

# **Consultation on proposals to introduce a charging scheme under the Reservoirs (Scotland) Act 2011 and the Reservoirs (Scotland) Regulations 2015**

## **Analysis of responses**

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Scottish Environment Protection  
Agency  
Strathallan House  
Castle Business Park  
Stirling  
FK9 4TZ  
Tel: 01786 457700

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## **1 Introduction**

From 1 April 2016, responsibility for the regulation of reservoir safety is expected to transfer fully from the 32 Scottish local authorities to the Scottish Environment Protection Agency (SEPA).

In accordance with the Reservoirs (Scotland) Act 2011 (the 2011 Act), reservoir managers are currently registering their large raised reservoirs (i.e. reservoirs greater than 25,000 cubic metres impounded volume) with SEPA. The period of registration (which began on 1 April 2015) will end on 30 September 2015. For this 6 month period there is no registration fee for reservoir managers.

Under the 2011 Act and associated regulations (Reservoirs (Scotland) Regulations 2015), SEPA is introducing a new charging scheme for reservoir safety regulation in order to fully recover the costs of its new regulatory and administrative duties.

A public consultation on the proposed reservoirs charging scheme ran for 8 weeks from 15 May until 10 July 2015. We published the consultation on our website using the consultation hub ('Citizen Space') to enable responses to be submitted online. Respondent information forms could also be emailed or posted to our head office.

In addition, we wrote individually to all existing managers of large raised reservoirs (approximately 220 reservoir managers in total) to advise them of the consultation and to invite their feedback. We also publicised the consultation externally to organisations including the British Dam Society who included information on their website.

This report presents results and analysis of the consultation together with SEPA's conclusions and future plans for charging. The new charging scheme for reservoirs will be implemented on 1 October 2015.

We would like to thank everyone who took the time to provide us with their feedback, all of which has been considered.

## **2 What did the consultation cover?**

The consultation included proposed charges under the following categories:

Under Section 14 of the 2011 Act and the 2015 Regulations

- Registration fee
- Annual subsistence fee (applicable from 1 April 2016)
- Notification ('cessation' and 'new manager') fees

Under Section 23 of the 2011 Act

- Application fee for review of SEPA risk designation

The consultation included proposed charges, where applicable, for the financial years 2015/16, 2016/17 and 2017/2018.

### 3 Overall Response

In total, SEPA received 29 responses to the consultation which represents approximately 12% of reservoir managers. 23 of these were from various organisations and 6 responses were from named individuals. One organisation submitted 3 responses. 22 responses were received online via 'Citizen Space', 4 responses were sent by email using the respondent information form and 3 responses were submitted by letter. 27 responses were received on time and 2 responses were received after the consultation deadline of 10 July 2015 but were still taken into consideration.

In addition to feedback from individuals (6), responses were received from the following range of sector groups: Academic Institutions (1), Angling (2), Charitable Bodies (1), Farming (2), Forestry (1), Hydropower/renewable energy (2), Land and Estates (4), Local Authorities (7), Navigation (1), other industry (1) and Water Services (1).

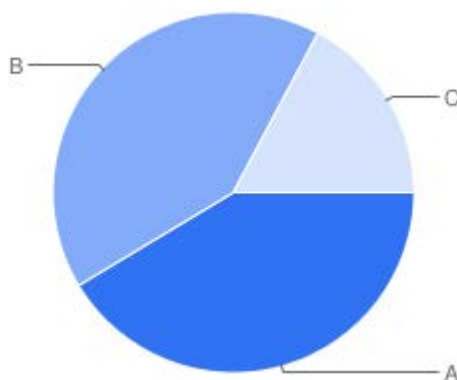
The respondents are shown in the Appendix (page 15).

### 4 Responses to the questions

Set out below is a summary of the responses to each question in the consultation together with SEPA's comments on those responses.

#### ***Question 1: Do you agree with the proposed level of registration fees?***

Key	Option	Total	Percent of all
A	Yes	12	41.38%
B	No	12	41.38%
C	Not answered	5	17.24%



Of the 24 respondents to this question, half agreed with the proposed level of registration fees which would apply to new sites (or late registration of existing sites) and half disagreed. Sixteen respondents provided further comments.

A number of respondents acknowledged that registration was free for existing sites registering within the 6 month window (April-September 2015) and thus the proposed registration charge (as a one off fee for new sites/late registrations) was seen to be fair and appropriate for the work required.

Five respondents felt that the registration charges were excessive or higher than expected whilst 3 respondents commented that the level of charges were at an appropriate level.

One respondent felt that the proposed fee was high if it did not include SEPA's risk designation for a given reservoir. In response to this we confirm that the registration fee does include costs for the risk designation work, as detailed in the consultation breakdown of main regulatory tasks, times and associated tasks (in particular, see Registration task titled 'Apply risk designation process').

One respondent queried whether the registration fee requires to be paid each year. In response to this we confirm that this is not the case and that registration of a reservoir with SEPA occurs once only with no annual requirement to pay a registration fee.

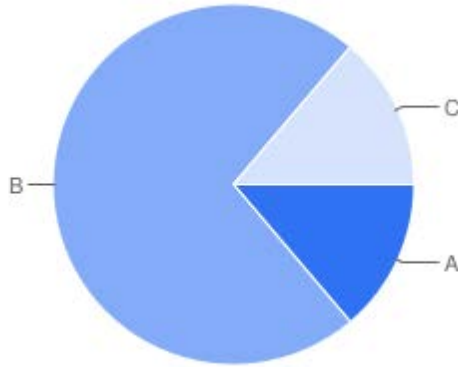
One respondent commented that the public sector, charities and non-commercial use of reservoirs (e.g. for recreation/amenity) should be exempt from all charges. A number of other respondents felt that there should be charge exemptions for recreational/amenity use. In response to this we would comment that should some reservoir sectors be exempt from charges, then other sectors would have to be charged an additional amount to ensure SEPA achieves full cost recovery. From previous stakeholder engagement, we know that this type of cross subsidy would not be acceptable to some sectors.

One respondent queried why there would be a charge for registration when currently there is no charge for registering with local authorities. This point is explained within the consultation in that SEPA is funded differently to local authorities and will not receive Grant in Aid from the Scottish Government specifically for reservoir work. Therefore we are required to recover our costs through charging which is enabled by the relevant legislation.

One respondent expressed concern about the risk of an increase in charges above inflation following the first 3 year charging review period mentioned in the consultation. In response to this, note that as part of the first charging review, SEPA will host another public consultation prior to any proposed changes to the scheme.

**Question 2: Do you agree with the proposed level of subsistence fees?**

Key	Option	Total	Percent of all
A	Yes	4	13.79%
B	No	21	72.41%
C	Not answered	4	13.79%



Of the 25 people who responded to this question, a significant majority did not agree with the proposed levels of subsistence fees. 23 respondents provided further comments.

Seven respondents specifically commented that the proposed subsistence fees were too high or excessive, especially on top of existing engineers' inspection fees. One respondent thought that the fee for high risk reservoirs should be higher and the low risk fee minimal.

One respondent queried why low risk reservoirs were subject to a charge. In response to this we would comment that even low risk sites have certain statutory obligations, e.g. record keeping and notifications to SEPA where changes are made to site details and contacts. The expected minimal involvement of SEPA at low risk sites is reflected in the minimal annual charge levied.

A number of respondents requested charge concessions/exemptions for public bodies, charities and for non commercial use of reservoirs (e.g. recreation/amenity) as applied by SEPA under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 for certain licenced impoundments. Some reservoir owners felt that the charges would have a negative impact on their business (e.g. recreation, fishing, amenity etc) and in one response, the potential draining of the reservoir due to the introduction of charges, was mentioned. In response to this we would reiterate (as for the response to Question 1) that should some reservoir sectors be exempt from charges, then other sectors would have to be charged an additional amount to ensure SEPA achieves full cost recovery. From previous stakeholder engagement, we know that this type of cross subsidy would not be acceptable to some sectors.

Some respondents commented that SEPA's role in reservoir safety would be the same or similar to that of local authorities i.e. mainly administrative in maintaining records including a public register of reservoirs. In response to this we would advise that this is not the case. As explained in the consultation, under the Reservoirs (Scotland) Act 2011, SEPA has enhanced duties in relation to reservoir safety. For example, copies of all inspecting engineer reports will be required to be submitted to SEPA, not just those which include Measures in the Interest of Safety, as was previously the case. In addition, copies of all supervising engineers' annual written statements will require to be submitted to SEPA which again is not an existing requirement.

Two respondents queried the scale of difference in charge between high risk and medium risk sites. In response to this we would advise that this is based on SEPA's estimates of time spent proportionately on regulation per reservoir risk category. This is determined from differences in legislative requirements, including inspection and

reporting. However, it should be noted that the actual time spent on these activities will be monitored by SEPA to inform the first review of the charging scheme within the 3 year period after which times and costs will be adjusted if appropriate.

One respondent felt that charge reductions should be available for dealing with multiple reservoirs under the same reservoir manager, and similarly this point was raised by another respondent with respect to cascades. In response to this we would comment that in terms of annual subsistence fees, SEPA does not believe that an 'economies of scale' type discount to reservoir managers having multiple sites would be justifiable as the amount of regulatory work to be carried out by SEPA per reservoir site will largely be the same, regardless of the number of reservoirs under one reservoir manager.

However, economies of scale are taken into account in relation to reservoirs having more than one dam. In such cases, the annual charge is based on a controlled reservoir, not on the number of potential breach sources. This point will be covered by associated guidance when we publish the charging scheme.

In addition, SEPA will regulate each reservoir on a site by site basis. This will require individual updates to SEPA's reservoir records, database and public register etc. The savings to SEPA from dealing with one reservoir manager having a number of sites as opposed to one reservoir site per manager are therefore negligible. Nevertheless, SEPA is required to review the charging scheme at least once in every 3 year period beginning with 1 April 2016 and will ensure the estimated task times are corrected in light of experience if economies of scale are found and will adjust future charges as necessary.

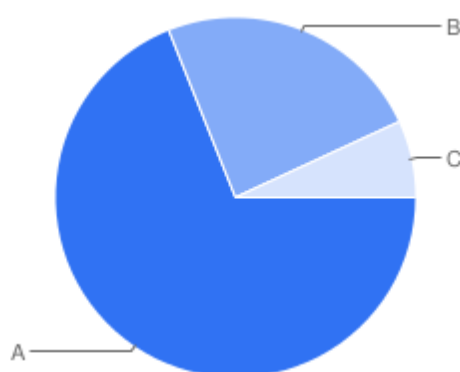
As explained in the consultation, the scheme does recognise that there will be savings involved where, for a controlled reservoir with multiple reservoir managers, SEPA is able to engage with one nominated representative rather than all reservoir managers. Where a controlled reservoir has more than one reservoir manager, the reservoir managers may choose to nominate a single 'point of contact' to correspond with SEPA and fulfil certain functions required by the legislation. In such cases, only one annual subsistence fee per controlled reservoir will be applied as SEPA will only be required to engage with one reservoir manager (the point of contact manager). If no such point of contact manager is nominated, the full annual subsistence fee will apply to each of the reservoir managers for that controlled reservoir. These points will be covered by associated guidance when we publish the charging scheme.

Six respondents queried the subsistence charge element attributed to enforcement where a cost for enforcement is included at all sites rather than applying a direct charge where enforcement is actually required. In response to this we would comment that the type of enforcement work carried out by SEPA ranges widely from very informal (phone call reminders and emails following up incidences of non-compliance) through to the formal serving of notices, final warning letters, and in the future, monetary penalties as well as referring the most serious cases to the Procurator Fiscal recommending prosecution.

We believe that the most equitable approach to charging for enforcement work under the reservoirs legislation is to assume a standard level of enforcement across a percentage of all reservoir sites depending on the risk category, with most time allocated to sites classified as high risk. This is an example of proportionate regulation aligned with risk.

**Question 3: Do you agree that the level of annual subsistence fee should vary according to the assigned risk designation of the reservoir with high risk reservoirs being subject to the highest fee and low risk reservoirs subject to the lowest fees?**

Key	Option	Total	Percent of all
A	Yes	20	68.97%
B	No	7	24.14%
C	Not answered	2	6.897%



Of the 27 people who responded to this question, the significant majority agreed that the level of annual subsistence fee should vary according to risk designation (with high risk reservoirs being subject to the highest fee and low risk reservoirs subject to the lowest fees). 15 respondents provided further comments.

One respondent commented that public benefit should also be taken into account and another queried why any subsistence charge should apply to low risk reservoirs. This point is addressed under the analysis for Question 2.

Another respondent felt that the fee should vary according to reservoir use (i.e. commercial v private use) and that reservoirs providing an environmental service used for amenity or recreation should be exempt from charging. Reasons for not including cross subsidy of this type are provided under the analysis for Questions 1 and 2.

Two respondents commented that high risk reservoirs would have less input from the regulator compared with other reservoirs as they are likely to be better maintained and that charges should therefore be recovered on a time-cost basis. In contrast another respondent agreed that high risk reservoirs would be likely to be more time consuming for the regulator, as would privately owned reservoirs.

In response to the above points we would comment that under the legislation, reservoirs designated as high risk will have the greatest amount of inspection, reporting and other compliance requirements compared with other sites. Therefore SEPA's workload will also be greatest for high risk sites and this is detailed in the consultation. We do not expect levels of compliance with the legislation, including



maintenance requirements etc, to be uniform across all reservoir managers of high risk sites.

One respondent commented that provisional risk designations could have been released prior to publication of the charging consultation in order to be able to properly assess the actual financial impact on reservoir managers. In response we would comment that although this would have been desirable, it was not feasible or practical for a number of reasons, including the fact that the charging scheme must be in place by 1 October 2015 but valid registrations could be received up to the end of September 2015. Only after receiving a valid registration form and processing the submitted data would SEPA be in a position to assign a provisional risk designation. The timetable for issuing provisional risk designations from 1 October 2015, after the registration period closes, was agreed by the Scottish Government.

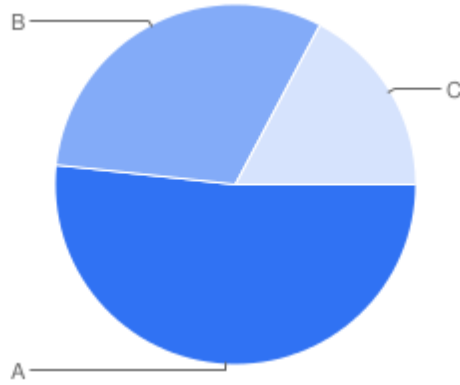
It should also be noted that a reservoir's risk designation could change over time due to changes to the reservoir such as alteration of dam heights or reservoir volumes or downstream land use. Therefore it was important during the consultation for respondents to be able to consider the full range of possible charges for all risk categories and not just the one that their reservoir may be assigned to at present.

One respondent commented that the proposal appeared to be consistent with the principles of proportionate regulation aligned with risk. A comment was also received that discussions on introducing a 'probability of failure' factor would be welcome.

In response to the latter point, we would comment that it is generally acknowledged that there is currently insufficient evidence (coupled with the absence of an agreed reservoir industry standard) to be able to include probability of dam failure in the risk designation process. However, when an agreed approach is developed to take account of probability of dam failure then this can be built into our risk designation methodology.

**Question 4: Do you agree with the proposed level of charge for notification ('cessation' and 'new reservoir manager') fees?**

Key	Option	Total	Percent of all
A	Yes	15	51.72%
B	No	9	31.03%
C	Not answered	5	17.24%



Of the 24 people who responded to this question, more than half agreed with the proposed level of notification fees. Eleven respondents provided further comments.

One respondent felt that such a notification fee was not acceptable for a reservoir manager acting as volunteer of a charitable body.

Two respondents felt that the fee was excessive for a minor administrative task whilst one respondent commented that the fee seemed proportionately correct. One respondent felt that the fee should only apply for notification of a new manager fee and thus no 'cessation' fee should apply.

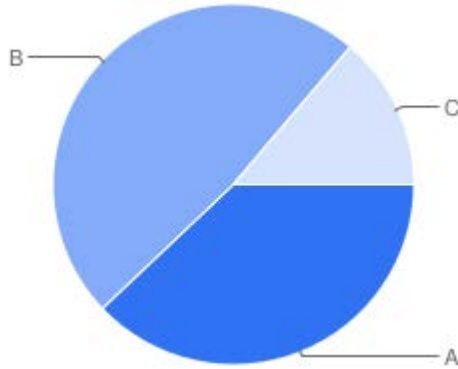
Again, views were expressed that public bodies, charitable trusts, and reservoirs used for recreation/amenity should be exempt from such charges. The reasons for not doing this are provided under the analysis for Questions 1 and 2.

Comments were made that the proposed notification fee should be included as part of the annual subsistence charge and respondents also suggested that SEPA could minimise the administrative and transactional burden of the proposed fee.

In response to the feedback to this question, SEPA agrees that the proposed notification fees could be included as part of the annual subsistence charge which would also eliminate the administrative burden of processing this separate fee. In addition, new and ceasing reservoir managers would not be deterred from notifying SEPA if there was no charge for such notifications. Therefore in conclusion we confirm that we do not intend to progress charges for such notifications to SEPA.

**Question 5: Do you agree with the proposed level of application fee for a review of the risk designation given to a reservoir by SEPA?**

Key	Option	Total	Percent of all
A	Yes	11	37.93%
B	No	14	48.28%
C	Not answered	4	13.79%



Of the 25 people who responded to this question, just over half disagreed with the proposed level of application fee for review of a risk designation whilst over 40% were in agreement. Sixteen respondents provided further comments.

One respondent commented that there should not be a large fee applied for this in addition to the further information that would need to be provided to SEPA in a review application.

A comment was received requesting that information on what is involved in the risk designation process should be provided including how the proposed fee is calculated. In response to this we would comment that SEPA's risk designation process will be published on our website by 1 October 2015. In addition, details of the components making up the application fee were included in the charging consultation document (refer to page 18, table 3.4 titled 'Review of Risk Designation').

Again, a general comment was received that public bodies, charities and reservoirs used for amenity/recreation should not be charged under this category which is addressed under the analysis for Questions 1 and 2.

A number of respondents commented that if SEPA issues or amends the risk designation then a reservoir manager should be able to challenge this without charge. In response to this we would remind reservoir managers that initial representations to SEPA following issue of a provisional risk designation are free. It is only the subsequent application for a formal review of the confirmed risk designation which will be subject to charge. This is explained in the charging consultation.

Two respondents commented that the risk designation should also include a probability of breach factor in addition to impact and that the application fee should include both elements. Reasons for not including a probability factor in risk designation are provided under the analysis for Question 3.

Two respondents felt that the proposed fees were excessive and in one response that a panel engineer would be best placed to carry out this work. In response to this we would advise that the legislation specifies that it is SEPA's responsibility to apply a risk designation to reservoirs and carry out associated reviews. This will be done taking into account representations from reservoir managers, who can be supported by panel engineers in this process. In addition, the time allocated involves SEPA reviewing the information submitted in support of a review application and repeating

the application of its detailed risk methodology. As mentioned above, the risk designation methodology will be published on our website by 1 October 2015.

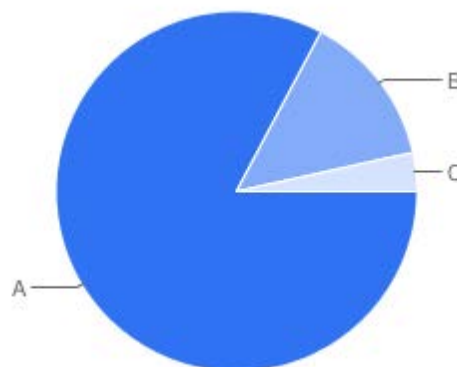
One respondent commented that the fees were reasonable given the fact that a refund would be issued in the event of a successful appeal.

Two respondents expressed concern that a disproportionate number of high risk designations will be set by SEPA thus resulting in a large number of potential appeals. In response to this we would advise that SEPA has worked closely with a number of major reservoir operators, panel engineers and Scottish Government to discuss specific concerns over risk designations. We would highlight that risk designation is based on the agreed national methodology and is affected by the proximity of a number of downstream receptors, including single properties as well as impact on major roads and other infrastructure etc. A number of sites will therefore be designated as high risk due to the predicted impact on a number of different receptors and not just human health (people).

SEPA does not believe that risk designation decided by a panel, as is suggested, would be a practical solution to the issue raised because of the requirement under the 2011 Act to take into consideration human health, the environment, cultural heritage, infrastructure and other social or economic interests. We also believe that this would introduce an element of subjectivity into the process providing potentially differing opinion on risk designation. This would be in contrast to a consistent, automated method for designating risk which is then sense checked by SEPA and open to representations free of charge prior to the formal review application stage.

**Question 6: Do you have any other comments you wish to make about SEPA's proposed charging scheme for reservoir safety?**

Key	Option	Total	Percent of all
A	Yes	24	82.76%
B	No	4	13.79%
C	Not answered	1	3.448%



Twenty four respondents provided further comments in response to this question.

Most of the feedback to this question has already been captured and summarised in the preceding sections as many of the comments were reiterated by the respondent under this final question. However, the following additional comments were made:

One respondent commented that, as a registered charity, continuation of their reservoir as a recreation facility would require to be given serious consideration should the charges be implemented as proposed because it may no longer be financially viable. Another respondent similarly mentioned the threat of being forced to drain their loch.

The concern over increased costs in addition to existing inspection fees was a theme amongst respondents, in particular private landowners and estates, charities, angling clubs and syndicates. Concern was also expressed as to how local authorities were to find the additional funding for reservoir regulation fees.

SEPA acknowledges the concerns raised by respondents in the points above. In response we would reiterate that reservoir safety regulation places new duties on SEPA for which we require to fully recover our costs through charging. There is no new direct funding provided to SEPA for carrying out these duties and other stakeholder sectors have made it clear that they do not wish to pay additional costs in order to cross subsidise any sectors that might be exempt.

One respondent requested a review of the charging scheme before the 3 year review deadline. SEPA confirms that this will be done and that in the interim period, actual tasks and times will be carefully monitored and efficiencies sought in order to inform the first review.

One respondent commented that there has been no previous consultation with reservoir managers regarding charging proposals. In response to this we would advise that this is not the case. SEPA is a key member of the Reservoir Safety Stakeholder Group which is made up of reservoir managers and organisations representative of a wide range of reservoir sectors including industry, local authorities, private landowners and estates, in addition to the Scottish Government. This group has met regularly for a number of years and members have been kept informed of SEPA's proposals for charging.

One respondent asked about the current staffing levels for SEPA's reservoirs unit. In response to this we would advise that currently there are 4 full time members of staff. There is no proposal to increase this level of staffing for regulation of the existing reservoirs (approximately 700) currently being registered with SEPA.

Finally, one respondent expressed concern about the risk of double charging for reservoirs due to additional charges under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR). In response we would comment that CAR and Reservoir Safety regulation are completely separate regimes with different assessment criteria and consequences. The former is concerned with environmental protection and regulation whereas the latter is primarily about safeguarding human health (i.e. people) from the effects of reservoir flooding.

## **5 Conclusions and planned actions**

The total of 29 responses received represents approximately 12% of all reservoir managers that we wrote to individually regarding our reservoir charging proposals.

The proposed charging scheme has been independently reviewed by Scott Moncrieff Business Advisors and Accountants. That review advised that whilst the methodology for applying charges was reasonable, appropriate and in line with the Scottish Public Finance Manual, there was a potential risk to SEPA of under recovery from the charges proposed to be levied. This counterbalances some respondents' views that the task times estimated by SEPA may be too high. We acknowledge the differing opinions on this and SEPA will put in place processes to capture its actual times for administrative and regulatory tasks to enable a review of charges to be taken within the 3 year period stipulated by the legislation.

As stated in the consultation, we require to fully recover our regulatory and administrative costs. The cost to SEPA of registering and monitoring a site will be the same regardless of reservoir use. Therefore for SEPA to introduce a charge exemption for public sector, charities or recreational/amenity use as was suggested by consultation responses, would result in other sectors having to subsidise the exempt sites. This approach is not acceptable to other stakeholders and it is intended that the same charges will be applied to reservoir managers irrespective of the reservoir use or ownership, as detailed in the consultation.

For existing controlled reservoirs, there is already an exemption from paying registration fees until 30 September 2015. Thereafter a one off fee will only apply to new sites or late registration of existing reservoirs. The registration fees for new reservoirs and/or late registration of existing sites (from 1 October 2015) will remain as detailed in the consultation. As a percentage of the total costs associated with the construction of a new reservoir, the registration fee is recognised as being very small.

Similarly, it is planned that annual subsistence fees and the application fee for review of a risk designation given by SEPA will remain as detailed in the consultation. Note in this regard that annual subsistence fees will not commence until 1 April 2016.

However, in consideration of the overall feedback on subsistence fees and notification charges for change of reservoir manager (i.e. 'cessation' and 'new manager' fees); we have decided that the proposed notification fees should be abolished. The costs of dealing with these notifications will therefore be absorbed into the annual subsistence fees at no additional cost to reservoir managers. Therefore there will be no charge for any notifications to SEPA.

A summary of the charges that we intend to introduce from 1 October 2015 are as follows:

#### Fees Payable

Type of charge	Financial year		
	2015/16	2016/17	2017/18
Registration fee	£488	£505	£523
Annual subsistence fee: *			
High risk reservoir	No fee	£419	£434
Medium risk reservoir	No fee	£282	£292
Low risk reservoir	No fee	£172	£178
Application fee for review of SEPA risk designation	£343	£355	£367

\* The annual subsistence fee commences on 1 April 2016.

To place the new annual subsistence charges into context, it should be noted that in 2016/17 the increase in total costs to reservoir managers will be:

- a maximum of £419 per annum for high risk sites (where supervising and inspecting regimes will be the same as current);
- £282 for medium risk sites which may be offset against the fact that 10 yearly inspections will not be required (unless the supervising engineer requests an inspection on the basis of an identified need) and;
- £172 for low risk sites which will no longer have the costs of employing a supervising or inspecting engineer.

## **6 Appendix – list of respondents**

### Organisations

Aberdeenshire Council  
Angus Council  
Balthayock Farms  
Craigowmill Farm  
Forestry Commission  
Hallyburton Estate Trust  
Institution of Civil Engineers Scotland  
Lochshiel Limited  
North Uist Estate  
Perth and Kinross Council  
Scottish Canals  
Scottish Land and Estates  
Scottish Renewables  
Scottish Water  
SSE  
The City of Edinburgh Council  
The Moray Council  
Tinto Reservoirs Limited  
West Region Scout Council

### Individuals

M. A. Lascelles  
Ann Morgan  
Paula Newton

### Confidential Responses

A further 6 respondents requested that their responses be treated confidentially

Should you have any queries regarding this consultation report, please email [reservoirs@sepa.org.uk](mailto:reservoirs@sepa.org.uk) or telephone 03000 99 66 99