



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**

## **Consultation Document**

**December 2014**

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# Part 1: Background and purpose of consultation

## Background

1. Those wishing to carry out certain works<sup>1</sup> on or near main rivers<sup>2</sup> or sea defences that might impact on flood risk are required to seek prior consent from the Environment Agency (EA) in England and Natural Resources Wales (NRW) in Wales. These consents are known as “flood defence consents”<sup>3</sup>. With no regulation, activities might block or restrict watercourses or the effective operation of the flood plain, leading to flooding of other property that might not have happened otherwise, or flood defence structures might be damaged with the same effect.
2. Such activities controlled by flood defence consenting include (but are not limited to)
  - construction of outfalls,
  - construction and repair of foot, road or rail bridges,
  - works to prevent erosion of river banks and loss of land,
  - provision of utility crossings of rivers,
  - culverting watercourses for access crossings or to increase available land for some activity unrelated to the watercourse,
  - depositing solid material or raising ground levels in the floodplain when not covered by the grant of planning permission.

They may also include works temporarily affecting watercourses, such as access scaffolding or coffer dams.

3. The UK Government announced in November 2011 that, in order to reduce regulatory burdens on businesses, it intended to further expand the Environmental Permitting framework to cover flood defence consents (as well as water abstraction and impoundment licences and fish pass approvals). Powers to enable these changes to be made are included in the Water Act 2014<sup>4</sup>.
4. The Environmental Permitting framework is a common framework for applying for, receiving, varying, transferring and surrendering permits, along with compliance,

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<sup>1</sup> Work within, above or below the channel or on the banks or flood plain of a main river

<sup>2</sup> Main rivers are defined as a watercourse marked as such on [a main river map](#). Main rivers are usually larger streams and rivers, but also include some smaller watercourses. All other watercourses as termed “ordinary watercourses”, and are not covered by these proposals

<sup>3</sup> See <https://www.gov.uk/government/publications/riverside-ownership-rights-and-responsibilities> for further details of the current process

<sup>4</sup> See <http://www.legislation.gov.uk/ukpga/2014/21/part/3>

enforcement and appeals arrangements. It seeks to rationalise various permitting and compliance regimes into a common framework that is intended to be easier to understand and simpler to use. A key component is that it allows applicants that would otherwise require several permits for activities falling under various regulations on a single site to complete a single application, and to be issued with one permit. This simpler and more transparent system incorporates a risk-based and proportionate approach designed to help regulators focus resources on higher risk activities. In general, Environmental Permitting does not change overall level of protection or the substantive requirements of permits, although these proposals may identify instances where permitted activities can be assigned to a lower level of regulatory control. These proposals for moving into environmental permitting reduce the administration necessary to deliver those requirements.

5. In addition to EA and NRW consents on main rivers, local authorities and internal drainage boards (IDBs) consider applications for consents on ordinary watercourses<sup>5</sup> under the Land Drainage Act 1991. We will not be integrating these local authority or IDB administered land drainage consents into the Environmental Permitting framework. This is because to do so would be unlikely to present any significant benefits to businesses. In particular:
  - we have been unable to identify any clear examples of situations where standard rules permits or exemptions might be used for activities regulated by IDBs or local authorities, since the requirement for prior consent on ordinary watercourses is broadly limited to higher risk activities already;
  - activities requiring land drainage consents seldom need a permit under the emissions scheme administered by local authorities. In addition, IDBs have no role in any other consenting regimes within the EP framework. There is therefore little opportunity for multiple permits which would offer businesses savings from single applications and combined inspections.
6. We are consulting on various aspects of proposals to integrate flood defence consents into the Environmental Permitting framework in England and Wales. This document comprises the consultation by Department for Environment, Food and Rural Affairs (Defra) and Welsh Government (WG) on the changes to the existing environmental permitting regulations, and proposed exemptions and exclusions from these. The EA are carrying out a separate, though linked, consultation on proposals for standard rules that would apply to permits for standard activities in England (see paragraph 18), (<https://consult.environment-agency.gov.uk/portal/ho/flood/risk/sr13>). There are no standard rules permits proposed for Wales at this time. Defra, WG and EA are coordinating these consultations in order to give stakeholders a clearer idea of the complete scheme.

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<sup>5</sup> All watercourses not shown as “main rivers” on the main river map are termed “ordinary watercourses”.

7. Views are sought on how the new powers will be used, and the revised Impact Assessment that has been produced.

## Previous Consultation

8. The proposals to integrate flood defence consents into the Environmental Permitting framework formed part of the Water White Paper, published in December 2011, and subsequently the Water Bill, both of which were scrutinised by the Environment, Food and Rural Affairs Government Select Committee and were subject to public consultation. We published draft regulations in November 2013, during the passage of the Water Bill through the Parliamentary process, to give an indication of how Defra and Welsh Ministers intended to use the proposed new powers. The Water Act 2014 can be viewed at <http://www.legislation.gov.uk/ukpga/2014/21/contents>

## Coming into force date

9. Subject to the outcome of this consultation, any changes to flood defence consents would come into force in October 2015.

## Geographical scope

10. This consultation relates to England and Wales only. It does not include the Isles of Scilly.

## Part 2: The proposals

### General provisions

11. Integrating flood defence consents into the Environmental Permitting framework will not change the overall level of protection or the substantive requirements of permits, although these proposals identify instances where permitted activities may be assigned to a lower level of regulatory control. The EA will be responsible for receiving and determining applications for and regulating permits in England, NRW in Wales; in the regulations themselves these are referred to as ‘the regulator’ for their respective areas of operation.
12. Under the new regulations the Environmental Permitting framework’s general provisions will apply in the following ways;
  - Single application and permit - applicants for schemes which require multiple permits (for example, large treated effluent outfalls) can be issued with a single permit which includes the necessary conditions of issue across all relevant regimes administered by the EA/NRW,
  - The EA/NRW will be able to issue a single permit, for example, for ongoing maintenance of flood defences or structures that could typically last up to 5 years. Currently a separate consent is required each time work is proposed, or for a series of structures on a watercourse,
  - Flexibility on timing - if further information is needed in order to determine an application, deadlines for the EA/NRW to make a decision can be extended with the agreement of the applicant, instead of the application having to be rejected outright as at present,
  - An applicant (the Environmental Permitting framework uses the term “operator”) will be able to apply to transfer a permit to another person, or vary the details of a permit such as the precise location of the work (e.g. where site designs change in detail), or materials to be used (such as using different profiles of pre-formed culvert sections), rather than needing to apply for a new consent as at present,
  - The applicant will be able to surrender a permit where the permit is no longer needed, for example when construction work has been completed and is considered satisfactory by the regulator
  - The EA/NRW will be able to revoke a permit for activities where changes in circumstances since the original application mean that the activity is no longer appropriate, most commonly when construction work has been completed and is considered satisfactory by the regulator,

- Conditions - EA/NRW will be able to attach reasonable conditions to the permit. While only those activities which have the potential to affect flood risk will require a permit, the EA/NRW will be able to attach conditions to ensure that they are undertaken in a way which minimises flood risk and impacts on land drainage as well as avoiding environmental harm,
- Enforcement powers – the EA/NRW will be able to issue;
  - ❖ enforcement notices requiring remediation within a specified period for those who contravene a permit condition,
  - ❖ suspension notices requiring the suspension of a permitted activity if the EA/NRW consider that it presents a serious flood risk, risk of serious impediment to drainage or risk of serious harm to the environment,
  - ❖ remediation notice in respect of unauthorised activities (i.e. those activities carried out without a permit) requiring specified steps to be taken within a set time frame,
  - ❖ take prosecution in respect of breaches of notices and permit breaches,
  - ❖ The EA/NRW will also be able to take steps itself to prevent or remedy the effects of an authorised activity if they consider the activity involves a risk of serious flooding, risk of serious detrimental impact on drainage, or a risk of serious harm to the environment. The EA/NRW will have to give at least 5 days' notice of its proposed steps other than in emergency situations,
- Appeals - applicants will be able to appeal if their application for a permit has been refused or where they consider the conditions imposed on a permit are unreasonable. They will also be able to appeal against enforcement, suspension, and remediation notices. Appeals are heard by the Planning Inspectorate,
- Charges – the EA/NRW will have the power to set application fees, subject to consultation and Ministerial approval,

13. We are proposing to introduce some slightly different provisions to those in other Environmental Permitting schemes;

- Determination times – applications for stand-alone activities (i.e. where only a permit under this scheme is required) will still be determined within 2 months. The EA/NRW will have to consider applications which cover a number of different permits within 3 months (such as the treated effluent outfall noted above), or where public participation is required under the other regimes involved, 4 months,
- Public participation – as for the current flood defence consents, there will be no requirement for the EA/NRW to consult on applications for stand-alone activities.



- Public register – unlike other schemes in the Environmental Permitting framework, there will be no requirement for the EA/NRW to include applications for stand-alone activities in the public register.
- Additional enforcement powers;
  - ❖ The EA/NRW will be able, after giving advance notice, to take steps to remove, alter or pull down any unauthorised works and to remedy the effects caused by such an activity. The EA/NRW will be able to recover any expenses incurred. In emergency situations (e.g. to avoid danger to human health) EA/NRW will not be required to give advance notice. The person who has been served the notice will be able to appeal;
  - ❖ Emergency works notices in an emergency situation, requiring the removal or modification of any structure or activity. The person who has been served the notice will be able to appeal;
- Penalties – the standard EPR penalties will be amended for some offences committed under this scheme. The EPR maximum fine on summary conviction of £50,000 will be reduced to £20,000 and the maximum 5 years imprisonment on conviction on indictment reduced to 2 years. All other penalties will be unchanged.

**Question 1: Do you consider the proposals to apply the general Environmental Permitting provisions in the way proposed above is reasonable?**

**What would you change?**

## **Need for a permit**

14. We are proposing to integrate into the Environmental Permitting framework all flood defence consent and enforcement activities on and near main rivers. This includes both those currently required under section 109 of the Water Resources Act 1991, and any consents needed under EA and NRW land drainage and sea defence byelaws.
15. We are standardising the wording concerning activities previously controlled through byelaws, as these byelaws currently vary from region to region (for example, in some areas consent is required before erecting a fence within 8 metres of the main river, on others it is 9 or more metres). This means that in some places marginally more activities will be regulated and in others there will be marginally less.
16. We propose that the new regulations will cover all activities that have the potential to affect flood risk. These are;

- erecting any structure (whether temporary or permanent) in, over or under a main river;
- altering or repairing any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water or to impact on any drainage work;
- erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of a main river;
- any dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or bank of a main river (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging.
- any activity which is likely to divert the direction of the flow of water into or out of a main river or alter the level of water in a main river;
- any activity within 8 metres of a non-tidal main river (or any flood defence structure on that river) or any activity within 16 metres of a tidal main river (or any flood defence structure on that river) which is likely;
  - ❖ to cause damage to or endanger the stability of the bank of that river or of any culvert,
  - ❖ cause damage to any river control works,
  - ❖ alter, reconstruct, discontinue or remove any river control works
  - ❖ divert or obstruct flood waters or impact on the drainage of that river, or
  - ❖ interfere with the regulator's access to and along that river;
- any activity on a flood plain that is—
  - ❖ more than 8 metres from a non-tidal main river or more than 16 metres from a tidal main river, or
  - ❖ more than 8 metres from any flood defence structure or culvert on a non-tidal main river or more than 16 metres from any flood defence structure or culvert on a tidal main river,
 which is likely to divert or obstruct floodwaters, damage any river control works, or to impact on drainage (this does not include activities that have been granted planning permission under the Town and Country planning Act 1990, or the construction of hay or straw stacks, clamps or manure (or similar) heaps, in accordance with accepted agricultural practice);
- any activity within 16 metres of a sea defence which is likely to—
  - ❖ endanger the stability of, cause damage to or reduce the effectiveness of that sea defence, or
  - ❖ interfere with the regulator's access to and along that sea defence;
- any activity within 8 metres of a remote defence which is likely to—
  - ❖ endanger the stability of, cause damage to or reduce the effectiveness of that defence, or

- ❖ interfere with the regulator's access to and along that defence;
- any quarrying or excavation within 16 metres of a remote defence which is likely to cause damage to or endanger the stability of that defence;
- any quarrying or excavation within 16 metres of a main river or any flood defence or culvert on that river which is likely to cause damage to or endanger the stability of the bank of that river.

River control works are those structures or appliances used for measuring or regulating the level of water, the flow of water, or which draw water into or out of a main river, for example, sluices, flood gates, valves, locks, weirs, or pumps.

Remote defences are those embankments or walls constructed to prevent or allay flooding from a main river, but which are separated from that river.

Sea defences are any bank, wall, embankment (and any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier or tidal sluice or other defence whether natural or artificial against the inundation of land by sea water or tidal water. The term excludes those sea defence works which are, for the time being, maintained by a Coast Protection Authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority.

17. Byelaws that prohibit activities entirely, but do not require the regulator's consent will not be integrated into the framework. These prohibitions will remain within the byelaws. Consents issued under Schedule 1 to the Flood and Water Management Act 2010 will not be transferred into the Environmental Permitting Framework. These relate to where EA/NRW (or another specified authority) has previously designated by notice on the owner an existing structure as being a flood risk management feature by virtue of its benefit to flood risk management. Where a structure or feature has been designated, consent is required prior to any alteration, removal or replacement of the structure or feature.

**Question 2: What are your views on our proposals to integrate both s109 and byelaw consents and enforcement into the Environmental Permitting framework?**

**Question 3: Do you consider that this list of activities adequately covers all activities on or near main rivers, their flood plains and sea defences that might affect flood risk?**

## Types of permits

18. The two main types of permits available are bespoke and standard rules permits;

- **Bespoke permits** – these are issued specifically for activities which are not suited to simplified approaches to permitting and compliance (this might be because of the activity or the location for example). Activities which are higher risk in terms of flood risk or environmental harm are likely to need bespoke permits.

The regulator assesses the risks and mitigation on each application, and is able to impose reasonable conditions on the permit issued (to address flood risk, impact on drainage and environmental harm). Applicants can appeal against the refusal of a permit or against the conditions imposed in the permit.

- **Standard rules permits** – These are issued for specified types of activity which can be described and controlled by a standard rule set. Standard Rules in the Environmental Permitting framework are intended to reduce the administrative burden whilst maintaining the same levels of protection against environmental harm and, for this scheme, flood risk. These will tend to be those activities that are more commonly carried out and present lower flood risk and lower risk of environmental harm being caused.

Under standard rules, the regulator still assesses the environmental and flood risks and mitigation options, but they do this once, in advance, rather than at multiple sites in response to each application. The regulator develops standard rules proposals, including conditions that would apply in a standard rules permit, and consults on these with those who are affected to ensure that the proposals are appropriate. Applicants can see in advance whether the standard rule is applicable to their proposals, and can choose whether to apply for a standard rules permit, with the associated benefits in terms of reduced application and administration. Standard rules permits are more administratively efficient as risk assessments do not need to be carried out in response to each application, and as such can be issued in much shorter time scales. Applicants would be able to appeal against the refusal of a permit but not against the standard rules themselves

The EA is consulting on its proposals to introduce thirteen sets of standard rules in England (<https://consult.environment-agency.gov.uk/portal/ho/flood/risk/sr13>)

- SR2015 No. 26 - Temporary dewatering (less than 20 metres of riverbank)
- SR2015 No. 27 - Outfall headwalls (associated with discharge pipe of between 300mm to 500mm diameter)
- SR2015 No. 28 - Installation of a clear span bridge (maximum bridge width 4.2 metres)
- SR2015 No. 29 - Temporary storage within the flood plain
- SR2015 No. 30 - Temporary diversion on a main river
- SR2015 No. 31 - Installation of habitat structure made from natural materials occupying up to 100m of a main river
- SR2015 No. 32 - Construction of an access culvert
- SR2015 No. 33 - Repair and protection of the bank of a main river using natural materials
- SR2015 No. 34 - Use of temporary scaffolding

- SR2015 No. 35 - Small wetland and pond creation
- SR2015 No. 36 - Installation of site investigation boreholes and temporary trial pits
- SR2015 No. 37 - Dredging of up to 1.5 kilometre of man-made ditches, land drains and agricultural drains (see paragraphs 21 to 24 below)
- SR2015 No. 38 - Removal of a total of 100 metres of exposed gravel from bars and shoals over a 1 kilometre length of main river

The EA's consultation contains further details about the intended sets of standard rules under which standard permits would be issued.

The following questions are asked by the EA in relation to their consultation on its draft sets of standard rules:

**Question 4: Do you agree with the EA's approach to use standard rules for watercourse activities?**

**Question 5: Do you agree with the proposed new rules set out in section 3 of the EA's consultation?**

**Question 6: Has the EA correctly identified all the risks for each activity, as described in the generic risk assessments associated with the consultation?**

**Are there any barriers to complying with the standard rules?**

**Question 7: Do you think that the introduction of standard rules for watercourse activities will have a significant financial impact overall on your operation. If you agree or disagree, please explain why, and provide evidence to support your view of the likely impacts.**

**Question 8: Are there any other activities that you think would benefit from the standard permitting approach or future revisions?**

19. NRW proposes to consider, in 2015, proposals for standard rules. This timing is due to the Environment Bill for Wales that is currently being developed. Part of the Bill will introduce a new integrated approach to managing the natural resources of Wales, including flood risk, and new powers for NRW to exercise accordingly. NRW will consult on any proposals in due course.

20. Some activities have very low flood risk and will not require a permit;

- **Exemptions** - exempt activities will not need a permit, but those wishing to rely on an exemption must register their intention of undertaking the particular activity with EA/NRW (i.e. give their name, address and location of activity). Those wishing to use registered exemptions will need to comply with the specific rules set out in the regulations for that exemption, such as common controls and location rules, in order to ensure flood risk management and protection of the environment is not

undermined. If the activity is not carried out in accordance with the specific rules, it will be unauthorised, and could be subject to enforcement action.

Below is a list of exemptions being proposed (full details are set out in Annex 1). All of these will apply in England, most in Wales. Those that will not apply in Wales are marked with an \*;

- XM1 - Construction of footbridges
- XM2 - Electrical cable service crossings over channels
- XM3 - Service crossings below the channel bed by directional drilling or other non-invasive technique
- XM4 - Service crossings over the channel attached to existing structures
- XM5 - Temporary scaffolding (less than 10m of riverbank) \*
- XM6 - Temporary dewatering of a work area (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.)
- XM9 - Cattle drinking bay
- XM10 - Access platforms that project into the channel of the main river
- XM11 - Outfall headwalls (associated with discharge pipe less than 500mm diameter)
- XM12 - Bank repair and protection using soft-engineered materials
- XM13 - Repair of bank slips and erosion
- XM14 - Installation of natural channel habitat structures
- XM15 - Gravel cleaning in fish spawning beds
- XM16 - Placement of stones or logs for habitat enhancement \*
- XM17 - Eel pass devices on existing structures
- XM18 - Fish passage notch in an existing impoundment
- XM19 - Removal of sediment from within culverts and bridge arches
- XM20 - Removal of silt and sand adjacent to in-river structures
- XM21 - Dredging in man-made ditches, land drains and agricultural drains \* (see paragraphs 21 to 24 below)
- XM22 - Dredging in any watercourse \*
- XM23 - Excavation of scrapes and shallow wetland features in a flood plain
- XM24 - Raised defences around the perimeter of one to six adjoining properties\*
- XM25 - Bankside wildlife refuge structures
- XM26 - Improvement works for tracks and paths

**Question 9: Do you consider that these are appropriate activities to be exempted from the requirement to seek prior approval?**

**How could the conditions (set out in Annex 1) be better drafted to best ensure flood risk is not increased or environmental protection decreased?**

21. The River Maintenance Pilots were launched by the EA in October 2013 to see how the existing rules for getting consent to remove silt could be simplified while protecting the local environment. Under the pilots, farmers and landowners in nine areas in England at risk of flooding are able to remove silt up to the lesser of 1.5km or 20% of the watercourses (man-made ditches, land drains and agricultural drains) on their land without obtaining prior consent provided that certain conditions are adhered to and no harm to the environment or increase in flood risk is caused. Landowners are, however, required to register their intended works with the EA. These pilots end in March 2015.
22. Although those taking part in the pilots are only required to register their intended works with the EA rather than apply for a consent, the practical arrangements of the pilots more closely resemble conditions that would apply under a standard rules permit although the additional support and compliance checking provided under the pilot goes beyond what could be provided under a standard rules permit in some respects. These arrangements ensured that work that has been completed and compliance checked is in line with the Pilot Rules and environmental good practice. However, it should be noted that the support provided to manage environmental and flood risks was a resource intensive activity that could not be undertaken at a national level.
23. While conditions can be applied to an exemption to reduce residual risk of damage to the environment, this is most effective for small scale activities. As the length of dredge increases, residual risk rises, even with conditions in place. Generally speaking as more habitat is lost or degraded the greater time it takes for fish/animals and plants to recover from that disturbance.
24. We are still considering how we should roll out the benefits of the River Maintenance Pilots across England. In doing so we need to balance the wish to apply the simplified rules more extensively against the need to protect the environment. We would therefore welcome your views on the appropriate length of man-made ditches, land drains and agricultural drains that it should be permitted to dredge under an exemption, and under a standard rules permit. For example, the regulations could allow the removal of accumulated silt from up to 1.5km in man-made ditches, land drains and agricultural drains as a standard rules permit, but could also provide that dredging up to a maximum of 100m can be done under a registered exemption (i.e. without needing to get a standard rules permit. Standard rule permit No.37 and exemption XM21 show the necessary conditions to control how dredging should be undertaken in order to ensure that biodiversity, habitats, and hydromorphology ((i.e. the physical form of watercourses and the flow of water) are protected.

**Question 10: What length of watercourse do you think people should be allowed to dredge under the new scheme under an exemption? Should it be**

- a) 100 metres**
- b) 1.5km**
- c) Another length (please specify).**

**What evidence do you have to support your view?**

**Do you consider that the conditions proposed under Standard rule permit No.37 and exemption XM21 are appropriate?**

- **Exclusions** – those wishing to undertake excluded activities do not need to apply for a permit, or to register, so long as they comply with the rules specified in the regulations. The rules have been drawn up to ensure that activities are undertaken in such a way that flood risk management and environmental protection are not undermined.

Below is a list of exclusions being proposed (full details are set out in Annex 2). These will all apply in both England and Wales;

- XC1 - Activities carried out in an emergency situation
- XC2 - Marine activities covered by a marine licence
- XC3 - Temporary ladders and scaffold towers removed after each day of use
- XC4 - Removal of rubbish and debris from structures
- XC5 - Service crossings within existing structures
- XC6 - Minor works on or affecting highway bridges and culverts
- XC7 - Property protection device attached direct to building fabric
- XC8 - Erection of notice boards
- XC9 - Agricultural fencing
- XC10 - Site investigation boreholes and trial pits within a flood plain
- XC11 - Installation of rafts for wildlife surveys
- XC12 - Temporary fish traps
- XC13 - Clearing purpose-built sediment traps

**Question 11: Do you consider that these are appropriate activities to be excluded from the requirement to seek prior approval?**

**How could the conditions (set out in Annex 2) be better drafted to best ensure flood risk is not increased or environmental protection decreased?**

25. We anticipate further exclusions, exemptions and standard rules permits will be developed over time, and current ones may be revised. These changes will arise from experience in use (on the part of both the EA/NRW and the public) and identification of suitable new activities. Our proposed list reflects activities that are low risk in all areas (though note that exclusions will not apply in sensitive areas such as Sites of Special Scientific Interest). However, as our ongoing work continues to improve our geographical identification of what and where flood and



environmental risks exist, we will be able to identify more specific locations where activities can be assigned to a lower level of regulatory control.

26. The EA has also used the River Maintenance Pilots to trial whole farm and collective area consents. These consents have been developed in partnership between the EA and local landowners to enable a range of watercourse maintenance activities to be covered by a single consent. Whilst the pilots are ongoing the EA is investigating how permits can be offered under the new scheme in a way that delivers similar efficiencies; once the river maintenance pilots conclude in April 2015 the recommendations on whole farm and collective area consents will be finalised.
27. We are interested to hear from anyone who may be able to identify any new exclusions, exemptions and standard rules permits. Proposals need to be for activities with low flood and environmental risk that can be carried out using standardised approaches, which occur often and are widespread. It is not cost efficient to work up special permits for activities which only very few people undertake. Please send any suggestions to this consultation address, making sure to include your name and contact details so that your proposal may be discussed further if necessary. Some suggestions may not be suitable and we will not be able to develop them, but we will let you know if that is the case. It will take a certain amount of time for the necessary rules and definitions to be worked up, and it may not be possible to include all of the new suggestions straight away. We will, however, be able to amend the regulations periodically in the future to reflect further exemptions and exclusions as they are worked up, while the EA/NRW are able to modify and introduce new standard rules more simply.

**Question 12: Are there any activities you consider should be added to the lists of standard rules permits, exclusions or exemptions? (Please provide as much information as possible, in the manner of those already proposed.)**

28. 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. This is to ensure that the activities exempt from the requirement to seek a permit cannot harm the protected feature, or, in the case of rivers classified as “high status” under the Water Framework Directive, so that the activities do not endanger the hydromorphological or ecological condition of the watercourse. We consider that a standard buffer zone of, for example, 1km, would give clarity across the board. It would, however, mean that some activities which are unlikely to cause harm at such distances are unnecessarily restricted. An alternative is to set a different buffer zone for each exemption, or to set a different buffer zone according to the type of feature being protected. These, however, would mean that it would be more complicated for those wishing to undertake a number of different

activities to work out whether they need to apply for a permit, or could rely on an exemption.

**Question 13: What size buffer zone do you consider appropriate?**

**Would you prefer a standard buffer zone to be applied to all exemptions, or for different buffer zones to be applied?**

**Do you have any alternative suggestions of how to ensure works do not harm sensitive sites?**

## Highways Act 1980

29. Section 339 of the Highways Act 1980 requires that highway authorities and others wishing to undertake certain highways activities that impact on main rivers must seek the permission of the EA/NRW. In many cases this means that the highways authorities must apply for both a Highways Act consent and a flood defence consent. But the processes associated with the two consents are different, and it has not always been clear which regime should apply (either to highway authorities or to the EA or NRW);

- The key discrepancy is that there is no provision for the EA or NRW to include conditions in Highways Act consents, whereas conditions about the timing and manner of works are added and enforced as part of a flood defence consent;
- Timescales aren't fixed in the Highways Act, so for example, the EA or NRW could take 6 months to make a decision under the Highways Act rather than the 2 months required for a flood defence consent.
- A fee is payable on application for a flood defence consent under s109 Water Resources Act 1991, but not under the Highways Act (or in respect of applications under byelaws).

30. We wish to standardise procedures to reduce the confusion caused by dual legislation. We are therefore proposing to;

- Retain the principle that highway authorities must seek a permit from the EA/ NRW in all cases other than when requirements are included in a Highway Order or other legislation;
- Remove the requirement to apply for more than one consent by removing the need for a separate s339 consent when a watercourse activity permit has been obtained, requiring highways works to be permitted through the new Environmental Permitting scheme.

**Question 14: Do you support the changes we're proposing to make to the Highways Act?**

**What do you think the impact of these changes will be for you or your organisation?**

## **Fees**

31. The Environmental Permitting framework reduces the administration necessary to deliver permitting and compliance, and ensures regulators are able to assess applications in the most efficient manner proportionate to their associated risks. This will enable the EA and NRW to set charges at the lowest possible level compatible with fully funding their costs of regulation.
32. There will be no charge for undertaking activities that are exempt or excluded from needing a permit. For activities needing a standard rules permit or a bespoke permit we intend to continue the current level of fees for the time being – ie. £50 charge for those activities requiring a permit that would previously have been charged at this level, and no charge for all others.
33. The charges associated with a flood defence consent application have, however, remained at the same level since 1991 and, do not currently reflect the full cost of EA and NRW's work in determining permits and carrying out compliance activities. EA and NRW will therefore be carrying out a review of charges for this new scheme, and will consult on proposed changes during 2015 as part of the regular review and consultation on charging schemes under the Environment Act 1995, with a view to their introduction in April 2016.

## **Impact assessment**

34. A revised Impact Assessment, published alongside this consultation document, sets out an analysis of these proposals.
35. The main changes from the previous Impact Assessment, published in June 2013 reflect:
  - More detailed analysis of impact of standard rules permits, exemptions, exclusions which better reflects our more developed thinking of which activities are low risk and which therefore merit less regulatory oversight.
  - The results of a survey of recent applicants regarding their experience of the current scheme and their expectations of the potential impact of these proposals

**Question 15: Do you have any comments to make on the Impact Assessment?**

**Question 16: Is there anything else you wish to add in response to this consultation?**

**How did you find out about this consultation?**

## Part 3; Consultation process

### Tell us what you think

36. Comments and views are welcome on the questions asked in this and the EA's consultations (these are listed again in Part 5). Your thoughts and practical examples of the impact of this proposal on you and your business can help us get a fuller and more accurate understanding of the overall impact, which will be used in finalising our approach and the Impact Assessment itself.

37. The EA consultation on standard rules permits in England is available at <https://consult.environment-agency.gov.uk/portal/ho/flood/risk/sr13>, and includes the same questions. Replies to both parts of this consultation may be sent to Defra at the address below.

### Who will be interested in responding?

38. This is a public consultation and it is open to anyone with an interest to provide comments. The consultation should be of particular interest to people living or working next to main rivers who wish to undertake activities in, on, over, under or near that watercourse, or to a sea defence. This includes, but is not limited to:

- Residential riparian owners, such as homeowners;
- Non-residential riparian owners, such as businesses, large landowners (estates or farms), charities, and non-business organisations, such as voluntary trusts, churches, sports clubs;
- Property developers;
- Local authorities exercising their various roles, such as highway authority, education authority, and providing public facilities;
- Utility and infrastructure providers, such as water companies, electricity generators and distributors, Network Rail, Highways Agency, Transport Wales, cable TV companies, British Telecom, etc.;
- Port authorities, navigation authorities, harbour authorities; and
- Those affected by byelaws covering development in flood plains that is not covered by planning permission; some waste or agricultural activities

## Having your say

This consultation will run for 10 weeks, from 10 December 2014 to 17 February 2015. This is in line with the UK Government's Consultation Principles published in 2012 and with Welsh Government consultation guidelines. If you wish to respond, please submit your comments by **17 February 2015**.

The Environment Agency is consulting on its proposed Standard Rules in accordance with its Statement on Public Participation in relation to environmental permitting decisions . This requires the Agency to consult for 12 weeks, and their consultation will therefore end on **30 February 2015**.

You can respond in one of three ways:

### In England;

Comments on Defra and the EA's consultations can be combined and sent using any of the methods below. We will ensure that the comments are directed to the correct body. If you prefer you can send comments about the EA's proposals concerning standard rules permits (questions 5 to 10) directly to them.

**Online (through Citizen Space)** <https://consult.defra.gov.uk/flooding/flood-defence-consents/>

**Email to:** [floodreports@defra.gsi.gov.uk](mailto:floodreports@defra.gsi.gov.uk)

**Post to:** Flood Defence Consents Consultation,  
Flood Risk Management,  
Area 3C,  
Nobel House,  
17 Smith Square,  
London SW1P 2AL

### In Wales;

**Online;** <http://wales.gov.uk/consultations/environmentandcountryside/integrating-flood-defence-consents-into-the-environmental-permitting-regime>

**Email to:** [FloodCoastalRisk@Wales.gsi.gov.uk](mailto:FloodCoastalRisk@Wales.gsi.gov.uk)

**Post to:** Flood Defence Consents Consultation,  
Flood and Coastal Erosion Risk Management,  
3<sup>rd</sup> Floor  
Cathays Park,  
Cardiff CF10 3 NQ

Our preferred method is online because it is the fastest and most cost-effective way for us to collate and analyse responses.

Unless you specifically request your response to be treated confidentially, responses may be made publicly available.

## Consultation Criteria

This consultation is in line with the Code of practice on Consultations.

This can be found at [www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance](http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance)

Copies of responses will be made available to the public on request. If you do not want your response – including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential.

We will summarise all responses and place this summary on our website at:

[www.gov.uk/defra](http://www.gov.uk/defra)

This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

## Compliance with the government's consultation principles

This consultation is being undertaken in accordance with the Better Regulation Executive guidance on written consultation as set out at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/255180/Consultation-Principles-Oct-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf)

If you have any comments or complaints about the consultation process, as opposed to comments about any of the issues in this consultation paper, please address them to:

Defra's Consultation Coordinator

Room 629  
9 Millbank  
c/o 17 Smith Square London, SW1P 3JR  
Email: [consultation.coordinator@defra.gsi.gov.uk](mailto:consultation.coordinator@defra.gsi.gov.uk)

Any complaints regarding the EA consultation should be sent to

Emma Hammonds,  
Consultation Co-ordinator  
Environment Agency  
Horizon House  
Deanery Road  
Bristol BS1 5AH  
Email: [emma.hammonds@environment-agency.gov.uk](mailto:emma.hammonds@environment-agency.gov.uk)

## Next steps

Copies of the responses together with copies of consultation responses to personal callers or in response to telephone or email requests will be available;

For Defra; in the Defra Information Resource Centre

For EA; <https://consult.environment-agency.gov.uk/portal/ho/flood/risk/sr13>,

This is so that the public can see them. Wherever possible, personal callers should give 24 hours' notice of their requirements. Also, members of the public may ask for a copy of responses under freedom of information legislation.

All the responses received by the deadline will be analysed and a summary of the responses received will be placed on Defra's, WG's and EA's web sites. To see consultation responses and summaries, please contact:

For Defra;  
Defra Information Resource Centre  
Nobel House  
17 Smith Square  
London SW1P 3JR  
Telephone: 020 7238 6575  
Email: [defra.library@defra.gsi.gov.uk](mailto:defra.library@defra.gsi.gov.uk)



## Part 4: Summary of Consultation Questions

- Question 1:** Do you consider the proposals to apply the general Environmental Permitting provisions in the way proposed above is reasonable?  
What would you change?
- Question 2:** What are your views on our proposals to integrate both s109 and byelaw consents and enforcement into the Environmental Permitting framework?
- Question 3:** Do you consider that the list of activities adequately covers all activities on or near main rivers, their flood plains and sea defences that might affect flood risk?
- Question 4:** Do you agree with the EA's approach to use standard rules for watercourse activities?
- Question 5:** Do you agree with the proposed new rules set out in section 3 of the EA's consultation?
- Question 6:** Has the EA correctly identified all the risks for each activity, as described in the generic risk assessments associated with the standard rule?  
Are there any barriers to complying with the standard rules?
- Question 7:** Do you think that the introduction of standard rules for watercourse activities will have a significant financial impact overall on your operation. If you agree or disagree, please explain why, and provide evidence to support your view of the likely impacts.
- Question 8:** Are there any other activities that you think would benefit from the standard permitting approach or future revisions?
- Question 9:** Do you consider that these are appropriate activities to be exempted from the requirement to seek prior approval?  
How could the conditions (set out in Annex 1) be better drafted to best ensure flood risk is not increased or environmental protection decreased?
- Question 10:** What length of watercourse do you think people should be allowed to dredge under the new scheme under an exemption? Should it be  
a) 100 metres  
b) 1.5km  
c) Another length (please specify)  
What evidence do you have to support your view?

Do you consider that the conditions proposed under Standard rule permit No.37 and exemption XM21 are appropriate?

**Question 11:** Do you consider that these are appropriate activities to be excluded from the requirement to seek prior approval?

How could the conditions (set out in Annex 2) be better drafted to best ensure flood risk is not increased or environmental protection decreased?

**Question 12:** Are there any activities you consider should be added to the lists of standard rules permits, exclusions or exemptions? (Please provide as much information as possible, in the manner of those already proposed.)

**Question 13:** What size buffer zone do you consider appropriate?

Would you prefer a standard buffer zone to be applied to all exemptions, or for different buffer zones to be applied?

Do you have any alternative suggestions of how to ensure works do not harm sensitive sites?

**Question 14:** Do you support the changes we're proposing to make to the Highways Act?

What do you think the impact of these changes will be for you or your organisation?

**Question 15:** Do you have any comments to make on the Impact Assessment?

**Question 16:** Is there anything else you wish to add in response to this consultation?

How did you find out about this consultation?