



Department  
for Environment  
Food & Rural Affairs



Llywodraeth Cymru  
Welsh Government

# Consultation on integrating flood defence consents into the Environmental Permitting regime in England and Wales

## Annex 1; Proposed exemptions

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Exemptions marked with an \* are proposed for England only.

## General conditions

We propose that the exemptions should not apply in protected areas (this includes sites of special scientific interest, special areas of conservation and candidate special areas of conservation, special protection areas and candidate special protection areas, Ramsar sites, National and Local nature reserves), or in buffer zones around such areas (see paragraph 28 of the Consultation document).

We also propose that the majority of exemptions should not apply on a main river that is classified as high ecological status or high hydromorphological status, in order to meet Water Framework Directive obligations. We consider that the activities in the following exemptions will not adversely affect the hydromorphology (i.e. the physical form of watercourses and the flow of water) and so this restriction should not apply to these exemptions;

- XM2 - Electrical cable service crossings over channels
- XM4 - Service crossings over the channel attached to existing structures
- XM5 - Temporary scaffolding (less than 10m of riverbank)
- XM7 - Maintenance of raised flood defence structures outside the channel
- XM8 - Maintenance of structures within the channel (bridge arches, walls etc.)
- XM15 - Gravel cleaning in fish spawning beds
- XM17 - Eel pass devices on existing structures
- XM18 - Fish passage notch in an existing impoundment
- XM23 - Excavation of scrapes and shallow wetland features in a flood plain
- XM24 - Raised defences around the perimeter of one to six adjoining properties
- XM26 - Improvement works for tracks and paths

## Bridges and service crossings

**XM1** - The construction of footbridges.

Proposed conditions;

- (a) the length of the footbridge measured from the top of one bank of the main river to the top of the other bank is no more than 8 metres;
- (b) the footbridge is of clear span construction with a deck width of no more than 1.5 metres and with a kickerboard of no more than 100mm in height;
- (c) the footbridge does not reduce the cross-sectional area of the channel in the main river;
- (d) the construction does not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (e) no works take place within 100 metres of any non-agricultural building in the floodplain or another man-made structure on or in the main river;
- (f) the bed of the main river is not affected by the construction;
- (g) the length of bank disturbed by the construction extends to no more than 1 metre either side of the footbridge;
- (h) the footbridge is securely attached to foundations;

- (i) the approach ramp and steps for the footbridge do not extend more than 4m from the landward side of the bank;
- (j) the lowest point of the underside of the bridge is at least 300mm higher than the top of both banks of the main river;
- (k) all excavated material not re-used on the site of the works is removed from the floodplain; and
- (l) any parapet of the footbridge is of open construction comprising—
  - (i) post and rail,
  - (ii) post and wire mesh fencing of 100mm or more spacing, or
  - (iii) post and wire strands.

**XM2** - The erection of an electrical cable service crossing

Proposed conditions;

- (a) the service crossing is within 10° of perpendicular to the direction of flow in the main river;
- (b) the vertical and horizontal clearances of the service crossing comply with the requirements set out in table A below;
- (c) permanent hazard markers are erected on both banks of the main river; and
- (d) the bed and banks of the main river are not affected by the works.

Table A - Clearance requirements for service crossings

<b>Vertical and horizontal clearances for electrified cables</b>		
Voltage (kV)	Vertical clearance <sup>(1)</sup> (metres)	Horizontal clearance <sup>(2)</sup> (metres)
275	15	15
400	15	15
132	12	15
66	12	15
33	9	10
11	9	10
6.6	9	10
4.15	6	9

<sup>(1)</sup> Vertical clearance above river bank or flood bank crest level.

<sup>(2)</sup> Horizontal clearance of any tower or support from the top of the landward side of the bank of the main river.

**XM3** - The erection of a service crossing below the bed by directional drilling not involving an open cut technique.

Proposed conditions;

- (a) the service crossing is within 10° of perpendicular to the direction of flow in the main river;
- (b) the distance from the bed of the main river to the top of the service crossing is no less than 1.5 metres, which height above sea level is maintained between points 5 metres beyond the top of each bank of the main river;

- (c) the launch and reception pits are 8 metres or more from the landward side of the bank of the main river;
- (d) the service crossing does not pass through any culvert, remote defence, river control works or sea defence on the main river;
- (e) the service crossing is 50 metres or more upstream of any impoundment or artificially raised channel;
- (f) permanent hazard markers are erected on both banks of the main river; and
- (g) all excavated material not re-used on the site of the works is removed from the floodplain; and
- (h) the bed and banks of the main river are not affected by the works.

**XM4 - Service crossings attached to the outside of existing structures over a main river.**

Proposed conditions;

- (a) the service crossing does not project more than 1 metre from the structure;
- (b) the service crossing does not reduce the effective cross-section of the structure to the main river, both in the case of normal flow of the main river and where a flood flow bypasses the structure;
- (c) the service crossing does not pass through any culvert flood defence structure, river control works or sea defence on the main river;
- (d) permanent hazard markers are erected on both banks of the main river; and
- (e) a notification has not been sent by the regulator to the landowner that the structure has been identified for removal or modification in the relevant River Basin Management Plan.

## **Maintenance work**

**XM5 - The erection and use of temporary scaffolding\*.**

Proposed conditions;

- (a) the scaffolding will be in place for no longer than 4 weeks;
- (b) the scaffolding is not in place for any part of the five month period between 15<sup>th</sup> March and 15<sup>th</sup> June in any year;
- (c) on a main river identified as a salmonid river by the regulator, the scaffolding is not in place between 1<sup>st</sup> October and 14<sup>th</sup> March in any year;
- (d) the scaffolding does not affect more than 10 metres of a river bank at any one time;
- (e) the scaffolding projects no more than 1.2 metres or no more than 10% of the width of the main river, whichever is less;
- (f) any transoms and walking decks are set no lower than 600 millimetres above normal water level.

**XM6 - The temporary dewatering of a work area.\***

Proposed conditions;

- (a) the duration of the dewatering will be no longer than 4 weeks;

- (b) the dewatering is not in place during any part of the five month period between 15<sup>th</sup> March and 15<sup>th</sup> June in any year;
- (c) on a main river identified as a salmonid river by the regulator, the scaffolding is not in place between 1<sup>st</sup> October and 14<sup>th</sup> March in any year;
- (d) the dewatering does not affect more than 10 metres of the bank of a main river at any one time;
- (e) the dewatering is not within 8 metres of a flood defence structure or river control works;
- (f) the depth of water adjacent to the dewatered area does not exceed 1.2 metres;
- (g) the dewatering does not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (h) all reasonable steps are taken to protect aquatic plants and aquatic animals found in the dewatered area;
- (i) the dewatering structure projects no more than 1.2 metres or no more than 10% of the width of the main river, whichever is less;
- (j) the works do not impact protected species or species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (k) all excavated material not re-used on the site of the works is removed from the floodplain; and
- (l) any pumps used in the dewatering process are fitted with 20mm mesh screen.

**XM7** - The maintenance of raised river or sea defences.

Proposed conditions;

- (a) the maintenance work uses materials of the same kind as those present in the raised defences and does not alter the shape or overall height of those defences;
- (b) the raised defences are carrying out the functions for which they were originally designed; and
- (c) a notification has not been sent by the regulator to the landowner that the structure has been identified for removal or modification in the relevant River Basin Management Plan.

**XM8** - The maintenance of structures within the channel of a main river other than raised river or sea defences.

Proposed conditions;

- (a) the maintenance work does not alter any dimension of the structure;
- (b) the structure is carrying out the functions for which it was originally designed ; and
- (c) a notification has not been sent by the regulator to the landowner that the structure has been identified for removal or modification in the relevant River Basin Management Plan.

## Access structures

**XM9** - The construction of a cattle drinking bay.

Proposed conditions;

- (a) the bay is not located within 100 metres of any other man-made structure on or in the main river;
- (b) the bay is surrounded by a post and rail fence which should project no more than 1.2 metres or 10% of the main river, whichever is less;
- (c) the base of the bay has a surface made of concrete, stone or inert hard core;
- (d) all excavated material not re-used on the site of the works is removed from the floodplain; and
- (e) the remainder of the bank is fenced so as to prevent damage.

**XM10** - The construction of access platforms that project into the main river.

Proposed conditions;

- (a) the platform is not located within 50 metres of any other man-made structure on or in the main river;
- (b) the platform projects no more than 1.2m into the main river and occupies no more than 2m of bank length;
- (c) the platform is constructed as a flat deck, with no solid infill beneath the platform, supported on piers or piles of no more than 300mm width; and
- (d) any steps cut into the bank are supported by timber risers on the vertical part of the step.

## Outfalls

**XM11** - The construction of small outfall headwalls to main rivers.

Proposed conditions;

- (a) the headwall is not located within 50 metres of another man-made structure on or in the main river;
- (b) in the case of a headwall to a non-tidal main river, the outfall pipe is aligned to between 30° and 60° to the direction of flow in the river;
- (c) the diameter of the discharge pipe is less than 300mm;
- (d) the height of the headwall is no more than 1.5 metres or no more than 75% of the height of the bank, whichever is less;
- (e) the length of bank excavated during construction of the headwall is no more than 1.5 metres;
- (f) the headwall, wing walls and apron do not project beyond the profile of the bank;
- (g) the headwall is not within 8 metres of a flood defence structure or river control works;
- (h) all excavated material not re-used on the site of the works is removed from the floodplain; and

- (i) any pipe that discharges through the headwall does not pass within 8 metres of a flood defence structure.

## **Bank protection**

**XM12** - The repair and protection of main river banks using soft-engineered materials.

Proposed conditions;

- (a) the length of bank affected by the works is no more than 10 metres or no more than the width of the channel measured between the tops of each bank of the main river, whichever is less;
- (b) the works do not include the use of steel sheet piling, concrete, cement or concrete bagwork, brickwork, gabions or non-biodegradable geotextiles;
- (c) the works do not take place within 50 metres of bank that has been reinforced using soft or hard engineering techniques;
- (d) the works do not encroach into the channel of the main river beyond the previous line of the bank;
- (e) the works do not raise the height of the top of the bank;
- (f) the works are tied into the bank at each end so as to prevent erosion behind the works; and
- (g) the works are not to a bank consisting of an earth cliff over 1m in height.

**XM13** - Repair of bank slips and erosion.

Proposed conditions;

- (a) the work does not involve removal of material from the bed of the main river other than bank slippage;
- (b) the work does not affect more than 10 metres of the bank at any one time;
- (c) the works do not encroach into the channel of the main river beyond the previous line of the bank;
- (d) the works do not raise the height of the top of the bank;
- (e) the works are tied into the bank at each end so as to prevent erosion behind the works;
- (f) the repair uses materials of the same kind as those present in the relevant site; and
- (g) the works do not involve the use of wheeled machinery on the bed or bank of the main river.

## **In channel works**

**XM14** - The installation of natural channel habitat structures (excluding weirs and berms).

Proposed conditions;

- (a) the structure occupies no more than half the width of the main river channel and no more than 20 metres of the length of the main river;

- (b) no part of the structure is higher than 0.3 metres above the level of the river bed or 25% of the height of the bank (excluding any wall or embankment forming part of the bank), whichever is the greater;
- (c) the structure is made from naturally occurring woody debris and is securely fastened to the bed of the main river, the bank or both; and
- (d) no works take place within 100 metres
  - (i) a non-agricultural building in the floodplain,
  - (ii) another natural channel habitat structure,
  - (iii) stones or logs placed in the main river for habitat enhancement, or
  - (iv) a man-made structure on or in the main river.

**XM15 - Gravel-cleaning for fish-spawning beds.**

Proposed conditions;

- (a) the work is carried out in September or October;
- (b) the works are to no more than 20 square metres of gravel per location with a gap of at least 30 metres between locations; and
- (c) the work is carried out using hand tools, a leaf blower or a water pump.

**XM16 - Placement of stones or logs in the channel of a main river for habitat enhancement.\***

Proposed conditions;

- (a) the stones or logs placed in the channel are of a size and type that occur naturally in the main river;
- (b) any log placed in the main river is less than 40cm in diameter, oriented parallel to the flow of water and securely fixed to the bed or bank of the main river;
- (c) the stones or logs are placed in the channel over no more than 20m of the length, and 10% of the width, of the main river];
- (d) the placement of stones and logs does not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act; and
- (e) no stones or logs are placed within 100 metres of –
  - (i) a non-agricultural building in the floodplain,
  - (ii) a natural channel habitat structure,
  - (iii) stones or logs placed in the main river for habitat enhancement, or
  - (iv) a man-made structure on or in the main river.

**XM17 - Construction of eel pass devices on existing structures.**

Proposed conditions;

- (a) the existing structure is not located on a tidal river;
- (b) the device is permanently and securely attached to the existing structure;
- (c) the width of the device is no more than 5% of the width of the main river; and



- (d) the device does not extend more than 10 metres or the width of the channel measured between the tops of each bank of the main river, whichever is less, up or down stream from the existing structure.

**XM18** - Construction of fish passage notches on an existing impoundment.

Proposed conditions;

- (a) the construction does not affect the structural integrity of the existing impoundment;
- (b) construction of the notches does not change the water level in the main river by more than 20cm the up or down stream from the existing structure;
- (c) the existing impoundment is located on a main river with a width of no more than 5 metres measured between the tops of each bank; and
- (d) the notch is no more than 0.6 metres in width.

**XM19** - Removal of sediment from within bridge arches and culverts.

Proposed conditions;

- (a) the removal of silt and sand does not affect the structural integrity of the bridge arch or culvert;
- (b) the removal of silt and sand does not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (c) the removal of silt and sand and its subsequent deposition does not impact protected species or species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (d) the removal of silt and sand does not occur between 15<sup>th</sup> March and 15<sup>th</sup> June in any year;
- (e) on a main river identified as a salmonid river by the regulator, the removal of silt and sand does not occur between 1<sup>st</sup> October and 14<sup>th</sup> March in any year;
- (f) the removal of silt and sand does not expose the structural foundations or footings of the bridge or culvert; and
- (g) the removal of silt and sand does not occur in a watercourse identified by the regulator as sensitive because sediment management may compromise delivery of the environmental objectives of the Water Framework Directive.

**XM20** - The removal of silt and sand adjacent to in-river structures.

Proposed conditions;

- (a) the works take place no more than 10 metres up or down stream from the edge of the structure;
- (b) the removal of silt and sand does not affect the structural integrity of the structure;
- (c) the removal of silt and sand does not expose the structural foundations or footings of the structure;
- (d) silt and sand is not removed to below the level of the base of the inside of an adjacent culvert;

- (e) the works do not remove vegetation from the bed or bank of the main river;
- (f) the works do not involve the use of a vehicle or machinery on the bed or bank of the main river;
- (g) the removal of silt and sand does not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (h) the removal of silt and sand and its subsequent deposition does not impact protected species or species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (i) the removal of silt and sand does not occur between 15<sup>th</sup> March and 15<sup>th</sup> June in any year;
- (j) on a main river identified as a salmonid river by the regulator, the removal of silt and sand does not occur between 1<sup>st</sup> October and 14<sup>th</sup> March in any year;
- (k) the works and any equipment used to remove the sand and silt comply with the requirements specified in any guidance issued by the appropriate authority in relation to the removal of sand and silt from main rivers; and
- (l) the removal of silt and sand does not occur in a watercourse identified by the regulator as sensitive because sediment management may compromise delivery of the environmental objectives of the Water Framework Directive.

The guidance referred to in condition (k) will be similar to the Environmental Good Practice Guide published for those undertaking dredging through the River Maintenance Pilots. It can be found here;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307608/LIT\\_8\\_808\\_NAL\\_LIT\\_EnvGoodPracticeGuide\\_V3\\_280413.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307608/LIT_8_808_NAL_LIT_EnvGoodPracticeGuide_V3_280413.pdf)

**XM21** - Dredging of no more than 100 metres of man-made ditches, land drains and agricultural drains classified as main rivers.\*

Proposed conditions;

- (a) no previous exemption has been registered for a dredging operation in the same calendar year, main river and property;
- (b) the works do not damage the bed or banks of the main river;
- (c) the dredging is limited to the removal of accumulated silt and sand on the established bed of the main river;
- (d) the works do not remove vegetation from the bed or bank of the main river;
- (e) the works do not involve the use of a vehicle or machinery on the bed or bank of the main river;
- (f) the works do not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (g) the dredging and subsequent deposition of dredged material do not impact protected species or species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

- (h) the works do not occur between 15<sup>th</sup> March and 15<sup>th</sup> June in any year;
- (i) on a main river identified as a salmonid river by the regulator, the works do not occur between 1<sup>st</sup> October and 14<sup>th</sup> March in any year;
- (j) the works and any equipment used comply with the requirements specified in any guidance issued by the appropriate authority in relation to the dredging of main rivers; and
- (k) the dredging does not occur in a watercourse identified by the regulator as sensitive because sediment management may compromise delivery of the environmental objectives of the Water Framework Directive.

The guidance referred to in condition (j) will be similar to the Environmental Good Practice Guide published for those undertaking dredging through the River Maintenance Pilots. It can be found here;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307608/LIT\\_8808\\_NAL\\_LIT\\_EnvGoodPracticeGuide\\_V3\\_280413.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307608/LIT_8808_NAL_LIT_EnvGoodPracticeGuide_V3_280413.pdf)

**XM22 - Dredging of no more than 20 metres of any main river.\***

Proposed conditions;

- (a) no previous exemption has been registered for a dredging operation in the same calendar year, main river and property;
- (b) the works do not damage the bed or banks of the main river;
- (c) the dredging does not include the removal of gravel;
- (d) the works do not remove vegetation from the bed or bank of the main river;
- (e) the dredging is limited to the removal of accumulated silt and sand on the established bed of the main river;
- (f) the works do not involve the use of a vehicle or machinery on the bed or bank of the main river;
- (g) the works do not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (h) the dredging and subsequent deposition of dredged material do not impact protected species or species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (i) the works do not occur between 15<sup>th</sup> March and 15<sup>th</sup> June in any year;
- (j) on a main river identified as a salmonid river by the regulator, the works do not occur between 1<sup>st</sup> October and 14<sup>th</sup> March in any year;
- (k) the works and any equipment used comply with the requirements specified in any guidance issued by the appropriate authority in relation to the dredging of main rivers; and
- (l) the dredging does not occur in a watercourse identified by the regulator as sensitive because sediment management may compromise delivery of the environmental objectives of the Water Framework Directive.

The guidance referred to in condition (k) will be similar to the Environmental Good Practice Guide published for those undertaking dredging through the River Maintenance Pilots. It can be found here;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307608/LIT\\_8808\\_NAL\\_LIT\\_EnvGoodPracticeGuide\\_V3\\_280413.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307608/LIT_8808_NAL_LIT_EnvGoodPracticeGuide_V3_280413.pdf))

## Floodplain works

**XM23** - The excavation of scrapes and shallow wetland features in a floodplain.

Proposed conditions;

- (a) the area of the excavation is no more than 0.1 hectare and takes place at least 100 metres from any other excavation in the floodplain;;
- (b) the excavation is no more than 500mm deep at any point;
- (c) where spoil from the excavation is spread on the floodplain, the spoil is spread to a depth of no more than 100mm;
- (d) the excavation does not occur in a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;
- (e) the excavation is 8 metres or more from any structure forming part of a flood defence and from the landward side of the bank of the main river; and

**XM24** - The construction of raised flood defences around one to six adjoining properties.\*

Proposed conditions;

- (a) the works are not within 8 metres of a main river;
- (b) the dimensions of the flood defences are no more than 1 metre in height and 6 metres in width];
- (c) the defences are located at least 20 metres from any building not owned by the owners of the properties;
- (d) the total area protected by the defences is no more than 150m<sup>2</sup> for each property;
- (e) the defences are to protect existing buildings; and
- (f) the works are within the existing boundary of the properties.

**XM25** - Construction of bankside wildlife refuge structures.

Proposed conditions;

- (a) the length of bank excavated during construction of the structure is no more than 1.5 metres;
- (b) the height of the structure is no more than 1.5 metres or no more than 75% of the height of the bank, whichever is less;
- (c) the structure is not located within 50 metres of another man-made structure on or in the main river;
- (d) the structure is not located within 8 metres of a flood defence structure or river control works; and

(e) the structure does not project beyond the profile of the bank.

**XM26** - Improvement works for tracks and paths.

Proposed conditions;

- (a) the works are to an existing track or path;
- (b) the works do not alter the route or width of the track or path;
- (c) the works do not affect the bed or bank of any main river;
- (d) the works do not increase the level of the path by more than 100mm; and
- (e) when the works are completed all materials and debris are removed from the site.