

# Charging Proposals for 2017-18

## - Summary of Consultation Responses

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## 1. Introduction

To develop the Natural Resources Wales charging scheme for 2017-18 we are required to consult on our proposals and to take account of the responses before finalising.

We recently undertook a 12 week consultation which closed on 13<sup>th</sup> January 2017. Prior to the consultation we met with the Charge Payers Consultative Group<sup>1</sup> to discuss the proposals with some of our major stakeholders and representative groups. We also worked with established stakeholder groups and emailed our customers and other interested parties directly to raise awareness of the proposals. For the duration of the consultation period, we also placed the Consultation Documents on our website.

We received 22 responses in total and these along with feedback from stakeholder groups was used to further develop our final scheme.

## 2. Our Proposals

Our consultation document outlined a number of different proposals, including minimal changes to our baseline charges, technical changes to existing schemes and new charges.

Detailed proposals as outlined within the consultation can be found in Annex 1. A summary of those changes is below:

### 1. Abstraction Charges

- Increase the Standard Unit Charge by 6% to fund capital works by Dwr Cymru Welsh Water (DCWW) on reservoirs, under the Section 20 Reservoir Operating Agreements, so that assets are maintained at the appropriate levels.

### 2. Environmental Permitting Amendments

- Amendments to the charges relating to Pig and Poultry permits due to changes to the permitting process and to better reflect cost recovery, as follows:

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<sup>1</sup> The Charge Payers Consultative Group consists of members of the various trade and representative organisations of our stakeholders.

Charge Type	Current Charge	Proposed Charge
<b>Application Fee</b>	£3,650	£7,150 for: More than 2,000 pigs >30kg More than 750 Sows More than 40,000 Poultry
		£10,000 80,000 Poultry or more
<b>Compliance Monitoring Charge</b>	£1,540	£1,040
<b>Variation</b>	£379	£379 for variations other than expansions
		£3,500 Increasing animal places at a site where: More than 2,000 pigs >30kg More than 750 Sows More than 40,000 Poultry
		£5,000 Increasing animal places at a site of 80,000 Poultry or more

- Amendments to the compliance band multipliers applied to Waste Operation Facility subsistence charges to better reflect cost recovery, as follows:

Proposed amendment to compliance band multiplier

Compliance Band	Compliance Band Multiplier	
	Current value for sites in Band D, E and F	Proposed value for sites in Band D, E and F
D	125%	200%
E	150%	300%
F	300%	500%

### 3. New charges

- Changes in the Reservoirs Act 1975 which came into force on 1 April 2016, introduced new responsibilities for NRW and these new charges for registration and compliance seek to recover the costs of undertaking these activities. These are:
  - Registration and Risk Designation Charge of £510
  - Annual Compliance Monitoring Charge - based on risk:
    - High-risk reservoirs of £230
    - Large raised reservoirs not considered high-risk of £150
- A new charged for Discretionary Advice Service where NRW is the decision maker. This is in addition to free advice and guidance provided for regulatory activities and will be subject to individual contractual agreements between NRW

and the person receiving the service and charged at £125/hr. This new charged service is not part of the formal NRW charging scheme, but is an additional discretionary service.

### **3. Consultation Responses**

We received a total of 22 responses through the consultation.

The list of responders and their full responses along with full comments from NRW covering all points raised in the consultation can be found in Annex 2.

#### **Key Response Themes**

##### **Abstraction Charges**

On the whole responders understand that the increases need to be made, but feel 6% is too high and suggest that costs should be spread over as long a period as possible to keep costs down.

##### **Intensive Farming – Pig and Poultry**

Some concern expressed that the higher application will increase already high set up costs even further and suggest a system to defer some costs to help this. Concern that permit holders should be charged for variations imposed by the regulator and would like to see a review of the service to drive efficiencies and greater transparency, with much more detailed evidence and supporting data. Mixed feelings about whether it was the initial set up costs or lifetime costs which were more important.

##### **Waste Operation Facility Multipliers**

Some support for poor performers paying increased costs due to the need to increase regulation and lower costs for good performers. However some concern expressed about consistency in regulation and recording of non-compliance.

##### **Reservoir Compliance**

Many feel that this seems like a fair approach, especially given the period of free registration. However some also feel that as the capacity criteria has been reduced and old infrastructure remains and the structures are not used for a commercial activity, this additional charge may prove difficult for some smaller operators. Suggested there could be a case for exemption for some smaller operators where there is no commercial gain, they are already checked annually by an engineer at cost and where there is environmental benefit. There is a call for greater clarity and evidence to show how the charges were developed, better communication with those affected and on what minimum information needs to be provided to constitute a registration.

The feeling is that a risk based system is fair but many feel that the costs are too high, particularly for smaller operators and there is a lack of evidence to show how the costs are calculated and what they cover.

Support for the multiple party split, provided it is done clearly and fairly.

### **Discretionary Charges**

Some support for this proposal, provided it is timely and of a sufficient standard, provided by a technically competent person and depends on suitable guidance being freely available. However there is also concern that it could be detrimental to the pre-app process. There also needs to be assurance that the advice won't be overturned later in the process. Greater clarity is needed on what regimes this will and won't cover. Some feel that the £125/hr charge is excessive, almost double that charged by many consultants and that this would deter many from using the service causing problems further along in the permitting process.

The general feeling was that both standardised agreements and site specific agreements would need to be available.

Suggestions for concessionary rates include charitable organisations, applications where work is being done to address flooding, operators with excellent compliance track records, non-commercial services and farm businesses.

## **4. Changes for Final Scheme**

As a result of the consultation process and feedback and other work undertaken during this time, the following amendments are being made to the proposals consulted upon, for inclusion within the final scheme to be presented to the Minister.

### **Reservoir Compliance**

We have amended the proposal consulted upon with two changes:

- a 6-month extension of the period for free registration
- removal of an annual subsistence fee for lower risk reservoirs

To allow sufficient time for us to communicate the detail of the charging scheme to reservoir undertakers and to allow them reasonable access to our guidance, we will include a period of free registration of 6 months, meaning the imposition of a registration fee will come into effect on 1 October 2017.

The anticipated annual income from a charge imposed on lower risk reservoirs is <£3,000. Our amended proposal removes the annual compliance monitoring fee for reservoirs which are not designated high risk. The cost of regulating these lower risk reservoirs will not be borne by undertakers of high risk reservoirs and we will seek to fund this small portion of activity from GiA. The Annual Compliance Monitoring fee is amended as follows:

<b>Annual Compliance Monitoring Fee</b>	
High Risk Reservoir	<b>£230</b>
Large Raised Reservoir (not High Risk)	<b>£0</b>

The full amended scheme can be found in Annex 3.

## Annex 1 Charging Consultation Proposals

### 1. Abstraction

Section 20 Reservoir Operating Agreements exist to fund capital works by Dwr Cymru Welsh Water (DCWW) on reservoirs so that assets are maintained at the appropriate levels. Capital upgrades are required to some reservoirs following safety inspections and these are currently estimated to cost approximately £4m over the next 2-3 years. To fund these works we are proposing to increase the Standard Unit Charge (SUC) by 6% in 2017-18. The SUC will be maintained at this level in 2018-19 and then reduced to current levels in 2019-20, on the underlying assumption that all other relevant areas remain constant. We are currently working with DCWW to look at alternative ways of spreading the cost of capital works over a longer timescale, thus reducing the impact of cycles of cuts and increases, which will give charge payers longer-term certainty.

### 2. EPR Intensive Farming (Pig and Poultry)

The current approach to charging for Intensive Farming is different to other installations, reflecting the lower environmental risk of the activity. However, our current fees are lower than the cost of the necessary permitting and compliance work.

Our current charges fall into two sections: permitting (applications and variations) and the annual compliance monitoring charges. Our permitting activity currently costs us around £230,000 more each year than we currently are able to cost recover from the permit fees. Conversely, our annual compliance costs are lower than the actual compliance monitoring fees we receive. This leaves this area of work with a net deficit each financial year.

Alongside this, the Environmental Permitting regulations now require regulators to carry out inspections related to the amount of risk posed by the activity and to review all relevant permits within four years of the publication of the Best Available Techniques Reference Documents (BRef). The BRef for the Intensive farming sector is nearing completion and we expect publication early in 2017. This means we must secure information and review each Intensive Farming permit against the standards in the BRef by 2021. This is funded from variation fees rather than the annual compliance monitoring charge.

Therefore, we intend to change the proposed charges to reflect the cost of providing the service and properly reflect the cost of regulation. We are seeking to increase the initial application cost for new permits and variations where operators are seeking to increase the number of animals at a site. At the same time, we will be reducing the annual compliance monitoring charge. For other variations we will hold the fee at the current rate.

Almost all intensive farming operations in Wales relate to poultry with currently only one intensive pig rearing operation. When permit holders increase the number of animals at a site we have to reassess the nuisance and habitats aspects in the permit. The current fee does not reflect the additional work needed, so we are proposing to increase our charges for variations increasing the number of animals or birds permitted.

Variations to increase the number of animal places at farms also require a re-assessment of both nuisance and habitat issues. This additional work takes more than the current fee covers so we are proposing to increase the variation fee to £3,500 for an increase of animal places at sites dealing with either pig or poultry. Increasing animal places at permitted sites with more than 80,000 birds would cost £5,000. These figures are based on data collected by our permitting service on the time taken to determine a variation request.

Using information gathered on current regulatory activity, and reviewing what will be needed in the future, we estimate that just over 8 hours of compliance activity is needed each year to monitor compliance. Charging £1,040 each year enables NRW to cover the cost of doing this.

We are also changing the way we permit Intensive Farming, reducing our costs and ensuring that permitting officers spend more time on relevant site-specific issues. We will be splitting permits into a more generic, sector specific section and a site-specific section. Taking this approach means we can consult once on general changes in legislation, standards and methods. We can then make these updates without needing to review every site-specific permit individually. This saves costs overall and ensures permits are always up to date, the same requirements applying equally across Wales.

These proposals reduce the annual compliance monitoring charge to a level that simply covers our ongoing costs of compliance. The proposed changes benefit all current farming operations by £500 per year and are cost neutral for new farms by year 7 when balanced against the proposed changes to application fees. The proposed charges are as follows:

Charge Type	Current Charge	Proposed Charge
<b>Application Fee</b>	£3,650	£7,150 for: More than 2,000 pigs >30kg More than 750 Sows More than 40,000 Poultry
		£10,000 80,000 Poultry or more
<b>Compliance Monitoring Charge</b>	£1,540	£1,040
<b>Variation</b>	£379	£379 for variations other than expansions
		£3,500 Increasing animal places at a site where: More than 2,000 pigs >30kg More than 750 Sows More than 40,000 Poultry
		£5,000 Increasing animal places at a site of 80,000 Poultry or more

### 3. EPR Waste Operations Facilities - Poor Performer Multipliers

Last year we consulted upon a proposal to add an additional tier of multipliers for poor performing EPR Waste operations facilities. The proposal was not implemented as it was not deemed to represent true cost recovery. A change is still needed however as we are still currently under-recovering our costs within EPR Waste Operations. One of the main reasons for this is the significant extra regulatory effort required to monitor compliance and improve performance at poor performing sites.

The Compliance Classification Scheme (CCS) is used to classify in a consistent way, any non-compliance with a permit condition according to its potential severity.

- Category 1 – a non-compliance at a regulated site that could foreseeably result in major pollution of the environment. A category 1 breach attracts 60 CCS points;
- Category 2 - a non-compliance at a regulated site that could foreseeably result in significant pollution of the environment. A category 2 breach attracts 31 CCS points;
- Category 3 - a non-compliance at a regulated site that could foreseeably result in minor pollution of the environment. A category 3 breach attracts 4 CCS points;
- Category 4 - a non-compliance at a regulated site that could foreseeably result in no environmental impact. A category 4 breach attracts 0.1 CCS points

A facility's compliance performance band is determined by the total CCS score identified through compliance assessment activities recorded on Compliance Assessment Report forms throughout a calendar year. In addition to this we use a risk assessment tool called Operational risk appraisal (Opra).

The Opra assessment provides a risk-rating, or profile, which we use as part of our compliance assessment process, see more in section 6.2.

A facility's total CCS score (and associated band) will increase in accordance with relative risk posed and the number of the non-compliances identified. For example a Band D site typically would have an average of 10 category 3 non-compliances identified and a Band F site typically 6 category 2 non-compliances identified. These non-compliances signify the potential for systemic or management failure of the operations at the facility.

All D, E and F sites have a site specific compliance plan in place that details time-limited actions agreed with the regulator, to ensure that sites work towards improving their performance and compliance with their permit. Our compliance assessment resource allocation planning is determined by the compliance monitoring deemed necessary and is proportionate to the risk posed by the facility.

An assessment of resource needed to monitor compliance of the actions identified within the Compliance Assessment Plans has shown that the level of effort required to regulate a site to improve compliance performance far exceeds the income collected for that purpose. For example a poor performing site can require 43 days of regulatory effort<sup>[1]</sup> and a significant number of these sites remain within these bands for a number of years.

To ensure the fees charged at such sites are set on a cost recovery basis to cover the additional resource required for the extra compliance monitoring effort needed, we are proposing an amendment to the existing multipliers, as shown in the table below.

Proposed amendment to compliance band multiplier

Compliance Band	Compliance Band Multiplier	
	Current value for sites in Band D, E and F	Proposed value for sites in Band D, E and F
D	125%	200%
E	150%	300%
F	300%	500%

The impact of applying these proposed amendments to existing poor performing facilities would result in recovering a further ~£87k (table below details impact by band), which is equivalent to 694 hours (based on EPR hourly charge rate of £125).

Impact of proposed amendment to existing charge payers (Based on 2015 billing)

Compliance Band	Number of Permits	Total of Existing Charges	Total of New Charges
D	14	£35,085	£56,718
E	14	£39,498	£80,022
F	4	£36,933	£61,555
<b>Grand Total</b>	<b>32</b>	<b>£111,516</b>	<b>£198,295</b>

We propose to introduce a check of the compliance scores of all D, E and F banded sites after the first 6 months to see if their compliance has improved sufficiently to move them to a higher band and amend their fees half way through the year to reflect this.

<sup>[1]</sup> Average regulated effort estimated from Compliance Assessment Plans for Poor performers.

## 4. Reservoir Compliance

The Reservoir Act 1975 is a piece of public safety legislation that seeks to protect people, property and infrastructure by reducing the risks associated with an uncontrolled release of water from large raised reservoirs. The Act requires that these reservoirs are constructed, altered, inspected and discontinued under the guidance of a suitably qualified engineer.

Natural Resources Wales has a duty to ensure undertakers<sup>2</sup> of large raised reservoirs across Wales observe and comply with the legislation. Since April 2016, the Flood & Water Management Act 2010 introduced significant changes in Wales, including reducing the threshold capacity of a regulated reservoir to 10,000 cubic metres, along with other new regulatory responsibilities.

We propose introducing a tiered system of charges for registration and compliance monitoring. There will be a:

- Registration and Risk Designation Charge of £510
- Annual Compliance Monitoring Charge - based on risk:
  - High-risk reservoirs of £230
  - Large raised reservoirs not considered high-risk of £150

The proposed charge for each activity is set to allow cost recovery across the regime, reflecting the work necessary based on risk. The Annual Compliance Monitoring charges cover our ongoing regulatory costs after registration and risk designation of the reservoir.

Reservoir undertakers have a legal duty to register their reservoir and these proposals will only come into effect for those reservoir undertakers registering with us on or after 1 April 2017. We will work to communicate the implementation date for these proposed charges, encouraging undertakers to take advantage of the free registration and designation period finishing on 31 March 2017.

### Multiple party responsibilities

Where there are multiple undertakers with responsibilities under the Reservoirs Act 1975, we propose that one charge is applied to the reservoir. To avoid additional costs, Natural Resources Wales will issue one invoice to all reservoir undertakers for payment. The multiple parties will be required to apportion costs between themselves and NRW will not dictate or recommend apportionment of costs.

## 5. Discretionary Advisory Service

Before accepting an application for a licence, consent or permit, applicants are encouraged to contact the NRW team that is responsible for the relevant regime, and initiate a pre-application discussion. Pre-application discussions can help reduce the risk and uncertainty applicants face when applying for permits for regulated activities, and potentially improve the quality of the application by making applicants better aware of regulatory requirements and what information is required to support the application.

We value the importance of early and effective engagement and the benefits this can bring to both our customers and the environment. However, applicants often want us to be involved at a level that goes beyond our statutory duties, or any advice we provide as part of the application fee. In such cases, the advice we would be offering would be provided on a discretionary basis as supplementary to that which we are required to provide by statute.

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<sup>2</sup> Undertaker is the legal term for reservoir owners and operators as defined in the Reservoirs Act 1975

It is increasingly challenging to balance the resourcing of this discretionary advice with our statutory work. To ensure that we can continue to meet the needs of our customers and deliver a consistent service across Wales, NRW proposes to offer applicants a discretionary pre-application advisory service for all regimes where NRW is the determining body (and does not already charge for pre-application advice), subject to the payment of an appropriate charge.

### Scope of the service

Pre-application advice is considered to be advice provided to an applicant before formal submission of an application (or any other formal request for a permission where there is no distinct application procedure), and may include circumstances where the applicant chooses not to proceed with the formal application.

The charged discretionary pre-application advice service encompasses advice that is considered to be:

- outside of any statutory requirement to provide the advice for free,
- outside of any regime specific agreement with Welsh Government to provide the advice for free, and
- outside of any advice provided under another funding mechanism, including any application fee.

### Limitation of the service

Only regimes that publish appropriately robust and freely available guidance to support the application process will be considered suitable for the charged discretionary advice service.

The scope of the discretionary advice that is appropriate to provide will be regime specific, but as a regulator, we must not provide any advice or service that might prejudice the determination of an application. Therefore, the service will be limited to advisory activities, and will not include preparing reports for applicants or undertaking assessments that should form part of the application.

The service will only be offered where NRW has the available resources and expertise to provide the discretionary advice. The service will be offered at the discretion of NRW and there will be no obligation for the applicant to accept the offer.

Uptake of this service is no guarantee that a permit will be granted.

### Cost of the service

NRW has a discretionary power under article 10 of the Establishment Order to provide advice, and to charge for such advice. In setting the level of charges the general principles set out in Managing Welsh Public Money will apply, and full cost recovery is the appropriate basis for charging for discretionary pre-application advice.

We have sought to calculate a consolidated cost recovery hourly rate that would be applicable to multiple permitting regimes. The adoption of a consolidated hourly rate provides clarity for service users on the expected costs of advice across regimes.

NRW has assessed the costs that are associated with providing this service. Based on this, we propose to set the hourly rate at £125/hr per person. This rate is based on staff costs, overheads and other costs that will be incurred by NRW in the delivery of this discretionary service.

In exceptional circumstances, NRW may offer applicants the option to pay for the employment of dedicated staff within NRW. This option will only be used in cases where offering the charged service could negatively affect NRW's overall service, for example where providing the requested service would result in NRW having to take staff offline for an extended period of time.

NRW intends to prepare a number of standardised agreements that would outline the service we could provide. However, where we consider it more appropriate, we may enter into an application specific negotiation with the applicant to agree the terms for the provision of discretionary advice.

### Implementation

We intend to start implementing the service from 1 April 2017; however, the start date for implementation will differ according to the regulatory regime. We will only apply the service to regimes where we are satisfied that appropriate technical guidance has already been published. To facilitate its delivery we will prepare and publish guidance on our website that will explain to applicants what service they can expect for free, and what service is provided for within the application fee.

## Annex 2 Summary of Comments Received and NRW Response

### Responders

Keith Jones, Institution of Civil Engineers Wales/Cymru (ICE)  
 Stewart Wood, St Pierre Hotel and Country Club (StPierre)  
 Louise Shaw, Innogy Renewables UK Ltd (Innogy)  
 Andrew Sumner, Richards, Moorehead & Laing Ltd (RML)  
 Matthew Brown, UK Environment Manager – Uniper (Uniper)  
 Charles B P de Winton, CLA Cymru (CLA)  
 Oliver Twydell, Dee Valley Water (DVW)  
 Steve Rymill Ash Group (UK) Ltd (Ash)  
 Walter Simon, private landowner (Simon)  
 Tim Lee, Balfours LLP (Balfours)  
 Allan Cuthbert, Vale of Clwyd Angling Club (VCAC)  
 Simon Hamlyn, British Hydropower Association Ltd (BHA)  
 David Trant, private landowner (Trant)  
 Jessica Norris, Blaenau Gwent County Borough Council (BGCBC)  
 Celine Anouilh, Chartered Institute of Waste Management, (CIWM)  
 Philip Griffiths, Caerphilly County Borough Council (CCBC)  
 P. W. Bowen, private landowner (Bowen)  
 Sam Corp, Welsh Environmental Services Association (WESA)  
 Nick Horsley, Mineral Products Association Wales (MPA)  
 Tony Harrington, Dŵr Cymru/Welsh Water (DCWW)  
 Rachel Lewis Davies National Farmers Union Cymru (NFU)  
 Plus 1 additional response that is to remain anonymous. (Anon)

### Summary of responses

<p>Question 1. What are your views on the proposed level of the Standard Unit Charge (SUC)?</p>	<p>On the whole responders understand that the increases need to be made, but feel 6% is too high and suggest that costs should be spread over as long a period as possible to keep costs down. One responder also stated that it was unfair that small abstractors have to contribute to the capital upgrades to Welsh Water reservoirs, but they will not have to contribute to any capital upgrades to private reservoirs. A suggestion was made that costs should depend on the use of the water, e.g. lower costs where the use provides environmental benefit. One responder provided their views on providing a fund to pay compensation to abstractors that are currently exempt from licensing if their abstraction was refused or curtailed when brought into the abstraction licensing regime under the New Authorisations process.</p>
<p>Question 2. Are there any reasons why these changes would adversely affect Intensive Farming Operations in Wales?</p>	<p>Not many enterprises that will be affected by this in Wales, however set up costs for such things are high, and this will increase those set up costs even further. Suggested a system to defer some costs to help this. One response stated that a change in numbers may not affect overall weight or emissions, so is a variation really needed? And charging £3500-£5000 seems very high for this. Such charges for variations, which may be made for animal welfare reasons could be detrimental. NFU does not believe permit holders should be charged for variations imposed by the regulator</p>

	and would like to see a review of the service to drive efficiencies and greater transparency, with much more detailed evidence and supporting data. Need to consider effects of Brexit.
Question 3. Are initial higher set up costs prohibitive to development or is the lifetime cost of the Intensive Farming Operation taken into account?	Both, but refer to possibility of deferring some of the initial set up costs.
Question 4. What are your views on our proposal to change the approach for Band D, E and F performing EPR Waste Operations Facilities?	Support for poor performers paying increased costs for need to increase regulation and lower costs for good performers. However some concern expressed about consistency in regulation and recording of non-compliance. A suggestion was made that an overall review of the compliance assessment mechanism be made and that e.g. the number of visits be determined by the banding and not due to location or a local campaign, this would provide a fairer approach. WESA also suggest some form of independent review.
Question 5. What are your views on the proposed level of charges for registration & risk designation?	Many feel that this seems fair especially given the period of free registration. However some also feel that as the capacity criteria has been reduced and old infrastructure remains and the structures are not used for a commercial activity, this additional charge may prove difficult for some smaller operators. Suggested there could be a case for exemption for some smaller operators where there is no commercial gain, they are already checked annually by an engineer at cost and where there is environmental benefit. Some suggest costs seem high, considering many are already registered and there should not be a need for an annual fee. There is a call for greater clarity and evidence to show how the charges were developed, better communication with those affected and on what minimum information needs to be provided to constitute a registration.
Question 6. What are your views on a tiered risk-based charge for annual compliance monitoring and the level of these charges?	The feeling is that a risk based system is fair but many feel that the costs are too high, particularly for smaller operators and there is a lack of evidence to show how the costs are calculated and what they cover. Some explicitly state that this is an unnecessary burden given the existing requirements in relation to such structures. Some feel this approach is counterproductive to achieving goals in relation to water management.
Question 7. What are your views on the approach to require multiple parties to apportion costs between them?	Some support for this as a reasonable approach. However some parties concerned about disputes and state it may cause payment delays. Some companies will also not pay part invoices. Some concern about how costs would be apportioned and a suggestion that it would be up to the parties involved, rather than NRW, to resolve.
Question 8. What are your views on the arrangements for pre-application advisory services and do you believe they are beneficial to the applicant, leading to better quality applications?	Some support for this proposal, provided it is timely and of a sufficient standard. However there is also concern that it could be detrimental to the pre-app process. It also depends on suitable guidance being freely available and it would be unfair to impose charges if guidance was not available or of such a reduced technical nature that an applicants' only choice was to contact NRW. There will need to be discipline around how long it takes to provide and that it is of sufficient quality, provided by a technically competent person. There also needs to be assurance that the advice won't be overturned later in the process. Greater clarity is needed on what regimes this will and won't cover. Some feel that the £125/hr charge is excessive, almost double that charged by many consultants and that this would defer many from using the service causing problems further along in the permitting process.

Question 9. What are your views on standardised agreements for the provision of the service and are they preferable to application specific negotiations?	Some support for this but more detail needed. In many cases though it would not be suitable, so both standardised agreements and site specific need to be available.
Question 10. If NRW offered a concessionary rate, under what circumstances should the concession be applied?	Suggestions include charitable organisations, applications where work is being done to address flooding, operators with excellent compliance track records, non-commercial services and farm businesses.

## Full Answers

### Question 1. What are your views on the proposed level of the Standard Unit Charge (SUC)?

**ICE** - 6% is far too high, keep at maximum of inflation rate

**St Pierre** - As one of the aims is to be environmentally responsible, should there not be different rates for abstraction based on the use of the water abstracted. We have been certificated as an environmental sanctuary by Audubon international for many years. A large percentage of the water we abstract from our licenses is used to maintain the level of our ornamental (artesian) lake, which in turn provides a variety of environmental habitats, with wildlife corridors provided to allow wildlife a safe route to water. The remainder of the water we abstract is returned to the ground to maintain health grasses trees and plants on our estate.

I am unsure if you operate different charge rates for water abstraction based on the end use of the water once abstracted, but I would see your role in encouraging environmentally responsible use of that which is abstracted through differing charges as quite a powerful tool to encourage preferred end use.

A 6% increase for water that is lifted out of the ground to be returned to the ground benefiting the natural environment as it does so (meaning that our abstraction and use is more beneficial than if it were not to be abstracted) within the same water catchment area seems a little excessive.

**Innogy** – No comment

**Anon** – No issues

**RML** – No comment

**UNIPER** – No comment

**CLA** - This area is not a primary concern for our members, however any increases in the fee structure need to be quantifiable and just. It is important that compensation payments that need to be paid out due to existing extraction exemptions being withdrawn must be in full and at the market rate. If a fund needs to be set up in order to achieve this then that is fine, however if at the end of the period the fund has excess funds over and above what is needed then the rate in future years must be reduced as a result.

**DVW** - We understand the need for the increased SUC due to the capital works required at Llyn Brenig and Llyn Celyn. We would ask that the cost be spread over as long a period as possible to smooth out the effect on budgets.

**Ash** – No comment

**Simon** - It seems a bit perverse that as a small abstractor I have to contribute to the capital upgrades to Welsh Water reservoirs, but they will not have to contribute to any capital upgrades to my reservoir, especially as the upgrades are for all Welsh Water consumers benefit, not just abstractors.

**Balfours** – No comment

**VCAC** - No comment

**BHA** - No comment

**Trant** - No comment

**BGCBC** - No comment

**CIWM** - No comment

**CCBC** - No comment

**Bowen** – I understand your position but this must not be allowed to adversely affect activities.

**WESA** - No comment

**MPA** - No comment

**DCWW** - We note that the main driver for the proposed increase in the Standard Unit Charge is the recharge from Dŵr Cymru under section 20 operating agreements. The capital works we are undertaking are required by the Reservoirs Act 1975 and are essential to maintain public safety. This investment in our assets will enable us to maintain the river regulation services we provide for the benefit of all abstractors on those rivers.

Dŵr Cymru shares a common objective with NRW to have predictable charges in future years. Prior to the publication of this consultation we were pleased to be able to agree a refund of £1.5m to NRW which has been able to offset what would otherwise have been a larger increase of charges for 2017/19 and 2018/19 and we are now working with your officers to provide the best possible estimates of future costs for capital works, and wherever possible, spread costs over a longer timescale.

**NFU** - No comment

## **NRW Response**

### *SUC Increase*

When reviewing our fees and charges we must consider all relevant costs as well as inflation. In this instance we are legally obliged under the section 20 reservoir operating agreements to fund the work of any capital safety improvements. Although this is a legal requirement, the reservoirs involved also provide additional benefits beyond supplying water to Welsh Water customers, such as:

- Improved protection for the environment,
- Improved amenity and recreation,
- Increased river flow reliability for abstractors (not just for Welsh Water) and
- Improved drought management

Following the consultation the increase to SUC will remain at 6%.

### *Purpose of Abstraction*

Our current charging regime does take into account the purpose of the abstraction. The annual abstraction charge is calculated from the volume, the appropriate charge factor and the Standard Unit Charge. The charge factor includes several weightings including a loss factor which relates to the purpose for which the water is authorised to be used by the licence and has four categories: high loss, medium loss, low loss and very low loss. These categories depend on how much water after use is returned either directly or indirectly to any source of supply. This in effect means lower costs for abstractors where water after use is returned either directly or indirectly to any source of supply. More information can be found in the abstraction charging scheme.

## Exemptions

A separate consultation has taken place which covers changes to water abstraction licensing exemptions, 'New Authorisations'. The approach outlined in the consultation document considers any potential compensation liabilities if existing abstractors are refused or curtailed. The Welsh Government has directed Natural Resources Wales to deliver a funding mechanism to support potential compensation costs that might arise during the implementation of these changes. It is expected that the Environmental Improvement Unit Charge will play at least some part in this process, but the details of this will be confirmed in the formal response to the consultation, due to be published later this year subject to Ministerial approvals. We will continue to keep our Charging Scheme under review and if changes are required, we will consult at the appropriate time.

## Question 2. Are there any reasons why these changes would adversely affect Intensive Farming Operations in Wales?

**ICE** - No comment

**St Pierre** - No comment

**Innogy** – No comment

**Anon** – No comment

**RML** – No comment

**UNIPER** – No comment

**CLA** - We are aware of very few enterprises of this nature in Wales, however, with Brexit on the horizon and the possible shift in farming practice that will follow, then ensuring that there are no unnecessary costs/regulatory barriers to limit access to these new opportunities will be important to the farming sector in Wales.

When considering development of this nature in Wales, there will be high development costs appertaining to planning; these include all the additional reports and monitoring that the planning process now requires. The additional proposed rise in NRW charging, will hit the developer at the beginning of any project, before any income is derived from the business, possibly making investment decisions more circumspect. Is there a system or option that could be brought in so that a developer could partly defer some of these costs over a two to three period to avoid all the set up costs hitting the business in the early stages?

**DVW** - No comment

**Ash** – No comment

**Simon** - No comment

**Balfours** – No comment

**VCAC** - No comment

**BHA** - No comment

**Trant** - A variation in bird numbers may be required because birds are being reared to a lighter weight, so the site has potential to rear more birds .The overall weight produced may not increase, likewise emissions. Do you really need to charge £3500--£5000 for such a change?

Likewise will changes like extra fan capacity or other changes to the existing equipment that may be needed due to technological improvement or for welfare reasons be subject to large charges? This could be detrimental to upgrading facilities.

**BGCBC** - No comment

**CIWM** - No comment

**CCBC** - No comment

**Bowen** – No comment

**WESA** - No comment

**MPA** - No comment

**DCWW** - No comment

**NFU** - NFU Cymru notes NRW proposals to change the Environmental Permitting (EP) Charging Scheme for 2017-18 for Intensive Farming (Pigs and Poultry). We are pleased that NRW acknowledge that activities under Intensive Farming permits are a lower environmental risk activity than many other permitted operations. This low level of risk should be reflected in the charging regime.

We note that EPR Intensive Farming charging falls into two sections: permitting (applications and variations) together with the annual compliance monitoring charges. We further note that EPR Intensive Farming permitting activity currently costs £230,000 more each year than permit fees, whilst annual compliance costs are lower than the actual compliance monitoring fees received. NFU Cymru would make the following comments:

- If current fees are lower than the costs incurred then, in line with charging principles, NRW should undertake a review of the service to drive efficiencies. Such a review would highlight the opportunities to reduce the time taken or approach to certain aspects in permitting or compliance monitoring.
- With respect to Permit Variations where the number of animal places is increased, we note from the consultation that the figures are based on data collected by the permitting service on the time taken to determine a variation request, however, this data is not provided. This is most concerning to us. Without this detail, for example, it is not possible to determine whether it is a small number of highly complex permit variations skewing the figures and creating a much higher average cost. Failure to provide this detailed information undermines transparency in the charging service. In the context of a tenfold increase in fees, the principle of transparency is most important to NRW customers
- Similarly we note that data has not been provided to underpin the proposed change to the compliance monitoring charge. It is vital that we have access to the detailed analysis to fully understand the evidence behind the proposals on behalf of our members.
- We note that within EPR Intensive Poultry, NRW plans to split permits into more generic, sector specific section and a site specific section. However, no information is provided on the expected efficiency savings that are likely to result and how these will be reflected in the charging regime. We would emphasise that the efficiency of the permitting service needs to be addressed through the consultation process – simply increasing fees will not correct any fundamental flaws in the way the service is run
- The costs of EPR Intensive Farming also need to be considered alongside the significant other investment costs incurred by farm businesses diversifying or expanding in this sector. This includes planning fees and consultancy. Consultancy fees for EPR Intensive Poultry alone can run into thousands of pounds. Our members highlight that the process is far too complex to undertake without external advice; they also highlight that the period to determination in Wales is not comparable to that in England. The need to consider the efficiency of the process should be a key consideration, as should the quality of service provided
- NFU Cymru does not believe that permit holders should not incur variation charges as a result of variations to permits imposed on them by the regulator. This includes the Bref permit review.
- Overall NFU Cymru, proposals lack transparency and further efforts should be made to reduce costs through efficiency measures within the permitting service.

To conclude NFU Cymru would highlight that the poultry sector offers opportunities to many farming families to diversify their income in response to market opportunities. This builds business resilience

which is more important than ever in the context of Brexit and our transition out of the EU. NFU Cymru would stress that the regulatory and charging regime should not be used as a mechanism to prevent or hinder farm business development in Wales.

### **NRW Response**

The application charges are being increased to cover the cost of assessing applications to ensure there is no adverse environmental effect. Deferring the cost over a number of years would result in a deficit to the public purse rather than applying the charge when the cost is incurred.

The increased cost will only apply to new installations or existing installations that want to increase the number of animal places. Increasing the number of animal places will always require an assessment to ensure the public and the environment are protected and therefore costs will be incurred, however where a simple variation does not require an assessment, no charge will be levied. In addition to this NRW is required to review permits periodically to ensure they are fit for purpose and deliver Best Available Techniques, this work incurs costs and variation charges would apply.

The complexity of assessing a permit application or variation is a result of the possible impact the installation could have as emissions from Intensive farming have the potential to adversely affect the environment and human health and therefore a proper assessment of these impacts is required. In comparison to other sectors in EPR the charges for Intensive Farming are extremely low.

As part of the charging review we are changing the way we permit Intensive Farming by introducing a generic section to the permit. This will make the permitting service more efficient and reduce the number of variations needed, therefore reducing costs and this has been taken into account in the proposed charging scheme. As stated we are currently in deficit and a combination of increasing the overall charges and reducing our costs will address this.

The charges have been calculated using the average time an officer spends on determining a permit or variation, for the intensive farming sector. A site specific charging scheme will not provide clarity to operators and be very difficult to manage, resulting in greater overall costs to the sector and higher costs being incurred in certain areas resulting in geographical charging anomalies.

NRW are in contact with both UK and Welsh governments over the impact of Brexit, there is a clear message that we must maintain our environmental standards and ensure compliance with UK legislation that currently enacts EU law. As this situation changes we will respond accordingly. In Wales we also have responsibilities under the Environment (Wales) Act and the Wellbeing of Future Generations Act, and in order for us to fulfil these duties we will continue to need to properly assess permit applications and expansions to intensive farming and these charges will enable us to do that beyond Britain's exit from Europe.

### **Question 3. Are initial higher set up costs prohibitive to development or is the lifetime cost of the Intensive Farming Operation taken into account?**

**ICE** - No comment

**St Pierre** - No comment

**Innogy** – No comment

**Anon** – No comment

**RML** – No comment

**UNIPER** – No comment

**CLA** - I refer you to the points raised above. Can an option be given to partially defer some of these costs over the first two to three years, to assist in cash-flow forecasting?

**DVW** - No comment

**Ash** – No comment

**Simon** - No comment

**Balfours** – No comment

**VCAC** - No comment

**BHA** - No comment

**Trant** - No comment

**BGCBC** - No comment

**CIWM** - No comment

**CCBC** - No comment

**Bowen** – Lifetime costs

**WESA** - No comment

**MPA** - No comment

**DCWW** - No comment

**NFU** – See Qu. 2

### **NRW Response**

See Response to question 2 above.

#### **Question 4. What are your views on our proposal to change the approach for Band D, E and F performing EPR Waste Operations Facilities?**

**ICE** - They seem acceptable.

**St Pierre** - No comment

**Innogy** – No comment

**Anon**– No comment

**RML** – No comment

**UNIPER** – No comment

**CLA** - The CLA is supportive of your proposal as it is evident that poor performers require more time and resources. Why do good performers have to support poor performers? Attitudes and behaviours normally change when costs increase. Good performance should be encouraged with reduced costs.

**DVW** - No comment

**Ash** - ASH Group (UK) Ltd objects to this proposal. Although we do understand the need for Natural Resources Wales (NRW) to operate efficiently, the justification for the proposed price increase, particularly the scale of them, is unjustified. In our experience, and that of other operators in Wales that we have spoken to, there is a noticeable inconsistency in the approach, feedback and compliance reporting by different officers. This leads to the inconsistency of Compliance Assessment Reports (CAR) being received by operators, which has a direct implication on a sites OPRA banding.

We believe that the proposed amendment to the fees will actually lead to unfair and excessive non-compliances being recorded by NRW officers, particularly as most non-compliances are as 'perceived by an authorised officer' and not necessarily based on hard facts. This is particularly the case for smaller operators who may not have the resources, either financial or staffing, or sufficient knowledge to challenge CAR forms. The proposed increase in subsistence fees could actually result in smaller businesses being driven out of business.

ASH also feels that a complete review is needed for the compliance assessment mechanism, rather than just using it as an opportunity to increase cost recovery for NRW. The current system is more likely to punish operators rather than helping them to achieve compliance. In order to make it a fairer system, we believe that the number of visits by an officer should be set depending on the banding. For example, a Band A site once per year, Band B twice etc. We appreciate that sometimes visits are in response to complaints, but feel this is something that could be looked at. This would compare sites

on an even basis. We know anecdotally that some sites are subject to more inspections purely as a consequence of being located close to an NRW officer's work place or home.

**Simon** - No comment

**Balfours** – Good performance should be encouraged with reduced costs for good performers.

**VCAC** - No comment

**BHA** - No comment

**Trant** - No comment

**BGCBC** - No comment

**CIWM** - CIWM Cymru Wales recognises that this issue was part of the consultation on fees and charges 2016-17, in our response we stated that “CIWM supports the concept that where a site falls into the poorer performing categories and remains there for more than two consecutive years substantially higher fees and charges should levied.” CIWM Cymru Wales is not surprised that the level of effort required to regulate a site to improve compliance performance far exceeds the income collected for that purpose. CIWM Cymru Wales supports the proposed increases in the compliance band multiplier for band D E and F sites and the 6-month review of the performance of these sites to examine whether these sites can move to a higher band to reflect the improvements in performance and therefore benefit from a reduction in fees during the year. It remains to be seen whether the sites that have been poor performers for a number of years can improve their performance on a continuous basis. CIWM Cymru Wales assumes that sites that improve their compliance on a temporary basis but fall back in subsequent periods would fall back into higher compliance multiplier charges in the following year, this is not stated in the consultation paper, so setting out some clarity on this matter would be welcome in the final published scheme.

**CCBC** - No comment

**Bowen** – No comment

**WESA** - In general terms WESA supports measures to target persistent poor performing operators who are making little or no effort to bring sites into compliance. We also understand the need for NRW to focus its resources in the right areas and to ensure cost recovery.

WESA recognises NRW's challenge in trying to target poorly performing operators in this category but we do think that it should try to distinguish between operators which engage in such lax practices and those operators which are appropriately managing challenging sites to accredited environmental standards such as ISO 14001.

We have particular concerns about the potential economic impact on some landfill facilities. The current system for regulating landfills does not fit well with to landfill sites, in contrast to fixed, built facilities, due to the sheer physical size of sites, their multiple emission and monitoring points and monitoring frequencies. These factors when translated into compliance scores often give a disproportionate and misleading impression of actual harm/environmental risk compared to other regulated facilities and do not appear to have sufficient 'flexibility' to accommodate the complexities posed by landfill sites specifically. We are therefore concerned that the proposed increased charges could therefore have a significant impact on some landfill operators and could lead to funds being diverted from other areas, such as environmental improvement. ESA has commenced discussions with the Environment Agency in England about developing a more appropriate system of regulation for landfill and would hope to also engage with NRW about developing similar regulation in Wales.

Sadly, WESA also notes that legal firms can co-ordinate local campaigns on issues, such as odour, which can lead to worse scores for some sites despite no material change in the site's environmental impact.

We also have concerns about the lack of independent review of the proposed charging regime and concerns that inconsistencies in regulation could lead to substantially increased charges for some operators. We would prefer to see an appropriate independent review process for the compliance assessment by NRW. Similarly in situations where there is considerable local opposition to a facility this could give an additional incentive for complaints to be made knowing that this will increase the regulatory effort needed and will have direct cost implications for the operator. We would welcome clarification of what safeguards will be implemented to manage this potential scenario.

In addition Opra scores can be subjective and NRW must be able to demonstrate that scores are allocated appropriately and consistently by NRW officers. Compliance methodology and scores are based on the guidance but there is also a site specific element to this.

**MPA** - No comment

**DCWW** - In line with our comments made upon the proposed 2016/17 charging scheme; we support the proposal to affix a financial penalty to consistently poor permit compliance, as this requires increased regulatory effort. NRW have developed this proposal over the last year and we think the evidence provided in the current consultation document now provides sufficient support for the introduction of the new charges.

**NFU** – No comment

### **NRW Response**

We use a standardised methodology to assess compliance at sites and this is assessed against individual permit conditions. Compliance assessment is site specific and risk based depending on factors such as local receptors and scores are allocated based on the reasonably foreseeable impact of the breach rather than the breach itself and this varies from site to site; apart from for amenity, where it is the actual impact that is taken into account. Therefore a similar breach could be scored differently on two different sites according to the methodology, depending on local factors. But a score will only be given where there is an actual breach.

When dealing with vexatious complaints about a site, any breaches will be dealt with proportionally and not repeatedly scored unnecessarily. Procedures on how to deal with such instances can be found in our Compliance Classification Scheme, Incident Methodology and Complaints Procedures.

Breaches are discussed with the operator and all sites are required to have a Technically Competent Manager who should be able to understand and deal with such issues.

The compliance scores are totalled at the end of the year and a site falls into a particular compliance band based on their overall score. The charge the following year is then based on this score. The level of regulatory activity is risk based, according to compliance scores and a poor performing site would expect to see an increased level of regulation to help the operator move back into compliance. Equally, good performance is also recognised with a reduction for Band A sites to recognise the reduction in regulatory activity. The multipliers are now being amended to recognise the increased level of regulation required at Band D, E and F sites.

For clarity:

- This amendment applies to Waste Operation Facilities only and not Waste Installations.
- The multiplier will be based on the previous year's compliance band.
- The compliance scores for Band D, E and F sites will be amended half way through the year where performance has improved.
- A sites fees for the year will be based on the compliance banding for the previous period.

### **Question 5. What are your views on the proposed level of charges for registration & risk designation?**

**ICE** - They seem acceptable.

**St Pierre** - No comment

**Innogy** - Given the charging stream is required due to funding shortfall and the amounts to be charged are demonstrable:

There is no forward projecting fee amounts for 2018-2020 so I assume a consultation every year is required as the fees increase with inflation? These charges are slightly lower than SEPA but not as low as EA. What have NRW done to effectively engage with the public on the registration of "new 10000m<sup>3</sup>" reservoirs? I have not seen anything outside of my specialist knowledge area (direct emails, information to the BDS and ICE).

**Anon** - Level of charges seems sensible, especially as period of free registration and risk designation is offered

**RML** – No comment

**UNIPER** – No comment

**CLA** - In order to soften the blow of the new charging, NRW gave a period of free registration, but clearly set out that charges would apply after this. This is a fair approach, especially as businesses should have benefitted from the 'free' period.

For businesses that own such infrastructure and are running large commercial enterprises the additional annual charge is not particularly significant. However, as the capacity criteria have been reduced and old infrastructure remains and the structures are not used for a commercial activity, this additional charge may prove difficult. The CLA appreciates that these may be the types of structure where issues could potentially arise as they may have little ongoing commercial use or maintenance and will become a liability.

Is there any data available on how many structures of this nature there are in Wales and do the ones registered so far prove a risk? If the number of these obsolete structures is small and there is no commercial activity related to them and there is a case of hardship, could this charge be waived in certain cases?

**DVW** - It is not clear from the consultation document whether the annual charge will only apply to those reservoirs registered after 1 April 2017 so some clarification would be welcome here. We appreciate that there are costs associated with regulatory duties but as these are completely new charges, it would have been helpful to see the justification behind the level of charges proposed in order to make a proper assessment.

**Ash** – No comment

**Simon** - These charges seem on the surface sensible, but when it is seen that 40% of reservoirs are Welsh Water and further ones are NRW and other public bodies it seems that there is a bureaucracy being created to move public money around between departments with some private undertakers actually being the only net contributors to the public purse where they are the smallest and least able to fund this. These small reservoir owners provide a significant public good and ecosystem services that is not recognised in any form of payment from NRW and I would suggest that it would be appropriate to acknowledge this environmental benefit by dropping this charge that will fall disproportionately on the small private reservoir owners. This charge will be another incentive to descale/remove small large raised reservoirs which I am sure is not the intention of NRW/WG.

**Balfours** – For businesses that own/operate a reservoir commercially this charge would not have too severe an effect, but where there is no commercial gain from having such structure, which is monitored regularly by estate staff and inspected annually by an Inspecting Engineer and every 10 years by a Supervising Engineer, both at an annual cost in the region of £500 and every 10 years about £1200 this is a huge added burden on the owner, especially when all reports are sent to NRW for their information.

Effectively doubling the annual costs of owning a reservoir from which no income is derived will have a huge effect on the owners and is unjustifiable, especially if they have a good track record of compliance. I believe discounts ought to be applied in these cases. Why is this charge necessary, it seems as though NRW are trying to raise revenue by any means possible?

**VCAC** - On the 27/01/2014 the following table was present on the web site;-

<http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?topic=reservoir#x=303977&y=357588&scale=11>

**Clywedog.**

**Reservoir Owner:** Badland

<b>Reservoir location (grid reference):</b> 301247, 357494	<b>Environment Agency Area:</b> Natural Resources Wales	<b>Local Authority</b> :	<b>Additional Comments:</b> If you have questions about local emergency plans for this reservoir you should contact the named Local Authority	View map 
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The current web address:

[https://maps.cyfoethnaturiolcymru.gov.uk/Html5Viewer/Index.html?configBase=https://maps.cyfoethnaturiolcymru.gov.uk/Geocortex/Essentials/REST/sites/Flood\\_Risk/viewers/Flood\\_Risk/virtualdirectory/Resources/Config/Default](https://maps.cyfoethnaturiolcymru.gov.uk/Html5Viewer/Index.html?configBase=https://maps.cyfoethnaturiolcymru.gov.uk/Geocortex/Essentials/REST/sites/Flood_Risk/viewers/Flood_Risk/virtualdirectory/Resources/Config/Default)

Shows that the risk of flooding from a "catastrophic" event has effectively petered out at or around the village of Cyffylliog. Thus the data to assess the flood risk is readily available.

It therefore seems unreasonable to expect the VCAC to pay £510 to re-register our reservoir. It should surely be a trivial matter to transfer the detail to a new database. The charge rates quoted in a later section, (5.13,) of £125/hour per person implies it will take 4 person hours to complete the task.

**BHA** - No comment

**Trant** - I have a reservoir that has been registered with NRW for many years. My previous inspecting engineer had indicated that as this reservoir was of very low risk having been constructed nearly 200 years ago and having caused absolutely no problems, that it should not need as frequent or as rigorous an inspection as currently. Now I see that you want to charge an annual monitoring fee. This is on top of the hugely increased inspection fee that I have to pay annually to an engineer. We seem to be going in the opposite direction! This reservoir generates NO income. I would sooner be putting the money towards something useful like flood alleviation. I could construct some "dry dams" downstream that would be much more useful in times of heavy rainfall. I would be very happy to discuss this with you.

**BGCBC** - The charges seem fair and reasonable for registration and risk designation, although BGCBC aim to get all additional reservoirs registered on or before 31st March 2017 to avoid these charges.

**CIWM** - No comment

**CCBC** - No strong view as such water bodies should be registered by now and as such should apply only to new build and not to any amendments put forward by yourselves.

**Bowen** – Any charges would not make my lake (1.4 acres) viable. I have read the proposals in total and whilst I appreciate the direction of travel from your point of view any cost on my activities will mean that the activity with the fishing club will come to an end. I note that much of the content is with reference to farming activities – perhaps you should charge farms for the water provided in each field which is not paid for. I have mentioned this to the water board as there must be millions of gallons of water which is not charged for.

**WESA** - No comment

**MPA** - No comment

**DCWW** - We acknowledge that paragraph 39 (Charges), of the Flood and Water Management Act 2010, Schedule 4 (Reservoirs), makes amendments to Section 41(1) of the Environment Act 1995. These amendments enable Natural Resources Wales (NRW) to recover costs incurred by it in performing functions conferred by the Reservoirs Act 1975.

In contrast to the evidence provided for changes to EPR waste operations facilities, the proposal for introducing charges for reservoir compliance lacks supporting evidence of the costs that will be incurred by NRW in delivering this new function.

As a benchmark, we have compared the charges proposed by NRW to those in Scotland, and on the basis of that comparison, the proposed charges appear reasonable.

Given that these are new charges, we would expect to see NRW collecting cost information over the next year and if necessary reviewing the level of charges for reservoir risk and compliance in 2018/19.

### **Regulation of NRW reservoirs**

NRW are the enforcement authority for all large raised reservoirs under the Reservoirs Act 1975 in Wales. This includes a significant number where NRW themselves are the undertaker. We would expect costs associated with regulation and enforcement activity by NRW on their own reservoirs would be covered by NRW and not cross subsidised by other reservoir undertakers across Wales.

### **Reviews of risk designation**

We note that unlike Scotland there is no intention at this time to charge a fee to review a risk designation. We assume therefore that these costs will be incorporated in the Annual Compliance Monitoring Charge incurred by all reservoir undertakers. We consider this reasonable at this time, but would expect this to be periodically reviewed as more evidence is gathered with time as to the amount and cost of reviews across Wales.

### **Registration and timing of charges**

We note the following statements concerning the timing of the introduction of charges:

“Reservoir undertakers have a legal duty to register their reservoir and these proposals will only come into effect for those reservoir undertakers registering with us on or after 1 April 2017. We will work to communicate the implementation date for these proposed charges, encouraging undertakers to take advantage of the free registration and designation period finishing on 31 March 2017.”

We assume from this that:

- All reservoirs greater than 25,000m<sup>3</sup> already registered prior to April 2016 will not be subject to any Registration and Risk designation charge.
- Reservoirs registered after April 2016 and before 31st March 2017 will not be subject to a Registration and Risk designation charge even if NRW carry out risk designation after 31st March 2017.
- The Annual Compliance Monitoring charge will only become payable following final designation or confirmation of not high risk. It will not become payable at provisional designation stage.
- If the final designation or notification of not high risk occurs part way through the financial year, then only a proportionate amount of the Annual Monitoring Charge will be incurred.

Confirmation of these assumptions would be welcome in the final charges scheme.

We would welcome more clarity on what minimum information provided to NRW will satisfy ‘registration’ by 31st March 2017 and consequential exclusion from any registration and risk designation charges. We would also appreciate NRW providing acknowledgement of satisfactory registration so undertakers are clear that no Registration and Risk Designation Charge will be incurred.

**NFU** – We note proposals to introduce a tiered system of charges for registration and compliance monitoring for Reservoirs based on registration and risk designation of £510 and annual compliance monitoring of £230 for high risk and £150 for large raised reservoirs not considered high risk.

We would highlight that through the proposals little information is provided to justify the costs or on what efficiency measures NRW are considering to reduce the cost burden to its customers.

We express concerns that the impact of proposals falls disproportionately on small businesses who are least able to fund this. Through the consultation process our members have highlighted that they already have to meet costs of annual inspection by a qualified engineer and these costs are not insignificant. NFU Cymru would highlight that small reservoir owners provide significant ecosystem services and public benefits which are not recognised in any form of payment from NRW or elsewhere. We believe the application of this charging regime could have unintended consequences including the removal of small large raised reservoirs.

We further note that registration and risk designation will not apply to those reservoirs registered before 1 April 2017 and NRW propose to communicate the advantage of free registration prior to this date.

NFU Cymru would highlight that this information is not easy to locate currently on your website – even if farmers were aware of proposals and made efforts to look for it – there is no reference to it on the agricultural webpages. We note that the most recent communication on the NRW website dates back to March 2016. From the consultation you have not indicated if there is a direct communication route (mailing list), if not, more targeted communication for the agricultural industry will be necessary as soon as possible.

### NRW Response

All our activity for reservoir regulation has, up until now, been funded by the public purse through our Grant in Aid (GiA) from Welsh Government. We incur costs in the monitoring and review all large raised reservoirs and investigation of unknown reservoirs, whether they are high risk, obsolete, lower risk, orphan reservoirs and/or ones where there is no commercial activity. The new charging scheme passes these costs onto to the reservoir undertakers who hold the liability for keeping their dams in a safe condition, instead of making the wider public pay through general taxation.

16% of undertakers are private individuals or partnerships, with the remaining falling to public bodies or commercial organisations. Private ownership constitutes a growing proportion of reservoirs and we will monitor this to ensure that the impact does not fall disproportionately on small businesses. The period of free registration, and removal of fees for lower risk reservoirs will mean only undertakers for high risk reservoirs, where there is a risk to life, will be charged for registration (after 1 October 2017) and compliance monitoring.

Since the changes in the Reservoirs Act 1975 came into force on 1 April 2016, we have undertaken to identify waterbodies with the potential for registration under the new law. The activity has focussed on informing current reservoir undertakers, establishing contact with undertakers of reservoirs with a known capacity of 10,000 cubic metres, or which had been lowered below the previous registration threshold of 25,000 cubic metres. We have also acted on information from Local Authority and Environment Agency archives.

To allow sufficient time for us to communicate the detail of the charging scheme to reservoir undertakers and to allow them reasonable access to our guidance, we will include a period of free registration of 6 months, meaning the imposition of a registration fee will come into effect on 1 October 2017.

For clarity:

- Large raised reservoirs with a capacity of 25,000m<sup>3</sup> already registered with us prior to April 2016 will not be subject to any Registration and Risk designation charge.
- Reservoirs with a capacity of 10,000m<sup>3</sup> or more, newly registered since April 2016 and before 1 October 2017 will not be subject to a Registration and Risk designation charge even if NRW carry out risk designation after 1 October 2017.
- Reservoirs with a capacity of 10,000m<sup>3</sup> or more registered from 1 October 2017 will be subject to the Registration and Risk Designation charge, as per Table 1 below:

Initial registration fee	
Registration & Initial Risk Designation	<b>£510</b>

We have amended the proposal consulted upon with two changes:

- a 6-month extension of the period for free registration
- removal of an annual subsistence fee for lower risk reservoirs (see Q.6)

Enforcement activity costs are not included within the charges, so undertakers that comply with the law are not subsidising others' poor practice.

**Question 6. What are your views on a tiered risk-based charge for annual compliance monitoring and the level of these charges?**

**ICE** - This seems acceptable.

**St Pierre** - No comment

**Innogy** – Reasonable

**Anon** - With the vast majority of reservoirs being provisionally designated as high-risk, the charging scheme may require some adjustment to avoid the consensus that risk designation has been overly conservative in order to raise the maximum amount of revenue.

**RML** – No comment

**UNIPER** – No comment

**CLA** - The tiered base proposal should be welcomed to recognise the potential level of risk involved and the level of work associated with its perceived risk.

**DVW** - We feel that a tiered risk-based charge for annual compliance monitoring is fair and fits with NRW's risk based approach to regulation. However, as commented under question 5, it would have been helpful to see the justification behind the level of charges to allow a proper assessment of how appropriate they are.

**Ash** – No comment

**Simon** – See Qu. 5

**Balfours** – Anything that keeps costs to a minimum should be welcomed.

**VCAC** - Again the charge of £230 for a high risk reservoir and £150 for reservoir not considered a high risk seem excessive, without a detailed explanation of the work required to monitor a fixed asset not subject to significant year by year change.

The overall impression is that the charges under the heading Reservoir Compliance do not reflect the true cost of what would be a trivial exercise for a small reservoir such as the Clwedog reservoir owned by the VCAC.

I should also like to add that the imposition of these charges will represent a considerable strain on the resources of a small angling club such as ours. The cost of two engineer's reports each year in respect of the dam for the reservoir is already a considerable drain on the clubs finances and these additional charges are, we believe, unwarranted.

**BHA** - No comment

**Trant** - No comment

**BGCBC** - The tiered approach seems fair. Will NRW provide an annual report for each reservoir whether high risk or non-high risk? One effect this could have is undertakers deciding to discontinue reservoirs to avoid such charges, which in turn may have a detrimental effect on the local area.

**CIWM** - No comment

**CCBC** - This is of more concern. There is already a significant cost burden with complying with legislation in terms of the monitoring and management of such water bodies. As would be expected the maintenance of such sites is a high priority and requires more resource than other sites where water is not present, or at levels below threshold. In addition to this are the costs associated with statutory annual and ten year inspections, which require specialist engineers. There is now also the issue of charging for a discharge licence, which is a statutory part of the inspection. In summary there have been significant increases in terms of both costs and time. It is questioned as to whether there should be a charge in meeting a statutory duty particularly between one public sector organisation and another. There should also be consistency between public bodies with regard to charges eg exemptions for water discharges.

Allied to the above but of more strategic significance are the objectives of what our organisations are trying to achieve notably with regard to water management. Both our organisations have water retention, particularly in uplands, as an objective, indeed NRW and WG fund such initiatives. As a Council we have a number of reservoirs, both owned and leased, which have no commercial value

but play an important role in water retention helping meet sustainability objectives of which water retention is a significant part. Adding additional costs could be completely counter-productive should it be concluded that costs can be reduced by decommissioning these reservoirs. Indeed some reservoirs were taken on so as to prevent British Steel decommissioning them. If they were to be handed back, as we are perfectly entitled to do, then it is my belief they would be decommissioned immediately. These matters should be considered and indeed exemptions, at least, given for non-commercial waters and/or publicly controlled waters.

In terms of risk categorisation I would have thought that a flat fee would be more appropriate as it is not the 'fault' of the reservoir owner as to what surrounds the site. Actions of others in the future eg granting of a planning consent could have a financial implication on a neighbour.

As an aside, the appropriateness of levying the charge to partly support Welsh Water sites in north Wales has been questioned in both principle and practice.

**Bowen** – Any charges and I will close down.

**WESA** - No comment

**MPA** - No comment

**DCWW** - We consider a tiered risk based approach to be appropriate as we would expect this to reflect the greater amount of regulatory effort required on high risk compared to not high risk reservoirs.

Consideration could be given to waiving the charge for not high risk reservoirs. However these reservoirs are still subject to a degree of regulation, if charges are not applied then the high risk reservoir undertakers would be paying this cost and effectively cross subsidising not high risk reservoir undertakers.

Maintaining a charge on not high risk reservoir undertakers also serves to remind undertakers that their reservoirs are still subject to a degree (albeit lesser) of regulation. If there was no charge this would help perpetuate the belief by some that not high risk reservoirs are not covered by the regulation. So we would support a proportionate and evidenced based charge on not high risk reservoir undertakers.

**NFU** – See Qu. 5

### **NRW Response**

The charging scheme does not apportion costs to the level of activity attributed to specific reservoirs or undertakers; instead the charges are a portion of the overall cost of NRW's reservoir regulation service shared across the undertakers for large raised reservoirs. It does not include any consideration for individual performance against compliance. The activities we are charging for are listed below:

- Production & maintenance of general supportive advice & guidance
- Provision of (office based) site specific advice to undertakers
- Site meetings to provide specific advice to undertakers
- Provision of specific advice relating to discontinuance and abandonment
- Provision of reminders to undertakers for forthcoming statutory deadlines
- Receipt, review & recording all reports, certificates, appointments and other correspondence for activities under Section 6, 7, 10, 11, 12 of the Reservoirs Act

Our legally recoverable costs for these activities total £55,000 which is currently provided by GiA, this includes the cost of the new activities we must undertake in line with the amended Reservoirs Act, for example registration of newly regulated reservoirs and risk designation. We also undertake a number of activities the cost of which is **not** recovered through the charging scheme, these are:

- Enforcement Activities
- Performance Management & Reporting
- Responding to consultations, and information requests
- Incident Management
- Representation of NRW at UK & international level.

Our calculation of our recoverable costs excluded the cost of managing and operating our own reservoirs, and the cost of regulating them.

The anticipated annual income from a charge imposed on lower risk reservoirs is <£3,000. Our amended proposal removes the annual compliance monitoring fee for reservoirs which are not designated high risk. The cost of regulating these lower risk reservoirs will not be borne by undertakers of high risk reservoirs and we will seek to fund this small portion of activity from GiA. The Annual Compliance Monitoring fee is amended as follows:

Annual Compliance Monitoring Fee	
High Risk Reservoir	£230
Large Raised Reservoir (not High Risk)	£0

Several responses make suggestions for reduced fees, or the provision of exemptions, for non-commercial reservoirs which provide wider environmental benefits, such as the attenuation of flood water. This is something we would like to evaluate better and consider for the future.

Annual fees are directly linked to the risk designation for the reservoir. The fee will become payable from the date a Notice of Final Designation provided to the undertakers comes into force, subject to any formal appeal they may bring.

Our risk designation process was established following an England and Wales wide consultation which took place prior to the establishment of NRW, and prior to any authority being given to recharge our appropriate costs. Our risk designation process uses a precautionary principle where a lack of evidence or doubt as to the clarity of the evidence prompts us to designate a reservoir as a high risk reservoir if we think human life could be endangered in the event of an uncontrolled release of water. This principle may have the effect of appearing overly conservative, however we are an evidence based regulator and submission of additional evidence by undertakers may decrease the proportion of high risk reservoirs.

We have not included a charge for the submission of a request to review a reservoir risk designation. We do not consider this will be necessary in the first year of charges when designations will be newly notified. We will monitor the significance of designation reviews and consider charging for this in the future.

#### **Question 7. What are your views on the approach to require multiple parties to apportion costs between them?**

**ICE** - This seems acceptable.

**St Pierre** - No comment

**Innogy** – Payments of part invoices would not be acceptable under our company procedures, the invoice must match the payment amount.

**Anon** - Agree, however, payment delays may be encountered.

**RML** – No comment

**UNIPER** – No comment

**CLA** - This approach is to be welcomed to keep costs down.

**DVW** - We understand the logic for taking this approach; however, without some sort of guidance from the regulator, there is risk of disputes between undertakers – is it intended that any disputes would be referred to the relevant economic regulator or would NRW have a role in facilitating any disputes? Are NRW confident that they have details for all multiple party ownerships, to ensure that all relevant parties receive invoices?

**Ash** – No comment

**Simon** - Acceptable

**Balfours** – See Qu. 6

**VCAC** - No comment

**BHA** - No comment

**Trant** - No comment

**BGCBC** - Apportioning costs across multiple parties seems fair and reasonable in theory, although it may be difficult in practice to arrange for each party to agree the portion of cost attributed to them. There would need to be a person/authority identified to coordinate this to ensure cost is fairly split.

**CIWM** - No comment

**CCBC** - Whilst holding no strong views on the above it does seem fairly difficult to enforce but support the ethos. It should not become more costly to implement than the revenues generated.

**Bowen** – I understand your position but I would not like paying any other costs.

**WESA** - No comment

**MPA** - No comment

**DCWW** - We consider this is appropriate. Where multiple undertakers exist it is for them to agree apportionment of costs not NRW. This principle is already well established in the apportionment of qualified civil engineer costs and the costs to carry out any capital or maintenance works on site.

**NFU** – See Qu. 5

### **NRW Response**

Where there are multiple undertakers with responsibilities under the Reservoirs Act 1975, we will apply one charge to the reservoir. The multiple parties will have to apportion costs between themselves and NRW will not dictate or recommend this apportionment. This could replicate any agreements in place for the sharing of engineers' costs.

The consultation raised a concern that some undertakers, commonly limited companies, will be unable to pay part invoices. We consider this to be a rare event, but in such a case we will direct the undertakers to submit a signed agreement showing the apportionment to be attributed to each undertaker.

It is a requirement of the Reservoirs Act 1975 that undertakers ensure their reservoir is correctly registered and this includes the provision of undertaker name and address. It is in the undertakers' own interests to ensure that all undertakers are correctly registered.

### **Question 8. What are your views on the arrangements for pre-application advisory services and do you believe they are beneficial to the applicant, leading to better quality applications?**

**ICE** - This seems an acceptable way forward and beneficial to all including the applicants.

**St Pierre** - No comment

**Innogy** - I am not sure if the advisory service will be “beneficial to the applicant, leading to better quality applications”.

There will need to be discipline from NRW to ensure fees are kept to a reasonable level. Charging £125/h for half a day's work to have a non-committal answer back of “we have no view” or “it depends on other unspecified criteria” will not help and will lead to applications without any consultation (as it won't add value but will cost lots).

**Anon** – Agree

**RML** – No comment

**UNIPER** – While we appreciate that these pre-application discussions may on occasion stray outside some key areas. We feel that they are important to both parties when discussing new permits or permit variations. New developments can often be complex and it is as much of benefit to the regulator as it is the regulated to have a clear understanding of the information needed within an application. This will help ensure that the application assessment will progress more smoothly leading to less delay for the Regulator and the party applying for the new permit or variation. We would wish

to see NRW take a pragmatic approach to these charges and ensure that they do not become a barrier to discussing permits and permit variations.

There should be a frequent review of these charges given that they are linked to the publication of guidance. Guidance is limited on the NRW website and there has been an active campaign within UK Government to reduce the amount of guidance available via the .GOV.UK website. Much of the EA guidance that is available is reduced with much of the advice to be to contact the EA. NRW need to ensure that the guidance is widely available and suitable to ensure that it can be used by operators. It would be unfair to impose charges if guidance was not available or of such a reduced technical nature that applicants only choice was to contact NRW. Provision of a dedicated NRW officer may be beneficial in some cases however, we have experience of this with Local Authorities and expectations from both sides needs to be established early on in this process.

**CLA** - Any assistance to support an applicant is to be welcomed. The advice must be to a high standard and given by a competent adviser who will be there throughout the process. Unfortunately, there have been cases in the planning process where pre-application advice has been given which was subsequently overturned, with the excuse that the pre-planning advice was given by a junior member of the team. If NRW are going to offer a pre-application advisory service, there must be a process through which NRW can be held responsible for that advice under the normal terms of contract law.

**DVW** - No comment

**Ash** – No comment

**Simon** - No comment

**Balfours** – No comment

**VCAC** - No comment

**BHA** - The overarching view, is that if it is being proposed by NRW that charges should apply to the pre-application services for hydropower, the pre-application service would not be at all beneficial to the applicant. The BHA are unsure as to whether this section ['5 Discretionary Charges'], is intended to be applicable to hydropower operators, but for thoroughness we will continue as if it is. However, to apply it to hydropower would be contrary to the consultation's section 6.3, which deals solely and explicitly with hydropower and states that hydropower charges will not alter at this time, in part because of;

1. "A reduction in the number of hydropower licences."
2. "Our ongoing review of hydropower licensing and other regimes, and;"
3. "A need for clear guidance on charge out rates."

The BHA believes the reference to "our ongoing review of hydropower licensing and other regimes" will in part relate to a parallel exercise being led by Welsh Government through a Ministerial Hydropower Task and Finish Group [which consists of representatives of the British Hydropower Association and NRW], and which has since produced a report for the Cabinet Secretary for Environment and Rural Affairs which identifies a package of specific measures to support the hydropower industry in Wales. The objective given to the Hydropower Task and Finish Group is to draw up recommendations that will enable the industry to continue to deliver jobs, economic activity and contribute to generating low carbon energy. Having regard for the above, any suggestion of introducing a charging regime for pre-application advice for hydropower schemes, is clearly contradictory to the purpose of the Hydropower Task and Finish Group and section 6.3 of this consultation.

The introduction of a charging regime for pre-application advice for hydropower schemes, particularly as set out in this consultation, is inappropriate for the following reasons:

1. The pre-application system for hydropower is not a true pre-application process. Instead it brings most of the actions and considerations that were previously part of the formal application process out of the formal application time-frame for the benefit of NRW. As such the very high application fees for formal applications recently introduced by NRW are presumed to cover the time taken by NRW to consider hydropower applications at the 'pre-application' stage and hence no further 'cost-recovery' is necessary in respect of hydropower applications.

2. As alluded to under section 6.3, the rate at which new hydropower projects are coming forward to the application stage has reduced significantly. That fall is likely to continue for the foreseeable future due to the lack of an adequate funding mechanism.

It is now extremely difficult to produce a new economically-viable hydropower project in Wales, as the sector simply cannot take on further costs and continue to develop new schemes.

3. The pre-application stage is more beneficial to NRW in taking normal determination procedures out of the statutory time window and away from the prospect of appeal than it is to applicants in 'improving' applications.

4. Any fees payable in respect of work done by NRW before the formal application stage should be payable only on receipt of timely and accurate advice. The current levels of service provided by NRW to hydropower developers falls a very long way short of anything anyone would be willing to pay for.

Hydropower applicants should not be asked to cover NRW's costs whilst NRW's hydro permitting operation remains so inefficient. Cost reductions through efficiency improvements must come before external charging can be seriously contemplated.

5. If NRW could provide a pre-application service that added value for applicants, then the fees NRW might consider charging would need to be proportionate, as £125/hour is not a realistic suggestion and as well, applicants would need to have a measure of control over the expenditure to which they were exposing themselves to.

6. For example, applicants would need to be able to approve of the personnel assigned to their cases; they would need to be frequently kept informed of costs incurred and they should be entitled to receive cost estimates in advance that should be binding [with a reasonable margin for error and where the scope of work did not alter].

These stipulations simply mirror reasonable practice observed in professional services industries in the private sector. It should be noted that in such cases the applicant/client would normally also have the luxury of choice as to which organisation to appoint and often whether to appoint at all. These freedoms add significantly to the applicant/client's willingness to pay.

**Trant** - No comment

**BGCBC** - No comment

**CIWM** - The provision of Pre-application advice will be beneficial to waste facility applications where the proposal is difficult in terms of compliance with regulatory standards. This would also be beneficial where the applicant does not have access to the necessary technical knowledge to construct an application containing the necessary level of detail. Provision of this advice will assist with the application process and reduce the frequency with which NRW staff has to require additional information in order to be able to determine a permit.

**CCBC** - No comment

**Bowen** – No comment

**WESA** - We support the provision of a pre-application advisory service. The appropriate level of technical advice must however be consistent and provided in a timely manner.

**MPA** - We note the proposals to implement a Discretionary Advice Service. It is imperative that duties to fulfil statutory responsibilities for planning and licensing remain exempt from all charges, this includes NRW's formal responsibilities under the EIA Regulations and the Development Management Procedure Order. NRW responses under these regulations, must be detailed, considered and comprehensive to fulfil the duties as a statutory consultee.

Where the DAS is employed all advice given must be binding upon NRW if the parameters of the proposed matter do not undergo any material change.

The proposed charges of £125/hr are considered excessive particularly as an applicant seeking advice from NRW does not have any option but to use NRW for the advice. In effect, they are a captive customer and NRW has a monopoly over the advice being sought. Furthermore, the figure far exceeds the average cost per hour of an experienced ecological consultant which is generally half that now being proposed by NRW.

It is disappointing that the consultation document was not accompanied by a regulatory impact assessment to show transparency over the structure of the charges and how these have been determined, as well as considering the external effects of the proposed charges.

We look forward to being consulted upon the scope and nature of any standardised agreements and any supporting guidance in advance of the implementation of the service.

**DCWW** - We generally support the approach outlined by NRW for the provision of advisory services and are reassured by the clear statements that this service would be underpinned by robust and freely available guidance and that uptake of this service is no guarantee that a permit will be granted.

We think that there is merit in having a concessionary rate available to support charitable, or not-for-profit organisations that are seeking to make improvements to the environment, e.g. delivery of Water Framework Directive schemes, but may lack the technical skills to make a competent permit application. The availability and eligibility for such a concessionary rate should be at the discretion of NRW.

**NFU** – We would stress that the best outcomes for all parties and the environment will be achieved by working in partnership; free pre-application advice can often iron out many small issues before an application is submitted thus saving the permitting team valuable time and resource in the long term. We have concerns that the high hourly cost will discourage farm businesses from using the service.

### **NRW Response**

NRW values the importance of early and effective engagement with applicants, and we recognise the important contribution this engagement can make to the social, economic, environmental and cultural well-being of Wales. We are therefore committed to the continuation of advisory services that exceed our statutory obligations. However, it is increasingly challenging to balance the resourcing of this discretionary advice with our statutory work. The introduction of appropriate charges for discretionary advice will ensure that we can continue to meet the needs of our customers and deliver a consistent service across Wales.

In preparing the charged discretionary advice service NRW has consulted with other regulatory organisations that offer a similar service, and we have learnt from existing charged advisory services currently provided by NRW.

### **Scope**

The proposed service will be limited to pre-application advice that is provided at the discretion of NRW. The continued provision of this discretionary advice service will depend on it being funded by a charge to recover the costs of its provision. NRW will not charge for any advisory services that we are required to provide for free via statute, or due to Welsh Government policy directions.

In addition, in many regulatory regimes within our remit currently offer limited advisory services as part of the application fee. NRW intends to continue to offer this advice, the nature and scope of which will be regime specific.

Furthermore, NRW does not intend to charge for advice where an applicant could reasonably expect for that advice to be freely available on the NRW website, for example routine information likely to be required by multiple applicants.

When determining whether to include a regulatory regime within the charged discretionary advice service, NRW will first review the scale and scope of advice that an applicant could reasonably expect to be included within the application fee. The extent of regime specific advice provided as part of the application fee will be published on our external website prior to a regime being included within the charged discretionary advice service.

The scope of the discretionary advice that is appropriate to provide will be regime specific, but as a regulator, we must not provide any advice or service that might prejudice the determination of an application or in any way restrict NRW in carrying out its statutory duties. Therefore, the service will be limited to advisory activities, and will not include preparing reports for applicants or undertaking assessments that should form part of the application. However, we will not set timescales or limits on the number of hours that will be offered via the discretionary service (subject to resources being available to deliver the service).

NRW will only offer the service where the teams responsible for delivering the regulatory advice have the technical ability, resource capacity and management capacity to provide the pre-application advice within an agreed timeframe.

It will always be at the discretion of the applicant to seek advice provided as part of NRW's charged discretionary advice service. Applicants will remain at liberty to seek such advice by other means e.g. from private, public or academic sector consultancies. Applicants will also continue to have access to freely available advice on our website.

NRW will review how we deliver this discretionary advice service over time, and look to continuously improve how we delivery advice to applicants. NRW will apply lessons learned from the initial delivery of the service, and liaise with our customers to guide our decisions on the inclusion of additional regulatory regimes.

### **Guidance**

Only regimes that publish appropriately robust and freely available guidance to support the application process will be considered suitable for the charged discretionary advice service. Therefore, in developing the charged service for discretionary advice we will review existing guidance that is available to applicants (including both generic and regime specific guidance).

For regimes that are included within the charged discretionary service, we will publish guidance on what advice services an applicant can expect to receive for free, and what additional discretionary advice services will be subject to a charge. We will also prepare guidance on how applicants can access the service, and the relative responsibilities of NRW and the applicant.

### **Nature the advice provided**

The charged discretionary advice service will provide advice only, and it will remain the responsibility of the applicant to consider how best to act on this advice in regard to any application. Furthermore, NRW cannot be held responsible for decisions made by other bodies who will have other factors to consider alongside our advice. Any advice we provide will be based on the best available information at that time and if different or additional information is submitted as part of any future application we reserve the right to change our views.

As required by our statutory obligations, we will not determine any aspect of an application during the pre-application advice discussions. This would be contrary to our obligation to not pre-determine or prejudice the outcome of an application before it is submitted. NRW can only determine an application once we are content that all of the necessary information has been submitted and we formally accept the application. We generally refer to this as the application being 'duly-made'. The statutory determination period for determining applications only applies following NRW formally accepting the application.

### **Terms and conditions**

NRW has developed a standardised set of terms and conditions which will govern the provision of the discretionary advice service. We intend to publish a copy of our standard terms and conditions on our website, which will provide clarity to applicants on how the service works.

In addition to the standard terms and conditions, NRW will provide a 'quotation' to the applicant which will be specific to the pre-application advice sought. The quotation will outline the specific activities that will be completed by NRW in providing the advice, estimated delivery dates and an estimate of the costs of providing the advice. The service outlined in the quotation will rely on the applicant providing NRW with the appropriate technical information necessary for NRW to advise effectively.

The terms and conditions and the quotation will form a contractual arrangement between NRW and the applicant. These two documents will provide both the applicant and NRW with clarity and transparency over what will be delivered and how much it will cost before entering in to a contractual arrangement. There will be no obligation for the applicant to accept the service offered.

Where we consider it appropriate, we may enter into a bespoke agreement for the provision of discretionary advice (this will typically only be applied to large, multi-regime and long term

applications). However, similar to the more standard agreements, cost-recovery will be the basis for NRW's charges under any bespoke arrangement.

The proposed terms and conditions will enable NRW to charge for the discretionary service, and recover our costs, even when the applicant decides not to proceed with the application (for example, where our advice ultimately negates the need for an application through the proper consideration of environmental issues).

Where an applicant accepts any offer for charged discretionary advice, this is not to be considered reflective of the outcome of any future application determination process.

### **Cost Rate**

The general principles set out in the Welsh Government guidance *Managing Welsh Public Money* apply to how this service is provided. This guidance stipulates that cost recovery is the appropriate basis for charging for discretionary pre-application advice sought where we are also the determining body.

The rate of £125/hour is calculated on the basis of full cost recovery i.e. the rate reflects all costs incurred by NRW in providing the advisory service. We have elected to apply a consolidated rate across all regimes to minimise the administrative burden, which will ultimately reduce overall costs to NRW and the applicants.

The cost rate is consistent with the pre-application advice charges highlighted in the current NRW Environmental Permitting Charging guidance, of £125/hour for discretionary Environmental Permitting Regulation waste and installation pre-application permit advice. This hourly rate is also comparable to other regulators e.g.

#### *The Environment Agency*

Charges £125/hour for discretionary pre-application advice for Environmental Permitting Regulation waste and installations.

#### *Natural England*

Charges:

- £500 per adviser for a 90 minute meeting (either by conference call or a face-to-face meeting at an office or on the development site)
- £110 per hour per adviser for each additional hour

Other fees may also be added onto this such as mileage expenses.

### **When will the charges commence?**

We propose to commence the charged service from 1<sup>st</sup> April 2017, initially for Environmental Permitting Regulation waste and installation pre-application permit advice, and only where NRW has the technical capacity resources available to deliver the service. Further regimes will be incorporated in to the charged service over time.

### **Question 9. What are your views on standardised agreements for the provision of the service and are they preferable to application specific negotiations?**

**ICE** - This seems an acceptable; a standard style agreement seems a good approach.

**St Pierre** - No comment

**Innogy** - Yes, parity and transparency are essential.

**Anon**- Standardised agreements may be considered more transparent than, therefore preferable to, application specific negotiations.

**RML** – No comment

**UNIPER** – This could prove useful for large of complex discussions, however, these types of projects do not often lead to standardised approaches. We would like to see more detail of what is proposed for these agreements and the areas they would cover.

**CLA** - If the advice is clear and of a standard nature then a standardised agreement should suffice, it should also assist in keeping costs down. If the standardised agreement is not thorough enough it will lead to problems which may lead to legal issues. NRW need to get this right and spend time in perfecting it. We would suggest working with stakeholders and interested parties to ensure that any agreement is fit for its intended purpose and of commercial value.

**DVW** - No comment

**Ash** – No comment

**Simon** - No comment

**Balfours** – No comment

**VCAC** - No comment

**BHA** - No comment

**Trant** - No comment

**BGCBC** - No comment

**CIWM** - Both standardised agreements and site specific negotiations may be necessary. There may be areas that are commonly poorly addressed by applicants from specific sectors for the necessary permits that would benefit from a standardised approach. There may also be specific applications that would benefit from a negotiated approach; these would typically be complex applications from specific industry types.

**CCBC** - No comment

**Bowen** – No comment

**WESA** - As a general principle WESA members consider that pre-application discussion is considered good practice and we are concerned that the option to establish specific fees for pre-application discussion may disincentivise developers to continue to engage in pre-application discussion.

Rather than perceive pre-application consultation as a burden on NRW's resources, NRW should communicate the benefits that such consultation offers in providing technical resources to examine key aspects of a development prior to submission of an application.

To provide an effective incentive for developers to continue to engage in pre-application discussion, WESA suggests that, relative to the size of the application fee, developers should be given a set number of hours "free" pre-application discussion.

There would also need to be a system in which the premium fee was refunded if the service, identified in the pre-submission document was not then delivered in a timely manner.

**MPA** – See Qu. 8

**DCWW** - See Qu. 8

**NFU** – See Qu. 8

### **NRW Response**

See response to question 8 above.

**Question 10. If NRW offered a concessionary rate, under what circumstances should the concession be applied?**

**ICE** - For charities, minimal services, minimal operations.

**St Pierre** - No comment

**Innogy** - Charitable organisations and private owners where flooding is the primary issue.

**Anon** - No comment

**RML** – No comment

**UNIPER** – No comment

**CLA** - NRW should consider ways that concessionary rates could be offered for those operating a small business or applying as a private individual. The choice of threshold or rate of discount to be applied will need careful consideration.

**DVW** - No comment

**Ash** – No comment

**Simon** - No comment

**Balfours** – Where there is a good track record of compliance AND in non-commercial circumstances or small businesses or private individuals.

**VCAC** - No comment

**BHA** - No comment

**Trant** - No comment

**BGCBC** - No comment

**CIWM** - Concessionary rates may be appropriate for pre-application advice requests for applications from charitable incorporated organisations (CIO), charitable companies (limited by guarantee), unincorporated associations or trusts.

CIWM Cymru Wales supports intention for NRW to start rolling out the charged for service regarding discretionary advice on development planning matters from 1 April 2017 onwards as consulted on in 2016.

**CCBC** - No comment

**Bowen** – No comment

**WESA** - No comment

**MPA** - No comment

**DCWW** - See Qu. 8

**NFU** – There should be exemption or concessionary rates for farm businesses.

### **NRW Response**

See response to question 8 above.

### **General**

**RML** - Only one key point to make with regard to the charging of fees. I am deeply concerned that as a public funded organisation you receive funding to administer regulations. To charge extra to undertake these routine administrative duties seems unreasonable. There is a the great danger that public bodies charging fees will be seen to be like sharks in a feeding frenzy with the developer's budget being swallowed up with little to show for the money.

The only way that charging fees can be countenanced is if you are providing your expertise and information to assist those who are paying fees. Expertise and information is, after all, what you profess to have. If you are therefore offering expertise and information for a fee then are you willing to stand by what you say and be liable for mistakes or bad advice? When you are consulted during the development of a scheme will you actually provide the advice and information you are asked for, or will you give only what is convenient and readily available? If you give advice for a fee and then later say something different without good reason could you be negligent? Could negligence result in costly law suits? What happens if you have given advice for a fee and then new relevant information arises? Will you subsequently make this available to the fee payer? That would seem to be the correct way to proceed.

The NRW has a reputation for being slow to respond and often to exceed the required response time. It is not for me to comment on why that should be, but on one aspect I must comment on; there is a tendency in large organisations, of all kinds and public sector ones in particular, for matters to be left in the hands of individuals, and when that individual goes on leave, sick leave or job share the matter goes on hold. Often the delay is unnecessarily long and nobody else is willing to pick up the matter and address it. However, when one contacts the organisation about a delay the answer is that

the person is away and the matter will have to wait until they return. Surely, the responsibility lies with the organisation and not with the employed individual? When you charge fees you will be expected to perform effectively as an organisation and using excuses about individuals being away will no longer be appropriate.

As an example of how fee charging is not always a good move, we have plenty of experience that tells us that since planning authorities have been able to charge for pre-application advice, they have often take the fee and given virtually nothing in return. On almost every occasion the advice has been late, misguided and in some cases grossly incorrect. I trust that this will not be the case with NRW. In one case the response stated that there was no information to give. As professionals, we all have to stand by our advice and should be fairly paid, but is there a conflict between taking a regulatory role and receiving fees for advice? I offer these comments in the hope that they will be considered properly and will be of some assistance to you.

**NFU** – We stress that farmers in Wales can only deliver the multiple benefits that society seeks and meet the challenges ahead if Welsh Government and its regulators recognise the importance of the sector and its unique contribution through the policy and regulatory framework. We highlight that regulation matters very much to our members; it adds cost and takes time to achieve and demonstrate compliance. Overall, the cumulative effect of regulation can undermine confidence and hinder development of farm businesses.

It is also vitally important that farmers in Wales, through the regulatory framework and associated charging regime are not placed at a competitive disadvantage compared to their UK and EU counterparts. We note that NRW has committed to a number of key principles to guide the implementation of the charging regime in Wales. In particular, we concur that charging decisions should be transparent to those who are regulated and the aim should be to keep charges as low as possible through a continued drive for increase efficiency.

In addition, we would highlight that NRW must also place a strong emphasis on the quality of service it provides to its customers. Whilst we note that NRW refer to the fact that they review their work to ensure processes are efficient and effective, to keep charges as low as possible. NFU Cymru is disappointed that throughout the consultation there is an absence of proposals or discussion on how their internal service could be improved.

Overall, we do not believe that the principles of transparency or increased efficiency are reflected through the consultation. Whilst we note that comments have not been invited on 6.1 Discretionary Planning Advice Service, NFU Cymru would repeat its call for an exemption for fees for developments on farm, especially where the development of buildings and operations are needed to meet regulation including environmental and animal welfare requirements.

Other matters to note:

With respect to 6.4 Flood Risk Activity Charges we would seek clarification that works undertaken by farmers during an emergency after a flood event will remain free of charge. NFU Cymru has also long-argued that there should be exemption from charges where the proposed works produce flood risk benefits beyond those of the applicant. Such an approach will support and encourage farmers to undertake maintenance that involves the delivery of a public service.

To conclude NFU Cymru has some fundamental concerns with the changes proposed to the new charging regime and would emphasise the need for NRW to undertake a detailed review of each of the regimes to identify opportunities for efficiency. This analysis should be shared with industry. Should charges need to be increased then far greater effort is required to ensure these are transparent to customers through the consultation process.

## **NRW Response**

See responses above.



## Annex 3 Amendments to the initial proposals

### Charging scheme for large raised reservoirs regulated by NRW under the Reservoirs Act 1975.

#### Summary

**The proposed charging scheme described here balances the need for NRW to recover its regulatory costs against the financial impact on reservoir undertakers that find themselves suddenly liable to c. £5000 engineers' fees following the introduction of new legislation that regulates them for the first time. The proposal is for staged implementation over the 2017-18 year with all elements in place by 2018-19.**

The Reservoirs Act 1975 is a piece of public safety legislation that seeks to protect people, property and infrastructure by reducing the risks associated with an uncontrolled release of water from large raised reservoirs. NRW has a duty to ensure that reservoir undertakers<sup>3</sup> in Wales observe and comply with the law. This is a service to the people of Wales to ensure that dams and reservoirs are constructed, maintained, supervised, inspected and decommissioned safely under the supervision of qualified engineers.

During our public consultation several issues were raised for our consideration, and have informed the scheme of charges for registration and compliance monitoring activities described below and shown in Table 1:

Table 1. Proposed charges for the period 2017-18, payable for large raised reservoirs subject to regulation under the Reservoirs Act 1975

Initial registration fee	
Registration & Initial Risk Designation	£510

  

Annual Compliance Monitoring Fees	
High Risk Reservoir	£230
Large Raised Reservoir (not High Risk)	£0

The charges include two changes to our original proposal which are justified below:

- a 6-month period for free registration
- removal of an annual subsistence fee for lower risk reservoirs

A significant outcome of our work is providing confidence to the public that Wales' dams and reservoirs pose a minimal risk to their safety. In fulfilling our duty we provide the reservoir community with advice and guidance on what the law requires them to do. This advice may include such actions as maintaining up to date information on our website, providing reminders to appoint for inspection, checking the status of safety measures to be taken or investigating unlawful works which may endanger the public. On occasion it may be necessary to require action from undertakers and we are authorised to serve enforcement notices to do this. The cost to us of stepping in to carry out actions in default of undertakers is not included in this charging scheme, instead we may recharge those costs directly to the undertaker. This means undertakers that comply with the law are not subsidising others' poor practice.

We also work closely with the reservoir engineering community, government departments and general public in ensuring lessons are learned in all aspects of reservoir safety whether that is through the reporting of incidents or providing information about reservoirs, their uses, and their performance.

Until now all our activity under the Reservoirs Act 1975 has been funded by the public purse through NRW's Grant in Aid (GiA) from Welsh Government. Legislation has been introduced enabling us to recover our costs. The charging scheme passes these costs onto to the reservoir undertakers who hold

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<sup>3</sup> Undertaker is the legal term for reservoir owners and operators as defined in the Reservoirs Act 1975

the liability for keeping their dams in a safe condition, instead of making the wider public pay through general taxation.

The consultation responses provided a general acceptance from commercial undertakers and professional advisors that our proposal was reasonable. However, there were responses which advocated 'exemption' from fees, or some similar off-set. These were typically raised by undertakers of reservoirs owned or managed by individuals where there is no commercial gain, or groups such as angling clubs, where it was felt charges may make their activities untenable.

There are over 300 large raised reservoirs in Wales, and at the close of the consultation period we recorded 102 undertakers responsible for them. 16% of these undertakers were private individuals or partnerships, with the remaining falling to public bodies or commercial organisations. Private ownership constitutes a growing proportion of lower risk reservoirs. We consider the proportion of private ownership, where there is no income gained from the reservoir, will continue to increase with the registration of smaller reservoirs being brought into regulation.

NRW, in fulfilling its work under the Reservoirs Act 1975, incurs costs in the monitoring and review all large raised reservoirs, whether they are high risk, obsolete, lower risk reservoirs, orphan reservoirs and/or ones where there is no commercial activity. Funding for these costs must be achieved either through the charging scheme or from GiA.

### **Context of a charging scheme alongside changes in legislation**

The purpose of the Reservoirs Act 1975 is ultimately one of public safety and the law has recently been amended which lowers the capacity threshold of reservoirs from 25,000m<sup>3</sup> to 10,000m<sup>3</sup>. The imposition of a charging scheme for reservoirs coincides with the change in law that brings people into regulation for the first time. For these first time registrations, it is highly probable that some reservoirs belonging to private individuals, from which they gain no income, will incur an immediate cost of circa £5,000 in engineers' fees, and additional variable fees, depending on the scale of works required to bring the reservoir up to minimum safety standards. Our charging scheme must be mindful of this and we should seek to recover our costs with a sensitive approach.

Undertakers that are already required to employ qualified civil engineers to undertaker construction, inspection and supervision activities, may also react adversely to an insensitive additional financial burden which may prompt them to remove their dams without professional supervision in an attempt to reduce their liability. Whilst this would constitute a criminal offence, the activity could itself endanger people and property. The context differs depending on the status of each reservoir under the Reservoirs Act pre and post recent legislative amendments as described in the [Table 2](#) below.

### **Registration**

Since the changes in the Reservoirs Act 1975 came into force on 1 April 2016, we have undertaken to identify waterbodies with the potential for registration under the new law. The activity has focussed on informing current reservoir undertakers, establishing contact with undertakers of reservoirs with a known capacity of 10,000 cubic metres, or which had been lowered below the previous registration threshold of 25,000 cubic metres. We have also acted on information from Local Authority and Environment Agency archives.

We consider that communication with the wider population of people that may own or manage reservoirs, such as the agricultural sector, fisheries and angling clubs, etc. has been less than we consider necessary to allow undertakers reasonable access to our advice and guidance information. Consequently, this group may still be unaware of their liabilities and become subject to liabilities and registration fees with little time to establish proper facts, seek professional advice or budget effectively. As such we will include a period of free registration of 6 months, meaning the imposition of a registration fee will come into effect on 1 October 2017. For clarity:

- Large raised reservoirs with a capacity of 25,000m<sup>3</sup> already registered with us prior to April 2016 will not be subject to a Registration Fee.
- Reservoirs with a capacity of 10,000m<sup>3</sup> or more, newly registered since April 2016 and before 1 October 2017 will not be subject to a Registration Fee.

- Reservoirs with a capacity of 10,000m<sup>3</sup> or more registered from 1 October 2017 will be subject to the Registration Fee, as per Table 1 above.

The cost of registration covers the following activities:

- Pre-registration discussions with potential reservoir undertaker. Receipt of registration documents, review, validation and entry onto the public register, including resolution of omissions & queries
- Infrequent site visits (circa 6/year across all reservoirs), with an engineer to establish facts
- Identification & confirmation of multiple undertakers
- Provisional Designation, including desk study, review by qualified engineer and site visits in some circumstances, notification of designation to undertaker
- Receipt & evaluation of representations against provisional designation and notification to undertaker of Final Designation
- Periodic review of risk designation

Table 2: showing the different impacts of a charging scheme for reservoir

<1 Apr 17		Registration fee	Annual compliance fee
25k m <sup>3</sup> already registered	These reservoirs have mostly been regulated since 1980s and are often the familiar, larger reservoirs used for water supply and commercial purposes.	No registration fee required – this work is complete. Risk designations complete by early summer, c.90% high risk, 10% low risk	Start to pay annual subsistence fee based on risk designation: <ul style="list-style-type: none"> <li>• Low risk: 1 April (some already notified)</li> <li>• High risk: early summer (legal process of designation to complete)</li> </ul>
10k m <sup>3</sup> already registered	<ul style="list-style-type: none"> <li>• These are smaller reservoirs often with a wider variety of uses, or none at all. We'll likely register 70% of these by 1 April 17.</li> <li>• They have never been regulated before. It is reasonable to assume that a greater proportion of these smaller reservoirs will be owned privately and have no particular purpose.</li> <li>• If designated high risk the undertaker will be immediately subject to the following costs for employing engineers (£ approx.): <ul style="list-style-type: none"> <li>○ £1,500/yr supervising engineer</li> <li>○ £3,500 inspecting engineer within first year of designation, and subsequently at least every ten years (current average 8-9 years)</li> <li>○ They will also be liable to implement safety measures at variable cost. As this will be the first ever statutory inspection it is highly likely they will be faced with several measures to bring their reservoir up to acceptable safety standards.</li> </ul> </li> </ul>	No registration fee required as already registered prior to 1 April 17. Assume same percentage of high: low risk	Risk designations may take 12 months to complete, therefore annual subsistence fee will be applied toward end of 2017-18.
10k m <sup>3</sup> not registered	The same comments as above for 10k m <sup>3</sup> already registered. We have yet to complete satisfactory comms with this population and subsequently it is unreasonable to expect registration during the current "free" period	Registration fee to be payable from 1 October 2017 and includes costs of risk designation. We consider that undertakers of unregistered reservoirs after this time will have received sufficient information and advice on which to make a decision. Registration after 1 Oct. may also be considered an offence.	Designation will begin after registration and take up to 12 months, following which annual subsistence fees will be payable. Costs are only incurred at this stage through designation (reg. fee). There are no compliance costs until final designation.

### Annual compliance monitoring fees

The anticipated annual income from a charge imposed on lower risk reservoirs is <£3,000. Our work on these lower risk reservoirs includes monitoring downstream developments to ensure the risk designation remains appropriate which does not benefit the undertaker, but adds to our greater flood risk knowledge. On the contrary, downstream development would have an adverse impact of increasing flood consequence and cause a reservoir to be designated as high risk reservoir, following which the undertaker would be liable for higher annual charges and engineering costs. We also consider the value of this relatively small income will be eroded or outweighed by the additional time needed for advising, implementing and securing cost recovery.

We have therefore changed the fees to remove the annual compliance monitoring fee for reservoirs which we do not consider to be high risk reservoirs, see [Table 1](#) above. These costs will not be added to the registration fee, or annual charges for high risk reservoirs, and we seek to fund this small portion of activity from within GiA. This also reflects that the wider public are the actual beneficiary of this law, not the undertaker who holds all the liability, and it is considered appropriate that this token amount in part reflects the security they gain.

Several responses made suggestions for reduced the fees, or the provision of exemptions, for non-commercial reservoirs which provide wider environmental benefits, such as the attenuation of flood water. This is something we would like to evaluate better as part of our sustainable management of natural resources and have not considered it further in the charging scheme for 2017-18.

Clarity was sought as to the date subsistence fees will be payable from. The subsistence fee is directly linked to the risk designation for the reservoir. The appropriate annual subsistence fee will become payable from the date a Notice of Final Designation provided to the undertakers comes into force, subject to any formal appeal they may bring.

### Cost breakdown

We are asked to provide an explanation of the work required to monitor reservoirs which are in effect fixed assets not subject to significant year on year change.

The charging scheme does not apportion costs to the level of activity attributed to specific reservoirs or undertakers; instead the charges are a portion of the overall cost of NRW's reservoir regulation service shared across the undertakers for large raised reservoirs. It does not include any consideration for individual performance against compliance.

The activities we are charging for are listed below:

- Production & maintenance of general supportive advice & guidance
- Provision of (office based) site specific advice to undertakers; calculated at 2 hours advice for 15% of all LRRs per year
- Site meetings to provide specific advice to undertakers; calculated as 5% of high risk reservoirs per year
- Provide advice specific with discontinuance and abandonment; calculated as 4% high risk reservoirs and 1% lower risk reservoirs, per year
- Provision of reminders to undertakers for forthcoming statutory deadlines; calculated as 1.5 days per week
- Receipt, review & recording all reports, certificates, appointments and other correspondence for activities under Section 6, 7, 10, 11, 12

Our legally recoverable costs for these activities total £55,000 which is currently provided by GiA, this includes the cost of the new activities we must undertake in line with the amended Reservoirs Act, for example registration of newly regulated reservoirs and risk designation.

We also undertake a number of activities the cost of which is *not* recovered through the charging scheme, these are:

#### Enforcement Activities

Provision of site specific advice to reservoir undertakers on enforcement matters, including site meetings and acquisition of advice from qualified civil engineers, legal advice or the preparation of notices, warning letters or enforcement case files.

#### Performance Management & Reporting

Casework reviews & performance monitoring, culminating in the maintenance of the Public Register of Large Raised Reservoirs and production of the statutory Biennial Report to the Minister.

#### Responding to consultations, and information requests

Providing advice and comment on applications for a variety of consents, such as planning, hydropower, etc. Providing response to requests for information on reservoir data and information with due regard to personal, commercial and national data security.

#### Incident Management

Maintain emergency response registers and provide advice to Local Resilience Fora

#### Representation of NRW at UK & international levels through:

- Joint Government Departments & Regulatory Authorities Liaison Group
- UK Reservoir Safety Research Advisory Group
- ICE Reservoirs Act Committee
- UK Reservoir Managers Group
- British Dam Society
- International Commission on Large Dams

To correct the assertion that NRW will use the charging scheme to fund the maintenance of our own reservoirs, we would like to clarify that NRW has two functions under the Reservoirs Act 1975; that of enforcement authority, and as an undertaker for a number of reservoirs. We must fulfil the same standard of duty as other undertakers and are not exempt from regulation.

In our calculation of our recoverable costs we have excluded the cost of managing and operating our reservoirs, and the cost of our regulation of them. We do not therefore seek to recover the cost of these activities from charge-paying undertakers. This was accounted for in the original proposed charges.

#### Risk designation

It has been brought to our attention through the consultation that the process used in deciding our risk designations may be considered overly conservative to enable us to maximise income from the higher tier annual subsistence fees. This is incorrect. The risk designation process was established following an England and Wales wide consultation which took place prior to the establishment of NRW, and prior to any authority being given to recharge our appropriate costs.

Our risk designation uses a precautionary principle where a lack of evidence or doubt as to the clarity of the evidence prompts us to designate a reservoir as a high risk reservoir if we think human life could be endangered in the event of an uncontrolled release of water. This principle has the effect of appearing overly conservative, however we are an evidence based regulator and submission of additional evidence by undertakers may decrease the proportion of high risk reservoirs.

Within our cost calculations, the proportion of time on activities associated with high risk and not-high-risk reservoirs has been calculated.

We have not included a charge for the submission of a request to review a reservoir risk designation. We do not consider this will be necessary in the first year of charges when designations will be newly

notified. We will monitor the significance of designation reviews and consider charging for this in the future.

### **Multiple party responsibilities**

Where there are multiple undertakers with responsibilities under the Reservoirs Act 1975, we will apply one charge to the reservoir. The multiple parties will have to apportion costs between themselves and NRW will not dictate or recommend this apportionment. This could replicate any agreements in place for the sharing of engineers' costs.

The consultation raised a concern that some undertakers, commonly limited companies, will be unable to pay part invoices. We consider this to be a rare event, but in such a case we will direct the undertakers to submit a signed agreement showing the apportionment to be attributed to each undertaker.

It is a requirement of the Reservoirs Act 1975 that undertakers ensure their reservoir is correctly registered and this includes the provision of undertaker name and address. It is in the undertakers' own interests to ensure that all undertakers are correctly registered.