



Department  
for Environment  
Food & Rural Affairs

# Consultation on amendments to the Environmental Permitting (England and Wales) Regulations 2016

## Amendments to exemptions and exclusions in relation to flood risk activities

March 2018



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Llywodraeth Cymru  
Welsh Government



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# Summary

## Scope of the consultation

Topic of this consultation	<p>This consultation sets out proposals to make amendments to the following sections of the Environmental Permitting (England and Wales) Regulations 2016. <b>These proposals relate to flood risk activities only (see Chapter 2):</b></p> <p><b>Schedule 3, Chapter 5, Part 4, paragraph 1(5)(a) – salmonid map.</b></p> <p>The current salmonid map is dated 22 October 2015. The fish dataset and map have now been updated and we propose to reference the new map dated 10 November 2017.</p> <p><b>Schedule 3, Chapter 5, Part 4, paragraph 9 and flood risk activity (b) – maintenance of structures within the channel of a main river.</b></p> <p>We are proposing to remove this exemption entirely as it would appear to be redundant.</p> <p><b>Schedule 3, Chapter 5, Part 4 Exemption 16 Rafts for surveys.</b></p> <p>We are proposing to remove the 12 month timing constraint and include further conditions.</p> <p><b>Schedule 3, Chapter 5, Part 4 Exemption 20 - Construction of fish passage notches on an existing impoundment.</b></p> <p>We are proposing to remove the words “fish passage” so that other types of notches can be covered more generally.</p> <p><b>Schedule 25, Part 2, Section 2, paragraph 5 – Ladders and scaffold towers.</b></p> <p>We are proposing to add the words “other types of apparatus” to the exclusion.</p> <p><b>Schedule 25, Part 2, Section 2, paragraph 9 - Fencing.</b></p> <p>We are proposing to extend this exclusion so fencing is not located on “flood defences” as well as beds and banks of the main river.</p> <p>The amendments are relatively minor and most changes are intended to be deregulatory, offering greater flexibility to a person carrying out works on or near main rivers. For information on the specific sections mentioned above in the Environmental Permitting (England and Wales) Regulations 2016, please see at:-</p> <p><a href="http://www.legislation.gov.uk/uksi/2016/1154/contents/made">http://www.legislation.gov.uk/uksi/2016/1154/contents/made</a></p>
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Purpose	The purpose of the consultation is to set out the full proposals and seek your views on the proposed amendments as set out in Chapter 2. The outcome of the consultation will assist in formulating the final proposal that will then be put in a Statutory Instrument before Parliament and the National Assembly for Wales.
Geographical scope	The change to the fish dataset and the salmonid map applies to England only. It is proposed the other changes to the exemptions and exclusions will apply in England and Wales.

## Basic information

To	This consultation is open to everyone, but is particularly aimed at: <ul style="list-style-type: none"> <li>• local farmers/landowners;</li> <li>• local authorities;</li> <li>• internal drainage boards; and</li> <li>• all businesses/organisations that carry out works on or near to main rivers.</li> </ul>
Body/Bodies responsible for the consultation	This consultation is being carried out by the Department for Environment, Food and Rural Affairs and the Welsh Government.
Duration	The consultation will run for 10 weeks. This is in line with the Cabinet Office's 'Consultation Principles' which advises government departments to adopt proportionate consultation procedures.  Consultation starts: 11 April 2018  Consultation closes: 20 June 2018
Enquiries	During the consultation, if you have any enquiries, please contact:  Kilie Mpopo Flood Risk Management Department for Environment, Food and Rural Affairs 3rd Floor Seacole Block 2 Marsham Street London SW1P 4DF  Telephone: 0208 0263490  Email: <a href="mailto:floodreports@defra.gsi.gov.uk">floodreports@defra.gsi.gov.uk</a>
How to respond	Please respond to this consultation using the citizen space consultation hub at Defra ( <b>Annex A sets out the questions being asked</b> )  Or By email to <a href="mailto:floodreports@defra.gsi.gov.uk">floodreports@defra.gsi.gov.uk</a>

	<p>Or you may alternatively send your comments by post to:</p> <p>Kilie Mpopo Flood Risk Management Department for Environment, Food and Rural Affairs 3rd Floor Seacole Block 2 Marsham Street London SW1P 4DF</p> <p>For respondents in Wales</p> <p><a href="mailto:floodcoastalrisk@gov.wales">floodcoastalrisk@gov.wales</a></p> <p>Flood and Coastal Erosion Risk Management 3rd Floor Cathays Park Cardiff CF10 3NQ</p> <p>Responses in Welsh are welcomed.</p>
<p>After the consultation</p>	<p>After the consultation, a summary of the responses to this consultation will be published and placed on the government website at <a href="http://www.gov.uk/defra">www.gov.uk/defra</a></p> <p>The summary will include a list of names and organisations that responded but not personal names, addresses or other contact details. However, information provided in response to this consultation document, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes e.g. Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998.</p> <p>If you want information, including personal data that you provide to be treated as confidential, please say so clearly in writing when you send your response to the consultation why you need to keep these details confidential. If we receive a request for disclosure under the FOIA, we will take full account of your explanation, but we cannot provide an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as a confidentiality request.</p>
	<p>This consultation is being conducted in line with the “Consultation Principles” as set out in the Better Regulation Executive guidance which can be found at <a href="https://www.gov.uk/government/publications/consultation-principles-guidance">https://www.gov.uk/government/publications/consultation-principles-guidance</a> If you have any comments or complaints about the consultation process, please address them to: By e-mail: <a href="mailto:consultation.coordinator@defra.gsi.gov.uk">consultation.coordinator@defra.gsi.gov.uk</a>, or in writing to: Consultation Co-ordinator, Defra, 8A, 8th Floor, Nobel House, 17 Smith Square, London SW1P 3JR</p>

# Chapter 1: Introduction

## Purpose of the consultation

This consultation paper sets out Defra's and Welsh Government's proposals for making amendments to specific clauses within the Environmental Permitting (England and Wales) Regulations 2016 in relation to flood risk activities.

These amendments relate to:-

- Updating the salmonid river dataset in Schedule 3, Chapter 5, Part 4, paragraph 1 (5)(a).

Making changes to the following exemptions and exclusions in Schedule 3 and Schedule 25 of the Regulations:-

- Schedule 3, Chapter 5, Part 4, paragraph 9 and flood risk activity (b) – maintenance of structures within the channel of a main river
- Schedule 3, Chapter 5, Part 4 Exemption 16 - Rafts for surveys
- Schedule 3, Chapter 5, Part 4 Exemption 20 - Construction of fish passage notches on an existing impoundment.
- Schedule 25, Part 2, Section 2, paragraph 5 – Ladders and scaffold towers
- Schedule 25, Part 2, Section 2, paragraph 9 - Fencing

**The legislative changes being proposed only apply in England and Wales, except in relation to the updating of the salmonid river database/map which would apply in England only.**

## Whom will the proposals affect?

These proposals will primarily affect those individuals, businesses and organisations that carry out works on or near to main rivers, such as:

- Landowners/farmers;
- Internal drainage boards;
- Canal and Rivers Trust;
- Local authorities;
- Riparian owners/householders; and
- Environmental groups.

## Why changes are needed?

The EA have updated the fish dataset and it is therefore important that the statutory salmonid map shows the extent of salmonid rivers to reflect the current status of the rivers. A new map has been created and this needs to be referenced and updated in the regulations.

After nearly two years of applying the Environmental Permitting Regulations (EPRs) in relation to flood risk activities, the Environment Agency, in collaboration with Natural Resources Wales (NRW), have undertaken an initial assessment of the use of the exemptions and exclusions under the EPRs and have advised that it would be best to make some small adjustments to some of the exemptions and exclusions, mainly to simplify and allow more flexibility. This is not a major review of the regulations but an opportunity to make some simple changes.

## Defra's and Welsh Government's policy intention

The policy objectives for undertaking these changes are to:-

- extend the level of de-regulation;
- make the regulations clearer;
- remove barriers and introduce flexibility for individuals and businesses;
- make it less bureaucratic for people without increasing the risk to the environment;

## How will these proposals be taken forward?

We propose to introduce the changes by means of a Statutory Instrument with the intention of bringing them into force in Autumn 2018.



# Chapter 2: Background to the policy and legislation and proposed changes

## Background

Flood defence consents – where those proposing works in watercourses have to seek permission from flood risk regulators - were brought into the Environmental Permitting framework and the existing penalty framework in April 2016. The EPRs have since been consolidated and a new set of Regulations (the Environmental Permitting (England and Wales) Regulations 2016) came into force on 1 January 2017.

Under the EPR regime there are a number of exclusions and exemptions for low risk activities to work in or around main rivers and sea defences. These are explicitly defined in terms of meeting certain conditions. After nearly two years of applying these regulations, the Environment Agency and NRW have proposed a number of minor alterations to the definitions, generally to have the effect of extending situations where regulation is excluded or exempt. These will extend the level of de-regulation and fewer people will face the prohibitive conditions detailed in some of the exemptions.

## Proposed changes

The proposed changes are as follows:-

### **Schedule 3, Chapter 5, Part 4, paragraph 1(5) (a) – salmonid map**

Within the EPRs, there is a reference to a dataset and salmonid map dated 22 October 2015 in England. This map is important as salmonid areas determine where work in rivers is restricted during times of the year. Individuals and businesses need to know where this is to plan their work accordingly.

The EA have updated the fish dataset for England and it is therefore important that the statutory map shows the extent of salmonid rivers to reflect the current status of the rivers. A new dataset and map has been created as of 10 November 2017 (copy attached) and this needs to be referenced and updated in the regulations. The new map involves fewer restricted areas because more detailed surveys of the rivers and accuracy of the mapping have shown that not as many of the rivers are salmonid as previously thought.

In respect of Wales, there is a map dated 20 October 2015 but there are no proposals to make any changes to that map.

**We are not seeking comments/views from consultees on the updating of the map.**

## **Schedule 3, Chapter 5, Part 4, Paragraph 9 and meaning of flood risk activity in Schedule 25, Part 1 paragraph 3(1)(b) – maintenance of structures within the channel of a main river**

We are proposing to remove this exemption from the EPRs. The Environment Agency and NRW have received feedback from staff and individuals/organisations that this exemption is confusing particularly because it does not align with a Flood Risk Activity definition.

For maintenance work to qualify as a flood risk activity as set out in Schedule 25, Part 1, paragraph 3 (1)(b), it has to be “likely to affect the flow of water in the main river or to affect any drainage work”. If it does not, then it is not a flood risk activity and so does not need a permit. The conditions of this exemption state that work must not change dimensions of the structure. The suggestion is that if maintenance does not change the structure, it would not count as an activity under Schedule 25, Part 1 paragraph 3(1)(b), so this exemption need not be relied upon.

The exemption would therefore seem to be redundant. Removing this exemption will make the regulations clearer. Additional works enabling the activity such as scaffolding and temporary structures may still need a permit in their own right.

- 1. Do you agree with the reason for removing this exemption?**
- 2. Do you intend to undertake works that you consider could impact the flow of water without altering the dimension of any structure?**
- 3. Do you agree that activities supporting maintenance on structures such as scaffolding and cofferdams/bunding may still need a permit in their own right?**

## **Schedule 3, Chapter 5, Part 4 Exemption 16 - Rafts for surveys**

For the purpose of this paragraph, the specific condition we propose to change is

(f) the raft is installed for no more than 12 months and removed immediately if, within that period it is no longer required:

We understand that the Environment Agency received some concerns from people about the restriction to remove these rafts after one year. We are therefore proposing to **remove** the timing constraint of 12 months. The change will allow more flexibility with the rafts as some need to be in place for longer. However, to facilitate this change, we propose that the following conditions are added to mitigate additional risk.

i.) The raft is installed for no longer than required to undertake the survey, after which it must be removed immediately.

ii.) The raft and any anchor(s) are inspected regularly to ensure that they are in good order.

**4. Do you agree with removing the timing constraint of 12 months?**

**5. With regard to inspections of the raft and the anchor(s), do you wish to see a more specific requirement on how regular the inspections should be?**

**6. If so, how often should the inspections take place?**

### **Schedule 3, Chapter 5, Part 4 Exemption 20 - Construction of fish passage notches on an existing impoundment.**

At present, use of the exemption is limited by the specific reference to fish passage. The interest is around the impact of the structure on the environment rather than the use of it, therefore this limitation is not needed.

We propose to remove the explicit reference to ‘fish passage’, so that notches can be used for other purposes other than fish for e.g, to create low flow on a weir that is not connected to a fish passage.

**7. Are you content for the reference to fish passage to be removed?**

### **Schedule 25, Part 2, Section 2, paragraph 5 – Ladders and scaffold towers**

The current text of the EPRs reads:

**5.—(1)** The erection and use of ladders and scaffold towers (“equipment”).

We propose this definition is broadened to include “other similar access or service apparatus”. This is because there are similar activities proposed which use apparatus similar to, but distinct from, a ladder or a scaffold tower, but which serve the same purpose. The specific conditions to this exclusion will still apply.

**8. Do you agree with the proposal to include “other similar access or service apparatus”?**

### **Schedule 25, Part 2, Section 2, paragraph 9 - Fencing**

The current clause states:

**9.** The erection of fencing.

(2) For the purposes of this paragraph, the specific conditions are—

(a) the fencing is not located on the bed or banks of the main river

The EA and NRW have evidence of situations where structures, particularly fencing is located on flood defences and where the fencing has compromised the operation or maintenance of the structure. We are therefore considering amending the specific conditions of the exclusion so that the condition is extended to include flood defences alongside beds and banks.

The original exclusion was to allow fencing to take place near rivers so long as they did not impact the beds and banks of a main river, in which case a permit may be required. We are tightening the condition so that this also controls fencing on our flood defences. This is important because the Environment Agency and Natural Resources Wales need greater regulatory control of structures that may impact our flood defences. Without this control, it is harder for them to ensure that the structural integrity and maintenance of flood defences is not compromised.

The proposed change is to include flood defence [structures] alongside the bed and banks of a main river as a specific condition which attaches to the exclusion.

## **9. Do you agree with the proposed change?**

# Annex A – Question and answer form

## About you

a) What is your name?

b) What is your email address?

c) What is your organisation?

d) Would you like your response to be confidential?

Yes  No

If you answered Yes to this question please give your reason:

e) Are you responding as or on behalf of:

- a) an individual
- b) a local authority
- c) a business
- d) another type of organisation

If you answered d) please specify

## Part A

### **Schedule 3, Chapter 5, Part 4, Paragraph 9 and flood risk activity (b) – maintenance of structures within the channel of a main river**

We are proposing to remove this exemption from the environmental permitting regulations (see explanation under Chapter 2, page 7).

**1. Do you agree with the reason for removing this exemption?**

Yes  No

Comments:

**2. Do you intend to undertake works that you consider could impact the flow of water without altering the dimension of any structure?**

Yes  No

Comments:

**3. Do you agree that activities supporting maintenance on structures such as scaffolding and cofferdams/bunding may still need a permit in their own right?**

Yes  No

Comments:

### **Schedule 3, Chapter 5, Part 4 Exemption 16 - Rafts for surveys**

We are proposing to remove the time constraint of 12 months and include new conditions (as set out in Chapter 2, pages 7/8)

**4. Do you agree with removing the timing constraint of 12 months?**

Yes  No

**5. With regard to inspections of the raft and the anchor(s), do you wish to see a more specific requirement on how regular the inspections should be?**

Yes  No

**6. If so, how often should the inspections take place?**

Comments:

**Schedule 3, Chapter 5, Part 4 Exemption 20 - Construction of fish passage notches on an existing impoundment.**

**7. Are you content for the reference to fish passage to be removed?**

Yes  No

**Schedule 25, Part 2, Section 2, paragraph 5 – Ladders and scaffold towers**

**8. Do you agree with the proposal to include “other similar access or service apparatus” to the exclusion?**

Yes  No

**Schedule 25, Part 2, Section 2, paragraph 9 - Fencing**

**9. Do you agree with the proposed change?**

Yes  No