequences, is absolutely right. That is the direction of travel that we would like to see for all aspects of regulation. The cabinet secretary was right not simply to illustrate that fact with reference to the incident that occurred in Hungary around the time that the bill was introduced but to bring the issue rather closer to home by referring to the near miss, as it were, at the Maich fishery in Renfrewshire.

There was no equivalent in the bill to the contentious issues around snaring and wildlife crime with which we had to wrestle during consideration of the WANE bill. That said, a couple of issues that struck me as being potentially quite knotty were dealt with by amendments at stage 2.

The first of those issues related to the respective roles and responsibilities of construction engineers, inspection engineers and supervising engineers. At one stage—certainly after the bill was first presented to us—there was a risk that the Government might inadvertently have closed off the potential to access some of the expertise that is available in that cohort of engineers. Fortunately, due to evidence that was given to us at stage 1 and through the consultation with the Institution of Civil Engineers that was ongoing throughout the process, those concerns were adequately addressed at stage 2.

Similarly, concerns were raised about the potential impact of the provision disqualifying an engineer who had previously acted as the construction engineer for a particular reservoir. I welcome the changes that the Government proposed at stage 2.

The other issue that stood out for me was support for small businesses, individuals or angling clubs that are owners of reservoirs. Some of the evidence that we took from one individual at stage 1 demonstrated that the ways in which individuals come into possession of reservoirs are not always straightforward. The potential impact of the liability on individuals and small businesses was almost the dominant concern of the committee at the conclusion of stage 1.

I welcomed the approach that ministers took at stage 2. As I said during stage 2 proceedings, the grant scheme that they have suggested makes sense. The whole committee struggled to find a magic bullet to deal with the problem, but the proposition that the Government has brought forward is a fair and considered stab at addressing it. I recognise that coming up with a ballpark figure for the liability on the Government from such a grant scheme is difficult until risk assessments have been carried out, but I am sure that the measures that have been taken in that regard will be welcome.
I thank fellow members of the Rural Affairs and Environment Committee, the committee clerks and, in particular, those who gave evidence, especially the representatives of ICE, on whose expertise we had cause to rely on a regular and on-going basis. Thanks, too, to the minister and his officials.

There were no huge areas of disagreement, although it was striking that, in those areas where concerns arose, ministers acted swiftly to address them. However, the lack of controversy and profile should fool no one into underestimating the importance of the bill that we will put on to the statute this evening. I very much welcome the Reservoirs (Scotland) Bill, and I confirm that the Liberal Democrats will support it at decision time.

17:35

Maureen Watt (North East Scotland) (SNP): As Liam McArthur has just indicated, the Reservoirs (Scotland) Bill contrasts wildly with the Wildlife and Natural Environment (Scotland) Bill, which also fell within the remit of the Rural Affairs and Environment Committee, and which was debated and passed last week. The passage of the WANE bill was long and tortuous and it had many major controversial amendments right to the end. The Reservoirs (Scotland) Bill, in contrast, has been a bit of a breeze, although, as with many bills that look fairly straightforward at first glance, the devil ends up being in the detail—and the Reservoirs (Scotland) Bill is very detailed.

My committee member colleagues and I have valued the engineering expertise of John Scott, who used his background knowledge to good effect in teasing out many aspects of the bill. While I am in thanking mode, I also thank the clerks, SPICe staff and everyone who gave evidence and who was otherwise involved with the bill.

Like Karen Gillon and Liam McArthur, I apologise for not being present for the stage 1 debate, which took place during the visit to Malawi, but I know that Bill Wilson and Sandra White spoke ably on behalf of Scottish National Party committee members.

There is no doubt that if a reservoir were to fail there could be catastrophic results and it is right and proper for the Government to take preventive measures in that regard. Ten thousand cubic metres is equivalent to four Olympic-size swimming pools—that is the size of reservoir that comes under the bill. We can all imagine that a burst of that amount of water could inflict substantial damage and even loss of life, so it is important that the bill provides for reservoirs to be allocated different levels of risk and supervision at an appropriate level. The costs involved should also be appropriate and I will come back to that point.

The committee had a worry about the availability of qualified engineers capable of undertaking the necessary work. It is good to note, as the bill is passed, that there must be significant employment opportunities for engineering graduates and technicians in this area. Concerns were also raised about conflicts of interest, with the same engineers working for different people and parties, but I am satisfied with the measures that are in place to deal with that. Chapter 8 of the bill deals specifically with dispute resolution and is an important part of the bill.

Owners of reservoirs, especially those of small reservoirs that will now be regulated, are unsurprisingly nervous about the additional burdens, costs and paperwork involved. As with many regulations from various Government departments, full cost recovery of inspections is now the norm. That becomes more true as budgets decrease. It is important that costs are transparent. It is to be hoped that SEPA and other regulatory agencies become more open about how costs are arrived at and that all efforts are taken to keep costs under control—and not to shift unrelated costs on to the owners of reservoirs. It is also important that grants are available for owners who want to decommission their reservoirs, as Elaine Murray said.

Reservoirs play an important part in our natural environment. They provide drinking water, of course, and smaller reservoirs are often used for angling and other pursuits. I often think that reservoirs are underutilised as a resource for leisure pursuits.

As Elaine Murray and other members said, there was little in the bill that was contentious, and all parties agreed to the amendments. It seems pointless to speak for the sake of doing so, particularly given that we face a late decision time this evening. I look forward to the passing of the bill.

17:40

Peter Peacock (Highlands and Islands) (Lab): It is difficult to know where to start, given the wide array of issues in this extensive, complex and technical bill. While the cabinet secretary was speaking, I was thinking that when he comes to write his book about his experiences in Government the chapter on how he steered through this important bill will show that this was a high point in his political career.

Richard Lochhead: Will you be buying the book?
**Peter Peacock:** I do not think so, but I will be delighted to receive a signed copy free of charge, when it has been completed.

In all seriousness, the bill is important.

I was delighted that John Scott put his reference to the Mohr slip circle—I confess that I was blissfully unaware of the phenomenon until it came up in the committee; I had seen one but I did not know what it was until John Scott explained it—in the context of climate change, because it has been important to consider the bill in light of the changing environment in which we live.

A feature of climate change is the much more erratic weather that we have all experienced. Members who have been here for a long time—I mean on the planet, not in the Parliament—can testify to the climate changes over our lifetimes. There is a much greater intensity of rainfall than there was when I was a boy. A consequence is that there is more scouring of the land, which the committee heard can give rise to slips of land into reservoirs. That can lead to overtopping or put pressure on the front of the dam, which in turn could lead to a collapse and endanger human life. John Scott was therefore right to refer to climate change as an important part of the context in which the bill must be considered. It is right that Government should take account of such matters and consider whether legislation is fit for purpose in the current times or needs to be updated. It is very much in such a spirit that the bill was introduced.

As we learned during our evidence taking, many reservoirs were built during the industrial revolution for particular purposes. For example, water was taken from the top of the hill above Greenock and down through the town to power the wealth-creating mills of the time. Some reservoirs are 150 years old or more. As Maureen Watt said, the purposes for which many reservoirs were created and maintained have changed over time, and many reservoirs are now used for leisure. They are largely used for angling, but the diverse habitat that they create is enjoyed by people in their leisure time in a variety of ways.

As the use of reservoirs has changed, so has the ownership. Many people and many small organisations that have a social purpose find themselves in charge of reservoirs. The change in the law, which will improve public safety through a risk-based approach, will lead to new burdens on owners. If everyone who is involved is to understand the implications of the new law, the Government and SEPA must provide a lot of information to owners and the wider public about the changes that are taking place. There must also be guidance for owners on their responsibilities under the new legislation, so that they can take their responsibilities seriously and try to meet their obligations.

In that context, I welcome the amendments that the Government made at stage 2 and today. As others said—Liam McArthur in particular— the Government has approached the bill constructively, as has the committee. The suggestions that were made for improvement were readily picked up and acted upon. I welcome the fact that the Government listened to the committee and to the evidence that it received and reflected that in changes to the bill.

Like Liam McArthur, I will draw attention to one thing in particular. I was particularly impressed by evidence that we got from a private owner who found himself potentially facing liabilities in relation to the new obligations that he and some colleagues would have, which it would clearly be difficult for him to finance. That situation would have the potential to give rise to a loss of amenity over time if the reservoir could not be maintained or kept. Equally, it could give rise to short-term costs that the owner simply could not pay.

The provision that has been included in the bill to give ministers the power, in the right circumstances, to offer grant support to allow people to fulfil their obligations is an important step forward. I hope that it will not require to be used, but it is important that the Government listened to the arguments about that and made provision for it.

I welcome equally the amendment about guidance. I lodged such an amendment at stage 2, but the minister improved upon it and brought the matter back to the Parliament. It will now be part of the coming act.

As members said, the bill is serious. It is all about improving public safety, better protecting the public and examining the risks that are associated with important reservoirs. I have every intention of supporting it at decision time because it is the right thing to do.

17:46

Stewart Stevenson (Banff and Buchan) (SNP): It is a great pleasure to have returned to the Rural Affairs and Environment Committee. I previously served on the Rural Development Committee under your benevolent dictatorship, Presiding Officer. Your performance in that role was so impressive that I was delighted that you expanded your convenership by taking control of the Parliament.

As a late joiner in relation to the bill, I missed the early discussions and the clearly significant engineering contributions that John Scott and others made.
Those members who were in Malawi and missed some of the proceedings should not feel in the slightest bit guilty about it because there the issue of water has a much different character. It is about getting clean, wholesome water in adequate volume to many of the communities in that country. In Scotland, we are fortunate to have sufficient water and simply to have to apply the technical solutions to ensure that we deliver that water to our communities and, through our dams and reservoirs, provide a significant contribution to the amenity of Scotland and the recreation of its inhabitants.

It is worth observing that the extension of the regulation on dams will slightly less than double the number of dams that are covered but, simultaneously, just under one third of those that are currently affected will experience reduced regulation. The bill strikes a proper balance on that.

Deciding that the amount of water that is held in a reservoir that comes under the bill should be 10,000m$^3$ rather than 25,000m$^3$ is quite difficult for the layperson to grasp. To do a little thinking about it, a single cubic metre—1m long by 1m wide by 1m high—is approximately 1 ton in weight because 1 gallon of water weighs 10lb. If 1m$^3$ of water were to be flung over the top of a dam and fall something like 120ft, it would be travelling at 60mph or 70mph by the time it got to the bottom. Members should imagine 1m$^3$ of water hitting an individual: it would be like stepping on to a motorway and being hit by a car.

**John Scott rose—**

**Stewart Stevenson:** I suspect that we will get the exact figures from John Scott.

**John Scott:** Would Stewart Stevenson expect that water to have reached its terminal velocity over that distance, given the gravitational effect on it?

**Stewart Stevenson:** Let us have a really technical discussion. If it were ice, its terminal velocity in that shape would be approximately 120mph. On the other hand, it is travelling as a liquid, so it will of course disperse and to some extent become aerated. It is a complex issue. Does that not touch upon the very complexities of water? I speak, by the way, as someone who has undertaken parachuting, so I know about terminal velocity and all that sort of thing—it is quite exciting, I have to say.

At 10,000m$^3$, we are looking at holding back something of the order of 10,000 tonnes of water.

Climate change is an important part of the future of not just Scotland but countries around the world. We will see dams that are overfilled because of increased rainfall; as atmospheric temperature rises, that will be one of the consequences. Equally, there will be periods of drought, when there is less water behind the dam.

Concrete is a very old material; the Romans used it 2,000 years ago. Many of our dams are constructed of concrete. As Barnes Wallis discovered when he designed the bouncing bomb, concrete is very strong in pressure but very weak in tension. If you take away the water from behind an elderly dam, there is a risk—although not a huge risk—that the dam might collapse backwards towards the water that previously held it in place. There are a range of risks to which some of our older dams can be exposed. The explosive effect of the bouncing bomb—taking the water suddenly away from behind the dam—is of course what caused the concrete to fall backwards and the water to come forward.

Water is essential for human life. It is worth saying that the well-nourished member of this Parliament could probably survive without food for a couple of months but would survive without water for something less than a week. In paying attention to Scotland’s natural resource that is water, we do something very important indeed.

This is a bill of considerable technical complexity that is simple in its purpose. It is fit for purpose and we should all support it at decision time.

**The Presiding Officer (Alex Fergusson):** We come to closing speeches. I can offer each speaker exactly one extra minute and would be very grateful if they took it. You have up to five minutes, Mr McArthur.

17:52

**Liam McArthur:** I am on the horns of a dilemma, Presiding Officer. I got that instruction from you with Maureen Watt’s plea that, if it has all been said for goodness’ sake do not repeat it, still ringing in my ears.

This has been an interesting debate that has set the right tone and reflects the way in which the bill has proceeded through its various stages. A number of speakers have talked about some of the concerns that exist in relation to the availability of qualified engineers. In these straitened times the job opportunities that might exist in that area might be just the sort of thing that we are looking for.

Given the economic circumstances and the state of budgets, it was quite right for a number of speakers to illustrate concerns about the ability of SEPA to carry out its functions.

**John Scott:** I want to help extend the debate and also to introduce an element of controversy. I think that we received assurances from the
Government. I am quite surprised that Liam McArthur and Maureen Watt do not seem happy to accept that sufficient engineers would be available to carry out the work associated with the bill. Is that a continuing concern? Will they pursue with the minister the point that there do not appear to be enough engineers to carry out the work?

Liam McArthur: I was going to go on to comment that I thought it was very brave of Stewart Stevenson to accept an intervention from John Scott. Those of us who have been dealing with the bill from the outset have long since learned the lesson that that is not advisable.

John Scott makes a fair point. Time will tell. We saw that in relation to the Flood Risk Management (Scotland) Bill and the availability of hydrologists. Future workforce planning is a difficult thing to get absolutely right. As John Scott said, we were assured that enough qualified engineers would be available—indeed, I think that Scotland is better blessed in that respect than other parts of the UK—but it is something that we probably need to keep a weather eye on.

Maureen Watt was absolutely right to say that there needs to be transparency when it comes to full cost recovery. It should not be full cost recovery at any cost. Any sense that external costs are being loaded on to reservoir owners needs to be avoided at all stages.

Peter Peacock made his usual thoughtful contribution. He started by referring, quite rightly, to the complex and technical nature of the bill. It is absolutely right that it weaves in issues around climate change. For those of us who are not blessed with the engineering background of Mr Scott, we can conceptualise such matters a little more readily. Like Peter Peacock, the rest of us are looking forward to receiving our signed copy of the minister’s book, “Richard—the reservoir months”, in due course.

Peter Peacock was also right to talk about the change in the usage and ownership of reservoirs, given that the bill places potential new burdens on individuals and smaller businesses who, at the point at which they found themselves in ownership of a reservoir, never anticipated taking on such responsibilities and burdens. I made that point in my opening speech and I reiterate that the Government’s response appears to be fairly pragmatic.

As well as bravely taking an intervention from John Scott and doing an awful lot to ingratiate himself with the Presiding Officer, Stewart Stevenson made some interesting points about the way in which issues around water are ones that we are all wrestling with. Despite the fact that those that we are forced to deal with in a Scottish context are in marked contrast to those that our counterparts in Malawi are forced to deal with, there is an international dimension to such issues.

It boils down to the fact that the bill that we will pass today is about public safety. I think that Stewart Stevenson caused a degree of alarm in identifying a concern about dams collapsing backwards in the event that water is removed from behind them. That was certainly new to me but, as every speaker has identified, recent events in Hungary and Renfrewshire have brought home to us the potential risks that are inherent in the use of dams.

The approach that the bill takes, which is based on the assessment of risk and possible consequences, is absolutely the right one and I reiterate that, on that basis, we will be happy to support it this evening.

17:58

Jamie Mcgrigor (Highlands and Islands) (Con): I am pleased to close the debate on the bill for the Scottish Conservatives. I join many others in paying tribute to the Rural Affairs and Environment Committee for its good stage 1 report and its efforts at subsequent stages, and I thank the many organisations and individuals who took the time to give evidence to the committee or to send briefings to MSPs. In addition, SPICe’s Alasdair Reid produced two very good briefings, which were helpful for today’s debate and the stage 1 debate.

I very much enjoyed Stewart Stevenson’s speech. “The Dam Busters” is one of my favourite films. He was right when he said that an explosion at the front of a dam can cause it to fall in the other way—we saw that happening in the film. I wondered whether he might have heard the strains of “The Dambusters March” as he spoke.

John Scott: Are you going to sing it?

Jamie Mcgrigor: No, I am not going to sing it because I am not allowed to in here, but it is one of my favourite tunes.

As I said in the stage 1 debate, the bill is of particular importance to my region of the Highlands and Islands because of the high number of reservoirs and lochs there. In that debate, I focused on concerns that were voiced in the stage 1 report about the cost implications for current and potential managers of medium or high-risk reservoirs. Amendments at stage 2 and today have gone some way towards addressing those concerns. It is right for ministers to put in place regulations before SEPA is able to charge any fees. It is also right that SEPA must consult widely on any charging scheme for the initial registration fee, annual charges and the cost of checking the dams, which might be done every year. I would be
grateful if the minister could set out in more detail how the Government envisages consultation taking place and how it will ensure that it is as comprehensive as possible.

In Scotland, the feed-in tariff scheme is encouraging the construction of many small to medium-sized hydro schemes, especially in the Highlands and Islands. The developers of many of those schemes will want to construct and engineer storage reservoirs or to use existing lochs in the hills as storage reservoirs to maximise the potential of the schemes in dry weather. It is therefore important that developers are aware of any additional costs that SEPA might levy so that those can be factored into the schemes’ budgets. That will be important when people are trying to raise money from bankers to pay for the schemes—everyone knows how difficult that can be.

I welcome the fact that the bill will give ministers the power to issue grants to managers of high or medium-risk reservoirs that are not regulated by the 1975 act to help them to comply with the new legislation. Again, any further details on such grants from ministers at this stage would be welcomed by constituents who might be affected for the reasons that I have given. How will ministers make people aware of such grants? Will it be done in the same way as it was for the notorious agri-environmental grants?

The Scottish Conservatives are content to see the bill passed today because we recognise the need to enhance reservoir safety and clarify the legal framework that surrounds the construction and management of controlled reservoirs. However, we do not want people to suddenly have to pay charges for natural lochans in the hills just because they are there. We look to ministers to ensure that any remaining concerns about the cost implications are fully addressed and that all stakeholders are fully involved and consulted as the legislation is being implemented.

18:02

Elaine Murray: On behalf of Labour committee members, I thank the clerks and the bill team for their assistance with our consideration of the bill. I also thank the witnesses whose expert evidence illuminated the committee’s consideration and who pointed out to us and the cabinet secretary where amendments were required. Without the advice of organisations such as the Institution of Civil Engineers, we would not, during our consideration of the bill, have been aware of some of the problems that have arisen.

John Scott and Peter Peacock made an important point about the effect of climate change in increasing the risks of uncontrolled releases from older reservoirs. We have to consider climate change in a wide variety of pieces of legislation, not least this bill. As climate change causes erratic weather patterns and stormier weather, we will have to take preventive action as part of the way in which we adapt to climate change. Climate change is an issue not just in this country. It is an issue of international concern, and some of the problems that committee colleagues who went to Malawi observed on their travels relate to the effects of climate change in some of the hotter parts of the globe in addition to the effects that we see here, such as inundation and heavy rainfall.

I was reassured to hear that Liam McArthur, Maureen Watt and Karen Gillon rushed back to our stage 1 deliberations when they returned from Malawi. I am sure that they found the *Official Report* to be very illuminating. I thought that Liam McArthur referred to two naughty issues, and that I had missed something much more exciting than what was in the bill.

Liam McArthur: It was knotty with a k.

Elaine Murray: Maureen Watt referred to John Scott’s professional knowledge as a trained engineer. I have to say that John was probably more enthusiastic about the consideration of the bill than many other committee members, and I am grateful to him for bringing many different aspects to our attention. John normally advises us about agricultural issues from his position as a farmer, so to get his input as a civil engineer was interesting.

At stage 2, my colleague Peter Peacock raised the need to ensure that there is clarity in the interpretation of the bill and the responsibilities of the various individuals and organisations concerned. He pointed out then that the bill will create many new small registered reservoirs, that the managers of the reservoirs will be required to comply with legislation, and that to do that they will have to be able to understand both the nature and the scope of their responsibilities.

Part 1 of the bill is the most substantive. It places duties and responsibilities on the owners of reservoirs between 10,000m$^3$ and 25,000m$^3$, which are currently not required to be registered. I was therefore pleased that amendment 17 was agreed to this afternoon. It requires ministers to publish guidance, after consultation with SEPA, the Institution of Civil Engineers and any other persons who might seem to be appropriate, on how the legislation has to be interpreted. The amendment also requires ministers to review and republish the guidance as they think appropriate. At stage 2, Peter Peacock made the point that the previous legislation ended up with extensive guidance as it was revised over the years.
Mention has been made of the use of reservoirs for leisure, but they also provide an important habitat for many species, such as waterfowl. RSPB Scotland or one of the other non-governmental organisations raised the concern at stage 1 that, if reservoirs were decommissioned as a result of the legislation, important habitat might be lost. The fact that ministers could make grants available means that they could help to protect those habitats and biodiversity in general.

I do not know whether today’s speech was Stewart Stevenson’s 401st—I know that he reached 400 fairly recently.

Stewart Stevenson: Four hundred and second.

Elaine Murray: It was his 402nd speech. He reminded us of the issues around the weight of water and the speed at which it can travel. I was almost inclined to intervene in the debate between him and John Scott about what would actually happen as, of course, the water would not be flying through the air but pouring down the hillside, and the effects of friction and turbulence would have to be considered in judging the speed at which it would reach the bottom. However, I did not intervene because Karen Gillon was sitting beside me and I thought that she might hit me if I did. [Laughter.] However, the dialogue between John Scott and Stewart Stevenson was a good prelude to the science hustings, which I am hosting in committee room 1 this evening—I thought that we would have a little advert for that.

The cabinet secretary referred to a six-week break. It may be a six-week break for some. I think that this is probably the last stage 3 speech in this session in which I will take part—I am sure that members are relieved about that—but I hope to return to this place both leaner and fitter after my six-week break.

Finally, Jamie McGrigor and Stewart Stevenson both referred to the film “The Dam Busters”. My colleague Karen Gillon, who was with me when they did, observed that perhaps we should be considering “Reservoir Dogs”.

18:08

Richard Lochhead: I thank members for their beneficial and constructive contributions to the debate. I know that Elaine Murray was concerned that we would be making so many speeches on the subject so close together, and she was worried that we had long memories. My constituents are always telling me that politicians have very short memories, so I assure her that we have forgotten what each of us has been saying.

I pay tribute to Peter Peacock, who is standing down from Parliament shortly. I do not know whether this is his last debate in Parliament, but it is certainly his last debate on my ministerial responsibilities. Even though we have not agreed on every issue, I pay tribute to the valued and thoughtful contributions that he has made in this chamber and in committee. [Applause.] He referred to the fact that I will perhaps mention this debate in my memoirs. I was going to give him a special mention, but he went on to say that he would not buy a copy of my memoirs, so I have dropped that idea. Nevertheless, I wish him all the best for the future.

John Scott was brave to take on Stewart Stevenson. He was clearly not aware that Stewart Stevenson is the Scottish National Party group’s chief scientist as well as our chief medical officer and chief engineer—as John Scott will have learned from the response to his intervention. He should have known better than to take on Stewart Stevenson. It was good to have a speech by a real scientist, Elaine Murray, on the Labour benches, during the debate as well.

It has given me great pleasure to bring the bill to the chamber. It has perhaps not been seen as the most attention-grabbing piece of legislation, as members have said, but we can all agree that it is a vital requirement for Scotland’s future and the safety of our communities. Indeed, the main reason why we decided to strengthen reservoir safety legislation was to ensure that we, in Scotland, never see the sort of attention-grabbing headlines that are prompted by reservoir breaches elsewhere in the world. As I mentioned at the start of the debate, the consequences of a reservoir failing are too unthinkable for us not to do everything in our power to prevent that from ever happening. We are in agreement that there is a need for new and improved reservoir safety legislation if we are to continue properly to protect the people of Scotland.

However, legislation alone will not make the necessary improvements to reservoir management. The Scottish Government has set in place a framework for taking forward the implementation of the bill. That work will build on the strong partnerships that have been developed during preparations for the bill.

A number of issues were raised during the debate, and I will try to address one or two of them. Maureen Watt and others asked whether there will be enough engineers to carry out the work that the bill will require. We have taken the issue seriously and referred to it at stage 2 when I attended the committee. I advise those members who raised the issue that, in 2010, 60 people were appointed or reappointed to the reservoir panels. The figure for 2010 was slightly higher than the average for a number of years, which was only 40. We can all agree that the trend is going in the right
direction and that we can take some satisfaction from those statistics.

Reference was made to the costs that will be borne by reservoir managers and owners as well as those who will have to carry out improvements to meet the obligations that will be placed on them. I reiterate what I said at stage 2 about SEPA’s charging regime. SEPA will publish a detailed consultation paper on any proposed charging schemes and any schemes will have to be signed off by Scottish ministers. Members can rest assured that we will take into account the nature of the charging schemes when they are put in place.

John Scott: For the avoidance of doubt, can the minister tell us whether the charging schemes that he envisages SEPA creating will operate purely on a cost recovery basis?

Richard Lochhead: We will certainly take that into account to ensure that the charging schemes operate on a cost-recovery basis and are proportionate.

The other financial issue to be raised was to do with the financial provision that the Government proposes to make to assist small businesses with the new costs that may arise as a result of the bill. We amended the bill at stage 2 to allow financial help to be provided to the owners of newly regulated reservoirs in extreme cases. We all accept that the bankruptcy of any business is nobody’s interests. If we did not help, that might result in the cost of the required maintenance falling on the public purse in any case, which is why we lodged the amendment on that. However, any such assistance will not be required before 2015 at the earliest, when we will know the risk categories of all reservoirs of between 10,000m$^3$ and 25,000m$^3$. By then, the risk will have been assessed and the scale of any necessary remedial action will be known.

I should also make it clear that the level of necessary financial assistance will be assessed on a case-by-case basis to ensure that it goes to those who really need it. It will, of course, be a temporary measure to assist with any capital investments. Thereafter, reservoir managers should be able to maintain their reservoirs to ensure that the safe standards that they have reached continue. If not, they should consider whether they wish to own or manage reservoirs in the future.

Jamie McGrigor: I am delighted that there will be grants towards the costs of people developing reservoirs or bringing them up to standard, but what about inspection charges in the years thereafter? Does the cabinet secretary know how much those inspection charges will be and how often the reservoirs will have to be inspected?

Richard Lochhead: Financial assistance will be given only to those who have to bring their reservoirs up to the standards that are required and those who are in the circumstances that I have just outlined. No other financial assistance is envisaged.

I see that I am just about out of time, so I will say simply that the bill brings new opportunities and, of course, new challenges. I want to thank everyone for their enthusiasm and their commitment to the bill as we meet Scotland’s reservoir management needs in the 21st century. Many members have mentioned climate change and other threats to Scotland. The bill is about making Scotland a safer place, and I commend it to Parliament.
The next question is, that motion S3M-8110, in the name of Richard Lochhead, on the Reservoirs (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Reservoirs (Scotland) Bill be passed.
CONTENTS

Section

PART 1

RESERVOIRS

CHAPTER 1

CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs
2 Controlled reservoirs: supplementary
3 Reservoir managers
4 Multiple reservoir managers: supplementary
5 Duty of multiple reservoir managers to co-operate
6 Guidance by SEPA: management of reservoirs
7 SEPA
8 The 1975 Act and its repeal

CHAPTER 2

REGISTRATION

9 Controlled reservoirs register
10 Reservoir managers’ duty to register with SEPA
11 Controlled reservoirs required to be registered under the 1975 Act
12 Controlled reservoirs not required to be registered under the 1975 Act
13 Structures or areas which become controlled reservoirs after the relevant date
13A Fees: registration and administration
14 Registration: supplementary
15 Transfer of information from existing relevant authorities
16 Offences: registration

CHAPTER 3

RISK DESIGNATION

17 Provisional risk designation
18 First risk designation
19 Periodic review of risk designations
20 Decision following a periodic review
21 Risk designation and periodic review: matters to be taken into account
22 Review of SEPA’s decisions giving risk designations
22A Appeal to the Scottish Ministers following SEPA’s review
23 Guidance by SEPA: risk designation
24 High-risk reservoirs, medium-risk reservoirs and low-risk reservoirs: further provision

CHAPTER 4
PANELS OF RESERVOIR ENGINEERS

25 Panels of reservoir engineers
26 Appointment and removal of panel members
27 Dissolution of panels etc.
28 Review of decisions to appoint or remove civil engineers from panels etc.
29 Consultation with Institution of Civil Engineers

CHAPTER 5
CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

30 Application of Chapter 5
31 Notice to SEPA and appointment of construction engineer
32 Inspection, reports, supervision of works etc. by construction engineer
33 Safety reports
34 Safety reports: compliance
35 Preliminary certificates
36 Construction certificates
37 Final certificates
38 Preliminary and final certificates: compliance
39 Termination of supervision by construction engineer
40 Offences: construction or alteration
41 Defences: offences under section 40(1)(d) or (e)
42 Controlled reservoirs subject to relevant works on commencement

CHAPTER 6
OTHER REQUIREMENTS: HIGH-RISK RESERVOIRS AND MEDIUM-RISK RESERVOIRS

43 Appointment of inspecting engineer etc.
44 Inspections: timing
45 Inspections: duties of inspecting engineers etc.
46 Inspection reports: compliance
47 Appointment of supervising engineers etc.
48 Supervising engineer and monitoring of reservoir
49 Recording of water levels etc. and record keeping
50 Offences: inspection, supervision, record keeping
51 Defences: offence under section 50(1)(c)

CHAPTER 7
OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

52 Incident reporting
53 Flood plans
54 Maintenance of records
55 Display of emergency response information
56 Offences: record keeping, display of emergency response information
CHAPTER 8

DISPUTE REFERRAL

57 Referral to referee: directions in safety report or inspection report
58 Referral to referee: requirements in preliminary certificate or final certificate
59 Appointment of referee
60 Powers of referee: referral under section 57(2)
61 Powers of referee: referral under section 58(1)
62 Procedure

CHAPTER 9

CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

Appointment of engineers

63 Enforcement notice: appointment of engineer
64 Offence: failure to comply with notice under section 63(2)
65 Appointment of engineer by SEPA
66 Appointment by SEPA: engineers’ reports, certificates, recommendations etc.

Taking of safety and other measures

67 Enforcement notice: safety and other measures
68 Offence: failure to comply with notice under section 67(2)
69 SEPA’s power to arrange taking of safety and other measures
70 Offences under sections 40(1)(d) and 50(1)(c): further remedies

Stop notices

71 Stop notices
72 Stop notices: procedure
73 Stop notices: compensation
74 Stop notices: enforcement

Emergency powers

Other civil enforcement measures

76 Enforcement undertakings
77 Fixed monetary penalties
78 Fixed monetary penalties: procedure
79 Fixed monetary penalties: criminal proceedings and conviction etc.
80 Further enforcement measures
81 Further enforcement measures: procedure
82 Further enforcement measures: criminal proceedings and conviction
83 Further enforcement measures: enforcement

Miscellaneous

84 Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)
85 Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures
86 Recovery by SEPA of expenses
86A Guidance: appeals
87 Publication of enforcement action
88 Powers of entry
89 Warrants authorising entry
90 Powers of entry: supplementary
91 Offence: preventing or obstructing entry
92 Compensation
93 Reports by SEPA to the Scottish Ministers
94 Affording of reasonable facilities to engineers
95 Power of SEPA to require information and assistance
96 Offences: sections 94 and 95

CHAPTER 10
MISCELLANEOUS

96ZA Guidance
96A Grants
97 Assessment of engineers’ reports etc.
98 Notice to SEPA of revocation of appointment or resignation of engineer
98A SEPA: Ministerial directions
99 Form and content of notices, reports, certificates etc.
100 Notices by SEPA
101 Change to the Institution of Civil Engineers
102 Civil liability

PART 2
PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

103 Remedial and restoration measures regulations

PART 3
GENERAL

104 Crown application
105 Offences by bodies corporate
105A Consequential amendment and repeals
106 Ancillary provision
107 Orders and regulations
108 Defined expressions
109 Commencement and short title

Schedule—Index of defined expressions
Reservoirs (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about the regulation of the construction, alteration and management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs, for the repeal and replacement of the Reservoirs Act 1975, about offences to facilitate the achievement of the environmental objectives set out in river basin management plans; and for connected purposes.

PART 1
RESERVOIRS

CHAPTER 1
CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

1 Controlled reservoirs

(1) This section (and section 2) determine what is a “controlled reservoir” for the purposes of this Part.

(2) A controlled reservoir is any of the following structures or areas which is capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land—

(a) a structure designed or used for collecting and storing water,

(b) an artificial (or partly artificial) loch or other artificial (or partly artificial) area.

(3) A combination of more than one of the structures or areas referred to in paragraph (a) or (b) of subsection (2) is to be treated as a controlled reservoir where—

(a) none of the individual structures or areas is a controlled reservoir under that subsection, but

(b) water does (or could) flow between them, and

(c) there could be an uncontrolled release of 10,000 cubic metres or more of water from the combination.

(4) The Scottish Ministers, having taken into account the matters mentioned in subsection (5), may by order provide that any of the following is to be treated as a controlled reservoir—
(a) a structure or area referred to in paragraph (a) or (b) of subsection (2) which is not a controlled reservoir,

(b) a combination of more than one such structure or area—
   (i) between which water does (or could) flow, but
   (ii) which does not fall within subsection (3) because there could not be an uncontrolled release of 10,000 cubic metres or more of water from the combination.

(5) The matters are—
(a) the potential adverse consequences of an uncontrolled release of water from the structure or area or (as the case may be) the combination,

(b) the probability of such a release.

(6) The Scottish Ministers may—
(a) by order substitute a different volume of water for the volume for the time being specified in subsections (2), (3)(c) and (4)(b)(ii) and sections 30(3) and (5), 33(2)(b) and 37(3)(b),

(b) by regulations make provision for the purposes of this Part as to—
   (i) when a loch or other area is considered to be artificial or partly artificial,
   (ii) how the volume of water capable of being held or released is to be calculated,
   (iii) the meaning of “natural level” and “surrounding land”.

(7) Before making an order under subsection (6)(a) the Scottish Ministers must consult the Institution of Civil Engineers about the volume of water which should be specified in the order.

2 Controlled reservoirs: supplementary

(1) A controlled reservoir includes its basin, spillways, valves, pipes and any other thing which—
   (b) controls the flow of the water,
   (c) facilitates the storage of water in it,
   (d) supports such control or storage.

(2) The following structures or areas are not controlled reservoirs (and are not to be taken into account in relation to what is to be treated as a controlled reservoir for the purposes of section 1(3) or (4))—
   (a) ponds within extractive waste sites or waste facilities,
   (b) canals or other inland waterways,
   (c) weirs,
   (d) structures or areas of water designed to protect land from the sea,
   (e) sewage sludge lagoons,
   (g) road and railway embankments,
(h) embanked watercourses.

(3) Regulations by the Scottish Ministers may make provision as to—
   (a) what constitutes any of the structures or areas referred to in subsection (2),
   (b) what other thing (if any) described in the regulations is not a controlled reservoir
       (and is not to be taken into account in relation to what is to be treated as a
       controlled reservoir for the purposes of section 1(3) or (4)).

3 Reservoir managers

(1) This section determines who is the reservoir manager of a controlled reservoir for the
    purposes of this Part.

(2) Scottish Water is the reservoir manager of a controlled reservoir which is managed or
    operated by it.

(3) The reservoir manager of a controlled reservoir for which Scottish Water is not the
    reservoir manager by virtue of subsection (2) 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).

(4) In this section—
   (a) managing or operating a reservoir (without prejudice to the generality of that
       expression) includes controlling of the flow of water in or out of the reservoir, and
   (b) a reference to managing or operating a reservoir is, in relation to a reservoir which
       is being constructed or restored to use (within the meaning of Chapter 5), to be
       read as referring to proposing to manage or operate the reservoir.

4 Multiple reservoir managers: supplementary

(1) This section applies where by virtue of section 3 there is more than one reservoir
    manager of a controlled reservoir.

(2) The requirements of this Part apply in relation to each of the reservoir managers
    (whether or not they make a nomination under subsection (3)).

(3) Any of the reservoir managers (“the nominating manager”) may nominate another of the
    reservoir managers (“the nominee”) to do any of the following—
   (a) fulfil on behalf of the nominating manager any requirements of this Part to which
       the nominating manager is subject and which are specified in the nomination,
   (b) exercise any rights the nominating manager has under this Part and which are so
       specified.

(4) Where a nomination is made under subsection (3)—
   (a) the nominating manager must give notice of the nomination to—
      (i) SEPA,
      (ii) any construction engineer, inspecting engineer or supervising engineer
           appointed in relation to the reservoir,
(b) SEPA may notify and consult the nominee in accordance with the nomination,

(c) any construction engineer, inspecting engineer or supervising engineer appointed in relation to the reservoir may give any notice, report, certificate or other document (required by this Part to be given to the reservoir manager of the reservoir) to the nominee in accordance with the nomination.

5 **Duty of multiple reservoir managers to co-operate**

(1) Where, by virtue of section 3, there is more than one reservoir manager of a controlled reservoir, each of the reservoir managers must co-operate with the other reservoir manager (or managers) of the reservoir so far as is necessary to enable all of the reservoir managers to comply with the requirements to which they are subject under—

(a) section 31(2)(a) or 63(2)(a) (appointment etc. of construction engineer),

(b) section 34(1) or 67(2) (directions of construction engineer as to taking of measures in safety report),

(c) section 38 (compliance with preliminary certificate or final certificate),

(d) section 43(1)(a) or 63(2)(a) (appointment etc. of inspecting engineer to carry out inspections in accordance with section 44),

(e) section 45(2) (giving inspecting engineer copy of final certificate and latest inspection report),

(f) section 46(1) or 67(2) (directions of inspecting engineer as to taking of measures in inspection report),

(g) section 47(1)(a) or 63(2)(a) (appointment etc. of supervising engineer),

(h) section 48(4) (direction by supervising engineer as to carrying out visual inspection of reservoir),

(i) section 49 (recording of certain matters),

(j) regulations under section 52(1) (reporting of incidents),

(k) regulations under section 53(1) (preparation of flood plans),

(l) section 54 (maintenance of records for controlled reservoirs),

(m) section 55 (display of safety information),

(n) section 94 (affording reasonable facilities to engineers),

(o) section 95 (providing information or assistance to SEPA).

(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, designated as a high-risk 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.
6 Guidance by SEPA: management of reservoirs

(1) SEPA must, by such date as the Scottish Ministers direct, publish guidance on—
   (a) the management of controlled reservoirs by reservoir managers,
   (b) co-operation among reservoir managers of controlled reservoirs where a
       controlled reservoir has more than one reservoir manager.

(2) Before publishing guidance under subsection (1), SEPA must consult—
   (a) the Institution of Civil Engineers,
   (b) such other persons as it considers appropriate.

7 SEPA

In this Act “SEPA” means the Scottish Environment Protection Agency.

8 The 1975 Act and its repeal

(1) “The 1975 Act” means the Reservoirs Act 1975 (c.23).

(2) The 1975 Act is repealed.

Chapter 2—Registration

9 Controlled reservoirs register

(1) SEPA must establish and maintain a controlled reservoirs register.

(2) The controlled reservoirs register is a register containing the following information and
documents in relation to each controlled reservoir—
   (a) the name (if any) and location of the reservoir,
   (b) the maximum volume of water capable of being held in the reservoir,
   (c) the name and address of the reservoir manager,
   (d) the risk designation for the time being of the reservoir (and the date on which the
       designation was given) (see sections 18 and 20),
   (e) any different risk designation the reservoir may have had in the past (and where it
       has had a different risk designation, the dates on which such designation was
       given and changed),
   (f) the name of any construction engineer, inspecting engineer, other qualified
       engineer or supervising engineer appointed at any time in relation to the reservoir
       (and the period of any such appointment),
   (g) a copy of—
      (i) any safety report, safety measure certificate, preliminary certificate,
          construction certificate or final certificate in relation to a controlled
          reservoir which is copied to SEPA (or given to it pursuant to section 66),
(ii) any inspection report, interim inspection compliance certificate or inspection compliance certificate in relation to a controlled reservoir which is so copied (or given),

(iii) any written recommendation or written statement by a supervising engineer under section 48(3) or (7) in relation to a controlled reservoir which is so copied (or given),

(h) a map showing the area of land which, in the event of an uncontrolled release of water from the reservoir, would be likely to be flooded.

(3) The Scottish Ministers may by regulations—

(a) require further information or documents specified in the regulations to be contained in the register,

(b) make provision as to the manner in which the information to be contained in the register is to be recorded there.

(4) SEPA must make arrangements for the controlled reservoirs register (or a copy of it) to be available for inspection by any person at all reasonable times.

(5) The Scottish Ministers may by order make provision as to the place (or places) in which the register is (or copies of it are) to be kept.

Reservoir managers’ duty to register with SEPA

(1) The reservoir manager of each controlled reservoir must register the reservoir with SEPA in accordance with sections 11 to 13.

(2) The Scottish Ministers may by regulations make provision as to—

(a) the information to be registered,

(b) the time by which information, or any change to information, must be registered.

Controlled reservoirs required to be registered under the 1975 Act

(1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place before the end of the period of 6 months beginning with the relevant date.

(2) This subsection applies to controlled reservoirs which were, immediately before the relevant date, required to be registered in a large raised reservoirs register.

(3) In this section and sections 12, 13 and 15—

a “large raised reservoirs register” means a register maintained under section 2(2) of the 1975 Act,

“the relevant date” means the date of commencement of section 9.

Controlled reservoirs not required to be registered under the 1975 Act

(1) Registration under section 10 of a controlled reservoir to which subsection (2) applies must take place by such time as the Scottish Ministers by order specify.
(2) This subsection applies to controlled reservoirs which are controlled reservoirs on the relevant date but which were not, immediately before that date, required to be registered in the large raised reservoirs register.

13 **Structures or areas which become controlled reservoirs after the relevant date**

Registration of a controlled reservoir which becomes a controlled reservoir after the relevant date must take place not later than 28 days after the day on which a preliminary certificate is given in relation to it for the first time.

13A **Fees: registration and administration**

(1) The Scottish Ministers may by regulations make provision allowing SEPA to charge reservoir managers of controlled reservoirs, and requiring reservoir managers to pay—

(a) fees in relation to registration, and

(b) other annual or recurring fees in relation to the performance of functions by SEPA under this Part.

(2) In making regulations under subsection (1) the Scottish Ministers must have regard to the reasonable cost of the exercise of the functions in respect of which the fees are to be charged.

(3) Regulations made under subsection (1) must include provision—

(a) specifying how SEPA is to determine and charge fees,

(b) requiring SEPA—

(i) to set out its fees in a published charging scheme,

(ii) to consult such persons as SEPA considers likely to be affected by the scheme before it publishes (or revises) a scheme.

(4) Regulations made under subsection (1) may include such other matters as the Scottish Ministers consider appropriate, including provision specifying—

(a) the maximum amount of any fee,

(b) the circumstances in which any fee is payable,

(c) different fees to be imposed in respect of different reservoirs or in other different cases or classes of case, and

(d) how fees may be collected and recovered.

14 **Registration: supplementary**

(1) Where a person ceases to be a reservoir manager of a controlled reservoir, the person must, not later than 28 days after ceasing to be reservoir manager, give notice to SEPA of that fact and the date on which the person ceased to be reservoir manager.

(2) A person who becomes a reservoir manager of a controlled reservoir must, not later than 28 days after becoming reservoir manager, give notice to SEPA of that fact and the date on which the person became reservoir manager.
(3) Where SEPA receives notice under subsection (1) or (2), it must take such steps as it considers are reasonably required to inform the new reservoir manager, as soon as is reasonably practicable, of the duties of reservoir managers of controlled reservoirs under this Part.

(4) The Scottish Ministers may by regulations make provision requiring SEPA—

(a) to prepare and publish guidance on registration,

(b) to consult the Institution of Civil Engineers in relation to the preparation of such guidance.

15 **Transfer of information from existing relevant authorities**

(1) Each existing relevant authority must, as soon as practicable after the relevant date, give to SEPA—

(a) the large raised reservoirs register maintained by the authority,

(b) any other documents, records or other information in its possession which relate to the exercise of the authority’s functions as an enforcement authority within the meaning of section 2(6) of the 1975 Act (referred to in this section as its “enforcement functions”).

(2) An existing relevant authority must give SEPA such assistance as SEPA may reasonably require for the purposes of facilitating the taking over by SEPA of the authority’s enforcement functions.

(3) Nothing in this section affects the validity of anything done by or in relation to an existing relevant authority in the exercise of its enforcement functions before the relevant date.

(4) There may be continued by or in relation to SEPA anything (including legal proceedings) which relates to any of an existing relevant authority’s enforcement functions and is in the process of being done by or in relation to the authority immediately before the relevant date.

(5) Anything which was done by an existing relevant authority for the purpose of or in connection with any of its enforcement functions and is in effect immediately before the relevant date has effect as if done by SEPA.

(6) An existing relevant authority is a body which, immediately before the relevant date, is a relevant authority in Scotland for the purposes of the 1975 Act.

16 **Offences: registration**

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter relating to registration is an offence—

(a) the requirements of section 10(1) or of regulations made under section 10(2),

(b) the requirements of section 11(1), 12(1) or 13,

(c) the requirements of section 14(1) or (2).

(2) A reservoir manager who, in relation to any requirement referred to in subsection (1), knowingly or recklessly gives information 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-risk 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.

CHAPTER 3
RISK DESIGNATION

17 Provisional risk designation

(1) SEPA must, as soon as is reasonably practicable after registering a controlled reservoir in the controlled reservoirs register, give the reservoir a provisional risk designation.

(2) In giving a provisional risk designation, SEPA must take into account the matters mentioned in section 21.

(3) A provisional risk designation is a provisional designation of the reservoir as one of the following types—

(a) a high-risk reservoir,
(b) a medium-risk reservoir,
(c) a low-risk reservoir.

(4) SEPA gives a controlled reservoir a provisional risk designation by giving the reservoir manager notice specifying—

(a) the provisional risk designation it has given the reservoir,
(b) the reasons for the provisional risk designation,
(c) how representations may be made to SEPA,
(d) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

18 First risk designation

(1) SEPA must, as soon as is reasonably practicable after the end of the period referred to in section 17(4)(d) and having taken into account any representations made in that period, give the controlled reservoir a risk designation.

(2) In giving a risk designation, SEPA must take into account the matters mentioned in section 21.

(3) A risk designation is a designation of the reservoir as one of the types referred to in paragraphs (a) to (c) of section 17(3).

(4) SEPA may not give the reservoir a risk designation before the end of the period during which representations may be made under section 17(4).
(5) SEPA gives the reservoir a risk designation by giving the reservoir manager notice—
(a) specifying the risk designation given,
(b) specifying the reasons for the risk designation,
(c) giving information about the right under section 22 to apply for a review of the risk designation.

19 Periodic review of risk designations

(1) SEPA must review the risk designation for the time being of a controlled reservoir—
(a) at any time SEPA considers the designation may have ceased to be appropriate,
(b) where the designation was given under section 18 and has not been reviewed under paragraph (a) during the period of 6 years after it was given (whether or not it has been reviewed under section 22), by the end of that period,
(c) by the end of the period of 6 years after each review under this section.

(2) In reviewing the risk designation, SEPA must, having taken into account the matters mentioned in section 21, either—
(a) provisionally confirm the risk designation, or
(b) provisionally give the reservoir a risk designation as one of the other types referred to in paragraphs (a) to (c) of section 17(3).

(3) SEPA does as is specified in paragraphs (a) and (b) of subsection (2) in relation to a controlled reservoir by giving the reservoir manager notice specifying—
(a) whether it provisionally confirms the risk designation or provisionally gives the reservoir a different risk designation,
(b) where it provisionally gives the reservoir a different risk designation, the different risk designation concerned,
(c) the reasons for its decision,
(d) how representations may be made to SEPA,
(e) that any representations must be made not later than the end of the period of 2 months beginning with the day on which the notice is given.

20 Decision following a periodic review

(1) SEPA must, having taken into account any representations made in accordance with section 19(3), either—
(a) confirm the risk designation the reservoir had immediately before the review, or
(b) give the reservoir a risk designation as one of the other types referred to in paragraphs (a) to (c) of section 17(3).

(2) In doing so, SEPA must take into account the matters mentioned in section 21.

(3) SEPA may not make a decision under subsection (1) before the end of the period during which representations may be made under section 19(3).

(4) SEPA does as is specified in paragraph (a) or (b) of subsection (1) by giving the reservoir manager notice—
(a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,
(b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,
(c) specifying the reasons for its decision,
(d) giving information about the right of review under section 22 against the risk designation.

21 Risk designation and periodic review: matters to be taken into account
(1) The matters SEPA is required by sections 17(2), 18(2), 19(2) and 20(2) to take into account are—
(a) the potential adverse consequences of an uncontrolled release of water from the reservoir,
(b) the probability of such a release.
(2) For the purposes of subsection (1)(a), potential adverse consequences include—
(a) potential damage to—
(i) human health,
(ii) the environment,
(iii) cultural heritage,
(iv) medical facilities, power supplies, transport, the supply of water for consumption and anything connected with such matters,
(v) other social or economic interests,
(b) such other potential damage as SEPA considers relevant.
(3) The matters which SEPA may take into account in assessing under subsection (1)(b) the probability of an uncontrolled release of water from a reservoir include—
(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 maintenance of the reservoir.
(4) The Scottish Ministers may, after consulting SEPA and the Institution of Civil Engineers, by regulations make further provision about the matters SEPA is to take into account under sections 17(2), 18(2), 19(2) and 20(2).

22 Review of SEPA’s decisions giving risk designations
(1) A reservoir manager of a controlled reservoir who is given notice of a risk designation (under section 18(5) or 20(4)) may apply to SEPA for a review of the designation.
(2) Any such application must be made before the end of the period of 12 months beginning with the date on which the notice was given.
(3) Subject to subsection (4), a risk designation in respect of which an application is made under this section continues to have effect despite the application and the review.
(4) Where as a result of the review SEPA gives the controlled reservoir a different risk designation, the designation which is the subject of the application ceases to have effect from the date on which SEPA gives its decision.

(4A) SEPA gives its decision in the review by giving the reservoir manager notice—

(a) specifying whether it confirms the risk designation or gives the reservoir a different risk designation,

(b) where it gives the reservoir a different risk designation, specifying the different risk designation concerned,

(c) specifying the reasons for its decision,

(d) giving information about the right of appeal under section 22A against the risk designation following the review.

(5) SEPA may charge a reasonable fee of such amount as it determines in relation to an application for review under this section.

(6) Any fee charged by SEPA under subsection (5) must be returned by it to the reservoir manager in the following circumstances—

(a) where the risk designation which was the subject of the application was as a high-risk reservoir and SEPA’s decision in the review is to give a risk designation as a medium-risk reservoir or a low-risk reservoir,

(b) where the risk designation which was the subject of the application was as a medium-risk reservoir and SEPA’s decision in the review is to give a risk designation as a low-risk reservoir.

(7) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section.

### 22A Appeal to the Scottish Ministers following SEPA’s review

(1) A reservoir manager of a controlled reservoir who is given notice of SEPA’s decision in a review under section 22 may appeal to the Scottish Ministers against that decision.

(2) Any such appeal must be made before the end of the period of 12 months beginning with the date on which the notice under section 22(4A) was given.

(3) A risk designation in respect of which an appeal is made under this section continues to have effect while the appeal is pending.

(4) Before determining an appeal the Scottish Ministers—

(a) may, at their own expense, appoint to make recommendations about the risk designation an engineer who is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this subsection, and

(b) must take into account—

(i) a recommendation by any engineer appointed under this subsection, and

(ii) the matters mentioned in section 21.

(5) The Scottish Ministers must notify their determination of the appeal by giving the reservoir manager and SEPA notice—
part 1—reservoirs
chapter 4—panels of reservoir engineers

section 25 panels of reservoir engineers

the scottish ministers must—

(a) establish one or more panels of reservoir engineers for the purposes of this part and specify by order the sections of this part under which the members of any such panel may be appointed,
(b) appoint civil engineers who they consider to be fit and qualified for appointment to such panels to be members of such of the panels as they consider appropriate.

26 Appointment and removal of panel members

(1) A civil engineer who wishes to be appointed to a panel under section 25 must make an appropriate application.

(2) An appointment is for such period as the Scottish Ministers determine.

(3) A civil engineer appointed to a panel is eligible for re-appointment.

(4) The Scottish Ministers may remove an engineer from a panel where they are satisfied that the engineer is not fit or qualified to remain on it.

(5) The Scottish Ministers must give an engineer removed from a panel under subsection (4) notice of the removal.

(6) Notice under subsection (5) must specify the grounds on which the engineer has been removed from the panel.

(7) In this section, “an appropriate application” is an application made in accordance with regulations made by the Scottish Ministers.

(8) The Scottish Ministers may by regulations make provision for the determining and charging of fees in connection with applications for membership of panels established by them under section 25.

27 Dissolution of panels etc.

(1) The Scottish Ministers may dissolve a panel established under section 25.

(2) Before doing so, the Ministers must give reasonable notice to the members of the panel.

(3) Where the Scottish Ministers dissolve a panel whose members might, by virtue of an order under section 25, (if not for the dissolution) still be appointed as construction engineers or inspecting engineers, the Scottish Ministers may allow an engineer who immediately before the dissolution was such an engineer or was the other qualified engineer in relation to a reservoir (see section 45(5)), to continue to act as such in relation to the controlled reservoir concerned for a period of 4 years.

(4) The Scottish Ministers may, by notice, direct that an engineer is no longer entitled to act under subsection (3) where they are satisfied that the engineer is not fit or qualified to do so.

(5) Notice under subsection (4) must specify the grounds on which the engineer has been removed under that subsection.

28 Review of decisions to appoint or remove civil engineers from panels etc.

(1) A civil engineer—

(a) whose application for appointment to a panel established under section 25 is rejected,

(b) who is removed from a panel under section 26(4),

(c) who is given a direction under section 27(4),
may apply to the Scottish Ministers for a review of their decision.

(2) The Scottish Ministers may by regulations make further provision in relation to applications and reviews under this section, including provision as to determining and charging fees in connection with applications for review under this section.

5 29 Consultation with Institution of Civil Engineers

(1) The Scottish Ministers must consult the President of the Institution of Civil Engineers (or, if that Institution appoints a committee for the purpose, that committee), before—

(a) establishing a panel under section 25,
(b) making an order under that section,
(c) making an appointment to a panel under that section,
(d) removing an engineer from a panel under section 26(4),
(e) dissolving a panel under section 27(1),
(f) directing that an engineer is no longer entitled to act under section 27(4),
(g) making a decision in a review under section 28.

(2) The Scottish Ministers may reimburse the Institution of Civil Engineers for any expenses incurred by it by virtue of this section.

CHAPTER 5

CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

30 Application of Chapter 5

(1) This Chapter applies where a controlled reservoir is to be constructed or subject to alteration.

(2) Subsections (3) to (7) have effect for the purposes of this Chapter.

(3) Any work for the purpose of restoring an existing structure or area (which has previously at any time been capable of holding 10,000 cubic metres or more of water above the natural level of any part of the surrounding land) so that it is capable of so holding such amount of water is to be treated as construction of a controlled reservoir.

(4) Alteration of a controlled reservoir includes—

(a) any work for the purpose of increasing or decreasing the capacity of a controlled reservoir,

(b) any other work in relation to the reservoir (including work which the Scottish Ministers are satisfied might affect its safety) which the Scottish Ministers by regulations specify.

(5) Alteration of a controlled reservoir amounts to discontinuance of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land (but still capable of holding water above the natural level of any part of that land).

(6) Alteration of a controlled reservoir amounts to abandonment of a controlled reservoir where the alteration is for the purpose of making the reservoir incapable of filling with water above the natural level of any part of the surrounding land.
(7) Any reference to—
   (a) a controlled reservoir being constructed or subject to alteration is to be construed in accordance with this section,
   (b) a controlled reservoir being restored to use is to be construed as a reference to a controlled reservoir being constructed as mentioned in subsection (3),
   (c) a controlled reservoir being discontinued is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (5),
   (d) a controlled reservoir being abandoned is to be construed as a reference to a controlled reservoir being subject to an alteration for the purpose referred to in subsection (6),
   (e) “relevant works” is a reference to any works carried out for the purpose of the construction or alteration of a controlled reservoir.

31 Notice to SEPA and appointment of construction engineer

(1) 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 SEPA of the proposed works.

(2) The reservoir manager must, not later than 28 days before the proposed relevant works begin—
   (a) appoint a construction engineer,
   (b) give notice to SEPA of the appointment.

(3) “A construction engineer” is an engineer appointed under this section to supervise the relevant works until a final certificate is issued in respect of the works.

(4) An engineer may be appointed as a construction engineer if the engineer—
   (a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,
   (b) is not disqualified by virtue of subsection (5) from being appointed as a construction engineer in relation to the reservoir.

(5) An engineer is disqualified from being appointed as a construction engineer in relation to the reservoir if the engineer is employed by any person who is a reservoir manager of the reservoir.

(6) In sections 32 to 39—
   (a) references to “the construction engineer” are references to the engineer appointed for the time being as such under this section in respect of the relevant works,
   (b) references to “the reservoir manager” are references to the reservoir manager of the controlled reservoir which is the subject of the relevant works.

32 Inspection, reports, supervision of works etc. by construction engineer

(1) The construction engineer must supervise the relevant works in accordance with this section until a final certificate is issued in respect of the works.
(2) The engineer must—
   (a) inspect the reservoir,
   (b) design any construction or alteration.

(3) Where the reservoir is being constructed or is subject to alteration but is not being discontinued or abandoned, the construction engineer (subject to subsection (6)) may give the reservoir manager a safety report prepared in accordance with section 33.

(4) Where the reservoir is being restored to use, discontinued or abandoned, the construction engineer must give the reservoir manager a safety report.

(5) A safety report given under subsection (4) must (subject to subsection (6)) be given not later than 9 months after the construction engineer is appointed.

(6) Where the appointment of the construction engineer was required by notice from SEPA under section 63(2) (or is to be treated by virtue of section 65(2) as being an appointment by the reservoir manager), the construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed.

(7) A construction engineer must, not later than 28 days after giving a safety report under this section, give SEPA a copy of it.

33 Safety reports

(1) A safety report must—
   (a) specify any measures the construction engineer considers are necessary in the interests of the safety of the controlled reservoir,
   (b) direct the reservoir manager to ensure that any measures specified in the report are taken under the supervision of the construction engineer and within the period of time specified in the report,
   (ba) where the reservoir manager is required to appoint a supervising engineer (see section 47), specify any matters that the construction engineer considers should be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,
   (c) include such other matters as the Scottish Ministers by regulations specify.

(2) Where a controlled reservoir—
   (a) is being restored to use, the measures must include in particular any measures the construction engineer considers should be taken before the reservoir may safely be used for the collection and storage of water,
   (b) is being discontinued, the measures must include in particular any measures the construction engineer considers are necessary to secure 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) is being abandoned, the measures must include in particular any measures the construction engineer considers are necessary to secure that the reservoir is incapable of filling with water above the natural level of any part of the surrounding land.
34 Safety reports: compliance

(1) The reservoir manager of a controlled reservoir must (subject to section 57(3)) comply with any direction in a safety report issued to the manager.

(2) The construction engineer must, not later than 28 days after being satisfied that each measure directed in the safety report has been taken, give the reservoir manager a safety measure certificate.

(3) A safety measure certificate must specify—
   (a) the safety report to which it relates,
   (b) the measure taken,
   (c) any measure that has yet to be taken.

(4) A construction engineer must, not later than 28 days after giving a safety measure certificate under subsection (2), give SEPA a copy of it.

35 Preliminary certificates

(1) Where the construction engineer considers that the reservoir may safely be filled (wholly or partially) with water or that the level of water should be reduced, the engineer must, as soon as is reasonably practicable after being so satisfied, give the reservoir manager a preliminary certificate.

(2) A preliminary certificate must—
   (a) specify a level (the “specified level”) that water in the reservoir must not exceed,
   (b) require the reservoir manager to ensure that the level of water does not exceed the specified level,
   (c) specify any requirements the engineer considers appropriate as to the manner in which the level of water in the reservoir may be increased or decreased.

(3) A construction engineer must, not later than 28 days after giving a preliminary certificate, give SEPA a copy of it.

(4) A subsequent preliminary certificate applicable to the reservoir replaces any previous preliminary certificate applicable to the reservoir in respect of the relevant works.

(5) A preliminary certificate ceases to have effect on the issue of the final certificate applicable to the reservoir in respect of those works.

36 Construction certificates

(1) The construction engineer must give the reservoir manager a construction certificate as soon as is reasonably practicable after being satisfied that the construction or (as the case may be) alteration has been completed to a satisfactory standard.

(2) The construction certificate must in any event be issued not later than the final certificate in respect of the works.

(3) A construction certificate must—
   (a) certify that the construction or (as the case may be) alteration has been executed effectively in accordance with the drawings and descriptions included in the annex to the certificate,
(b) include an annex containing detailed drawings and descriptions giving full information about the works for the construction or (as the case may be) the alteration, including the dimensions, water levels and details of the geological strata or deposits encountered in trial holes or excavations made in connection with the works,

(c) include such other information as the Scottish Ministers by regulations require.

(4) The construction engineer must, not later than 28 days after giving a construction certificate, give SEPA a copy of it.

37 Final certificates

(1) Where the controlled reservoir is being constructed or is subject to alteration but is not being 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-risk 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-risk reservoir or medium-risk reservoir, must specify any matter the construction engineer considers should be monitored, until the first inspection of the reservoir under section 44, by the supervising engineer appointed in relation to the reservoir under section 47,

(d) impose the requirements mentioned in subsection (7).

(3) Where the reservoir is 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 reservoir is 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.
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.

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.

A copy of the construction certificate issued in respect of the construction or (as the case may be) alteration must be attached to the final certificate.

The construction engineer must, not later than 28 days after issuing a final certificate, give SEPA a copy of the certificate.

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 SEPA a copy of the statement.

The reservoir manager of a controlled reservoir must (subject to section 58(3)) comply with the requirements of any preliminary certificate or final certificate for the time being applicable to the reservoir.

The obligation of the reservoir manager to appoint a construction engineer in respect of the relevant works terminates when the construction engineer gives a copy of the final certificate issued by the engineer in respect of the works to SEPA in accordance with section 37(9).

Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—

(a) the requirements in section 31(1) (notice to SEPA of proposed relevant works),

(b) the requirements in section 31(2)(a) (appointment of construction engineer),

(c) the requirements in section 31(2)(b) (notice to SEPA of the appointment),

(d) the requirements in section 34(1) (compliance with direction as to taking of safety measure in safety report),
(e) the requirements in section 38 (compliance with preliminary certificate or final certificate).

(2) A reservoir manager guilty of an offence under subsection (1)(a), (b) or (c)—

(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.

(3) A reservoir manager guilty of an offence under subsection (1)(d) or (e) 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 12 months, or to a fine not exceeding the statutory maximum, or to both.

41 Defences: offences under section 40(1)(d) or (e)

It is a defence to a charge in proceedings under section 40(1)(d) or (e) for the person to show both—

(a) that the failure to comply with the requirements concerned was as a result of 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

(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, and

(iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

42 Controlled reservoirs subject to relevant works on commencement

(1) Subsection (2) applies in relation to controlled reservoirs—

(a) which were, immediately before the commencement date, large raised reservoirs,

(b) which are, on that date, subject to relevant works.

(2) This Chapter, and sections 63 to 65, apply in relation to such controlled reservoirs on and after the commencement date as they apply in relation to controlled reservoirs which are subject to relevant works wholly on or after that date.

(3) Subsection (4) applies in relation to controlled reservoirs—

(a) which were not, immediately before the commencement date, large raised reservoirs,

(b) which are, on that date, subject to relevant works.
The modifications are—

(a) notice under section 31(1) of the relevant works must be given not later than 28 days after the commencement date,

(b) a construction engineer must be appointed under section 31(2)(a) not later than 28 days after the commencement date,

(c) notice under section 31(2)(b) of the appointment must be given not later than 28 days after the appointment,

(d) for section 32(3) to (6) substitute—

“(3) The construction engineer must give the reservoir manager a safety report as soon as is reasonably practicable after being appointed and in any event not later than 9 months after being appointed.”.

(6) In this section—

“the commencement date” means the date on which section 30 is commenced,

“large raised reservoir” has the same meaning as in section 1(1) of the 1975 Act.

Chapter 6—Other requirements: high-risk reservoirs and medium-risk reservoirs

43 Appointment of inspecting engineer etc.

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—

(a) appoint an inspecting engineer to carry out an inspection of the reservoir at each of the times required by section 44,

(b) not later than 28 days after the appointment, give notice of it to SEPA.

(3) An engineer may be appointed as an inspecting engineer if the engineer—

(a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,

(b) is not disqualified by virtue of subsection (4) from being so appointed in relation to the reservoir.

(4) An engineer is disqualified from being appointed as an inspecting engineer in relation to the reservoir if the engineer—

(a) is employed by any person who is a reservoir manager of the reservoir,

(b) has previously been a construction engineer in relation to the reservoir,

(c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer in relation to the reservoir.

44 Inspections: timing

(1) Subject to subsection (2A), inspections of a high-risk reservoir must be carried out—
before the end of the period of 2 years beginning with the date of any final
certificate for the time being applicable to the reservoir, and

(b) at each of the following times—

(i) at any time recommended by the supervising engineer under section 48(3),

(ii) at any time recommended in an inspection report under section 45,

(iii) before the end of the period of 10 years beginning with the date of the latest
inspection.

(2) Subject to subsection (2A), inspections of a medium-risk reservoir must be carried out at
each time recommended by the supervising engineer under section 48(3).

(2A) Where a construction engineer is appointed to supervise relevant works at a high-risk
reservoir or a medium-risk reservoir—

(a) each inspection which, at the date of the appointment, is due to be carried out is
cancelled, and

(b) the next inspection must be carried out—

(i) in the case of a high-risk reservoir, in accordance with subsection (1)(a),

(ii) in the case of a medium-risk reservoir, at any time recommended by the
supervising engineer under section 48(3) which is after the end of the
period of 2 years beginning with the date of the final certificate for the
relevant works.

(3) In this section and section 45, references to “the supervising engineer” are references to
the engineer appointed for the time being as such under section 47 in relation to the
reservoir.

45 Inspections: duties of inspecting engineers etc.

(1) The inspecting engineer must—

(a) inspect the reservoir,

(b) give the reservoir manager, not later than 9 months after the completion of the
inspection, an inspection report prepared in accordance with this section,

(c) give the reservoir manager certificates in accordance with section 46.

(2) The reservoir manager must give the inspecting engineer a copy of—

(a) any final certificate for the time being applicable to the reservoir,

(b) the inspection report of the latest inspection (if any) of the reservoir carried out
under this section (“the latest report”).

(3) The inspection report—

(a) must specify any measures the inspecting engineer considers should be taken in
the interests of the safety of the reservoir (including measures for the maintenance
of the reservoir),

(b) must specify whether any measure specified in the inspection report was specified
in the latest report,
(c) 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,
(d) must direct the reservoir manager to ensure—

(i) that any measures specified in the inspection report for the maintenance of the reservoir are monitored by the supervising engineer, and
(ii) that the other measures specified in the inspection report are taken under the supervision of the inspecting engineer or the other qualified engineer within the period of time specified in the inspection report,
(e) must specify when the next inspection of the reservoir should take place,
(f) must specify any matters that the inspecting engineer considers should be monitored by the supervising engineer until the next inspection,
(g) may include recommendations on other matters which the inspecting engineer considers relevant to the maintenance of the reservoir but in relation to which the engineer does not specify a measure to be taken under paragraph (a).

(4) An inspecting engineer must, not later than 28 days after giving an inspection report under this section, give a copy of it to—

(a) SEPA,
(b) the supervising engineer (if a different person).

(5) In this section and section 46—

(a) references to “the inspecting engineer” are references to the engineer appointed for the time being as such under section 43 in relation to the reservoir,
(aa) references to “the other qualified engineer” are references to the engineer appointed for the time being as such under section 46 in relation to the reservoir,
(b) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being inspected.

46 Inspection reports: compliance

(1) The reservoir manager must (subject to section 57(3)) ensure that any direction in an inspection report issued to the manager is complied with.

(1A) The reservoir manager—

(a) may appoint any other qualified engineer (being a person eligible to be appointed as an inspecting engineer for the reservoir) to supervise any of the measures specified in the inspection report, and
(b) must, as soon as practicable after making any such appointment, give notice of it to SEPA and the inspecting engineer.

(2) Not later than 28 days after being satisfied that a measure directed in the inspection report has been taken—

(a) the inspecting engineer, or
(b) in relation to any measure for which the other qualified engineer is appointed, the other qualified engineer,
must give to the reservoir manager an interim inspection compliance certificate.

(3) An interim inspection compliance certificate must specify—
   (a) the inspection report to which it relates,
   (b) the measure taken,
   (c) any measure for which the person giving the certificate is responsible for
      supervising that has yet to be taken.

(4) The inspecting engineer or the other qualified engineer must, not later than 28 days after
    being satisfied that all of the measures directed in the inspection report have been taken,
    give the reservoir manager an inspection compliance certificate.

(4A) The engineer giving an inspection compliance certificate must take an interim
     compliance certificate given by another engineer under this section to be conclusive of
     that measure having been taken.

(5) An inspection compliance certificate must specify—
   (a) the inspection report to which it relates,
   (b) that all of the measures directed in the report have been taken.

(6) The inspecting engineer or the other qualified engineer must, not later than 28 days after
    giving an interim inspection compliance certificate or an inspection compliance
    certificate under this section, give SEPA a copy of it.

(7) Where an inspection report directs a measure for the maintenance of the reservoir to be
    taken in the interests of the safety of the reservoir (specified in accordance with section
    45(3)(a))—
    (a) no interim inspection compliance certificate is required for that measure, and
    (b) no account of that measure is to be taken for the purposes of subsections (3)(c),
        (4) and (5)(b).

47 **Appointment of supervising engineers etc.**

(1) The reservoir manager of a high-risk reservoir or medium-risk reservoir must—
   (a) appoint a supervising engineer to supervise the reservoir in accordance with
       section 48 at all times other than the period mentioned in subsection (2),
   (b) not later than 28 days after the appointment, give notice of it to SEPA.

(2) A reservoir manager of a controlled reservoir which is being constructed or restored to
    use (within the meaning of Chapter 5) need not appoint a supervising engineer before a
    final certificate is issued in respect of the relevant works (see section 37).

(3) An engineer may be appointed as a supervising engineer if the engineer is a member of a
    panel of reservoir engineers established under section 25 who may (by virtue of an order
    under that section) be appointed under this section.

48 **Supervising engineer and monitoring of reservoir**

(1) The supervising engineer must supervise the reservoir 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,

(aa) monitor any matters specified in a safety report as matters to be monitored by the supervising engineer until a final certificate is issued in respect of the relevant works,

(ab) monitor compliance by the reservoir manager with the requirements of any preliminary certificate for the time being applicable to the reservoir,

(b) monitor compliance by the reservoir manager with the requirements of any final certificate for the time being applicable to the reservoir,

(c) monitor any matters specified in any such final certificate as matters that should be monitored by the supervising engineer until the first inspection of the reservoir required under section 44,

(ca) monitor compliance by the reservoir manager with the requirements of any direction given in the latest inspection report by virtue of section 45(3)(d)(i),

(e) give notice to the reservoir manager and SEPA of any failure to comply with any requirement of—

(i) a safety report referred to in paragraph (aa),

(ii) a preliminary certificate referred to in paragraph (ab),

(iii) a final certificate referred to in paragraph (b), or

(iv) a direction referred to in paragraph (ca),

(f) monitor any matters specified in the latest inspection report as matters that should be monitored by the supervising engineer until the next inspection of the reservoir required under section 44,

(g) supervise (or ensure that a nominated representative of the engineer supervises) any proposed draw-down in respect of the reservoir,

(h) monitor compliance by the reservoir manager with the requirements of section 49.

(3) If the supervising engineer considers at any time that the reservoir should be inspected in accordance with section 45, the engineer must—

(a) give the reservoir manager a written recommendation to that effect specifying when the inspection should take place, and

(b) not later than 28 days after giving the written recommendation, give SEPA a copy of it.

(4) The supervising engineer 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.

(5) The reservoir manager must comply with any direction under subsection (4).

(6) The reservoir manager must—

(a) maintain a written record of each visual inspection carried out in pursuance of a direction under subsection (4),

(b) make that record available on request to the supervising engineer, and
(c) give notice to the supervising engineer of anything identified during such an inspection which might affect the safety of the reservoir.

(6A) Notice under subsection (6)(c) must be given as soon as reasonably practicable after the inspection during which the thing was identified.

(7) 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 (f),

(b) any measures taken by the reservoir manager in the interests of the safety of the reservoir or otherwise to maintain the reservoir,

(c) any failure to comply with—

   (ai) a requirement in a safety report referred to in subsection (2)(aa),
   (bi) a requirement in a preliminary certificate referred to in subsection (2)(ab),
   (i) a requirement in a final certificate referred to in subsection (2)(b),
   (ia) a direction referred to in subsection (2)(ca),
   (iii) a recommendation by the supervising engineer under subsection (3),
   (iv) a direction by the supervising engineer under subsection (4).

(8) The supervising engineer must give the reservoir manager information for the purpose of enabling the manager to contact the engineer (or in the event of an emergency and the supervising engineer being unavailable, a nominated representative of the engineer).

(9) The supervising engineer must, not later than 28 days after giving a written statement under subsection (7), give SEPA a copy of the statement.

(10) The Scottish Ministers may publish guidance about supervision of high-risk reservoirs and medium-risk reservoirs in accordance with this section.

(11) 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 supervising engineer” are references to the engineer appointed for the time being as such under section 47 in relation to the reservoir,

   (c) references to “the reservoir manager” are references to the reservoir manager of the reservoir which is being supervised in accordance with this section.

49 Recording of water levels etc. and record keeping

(1) The reservoir manager of a high-risk reservoir or medium-risk 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) leakages,

   (c) repairs,
(d) settlements of walls or other works,
(e) such other matters as the Scottish Ministers by regulations specify.

(2) The Scottish Ministers 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 construction engineer, an inspecting engineer or a supervising engineer appointed 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) 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.

(6) Sections 54 and 56 make further provision about records to be maintained by the reservoir managers of controlled reservoirs.

50 Offences: inspection, supervision, record keeping

(1) Failure by the reservoir manager of a high-risk reservoir or medium-risk reservoir to comply with any of the following requirements under this Chapter is an offence—
(a) the requirements of section 43(1)(a) and 44 (appointment of inspecting engineer and carrying out of required inspections),
(b) the requirements of section 43(1)(b) (notice of appointment to SEPA),
(c) the requirements of section 46(1) (compliance with direction as to taking of measure in inspection report),
(d) the requirements of section 47(1)(a) (appointment of supervising engineer),
(e) the requirements of section 47(1)(b) (notice of appointment to SEPA),
(f) the requirements of a direction under section 48(4) (compliance with direction of supervising engineer as to carrying out of visual inspection of reservoir),
(fa) the requirements of section 48(6)(c) (notice of identification of thing which might affect the safety of the reservoir),
(g) the requirements of section 49 (including any direction under subsection (3) of that section) (maintenance of record of water levels etc.).

(2) A reservoir manager of a controlled reservoir who fails, without reasonable excuse, to comply with the requirements of section 45(2) (giving inspecting engineer copy of final certificate and latest inspection report) commits an offence.

(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,
Reservoirs (Scotland) Bill
Part I—Reservoirs
Chapter 7—Other requirements: controlled reservoirs

(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.

51 Defences: offence under section 50(1)(c)

It is a defence to a charge in proceedings under section 50(1)(c) 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 SEPA as soon as practicable after the failure arose.

CHAPTER 7

OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

52 Incident reporting

(1) The Scottish Ministers may by regulations make provision for the reporting to SEPA 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 SEPA 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 specified person to report incidents occurring at the reservoir,
(d) provide for an inspecting engineer, a supervising 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 SEPA or the Scottish Ministers,
(f) make provision for the publishing of incident reports,
(g) confer powers of entry on SEPA in connection with its functions under the regulations,
(h) create 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-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,

(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) Before making regulations under subsection (1), the Scottish Ministers must consult—
   (a) SEPA,
   (b) the reservoir managers of controlled reservoirs to which they consider the
regulations will apply,
   (c) the Institution of Civil Engineers,
   (d) such other persons as they consider appropriate.

53 Flood plans

(1) The Scottish Ministers 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 they consider 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 as may be determined by the Scottish Ministers or
SEPA,
   (ba) allowing a single flood plan to be prepared in respect of two or more controlled
reservoirs between which water does (or could) flow,
   (c) specifying—
      (i) the form in which a flood plan is to be prepared,
      (ii) what is to be included in a flood plan,
   (d) requiring the person preparing a flood plan to have regard to any guidance that
may be issued by SEPA or the Scottish Ministers as regards flood plans,
   (e) requiring flood plans to be produced or submitted to SEPA (whether or not for
approval) by such time as either—
(i) the regulations specify, or
(ii) the Scottish Ministers or SEPA may direct,

(f) as regards the approval of flood plans (whether by the Scottish Ministers, SEPA, inspecting engineers or supervising engineers),

(g) as regards the review and updating of flood plans,

(h) as regards the publication or distribution of copies of—

(i) a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations,

(ii) flood plans,

(i) in connection with the testing of flood plans,

(j) in connection with the referral of matters to a referee,

(k) requiring the reservoir manager of the reservoir to which a flood plan relates, so far as it is practicable to do so, to take action set out in the plan relating to the reservoir in the event of an emergency,

(l) providing that SEPA may, in circumstances specified in the regulations, do anything that another person is required to do under the regulations and may recover the expenses of doing so from the person,

(m) conferring powers of entry on SEPA in connection with its functions under the regulations,

(n) making provision in connection with paragraphs (j), (l) and (m) amending this Act (other than this section) or applying this Act with modifications,

(o) creating offences,

(p) providing that any offence created is triable only summarily,

(q) 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) Before making regulations under subsection (1), the Scottish Ministers must consult—

(a) SEPA,

(b) the reservoir managers of reservoirs for which they consider a flood plan will require to be prepared under the regulations,

(c) the Institution of Civil Engineers,

(d) such other persons as they consider appropriate.

54 Maintenance of records

(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.

(3) Where the reservoir is a low-risk reservoir, the record must in addition contain information about repairs to the reservoir in such form as the Scottish Ministers may require by regulations.

(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) an inspection report, interim inspection compliance certificate or inspection compliance certificate,

(iii) a notice under section 48(2)(a) or (e), recommendation under section 48(3) or statement under section 48(7) (by a supervising engineer),

(b) any drawings and descriptions of works annexed to construction certificates given in respect of the reservoir under the 1975 Act, drawings and descriptions annexed to certificates given under the Reservoirs (Safety Provisions) Act 1930 (c.51), charts, graphs and plans, and

(c) any flood plan produced in respect of the reservoir in pursuance of regulations made under section 53.

55 Display of emergency response information

(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 order by the Scottish Ministers.

(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 relating to 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-risk reservoir or medium-risk reservoir, information for the purpose of enabling a person to contact SEPA in the event of an emergency.

(4) SEPA may give directions to reservoir managers of controlled reservoirs as to—

(a) the manner in which emergency response information is to be displayed,

(b) the location at which it is to be displayed.

(5) Directions under subsection (4) may be general or specific.

(6) The reservoir manager must comply with any directions by SEPA under subsection (4).
56 Offences: record keeping, display of emergency response information

(1) Failure by the reservoir manager of a controlled reservoir to comply with any of the following requirements under this Chapter is an offence—
   (a) the requirements of section 54 (maintenance of records),
   (b) the requirements of section 55(1) and (6) (display of emergency response information).

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 8
DISPUTE REFERRAL

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

(1) This section applies where—
   (a) a safety report contains a direction by a construction engineer,
   (b) an inspection report contains a direction by an inspecting engineer.

(2) The reservoir manager to whom the report is given may challenge the direction by referring it to a referee in accordance with regulations made under section 62(1).

(3) Where a referral is made under subsection (2), the direction is suspended until the reference has been determined or withdrawn.

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

(1) The reservoir manager to whom a preliminary certificate or final certificate is given may challenge any of the matters mentioned in subsection (2) by referring it to a referee in accordance with regulations made under section 62(1).

(2) The matters are—
   (a) the level of water specified in the preliminary certificate in accordance with section 35(2)(a),
   (b) any requirement specified in the preliminary certificate in accordance with section 35(2)(c),
   (c) any recommendation contained in the final certificate in accordance with section 37(2)(b),
   (d) any matter specified in the final certificate in accordance with section 37(2)(c),
   (e) any requirement imposed in the final certificate in accordance with section 37(7)(a) or (c).

(3) Where a referral is made under subsection (1), the matter referred is suspended until the reference has been determined or withdrawn.
Appointment of referee

(1) The referee must be an engineer appointed under this section either—
   (a) by agreement between the reservoir manager and the relevant engineer, or
   (b) where no agreement is reached, by the Scottish Ministers.

(2) An engineer may be appointed as a referee if the engineer—
   (a) is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section,
   (b) is not disqualified by virtue of subsection (3) from being appointed under this section in relation to the reservoir concerned.

(3) An engineer is disqualified from being appointed under this section in relation to the reservoir if the engineer—
   (a) is employed by any person who is a reservoir manager of the reservoir,
   (b) has previously been a construction engineer or an inspecting engineer in relation to the reservoir,
   (c) is connected (as a partner, employer, employee or fellow employee in a civil engineering business) with a person who has previously been a construction engineer or an inspecting engineer in relation to the reservoir.

(4) In this section and sections 60 and 61, “the relevant engineer” means the construction engineer or (as the case may be) inspecting engineer who gave the direction or (as the case may be) specified, recommended or imposed the matter which is the subject of the referral.

Powers of referee: referral under section 57(2)

(1) This section applies where a referral is made under section 57(2).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the direction.

(3) Where the referee makes any such modification, the referee—
   (a) must modify the report which contains the direction,
   (b) where the report is a safety report, must make any necessary modification to any safety measure certificate given in relation to the report,
   (c) where the report is an inspection report, must make any necessary modification to any interim inspection compliance certificate given in relation to the report.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—
   (a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—
      (i) whether the referee has modified the report,
      (ii) any modification made,
Part 1—Reservoirs
Chapter 8—Dispute referral

(b) where the referee has modified the report or any safety measure certificate or interim inspection compliance certificate, to give the reservoir manager and the relevant engineer a copy of the modified report and any such modified certificate,

(c) to give SEPA a copy of the referral certificate and any modified report and any such modified safety measure certificate or interim inspection compliance certificate.

(6) A direction, report, safety measure certificate or interim inspection compliance certificate modified under this section has effect as so modified.

(7) In subsection (3)(b) and (c), “any necessary modification” means any modification the referee considers is necessary in relation to any measure specified in the certificate as a measure yet to be taken.

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

(1) This section applies where a referral is made under section 58(1).

(2) The referee may make such modifications (if any) as the referee considers appropriate to the matter referred.

(3) Where the referee makes any such modification, the referee must modify the certificate which contains the matter.

(4) The referee must take the steps mentioned in subsection (5) not later than 28 days after making a decision under subsection (2).

(5) The steps are—

(a) to give the reservoir manager and the relevant engineer a certificate (a “referral certificate”) stating—

(i) whether the referee has modified the certificate,
(ii) any modification made,

(b) where the referee has modified the certificate, to give the reservoir manager and the relevant engineer a copy of the modified certificate,

(c) to give SEPA a copy of the referral certificate and any modified preliminary certificate or final certificate.

(6) A preliminary certificate or final certificate modified under this section has effect as so modified.

62 Procedure

(1) Regulations by the Scottish Ministers may make provision as to—

(a) the time within which a referee may be appointed under section 59,

(b) the time within which a request to them for an appointment under that section may be made,

(c) the manner of the request,

(d) the procedure before the referee,

(e) the expenses of the investigation and proceedings (including the remuneration of the referee).
(2) The expenses of any investigation and proceedings are to be paid by the reservoir manager who makes the referral.

CHAPTER 9
CIVIL ENFORCEMENT, EMERGENCY POWERS AND FURTHER OFFENCES

63 Enforcement notice: appointment of engineer

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that—
(a) the reservoir manager is required by section 31(2)(a) to appoint a construction engineer, but no construction engineer is for the time being appointed,
(b) the reservoir manager is required by section 43(1)(a) to appoint an inspecting engineer, but no inspecting engineer is for the time being appointed,
(c) the reservoir manager is required by section 47(1)(a) to appoint a supervising engineer, but no supervising engineer is for the time being appointed.

(2) SEPA may by notice require the reservoir manager of the reservoir—
(a) to make the relevant appointment before the end of the period of 28 days beginning with the day on which the notice is given (unless the reservoir manager has already made the relevant appointment),
(b) to give notice to SEPA of the appointment (whether it was made before or after the notice was given).

(3) In subsection (2)(a) and sections 65 and 66, “the relevant appointment” is the appointment of a construction engineer, an inspecting engineer or (as the case may be) a supervising engineer.

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

(1) Failure to comply with the requirements of a notice by SEPA under the following sections is an offence—
(a) section 63(2)(a) (requirement to appoint construction engineer, inspecting engineer or supervising engineer),
(b) section 63(2)(b) (notice of appointment to SEPA).

(2) A reservoir manager guilty of an offence under subsection (1)(a) or (b) 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 12 months, or to a fine not exceeding the statutory maximum, or to both.

65 Appointment of engineer by SEPA

(1) SEPA may make the relevant appointment where—
(a) it has by notice under section 63(2) required a reservoir manager to make the appointment,
(b) the reservoir manager has failed to make the appointment.

(2) An appointment by SEPA under this section is to be treated for the purposes of this Part as if the appointment were by the reservoir manager under section 31(2)(a), 43(1)(a) or (as the case may be) 47(1)(a).

(3) An appointment under this section has no effect if the reservoir manager has already made the relevant appointment.

(4) An appointment under this section terminates with effect from the date of a subsequent relevant appointment made by the reservoir manager.

(5) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in pursuance of the exercise of powers under this section.

### Appointment by SEPA: engineers’ reports, certificates, recommendations etc.

Where SEPA makes a relevant appointment under section 65, the following are to be given to SEPA (instead of being given to the reservoir manager) and copied to the reservoir manager not later than 28 days after being given to SEPA—

(a) where the relevant appointment is that of a construction engineer, any safety report, safety measure certificate, preliminary certificate, construction certificate or final certificate by the construction engineer,

(b) where the relevant appointment is that of an inspecting engineer, any inspection report, interim inspection compliance certificate or inspection compliance certificate by the inspecting engineer,

(c) where the relevant appointment is that of a supervising engineer, any notice under section 48(2)(a) or (e), recommendation under section 48(3) or statement under section 48(7).

### Taking of safety and other measures

### Enforcement notice: safety and other measures

(1) This section applies in relation to a controlled reservoir where it appears to SEPA that the reservoir manager has failed to comply with—

(a) the manager’s duty under section 34(1) (to comply with a direction in a safety report),

(b) the manager’s duty under section 46(1) (to comply with a direction in an inspection report).

(2) SEPA may by notice require the reservoir manager to comply with the duty before the end of the period specified in the notice.

(3) SEPA must consult an engineer appointed by it under this section about the period to be specified in the notice.

(4) An engineer may be appointed under this section, or section 69, if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section or (as the case may be) section 69.

(5) Notice under subsection (2) must—
(a) specify the measure that SEPA requires to be taken,
(b) state SEPA’s reasons for considering that this section applies,
(c) specify any particular steps SEPA considers must be taken to take the measure.

(6) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in connection with consultation under this section.

(7) The Scottish Ministers may by order make provision allowing a reservoir manager to whom notice is given under subsection (2)—
(a) to apply to SEPA for a review of its decision to give the notice,
(b) to appeal to the Scottish Ministers against the decision to give the notice.

(8) Any such order—
(a) must, where it includes provision for—
(i) a right of review, specify the period within which a review may be made,
(ii) a right of appeal, specify the period within which an appeal may be made, and
(b) may make further provision in relation to reviews and appeals in relation to notices given under subsection (2).

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

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

(1A) Where a reservoir manager has a right of review in accordance with an order made under section 67(7), non-compliance is an offence only if—
(a) the period within which an application for review may be made has expired, or
(b) where such an application has been made, it has been withdrawn or determined.

(1B) Where a reservoir manager has a right of appeal in accordance with an order made under section 67(7), non-compliance is an offence only if—
(a) the period within which an appeal may be made has expired, or
(b) where such an appeal has been made, it has been withdrawn or determined.

(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 12 months, or to a fine not exceeding the statutory maximum, or to both.

69 SEPA’s power to arrange taking of safety and other measures

(1) This section applies where SEPA 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) SEPA may arrange for the taking of the measure under the supervision of an engineer appointed 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 SEPA.

(4) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in making arrangements under this section.

570 Offences under sections 40(1)(d) and 50(1)(c): further remedies

(1) This section applies where a reservoir manager is convicted of an offence under—

(a) section 40(1)(d) (failure to comply with direction in safety report),

(b) section 50(1)(c) (failure to comply with direction in inspection report).

(2) The court may, in addition to or instead of imposing any penalty competent under section 40(3) or (as the case may be) 50(3), order the reservoir manager to take such steps as are specified in the order, within such period as is so specified—

(a) to secure compliance with the direction concerned,

(b) to secure the remedying or mitigating of the effects of the failure to comply with the direction.

(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.

Stop notices

71 Stop notices

(1) The Scottish Ministers may by order make provision as to the giving by SEPA of stop notices to reservoir managers of controlled reservoirs.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) A stop notice is a notice prohibiting a reservoir manager of a controlled reservoir from carrying on an activity specified in the notice until the manager has taken the steps specified in the notice.

(4) Provision under subsection (1) may confer power to give a stop notice only in relation to a case where the reservoir manager is carrying on the activity and either—

(b) SEPA reasonably believes that the activity as carried on by the manager presents a significant risk of causing an uncontrolled release of water from the reservoir, or

(c) SEPA reasonably believes that the activity as carried on involves or is likely to involve the commission of an offence under this Part.

(5) Where provision under subsection (1) confers power to give a stop notice in a case falling within subsection (4)(b)—

(a) SEPA must, before it exercises the power—
Chapter 9—Civil enforcement, emergency powers and further offences

1. Reservoirs (Scotland) Bill
2. Part 1—Reservoirs
3. Chapter 9
4. Civil enforcement, emergency powers and further offences
5. (i) at its own expense appoint an engineer who is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this subsection, and
6. (ii) take into account recommendations made by that engineer about the stop notice,
7. (b) the steps specified in any such stop notice in pursuance of subsection (3) must be steps to remove or reduce the risk referred to in subsection (4)(b),
8. (c) SEPA must give the Scottish Ministers notice of each occasion on which it exercises the power as soon as reasonably practicable after doing so.

Stop notices: procedure

1. Provision under section 71(1) must secure the results in subsection (2) in a case where a stop notice is given.
2. The results are that—
3. (a) the stop notice must comply with subsection (3),
4. (b) the reservoir manager to whom it is given may appeal to the Scottish Ministers against the decision to issue it,
5. (c) where, after giving of the notice, SEPA is satisfied that the manager has taken the steps specified in the notice, SEPA must give a certificate to that effect (a “completion certificate”),
6. (d) the notice ceases to have effect on the giving of a completion certificate,
7. (e) the reservoir manager to whom the notice is given may at any time apply for a completion certificate,
8. (f) SEPA 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 was made,
9. (g) the reservoir manager to whom the notice is given may appeal to the Scottish Ministers against a decision not to give a completion certificate.

3. To comply with this subsection a stop notice must include information as to—
4. (a) the grounds for giving the notice,
5. (b) rights of appeal,
6. (c) the consequences of non-compliance.

4. Provision pursuant to subsection (2)(b) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA to give a stop notice include that—
5. (a) the decision was based on an error of fact,
6. (b) the decision was wrong in law,
7. (c) the decision was unreasonable,
8. (d) any step specified in the notice is unreasonable,
9. (e) the reservoir manager has not committed the offence and would not have committed it had the stop notice not been given,
(f) the manager would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been given.

(5) Provision pursuant to that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

(6) Provision pursuant to subsection (2)(g) must secure that the grounds on which a reservoir manager may appeal against a decision of SEPA 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 unfair or unreasonable.

73 Stop notices: compensation

(1) Provision under section 71(1) must include provision for SEPA to compensate the reservoir manager for loss suffered as the result of the issue of the stop notice.

(2) Provision pursuant to subsection (1) may provide for compensation—

(a) only in cases specified (by the order under section 71(1)),

(b) only in relation to descriptions of loss so specified.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager to whom the stop notice is given may appeal to the Scottish Ministers against—

(a) a decision of SEPA not to award compensation,

(b) a decision of SEPA as to the amount of the compensation.

74 Stop notices: enforcement

(1) Provision under section 71(1) may provide that where a reservoir manager to whom a stop notice is given does not comply with it, the manager commits an offence and is liable on summary conviction—

(a) in the JP court, to imprisonment for a term not exceeding 60 days, or to a fine not exceeding level 4 on the standard scale, or to both,

(b) in the sheriff court—

(i) for a first such offence, to imprisonment for a term not exceeding 3 months, or to a fine not exceeding the prescribed sum (within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 (c.46)), or to both,

(ii) for any subsequent such offence, to imprisonment for a term not exceeding 6 months, or to the fine mentioned in sub-paragraph (i), or to both.

(2) Provision under section 71(1) must provide that it is a defence to a charge in proceedings for an offence created by the order for the person to show both—
Reservoirs (Scotland) Bill  
Part 1—Reservoirs  
Chapter 9—Civil enforcement, emergency powers and further offences

(a) that the failure to comply with the stop notice 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

(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, and

(iii) provided particulars of the failure to SEPA as soon as practicable after the failure arose.

Emergency powers

(1) This section applies where it appears to SEPA 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) SEPA 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) SEPA must—

(a) appoint 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 appointed engineer.

(4) An engineer may be appointed under this section if the engineer is a member of a panel of reservoir engineers established under section 25 who may (by virtue of an order under that section) be appointed under this section.

(5) SEPA must give notice to the reservoir manager of the measures to be taken under this section.

(6) Notice under subsection (5)—

(a) must be given as soon as practicable (which may be after any works have begun), but

(b) is not required if SEPA is unable after reasonable enquiry to ascertain the name and address of the reservoir manager and the works have commenced.

(7) The reservoir manager must pay SEPA the amount of any expenses reasonably incurred by it in the exercise of powers under this section.

Other civil enforcement measures

(1) The Scottish Ministers may by order make provision—
(a) as to the acceptance by SEPA of an enforcement undertaking from a reservoir manager of a controlled reservoir in a case where SEPA has reasonable grounds to suspect that the manager has committed an offence under this Part,

(b) for the acceptance of the undertaking to have the consequences in subsection (5).

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) An “enforcement undertaking” is an undertaking to take such action as may be specified in the undertaking before the end of such period as may be so specified.

(4) The action specified in an enforcement undertaking must be—

(a) action to secure that the offence does not continue or recur,

(b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed,

(c) action (including the payment of a sum of money) to benefit any person adversely affected by the offence,

(d) action of a description specified in the order.

(5) The consequences in this subsection are that, unless the reservoir manager from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—

(a) the reservoir manager may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates,

(b) SEPA may not impose on the manager any fixed monetary penalty which it would otherwise have power to impose by virtue of section 77(1) in respect of the act or omission,

(c) SEPA may not impose on the manager any further enforcement measure which it would otherwise have power to impose by virtue of section 80(1) in respect of the act or omission.

(6) Provision under subsection (1) may in particular include provision—

(a) as to the procedure for entering into an undertaking,

(b) as to the terms of an undertaking,

(c) as to the publication of an undertaking by SEPA,

(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 SEPA of compliance with an undertaking,

(g) as to the certification by SEPA that an undertaking has been complied with,

(h) allowing an application for a review by SEPA before an appeal to the Scottish Ministers against refusal to give such certification,

(i) 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,
(j) 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 of any criminal or other sanction on the manager,

(k) 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,

(l) for the creation of offences,

(m) for any offence created to be triable only summarily,

(n) 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,

(o) for it to be a defence to a charge in proceedings for an offence created by the order for a person to show both—

(i) that the failure to comply with the requirements 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 SEPA as soon as practicable after the failure arose.

77 Fixed monetary penalties

(1) The Scottish Ministers may by order make provision about the imposition by SEPA of fixed monetary penalties on reservoir managers of controlled reservoirs in relation to offences under this Part.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) Provision under subsection (1) must provide that—

(a) fixed monetary penalties may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,

(b) fixed monetary penalties are to be imposed by notice,

(c) the amount of the penalty which can be imposed in relation to an offence may not exceed the maximum amount of the fine that may be imposed on summary conviction for the offence.

(4) A fixed monetary penalty is a requirement to pay to SEPA a penalty of a specified amount (with payment attracting the results mentioned in paragraphs (a) and (b) of section 79(2)).
For the purposes of this section and section 78 “specified” means specified in an order made under subsection (1).

78 Fixed monetary penalties: procedure

(1) Provision under section 77(1) must secure the results in subsection (2).

(2) The results are that—

(a) where SEPA proposes to impose a fixed monetary penalty on a reservoir manager, it must give the manager a notice of what is proposed (a “notice of intent”) which complies with subsection (3),

(b) the notice of intent also offers 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 SEPA in relation to the proposed imposition of the fixed monetary penalty,

(ii) SEPA must at the end of the period for making representations and objections decide whether to impose the fixed monetary penalty,

(d) where SEPA decides to impose the fixed monetary penalty, the notice imposing it ("the final notice") complies with subsection (5),

(e) the reservoir manager on whom a fixed monetary penalty is imposed may appeal to the Scottish Ministers 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 payment may be made,

(c) the effect of payment of the sum referred to in subsection (2)(b),

(d) the right to make written representations and objections,

(e) the circumstances in which SEPA 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 given,

(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 in subsection (2)(c)(ii)—

(a) must secure that SEPA 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 SEPA 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,
(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 SEPA 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 may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

79 Fixed monetary penalties: criminal proceedings and conviction etc.

(1) Provision under section 77(1) must secure that, in a case where a notice of intent referred to in section 78(2)(a) is given to a reservoir manager—
(a) no criminal proceedings for the offence to which the notice relates may be instituted against the manager in respect of the act or omission to which the notice relates before the end of the period in which the manager may discharge liability for the fixed monetary penalty pursuant to section 78(2)(b),
(b) SEPA may not before the end of that period give a stop notice to or impose a further enforcement measure on the manager in respect of the act or omission giving rise to the notice,
(c) if the manager so discharges liability—
   (i) the manager may not at any time be convicted of the offence to which the notice relates in relation to that act or omission,
   (ii) SEPA may not give a stop notice to or impose a further enforcement measure on the manager in respect of that act or omission.

(2) Provision under section 77(1) must also secure that, in a case where a fixed monetary penalty is imposed on a reservoir manager—
(a) the manager may not at any time be convicted of the offence in relation to which the penalty is imposed in respect of the act or omission giving rise to the penalty,
(b) SEPA may not give a stop notice to or impose a further enforcement measure on the manager in respect of the act or omission giving rise to the penalty.
80 Further enforcement measures

(1) The Scottish Ministers may by order make provision about the imposition by SEPA on reservoir managers of controlled reservoirs of one or more further enforcement measures in relation to offences under this Part.

(2) Before making an order under subsection (1), the Scottish Ministers must consult in accordance with section 84.

(3) Provision under subsection (1)—

(a) must provide that further enforcement measures—

(i) may be imposed only where SEPA is satisfied beyond reasonable doubt that a reservoir manager has committed an offence under this Part,

(ii) may not be imposed on a reservoir manager on more than one occasion in relation to the same act or omission,

(iii) are to be imposed by notice,

(b) may provide that further enforcement measures may be imposed in addition to any requirement referred to in section 63(2) or 67(2).

(4) A further enforcement measure is any of the following—

(a) a requirement to pay to SEPA a penalty of such amount as SEPA may in each case determine (but not exceeding the maximum fine for which a person convicted of the offence concerned may be made liable on summary conviction),

(b) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the offence does not continue or recur,

(c) a requirement to take such steps as SEPA may specify, within such period as it may specify, to secure that the position is so far as possible restored to what it would have been if the offence had not been committed.

(5) For the purposes of this Part—

a “variable monetary penalty” means a requirement referred to in subsection (4)(a),

a “restraint notice” means a requirement referred to in subsection (4)(b),

a “restoration notice” means a requirement referred to in subsection (4)(c).

81 Further enforcement measures: procedure

(1) Provision under section 80(1) must secure the results in subsection (2).

(2) The results are that—

(a) where SEPA proposes to impose a further enforcement measure on a reservoir manager, it must give 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 SEPA in relation to the proposed imposition,

(c) after the end of the period for making such representations and objections, SEPA must decide whether to—

(i) impose the further enforcement measure (with or without modifications),
(ii) impose any other further enforcement measure which SEPA may impose,

(d) where SEPA decides to impose a further enforcement measure, the notice (the “final notice”) complies with subsection (6),

(e) the reservoir manager on whom a further enforcement measure is imposed may appeal to the Scottish Ministers 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 further enforcement measure,

(b) the right to make representations and objections,

(c) the circumstances in which SEPA may not impose the further enforcement measures,

(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 is given.

(4) Provision to secure the result in subsection (2)(c)—

(a) must secure that SEPA may not decide to impose a further enforcement measure 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 SEPA may not decide to impose a further enforcement measure.

(5) Provision to secure the result in subsection (2)(c) must also include provision for—

(a) the reservoir manager to whom the notice of intent is given to be able to offer an 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) SEPA to be able to accept or reject such an undertaking,

(c) SEPA 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 further enforcement measure,

(b) where the further enforcement measure is a variable monetary penalty—

   (i) how payment may be made,

   (ii) the period within which payment must be made,

   (iii) any early payment discounts or late payment penalties,

(c) rights of appeal,

(d) the consequences of non-compliance.

(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 SEPA include the following—

(a) that the decision was based on an error of fact,

(b) that the decision was wrong in law,
(c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
(d) in the case of a restraint notice or a restoration notice, that the nature of the requirement is unreasonable,
(e) that the decision was unreasonable for any other reason.

(8) Provision to secure the result in that subsection may include provision about the determining by or under the order of a fee, and the charging of any fee so determined, in connection with an appeal and may require the return of a fee paid in relation to an appeal which is upheld.

82 Further enforcement measures: criminal proceedings and conviction

(1) Provision under section 80(1) must secure the result in subsection (2) in any of the following cases—
(a) where a further enforcement measure is imposed on a reservoir manager,
(b) where an undertaking referred to in section 81(5) is accepted from a reservoir manager.

(2) The result is that the reservoir manager may not at any time be convicted of the offence in respect of the act or omission giving rise to the further enforcement measure or undertaking except in a case mentioned in subsection (3).

(3) The case is where each of the following applies—
(a) a restraint notice or restoration notice is imposed on the manager, or an undertaking referred to in section 81(5) is accepted from the manager,
(b) no variable monetary penalty is imposed,
(c) the manager fails to comply with the restraint notice, restoration notice or undertaking.

(4) Provision under section 80(1) may for the purposes of the case referred to in subsection (3) extend any period within which criminal proceedings may be instituted against the reservoir manager.

83 Further enforcement measures: enforcement

(1) Provision under section 80(1) may include provision for a reservoir manager to pay a monetary penalty (a “non-compliance penalty”) to SEPA if the manager fails to comply with any of the following—
(a) a restraint notice or restoration notice imposed on the manager,
(b) an undertaking referred to in section 81(5).

(2) Provision pursuant to subsection (1) may—
(a) specify the amount of the non-compliance penalty,
(b) provide for the amount to be calculated by reference to criteria specified by order by the Scottish Ministers,
(c) provide for the amount to be determined by SEPA,
(d) provide for the amount to be determined in any other way.
but 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 concerned 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 given by SEPA,

(b) the reservoir manager on whom it is imposed may appeal to the Scottish Ministers against the notice.

(4) Provision pursuant to subsection (3)(b) must secure that the grounds on which a reservoir manager may appeal against a notice referred to in that subsection 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 unfair or unreasonable for any reason (including, in a case where the amount of the non-compliance penalty was determined by SEPA, that the amount was unreasonable).

(5) An order under section 80(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 an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

**Miscellaneous**

84 Consultation in relation to orders under sections 71(1), 76(1), 77(1) and 80(1)

(1) The consultation required by sections—

(a) 71(2) (stop notices),

(b) 76(2) (enforcement undertakings),

(c) 77(2) (fixed monetary penalties),

(d) 80(2) (further enforcement measures),

is consultation with the persons and organisations mentioned in subsection (2).

(2) The persons are—

(a) such organisations as appear to the Scottish Ministers to be representative of persons substantially affected by the making of the proposed order,

(b) such other persons as the Scottish Ministers consider appropriate.

85 Guidance as to use of stop notices, fixed monetary penalties or further enforcement measures

Where the Scottish Ministers make provision—

(a) by order under section 71(1) (giving by SEPA of stop notices),

(b) by order under section 76(1) (acceptance of enforcement undertakings by SEPA),

(c) by order under section 77(1) (imposition by SEPA of fixed monetary penalties),
(d) by order under section 80(1) (imposition by SEPA of further enforcement measures),
the order concerned must require SEPA to publish guidance about the use of the powers
conferred on it by the order.

86 Recovery by SEPA of expenses
(1) Provision under section 71(1) or 80(1) may include provision for SEPA, by notice, to
require a reservoir manager to whom a stop notice is given or on whom a further
enforcement measure is imposed, to pay the amount of any expenses reasonably
incurred by SEPA in relation to (and up to the time of) the giving of the notice or (as the
case may be) imposition of the measure.

(2) In subsection (1), the reference to “expenses” includes in particular—
(a) investigation expenses,
(b) administration expenses,
(c) expenses of obtaining expert advice, including legal advice.

(3) Provision pursuant to subsection (1) must secure that the reservoir manager required to
pay the expenses may appeal to the Scottish Ministers against—
(a) the decision of SEPA to impose the requirement to pay expenses,
(b) the decision of SEPA as to the amount of the expenses.

(4) Provision pursuant to that subsection may include provision about the determining by or
under the order of a fee, and the charging of any fee so determined, in connection with
an appeal and may require the return of a fee paid in relation to an appeal which is
upheld.

86A Guidance: appeals
The Scottish Ministers must publish guidance on the process of making appeals in
pursuance of sections 67, 72, 73, 76, 78, 81, 83 and 86.

87 Publication of enforcement action
(1) The Scottish Ministers may by order require SEPA to publish such information as may
be specified in the order as regards cases in which it has—
(a) appointed a construction engineer, an inspecting engineer or a supervising
engineer under section 65,
(b) arranged for the taking of any measure under section 69.

(2) Where the Scottish Ministers make provision by order under—
(a) section 71(1) as to the issuing by SEPA of stop notices,
(b) section 77(1) as to the imposition by SEPA of fixed monetary penalties,
(c) section 80(1) as to the imposition by SEPA of further enforcement measures,
the order concerned may require SEPA to publish such information as may be specified
in the order as regards cases in which it has done what the order permits it to do.
(3) In subsection (2), the reference to cases in which SEPA has done what the order permits it to do does not include cases where the stop notice, fixed monetary penalty or (as the case may be) further enforcement measure has been imposed but overturned on appeal.

88 Powers of entry

(1) A person authorised by SEPA is entitled, at any reasonable time for any of the purposes in subsection (2), to enter—

(a) land on which a controlled reservoir is situated,
(b) land on which SEPA considers there is situated a structure or area (or combination) referred to in section 1(4) in relation to which SEPA is considering requesting the making an order under that subsection,
(c) land on which a structure or area which previously at any time has been a controlled reservoir is situated.

(2) The purposes are to carry out an inspection, survey or other operation—

(a) to determine whether any provision of this Part applies,
(b) for the purpose of assisting SEPA in giving the reservoir a provisional risk designation or risk designation, or reviewing its risk designation,
(c) to determine whether a measure directed in a safety report has been taken,
(d) to determine whether the reservoir manager of a controlled reservoir is complying with the requirements of a preliminary certificate or final certificate,
(e) to determine—

(i) whether a measure directed in an inspection report has been taken (whether before or after the giving of a notice under section 67),
(ii) the period to be specified in a notice under that section,
(f) to determine whether a direction by a supervising engineer under section 48(4) has been complied with,
(g) to determine whether the records required by sections 49 and 54 are being maintained,
(h) to determine whether incidents are being reported in accordance with regulations under section 52(1),
(i) to determine whether a flood plan is being prepared in accordance with regulations under section 53(1),
(j) for the purposes of section 69,
(k) to determine what (if any) emergency measures should be taken under section 75, or for any purpose connected with taking such measures,
(l) to assess whether any offence under this Part may be being committed.

89 Warrants authorising entry

(1) A sheriff or justice of the peace may by warrant authorise any person entitled to exercise a right of entry under section 88 to do so, if necessary using reasonable force, in accordance with the warrant.
(2) A warrant may be granted under subsection (1) only if the sheriff or justice is satisfied, by evidence on oath as to both of the following—

(a) that there are reasonable grounds for the exercise of the right in relation to the land concerned,

(b) that any of the following applies—

(i) the conditions in subsection (3) are satisfied,
(ii) the land is unoccupied, or
(iii) the case is one of urgency.

(3) The conditions referred to in subsection (2)(b)(i) are—

(a) that the person applying for the warrant has given notice under section 90(3)(a) of the person’s intention to exercise the right,
(b) that the notice period has expired,
(c) that either—

(i) permission to exercise the right in relation to the land has been refused, or
(ii) such a refusal is reasonably expected.

(4) A warrant granted under this section—

(a) does not entitle a person to use force against an individual,
(b) continues in force until the purpose for which the warrant was issued has been fulfilled or, if earlier, the expiry of such period as the warrant may specify.

90 Powers of entry: supplementary

(1) Where entry under section 88 is for a purpose in subsection (2)(k) of that section the right to enter extends to any neighbouring land.

(2) A right to enter land conferred by section 88 includes a right, subject in the case of a right exercisable in accordance with a warrant to the terms of the warrant, to—

(a) take on to the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting the person,
(b) do anything else which is reasonably required in order to fulfil the purpose for which entry is taken.

(3) Except for a purpose referred to in section 88(2)(k), a person may not demand entry to land which is occupied unless either—

(a) at least 7 day’s notice has been given to the occupier, or
(b) the entry is authorised by a warrant under section 89.

(4) Notice under subsection (3)(a) must—

(a) specify the purpose for which entry is required,
(b) specify so far as practicable the nature of the proposed works on the land.

(5) A person authorised by virtue of section 88 to enter land must on request produce written evidence of the authorisation.
91 Offence: preventing or obstructing entry

(1) Any person who intentionally 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-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.

92 Compensation

(1) SEPA must pay compensation in accordance with this section 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.

(2) Compensation is to be paid in respect of the damage or disturbance to—

(a) a person with an interest in the land,

(b) a person whose enjoyment of the land is disturbed.

(3) Any dispute about compensation under this section is to be determined by the Lands Tribunal for Scotland.

(4) Compensation payable under this section is to be treated, for the purposes of recovery from the reservoir manager, as expense incurred by SEPA in the exercise of its powers under section 75.

93 Reports by SEPA to the Scottish Ministers

(1) SEPA must report to the Scottish Ministers about the steps it has taken to secure the compliance by reservoir managers of controlled reservoirs with the requirements of this Part.

(2) Reports under subsection (1) must—

(a) be at such intervals and times as the Scottish Ministers direct,

(b) contain such information as they direct.

94 Affording of reasonable facilities to engineers

(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 functions under this Part.

(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-risk reservoir or a medium-risk reservoir, the record maintained by the manager under section 49,

(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 construction engineer, an inspecting engineer, an other qualified engineer or a supervising engineer appointed for the time being in relation to the reservoir.

95 **Power of SEPA to require information and assistance**

(1) The reservoir manager of a controlled reservoir must, on being requested by SEPA, provide SEPA with such information and assistance as it may reasonably seek in connection with the exercise of its powers and duties under this Part.

(2) The reservoir manager in particular—

(a) must, on being requested by SEPA, make available to it the records referred to in section 94(2)(a),

(b) must, on being so requested, provide SEPA with such further information or particulars as SEPA may require, in such form and manner as SEPA may by notice require.

96 **Offences: sections 94 and 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 94 (affording of reasonable facilities to engineers),

(b) the requirements of section 95 (provision of information and assistance to SEPA).

(2) A reservoir manager of a controlled reservoir who intentionally alters, suppresses or destroys a document which the person has been required by virtue of either of those sections to produce commits an offence.

(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 any other controlled reservoir is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**CHAPTER 10**

**MISCELLANEOUS**

96ZA **Guidance**

(1) The Scottish Ministers must publish guidance on the operation of this Part.

(2) Guidance under subsection (1) must in particular—
(a) include guidance on any orders or regulations which have been made under this Act and which affect the operation of this Part, and

(b) incorporate any guidance which has been issued or published under any other provision of this Part (whether by SEPA or the Scottish Ministers).

(3) The Scottish Ministers must keep the guidance under this section under review with a view to revising and re-publishing the guidance with such revisions as they think appropriate.

(4) Before publishing or re-publishing any guidance under this section, the Scottish Ministers must consult—

(a) SEPA,

(b) the Institution of Civil Engineers,

(c) such other persons as they consider appropriate.

96A Grants

(1) The Scottish Ministers may pay grants to a reservoir manager for the purposes of enabling or assisting the reservoir manager to comply with any obligation arising under or by virtue of this Part.

(2) Grants are payable only where the reservoir concerned—

(a) is a high-risk reservoir or a medium-risk reservoir, and

(b) was not a “large raised reservoir” for the purposes of section 1 of the 1975 Act on the date immediately before that section was repealed.

(3) Grants may be subject to such conditions (including conditions on repayment) as the Scottish Ministers think fit.

97 Assessment of engineers’ reports etc.

(1) The Scottish Ministers may by regulations make provision for the assessment of the quality of reports, written statements and certificates given under this Part by—

(a) construction engineers,

(b) inspecting engineers,

(ba) other qualified engineers,

(c) supervising 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 SEPA and the Scottish Ministers,
(f) the steps that may be taken by SEPA or the Scottish Ministers following an assessment.

98 Notice to SEPA of revocation of appointment or resignation of engineer

(1) Where the reservoir manager of a controlled reservoir revokes the appointment of a construction engineer, an inspecting engineer, an other qualified engineer or a supervising engineer appointed in relation to the reservoir, the manager must give SEPA notice of the revocation and of the date it took effect.

(2) Where an engineer referred to in subsection (1) resigns such appointment—
(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 SEPA 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 (as the case may be) 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-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.

(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 engineer’s resignation.

98A SEPA: Ministerial directions
SEPA must, in carrying out its functions under this Part, act subject to and in accordance with such directions as may be given by the Scottish Ministers.

99 Form and content of notices, reports, certificates etc.
The Scottish Ministers may by regulations make provision as to—
(a) the form and content of any notice required under this Part,
(b) the form of any report or certificate by a construction engineer or an inspecting engineer or of any notice, written statement or recommendation by a supervising engineer under this Part.
Notices by SEPA

(1) Section 123 of the Environment Act 1995 (c.25) (service of documents) applies to any document authorised or required by virtue of any provision of this Act to be given by SEPA as if it were authorised or required to be given (or served) under that Act.

(2) Where SEPA is unable after reasonable enquiry to ascertain the name or address of a reservoir manager of a controlled reservoir, a notice by SEPA under this Part is to be treated as given to the manager if either—

(a) it is left in the hands of a person who is or appears to be resident or employed at the site of the reservoir, or

(b) it is conspicuously affixed to a building or object at the site of the reservoir.

Change to the Institution of Civil Engineers

If the Institution of Civil Engineers ceases to exist, the Scottish Ministers may by order amend references in this Part to the Institution and to its President.

Civil liability

This Part does not confer a right to claim damages in respect of a breach of an obligation imposed by the Part.

PART 2

PROTECTION OF THE WATER ENVIRONMENT – REMEDIAL AND RESTORATION MEASURES

Remedial and restoration measures regulations

(1) In section 22 (remedial and restoration measures) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3), in subsection (3), after paragraph (b) insert—

“(c) for any of the purposes specified in paragraphs 1 to 3 of schedule 2A.

(4) Paragraphs 4 and 5 of that schedule have effect for supplementing paragraphs 1 to 3.”.

(2) After schedule 2 to that Act insert—

“SCHEDULE 2A
(introduced by section 22)

REMEDIAL AND RESTORATION MEASURES REGULATIONS: OFFENCES

Offences

1 Creating offences and dealing with matters relating to such offences, including—

(a) the provision of defences, and

(b) evidentiary matters.

2 Enabling, where a person has been convicted of an offence under the regulations, a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment).
Reservoirs (Scotland) Bill
Part 3—General

3 Making provision which, subject to any modification that the Scottish Ministers consider appropriate, corresponds or is similar to any provision made by section 157 or 158 of the Environmental Protection Act 1990 (c.43).

Supplementary

4 (1) The regulations may provide for any such offence as is mentioned in paragraph 1 to be triable—
   (a) only summarily,
   (b) either summarily or on indictment.

   (2) The regulations may provide for such an offence which is triable only summarily to be punishable on conviction by—
      (a) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or
      (b) a fine not exceeding such amount as is specified (which must not exceed level 5 on the standard scale),

   or both.

   (3) The regulations may provide for any such offence which is triable either summarily or on indictment to be punishable—
      (a) on summary conviction, by—
         (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 12 months), or
         (ii) a fine not exceeding such amount as is specified (which must not exceed the statutory maximum),
      or both,
      (b) on conviction on indictment by—
         (i) imprisonment for a term not exceeding such period as is specified (which must not exceed 2 years), or
         (ii) a fine,
      or both.

Interpretation

5 In this schedule—
   “the regulations” means regulations under section 22,
   “specified” means specified in the regulations.”.

PART 3
GENERAL

104 Crown application

(1) Part 1 of this Act binds the Crown and applies to any Crown land as it applies in relation to any other land.
(2) The modifications made by Part 2 bind the Crown to the extent that the enactment modified binds the Crown.

(3) No contravention by the Crown of any provision made by or under this Act makes the Crown criminally liable.

(4) But the Court of Session may, on the application of SEPA or a person authorised by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(5) Despite subsection (3), any provision made by or under this Act applies to persons in the public service of the Crown as it applies to other persons.

(6) The powers conferred by section 88 (whether those specified in that section or the ancillary powers referred to in section 90(1) or (2)) are exercisable in relation to Crown land only with the consent of the appropriate authority.

(7) In subsection (6)—
   (a) “Crown land” means land, an interest in which—
      (i) belongs to Her Majesty in right of the Crown or in right of Her private estates,
      (ii) belongs to an office-holder in the Scottish Administration or to a government department,
      (iii) is held in trust for Her Majesty for the purposes of the Scottish Administration or a government department,
   (b) “appropriate authority”, in relation to any land—
      (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
      (ii) in the case of any other land belonging to Her Majesty in right of the Crown, means the office-holder in the Scottish Administration or, as the case may be, government department having the management of the land,
      (iii) in the case of land belonging to Her Majesty in right of Her private estates, means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,
      (iv) in the case of land belonging to an office-holder in the Scottish Administration or to a government department or held in trust for Her Majesty for the purposes of the Scottish Administration or a government department, means the office-holder or government department.

(8) In subsection (7), the references in paragraph (a)(i) and (b)(iii) to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c.37).

(9) It is for the Scottish Ministers to determine any question which arises as to who is the appropriate authority in relation to any land, and their decision is final.

**Offences by bodies corporate**

(1) Where—
   (a) an offence under this Act has been committed by a body corporate or a Scottish partnership or other unincorporated association,
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual, or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body,

(ii) where the affairs of the body are managed by its members, the members,

(b) in relation to a Scottish partnership, a partner,

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

105A Consequential amendment and repeals

(1) In section 14(2)(a) of the Local Government and Planning (Scotland) Act 1982 (c.43), for “(within the meaning of the Reservoirs Act 1975)” substitute “(within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00) but irrespective of the volume of water held in the reservoir)”.

(2) Paragraph 98 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c.39) is repealed.

(3) Paragraph 7 of schedule 7 to the Water Industry (Scotland) Act 2002 (asp 3) is repealed.

(4) In section 55(2)(f) of the Building (Scotland) Act 2003 (asp 8), for “large raised reservoir within the meaning of the Reservoirs Act 1975 (c.23)” substitute “controlled reservoir within the meaning of the Reservoirs (Scotland) Act 2011 (asp 00)”.

(5) Part 7 of the Flood Risk Management (Scotland) Act 2009 (asp 6) is repealed.

106 Ancillary provision

(1) The Scottish Ministers may by order make such supplemental, incidental, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provisions of this Act.

(2) An order under subsection (1) may modify any enactment, instrument or document.

107 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act must be exercised by statutory instrument.

(2) Any such power includes power to make—

(a) in the case of an order under section 109(1) (commencement orders), such transitional, transitory or saving provision as the Scottish Ministers consider appropriate,
(b) in the case of any other order or any regulations—

(i) such supplemental, incidental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate,

(ii) different provision for different purposes.

(3) Unless subsection (4) provides otherwise, a statutory instrument containing an order (other than an order made under section 109(1)) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Parliament.

(4) An order or regulations must not be made under any of the following provisions unless a draft of the statutory instrument containing the order or (as the case may be) the regulations has been laid before, and approved by a resolution of, the Parliament—

(a) section 1(4),
(b) section 1(6)(a),
(c) section 21(4),
(d) section 52(1) or 53(1),
(e) section 67(7),
(f) section 71(1), 76(1), 77(1), 80(1) or 101,
(g) section 106(1) (if the order contains supplemental provision or provision which adds to, replaces or omits any part of the text of an Act).

108 Defined expressions

The expressions listed in the schedule are defined or otherwise explained for the purposes of this Act by the provisions indicated in the schedule.

109 Commencement and short title

(1) The provisions of this Act, except this section and sections 1, 2, 3, 7, 107 and 108, come into force on such day as the Scottish Ministers by order appoint.

(2) This Act may be cited as the Reservoirs (Scotland) Act 2011.
## SCHEDULE
(introduced by section 108)

### INDEX OF DEFINED EXPRESSIONS

<table>
<thead>
<tr>
<th>Expression</th>
<th>Interpretation provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 the 1975 Act</td>
<td>section 8(1)</td>
</tr>
<tr>
<td>construction certificate</td>
<td>section 36</td>
</tr>
<tr>
<td>construction engineer</td>
<td>section 31(3)</td>
</tr>
<tr>
<td>controlled reservoir</td>
<td>sections 1 and 2</td>
</tr>
<tr>
<td>controlled reservoir being abandoned</td>
<td>section 30(7)(d) (see also section 30(6))</td>
</tr>
<tr>
<td>controlled reservoir being altered</td>
<td>section 30(7)(a) (see also section 30(4) to (6))</td>
</tr>
<tr>
<td>controlled reservoir being constructed</td>
<td>section 30(7)(a) (see also section 30(3))</td>
</tr>
<tr>
<td>controlled reservoir being discontinued</td>
<td>section 30(7)(c) (see also section 30(5))</td>
</tr>
<tr>
<td>controlled reservoir being restored to use</td>
<td>section 30(7)(b) (see also section 30(3))</td>
</tr>
<tr>
<td>controlled reservoirs register</td>
<td>section 9</td>
</tr>
<tr>
<td>emergency response information</td>
<td>section 55</td>
</tr>
<tr>
<td>enforcement undertaking</td>
<td>section 76(3)</td>
</tr>
<tr>
<td>final certificate</td>
<td>section 37</td>
</tr>
<tr>
<td>fixed monetary penalty</td>
<td>section 77(4)</td>
</tr>
<tr>
<td>10 flood plan</td>
<td>section 53</td>
</tr>
<tr>
<td>further enforcement measure</td>
<td>section 80(4)</td>
</tr>
<tr>
<td>high-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>incident</td>
<td>section 52</td>
</tr>
<tr>
<td>inspecting engineer</td>
<td>section 43(1)</td>
</tr>
<tr>
<td>15 inspection compliance certificate</td>
<td>section 46(4) and (5)</td>
</tr>
<tr>
<td>inspection report</td>
<td>section 45(1)(b) and (3)</td>
</tr>
<tr>
<td>Expression</td>
<td>Interpretation provision</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>interim inspection compliance certificate</td>
<td>section 46(2) and (3)</td>
</tr>
<tr>
<td>low-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>medium-risk reservoir</td>
<td>section 24(1)</td>
</tr>
<tr>
<td>other qualified engineer</td>
<td>section 46(1A) (see also section 45(5))</td>
</tr>
<tr>
<td>panels of reservoir engineers</td>
<td>section 25</td>
</tr>
<tr>
<td>preliminary certificate</td>
<td>section 35</td>
</tr>
<tr>
<td>provisional risk designation</td>
<td>section 17(3)</td>
</tr>
<tr>
<td>relevant works</td>
<td>section 30(7)(e)</td>
</tr>
<tr>
<td>reservoir manager</td>
<td>section 3 (see also section 4)</td>
</tr>
<tr>
<td>risk designation</td>
<td>section 18(3)</td>
</tr>
<tr>
<td>safety measure certificate</td>
<td>section 34(2) and (3)</td>
</tr>
<tr>
<td>safety report</td>
<td>section 33 (see also section 32(3) to (6))</td>
</tr>
<tr>
<td>SEPA</td>
<td>section 7</td>
</tr>
<tr>
<td>stop notice</td>
<td>section 71(3)</td>
</tr>
<tr>
<td>supervising engineer</td>
<td>section 47(1)</td>
</tr>
</tbody>
</table>
Reservoirs (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about the regulation of the construction, alteration and management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs, for the repeal and replacement of the Reservoirs Act 1975, about offences to facilitate the achievement of the environmental objectives set out in river basin management plans; and for connected purposes.

Introduced by: Richard Lochhead
On: 6 October 2010
Supported by: Roseanna Cunningham
Bill type: Executive Bill