These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

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
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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
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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 a safety report 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.
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).
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 reclaim 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)).
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

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

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

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

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

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.
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

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
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 officer 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
These documents relate to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010

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.
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.
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 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 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 ≥ 25,000 m³ categorised as low risk;
- Owners of reservoirs ≥ 25,000 m³ categorised as medium risk;
- Owners of reservoirs ≥ 25,000 m³ categorised as high risk;
- Owners of reservoirs ≥ 10,000 m³ and < 25,000 m³ categorised as low risk;
- Owners of reservoirs ≥ 10,000 m³ and < 25,000 m³ categorised as medium risk;
- Owners of reservoirs ≥ 10,000 m³ and < 25,000 m³ 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 m³ in capacity. The estimated total savings for all privately owned low risk reservoirs over 25,000 cubic metres up to 2015/16 inclusive is £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 £400 per reservoir through SEPA charges and reviewing and testing flood plans although this could vary between £225 and £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 £400 per year per reservoir although this could vary from £200 to £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 £1000 and erection of information boards of £1000. The estimated total cost for all privately owned medium risk reservoirs over 25,000 cubic metres up to 2015/16 inclusive is £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 £1400 through SEPA charges and for reviewing and testing flood plans although this could vary between £550 to £2300 per annum. This equates to an estimated total cost up until 2015/16 of £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 £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. The total estimated one off costs for this group is £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 £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 £150 per reservoir for the production of a simple flood plan and gathering information for registration for low risk reservoirs. This could vary between £100 and £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 £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 £1000 per reservoir per annum, which will only be incurred from 2015/16 onwards. This could vary between £525 and £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).
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>
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</thead>
<tbody>
<tr>
<td>One off capital costs from 2011 until 2016</td>
<td>0.1^a</td>
<td>0.53^d</td>
<td>2.3^g</td>
<td>1.2^j</td>
<td>3.26^m</td>
<td>7.39</td>
</tr>
<tr>
<td>Resource costs/(savings) from 2011 until 2016</td>
<td>0.48^b</td>
<td>(0.21)^e</td>
<td>1.82^h</td>
<td>0.26^k</td>
<td>1.59^n</td>
<td>3.94</td>
</tr>
<tr>
<td>Annual costs/(savings) after 2016</td>
<td>0.05^c</td>
<td>(0.07)^f</td>
<td>0.24^i</td>
<td>0.09^l</td>
<td>3.34^o</td>
<td>3.65</td>
</tr>
</tbody>
</table>

^a Paragraph 166, ^b Paragraph 167, ^c Paragraph 168(£46,000), ^d Paragraph 173, ^e Paragraph 174, ^f Paragraph 176, ^g Paragraph 179, ^h Paragraph 181, ^i Paragraph 183, ^j Paragraph 184, ^k Paragraph 185, ^l Paragraph 186, ^m Paragraph 201, ^n Paragraph 201, ^o 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.”