

Explanatory Memorandum to ‘The Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017’

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary’s Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017. I am satisfied that the benefits justify the likely costs.

Carl Sargeant AM
Cabinet Secretary for Communities and Children

15 February 2017

1. Description

At present, the three Welsh Fire and Rescue Authorities (FRAs) respond to flooding and water rescue incidents using their existing general powers to respond to 'other eventualities' that cause or are likely to cause death, injury or illness, as described in Section 11 of the Fire and Rescue Services Act 2004 ('2004 Act'). There is, however, no statutory requirement for them to do so.

The Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017 ("the Order") introduces a duty requiring the three Welsh FRAs to make provision to respond to flooding and inland water emergencies.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest.

3. Legislative background

The Order is made in exercise of the powers conferred on the Welsh Ministers by section 9 of the 2004 Act. The power of the Secretary of State in section 9 of the 2004 Act was, in relation to Wales, exercisable by the National Assembly for Wales by virtue of section 62 of the 2004 Act. That power is now vested in the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006).

The core functions of FRAs are set out in sections 6 to 8 of the 2004 Act. These are functions relating to fire safety, fire-fighting and road traffic accidents. Section 9 of the 2004 Act allows the Welsh Ministers to specify, by Order, other core functions relating to emergencies for which the FRAs must make provision.

The Fire and Rescue Services (Emergencies) (Wales) Order 2007 (the "2007 Order") specified functions in relation to emergencies involving chemical, biological or radio-active contaminants; emergencies involving structural collapse; and emergencies involving trains, trams or aircraft.

The Order amends the 2007 Order to extend the functions of FRAs in Wales to make provision for emergencies involving flooding and inland water.

This instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

The Order creates a statutory duty for FRAs to make provision for responding to flooding and inland water emergencies which present a risk of death, serious injury or serious illness to people.

- Article 2(2) of the Order inserts a new article 3A into the 2007 Order, creating a duty on FRAs in Wales in connection with emergencies involving flooding and inland water. It also provides a definition of flooding and inland water.

- Article 2(3) extends article 4(a) of the 2007 Order, which specifies the things that FRAs must do in making provision for emergencies detailed in the 2007 Order. In future, as part of making provision for those emergencies, FRAs will be required to secure the provision of equipment.
- The new duty will cover emergencies related to flooding and inland water that cause or are likely to cause death, serious injury or serious illness to people. It does not cover cases where human life or health is not at risk.

It is intended that the Order will come into force on 1 April 2017.

5. Consultation

The Welsh Government undertook a 14 week consultation commencing on 15 September 2016 seeking views on introducing a statutory duty for FRAs to respond to flooding and inland water emergencies including on the draft Order itself. Details of the consultation undertaken are included in the Regulatory Impact Assessment below.

REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do Nothing

Whilst the three Welsh FRAs already respond to flooding and inland water emergencies using their existing general powers and resources, they are not under a specific statutory duty to do so. This means they can decide to withdraw their response to such emergencies and to any other non-mandatory incidents at any time.

If we choose to do nothing, in the short term, the FRAs' current response arrangements for flooding and water rescue would continue. However, in the medium to long term, there is potential for this service to be withdrawn.

This is because like other public sector organisations, FRAs are under continued pressure to reduce costs and they could potentially consider withdrawing the provision of non-statutory services such as flood and water rescue, 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. As well as having the specialist resources, training and equipment to respond to such emergencies, there is high public expectation on them to attend.

In Wales there are around 208,500 properties that are at risk of flooding from rivers or the sea and around 163,000 properties at risk from surface water flooding; these risks are likely to increase in the longer term as a result of climate change with the potential of increased incidence of severe flooding in the future. Major flooding attracts widespread public concern, can cause serious threat to

life, the environment and the economy and severe damage to property to which there is currently no guaranteed or standardised response.

Other water-related incidents rarely create the same level of threat to life. However, they are a continuing cause of concern in Wales, which has the highest level of accidental drowning in inland waters in the UK. Children, and especially boys, are at particular risk.

Option 2: Make the Legislation

The Order will amend the 2007 Order and introduce a statutory duty on the three Welsh FRAs to make provision for responding to flooding and inland water emergencies which present a risk of death, serious illness or serious injury to people.

The proposed scope and definition of the duty including the draft Order itself was subject to a full public consultation including engagement with key stakeholders.

Introducing a statutory duty requiring the FRAs in Wales to respond to flooding and inland water- emergencies will protect the future provision of these services ensuring that people continue to have support from FRAs in the event of such emergencies.

a) Costs

The assessment of costs relating to flooding and water rescue provision has been broken down into three categories:

Equipment – Data taken from FRAs' Business Case - Creating a Sustainable Fire and Rescue Service Flood and Water Rescue Response in Wales dated 11 November 2016 indicates capital costs of £1,463,582 for the refresh of water rescue assets ranging from rescue boats, personal protective equipment to lines, reach poles etc. North Wales FRA also submitted a Business Case for procuring a second High Volume Pump (HVP), ancillary equipment and prime mover for North Wales FRA at a cost of £504,070.

Training - Data taken from FRAs' Business Case - Creating a Sustainable Fire and Rescue Service Flood and Water Rescue Response in Wales dated 11 November 2016 indicates projected revenue cost of £294,000 per annum for 2016-17 to 2017-18. This includes water training modules – water awareness, water first responder, water rescue technician and water incidents management training.

Response - Overall data for the number of FRA attendances at flooding and water rescue incidents are available, as are data for the types of appliances deployed. However, it is not possible to derive a total or average cost from these data, for several reasons:

- Many of these incidents would not be covered by the Order, in that there was no risk to human life or health. Whether such a risk existed cannot be determined retrospectively from the data.

- The number of incidents where there is a life risk will fluctuate greatly from one year to the next, in particular based on the occurrence of severe weather. So even if a cost could be calculated for a given period of time, it would not necessarily be representative.
- The costs of wholetime firefighters' pay are sunk, ie they would be incurred in any event. While deploying retained firefighters to flooding and water-related emergencies does incur a direct cost, it is again not possible to determine this retrospectively.

The costs above have been identified as the cost of flooding and water rescue provision as currently provided by FRAs and is not limited to the provisions set out in the Order. For instance, it will include the cost of rescuing animals from water or of dealing with flooding which does not threaten human life or health.

The Welsh Government does not currently provide funding for FRA core functions such as firefighting. FRAs are funded by contributions from their constituent local authorities and extending their core functions to responding to flooding and inland water emergencies would form part of this arrangement.

However, as the three Welsh FRAs already routinely respond to flooding and water rescue incidents from within their existing resources the new duty should not present any particular funding issues or challenges for the FRAs. It is not a new burden on FRAs; the duty simply formalises part of the FRAs' current arrangements for responding to flooding and inland water emergencies. Therefore there is no anticipated increase in demand on FRA or Local Authority budgets.

The potential financial impact of introducing the duty on the three Welsh FRAs is therefore mainly limited to removing the FRAs' ability to withdraw their provision for flooding and inland water emergencies. Therefore the FRAs will have to continue to factor these costs into their budget-setting process in the same way as they do for other core functions such as firefighting and road traffic accidents.

The Welsh Government does not provide capital funding for FRAs' acquisition of firefighting assets; and is under no obligation to fund assets used to undertake other FRA core functions such as those required for responding to flooding and inland water emergencies. Nonetheless, the Welsh Government has recently approved a one-off grant of £1.8m between 2016-17 and 2017-18 to enable the three FRAs to refresh their flooding and inland water rescue equipment.

b) Benefits

The Order will protect a vital function of the FRAs which was previously non-statutory and remove any possibility of that function being withdrawn.

It will guarantee a response in Wales to flooding and inland water emergencies and ensure that the safety and well-being of Welsh citizens is maintained.

7. Consultation

The Welsh Government consulted on the proposed duty and the draft Order for 14 weeks between 15 September and 22 December, consulting with a range of interested stakeholders. These included the three Welsh FRAs, firefighters' unions, Local Authorities, the Welsh Ambulance Services NHS Trust, the Welsh Local Government Association, Ministry of Defence, Natural Resources Wales, the four Police Forces in Wales, the Royal National Lifeboat Institution, the Maritime and Coastguard Agency, Local Resilience Forums, the Home Office, the Scottish Government and other rescue and voluntary organisations.

A detailed analysis of the responses is provided at the following link:-

[insert link here to summary document](#)

Responses to the consultation were overwhelmingly in support of the three Welsh FRAs having a statutory duty to respond to flooding and inland water emergencies, although some issues were raised in relation to the detail of the proposals.

The greatest number of issues raised by far was in respect of the definition of 'inland water'. Whilst some respondents were in broad agreement with the proposed definition of inland water they suggested it should be further expanded to include other bodies of water, such as ponds, pools and industrial settlement lagoons. Others requested greater clarity of the definition with particular reference to the boundary between inland water and the sea (estuaries and tidal rivers/river mouths, tidal lagoons and barrages). Two of the three FRAs raised concerns that there might be an expectation that they would provide sub-surface search and rescue. Several respondents felt that bodies of water used for recreational activities such as sailing, rowing, fishing or diving in quarries, lakes and reservoirs, should be excluded.

Several respondents also raised the issue of coastal flooding and suggested that the Order should include a clear definition of this term.

Some respondents raised concerns regarding 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. Concerns included whether this duty extended to preventing damage to critical infrastructure such as roads, power supplies and other services. Several respondents, including the RSPCA, were concerned that animal rescue was not included in the duty.

The majority of respondents agreed that FRAs were ideally placed to lead or co-ordinate the multi-agency response to flooding and inland water emergencies but agreed that a duty to do so was not warranted. Several respondents indicated that introducing a duty requiring FRAs to respond to flooding and inland water emergencies would require substantial funding, including for specialist training.

Almost all of the respondents agreed with the proposed approach that a duty to 'make provision' in respect of flood and inland water emergencies should mirror the approach already in place for responding to fire and road traffic accidents in the 2004 Act. Unlike the provision for fire and road accidents, the existing provision in the 2007 Order does not include a duty to secure the provision of

“equipment”. One respondent proposed the inclusion of “equipment” in the duty to make provision for flooding and inland water emergencies. Several issues were raised on the need for specialist equipment.

Around half of those who responded agreed that there was no need to place a duty on FRAs to respond to flooding and inland water emergencies across FRA boundaries as existing border arrangements already work well. All three Welsh FRAs referred to existing mutual aid arrangements in place under sections 13 and 16 of the 2004 Act.

Welsh Government Response

The Welsh Government welcomes the responses received to the consultation.

Whilst comments were received regarding clarity and detail, there was overall support for the introduction of a duty. As such the Fire and Rescue Services (Emergencies) (Wales) (Amendment) Order 2017 will come into force on 1 April 2017, although with one minor extension as a result of the consultation. This is detailed below.

Many comments called for greater clarity in the definition of ‘inland water’. Whilst there are many references to ‘inland water’ in existing legislation, there is no single appropriate definition for the purposes of the new duty. . Those who will be affected by the new duty need to be absolutely sure what it will mean in practice and in addition the definition needs to reflect FRAs’ current capability. Accordingly, a balance needs to be struck between a definition that is detailed and comprehensive and one that is concise and easily understood.

Instead the Welsh Government believes that the answer to these concerns lies in the nature of the duty. This does not specify the circumstances in which, or the locations to which, FRAs would be required to respond. Instead, it requires them to “make provision” for such a response to the extent that they believe 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 example, it could be reasonable for an FRA to decide that there was no need to develop a capability to respond to rare or hypothetical incidents, such as sub-surface rescues of live casualties, or a capability which duplicated that of other agencies such as the RNLI.

The Order is, though, clear that FRAs must develop a capability to respond to incidents on rivers or lakes – terms which have plain and common-sense meanings needing 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 any other term for a body of inland water which does not feature in the draft Order). Whether to respond to a specific incident must remain a matter for firefighters’ professional judgement, as it already is as regards all other classes of incident with which FRAs deal.

Equally, there is no reason at all to exclude bodies of water used for recreational or sporting events; indeed, these may be the sources of the greatest risk. While

the organisers of such events typically provide safety boats, lifeguards and the like, they are (and will remain) obliged to do so by health and safety law. This does not displace the need for a fire service response if the circumstances require it, just as fire safety precautions in business premises do not preclude a firefighting response.

We therefore do not propose to make any amendment to the definition of inland water in the Order.

The consultation document made clear that damage to or interference with, infrastructure could be considered as being included in the duty if an FRA, as part of its risk assessment, concluded that such a circumstance might put people at serious risk.

The duty does not include a duty to rescue animals. However, FRAs are still able to do so using their enabling powers under section 11 of the 2004 Act. We have been very careful to ensure that we are not increasing the burden on FRAs as a result of the duty. At least one of the FRAs in Wales does not provide large animal rescue services. To require such a response would therefore definitely add a new burden onto that service.

Therefore we do not propose any amendments to the Order in terms of the type of emergency to which the duty will apply.

Several issues were raised on the need for specialist equipment, and one proposed that the duty should include a requirement to secure the provision of such equipment. We agree. This would be consistent with the duties as regards firefighting and road traffic accidents in the 2004 Act, and therefore the 2007 Order would also be amended to include the provision of equipment as part of the provision FRAs are required to make.

The proposal to include provision of equipment in the 2007 Order will mean that the requirement also applies to the other types of emergency stipulated in the 2007 Order i.e. those relating to chemical, biological, radiological and nuclear incidents; rescues from collapsed buildings; and emergencies involving trains, trams or aircraft. The provision of equipment was previously excluded from the 2007 Order because the equipment to deliver that capability referred to in that Order was originally owned by the Welsh Government. Ownership was transferred to the FRAs under an agreement in 2010; which requires the Welsh Government to continue to fund the maintenance and replacement of equipment until 2025. This is done via an annual National Resilience grant. The amendment does not affect this agreement in any way. It is worth noting that the 2007 Order already includes reference to the provision of training, which is also funded via the National Resilience grant.

The issues raised in relation to the cost implications of the duty have been covered under the costs section above.

8. Competition Assessment

Not applicable.

9. Post implementation review

The Order will formalise the FRAs' current response arrangements for flooding and inland water emergencies and as such, no post implementation review would be necessary. We will of course monitor the effect of the Order on the incidence of flooding and inland water emergencies in particular, as part of the Welsh Government's routine monitoring of FRA activities and performance.

10. Equality Impact Assessment

A copy of the Equality Impact Assessment and Welsh Language Impact Assessment can be accessed via the links below:-

web team to provide links