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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Consultation on Proposals to Introduce a Statutory Duty on Fire and Rescue Authorities in Wales to respond to Flooding and Other Water-Related Emergencies:

The Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017

Date of issue: **15 September 2016**
Action required: **Responses by 22 December 2016**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview The purpose of this consultation is to seek your views on the proposals to introduce a statutory duty on the Fire and Rescue Authorities in Wales to respond to flooding and other water-related emergencies.

How to respond To respond to this consultation, please complete the online form which can be accessed here:

<https://consultations.gov.wales/consultations/statutory-duty-fire-and-rescue-authorities-wales-respond-flood-and-water-rescue>

Alternatively, respondents may use the separate response form provided, which can be emailed to:

fire@wales.gsi.gov.uk

or sent to the address below.

The closing date for responses is **Thursday 22 December 2016**.

Further information and related documents **Large print, Braille and alternative language versions of this document are available on request.**

Consultation web address:

<https://consultations.gov.wales/consultations/statutory-duty-fire-and-rescue-authorities-wales-respond-flood-and-water-rescue>

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

CONSULTATION ON PROPOSALS TO INTRODUCE A STATUTORY DUTY ON FIRE AND RESCUE AUTHORITIES IN WALES TO RESPOND TO FLOODING AND OTHER WATER-RELATED EMERGENCIES

INTRODUCTION

1. This consultation details the Welsh Government's proposals to extend Fire and Rescue Authorities' (FRAs) duties to include emergencies involving floods and inland waters. A draft Order is attached at Annex 1.

BACKGROUND

FRAs' CURRENT DUTIES

2. As well as fighting fires and promoting fire safety, FRAs are required by law to respond to road traffic accidents,¹ and certain other incidents such as, chemical spills, people trapped in collapsed buildings and accidents involving other forms of transport². FRAs have no such duty as regards flooding or inland water-related emergencies.
3. Nonetheless, FRAs routinely attend flooding and other inland water-related incidents. This includes relatively minor matters such as pumping out premises in the event of burst pipes, and effecting small-scale water rescues, to dealing with major floods which present very serious threats to life and damage to property. As there is no duty on FRAs to respond to these incidents FRAs' response to flooding and inland water rescue relies on their general powers to respond to other 'eventualities' that cause or are likely to cause death, injury or illness³.

In this document:

- A *flood* is a situation in which land that is not normally covered by water becomes covered by water. In theory this could include even the smallest puddle; but only floods which present a risk of death or serious injury (see paragraph 22) would be covered by the duty we propose.
- A *water rescue* is any action by which people who are trapped in, on or by water are rescued. For the purposes of the Order this would include rescues from floodwater and permanent bodies of inland water. Note that we are only proposing to create a duty to rescue *people* from water, not pets, livestock or property.
- *Inland water* comprises rivers, streams, canals, lakes, reservoirs, and water-filled quarries. It does not include swimming or paddling pools.

¹ Sections 6 to 8 of the Fire and Rescue Services Act 2004.

² Fire and Rescue Services (Emergencies) (Wales) Order 2007.

³ Section 11 of the Fire and Rescue Services Act 2004.

THE CASE FOR CHANGE

4. In Wales, around 208,500 properties are at risk of flooding from rivers or the sea and around 163,000 properties are at risk from surface water flooding⁴. Changes in our climate, such as more severe storms and wetter summers and winters, will increase that risk. The UK has seen several major flooding incidents in recent years: in Somerset in 2014, in the North of England in 2015 as well as in Wales in Denbighshire in 2012 and along the A55 corridor in 2015. This was recognised in the Fire and Rescue Service Framework 2016⁵ which committed the Welsh Government to review and consult on extending the statutory functions of FRAs to include emergencies related to flooding and water rescue. There was general support for this proposal when we consulted on the Framework during the summer of 2015.
5. As highlighted at paragraph 3 above, whilst Welsh FRAs already respond to flooding and inland water rescue incidents using their existing general powers and resources, they are not under a specific duty to do so. The case for requiring FRAs to respond to such incidents is as follows:-
 - (a) Major flooding is a risk of increasing concern and an effective response to it merits statutory protection. It can have a serious impact on people, the environment and the economy and there is currently no guaranteed or standardised emergency response to such eventualities;
 - (b) FRAs are under pressure to reduce costs and may well consider whether to stop providing non-mandatory services as a means of doing so. While that may be appropriate for some services, it would not be acceptable for there to be no FRA response to flooding;
 - (c) As FRAs, in practice already respond to flooding and inland water rescue incidents routinely but are not under a duty to do so, this leads to a lack of certainty about FRAs' responsibilities and thus the need for training, equipment and insurance in connection with such incidents;
 - (d) In practice FRAs tend to have a primary role in responding to flooding and water rescue incidents. Other agencies, including the police, local authorities, Natural Resources Wales, the armed forces and voluntary bodies such as the RNLI also often participate to some extent. However, there is no clear lead, so there may be confusion about each agency's responsibilities on-scene.
6. Whilst water rescues other than from floodwater may not arise on the same scale, nor generate the same level of public concern, they can still be life-threatening situations for those involved. Responding to them entails many of the same techniques, equipment and skills as FRAs deploy in response to a flood. We could not justify making a distinction

⁴ Surface water flooding occurs when water does not drain away through the normal drainage systems or soak into the ground, but lies on or flows over the ground instead.

⁵ <http://gov.wales/docs/dsjlg/publications/fire/151125-fire-rescue-framework-2016-en.pdf>

between rescuing persons from floodwater but not from other bodies of inland water such as rivers and lakes. That would be arbitrary and difficult to maintain in practice, for instance when those bodies of water were closely linked to flooding, such as rivers in spate. We therefore propose that the new duty should cover rescues from inland water as well as responses to flooding.

THE NEW DUTY

7. The proposed new duty would require FRAs to make provision for, and to respond to, emergencies arising from floods and incidents involving particular types of inland waters.

POWER TO IMPOSE A NEW DUTY

8. Sections 6-8 of the Fire and Rescue Services Act 2004 (the “2004 Act”) impose duties on FRAs relating to fires and road traffic accidents. Section 9 of the 2004 Act empowers the Welsh Ministers to confer additional functions relating to emergencies on FRAs by way of an Order. The Welsh Ministers exercised this power when making the Fire and Rescue Services (Emergencies) (Wales) Order 2007 which imposed duties on FRAs to deal with emergencies relating to collapsed buildings, trams, trains and aircraft and chemical spills and other substances.
9. The proposed new duty in respect of flooding and inland water emergencies would constitute a further exercise of the Welsh Ministers’ power under section 9. The Welsh Ministers are required to consult before exercising their power under this section.
10. As such the draft Order on which we are also consulting (Annex 1) would amend the original 2007 order to include flood and inland water emergencies. This would mean that all additional duties placed on FRAs under section 9 would be available in one place for ease of reference.

WATERS TO WHICH THE DUTY WOULD APPLY

11. The new duty would apply to flood-waters and to certain inland waters.

Floodwaters

12. Floodwaters and flooding may occur in any situation where land that is not normally covered by water becomes covered by water from any source. A definition of flooding appears in Article 2 of the draft Order.

Inland water

13. FRAs have a largely land-based remit. With very few exceptions, their firefighting duties do not cover the sea or seagoing vessels⁶. The same is

⁶ FRAs have powers, but not duties, to fight fires at sea (e.g. aboard ships, oil rigs, offshore turbines or other structures) in s20 of the Fire and Rescue Services Act 2004. A vessel moored in port, however,

true of their water rescue capability. While FRAs can and do rescue people from inland water, they have neither the equipment nor the capacity to effect rescues at sea. That role falls to the Coastguard, the RNLI and military resources as they are equipped to fulfil this function.

14. Although FRAs and other agencies already work well together and may coordinate their activities where appropriate, it is important that we define clearly the inland water to which the duty will apply.

15. We propose using the term “inland water” within the Order and to adopt the following definition :-

inland water means –

- (a) rivers, streams and canals; and
- (b) lakes, reservoirs and water-filled quarries.

16. The duty would therefore not cover artificial bodies of water specifically built for swimming, bathing or paddling. Whilst these facilities can, of course, be hazardous, rescues from them would normally fall to the owners or operators of such facilities, in the form of swimming pool attendants, lifeguards and the like.

17. It is also important to note that although the proposed duty would extend only to inland water as set out above; FRAs would not be precluded from responding to other water rescue incidents under their existing powers to respond to other eventualities under section 11 of the 2004 Act. For instance, this means FRAs could attend water rescue incidents which occur in harbours or other coastal waters if they were equipped and available to do so.

18. We have considered other definitions of “inland water”, as follows.

- Firstly, we could simply define this as being any water within an FRA’s area. As FRA areas match those of their constituent local authorities, this would extend to the mean low water mark all round the coast of Wales, but would exclude (for instance) the Menai Strait and the Dee and Severn estuaries beyond mean low water. This has the advantage of simplicity and clarity, as definitive Ordnance Survey mapping shows the precise boundary. However, it would include some significant areas of sea between the low and high water marks, for instance in Swansea Bay and off the coast between Bangor and Llanfairfechan. As such the duty could exceed FRAs’ current capability.
- Secondly, we could use the Maritime and Coastguard Agency’s classifications of inland water as set out in MCA Merchant Shipping Notice (MSN)1837⁷. These better reflect the nature of the waters concerned and the types of vessels which can safely use them.

is effectively in the FRA’s territorial area; and fighting a fire aboard it would fall within the FRA’s routine duties.

⁷ MCA Merchant Shipping Notice (MSN) 1837:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/440225/1837.pdf

However, the classifications rely on a complex set of definitions regarding depth of water and significant wave height. Classification of individual bodies of water is not undertaken as a matter of course; and whilst in many instances this classification might be clear, in others there could be an unacceptable level of doubt.

19. For these reasons we do not favour either of these approaches, but we would be grateful for your views.

We are interested in your views on the proposal to limit the duty to cover floodwaters and inland water only as defined in Article 2 of the draft Order. We are also interested in any alternative definition of “inland water” that you consider may be more appropriate.

(Please see the questions at the end of this Consultation Document).

THE NATURE OF THE DUTY

20. Flooding is a natural occurrence in many parts of Wales. Unlike fire, in many cases floodwater may pose no threat at all, and may require no response from the FRA. As such it is not necessary to require FRAs to respond to all cases of flooding. Similarly FRAs will not be required to respond to all incidents involving bodies of inland water.

21. That reflects the power to create the new duty in section 9 of the 2004 Act. This is restricted to functions relating to emergencies. An emergency is defined in Section 58 of the 2004 Act as an event or situation that causes or is likely to cause:-

- a) one or more individuals to die, be seriously injured or become seriously ill, or;
- b) serious harm to the environment (including the life and health of plants and animals).

22. We propose that the duty should focus only on emergencies related to flooding and inland waters that cause or are likely to cause death, serious injury or serious illness to people, i.e. on the first limb of section 58 only. FRAs could respond to floods which pose only a threat of serious harm to the environment, and/or to the health of plants or animals, under their general power to respond to other ‘eventualities’ in the 2004 Act⁸. We would encourage them to do so as resources permit. But we believe it would be unduly burdensome to require this. It would be a significant departure from current practice and would probably require FRAs to develop extensive new capacity.

⁸ Section 11 of the Fire and Rescue Services Act 2004.

23. However, there are many ways in which floods and other waters could cause death, serious injury or serious illness and which would fall within the scope of the proposed duty.
24. Most obviously, this includes cases where water, whether that is flood-water or not, poses a direct risk of death, serious injury or serious illness (e.g. by drowning or hypothermia). This would normally be as a result of people being trapped in, on, or by water, or on a vessel in distress. Responding to such an incident would generally involve the physical rescue of an individual or individuals, and/or the removal of water from the vicinity of those at risk.
25. However, the duty would also encompass incidents where floodwater causes damage which in turn poses a risk of death, serious injury or serious illness. This could be as a result of damage to or interference with infrastructure such as road closures which prevent or impede emergency response, or loss of power resulting, for instance, in loss of domestic heating. Responding to such incidents would be likely to involve the removal or diversion of water to enable infrastructure to be protected or returned to use.

We are interested in your views on the proposal to limit the duty to emergencies that cause or are likely to cause people to die, be seriously injured or become seriously ill, whether by direct exposure to water or because of other damage that flooding might cause.

(Please see the questions at the end of this Consultation Document).

26. We propose that the duty should be framed in the same way as FRAs' existing duties to respond to fires and road traffic accidents under sections 7 and 8 of the 2004 Act. It is therefore proposed that FRAs will be required to develop and maintain the capability to deal with flooding and inland water rescues, rather than requiring particular types of response. This is the same approach as was taken in the 2007 Order. As such it is proposed that Article 4 of the 2007 Order will also apply to flooding and water rescue emergencies. Article 4 requires FRAs to make provision to:-
- secure the provision of such personnel, services and training as may be necessary efficiently to meet all reasonable requirements;
 - make arrangements for dealing with calls for help;
 - make arrangements for obtaining necessary information; and
 - make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken pursuant to such provision.

27. It is important to note that the proposed duty would be one of making provision to deal with flooding and inland water rescue. It would leave FRAs with the discretion to determine the appropriate level of response based on the circumstances in each case, just as is the case with firefighting.
28. Essentially, we have framed the proposed duty so as to capture and formalise FRAs' current practices, and the services they are able to deliver within the capabilities they already have. As such, we believe that complying with the proposed duty should not present any particular new issues or challenges for FRAs.

Do you think that the duty to “make provision” in respect of flood and inland water rescue should mirror the approach already in place for responding to fires and road traffic accidents ?

(Please see the questions at the end of this Consultation Document).

29. The original 2007 Order included (at article 5) a requirement on each FRA to respond to emergencies outside its area if it had the assets and capability to do so. The proposed Order does not seek to extend this requirement to flooding and water rescue emergencies. The 2007 Order dealt with incidents which often require highly specialised assets which are strategically positioned throughout Wales to meet national resilience requirements. That is generally not true as regards flooding and water rescue. In any event, FRAs have local arrangements in place to manage the use of assets across FRA boundaries and we believe these are sufficient.

We are interested in your views on our proposal not to extend the existing Article 5 of the 2007 Order to flooding and water rescue emergencies.

(Please see the questions at the end of this Consultation Document).

OTHER MATTERS

CO-ORDINATION

30. A typical flooding or inland water incident may of course elicit a response from other agencies as well as the FRA: the police, local authorities and Natural Resources Wales, for instance, all have a role. We have considered whether to include in the new duty a requirement on FRAs to co-ordinate the work of these agencies. However, on balance we do not believe this would be viable. This is because:-

- Whilst the Welsh Ministers have powers to impose new duties on FRAs they do not have powers to impose duties on other responders to co-operate with them. In effect, this would mean imposing a duty on FRAs with which they could not comply.
- Currently FRAs and other responders use the Joint Emergency Services Interoperability Programme in emergencies (“JESIP”). JESIP provides a joint doctrine setting out what front line staff should do and how they should do it in a multi-agency working environment, in order to achieve the degree of interoperability that is essential to joint response. This provides for a more flexible and adaptable approach whereby at operational, tactical or strategic level, the lead officer at any incident is appointed from the most appropriate agency depending on the unique circumstances of the situation.

We are not proposing to include a duty to lead or co-ordinate the multi-agency response to flooding or water rescue incidents. However we would be interested in your views on this.

(Please see the questions at the end of this Consultation Document).

ADVICE ON FLOOD MITIGATION AND WATER SAFETY

31. Section 9 of the 2004 Act specifically relates to emergencies and empowers the Welsh Ministers, following consultation, to make an Order which confers functions relating to *emergencies* on FRAs. Such a duty would therefore not extend to FRAs providing advice on flood mitigation or water safety measures. However, there is no reason why FRAs cannot provide such advice in collaboration with other partners and there are already examples across Wales where this does take place.

NEXT STEPS

32. The Welsh Government invites consultees’ views and any evidence relating to all aspects of this consultation by 22 December 2016. In particular comments are welcomed on the following questions:

Question 1

What are your views on the proposed definition of inland waters in Article 2 of the draft Order?

Question 2

Do you have any alternative proposals for a definition of “inland waters”? Please provide details.

Question 3

Do you have any views on the proposal to limit the duty to emergencies that cause or are likely to cause people to die, be seriously injured or become seriously ill, whether by direct exposure to water or because of other damage that flooding might cause?

Question 4

Do you think that a duty to “make provision” in respect of flood and inland water rescue should mirror the approach already in place for responding to fires and road traffic accidents?

Question 5

Do you agree that there is no need to place a duty on FRAs to respond to flooding and water rescue emergencies across FRA boundaries as set out in Article 5 of the 2007 Order?

Question 6

Do you agree that we should not include a duty to lead or co-ordinate the multi agency response to flooding or water rescue incidents?

Question 7

Do you have any other comments on the draft Order?

Question 8

We do not believe that this policy affects opportunities for people to use Welsh or treats the language less favourably than English, or that it could be reformulated or revised to have positive effects. If you disagree, we **would** welcome your comments on this issue.

Question 9

We have asked a number of questions, but are there any other issues you would like to raise in this area?