This document relates to the Reservoirs (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 6 October 2010.

RESERVOIRS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Reservoirs (Scotland) Bill introduced in the Scottish Parliament on 6 October 2010. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 55–EN.

POLICY OBJECTIVES OF THE BILL - GENERAL

2. This Bill is being brought forward as part of the Government’s objective of creating stronger, safer communities. It will create a legal and administrative framework for the construction and management of controlled reservoirs in a manner that reduces the risk of an uncontrolled release of water from reservoirs and the consequences of any subsequent flooding.

3. To deliver this framework, the Bill makes substantive provision in the following areas:
   - A requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be registered with SEPA;
   - Each reservoir is to be classified as high, medium or low risk according to whether it poses a threat to human life, property and/or critical infrastructure;
   - Each reservoir will be subject to a proportionate supervision and inspection regime dependent on its classification;
   - SEPA will be responsible for enforcing the provisions under this legislation. This is an administrative role;
   - Independent qualified civil engineers (known as panel engineers) will provide technical expertise with supervising and inspection roles within the framework.

BACKGROUND

4. Reservoirs are artificial structures which have been created to hold and store water above its natural level for a variety of purposes including drinking water, energy production, flood management and recreation. There are over 1000 reservoirs in Scotland. Of these just over 650 reservoirs currently come within the ambit of the Reservoirs Act 1975. About 80% of these are embankment dams, with the remainder being concrete dams and service reservoirs. The age of the dams ranges from the 12th century to dams which have been constructed in the last few years. Most of the dams in Scotland are over 100 years old.
The 1975 Reservoirs Act

5. The safety of reservoirs in Scotland is currently governed by the Reservoirs Act 1975 (the “1975 Act”) which aims to reduce the risks posed to public safety from a reservoir or dam failure which may lead to flooding. The main features of the 1975 Act have not changed substantively from the Reservoirs (Safety Provisions) Act which was passed in 1930.

6. The responsibility for enforcement of the 1975 Act lies with local authorities, but provision has been made to transfer these functions to SEPA under the Flood Risk Management (Scotland) Act 2009 (the “2009 Act”). In addition, the 2009 Act gave enforcement authorities in Scotland the power to serve and enforce notices requiring reservoir undertakers to take measures in the interests of safety. The 2009 Act also introduced new enabling powers which allow the Scottish Government to put in place incident reporting regulations and require reservoir undertakers to prepare on-site flood plans for reservoirs.

7. The 1975 Act only applies to Large Raised Reservoirs which hold, or are capable of holding, more than 25,000 cubic metres of water above the natural level of the surrounding land. This threshold was chosen as it was on the basis of failures of reservoirs of this size in the 1920s which caused loss of life and prompted the introduction of the 1930 Act. The level of regulation does not take into account the level of risk posed by the reservoir. There is also no provision for smaller reservoirs to be supervised through their construction or operational phases, even though the failure of smaller reservoirs could have serious consequences if there are people living downstream.

8. There have been incidents at some smaller reservoirs which are not currently subject to regulation, such as the Maich fishery in Renfrewshire in 2008 where overtopping of the reservoir due to heavy rain nearly caused the failure of the dam. This required emergency response procedures to be activated and an area downstream of the dam had to be evacuated. Such incidents have reinforced the need to modernise the reservoir safety legislation and provide greater protection for the public. This is especially true given the increasing age of most of the dams in Scotland.

9. For these reasons, the Scottish Government has decided that the changes to the enforcement regime introduced in the 2009 Act, while important, do not go far enough in minimising the risk of flooding from reservoirs. The Government decided, therefore, to repeal and replace the 1975 Act in Scotland with a proportionate, targeted and risk-based approach to reservoir safety.

10. In order to maintain the current consistency of approach across Scotland, England and Wales, the provisions in this Bill are broadly in line with those in the Flood and Water Management Act 2010 which, when commenced, will update the reservoir safety regime in England and Wales. Maintaining a consistent approach is important because of the crucial role played by specialist reservoir engineers appointed to panels by the Secretary of State on the advice of the Institution of Civil Engineers (“ICE”). These panel engineers are the only group of individuals qualified to supervise and inspect controlled reservoirs and retaining their extensive knowledge will be essential to the success of any new regime. The number of panel engineers operating in Scotland is already limited, and any major difference in operating practices compared with England and Wales could further reduce this limited pool.
BILL CONTENT- GENERAL

11. The Bill is separated into three parts:

- **Part 1** creates a new regime for ensuring the risk from flooding from reservoirs in Scotland is managed appropriately.
  - Chapter 1 provides a definition of a controlled reservoir that would be captured by the new legislation. Chapter 1 also defines who is responsible for the safety of each reservoir, and repeals the Reservoirs Act 1975 for Scotland.
  - *Chapter 2* sets out the process for registering a reservoir with SEPA, and how SEPA will manage the register
  - *Chapter 3* sets out the process for designating each reservoir as either high, medium or low risk.
  - *Chapter 4* describes the process for establishing panels of reservoir engineers to carry out the construction, inspection and supervisory roles set out in more detail in chapters 5 and 6.
  - *Chapter 5* establishes the process for constructing or altering controlled reservoirs, including the appointment of a relevant panel engineer to oversee the work and the associated supervision and inspection regime.
  - *Chapter 6* sets out the supervision and inspection requirements for those reservoirs that are designated as either high or medium risk.
  - *Chapter 7* sets out other general requirements in relation to controlled reservoirs. This includes a power to establish a new system for reporting incidents that affect safety at controlled reservoirs and a power to require the preparation of flood plans for controlled reservoirs.
  - *Chapter 8* sets out the procedures for resolving disputes between reservoir owners and panel engineers.
  - *Chapter 9* creates new civil enforcement powers that SEPA can use as an alternative to prosecution to enforce the requirements of the legislation. It also sets out the emergency powers that SEPA can use where it appears that immediate action is needed to protect people or property.
  - Chapter 10 makes provision for a number of miscellaneous technical matters including regulation making powers to enable Ministers to make provision about the assessment, form and content of the reports made by panel engineers.

- **Part 2** creates an enabling power to create relevant and proportionate offences in relation to regulations made under The Water Environment and Water Services (Scotland) Act 2003 (“WEWS”) in connection with the remediation or restoration of the water environment.
Part 3 sets out general provisions relating to Crown application, ancillary provision, offences by bodies corporate and other technical matters.

12. The Bill does not make specific provision for emergency responses to major flooding events - this remains under the remit of the Civil Contingencies Act 2003. However, the expectation is that the improved information on the risk posed by controlled reservoirs, as well as any flood plans produced under this Bill will help emergency responders prepare and react to any potential reservoir breach. The Bill also does not cover wider health and safety aspects of reservoir management, as this comes under the auspices of the Health and Safety legislation.

PART 1

CHAPTER 1 - CONTROLLED RESERVOIRS, RESERVOIR MANAGERS, ETC.

Policy Objectives

13. The provisions set out in Chapter 1 of the Bill create the statutory framework within which reservoir safety in Scotland will be regulated. It establishes SEPA as the enforcement authority and defines what will constitute a controlled reservoir, and therefore the types of structures that would be subject to risk-based regulation.

Definition of a reservoir

14. As reservoirs which have a capacity of less than 25,000 cubic metres can pose similar dangers to the people living immediately downstream as those posed by larger reservoirs, the Bill defines a reservoir as a structure designed or used for collecting and storing water, or an artificial (or partly artificial) area capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land area. A reservoir includes certain technical features such as spillways, valves and pipes. Applying these definitions will ensure that no structures are captured inappropriately.

15. The 10,000 cubic metre minimum volume threshold above which a reservoir would be subject to regulation has been agreed in close consultation with the ICE. 10,000 cubic metres is considered to be the minimum volume at which a reservoir failure would, in most cases, pose a risk to human life. However, as one of the concerns about the 1975 Act was that it relied upon a strict volume criterion for determining the reservoirs that needed to be supervised, it was important that there should be some flexibility around any minimum volume threshold set in the Bill. Therefore, provision has been made to enable Scottish Ministers to treat particular reservoirs as controlled reservoirs, notwithstanding that they have a capacity of less than 10,000 cubic metres, where there are particular concerns about the risk posed by that reservoir. Ministers also have the power to change the minimum volume threshold above which all reservoirs are subject to regulation under the Bill should evidence suggest that a different volume threshold would be more appropriate.

16. Structures which are already covered by existing legislation, such as canals and inland waterways, are specifically excluded from regulation by provisions in the Bill.
Reservoir Managers

17. The Bill introduces a new term to describe the person or organisation which is legally responsible for all enforcement requirements relating to each reservoir. The term ‘reservoir undertaker’, which was used in the Reservoirs Act 1975 was unpopular and often misunderstood. It has therefore been replaced with the term ‘reservoir manager’. Scottish Water merits a specific mention as the largest reservoir owner in Scotland – Scottish Water owns 248 reservoirs regulated under the 1975 Act. The number of regulated Scottish Water reservoirs under the Bill will exceed 300 due to the lowering of the volume threshold to 10,000m³.

18. To reduce bureaucracy and duplication of effort, the Bill allows multiple owners of the same reservoir to either nominate one owner who is then responsible for either all or part of the enforcement requirements for that reservoir, or for all parties to be jointly responsible. There have been issues in the past relating to multiple owners where it has proven to be extremely difficult to assign responsibility for undertaking work, and this is an area where there has been widespread support for implementing change. Reservoir managers now have a duty to co-operate to enable them all to comply with the legislation. The practical consequence of this is that, at the most basic level, a reservoir manager has a duty not to act in a way which prevents another reservoir manager exercising functions under the Bill. The intention is to facilitate any disagreements between reservoir managers with mediation if necessary, which would be done through guidance.

CHAPTER 2 - REGISTRATION

Policy objectives

19. At the moment, there is no central database covering reservoirs in Scotland. Currently, each of the 32 Local Authorities in Scotland are responsible for regulating each reservoir within their respective areas, which leads to a fragmented and inconsistent approach to record keeping and enforcement across the country. The transfer of responsibility to one central enforcement body, SEPA, is a key aspect of the Bill, ensuring consistency of record keeping and a more cohesive, transparent approach. SEPA will, therefore, be responsible for creating the Controlled Reservoirs Register. The details to be held on each reservoir will include contact information for the owner and details of any currently appointed panel engineers; however, entries for Medium and High-risk reservoirs will include more detailed data appropriate to each risk level. The differing levels of detail to be stored on the central register reflect how reservoirs are to be treated proportionate to the level of risk they pose. SEPA will also be responsible for updating the register if there is a change in circumstances.

CHAPTER 3 – RISK DESIGNATION

20. One of the crucial elements of creating a risk-based safety regime is the categorisation of reservoirs as either High, Medium or Low risk. Each category will carry a different level of inspection requirements; reservoirs in the high risk category will be subject to a higher level of scrutiny and enforcement than those in lower risk classes. In categorising reservoirs, SEPA will give careful consideration to the potential impact that could result from an uncontrolled release of water; in particular the potential impact on public safety. As the enforcement body, SEPA are best-placed to assess the available evidence and arrive at a risk designation for each reservoir, even if this will be a novel process for them. If necessary, SEPA will be able to draw on the technical
expertise of panel engineers, which would also be provided independently.

21. As with other provisions in the Bill, it is important that the classification process should be flexible, so that the level of risk assigned to a particular reservoir can be adjusted if new information becomes available, or if circumstances change. As the risk designation assigned to a controlled reservoir will determine the level of supervision and inspection needed, and consequently the level of cost associated with maintaining that reservoir, it is crucial that there should be the opportunity for a reservoir manager to request a review of SEPA’s decision.

CHAPTER 4 – PANELS OF RESERVOIR ENGINEERS

Policy Objectives

22. As mentioned previously, the creation of panels of specialist reservoir engineers is an area where ensuring consistency with Defra’s Flood and Water Management Act 2010, wherever appropriate, will be crucial. The number of panel engineers operating in Scotland is already limited, and it is important that Scotland avoids any major differences in operating practices compared with England and Wales which could reduce this already limited pool.

23. The Bill necessarily involves the creation of separate Scottish panels of engineers; however, the intention is for the registration process to be the same as for the English and Welsh panels, so as not to create any unnecessary administrative hurdles for the ICE when making recommendations for appointments to the Scottish panels. The ICE will continue to play a crucial role in advising Scottish Ministers on the appointment or removal of engineers from the Scottish panels, and on any other aspects of the Scottish panel structure.

CHAPTER 5 - CONSTRUCTION OR ALTERATION OF CONTROLLED RESERVOIRS

Policy Objectives

24. One of the crucial roles played by panel engineers is in ensuring the safe construction or alteration of a controlled reservoir. An important omission in the 1975 Act was that panel engineers were not required to be involved when the capacity of a reservoir was reduced, even though this is major work which the potential to impact on the safety of a reservoir, and which should not, therefore, be undertaken without the supervision of a panel engineer. The Bill now requires a relevant panel engineer to be appointed to be responsible for, and certify, any increase or reduction in capacity of any controlled reservoir or any other relevant work.

25. Chapter 5 also simplifies the system of certification provided by panel engineers when any work to construct or alter the capacity of a controlled reservoir is undertaken. Previously, a panel engineer would have to wait a minimum of 3 years after the issue of a ‘preliminary’ certificate to observe how the reservoir performed when filled before issuing a final certificate. In reality, this is not always necessary and the Bill seeks to take advantage of the expertise and judgement of panel engineers in determining when a final certificate should be issued. It may be the case that the panel engineer is satisfied that a reservoir is sound after a shorter period than 3 years, and would now be able to issue the final certificate accordingly.

26. Another simplification is the removal of the ‘interim’ certificate, which was previously issued to allow work to draw down a reservoir to a specified amount. In practice, this could be
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onerous task (especially if a reservoir was being altered in stages); any such requirements involving a change in volume are now covered by the same preliminary certificate that would also be used if an engineer was seeking to test a structure during construction.

27. The requirement that SEPA must receive promptly any certificate issued in respect of any reservoir over 10,000 cubic metres will enable SEPA to monitor the ongoing construction and alteration of reservoirs in Scotland, highlight any outstanding points and take necessary action if the process is not followed. This will be yet another improvement to the level of data held on controlled reservoirs in Scotland.

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

Policy Objectives

28. Under the 1975 Act, all reservoirs over 25,000 cubic metres are subject to the same inspection requirements – ongoing supervision by a panel engineer referred to as a “supervising engineer” and inspection once every ten years by a panel engineer referred to as an “inspecting engineer” (or whenever recommended by the supervising engineer). Chapter 6 of the Bill retains a similar system of inspection for High-risk reservoirs, whereas Medium-risk reservoirs are only inspected whenever recommended by the relevant panel engineer. Low-risk reservoirs have no inspection requirements at all.

29. This tiered system more accurately reflects the variable need for a fresh pair of eyes to review each reservoir. Though inspecting engineers provide a valuable and independent review of the ongoing work done by supervising engineers, it should not be necessary to make this mandatory in the case of Medium-risk reservoirs. Instead, the need for inspections will be determined by the expertise of the supervising engineer. In the case of Low-risk sites, the absence of consequences for any people or property negates the need for any supervisory requirements at all. This is very relevant in Scotland as many reservoirs are geographically remote. In these cases, the onus will appropriately be on each reservoir manager to properly maintain their own assets. This in turn will allow for a more considered allocation of limited engineering resources.

CHAPTER 7 - OTHER REQUIREMENTS: CONTROLLED RESERVOIRS

Policy Objectives

30. Chapter 7 provides an enabling power for a mandatory incident reporting regime. Panel engineers are keen to receive data on any incident involving a reservoir. As many incidents currently go unreported (partly because of reservoir managers’ fears that reporting will lead to sanctions), the availability of such data has previously been extremely limited. Provision of any information, no matter how minor, will help panel engineers better understand some processes associated with reservoir maintenance. Where information is not willingly provided by reservoir managers, SEPA will have the power to investigate actively.

31. This section also provides an enabling power for the production of flood plans, specifying what action a reservoir manager would take in order to control or mitigate the effects of any flood. Such flood plans would not be appropriate to contribute to the process of risk designation, but they would be valuable in linking with offsite plans prepared separately and held by emergency services, providing a cohesive and complete picture of how all affected parties would respond in the event of
an uncontrolled release of water.

CHAPTER 8 – DISPUTE REFERRAL

Policy Objectives

32. In any regulatory system, it is important to have a mechanism in place to resolve disputes, particularly in areas that deal with public safety, so as to ensure that the dispute is resolved as quickly and as amicably as possible. Chapter 8, therefore, establishes a system, similar to the one which already exists under the 1975 Act, which allows reservoir managers to challenge any requirements set out by panel engineers in relation to their reservoir(s). In such cases, a suitably qualified referee will be appointed and, in order to ensure that the dispute is resolved to the satisfaction of both parties, referees must be appointed by agreement between the reservoir manager and the relevant panel engineer.

CHAPTER 9 - CIVIL ENFORCEMENT, RELATED OFFENCES AND EMERGENCY POWERS

Policy Objectives

33. Chapter 9 sets out a ‘toolkit’ of enforcement options available to SEPA in the event of non-compliance by reservoir managers. This includes stop notices, financial penalties, the ability to publish details of enforcement action, and further criminal proceedings, amongst other options. The intention is that SEPA can deal with each case on a specific and individual basis, rather than following a prescribed legal path where sometimes it might be inappropriate to do so. Flexibility and common sense will be key aspects of how SEPA approach their enforcement duties, although legal sanctions will still be applied where it is viewed appropriate to do so.

34. SEPA will be able to invoke any of these civil sanctions without the involvement of a court, having formed its own judgement as to whether it considers, beyond reasonable doubt, that an offence under the Bill has been committed by a reservoir manager. This is a new process for SEPA, although in England and Wales, there is already provision for regulatory bodies such as the Environment Agency to use similar sanctions.

35. Chapter 9 also enables SEPA, in consultation with a panel engineer, to enter a site to take emergency action in order to deal with an immediate threat of uncontrolled release of water from a dam. In the Maich Fishery incident in 2008, it proved to be difficult to establish the legal acceptability of the enforcement authority entering the site to undertake urgent safety works (unusually, at one point legal permission had to be sought from the owner to remove the dam). The Bill seeks to remove any such obstacles to urgent remedial works being undertaken, thereby improving the safety of people and property at risk from a potential dam breach.

36. It was also necessary to provide SEPA with powers to enter a site to gain necessary information on a reservoir. This could be to assist with a risk classification, to verify if necessary work has been completed, or to determine if any work is needed. Such powers will enable SEPA to fully investigate any situations where information is unclear, allowing it to come to a fully informed decision about the course of action to take. As an independent body, SEPA must be seen to be transparent and thorough in its decision making. This section will allow them, when needed, to reasonably gain a full picture of events without obstruction.
CHAPTER 10 – MISCELLANEOUS

37. Chapter 10 deals with a number of technical matters including regulation making powers to enable Ministers to make provision about the assessment, form and content of the reports made by panel engineers.

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

Policy Objectives

38. This section concerns the second part of this two-purpose Bill. The Water Environment and Water Services (Scotland) Act 2003 (WEWS) empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, WEWS did not provide for the creation of offences in respect of such regulations. This section is necessary as it is currently difficult to enforce regulations where there are no offences in place.

39. The EC Water Framework Directive put in place a strategy for improving the water environment throughout Europe. Specifically, the River Basin Management Plans identify that around 40% of Scotland’s water bodies are not currently meeting the WFD’s “good status” objective; with some 760 water bodies needing some restoration activity to restore them to good status. The consultation documents Scotland’s Waters: Future Directions and Restoration of the water environment were published in January 2009 alongside the draft River Basin Management Plans, and ran until April 2009. These highlighted the gap in our delivery framework and proposed a strategic approach to restoration, underpinned by proposals for new regulatory powers. Responses to the consultations strongly supported new powers for SEPA to take action. The inclusion of an enabling power to create relevant and proportionate offences will greatly aid the delivery of Ministers’ obligations in this area.

PART 3 – GENERAL

40. Part 3 deals with ancillary provision, Crown application and other technical matters.

CONSULTATION – GENERAL

41. The consultation document Reservoir Safety in Scotland summarised the Scottish Government’s proposals for an improved regime to manage reservoir safety in Scotland. The consultation was published in January 2010, with the consultation period running from 25 January to 18 April 2010. The consultation was made available on the Scottish Government’s website and a wide range of stakeholders were invited by email or letter to respond to the consultation.

42. 67 organisations and individuals responded to the consultation. 21 responses were received from the private sector and 11 from consultants. A significant number of responses were received from Local Authorities (16), public bodies (11) and angling clubs (2). A report containing analysis of the responses to the consultation, together with the responses themselves (where permission was given to do so), was published on the Scottish Government’s website in July 2010.

43. In summary, responses generally supported proposals for reservoir flood plans, incident reporting and a risk-based approach to reservoir safety. There were some concerns about some of
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the detail, such as the reasoning behind the minimum volume of 10,000 cubic metres, and the need to ensure that no restrictions are placed on engineers operating across borders after a Scottish panel of engineers is established. The Scottish Government used these comments to clarify some points where necessary. Generally, however the safety benefits of the proposed changes were accepted to be worthwhile and of value to public safety, and the vast majority of respondents supported the Scottish Government’s preferred implementation model.

RESERVOIR SAFETY STAKEHOLDERS GROUP

44. In July 2009 the Scottish Government set up the Reservoir Safety Stakeholder Group (RSSG). The role of this group was to advise the Scottish Government on the development of reservoir safety issues at a strategic level and assist with developing legislation in this area. The group is an informal forum which brings together professionals which bring together a wide range of stakeholders including SEPA, the Environment Agency and panel engineers, as well as undertakers such as Scottish Water, utility companies, SMEs and private individuals. To date there have been six meetings of the RSSG, with discussion topics selected for each that were relevant to the development of the legislation at that time.

PUBLIC WORKSHOPS

45. The Scottish Government hosted public meetings in Inverness, Edinburgh, New Galloway and Glasgow as an open forum for discussion on the legislative proposals. The workshops were attended by over 80 delegates and provided the opportunity for the policy proposals to be further explored, particularly by organisations not represented on the stakeholder group. Representatives from the Scottish Government Flooding Policy Team, SEPA and ICE panel engineers participated in the open question and answer sessions. The meetings were promoted with advertisements in the local press, Ministerial interviews and flyers. Local stakeholders were invited to attend and comment on the proposals for improving reservoir safety in Scotland. Data from all four meetings formed a substantial part of the analysis of consultation responses.

ALTERNATIVE APPROACHES

46. The alternatives to the Bill proposals are to retain the current enforcement regime, to retain the current regime with the changes introduced by the 2009 Act, the creation of a new reservoir licensing system or the deregulation of the reservoir safety regime.

Deregulation

47. Deregulation would have involved repealing the 1975 Act and relying on reservoir managers to maintain dams to a suitable standard. However, this was not considered to be a viable option as it would mean a reduction in the current control over reservoir safety in Scotland, and would be overly reliant on self-policing by the industry. Although many reservoirs are owned by public bodies, or by conscientious private companies that carry out regular inspection and maintenance regimes, there are many privately owned reservoirs about which little is known and which could have the potential to pose a risk to public safety.
Current Enforcement Regime

48. Currently, the enforcement of the 1975 Act in Scotland is the responsibility of the 32 Scottish local authorities. The biennial reports they submit indicate varying staffing and financial resource allocation to reservoir responsibilities amongst these authorities. This can be partly attributed to geography and topography; for example Highland Council has some 125 reservoirs which fall within the ambit of the 1975 Act, whilst Glasgow City Council has only 2. However, the enforcement role is considered an onerous burden which is disproportionate to the reservoirs located within many local authority areas. For example, two local authorities have responsibility for the enforcement of the 1975 Act for 21 reservoirs, some 1-2% of the total number of reservoirs in Scotland. However, both authorities experienced significant and lengthy problems in trying to establish ownership of one reservoir within each of their areas. The Scottish Government therefore concluded that a single enforcement authority will provide a more efficient and nationally consistent approach to the enforcement of the legislation that will ultimately enhance the safe operation of Scotland’s reservoirs.

49. The alternative to transferring the enforcement responsibilities to SEPA was to establish a completely new authority for reservoir safety in Scotland. The creation of a new body for reservoir safety would be very resource intensive. Creating yet another public body to take on a role that could be carried out by an existing organisation would also be contrary to the Scottish Government’s stated aim of having fewer, better structured arms length bodies at a national level; which receive clear and integrated strategic direction from Government, while at the same time given room to deliver.

Current Enforcement Regime with 2009 Act Changes

50. Once the decision had been made to retain a reservoir safety regime and to transfer the enforcement responsibilities to SEPA, consideration had to be given to the options for ensuring reservoir safety in Scotland. One option was retaining the 1975 Act, with the changes introduced by the 2009 Act. This would have ensured compliance of large raised reservoirs with volumes greater than 25,000 cubic metres through constant expert supervision. However, the system under the 1975 Act is not risk based, and does not take account of the impact of a dam failure on the downstream community. The Scottish Government concluded, therefore, that this option would not deliver a modern and robust system which protects the Scottish public from the risk of flooding from reservoirs.

Reservoir Licensing System

51. Another option was to move to a reservoir licensing system whereby those reservoir managers with a reservoir that has the capacity to hold 10,000 cubic metres or more would need an authorisation from SEPA. The registrations would contain a minimal number of standard conditions with which the reservoir manager would have to comply. These might include the need to appoint a supervising engineer, or undertake periodic visual inspections. However, requiring SEPA to set licence conditions would have meant a shift in responsibility for safety from suitably qualified panel engineers to SEPA. This would have required SEPA to recruit and employ, or buy in expertise to monitor and inspect compliance with the license conditions – a cost that would then be passed back to the reservoir manager via a charging scheme. The need for an additional license
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in place of conditions set out in legislation was also considered to be an unnecessary layer of bureaucracy that did not comply with the Scottish Government’s aim of Better Regulation.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, AND SUSTAINABLE DEVELOPMENT ETC.

Impact on equal opportunities

52. Copies of the consultation paper on reservoir safety in Scotland were sent to all the main national equality groups and no equalities issues were raised during these consultations.

53. The Bill should not be considered in isolation from existing statutory obligations in relation to equal opportunities. Public authorities have relevant statutory obligations under the Race Relations Act (RRA), the Sex Discrimination Act (SDA) and the Disability Discrimination Act 1995 (DDA). All three Acts make discrimination in service provision unlawful. The RRA also places a general duty on public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between people of different racial groups. The Commission for Racial Equality produces codes of practice to provide practical guidance to public authorities on how to fulfil that duty. SEPA and the other responsible authorities will be obliged to carry out their functions relating to reservoir safety, including the provision of information to interested parties, in accordance with this legislation and in accordance with the Access to Environmental Information Regulations as well as the Freedom of Information (Scotland) Act 2002.

Impact on human rights

54. The Scottish Government considers that the provisions within the Bill are compatible with the European Convention on Human Rights.

Impact on island and rural communities

55. The purpose of the Bill is to improve reservoir safety for the whole of Scotland, including rural, island or urban settings. As such, communities and businesses in island or rural communities will benefit from this in the same way as those in other parts of Scotland.

Impact on Local Authorities

56. Local Authorities will no longer be the enforcement bodies for reservoirs once the responsibility is transferred to SEPA. In general, Local Authorities have been strongly supportive of this change, both in consultation and in subsequent discussions. Removal of the enforcement responsibility will result in a resource saving for those Local Authorities who currently have reservoirs in their area. However, some Local Authorities may own smaller reservoirs not currently covered by the 1975 Act, which will be brought under the new legislation with appropriate related costs.

57. When any new costs incurred are compared with the savings resulting from no longer being the enforcement authority, annual costs for Local Authorities collectively will remain relatively
unchanged. Those Local Authorities owning a significant number of smaller reservoirs may have a cost increase. The Scottish Government worked with both CoSLA and individual Local Authorities to establish and agree cost implications. The estimated costings were signed off by CoSLA’s Director of Finance.

Impact on sustainable development

58. The Scottish Government is committed to building a sustainable future and has published its Economic Strategy aimed at creating a more successful country with opportunities for all of Scotland to flourish. Increasing sustainable economic growth, which is defined as building a dynamic and growing economy that will provide prosperity and opportunities for all, while ensuring that future generations can also enjoy a better quality of life, is the central tenet of this strategy.

59. To deliver this Economic Strategy, the Scottish Government have identified five Strategic Objectives which map a Scotland that is wealthier and fairer, smarter, healthier, safer and stronger, and greener. The alignment of the Scottish Government’s work with these Strategic Objectives will help us to deliver the sustainable development that will increase the prosperity of Scotland.

60. This Bill will have an important role to play in driving forward the Safer and Stronger Strategic Objective which seeks to ensure that people live in well designed, sustainable places that are either urban or rural. This will be achieved through chapter 5, which aims to ensure reservoirs which pose a high risk are supervised and inspected to ensure the structures are consistently well maintained. This will accordingly ensure the safety of people, property and infrastructure in the vicinity of each reservoir.

61. The Bill also contributes to the Wealthier and Fairer objective. By categorising each reservoir according to the level of risk it poses and specifying inspection and maintenance requirements accordingly, reservoir owners and managers will be assessed in a responsible and sustainable way.
RESERVOIRS (SCOTLAND) BILL

POLICY MEMORANDUM


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