

## Rural news - winter edition: is your lake a reservoir?

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Bodies of water holding 25,000 cubic metres or more of water above surrounding ground level are known as 'large raised reservoirs' (this is equivalent to about 5 million gallons of water, or roughly 10 Olympic swimming pools).

Large raised reservoirs are subject to the Reservoirs Act 1975 ('Reservoirs Act'), which provides a legal framework to ensure the safety of reservoirs. This is enforced in England by the Environment Agency and by local regulatory bodies in Wales and Scotland.

Currently, there are more than 2,120 dams and reservoirs regulated under the Reservoirs Act. Reservoir owners have ultimate responsibility for the safety and maintenance of their reservoirs. This is not a liability to be taken lightly. It could impose not only considerable financial liability (repair and maintenance) but also administrative (to comply with the Reservoirs Act) and potentially criminal liability. The criminal liability is strict, which means the reservoir owner's knowledge or intention is irrelevant.

In addition, owners of reservoirs of any size should be aware that, under common law, they might be held responsible for any damage or injury caused due to a sudden uncontrolled release of water from the reservoir. It is therefore critical to determine whether a body of water on your property is a designated reservoir (or should be) and whether it has been properly maintained.

The reservoir's owner must comply with all of the statutory requirements, regardless of whether the reservoir is deemed to pose a risk to people living downstream.

The Reservoirs Act has been amended by the Flood and Water Management Act 2010 ('FWMA'), which includes requirements for:

- the registration of large raised reservoirs capable of holding 10,000 cubic metres of water or more (roughly 2.2 million gallons), with the Environment Agency; and
- the Environment Agency to consider whether such reservoirs should be designated as a 'high-risk reservoir' on the grounds that: (1) human life could be endangered in the event of uncontrolled release of water; and (2) it does not meet the conditions specified in the regulations.

Reservoirs designated as 'high-risk' will be subject to the full safety monitoring requirements set out in the Reservoirs Act. The owner of a reservoir that is not designated as 'high-risk' will still need to register their reservoir but will not need to comply with the inspection and supervision requirements of the Reservoirs Act.

The FWMA also contains provisions relating to the preparation of flood plans by reservoir owners and to the construction, enlargement and reduction in capacity of large raised reservoirs. 'Phase 1' of the amendments, those relating to reservoirs which already fall under the purview of the Reservoirs Act, came into force in July 2013. 'Phase 2' will introduce the reduction in the statutory threshold to 10,000 cubic metres, thereby bringing additional reservoirs under regulation.

Phase 2 came into force in Wales in April 2016, though timescales for Phase 2 are yet to be agreed in England.

Therefore, if you have a 'large raised reservoir' as defined under the Reservoirs Act, you will be required to register it with the Environment Agency (or local authority in Wales or Scotland). If your reservoir is deemed to be high-risk, you must also:

- appoint the appropriate engineers to survey your reservoir and carry out periodic inspections
- report any incidents; and

- prepare an onsite plan of the reservoir.

Landowners in England may wish to undertake a review of the position now in order to ensure that they are covered when Phase 2 comes into force.

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