

## Independent Review of Section 19 and NRW reports

# Terms of Reference (and supporting information)

### Issue

1. This paper provides terms of reference to inform the Minister for Climate Change and Plaid Cymru Designated Member in consideration of the scope and delivery of the Co-operation Agreement / Programme for Government commitment:

*Flood review – Commission an independent review of the local government section 19 and Natural Resources Wales reports into extreme flooding in winter 2020-21 and act on its recommendations.*

2. The paper also provides the latest information on the state of play in relation to the section 19 reports and relevant details in the terms of reference for separate reviews currently underway or planned to help to inform the scope and objectives of the Independent Review.

### Monitoring of flood impacts and follow-up

3. During extreme weather events, Local Authorities activate phone “hotlines” to log all incidents reported to them by the public, their own officers or public sector partners. Every report of internal flooding of a property is investigated by Local Authority flood officers to understand the scale and nature of the issue. In the initial stages, the follow-up action may consist of a phone call by Local Authority Flood officers to the householder(s) affected or a physical inspection of the property and surrounding area. This may not necessarily trigger a Section 19 investigation.
4. Following a flooding incident, a Local Authority may identify remedial work to flood risk management infrastructure to reduce future vulnerability. If the work identified falls within its remit (ie the source is from surface water, ordinary watercourses etc.), the Local Authority may opt to carry out the remedial work as soon as possible. Under those circumstances, funding for reparatory works to damaged infrastructure, or improvement works to existing assets, may be made available by the Welsh Government. Following the February 2020 storms, for instance, the Welsh Government provided £8.9m to Local Authorities - over and above the 2020-21 allocation to risk management authorities for flood delivery - to repair damaged flood infrastructure and assets.

### Section 19 investigations

5. Section 19 of the Flood and Water Management Act 2010 requires Lead Local Flood Authorities (Local Authorities in Wales) to undertake investigations following significant flooding and to publish the results:

#### **Local authorities: investigations**

*(1) On becoming aware of a flood in its area, a lead local flood authority must, to the extent that it considers it necessary or appropriate, investigate—*

*(a) which risk management authorities have relevant flood risk management functions, and  
(b) whether each of those risk management authorities has exercised, or is proposing to exercise, those functions in response to the flood.*

*(2) Where an authority carries out an investigation under subsection (1) it must —  
(a) publish the results of its investigation, and  
(b) notify any relevant risk management authorities.*

6. Section 19 investigations can be useful in understanding the full extent of flood impacts, improving data models and may inform maintenance regimes or further alleviation works or measures. There is no statutory timeframe for undertaking and completing section 19 investigations, but the [National Strategy for Flooding and Coastal Erosion Risk Management](#) (published in October 2020) makes clear that the length and complexity of Section 19 reports is for Local Authorities to decide and should be proportionate to the scale of flooding, take account of the understanding of the issues (if the cause of flooding is already well understood, for example), or the type of remediation measure required.
7. The section 19 requirement applies to Local Authorities only in Wales (ie. the provision applies to neither Natural Resources Wales nor Dwr Cymru Welsh Water). While there is no statutory threshold for triggering a section 19 investigation, the Flood Strategy makes clear the Welsh Government's expectation that Section 19 investigations be undertaken where 20 or more homes in one area are impacted by internal flooding. The Flood Strategy makes clear also that Local Authorities should notify NRW and the Welsh Government once the investigation report is published.
8. Section 19 reports can vary in size and complexity. The British Standards Institution have published standard BS 85600:2017 (Post-event flood assessments — Guidance on investigating flooding incidents) to assist in flood Risk Management Authorities. The BSI standard sets out a methodology for investigating flood events, but the level of detail of flood investigations is ultimately a decision for the Local Authority. An example of a recent section 19 reports produced by Rhondda Cynon Taf Council is attached at Annex B.
9. In carrying out an investigation report, Local Authorities must notify any relevant Risk Management Authorities (RMAs) who deliver flood risk management functions in relation to the flood incident under investigation. The Flood Strategy makes clear that the Welsh Government expects other RMAs (NRW, water companies and neighbouring Local Authorities), to collaborate fully.
10. Local Authorities do not necessarily compile reports for every flooding incident and there is no statutory obligation to do so beyond the section 19 requirement (ie. where the authority deem it is "necessary or appropriate"). Some Local Authorities adopt a different threshold for triggering section 19 investigation to that set out in the Flood Strategy (see Table 1, Annex 1), while others opt to undertake section 19

investigations where fewer than 20 properties have been impacted, given that flooding of one or very few properties can cause significant damage, danger to life and trauma. The decision to launch a formal investigation is typically informed by the available capacity and capability of the relevant team which will be also meeting other demands including emergency flood response, inspection of flood assets, development of new schemes and delivering other statutory functions such as the Sustainable Drainage Systems (SuDS) Approval Body.

11. There is nothing to prevent Local Authorities from acting to address community needs and risks in relation to flood prevention irrespective of whether a section 19 investigation is undertaken or not. Access to Welsh Government funding (including for new schemes) is not predicated on formal section 19 report findings, although this evidence can be helpful in informing future need.
12. The Flood Strategy includes a specific measure (21) to improve the implementation of section 19 provisions: *we want Section 19 investigation reports to be simpler for Local Authorities to undertake and easier for the public to understand*. Flood Branch officials are working with Local Authorities and Wales' independent Flood and Coastal Erosion Committee to make Section 19 reporting clearer for the public and less burdensome on those producing them.

#### **State of play: section 19 investigations**

13. Flood Branch works closely with Wales' flood risk management authorities to monitor delivery, track emerging issues and provide the necessary support, guidance and funding. As of the end of February 2022, the 22 Local Authorities have advised Welsh Government that there is a requirement for 152 section 19 investigations in total since February 2020. These investigations cover numerous flooding incidents and are not limited specifically to the February 2020 storms (Storms Ciara, Dennis and Jorge).
14. In anticipation of the independent review, Flood Branch has sought to ensure that all relevant section 19 reports which might be requested, or to which the review may refer, are available. Local Authorities have been encouraged to complete their investigations and publish the associated findings as quickly as possible. We are aware, however, that some of the hardest hit Local Authorities following the February 2020 storms have prioritised operational repair and recovery work over progressing formal investigations.
15. Early assessments provided by Local Authorities indicated that approximately 150 section 19 investigations would be required in relation to the February 2020 storms alone. However, this number has reduced subsequently; a number of authorities have consolidated large numbers of investigations initially identified, some have taken the decision not to undertake formal investigations (having delivered remediation measures since), while others have increased the threshold required to

trigger a formal investigation. The decision to increase the threshold to trigger a formal investigation may have been a pragmatic one: one local authority identified indicated initially that 50 separate reports would be required in relation to the February 2020 storms alone.

16. Aside from the impact of flood risk management demands, we understand many section 19 investigations have been impeded by Covid-19 restrictions and the associated demands on local government. In particular, working in enclosed spaces (to inspect drainage and flood assets) and restriction on gathering and engaging residents affected progress with investigations in 2020 and 2021.
17. Table 2 (Annex 1) summarises the latest position with these investigations and the associated reports:
  - 49 published
  - 17 completed (but Local Authority not intending to publish)
  - 34 awaiting approval
  - 40 ongoing investigation or in draft
  - 12 investigations yet to commence.Five Local Authorities have confirmed they will not be instigating any section 19 investigations.
18. Details of the section 19 investigations by flood incident are provided in Table 3 (Annex 1). The majority of investigations (89) have arisen in relation to the February 2020 storms. Storm Christoph (January 2021) triggered 35 investigations.

### **Natural Resources Wales' review into its response to February 2020 storms**

19. Following the February 2020 flooding, NRW undertook its own review into the events and its response, identifying 28 recommendations - [Natural Resources Wales / Our response to Storm Ciara and Storm Dennis](#):
  - February 2020 Floods in Wales: Natural Resources Wales' Response
  - February 2020 Floods in Wales: Flood Event Data Summary
  - February 2020 Floods in Wales: Flood Incident Management Review
  - February 2020 Floods in Wales: Land Estate Management Review
  - February 2020 Floods in Wales: Flood Recovery Report

NRW also produced a narrative assessment for the public covering the [February 2020 floods in Wales \(arcgis.com\)](#).

### **Terms of reference**

20. Establishing and agreeing the final terms of reference will be a matter for the independent reviewer, the Minister for Climate Change and the Plaid Cymru

Designated Member, once the reviewer has been appointed. However, the following terms of reference are suggested to inform this work:

- a) The Review should consider all relevant material provided in section 19 reports and NRW's own review into the flooding that occurred in Wales in the winter of 2020 and 2021, its impacts and how this might inform priorities for flood risk management in future.
- b) The Review should be led by an independent, suitably qualified and authoritative person who is empowered and resourced to discharge their responsibilities in leading the review in an impartial and objective manner.
- c) The Review should focus in particular on assessing and prioritising the recommendations made in the available section 19 reports and the NRW review along with any other relevant reports the chair deems necessary (for example those of water companies) setting out associated recommendations for action by the relevant body. It should consider key findings, shared concerns, identify areas for improvement and good practice, successes and lessons learned.
- d) The Review should seek written representations from relevant stakeholders specifically public bodies and elected representatives.
- e) The Review shall, as appropriate, be informed by and build upon previous reviews in relation to flooding, other relevant reports, Senedd Committee findings and national policy including, in particular, Wales' Flood Strategy, making best use of resources and maximising value for money.
- f) The Review shall, in so far as possible avoid duplication with the following:
  - i. The Flood and Coastal Erosion Committee (FCEC) review exploring optimal approaches for accessing finance and RMA collaboration to deliver flood and coastal erosion risk management outcomes;
  - ii. The FCEC review of delivery of statutory flood risk management functions;
  - iii. The anticipated National Infrastructure Committee for Wales' review of long-term flood risk vulnerability of infrastructure;
  - iv. Audit Wales' anticipated 'state of the nation' assessment of flood risk management challenges and subsequent audit of delivery (the scope of which is being considered by Wales' Auditor General currently)
  - v. The Law Commission's anticipated review of flood risk management legislation in England and Wales.
- g) If the Reviewer deems any amendment necessary to these ToR the issue will be brought back for consideration by the commissioning parties.

**Water, Flood and Coal Tip Safety Division**  
July 2022

## Annex A

**Table 1. Thresholds for triggering formal section 19 investigation**

Local Authority	Section 19 investigation trigger threshold (number of properties internally flooded)
Blaenau Gwent County Borough Council	20
Bridgend County Borough Council	20
Carmarthenshire County Council	20
Cardiff Council	20
Ceredigion County Council	10
Conwy County Borough Council	2
Caerphilly County Borough Council	20
Denbighshire County Council	Unknown
Flintshire County Council	10*
Gwynedd Council	N/A**
Isle of Anglesey County Council	1
Merthyr Tydfil County Borough Council	20
Monmouthshire County Council	20
Neath-Port Talbot Council	5
Newport City Council	20
Pembrokeshire County Council	20
Powys County Council	N/A**
Rhondda Cynon Taff County Borough Council	20
City and County of Swansea	5*
Torfaen County Borough Council	20
Vale of Glamorgan Council	N/A**
Wrexham County Borough Council	Unknown

\*LA indicated they will be updating their S19 reporting threshold to 20 properties to align with the National Strategy.

\*\*Reporting decision is more nuanced, based upon the severity of the event and the impacts.

- 11 Local Authorities have adopted a threshold of 20 properties for publishing S19 reports, in line with the National Strategy;
- 2 currently have a lower threshold, but have stated their intention to adjust this to 20 properties when they update their local flood risk management strategy;
- 3 LAs have advised that they prefer not to use an arbitrary threshold, but make a more nuanced decision over whether or not to report based upon the severity of the flood.
- 4 prefer to use lower thresholds for publishing S19 reports.
- 7 Local Authorities have indicated they are also preparing a total of 140 'Flood Investigation Reports' for incidents which do not meet S19 reporting thresholds, but are considered to still warrant further investigation. (Further to the information contained in Table 2 overleaf).

**Table 2. State of play: section 19 investigations (required since February 2020)**

Local Authority	Section 19 Report Status as of end of February 2022					
	Investigation / report yet to commence	Ongoing / in draft	Awaiting approval	Completed, (not intending to publish)	Published	Total
Blaenau Gwent County Borough Council	-	-	-	-	1	1
Bridgend County Borough Council	-	-	-	-	1	1
Carmarthenshire County Council	-	1	-	-	-	1
Cardiff Council	-	-	-	-	-	0
Ceredigion County Council	-	-	-	-	-	0
Conwy County Borough Council	-	-	24	10	-	34
Caerphilly County Borough Council	-	4	-	-	-	4
Denbighshire County Council	-	-	-	-	2	2
Flintshire County Council	1	-	-	-	-	1
Gwynedd Council	-	1	-	5	15	21
Isle of Anglesey County Council	-	21	-	2	13	36
Merthyr Tydfil County Borough Council	-	-	-	-	1	1
Monmouthshire County Council	-	-	5	-	5	10
Neath-Port Talbot Council	1	-	-	-	2	3
Newport City Council	1	-	-	-	-	1
Pembrokeshire County Council	0	0	0	0	0	0
Powys County Council	9	-	-	-	-	9
Rhondda Cynon Taff County Borough Council	-	10	4	-	6	20
City and County of Swansea	-	-	1	-	1	2
Torfaen County Borough Council	-	-	-	-	-	0
Vale of Glamorgan Council	-	3	-	-	2	5
Wrexham County Borough Council	-	-	-	-	-	0
<b>Total</b>	<b>12</b>	<b>40</b>	<b>34</b>	<b>17</b>	<b>49</b>	<b><u>152</u></b>

**Table 3. Section 19 investigations by flood incident**

	Storm Ciara (Feb-20)	Storm Dennis	Storm Jorje	February Storms (all)	25/02/2020	01/07/2020	17/08/2020	25/08/2020	Nov-20	Dec-20	Storm Christoph (Jan-21)	Mar-21	Oct-21	Total
Blaenau Gwent County Borough Council	-	1	-	-	-	-	-	-	-	-	-	-	-	1
Bridgend County Borough Council	-	-	-	-	-	-	-	-	-	-	-	1	-	1
Carmarthenshire County Council	-	-	-	-	-	-	-	-	-	-	1	-	-	1
Cardiff Council	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Ceredigion County Council	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Conwy County Borough Council	-	-	-	25	-	-	-	-	4	-	3	-	2	34
Caerphilly County Borough Council	-	4	-	-	-	-	-	-	-	-	-	-	-	4
Denbighshire County Council	1	-	-	-	-	-	-	-	-	-	1	-	-	2
Flintshire County Council	-	-	-	-	-	-	-	-	-	-	1	-	-	1
Gwynedd Council	-	-	-	9	2	2	-	5	-	-	2	-	1	21
Isle of Anglesey County Council	7	-	-	-	-	-	-	-	-	2	27	-	-	36
Merthyr Tydfil County Borough Council	-	1	-	-	-	-	-	-	-	-	-	-	-	1
Monmouthshire County Council	-	8	1	-	-	-	-	-	-	1	-	-	-	10
Neath-Port talbot Council	-	2	-	-	-	-	-	-	-	-	1	-	-	3
Newport City Council	-	-	-	-	-	-	-	-	-	1	-	-	-	1
Pembrokeshire County Council	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Powys County Council	-	-	-	8	-	-	1	-	-	-	-	-	-	9
Rhondda Cynon Taff County Borough Council	-	19	-	-	-	-	-	-	-	-	-	-	1	20
City and County of Swansea	-	2	-	-	-	-	-	-	-	-	-	-	-	2
Torfaen County Borough Council	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Vale of Glamorgan Council	-	-	1	-	-	-	-	-	-	4	-	-	-	5
Wrexham County Borough Council	-	-	-	-	-	-	-	-	-	-	-	-	-	0
<b>Total</b>	<b>8</b>	<b>37</b>	<b>2</b>	<b>42</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>8</b>	<b>35</b>	<b>1</b>	<b>4</b>	<b>152</b>