



Llywodraeth Cymru
Welsh Government

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Policy Update to the Consultation on the Implementation of Amendments to the Reservoirs Act 1975

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Welsh Government:

www.wales.gov.uk/consultations/environmentandcountryside/reservoirsafety/?lang=en

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Section 1 - Introduction

Large raised reservoirs in England and Wales are currently regulated by the Reservoirs Act 1975¹(the 1975 Act). The 1975 Act seeks to ensure public safety through imposing a statutory obligation on the undertakers² of reservoirs above a certain volume to take and act upon independent professional advice on the integrity of the reservoir to manage and respond to all of the forces and conditions imposed on it. The purpose of this obligation is to reduce the risk of uncontrolled releases of water, which may lead to loss of life.

In Wales responsibility for the enforcement of reservoir safety rests with Natural Resources Wales (NRW). Enforcement is in respect of the legislation. NRW does not impart engineering judgement or technical advice to reservoir undertakers. The provision of technical and engineering advice is the responsibility of the qualified civil engineers employed by the undertakers. Qualified civil engineers are those engineers appointed to Panels of Engineers by the Defra Secretary of State and the Welsh Ministers.

The essential features of the 1975 Act have not changed much from the Reservoirs (Safety Provisions) Act 1930 which was introduced following the failure of certain reservoirs in the 1920's. There has been no loss of life through reservoir failure since the legislation was first introduced, however, in recent years there have been a number of near-miss incidents where lives could have been lost if the reservoir had failed. Sir Michael Pitt's report on the 2007 floods made 92 recommendations including updating reservoir safety legislation.

Schedule 4 to the Flood and Water Management Act 2010³ (the 2010 Act) includes a number of provisions amending the 1975 Act. The primary reason for amending the 1975 Act was to ensure that appropriate safeguards are in place to protect the public that are based on an assessment of risk. The risks from reservoir breaches are classed as low likelihood/high consequence.

Chief amongst the amendments were the reduction of the threshold for large raised reservoirs from 25,000 cubic metres to 10,000 cubic metres capacity and the introduction of the 'high risk' designation for those large raised reservoirs thought to pose a risk to life.

¹ The Reservoirs Act 1975 – www.legislation.gov.uk/ukpga/1975/23

² For anyone other than the Environment Agency or NRW or a water undertaker, this is the person(s) carrying out the undertaking(s) for which the reservoir is used, and where there is no such undertaking, it is the owners or lessees of the reservoir.

³ The Flood and Water Management Act 2010 - www.legislation.gov.uk/ukpga/2010/29

Section 2 - Consultation process

A joint Welsh Government and Defra consultation ran for 12 weeks between 23 February and 17 May 2012, covering both England and Wales, which sought views in respect of the secondary legislation that will be made to support the move to a risk based reservoir safety regime.

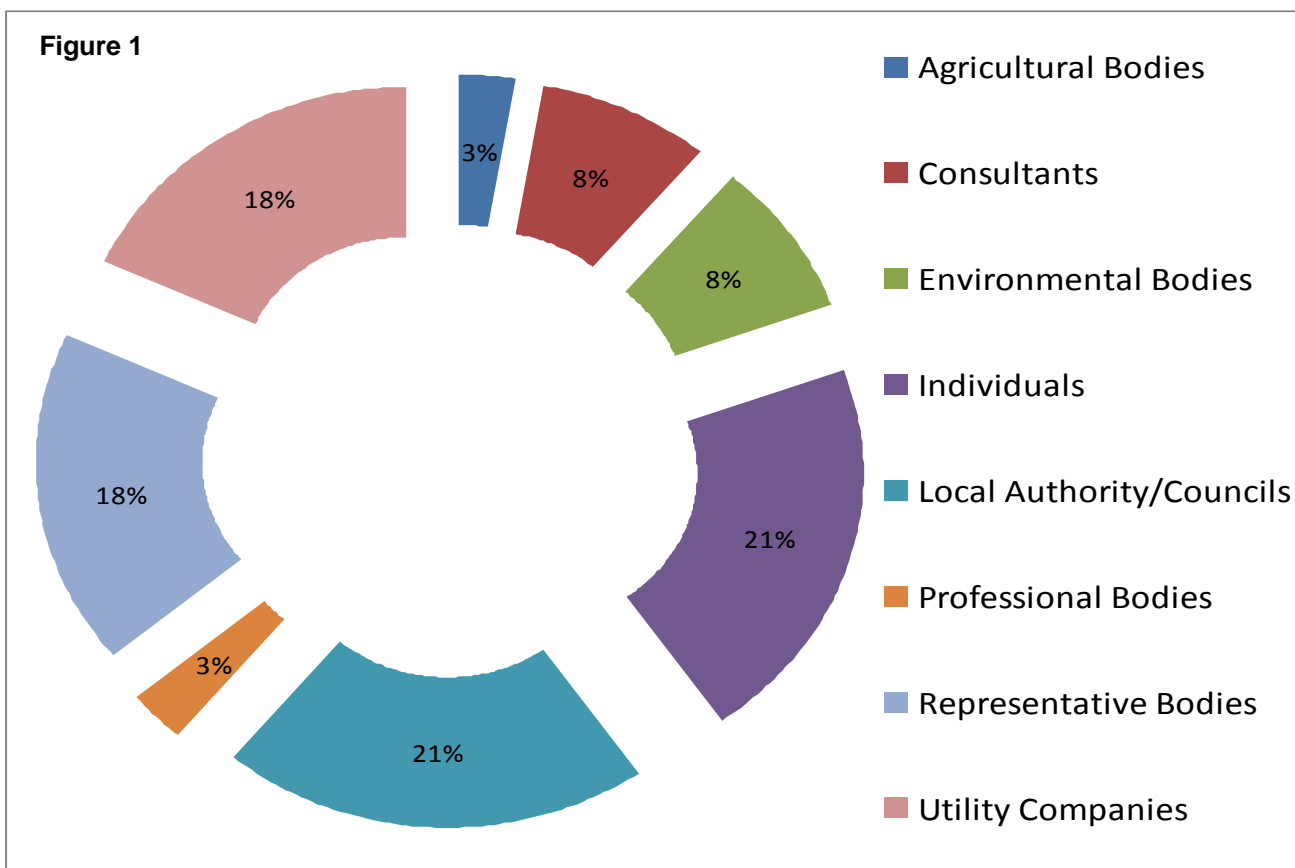
A copy of the consultation paper along with the summary of responses for Wales is available on the Welsh Government website and can be viewed on the link below:
wales.gov.uk/consultations/environmentandcountryside/reservoirsafety/

Since this consultation a second consultation was issued in June 2014 by the Welsh Government to obtain views on the proposal to commence the whole of schedule 4 to the 2010 Act in one go, rather than a two phased approach as originally suggested. This will mean that all reservoirs with a capacity of 10,000 cubic metres and over will fall under the 1975 Act (as amended by the 2010 Act) straight away. A copy of this consultation can be viewed on the Welsh Government website:
<http://gov.wales/consultations/environmentandcountryside/8846150/?status=closed&lang=en>

2.1 Response to Consultation (Feb – May 2012)

A total of 72 responses were received, 6 of which were respondents in Wales.

The split of respondents is set out in figure 1 below and a list of respondents is at Annex A.



Section 3 – Next Steps

The Welsh Ministers will make a number of pieces of secondary legislation in relation to reservoir safety following the joint consultation. The new legislation will reflect this revised policy on reservoir safety and take into account the responses in the joint Welsh Government and Defra consultation in 2012.

Welsh Government intends to make regulations on the following:

- determine how to calculate reservoir capacity
- define a structure or area to be treated as 'large' or define structures or areas not to be classed as a large raised reservoir
- the registration process
- specify the minimum period for representations against a provisional designation and provide a right of appeal against final designation
- define what is to be treated as abandonment and what is to be treated as bringing a reservoir back into use
- establish Joint Panels of Engineers in England and Wales
- provide a right of appeal against a requirement to appoint an engineer and a requirement to carry out a recommendation of an engineer
- specify the timing for inspections of large raised reservoirs
- requirements to make post incident safety reports
- Introduce civil sanctions for offences

The initial intention had been to take a two phased approach to commencement of these new regulations whereby phase one would commence all changes to the 1975 Act to reservoirs over 25,000 cubic metres. The second phase to come in at a later date would reduce the threshold of a large raised reservoir to 10,000 cubic metres. Since this phased approach was proposed following the consultation on the amendments to the 1975 Act, much has changed and this is no longer felt to be the most suitable approach.

A second consultation has been undertaken whereby the Welsh Government proposed that the whole of Schedule 4 to the 2010 Act is commenced at once in Wales, meaning that the 1975 Act, as amended by the 2010 Act will apply to all raised reservoirs with a capacity of over 10,000 cubic metres immediately. Although the whole of Schedule 4 will be commenced, there will still remain some areas where

regulations will not be made at this present time, in line with responses to the joint Welsh Government and Defra consultation (e.g. in relation to reservoirs in cascade and flood plans).

Section 4 – Revised Policy

This policy update sets out details of the policies of Welsh Government, in response to the joint consultation, in respect of the secondary legislation that will be made to support the move to a risk based reservoir safety regime. A number of questions were included to which this section provides a summary of responses to each question.

4.1 Large Raised Reservoirs: Capacity, Exemption & Registration

In commencing schedule 4 to the 2010 Act, Welsh Government intends to commence the new definition of a large raised reservoir to capture all those reservoirs with a capacity of over 10,000 cubic metres.

4.1.1 Definition of a Large Raised Reservoir

The new definition set out in the 2010 Act specifically refers to large raised structures designed or used for collecting and storing water. The definition also includes a large, raised lake or other area capable of storing water which was created or enlarged by artificial means.

“Raised” applies if the structure is capable of storing water above the natural level of any part of the surrounding land.

“Large” is if the raised structure is capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land.

Road and rail embankments which have the capability to hold back water and so fall under the amended definition of a large raised reservoir should not fall under the Act unless there is a deliberate intention to store water.

4.1.2 Capable of storing

In line with the consultation, the Welsh Government intend that the water level to be used for the calculation of capacity is the lowest of any spillway crests. For a gated spillway, where the gates are closed; we intend the lowest fixed crest becomes the next lowest point of overflow, which could be the top of a gate or whichever is lower. We wish to ensure that the calculation is appropriate for flood storage reservoirs which are normally empty. On-line flood storage reservoirs may have a low-level overflow structure at the outlet designed to allow the free passage of normal river flows but to restrict flood flows so that the reservoir fills during flood. We wish to avoid the crest of the low-level structure being interpreted as the spillway for the purposes of calculating capacity.

A spillway blockage, whilst unlikely, would increase the capacity of a reservoir, however we do not wish this to be considered as the basis for calculating capacity as such blockages are unlikely to remain in place for long. Reservoirs designated as high-risk will be under supervision of a supervising engineer and require regular visual inspections including the checking of spillways, therefore reducing the risk of a blockage.

4.1.3 Calculation of Capacity

The consultation set out a number of points to be clarified when making regulations under the 1975 Act in relation to calculating the capacity of a reservoir. Welsh Government intends to proceed with the points set out in the consultation, taking account of the comments made in the response. This includes comments regarding material that can escape from a reservoir in the event of an uncontrolled release, including silt that could be mobilised.

The capacity that is important is the volume of water and silt that could escape from the reservoir in the event of an uncontrolled release. We consider that this is the maximum volume that can be stored within the reservoir and is related to the top water level as defined by the lowest fixed spillway crest. For a gated spillway, the gates are considered to be closed; the “fixed crest” becomes the next lowest point of overflow, which could be the top of a gate.

In defining the calculation of capacity, Welsh Government intends to include the following:

- The escapable volume of the reservoir.
- The escapable volume of the reservoir is assessed at the time of construction or any subsequent enlargement, whether by raising the reservoir structure(s) or excavating the bed of the reservoir.
- Silt or other material that accumulates on the bed of a reservoir within the raised volume is included in the calculation of capacity.
- This is to apply to all reservoirs whether impounding or non-impounding, online flood storage reservoirs and offline flood storage reservoirs.

We will exclude:

- Any volume of the reservoir below the lowest natural ground level.
- Any volume within a reservoir that cannot escape over natural ground within a reservoir.

- The volume of silt or other material that accumulates on the bed of a reservoir within the raised volume where such material is assessed by a qualified civil engineer as unlikely to flow in the event of an uncontrolled breach of the reservoir. The engineer must take into account the tested properties of the silt or other material; consider the impact of all events likely to lead to the uncontrolled breach of the reservoir and the effect on the silt or other material of the water draining rapidly from the reservoir during an uncontrolled breach. The issue of siltation will only become relevant when the qualified civil engineer is giving a final certificate or a discontinuance certificate under section 13(2).

4.1.4 Reservoirs in Cascade

As a result of the comments received during the consultation it was felt that there is not currently enough knowledge or information available at this time about the impacts of reservoirs in cascade to make regulations. This could be considered at a later time.

4.1.5 Exemptions

As set out in the consultation, Welsh Government intends to include the following that should not be treated as large raised reservoirs under the Act:

- a mine lagoon which is a tip within the meaning of the Mines and Quarries (Tips) Act 1969;
- a quarry lagoon which is:
 - a tip within the meaning of the Quarries Regulations 1999
 - a disused tip within the meaning of Part 2 of the Mines and Quarries (Tips) Act 1969
- canals or other inland navigation waterways;
- structures or areas of water designed to protect land from the sea;
- embanked watercourses;
- a road and railway embankment except where:
 - the drain/drains through it are artificially blocked for the purposes of using areas upstream to store water; or
 - the drain/drains through it are constructed so that water is stored above natural ground level.

As part of the consultation suggestions were put forward for other structures that could be considered as exemptions, however reasons for excluding these were limited and therefore no further exemptions will be added at this point.

4.1.6 Registration

With regards to the registration requirements of large raised reservoirs, Welsh Government intends to make legislation relating to:

- The information required when registering large raised reservoirs with NRW
- The timing in which information must be provided when registering reservoirs, or after changes are made to reservoirs
- Any changes to information held on the register
- The location of the register

Concerns were raised within the consultation around the timescale of 28 days for the provision of information for the registration of a reservoir, or changes to a reservoir. Welsh Government considers that the 28 day period is appropriate and consistent with other sections of the amended 1975 Act.

For newly built reservoirs over 10,000 cubic metres, the registration process is tied to the issuing of a construction certificate for new or altered reservoirs and therefore it is considered that the information required should be available at the point the certificate is issued.

For reservoirs with a capacity of 25,000 cubic metres already recorded under the 1975 Act, there will be no requirement to re-register unless specified information has changed.

For reservoirs already built with a capacity of between 10,000 and 25,000 cubic metres, information will be collected by NRW at the point of registration. The required information will be set out within the new regulations. In order that all reservoir owners come forward as undertakers, the amount of information initially required from them will be limited to basic factual information (such as contact details) and any other information where this is available in existing reports or statements.

Paragraph 39 of Schedule 4 to the 2010 Act amends section 41 of the Environment Act 1995 to allow NRW to “recover costs incurred by it in performing functions conferred by the 1975 Act...and may require the payment to it of such charges as may from time to time be prescribed”.

This allows NRW to consider whether it is appropriate to charge a fee to the undertaker for the registration of a reservoir, however, at this time, NRW have indicated that they will not be making such a charge. NRW consider that such a charge could be seen as a barrier to registration.

4.2 Monitoring, Supervision & Inspections

4.2.1 High Risk Reservoirs: monitoring and supervision

At this time, Welsh Government does not intend to issue statutory guidance on the supervision of reservoirs. Defra has worked in collaboration with the Institution of Civil Engineers and alongside the Environment Agency to produce non-statutory guidance in the form of “A guide to the 1975 Act”. Welsh Government will work alongside Natural Resources Wales to produce appropriate guidance taking in to account the new legislation for Wales.

4.2.2 High Risk Reservoirs: Inspections

Welsh Government intends to make legislation as set out in the consultation document in terms of inspection dates for high risk reservoirs. There will be a maximum period of 10 years between inspections or a shorter period upon recommendations of the inspecting or supervising engineers.

In addition, inspections will be carried out under the following circumstances:

- An inspection will be required within a maximum of two years following any construction or alteration certified by a qualified civil engineer. The start of the two year period will be the date of any final certificate for the high-risk reservoir given by the construction engineer responsible for the construction/alteration of the reservoir.
- An inspection will be required within six months of any alterations to the reservoir which do not increase its capacity but might affect its safety and which have not been designed and supervised by a qualified civil engineer.
- An inspection can be required at any time when the supervising engineer so recommends.
- An inspection can be required at any time recommended in the report of the inspecting engineer.
- As required by the following table:

25,000m ³ plus already registered and in valid inspection regime	As recommended: <ul style="list-style-type: none"> • In last Section 10 report • By Supervising Engineer • Within 10 years of last S10 inspection
10,000m ³ plus not already registered or in a valid inspection regime	Within one year of final designation as high risk, or as required by the Supervising Engineer if earlier

In the responses to the consultation question around longer inspection periods, the majority of respondents did not support inspection periods of longer than 10 years. Welsh Government does not intend to include longer inspection periods within new legislation.

4.3 Construction, Alteration, Abandonment & Discontinuance

4.3.1 Discontinuance

The 2010 Act amends section 13 of the 1975 Act so that reduction of capacity of a reservoir below the capacity threshold (i.e. discontinuance as a large raised reservoir) is further regulated. Welsh Government intends to commence this section. In commencing this amendment and making such a reduction in capacity, section 13 of the Act ensures that a Qualified Civil Engineer (QCE) is employed to design or approve and to supervise the alteration. This may involve the issuing of an interim certificate if the QCE judges that the level of water in the reservoir should be reduced before the alteration is completed.

4.3.2 Abandonment and bringing back into use

At this time, Welsh Government will not be making regulations further defining what is and is not to be treated as abandonment of use of a large raised reservoir, and bringing a large raised reservoir back into use. The relevant sections of the 1975 Act remain in place

4.4 Panels of Engineers and Engineer Reports

The regulations governing applications to the panels of engineers will be updated to reflect recent experience with the application process and advice from the Reservoir Committee of the Institution of Civil Engineers that provides advice to the Secretary of State and the Welsh Minister on applicants.

Defra and the Welsh Government will set up joint panels of engineers, for the time being reflecting the current panels.

4.4.1 Information and Reports

The response to the consultation showed that consultees were keen to require a specific person to report to NRW on any incident of a specified kind which could affect or could have affected the safety of a large raised reservoir.

When the safety of a large raised reservoir has been, or could have been compromised, it is vital that the enforcement authority is made aware of such incidents. Welsh Government intends to impose a duty on the undertakers to report any incidents which have, or could have affected the safety of a large raised reservoir in Wales to NRW. The regulations will set out when reports are required and the scope of their content. The reporting requirement will be satisfied once NRW has accepted the report. NRW already has guidance on the reporting of incidents at reservoirs which will be reviewed for suitability in line with the changes in the legislation. The objective of making this regulation is to learn from the full range of incidents at all large raised reservoirs thereby maximising the experience available to inform the design, construction and management of reservoirs generally.

Welsh Government intends to state that a final report should be made to NRW within six months of the incident, following a preliminary report as soon as is practicable following the incident. Valuable lessons can be learned from the timely reporting of incidents which should be an obligation under the RA75. A preliminary report should be submitted to NRW as soon as practicable after the incident. The final report should be provided within 6 months, unless otherwise agreed with the enforcement authority. This timescale typically allows sufficient time for the incident to be brought under control and remediation works under way; these works do not have to be complete before submitting a report which focusses on root cause. Longer delays may see the immediacy of information / knowledge gained fading. All incidents are collated for national reporting purposes and allowing a longer timescale will see information appearing in different years to when incidents occur. A six month timescale would enable the facts to be disseminated sooner, allowing best practice to develop sooner also.

4.5 Appeals

Welsh Government intends to make regulations relating to appeals under the following sections:

- Section 19A of the 1975 Act to provide the right to appeal against the requirements in enforcement notices to appoint a civil engineer and the requirements to carry out recommendations of an engineer into effect under certain provisions of that Act.
- Section 2E of the 1975 Act to provide the right to appeal the final designation of risk made by NRW.

4.5.1 Tribunals

Welsh Government intends to vest the power to hear all appeals under the 1975 Act in the First Tier Tribunal and the General Regulatory Chamber Rules for handling appeals. The majority of respondents to the consultation agreed with this proposal.

4.5.2 Referee Rules

As stated on the consultation, Welsh Government does not intend to make changes to the rules concerning the appointment of a referee, the investigation of complaints or costs except as needed to reflect the general changes to legislation.

The majority of the respondents to the consultation agreed with current rules relating to Referees and that they were fit for purpose, however in response to a number of consultees, the time to lodge an appeal will be increased. Welsh Government intend to increase the time from 40 to 60 days, this also aligns with legislation across the border in England. Welsh Government would encourage that undertakers inform NRW where a referee is sought. This is indication that the current time available is not adequate for less experienced undertakers.

4.6 Civil Sanctions

4.6.1 Criminal liabilities and civil sanctions

Welsh Government intends to introduce civil sanctions in addition to the criminal sanctions already in place in relation to reservoir safety.

The 1975 Act currently contains a number of criminal liabilities. However, Welsh Government consider there to be an alternative to criminal sanctions in the form of civil sanctions. This would introduce a more flexible regime to provide a wider, more appropriate range of responses to reservoir safety offences. As the amendments to

the 1975 Act are designed to introduce a risk-based approach to the regulation of large raised reservoirs, the adoption of civil sanctions in addition to criminal sanctions would introduce financial penalties that were proportionate to the risk.

The criminal sanctions set out in the 1975 Act and the proposed amendments are generally fines, linked to a statutory scales, and currently if found guilty, the undertaker will have a criminal record. In the case where national security is a consideration, there is also the option of imprisonment.

In considering the development of a civil sanctions regime, Welsh Government believe that there should be a proportionate approach that reflects both the likelihood and the magnitude of the harm that could be caused if a reservoir were to fail. The current and proposed sanctions are for a failure to carry out different actions required by the legislation, generally before any reservoir failure or partial failure has occurred. Some of these failures of actions could be considered directly to contribute to a future failure of a reservoir, such as not carrying out recommended safety works or maintenance, whereas for others the direct link to failure is less clear.

The intended effect of introducing these sanctions will enable NRW to apply the full range of civil sanctions. These may attract a monetary penalty, either fixed or variable.

4.7 Expenses & Charging

4.7.1 Expenses

Section 22C of the 1975 Act as inserted by the 2010 Act requires undertakers to pay to the enforcement authority, the amount of expenses reasonably incurred in connection with the consultation of an engineer when exercising its enforcement powers under Sections 8 (construction and enlargement), 9 (re-use of abandoned reservoirs) 10 (inspection) and 14(abandonment) of the 1975 Act. These expenses may be incurred by an undertaker if they do not fulfil their requirements under the 1975 Act.

The commencement of section 22C will allow NRW to recover reasonable costs associated with enforcement of the 1975 Act.

4.7.2 Arrangement for Civil Protection

The joint UK and Welsh Government response to the Draft Flood and Water Management Bill set out that costs of preparing off-site plans should not at this time be met by reservoir undertakers. Given the likely burdens on undertakers, many of whom may be small businesses, Welsh Government intends to maintain this position.

No decision has been made as to whether any funding will be made available to local authorities in the future for those high risk reservoirs identified by the Natural Resources Wales risk designation process and those captured when the minimum capacity threshold is reduced. The majority of consultees supported the view that undertakers should not be charged fees.

4.8 Other matters

4.8.1 Further Amendments

In providing responses to the consultation, various recommendations were put forward for further changes to the 1975 Act, however Welsh Government do not have the powers under current legislation to implement these recommendations.

4.8.2 Regulatory Impact Assessment

We are required to review the burden on undertakers in relation to large raised reservoirs of complying with the amendments to the 1975 Act made by Schedule 4 to the 2010 Act. The review must be carried out at the end of the 12 month period, beginning with the operative date – this is the date that the following have come in to force:

- a) Section A1 of the 1975 Act
- b) Regulations under section 2 (2C), 2C (1b) and 10(2)

Annex A - List of Respondents

15 Individuals responded to consultation

56 Organisations responded as listed below:

Anglian Water	Utility Company
Angling Trust	Representative Bodies
Bolton Council	Local Authority/Councils
British Dam Society	Representative Bodies
British Waterways	Representative Bodies
Caerphilly CBC	Local Authority/Councils
CH Consultancy	Consultants
Chesterfield Canal Partnership	Representative Bodies
City of London Surveyors Dept	Local Authority/Councils
Country Land and Business Association	Representative Bodies
DCWW	Utility Company
Denbighshire CC	Local Authority/Councils
Derbyshire County Council	Local Authority/Councils
Environment Agency Wales (now Natural Resources Wales)	Environmental Bodies

EDF	Utility Company
Epping Forest District Council	Local Authority/Councils
Farmers' Union of Wales	Representative Bodies
Forestry Commission	Environmental Bodies
Golf England (Irriplan)	Representative Bodies
Halcrow Group Ltd	Consultants
Heath and Hampstead Society	Representative Bodies
Horticultural Trades Association	Representative Bodies
Institution of Civil Engineers	Professional Bodies
Jacobs (x2)	Consultants
JBA Consulting	Consultants
Knight Frank	Professional Bodies
Lancashire CC	Local Authority/Councils
Leeds CC	Local Authority/Councils
Mott McDonald	Consultants
National Trust	Environmental Bodies
NFU	Representative Bodies
North Somerset Council	Local Authority/Councils

North Worcester Water Management	Local Authority/Councils
NW (Northumbrian Water Ltd)	Utility Company
Rotherham Borough Council	Local Authority/Councils
RSPB	Representative Bodies
RSPB Cymru	Representative Bodies
Sembcorp Bournemouth Water	Utility Company
Severn Trent	Utility Company
Snowdonia National Park Authority	Environmental Bodies
Somerset Drainage Boards Consortium	Environmental Bodies
South East Water	Utility Company
South Somerset DC	Local Authority/Councils
South West Water	Utility Company
SSE	Utility Company
Suffolk Resilience Forum	Local Authority/Councils
Thames Water	Utility Company
Tuckmarsh Farm Ltd	Agricultural Bodies
United Utilities	Utility Company
Upper Witham IDB	Environmental Bodies

Water UK	Representative Bodies
Wessex Water	Utility Company
Witham Trading Co Ltd	Agricultural Bodies
Worfield and Rudge Parish Council	Local Authority/Councils
Wyre Forest District Council	Local Authority/Councils
Yorkshire Water	Utility Company