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Llywodraeth Cymru  
Welsh Government

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Welsh Government

## Consultation – summary of responses

# Commencement of Schedule 4 to the Flood and Water Management Act 2010

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## Section 1 – Introduction

The Reservoirs Act 1975 (the 1975 Act) provides the current legal framework to ensure the safety of large raised reservoirs in England and Wales (this Act does not apply to Scotland or Northern Ireland).

The 1975 Act seeks to ensure public safety through imposing a statutory obligation on the undertakers of reservoirs above a certain volume to take, and act on, independent professional advice on the integrity of the reservoir and to manage and respond to all of the forces and conditions imposed on it. The purpose of such duties and obligations is aimed at reducing the risk from 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). In their enforcement role, NRW does not impart any engineering judgement or technical advice. This 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 Welsh Ministers.

The 1975 Act currently applies only to large raised reservoirs – those which are designed to hold or capable of holding more than 25,000 cubic metres of water above the natural level of the adjoining ground. This threshold was set on the basis of failures of reservoirs of this size in the 1920s which caused loss of life and prompted the introduction of the Reservoirs (Safety Provisions) Act 1930. There are currently around 200 large raised reservoirs in Wales. Reservoirs with a raised capacity of less than 25,000 cubic metres are not currently subject to any statutory safety requirements under the 1975 Act, irrespective of the possible consequences of any dam failure.

Schedule 4 to the Flood and Water Management Act 2010 (the 2010 Act) includes a number of provisions updating reservoir safety legislation by amending the 1975 Act, including introducing a risk based approach to reservoir safety.

The primary reason for amending the 1975 Act is to ensure that appropriate safeguards are in place to protect the public. The risks from reservoir breaches are classified as being of low likelihood but with a high impact. Although the likelihood of failure is typically low, the consequences from a sudden uncontrolled release of water from a reservoir are potentially catastrophic. A reservoir breach in an urban area would have a significantly greater impact, possibly causing loss of life as well as the destruction of property.

At present, reservoirs with a capacity greater than 25,000 cubic metres of water are all subject to the same level of inspection and supervision, regardless of the danger they may or may not pose to human life. However, the 2010 Act recognises that reservoirs with a capacity of over 10,000 cubic metres can pose as much, or greater risk to life, as those with a larger capacity, especially as their location is largely unknown.

To ensure that reservoir safety in Wales is based on a proportionate risk management basis, one of the major amendments to the 1975 Act was 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 where an uncontrolled release of water could endanger human life.

## **Section 2 – Consultation**

This consultation set out Welsh Government's proposal for the commencement of Schedule 4 to the Flood and Water Management Act 2010.

In this consultation the Welsh Government proposed that the whole of Schedule 4 to the Flood and Water Management Act 2010 is commenced in one go in Wales, meaning that the 1975 Act, as amended by the 2010 Act will apply to all reservoirs with a capacity of over 10,000 cubic metres immediately upon commencement. 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 the responses from the original joint Welsh Government and Defra consultation (e.g. in relation to reservoirs in cascade).

This option will allow any reservoir with a capacity over 10,000 cubic metres and seemingly posing a risk to life to be designated, or at the least be provisionally designated as high-risk by Natural Resources Wales immediately and will place certain responsibilities on the undertakers straight away in terms of safety requirements.

### **Consultation Process**

This consultation was led by Welsh Government and looked to obtain views on the commencement in Wales of Schedule 4 to the 2010 Act which amends the Reservoirs Act 1975 in respect of reservoir safety.

The consultation ran for 8 weeks from 18<sup>th</sup> June to 13<sup>th</sup> August 2014.

The consultation was placed on the Welsh Government website, a copy of which can be viewed through this link:

<http://wales.gov.uk/consultations/environmentandcountryside/8846150/?status=open&lang=en>

The consultation closed on 13<sup>th</sup> August 2014 with a total of 14 responses received.

A full list of the respondents can be found at Annex A.

### **Section 3 – Summary of responses to the consultation and commentary**

This consultation asked only one question regarding the commencement of schedule 4 to the Flood and Water Management Act:

*The Welsh Government proposes to commence the whole of Schedule 4 to the Flood and Water Management Act 2010 at once. This will include the reduction of capacity threshold of what is classified as a large raised reservoir to 10,000 cubic metres. Do you agree with the proposed approach to commencement?*

As this was the only question posed within this consultation, all respondents gave a response, of which 12 fully agreed with the proposal as set out. One respondent agreed only on the proviso that the resources were available to carry out the Category D designation without delay and relieve undertakers of financial burden, if this was not to be possible, the respondent did not agree with the commencement of the whole of Schedule 4 at once.

Some of the comments made by the respondents to this consultation included:

- If any small reservoir has the potential to endanger life, it should be a legal duty of the owner to prove that they are looking after it responsibly. If a small reservoir poses little risk, there will be no unnecessary burden by this change.
- Low risk reservoirs over 25,000 cubic metres should be designated high risk/not high risk without further delay to relieve burden to small scale undertakers.
- A number of small reservoirs fail or come close to failing in the UK almost every year and it is fortunate that there has been no loss of life in recent times. Some small reservoirs are located in urbanised areas where it is clear that there could be endangerment in the event of reservoir failure. Reservoirs in the 10 – 25,000 cubic metre range should therefore be regulated as soon as practicable.
- We welcome these new provisions and recognise that these will bring about significant improvements to dam safety in Wales and we commend Welsh Government for implementing the whole of Schedule 4.
- If owners are to be able to decide whether their reservoirs are caught by the revised definition of large raised reservoirs, they will need clarification of how to calculate the capacity. The Welsh Government therefore needs to make the new regulations at the earliest opportunity. It would also be useful if Welsh Government provided further guidance on the new legislation changes as soon as possible to assist undertakers to perform their duties correctly.
- The proposed approach in this consultation supports a more risk based approach, in that the greater public safety risk is more likely to be in the unknown

and un-regulated 10,000m<sup>3</sup> plus reservoirs and not those reservoirs currently under regulation. It also provides a mechanism for us to designate reservoirs as high risk immediately following implementation of the legislation should we be concerned there is a need to do this in the interest of public safety. It will also place a requirement on undertakers to register their structures. This coupled with a relatively light touch requirement in terms of the initial information required does facilitate and encourage owners of potential reservoirs to disclose their reservoirs and seek advice and guidance.

## **Section 4 – Next steps**

The majority of respondents to this consultation were in agreement that the whole of schedule 4 to the Flood and Water Management Act in relation to reservoir safety should be commenced in one go.

Taking in to account the positive response from respondents to this proposal, Welsh Government now intends to commence the whole of Schedule 4 to the Flood and Water Management Act 2010 in one go.



## Annex A – List of respondents

- Two individuals responded to this consultation
- Twelve organisations responded to this consultation, as listed below

Fairhurst	Consultants
HR Wallingford	Consultants
Mott Macdonald - Consultant	Consultants
Mott Macdonald - Reservoirs Panel Engineer	Consultants
Stillwater Associates	Consultants
Natural Resources Wales	Environmental Body
Cardiff Council	Local authority
Flintshire County Council	Local Authority
Powys Council	Local Authority
Institution of Civil Engineers	Professional body
Canal and River Trust	Representative Body
Dŵr Cymru Welsh Water	Utility Company