The Committee will meet at 10.00 am in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 7 in private, together with consideration of Reservoirs (Scotland) Bill evidence and a draft report at future meetings.

2. **Subordinate legislation:** The Committee will take evidence on the National Scenic Areas (Consequential Modifications) Order 2010 (SSI 2010/draft) from—
   
   Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and the Environment, and Bob McNeill, Policy Officer, Landscape and Protected Sites Team, Scottish Government.

3. **Subordinate legislation:** Richard Lochhead MSP to move S3M-7398— That the Rural Affairs and Environment Committee recommends that the National Scenic Areas (Consequential Modifications) Order 2010 (SSI 2010/draft) be approved.

4. **Draft Budget Scrutiny 2011-12:** The Committee will take evidence on the Scottish Government's budget proposals 2011-12 from—
   
   Richard Lochhead MSP, Cabinet Secretary for Rural Affairs and the Environment, Paul Gray, Director General, Rural Affairs, Environment and Services, Mike Neilson, Director, Marine Scotland, David Barnes, Deputy Director, Rural and Environment Directorate, and Ross Scott, Finance Team Leader, Rural Affairs and Environment, Scottish Government;
   
   Bob McIntosh, Director, Forestry Commission Scotland.

5. **Reservoirs (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—
   
   Neil Ritchie, Head of Natural Resources and Flooding Branch, Judith Tracey, Head of Flooding and Reservoir Safety Policy, Joyce Carr, Head
of Water Environment Policy, Stephen Rees, Solicitor, Food and Environment Division, and Fiona Quinn, Reservoir Policy Manager, Scottish Government.

6. **Draft Budget Scrutiny 2011-12 (in private):** The Committee will consider the evidence heard earlier in the meeting.

7. **Reservoirs (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

8. **The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 (in private):** The Committee will consider a draft letter to the Cabinet Secretary for Rural Affairs and the Environment.

Peter McGrath  
Clerk to the Rural Affairs and Environment Committee  
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The Scottish Parliament  
Edinburgh  
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The papers for this meeting are as follows—

**Agenda Item 2**

The National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 (SSI 2010/draft)  
RAE/S3/10/27/1

**Agenda Item 4**

Submissions Pack  
RAE/S3/10/27/2

Briefing Paper (Private Paper)  
RAE/S3/10/27/3

**Agenda Item 5**

SPICe Briefing  
RAE/S3/10/27/4

Submissions Pack  
RAE/S3/10/27/5

Briefing Paper (Private Paper)  
RAE/S3/10/27/6

**Agenda Item 8**

Draft Letter (Private Paper)  
RAE/S3/10/27/7

**For Information**

Recent Developments  
RAE/S3/10/27/8
This draft Order supersedes the draft laid in the Scottish Parliament on 8th November 2010 and published on 10th November 2010. It is being issued free of charge to all known recipients of that draft Order.

Draft Order laid before the Scottish Parliament under section 58(5) of the Planning etc. (Scotland) Act 2006 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

COUNTRYSIDE

The National Scenic Areas (Consequential Modifications) (Scotland) Order 2010

Made - - - 2010

Coming into force - - 17th December 2010

The Scottish Ministers make the following Order in exercise of the powers conferred on them by section 58(1) of the Planning etc. (Scotland) Act 2006(a) and all other powers enabling them to do so.

In accordance with section 58(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 and comes into force on 17th December 2010.

The Harbours Act 1964

2. In paragraph 1 of Schedule 3 to the Harbours Act 1964(b) (Procedure for making harbour revision and empowerment Orders), in the definition of “sensitive area”, in paragraph (k), for the words from “an area defined” to “1978” “substitute “as a National Scenic Area by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997”.

(a) 2006 asp 17.
(b) 1964 c.40; Schedule 3 was substituted by S.I. 1999/3445 and relevantly amended by S.S.I. 2008/202.
The Road Traffic Regulation Act 1984

3. In section 22(1)(b)(ii) (Traffic regulation for special areas in the countryside) of the Road Traffic Regulation Act 1984(a) for the words from “under” to “1972” substitute “by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997(b)”.

The Overhead Lines (Exemption) Regulations 1990

4. In regulation 3(2) (exemptions from section 37(1) of the Electricity Act 1989) of the Overhead Lines (Exemption) Regulations 1990(c), for the definition of “National Scenic Area” substitute—

“National Scenic Area” means an area designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992

5. In article 2(1) (interpretation) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(d), for the definition of “national scenic area” substitute—

“national scenic area” means an area designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

The Environmental Impact Assessment (Scotland) Regulations 1999

6.—(1) The Environmental Impact Assessment (Scotland) Regulations 1999(e) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (interpretation), in the definition of “sensitive area”, for paragraph (f) substitute—

“(f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

(3) In regulation 55(a) (interpretation), in the definition of “sensitive area”, for paragraph (d) substitute—

“(d) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999

7. In paragraph 1 (interpretation) of Schedule 2 (thresholds for identification of projects likely to have significant effects on the environment) to the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999(f), in the definition of “sensitive area”, for paragraph (e) substitute—

“(e) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

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(a) 1984 c.27.
(b) 1997 c.8.
(e) S.S.I. 1999/1; (a relevant amending instrument is S.S.I. 2006/614) and relevantly amended by S.S.I. 2008/202.
The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999

8. In regulation 2(1) (interpretation) of the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999(a), in paragraph (j) of the definition of “sensitive area”, for the words from “an area defined” to “1978” substitute “as a National Scenic Area by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997”.

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000

9. In paragraph 1 of Schedule 2 (description of development for the purposes of the definition of “Schedule 2 development”) to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000(b), in paragraph (v) of the definition of “sensitive area”, for the words from “an area defined” to “1978” substitute “as a National Scenic Area by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997”.

The Electronic Communications Code (Conditions and Restrictions) Regulations 2003

10. In regulation 2(2) (interpretation) of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003(c) for the definition of “national scenic area” substitute—

"“national scenic area” means an area designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

The Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006

11. In regulation 5(3) (screening decision – restructuring project) of the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006(d), for paragraph (f) substitute—

“(f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

The Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008

12. In paragraph 1 of Schedule 1 (interpretation of Schedules) to the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008(e) for the definition of “NSA” substitute—

““NSA” means a National Scenic Area designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

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(a) S.I. 1999/1672 (to which there are amendments not relevant to these Regulations) and relevantly amended by S.S.I. 2008/202.
(c) S.I. 2003/2553; amended by S.I. 2009/584.
(e) S.S.I. 2008/100.
The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

13. In regulation 3(1) (interpretation) of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(a) for the definition of “National Scenic Area” substitute—

““National Scenic Area” means an area designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997;”.

Authorized to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
Date

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(a) S.S.I. 2008/432.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order makes provision consequential on section 50 of the Planning etc. (Scotland) Act 2006 which inserts section 263A into the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act").

This Order provides for modifications of the enactments specified in articles 2 to 13 so that references in those enactments to "national scenic areas" will be references to national scenic areas designated by a direction made by the Scottish Ministers under section 263A of the 1997 Act.
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

SCOTTISH GOVERNMENT’S DRAFT BUDGET 2011-12

SUBMISSIONS PACK

The following written submissions from ConFor, COSLA and SAC have been received in advance of the Committee’s meeting on 1 December:

SUBMISSION FROM CONFOR

ConFor represents forestry and wood-using businesses from nurseries and growers to wood-processing end users.

Forestry Commission Scotland (FCS) funds to be reduced by £8.5 million or 11%, from £80.0m in 2010/11 to £71.5m in 2011/12.

FCS to increase funding for forestry grants from £27.1m to £36.0m due to a trebling of EU receipts from £6m to £18m. Welcome, but concern remains over sustainability of future EU receipts and that funds are too little to deliver Government objectives for new planting.

ConFor has produced a report at www.confor.org.uk (and reported in newspapers, radio and TV) setting out serious concerns over current decline in productive new planting – estimated at 24,000 hectares in last five years – and the impact that will have on green jobs and carbon reduction.

Uncertainty over future funding will deter new planting applicants from coming forward. It is vital that reassurances are provided.

ConFor has calculated that meeting the modest target of planting 8,000 hectares of new forests, along with modest support for management of existing forest, will require £46m.

If forestry is to make its potential contribution to Government’s 42% reduction target for 2020 then 13,000 hectares would be required at a cost of £63m per annum.

May seem large, but it would stimulate hundreds of new green jobs and remove millions of tonnes of CO2. It would also still mean that forestry is receiving far less per hectare than agriculture while delivering more for the green economy.
WRITTEN SUBMISSION FROM COSLA

Introduction
COSLA would like the opportunity to respond to the Rural Affairs and Environment Committee’s review of the Draft Budget 2011/12. We acknowledge that the Committee is undertaking this review in parallel with the Local Government and Communities Committee budget scrutiny process. Whilst we understand that a main focus of the Committee, and one which COSLA is keen to draw to the Committee’s attention to in this submission, is on the impact on the waste agenda, it is important for the Committee to understand the approach which Local Government has taken around the Spending Review discussions more widely.

Attached as an Appendix to this submission is the evidence which has been prepared by COSLA for the Local Government and Communities Committee review into the Budget 2011/12, and this highlights the key messages which Local Government would wish to be considered as part of the budget scrutiny. We would ask that the Committee consider this evidence alongside the additional key messages which are highlighted below. The appended evidence was submitted before the Cabinet Secretary’s budget announcement on 17th November but this does not alter the key issues that Cosla would like considered.

Additional information
Capital investment
In terms of infrastructure investment the Committee will be aware that the Cabinet Secretary announced a 17.9% reduction in local government’s capital funding for 2011/12. Whilst this cut is proportionate to the overall cut to the Scottish capital budget...
it will have consequences for infrastructure investment. In recognition of the capital cuts ahead Cosla established an Infrastructure Task Group in the latter part of 2009 to consider existing and potential new funding options. The attached submission (paragraph 27) contains the link to the Task Group’s final report but in summary concluded that given the reduction in traditional sources of funding, such as capital grant and supported borrowing, and the reduced capacity to borrow prudentially there will not only be a reduction in capital investment going forward but it will be increasingly difficult to fund new infrastructure. The Task Group considered a number of new proposals and whilst recognising that some offered some councils flexibility there was no new silver bullet that would compensate for the reduction in traditional funding methods.

Revenue
The Committee will also be aware that as part of the same announcement local government’s revenue funding will be cut by 2.6% for 2011/12 subject to acceptance by Councils of the deal which has been offered by the Scottish Government.

Waste
COSLA welcomes the proposal to increase the Zero Waste budget by £2 million in 2011-12. Scotland's spending plans and Draft Budget for 2011-12 appears to highlight that the proposed increase in the zero waste budget is to support a number of programmes including work to develop market for recyclate use, waste prevention and minimisation, reuse and recycling awareness, support for community recycling groups and support for local authorities to achieve municipal waste targets in 2011 and beyond. In addition, the budget funds Keep Scotland Beautiful, which carries out anti-litter and anti-flytipping campaigns and promotes environmental education.

We would welcome confirmation about how local authorities can access this enhanced additional resource and now it is proposed this will be distributed between these priority programmes. We had previously been expecting the new Zero Waste Scotland delivery programme to suffer a significant reduction in its funding next year in line with other budgets. Therefore, we welcome any significant real terms increase in budget for 2011-12 but would welcome further information on what this constitutes in terms of distribution within the areas funded from this Level 3 category.

However, given the publication earlier in the year of the SQW's report¹ for the Scottish Government on the cost of delivering municipal waste infrastructure to 2025, this level of funding whilst welcomed is still a small proportion of the investment that SQW’s report highlights as required by 2025. The report projects a cost by 2025 ranging between £1 - 1.5 billion over and above current costs of waste collection and disposal depending on the scenario implemented. The key theme through all of the scenarios is that a zero waste Scotland will cost more for local government whatever the scenario pursued.

Local authorities still need access to low cost alternative forms of treatment other than landfill. However, welcome this increase in the zero waste budget is, it is still insignificant to deliver real change on its own in terms of the infrastructure needed to achieve the goal of a zero waste Scotland.

Local authorities will struggle to access funding internally for waste management infrastructure given the current competing capital demands to deliver other priorities. This leads to a circular situation, where councils continue to be faced with mounting landfill tax bills, limited ability to avoid these costs because there is limited alternative treatment infrastructure that they can access partly because of lack of council funding/anchor tonnage for infrastructure to enable it to be commercially viable and get constructed in the first instance.

The difficulty in funding zero waste infrastructure highlights the need to review how the ambitious targets in the Zero Waste Plan can be achieved in the context of limited funding available overall to local authorities for zero waste infrastructure. Even improvements in landfill diversion/recycling are only cost avoidances in terms of local authority budgets and do not result in savings due to the scale of the current escalator up until 2014 as well as competing priorities. COSLA welcomes the Scottish Government commissioning of a research project on the landfill tax options in the context of Calman recommendations, which perhaps may identify alternative funding mechanisms for this infrastructure in future budgets.

Conclusion

Cosla would like to highlight that the key messages around the 2011/12 budget have been submitted to the Local Government and Communities Committee as part of their consideration of the Draft Scottish Budget for 2011/12. This should be considered alongside the key messages outlined above.

Appendix 1 – Cosla evidence

Evidence to Local Government and Communities Committee

Draft Budget 2011/12

Introduction

1. COSLA welcomes the opportunity to respond to the Local Government and Communities Committee’s call for views on the Scottish Government’s Draft Budget and the Scottish Spending Review. In particular we welcome the Committee’s recognition of the severe financial pressures which Local Government is facing over the next spending review. Local Government has been voicing for many months now that we face unprecedented times and that the much needed services we provide to our communities could be in jeopardy. In developing COSLA’s response SOLACE has been consulted and has given its full support to the evidence presented in this submission.

http://www.scotland.gov.uk/Topics/Research/About/EBAR/research-opportunities/cr201004
2. Local Government has already acted to address these challenges. The Committee will already be aware that over the last year a group of Chief Executives, Directors of Finance and COSLA officers has undertaken a major financial modelling exercise looking both at the anticipated reduction in resources over the next six years, as well as the increased demand on services over the longer term. The purpose of this modelling work was to provide an evidence based platform for a more fundamental policy review from a Local Government perspective, which would assist in planning for the future delivery of services in a reduced resource environment. We acted early as we wanted to avoid taking ill-thought out last minute responses to cuts and we recognised the scale of the cuts go deep into the core of what we do. Our focus is about how far we can go to protect vital frontline services, however the scale of cuts anticipated means that we need to think fundamentally about the services we can deliver in the future.

3. We have sought throughout to work on a partnership basis with the Scottish Government, recognising the impact the cuts will have right across the public sector, and we are actively in discussion with the Cabinet about the impact on Local Government funding. With the Scottish Budget due to be published shortly much of the focus has been on the short term but we believe it is essential that the longer term is also addressed or else the difficulties we face now will be compounded many times over.

4. In our substantive financial modelling work we have identified a funding gap for Local Government of close to £4bn over the next six years which is driven partly by the reduction in resources but more importantly by increasing demand for our services, particularly for social care. The Independent Budget Review, which COSLA welcomed, also concurred with much of what we have been saying about the need for a longer term approach. We talk later in this submission about some of our key aspirations over the longer term and would like to draw the Committee's attention to these areas.

One year deal
5. The Committee will be aware by the time this submission is received that the Scottish Government has decided not to carry out a spending review beyond 2011/12 and that the Scottish Budget will be for one year only. This is a fundamental concern for Local Government which needs greater certainty over the longer term and we had no reason to expect anything other than a four year spending review following the UK Comprehensive Spending Review. This puts Scottish Local Government at a disadvantage compared with other parts of the UK where Councils will be able to plan ahead knowing the resources which will be available to them. Instead Local Government will have to wait another year for the Commission on Public Sector Reform set up by the Government to feed back its findings.
6. Our modelling work has identified the gap in resources over a six year period and with only a one year deal on the table, Local Government will be forced to make decisions in the dark and this has real impacts on the communities we serve as decisions must be made now which have impacts into future years. What is clear however is that Local Government must plan for the years ahead with or without certainty on funding, to not do so would be an abrogation of our duty to show responsible leadership. Had we been able to see the resources over a longer time frame this would enable Local Government to plan more effectively and perhaps avoid cuts which may hurt our communities unnecessarily.

Local Government’s Share

7. First and foremost at the heart of our campaign we have argued for maintaining Local Government’s share of the overall Scottish Budget. We consider this to be the most fundamental issue for Local Government on which we need clarity now from the Scottish Government. We have been crystal clear in our discussions that if our settlement is below our current share this will have devastating consequences for the services we deliver and our communities. This does not mean that Local Government is not willing to take its share of the pain of the overall reductions to the Budget, however our chief concern is that any protection of the NHS at Local Government’s expense will lead to an imbalance of funding that fails to recognise the inter-dependence of health and social care budgets. Protecting the NHS in isolation will lead to a divergence of shared priorities and a greater likelihood of failing to deliver on national and local policy objectives.

8. One risk of reduced capacity on the social care side would be a sharp increase in the number of older people presenting at A&E and a steep rise in the number of delayed discharges. A consequence of this might mean a significant number of elective procedures being cancelled and NHS waiting times targets being missed. In time this will lead to a severe difficulties for both health and care systems at significant financial and human cost.

This would be bad for local government, it would be bad for the NHS and – more importantly still – it would be bad for the many vulnerable people who rely on the health and social care system to maintain health and well-being.

9. In parallel with maintaining share COSLA has also sought to ensure that there is an absolute moratorium on new policy announcements by the Government that do not have direct funding attached. We feel that with shrinking budgets, precious resources need to be directed at the critical services we currently provide and not to new areas. It is essential that maintaining share therefore does not imply that Local Government needs to meet a host of new commitments.

10. We have also sought to ensure as partners with Government that there is a framework for handling the aftermath of our local decision making so that there is no national shifting of responsibility for painful financial decisions.
Priorities
11. COSLA believes that the Scottish Government’s priorities must reflect the wide range of vital services provided by Local Government to our communities. This is not about saying whether education for our children is a higher priority than supporting the elderly or vulnerable people. The services we provide are complementary to each other, take out one service and the burden falls on another. This is not just an issue of reduced funding either as Local Government is facing unprecedented and growing demand on its services.

12. The areas below are not exhaustive but they give the Committee a flavour of the priorities we are discussing with Government to address the funding gap:

Council Tax
13. Given the financial forecasts one of the obvious areas for Local Government to generate more funding is through the Council Tax. The Committee will be aware that Councils have frozen Council Tax over the last three years as part of an agreement around funding with the Scottish Government. Whilst the Government has signalled a wish to continue with a freeze for 2011/12, COSLA’s position is that only individual Councils can decide whether to apply a freeze. With the scale of cuts anticipated the option to increase Council Tax does give us flexibility. However we have indicated to Ministers that Local Government may be able to freeze Council Tax for a further year but we can only do so if the conditions are right. The conditions would include that there are sufficient resources to cover the freeze, that there is clarity over longer term funding and that Government is willing to support flexibility in other ways and not to undermine local democratic decisions in other ways.

Workforce Planning, Pay and Conditions
14. Council employment is critical to demand, consumption and the strength of local economies across Scotland. Local Government employs circa 250,000 people and around half of all local government budgets are spent on their workforces. Our workforce is diverse, and delivers many of the services that society most values, including those who help our children grow and learn, those who protect our communities and care for the vulnerable, and those providing the essential day-to-day services that allow people to work, live in or visit our communities.

15. Councils are facing unprecedented year on year reductions in their income across the next spending review period and beyond, whilst at the same time facing growth in policy and demographically driven demand. The measures open to them as they seek to continue the provision of essential local services and at the same time balance the books, are limited and profoundly challenging.

16. Planning the local government workforce of the future in this context is therefore one of our greatest challenges. The priority is to protect jobs and services, but this can only be done by delivering material savings to councils’ pay bill through a
programme of pay restraint, modernisation of workforce terms and conditions, and workforce planning.

17. Many of the decisions that will be needed would not have been contemplated in the past. While there will inevitably be less people working in local government in the future, councils will ensure their actions are measured and proportionate, and will consider the impact on future service delivery, individual communities, the economy and potential displacement of costs to other service areas. This of course does not mean they are able to shy away from solutions which are radical.

18. The Committee will be aware that Council Leaders recently imposed a three year pay settlement for a large part of its workforce, composed of 0.65% in 2010/11 followed by a two year pay freeze. We will be pressing for a similar arrangement for our remaining workforce, including teachers. Together, these are vital first steps in addressing the funding gap highlighted at the beginning of this submission.

19. Securing a workforce for the future will require investment. For example, councils require upfront investment in voluntary severance schemes in order to realise future benefits. Given the financial constraints ahead this is unaffordable within existing arrangements, and Councils will therefore require flexibility from Government to be able to cope with this added pressure. As an example the Government with Treasury approval could allow Councils to spread the costs of severance payments over more than one year using capitalisation consent. The Committee may wish to echo concerns that a full range of options should be available to Local Government to manage fundamental workforce changes going forward.

Charging for services

20. Local Government charges for a wide range of its services, these charges being carefully balanced between fairness to communities especially the most vulnerable and the potential for raising revenue. Local Government has looked at charging including the potential for new charges, however the room for manoeuvre is extremely limited and we must not forget that our primary purpose is to support communities not to extract money from them. Whilst some additional income can be generated this is not significant enough to make any significant impact on the funding gap.

21. When determining their charging policies Councils need to consider what the implications are for outcomes, for example were large-scale increases be applied to leisure charges, the knock on effect on the health of individuals would need to be considered, as would the services they may then need in the future, if they cannot afford to make use of leisure facilities and consequently their health deteriorates.

22. We are continuing to discuss with Government what they can do to assist Councils to extend the scope of charging, given many of the charges are governed by statute, the most notable of which are planning fees which COSLA believes could be increased without any significant adverse impact on communities.
Efficiencies

23. Local Government is ahead of the game when it comes to tackling efficiency and has consistently exceeded targets. Between 2005/06 and 2009/10, Local Government reported efficiencies of £1,033m against a Scottish Government target for the four years of £676m. Local Government has prioritised this area but that does mean the capacity for making future efficiencies is reducing and the financial gap going forward cannot be addressed by efficiencies alone.

24. Shared services are not separable from efficiencies. Shared services tend to be very narrowly viewed as full scale re-organisation at one end of the spectrum or specific internal Council transformation projects at the other. The latter will not deliver savings in anything like the timescales we need to and we cannot afford to squander scarce resources on the former.

25. Equally outsourcing, whilst being an option which Councils have considered and in certain cases have implemented, does not represent a panacea and has to be considered as just one option which requires to be thoroughly tested against other options for delivering efficient services without jeopardising service delivery.

Capital spending

26. We know that there will be a substantial decline in the capital resources available in 2011-12 onwards and an approach is therefore needed to deal with this reduction not just in the short term but also in the longer term. Given the financial forecasts and the resulting implications for the revenue budget, Councils are already planning to reign in prudential borrowing and in the short term at least they advise that there is little prospect of recovery in capital receipts, so Councils will not be able to bridge the gap through their own resources.

27. Last year COSLA established an Infrastructure Task Group to look into the future of infrastructure funding for Local Government and they recently advised that there is no silver bullet to address the infrastructure funding gap. All of this suggests there will be extremely limited capital investment by Councils in future which will have wider implications for the public sector and for economic recovery. A copy of the Task Group’s report can be found at the link below:


28. Some commentators may suggest that Tax Increment Financing is a solution for the future funding of infrastructure. With the Government having now given the green light to the Edinburgh Waterfront TIF Project this is an option to be welcomed, however this should not then be interpreted as providing a wider solution which can cover all of Local Government’s infrastructure needs. COSLA’s Task Group concluded that TIF can only work under certain conditions such as large-scale urban
regeneration schemes where there is a strong prospect of payback through increased business rates and minimal displacement.

29. Additionally it needs to be recognised that there will be a need to meet infrastructure requirements of the Climate Change Act. There are no resources available which Councils can call on to meet these infrastructure requirements, should the burden primarily fall to Local Government to provide these. This is an area which the Committee may feel merits further answers from Government.

**Fundamental questions for the longer term**

30. Having identified our priorities over the short term we also and more importantly need to address the longer term. Our modelling has identified the extent of demand pressures into the future and that this is a greater pressure than the reduction in resources. We have already recognised that the focus therefore needs to be on how we can take demand out of the system as far as possible and that this requires a more fundamental review of the services we provide.

31. We believe that moving forward there are some fundamental questions which should be asked, both of ourselves and the wider public sector, which could radically impact on the way we currently provide services. We would welcome the Committee’s recognition that these are indeed the key questions for the future.

i. Within a reduced allocation of resources, should services be universal or targeted? More and more of the public sector’s resources are being tied up in universal provision and this trend is growing as a result of demographic change, such as care for the elderly, and we need to ask ourselves is this the best use of scarce resources? There is a creeping acceptance that universal provision is the norm but carrying on with universal provision is as much a policy choice as not doing so.

ii. COSLA has found it more difficult to promote a more radical debate about the responsibility of the state, individual and community but in the longer term these responsibilities must be addressed. Communities play their part in a whole range of services provided within their communities and this type of co-production of services needs to be looked at more fully, in particular around how we work with communities to play their part and how they can take greater responsibility, rather than just relying on the public sector to deliver services.

iii. Another fundamental change would be to seek to use resources differently by engendering transformational change now through early intervention which diminishes the need for reactive services in years to come. This area is further explored below.

**Transformational change**

32. We feel that there is the big message around transformational change which we would want to bring to the attention of the Committee and we would welcome the Committee’s support as we seek to drive forward this change.
Early Intervention

33. COSLA has done much work on the need to redirect resources from reactive services to preventative services. Currently, resources across Local Government and the NHS are heavily weighted towards reactive care and crisis intervention: hospitals account for vast amounts of money within the NHS and most procedures and services tend to be focused on dealing with illnesses and medical emergencies. Equally, if we look at social work services, most provision is still directed at people with critical social care needs, for example individuals and children who have experienced a crisis episode and who require formal social support. In short, we spend large amounts of money dealing with ‘negative outcomes’.

34. We need to find a route to redirect resource from crisis intervention to crisis prevention. That means all community planning partners will need to find a means of better supporting preventive services (like housing support, health screening, family support, community policing) and managing reduced services at the acute end (e.g. care home provision, acute hospital provision, prosecution). This implies the need for community planning processes to be strengthened, and in particular, thought given to the alignment and possible integration of some budget lines and the accountability and the governance issues which this raises.

35. Further thought also needs to be given to disinvesting in the services which serve to consolidate the reactive service provision. This will create political challenges insofar as that translates to providing less service in some areas. A carefully constructed narrative will need to be devised to explain why current service models are not addressing social problems at their root, followed by difficult disinvestment decisions.

36. However, whilst there is widespread recognition that a conservative approach to managing budget pressures will make the reform agenda more difficult to progress, the reduction in resources may cause Councils and their partners to fall back on protecting core services rather than delivering this transformational change. To put it starkly, short-term efficiencies could entrench service models that are not sustainable in the longer term and suffocate burgeoning early intervention strategies.

Local Government led reviews

37. Local Government has and will continue to be pro-active in reviewing the services it provides and there are well developed examples of where we have done this. A good example for the wider reviews to consider is the work done to review older peoples’ care we have worked on in partnership with the Scottish Government and NHS Scotland.

38. Our review has a goal to bring about real aspirational change in the way older people are cared for. This philosophy begins with a view that older people are an asset not a burden and that we should be helping older people remain independent
and healthy. Care for older people (and all people) is based on a compact between individuals and their carers, local communities and the state. A mutual care approach is required that supports and enables the compact to achieve the best possible outcomes for the individual requiring care and their unpaid carers. The potential significant contribution of communities alongside unpaid carers and the state should be recognised. What is more, care should be personalised to the needs of the individual and be outcomes focused, through the setting of personal goals. The principles underpinning this approach to care are applicable regardless of the extent of care required; however frail a person is, the aim must always be to help them achieve their best possible quality of life within whatever limitations they face.

39. Our current care system seeks to provide extensive and universal services through the welfare state and formal care and health systems. However, this has arguably built up a dependency culture which can undermine the policy goal of “optimising independence”. We want to generate a debate that seeks to promote an “enabling” approach. Helping people to stay out of the formal care system safely is a very positive message.

40. This is one example of the pro-active approach which Local Government takes to the delivery of services, though of course we could mention other examples across the wide range of services we provide.

Moving to an Outcomes based approach

41. As we go into the next spending review period, we must see a move away from input measures. Inputs such as class sizes and police numbers do not deliver on our outcomes and they become populist shorthand for policy success. If the external world continues to define success in terms of inputs we cannot possibly succeed in delivering quality services with less resource. We would argue that it is far better to judge success by, for example, the numbers who do not re-offend rather than the number of people we have in prison. Equally is it not preferable to judge success by educational attainment of our children rather than the number of teachers?

42. Local Government is leading the way and has worked closely in partnership with the Scottish Government to develop Single Outcome Agreements. These are agreements about how individual Councils will work to achieve outcomes for their own communities whilst largely aiming to reflect the Scottish Government’s national outcomes. It is important to note however that Councils interpret the national outcomes locally and therefore each Council will have differing priorities according to local circumstances.

43. There is more to do here and Parliament has a role to play in acknowledging the very real change which has taken place. All too often Parliament’s focus is on measuring performance using input measures and that focus must shift if we are truly going to reap the benefits of an outcomes approach and not operate a dual system. We welcome therefore the Committee’s support of an outcomes based approach.
Ringfencing

44. As we approach the next spending review and resources shrink, COSLA would resist any calls to a retreat from our hard won gains, for example, reductions in ringfencing, more flexibility in use of resources, Single Outcome Agreements as the driver of budgets not inputs.

45. During the last Spending Review period Local Government has seen a substantial reduction in the level of funding which is subject to ringfencing from £1.56bn in 2007/08 to £328m in 2010/11. This has freed up officer time due to the significantly reduced bureaucracy and allowed Councils to devote resources more effectively rather than artificial limitations placed on how the money is spent. In turn outcome agreements have been developed which ensure that that is our focus and this includes more flexible responses to protecting the vulnerable.

46. Some parties may be inclined to call for the reintroduction of ringfencing as a means to protect vulnerable groups from the adverse effects of any budget reductions. COSLA is absolutely averse to ringfencing as we firmly believe it diminishes Local Government’s flexibility and therefore its capacity to deal with the financial pressures ahead. In fact ringfencing would exacerbate the impact of the financial climate as more and more of the budget would be protected reducing scope to make efficiencies. In an environment of outcome agreements, there should be no requirement for ringfencing.

Independent Budget Review

47. We welcome the findings of the Independent Budget Review and specifically the findings in relation to the need to re-consider the Council Tax Freeze and the findings on the sustainability of retaining universal provision. We also welcomed the IBR’s recognition of many of our arguments over the need to address the longer term and not just focus on short term fixes.

48. We had hoped that the findings of the Independent Budget Review would have played a greater part in informing the Government’s approach to the financial challenges ahead, however instead we are disappointed that many of the more fundamental findings have been brushed aside by the Government.

49. In conclusion we would ask that the Committee takes on board our comments on the findings of the IBR, as well as the comments contained in our submission, in their consideration of the Draft Scottish Budget for 2011/12.

WRITTEN SUBMISSION FROM SCOTTISH AGRICULTURAL COLLEGE

You have invited comments from SAC on the draft Scottish Government budget.
I would wish to draw the attention of the Committee to two items contained in the Environmental and Rural Sciences budget which directly impact on SAC and on the services which it provides to rural Scotland on behalf of Government.

1. **Agricultural and Horticultural Advice and Support**
   This budget has been reduced by £1m overall; £400k of that cut is to be applied to the ‘Remote Areas’ Support for local SAC Offices (a cut of approximately 30%). This will impact mainly on the Highlands and Islands and, in particular, the Crofting communities. It will lead to reductions in staffing and an increase in costs of advisory services to the end users in these economically fragile areas.

2. **Veterinary Surveillance**
   The headline figures provided for Veterinary Surveillance, most of which is provided by SAC through its network of eight regional Veterinary Laboratories across Scotland, appear to indicate an increase in resources from £4.8m to £5.2m. However, SAC has received notice of a cut of £500k (out of a total budget of approximately £4m) from 1st April 2011. It is proposed that this 12.5% cut in resources for animal disease surveillance is to be implemented ahead of the outcome of the current independent review of animal disease surveillance in Scotland, which is being conducted under the chairmanship of Mr John Kinnaird.

   It makes little sense to us to have a cut in resources implemented now, which will result in a loss of key scientific staff and threaten the viability of individual labs, ahead of the outcome of John Kinnaird’s review. We would propose that any alteration in budgets, and any consequent re-organisation, should only take place consequent to the review being completed.

Professor W A C McKelvey
Chief Executive & Principal
25 November 2010
RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RESERVOIRS (SCOTLAND) BILL

SUBMISSIONS PACK

The following written submissions have been received in advance of the 1 December meeting:

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WRITTEN SUBMISSION FROM ASSOCIATION OF BRITISH INSURERS

The ABI is the voice of the UK’s insurance, investment and long-term savings industry. It has over 300 members, which together account for around 90% of premiums in the UK domestic market. The UK insurance industry is the third largest in the world and the largest in Europe. Employing more than 300,000 people in the UK alone, it is an important contributor to the UK economy and manages investments of £1.5 trillion, over 20% of the UK’s total net worth.

Flood risk management is an important issue for Scottish Government, local authorities, the Scottish Environment Protection Agency, householders and businesses. The ABI supports the Flood Risk Management (Scotland) Act 2009. The Reservoirs (Scotland) Bill will play a part in managing the upstream flood risk from smaller reservoirs and is to be welcomed.
The key policy objective of the Bill is to create a legal and administrative framework for the construction and management of controlled reservoirs in a manner that reduces the risk of an uncontrolled release of water from reservoirs and the consequences of any subsequent flooding.

The ABI believes that an appropriate framework for managing the risk of flooding from reservoirs is important and therefore supports this objective.

We agree that an arbitrary threshold of 25,000m³ above which reservoirs would be regulated does not reflect the potential for smaller reservoirs to pose risks to the public and to property. We therefore support the switch to a 10,000m³ threshold along with the provision that Ministers may take the decision to regulate even smaller reservoirs if the risk is deemed significant enough.

Some parties have suggested previously that reservoir owners should be subject to compulsory liability insurance. We believe that this would be unhelpful for the following reasons:

1. Difficulty of enforcement of any compulsory insurance;
2. It would require a mechanism for paying claims for the uninsured;
3. It would require a mechanism for enabling owners to take out insurance in situations where insurers had no market-driven desire to insure them.

We would be happy to provide any further information that the Committee might find useful.

Association of British Insurers
25 November 2010

WRITTEN SUBMISSION FROM BRITISH WATERWAYS SCOTLAND

Thank you for the opportunity to submit our views on the general principles of the Reservoirs (Scotland) Bill to be considered by the Rural Affairs and Environment Committee.

Background

BW is currently a cross-border public corporation sponsored in Scotland by the Scottish Government, delivering a valuable contribution to their strategic objectives – smarter, wealthier & fairer, healthier, safer & stronger and greener - essential to enhancing the quality of life in Scotland. In England & Wales BW is sponsored by the Department for Environment, Food and Rural Affairs.

We manage and care for over 2000 miles (3200 km) of canals and navigable natural water bodies (rivers and lochs) in Britain as a whole, of which 137.5 miles (220 km) are in Scotland. British Waterways Scotland (BWS) is responsible for five canals in
Scotland: the Forth & Clyde, Union and Monkland Canals in the Lowlands, the Crinan Canal in Argyll, and the Caledonian Canal in the Highlands. BW is also responsible for 93 'large raised reservoirs' (as per the Reservoir Act 1975 definition) 21 of which are in Scotland.

General Commentary on the Bill
We support the replacement of the Reservoirs Act 1975 rather than a piecemeal approach to amending the 1975 Act. As the owner of a significant number of reservoirs UK wide, we are pleased to note that the Bill broadly reflects the legislative changes for England and Wales set out in the Flood & Water Management Act 2010. We consider such parity to be of great importance and will avoid the confusion which would result from two different approaches.

Specific Comments:

1 Controlled Reservoirs
   We have no specific comments, all our present reservoirs will remain registered.

2 Controlled Reservoirs; Supplementary
   2(1) We note that the definition of a reservoir is wider than in the 1975 Act. Feeders such as the Colzium Cut near Kilsyth will be defined as part of the reservoir. Whilst such infrastructure does present a flooding risk, it is of a lesser order than that presented by a reservoir and is adequately managed by British Waterways’ asset management procedures. Whilst we would expect Inspecting Engineers to examine the means of diverting water to reservoirs, as they do at present, in order to understand the inflows into the reservoir, there is no benefit in asking Inspecting Engineers to consider the consequences of extreme events on feeders and catchwater systems.

   2(2) We are pleased to note that canals are excluded. They present a different sort of flooding risk to reservoirs. These risks are managed under British Waterways’ asset management procedures.

3 Reservoir Managers
   3(4) British Waterways is a public corporation and may not come under the definition of a ‘commercial undertaker’. Similarly a charity such as the National Trust for Scotland, might fall outside the definition of a Reservoir Manager. British Waterways does not always own its reservoirs and we are concerned that the unexpected consequence of the wording may be to make the freeholder the reservoir manager.

4 Duty of multiple reservoir managers to co-operate
   British Waterways is at present a joint undertaker for several reservoirs. This does not present a problem but the relationship between each undertakers is clearly defined. This will not invariably be the case for other reservoirs.
6, 7, 8  no comment

9 to 14  Register  
no comment

15  Transfer of information  
no comment

16  Offences  
no comment

17-24  Risk Designation  
We would be interested to learn more about the mechanism that SEPA will use to designate the risk categories. In England and Wales, it is expected that ‘risk’ will be defined by consequence and not by likelihood. This is relatively straightforward. In this Bill, elements such as age of the dam and its standard of maintenance have been included. These are much less easy to quantify and are variable in the case of maintenance standards.

25-29  Panels  
We would hope that Panel Engineers will be able to submit a single application for the English Welsh and Scottish Panels.

30-42  Construction  
We note the term includes enlargement and reduction as well as new build. It mostly follows present practice in general terms.

30(5)  We note that definition of the terms ‘discontinuance’ and ‘abandonment’ have changed from those used in the 1975 Act. There is a risk of confusion. We would wish to see consistent definitions used across the UK.

43 etc  Inspection  
43(1)  This clause says that high and medium risk reservoirs will need inspection. This seems to be in contradiction to 44(2) which requires only high risk reservoirs to be inspected unless the Supervising Engineer requests that one be carried out.

43(4)(c)  We support the principle of the independence of Panel Engineers performing separate functions. There are, however, only two consultancies in Scotland (Jacobs and AECOM) providing these services.

44(2)  See comments on 43(1)

45(1)(b)  We support the principle of timely reporting.

45(3)(d)  Under the 1975 Act, recommendations in the interests of safety must be carried out under the supervision of a ‘qualified civil engineer’ from the All Reservoir Panel. This clause transfers the duty to the Supervising Engineer,
although clause 46 leaves the responsibility for signing off these works with the Inspecting Engineer. Whilst at present, the Supervising Engineer will often act as the eyes and ears of the 'qualified civil engineer', the responsibility remains solely with the 'qualified civil engineer'.

46 As drafted, recommendations in the interests of safety must be certified by the Inspecting Engineer and not by a different Panel Engineer. This is the most common practice but is restrictive and cannot be achieved if the original Inspecting Engineer is unable to carry out the role for any reason.

47&48 Supervision
47(1) We note that no Supervising Engineer is needed for low risk reservoirs as will be the case in England and Wales.

48(2)(d) See comments above relating to the supervision of safety work by the Supervising Engineer.

48(2)(g) As drafted, the Supervising Engineer has to supervise any lowering of levels including routine operational changes. British Waterways' reservoirs are in constant use to feed the canals. It is impractical and unnecessary to require the Supervising Engineer to oversee such routine operations.

48(4) There may be a problem with routine surveillance of reservoirs between Supervising Engineer’s visits. This clause will give a facility to address this. Bodies such as British Waterways have procedures to ensure surveillance takes place by competent persons so that change can be identified at an early stage. Typically reservoirs are checked once or twice a week, including during holiday periods. British Waterways' Supervising Engineers, being responsible for large numbers of reservoirs are appraised of the results of such surveillance only when change which may be of significance is identified. It is not necessary, practical nor timely for the Supervising Engineer to be sent all the surveillance sheets.

49 Monitoring
   No comments

52 Incident Reporting
   We support the concept of incident reporting and make voluntary reports through the current channels. It is important that the Environment Agency and SEPA share the information.

53 Flood Plans
   We expect that there will be more detail provided about Flood Plans in Statutory Instruments.

54 Records
54 **Display of Emergency response information**

We support the concept of providing emergency contact details on site. We consider that the most appropriate contact numbers to give are the office number and the out of hours number. Our emergency procedures will call out the Supervising Engineer at an early stage of an incident.

Members of the public may well be alarmed to read that they live below a high risk reservoir, without the understanding of what this means.

59(3)(c) **Disputes**

As noted above, there are only two Scottish consultancies in the reservoir field.

60 and onwards

No detailed comments

Steve Dunlop
Director, Scotland
24 November 2010

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**WRITTEN SUBMISSION FROM EAST LOTHIAN COUNCIL**

**Part 1 – Reservoir Safety and Management**

1. The Council agree to the creation of a statutory framework for regulating reservoir safety supervised by the Scottish Environment Protection Agency (SEPA) to ensure consistency of record keeping and enforcement.

2. The Council agree to the requirement for reservoirs above a minimum volume capacity to be registered with SEPA.

3. Comment – To establish the capacity of a reservoir containing a minimum volume of 10,000 cubic metres with any degree of accuracy will be difficult and expensive. As most of these small artificial lakes are old and are presently and primarily used for industrial, agricultural, amenity or leisure activities it is most unlikely that any records exist on the topography lying below the surface, therefore, it will be necessary to undertake detailed surveys to establish the actual capacity prior to entry onto the register.

As the owner is unlikely to agree to voluntarily undertake this work, this duty is likely to fall to SEPA, including an assessment on its safety prior to entry onto the register.
4. The Council agree to the establishment of a reservoir classification system with high, medium or low risk categories to the degree to which a reservoir poses a threat to human life, property and/or critical infrastructure.

5. The Council agree to a tiered supervision and inspection regime depending on reservoir classification.

6. The Council agree that an independent panel of Chartered Civil Engineers will be formed to provide technical expertise on the supervisory and inspection requirements created under this new framework.

Comment – All Civil Engineers will have expertise in all aspects to appraising water retaining structures.

MH/CC
24 November 2010

WRITTEN SUBMISSION FROM INSTITUTION OF CIVIL ENGINEERS (ICE)

1. General

ICE welcomes the initiative taken by the Scottish Government (SG) to update reservoir safety legislation and we are pleased to see that some of the comments made by ICE at the consultation stage have been taken into account. However, there are still a number of aspects of the Bill which give us cause for concern. In view of the fact that ICE will have significant responsibility under certain sections of the Bill we feel that it is appropriate to highlight these before the Bill passes into legislation. In formulating this response the views of the ICE Reservoirs Committee and the ICE Reservoir Safety Consultative Group, which advises Defra on the Flood and Water Management Act 2010 have been sought, as well as the views of a number of Panel Engineers living and working in Scotland.

We note that the Bill requires various Regulations to be made. ICE would welcome the opportunity to advise SG, where appropriate, on the drafting of the Regulations. We look forward to working with the SG to address these critical aspects of the legislation as experience with the current legislation is that these Regulations help to clarify the way that it works in practice. To this end, and also to try to resolve any remaining aspects of concern to us in the current drafting of the Bill, we would suggest that it may be appropriate to set up a small Liaison Group in the very near future, possibly consisting of representatives from the SG, SEPA, and ICE.

Throughout this response “Act” is used to refer to the Reservoirs Act 1975 and “Bill” is used to refer to the Reservoirs (Scotland) Bill.

2. Chapter 1 – Controlled Reservoirs, Reservoir Managers etc
Section 2(1) – The definition should include the “dam”. By the definition given, a Controlled Reservoir would include all tunnels and aqueducts transferring water into the reservoir from another catchment. In Scotland this would include many kilometres of transfer tunnels on hydroelectric projects. We do not consider this to be appropriate as it is not directly related to reservoir safety and we suggest the definition be amended.

Section 2(2) – As a general point, we wonder whether it would be more prudent not to detail in primary legislation the structures or areas to be covered by subsection 2, since subsection 3 provides for them to be covered by regulation.

Section 2(2)(c) – Within Scotland there are many weirs across rivers at the outlets from existing lochs, the purpose of which is to raise the water level in the loch for additional storage. We consider that these should come under the Bill and some clarification may therefore be required on the definition of a “weir”.

Section 2(2)(g) – On occasions, road and railway embankments can be used for the purpose of flood defence. In such cases they would form part of a flood storage reservoir and the definition should allow for this.

3. Chapter 3 – Risk Designation

Section 17(1) and 21 – We suggest that there should be a requirement for SEPA to consult with an Engineer from the appropriate Panel before determining the risk designation for any reservoir. This should hopefully prevent too many cases of Reservoir Managers (RM) challenging the designation given by SEPA.

Section 17(3) - This introduces the concept of High, Medium and Low Risk Reservoirs. We note that the detailed requirements within each designation have still to be worked up. However we suggest that unless a reservoir failure would lead to negligible or no risk to life the category would be ‘High’. Medium Risk could then be categorised as negligible risk to life and Low Risk as no perceivable risk to life. We believe this is consistent with the current views of the Environment Agency.

Section 19(1) – We note that the risk designation is to be reviewed at least every six years. This seems to be an unnecessarily onerous requirement and we suggest that at least every 10 years may be more appropriate to allow a degree of stability for both SEPA and the RM.

Section 21(2)(a) – We note that “Environment”, “Cultural Heritage” and “Other Social and Economic Interests” are issues to be considered in determining the Consequences of failure and hence the risk designation. To date reservoir safety legislation in Great Britain has only been concerned with public safety. (We are content for medical facilities, etc, to remain, as these impinge directly upon public health and safety). We are strongly of the opinion that this is still appropriate and we would urge the SG to consider removing “Environment”, “Cultural Heritage” and “Other Social and Economic Interests” as aspects to be considered by SEPA when deciding on risk. Our concern is that these may be highly subjective and would give rise to disputes with the RMs in view of the significant additional costs that would be incurred by a RM if the reservoir was placed in a higher risk category than that necessary from a public safety viewpoint.

Section 21(3) – This introduces the probability of release of water and notes four factors to be taken into account in determining probability. These include purpose for which the reservoir is to
be used, materials used in its construction, maintenance and the way the reservoir was constructed. Other than in determining the breach characteristics and hence the flow of water in the event of failure we do not consider that it is necessary to consider any of these aspects. Despite studies having been undertaken in the UK into quantitative risk assessment for reservoirs, reliable and accepted tools are not yet available to the reservoir profession to determine the probability of failure of any structure. In view of this we reaffirm the strong view we expressed at consultation stage that only ‘Consequence’ is important and that the Risk designation should be related to that and that alone. We would ask the SG to reconsider the drafting of this section.

4. Chapter 5 - Construction or Alteration of Controlled Reservoirs

It is noted that the requirements of this Chapter appear to relate to all reservoirs of over 10,000 cu. m. capacity regardless of the risk designation. We assume that this is the intent and we would support this.

Section 30(6) – In the case of a covered service reservoir filled by inlet pipework it would be possible to render it incapable of holding water by cutting and capping the pipework. The current drafting of this section would not seem to allow this as it specifically mentions reducing capacity.

Section 31(5)(b) and (c) – We are not clear why previous involvement as Construction Engineer (ConE) with a reservoir should prohibit a person from acting as ConE on the reservoir’s alteration, which includes enlargement, discontinuance and abandonment. If that individual is still on the appropriate Panel then that Engineer or his successors within his firm may actually be the best person to be ConE in view of the knowledge he has of the original construction. We suggest these subsections be deleted.

Section 32(1) – Under the Act the term Construction Engineer was reserved for the Qualified Civil Engineer (QCE) appointed to design and supervise the Works related to the construction of new reservoirs or the alteration of existing ones. The Bill widens this to include aspects such as Abandonment and Discontinuance as well as other Alterations to be determined by Regulation. Under the Act the Supervising Engineer (SE) did not assume responsibility for the reservoir until the Final Certificate was issued. However for reservoirs being Discontinued or Abandoned a SE will already be in post. We are of the opinion that in such cases the SE should continue to carry out his duties and the ConE should be only be responsible for the design and construction of the Works. This will ensure continuity by a SE who is familiar with the reservoir during what, on occasions, can be an extended period between the decision being taken to Discontinue and Works actually being undertaken.

Section 32(30) and (4), Section 33, Section 34 – This is a requirement not included in the Act and we are unsure as to the reasons for requesting Safety Reports and Safety Measure Certificates, particularly as these only seem to be mandatory where the reservoir is being restored to use, abandoned or discontinued. We believe that these sections need further discussion with ICE to allow us to understand their intent which would allow us to advise further.

5. Chapter 6 – Other Requirements: High-Risk Reservoirs and Medium-Risk Reservoirs

Section 43(1)(a) – The wording of this section would seem to indicate that an Inspecting Engineer(IE) would be appointed to all Medium and High Risk Reservoirs at all times that the
reservoir was not under the supervision of a ConE. This is a major change to the current Act which only requires the appointment of the IE at the time an inspection is required, that appointment terminating when the IE submits his report. The SE is the person with continuous responsibility for the reservoir. We consider the current system is effective and takes into account the fact that the senior members of the reservoir profession who are qualified to be IEs may frequently be unavailable due to international work commitments etc. RMs will also want the flexibility to call on the individual they consider most appropriate to address and subsequently certify any work identified in the interests of safety during an inspection. This may be a different person from the IE. Having an IE appointed at all times is likely to result in increased costs to the RM as there will be a tendency for SEs to seek advice from the IE between inspections. ICE would welcome further discussion with the SG on this section.

**Section 45(3)(d)** – This requires the IE to direct the RM to ensure that any measures specified in the inspection report are taken under the supervision of the SE within the period of time specified in the inspection report. This puts a time requirement not just on measures in the interests of safety but also on any other measures specified. We believe that the requirement on IEs to specify time limits for measures in the interests of safety is appropriate and is to be welcomed but would question the value of being specific with other measures. In addition the requirement for the measures to be taken under the supervision of the SE is open to interpretation. At present a SE would “monitor” measures recommended in an inspection report and would advise the RM and Enforcement Authority if these were not being carried out. However he does not have a “supervision” responsibility and, dependent on the experience of the SE, he may not have the knowledge to be able to undertake such a task. Further clarity is required on this section.

**Section 46** – This requires Interim Inspection Compliance Certificates (which are welcomed) and Inspection Compliance Certificates to be issued by the IE for all directions he gives in his report. These are not just related to measures in the interests of safety but would appear to cover minor maintenance requirements, monitoring etc. In the case of monitoring, this is ongoing and hence it will not be possible to issue a certificate to state that it has been completed. We strongly suggest that these certificates be restricted to measures in the interests of safety. In addition, the section is probably based on the assumption that the same IE will be involved in certifying these as undertook the inspection, presumably under the same appointment contract as for the inspection. This ties in with the requirement for the appointment of the IE contained in Section 43(1)(a) which we have already commented on. While this might be desirable, we do not consider it essential and in a number of cases will be impractical. For example, an IE might have retired by the time the measures are completed; has not been re-appointed to the Panel; or be on a long term international posting. The Act only requires a QCE to be appointed to certify that measures in the interests of safety have been completed. The RM is then free to appoint anyone who is on the appropriate Panel. As for Section 43(1)(a), we would welcome further discussion on this.

**Section 48(1)** – Refer to our comments on Section 32(1) and our recommendation that a SE should be appointed at all times unless the reservoir is under the supervision of a ConE for the construction of new reservoirs, the enlargement of existing ones, or bringing a discontinued reservoir back into service as a Controlled Reservoir. The SE would then still be responsible for reservoirs that were being discontinued or abandoned up to the time that the Final Certificate had been issued for the work.

**Section 48(2)(d)** – Under this section we believe that the SE should “monitor” but not “supervise”. Refer to our comments on Section 45(3)(d).
Section 48(2)(g) – This requires the SE to supervise (or ensure that a nominated representative of the engineer supervises) any proposed drawdown of the reservoir. “Drawdown” is defined in Section 48(11)(a) as any intentional reduction in water level. It would therefore include reductions in water level that were made as part of the normal operation of the reservoir for supply purposes. This is impractical and we recommend that the duty to supervise be restricted to any drawdown of the reservoir directed by an IE (or an engineer appointed to the relevant Panel) or the SE.

Section 48(4),(5), and (6) – This could be an onerous requirement on RMs as a SE could direct that the reservoir be visited on (say) a weekly basis for the purpose of carrying out a visual inspection to identify anything that might affect the safety of the reservoir. A requirement such as this would not be abnormal and, in fact, would be good practice on any reservoir. However if the SE directs this, the RM is then required to give notice to the SE of each inspection and anything noticed in the course of it. We would suggest that it would be sufficient for a record of each visit to be maintained by the RM and made available to the SE at the time of his visits to the reservoir, but that the RM should have a duty to bring to the attention of the SE as soon as possible any change in the nature of the reservoir which could be indicative of a safety issue.

6. Chapter 7: Other Requirements: Controlled Reservoirs

Section 55(3)(d) – We do not believe it is necessary or appropriate for the name, address and telephone number of the SE to be on display for any member of the public to see. This could lead to intrusion on the privacy of the SE through hoax calls. The SE may be located many hours away from the site and not in a position to assess if the threat to the reservoir is real or not. In an emergency the RM is the person who should be contacted and these should be the contact details given. In addition, and with the rider that it should only be used if the RM is unavailable, the contact details of SEPA should be given. It could be a requirement on the RM to provide SEPA with the contact details of the SE for use in an emergency. This information will be available in the Prescribed Form of Record in any case.

7. Chapter 9: Civil Enforcement, Emergency Powers and Further Offences

We note that there are 40 Sections in this Chapter out of a total of 109 in the Bill. This compares to 30 Sections in total in the Act. We have not reviewed Chapter 9 in detail and assume that this has been critically reviewed by the SG to ensure that all Sections in this Chapter are necessary. The impression is given of a heavy regulatory regime with, potentially, significant administrative costs.

ICE
26 November 2010

WRITTEN SUBMISSION FROM LAW SOCIETY SCOTLAND

Introduction

The Environmental Law Sub-Committee of the Law Society of Scotland (the Sub-Committee) welcomes the opportunity to comment upon the general principles of the Reservoirs (Scotland) Bill which was introduced into the Scottish Parliament on 6
October 2010 and should like to respond to the Scottish Parliament’s Rural Affairs and Environment Committee’s call for written evidence upon the general principles of the Bill in the following terms.

General Comments
The Society notes that the Bill makes substantive provision in the following areas:

- A requirement for all reservoirs above a minimum volume capacity (10,000 cubic metres) to be registered with the Scottish Environmental Protection Agency.
- Each reservoir is to be classified as high, medium or low risk according to whether it poses a threat to human life, property and/or critical infrastructure.
- Each reservoir will be subject to a proportionate supervision and inspection regime dependent on its classification.
- The Scottish Environmental Protection Agency will be responsible for enforcing the provisions under this legislation.
- Independent Qualified Engineers (known as Panel Engineers) will provide technical expertise with supervising and inspection roles within the framework.

General Comments
The Society welcomed the proposal to transfer enforcement of responsibilities to SEPA and note at paragraph 49 of the Scottish Government’s policy memorandum accompanying the Bill that the creation of a new body for reservoir safety would be very resource intensive. The Sub-Committee trusts that sufficient resources will be afforded to SEPA in order to discharge their obligations in terms of this Bill.

The Sub-Committee should like to make the following specific comments:

Section 2 – Control of Reservoirs: Supplementary
The Sub-Committee notes the list at Section 2(2) of the Bill, being structures or areas which are not controlled reservoirs and questions how risks associated with the failure of canals or other inland waterways, weirs and salted ash lagoons will be controlled. This also applies to the definition of “controlled reservoir” at section 1 of the Bill, given the reduction in size of controlled reservoirs.

Section 32 – Inspection, Reports, Supervision of Works etc by Construction Engineer
The Sub-Committee suggests that it would be more appropriate that the construction engineer approves a design rather than actually design any construction or alteration as provided for at Section 32 (2) of the Bill as this would no doubt result in the practical problem of an engineer being precluded from working in a team which is tasked with designing any construction or alteration.

Section 54 – Maintenance of Records
The Sub-Committee would suggest that, on the basis that it is not provided elsewhere, flood plans should be included in the record of relevant documents.
Section 57 – Referral to Referee – Directions in Safety Report or Inspection Report
The Sub-Committee questions whether any issues with regard to the possibility of arbitration are relevant.

Section 65 – Appointment of Engineer by SEPA
The Sub-Committee notes that there is no provision as to who is liable for the fees of an engineer appointed by SEPA. In terms of Section 65, the Sub-Committee notes that the cost of the appointment process is covered in terms of Section 65(5) of the Bill but questions whether Section 65(2) is sufficient to make clear that the reservoir manager is responsible for the actual fees of the appointment.

Sections 67 – 83 Taking of Safety and Other Measures, Stop Notices, Emergency Powers and other Civil Enforcement Measures
The Sub-Committee notes that some of these provisions are a piecemeal introduction of a range of “civil sanctions” contained in various regulatory regimes and specific reference is made to the Wildlife and Natural Environment (Scotland) Bill and the Regulatory Enforcement and Sanctions Act 2008. The Sub-Committee suggests that there should be a consistent and principled enforcement mechanism across a number of regimes rather than what appears to be a fragmented and incomplete set of powers.

Section 72
The Sub-Committee suggests that the Bill should specify to whom the appeal should be made.
With particular reference to the grounds in which a reservoir manager may appeal against the decision of SEPA as outlined at Section 72 (4) of the Bill, the Sub-Committee suggests that the appropriate forum should be the Sheriff Court.

Section 75 – Emergency Powers
The Sub-Committee questions whether there should be a provision giving emergency action authorisation under the Controlled Activities Regulations.

Section 76 – Enforcement Undertakings
The Sub-Committee is of the view that there should be a relevant amount of publicity from the Scottish Ministers with regard to enforcement action as this is important in order to maintain public confidence.

Section 87 – Publication of Enforcement Action
The Sub-Committee refers to its comments at Section 76 above.

Section 88 – Powers of Entry
The Sub-Committee questions whether the Power of Entry should extend to land downstream of a reservoir in order to enable the assessment of risks in the event of any breach.
Section 104 – Crown Application
The Sub-Committee questions whether this section is necessary given Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 105 – Offences by Bodies Corporate
The Sub-Committee highlights the practical issues of offences being committed by unincorporated associations which cannot be defined as legal persons.

Law Society of Scotland
25 November 2010

WRITTEN SUBMISSION FROM MACAULAY LAND USE RESEARCH INSTITUTE

The Macaulay Land Use Research Institute is an international centre for research and consultancy on the environmental and social consequences of rural land uses. We carry out interdisciplinary research across the environmental and social sciences aiming to support the protection of natural resources, the creation of integrated land use systems, and the development of sustainable rural communities. In April 2011 we will join with the Scottish Crop Research Institute to become The James Hutton Institute.

We are concerned about the potential negative impact the Reservoir (Scotland) Bill might have on the implementation of sustainable flood management, which was a key component of the Flood Risk Management (Scotland) Act 2009.

This concern is based on research carried out as part of the Aquarius project. In this project we have been working in partnership with Aberdeenshire Council and Landcare North-East project to look at how to encourage farmers to manage water and to develop flood alleviation measures. One of the flood alleviation measures we are considering is the use of temporary flood storage areas on agricultural land to alleviate flooding in downstream residential areas. We are concerned that the new minimum size for a controlled reservoir set out in section 1 of the Bill (10,000 cubic metres) could now include these temporary flood storage areas.

Our research involves implementing sustainable flood management measures in the Tarland catchment with the aim of protecting Tarland and/or Aboyne from flooding. Initial scoping work for the Tarland catchment suggested 15 sites that might be suitable for temporary flood storage to protect downstream areas from flooding. Thirteen of these proposed sites have a volume in excess of 10,000 cubic metres, and therefore seem to fall within the definition of a controlled reservoir as set out in the Bill. The smallest site would store 7,379 cubic metres and the largest 703,914 cubic metres.

The requirements related to controlled reservoirs in the Bill would increase the financial and transaction costs of building and maintaining these flood storage areas. We understand the design criteria would be more onerous than currently required and the build specification would require more materials, thereby increasing the cost. The
proposed requirement for annual inspections would incur further financial cost and administrative burden.

Our initial findings on the financial incentives for temporary flood storage on agricultural land suggest that the cost-benefit ratio is already problematic and any increase in costs may make such measures unattractive and uneconomic. Although all the stakeholders were aware of the need to ensure the safety of impoundments, they believe that the proposed requirements in the Bill may be too onerous for temporary flood storage areas. Such areas would not be permanently filled with water, so the risks of failure may be lower.

We are unable at this time to be precise about how often these storage areas would be filled with water, and for how long. We hope to conduct further research as part of the Aquarius project to establish these benchmarks, and examine differences in risk between controlled reservoirs with permanent storage and temporary water storage areas. However, this work depends on a number of factors and will not be available in time to inform scrutiny of the Bill.

The Committee may wish to consider whether the arrangements set out in the Bill for controlled reservoirs are appropriate for temporary flood storage areas which are designed to alleviate residential flooding downstream.

Dr Kirsty Blackstock
Macaulay Land Use Research Institute
25 November 2010

WRITTEN SUBMISSION FROM MORAY COUNCIL

It is planned that most of these duties will transfer to SEPA at some point but there is a financial implication with the proposal to drop the threshold from 25,000m3 down to 10,000m3.

Few of the reservoirs between 10,000 and 25,000 m3 will have as built record drawings. This in turn raises the cost of surveying them to establish their maximum possible capacity. If the measured volume is greater than 10,000 m3, then presumably the owner pays for the survey and all subsequent inspections. If this is correct, it should to be clearly stated so that owners are able to budget for the possible expenditure involved. (Prior to the survey, they do not know for certain if their reservoir is covered by the Bill or not.)

If a survey is carried out and the volume proves to be less then 10,000m3, it should also be clarified who pays for that survey. Presumably not the owner since their reservoir is not covered by the legislation. If it is some other body, they must be told in advance of these circumstances so that budget provision can be made.
As it stands, responsibility for these costs is not clear and this should be clarified before the Bill comes into force.

Moray Council
15 November 2010

WRITTEN SUBMISSION FROM NATIONAL TRUST FOR SCOTLAND

The National Trust for Scotland (the Trust) welcomes the opportunity to comment on the above Bill. The Trust owns some 188,000 acres of land across Scotland. Within our land holding we are responsible for a number of smaller artificial water bodies such as water supply ponds and mill ponds. These currently do not fall within the threshold as defined by the Reservoirs Act 1975 but we anticipate that some of them may fall within the 10,000m³ threshold as proposed in this bill. This would mean that a number of our water bodies would become controlled reservoirs and subject to the provisions of this draft bill.

We welcome any moves to protect people and property by introducing a risk based approach to reservoir safety. We also welcome proposals to create a Controlled Reservoirs Register to be managed by SEPA. This will ensure a consistent approach to reservoir safety across Scotland.

The Trust does have some concerns about the costs involved in reservoir inspections, registration and the preparation of flood plans. Some structures may require upgrading after the initial inspection to ensure they comply with any requirements identified after an inspection. At the moment these costs are unknown. As a charity we have limited resources and anticipate the costs involved may be significant.

We would suggest that the Reservoirs (Scotland) Bill as proposed makes some provision for charities to apply for grants to fund the initial surveys and inspection costs and for the preparation of the flood risk plans. Additionally we suggest that a fund is set up to help charities, community groups and angling clubs pay for upgrading works to the reservoir or associated structures required as part of any initial inspection.

While most of these structures may no longer be used for their original purpose, they will have an important local landscape, amenity and biodiversity value. Some will have natural heritage designations. These features could be lost if the reservoir manager is forced by lack of resources to draw down or otherwise remove the water body.

The National Trust for Scotland
25 November 2010

WRITTEN SUBMISSION FROM PERTH AND KINROSS COUNCIL
Perth & Kinross Council (Flooding Team) Response to Reservoir (Scotland) Bill Consultation - 19 November 2010

**General summary of what the act means to Perth & Kinross Council (PKC)**
PKC currently operates two ‘dry’ reservoirs, North Muirton and South Inch, under existing legislation. The new Reservoirs Act will incorporate a further two reservoirs under the act of which will include the ‘wet broxden pond’ and a further ‘dry broxden pond’ which were both required as part of the Perth Flood Prevention Scheme. It is envisaged by PKC that the 3 dry reservoirs will be classed as low risk and the Wet Broxden Reservoir will be classed as either medium or high risk. On this basis, we believe that annual costs for the 4 reservoirs will equate to either a cost neutral or slight saving in comparison to what is operated under the existing act; and the time/resources saved by the transfer of Reservoirs Register to SEPA. The only cost envisaged by the new Act is from the one-off payment for the production of Flood Plans. Obviously, if the 3 ‘dry’ reservoirs are categorised as medium risk then there will be cost implications for PKC but this is not expected as they are empty for 99% of the year.

Therefore, the financial memorandum costings are likely to be within the correct region for costs realised by PKC under the new Reservoirs Act.

**(Section 19) Periodic review of risk designations**
Will there be a cost associated with the review of risk designations for reservoirs every 6 years? I would expect there should not be as the likelihood for it changing should be minimal and the basis of the risk designation was carried out during the original decision. Therefore, the workload for SEPA should be minimal for these reviews.

**Inundation Maps**
The only reference to Inundation Maps within the new Reservoirs Act is under Section 9(h) where it states that this should form part of the reservoir register for the said reservoir. However, it is never again mentioned throughout the rest of the Act. Why is there not a section relating to this in order to state its requirement and who will produce the maps?

Under Section 179 of the financial memorandum, it does state in line 13 that SEPA will incur the costs of inundation maps and in Section 181 that the costs will eventually be passed on to the Reservoir Owners. Therefore, I presume the cost of these maps will be incorporated into the annual fee levied by SEPA and there won’t be an additional one-off charge?

**Flood Plans**
Is there likely to be a timeframe for implementation of a flood plan? i.e. must be complete by 2015?

Will there be a requirement for reservoir managers to test the plans and if so how often?
**Display Emergency Response Information**
The emergency boards that will be required to be displayed would be more effective if they all aligned to a single format, perhaps SEPA should provide a template to determine the layout and information required on them.

**Future Development around a Reservoir**
How will the future development around a reservoir be managed? For example, if a reservoir is currently a low risk and a development is built downstream causing SEPA to reclassify its risk designation to Medium or High, this will cause the Reservoir manager a financial burden. Therefore who is really liable for the costs? Or should development downstream of a reservoir be classed as undevelopable in order to avoid this scenario? There is no reference to this scenario in the Bill or supplementary notes. It is clear there is a need to ensure development plans take account of reservoirs.

**Additional Comment:**
There will be a need in the future to ensure any increase in costs for the regulation of the Reservoirs does not become excessive and can be justified.

Perth and Kinross Council
19 November 2010

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**WRITTEN SUBMISSION FROM RAMBLERS SCOTLAND**

Ramblers Scotland notes that the Reservoirs (Scotland) Bill is concerned with the management of certain reservoirs, in particular in relation to the risk of flooding from such reservoirs. However, we would like to suggest that the Committee gives consideration to widening the scope of the bill to include the management of public access across dams.

Over recent years we have identified that there is a problem relating to the loss of longstanding public access across dams. These dams have been or are going to be closed following risk assessments undertaken by the operators, but with no widespread public consultation.

One recent example of this is the Torr Achilty dam across the River Conon which was closed following a risk assessment by Scottish and Southern Energy (SSE) in the summer of 2010. Public access had been taken across this dam for decades, and at one stage it was clearly encouraged in order to enable people to view a salmon ladder. However, the operators claimed that they were concerned about the potential risk of vandalism and possible damage to their equipment, and so they decided to close the dam and advertised this closure in the local press. There was no public consultation as regards the justification for this closure, its potential impacts on access takers or possible mitigation measures.
Under the Land Reform (Scotland) Act 2003, access rights do not apply to structures such as dams. However, the Scottish Outdoor Access Code makes it clear that where access rights apply on land which is contiguous to those areas where statutory rights do not apply, land managers should continue to support this customary access. In relation to dams, the Code states “Owners are encouraged to support access across dams if there are no specific safety issues. Take steps to advise people of any water discharges likely to cause a hazard.” (p.82)

In this case, SSE did advise the local authority access officer of the decision to close access across the dam but there was no wider consultation on the implications of this decision. There has subsequently been an adverse reaction from access takers who regard the consequential restrictions on access and associated diversion onto a public road with no pavements as detrimental to enjoyment of the surrounding area. The Highland Council access officer has indicated to us that other places where dams have been closed or are shortly to be closed include Aigas, Kilmorack, Invergarry and Strathfarrar. These closures could significantly affect access in remote areas and in some cases lead to greater hazards of health and safety as walkers try to cross rivers without the help of the dams or to use roads instead of paths.

Ramblers Scotland is therefore seeking an amendment to the Reservoirs Bill which requires any proposed closure to be subject to public advert and consultation, with Scottish Ministers having the final say as to whether a closure should be permitted and if so, whether the closure should be subject to compensatory mitigation measures. We believe this minor modification to the Bill would safeguard public access interests without compromising safety and would be more straightforward than seeking changes to the Land Reform (Scotland) Act 2003 to ensure that statutory access rights applied across all dam structures.

We are grateful to the Committee for considering this request and would be happy to give further information on this issue if requested.

Dave Morris
Director
22 November 2010

WRITTEN SUBMISSION FROM RENFREWSHIRE COUNCIL

Firstly, I commend the principles, extended scope and improved risk based control measures of the new Bill, especially given Renfrewshire’s recent history at Maich. These measures will no doubt reduce risk to human health, economic activity, the environment and roads / infrastructure, as the Bill intends.

At least one reservoir in Renfrewshire will now be controlled by the new Bill, where not currently controlled by the existing Reservoirs Act (Glentayan at Kilbarchan) the control of which will, as stated above, no doubt reduce risk to human health, economic
activity, the environment and roads / infrastructure. We should however be careful that the proposed Bill does not allow reservoir owners / managers as designated under the proposed Bill to abandon or discontinue such newly registered reservoirs below 25,000 cub m, as this could increase downstream flood risk. The Bill appears to address this issue, but perhaps further legal scrutiny in this regard would be prudent, given the potential adverse consequences of such resultant increased downstream flood risk and likelihood of such Private owners doing so given the new costs of Bill compliance being likely to be as high as in the ten's of thousands up front. Such legal scrutiny is important for Renfrewshire as the downstream catchment is Kilbarchan which is subject to historic flooding from all sources and a high level of theoretical flood risk from all sources, mitigated in part by the reservoirs existence.

We currently have a dry off line attenuation reservoir in Paisley ( Moreldun ) which the Council constructed and own which is currently registered as a large raised reservoir on the current Reservoirs register, with final construction engineer certification, required under the existing Reservoirs Act. We do not currently have an Inspecting or Supervising Engineer appointed, as the reservoir is still under control of the Construction Engineer, however the Bill proposals cater for this scenario in all critical matters addressed by the Bill, i.e registration, risk designation, manager allocation and duties, construction, alteration and emergency powers.

In relation to Chapter 3, Section 21, Subsection (3) of the Bill: "Risk Designation and Periodic Review, Matters to be taken into account". I suggest that reservoirs such as the dry off line attenuation reservoir in Paisley ( Moreldun ), mentioned above, have cognisance of their generally "dry" status in the risk assessment process, i.e as they are not full or impounded at all generally then this fact should potentially then reduce the assessed risk level of the reservoir as compared to a normal impounding reservoir in the same circumstances. To address this concern I suggest adding a subsection 3 (e) "If the reservoir is not an impounding reservoir, the design frequency of impoundment" to the matters to be addressed when assessing the probability of release in the risk assessment and designation process. Given the likely costs of compliance to the new Bill for current undertakers such as Renfrewshire Council for medium and high risk reservoirs especially and the budgetary constraints on all Scottish Local Authorities any appropriate reduction in duties would be welcomed through cognisance of such "dry" reservoir status in initial risk designation.

If you wish to discuss any of the above comments, or are unclear on any of the points raised, please feel free to call me on 0141 842 5453 and I will be happy to discuss matters with you.

Renfrewshire Council
25 November 2010

WRITTEN SUBMISSION FROM RSPB SCOTLAND
Overview
RSPB Scotland welcomes the opportunity to respond to the Rural Affairs and Environment Committee’s call for evidence on the general principles of the Reservoirs (Scotland) Bill. We fully recognise the need for a Bill that modernises current reservoir legislation to ensure that a regulatory regime is in place to manage risks to human life and critical infrastructure, and we welcome the risk-based approach that is proposed by the Bill. Scottish Government, SEPA and Scottish Water must be mindful of their duty to further the conservation of biodiversity in exercising their functions, as per the Nature Conservation (Scotland) Act 2004. The Bill states that details regarding the definition and classification of reservoirs will be set out at a later stage. We have some concerns that those regulations will not be subject to the same level of scrutiny as the Bill. It is also crucial that the regulations will not result in excessive regulatory and administrative burden for owners of sites that are not considered high risk and yet are important habitat for wetland and aquatic biodiversity. We welcome the provisions in the Bill to create offences for failing to carry out remedial and restoration measures to protect the water environment and look forward to these being utilised to ensure protection and improvement of Scotland’s water environment.

Background
RSPB Scotland is part of the RSPB, which speaks out for birds and wildlife, tackling the problems that threaten our environment, and promotes the conservation of wild birds and their habitats. We are supported by 88,131 members in Scotland, with a strong membership base in rural areas as well as in towns and cities. We have practical experience of managing land for conservation, farming and other enterprises, and of providing advice to land managers. We manage 68,240 hectares of land across Scotland, much in management agreements with local farmers, crofters and graziers, and much of this is associated with aquatic habitats such as lochs, freshwater wetlands and coastline. This encompasses some internationally and nationally important areas that have been designated as Special Protection Areas, Special Areas of Conservation, Ramsar sites and Sites of Special Scientific Interest for the priority bird species and/ or habitats that they support.

Reservoir definition and classification
A number of aspects of the Bill are to be considered through further regulations and, thus, we have some concerns that they may not be subject to the same level of scrutiny. We highlight below those areas that will be of interest to RSPB Scotland and other potential reservoir owners:

- Section 1(6) allows provision for regulations to set out how the volume of water capable of being held or released is to be calculated, and on the meaning of ‘natural level’ and ‘surrounding land’. This should be subject to adequate consultation and give due consideration to circumstances that do not result in unnecessary classification resulting in excessive cost and administrative burden, nor should it lead to disincentives for biodiversity management e.g. wetland creation.
Scottish Government has assured us that the retention structure of a water body (e.g. sluice versus a fixed wall) will not be taken into consideration when designating reservoirs. However, we understand that retention structure may affect the risk category that is placed on a reservoir. We hope that a pragmatic approach will be taken when considering retention structure in the assignment of the risk category so that wetlands that are managed with sluices and that pose little risk of an uncontrolled release, will be assigned a low risk accordingly.

Section 2(2) of the Bill, which lists structures and areas that would be exempt from being classified as controlled reservoirs, includes “structures or areas of water designed to protect land from the sea”. Indeed, Scottish Government has stated that it is not the intention for coastal realignment sites to be classed as reservoirs under this legislation, which we would welcome. However, as this will be clarified through further regulation (Section 2(3)), we hope that this is fully reflected in these regulations. Climate change is predicted to cause sea level rise and increased storminess in some parts of Scotland, which could result in extensive areas of the coast being lost to ‘coastal squeeze’ whereby the intertidal land is eroded as it is progressively squeezed between rising sea levels and hard sea defences. Coastal realignment is an important mechanism for enabling Scotland to adapt to a changing climate and any associated flood risk, while also delivering benefits such as intertidal habitat for important migratory and wintering wetland bird species and offering recreational opportunities around coastal areas. We would like to reiterate that we believe it would be negative to disincentivise coastal realignment projects as a result of regulatory burden through the reservoirs legislation.

Grants and fees for reservoir managers
We note that there is no provision for grant-making powers in the bill and urge that this is put in place. This could be essential for many small reservoir owners who require financial assistance to meet the costs of adhering to the regulatory regime. In particular, we believe that grants should be given or fees waived for those owners who manage the reservoir and surrounding land for wider public benefit, such as for biodiversity. Thus, we suggest that a similar model to that for the Controlled Activities Regulations (CAR) is implemented whereby charges are waived for activities that provide an environmental service.

Remedial and restoration measures regulations
Section 22(1) of the Water Environment and Water Services (Scotland) Act 2003 (WEWS) states that “The Scottish Ministers may by regulations make such provision for or in connection with remedial or restoration measures as they consider necessary or expedient for the purposes of facilitating the achievement of the environmental objectives set out in river basin management plans”. Therefore, we welcome the provision in this Bill to amend the WEWS Act to allow the creation of criminal offences in relation to remediation and restoration of the water environment. However, we seek reassurance that action is already underway to get restoration and remediation

measures in place so as to meet the environmental objectives set out in Scotland's River Basin Management Plans.

RSPB Scotland
24 November 2010

WRITTEN SUBMISSION FROM SCOTCH WHISKY ASSOCIATION

Thank you for allowing us the opportunity to contribute to this consultation.

The Scotch Whisky Association is the leading representative body in the spirits sector. Our 56 member companies – distillers, blenders, bottlers and brokers of Scotch Whisky – account for over 90% of the Scotch Whisky industry by production. Scotch Whisky operates in a highly competitive and international market. Over 90% of Scotch Whisky sales are abroad – exports reached a record of £3.13 billion in 2009. This figure accounts for around 20% of Scotland's manufacturing exports, thus highlighting the industry's significant role in the Scottish economy.

As discussed previously, the Association provided a short response to the Scottish Government consultation on 'Reservoir Safety in Scotland' in April this year.

Our industry experts have now reviewed the Bill itself and its overarching aims. The Association supports the general principles of the Bill and, at this stage, no issues have emerged from our examination of its provisions. Rather, we are pleased to see that many of the points in our original consultation response have been embedded into the Bill.

In light of this, we support the development of this Bill and will watch with interest as the Bill moves through its different stages to gain assent.

Morag Garden
Environmental & Scientific Affairs Manager
24 November 2010

WRITTEN SUBMISSION FROM SCOTTISH WATER

Scottish Water welcomes the opportunity to provide evidence to the Rural Affairs and Environment Committee concerning the Reservoirs (Scotland) Bill. We are particularly interested in this proposed legislation, as we own and operate a large number of reservoirs across Scotland and, as such, we are a reservoir undertaker under the terms of the existing Reservoirs Act 1975.
Introduction and background
The Bill will reduce the minimum volume for the definition of a reservoir to 10,000 cubic metres. Under the proposed Bill, Scottish Water will own and operate 365 reservoirs for the supply of drinking water. This total includes 95 reservoirs that currently do not fall under the Reservoirs Act 1975. These additional reservoirs comprise of 34 small reservoirs and 61 treated drinking water storage tanks. A small number of sustainable urban drainage (SUDS) systems may also now be controlled under the Bill.

70 of the 365 reservoirs are no longer used operationally.

Primarily, our reservoirs are or were used as sources to supply drinking water for Scotland. We do acknowledge that reservoirs may additionally provide flood management, biodiversity and recreational benefits. Many of our reservoirs are regarded as historic features and focal points in the Scottish landscape. However, it remains our view that reservoir safety is of paramount importance at all times, taking priority over other interests.

The future of reservoir safety legislation in Scotland is of high importance to Scottish Water as it affects the provision of drinking water to our customers. We take this opportunity to provide comments on the current proposals in the interests of ensuring that the new reservoir safety regime is effective and proportionate in terms of safety and enforcement action, and that the proposals are fair and not administratively burdensome to reservoir managers.

Risk designation
Scottish Water welcomes the introduction of the risk designation (section 21) for reservoirs as high, medium and low based upon the potential adverse consequences and the probability of an uncontrolled release of water. This allows a proportionate supervision and inspection regime dependant on the risk designation of the reservoir. We suggest that section 21 (3) items (a) – (d) should all form part of the risk designation, where the information is available, and SEPA shall (as opposed to may) take these items into account. We also suggest that to give consistency with the Reservoirs Act 1975, greater emphasis should be placed on human life and safety of people over the other items listed in section 21 (2) (a).

In order to ensure that the risk designation process by SEPA is conducted effectively, we suggest that the Bill should make provision for any guidance, which may be issued by SEPA under section 23, to be subject to consultation with reservoir managers and others as appropriate.

With respect to review of risk designations under section 23, there is no timescale specified for SEPA to respond to an application for review. This may cause reservoir managers unnecessary inconvenience and expense if a review takes a considerable time, then finally results in a low designation.
The Bill makes provision for SEPA to charge any fee it determines for risk designation review. We suggest that this neither provides any incentive for SEPA to get the designation correct first time or encouragement for reservoir managers to make appeals where they have legitimate concerns, which may introduce economic inefficiencies into the procedures. The review process under section 22 could perhaps be included within Chapter 8.

**Arrangements for inspection and construction of reservoirs**

Scottish Water retains supervising Panel Engineers to ensure safety at all our reservoirs. Scottish Water also has framework contracts for inspecting engineers and supervising engineers to carry out the duties of the Reservoir Act 1975 across Scotland.

Scottish Water considers that the Bill proposes a number of new requirements which result in both an inspecting engineer and a supervising engineer being involved in carrying out an activity, which currently is conducted by an inspecting engineer, for example “supervision of the implementation of any directions given by inspecting engineer” under section 48(2)(d). In the 1975 Act there was no requirement for the Supervising Engineer to be involved in the work that is carried out following the Inspecting Engineer’s report. This will increase costs to the reservoir managers.

**Flood Plans**

Reservoir managers will be required to produce flood plans for some or all controlled reservoirs. The Bill is unclear on the function that the flood plans will serve and who will have access to these flood plans. Our view is that flood plans, produced by reservoir managers, should identify the steps that are required to draw down a reservoir in the interests of safety in an emergency. However, we see this information as being part of good management of the reservoir and, in the interests of national security required by UK government, we cannot put this information into the public domain. Additionally, we acknowledge that reservoirs may be used to manage flow downstream in the interests of preventing flooding. It is not currently Scottish Water’s practice to actively operate reservoirs in the interests of flood prevention, nor are we currently financed to do so.

Scottish Water would like clarification on the content and purpose of the flood plans and looks forward to further consultation on this subject.

Under the Flood Risk Management Act there will be Flood Risk Management Plans and local Flood Risk Management Plans. To avoid confusion, we suggest that a more appropriate wording for flood plans under this Bill would be an “on site contingency plan”.

**SEPA’s role**

It is understood that SEPA’s role as the new enforcement authority is to be responsible for enforcing the provisions under this legislation and that this is an administrative role. Technical expertise will be provided by independent qualified civil engineers (known as panel engineers) who will provide supervising and inspection roles within the framework.
We note, however, that many of the provisions in the Bill clearly imply that SEPA will be required to exercise technical expertise and professional reservoir engineering knowledge, in order to conduct the statutory procedures. For instance: regarding the employment of panel engineers to conduct services on their behalf; awareness of which market rates represent good value; use of Stop Notices; development of Flood Plans; Risk Designations; identifying matters that are central to safety (not merely operational) and producing guidance, all require knowledge of reservoir engineering beyond an administrative capability. We note also that SEPA will need to use technical knowledge in order to justify criminal prosecution and imposition of civil enforcement measures.

Scottish Water would welcome greater definition of SEPA’s role and how it will be conducted. We are also seeking a proportionate and even handed approach to enforcement, where matters in the interests of safety are the central focus.

Offences and civil enforcement powers
The new Bill re-enacts a number of provisions relating to offences under the 1975 Act (although penalties may differ), and introduces a large number of new offences, for example, display of emergency information, incident reporting and flood plans. Additionally the Bill introduces new civil enforcement powers that SEPA will administer. We are keen that there is clarity over how SEPA will determine and administer the process for taking enforcement action. However, the Bill does not prioritise offences and enforcement in the interests of safety above other administrative matters. We raise this matter as we see it is essential that safety matters are the priority for enforcement action.

We draw to your attention that enforcement action under the Reservoirs Act 1975 is carried out in the interest of safety only. Scottish Water notes that the precise wording of the Bill, section 34(1) safety report compliance and 46(1) inspection reports compliance, is “The reservoir manager must (subject to section 57(3)) comply with any direction in a safety report issued to the manager”. It should be noted that safety reports may contain a range of information relating to a reservoir, including operational and administrative matters. We suggest the Bill should provide that an offence would only arise out of a failure to implement a direction relating to a safety measure. This current wording of the Bill gives SEPA enforcement powers in relation to administrative, operational and others matters.

We draw your attention to the point that the introduction of civil enforcement powers were not included within the consultation “Reservoir Safety in Scotland”. We note that in England and Wales the introduction of civil enforcement powers for use by the Environment Agency was subject to public consultation in July 2009, by DEFRA in “Fairer and Better Environmental Enforcement, – consultation on proposals to improve environmental enforcement”. We anticipate full involvement in discussions relating to the deployment of civil enforcement powers by SEPA. We would not like to see civil enforcement penalties redirecting limited resources away from maintaining reservoirs in the interest of safety.
We consider that further refinements to the proposals for civil enforcement are necessary and we would like to contribute to these discussions.

**Criminal offences**
Given the potentially serious nature of failure of safety at a reservoir, the inclusion of imprisonment as a new penalty for certain offences does appear appropriate.

**Need for third party appeal mechanism**
At present the Bill does not provide for an appeal mechanism to a third party (such as Scottish Ministers, a Sheriff or other independent arbiter) against civil enforcement measures imposed by SEPA. We propose that the Bill must secure a right of appeal to such a third party to ensure just and proportionate application of such powers, fairness for reservoir managers and consistency with other legislative regimes. In all cases where civil enforcement is imposed, there must be recourse to appeal the level of any penalty imposed, any timescale or any other condition where it is unreasonable in the view of the reservoir manager.

**Powers of entry onto land**
The Bill (section 88) gives SEPA the powers of entry onto land. We are seeking clarification whether the definition of land in the Bill also includes buildings, as some of our reservoirs are within buildings. Our concern is that visitors could potentially affect the quality of the drinking water supply, at service reservoirs and clear water tanks which hold treated water. Permitted access can be given to Restricted and Non-Restricted Areas provided that visitors are properly supervised by a competent Scottish Water employee and arrangements are implemented to ensure that the recommendations of our Hygiene Code of Practice are not compromised. This would include a risk assessment of any proposed activity to be carried out by the nominated Responsible Person.

**Guidance**
The Bill includes sections (notably sections 6 and 21) where additional guidance may be forthcoming in the future. It is our view that reservoir managers should be consulted early in the development of any guidance and that this should form a general requirement of the Bill. Reservoir managers may have both knowledge and experience that is relevant, and their input into guidance will help ensure that procedures are effective in the interests of safety and not administratively over burdensome.

**Interests of National Security**
In the interests of national security required by UK Government, Scottish Water is required to limit the availability of certain information relating to large drinking water storage reservoirs such as service reservoirs and clear water tanks.

**Reservoir safety and the interaction with other legislative frameworks**
The Flood Risk Management (Scotland) Act 2009 requires Scottish Water as a responsible authority to exercise their flood risk related functions with a view to reducing
overall flood risk. Reservoirs may attenuate flooding. Where a reservoir is no longer used as a source of drinking water, Scottish Water still retains all obligations under Reservoirs Act 1975. Works we may undertake in the interests of safety (such as breaching a reservoir) may be contrary to management of flood risks. However, maintaining reservoirs in the interests of flood risk management may be more costly than actions taken in the interests of safety. In this case, the additional costs to retain reservoir structures (in proper condition in the interests of safety) for the purpose of flood risk management, requires additional funding. We suggest that Scottish Water should be financed to maintain reservoirs for flood attenuation purposes where they are no longer required as a source of water.

**Financing for provisions of the Bill**
Scottish Water will be including the requirements of this Bill into our business planning process for the next regulatory period. We expect that meeting the requirements of the Bill will be part of the Ministerial Direction to Scottish Water for the period SR15 (2015-20). As stated in the introduction, we see that ensuring reservoir safety as a fundamental duty. We shall take steps to ensure that we are properly financed in future periods to deliver the requirements of the new legislative requirements. As submitted to the Finance Committee, we are not financed in the current period for additional costs that may emerge from the new legislative regime during the 2010-2015 period.

**Part 2 – Remedial and Restoration Measures**
Scottish Water submits no comments on this Part.

Scottish Water
25 November 2010

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**WRITTEN EVIDENCE FROM SEPA**

1. **Opening Remarks**

The Scottish Environment Protection Agency (SEPA) welcomes the opportunity to give its views on the general principles of the Reservoirs (Scotland) Bill to the Rural Affairs & Environment Committee.

The Bill will create the framework that will ensure reservoirs in Scotland are regulated in a proportionate and risk-based regime to protect the people of Scotland from the risk of flooding from any reservoir failure, whilst limiting the burden on those owners whose sites pose minimal risk.

SEPA recognises the responsibilities associated with its new role and looks forward to the challenges it will bring. Success will depend on the powers and duties conferred by the legislation, the working relationships SEPA builds with the regulated sector and other key stakeholders and the resources that can be made available.
When commenced, Part 7 of the Flood Risk Management (Scotland) Act 2009 will transfer responsibility for regulating reservoir safety in Scotland from the Local Authorities to SEPA.

The Reservoirs (Scotland) Bill will supersede the existing reservoir safety legislation, Reservoirs Act 1975, and bring with it additional regulatory requirements as well as a stronger tool kit to enable SEPA to carry out its enforcement duties.

SEPA has been involved with the Scottish Government throughout the consultation process. We have worked with the Reservoirs Bill Team during the Bill drafting process and provided comment on the wording of the provisions relevant to SEPA when requested.

SEPA formally responded to the Scottish Government consultation “Reservoir Safety in Scotland” in April 2010. We also assisted the Government in the stakeholder engagement process of this consultation by attending and sitting as panel members at public awareness raising workshops around the country. SEPA also sits on the Government’s ‘Reservoir Safety Stakeholder Group’, which comprises a cross section of the reservoir safety community, individual owners, large reservoir owning organisations such as Scottish & Southern Energy, Local Authorities, Panel Engineers and Scottish Water.

2. Reservoirs (Scotland) Bill Part 1 - General Comments

The Reservoirs (Scotland) Bill contains a number of significant changes from the existing UK based legislation, the Reservoirs Act 1975. These changes are included to make the new legislation risk-based and proportionate, to ensure that those sites posing the greater risk receive a higher level of monitoring and regulation whilst ensuring minimal impacts on managers of sites considered to be low risk sites.

SEPA welcomes this risk-based legislation which complements SEPA’s on-going ‘Better Regulation’ programme. Through this programme SEPA will facilitate those who are willing to comply and ensure that burdens on them are minimised. This will allow us to focus our resources on those who pose a higher risk to the environment or to human health.

Where possible, SEPA will look to incorporate this new regulatory duty into existing processes and systems to ensure efficiencies and minimise any costs that may be passed on to reservoir managers.

The regime proposed in the Bill will largely be self regulating and SEPA’s role will primarily be to monitor compliance with the regime and take action in the event of non-compliance.

This follows on from the existing system and ensures that the experience, knowledge and expertise of the civil engineers (Panel Engineers) currently engaged in reservoir safety inspections is retained and utilised in the most appropriate way to ensure reservoir safety.

2.1 Definition of a ‘Controlled Reservoir’
Section 1 of the Bill outlines what is deemed to be a ‘Controlled Reservoir’ and thereby regulated by this legislation. The major change contained in this section, when compared to the Reservoirs Act 1975, is the altering of the threshold above which a reservoir is deemed to be a ‘Controlled Reservoir’ and therefore must comply with the relevant sections of the legislation.

Currently reservoirs capable of holding 25,000 cubic metres or more are deemed to be ‘Controlled Reservoirs’ and all must comply uniformly with the legislation regardless of the degree of risk they pose. The Bill proposes to lower this threshold to 10,000 cubic metres as it is recognised that there are structures which have a capacity to have a detrimental impact, due to flooding, on human health which are currently excluded from the current reservoir safety legislation due to their capacity being less than 25,000 cubic metres.

An example which illustrates why this new threshold is important is the Maich Dam in Renfrewshire, where in 2008 an emergency arose due to severe damage to the dam following overtopping of the structure. This was due to a period of heavy rainfall. This structure held approximately 24,000 cubic metres which meant it was not inspected and monitored under the current legislation.

SEPA understands that the revised threshold of 10,000 cubic metres has been selected in consultation with the Environment Agency and the Institution of Civil Engineers and that this volume was the amount of water that was likely to cause serious harm if released quickly into a downstream channel.

The revised threshold of 10,000 cubic metres has been included in the Flood & Water Management Act 2010 for England & Wales. If this figure remains within the Bill it will provide consistency across the UK which will aid those engineers and organisations that operate under both Acts. This is particularly relevant to Panel Engineers as it is recognised that there is already a small pool of engineers operating within the UK and a common approach would contribute to most effectively utilising this limited resource.

SEPA supports this revised threshold as it will provide greater protection for people downstream of smaller dam structures, which would otherwise be exempt from inspections and monitoring. However, this could capture a significant number of sites that have not been regulated before and will require appropriate resources if SEPA is to ensure all owners of these newly regulated sites are aware of their responsibilities and duties under the Bill and provide appropriate data during the registration process.

SEPA will endeavour to make the registration process as simple and straightforward as possible and will look to combine it with other appropriate processes such as the authorisation process for impoundment under the Water Environment (Controlled Activities)(Scotland) Regulations 2005. This should ensure an integrated process covering both sets of legislative requirements and therefore avoid duplication of information an applicant should supply, and also reduce the burden on public expenditure.

### 2.2 Risk Classification Process
As noted in 2.1, all reservoirs with a capacity for holding 10,000 cubic metres of water will be required to register under the new Act. Thereafter, SEPA will be required to undertake a risk classification process as laid out in Section 21, assigning a designation of ‘high’, ‘medium’ or ‘low’ risk for all sites. The risk designation process will take two aspects into consideration: the potential adverse consequence of an uncontrolled release of water and the probability of such a release.

When considering the potential adverse consequence, SEPA will be required to consider the potential damage to, human health, the environment, cultural heritage, medical facilities, power supplies, transport, the supply of water for consumption and anything connected with such matters, other social or economic interests and such other potential damage as SEPA considers relevant. These considerations are consistent with those issues that must be taken into account for wider flooding issues contained within the Flood Risk Management (Scotland) Act 2009 and can be stipulated in guidance or regulations, making a risk assessment based on consequences an objective process. To take account of probabilities of an uncontrolled release is much more subjective and open to challenge which would result in more work and more costs to SEPA and the reservoir manager. Such probabilities are controlled through ensuring the inspection and repair requirements are enforced.

The three risk designations will be subject to proportionate levels of supervision and monitoring, ensuring that costs to the reservoir managers will be proportionate to the risk the reservoirs pose; in particular to human life. Low risk sites will incur minimal costs. This will also enable SEPA to focus its efforts where needed, on those sites posing most risk, which aligns itself with the principles of ‘Better Regulation’.

To enable SEPA to undertake this process it will be necessary for each site to have a flood inundation map produced to indicate areas that would be flooded should there be an uncontrolled release of the water stored behind the impoundment. In the initial period when SEPA will be required to undertake the risk designation process for those sites covered under the existing legislation, and thereafter for an initial period for those newly regulated sites, it would be advantageous if SEPA produced these maps. In this way, it would ensure that the maps would be produced in a standard and consistent manner, thereby reducing the effort required by SEPA that would otherwise be needed to ensure each site owner provided a viable and usable map within stated timescales.

2.3 Civil Sanctions

With regard to the civil enforcement powers contained in Chapter 9 of the Bill, SEPA has studied with great interest the 2006 report by Professor Richard Macrory entitled “Regulatory Justice: Making Sanctions Effective”. This report (which developed some themes contained within Sir Phillip Hampton’s earlier report “Reducing Administrative Burdens: Effective Inspection and Enforcement”) concluded that regulators needed more flexible and risk based enforcement tools. Professor Macrory recommended the introduction of more flexible tools, similar to many of those proposed in the draft Bill. SEPA is also aware of the Regulatory Enforcement and Sanctions Act 2005 which sets out an extended toolkit for regulators in England and Wales based on the recommendations of Macrory.
SEPA agrees additional enforcement tools would enhance our ability to take effective and proportionate enforcement action; this fits well with better regulation principles. SEPA also agrees with Professor Macrory’s analysis that the availability of such a flexible toolkit would assist in ensuring prosecution is targeted on those who have little evident concern for managing and preventing risks, thereby helping ensure the regulatory response is proportionate to the offence and easing the workload of the criminal courts.

In general terms therefore, SEPA is supportive of the proposals in the Bill regarding the regulatory toolkit. We consider the proposal to only grant SEPA the ability to serve fixed monetary penalties, variable monetary penalties, restraint and restoration notices by order of the Scottish Ministers following consultation is sensible, as it will give the opportunity to consider in detail how these will operate in practice – for example what the relevant appeals mechanisms should be. In the long term SEPA is keen that the most appropriate toolkit is developed for SEPA in the Scottish context across all the regimes that SEPA has regulatory responsibilities for.

SEPA also considers that the requirement in section 85 for SEPA to publish guidance on how it would use such powers, prior to actually utilising them in practice, provides the safeguard for reservoir managers of ensuring SEPA utilises these powers in a transparent and appropriate manner.

2.4 Costs
The Scottish Government’s Financial Memorandum lays out the estimated on-going cost to SEPA of carrying out its new regulatory duties under the Bill. This cost is approximately £0.41 million per annum. This cost includes estimates for support staff, training and external engineering support, but the majority of the cost relates to regulatory staff costs. The number of staff required within the regulatory team will be dictated by the number of overall reservoirs that must register and thereafter by the risk classification that they fall into. In the Financial Memorandum it states that SEPA cost estimates are based on a figure of 1150 reservoirs being required to be regulated, of which 500 are currently unregulated reservoirs. Of these 1150 reservoirs an assumption has been made that 40% will be classified as ‘high risk’, 30% as ‘medium risk’ and 30% as ‘low risk’. If either the number of sites required to register or the split between risk categories altered then this would impact on the cost estimates. These costs include the additional duties SEPA will have when compared to those undertaken by local authorities under the 1975 Act, and the increase in number of reservoirs that will be regulated.

As noted in 2.2 above, the risk designation process is detailed and the requirement to review the risk designation of every controlled reservoir at least every 6 years could affect the overall number of staff required, depending on the complexity of the classification scheme.

A significant proportion of SEPA’s on-going costs should be recoverable as the Bill provides for Scottish Ministers by regulations to make provisions for SEPA to implement a charging scheme, both for the registration of sites and annual on-going charges, to limit the cost to the public purse. It is proposed that those sites posing the greatest risk and therefore requiring a higher level of regulation will be charged at a higher level than those posing a medium risk, with low
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risk sites not receiving a charge. However, this may result in higher risk sites subsidising the cost of the risk designation review process which currently applies to all sites.

SEPA remains concerned about the potential financial liability in the event of having to undertake emergency repairs and discussions are continuing with Scottish Government.

3 Reservoirs (Scotland) Bill Part 2 - General Comments

SEPA welcomes the draft Part 2 and that enactment of the provisions will play an important role in the restoration regime that is envisaged by section 22 of Water Environment and Water Services (Scotland) Act 2003.

James C Curran
Director of Science and Strategy
25 November 2010

WRITTEN SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

South Lanarkshire Council requests the Committee take cognisance of the following points whilst considering the proposed Bill;

1. Within the Bill SEPA will assume the role of enforcement authority, where local authorities are reservoir undertaker will there be charge by SEPA?

2. There is a proposal to reduce the reservoir threshold level from 25000m3 to 10000m3. Who will fund the capturing of this data?

3. With regard to the proposed classification system, how will this interact with future planning proposals which may fall within the catchment of an uncontrolled discharge from a reservoir?

4. An explanation of how a tiered supervision and inspection regime is funded is required.

David Beaton
Engineer Officer
25 November 2010

WRITTEN SUBMISSION FROM SRPBA

INTRODUCTION

The Scottish Rural Property and Business Association (SRPBA) is a membership organisation that uniquely represents the interests of both land managers and land
based businesses in rural Scotland. Our membership, which numbers around 3,000 in total and includes both those directly involved in active land management and professional members who advise clients, accounts for the majority of non-publicly owned land in Scotland.

The SRPBA welcomes the opportunity to provide our comments on the Reservoirs (Scotland) Bill. Many SRPBA members have reservoirs present on their land and the proposals made in the Bill could significantly affect them. The SRPBA recognises the importance of introducing legislation that adequately protects human life, property and critical infrastructure. However, we do believe that this legislation should be proportionate and not result in unnecessary bureaucracy and costs for land managers.

COMMENTS ON THE MAIN PRINCIPLES OF THE BILL

At the outset, the SRPBA would like to state that we welcome the replacement of the term "reservoir undertaker" with "reservoir manager".

1. Creation of a statutory framework for regulating reservoir safety supervised by the Scottish Environment Protection Agency (SEPA)
   The SRPBA believes that in order to ensure consistency of approach it is beneficial for SEPA to supervise this framework for regulating reservoir safety rather than individual Local Authorities. It will be essential that Local Authorities give SEPA all of the details that they currently hold on the reservoirs within their boundaries in order to build up a good national baseline of information. This will give SEPA a head start with collating information and will mean that reservoir managers do not have to supply duplicate information.

2. Requirements for reservoirs above a minimum volume capacity (10,000 cubic metres) to be registered with SEPA
   The SRPBA argued strongly against this proposal in our response to the "Reservoir Safety in Scotland" consultation. The SRPBA believes that the threshold stated in the 1975 Act (25,000 cubic metres) should be maintained. Dropping the threshold to 10,000 cubic metres will create unnecessary bureaucracy for smaller reservoir managers and will be off putting for small scale hydro projects which are not yet constructed. The only possible exception to the 25,000 cubic metres threshold would be new impoundments situated close to human habitation where topography would make a sudden release of water a genuine threat to human life.

   The SRPBA would like to stress that reservoirs between 10,000 and 25,000 cubic metres are often beneficial for the environment and help to reduce flood risk further down the catchment due to their water storage capacity. The additional regulation and administrative costs proposed in this legislation will be a disincentive to land managers to produce such environmentally useful water bodies. Additionally, it is necessary to be aware that these reservoirs are often already capital and maintenance expensive and by placing additional costs on their managers, they will be very unattractive to be involved with. If rural land managers are to make a real difference to tackling flood risk,
the Scottish Government should be promoting the creation of smaller scale reservoirs, not hindering their growth. The number of dam failures below 25,000 cubic metres is minuscule and likely future dam failures are not very high. Therefore, in these austere times, one must question the need to spend large sums of money regulating something which does not require regulation.

The SRPBA is also concerned about SEPA charging reservoir managers a fee in order to fund their administrative role as well as requiring the reservoir manager to incur the one-off cost of preparing a flood plan. Reservoir managers already have to pay a fee for CAR authorisation and this additional cost is unnecessary. It is not appropriate to place these financial burdens on private operators when the benefit is for the public at large.

The SRPBA is also unclear about how multiple reservoir managers will be dealt with. There is provision for reservoir managers nominating one of their number to represent all and there is a general obligation for the reservoir managers to comply with the provisions of the Act. However, it is possible that non-compliance by one reservoir manager prevents compliance by the others.

3. The introduction of a reservoir classification system which distinguished between high, medium and low risk reservoirs depending on the threat which they pose to human life, property and/or critical infrastructure
   The SRPBA agrees with the categorisation of reservoirs as being high, medium or low risk. Making the distinction between the different levels of risk will mean that the level of supervision and inspection required for individual reservoirs can vary accordingly.

   It is appropriate that a reservoir manager can apply to SEPA for a review of the designation assigned to their reservoir. However, it is not appropriate for SEPA to be permitted to charge a fee for this work if the risk level is not downgraded. This fee may put reservoir managers off requesting to have their risk level reviewed and result in them having to follow very stringent requirements and incur high costs unnecessarily.

4. Tiered supervision and inspection regime depending on reservoir classification
   The SRPBA agrees that the supervision and inspection regime must be proportionate with the risk posed by the reservoir. It is essential that low risk reservoir managers are not unnecessarily burdened.

5. The establishment of an independent panel of qualified civil engineers to provide technical expertise on the supervisory and inspection requirements created under this new framework
   Since the number of panel engineers operating in Scotland is already limited, the SRPBA agrees that it is important to avoid any major differences with England Wales. Therefore, the registration process to become a panel engineer should be the same in Scotland as in England and Wales.

6. Dispute referral and the right of appeal
The SRPBA welcomes the inclusion of a mechanism to resolve disputes. It is important that reservoir managers have the ability to challenge the requirements set out by a panel engineer when necessary.

The SRPBA also welcomes the inclusion of the right of the reservoir manager to appeal against the decision of SEPA to impose the requirement to pay expenses and also the amount of the expenses.

SRPBA
25 November 2010

WRITTEN SUBMISSION FROM SSE GENERATION LTD

We refer to your recent call for comments on the draft Reservoir (Scotland ) Bill regarding proposed changes to reservoir safety legislation. We have provided a response below.

SSE is the largest renewable energy generator in the UK. 61% of this energy comes from our hydro assets located in the North of Scotland. We operate some 80 reservoirs which come under the Reservoirs Act 1975.

SSE has taken an active role in the review consultation but finds itself repeating the same issues in an attempt to avoid allocating resource to feed duplicated Regulatory Authority processes. The focus should be to introduce these legislative changes without burdening existing responsible owners with excessive regulation, overly complex processes and additional costs. The current process has successfully regulated large dams for many years, in introducing this new legislation there is a danger that the new process may actually reduce the effectiveness of the existing legislation by being overly bureaucratic.

It is essential that these points are recognised and the principals of Better Regulation are followed. An example of where resources and costs are in danger of escalating is the testing of Flood Plans for reservoirs. The current proposals will cost industry many tens of thousands of pounds per site to develop and repeatedly test.

SEPA will administer the new system and should be given an explicit responsibility to minimise costs to industry by proving they have introduced a regime which follows the principals of Better Regulation. In these times of reduced budgets there is a real danger that the introduction of a new regime is taken as a revenue raising opportunity. SEPA have in past regimes (Controlled Activities Regulations) created self perpetuating work loads by interpretation of the Act’s intent without any demonstrable benefit to the water environment. This must not be allowed to happen with the standards for reservoir safety.
We are generally supportive of the key element of the proposed changes in reservoir safety legislation i.e. to introduce a more risk based approach to reservoir safety.

M.Noble
Generation civil O&M Manager
25 November 2010

**SSE Response to Reservoirs (Scotland) Bill**

**Introduction**
For clarity the issues of greatest concern have been tabularised.

<table>
<thead>
<tr>
<th>Clause</th>
<th>Definition</th>
<th>Interpretation</th>
<th>Impact</th>
<th>Solution</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(1)</td>
<td>Definition of a reservoir includes spillways, valves, pipes and any other thing which controls the collection of water into the reservoir</td>
<td>Technically this would mean all intakes and tunnels in an extended catchment. A significant change to 1975 Res Act</td>
<td>Not feasible to inspect many miles of tunnel and pipe not directly related to dam safety. Duplicates HSE remit.</td>
<td>Restrict to 'dam and appurtenant structures'</td>
</tr>
<tr>
<td>17-22</td>
<td>SEPA undertake risk evaluation independent of Inspecting Engineer</td>
<td>A current low risk reservoir may be assigned high risk by SEPA then an inspecting engineer tries to apply current flood categorisation.</td>
<td>Significant works required to meet a SEPA requirement disputed by the inspecting Engineer.</td>
<td>Guidance for Inspecting Engineers and SEPA (rewrite the Guide to the Reservoirs Act 1975)</td>
</tr>
<tr>
<td>17-22</td>
<td>SEPA undertake risk evaluation including Environment and Cultural Heritage</td>
<td>This is a significant change from the 1975 Act, duplicating the risk process in CAR licensing agreements.</td>
<td>Not directly related to dam safety and people. Significant works required</td>
<td>Remove these terms from the Bill.</td>
</tr>
<tr>
<td>43 - 46</td>
<td>Inspecting Engineer is appointed at all times</td>
<td>Currently only appointed for one inspection at a time.</td>
<td>Difficult to administer especially Inspecting Engineers often out of country</td>
<td>Remove requirement to appoint at all times</td>
</tr>
</tbody>
</table>
Requirement to comply with any direction in an Inspection Report

Maintenance issues are treated the same as matters in the interests of safety diluting the effectiveness of directions.

Grass cutting maintenance could have the same impact as structural instability, and prove.

Remove maintenance as a statutory requirement. Keep as current as a matter to be watched.

Supervising Engineer to supervise any proposed drawdown

Levels in reservoirs move up and down on a regular basis

Could impose unnecessary restrictions on normal hydro operation. Duplicates restrictions through CAR

Need to introduce the words “unexpected or significant drawdown”. Already identified in CAR

Guidance is required for users and the existing “Guidance to the Reservoirs Act 1975” should be rewritten.

WRITTEN SUBMISSION FROM TINTO RESERVOIRS LTD

GENERAL POINTS:

Tinto Reservoirs Ltd own two reservoirs registered under the 1975 Act.

Both reservoirs form a small fishery business established in 1992.

Since taking ownership of the reservoirs in 2002, I have diligently complied with all the legal requirements imposed by the current legislation. Appointed a Supervising engineer who carries out 6 monthly inspections and an inspection every 10 years carried out by a Panel Engineer. To say that these inspections are not risk based is misleading.

The very nature of the inspection is to identify possible safety problems in relation to the integrity of the structures and to advise the undertaker of work to be undertaken in the interest of safety, maintenance and monitoring.

An emergency plan is already in place, however an inundation plan would be a valuable tool to establish the effects of a serious breach on the surrounding area and whither the emergency plan requires to be revised.
While I agree with improvement in reservoir safety, the Bill changes the whole concept of the regulatory enforcement, placing an unfair burden on undertakers with private owners paying a disproportionate amount compared to the public bodies, who are publicly funded, so in effect the extra financial costs really doesn't effect them in reality. The public purse will pick up any added costs either directly or indirectly.

Not so in the case of the private owners, in particular the small rural business linked to the leisure/tourism industry/angling clubs/associations/micro hydro generation.

Larger business like energy companies etc will be able to recover any extra costs via their much larger customer base.

It is interesting to note that Scottish Water and Local Authorities share will be lower apparently with the full agreement of COSLA, and the private sector left with the highest burden.

SMALL/MICRO FIRMS IMPACT TEST
While there was reference in the Regulatory Impact Assessment about significant effects on small business or micro business, there is no indication in the Bill of any measures to assist private owners who just don't have the resources to finance the added expense that the Bill will impose.

LEGALAID IMPACT TEST:
The proposed appeal mechanism indicated in the Bill will be at a cost. Fees associated with lodging an appeal are only returnable if the appeal is upheld. Presumably legal aid will only be available to parties with no resources or the undertaker is faced with legal costs.

COMPETITION ASSESSMENT
No mention of mechanisms to help business and individuals are included in the Bill.

No mention of a burden being put on land values which will have a detrimental effect on the sale of capital assets.

FINANCIAL IMPACT OF INTRODUCING LICENCING SYSTEM FOR SMALL BUSINESS under this Bill,

Increased financial burden on small business:
Diminution in business and property values of reservoirs and associated business:
Total Loss of Capital Assets: (Decommissioning or Abandonment scenario) ***
Disadvantaging one section of business against another:
Presents a threat to owner’s rights and livelihood:

*** This could occur where an undertaker is unable to meet the costs abandons the reservoirs, in effect being forced into liquidation/bankruptcy. My understanding is that
SEPA would have to pick up the costs to either undertake the remedial work or pay for Decommissioning/Breaching. Given that the company is no longer in being, who then are SEPA going to recover the cost from.

Footnote:
The undertaker finishes up with a criminal record, fined and/or imprisoned for not complying with enforcement notices because he hasn’t the financial means to undertake the work, **when did being insolvent become a criminal offence.**

(This proposed legislation may infringe both my civil and human rights)

Through no fault of my own, my property assets are seized, which in my case is a pension plan to supplement my income in retirement by selling the business and property assets.

**Impossible Situation**
Provision requires to be made regarding this impossible situation, either in the form of grants/loans to the undertaker or an option for small business/angling clubs etc to be compensated by means of compulsory purchase or buyback scheme, taking the reservoirs back into public ownership. (see: Failure of Government)

**Decommissioning Costs**
Estimated cost, of decommission a reservoir of similar size to mine £300,000.

**Costs Projection: on high risk category reservoirs 25K & above.**
Estimated One Off costs £15,000
Estimated Annual costs £15,300
The business wouldn’t be able to meet these costs and would probably lead to administration as my only option, so as to avoid prosecution for non compliance.

**Failure of Government**
This situation was going to happen sooner or later as a result of the Water Authorities being allowed to sell of redundant reservoirs to the general public, people with limited resources, was always going to be a recipe for disaster. They should have been decommissioned or breached by the water authorities and where this was not possible because of possible effects on ecological grounds etc, then transferred to Scottish Natural Heritage or some other publicly funded body, keeping them in the public ownership.

A public resource was given away for a pittance, due in the main to the lack of maintenance over the years by the previous water authorities to a stage that remedial costs then became the over riding factor and rather than address this, the easy option was get rid of them.

**For Background Information:**
I didn’t buy the reservoirs at auction, I knew exactly what the responsibilities were and didn’t want anything to do with them. I already owned the fishing and wildfowling rights, I had nothing to gain, however they were purchased by a third party not aware of what he was taking on, once he realised his error, he then tried offloading to anyone he could and I was faced with a situation where prospective purchasers were making backhanded threat of what they would do and wouldn’t.

The threats would have impacted on my fishery business, so in effect had little choice other than to purchase to avoid a constant conflict and protect my business interest.

I have spent the last 8 years undertaking the remedial work and spending in the region of 75% of my annual income from the business, bring the reservoirs up to the required standard that they were able to pass the 10 year inspection in 2009 and there being no safety issues arising from that inspection.

Now I maybe faced with closure, because I am unable to meet the proposed new financial burden and with the possibility of losing my property.

No I am not a happy citizen by any means, when the state can undermine my livelihood, disadvantage me, makes me a potential criminal, possible bankruptcy and infringe my basic rights.

THESE ARE ISSUES THAT REQUIRE IMMEDIATE INVESTIGATION PRIOR TO THE BILL BEING INACTED INTO LAW.

I WOULD ALSO SUGGEST THAT GOVERNMENT TAKE ACTION TO ENSURE THAT NO OTHER REDUNDANT RESERVOIR IN PUBLIC OWNERSHIP, ARE DISPOSED OFF IN THIS WAY.
(This would be a positive action to reduce the risk factor in the future)

CIVIL ENFORCEMENT, RELATED OFFENCES AND EMERGENCY POWERS
I have grave concerns about the powers being devolved to SEPA in effect the transfer of power from the courts. SEPA will determine what is “beyond reasonable doubt”

No mention of mitigating circumstance for non compliance.

Not clear who will hear the appeal, but given that a fees will be payable to SEPA, then it’s fair to assume that they will administer the appeals procedure themselves. This being the case, surely there is a conflict of interest in hearing appeals against there own decisions.

To appeal a decision, a fee is charged, presumably, NO FEE, equate to NO APPEAL Equates to denial of NATURAL JUSTICE:
SEPA effectively becomes judge & jury in the first instance.
Many small business and angling clubs etc, will not have the resources to meet legal fees in defending themselves, there are no provision in the Bill making legal aid available in these cases.

**Inundation Plans**
There is no mention in the costing for inundation plans being prepared. The cost in England/Wales was £2.3M to undertake 2092 reservoirs. Scotland with 950 will equate to £1.4m. There are no reference to the actual costs for inundation plans in the documents which is surprising given the current financial constrains government is facing.

**Flood Prevention:** £32.1m spent 2007/08 of public money on flood prevention etc in Scotland, how much of this was spent on reservoirs, if they present such a threat.

**Reservoir Safety**
It is perceived now that all reservoirs present a threat, follow the Ulley incident, but would respectively point out the dam didn't fail and there have been no such instances in the past 80 years. The proposed system of High, Medium or Low risk categories is based on the loss of life; damage etc is a false premise to start from and may actually be misleading. Categorising is no guarantee that a low risk reservoir won't fail.

The real RISK ISSUE is the integrity of the structure, how it is managed, maintained, holding capacity, catchments area, and monitoring regime. Any categorisation should be based on these factors, which is a tried and tested system, or you automatically build in an unfair bias against reservoirs which are situated closer to people and property which may never have, or will posed a threat of any sort in the future.

No matter how well reservoirs are maintained or how they are categorised there is the unknown factor of what mother-nature will deliver and no amount of Risk Assessment is ever going to outwit her, as is the case in river and costal flooding, earth quakes etc.

**Emergency Planning:**
On checking with my Local Emergency Planning Dept, indicated we don’t even figure in their plans as reservoirs are considered a low risk.

**Unfair Competition:**
When we opened 18 years ago, there was only one other commercial fishery in the area, but with farm diversification scheme (government funded) commercial fisheries start popping up all over the country. No consideration was given to the financial impact that this would have on existing fisheries.

Scottish Water (government funded) decided rather than provide the fishing themselves, they leased these out to members of the public adding again to the number of commercial fisheries (again no financial impact assessment on existing business) as a public body they should have been duty bound to do so.
I have no objection to leases to constituted angling clubs or associations which are run on a non-profit basis. This course of action would have at least lessened any impact on existing business.

The rural grant system doesn’t as far as I can ascertain offer substantive support to businesses like mine, but at the same time farm diversification grants cut across area’s that reservoir undertakers could benefit from.

Example: boundary stock fencing, hydro, holiday letting accommodation, conservation measures and leisure activities to mention only a few.

If we wish to diversify, then we have to do it with our own resources. I would categories this as unfair competition instigated but government.

I cannot equate the government policy of a wealthier and fairer Scotland having been applied in these instances, not from my perspective.

The proposed changes in legislation, pose a serious threat to my rights, livelihood, business and property values and would respectfully request that the members of the Committee take due cognisance of the points made.

I have tried to be positive in my approach to the proposal and while I fundamentally agree that safety of reservoirs is an important issue. The introduction of this legislation without some provision for small business would be inequitable.

No specific mention is made about Impact on small businesses in the Policy Memorandum and would draw your attention to

9.2 Regulatory Impact Assessment:

“These proposals are unlikely to have significant impact on competition. We accept that certain reservoirs may initially require more expensive measures to be undertaken to secure compliance. However, mechanisms to help business and individuals are being investigated to minimise the impact of this”

Two questions:. UNLIKELY: for who? MECHANISMS: none are mentioned, why not?.

An aspect not mentioned in the Memorandum but which appear in SEPA Board Meeting Minute, dated 9/11/2010 Ref. 50/10 par. 3/4 makes reference to Compulsory Insurance, Bonds. Will this be another financial burden placed on all reservoir undertakers, or just the one’s in private ownership.

I make no apology for deviating from the specific contents of the Bill. I feel the issues highlighted are real and very serious one’s and will afford the Committee a fuller understanding of the impact of the new legislation on small business and angling bodies etc. which the Policy Memorandum fails to address.
I would respectfully urge Members of the Committee to consider some form of financial assistance to small business, angling clubs as well as owners in the category 10K to 25K who are being brought into the regime for the first time.

John Reid, Director
Tinto Reservoirs Ltd.
25 November 2010

WRITTEN SUBMISSION FROM WEST LOTHIAN COUNCIL

West Lothian Council’s draft response to the Scottish Parliament’s Rural Affairs and Environment Committee’s call for views on the Reservoirs (Scotland) Bill.

1.0 Introduction & background

1.1 West Lothian Council currently has eight Large Raised Reservoirs in its administrative area, a number which has reduced in recent years during which several have been taken outwith the ambit of the Act following engineering work to render them incapable of holding more than the statutory 25,000 cubic metres of water. These actions have generally been taken by operators to minimise the very significant costs associated with the supervision and inspection of reservoirs, which exceed the current statutory threshold.

1.2 The council owns two reservoirs. Beecraigs is a Large Raised Reservoir, which currently falls within the ambit of the existing legislation. Eliburn Reservoir used to be a Large Raised Reservoir but was engineered by Livingston Development Corporation some years ago to limit its capacity. No flood plans have previously been prepared for either of these structures.

2.0 The Council’s Views

2.1 The council agrees with the proposal to transfer its current role as ‘Enforcement Authority’ under the Reservoirs Act 1975 and that of other local authorities in Scotland to SEPA. Its support is with the aim of promoting consistency and, in particular, to ensure to that Scottish Water, a national organisation and the largest owner and operator of reservoirs in Scotland, is regulated fairly and consistently.

2.2 The principle of revised and risk-based reservoir safety legislation is strongly supported. The need to review the existing legislation is overdue particularly in the context of changing trends in the ownership of Large Raised Reservoirs in Scotland, the impact of our changing climate and the ageing nature of these important and potentially dangerous structures.
2.3 The proposed requirement for reservoir undertakers to produce on-site flood plans is supported. The council considers the risk-based approach to be well reasoned given the potential impact of an uncontrolled release of water from such structures however small that risk might be.

2.4 The proposed approach to align reservoir safety legislation with the Water Environment Controlled Activities licensing arrangements should help minimise costs.

2.5 The Council considers it critical that the cost of introducing new legislation and regulating the safety of reservoirs remains proportionate to the benefit to society at large. The more that relevant processes can therefore be integrated with the SEPA’s existing activities, the better in terms of minimising duplication, reducing the number of processes and minimising regulatory costs.

2.6 If SEPA later determines that either of the reservoirs owned by local authorities or Scottish Water were to constitute high-risk structures the additional statutory burden would result in a significant revenue cost pressures.

The Scottish Government would be expected to provide additional funding to offset the cost of additional regulatory burdens particularly where these are associated with the more stringent regulatory requirements associated with structures later deemed by SEPA to present a high-risk.

2.7 Flood plans must, as a minimum, include a reasonably accurate representation of infrastructure that would potentially be at risk downstream, the sensitivity of these receptors and the political, economic, social and environmental implications of inundation.

Where serious risk of infrastructure or proposed development identified within Local Plans is identified, careful consideration would need to be given to the potential impact. Guidance is needed as to how situations such as this should be handled by planning authorities.

2.8 The proposed new 10,000 cubic metre statutory volume is considered arbitrary. Risk has as much to do with location, head and velocity than volume alone. Risk may equally be posed by localised rainfall exceeding the capacity of a structure as assumed failure. The latter has no bearing on permanent capacity.

Determining the actual volume of a reservoir can be challenging in the absence of construction drawings or a plumbed-depth survey. Most reservoir undertakers no longer have construction drawings for their reservoirs.
2.9 The principal of charging for the regulation of reservoirs concerns the council. The proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of complying with said regulation. Given the changing dynamics of reservoir ownership in favour of small businesses such as fisheries and those promoting the shooting of game, this is not regarded as sustainable, particularly in the current economic climate.

Increased risk associated with development downstream of the structure is outwith the control of reservoir operators and yet it is the operators that will have to pick up the additional costs in the event of a reservoir risk rating being changed when their license is reviewed by SEPA.

2.10 The number of occasions where the regulator needs to intervene in a practical way due to the failure of a reservoir operator is expected to be minimal. However, this might well increase over time given the changing dynamics of reservoir ownership and the age / condition of the structures and the maintenance regimes or absence of them. It is only right that the relevant reservoir operator meets the cost of personal or corporate failure. However, it is anticipated that the circumstances when such intervention will be necessary will relate to individuals with insufficient capital and recovery of costs could be challenging and potentially controversial.

In promoting the Bill, the Scottish Parliament needs to be mindful of the economically delicate nature of some of the businesses, which are now responsible for reservoirs and reservoir safety. There are limited commercial returns from fishing and the shooting of game for example.

Where landowners are not the reservoir undertakers, responsibility for the reservoir and compliance with reservoir safety legislation is often included in leases. The council considers that this might sometimes represent an unfair burden given the scale of investment that might potentially be necessary when work becomes necessary in the interests of safety.

In considering the merits of the risk-based approach to reservoir safety and the introduction of enabling legislation, members of the Scottish Parliament need to be mindful of the fragile economic viability of some flood plans for example which the Financial Memorandum estimates will cost between £2.5K and £25K. Over recent years, water authorities and other public bodies have rationalised their asset base and divested themselves of unwanted assets to the highest bidder. Many structures have been purchased as fisheries or for the shooting of game. Many new owners and operators may struggle to meet the cost of preparing associated with a reservoir and necessary in the interests of safety. The added burden, particularly for those structures later deemed by SEPA to be high-risk in nature have the potential to undermine the viability of some business and leisure interests. Under the new legislation,
actions by SEPA to recover any costs that it incurs in securing compliance could potentially send such businesses into administration.

2.12 There are wider concerns that the proposals appear to shift the cost of regulation, currently met from general taxation and council tax, to those operating reservoirs that also have the burden and potentially increased costs of compliance. Given the changing trends in reservoir ownership in favour of small businesses such as fisheries and for game shooting, this is not regarded as sustainable, particularly in the current economic climate.

3.0 Conclusion

3.1 The council is supportive of the general principles of the Bill. In its response to both this and the Financial Memorandum it urges caution in terms of ensuring that the cost of administering the legislation remains in proportion to its benefit, that very careful consideration be given before passing on the regulator’s costs onto reservoir operators or otherwise increasing the financial burden associated with compliance on local authorities and small / medium enterprises.

West Lothian Council
15 November 2010
The Reservoirs (Scotland) Bill seeks to create a legal and administrative framework for the construction and management of controlled reservoirs in a manner that reduces the risk of an uncontrolled release of water from reservoirs and the consequences of any subsequent flooding.
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EXECUTIVE SUMMARY

- Part 1 of the Bill seeks to create a framework for the construction and management of reservoirs to reduce the risk of an uncontrolled release of water and the consequences of subsequent flooding. Part 2 of the Bill provides for the creation of offences to support the Water Environment and Water Services (Scotland) Act 2003. These are not connected to Part 1
- 80% of reservoirs in Scotland are created by embankment dams; most reservoirs are over 100 years old
- Scottish Water, Scottish and Southern Electricity, private landowners, angling clubs, distillers and local authorities will all be affected by this legislation
- At present, reservoirs holding 25,000m$^3$ of water or more are controlled by the Reservoirs Act 1975. Under the proposed regime, this will reduce to reservoirs holding 10,000m$^3$ or more
- Individual reservoir managers are deemed to be responsible for complying with most of the Bill’s requirements, with SEPA as the enforcement authority, as opposed to individual local authorities under the current regime
- SEPA is required to take the probability of an uncontrolled release of water, and the potential consequences into account, then give relevant reservoirs a provisional risk designation (high, medium or low) as soon as is reasonably practicable following their registration by reservoir managers
- Thereafter, structures deemed to pose a high risk will have a greater level of regulation than those deemed medium or low
- A panel of engineers, established in consultation with the Institute of Civil Engineers, will be established to regulate the construction, alteration, supervision or inspection of relevant structures. Reservoir managers must also comply with a series of requirements, including incident reporting
- Scottish Ministers are enabled to make provision in regulations for the preparation of flood plans which set out the action to be taken by the reservoir manager in order to control or mitigate the effects of flooding likely to result from any escape of water
- SEPA are enabled to enforce a series of civil sanctions, if it considers, beyond reasonable doubt, that an offence has been committed by a reservoir manager under Part 1 of the Bill
- The Scottish Government’s Analysis of Consultation Responses shows that stakeholders are broadly supportive of the legislative proposals
- Part 2 of the Bill has been consulted on, however responses to this have not been published
INTRODUCTION

The Reservoirs (Scotland) Bill (the Bill) was introduced in the Scottish Parliament on 6 October 2010. The Rural Affairs and Environment Committee has been designated lead committee for consideration of the Bill at Stage 1. The Bill seeks to create a legal and administrative framework for the construction and management of controlled reservoirs\(^1\) to reduce the risk of an uncontrolled release of water and the consequences of any subsequent flooding.

The Bill also provides for the creation of offences to support the Water Environment and Water Services (Scotland) Act 2003 (asp 3). These provisions are not connected to those relating to reservoir safety.

This briefing outlines relevant current responsibilities and legislation and recent government work. It discusses the provisions of the Bill, as well as consultation responses, and other related issues.

CURRENT LEGISLATION AND REGULATIONS

The Reservoirs Act 1975 (c.23) (the 1975 Act) sets safety requirements to prevent escapes of water from Large Raised Reservoirs (LRR). These are defined as holding more than 25,000\(m^3\) of water above the natural level of the surrounding land. It imposes duties on “undertakers” who own, operate or use LRR. The Act regulates maintenance, inspection and structural changes to these. At present, local authorities have responsibility for enforcement of the provisions of this Act.

The Flood Risk Management (Scotland) Act 2009 (asp 6) (the 2009 Act) amends the 1975 Act in Part 7 by inserting provisions (not yet commenced) which:

- transfer enforcement responsibility for compliance with the 1975 Act from individual local authorities to the Scottish Environment Protection Agency (SEPA)
- require the production of flood plans by the reservoir manager or other person
- introduce compulsory post incident reporting
- extend the enforcement authority powers
- apply the Reservoirs Act 1975 to the Crown

The Water Environment and Water Services (Scotland) Act 2003 (asp 3) (the 2003 Act) transposes the EC Water Framework Directive (2000/60/EC) (WFD) into Scots law. The WFD established a framework to improve Europe’s water environment by implementing River Basin Management Plans (RBMP) to identify measures to manage impacts on the water quality of rivers, lochs, groundwater, transitional waters and wetlands. The RBMP process has identified that around 40% of Scotland’s water bodies do not meet the WFD’s “good status” objective. The 2003 Act empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, it did not provide for the creation of offences in respect of such regulations.

The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) have been made under the 2003 Act. These require authorisation for activities such as abstractions.

\(^1\) As defined on p9.
from surface and groundwater; engineering activities in, or in the vicinity of rivers, lochs and wetland which are likely to have a significant adverse impact upon the water environment; any other activity which directly or indirectly is liable to cause a significant adverse impact upon the water environment.

The Buildings (Scotland) Act 2003 (asp 8) sets out the framework for a building standards system in Scotland. This applies to the construction of dams.

The Civil Contingencies Act 2004 (c. 36) creates a single UK framework for civil protection. It focuses on establishing statutory roles and responsibilities for local responders; and on emergency powers and special legislative measures that might be needed to deal with most serious emergencies.

CURRENT SITUATION, ROLES AND RESPONSIBILITIES

Reservoirs are artificial structures created to reserve water above its natural level for a number of purposes including drinking water, hydro power, agriculture, flood management and recreation. At present, there are more than 1000 reservoirs in Scotland, many of which are key components of the water supply regime. Of these, over 650 have a volume of more than 25,000m$^3$, and come under the 1975 Act. About 80% of these dams are embankment dams, with the remainder being concrete dams and service reservoirs. Most are over 100 years old (Policy Memorandum).

Figure 1: Example of a concrete dam; Blackwater, Kinlochleven (Photo: R Maclean)

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2 Embankment dams are made mainly from natural materials. The two main types are earthfill and rockfill. Earthfill dams are made up mostly from compacted earth, while rockfill dams are made up mainly from dumped and compacted rockfill. The materials are usually excavated or quarried from nearby sites, or from within the reservoir basin (British Dam Society 2010).

3 A service reservoir is a water storage container that holds clean water after it has been treated in a water plant, and before it is piped to the end users. These containers are covered, and are designed to keep the water safe from contamination. Their main purpose is to provide a buffer within the water supply system so that water supplies can be maintained across periods of varying demand (Open University 2010).
Scottish Water is the largest reservoir owner in Scotland. At present it has 248 structures regulated under the 1975 Act. Under the provisions of the Bill, this will exceed 300. Scottish and Southern Energy is Scotland’s largest supplier of electricity from hydro-power, and has 80 structures regulated under the 1975 Act. Under the provisions of the Bill, this will exceed 90. Other stakeholders who will be affected by the provisions of the Bill include private landowners, angling clubs, distilleries and local authorities. A list of local authorities and the number of reservoirs in their area is included at Annexe A. Briefly, in the top three, Highland has 127 reservoirs, Argyll and Bute has 76, and Perth and Kinross has 55.

Before 1930, there were a number of dam failures in the UK which resulted in loss of life; including Skelmorlie in North Ayrshire which saw the failure of a 24,000m$^3$ reservoir killing five people in 1925. Since 1930, there have been no dam failures in the UK involving loss of life, although some small dams have failed. The most common causes of failure of embankment dams are overtopping (overflow) or internal erosion (Scottish Government 2010a). However, the Scottish Government (2010a) have said that:

“…a number of incidents have occurred which have given cause for concern about the robustness of the current system. An incident which occurred at the Maich fishery in Renfrewshire in 2008 required emergency response procedures to be activated and an area downstream to be evacuated. This reservoir did not come under the ambit of the 1975 Act.”

Current legislation (the 1975 Act) only applies to LRR holding, or capable of holding, more than 25,000m$^3$ of water above the natural level of the surrounding land. This, however does not take into account the level of risk posed by the reservoir, nor does it allow 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.” (Policy Memorandum)

Key players in the current regime of reservoir safety and their relationship to each other are set out below:

- **Reservoir Undertakers/Managers** (usually the owners) have ultimate responsibility for the safety of their reservoirs and associated structures (e.g. spillways and embankments). They must appoint a Panel Engineer who supervises and carries out periodic inspections to ensure structural integrity. A Panel Engineer must also be appointed to design and construct a new reservoir or repair/change an existing reservoir.

- **The Reservoir Panel** is set up by the UK Secretary of State for Environment in consultation with the Institute of Civil Engineers (ICE). The institute oversees its members who undertake the inspections, and recommends whether a member should be a panel engineer (N.B. Not all engineers are the same. It requires a higher level of expertise to be an inspecting/construction engineer. Most inspecting engineers are also supervising engineers).

- **Local Authorities** have responsibility for enforcement of the 1975 Act. This includes maintaining registers of information about LRR (over 25,000m$^3$), powers and duties to require undertakers to comply with the Act, as well as reporting to Scottish Ministers. Failure to comply is a criminal offence and triggers a power for the authority to carry out the work itself and recover the costs from the undertaker.

- **SEPA** has been given the power of enforcement authority under the 2009 Act, removing responsibility for regulating LRR from local authorities. However the relevant provisions of the Act have not yet commenced. Under CAR, SEPA is the licensing authority, and
regulates any activities which are likely to have a significant adverse impact upon the water environment.

- **Scottish Ministers** have responsibility for ensuring the 1975 Act is enforced by local authorities. Reservoir safety is a devolved matter for the Scottish Government, however the operation of the “panel” system, is currently administered on a UK basis by Defra. Under the 2009 Act, Ministers can also make incident reporting regulations and require reservoir undertakers to prepare flood plans, or to repair/change an existing reservoir.

- **Strategic coordinating groups** are led by the Chief Constable and local authority chief executives across eight Scottish areas. These groups lead responses to flooding events, and are responsible for developing detailed plans for all types of incidents. These are exercised regularly and all groups have experience of dealing with different types of emergencies. A number of organisations contribute to delivery of the plans, including local authorities, emergency services and SEPA.

### RELEVANT SCOTTISH GOVERNMENT CONSULTATIONS

**Reservoir safety**

In February 2008, the Scottish Government launched a consultation on “The Future of Flood Risk Management in Scotland”. This sought responses on subjects relating to planning and preparing for flooding, as well as key Bill provisions (Scottish Government 2008). It requested information on a number of matters, including proposals to transfer responsibility for enforcement of the 1975 Act from local authorities to a single enforcement authority, SEPA.

The Flood Risk Management (Scotland) Bill was passed by Parliament on May 13, 2009 and received Royal Assent on June 16, 2009. As previously noted, the 2009 Act contained a provision (in Part 7) to create a single enforcement authority for reservoirs. Two commencement orders have come into force for the majority of the 2009 Act; Part 7 (Reservoirs) is expected to be commenced in 2011.

In January 2010, “Reservoir Safety in Scotland: A Consultation Document” was launched. This sought views on a number of subjects, including the implementation of Part 7 of the 2009 Act as well as proposed Regulations under sections 88 and 89 which provide for incident reporting at reservoirs to the enforcement authority, and the preparation of reservoir flood plans (Scottish Government 2010a).

The consultation further proposed to introduce a more risk-based approach to reservoir safety by:

- placing a requirement for all reservoirs above a minimum volume capacity (10,000m³) to be included on a SEPA register
- requiring SEPA to classify each reservoir according to whether it poses a threat to human life, property and critical infrastructure
- requiring reservoir undertakers to comply with the new regime which will vary depending on risk
- imposing new duties on reservoir undertakers
- amending the role of Panel Engineers
A report (Scottish Government 2010b) containing analysis of the 67 consultation responses as well as the discussions from four workshops held in Inverness, Edinburgh, Glasgow and New Galloway states that:

“…responses generally supported proposals for reservoir flood plans, incident reporting and a risk-based approach to reservoir safety. There were some concerns about some of the detail […]. 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.

These concerns are discussed in more detail below.

**Creation of offences under WEWS**

The Scottish Government consulted on Scotland’s Waters: Future Directions (2009a) and Restoration of the Water Environment (2009b) alongside draft RBMPs. These documents highlighted a gap in the delivery framework of WEWS, and proposed a strategic approach to river basin restoration, underpinned by proposals for new regulatory powers. In particular, the Scottish Government (2009b) proposes a “tiered set of regulatory powers” for SEPA; furthermore, it notes that “SEPA already has similar powers under a number of regulatory regimes, including CAR and in relation to Special Sites under the contaminated land regime”. There is no specific mention made of the creation of offences.
THE RESERVOIRS (SCOTLAND) BILL

This section details the provisions of the Bill, and considers these provisions in relation to responses to the Government consultation.

PART ONE

This part sets out a new regulatory regime for the safe construction and operation of reservoirs in Scotland, and makes provision in the following main areas:

- definition of controlled reservoirs, and their compulsory registration by managers
- classification of each reservoir according to risk
- regulation, supervision and inspection of controlled reservoirs by panels of engineers
- requirement for incident reporting, flood planning, and for SEPA to enforce the provisions of the Bill

Definition of controlled reservoirs, and their compulsory registration by managers

Under Chapter 1, the definition of a controlled reservoir is determined in sections 1 and 2 to include any of the following areas “capable of holding 10,000m$^3$ or more of water above the natural level of any part of the surrounding land”, including associated infrastructure e.g. spillways, valves and pipes:

- structures designed or used for collecting and storing water
- artificial or partly artificial lochs and other artificial areas
- individual structures where a combined capacity or flow amounts to 10,000m$^3$

With regard to combined capacity or flow, the Explanatory Notes state:

“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.”

Section 1(4) enables Scottish Ministers to treat particular reservoirs as controlled, even if they fall outwith the 10,000m$^3$ definition, where there are particular concerns about the risk posed by that structure. Specific exclusion from regulation is also applied, in section 2(2), to structures such as canals and weirs, which are covered by existing legislation.

Individual reservoir managers are deemed to be responsible for complying with most of the Bill’s requirements, and section 3 sets out who these are. Depending on different factors, this might be Scottish Water, the business (or businesses) who use the reservoir, the lessee, or the owner(s). Section 3(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, unless they are also lessees or owners. There is potential for duplication where multiple businesses use a reservoir, therefore section 4 provides for one to be nominated to reduce the administrative burden, and to avoid confusion over responsibility.
Further sections place a duty on reservoir managers to cooperate (s5), enable Scottish Ministers to direct SEPA to publish guidance on controlled reservoirs (s6), and repeal the 1975 Act (s8).

Chapter 2, section 9 requires SEPA to establish and maintain a register of controlled reservoirs to include name, location, maximum capacity, contact details for reservoir manager, copies of any relevant documentation, and an outline inundation map showing the area of land which, in the event of an uncontrolled release of water, would be likely to flood. SEPA would prepare these initially to enable them to carry out the risk assessment under sections 17 to 22; copies of these will be provided to the reservoir managers and they will inform the flood plans they will be required to prepare under Chapter 7.

Under section 16, it will become an offence for a reservoir manager to fail to comply with specified registration requirements, allowing for a maximum penalty not exceeding level 5 on the standard scale. 4

Further sections in Chapter 2 require reservoir managers to register with SEPA (s10), and if Scottish Ministers make provision by regulation under section 14(4), for:

- SEPA to charge for registration
- SEPA to publish guidance on registration in consultation with ICE

Consultation Responses

The Scottish Government’s Analysis of Consultation Responses (2010b) showed that the most contentious issue of the proposed legislation is the 10,000m$^3$ minimum capacity threshold. Around half of the respondents disagreed with the proposed figure, for various reasons. Many of these felt that there was insufficient detail as to the figure’s origins, and it therefore appeared too low. However, responses from local authorities generally accept the proposed figure as reasonable and appropriate. A rationale for the 10,000m$^3$ threshold has subsequently been published (Scottish Government 2010b) which shows that the “figure was determined following advice from the sector, specifically ICE”.

The administrative and financial burden imposed by the Bill is a major concern for many of the consultation respondents. It is widely felt that the registration process should have minimal cost implications or that the costs should be covered by SEPA, who should also strongly support registration work to lower the burden on managers. Many respondents felt that there should be no charge imposed whatsoever, or that there should be an initial period of free registration. Some believed that charging should be proportionate to risk/consequence.

Classification of each reservoir according to risk

Chapter 3, sections 17, 18 and 21 require SEPA to give relevant reservoirs a provisional risk designation (high, medium or low) as soon as is reasonably practicable after their registration, taking into account the probability of an uncontrolled release of water, and the potential adverse consequences on a number of factors, e.g. human health, the environment, and critical infrastructure. Reservoir managers then have two months to make representations to SEPA regarding the initial designation. Thereafter, having taken account of any representations from

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4 £5000
the reservoir manager, SEPA must give a “first risk designation”, alongside the reasons for that designation; against which, reservoir managers have a right of appeal.

Section 19 requires SEPA to periodically review the risk designation, at least every six years, or sooner should they believe that it is no longer appropriate. This is to allow SEPA to consider updated flood risk assessments, maps and plans under the 2009 Act and ensure the risk classification is based on the most up to date information. The same process of representation and right of appeal applies. Section 23 allows for SEPA to publish guidance on risk designations.

Consultation Responses

The classification and regulation of each reservoir according to risk is an updated version of the current UK wide system, and was supported by most respondents to the consultation (Scottish Government 2010b). The Scottish Government (2010b) states that:

“A shift to a combined risk and consequence approach is more sophisticated than a simple de minimus threshold, and many respondents identify that this reflects the need to consider the complex realities around reservoir undertaking. Generally, a risk-based approach is preferred…”

Furthermore, “an approach which considers both risk and consequence […] is supported by the vast majority of respondents”. There was no consensus amongst respondents about whether certain reservoirs should be made exempt from classification.

Therefore:

“Those sites deemed to pose a ‘High’ risk would have a greater level of regulation and control that those deemed to be ‘Medium’ or ‘Low’ risk. In this way it would ensure reservoirs are regulated appropriately in relation to the risk they pose to human safety. Risk classification would be re-assessed on a regular basis, possibly every six years, to tie in with the Flood Risk Management (Scotland) Act to ensure the most up-to-date information is used in assigning risk classification.” (Scottish Government 2010b)

Regulation, supervision and inspection of controlled reservoirs by panels of engineers

Chapter 4 makes provision for the establishment of one or more panels of reservoir engineers, in consultation with the Institute of Civil Engineers, and sets out the process for appointing or removing engineers from the panel.

Chapter 5 regulates the construction or alteration of controlled reservoirs by requiring the appointment of a panel appointed construction engineer to oversee, report on, and certify the works. These include restoration to use, discontinuance and abandonment. SEPA must be notified at least 28 days in advance of any works commencing.

Sections 32 to 42 of Chapter 5 make provision for a system of inspection and reporting by panel engineers. This allows for the issuing of safety reports, preliminary certificates, construction certificates and final certificates, depending on the work carried out. These are issued to both the reservoir manager and SEPA. Consequently, failure to comply with certain requirements of this chapter constitutes an offence. For example, a reservoir manager who does not notify SEPA of relevant works or the appointment of a construction engineer might incur a maximum
penalty not exceeding level 5 on the standard scale\(^5\) for a high-risk reservoir. Non-compliance with a safety report or other relevant certificate might incur imprisonment for up to three months if tried in the sheriff court. Acceptable defences are also set out as; if the person can show that failure to comply was as a result of an unforeseen accident, natural cause or force majeure, and that all practicable steps were taken to:

- prevent an uncontrolled release of water
- rectify the failure
- provide particulars of the failure to SEPA as soon as practicable

Chapter 6, section 43 requires managers of high or medium risk reservoirs to appoint an inspecting engineer from the panel created under section 25, and to give notice of this appointment to SEPA within 28 days.

Thereafter, sections 44 to 46 allow for a regime of inspection of high risk reservoirs to be carried out within two years of a final certificate being issued; at any time recommended by the supervising engineer; and within 10 years of the last inspection. Inspections of medium risk reservoirs should be carried out as recommended by the supervising engineer.

Panel engineers, having carried out the inspection should supply reservoir managers with an inspection report, and compliance certificates. Likewise, reservoir managers should supply engineers with their final certificates, and most recent inspection reports (if they exist). Inspection reports are to include any measures the inspecting engineer considers should be taken:

- in the interest of safety
- to maintain the reservoir

The report should also specify whether any of the measures from the previous report are not included in the current report and why. Thereafter, the report should direct the manager to carry out the specified measures within a certain period of time, detail the timing of the next inspection and any matters that should be monitored by the supervising engineer until that occurs. Reservoir managers are obliged to comply with these directions, and inspecting engineers are required, having been satisfied that the directed measures are complete, to issue an interim inspection compliance certificate to both reservoir manager and SEPA. The Policy Memorandum states:

"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."

Sections 47 to 51 allow for a supervising engineer, appointed from the panel established under section 25, to be in place at high and medium risk reservoirs at all times, unless it is under the supervision of a construction engineer. This supervising engineer is required to:

- notify the reservoir manager of any matters which could affect the safety of the reservoir
- monitor compliance with the final certificate

\(^5\) £5000
• 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
• monitor the reservoir manager’s compliance with further provisions on recording water levels and record keeping

These provisions on recording water levels and record keeping require the reservoir manager of high and medium risk reservoirs to maintain a record of:

• water levels, depth of water, including flow of water over any waste weir or overflow
• leakages and or repairs
• settlements of walls or other works
• any other matters as specified by Scottish Ministers by regulation

Further provision (s49(3)) enables construction, inspecting or supervising engineers to direct the reservoir manager as to the manner in which the records are to be kept and how often they should be updated, as well as requiring the reservoir manager to install any instruments necessary to allow relevant information to be recorded.

Failure to comply with the provisions of Chapter 6, such as:

• appointment of supervising engineer, or of inspecting engineer and carrying out of required inspections
• notice of appointment to SEPA
• compliance with direction as to taking of measure in inspection report
• compliance with direction of supervising engineer as to carrying out of visual inspection of reservoir
• maintenance of record of water levels etc
• giving inspecting engineer copy of final certificate and latest inspection report

renders a manager of a high-risk reservoir liable on summary conviction to a fine not exceeding level 5\(^6\), and a manager of a medium-risk reservoir is liable on summary conviction to a fine not exceeding level 4\(^7\).

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\(^6\) £5000
\(^7\) £2500
Acceptable defences are also set out in section 51 as; if the person can show that failure to comply was as a result of an unforeseen or natural cause, or force majeure, and that all practicable steps were taken to:

- prevent an uncontrolled release of water
- rectify the failure
- provide particulars of the failure to SEPA as soon as practicable

Consultation Responses

The Scottish Government’s Analysis of Consultation Responses (2010b) shows that the vast majority of consultees agreed with a model for reservoir safety where panel engineers have a key role in ensuring public safety by undertaking inspections, completing reports and signing off certificates. Furthermore:

“Most respondents feel that overall responsibility for reservoir safety should remain with reservoir undertakers, though with this responsibility undertakers will require the expertise of appropriate professional support”

However, because at present panel engineers operate across Great Britain under the Secretary of State for Environment, there was some confusion “about restrictions that this might place upon engineers operating across boundaries; it is not clear to many respondents how the proposals might affect engineers’ ability to work across borders within England and Wales. Should restrictions apply, this might raise costs associated with a smaller labour pool. In essence, most respondents agree that the proposals are logical should they simplify existing processes and not create additional, unnecessary work for engineers” (Scottish Government 2010b).

Most respondents generally supported reporting requirements, as well as the setting of certain parameters for engineering reports. However, the detail of these reports, in particular the setting of dates, was felt to be inappropriate, and respondents felt that any dates stated would require a degree of flexibility to take into account situations where an undertaker has work ongoing (Scottish Government 2010b).

Requirement for incident reporting and flood planning, and provisions for dispute referral

Chapter 7, section 52 enables Scottish Ministers to consult on, and make provision in regulations for reporting incidents which may affect the safety of controlled reservoirs. These regulations may:

- define what constitutes an incident by reference to circumstances which adversely affect the safety of a controlled reservoir
- require the reservoir manager of a controlled reservoir or other specified person to report incidents occurring at the reservoir
- provide for an inspecting engineer, a supervising engineer or other person to determine whether an incident has occurred
require reservoir managers of controlled reservoirs, supervising engineers, inspecting engineers and any other person of a specified description to have regard to guidance issued by SEPA or the Scottish Ministers

make provision for the publishing of incident reports

confer powers of entry on SEPA in connection with its functions under the regulations

create summarily triable offences, and set out fine limits for these

make provision in connection with ensuring remedial action is taken following an incident report including provision amending the proposed legislation

Section 53 enables Scottish Ministers to consult on, and make provision in regulations for the preparation of flood plans, as follows:

“A “flood plan” for a controlled reservoir is a plan setting out the action to be taken by the reservoir manager of the reservoir to which the plan relates in order to control or mitigate the effects of flooding likely to result from any escape of water from the reservoir.”

Regulations may include provision:

- regarding who is to prepare a flood plan

- requiring the preparation of flood plans for all controlled reservoirs, or controlled reservoirs of such categories as may be determined by Scottish Ministers or SEPA

- specifying the form in which a flood plan is to be prepared, and what is to be included

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

- requiring flood plans to be produced or submitted to SEPA by such time as either the regulations specify, or the Scottish Ministers or SEPA may direct

- regarding the approval of flood plans (whether by the Scottish Ministers, SEPA, inspecting engineers or supervising engineers)

- regarding the review and updating of flood plans

- regarding the publication or distribution of copies of a list of reservoirs in relation to which a flood plan must be prepared by virtue of the regulations, as well as those flood plans

- in connection with the testing of flood plans

- in connection with the referral of matters to a referee

- requiring the reservoir manager, so far as it is practicable to do so, to take action in the event of an emergency

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

- conferring powers of entry on SEPA in connection with its functions under the regulations
• creating summarily triable offences, and setting out fine limits for these

Further sections in Chapter 7 require reservoir managers to:

• maintain a record of relevant documents, including safety reports, construction or final certificates; inspection reports, inspection compliance certificates; and relevant drawings and descriptions of works annexed to construction certificates (s54)

• display emergency response information, by order of Scottish Ministers under the direction of SEPA, to include name of reservoir, registration number in the controlled reservoir register, reservoir manager’s name, address, and contact information for the engineer (s55)

Failure to comply with the provisions on maintenance of records, and displaying of emergency response information leave a manager of a high-risk reservoir liable on summary conviction to a fine not exceeding level 5\(^8\), and a manager of a medium-risk reservoir liable on summary conviction to a fine not exceeding level 4\(^9\).

Chapter 8 provides for arbitrating disputes between reservoir managers and construction or inspecting engineers in relation to directions in safety or inspection reports, and preliminary or final certificates. These disputes must be refereed by a relevant panel engineer, and might relate to:

• the specified water level which the reservoir must not exceed

• any requirements the engineer considers appropriate as to the manner in which the water level may be increased or decreased

• an early inspection timetable relating to high risk reservoirs

• any other matter the engineer considers should be monitored

Section 60 enables the referee to modify the directions of relevant reports, make the necessary modifications to associated certificates, and then require the reservoir manager and SEPA to be issued with these within 28 days of making the decision. Scottish Ministers are further enabled to make provision in regulations as to the time, manner and procedure of referrals under this Chapter (s62).

Consultation Responses

The Scottish Government’s Analysis of Consultation Responses (2010b) indicates that proposals for incident reporting criteria, report content and incident reporting responsibility are largely uncontroversial, with the majority of respondents in support of the proposals. Some minor changes to incident reporting criteria were suggested; however these did not constitute significant alterations to the proposals.

“A number of respondents highlight a need for incident reporting and flood plans to be linked through consideration of necessary changes to the flood plan following incidents, should systems be modified or physical reservoir works take place. Most respondents feel that overall responsibility for reservoir safety should remain with reservoir undertakers, though with this responsibility undertakers will require the expertise of appropriate professional support.” (Scottish Government 2010b)

\(^8\) £5000
\(^9\) £2500
Regarding the preparation of flood plans, more than half of respondents agreed that, to prevent unnecessary work, high, medium and low risk reservoirs require different levels of flood planning. However, around a quarter felt that all flood plans should contain the same level of data; most agreed that a basic inundation map, prepared by SEPA to ensure comparability, should be included. A significant majority of respondents from all sectors believed that financial assistance should be provided by the Scottish Government to assist the preparation of flood plans to enable compliance with the Bill. It was generally accepted that inundation maps should be freely available to any interested parties, particularly because inundation maps may influence ongoing planning and development. However, many respondents felt that access to flood plans should be restricted to professional users due to possible security concerns should information be freely available (Scottish Government 2010b).

New powers for SEPA to enforce Part One of the Bill

Chapter 9 sections 63 to 96 create new civil enforcement powers that SEPA can use as an alternative to prosecution to enforce the requirements of the Bill, as well as emergency powers to take immediate action to protect people or property. The Policy Memorandum states that 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.” These powers include:

- serving enforcement notices requiring the reservoir manager to appoint a construction, inspecting or supervising engineer within 28 days, and making it an offence not to comply (s63 and s64)
- enabling SEPA to appoint a relevant engineer where the reservoir manager has failed to do so, and to reclaim any expenses from the reservoir manager (s65)
- where SEPA has appointed an engineer, a requirement that any reports or certificates are to be first given to SEPA (s66)
- serving an enforcement notice where it appears that a reservoir manager has failed to comply with their duty to comply with a safety or inspection report. This notice must (following consultation with a specified engineer) specify, a timeframe for compliance, reasons for serving the enforcement notice, and any steps which SEPA consider must be taken, as well as making it an offence not to comply (s67 and s68)
- creating powers for SEPA to appoint a relevant engineer to oversee compliance with a measure previously specified in a report, and for the reservoir engineer to reimburse SEPA the amount of any expenses reasonably incurred (s69)
- where a reservoir manager is found guilty of failure to comply with a direction in a safety or inspection report; the court may, in addition to or instead of imposing a penalty, order the reservoir manager to undertake any mitigating or remedial work directed in the relevant report (s70)
- Scottish Ministers, by order, allowing SEPA to issue stop notices. These notices prohibit a reservoir manager from carrying on a specified activity until the manager has taken specified steps to remove or reduce the risk of an uncontrolled release of water. Further sections relate to stop notice procedural requirements, financial compensation and rights to appeal, and enforcement (s71, s72, s73 and s74)
• enabling SEPA to take emergency action, in consultation with a panel engineer, to prevent an uncontrolled release of water that would cause harm to people or property (s75)

• allowing SEPA to receive an enforcement undertaking; these allow reservoir managers who may have committed an offence under the Bill to agree to take action rectify the situation in exchange for immunity from prosecution. Appropriate actions include securing that the offence does not continue or recur, restoring the reservoir, benefiting any person adversely affected (including payment of a sum of money) (s76)

• the imposition of fixed monetary penalties on reservoir managers in relation to offences under this part. Further sections relate to the process for issuing a fixed monetary penalty, and a reservoir manager’s immunity from further proceedings upon payment (s77, s78 and s79)

• the imposition of further enforcement measures in the event of non-compliance; including variable punitive monetary penalties, restraint notices which may require steps to be taken to avoid recurrence of an offence, and restoration notices which may require action to be taken to rectify the consequences of an offence. Further sections relate to charging a financial penalty in the case of non-compliance with a relevant notice, and a reservoir manager’s immunity from further proceedings upon payment (s80, s81, s82, and s83)

• requirements on SEPA to consult relevant bodies before invoking the above provisions, and to publish guidance about these powers (s84 and s85)

• recovery of expenses incurred by SEPA in issuing stop notices, or imposing further enforcement measures (s86)

• publication of information regarding enforcement action taken against a reservoir manager (s87)

• powers of entry for SEPA to inspect land or a structure for a number of purposes including, designating reservoir risk, determining whether a directed measure has been carried out, determining compliance with a relevant certificate, preparation of a flood plan, or other relevant measure. If necessary, where reasonable grounds have been established, warrants will be available from a sheriff or justice of the peace to gain entry using reasonable force. Impeding or obstructing entry of a person appointed by SEPA constitutes an offence (s88, s89, s90 and s91)

• a requirement on SEPA to pay compensation for disturbance to persons or damage to land (s92)

• a requirement on SEPA to report to Scottish Ministers about the steps it has taken to secure compliance with powers outlined in Part One of the Bill (s93)

• a requirement for reservoir managers to provide the relevant required records, and reasonable facilities to engineers to carry out their functions under Part One of the Bill (s94)

• further powers for SEPA to require reasonable information and assistance from the reservoir manager to exercise its powers and duties under Part One of the Bill (s95)

• failure to provide relevant required records, or reasonable information and assistance on the part of a reservoir manager constitutes an offence (s96)
Consultation Responses

The Scottish Government (2010b) notes that the “reservoir safety regulation and enforcement role would be new to SEPA and would therefore require new systems and a new administrative team to enforce the regime. Where appropriate, SEPA would look to incorporate these new systems and processes into current business operations to provide an effective and efficient service”. It is also noted that a consultee recognised the “need to reinforce enforcement powers to establish real consequences of non-action in terms of maintenance and safety”. However, the consultation (Scottish Government 2010a) did not cover in detail the expansion of SEPA’s enforcement powers.

Similarly, a number of respondents identified that the lack of detail provided through the consultation as to the potential scale of costs of enforcement was problematic, and that the situation regarding recovery of costs from a reservoir manager was “more complicated than is presented in the consultation document”. The consultation document states (Scottish Government 2010b):

“The costs to SEPA of compliance with legislation must be recovered in an appropriate manner; most respondents do not agree that these costs should be recovered through subsistence fees due to the financial pressure this would place on reservoir undertakers. Those respondents who are in support of subsistence charging either support a means-tested approach or charging on a sliding scale linked to cost, offence and reservoir risk categorisation. In situations where SEPA has to undertake emergency works in the interest of public safety, most respondents agree that SEPA should be able to recover these costs from the reservoir undertaker. A number of issues […] could complicate this procedure […] with some respondents identifying that affordability should not be a concern for [reservoir managers]; they ought to have appropriate public liability insurance.”
PART TWO

As previously noted, the Water Environment and Water Services (Scotland) Act 2003 empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, it did not provide for the creation of offences in respect of such regulations. The Explanatory Notes state:

“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)”

This Part contains one section, 103, and extends the powers conferred by section 22 of the 2003 Act. Section 22 does not include provision for criminal offences relating to restoration measures. This section is therefore thought to be “necessary as it is currently difficult to enforce regulations where there are no offences in place” (Policy Memorandum).

A new schedule 2A is inserted into the 2003 Act which creates offences, and deals with matters relating to these offences, including enabling a court to order a person who has committed an offence to take remedial action in addition to or instead of imposing any punishment. Offences are triable either summarily, or by indictment; and depending on the seriousness of the offence, may incur imprisonment for a term not exceeding 12 months or by a fine not exceeding the statutory maximum, or imprisonment for a term not exceeding 2 years or by an unlimited fine.

As previously noted, in January 2009 the Scottish Government consulted on Scotland’s Waters: Future Directions (2009a) and Restoration of the Water Environment (2009b) alongside draft RBMPs. These documents highlighted a gap in the delivery framework of WEWS, and proposed a strategic approach to river basin restoration, underpinned by proposals for new regulatory powers. However, neither the consultation responses, nor an analysis of these has been published. The Policy Memorandum states:

“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.”
KEY CONSULTEES VIEWS ON PART ONE OF THE BILL

Insurance Experts: The Association of British Insurers (Scottish Government 2010c) welcomes the move towards a risk-based regulatory regime, and believes that effective risk assessment and management should help reservoir owners secure better insurance terms. It does not however, support the move to a 10,000m³ capacity limit, and believes that the legislation should be applied to all existing reservoirs. It believes that the information about flood risk and flood defences should be publicly available free of charge, and that they should have access to this data to enable them to price fairly for different risk levels. Furthermore, “In terms of insurance, it is important that reservoir owners understand the extent of their liabilities for damage caused by reservoir flooding. Insurance is available to cover this liability”. Professor David Crichton (Scottish Government 2010d), an independent insurance and flood risk analyst, believes that risk assessment for the preparation of flood plans should be based on insurance industry techniques, that flood plans should be publicly available, and that compulsory public liability insurance would allow reservoir owners to meet all claims. Regarding the use of engineers to assess risk, he states “Particular attention should be paid to the landslide and peat slide risk. Panel engineers never look at this – it needs geologists and peat slide experts”.

Civil Engineers: The Institute of Civil Engineers (Scottish Government 2010e) considers that the level of detail in flood plans should be commensurate with the level of risk, and that a list of competent companies should be compiled to enable reservoir managers to carry out their work accurately. ICE believes that SEPA should prepare simple inundation maps for all reservoirs over 10,000m³ to ensure consistency of approach, and to allow potential risk categorisation. This should however be done in a phased manner to prioritise expenditure and get best value. Furthermore, “Panel engineers are recognised as an authority on dams, therefore their involvement in preparation of the plans, in particular for medium and high-risk reservoirs, is important”. Regarding these plans, they believe that on site flood plans should be available to those with responsibility for reservoir safety (e.g. SEPA, owners, operators, engineers etc), but that inundation maps should be freely available. Regarding reservoir classification, a risk matrix should be established which considers the consequence of an uncontrolled release of water and the likelihood of a dam failing. Atkins (Scottish Government 2010f) a global engineering and design consultancy, operating in Scotland believes that the criteria for determining whether a reservoir requires a flood plan should be determined by the consequences of a failure, and that SEPA should prepare basic inundation maps for all reservoirs over 10,000m³. These, however, should only be used for emergency planning, and not spatial planning as has happened elsewhere in the UK. One key concern is finding and registering appropriate reservoirs. They state, “it is going to be very difficult to track down the reservoirs and then find their owners”. SEPA will therefore have to actively look for structures.

Local Authorities: There is general agreement (Scottish Government 2010g) that the criteria for preparation of a flood plan should be directly linked to risk of flood and consequence to people, property, infrastructure and natural heritage; and that different levels of detail should be included in flood plans depending on the risk of an uncontrolled release of water. However, at the very least basic inundation maps should be prepared by SEPA for all relevant reservoirs. Panel engineers should play a role in the preparation of more detailed flood plans, and these should be available to those who have a role in emergency response to an uncontrolled release. Inundation maps should be widely available, particularly to local authority planners. Regarding incident reporting, there is a call for “extremely comprehensive clear guidance” to determine whether an incident should be reported, as well as what information should be included. Some concern is voiced over the 10,000m³ threshold, as it is considered to be arbitrary if the policy focus is to shift from a volume based approach to a risk based one.
Royal Society for the Protection of Birds Scotland: “are extremely concerned that the changes could have perverse outcomes for biodiversity. For example the threat of regulation could lead to the pre-emptive draining of water bodies with a high biodiversity conservation value as happened in the UK following the introduction of the 1975 Act”. For these reasons, they propose retaining 25,000m³ as the regulatory benchmark. They further note that reservoir classification should be based on risk/consequence, and that different levels of flood planning should apply depending on this. Inundation mapping is not thought to be essential for low risk reservoirs, lest it divert SEPA from other key areas of work. They further propose that any costs incurred should be scaled against risk, and that costs (for registration etc), and any public assistance for payment of these should be prioritised towards reservoir managers who deliver land management for the public good, such as biodiversity, climate change adaptation and a sustainable water supply (Scottish Government 2010h).

Scottish Environment Protection Agency: “recognises the responsibility associated with being proposed as the regulatory authority and looks forward to addressing the challenges that this will bring. However, the success of the regulatory authority will depend on the powers and duties conferred on it”. They believe that all sites should produce on-site flood plans, but that these should reflect the risk categorisation of each site. Furthermore “If SEPA were to undertake the process of producing the basic inundation maps for all sites it would help to ensure maps are produced to an agreed standard, within timescales, containing all relevant data and were produced using compatible software to systems already used within SEPA. It would also ease the management of this element of work. The alternative of co-ordinating all Undertakers to produce and return maps would be challenging. The cost of producing inundation maps should be cheaper if undertaken as a bulk exercise rather than by individuals”. SEPA believe that responsibility for producing flood plans should lie with the reservoir manager, but that where a site is deemed high or medium risk, a panel engineer should satisfy themselves with them, and sign them off.

Regarding access to flood plans, this should be granted to the reservoir manager and appropriate staff/employees based at the reservoir, relevant engineers, the regulatory authority and the relevant Strategic Coordinating Group. “If the plans are to be made available for public inspection by SEPA, SEPA would, subject to security directions, have limited ability to restrict access after submission”. Access to inundation maps should be for individuals, organisations and authorities who could be called upon to respond in an emergency; including members of the public living within relevant inundation areas. Local Planning Authorities should also have access to avoid the identification of development land which might be at risk. “Clearly the presentation of information would need to be carefully managed but it should be an aim to better inform the public of any risk and thus raise awareness, particularly if an emergency action is required”.

SEPA agrees with the minimum volume figure of 10,000m³, however further notes the importance of a mechanism whereby this can be altered in the future if it has been set incorrectly, and where it can require registration, subject to an appeal process, of reservoirs with a lower volume where they are identified to pose a significant risk. Regarding registration, it is believed that there should be an initial free period to encourage reservoir managers to come forward (subject to alternative Government funding); however that low risk sites should still be required to register. They would subsequently be subject to minimal regulatory obligations; however “The risk a site poses can alter over time so it is essential that all sites are contained on a register so they can be reviewed within appropriate timescales. This is particularly important when thinking about linking reservoir safety with land-use planning and development management”. SEPA supports the reclamation of costs for emergency works, where a reservoir manager is not able to pay. Alternatively, “the Government could consider […] the requirement of High risk sites to carry insurance to cover the costs of any emergency works […] (Scottish Government 2010i).
**Scottish Natural Heritage:** has restricted its comments to considering the implications that a change in legislation might have on the management of reservoirs with “significant natural heritage interest” (Scottish Government 2010j). Their response encourages the Scottish Government and SEPA to maintain a dialogue with them to ensure there is no impact on protected natural features. They further propose that SEPA considers environmental / natural heritage values when assessing the impact of potential dam failures.

**Scottish Rural Property and Business Association (SRPBA):** favours the retention of the current system with some changes. They believe that panel engineers should continue to play a key role in ensuring public safety in reservoirs of 25,000m³ or more, but that SEPA should become the responsible authority, rather than local authorities. It is thought to be inappropriate to expect all reservoir managers to prepare a flood plan when the probability of an uncontrolled release of water varies between reservoirs; these therefore should be tailored depending on risk classification. Regarding the affordability of the proposed new regime, they state “It will be more expensive for small private businesses and individuals to comply with the new legislation than large organisations and this must be acknowledged through the provision of funding”. Further concern is voiced over access to inundation maps, in particular “inundation maps should not be used by insurance companies to increase insurance payments for properties found to be in a high flood risk area due to the presence of a high risk reservoir” (Scottish Government 2010k).

**Scotch Whisky Association:** “believe care is required to ensure that the proposed changes do not place growing and successful industries, such as Scotch Whisky, at a competitive disadvantage when compared with our international competition”; however “many of our [...] members’ impoundments are in rural locations and therefore there is a low risk of any major impact upon property or lives from a dam collapse”. They support the proposal for a reduction in volume to 10,000m³, as well as for risk/consequence to be taken into account before implementing a requirement to prepare a flood plan. Financial assistance should be provided by the Scottish Government for all reservoir managers. However, financial burden should only be placed on the operators of high risk sites. Registration should be free to all (Scottish Government 2010l).

**Scottish Water:** suggests that reservoir safety requirements should be proportionate to the consequence and risk posed by reservoirs to people, property and critical infrastructure. They do not believe that fees should be charged for enforcement, as they would not want to see owners deferring remedial works due to additional costs. “This would have a negative effect on reservoir safety and would be counter to the aims of new legislation”. There may therefore be a case for providing financial assistance to reservoir managers.

They support all reservoirs having basic flood plans as a good practice measure to determine the on-site steps which should be taken in the event of an uncontrolled release of water. However, only flood plans for medium and high risk reservoirs should be regulated in order to ensure proportionate enforcement and costs.

Concern is voiced over reservoir flood planning and development control. “At present it is not clear if planning authorities take any cognisance of reservoirs upstream of any proposed development. As under the proposed new legislation, downstream development could result in a reservoir moving from low to high consequence with attendant significant additional costs to the reservoir Undertaker, we believe that consideration of the impact of development on upstream reservoirs should be a mandatory requirement on planning authorities” (Scottish Government 2010m).
### ANNEXE A: NUMBER OF RESERVOIRS PER LOCAL AUTHORITY

<table>
<thead>
<tr>
<th>Enforcement Authority</th>
<th>Number of reservoirs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highland</td>
<td>127</td>
</tr>
<tr>
<td>Argyll and Bute</td>
<td>76</td>
</tr>
<tr>
<td>Perth and Kinross</td>
<td>55</td>
</tr>
<tr>
<td>Comhairle nan Eilean Siar</td>
<td>45</td>
</tr>
<tr>
<td>Dumfries and Galloway</td>
<td>38</td>
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<tr>
<td>Stirling Council</td>
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<td>Fife</td>
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<td>Scottish Borders</td>
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<td>Aberdeenshire</td>
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<td>South Lanarkshire</td>
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SOURCES


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RELATED BRIEFINGS

SB 10-27 Flooding: Frequently Asked Questions
SB 08-62 Flood Risk Management (Scotland) Bill
SB 09-22 Flood Risk Management (Scotland) Bill : Stage 3

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RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

RECENT DEVELOPMENTS WITHIN THE COMMITTEE’S REMIT

Note by the Clerk: Each time an agenda and papers for a meeting are circulated to members, a short paper like this one will also be included as a means of alerting members to relevant documents of general interest which they can follow up through the links included.

**Wildlife Estates Initiative for Scotland**

The Wildlife Estates Scotland initiative was launched this week, which aims to highlight conservation of habitat and wildlife. A link to the SRPBA’s Concept briefing, ten commitments, and media release can be accessed using the links below:


**SRPBA: Wildlife Estates Initiative**

**Preparation Agriculture/Fisheries Council of November 2010**

The Agriculture & Fisheries Council will meet in Brussels on Monday 29 November and possibly Tuesday 30 November. A link to the European Commission’s Press release can be accessed here:


**House of Commons Environment Food and Rural Affairs Committee**

The Committee has made the following two announcements:

1. **Inquiry announced**

   MPs to examine the European Commission's proposals for reform of the Common Agricultural Policy

   The European Commission presented its proposals to reform of the Common Agricultural Policy, The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future, on 18 November 2010.

   The Committee does not intend to revise its original Terms of Reference (released 4 November 2010) as it considers that these encompass the major issues.

   The Committee also welcomes interested parties' views on the options outlined in the European Commission's document and suggestions for how the European Commission should develop these proposals.
As indicated previously, the Committee invites all interested parties to address these and related matters in writing by Friday 3 December 2010.

2. **Evidence session announced**

The Marine Policy Statement

Wednesday 24 November 2010

Witness: At 3.00 pm

* Richard Benyon MP, Parliamentary Under-Secretary of State for Marine Environment and Fisheries, Department for Environment, Food and Rural Affairs

The Environment, Food and Rural Affairs Committee will hold this oral evidence session on the Marine Policy Statement (MPS) which is the first step in the planning system introduced under the Marine and Coastal Access Act 2009. The Committee will scrutinise the draft MPS, which was published by Defra in July 2010, to establish whether it meets the requirements of the Act and provides a coherent and practical framework for decision-making in the UK area.

The meeting will take place in a committee room in the House of Commons. Visitors should check the exact location nearer the time on [http://services.parliament.uk/calendar/](http://services.parliament.uk/calendar/).

**Brussels Bulletin**

A link to the latest copy of the Scottish Parliament’s Brussels Bulletin (Issue 50) is now available here:

[The Scottish Parliament: - Committees - European and External Relations - Brussels Bulletin](http://services.parliament.uk/calendar/)

A special edition of the Brussels Bulletin, focussing on the European Economic and Social Committee has also been produced and is available here:


Of particular interest in this month’s copy of the Brussels Bulletin (Issue 50) is an article by Ian Hudghton MEP on CAP and CFP. The special edition of the Brussels Bulletin also includes a piece on CAP and CFP by Brendan Burns, EESC member for Scotland.