Water Related Specialist Casework

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Responsibility of	**Subject Lead for Water Related Specialist Casework**
Review Changes: updated secondary legislation to include the Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021, amended guidance to details of NRW updates related to secondary legislation and include advice in relation to the Reservoir Act.	

Key legislation and policy

Primary Legislation	• Water Resources Act 1991 (as amended) • Water Act 2014 • Water Industry Act 1991 • Water Act 2003 • Reservoirs Act 1975 • Drought Act 1976
Secondary Legislation	• Water Resources (Abstraction and Impounding) Regulations 2006 (as amended by the Water Resources (Abstraction and Impounding) (Amendment) Regulations 2008 • Water Abstraction and Impounding (Exemptions) Regulations 2017 • Water Abstraction (Transitional Provisions) Regulations 2017 • Anti-Pollution Works Regulations 1999 • Water Resources Management Plans Regulations 2007 • Water Resources Management Plan (Wales) Directions 2016 • The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 • Drought Orders (Inquiries Procedure) Rules 1984 • Drought Plan Regulations 2005

	• Environmental Permitting (England and Wales) Regulations 2016 • Drought Plan (Wales) Direction 2017 • The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 • The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No.2) Regulations 2023 • Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (Wales) Regulations 2016 • The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms, etc.) (Wales) Regulations 2016
Other guidance	• NRW's Water Company Drought Plan Technical Guidance 2017 • Guidance on the Water Resources (Control of Pollution) (Oil Storage) (Wales) Regulations 2016 March 2016 • WG 'Guiding Principles for Developing Water Resources Management Plans (WRMP's) for 2020 April 2016' • WG 'The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 Guidance for Farmers and Land Managers' • WG 'Guiding Principles for Developing Water Resources Management Plans (WRMPs) 2022' • NRW's, 'Understand your reservoir risk designation' • NRW's 'Guidance for owners and operators' • 'A Guide for reservoir Owners and Operators' • WG, Explanatory Memorandum to 'The Reservoirs Act 1975 (Capacity, Registration, Prescribed Forms etc.) (Wales) Regulations 2016'

Introduction

1. This chapter covers a diverse range of water related specialist casework. The water licencing regimes aim to prevent or reduce pollution and to help ensure security of supply through the following mechanisms:

   - Abstraction and Impoundment licencing;
   - Anti-pollution Works Notices - Water Resources Management Plans;
   - Silage and Slurry Works Notices.

2. Discharge Consents are now encompassed within the Environmental Permitting Regime and so guidance is included in the Environmental Permitting chapter.

3. Guidance is also included on Drought Orders and Drought Permits, which only occur quite rarely but which, when they do arise, are subject to an urgent timescale.

Abstraction and Impoundment Licences

4. Abstraction licences encompass water from rivers, lakes, canals, reservoirs and groundwater. In addition to general water supply purposes, water abstraction most commonly occurs in connection with industrial processes (e.g. for cooling water or flushing), irrigation of agricultural crops (which is seasonal and often only needed every few years at times of low rainfall), and for hydroelectric schemes. Depending on the physical arrangements, an impoundment licence may also be required to authorise works that would obstruct or impede the flow of water or for the alteration of any such works.

5. The Water Act 2014 marked an important turning point in water abstraction reform, removing water companies' compensation rights for revocation or changes to their abstraction licences, which has unblocked progress for a programme of measures to improve the sustainability of water abstraction. This plan has 3 main elements:

   - using regulatory powers to address unsustainable abstraction practices;
   - developing catchment-based initiatives to change abstraction licences to better reflect water availability, reduce the impact of abstraction, and introduce more flexible arrangements that support water storage, water trading and efficient use; and
   - modernising the abstraction service and bringing it into line with other environmental permitting regimes.

6. Over the past few years NRW has been reviewing all abstraction licences and changing those considered to cause environmental damage, revoking or reducing quantities for licences unused (or little used) over the past 10 years, and changing time-limited licences to avoid environmental damage. Much of this has been done voluntarily with the companies or parties concerned. However, some has involved enforced changes which have given rise to appeals. This programme of reviews is moving towards a conclusion but there is still potential for more appeals. Whilst ordinary abstraction licence appeals are infrequent in Wales, this programme of reviews is likely to generate an increased number in the short-term.

7. The 2014 Act also removed a large number of abstraction exemptions which will bring all significant abstractions into regulation (20 cubic metres per day or more). Transitional arrangements are currently in place for these, but all applications have to be made by the end of 2019, and a period of 3 years is scheduled for determination of all of the applications. Thus, appeals from unsuccessful applicants may arise for some years yet. The legislation also makes provision for enforcement action to be taken if applications are not submitted by the deadline, which may also give rise to appeals.

8. One of the other proposals is that abstraction and impoundment licences will become environmental permits within the Environmental Permitting regime. This process is being overseen by an External Advisory Group covering both England and Wales. Until then the procedures will continue to fall under the Water Resources Act 1991 (WRA).

9. NRW is responsible for determining licence applications under the WRA (as amended by the Water Act 2003) and for the regulation of licences. Applicants for abstraction and impounding licences may appeal under Section 43 of the WRA if they are dissatisfied with NRW's decision (i.e. its refusal or the terms of its grant) or if NRW fails to deal with the application within the prescribed period. If NRW itself seeks a licence the application is made directly to the Welsh Ministers (Section 64 of the WRA).

10. Unlike planning permissions, abstraction licences can be subject to periodic review by NRW, and Section 52 of the WRA makes provision for NRW to revoke or vary a licence at any time. If the licence holder gives notice within the prescribed period objecting to the proposals, Section 53 makes provision for referral to the Welsh Ministers.

11. In both types of appeals the legislation includes provision for a local inquiry (or hearing) to be held or for the licence holder/applicant to appear before an Inspector if either the Welsh Ministers think fit or if the licence holder/applicant requests it. The Welsh Ministers' decision should include a direction to NRW, as the case may be:

    - to grant a licence containing such provisions as specified in the direction; - to vary the licence so as to contain such provisions as may be specified; or
    - to revoke the licence.

12. Water abstractions affect eco-systems, fish and the status of the water body concerned. They may also affect the amenity value of the water body, for example by reducing the flow and depth of water such that its wider use and appearance is affected. Evidence put before the Inspector is likely to include detailed ecological surveys to set the baseline, geomorphological data for rivers (i.e. the features of the river channel surfaces) and historic data on water levels and flows (for rivers). With regard to the latter, the terms Q90 and Q10 are often referred to, meaning the flows exceeded for 90% of the time and 10% of the time, i.e. low and high flows respectively.

13. The likely effects of the proposed abstraction are then assessed against these baselines. For groundwaters there will be some drawdown of the aquifer around the point of abstraction, gradually reducing further away. For rivers, abstraction results in reduced flows which affect the habitats of flora and fauna within the river channel, including changes to wetting of the sides and banks both directly and due to spray and mist. The latter can affect flora in the wetting zone, such as mosses and liverworts. There is potential for fish to be affected by changes in water depths, including spawning and movements up and down the river. Impounding may have particular effects on fish movements and can give rise to the need for fish ladders in the proposals.

14. Clearly, these effects are likely to be most keenly felt at times when natural water levels are already low, i.e. during the summer months. Abstraction for agricultural irrigation is most likely to be wanted at that time of year, and limitations on abstraction is leading farmers to provide on-farm water storage facilities so that water can be abstracted at other times of the year when water levels are less critical.

15. NRW's aim is to safeguard the environmental status of the water body and, in time, to raise all water bodies to good status. The criteria for water quality are explained in the Water Related Planning Casework chapter of the Wales ITM for both surface waters and groundwaters. The classification of surface waters takes into account ecological quality and chemical quality, whilst groundwaters are assessed for quantity and chemical status.

16. When licences are granted they always include conditions limiting daily and annual abstraction amounts, and in some cases they apply special controls during seasonal periods. Many licences include conditions which require abstraction to cease when river levels/flows fall below a pre-determined threshold set out in the licence and measured at some specified point. These are often referred to as hands-off flow and hands-off level conditions, and it is often these that are disputed at appeal. In the past licences were usually granted for indefinite periods of time, which made water resource planning and control difficult if licences fell into irregular use or disuse and there was pressure for other licences to be issued elsewhere in the catchment. Nowadays, all licences include time limits.

Anti-Pollution Works Notices

17. Section 161 of the Water Resources Act 1991 addresses anti-pollution works and operations where it appears to NRW *"that any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters"*. It confers powers on NRW to remedy such pollution. However, Section 161A also provides powers for it to issue an Anti-Pollution Works Notice (APWN) on any responsible person requiring that person to carry out remediation works.

18. The Anti-Pollution Works Regulations 1999 specify the required content of an APWN, and this includes a description of the incident and of the risk to controlled waters, details of the works to be carried out, and its reasons for serving the Notice on that person and for requiring the works to be carried out. Section 161C of the WRA provides the right of appeal to the Welsh Ministers who may confirm the Notice, with or without modification, or quash it. The 1999 Regulations set out the procedures for such appeals and say an appeal should state the grounds on which the appeal is made and whether the appellant wishes the appeal to be determined by written representations or a hearing.

19. Possible grounds of appeal include: the wording and possible amendment of the Notice; the source of the pollution, the receptor(s) and the risks involved; structural integrity; possible mitigation measures and the economics of the

works required; and the existence of a monitoring and management regime. The Appellant may also contend that the Notice should have been served on some other person.

20. Cases have occurred in connection with the escape of effluent, structural failure, uncontrolled storage and dredging. However, APWN cases are quite rare.

Water Resources Management Plans

21. The Water Industry Act 1991, which sets out the powers and duties of the water and sewerage companies formed following the Water Act 1989, includes the requirement that the water companies draw up regular Water Resources Management Plans to ensure there is security of supply in their area over a 25year period, whilst also ensuring the environment is protected. Paragraph 62 of the Water Act 2003 inserts paragraph 37A into the 1991 Act for this purpose.

22. The scope of matters to be addressed has been specified in various Directions over the years, the latest in Wales being the Water Resources Management Plan (Wales) Directions 2016. The basic requirements are to show how the needs of future populations will be managed, to take into account climate change, and the development of new water supply infrastructure (where needed), such as reservoirs.

23. Draft Plans have to be submitted to Welsh Government for approval and, under Section 5 of the Water Resources Management Plans Regulations 2007, WG can cause an inquiry or hearing to be held in order to test the evidence and assist in making the Plan fit for purpose. An Inspector appointed to hold such an inquiry/hearing should also expect to receive evidence on: Strategic Environmental Assessment; consultation with statutory bodies; and a Statement of Responses to the consultation representations.

24. Rather than cover the entire WRMP, the Inspector should try to narrow the scope of the inquiry/hearing to concentrate on the matters of concern to WG (and any other matters the Inspector may deem relevant). Statements and Statements of Common ground can be requested, and the most appropriate process may be along the lines of a Development Plan Examination in Public with topic-specific hearings. The Inspector's report should include recommendations on what is needed to make the WRMP compliant with statutory requirements and fit for purpose, and the Welsh Ministers may direct the water undertaker to change its Plan in accordance with the direction.

25. Cases of this sort occur only rarely.

Silage and Slurry Works Notices

26. Another rare type of casework is appeals against Notices served by NRW under Section 30 of The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021. The Regulations set standards for storing silage and slurries so as to minimise the risk of water pollution.

27. NRW can serve a Notice to require improvements to be made to an installation if it is not considered to be suitable and there is a significant risk of pollution to controlled waters. The actions required by the Notice must be appropriate to the task of minimising the risk of pollution (e.g. requiring sufficient slurry storage to be provided). In the event of an appeal both the appellant and NRW may request an oral hearing.

28. If an appeal is successful, the Notice may be withdrawn or modified or the period for compliance extended. If the Notice is not withdrawn, compliance is required on the day of the determination unless the period is extended. When deciding whether to extend the period for compliance, the Inspector should bear in mind whether it is reasonable, feasible or practicable for the appellant to comply with the Notice (amended or otherwise) as soon as it is issued.

29. Cases of this sort occur only rarely.

Structures affecting a Main River or Floodplain

30. Section 109 of the Water Resources Act 1991 (WRA) made it an offence to carry out the following works without consent or not in accordance with the approved plans:

- to erect structures in, over or under a watercourse which is part of a main river;
- to carry out any work of alteration or repair of any structure in, over or under such a watercourse if the work is likely to affect the flow of water in the
- watercourse or to impede any drainage work; or
- to erect or alter any structure designed to contain or divert the floodwaters of any part of a main river.

31. Applications for consent for such works were made under Section 110 of the WRA, which also says that approval shall not be unreasonably withheld and may be approved subject to any reasonable conditions as to the time at which and the manner in which any work is to be carried out. If any question arises on the reasonableness of these matters, the question may be dealt with by arbitration (if both parties agree) or by referral to and determination by Welsh Government, though cases of this sort occur only rarely.

32. Sections 109 and 110 of the WRA have now been repealed by the Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2016, and these consents are now covered by the Environmental Permitting (England and Wales) Regulations 2016. The consent is now termed a Flood Risk Activity Environmental Permit. In all other respects the considerations to be taken into account remain the same.

33. In addition to proposals for structures within the watercourse, these provisions cover structures within the floodplain such as embankments or walls designed to contain or divert floodwaters. Particular application may occur where a

person seeks to provide or improve flood protection for a property on the floodplain.

34. Determination is essentially a matter of balancing the benefits of the proposal against the detrimental effects. The benefits might include improved flood protection to a property, and that may take into account the value or status of the property (e.g. a listed building). The disbenefits are likely to be a small increase in flood levels in other parts of the floodplain as a result of the exclusion of water from that area of floodplain or the redirection of floodwater flows.

Drought Orders and Permits

35. Water companies have a duty (under Section 39B of the Water Industry Act 1991) to produce plans that show how, in drought conditions, they will provide water supplies without placing undue reliance on drought permits or drought orders e.g. the Dwr Cymru Final Drought Plan 2020 (dated 2021). Drought plans should describe measures that the company will take to restrain demand, to use other sources and to monitor the effectiveness of such measures, including the environmental effects. Measures to increase supply may include investing in new sources (a long-term measure), bulk supplies from outside the area and moving water between supply zones (refer to NRW's Water Drought Plan Technical Guidance).

36. Drought plans should also provide details of sites that might be affected by drought permits/orders. Where a permit or order would impact on a protected site (e.g. SAC/SPA/Ramsar/SSSI), the plan should identify any mitigation measures, and NRW should be consulted over its production. As a statutory undertaker, the water company is a competent authority for the purposes of The Conservation of Habitats and Species Regulations 2017. It must therefore carry out an appropriate assessment of the implications (of its drought actions) for any designated European site. A preliminary assessment should be included in the drought plan and this should be updated as part of the environmental report which accompanies an application for a permit/order (permits and orders are not formally subject to EIA requirements). If there are no alternative solutions and the company cannot conclude that actions identified in the order/permit would not adversely affect the integrity of the European site, the Welsh Ministers must be given the opportunity to decide whether there are imperative reasons of overriding public interest for the permit/order to be authorised.

37. An application for a drought order (or emergency drought order) is normally made to the Welsh Government by a water company (although NRW may also make an application). Water companies may also apply to NRW for a drought permit. Once an application has been submitted and advertised, seven days are allowed for objections to be made, and those objections are then considered at a hearing (or possibly an inquiry) that is governed by the Drought Orders (Inquiries Procedure) Rules 1984.

38. A drought permit may be warranted if a serious deficiency of water supplies exists or is threatened as a result of an exceptional shortage of rain (Section 79

of the WRA). A drought order may be justified when there has been an exceptional shortage of rain resulting in a serious deficiency in water supplies, or such a deficiency in the flow or level of any inland water as to pose a serious threat to flora or fauna (Section 73 of the WRA). Justification for an emergency drought order is that the deficiency in water supplies is likely to impair the economic or social well-being of people in the area (Section 73 of the WRA).

39. Applications for permits/orders must demonstrate the exceptional shortage and be supported by evidence that measures, identified in the drought plan, have already been taken in an attempt to avoid the need for a permit or order. Such measures might include the use of alternative sources and actions to reduce demand, such as temporary restrictions on the use of hosepipes for watering gardens or washing private cars. The Company's Drought Plan would be expected to include a number of such measures.

40. Drought permits can authorise applicants to take water from specified sources, or they can modify existing restrictions on the taking of water, for a period of up to six months. Ordinary drought orders may also affect others, for up to six months, by regulating abstractions and discharges and by authorising water companies to limit the uses of water. Emergency drought orders are in force for only up to 3 months but go further than ordinary orders in that they allow companies to make unfettered decisions over the uses of water and over the form of its supply. The duration of orders and permits may be extended if the drought persists. "Drought permits and drought orders May 2019" is Supplementary Guidance from the Environment Agency and Department of Environment and Rural Affairs and provides a useful overview of drought permits/orders and the key differences (although English based guidance the advice in this regard is equally applicable to Wales).

41. Procedures for both hearings and inquiries are covered by the 1984 Rules, and it is for the Inspector to determine the most suitable approach. The advice that follows refers to hearings but applies equally to inquiries. Once an application for an order/permit has been made, or shortly before, a suitable Inspector will be alerted to the possible need for a hearing. The hearing will be arranged as quickly as possible (typically within 1-2 weeks) and will be held if there are objections to consider, irrespective of whether the objectors wish to be heard.

42. The file should contain the draft order/permit, a supporting statement from the applicant, an environmental report and relevant parts of the drought plan. Objections may arrive with the file or later. It is recommended that the water company prepares an agreed statement of common ground with NRW, so as to speed up the hearing.

43. At the start of the hearing, the applicant should be asked to confirm that all of the necessary publicity and notification has been given to the proposed order/permit. If they have not been provided beforehand, copies of the relevant advertisements, notifications and lists of persons notified should be taken as hearing documents. If the applicant proposes modifications to the permit/order, in response to objections, care must be taken to ensure that no-one would be unduly prejudiced by consideration of the revised version, for example, if

additional works might be proposed which would affect other people. Some objections may be negotiated away by the time the hearing is held.

44. The Inspector has considerable discretion for the format of the hearing. The applicant and objectors, or their representatives, are normally allowed to speak at the hearing and the Inspector has the discretion to hear from objectors who failed to lodge their objections within the seven-day period. The applicant generally speaks first, but it is unlikely that proofs of evidence will be provided by any party and there is no requirement for written statements to be provided, let alone read. The Inspector may choose to hear the parties present their cases (in a succinct form), before allowing discussion, followed by the parties' questions, and then closing submissions. Alternatively, the Inspector may opt to ask questions on particular points and then, at a later stage, give the parties the opportunity to raise other matters. Closing submissions should finish with the applicant. There is no statutory requirement for a site visit, but an unaccompanied visit before the hearing may help the Inspector to understand the context for the provisions of the permit/order.

45. The following is a typical list of matters to be covered at a hearing:

- procedures leading up to the hearing (advertisement, consultation, etc.);
- terms of the draft Order/Permit, and temporary changes to relevant licence conditions;
- fundamental requirements, i.e. exceptional shortage of rain leading to a serious shortage in water supplies;
- consequential effects (environmental, other water users);
- Drought Plan measures taken (long and short-term) to relieve situation;
- preparations for the Order/Permit, e.g. baseline environmental surveys to enable effects to be monitored;
- objections made to the Order/Permit, including whether or not these have been resolved.

46. The Inspector will need to consider hydrological evidence in support of the claim that there has been an exceptional shortage of rain. There is no guidance on the meaning of an exceptional shortage, as every drought is different, and it is generally for the water company to demonstrate the case by reference to the type of drought and to the source that is affected. Data on rainfall and the availability of water supplies is likely to include comparison with historical records to demonstrate the severity of the deficiency of rainfall and the shortage of supplies. NRW's support for the claim is likely to carry significant weight. Refer to Appendix D "Drought permits and drought orders May 2019" and also Appendix H of NRW's Water Company Drought Plan Technical Guidance December 2017 in terms of what is meant by exceptional shortage of rain.

47. The Inspector will also look for evidence to show that those measures have been taken which the Drought Plan identifies as being necessary to reduce reliance on the use of permits or orders for the area in question. A permit/order should be refused if other options for public water supply remain or if proportionate actions such as publicity campaigns, hosepipe bans, pressure reduction and leakage control, have not been taken. The Inspector may wish to

see evidence on matters such as the company's progress with leakage control and with promoting the efficient use of water if the matter is at issue.

48. If the Inspector is satisfied that there is a serious deficiency of water, as a result of an exceptional shortage of rain, this must nevertheless be balanced against the environmental and other consequences. Consideration of the consequential effects of the order/permit often involves evidence about the effects on biodiversity and may also include effects on the uses of water that are available to others (e.g. angling clubs). Forewarning of such effects should be provided by the Drought Plan for the area.

49. If time allows, it can be helpful to prepare a list of questions that are structured to fit in with the likely form of the report. The list can be circulated at the hearing, or before, so as to give the parties maximum warning of any additional documents that might be needed.

50. Another advantage of the hearing procedure is that, if necessary, the Inspector can prepare a summary of each party's case in advance, read it out at the hearing, get any necessary amendments, and then insert it directly into the report. In addition, if the Inspector wishes, advance warning can be given of a request for closing submissions to be provided in electronic form. A further way of reducing reporting time may be to ask the water company to provide a succinct summary of the distribution system.

51. The report is produced in the same format as a normal Ministerial report and should include the Inspector's "findings of fact". There is no need to reproduce the detailed wording of the draft order/permit, or of any proposed modifications to it, within the report; references to the relevant documents will suffice. A report on a drought order is made to the Welsh Ministers and includes a recommendation that the order is made in the form sought, or in some modified form, or that the order is not made. Reports on drought permits are made to NRW but should not include recommendations. The timetable for reporting is necessarily very short (just a few days; less than a week) as any delay can put public water supplies at risk. The subsequent decision by Welsh Government or the NRW is usually made to a similar short timescale.

52. NRW can recover their costs under Section 64 of the Water Act 2003. Section 65 makes provision for awards of costs to other parties under the terms of the Local Government Act 1972 (unreasonable behaviour) and, in the absence of specific guidance, any such applications should be considered against the same criteria as in planning casework. It is unusual for costs applications to be made.

Reservoirs Appeals

53. The Reservoir Act 1975 (The Act) provides the legal framework intended to ensure reservoir safety. In doing so, the Act sets out the minimum standards for the construction, supervision, maintenance, inspection and ultimately reservoir decommissioning activities.

54. The Act places a duty on the relevant authority, NRW in Wales, to keep a register of the large-raised reservoirs situated wholly or partly in its area together with information about each of them. After the registration of a large-raised reservoir NRW must consider whether the reservoir should be designated as a high-risk reservoir. A reservoir may be designated as high-risk if:

- NRW thinks that, in the event of an uncontrolled release of water from the reservoir, human life could be endangered, and
- the reservoir does not satisfy the conditions (if any) specified in regulations made by the Minister.

55. High-risk reservoirs are subject to additional inspection, monitoring and supervision requirements as set out in sections 10 to 12 of the Act. These requirements have cost implications including those arising from the need to install and maintain instruments to provide information on water levels, depth and flow etc and to employ a supervising engineer.

56. Those managing, owning, or carrying out the functions of the reservoir, known as the 'Undertaker', can make an appeal in respect of the designation to the Welsh Ministers on any ground. The appeal decision must either confirm or cancel the designation which is suspended while the appeal is pending.

57. An Undertaker can also appeal if they have been served with an enforcement notice requiring them to appoint an engineer or to carry out an engineer's recommendation. In that case, the appeal decision must either:

- confirm the requirement;
- modify the requirement; or
- determine that the requirement is to cease to have effect.

The requirement is suspended while the appeal is pending.

58. A detailed note outlining the procedural requirements and main considerations in relation to reservoir appeals is attached as Appendix A.

Other Relevant Manual Chapters

59. The following other chapters of the ITM wich may be of relevance:

- Sustainable Drainage (SuDS) Appeals.
- Environmental Permitting.

Annex A: Reservoir Appeals

Legislation

1. The overarching legislation is the Reservoirs Act 1975 (the Act).

2. This defines a "large raised reservoir" as:
   a) a large, raised structure designed or used for collecting and storing water, and
   b) a large, raised lake or other area capable of storing water which was created or enlarged by artificial means.

3. In addition, a structure or area is "raised" if it is capable of holding water above the natural level of any part of the surrounding land, and "large" if it can hold 10,000 cubic metres of water.

4. Each relevant authority, Natural Resources Wales (NRW) in Wales, has a duty to keep a register of the large raised reservoirs situated wholly or partly in its area together with information about each of them. The register is available on DataMapWales. After the registration of a large raised reservoir NRW must consider whether the reservoir is to be designated as a high-risk reservoir. If it is, NRW makes a provisional designation by giving notice to the undertaker. The notice specifies:
   a) the reasons for the provisional designation,
   b) how representations to NRW may be made, and
   c) the period within which those representations may be made.

5. A reservoir may be designated as high-risk if:
   a) NRW thinks that, in the event of an uncontrolled release of water from the reservoir, human life could be endangered, and
   b) the reservoir does not satisfy the conditions (if any) specified in regulations made by the Minister.

6. Such conditions may include:
   a) the purpose for which the reservoir is used,
   b) the materials used to construct the reservoir,
   c) the way in which the reservoir is constructed, and
   d) the maintenance of the reservoir.

7. High-risk reservoirs are subject to additional inspection, monitoring and supervision requirements as set out in sections 10 to 12 of the Act. These requirements have cost implications including those arising from the need to install and maintain instruments to provide information on water levels, depth and flow etc (section 11), and to employ a supervising engineer (section 12).

Appeals

8. The Reservoirs Act 1975 (Exemptions, Appeals and Inspections) (Wales) Regulations 2016. (the regs) govern the appeal process. They are dated 27 January 2016.

9. Those managing, owning, or carrying out the functions of the reservoir (ie the undertaker, a full definition of which is given in the interpretation of the Act) can

make an appeal in respect of the designation to the Welsh Ministers (WMs) on any ground. The appeal decision must either confirm or cancel the designation which is suspended while the appeal is pending.

10. An undertaker can also appeal if they have been served with an enforcement notice (ie under sections 8(1), 8(3A), 9(7), 10(7), 12(4), 13(5) or 14(4) of the Act) requiring them to appoint an engineer or to carry out an engineer's recommendation. In that case, the appeal decision must either:
    a) confirm the requirement;
    b) modify the requirement; or
    c) determine that the requirement is to cease to have effect.

    The requirement is suspended while the appeal is pending.

11. Appeals must be;
    a) made in writing;
    b) state the grounds of the appeal; and
    c) be received by WMs no more than 28 days after the date on which the undertaker is served with the notice.

12. The appointed person/inspector (referred to as the inspector from here) determines the procedure for determining the appeal. Before making their decision the inspector must:
    i. give the appellant and NRW (the parties) 21 days in which to submit representations and supporting documents;
    ii. circulate these between the parties;
    iii. give the parties a further 14 days to submit comments on each other's submissions.

13. The inspector can request further information from the parties at any time. Once the inspector has seen all the representations made, they can decide whether to progress the appeal by written representations or a hearing. There is no provision for an inquiry.

Hearings

14. In fixing a date for a hearing parties must be given at least 28 days' notice. Witnesses who will be appearing at the hearing must submit a proof of evidence at least 14 days before the hearing. These must be circulated between the parties so that both have copies of all proofs of evidence.

15. The appellant can withdraw an appeal, in writing, at any time before it is determined by the inspector. All parties bear their own costs. The WMs are bound by the inspector's decision.

Considerations

16. The main consideration at the heart of the decision, in my view, should be the reason for which a reservoir is designated by NRW as high-risk, namely:
    - Whether, in the event of an uncontrolled release of water from the reservoir, human life could be endangered.

17. The Act sets out an additional reason for designation which is that the reservoir does not satisfy the conditions (if any) specified in regulations. It states that these conditions could include the purpose for which the reservoir is used, its construction materials, and the ways in which it is constructed and maintained. The regs, which were published in 2016 many years after the date of the Act, do not, however, specify any conditions. Nonetheless, NRW repeats this reason in its statutory notice confirming the designation of a high-risk reservoir.

18. The suggested conditions include matters which could be highly relevant in individual cases. Where pertinent, however, they would be addressed by evidence submitted in the appeal; they would contribute, therefore, to the main consideration and would not need to be separately identified as considerations or issues.