



Welsh Government
Consultation – summary of responses

**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: **27 February 2017**

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

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

Audience	All organisations with an interest in flooding and water rescue response in Wales, including the three Welsh Fire and Rescue Authorities, firefighters' unions, Local Authorities, the Welsh Ambulance Services (NHS) Trust, the Welsh Local Government Association, Ministry of Defence, Natural Resources Wales, the four Police Services, the Royal National Lifeboat Institution, the Maritime and Coastguard Agency, Local Resilience Forums and other rescue and voluntary organisations.
Overview	This document provides a summary of the consultation responses including the Welsh Government's response to them.
Action required	None - for information only
Further information	Enquiries about this document should be directed to: Kerry Citric Fire Services Branch Education and Public Services Welsh Government Rhydycar Merthyr Tydfil CF48 1UZ Tel: 0300 062 8226
Additional copies	This document can be accessed from the Welsh Government's website at: https://consultations.gov.wales/consultations/statutory-duty-fire-and-rescue-authorities-wales-respond-flood-and-water-rescue
Related documents	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 - Consultation document (published 2016)

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1. Introduction

The three Fire and Rescue Authorities (FRAs) in Wales already respond to flooding and inland water rescue incidents using their existing general powers¹ and resources, although there is currently no specific duty for them to do so. We therefore consulted on proposals to introduce a statutory duty on the FRAs to respond to flooding and inland water-related emergencies so as to formalise these arrangements.

The proposals included:-

- A definition of flooding and inland waters as follows:
 - *Flooding* is a situation in which land that is not normally covered by water becomes covered by water.
 - *Inland water* comprises rivers, streams, canals, lakes, reservoirs, and water-filled quarries.
- Details of the proposed nature of the duty – the consultation proposed that the duty should focus only on emergencies related to flooding and inland water that cause or are likely to cause death, serious injury or serious illness to people. The consultation did not propose including a statutory duty to respond to flooding which pose a threat of serious harm only to the environment, and/or to the health of plants or animals. However, FRAs would still be able to respond to these types of emergencies under their other general powers.

The proposals would require FRAs to develop and maintain the capability to deal with flooding and inland water rescues, rather than requiring particular types of response.

2. Consultation Process

A 12 week consultation began on 15 September 2016 and was open for responses until 22 December 2016. A total of 9 questions concluded the consultation document, with options to respond to those questions by email, online or by post. The consultation document was available on the Welsh Government website.

The consultation, which included the draft Order, specifically invited views on:-

- The proposed definition of inland water;
- The proposed limitations of the duty;
- Whether the duty should be extended to require co-operation across FRA boundaries;
- The proposal not to include a duty on FRAs to lead or co-ordinate responses to water-related incidents;
- The draft Order itself.

The Welsh Government received 38 responses to the consultation from the following organisations and individuals:

Aneurin Bevan University Health Board

¹ For instance, in section 11 of the Fire and Rescue Services Act 2004

Blaenau Gwent County Borough Council
Caerphilly County Borough Council
Cardiff Harbour Authority
Chief Fire Officers Association
Dyfed Powys Local Resilience Forum
Fire Brigades Union
Flintshire County Council
Gloucestershire FRA
Greater Manchester FRA
Gwent Police
Home Office
Hywel Dda University Health Board
Isle of Anglesey County Council
Merthyr Tydfil County Borough Council
Mid and West Wales FRA
Natural Resources Wales
Norfolk FRA
North Wales FRA
Retained Firefighters Union
RSPCA Cymru
South Wales FRA
South Wales Local Resilience Forum
Vale of Glamorgan Council (2)
Welsh Ambulance Services NHS Trust
Welsh Local Government Association

13 private individuals and groups also responded

The Welsh Government welcomes the responses to the consultation and would like to thank all those who responded.

3. Summary of consultation responses

The Welsh Government has considered all responses to the consultation. This document provides a summary of the responses received to each of the specific questions and the Welsh Government's response to them.

Whilst some issues were raised regarding the detail of the proposals, responses were overwhelmingly in support of there being a statutory duty on Fire and Rescue Authorities in Wales to respond to flooding and other inland water emergencies. As such, the Welsh Government will introduce the new duty to take effect from 1 April 2017. This will largely be in the terms on which we consulted, although we have made some changes in response to consultees' views. We explain those in the rest of this document.

Several issues were raised that did not have any bearing on the matter on which we have consulted. We have noted these issues but not considered them in any detail as part of this response.

As Questions 1 and 2 related to the proposed definition of 'inland water', we have considered and summarised the responses to both questions together including the Welsh Government's response to them.

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.

Twenty-six of the respondents generally agreed with the definition proposed for 'inland water'. Whilst some other respondents were in broad agreement with the proposed definition they suggested that it should be further expanded to include other bodies of water. These included:-

- Ponds, including tailing ponds;
- Pools ;
- large open water areas created by commercial excavations such as gravel extraction;. Two respondents also raised issues regarding the definition of a quarry
- Industrial settlement lagoons and dock pounds;

Others requested greater clarity on the definition of inland water already included in the draft Order as well as suggesting some 'exclusions'. Some of the issues raised were:

- Several respondents raised concerns regarding the position of estuaries and tidal waters (including on boundaries between rivers and the sea);
- Some respondents also sought clarity on other specific waterways such as river mouths, tidal lagoons, and barrages. Particular reference was made to Milford Haven, Cardiff Bay, the Menai Strait and the Severn estuary;
- Some respondents believed that artificial bodies of water flooded intentionally for recreational activities such as diving in quarries, lakes and reservoirs should be clearly excluded;
- Some respondents sought greater detail on what constitutes a lake as opposed to pool;

Two respondents also raised the issue of coastal flooding and the need to include a clear definition in the proposed new duty.

Two of the three FRAs in Wales raised concerns that there might be an expectation that they would provide sub surface search and rescue. FRAs did not have the specialist equipment or extensive training required to make such provision.

Whilst additional types of inland water were proposed for inclusion in the definition, as set out above, proposals for a completely alternative definition of 'inland water' were only suggested by the Cardiff Harbour Authority. It proposed using the already recognised Maritime and Coastguard Agency (MCA) classification to define 'inland waters' to include Category A and B (and certain Category C) inland bodies in the definition. It suggested that this would prevent the production of a separate set of Wales- only classifications.

Gloucestershire FRA did suggest however, that definition (a) be extended to include 'or other water courses be they natural or man-made' and (b) be extended to include 'or smaller bodies of open water such as ponds, pools, tarns'.

The Welsh Government's response:

Inland water

The Welsh Government appreciates that defining inland water for the purpose of this duty can be complex. We also accept that those who will be affected by the new duty need to be sure what it will mean in practice, and we understand that this is why many of these comments have been made. A balance needs to be struck between a definition that is detailed and comprehensive and one that is concise and easily understood. Above all, the definition needs to reflect FRAs' current capability. For instance, we could define inland water as being any body of water within an FRA's area, which extends to the low water mark. That would be clear and simple, but would mean giving FRAs responsibility for rescues from some extensive areas of inter-tidal water, such as in the Severn and Dee estuaries, for which they lack the capability. MCA classifications, on the other hand, are precise but are only published for a small number of bodies of water. Applying them elsewhere demands an accurate knowledge of depth and significant wave height. That would not bring any clarity at all.

The Welsh Government believes that the answer to these concerns lies in the nature of the duty. This would *not* specify in detail the circumstances in which, or the locations to which, FRAs would be required to respond. Instead, it would require them to "make provision" for such a response – ie, to develop and maintain the capability to do so – to the extent that they believed it was reasonable. Exactly what that capability consisted of, and how and whether to respond in each case, would remain operational matters for the FRA, as with other incidents.

For instance, an FRA could reasonably conclude that there was no need to make provision for responding to very rare or hypothetical incidents, such as sub-surface rescues of live casualties as distinct from recovery of bodies. Equally, there could arguably be no reasonable need to develop a capability which duplicated that of other agencies such as the RNLI.

The Order is, however, clear that FRAs must develop a capability to respond to incidents on rivers and lakes – terms which we believe have plain and common-sense meanings which need no elaboration. Such a capability would be equally suitable to respond to incidents on bodies of water which happened to be called ponds or pools (or brooks, reens² or any other term for a body of inland water which does not feature in the draft Order). Whether actually to provide a response to a specific such incident or any others – and if so, what type of response – must remain a matter for firefighters' professional judgement, as it already is as regards all other classes of incident with which FRAs deal.

Recreational waters

Similarly, we see no need to deal specifically with bodies of water which have been created for recreational purposes such as sailing, rowing, fishing or diving. Nor is there any obvious reason for excluding them; indeed, if they attract significant usage, they may present a greater risk than rivers or natural lakes. Such facilities and the activities on them are often managed actively by organised clubs or commercial enterprises, in which case they would probably have obligations under health and safety law to operate them safely. That might well entail providing rescue facilities and equipment such as lifebuoys. Those obligations

² "Reen" is a term used to denote a drainage ditch, mainly in the Gwent Levels between Cardiff and Newport.

remain in force regardless of this new duty. Equally, that should not relieve FRAs from responding where necessary, just as they fight fires in non-domestic premises where the occupiers have similar obligations.

For the avoidance of doubt, though, we do not believe a swimming pool or the like falls within our definition of 'inland water'; nor would capability to rescue people from rivers and lakes necessarily be suitable for effecting rescues from such facilities.

Flooding

The Welsh Government consultation outlined our definition for flooding as being "any case where land not normally covered by water becomes covered by water". This includes flooding caused by sea water beyond the normal high tide mark. We do not believe that further clarity is required. It should be noted however, that the duty would be restricted to such floods which present a risk of death, serious illness or serious injury, although it does not preclude the FRAs from responding to other flooding incidents using the enabling powers within the 2004 Act.

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?

Several respondents raised concerns on the proposal to limit the duty to responding to emergencies that cause or are likely to cause people to die, be seriously injured or become seriously ill. These respondents felt that the following areas also warranted inclusion in the proposed duty:

- Preventing damage to critical Infrastructure or services;
- Preventing damage to economical fabric of communities, e.g. power supplies;
- Animal Rescue.

Specific exclusion of sporting events involving water courses of any type was also proposed.

The Welsh Ambulance Service NHS Trust were concerned that FRAs' specialist capability skills such as rope rescue which can provide enhanced support to paramedics in rescuing patients during flooding incidents may be compromised, should the duty be restricted to emergencies that cause or are likely to cause people to die, be seriously injured or become seriously ill; there could be incidences where a rescue is required which does not pose any of these risks.

One respondent questioned whether the FRAs' current response to 'pumping out' flooded properties was still covered within their current legislation.

RSPCA Cymru raised two key issues in relation to the 'emergency' classification. They were concerned about the impact of not including subsection (b) of Section 58 of the Fire and Rescue Services Act 2004, which defined an emergency as 'an event or situation that causes or is likely to cause serious harm to the environment (including the life and health of plants and animals)'. They felt that by not including both subsections in the proposed

definition, there could be confusion during a major flooding incident around FRAs' responsibilities, potentially leading to the loss of animal life. They were also concerned that pet owners' and farmers' lives would be put at risk (as they would choose to stay with their pets or stock) if FRAs' response to flooding was restricted to protecting human life.

One respondent referred to wider issues that do not currently fall under the FRAs' remit ie the recovery of dead bodies from water courses or other difficult places to reach, bariatric rescues, and rescuing animals from various locations including sink holes.

One FRA made reference to FRAs' involvement in salvage work.

The Welsh Government's response:

The Welsh Government is limited in the provisions it can make under section 9 of the 2004 Act. Such provisions must relate to an emergency as defined in Section 58 of the Act, ie an event which causes or is likely to cause (a) people to die, become seriously injured or become seriously ill; or (b) harm to the life or health of plants and animals.

The Welsh Government acknowledges concerns raised in relation to excluding subsection (b), which relates to the life and health of plants and animals. It is important to note that the new duty will not preclude FRAs from rescuing animals from flooding emergencies, as they do now using the enabling powers in the 2004 Act. FRAs already work closely with the RSPCA water rescue teams; this should prevent any confusion of responsibilities during a major flooding incident. However, rescuing large livestock in particular requires specialist training and equipment which is not necessarily widespread within FRAs now. We do not propose to require FRAs to develop wholly new capabilities as part of these proposals, so we do not support creating a duty to rescue animals and plants as well as people.

Whilst the 'emergency' in the Order is limited to those which may cause or are likely to cause people to die, be seriously injured or become seriously ill, again the duty will not preclude the FRAs from supporting other organisations with specialist rescue capabilities, or responding to incidents which sit outside of the scope of the duty, should they have the capacity and capability to do so. Naturally, a person whose life or health is at risk because s/he has tried to protect pets or livestock from flooding is just as deserving of rescue as a person who is at risk for any other reason.

Again, although there is no statutory duty to do so, FRAs do of course provide wider rescue services, such as supporting the NHS in terms of services to bariatric patients. These services are provided on the basis of FRAs' own risk assessments, and the Welsh Government does not have any plans to change this approach.

FRAs would not be required to pump out flooded properties unless there was a risk to human life or to serious injury or illness, although they can continue to do so on a non-statutory basis should they choose to, using their general powers to respond.

Whilst the Welsh Government acknowledges the importance of maintaining or restoring critical national infrastructure or the economic fabric of communities, these are wider considerations for which there would be a co-ordinated National Resilience response involving a number of other organisations, including the FRAs. The FRAs' responsibilities as Category 1 responders under the Civil Contingencies Act 2004 are not in any way affected by this new duty. The consultation document made clear that damage to, or interference with, infrastructure could fall within the scope of the duty if an FRA, as part of

its risk assessment, concluded that such a circumstance might put people at risk of death or of serious injury or illness. For instance, disruption to power supplies could prevent vulnerable people from heating their homes, thus creating a threat to their life or health. However, that would be a matter for individual FRAs to assess.

Finally, we do not see any case for excluding sporting events which take place on water. The organisers of such events may often provide their own rescue capabilities in the form of safety boats, lifeguards and the like. As with recreational facilities, such capabilities may well be required by health and safety law, and that will remain the case. If these capabilities prove adequate, there would of course be no need for an FRA response at all. If not, there would be no good reason for withholding such a response. As we noted above, the duty requires FRAs to maintain a capability to respond, not necessarily to deploy it in all conceivable circumstances.

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 fire and road traffic accidents?

Almost all of the respondents agreed with the proposed approach that a duty to ‘make provision’ in respect of flood and inland water rescue should mirror the approach already in place for responding to fire and road traffic accidents.

One respondent made reference to the expectation on FRAs to deliver a flooding and water rescue response from within their existing resources; they referred to FRAs currently relying on other organisations such as Natural Resources Wales and the Environment Agency to provide additional assets such as high volume pumps.

Another respondent noted that specialist equipment is often required for flood rescues, and the Order should reasonably require FRAs to acquire and maintain such equipment, as is also the case for provisions in the 2004 Act dealing with firefighting and road traffic collisions. The respondent suggested that section 4 of the 2007 Order should also be amended accordingly.

One FRA requested clarity on the meaning of ‘reasonable requirements’ in relation to the provision of personnel, services and training to respond to widespread flooding. It made reference to assets possibly being exhausted very quickly which prevent FRAs being able to respond to additional requests for assistance.

One respondent suggested that the cost of the fire service’s involvement at incidents ought to be reclaimed from the insurance companies of those involved.

The Welsh Government’s response

The proposed duty would be one of making provision to deal with flooding and inland water rescue. As with the FRAs’ response to fire and road traffic accidents, it would be at the FRAs’ discretion to determine the appropriate level of response based on the circumstances in each case.

The duty is to ‘make provision’, whether this is using an FRA’s own resources and assets, or in collaboration and agreement with others. The FRAs already work with organisations

such as Natural Resources Wales as well as having mutual aid arrangements with other FRAs and can continue to do so.

The Welsh Government acknowledges the point made regarding equipment, and the importance of consistency with arrangements for firefighting and road traffic collisions. Therefore, we have amended the draft Order to include “equipment” in the action required by FRAs under section 4 of the 2007 Order. This will apply to the whole Order, ie the provision for emergencies involving chemical, biological or radioactive contaminants and emergencies involving structural collapse which are the subject of the original 2007 Order, as well as emergencies involving flooding and water rescue. The Welsh Government has already provided FRAs with a comprehensive range of vehicles and related equipment to respond to these other emergencies, and continues to provide revenue and capital support for it. That is unaffected by the Order.

We accept that there may be a case in theory for FRAs recovering costs from the insurers of those involved. However, that would represent a fundamental shift in the role and funding of the service: there would be an equal case for taking the same approach as regards dwelling fires, for instance. This would call into question the public nature of fire and rescue services, and the Welsh Government could not support any such developments.

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?

The responses received to this question were evenly split. Several respondents agreed that there is no need to place a duty on FRAs to respond to flooding and water rescue emergencies across FRA boundaries as existing cross border arrangements were already working well. All three Welsh FRAs made reference to existing mutual aid agreements in place under sections 13 and 16 of the 2004 Act.

On the other hand, several respondents indicated that cross-border arrangements would be strengthened if they were underpinned by a statutory duty.

The Welsh Government’s response

The Welsh Government is satisfied that current mutual aid arrangements under the 2004 Act are effective, and appropriate for flood and water rescue emergencies. Cross-border arrangements are in place and requests for larger-scale support are co-ordinated through the Fire and Rescue Service National Coordination Centre. Introducing a statutory duty on Welsh FRAs to respond to flooding and water rescue emergencies outside each FRA’s area would not alter these arrangements nor would they guarantee reciprocal support from FRAs outside of Wales. As set out in the consultation paper, the existing provisions requiring cross-border support in article 5 of the 2007 Order are for the purposes of sharing highly specialised national resilience assets strategically placed across Wales and the rest of the UK. Most flood and water rescue assets do not fall into this category.

Question 6 - Do you agree that we should not include a duty to lead or co-ordinate the multi agency respond to flooding or water rescue incidents?

The majority of respondents agreed that FRAs are ideally placed to lead or co-ordinate the multi- agency response to flooding and water rescue and agreed that imposing a duty on them to do so was not warranted. Several made reference to the Joint Emergency Services Interoperability Programme (JESIP) principles which they indicated worked well and which were already embedded across the responding agencies.

Several respondents did suggest that the FRAs should have a statutory duty to co-ordinate. Conversely, several respondents indicated that the best agency to lead an incident would depend on the particular circumstances of each incidents and therefore the multi-agency approach currently taken was the most appropriate.

The Welsh Government's response

The Welsh Government acknowledges the majority support for the proposal not to include a statutory duty on FRAs to lead/co-ordinate such incidents.

Question 7 - Do you have any other comments on the draft Order?

Several respondents were supportive of the Welsh Government's proposals to impose a duty on Welsh FRAs, although some made some specific comments on the draft Order itself. These have been incorporated at the relevant points throughout this document. A few respondents indicated that response to flooding and water rescue incidents were suitable and sufficient using existing legislation, namely the Fire and Rescue Services Act 2004, Section 11 - "Power to respond to Other Eventualities", although there was an understanding of the Welsh Government's wish to protect functions that are currently non-statutory.

The Welsh Government's response

The Welsh Government acknowledges that FRAs already routinely respond to flooding and water rescue incidents using their general powers to respond, although there is no specific duty for them to do so. However, major flooding is becoming a risk of increasing concern and as such it is important that this provision is protected, and that firefighters and their employers are clear about what is required of them. We note that this does not necessarily provide for a standardised response across Wales.

We have framed the proposed duty so as to capture and formalise FRAs' current arrangements for responding to flooding and water rescue incidents.

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.

Respondents agreed that the policy did not affect opportunities to use the Welsh language, and did not treat the Welsh language less favourably than English. No respondents felt that the proposals could be revised to have positive effects on the Welsh Language.

The Welsh Government's response

The Welsh Government notes respondents' views 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?

Several respondents indicated that introducing a duty on FRAs to respond to flooding and water rescue incidents required substantial funding to do so, including for specialist training. One FRA indicated that it would also require commitment from On-Call personnel. Another respondent referred to the specialist nature of the proposed duty, and the need to secure the required equipment.

Some respondents indicated that whilst the consultation concentrated on the response element of water rescue, consideration should be given to preventative work to reduce water related incidents and emergencies.

RSPCA Cymru made reference to the advice they provide to pet owners to ensure the safety of their animals in flooding situations so they are able to plan in advance. They also referred to the need for blue light escort to be given to them in order to deploy effectively at flooding incidents, and asked for this to be included in any guidance from the Welsh Government.

The Welsh Government's response

We have framed the proposed duty so as to capture and formalise FRAs' current arrangements for responding to flooding and water rescue incidents within the capabilities they already have. As such, the Welsh Government does not believe the proposed duty should present any particular new issues or challenges for the FRAs in terms of funding. Furthermore, the Welsh Government does not currently provide funding for other FRA emergency response services such as firefighting: FRAs fund this by contributions from their constituent local authorities. We do not believe it would be possible or sensible to consider revenue funding for flooding and water rescue in isolation from other responsive services, not least because such services would be provided by the same crews based at the same stations. However, and as the responses to this consultation demonstrate, it is becoming clear that the diversification of the fire service risks making this funding model unsustainable. The Welsh Government will consider the possibility of reform in this area, and may consult further in due course.

Nonetheless, the Welsh Government has previously provided capital funding for water rescue equipment. In recognition of that, and of the introduction of this new duty, we have

committed £1.8 million capital funding in 2016-17 and 2017-18 to refresh FRAs' water rescue assets

The Welsh Government notes the views of some respondents regarding prevention in the form of flood risk mitigation and water safety awareness. However, the Welsh Ministers' powers in the 2004 Act are limited to specifying additional types of emergency to which FRAs must respond; there is no power to expand FRAs' safety and prevention remit. We would nonetheless encourage FRAs to continue their work with other agencies on water safety messaging as part of their wider prevention activity.