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## **NFU Briefing: Consultation on the environment Agency's approach to designating large raised reservoirs as high risk**

### **Summary**

**On the 17th of November the Environment Agency (EA) published an 'on-line' consultation on how the EA will decide if a large raised reservoir is 'high risk'. The consultation runs until 23rd February 2012. The aim of this consultation is to help EA decide if a large raised reservoir is high risk.**

Defra & Welsh Assembly Ministers plan to amend the Reservoirs Act in two phases:-

1. Phase 1, concerns current large raised reservoirs (those above 25,000m<sup>3</sup> capacity) and is expected to begin in October 2012.
2. Phase 2, concerns newly designated large raised reservoirs (those between 10,000 - or another threshold decided by Ministers and 25,000m<sup>3</sup> capacity). The date for implementing Phase 2 has yet to be decided by Ministers.

This consultation covers the designation process for both phases but the designation process will only take effect once the relevant sections of the Flood & Water Management Act (FWMA) have been implemented by Ministers. This means the outcome of this consultation will initially only apply to those reservoirs defined as being 'a large raised reservoir' under the Reservoirs Act 1975 (those structures capable of holding more than 25,000m<sup>3</sup> of water above natural ground level).

The full document and questions can be located on the EA's website here: <https://consult.environment-agency.gov.uk/portal/ho/flood/reservoir/risk?pointId=1317302828222>

### **Background**

Current Reservoir regulation is not risk based and all reservoirs (capable of holding more than 25,000m<sup>3</sup> of water above natural ground level) are subject to the same regulatory requirements, even if where there is only a very small risk to human life if the reservoir failed.

The Flood & Water Management Act (FWMA) 2010 allows the threshold capacity for large raised reservoirs to be lowered to 10,000m<sup>3</sup> (or another volume decided by Ministers). Timescales for the implementation of these criteria are still to be agreed by Ministers. In the first instance, the move to risk based regulation of reservoirs will only address large raised reservoirs with a capacity above the current threshold of 25,000m<sup>3</sup>.

The majority of the costs for government will be in phase two as a result of the need to produce reservoir flood maps for any newly registered large raised reservoirs

### **Next steps**

- Following the consultation the EA will analyse the comments they receive and develop the preferred option for determining whether a large raised reservoir is 'high risk'. They will consult with Defra and the

Welsh Government before finalising the methodology. The final methodology will be used to assess whether existing large raised reservoirs are 'high' risk once the law changes. This is expected to be from October 2012 at the earliest.

- Once EA evaluated responses and adopted a final methodology, they will provide advice, evidence and information to reservoir undertakers, interested organisations and local communities on how to respond to the EA's provisional designation
- EA will publish a full summary of responses on their website by 23rd May 2012.

### Introduction

One of the changes to Reservoirs Act made in the FWMA requires the EA to determine whether a large raised reservoir is high risk. The EA seek, in this consultation, our views on how they (the EA) should make their provisional designation and the most appropriate way for reservoir undertakers, interested organisations and local communities to challenge this decision.

There are currently 1,919 large raised reservoirs in England and 202 in Wales. In future, high risk large raised reservoirs will be subject to the full requirements of the Reservoirs Act in the future. This means that reservoir undertakers must:-

- employ a construction engineer to design and supervise the construction or alteration of a large raised reservoir;
- appoint a supervising engineer to supervise the reservoir at all times when the reservoir is not under construction;
- appoint an inspecting engineer at least once every ten years to carry out a periodic inspection;
- Carry out any safety measures identified by the inspecting engineer in his/her report.

Other large raised reservoirs will still need to be registered with the EA but will not have to comply with the inspection and supervision requirement of the Act.

### Contents

The consultation proposes three possible options for designating large raised reservoirs as high risk:-

#### **Option A: Certified approach**

*Phase 1: Existing large raised reservoirs*

Each currently large raise reservoir must be visited by a supervising engineer. In the event of a challenge to EA's provisional designation, the EA provides written advice to the supervising engineer (employed by the undertaker).The supervising engineer would have the option to seek the advice of an inspecting engineer should they believe this is necessary.

*Phase 2: For newly designated large raised reservoirs*

Once the legal change to the definition of a large raised reservoir has taken place, undertakers of reservoirs between 10,000 (or another volume decided to Ministers) undertakers of reservoirs between 10,000 and 25,000m<sup>3</sup> capacity will be required to register their reservoirs.

EA will make a provisional designation for each registered reservoir. EA propose using appropriately trained staff from EA or engineering consultants to visit the reservoir and collect information to help inform the provisional designation.

#### **Option B: Tiered approach**

*Phase 1: Existing large raised reservoirs*

Each currently large raise reservoir must be visited by an inspecting engineer. In the event of a challenge to EA's provisional designation, the EA provides written advice to the inspecting engineer (employed by the undertaker).The inspecting engineer assesses whether, in their view, human life

could be endangered if the reservoir failed. The inspecting engineer issue a certificate to the EA and undertaker, if required, challenging the EA's provisional designation based on their findings.

*Phase 2: For newly designated large raised reservoirs*

Once the legal change to the definition of a large raised reservoir has taken place, undertakers of reservoirs between 10,000 (or another volume decided to Ministers) undertakers of reservoirs between 10,000 and 25,000m<sup>3</sup> capacity will be required to register their reservoirs.

EA will make a provisional designation for each registered reservoir. EA propose using appropriately trained staff from EA or engineering consultants to visit the reservoir and collect information to help inform the provisional designation.

If the undertaker wishes to challenge our provisional designation they must employ a supervising engineer to assess the reservoir. The EA would provide written advice enabling the supervising engineer to have the option of seeking advice from an inspecting engineer should they believe this was necessary.

**Option C Self- assessment approach**

*Phase 1: Existing large raised reservoirs*

The EA would provide written advice to enable the reservoir undertaker to make their own assessment to appropriate standards and challenge the EA's provisional designation, if appropriate. In order to assist with this task an undertaker may wish to employ an inspecting or supervising engineer or other professional adviser

*Phase 2: For newly designated large raised reservoirs*

Once the legal change to the definition of a large raised reservoir has taken place, undertakers of reservoirs between 10,000 (or another volume decided to Ministers) undertakers of reservoirs between 10,000 and 25,000m<sup>3</sup> capacity will be required to register their reservoirs.

EA will make a provisional designation for each registered reservoir. EA propose using appropriately trained staff from EA or engineering consultants to visit the reservoir and collect information to help inform the provisional designation.

The reservoir undertaker will follow the self-assessment approach described for Phase 1 if they wish to challenge the provisional designation.

**Each option (outlined above) involves three steps to the high risk designation.**

*Step one: Provisional designation*

This where the EA decide if human life could be endangered if a reservoir failed e.g. by an uncontrolled release of water from a reservoir as a result of a breach or structural failure. EA will make this assessment using relevant information such as the current dam category in the latest inspecting engineer's report, the likely loss of life evaluation made by the EA's National Reservoir Flood mapping project 2010.

*Step two: Period for representation*

This is the opportunity to challenge the EA's EA purpose the period for presentation should be 12 months (for each of the three options below).

*Step 3: Final designation*

Here, the EA will consider any representations made in step 2 before making a final decision on the designation of the reservoir. If no representations are made within the time period (proposed to be 12 months) the provisional designation will be the final designation.

Following the outcome of step three, there will be a right of appeal against the EA's designation. The appeals process will be subject to a separate future consultation by Defra and the Welsh Government

### **Review and appeals**

The EA must carry out a review if it thinks that the final designation is no longer appropriate. Steps one to three above will need to be followed if a final designation is to be altered. A right of appeal must be provided by Ministers, against final designations made by the EA.

### **Initial thoughts of an NFU response.**

The online consultation asks a total of nine questions to respondents. The NFU's main concern at this point is the potential impact of phase two on farm reservoir between 10,000 and 25,000 m<sup>3</sup>. Although many will not be directly affected by the designation process until the relevant sections of the Flood & Water Management Act (FWMA) have been implemented by Ministers, we must continue to lobby for the minimal impact of the designation process on our members. Of particular concern are costs involved which Paul Tame indicates are no representative – I shall be looking into this further and will keep you informed.