



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS AND ENVIRONMENT COMMITTEE

AGENDA

2nd Meeting, 2011 (Session 3)

Wednesday 19 January 2011

The Committee will meet at 9.30 am in Committee Room 1.

1. **Wildlife and Natural Environment (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).
2. **Appointment of EU Reporter:** The Committee will appoint a member to serve as EU Reporter during the pilot of an early warning system for consideration of EU legislative proposals.
3. **Reservoirs (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

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Clerk to the Rural Affairs and Environment Committee
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The papers for this meeting are as follows—

Agenda Item 2

EU Paper

RAE/S3/11/2/1

Agenda Item 3

Reservoirs Bill report (Private Paper)

RAE/S3/11/2/2

Rural Affairs and Environment Committee

2nd Meeting, 2010 (Session 3), Wednesday 19 January 2011

Appointment of EU Reporter

Background

The Scottish Parliament's EU Strategy

1. The debate on the European and External Relations Committee (EERC) report on the impact of the Treaty of Lisbon took place on the 9th December and the following motion was agreed to:

S3M-07496 Irene Oldfather (Cunninghame South) (Labour Party) on behalf of the European and External Relations Committee: Report on the impact of the Treaty of Lisbon on Scotland— That the Parliament notes the European and External Relations Committee's 4th Report 2010 (Session 3), ***Inquiry into the Impact of the Treaty of Lisbon on Scotland*** (SP Paper 469) and agrees to the introduction of a Parliament-wide strategy for European Union engagement and scrutiny, including the introduction on a pilot basis and if successful, permanently, of an early warning system for EU legislative proposals, as outlined in Annexe B to the Report.

2. The EU Strategy and related annexes is available on the Parliament's website at:

http://www.scottish.parliament.uk/s3/committees/europe/inquiries/euDirectives/documents/EUStrategy_Final.pdf

3. The EU Strategy outlines the enhanced role of subject committees in early engagement and in the scrutiny of emerging EU legislative proposals. Subject committees will be responsible for appointing EU Reporters and for scrutinising EU legislative proposals within their area.

4. The pilot that will test the process for consideration of EU legislative proposals in subject Committees seeks to ensure that the format, content and timing of the information received meets the needs of subject committees. Implementation of the pilot requires subject committees to nominate EU Reporters to cover the period of the pilot. This will commence at the end of January with the first report on EU legislative proposals being issued to EU Reporters on 31 January. The pilot will run to dissolution. The process will be evaluated over the dissolution period and the EU Strategy and associated procedures and guidance will be finalised and in place for the next Parliamentary session.

Appointment of EU Reporters

5. The role of the EU Reporter in the pilot is to undertake the initial review of EU legislative proposals and accompanying Explanatory Memoranda with

the Convener. A list of EU legislative proposals and the detailed documents will be sent to the EU Reporter and Convener (copied to the Clerk) on a weekly basis. In the review the EU Reporter and Convener will prioritise legislative proposals which should be subject to further scrutiny by the Committee and will identify those on which no further action should be taken. The proposed process for consideration of legislative proposals is outlined in Annexe B of the EU Strategy. It is anticipated that subject committees will develop criteria for assessing which proposals to prioritise, with the support of the Brussels Office and SPICe. Over the period of the pilot subject committees may wish to consider focusing on those areas already prioritised through their review of the Commission's Work Programme (CWP).

Recommendation

6. The Committee is asked to nominate a member to act as an EU Reporter for the period of the pilot for consideration of EU legislative proposals.

Committee Clerk
January 2011

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.

Reservoirs (Scotland) Bill

The Minister has written to the Clerk following her appearance before Committee on 22 December. The text of the letter can be found in the Annexe.

Scottish Government Report on the Economic Condition of Crofting

The Scottish Government's Report on the Economic Condition of Crofting was laid before the Scottish Parliament on 23 December 2010. Section 51 of the Crofting Reform (Scotland) Act 2010, places a duty on the Scottish Ministers to report to the Scottish Parliament once every 4 years on the economic condition of crofting. This report covers the period 2007 to 2010. The report can be accessed here:

[Economic Condition of Crofting](#)

Marine (Scotland) Act

The Cabinet Secretary has written to the Convener regarding the making of an order under the Marine (Scotland) Act 2010. The letter can be accessed here:

<http://www.scottish.parliament.uk/s3/committees/rae/documents/documents/20110111MarineScotlandActformatted.pdf>

and the draft instrument can be accessed here:

<http://www.scottish.parliament.uk/s3/committees/rae/documents/documents/20110111MarineScotlandActinstrument.pdf>

ANNEXE

30TH RAE COMMITTEE MEETING 22 DECEMBER 2010 – RESERVOIRS (SCOTLAND) BILL

I am writing following the RAE Committee meeting on 22 December 2010 at the Scottish Parliament, during which I gave Stage 1 evidence on the Reservoirs (Scotland) Bill. I agreed to provide the Committee with some further information on a number of points raised during the session.

How many appointments and re-appointments are typically made to the current panels of reservoir engineers by the ICE on an annual basis?

In 2010, 60 people have been appointed or reappointed to the reservoir panels. Two of the 60 were unsuccessful in applying to the All Reservoirs Panel, and so were reappointed to their existing panel (one to Supervising, one to Non-impounding). The numbers are as follows -

All Reservoirs panel

Reappointments	12
Appointments	2
(Unsuccessful	2)

Non-impounding panel

Reappointments	1 (Unsuccessful All Reservoirs Panel application)
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Supervising panel

Reappointments	36 (Inc. one unsuccessful All Reservoirs Panel application)
Appointments	9

<u>Total</u>	<u>60</u>
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The figures for 2010 are slightly higher than the average of 40 a year (there are around 200 panel engineers who must re-apply on a 5-year cycle). This, of course, depends on when the initial application was made.

Use of the term ‘risk’

In this legislation, ‘risk’ means a combination of the consequence and probability of a dam failure. The committee has discussed at length the appropriateness of including probability; however, SEPA is bound by the Flood Risk Management (Scotland) Act 2009 which implements the European Floods Directive to consider probability when assessing all forms of flood risk. This extends to flood risk from reservoirs and, as a result, will give a consistent, holistic picture of flood risk in Scotland. The 2009 Act states that –

“Flood risk” means the combination of the probability of a flood and of the potential adverse consequences, associated with a flood, for human health, the environment, cultural heritage and economic activity”

The probability of the failure of any reservoir is very likely to be assessed as ‘low’. However, whilst I fully appreciate the difficulties inherent in these assessments, as reliable methods of scientifically assessing such risk are still in development, I consider that it is sensible for the Bill to require SEPA to take into account basic risk factors such as the type of construction, the purpose of the reservoir, and actual condition of each dam when assessing the probability of failure.

As methods of assessing the probability of failure of reservoirs improve, such methods can then be utilised when categorising reservoirs if SEPA considers it

appropriate to do so. Alternatively, the Scottish Ministers can (by virtue of s.21(4)) by regulations make further provision about what is to be taken into account when assessing risk, should a recognised method of assessing probability emerge in future.

I must also stress that the Bill does not place obligations on engineers, or the ICE, to provide a precise assessment of the statistical probability of failure. The obligation is on SEPA, and is only to "take account" of the probability of an uncontrolled release of water from the reservoir (as well as the potential adverse consequences). I do not believe that the Bill is placing unrealistic requirements on the practitioners.

With these factors in mind, I consider that the inclusion of a requirement for SEPA to consider probability of flooding from reservoirs is crucial to maintaining consistency in how we assess flood risk in Scotland.

Scottish Water costs

The committee raised concerns about the difference in costs presented to the committee by Scottish Water with those set out in the Financial Memorandum. I understand that the difference is largely due to a recent assessment Scottish Water have undertaken of the likely structural work they may have to undertake on the smaller, currently unregulated reservoirs in their portfolio. This assessment took place after Scottish Water had provided information to the Scottish Government on the potential costs of the Reservoirs Bill for inclusion in the financial memorandum. In their current maintenance programmes, Scottish Water have prioritised the maintenance of their operational reservoirs and statutory obligations under the existing legislation. A number of their smaller reservoirs are no longer operational and have, following assessment, been found to be in need of repairs in order to meet the requirements of the Reservoirs Bill.

The committee also raised concerns about the estimated capital costs of £1.2 million for Scottish Water set out in the Financial Memorandum during the evidence session. This is the estimated costs of the production of reservoir flood plans. I would like to highlight that Scottish Water has already produced reservoir flood plans for 100 reservoirs and it is likely these plans will only require minor modifications to meet the new requirements under the Bill. If this is the case, the cost is likely to be closer to the lower end of the range at £0.7 million. This cost will be incurred over a number of years between now and 2016 as set out in the Financial Memorandum.

With regards to Scottish Water funding, the amount of finance it requires over a regulatory period is set by the independent economic regulator, the Water Industry Commission for Scotland. The current regulatory period runs from 2010-15 and the Water Industry Commission for Scotland issued its Final Determination in November 2009. The Determination, by necessity, includes a number of assumptions regarding Scottish Water's costs. There are regulatory mechanisms that enable deviations in cost (arising, for example, because of inflation) and new statutory obligations, that were not foreseen at the time of the Determination, to be accommodated.

If additional unfunded costs are placed on Scottish Water, for example as a result of the Reservoirs Bill, these mechanisms can be utilised to ensure that Scottish Water can deliver its new statutory obligations.

Stage 2 amendments

As I indicated during the session on 22 December, my officials are currently working on a number of Stage 2 amendments to resolve some of the concerns that have been raised by stakeholders since introduction of the Bill in its current form.

We are considering-

- removing the exclusion of ash and silt lagoons from the legislation in light of the recent incident in Hungary.
- the removal of Section 2(1)(a) in response to concerns raised by stakeholders that it may unintentionally capture extensive pipe networks which feed water into reservoirs, but do not affect the safety of the reservoir.
- an amendment which will enable SEPA to charge an annual subsistence fee to reservoir managers to cover the costs of their administrative role. The cost of this has already been taken into account in the Financial Memorandum as its omission from the Bill at introduction was not intended.
- an amendment which will put time constraints on SEPA when completing a reservoirs risk designation.
- an amendment which will require SEPA to consult and have regard to advice from ICE before publishing guidance on the risk designation process.
- an amendment to the disqualification criteria for construction engineers in Section 31(5) to address concerns raised by stakeholders.
- an amendment which will remove the requirement for an Inspecting Engineer to be appointed at all times in response to concerns raised. In addition we are also considering an amendment which will require measures in the interest of safety to be supervised by an Inspecting Engineer as is currently the case under the 1975 Act.
- amending Section 46 so that it is clearer that routine maintenance which does not affect the safety of the reservoir is not compulsory in the same way as maintenance which can affect the safety of the reservoir is.
- an amendment to clarify that day to day operational changes in water levels such as those changes as a result of switching on turbines in a hydro-electric scheme does not constitute a “proposed draw-down” under Section 48 (2)(g) and will not require the supervision of a supervising engineer.

- an amendment to remove the requirement for the supervising engineer's details to be displayed on emergency information boards and replace this with SEPA's contact details.
- A number of other minor amendments including a small number we have agreed to in response to concerns raised by the Subordinate Legislation Committee in it's Stage 1 report.

I would also like to take this opportunity to inform you that the Cabinet Secretary for Rural Affairs and the Environment will be taking over lead responsibility for the Reservoirs (Scotland) Bill from now on.

I hope you find this additional information helpful.

Roseanna Cunningham
Minister for Environment and Climate Change
12 January 2011