



Proposals for new and amended standard rules for flood risk activities

Summary of consultation responses and decisions

March 2019

We are the Environment Agency. We protect and improve the environment.

We help people and wildlife adapt to climate change and reduce its impacts, including flooding, drought, sea level rise and coastal erosion.

We improve the quality of our water, land and air by tackling pollution. We work with businesses to help them comply with environmental regulations. A healthy and diverse environment enhances people's lives and contributes to economic growth.

We can't do this alone. We work as part of the Defra group (Department for Environment, Food & Rural Affairs), with the rest of government, local councils, businesses, civil society groups and local communities to create a better place for people and wildlife.

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Contents

Proposals for new and amended standard rules for flood risk activities	1
Contents	3
1. Introduction.....	4
2. How we ran the consultation	4
2.1. Proposals.....	4
2.2. Level of response	4
2.3. Key findings.....	4
3. Consultee questions and our response to these.....	5
3.1. Question 1	5
3.2. Question 2	5
3.3. Question 3	6
3.4. Question 4	6
3.5. Question 5	6
3.6. Question 6	6
3.7. Question 7	7
3.8. Question 8	7
3.9. Question 9	7
3.10. Question 10	8
3.11. Question 11	8
3.12. Question 12	9
3.13. <i>Question 13</i>	9
4. Next Steps	10

1. Introduction

The Environmental Permitting (England and Wales) Regulations 2016 (EPR) allow us to make standard rules to reduce the administrative burden for applicants while maintaining environmental and flood standards.

The rules take considerable time and resources to develop but once in place they make applying and determining the applications more straight forward.

Through this consultation, live from 16 November 2018 to 11 January 2019 we undertook our first review of our standard rules for flood risk activities, prepared in April 2016 following flood risk activities moving into EPR. This consultation proposes amendments to the existing standard rules and the creation of three new standard rules. Our overall aim is to increase the uptake of flood risk activity standard rules permits, while maintaining our commitment to protect the environment and manage flood risk.

2. How we ran the consultation

We invited comments on the proposal from operators, trade associations and businesses, other regulators, the public, community groups and non-governmental organisations with an interest in flood risk activity permitting.

We ran an e-consultation and made hard copies available to those who requested. We also engaged with key stakeholders to explain our proposals and to understand their views. This document summarises the responses to the consultation questions and any other key points raised. It sets out our responses to the points raised by consultees, the decisions we have made and the actions we will take as a consequence.

2.1. Proposals

The consultation focused on two areas:

- amendments to the separation distances between the activity and a protected site
- new standard rules for: Water Gates, Mooring Piles and Steps, ramps and other similar structures excavated into the existing bank profile

Full details on the consultation and proposals are located:

<https://consult.environment-agency.gov.uk/fcrm/standard-rules-for-flood-risk-activities/>

2.2. Level of response

We received a total of 13 responses, which we have carefully considered. Of the 13 responses:

- 11 were from organisations or groups
- 2 were from individuals

2.3. Key findings

Of those that responded the large majority agreed with our proposed amendments to the separation distances between the activity and a protected sites.

The support for the new standard rules was not unanimous. Comments suggest that consultation responders may not undertake the activities proposed in the new standard rules.

- 15% of responders stated they would be likely to use the water gate standard rule
- 23% of responders stated they would be likely to use the mooring pile standard rule
- 31% of responders stated they would be likely to use the steps, ramps and other similar structures excavated into the existing bank profile standard rule

3. Consultee questions and our response to these

3.1. Question 1

The distance associated with the natural bank activities needs to be justified. With the Environment Agency carrying out less and less maintenance on main rivers within catchments across England and Wales it is essential that land owners can carry out essential maintenance work via the standard permit route. It is also recommended that 'Local Nature Reserve' and 'Local Wildlife Site' are removed from this standard rule as these are not official designated sites and will unnecessarily limit the application to carry out flood risk activities via the standard permit route. An extension from 12 to 24 months should be considered due to increasing periods of prolonged inclement weather which can lead to work not being able to be carried out.

Response: We have relaxed the conditions for bank repair as far as is practicably possible within the scope of this project, with the aim of limiting the risks associated with this type of activity.

Local Nature Reserves are designated under National Parks and Access to the Countryside Act 1949 by Principal Authorities. They contribute to the network of statutory and non-statutory sites which form a significant part of the natural capital of England and so require protection. Local Wildlife Sites are included within the National Planning Policy Framework and are described as sites that "make an important contribution to ecological networks." As the Environmental Permitting Regulations are written for the purpose of preventing environmental harm, these sites require inclusion.

3.2. Question 2

The limitation of the length of scaffolding along a bank limited to only 20 m may lead to a decline in the uptake of this standard rule. The time limiting factor of 6 months needs to be justified and the increase in time available to carry out the works should be extended as increasing periods of prolonged inclement weather can lead to work not being able to be carried out.

Response: For a standard rule to be applicable there has to be set conditions to which an operator can adhere. 20m was agreed as the intention is the standard rule can be used on smaller water courses. On smaller watercourses as scaffold length increases so does the risk. This increases our technical assessment, which pushes the requirement for a further assessment, through a bespoke permits.

The time limit to undertake the activity within 6 months of issuing the permit is required in order for the Environment Agency as the regulator to maintain control of issued

permissions. We appreciate the time limitation may prevent application of an activity. In such circumstances a permit can be varied in order to extend its validity.

3.3. Question 3

It would be beneficial to our members to be able to spread the excavated material. Arguably, the pond/hole will outweigh the impacts of spreading the said material. For the majority of these the restrictions have been lessened making it easier to fit the criteria (eg. reduced exclusions for gravel extraction from 'any distance' to 3km upstream of a designated waterbody will make it easier for gravel extraction in the undesignated headwaters of Special Area of Conservation (SAC) rivers); however, the changes to the wording for wetland scrape creation seems likely to make little difference. The additional restrictions for habitat structures seems likely to make it harder for people to undertake habitat improvements.

Response: We believe that this has been misinterpreted. The screening restrictions for both excavations and habitat structures has been relaxed. The most pertinent relaxation being to reduce the downstream screening distance for a European designated nature conservation site, Sites of special scientific interest (SSSI) or National Nature Reserve having reduced to 100m from 500m.

The limits of the activity were not proposed as a change under the consultation. However, the comment regarding this, which relates to spreading of spoil, will be considered if the activity limits are reassessed in the future.

3.4. Question 4

Although in some circumstances the amendments to the standard rules may make obtaining them easier, we do not believe they will make it easier to obtain permission for much of the beneficial environmental improvement work that was previously undertaken, or that which is currently limited by the existing system, since much of that work is of necessity outside the standard rule framework.

Response: We have standard rules for some environmental improvement work. Creating standard rules is a complex process as the rule needs to fit across all of England's watercourses. Environmental improvement projects differ greatly in terms of their risks and working methods. To somewhat counter the effect of creating rules which will inevitably catch environmental enhancements, we have endeavoured to limit the cost implications for these works by reducing bespoke permit costs for many environmental works. Once these new conditions have been implemented we propose further engagement with Non-Governmental Organisations (NGO) and Environmental organisations to investigate further activities which could come under standard rules.

3.5. Question 5

In addition, SR2015 No.34 temporary scaffolding has been even further restricted by the addition of a 10% of the channel limit or 1.5 metres, whichever is smaller.

Response: The 10% allows for scaffold to be undertaken in watercourses which are not 1.5m wide, therefore is more inclusive.

3.6. Question 6

We wish to seek clarification of the usage of the term "Public Highway". In this context, does it reflect the legal definition, inclusive of footpaths and bridleways &c, or it is referencing vehicular highways. Some of the bridges Lincolnshire County Council installs as clear span would meet all the other requirements (e.g a footbridge of 1.2m width) but

does actually carry the highway (i.e. the public footpath) itself. These are not "associated" with the public highway, they are the public highway.

Response: The intention is of SR2015 No.28: installing a clear span bridge on a main river is for landowners to be able to construct crossings for machinery. Hence the 4.2m deck. Pedestrian and bridleway traffic is suitable under this stand rule. The term "public highway" relates specifically to vehicular highways.

3.7. Question 7

These proposals appear to make it easier for people to undertake works that are harmful to the aquatic and riparian environment (such as gravel extraction and bank reinforcement). The negative biological and morphological effects of activities such as these are well known and making it simpler for people to undertake these works will potentially increase the number of such projects. At the same time, these proposals appear to make it more difficult for those trying to improve river and floodplain habitats by adding further restrictions.

Response: The proposals were developed in consultation with our internal Fisheries, Biodiversity and Geomorphology Teams, we also engaged Natural England. The consensus is that the amendments do not increase risk as the operational conditions mitigate any potential risks to specifically cited sites and not to the watercourses in general. The general protections for exposed gravel removal and bank repair and protection have remained unchanged.

We have standard rules for some environmental improvement work. Creating standard rules is a complex process as the rule needs to fit across all of England's watercourses. Environmental improvement projects differ greatly in terms of their risks and working methods. To somewhat counter the effect of creating rules which will inevitably catch environmental enhancements, we have endeavoured to limit the cost implications for these works by reducing bespoke permit costs for many environmental works. Once these new conditions have been implemented we propose further engagement with NGO and Environmental organisations to investigate further which activities could come under standard rules.

3.8. Question 8

We agree with the actual amendments but they do not significantly improve the situation for environmental improvement practitioners such as the organisations listed in our answer to question 1B above, for whom much ecologically meaningful falls outside standard rules and exemptions.

Response: We have standard rules for some environmental improvement work. Creating standard rules is a complex process as the rule needs to fit across all of England's watercourses. Environmental improvement projects differ greatly in terms of their risks and working methods. To somewhat counter the effect of creating rules which will inevitably catch environmental enhancements, we have endeavoured to limit the cost implications for these works by reducing bespoke permit costs for many environmental works. Once these new conditions have been implemented we propose further engagement with NGO and Environmental organisations to investigate further activities which could come under standard rules.

3.9. Question 9

The standard rule does not apply if the scaffolding is within 8m of a flood defence. As most Main River banks are also flood defences this makes the standard rule effectively useless. For this reason Lincolnshire County Council would prefer that the requirement should be

dropped or modified, in order for it to be usable in this context. Without modification, it is unlikely to be used.

Response: Proximity to flood defences is a key element of a standard rule. In some watercourses in England even small in channel structures can raise water levels and increase flood risk. Also access may be required 24/7 to flood defences. The inclusion of this 8m buffer therefore cannot be relaxed.

3.10. Question 10

Most of these activities are not things that this organisation would undertake, as they are harmful to the ecology and morphology of the river. Furthermore, as the Eden catchment is designated Sites of special scientific interest (SSSI) and Special Areas of Conservation (SAC), the Standard Rules would not apply most of the in-stream and floodplain work being done.

Response: We have standard rules for some environmental improvement work. Creating standard rules is a complex process as the rule needs to fit across all of England's watercourses. Environmental improvement projects differ greatly in terms of their risks and working methods. To somewhat counter the effect of creating rules which will inevitably catch environmental enhancements, we have endeavoured to limit the cost implications for these works by reducing bespoke permit costs for many environmental works. Once these new conditions have been implemented we propose further engagement with NGO and Environmental organisations to investigate further activities which could come under standard rules.

All activities undertaken in catchments which are SSSI & SAC require further technical assessment so their impacts can be fully assessed. Trying to create standard rules which would cover all European designations and their cited species and habitats and also fits within our legal requirement to fulfil the precautionary principal would be too complex for a general set of rules. Whilst we have sympathy for those undertaking activities which are to promote the condition of the site, all actions that may affect the site must by law be assessed whatever its stated outcomes. This requires a greater resource and therefore these activities should be bespoke.

3.11. Question 11

Many of the standard rules are not applicable to the work of organisations undertaking habitat improvement work on fisheries etc., marked with 'No Opinion' above. However, many groups undertaking habitat improvement works in riverine environments are prevented from using many of the standard rules they would otherwise use due to their inapplicability for designated sites (with no leeway) and the overly prescriptive nature of the rules. To the latter point, 'SR2015 No.31: Channel habitat structure made of natural materials' actually thereby encourages the installation of flow deflectors, rather than more natural woody material that would require a bespoke permit at significantly increased cost. As noted throughout the EPR flood risk process and as outlined by the Wild Trout Trust, the Angling Trust believes that there should be an option to waive the cost of bespoke/standard permits if the work is Environment Agency funded or part of an Environment Agency partnership project, or to provide a less restrictive standard rule or fit-for-purpose exemptions for beneficial habitat work more generally. We recognise the importance of regulating work that has the potential to harm the environment. However, the current system deters willing NGOs, angling clubs and fishery managers from undertaking important work that meets the Environment Agency's own duty to maintain,

improve and develop fisheries, which the Environment Agency should have the resources and ability to implement themselves.

Response: We have standard rules for some environmental improvement work. Creating standard rules is a complex process as the rule needs to fit across all of England's watercourses. Environmental improvement projects differ greatly in terms of their risks and working methods. To somewhat counter the effect of creating rules which will inevitably catch environmental enhancements, we have endeavoured to limit the cost implications for these works by reducing bespoke permit costs for many environmental works. Once these new conditions have been implemented we propose further engagement with NGO and Environmental organisations to investigate further activities which could come under standard rules. At that point we will take these comments into consideration.

3.12. Question 12

For the majority, the flood risk aspect has not changed; however, the storage of materials in the floodplain rule does not identify any restrictions regarding season/flooding and allows for materials to be stored for twice as long. Therefore, under these rules storage of materials 10m from the main river could be done for 8 weeks over winter, increasing the possibility of flood events mobilising these materials and therefore increasing the risk of it causing flooding in other areas. In general, we do consider that the rules to be further relaxed without any impact on flood risk- we have had a number of works where the local team at the Environment Agency have expressed the opinion that there would be no impact on flood risk and yet a full bespoke permit application is required.

Response: SR2015 No.29: temporary storage within the flood plain of a main river contains a condition specifying:

- all materials must be related to and stored adjacent to where specific works are carried out
- materials must be stored parallel to the river bank and have a 1 metre break every 10 metres

This therefore puts a limit in material as they have to be related to the works being carried out, for example solid for bank repairs. The gap stated within the standard rule creates flow routes back to the watercourse should the stored material be out flanked upstream.

We would question the proposed insertion of the word "radius" in SR26, paragraph 2.2.3 (a). It would seem more logical to measure the stand-off from the boundary of the European site rather than from some notional centre point.

We use software to run the screening for designated sites and Protected Areas, this reduces resource and therefore allows an activity to be processed via standard rule rather than upgrade it to a bespoke permit. Undertaking specific assessment for each application for a boundary approach would increase resource and therefore increase cost. It should be noted that the upstream distance is a stand-off from the boundary as this carries a higher risk of impact, albeit the risk remains small and temporary in nature given the works permitted under stand rule activities.

3.13. Question 13

The use of hydrological and ecological monitoring equipment and mink traps should be considered under the Standard Rules, to facilitate better understanding of river processes and encourage the tackling of American mink on UK rivers.

Response: We will investigate the possibility of excluding or creating an exemption or standard rule for hydrological and ecological monitoring equipment.

Exemption 16: 16. Installing temporary small rafts for surveys (FRA16). The exemption covers survey rafts and mink traps could be included within this exemption. Further details can be found on GOV.UK:

<https://www.gov.uk/government/publications/environmental-permitting-regulations-exempt-flood-risk-activities/exempt-flood-risk-activities-environmental-permits#installing-temporary-small-rafts-for-surveys-fra16>

4. Next Steps

We will use the responses from this consultation to inform any amendments to the existing and new rules set and generic risk assessment.

The new and amended standard rules sets will be published on the GOV.UK. Flood risk activity standard rules contain references to European Legislation and although the rules would continue to operate in the same way after the UK's exit from the European Union, some statutory references may need to be amended so we are delaying publishing until the EU Exit situation becomes clearer.

If you responded and wish to follow up your response, or want more detail on any of the points made in this document, you can contact us:

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