RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

29th Meeting, 2010 (Session 3)

Wednesday 15 December 2010

The Committee will meet at 10.00 am in Committee Room 1.

1. **Subordinate legislation:** The Committee will consider the following negative instruments—

   the Beef and Veal Labelling (Scotland) Regulations 2010 (SSI 2010/402)
   and;
   the Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2010 (SSI 2010/405).

2. **Reservoirs (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Peter Farrer, Customer Service Delivery Director, Scottish Water;

   Tom Inglis, Chief Officer Operations, SEPA;

   Alex MacDonald, Member of the All Reservoirs Panel, Fellow of the Institution of Civil Engineers;

   and then from—

   David Crichton, Chartered Insurance Practitioner;

   Mark Noble, Generation Civil Operations and Maintenance Manager, Scottish and Southern Electric;

   Mr John Reid, Reservoir Undertaker, Tinto Reservoirs Ltd.

3. **Reservoirs (Scotland) Bill (in private):** The Committee will consider the evidence heard earlier in the meeting.
4. **Draft Budget Scrutiny 2011-12 (in private):** The Committee will consider a draft report to the Finance Committee on the Scottish Government's budget proposals 2011-12.

Peter McGrath  
Clerk to the Rural Affairs and Environment Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5240  
Email: peter.mcgrath@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 1**

*The Beef and Veal Labelling (Scotland) Regulations 2010 (SSI 2010/402)*

RAE/S3/10/29/1

*The Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2010 (SSI 2010/405)*

RAE/S3/10/29/2

**Agenda Item 2**

Submissions Pack

RAE/S3/10/29/3

PRIVATE PAPER

RAE/S3/10/29/4 (P)

**Agenda Item 4**

Draft Report (Private Paper)

RAE/S3/10/29/5

**For Information**

Recent Developments

RAE/S3/10/29/6
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

The Scottish Ministers have carried out consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(b).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Beef and Veal Labelling (Scotland) Regulations 2010 and come into force on 11th December 2010.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“authorised officer” means a person (whether an officer of the Scottish Ministers or of a local authority) who is authorised for the purposes of these Regulations by the Scottish Ministers or a local authority;

“Council Regulation 1234/2007” means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(a);

“Commission Regulation 566/2008” means Commission Regulation (EC) No. 566/2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less(b);

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c); and


Authorities responsible for enforcement

3.—(1) The Scottish Ministers are the competent authority for the purposes of—

(a) Title II of Regulation 1760/2000 (labelling of beef and beef products);
(b) Commission Regulation 1825/2000;
(c) Article 113b of, and Annex XIa to, Council Regulation 1234/2007 (marketing of the meat of bovine animals aged 12 months or less)(e); and
(d) Commission Regulation 566/2008.

(2) These Regulations shall be enforced by—

(a) the Scottish Ministers, for the purposes of ascertaining whether there is or has been any contravention of these Regulations in slaughterhouses, cutting plants or wholesalers; and
(b) local authorities, for the purposes of ascertaining whether there is or has been any contravention of these Regulations in places other than in slaughterhouses, cutting plants or wholesalers.

Offences under European legislation

4.—(1) Any person who fails to comply with any of the following is guilty of an offence—

(a) the following provisions of Regulation 1760/2000—

(i) Article 11 (requirement to label);
(ii) Article 13(1) (compulsory labelling: general rules);
(iii) Article 13(2) (compulsory labelling: indications on the label);
(iv) Article 13(5) (compulsory labelling: additional information on the label);
(v) Article 14 (derogations from the compulsory labelling system);
(vi) Article 15 (compulsory labelling of beef from third countries);
(vii) Article 16(4) (voluntary labelling); and
(viii) Article 17(1) (voluntary labelling of beef from third countries);
(b) the following provisions of Commission Regulation 1825/2000—

(i) Article 1 (traceability);
(ii) Article 2 (labelling where information is not available);

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(c) 1994 c.39.
(iii) Article 4 (size and composition of a group);
(iv) Article 5(2) (minced beef);
(v) Article 5a (trimmings); (a)
(vi) Article 5b (pre-packaged cut meat);
(vii) Article 5c (non-pre-packaged cut meat);
(viii) Article 6(3) (beef in small retail packages);
(ix) Article 7(1) (checks); and
(x) Article 7(4) (Provision of information to the competent authority);
(c) the following provisions of Council Regulation 1234/2007—
(i) Article 113b (marketing of the meat of bovine animals aged 12 months or less);
(ii) paragraph II of Annex XIa (classification of bovine animals aged 12 months or less at the slaughterhouse);
(iii) paragraph III of Annex XIa (sales descriptions);
(iv) paragraph IV of Annex XIa (compulsory information on the label);
(v) paragraph V of Annex XIa (optional information on the label);
(vi) paragraph VI of Annex XIa (recording);
(vii) paragraph VIII(1) of Annex XIa (marketing of meat imported from third countries); and
(viii) paragraph VIII(2) of Annex XIa (operators from third countries); and
(d) the following provisions of Commission Regulation 566/2008—
(i) Article 4(1) (compulsory information on the label);
(ii) Article 4(2) (indications of age);
(iii) Article 5 (recording of information); and
(iv) Article 6(6) (official checks).

(2) For the purposes of paragraph IV(2) of Annex XIa to Council Regulation 1234/2007, the required information must be clearly displayed near the meat so as to allow the final consumer to identify it easily and must be clearly legible.

Notices

5.—(1) Paragraph (2) applies where an authorised officer reasonably suspects that any beef or veal is being labelled and marketed in a manner that does not comply with any applicable provision of the EU instruments listed in regulation 4(1).

(2) The authorised officer may serve a written notice on the operator of the business responsible for the labelling and marketing of the beef or veal (“the operator”) requiring its removal from sale until it is—

(a) re-labelled in accordance with the applicable provision of those EU instruments; or
(b) sent directly for processing into products other than those indicated in the first indent of Article 12 of Regulation 1760/2000.

(3) When serving the notice, the authorised officer must inform the operator of the right of review under paragraph (4) and how it may be exercised.

(4) An operator on whom a notice has been served under paragraph (2) may request the Scottish Ministers to arrange a review of the decision to serve the notice.

(a) Articles 5a, 5b and 5c were inserted into Commission Regulation 1825/2000 by Commission Regulation (EC) No. 275/2007 (O.J. L 76, 16.3.2007, p.12).
(5) The operator requesting a review of a decision to serve a notice under paragraph (2) must do so in person, by telephone or by fax to the contact details indicated in the notice. A request in person or by telephone must be confirmed in writing as soon as reasonably practicable thereafter.

(6) The review is to be determined by a person (unconnected with the original decision) appointed by the Scottish Ministers (“the appointed person”) under arrangements maintained by them for the purpose of this regulation.

(7) The appointed person conducting the review may cancel the notice or confirm it, with or without modifications.

(8) The appointed person must—
(a) complete the review as soon as reasonably practicable and in any event within 48 hours of the request being made under paragraph (4) in person, by telephone or by fax; and
(b) serve notice on the operator of the decision in writing.

(9) The Scottish Ministers may suspend the notice pending determination of the review and must serve a notice forthwith of their decision to do so on the operator and the authorised officer.

(10) The appointed person’s determination is final.

Service of notices

6.—(1) Any notice served on an operator under regulation 5(2), (8)(b) or (9) must be in writing.

(2) Any such notice must be served by—
(a) leaving it with the operator, or with an employee of the operator, at the appropriate place of business where the beef or veal, which is the subject of a notice under regulation 5(2), is being labelled and marketed; or
(b) sending it by post to the operator at the operator’s proper address.

(3) For the purposes of paragraph (2)(b) the proper address of any operator on whom a notice is to be served is the operator’s last known business address, except in the case of a body corporate, partnership or unincorporated association, where the proper address is the address of the registered or principal office of the body.

Powers of entry

7.—(1) An authorised officer of an enforcement authority may at any reasonable hour, and on producing a duly authenticated authorisation if required, enter any premises for the purpose of ascertaining whether—
(a) there is or has been on the premises any contravention of these Regulations; or
(b) there is on the premises any evidence of any contravention of these Regulations.

(2) The authorised officer may be accompanied by such other persons as that officer considers necessary, including any representative of the European Commission.

(3) If a justice of the peace, a stipendiary magistrate or a sheriff, by evidence on oath, is satisfied that there is reasonable ground for entry into any premises (excluding premises used only as a dwelling) for any purpose in paragraph (1) and that—
(a) admission has been refused, or a refusal of admission is anticipated, and that notice of intention to apply for a warrant has been given to the occupier; or
(b) an application for admission, or the giving of notice of the intention to apply for a warrant, would defeat the object of the entry, or that the case is one of urgency; or
(c) the premises are unoccupied or the occupier temporarily absent,
the justice of the peace, stipendiary magistrate or sheriff may by signed warrant authorise an authorised officer to enter the premises, if need be by reasonable force.

(4) A warrant granted under this regulation continues in force for one month.
(5) An authorised officer who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

(6) Where land or premises are damaged in the exercise of a power of entry conferred by this regulation, compensation in respect of that land or those premises may be recovered by any person interested in that land or those premises from the enforcement authority which authorised the authorised officer.

Powers of authorised officers

8. An authorised officer of an enforcement authority entering any premises under these Regulations may—

(a) inspect any beef or veal present on those premises;
(b) take samples from any beef or veal on those premises and, if necessary, send the samples for testing;
(c) inspect any labels and relevant business records (including electronic records) in whatever form they are held and take copies;
(d) seize and detain any such labels and records (including electronic records) that may be required as evidence in proceedings under these Regulations;
(e) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with any record mentioned in paragraph (c), and require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as that person may reasonably require;
(f) where records are kept by means of a computer, require the records to be produced in a visible and legible form in which they may be taken away.

Offences: obstruction etc.

9. Any person who—

(a) intentionally obstructs any person acting in the execution of these Regulations; or
(b) without reasonable excuse, fails to give any person acting in execution of these Regulations any assistance or information that that person may reasonably require for the purpose of carrying out functions under these Regulations; or
(c) furnishes to any person acting in the execution of these Regulations any information knowing it to be false or misleading,

is guilty of an offence.

Offences by bodies corporate

10.—(1) Where—

(a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

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

the individual as well as the body corporate, Scottish partnership or unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.
In paragraph (1), “relevant individual” means—
(a) in relation to a body corporate—
   (i) a director, manager, secretary or other similar officer of the body;
   (ii) where the affairs of the body are managed by its members, a member;
(b) in relation to a Scottish partnership, a partner;
(c) in relation to an unincorporated association other than a Scottish partnership, a person
   who is concerned in the management or control of the association.

Defence of due diligence

11. It is a defence for a person charged with an offence under regulation 4 (“P”) to prove that P
    took all reasonable precautions and exercised all due diligence to avoid the commission of
    the offence by P or by a person under P’s control.

Penalties

12. A person guilty of an offence under these Regulations is liable on summary conviction to a
    fine not exceeding level 5 on the standard scale.

Officers acting in good faith

13.—(1) No authorised officer shall be personally liable in respect of any act—
    (a) in the execution or purported execution of these Regulations; and
    (b) within the scope of that officer’s employment,
    if the authorised officer acted in the honest belief that these Regulations required the act to be
    done.

(2) Nothing in paragraph (1) shall be construed as relieving the Scottish Ministers or the relevant
    local authority from any liability in respect of the acts of authorised officers.

(3) Where an action has been brought against an authorised officer in respect of an act—
    (a) in the execution or purported execution of these Regulations; and
    (b) outside the scope of that officer’s employment,
    the enforcement authority which authorised the authorised officer may indemnify the authorised
    officer against the whole or part of any damages which that officer has been ordered to pay or any
    costs which that officer may have incurred if they are satisfied that that officer honestly believed
    that the act complained of was within the scope of that officer’s employment.

Revocation

14. The Beef and Veal Labelling (Scotland) Regulations 2008(a) are revoked.

RICHARD LOCHHEAD
A member of the Scottish Executive
St Andrew’s House,
Edinburgh
17th November 2010

(a) S.S.I. 2008/418.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations replace the Beef and Veal Labelling (Scotland) Regulations 2008. The changes are that they enforce Articles 5a, 5b and 5c of Commission Regulation (EC) No. 1825/2000 (regulation 4(1)(b)) and provide rules for the provision of information for unpacked meat of bovine animals aged 12 months or less at the point of sale (regulation 4(2)).

They continue to enforce Title II of Regulation (EC) No. 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and subsidiary Commission Regulations.

They also enforce the provisions relating to meat of bovine animals aged 12 months or less of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) as well as the provisions of Commission Regulation (EC) No. 566/2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less.

They are enforced by the local authority or the Scottish Ministers in accordance with regulation 3.

Breach of the Regulations is an offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale (regulation 12).

The Regulations confer enforcement powers on authorised officers, including powers of entry (regulation 7) and powers of inspection and sampling (regulation 8). Moreover, regulations 5 and 6 enable authorised officers to serve a written notice on operators requiring removal from sale of any beef or veal labelled and marketed in breach of the relevant EU instruments in respect of which operators have a right of review.

Regulation 10 makes provision in relation to offences of bodies corporate and regulation 11 provides for a defence of due diligence. Regulation 13 makes provision for the protection of officers acting in good faith.

A Business and Regulatory Impact Assessment has not been produced, as no effect on business is anticipated.
2010 No. 405

PLANT HEALTH

The Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2010

Made - - - - 18th November 2010
Laid before the Scottish Parliament 22nd November 2010
Coming into force - - 1st January 2011

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 56(1) and (2) of the Finance Act 1973\(^{(a)}\) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2010 and come into force on 1st January 2011.

Amendment of the Plant Health (Import Inspection Fees) (Scotland) Regulations 2005

2. For Schedule 2 (Import Inspection Fees (Reduced Rates)) to the Plant Health (Import Inspection Fees) (Scotland) Regulations 2005\(^{(b)}\) substitute—

\(^{(a)}\) 1973 c.51. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of article 2(2) of the Scotland Act (Consequential Modifications) (No 2) Order 1999 (S.I. 1999/1820) and the functions of the Minister transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain the consent of the Treasury was removed by section 55 of the Scotland Act 1998.

## Schedule 2

Regulation 4(3)

**Import Inspection Fees (Reduced Rates)**

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<td></td>
<td></td>
<td>South Africa</td>
<td>£6.62</td>
<td>£9.93</td>
</tr>
<tr>
<td></td>
<td>— for each additional 1,000 kg or part thereof</td>
<td>Colombia, Kenya</td>
<td>£1.32</td>
<td>£1.98</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Zimbabwe</td>
<td>£0.18</td>
<td>£0.27</td>
</tr>
<tr>
<td></td>
<td></td>
<td>South Africa</td>
<td>£0.26</td>
<td>£0.39</td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td>Column 4</td>
<td>Column 5</td>
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<tr>
<td>----------</td>
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<td>----------</td>
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<td>----------</td>
</tr>
<tr>
<td>Genus</td>
<td>Quantity</td>
<td>Country of origin</td>
<td>Fee</td>
<td>Fee (outside normal working hours)</td>
</tr>
<tr>
<td>Prunus</td>
<td>Per consignment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— up to 25,000 kg in weight</td>
<td>Chile, South Africa, Turkey</td>
<td>£1.32</td>
<td>£1.98</td>
<td></td>
</tr>
<tr>
<td></td>
<td>USA</td>
<td>£3.31</td>
<td>£4.96</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Argentina</td>
<td>£4.63</td>
<td>£6.95</td>
<td></td>
</tr>
<tr>
<td>— for each additional 1,000 kg or part thereof</td>
<td>Chile, South Africa, Turkey</td>
<td>£0.05</td>
<td>£0.07</td>
<td></td>
</tr>
<tr>
<td></td>
<td>USA</td>
<td>£0.13</td>
<td>£0.19</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Argentina</td>
<td>£0.18</td>
<td>£0.27</td>
<td></td>
</tr>
<tr>
<td>Pyrus</td>
<td>Per consignment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— up to 25,000 kg in weight</td>
<td>South Africa</td>
<td>£1.32</td>
<td>£1.98</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Argentina</td>
<td>£1.98</td>
<td>£2.97</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Chile, China</td>
<td>£4.63</td>
<td>£6.95</td>
<td></td>
</tr>
<tr>
<td>— for each additional 1,000 kg or part thereof</td>
<td>South Africa</td>
<td>£0.05</td>
<td>£0.07</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Argentina</td>
<td>£0.07</td>
<td>£0.11</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Chile, China</td>
<td>£0.18</td>
<td>£0.27</td>
<td></td>
</tr>
<tr>
<td>Vegetables</td>
<td>Per consignment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Solanum melongena</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>— up to 25,000 kg in weight</td>
<td>Turkey</td>
<td>£1.32</td>
<td>£1.98</td>
<td></td>
</tr>
<tr>
<td>— for each additional 1,000 kg or part thereof</td>
<td>Turkey</td>
<td>£0.05</td>
<td>£0.07</td>
<td></td>
</tr>
</tbody>
</table>

The total fee for additional units or weight is to be rounded down to the nearest whole penny, or if that fee is less than £0.01 it is to be disregarded.”.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
18th November 2010

The Council Directive contains a procedure (Articles 13a(2), 13d(2) and 18(2)) for setting reduced rates of inspection for imports of certain plants and plant products and for charging fees at a proportionately reduced rate.

Schedule 1 to the principal Regulations sets out the standard fees for plant health checks. Schedule 2 to the principal Regulations sets out the fees for reduced rate inspections.

These Regulations substitute Schedule 2 to the principal Regulations in light of the Notification of Reduced Plant Health Checks for Certain Products of 25th June 2010, published by the Commission under Article 2(2) of Commission Regulation (EC) 1756/2004 (O.J. L 313, 12.10.2004, p.6) (“the Commission Regulation”). The Commission Regulation makes provision for the publication of a list of products for which plant health checks may be carried out at a reduced frequency, and specifies the level of the reduced frequency.

The changes to the fees made by these Regulations, which are set at a direct proportion of the standard fee (described in Schedule 1 to the principal Regulations) corresponding to the rate of inspection, are based on the agreed inspection rates set out in the table below:

<table>
<thead>
<tr>
<th>Genus</th>
<th>Country of origin</th>
<th>Standard fee in Schedule 1 of the principal Regulations</th>
<th>Current rate of inspection</th>
<th>Current reduced rate of fee(1)</th>
<th>New rate of inspection</th>
<th>New reduced rate of fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cut Flowers</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dianthus</td>
<td>Colombia</td>
<td>£13.24</td>
<td>3%</td>
<td>£0.39</td>
<td>5%</td>
<td>£0.66</td>
</tr>
<tr>
<td>Dianthus</td>
<td>Israel</td>
<td></td>
<td>50%</td>
<td>£6.62</td>
<td>100%(2)</td>
<td>-</td>
</tr>
<tr>
<td>Dianthus</td>
<td>Kenya</td>
<td></td>
<td>25%</td>
<td>£3.31</td>
<td>5%</td>
<td>£0.66</td>
</tr>
<tr>
<td>Rosa</td>
<td>Colombia</td>
<td></td>
<td>5%</td>
<td>£0.66</td>
<td>3%</td>
<td>£0.39</td>
</tr>
<tr>
<td>Rosa</td>
<td>Ethiopia</td>
<td></td>
<td>10%</td>
<td>£1.32</td>
<td>5%</td>
<td>£0.66</td>
</tr>
<tr>
<td>Rosa</td>
<td>Kenya</td>
<td></td>
<td>10%</td>
<td>£1.32</td>
<td>5%</td>
<td>£0.66</td>
</tr>
<tr>
<td>Rosa</td>
<td>Tanzania</td>
<td></td>
<td>15%</td>
<td>£1.98</td>
<td>10%</td>
<td>£1.32</td>
</tr>
<tr>
<td>Rosa</td>
<td>Uganda</td>
<td></td>
<td>100%</td>
<td>-</td>
<td>25%</td>
<td>£3.31</td>
</tr>
<tr>
<td>Rosa</td>
<td>Zambia</td>
<td></td>
<td>50%</td>
<td>£6.62</td>
<td>25%</td>
<td>£3.31</td>
</tr>
<tr>
<td>Fruit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citrus</td>
<td>Egypt</td>
<td>£13.24</td>
<td>25%</td>
<td>£3.31</td>
<td>15%</td>
<td>£1.98</td>
</tr>
<tr>
<td>Citrus</td>
<td>Honduras</td>
<td></td>
<td>50%</td>
<td>£6.62</td>
<td>75%</td>
<td>£9.93</td>
</tr>
<tr>
<td>Mangifera</td>
<td>Brazil</td>
<td></td>
<td>10%</td>
<td>£1.32</td>
<td>50%</td>
<td>£6.62</td>
</tr>
<tr>
<td>Psidium</td>
<td>Brazil</td>
<td></td>
<td>75%</td>
<td>£9.93</td>
<td>100%(2)</td>
<td>-</td>
</tr>
<tr>
<td>Prunus</td>
<td>USA</td>
<td></td>
<td>50%</td>
<td>£6.62</td>
<td>25%</td>
<td>£3.31</td>
</tr>
<tr>
<td>Pyrus</td>
<td>South Africa</td>
<td></td>
<td>15%</td>
<td>£1.98</td>
<td>10%</td>
<td>£1.32</td>
</tr>
</tbody>
</table>

(1) Current fee per consignment for cut flowers (up to 20,000 in number) and fruit and vegetables (up to 25,000 kg in weight). Corresponding fees are set in the Regulations for additional quantities, maximum price per consignment and non-daytime working hours.
(2) Consignments subject to an inspection rate of 100% are, by definition, excluded from the reduced rate inspection scheme and are subject to the import inspection fees specified in Schedule 1 to the principal Regulations.

No Business and Regulatory Impact Assessment has been prepared for this instrument as it has no impact on the cost of business.
CORRESPONDENCE FROM THE SCOTTISH GOVERNMENT BILL TEAM

27TH RAE Committee Meeting 1 December 2010 – Reservoirs Bill

Thank you for your e-mail following on from the RAE Committee meeting on 1 December 2010 at the Scottish Parliament, where Environmental Quality Division officials gave Stage 1 evidence on the Reservoirs (Scotland) Bill. These specific questions were helpful given that the weather difficulties had prevented the policy lead on Part 2 of the Bill making the session.

In your e-mail you asked for the following further information on part 2 of the Bill.

What will the proposed new offences under WEWS actually be?

The proposed Restoration Regulations to be made under section 22 of Water Environment and Water Services (Scotland) Act 2003 (WEWS) will provide new powers to help SEPA and the other Responsible Authorities (such as local authorities and Scottish Natural Heritage) take forward restoration measures to improve the quality of the water environment, further supporting Scottish Ministers’ aims and objectives with regard to the Water Framework Directive. These Regulations will give new powers to SEPA and other responsible authorities to issue notices to land owners identifying specific remedial action required to restore water bodies adversely impacted by past
human activities. Whilst WEWS provides primary powers to make regulations for this purpose, it provides no basis to allow supporting offence provisions to be introduced. Without such powers, the regulations cannot compel the carrying out of restoration works, putting their usefulness in question. It is therefore anticipated that the new offences to be offences in connection with failure to comply with a restoration notice. The proposed powers to create offence provisions follow the model of the similar power in s.20 and Schedule 2 of WEWS, and subsequently used to create offences in the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR), which is the principal regulatory tool for delivering Ministers’ obligations in respect of the water environment. In the proposed restoration regulations, which will complement CAR, it is expected that similar offences may be adopted.

The outcome of such water restoration work will help support Scottish Ministers’ obligations under the Water Framework Directive, and improve the quality of Scotland’s water environment. Whilst we would hope that land owners will accept the need for remedial action where identified there may be some occasions where enforcement action is required. Part 2 of the Bill would, if enacted, allow us to introduce such actions.

Why were no questions in either of the consultations investigated directly, i.e. the possible expansion of enforcement powers, and will further consultation be carried out?

The question of water restoration enforcement powers did not feature in the public consultation on the Reservoirs Bill as it had been carried out in a separate context. The primary legislation proposed in the Reservoirs Bill consultation was identified a suitable vehicle to provide the offence provision.

Such provisions should have been included in WEWS. The offence provision was included in the original consultation on the WEWS Bill but due to an oversight were not included in what became the Act. In addition a specific consultation on water restoration measures was conducted in 2009 (http://www.scotland.gov.uk/Publications/2008/12/18145403/0) which highlighted the need for new powers as part of the package of initiatives to deliver improvements to the water environment. Responses to these consultations were supportive recognising their need to form part of the toolkit to promote improvements in the water environment. Offence provisions were not specifically mentioned in the consultation as they were considered an integral part of the package of new powers.

Restoration Regulations cannot be made until the Reservoirs Bill is passed, which will put offence provisions in place to enforce them. Should these offence powers be made in this Bill we will consult on the draft Restoration Regulations before they are brought to the Parliament.

Give examples of when, since WEWS came into force, having a prosecutable offence would have helped achieve the environmental objectives of the WFD
WEWS and regulations made under WEWS are currently focused on preventing damage to the water environment, rather than restoring it. Regulations enabling compulsory restoration measures have not yet been made under s.22 of WEWS, so it is not possible to give examples where having a prosecutable offence in connection with restoration measures would have helped achieve the environmental objectives of the WFD (although prosecutable offences under CAR do support the CAR licencing regime, helping to ensure that licences are complied with so that deterioration of the water environment is prevented). Prevention of further deterioration will not be sufficient to achieve the WFD’s environmental objectives, however. Restoration work is required to meet those objectives. The intention is that restoration notices issued under regulations made under s.22 of WEWS will identify specific remedial action that is needed. Such action could include, for example, the repair of a dam or weir on a property which may be impacting on fish stocks, or old mine workings which are discharging into a water body, impacting upon local biodiversity. The intention is that the person served with the notice should carry out the required work. Without the threat of a criminal sanction, there would be little or no incentive to incur the cost of complying with an improvement notice, compromising achievement of WFD objectives.

Where in the Bill is evidence of SEPA’s authority to charge reservoir managers under the Bill?

Section 14(4) provides powers that would enable SEPA to make charges for registration or (through 22(5)) to charge a fee for a review of a reservoirs risk assessment. (Section 22(6) specifies that this would be refundable if the review was successful). These are enabling powers and any use would be subject to consultation and the agreement of Scottish Ministers. It should also be noted that the policy intent is that registration would be free, at least for an initial 6 month period to encourage early registration.

Please give some more information about SEPA’s proposed general charging policy for reservoir classification and for requiring works to be done.

No charges would be made by SEPA for the classification of reservoirs. Any remedial work required in the interests of safety would be on the advice of the supervising engineer or direction of the inspecting engineer. Reservoir owners would be expected to undertake actions identified by the engineer to ensure that the reservoir meets required standards and is not a risk to public safety. As an exceptional matter sections 65 and 69 of the Bill provide SEPA with powers to appoint an engineer or to have emergency work undertaken and to recover the costs from the reservoir owner.

The intention is that SEPA will also be able to levy a subsistence charge that will be proportionate to the level of risk posed by the reservoir and therefore the level of administrative costs borne by SEPA. Under the new legislation, SEPA will have more statutory duties than local authorities have under the current legislation. SEPA will also have to enforce the legislation for a larger number of reservoirs. This subsistence charge was mentioned in the consultation paper, but was omitted from the Bill as
introduced. There will be a Government amendment at stage 2 to rectify this omission. SEPA will be required to carry out a consultation exercise before implementing any charging scheme for reservoir owners, and any such scheme would have to be approved by Scottish Ministers.

In addition to the above we agreed to respond to a number of specific points raised by the Committee:

**What is the nature of Scottish Ministers' power to define the meaning of "natural level" and "surrounding land":**

The Scottish Ministers can do so under s.1(6)(b) of the Bill. The power is to be exercised by regulations. The power to make regulations under section 1(6)(b) can also be used to make provision concerning when a loch or other area is to be considered artificial or partly artificial and to make provision about how the volume of water capable of being held is to be calculated. The intention is that s.1(6)(b) can, if necessary, be used to clarify these issues should disputes arise as to the appropriate method of calculation of reservoir volume (whether those disputes turn on the interpretation of "natural level of the surrounding land" or otherwise).

**What does 10,000 cubic meters look like?**

Clarification was also sought by committee members as to what 10,000 cubic meters meant in reality and we agreed on an Olympic size swimming pool as the metric. An Olympic-sized swimming pool contains 2,500 cubic metres of water. Therefore, a reservoir of 10,000m$^3$ (the threshold above which all reservoirs will be captured by the new legislation) is equivalent to the volume of water contained in four Olympic swimming pools.

**Sludge**

The Committee also asked whether a reservoir leaking sludge would be regulated by the Bill. The position under the Bill is that any structure or area that is capable of holding 10,000m3 or more of water above the natural level of any part of the surrounding land is a controlled reservoir under the Bill. The intention is that this could potentially cover a reservoir that contained, whether wholly or partly, sludge, if the total capacity exceeded 10,000m3. However, there are some express exclusions under s.2 (2) of the Bill and these exclusions include "ponds within extractive waste sites or waste facilities" and "sewage sludge lagoons". If the reservoir in question is such a pond or sewage sludge lagoon, it will not be subject to the regulatory regime of the Bill. The regulation of mining waste is regulated under "**The Management of Extractive Waste (Scotland) Regulations 2010**" and sewage sludge lagoons are regulated under the Waste Management Licensing Regulations 1994 as amended by the **Waste Management Licensing Amendment (Scotland) Regulations 2003**."
However, any discharge or leaking of sludge from a reservoir (whether or not a controlled reservoir under the Bill) into the water environment would most likely be prohibited under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“CAR”) as an activity liable to cause pollution of the water environment. If it did, or was liable to, pollute the water environment, such a discharge or leak would be a criminal offence under CAR (unless the discharge was authorised by SEPA under a CAR licence).

I hope you find this additional information helpful.

Neil Ritchie  
Head of Natural Resources and Flooding Branch  
Scottish Government

WRITTEN SUBMISSION FROM INSTITUTION OF CIVIL ENGINEERS (ICE)

1. General

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

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

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

2. Chapter 1 – Controlled Reservoirs, Reservoir Managers etc

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

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

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

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

3. Chapter 3 – Risk Designation

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

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

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

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

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

### 4. Chapter 5 - Construction or Alteration of Controlled Reservoirs

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

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

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

**Section 32(1)** – Under the Act the term Construction Engineer was reserved for the Qualified Civil Engineer (QCE) appointed to design and supervise the Works related to the construction of new reservoirs or the alteration of existing ones. The Bill widens this to include aspects such as Abandonment and Discontinuance as well as other Alterations to be determined by Regulation. Under the Act the Supervising Engineer (SE) did not assume responsibility for the reservoir until the Final Certificate was issued. However for reservoirs being Discontinued or Abandoned a SE will already be in post. We are of the opinion that in such cases the SE should continue to carry out his duties and the ConE should be only be responsible for the design and construction of the Works. This will ensure continuity by a SE who is familiar with the reservoir during what, on occasions, can be an extended period between the decision being taken to Discontinue and Works actually being undertaken.
Section 32(30) and (4), Section 33, Section 34 – This is a requirement not included in the Act and we are unsure as to the reasons for requesting Safety Reports and Safety Measure Certificates, particularly as these only seem to be mandatory where the reservoir is being restored to use, abandoned or discontinued. We believe that these sections need further discussion with ICE to allow us to understand their intent which would allow us to advise further.

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

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

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

Section 46 – This requires Interim Inspection Compliance Certificates (which are welcomed) and Inspection Compliance Certificates to be issued by the IE for all directions he gives in his report. These are not just related to measures in the interests of safety but would appear to cover minor maintenance requirements, monitoring etc. In the case of monitoring, this is ongoing and hence it will not be possible to issue a certificate to state that it has been completed. We strongly suggest that these
Agenda Item 2  
RAE/S3/10/29/3

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 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 a inspecting engineer, for example “*supervision of the implementation of any directions given by inspecting engineer*” under section 48(2)(d). In the 1975 Act there was no requirement for the
Supervising Engineer to be involved in the work that is carried out following the Inspecting Engineer’s report. This will increase costs to the reservoir managers.

**Flood Plans**

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

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

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

**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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Civil Sanctions

With regard to the civil enforcement powers contained in Chapter 9 of the Bill, SEPA has studied with great interest the 2006 report by Professor Richard Macrory entitled “Regulatory Justice: Making Sanctions Effective”. This report (which developed some themes contained within Sir Phillip Hampton’s earlier report “Reducing Administrative Burdens: Effective Inspection and Enforcement”) concluded that regulators needed more flexible and risk based enforcement tools. Professor Macrory recommended the introduction of more flexible tools, similar to many of those proposed in the draft Bill. SEPA is also aware of the Regulatory Enforcement and Sanctions Act 2005 which sets out an extended toolkit for regulators in England and Wales based on the recommendations of Macrory.

SEPA agrees additional enforcement tools would enhance our ability to take effective and proportionate enforcement action; this fits well with better regulation principles. SEPA also agrees with Professor Macrory’s analysis that the availability of such a flexible toolkit would assist in ensuring prosecution is targeted on those who have little evident concern for managing and preventing risks, thereby helping ensure the regulatory response is proportionate to the offence and easing the workload of the criminal courts.

In general terms therefore, SEPA is supportive of the proposals in the Bill regarding the regulatory toolkit. We consider the proposal to only grant SEPA the ability to serve fixed monetary penalties, variable monetary penalties, restraint and restoration notices by order of the Scottish Ministers following consultation is sensible, as it will give the opportunity to consider in detail how these will operate in practice – for example what the relevant appeals mechanisms should be. In the long term SEPA is keen that the most appropriate toolkit is developed for SEPA in the Scottish context across all the regimes that SEPA has regulatory responsibilities for.
SEPA also considers that the requirement in section 85 for SEPA to publish guidance on how it would use such powers, prior to actually utilising them in practice, provides the safeguard for reservoir managers of ensuring SEPA utilises these powers in a transparent and appropriate manner.

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

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

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

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

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

James C Curran
Director of Science and Strategy
25 November 2010
Consultation on a Risk Based Reservoir Safety Regime for Scotland

Affiliations
- Hon. Visiting Professor, AON Benfield Hazard Research Centre, University College London.
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- Fellow of the Chartered Insurance Institute.
- Chartered Insurance Practitioner.

Any opinions expressed are the author's own.

Please note:
This paper contains public information (shown in italics) obtained by my own site inspections and from freedom of information enquiries. All of the examples are in the UK. To avoid causing public concern, I am not prepared to disclose the sites referred to, but I have discussed each case with the relevant local emergency planning officers and recommended action.

Planning
All reservoirs should have published inundation maps which can be used by land use planners to ensure that new developments do not take place in the hazard zones.

I know of one large dam where housing has been built right up to the dam wall and there is a housing estate and sports centre in the middle of the inundation zone. The local authority is planning a new primary school and hospital there. The concrete dam wall shows cracks which have not been repaired.

Emergency plans should be drawn up for any reservoir where there is existing property in the hazard zone.

Consideration might be given to using insurance risk assessment techniques in drawing up such plans. For example, the “Crichton Risk Triangle”  

1, was designed for use by the insurance industry for catastrophe modelling (see Figure). Catastrophe models work on the basis that “risk” is a function of hazard, exposure and vulnerability, and each factor needs to be considered independently. Risk is represented by the area of an acute angled triangle.

Figure . The “Crichton Risk Triangle” (© Crichton, 1999)

Hazard
In the case of flooding, "Hazard" represents the frequency and severity of rainfall events or storms. Climate change predictions indicate an increasing hazard over which society has little immediate control other than to clean watercourses, provide adequate drainage, and adopt natural flood management practices\(^2\).

Climate change will produce more droughts leading to subsidence and more severe precipitation leading to heave and overtopping making embankments vulnerable.

I know of one reservoir where the embankment has subsided in many places due to mining subsidence and burrowing animals. Movement detectors were disconnected by the reservoir owner because they showed the embankments moving.

Panel engineers do examine many of the engineering hazards, but not all. In particular, avalanche, landslip and peat slide risk could swamp reservoirs as in the Vaiont disaster yet how many panel engineers are qualified to comment on this hazard?

I know of one reservoir where the surrounding hillsides are steep and covered with peat. Less than twenty miles away, a similar hillside suffered a major peat slide in 2003 due to heavy rainfall following an extended drought.

Exposure
This represents the density and value of property located in flood hazard areas such as near rivers, the coast, below dams, or on low lying land, especially at the foot of a slope. Even if there are few buildings, the presence of people can still occur, for example in river side camp sites.

10,000 people were in a river bank camp site for a motor cycle rally below a dam until 12 hours before it failed in 2005. Many were intoxicated. Fortunately the campers had

moved before the water arrived, but six stewards who were collecting litter were washed away.

Typical household and business premises contents are more valuable and more vulnerable than ever before. Population growth, migration, and smaller, often single person, households have meant a huge demand for land for development in many countries. Climate change and the “heat island” effect of densely populated areas can increase the frequency and severity of localised rainstorms in urban areas leading to more flash floods. Also exposure of property and critical infrastructure should be taken into account.

Vulnerability
This refers to the resilience of the properties insured and depends on the design and construction and the extent to which people and property exposed to the hazard could be resilient to it. This would depend on depth and velocity of likely flood and extent of warning available. The existence of warning systems and evacuation practices would help to reduce vulnerability.

In a current EU funded research project, Scotland has been held up as an example to the rest of Europe in work on making cities more resilient, yet when it comes to evacuation procedures for reservoirs, Scotland is well behind countries such as France.

Informing the public
Everyone should have access to flood plans including inundation maps.

I know of one reservoir where the designated disaster shelter was in the centre of the inundation map because the emergency planning officer had not been shown the inundation map.

Any landslip or peat slide in the surrounding hillsides should be reported. Also any works which might affect the drainage or stability of these hillsides. There should be a consultation with the insurance industry to reach an agreement on the maintenance of flood insurance cover for such properties to prevent insurance blight. Insurers will be prepared to do this if they can be sure that the owner of the reservoir has adequate funds to meet subrogation claims (see public liability below).

Warning systems
Reservoir owners should be encouraged to install permanent scatterer synthetic aperture radar interferometry (PS InSAR) transponders especially for high risk

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4 For more information about the Flood Resilient Cities project, see: www.floodresiliencity.eu accessed 7 September 2010
reservoirs. These cost around £100 each and enable sub millimetre movements of dams and embankments to be constantly monitored from satellites. Thames Water has used this technology in London. Such systems can give early warning of movement of hillsides, dams and embankments.

All people at risk should receive instruction on a regular basis on the risks and how to react. Some mechanism such as sirens could perhaps be used to warn of evacuation and the public could be advised to keep a bag handy to leave home at short notice. There should be shelters designated and measures taken to evacuate domestic pets and livestock.

**Public Liability Insurance**

The law relating to reservoirs owners is clear; there is strict liability for any injury or damage caused by the escape of water under the rule in Rylands v Fletcher\(^5\). However compensation to those suffering from such an escape depends on the reservoir owner having the money to pay. Public liability insurance is already compulsory for motorists, riding schools and labour only sub contractors in the construction industry. In the Channel Islands it is also compulsory for speedboat owners. Many reservoirs are owned by fishing and sailing clubs which may not have the resources to pay compensation following a disaster. Also they may not have the resources to properly maintain or inspect the structure.

Public liability insurance for a limit of say £250,000 should not be expensive, and higher limits could be required for cases where there is more property at risk. If such insurance was in force, the insurance industry could act as a further check on the standards of maintenance and inspection. Regular independent risk assessments and inspections by insurance company experts will increase safety at no cost to the taxpayer.

Insurers could also review panel engineers’ reports and these should be published. Some are more detailed than others. Panel engineers’ inspections should cover a laid down set of criteria to be covered. At present there is no obligation on reservoir owners to implement recommendations.

*I know of one dam where engineers have been making the same safety recommendations for 20 years and they have still not been implemented.*

**Application**

The Reservoirs Act 1975 does not apply to below ground reservoirs, tidal barrages, the Thames Barrier, canals, or reservoirs in Mines and Quarries (such as the slurry dam at Stoney Middleton in the Peak District, which collapsed on 22 January 2007), which are the responsibility of the Health and Safety Executive. Are there any plans to deal with these? (I appreciate that health and safety is reserved).

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\(^5\) Rylands v Fletcher [1868] LR 3 HL 330, HL
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>
<tr>
<td>43 - 46</td>
<td>Requirement to comply with any direction in an Inspection</td>
<td>Maintenance issues are treated the same as matters in the interests of</td>
<td>Grass cutting maintenance could have the same</td>
<td>Remove maintenance as a statutory</td>
</tr>
<tr>
<td>48 (2g)</td>
<td>Supervising Engineer to supervise any proposed drawdown</td>
<td>Levels in reservoirs move up and down on a regular basis</td>
<td>Could impose unnecessary restrictions on normal hydro operation. Duplicates restrictions through CAR</td>
<td>Need to introduce the words “unexpected or significant drawdown”. Already identified in CAR</td>
</tr>
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</tbody>
</table>

**WRITTEN SUBMISSION FROM JOHN REID, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No mention of mitigating circumstance for non compliance.

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

**Agriculture and Fisheries Council**

The Cabinet Secretary for Rural Affairs and the Environment has provided a short report on the EU Agriculture and Fisheries Council meeting that took place on 29 November. The report can be accessed here:


**Agriculture and Fisheries Council – December**

The Agriculture and Fisheries Council will meet in Brussels on Monday 13 and Tuesday 14 December. The points on the agenda are as follows:

**Fisheries:** Atlantic and North Sea TACs and quotas - political agreement; and Black Sea TACs – political agreement

**Agriculture:** Communication "The CAP towards 2020"; contractual relations in the dairy sector; quarterly report on the dairy market; and new quality policy for agricultural products.

The full agenda, which includes links to documents relating to each item, can be accessed here:


**House of Commons Scottish Affairs Committee**

The Scottish Affairs Committee visited post offices in rural Scotland on Monday 6 December as part of its inquiry into postal services in Scotland. The Committee’s inquiry webpage can be accessed here:

European Commission dairy sector proposals

The European Commission has proposed new measures to improve future stability in the dairy sector. The news release can be accessed here:

Commission proposes new measures to improve future stability in the dairy sector