

Explanatory Memorandum to the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021.

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021.

I am satisfied that the benefits justify the likely costs.

Julie James MS
Minister for Climate Change
11 November 2021

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (“DMPWO”) and the Developments of National Significance (Procedure) (Wales) Order 2016 (‘DNSPWO’) (referred to collectively as “the Procedure Orders”) place a statutory requirement on key bodies to be consulted at the pre-application and post-submission consultation stages of the consenting processes for planning applications and applications for Development of National Significance (DNS).
- 1.2 The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021 (referred to as “the Order”), which is the subject of this explanatory memorandum, amends these Procedure Orders so as to make Fire and Rescue Authorities (FRAs) in Wales ‘statutory consultees’ (including references to ‘specialist consultees’) for certain types of development at both pre-application and post-application stages. This will apply to planning applications to be determined by local planning authorities (LPAs) and DNS applications determined by the Welsh Ministers.
- 1.3 In addition, by making FRAs statutory consultees, by virtue of article 15A of the DMPWO, the Order ensures that FRAs are required to respond where the LPA chooses to consult on applications for approval, consent or agreement relating to a planning application on which it was initially consulted. This would include:
 - applications for approval of reserved matters;
 - applications for non-material changes to planning permission; and
 - applications for any other consent, agreement or approval required by any condition or limitation subject to which planning permission has been granted e.g. applications to discharge planning conditions.
- 1.4 As statutory consultees, FRAs will be required to provide a ‘substantive response’ within specified timeframes to consultation requests from developers at the pre-application consultation stage and from LPAs and the Welsh Ministers at the post-submission consultation stages of the application process (articles 2E and 15E of DMPWO and articles 10 and 23 of the DNSPO). FRAs will also be required to do so where LPAs choose to consult further on applications for approval, consent or agreement relating to a planning application on which it was initially consulted. FRAs will also be required to prepare and submit an annual report to the Welsh Ministers documenting their performance in complying with these statutory requirements (article 15F of the DMPWO and article 24 of the DNSPO). What constitutes a ‘substantive response’, the timeframes for responding and the requirements around performance recording are already prescribed in the Procedure Orders for existing statutory consultees.
- 1.5 The Order also contains amendments to the criteria by which the ‘natural resources body for Wales’ (Natural Resources Wales) is consulted on matters of flood risk. These amendments are required as a result of a decision to replace the current TAN 15 development advice map with a new Flood Map for

Planning. The Procedure Orders ensure that Natural Resources Wales is consulted on development in flood zone C of the development advice map. This zone will not exist in the Flood Map for Planning, therefore to ensure developers, local planning authorities and the Welsh Government continue to have a legal basis for consulting with Natural Resources Wales (NRW) on planning applications and DNS proposed in areas of flood risk, it is necessary to amend the Order.

- 1.6 These amendments do not introduce new requirements on Natural Resources Wales, or any other body. The nature of the consultation responses required from NRW is also unchanged as a result of the amendments

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None

3. Legislative background

3.1 The powers necessary for the purpose of making the Order are contained in the Town and Country Planning Act 1990 (TCPA 1990).

3.2 Powers allowing the Welsh Ministers to make provision about pre-application consultation are found in section 61Z of the TCPA 1990. That provision allows them to require developers to consult specified persons before they make a planning application for certain types of development. Those types of development must be specified in a development order.

3.3 The Welsh Ministers are able to make provision about post-application consultation of FRAs using various provisions of the TCPA 1990. Section 59(2)(b) and (3)(a) provide for the making of development orders dealing with the grant of planning permission by local authorities and the Welsh Ministers. Section 74(1)(c) provides that a development order may contain provision requiring local authorities to consult specified persons about a planning application before determining it. In respect of Wales, these powers are now vested in the Welsh Ministers. Section 62R of the TCPA 1990 allows a development order to make provision about consultation by the Welsh Ministers in relation to planning applications submitted to them.

3.4 Section 333(5B) of the Town and Country Planning Act 1990 provides that the procedure for a statutory instrument which contains a development order is the negative resolution procedure.

Consultation under the DMPWO

3.5 Currently, the DMPWO requires that bodies listed in Schedule 4 to that Order be consulted by a developer prior to making a planning application (see articles 2(1), 2B and 2D) and by an LPA before it determines a planning application (see articles 14, 15 and 15ZA).

3.6 However, the pre-application consultation requirement only applies where an application is for development constituting “major development” which is defined in article 2 of the DMPWO as development involving one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where—
 - (i) the number of dwellinghouses to be provided is 10 or more; or

- (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more.

3.7 A body listed in Schedule 4 which is consulted at either pre-application stage or post-application stage must provide a substantive response (see articles 15A and 15B).

3.8 In addition, where a body listed in Schedule 4 is consulted by an LPA in relation to certain other types of application, it must provide a substantive response (see section 100A of the TCPA 1990 and articles 15C and 15D). The applications in respect of which this requirement applies are:

- applications for approval of reserved matters (within the meaning of Section 92 of the TCPA 1990);
- applications for any consent, agreement or approval required by any condition or limitation subject to which planning permission has been granted; and
- applications for non-material changes to planning permission (made under Section 96A of the TCPA 1990).

3.9 Bodies listed in Schedule 4 are also required to produce annual reports for the Welsh Ministers regarding their compliance with certain of their functions in relation to consultation under the Order (see article 15F).

Consultation under the DNSPO

3.10 Similarly, the DNSPO requires that a body listed in Schedule 5 to that Order be consulted by a developer prior to making a planning application (see articles 2, 7 and 9) and by the Welsh Ministers before they determine a planning application (see article 22).

3.11 A body listed in Schedule 5 which is consulted at either pre-application stage or post-application stage must provide a substantive response (see articles 10 and 23).

3.12 Bodies listed in Schedule 5 are also required to produce annual reports for the Welsh Ministers regarding their compliance with certain of their functions in relation to consultation under the Order (see article 24).

Adding FRAs to Schedules 4 and 5

3.13 Adding FRAs to Schedule 4 of the DWMPO and Schedule 5 of the DNSPO will mean that developers, LPAs and the Welsh Ministers will have to consult FRAs about certain types of development and that FRAs will have to provide substantive responses to such consultations as described above. The types of development on which FRAs must be consulted will be specified in the

Schedules. As statutory consultees, FRAs would also have to provide the requisite annual reports to the Welsh Ministers as described above.

- 3.14 Transitional arrangements for developers have been put in place to take account of the lead time required to prepare an application for the specified types of development and to provide FRAs with sufficient notification. The differential phasing of the implementation has been designed to enable FRAs to adapt to the requirements, and be familiar with in-process applications, via pre-application consultation with developers prior to receiving requests to consult from LPAs.
- 3.15 For DNS applications (determined by the Welsh Ministers) neither pre-application nor post-application consultation will be required if the proposed application was notified to the Welsh Ministers (under Article 5 of the DNSPWO) before 24 January 2022 even where the application is submitted after that date. If an application was notified after that date both pre-application and post-application consultation would be required. FRAs will have to provide a substantive response to any consultation of them made on or after 24 January 2022.
- 3.16 In respect of planning applications to be determined by LPAs, the relevant provisions will take effect as follows:

Pre-application consultation stage:

- Developers may voluntarily undertake consultation with FRAs from 24 January 2022 onwards (three months after laying).
- Developers will be required to have conducted pre-application consultation in relation to any application submitted to LPAs on or after 25 April 2022 (six months from laying). Applications submitted before that date will be validated in any case (i.e. even where the formal Pre-application Consultation Report does not evidence consultation has been undertaken with FRAs).
- FRAs will be required to provide a substantive response to any pre-application consultation request received from developers on or after 24 January 2022 (three months after laying).

Planning application stage:

- Where an application concerns specified development, LPAs will be required to have consulted the relevant FRA only where permission is granted on or after 25 April 2022 (six months from laying) and FRAs will be required to provide a substantive response to these consultation requests.

Substantive Responses by FRAs:

- Where a developer, LPA or the Welsh Ministers choose to consult an FRA on or after 24 January, the FRA will be required to respond in accordance with the relevant provisions of the legislation.

Adding NRW to Schedules 4 and 5

- 3.17 The amendments to the Order in relation to flood risk and the natural resources body for Wales are not subject to transitional arrangements. They will come into force on 1 December 2021 and will apply to pre-application consultation and post-application consultation from that date. The date on which these amendments come into force is the date on which the new Technical Advice Note 15 and the Flood Map for Planning will take effect. They will be subject to a lead-in period of 9 weeks, from 28 September, when they will be made available publicly. This lead-in period will allow local planning authorities and developers to prepare for their formal publication on 1 December.
- 3.18 The introduction of the Flood Map for Planning to replace the development advice map can be regarded primarily as a procedural change. Both maps show areas at risk of flooding, but using zones with different definitions and names. An important element of continuity between the two maps is the principle that they are kept up-to-date. The development advice map was updated every 6 months, and the Flood Map for Planning will maintain that arrangement. Users of the planning system are familiar with using a map that changes periodically without the use of transitional arrangements. The introduction of the Flood Map for Planning in place of the development advice map is not considered to be a more significant change than an update of the same map is capable of being.

4 Purpose and intended effect of the legislation

Fire and Rescue Authorities

- 4.1 The Building Safety Expert Group convened by the Welsh Government following the Grenfell Tower tragedy of June 2017 recommended that FRAs should be more closely involved in the planning, design and construction of high-rise residential buildings. The Order responds to this recommendation by making FRAs in Wales a statutory consultee for certain types of development at the pre-application and post-applications consultation stages of the planning and DNS application processes. This is to ensure specialist advice from FRAs on fire safety informs both the preparation and determination of planning applications for certain types of development deemed to present greater fire risk. Primarily, that advice will relate to the provision of water supply for firefighting and site access for fire and rescue appliances.
- 4.2 Further, having information about developments posing a greater fire risk will allow FRAs to plan the long-term allocation of resources more effectively.
- 4.3 At present, FRAs are not listed in the Procedure Orders as a statutory consultee that must be specifically consulted on planning and DNS applications. Instead, FRAs may be consulted at the discretion of developers and determining bodies (LPAs and the Welsh Ministers). They are not required to provide a substantive response to any such enquiry.

- 4.4 The effect of the Order will be to amend the Procedure Orders so as to require that FRAs are consulted in relation to planning applications for types of development posing a higher fire risk.
- 4.5 Specifically, developers will be required to consult the relevant FRA prior to submitting their application, consider their representations, and confirm in a pre-application consultation report whether the issues raised have been addressed and, if so, how they have been addressed. A pre-application consultation report is a validation requirement for planning applications and will form part of the final application submission.
- 4.6 The types of development for which developers must consult FRAs are as follows:
- waste development (as defined in Article 2 of DMPWO);
 - the provision of dwellinghouses where either the number of dwellinghouses to be provided is 10 or more or the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the number of dwellinghouses to be provided is 10 or more;
 - the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
 - development on a site having an area of 1 hectare or more.
- 4.7 LPAs (or the Welsh Ministers) will be required to consult FRAs to inform their determination of applications for developments representing a higher fire risk. All applications for the types of development listed above will be subject to consultation in addition to development:
- which provides ten or more flats (whether by increasing the number of flats within an existing building or otherwise);
 - which provides residential accommodation of ten or more rooms, not contained in dwellinghouses or flats, which are not solely used for cooking purposes and are not toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms; or
 - which provides residential accommodation of ten or more rooms contained in a dwellinghouse or flat used as a house in multiple occupation, which are not solely used for cooking purposes and are not toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms.
- 4.8 In line with the current approach for statutory consultees, it will be at the discretion of the LPA as to whether to consult FRAs further on applications for approval, consent or agreement relating to a planning application on which they were initially consulted.
- 4.9 Where an FRA is consulted on an application (whether by a developer, an LPA or the Welsh Ministers) it will have to provide a 'substantive response'. As stated above, this is a requirement that applies to all statutory consultees, with the timescales for responding and definition of what constitutes a 'substantive response' set out in the Procedure Orders.

4.10 The types of development for which LPAs, the Welsh Ministers and developers must consult the FRAs go beyond that recommended by the Building Safety Expert Group (i.e. limited high-rise buildings) and instead cover a broader range of development that may cause concern from a fire safety perspective. This is because many of the risks to safety are broadly the same regardless of the size of the building.

Flood risk development

4.11 The purpose and intended effect of the amendments is to ensure a continuation in the existing requirement for ‘the natural resource body for Wales’ (Natural Resources Wales) to provide advice on planning applications and DNS proposed in areas of flood risk (from rivers and the sea). Specifically, NRW will be consulted on developments in areas of flood risk shown on the Flood Map for Planning defined in Technical Advice Note 15 as follows:

Flood Map for Planning zone	Definition
Zone 3 (rivers and the sea)	Risk greater than 1:100 (rivers) / 1:200 (the sea) <i>plus</i> climate change
Zone 2 (rivers and the sea)	Risk between 1:100/1:200 <i>plus</i> climate change and 1:1000 <i>plus</i> climate change
TAN 15 Defended Zones	Areas in Zones 2 and 3 (rivers and the sea) where defences have a standard of protection of at least 1 in 100 <i>plus</i> climate change

5 Consultation

Fire and Rescue Authorities

5.1 A 12 week consultation ran from 28 July 2020 to 23 October 2020 on the draft Regulations and accompanying guidance. The consultation was drawn to the attention of a wide audience of key stakeholders including LPAs in Wales, the Chief Fire Officers, Business Fire Safety Officers in FRAs, Fire Brigades Unions and the Retained Firefighters Union. In total, 32 responses were received to the consultation.

5.2 The majority of respondents agreed with the principle of making FRAs statutory consultees (94% answered either ‘Yes’ or ‘Yes Subject to Comment’). Support was strong across all sectors.

5.3 There was general support for the proposed types of development that trigger the requirement for public consultation but some responses suggested additional types could be included (small care homes, small hotels and buildings with cladding over two storeys). There was some support for flexibility so that the types of development can be amended based upon evidence.

5.4 The principle of using 10 or more flats or residential accommodation of 10 or more rooms as a consultation trigger for FRA consultation was largely

supported but some responses suggested alternative approaches. LPAs were generally split on the matter.

- 5.5 In response, the Welsh Government note that Determining Authorities will be able to continue to voluntarily consult FRAs on developments below the prescribed threshold, or other types of application, and FRAs may also submit representations to Determining Authorities for applications outside of the prescribed threshold on a non-statutory basis. However, it is anticipated that the majority of such developments will be captured by the proposed thresholds. For these reasons, the thresholds will not be changed.
- 5.6 A majority of LPAs considered that the proposal would have a limited impact upon their resources. The need for a correct, timely substantive response is seen as essential to mitigating any impact upon resources.
- 5.7 There was agreement across all sectors that the proposals will result in a need for additional resources within FRAs and that there is potential for existing FRA resources to be impacted without further funding. LPAs were in agreement that FRAs will need to have sufficient resources to be able to respond in a timely, clear and concise manner. There was a need identified for FRAs to be suitably trained to provide consultation responses. An assessment of the estimated costs for FRAs is set out in the Regulatory Impact Assessment (RIA).
- 5.8 In response, the Welsh Government acknowledge that taking forward the proposal incurs some additional costs for FRAs but, on balance, consider that such costs are generally balanced by the savings arising from greater efficiency in the determination process and improved long-term fire safety.
- 5.9 The consultation report is available at: https://gov.wales/fire-and-rescue-authorities-becoming-statutory-consultees-development-management-process?_ga=2.268049934.1613042593.1634287373-1115937830.1624440204.

Flood risk development

- 5.10 The amendments to the Order have not specifically and directly been subject to consultation. The introduction of the Flood Map for Planning, which necessitates the amendments, was subject to consultation as part of the wider consultation on a new Technical Advice Note 15 between October 2019 and January 2020. The introduction of the new map was welcomed and recognised as an important step in bringing the overall advice on planning and flood risk up to date. A draft version of the Flood Map for Planning was made available on an informal consultation basis from November 2020-January 2021. This exercise further established the legitimacy of introducing the Flood Map for Planning and replacing the development advice map.
- 5.11 The consultation report is available at <https://gov.wales/technical-advice-note-15-development-flooding-and-coastal-erosion>.

PART 2 – REGULATORY IMPACT ASSESSMENT

The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021

1. Fire and Rescue Authorities

Options

1.1 Two options have been considered:

- **Option 1** - Do nothing (i.e. continue with the current discretionary arrangements in which developers, LPAs and the Welsh Ministers choose whether or not to consult the FRAs, with no requirement for FRAs to respond within a set statutory timescale to consultation requests).
- **Option 2** - Introduce an amending Order to:
 - prescribe FRAs as a statutory consultee on planning and DNS applications for certain types of development at the pre-application and post-application consultation stages of the process,
 - require FRAs to respond where LPAs choose to consult further on applications for approval, consent or agreement relating to planning applications on which it was initially consulted, and
 - place a duty on FRAs to respond to consultation requests within a prescribed period.

Justification for 2 options

- 1.2 A third option is not proposed as it is considered that there is no other reasonable way of achieving the policy intention.

Costs and Benefits

Option 1 – Do Nothing (i.e. continue with the current discretionary arrangements in which developers, LPAs and the Welsh Ministers choose whether or not to consult the FRAs, with no requirement for FRAs to respond within a set statutory timescale to consultation requests).

Description

- 1.3 There would be no change to the current legislation under this option. It would mean that at the pre-application and post-application consultation stages of both planning and DNS application processes, developers, LPAs and the Welsh Government would continue to have the discretion over whether to

consult FRAs. FRAs would also continue to have the discretion whether to respond to consultation requests, with no statutory timescales set for responses to be provided or requirement to monitor their performance in responding.

Costs

- 1.4 This is the baseline option and as such there are no additional costs or benefits with this option. The following provides a summary of the current situation.

Fire and Rescue Authorities

- 1.5 This option does not result in any additional costs to FRAs. Developers and determining bodies (LPAs and the Welsh Government) would continue to engage with FRAs, and vice versa, on a discretionary basis at pre-application and post-application consultation stages, and where LPAs choose to consult further on applications for approval, consent or agreement relating to planning applications. There is currently no statutory duty for FRAs to provide a substantive response when consulted, or to monitor their performance in responding.
- 1.6 FRAs will continue to choose the applications, to which they wish to provide a consultation response, selecting applications from weekly planning application lists published by each LPA or by responding to consultation requests from LPAs or the Welsh Government. They will also continue to choose to respond to any consultation requests received from developers.
- 1.7 Mid and West Wales Fire and Rescue Service (MWWFRS) and South Wales Fire and Rescue Service (SWFRS) have confirmed to the Welsh Government that the current consultation responses from FRAs for both pre-application and post-application engagement are generally limited to representations on access issues for firefighting equipment and water supplies for firefighting purposes.
- 1.8 FRAs are estimated to require 0.5 days (3.6 hours) of Watch Manager B (WMB)¹ grade time (annual gross salary of £55,014²) per response in order to consider the proposed development, liaise with the developer or determining body, and provide a written response. This time estimate and gross hourly rate³ of a WMB results in a cost of approximately £125 per response.
- 1.9 The time estimate of 3.6 hours per response is approximately the median of the current range of time required to provide consultation request as estimated by MWWFRS (2.5 to 5 hours per application). The estimates of time and grade are broadly comparable with the resource requirements of some existing statutory consultees that provide consultation responses on focused and limited matters of consideration.

¹ MWWFRS estimated that this staff grade would be responsible for FRA consultation responses.

² Salary information provided by MWWFRS, includes employer on-costs

³ £55,014 annual salary / 220 working days = £250 (cost per day) / 7.24 (hours per day) = £34.54 (cost per hour)

FRA	Average number of planning responses provided by the FRA per year
South Wales FRS	Average of 70 per year (87 for 2019/20 and 53 for 2018/19)
Mid and West Wales FRS	Average 7.5 per year (22 total)
North Wales FRS	No data provided and so worst-case scenario of 42 per year is assumed which is based on the application of the 30% response rate of SWFRS (from 2018 to 2020) to the average amount of major applications determined per year by NWFRS (137).

Table 1 – Average number of planning responses issued by FRAs

- 1.10 Based on information received from MWWFRS and SWFRS, an average of approximately 120 consultations per year across the three FRAs is estimated across Wales (see Table 1), which gives a total approximate annual cost estimate to FRAs of £15,000.

FRA	Regional proportion of average consultations provided per year by FRAs	Estimated annual cost under Option 1
NWFRS ⁴	35%	£5,200
MWWFRS ⁵	6%	£1000
SWFRS ⁶	58%	£8,700

Table 2 – Annual cost per FRA for providing consultation responses over the assessed period⁷.

Local Planning Authorities

- 1.11 This option does not result in any additional costs to LPAs as they would continue to engage with FRAs on a discretionary basis. Currently, LPAs either consult FRAs on planning applications or applications for approval, consent or agreement relating to planning applications, based on their judgement of each proposal, or receive voluntary representations from FRAs.
- 1.12 The total average cost to LPAs of consulting an FRA is estimated to be approximately £35.00 per application. This calculation is based on an estimated

⁴ Gwynedd, Ynys Môn, Conwy, Denbighshire, Wrexham, Flintshire and Snowdonia.

⁵ Carmarthenshire, Ceredigion, Neath Port Talbot, Pembrokeshire, Powys, Swansea, Pembrokeshire Coast and Brecon Beacons (75% of area).

⁶ Monmouthshire, Torfaen, Blaenau Gwent, Merthyr Tydfil, Rhondda Cynon Taf, Bridgend, Vale of Glamorgan, Cardiff, Caerphilly, Newport and Brecon Beacons (25% of area).

⁷ The assessed period is 2017-2020.

average of 30 minutes for an administrative officer (annual gross salary of £25,451⁸) to notify the FRA, and 60 minutes for a senior planning officer (annual gross salary of £41,518⁹) to liaise with the FRA and consider their response in informing the determination. It is understood from correspondence with LPAs that consultation with statutory consultees or other public bodies are mostly conducted electronically for efficiency purposes; therefore, no postage/printing costs have been included.

- 1.13 The number of cases for which FRAs have been consulted by LPAs are not recorded. On this basis, it has been estimated that approximately 90% of the 120 responses provided per year on average by FRAs would have been submitted in response to an LPA request (the remaining 10% being in response to developer requests). This estimate gives a total of 108 LPA consultations per year of FRAs across Wales, which multiplied by the gross hourly rates of the relevant staff¹⁰ gives an estimated approximate total annual cost to all LPAs of £4,000 per year (£160 per LPA).

Welsh Government

- 1.14 Planning and Environment Decisions Wales (PEDW) process DNS applications on behalf of the Welsh Ministers. This option does not result in any additional costs to PEDW as they would continue to engage with FRAs on a discretionary basis. Under this option, PEDW would either consult FRAs based on their discretionary judgement, or receive voluntary representations from FRAs.
- 1.15 The total average cost to PEDW of consulting an FRA is estimated to be £60.00 per application. This estimate is based on 30 minutes of PEDW administrative officer time (annual gross salary of £28,329) to notify and liaise with the FRA and 60 minutes of PEDW inspector time (annual gross salary of £80,906) to interpret and summarise the FRA response. All PEDW consultation with statutory consultees or other public bodies are conducted electronically; therefore, no postage/printing costs have been included.
- 1.16 To date it has not been necessary for PEDW to consult FRAs in order to inform the determination of DNS applications and so the cost to the Welsh Government of consulting FRAs could be as low as zero under this option. If PEDW decided to consult FRAs on every application, the total average cost to PEDW of consulting FRAs would be approximately £180 per year, based on an

8 Welsh average gross salary for the LPA role of 'Average Technical Assistant/Planning Support Officer' as identified in the supporting data to the Welsh Government report entitled: 'The Cost of Delivering a Development Management Service in Wales' (Arup, January 2021).

9 Welsh average gross salary for the LPA role of 'Average Senior Planning Officer' as identified in the supporting data to the Welsh Government report entitled: 'The Cost of Delivering a Development Management Service in Wales' (Arup, January 2021).

10 LPA Admin Officer:- £25,451 gross annual costs / 220 working days = £115 (cost per day) / 7.24 (hours per day) = £15 (cost per hour). LPA Senior Planning Officer:- £41,518 gross costs / 220 = £188 / 7.24 = £26 (cost per hour).

average of 3 DNS applications¹¹ per year on average received between 2016 to April 2021 and the gross hourly rates of the relevant staff¹².

Development Industry

- 1.17 Under this option, consultation with FRAs at the pre-application stage is discretionary for developers, so they will not incur any costs unless they choose to engage with consultees at the pre-application stage. If they do not choose to engage with FRAs then there may be costs associated with having to amend their application to address fire safety issues that may arise later in the development process and require them to make amendments to the development.
- 1.18 There is no standard cost for conducting consultation by developers, as the costs of engagement between FRAs and developers will vary depending on the complexity of the proposal and staff allocated to the exercise. Some development proposals may also require changes to ensure that they address concerns raised by FRAs.
- 1.19 Developers will normally appoint planning consultants to undertake any pre-application consultation. Based on the average salary¹³ of a planning consultant (£58 per hour) and an assumed average time estimate of 60 minutes per application to notify and liaise with FRAs and consider and report their response in support of their application, it is estimated that the cost to the developer of consulting FRAs on development proposals is approximately £60 per application.
- 1.20 There is no published data available that records the number of cases for which FRAs have been consulted by developers. As developer consultation with FRAs is discretionary, anecdotal evidence suggests that it is at best only occurring in a very small number of cases. On this basis and taking a worst case scenario, it is anticipated that approximately 10% of the 120 responses provided per year on average by FRAs¹⁴ would have been submitted in response to a developer request. This estimate gives a total of 12 developer consultations per year of FRAs across Wales, which gives a combined total annual cost to the development industry of approximately £700.

11 PEDW confirmed that, as of May 2021, 16 DNS applications were submitted to PEDW from July 2016 to 12 May 2021. 16 / 5 years = 3.2 average per year (rounded to 3).

12 PEDW Admin Officer:- £28,329 gross annual costs / 220 working days = £129 (cost per day) / 7.24 (hours per day) = £18 (cost per hour). PEDW Inspector:- £80,906 gross annual costs / 220 working days = £368 (cost per day) / 7.24 (hours per day) = £50 (cost per hour).

13 Based on a WG public sector technical and professional services procurement framework.

14 90% of the 120 responses provided by FRAs (see paragraph 1.13 for further information).

Benefits

Fire and Rescue Authorities

- 1.21 FRAs will continue to be able to exercise their discretion over which applications they wish to provide responses on and control their costs accordingly. However, FRAs would continue to lack a clear framework of which applications they should provide responses on. This would result in a continuation of the current discretionary approach from developers and LPAs/Welsh Government, which places a degree of responsibility on FRAs to regularly monitor LPA application lists to determine which proposals they should comment on.
- 1.22 The lack of a clearly defined process of engagement would mean that FRAs would be less likely to productively engage with the planning system resulting in:
- increased operational risks to FRAs arising from inappropriate development from a fire safety perspective being approved; and
 - less understanding by FRAs of developments within their areas and associated resource requirements for them.
- 1.23 Less FRA engagement with developers at the pre-application stage would result in a greater risk of increased resource expenditure by FRAs should they choose to comment and object to development at the determination stage or seeking post-submission amendments and conditions to address fire safety issues.
- 1.24 Option 1 would fail to address the recommendation for formalised engagement with FRAs prior to planning approval in respect of higher risk buildings, as identified in Dame Judith Hackitt's Independent 'Review of Building Regulations and Fire Safety'¹⁵ and the Welsh Government 'Safer Buildings in Wales' white paper¹⁶.

Local Planning Authorities

- 1.25 LPAs will continue to be able to exercise their discretion over which applications they wish to consult FRAs on and control their costs accordingly. However, LPAs may not have the specialist knowledge and skills to identify potential fire safety concerns. Furthermore, because there is currently no requirement for developers to consult FRAs at the pre-application stage for major developments, and include their feedback in a Pre-Application Consultation Report, LPAs are at greater risk of missing fire potential safety issues that could trigger the need for FRA engagement.
- 1.26 Insufficient consultation of FRAs could result in:

¹⁵ Building a Safer Future Independent Review of Building Regulations and Fire Safety: Final Report (May 2018)

¹⁶ Safer Buildings in Wales: A consultation (gov.wales) - <https://gov.wales/sites/default/files/consultations/2021-01/consultation.pdf>

- long-term fire safety issues that the planning system could have addressed; and
- objections and requested amendments from FRAs late into the determination process, which would take greater resource to address than had FRAs been consulted earlier in the process and may delay the determination of applications.

Welsh Government

- 1.27 PEDW will continue to be able to choose which DNS applications to consult FRAs on and control their costs accordingly. However, PEDW may not have the specialist knowledge and skills to identify potential fire safety concerns.
- 1.28 Insufficient consultation of FRAs could result in:
- long-term fire safety issues that the planning system could have addressed; and
 - objections and requested amendments from FRAs late into the determination process, which would take greater resource to address than had FRAs been consulted earlier in the process and may delay the determination of applications.

Development Industry

- 1.29 Developers will continue to exercise their discretion over whether to consult FRAs on applications, providing flexibility. However, developers may not have the specialist knowledge and skills to identify and consider potential fire safety concerns that warrant FRA assessment.
- 1.30 Insufficient consultation of FRAs could result in objections or requested amendments from FRAs late into the determination process, which would take greater resource for developers to address, via changes to the development proposal, than had FRAs been consulted earlier in the planning process. This could lead to a risk of delay in the determination of the planning application, and could even result in the refusal of an application on fire safety grounds.
- 1.31 There is a risk to the overall implementation of the development due to fire safety issues being identified as part of other regulatory regimes, such as building regulations, or issues that have arisen during the use or operation of the development, which may require changes to the development via amendments to the existing permission or a new planning permission.
- 1.32 In addition, fire safety risks associated with the development may also result in reputational risk to the developer.

Option 2 - Introduce an amending Order to:

- **introduce FRAs as a statutory consultee on planning and DNS applications for certain types of development at the pre-application and post-application consultation stages of the process;**
- **require FRAs to respond where LPAs choose to consult further on applications for approval, consent or agreement relating to planning applications on which it was initially consulted; and**
- **place a duty on FRAs to respond to consultation requests within a prescribed period.**

Description

- 1.33 This option would make FRAs a statutory consultee on planning and DNS applications for certain types of development at the pre-application and post-application consultation stages of the process.
- 1.34 At the pre-application stage, Option 2 would mean that developers will be required to consult FRAs and consider their representations on development proposals that constitute major development and DNS where they fall within the description of development specified in the legislation prior to submitting their application for determination.
- 1.35 At the post-application stage, LPAs and the Welsh Government will be required to consult FRAs and take into account their representations on development proposals that fall within the specified description of development to inform their determination of planning or DNS applications.
- 1.36 It will also mean that FRAs will be required to respond where LPAs have chosen to consult them on applications for approval, consent or agreement relating to planning applications on which they were initially consulted, such as on applications for the approval of non-material amendments, reserved matters or discharge of planning conditions.
- 1.37 As is the case with existing statutory consultees, FRAs will be required to provide a 'substantive response' to these consultation requests within specified timeframes, and submit a performance monitoring report to the Welsh Government on an annual basis. The details of these specific requirements are already prescribed in the Procedure Orders.

Costs

Fire and Rescue Authorities

- 1.38 The proposal is considered to place some additional costs on FRAs, as they will be required to deploy further resources to scrutinise development proposals that they previously would not have been consulted on or may have chosen not to respond to.

- 1.39 Furthermore, when FRAs are consulted in the specified circumstances they will be obliged to provide a 'substantive' response within statutory timeframes and submit an annual report to the Welsh Government documenting their performance in complying with their statutory requirements¹⁷.
- 1.40 From discussions with FRAs, they have confirmed that the focus of their responses when consulted will continue to be focused on the following issues:
- Access – ensuring adequate access to a site for appropriate numbers and types of FRA appliance; and
 - Water – ensuring adequate water supply to the site for FRA responses to fire.
- 1.41 As FRA consultation responses will continue to be on focused and limited matters of consideration, it is anticipated that the staff grade and time taken to currently provide a consultation response continues to be a reasonable and appropriate estimate for the purposes of calculating FRA costs under Option 2. Therefore, it is anticipated that the FRA cost per application of responding to pre-application and post-application consultations will be the same under Option 2 as under Option 1 i.e. £125 per response.
- 1.42 Over a three financial year pre-pandemic period in Wales, it is estimated that there have been on average 1,168 consultations per year that would be subject to FRA consultation by developers, LPAs and PEDW under the requirements proposed by Option 2 (581 applications for major development and 3 DNS applications per year).
- 1.43 The average annual number of major development applications (excluding minerals developments) has been derived from the Welsh Government Development Management Quarterly Survey of LPAs. This is on the basis that the description of developments specified in the amending Order in which FRAs are to be consulted at both consultation stages align with those that constitute major development as defined in Article 2 of the DMPWO (with the exception of minerals developments which have been removed from the final total).
- 1.44 The description of developments triggering the FRA consultation requirements also capture any developments that provide for 10 or more flats or residential accommodation of 10 or more rooms. This type of development falls outside the definition of 'major development' and so would not trigger the need for pre-application consultation from developers. Therefore they do not need to be factored into the calculation for pre-application consultation.
- 1.45 FRAs would however be consulted on developments of this type by LPAs at the post application stage of the process. Neither the Welsh Government nor LPA databases categorise application data according to the category of 10 or more flats or residential accommodation of 10 or more rooms. Therefore, post-application consultation data for these specific types of development are not

¹⁷ As defined in Articles 2D, 15A to 15C, 15E and 15F of the DMPWO relating to planning applications and Articles 10, 23 and 24 of the DNSPO relating to DNS applications.

factored into the calculations. Based on our best estimate, it is anticipated that applications for these specific development types will generate negligible additional consultations, with the majority likely to be captured by other triggers that are common to major development - i.e. provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more, or development carried out on a site having an area of 1 hectare or more.

- 1.46 FRAs will also be required to respond where LPAs have chosen to consult them on applications for approval, consent or agreement relating to planning applications on which they were initially consulted. These forms of consent have not been factored into the total as any costs associated with them would not represent a new cost from the status-quo represented by Option 1, i.e. the current system of LPA discretionary consultation will continue for Option 2. There is no data held on what proportion of these applications LPAs currently consult FRAs on, but it is expected to be negligible in light of an estimated total average of 120 FRA consultation responses per year currently provided by FRAs in Option 1 (see Table 1).
- 1.47 On the basis of the above approach, a cost estimate of approximately £146,000 per year across all FRAs is identified to provide the required responses across Wales. A cost breakdown per FRA is provided below in Table 3 (based on the regional proportion of applications for major development submitted over the last three years¹⁸).
- 1.48 Under Option 2, a statutory requirement for FRAs to provide the Welsh Government with performance monitoring reports is introduced. It is assumed that FRAs currently record their performance in responding to consultations, for instance MWWFRS do this via the Community Fire Risk Management Information System (CFRMIS). Therefore, a one-off cost of establishing a recording system is not anticipated. If an FRA does not have an existing response recording system in place, then a system as informal as a spreadsheet could be used to produce reports of their performance at negligible cost.
- 1.49 It is estimated that one day of WMB grade staff time (£250) per FRA is required per year to produce an annual performance monitoring report. This estimate is based on the time taken by existing statutory consultees from within Welsh Government to provide annual performance monitoring reports in relation to their responses to planning consultations. As it is estimated that FRAs already monitor their own performances, the annual monitoring cost to FRAs under Option 2 is estimated to be approximately £750 (£250 per FRA) based on the cost of producing annual reports.
- 1.50 The total annual cost to FRAs of providing consultation responses and monitoring performance is estimated to be approximately £146,750. This represents an approximate cost increase of £132,000 across all FRAs compared to Option 1.

¹⁸ Data derived from the Welsh Government Development Management Quarterly Survey of LPAs.

FRA	Proportion of applications for major development received over the assessed period	Estimated annual cost under Option 2
NWFRS ¹⁹	24%	£35,000
MWWFRS ²⁰	35%	£51,500
SWFRS ²¹	41%	£60,000

Table 3 - Regional break-down of FRA total costs under Option 2.

- 1.51 FRAs set their own budgets by levying contributions on their constituent local authorities, a process over which the Welsh Government has no control. Accordingly, the increase in cost is to be met from the budgets of each FRA as is currently the case with existing statutory consultees to the planning process. It is estimated that costs will be recouped through efficiency gains and savings due to improved fire safety in developments and efficiencies in responding to fire safety issues, which can't be quantified.

Local Planning Authorities

- 1.52 Under Option 2, LPAs will be required to consult FRAs to inform their determination of planning applications for certain types of development. LPAs will continue to be able to consult FRAs at their discretion on applications for approval, consent or agreement relating to planning applications on which they were initially consulted, such as on applications for the approval of non-material amendments, reserved matters or discharge of planning conditions.
- 1.53 It is considered that the LPA cost of consulting FRAs per application will be the same as Option 1 (£35 per application) because no additional tasks or expenditures are required per consultation request under Option 2 than are currently required under Option 1.
- 1.54 Data relating to applications for major development is also used as the means of establishing a reasonable estimate of LPA consultations per year, as the description of developments requiring LPA consultation with FRAs align with those that constitute 'major development' as defined in the DMPWO (excluding minerals development). This means that over a three financial year pre-pandemic period²², LPAs in Wales received a yearly average of 581²³ applications for major development per year that would meet the proposed

¹⁹ Gwynedd, Ynys Môn, Conwy, Denbighshire, Wrexham, Flintshire and Snowdonia.

²⁰ Carmarthenshire, Ceredigion, Neath Port Talbot, Pembrokeshire, Powys, Swansea, Pembrokeshire Coast and Brecon Beacons (75% of area).

²¹ Monmouthshire, Torfaen, Blaenau Gwent, Merthyr Tydfil, Rhondda Cynon Taf, Bridgend, Vale of Glamorgan, Cardiff, Caerphilly, Newport and Brecon Beacons (25% of area).

²² 2017/2018 to 2019/2020.

²³ Welsh Government Development Management Quarterly Survey of LPAs

criteria for FRA consultation under Option 2, which would trigger the need for 581 LPA consultations of FRAs per annum.

- 1.55 In line with the approach taken with FRA costs, developments that provide 10 or more flats or residential accommodation of 10 or more rooms have not factored in for reasons set out in para 6.44.
- 1.56 Under Option 2, LPAs may also decide to use their discretion to consult FRAs further on applications for approval of reserved matters, non-material changes to planning permission approvals and applications for any other consent, agreement or approval required by any condition or limitation subject to which permission has been granted. These forms of consent have not been factored into the total LPA costs under Option 2 as any costs associated with them would not represent a new cost from the status-quo represented by Option 1. There is no data held on what proportion of these types of application LPAs currently consult FRAs on, but the amount is expected to be negligible in light of an estimated total average of 120 consultation responses per year provided by FRAs for Option 1.
- 1.57 Based on an average of 581 LPA consultations of FRAs per year under Option 2, the total annual cost to LPAs under Option 2 is estimated to be approximately £20,300 i.e. £810 per LPA. This represents an approximate cost increase from Option 1 of £16,300 across all LPAs i.e. approximately £650 additional cost per LPA.
- 1.58 The majority of LPAs who responded to the consultation stated that the proposal would have little or no material impact upon LPAs resourcing.
- 1.59 Planning fees set by the Welsh Ministers are subject to the principles of Managing Welsh Public Money. The basic principle is any fees for services provided by public sector organisations are to recover the full costs of providing those services. Hence, planning fees are targeted and designed to recover the full cost of providing the development management service. In accordance with these principles, a recent 20% increase²⁴ in fees for planning and related applications is designed to allow LPAs to move closer to full cost recovery and the Welsh Government are also undertaking further work to achieve full LPA cost recovery in the delivery of the development management service. It is therefore anticipated that LPA costs for FRA consultation are to be offset by planning fees.

Welsh Government

Determination of DNS applications

- 1.60 Under Option 2, PEDW will be required to consult FRAs to inform their determination of DNS applications for certain types of development.

24 Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020 which came into force on 24 August 2020.

- 1.61 It is considered that the cost to PEDW for consulting FRAs per application will be the same as Option 1 (£60.00 per application) because no additional tasks or expenditures are required per consultation request under Option 2 than are currently required under Option 1.
- 1.62 Of the 16 DNS applications submitted since 2016, 13 would qualify as requiring mandatory FRA consultation by PEDW under the criteria proposed under Option 2. Therefore, we would expect an average of 3 DNS applications requiring FRA consultation per year under Option 2 which would lead to a Welsh Government cost of approximately £180 per year.

Production of guidance

- 1.63 Option 2 would result in a one-off cost to the Welsh Government of providing standalone guidance on the new requirements and notifying LPAs and FRAs. Based on the average gross daily salary for a Higher Executive Officer (HEO) grade officer (£49,893²⁵) and the time estimated for drafting the guidance and notifying LPAs/FRAs (three hours), it is estimated that there will be a new one-off cost to the Welsh Government of approximately £100.

Development Industry

- 1.64 The current requirement to undertake pre-application consultation by developers applies to all planning application for major development and DNS applications, as defined in the DMPWO and DNSPO. Under Option 2 developers will be required to undertake pre-application consultation with FRAs on development proposals that constitute major development or DNS and fall within the description of development specified in the amending Order.
- 1.65 Under Option 1, at the pre-application stage, developers can use their discretion on whether to consult FRAs and how to report their response as part of an application. Under Option 2, FRAs will be prescribed as a specialist consultee meaning that they must be consulted at pre-application stage for applications for major development by developers and copies of the response received included within the Pre-application Consultation Report, with an explanation of the account taken of each response²⁶. The cost to developers for consulting FRAs per application will be the same as Option 1 because it is considered that no additional tasks or expenditures are required per consultation request under Option 2 than are currently required for consultees under Option 1. This means the cost to developers of consulting FRAs at this stage of the process is estimated to be £58 per application.
- 1.66 In order to calculate an estimated cost for the development industry as a whole, major development application data has been used (see paragraph 1.42). This is due to pre-application consultation for planning applications only applying to major development. The data excludes minerals development, as this

²⁵ Welsh Government Average Pay Costs 2020-21.

²⁶ Article 2F(2)(f) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

development type does not form part of the description of development requiring FRA consultation. Based on the average number of major planning and DNS applications received over the last three years²⁷ that would meet the proposed criteria for FRA consultation under Option 2, the estimated total cost to the industry would be approximately £34,000. This is expected to constitute an approximate increase in cost of approximately £33,000.

- 1.67 The increase in developer consultation costs is anticipated to only represent a very small portion of the overall development costs, particularly for major developments, and should be balanced by potential efficiency gains in terms of reduced developer resource expenditure at the post application stage and less likelihood of delays in determination.

Summary table – Option 1 and Option 2 costs per stakeholder per year

Stakeholder	Option 1 cost per year	Option 2 cost per year	Cost increase per year
FRAs ²⁸	£15,000	£146,750	+ £132,000
LPAs ²⁹	£4,000	£20,300	+ £16,000
Welsh Government ³⁰	£0-180	£280	+£0-280
Development industry ³¹	£700	£34,000	+£33,000

Table 4 – Summary of approximate costs

Benefits

Fire and Rescue Authorities

- 1.68 FRAs were represented in the Building Safety Expert Group that recommended making FRAs statutory consultees in the planning process. All three responded to the consultation and were broadly supportive of our proposal to make them a statutory consultee.
- 1.69 Option 2 provides a more formal process ensuring greater clarity and consistency for FRAs to engage at an early stage in the planning approval process on developments creating the greatest fire safety risks and concerns. It will ensure opportunities for FRAs to comment on such developments are not missed, which can more easily occur under the current approach where they are reliant on their own assessment of developments or the discretion of determining bodies and developers.

²⁷ 2017/2018 to 2019/2020.

²⁸ See paragraph 1.10 for Option 1 costs and paragraph 1.50 for Option 2 costs.

²⁹ See paragraph 1.13 for Option 1 costs and paragraph 1.59 for Option 2 costs.

³⁰ See paragraph 1.16 for Option 1 costs and paragraph 1.62/1.63 for Option 2 costs.

³¹ See paragraph 1.20 for Option 1 costs and paragraph 1.65 for Option 2 costs.

- 1.70 This option enables FRAs to consider and productively shape proposals from an early stage to ensure they are appropriate in terms of fire safety issues relating to access for firefighting equipment and water supplies for firefighting purposes relative to the fire risk presented by the new development. This will improve fire safety in new developments, reducing operational risks and resource requirements for FRAs in responding to any future fire incidences.
- 1.71 It will also serve as an important mechanism to gain a better understanding of developments within their areas thereby helping to establish and maintain local capacity and capability to address fire safety risks and concerns. Engagement at this stage will allow FRAs to update that knowledge and to begin planning for any changes in operational capacity which might be necessary.
- 1.72 Greater FRA engagement in the pre-application stage can reduce the level of FRA involvement at determination stage by reducing the likelihood of them submitting objections, or requesting post-submission amendments or conditions.

Local planning authorities

- 1.73 The majority of the 10 LPAs who responded to the consultation were in favour of the proposal to make Fire and Rescue Authorities statutory consultees.
- 1.74 Option 2 provides a more formal process ensuring greater clarity and consistency for LPAs to engage with FRAs at an early stage in the planning approval process on developments creating the greatest fire safety risks and concerns. It will ensure opportunities for FRAs to comment on such developments are not missed by LPAs, which can more easily occur under the current approach in which LPAs are reliant on their own assessment of fire risk issues arising from development proposals. LPAs will be able to utilise the resulting specialist FRA advice to ensure that fire safety issues are fully accounted for in their determination of applications.
- 1.75 Pre-application consultation of FRAs by developers should reduce the risk of objections and requests for further information, amendments and conditions by the FRAs at the determination stage, due to their ability to influence the design of the scheme prior to the submission of the planning application. This is likely to create efficiency savings for LPAs.
- 1.76 Post-application consultation with FRAs by LPAs³² will take place at the outset of determination thereby ensuring that there is adequate time for FRAs to respond and LPAs to factor in their response as part of the determination process.
- 1.77 It is anticipated that the clarification on the applications for which FRAs must be consulted on should lead to a reduction in the likelihood of non-relevant minor

³² As defined in Article 14 of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

applications being submitted by LPAs for FRA consultation. Similarly, the statutory clarification of the types of applications that FRAs must comment on should reduce the likelihood of non-relevant FRA responses being submitted for applications on which they were not consulted. However, LPAs will still be able to exercise their discretion and consult FRAs on developments that fall outside the specified description of development.

Welsh Government

- 1.78 Pre-application consultation between developers and FRAs allows for FRAs to engage with schemes prior to the submission of DNS applications to PEDW. This prior involvement, alongside consultation of FRAs by PEDW during determination, reduces the risk of objections and requests for further information, amendments and conditions by the FRAs at the determination stage. All of these factors should increase efficiency savings to PEDW.
- 1.79 Option 2 provides a more formal process ensuring greater clarity and consistency for PEDW to engage with FRAs at an early stage in the planning approval process on developments creating the greatest fire safety risks and concerns. It will ensure opportunities for FRAs to comment on such developments are not missed by PEDW, which can more easily occur under the current approach in which PEDW are reliant on their own assessment of fire risk issues arising from development proposals when deciding whether to consult FRAs. PEDW will be able to utilise the resulting specialist FRA advice to ensure that fire safety issues are fully accounted for in their determination of applications.
- 1.80 Pre-application consultation of FRAs by developers should reduce the risk of objections and requests for further information, amendments and conditions by the FRAs at the determination stage because the FRAs have been informed of the proposed development and so have a better understanding of its impact and are able to influence the scheme at an early stage. All of which should increase efficiency savings to PEDW.
- 1.81 Post-application consultation with FRAs by PEDW will take place at the outset of determination thereby ensuring that there is adequate time for FRAs to respond and LPAs to factor in their response as part of the determination process.
- 1.82 The statutory clarification of the types of applications that FRAs should comment on should reduce the likelihood of non-relevant FRA responses submitted for applications on which they were not consulted.
- 1.83 The submission of performance monitoring reports by FRAs enables the Welsh Government to regularly monitor the effectiveness of FRAs and utilise the quantitative data to discuss any issues of concern about the planning process with the relevant stakeholders.

Development Industry

- 1.84 Under Option 2, developers would be given a clear framework of when to consult FRAs prior to the submission of planning applications, thereby reducing the resource required to assess which projects they consider should be the subject FRA consultation.
- 1.85 Pre-application involvement of FRAs should help ensure that FRA views are accounted for from the outset, thereby increasing the likelihood that schemes have fire safety issues are addressed prior to submission with reduced risk of subsequent objection, amendments or conditions thereby reducing the likelihood of refusal, delays or re-design in the decision making process.
- 1.86 Developers receiving consultation responses from FRAs at pre-application and post-application stages increases the likelihood of their planning applications taking account of significant technical issues. Such FRA engagement at the design stage should help improve the operational safety and utility of developments post-consent, thereby reducing the risk of resource expenditure and reputational damage arising from fire issues.
- 1.87 Pre-application engagement between developers and FRAs also has the potential to identify and eliminate non-viable schemes at an early stage thereby saving the unnecessary expense of seeking planning permission.

Summary and Preferred Option

- 1.88 Option 2 is the preferred option.
- 1.89 Formalising the process by which FRAs are consulted will provide greater certainty and efficiency for FRAs, developers and determining bodies. Increased FRA engagement in the planning process will ensure that developers and determining bodies fully account for potential fire safety issues during the design and determination of development proposals by utilising specialist FRA guidance to consider the avoidance, mitigation and management of fire hazards in relevant developments. This will result in better designs, more efficient determinations, and safer developments. Furthermore, FRAs will be better informed about development in their areas and able to plan their resources accordingly.
- 1.90 Option 2 will contribute towards wider changes to building safety that seek to reduce the risk of major fires and consequently the risk of fatalities and injuries, costs, disruption and loss of property.
- 1.91 It is recognised that Option 2 incurs some additional costs for FRAs, developers and determining bodies. However, it is considered that such costs are generally balanced by the savings arising from greater efficiency in the determination process and improved long-term fire safety.

1.92 An Integrated Impact Assessment (IIA) has been completed for the proposed subordinate legislation and is available here <https://gov.wales/development-procedure-consultees-wales-miscellaneous-amendments-order-2021-integrated-impact>.

2. Consultation with Natural Resources Wales in respect of planning applications and pre-application proposals for 'major development' where development is proposed in a flood risk area

Options

2.1 Two options have been considered:

- **Option 1** - Do nothing. This would mean to continue with the current arrangements where:
 - The Development Advice Map (DAM) determines areas of flood risk for planning purposes; and
 - Natural Resources Wales is consulted on planning applications and pre-application proposals for 'major development' where they fall within flood risk zones of the DAM as defined in *Schedule 4 of The Town and Country Planning (Development Management Procedure) (Wales) Order 2012* and *Schedule 5 of The Developments of National Significance (Procedure) (Wales) Order 2016*.
- **Option 2** - Introduce a new flood map for planning purposes (to be titled: Flood Map for Planning) to replace the current DAM. Consequentially, introduce an amending Order to ensure the legislation requires Natural Resources Wales to be consulted on planning applications and pre-application proposals for 'major development' where they fall within flood risk zones specified on the Flood Map for Planning. References to development types (e.g. "highly vulnerable development") would be removed from the legislation in order to clarify requirements to consult with Natural Resources Wales that reflect current practice. It has become standard practice for local planning authorities and developers to consult NRW on development proposals beyond the scope of the current legislation where it is proposed to be located within a flood risk area.

Justification for 2 options

2.2 A third option is not proposed as it is considered that there is no other reasonable way of achieving the policy intention of ensuring Natural Resources Wales continue to be consulted on development where flood risk is likely to be a significant planning consideration.

Costs and Benefits

Option 1 – Do Nothing (i.e. continue with current arrangements where the Development Advice Map (DAM) determines areas of flood risk for

planning purposes and Natural Resources Wales is consulted on planning applications and pre-application proposals for ‘major development’ where they fall within flood risk zones of the DAM as defined in existing legislation).

Description

- 2.3 The current Development Advice Map (DAM) would remain in force for determining areas of flood risk for planning purposes. Consequentially, there would be no change to the current legislation for defining consultation with Natural Resources Wales (NRW) (as defined in the legislation as ‘The Natural Resources Body for Wales’) on planning applications and pre-application proposals for ‘major development’ in areas of flood risk under this option. This would mean that any such proposals, including for ‘Developments of National Significance’ (DNS), which fall within Flood Zone C2 of the DAM, or for applications which can be categorised as ‘emergency services development’ or ‘highly vulnerable development’ which fall within Flood Zone C1 of the DAM, would continue to be consulted on with NRW. It would continue to allow NRW the opportunity to provide comments on those proposals where consideration of flood risk is triggered using the current DAM.

Costs

- 2.4 This is the baseline option and as such there are no additional costs or benefits with this option. The following provides a summary of the current situation.

Natural Resources Wales (NRW)

- 2.5 NRW would continue to provide comments on proposals in flood risk areas as defined by the Development Advice Map (DAM). The statutory duty requiring NRW to respond when consulted on proposals to be located in flood risk areas of the DAM is set out under existing Development Management and Developments of National Significance Procedure Orders.

Year	Number of planning application consultations on which NRW provided substantive responses, falling within the DAM Flood Risk Zones.
2020/2021	1,966
2019/2020	1,865
2018/2019	2,184
	<i>(Figures include applications within the DAM Flood Risk Zones that do not fall within the development types required under the current legislation to be consulted on with NRW, but which reflects current practice – see Table 10)</i>

Table 5: Numbers of planning application consultations on which NRW provided substantive responses, falling within the Development Advice Map (DAM) Flood Risk Zones.

2.6 Data from NRW³³ evidences the volume of planning application consultations it provides substantive responses to that fall within the flood risk areas of the DAM (see Table 5 above). On average, for the period 2018/2019 to 2020/2021, 2005³⁴ substantive responses per annum were provided by NRW to planning consultations for development proposals located in the DAM flood risk areas. It is not considered necessary to evidence detailed costs to NRW for this option as there would not be a change in resources required by NRW to respond to planning consultations for development proposals located in flood risk areas under both options (also see costs to NRW under Option 2 below).

Local Planning Authorities (LPAs)

2.7 LPAs would continue to consult with NRW on planning applications in flood risk areas in accordance with the current legislative requirements where consultation is triggered by the DAM Flood Risk Zones.

2.8 The average cost to LPAs of consulting with NRW is estimated to be approximately £35.00 per application. This calculation is based on an estimated average of 30 minutes for an administrative officer (annual gross salary of £25,45135) to notify NRW, and 60 minutes for a senior planning officer (annual gross salary of £41,51836) to liaise with NRW and consider their response in informing the determination. It is understood from correspondence with LPAs that consultation with statutory consultees or other public bodies are mostly conducted electronically for efficiency purposes; therefore, no postage/printing costs have been included.

Year	Number of substantive responses provided by NRW to LPAs where development falls within the DAM Flood Risk Zones.	Estimated annual costs to LPAs
2020/2021	1,862 <i>(Figures include applications within the DAM Flood Risk Zones that do not fall within the development types required under the current legislation to be consulted on with NRW, but which reflects current practice – see Table 10).</i>	£65,170 (£2,607 per LPA)

³³ Data on NRW substantive responses to planning application consultations was provided by NRW to the Welsh Government on 12 October 2021.

³⁴ Sum of data for 2018/2019 to 2020/2021 divided by 3.

³⁵ Welsh average gross salary for the LPA role of 'Average Technical Assistant/Planning Support Officer' as identified in the supporting data to the Welsh Government report entitled: 'The Cost of Delivering a Development Management Service in Wales' (Arup, January 2021).

³⁶ Welsh average gross salary for the LPA role of 'Average Senior Planning Officer' as identified in the supporting data to the Welsh Government report entitled: 'The Cost of Delivering a Development Management Service in Wales' (Arup, January 2021).

Table 6: Number of substantive responses provided by NRW to LPAs and estimated annual costs to LPAs of consulting on proposals within the Development Advice Map (DAM) Flood Risk Zones.

To note: Data included in Table 5 on the numbers of substantive responses NRW has provided in total over the period 2018-2019 to 2020-2021 for applications falling within the DAM Flood Risk Zones are roughly within a similar ballpark figure of 2,000 responses for each year. Therefore, it is considered reasonable to assume the numbers of substantive responses provided by NRW to LPAs for 2020-2021 will be broadly similar for previous years 2018-2019 and 2019-2020.

Further, a substantive response can be anything from a one sentence reply to a detailed analysis. Therefore the numbers of applications where NRW provides substantive responses to a respondent is considered to be reflective of and broadly align with the numbers of applications consulted on by the respondent initially (in this case LPAs).

- 2.9 The number of cases where LPAs have consulted NRW on applications falling within the DAM flood risk zones is estimated in Table 6 above. On this basis, when multiplied by the gross hourly rate of the relevant staff³⁷, it has been estimated that the total approximate annual cost to LPAs is £65,170 per year (£2,607 per LPA).

Welsh Government

- 2.10 Planning and Environment Decisions Wales (PEDW) process DNS applications on behalf of the Welsh Ministers. Under this option PEDW would continue to consult with NRW on DNS applications, and potentially some cases they may be required to determine under the call-in process, in flood risk areas in accordance with the current legislative requirements where consultation is triggered by the DAM Flood Risk Zones.
- 2.11 The total average costs to PEDW of consulting NRW is estimated to be £60.00 per application. This estimate is based on 30 minutes of PEDW administrative officer time (annual gross salary of £28,329) to notify and liaise with NRW and 60 minutes of PEDW inspector time (annual gross salary of £80,906) to interpret and summarise the response. All PEDW consultation with statutory consultees or other public bodies are conducted electronically; therefore, no postage/printing costs have been included.

Year	Number of substantive responses provided by NRW to PEDW where development falls within the DAM Flood Risk Zones.
2020/2021	23 <i>(Figures include applications within the DAM Flood Risk Zones that do not fall within the development)</i>

³⁷ LPA Admin Officer:- £25,451 gross annual costs / 230 working days = £111 (cost per day) / 7.24 (hours per day) = £15 (cost per hour). LPA Senior Planning Officer:- £41,518 gross costs / 220 = £188 / 7.24 = £26 (cost per hour).

	<i>types required under the current legislation to be consulted on with NRW, but which reflects current practice – see Table 10).</i>
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Table 7: Number of substantive responses provided by NRW to PEDW where development falls within the DAM Flood Risk Zones.

To note: Data included in Table 5 on the numbers of substantive responses NRW has provided in total over the period 2018-2019 to 2020-2021 for applications falling within the DAM Flood Risk Zones are roughly within a similar ballpark figure of 2,000 responses for each year. Therefore, it is considered reasonable to assume the numbers of substantive responses provided by NRW to PEDW for 2020-2021 will be broadly similar for previous years 2018-2019 and 2019-2020.

Further, a substantive response can be anything from a one sentence reply to a detailed analysis. Therefore the numbers of applications where NRW provides substantive responses to a respondent is considered to be reflective of and broadly align with the numbers of applications consulted on by the respondent initially (in this case PEDW).

2.12 For 2020/2021, the number of substantive responses provided by NRW to PEDW for proposals that fall within the DAM Flood Risk Zones was 23; this figure can be seen as reflective of the total number of planning applications PEDW consulted on with NRW per annum over the period 2018-2019 to 2020-2021 (see Table 7 above). Therefore, administrative costs to PEDW of consulting with NRW on applications falling with the DAM Flood Risk Zones would be approximately £1,380 per year, based on an estimate of 23 DNS applications received per year between 2018/2019 to 2021/2021 and the gross hourly rates of the relevant staff³⁸. This estimate is considered to be a potential worst case scenario as the data indicates that PEDW predominantly consult with NRW on DNS applications; NRW provided 20 substantive responses to DNS applications falling within the DAM Flood Risk Zones for the period 2020/2021, compared to 7 responses for 2020/2019 and 6 for 2018/2019.

Development Industry

- 2.13 Consultation with NRW at the pre-application stage on major development proposals in flood risk areas is statutory for developers under the current legislative requirements where it is triggered by the DAM Flood Risk Zones.
- 2.14 There is no standard cost for undertaking consultation by developers, as the costs of engagement between NRW and developers will vary depending on the complexity of the proposal and staff allocated to the exercise. Some development proposals may also require amendments to ensure they address concerns raised by NRW.

38 PEDW Admin Officer:- £28,329 gross annual costs / 230 working days = £123 (cost per day) / 7.24 (hours per day) = £17 (cost per hour). PEDW Inspector:- £80,906 gross annual costs / 230 working days = £351 (cost per day) / 7.24 (hours per day) = £49 (cost per hour).

2.15 Developers will typically appoint planning consultants to undertake any pre-application consultation. Based on the average salary³⁹ of a planning consultant (£58 per hour) and an assumed average time estimate of 60 minutes per application to notify and liaise with NRW and consider and report their response in support of their application, it is estimated the cost to developers of consulting NRW on development proposals is £58 per application.

Year	Number of substantive responses provided by NRW to developers where development falls within the DAM Flood Risk Zones.
2020/2021	81 <i>(Figures include applications within the DAM Flood Risk Zones that do not fall within the development types required under the current legislation to be consulted on with NRW, but which reflects current practice – see Table 10)</i>

Table 8: Number of substantive responses provided by NRW to developers where development falls within the DAM Flood Risk Zones.

To note: Data included in Table 5 on the numbers of substantive responses NRW has provided in total over the period 2018-2019 to 2020-2021 for applications falling within the DAM Flood Risk Zones are roughly within a similar ballpark figure of 2,000 responses for each year. Therefore, it is considered reasonable to assume the numbers of substantive responses provided by NRW to developers for 2020-2021 will be broadly similar for previous years 2018-2019 and 2019-2020.

Further, a substantive response can be anything from a one sentence reply to a detailed analysis. Therefore the numbers of applications where NRW provides substantive responses to a respondent is considered to be reflective of and broadly align with the numbers of applications consulted on by the respondent initially (in this case the development industry).

2.16 For 2020/2021, the number of substantive responses provided by NRW to developers for proposals that fall within the DAM Flood Risk Zones was 81; this figure can be seen as reflective of the total number of planning applications proposals developers consulted on with NRW per annum over the period 2018-2019 to 2020-2021 (see Table 7 above). This would result in a total cost to the development industry of approximately (81 multiplied by 58) £4,698.

Benefits

Natural Resources Wales (NRW)

2.17 NRW would continue to be consulted on planning applications and pre-application proposals for ‘major development’ in flood risk areas as defined by

³⁹ Based on a WG public sector technical and professional services procurement framework.

the DAM. From a mapping perspective, NRW would continue to update the DAM every 6 months. These updates include a review of flood risk areas, which results in the appropriate types of proposals being consulted on with NRW in terms of enabling NRW to comment where there could be a flood risk.

- 2.18 It is not considered there would be any notable resource or procedural benefits for NRW by implementing either option. The proposed changes are more a tidying up of the mapping and existing terminology in order to reflect updated national planning policy on flood risk, as is explained below.
- 2.19 Currently, the terminology used for the DAM and the naming of the flood zones is not reflective of the need to ensure clarity and up-to-date use of language in accounting for areas of flood risk in the planning system. Further, it is not consistent with updated national planning policy on flood risk to be taken forward in a new Technical Advice Note (TAN) 15. For example, the new TAN updates the language on how areas that are defended from flood risk are to be defined by setting out a clearer definition that refers to them purely as 'defended areas'. By not being reflective of this new policy in the wording used for the flood risk mapping and accompanying consultation requirements, this could make it more difficult for NRW to formulate responses to development proposals that clearly align with both the mapping and policy wording.
- 2.20 With regards to current terminology used in the legislation, it defines certain development 'types' that should be consulted on with NRW for development in flood risk areas, referring to 'highly vulnerable development' in particular. This position does not reflect the current policy position and standard practice by where the default position should be to at least make NRW aware of all types of development proposal in the highest flood risk areas.
- 2.21 Option 1 would therefore not reflect these wider planning policy changes in the flood risk mapping and consultation requirements as set out in the legislation. Ultimately, by not updating the flood risk mapping and legislative terminology, it would fail to provide a comprehensive and transparent suite of up-to-date measures for all stakeholders on how flood risk should be considered in determining development proposals through the planning system.

Local Planning Authorities (LPAs), the Welsh Government and the Development Industry

- 2.22 LPAs, PEDW and the development industry would continue to be required to consult NRW on development proposals in flood risk areas as defined in the DAM.
- 2.23 For both LPAs and PEDW, it is not considered there would be any notable resource or procedural benefits by implementing either option over the other. The proposed changes to consultation requirements are a consequence of providing updated national planning policy on flood risk, as previously explained. Therefore, failing to align the mapping platform with updated flood risk national planning policy under this option would lead to ambiguity for

stakeholders on how their proposals align with, in totality, the flood risk mapping, requirements to consult with NRW and how they should be considered under the updated TAN 15 policy.

Option 2 – Introduce updates to flood risk flood mapping and consultation requirements that would:

- **Replace the current Development Advice Map with the Flood Map for Planning.**
- **Introduce an amending Order to ensure Natural Resources Wales is consulted on planning applications and pre-application proposals for ‘major development’ where they fall within flood risk zones specified on the Flood Map for Planning.**

Description

- 2.24 This option would replace the existing Development Advice Map (DAM) and its flood zones with a new Flood Map for Planning and new flood zones that would determine areas of flood risk for planning purposes. The new Flood Map for Planning would align with up-to-date national planning policy on flood risk contained in a new Technical Advice Note (TAN) 15. The Flood Map for Planning would ensure the mapping style and content is consistent with, and reflects updates to, flood risk national planning policy. For example, it would clearly set out that existing areas defended from flood risk are ‘TAN 15 Defended Areas’, aligning with the TAN 15 policy position.
- 2.25 As a consequence of amending the flood mapping, an amending Order would be required in order to update requirements to consult on development proposals in flood risk areas with Natural Resources Wales (NRW).
- 2.26 The amending Order would require NRW to be consulted on planning applications and pre-application proposals for ‘major development’ where they fall within the zones of highest flood risk on the Flood Map for Planning, rather than the DAM. The zones of highest risk to be specified in the Flood Map for Planning are Zone 2, Zone 3 and the TAN 15 Defended Zones which are areas at risk but benefit from a high standard of protection against flooding.
- 2.27 It has been decided that an amending Order should not specify particular development ‘types’ that should be consulted on in the highest risk zones, such as for ‘highly vulnerable development’ or ‘emergency services development’. It is apparent that local planning authorities and developers generally make NRW aware of any type of development proposal where it is proposed to be located within a flood risk area, not just those specifically required under current legislation.

Costs

Natural Resources Wales (NRW)

- 2.28 It is not considered this option would place any additional costs on NRW, as the resources used by NRW to provide substantive responses to planning applications would be similar to Option 1.
- 2.29 The changes to the legislation would ensure NRW is consulted on development in accordance with the highest risk flood zones set out as part of the new Flood Map for Planning, reflecting the most up-to-date flood risk data. The purpose of having a new Flood Map for Planning to replace the DAM is to ensure the mapping reflects up-to-date use of language on planning and flood risk in accordance with national planning policy flood risk updates to be set out in the new Technical Advice Note 15. To note: the new Flood Map for Planning has already been developed by NRW. The costs associated with developing a new flood risk mapping tool for planning purposes to replace the DAM have therefore already been incurred and are 'sunk costs'.
- 2.30 If retaining the current legislation and continuing with the current DAM, the DAM would continue to be updated periodically by NRW, i.e. every 6 months, to ensure it reflects the most up-to-date flood risk data⁴⁰. By pursuing either mapping route, the zones showing the highest levels of flood risk for planning purposes would be similar over the longer term; therefore the numbers of applications for which NRW is required to provide substantive responses annually should not change between Options 1 and 2.

Existing Development Advice Map (DAM) Flood Zones, triggering development requirements to consult NRW.	Land (area) km ²	Proposed Flood Map for Planning Flood Zones.	Land (area) km ²
C1 (includes existing defences)	234	Defended Zones	264
C2	1814	Zone 2	164
		Zone 3	1921
Total land area for highest risk flood zones using existing DAM.	2048	Total land area for highest risk flood zones using the new Flood Map for Planning.	2349

⁴⁰ To note, the current DAM does not take into account climate change in planning for flood risk areas, whilst the new Flood Map for Planning would account for climate change in defining areas of flood risk. However, it is considered if the DAM were to be updated going forward that it would take into account this data, due to the topic being of extreme importance in the context of flooding and NRW now having the ability to incorporate it into the flood risk mapping for planning purposes. Therefore, this change to incorporate climate change as part of the new Flood Map for Planning is not considered to be a deviation from the position if the existing DAM were to be updated for planning purposes going forwards.

Table 9: Differences in land area between current Development Advice Map (DAM) highest risk flood zones and new Flood Map for Planning highest risk flood zones.

2.31 NRW has provided data which shows the spatial impact of introducing the Flood Map for Planning at this point in time⁴¹. The data highlights the differences in land area between the highest risk flood zones for the DAM, where development is currently required to be consulted on with NRW, and the Flood Map for Planning Flood Zones (see Table 9 above). It evidences that if the Flood Map for Planning Flood Zones replaced the existing DAM Flood Zones, it would result in a 15%⁴² increase in land area for the highest risk flood zones. This is a modest increase in the areas of highest flood risk, which may lead to a modest number of new proposals for which NRW has to provide a substantive response. It is important to note at this stage, however, that the policy advice for areas at highest risk will become more restrictive than the previous position, which is anticipated to reduce the number of schemes proposed by developers. A further factor is that the arrangements to update the Flood Map for Planning Flood Zones would also be the case if Option 1 were selected, given that the DAM and its flood risk areas would be updated on a 6-monthly cycle.

Year	2020/2021	2019/2020	2018/2019
Number of substantive responses provided by NRW to all recipients for development falling within the DAM highest flood risk zones where the type of development isn't required to be consulted on under current legislative requirements.	338	355	366

Table 10: Data evidencing where NRW has provided substantive responses to planning application consultations for development falling within the DAM highest flood risk zones, where the type of development⁴³ isn't required to be consulted on under current legislative requirements.

2.32 Removing reference to development 'types' under this option in order to ensure NRW is made aware of all types of development in the highest flood risk zones is not considered to place additional costs on NRW, as it would reflect current practice (see Table 10 above). The data shows that over the previous 3 years

⁴¹ This data was provided by NRW to the Welsh Government on the 16 August 2021.

⁴² (Proposed Flood Map for Planning Flood Risk Areas (2349) minus current DAM Flood Risk Areas (2048)) / Current DAM Flood Risk Areas (2048) * 100.

⁴³ This type of development shows substantive responses provided to consultations falling outside of the current definition of 'emergency services' and 'highly vulnerable' development for DAM Zone C1.

NRW has provided substantive responses to approximately 353⁴⁴ consultations per annum that are not required to be consulted on under the current legislative requirements.

Local Planning Authorities (LPAs), the Welsh Government and the Development Industry

- 2.33 It is not considered there would be any direct additional costs to stakeholders requesting consultation responses from NRW under this option. The resource implications to consult with NRW would be similar, having regard to the types of planning proposals that would be required to be consulted on using the new Flood Map for Planning and its flood zones compared to Option 1. This is because under both scenarios, each flood map would be subject to 6-monthly updates to ensure they provide the most up-to-date flood risk data. This would mean the options available in this assessment would not be the direct cause of the definition of the highest flood risk areas which trigger consultation requirements with NRW.
- 2.34 The legislative changes under this option would ensure stakeholders consult with NRW on all development types proposed in the highest flood risk zones, rather than specifying development 'types' as is the case in the current legislation. This is considered to reflect what already occurs in practice.

Benefits

Natural Resources Wales (NRW)

- 2.35 NRW would be consulted on planning applications and pre-application proposals for 'major development' in flood risk areas in accordance with the Flood Map for Planning. The Flood Map for Planning would provide the most up-to-date flood risk data for planning purposes, though it is considered this would also be the case if the DAM were to be retained (Option 1) and updated periodically.
- 2.36 Notwithstanding this, the proposed changes would ensure flood risk mapping and consultation requirements are clear in requiring applicants and decision makers to make NRW aware of all development proposals in areas of highest flood risk. This is currently standard practice but under this option it would be reflected in legislation (by removing development 'types' from the existing legislation).
- 2.37 The changes would further ensure the flood risk mapping for planning purposes and the accompanying legislation specifying requirements to consult with NRW align with updated national planning policy on flood risk contained in Technical Advice Note 15. Ultimately, there would be no ambiguity between the flood risk policy, legislation and mapping, thus it would create certainty for NRW in ensuring it is consulted appropriately on development proposals in flood risk

⁴⁴ Sum of data for 2018/2019 to 2020/2021 divided by 3.

areas and it can formulate responses that fully align with the new flood risk national planning policy.

Local Planning Authorities (LPAs), the Welsh Government and the Development Industry

- 2.38 It is considered there would not be any notable resource or procedural benefits for LPAs, PEDW or the development industry for implementing either option over the other in the longer term. All stakeholders would continue to consult with NRW on planning proposals in the areas of highest flood risk, whether they are outlined in the current DAM or the new Flood Map for Planning.
- 2.39 Notwithstanding this, there are benefits with this option in aligning the flood risk mapping for planning purposes and consultation requirements with updated national planning policy on flood risk contained in the new Technical Advice Note 15. These proposals should result in a comprehensive set of flood risk mapping, legislative and national planning policy requirements, ensuring there is a clearer understanding for all stakeholders on how flood risk should be considered in determining development proposals through the planning system.

Summary and Preferred Option

- 2.40 Option 2 is the preferred option.
- 2.41 Both options are considered not to impose significant costs or provide significant financial benefits to all stakeholders. Under Option 1, the existing Development Advice Map (DAM) would continue to be updated in order to show the most accurate data that would evidence areas of flood risk for planning purposes. However, Option 2 will also provide the most up-to-date information on areas of flood risk with a new Flood Map for Planning, but crucially its terminology will align with updated national planning policy on flood risk contained in the new Technical Advice Note 15.
- 2.42 Implementing Option 2 will ensure that the consideration of development proposals in flood risk areas is fully aligned and clear to all stakeholders, in terms of the use of the mapping, requirements to consult with NRW and application of the updated planning policy.
- 2.43 An Integrated Impact Assessment or Competition Assessment has not been prepared for the proposed legislation due to the nature of the proposed changes not constituting a substantive change. Rather they are considered to be an exercise to align the legislative requirements to consult NRW with the new Flood Map for Planning, rather than the to-be-superseded DAM, and terminology contained in the updated Technical Advice Note 15. This position is explained under the two options outlined.

3. Competition Assessment (for A and B)

- 3.1 A competition filter test has been applied to the proposed amendments. The proposals are not expected to impact on levels of competition in Wales or the competitiveness of Welsh business.

4. Post implementation review (for A and B)

- 4.1 The annual monitoring reports to be submitted by FRAs to the Welsh Government under Option 2 provide a means of monitoring the performance of FRAs in responding to consultation requests. These reports will be publicly available and assessed by the Welsh Government.
- 4.2 The performance of LPAs in consulting FRAs can feature in the Planning Services Annual Performance Report produced by the Welsh Government and form a topic of discussion between the Welsh Government and LPAs at the meetings of the Planning Officer Society for Wales.
- 4.3 Annual reports are provided by NRW to the Welsh Government as a means of monitoring the performance of NRW in responding to consultations. These reports are assessed by the Welsh Government and are made publicly available.
- 4.4 The performance of LPAs in granting planning permission for development in flood risk areas is a part of the Planning Services Annual Performance Report produced by the Welsh Government. It can also form a topic of discussion between the Welsh Government and LPAs at the meetings of the Planning Officer Society for Wales.
- 4.5 A new Notification Direction will be introduced alongside the new TAN 15, which will limit the possibility of decisions being taken in contravention of national policy for highly vulnerable developments in the highest flood risk areas. This provides a means of monitoring the nature of schemes on which NRW is consulted.