



Draft Standard Rules Consultation No. 13 - Watercourse Activities

Standard rules for the Environmental Permitting Regulations

December 2014

We are the Environment Agency. We protect and improve the environment and make it a better place for people and wildlife.

We operate at the place where environmental change has its greatest impact on people's lives. We reduce the risks to people and properties from flooding; make sure there is enough water for people and wildlife; protect and improve air, land and water quality and apply the environmental standards within which industry can operate.

Acting to reduce climate change and helping people and wildlife adapt to its consequences are at the heart of all that we do.

We cannot do this alone. We work closely with a wide range of partners including government, business, local authorities, other agencies, civil society groups and the communities we serve.

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Summary

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). Government is now consulting on the proposal to bring flood defence consents into the Environmental Permitting framework.

The Environmental Permitting framework is a common framework for applying for, receiving, varying, transferring and surrendering permits, along with enforcement and appeals arrangements. It rationalises various permitting regimes into a common framework that is 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 the overall level of protection or the substantive requirements of permits, although the proposals may identify instances where permitted activities can be assigned to a lower level of regulatory control. The proposals for moving into environmental permitting reduce the administration necessary to deliver those requirements.

We are consulting on proposals for standard rules sets for thirteen activities in England. This is part of a coordinated consultation with Defra who is consulting on the remaining aspects of the proposals. The Defra consultation provides the details of the regulatory changes and should be read in conjunction with this document, it can be found at <https://consult.defra.gov.uk/flooding/flood-defence-consents/>.

The Environmental Permitting (England and Wales) Regulations 2010 (“EP Regulations”) allow us to offer standard rules where we believe the activity 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 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 Environment Agency still assesses the environmental and flood risks and mitigation options, but we do this once, in advance, rather than at multiple sites in response to each application. We develop standard rules proposals, including conditions that would apply in a standard rules permit, and consult on these with those who are affected. The rules are developed using assessments of the risk posed by the activity.

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 benefit of reduced administration. Where standard rules apply, the applicant can request a standard rules permit to be issued.

This is the thirteenth consultation on sets of standard rules and associated risk assessments. We are proposing new rules and risk assessments in relation to watercourse activities.

We would like your views on the following proposals:

- Temporary dewatering affecting up to 20 metres of a main river. SR2015 No.26
- Installation of an outfall of 300mm to 500mm through a headwall into a main river. SR2015 No.27
- Installation of a clear span bridge on a main river. SR2015 No.28
- Temporary storage within the flood plain of a main river. SR2015 No.29
- Temporary diversion of a main river. SR2015 No.30
- Installation of a habitat structure made from natural materials occupying up to 100m of a main river. SR2015 No.31

- Installation of an access culvert on a main river. SR2015 No.32
- Repair and protection of the bank of a main river using natural materials. SR2015 No.33
- Temporary scaffolding affecting up to 20 metres of the bank of a main river. SR2015 No.34
- The excavation of a wetland or pond in a main river floodplain. SR2015 No.35
- Installation of site investigation boreholes and temporary trial pits within a main river floodplain. SR2015 No.36
- The removal of accumulated silt and sand from up to 1.5 kilometres of certain main rivers. SR2015 No.37
- Removal of a total of 100 metres of exposed gravel from bars and shoals over a 1 kilometre length of main river. SR2015 No.38

We will take account of the consultation responses and publish the new standard rules on our website, together with details of the application process.

Contents

Summary	3
1 About this consultation	7
2 Standard permits - how they work.....	8
3 Proposed sets of rules	10
4 Consultation questions	13
5 Responding to this consultation.....	14

1. About this consultation

This is an explanatory document that provides an outline of the documents we are consulting on and an overview of the standard permitting process. It is designed to help you understand and comment on them.

What we are consulting on

The Environmental Permitting Regulations allow us to develop standard rules for certain activities. We base them on our understanding of the risks. We are asking for your views on whether we have correctly identified the risks associated with each activity and whether the new sets of rules are appropriate to manage those risks.

The consultation is primarily about the following documents:

- Generic risk assessments (see Section 3 for more information):

These describe the risks that each type of activity poses to flood risk, drainage and the environment and the ways in which these risks can be controlled. They define the boundary of risk that can be regulated by common controls, whilst still achieving a high level of environmental protection.

- Standard rules sets (see Section 3 for more information):

These consist of all the rules necessary to ensure that the risks from flooding, to drainage and to the environment are reduced to an acceptable level for each of the listed activities.

What this consultation means to you

We think that this consultation will be of particular interest to:

- All those businesses, landowners and members of the public that carry out works in, on or near main rivers. This is your opportunity to ensure that the rules and generic risk assessments are appropriate for your operations whilst also providing the necessary protection from flooding and to the environment. The rules will not be able to be applied in every circumstance, but we expect them to be appropriate for many operations. We would welcome any suggestions you may have to extend the uptake of these rules and for further sets of rules.
- Other regulators, flood risk management authorities, utility and infrastructure providers, the public, community groups and non-governmental organisations with an interest in environmental issues. This is your opportunity to ensure that the rules, risk assessments and method statements work to provide the necessary protection of flood risk and the environment, whilst still being useful.

2. Standard permits – how they work

What is a standard permit?

Standard permits contain one condition, which refers to a fixed set (or sets) of standard rules that an operator must comply with. The standard rules define the activities that an operator can carry out and specify necessary restrictions on those activities, such as limits on the activity that can be undertaken at a site. Standard rules are published on our website, following public consultation. This is the thirteenth such consultation.

An operator who wishes to carry out a particular activity can look at the standard rules and, if they can comply with them, they may decide to apply for a standard permit. We are able to issue the permit more quickly and more efficiently because we have no decisions to make on site-specific permit conditions and therefore do not consult on them. If an operator cannot meet the requirements of the standard rules, then they must apply for a bespoke permit and provide us with additional information. It takes us longer to issue a bespoke permit because we have to carry out a more detailed assessment of the application, decide whether to include site-specific conditions and may need to consult in accordance with our public participation statement.

There is no right of appeal against the rules in a standard permit because applying for a standard permit is voluntary. If an operator wants to change the way the site operates so that it falls outside the scope of the standard rules or they feel that the standard permit no longer works for their particular operation, an application must be made to vary to a bespoke permit.

Operators must apply for a bespoke permit for any regulated activities not covered by standard rules. These activities generally have a higher potential impact on the environment or require more complex controls than operations for which standard rules can be used.

Standard rules permits can only be granted where the regulated facility has one single legal person as the operator. The term 'Operator' is defined in regulation 7 of EPR as the person who has control over the operation of a regulated facility. If a regulated facility has not been put into operation, the person who will have control over it when it is in operation is the operator.

The central issue in deciding whether someone is the operator of a regulated facility is whether they are able to exercise control over its operation. They must demonstrably have the authority and ability to ensure that the Environmental Permit is complied with.

We assess whether an operator (or proposed operator) has the authority and ability to:

1. Manage site operations through having day-to-day control of plant operations, including the manner and rate of operation;
2. Ensure that permit conditions are effectively complied with;
3. Decide who holds key staff positions and have incompetent staff removed;
4. Make investment and/or other financial decisions affecting performance of the facility; and
5. Ensure that regulated activities are suitably controlled in an emergency.

A site or land owner can continue to be the operator and hold the permit where it lets a contract for activities at a site provided they continue to take responsibility and exert sufficient supervision.

What are standard rules?

When developing sets of standard rules we carry out a single assessment of risk for a particular activity. This enables us to define the risk boundary within which the rules - and therefore the operations - can be undertaken. This boundary comprises a number of restrictions such as size, location and operational controls. The restrictions will be those necessary to enable a consistent set of rules to reduce the risk to an acceptable level. The rules are therefore the same for each operator carrying out that particular activity, irrespective of location. Rules and risk assessments are published in advance so that operators and the public know precisely what controls we will apply to a proposed activity.

In developing the risk boundary for each set of standard rules, we have to protect the environmental quality of some specific sensitive receptors. For example, standard rules may contain a rule which requires that the activity must not be carried out within a certain distance of specified types of nature conservation sites, such as European sites, or waterbodies which have special status under the Water Framework Directive.

The rules for some operations will not permit activities to be carried out within a specified distance of a flood defence structure or main river. If an operator cannot meet the rules, they will either have to relocate or modify the activity to do so, or apply for a bespoke permit, to allow the activity to be considered with reference to the specific location. Operators will need to check that their operation fits within the rules before making an application. If there is a change in the local circumstances after the permit has been issued, such that the operation no longer fits within the standard rules (for example a conservation site is designated within the prescribed screening distance), an operator may be required to upgrade the operation to maintain levels of protection or apply to change to a bespoke permit.

We have based most of the rules on the objectives that need to be achieved. They specify what we want operators to achieve, but do not tell them how to achieve it. That is their responsibility. This approach is not new and was used in previous regimes such as water quality discharge consents, waste management licensing, pollution prevention and control and radioactive substances regulation. Guidance on how to comply with the rules we have already published is provided in 'How to comply with your environmental permit', which is available on our website. We will be updating this guidance before the draft regulations in respect of watercourse activities is brought into force.

2.1. The generic risk assessments

We have prepared a generic risk assessment for each of the activities. Each assessment defines the risk boundary that can be regulated through common controls and how to properly manage the risks. Each risk assessment has been carried out using the "source – pathway – receptor" approach. The risk assessment is split into three broad sections:

1. Data and information – this section comprises receptor, source, harm and pathway information that is relevant to the activity under consideration.
2. Judgement – we have carried out the risk assessment to determine the likelihood of the receptors being exposed to the hazard, the consequences of the hazard being realised and the overall magnitude of the risk.
3. Action – risks will be controlled by setting standard rules. In the case of the management of risks for watercourse activities this will include compliance with a management system (which would include details of the methods to be employed in carrying out the works so as to manage the risks required to be controlled by the standard rules). We will control residual risks by carrying out compliance assessment, such as site inspections, to ensure that operators comply with the rules.

Each set of standard rules may contain a rule which requires that activities must not be carried out within a certain distance of specified nature conservation sites or waterbodies having special status under the Water Framework Directive. The sensitivity of particular species and their habitats to the potential hazards from activities regulated by us through the EP Regulations is well understood. Harm can occur through hazards such as flooding, habitat loss, siltation, erosion, disturbance and contamination.

This is part of the overall risk boundary for each activity and is necessary because we will not be consulting the nature conservation bodies on individual applications for standard permits, in accordance with our public participation statement.

3. Proposed sets of rules

3.1 New rules and risk assessment for temporary dewatering affecting up to 20 metres of a main river. SR2015 No.26

The proposed rules cover a watercourse activity allowing the operator to use a temporary structure (for example a cofferdam) to dewater up to 20 metres of watercourse. The rules limit the activity to a period of 4 weeks and to a stretch of river no greater than 20 metres.

The proposed charge for the new standard permit would comprise:

- an application charge of £50*
- no subsistence charge

3.2 New rules and risk assessment for the installation of an outfall of 300mm to 500mm through a headwall into a main river SR2015 No.27

The proposed rules cover a watercourse activity allowing the operator to construct an outfall of no more than 500 millimetres diameter to discharge through a headwall affecting no more than 1.5 metres of riverbank.

The proposed charge for the new standard permit would comprise:

- an application charge of £50*
- no subsistence charge

3.3 New rules and risk assessment for the installation of a clear span bridge on a main river. SR2015 No.28

The proposed rules cover a watercourse activity allowing the operator to construct a clear span bridge, that is the bridge will have no bed or bank reinforcement or support in the watercourse. The deck width will be no more than 4.2 metres.

The proposed charge for the new standard permit would comprise:

- an application charge of £50*
- no subsistence charge

3.4 New rules and risk assessment for temporary storage within the flood plain of a main river. SR2015 No.29

The proposed rules cover a watercourse activity allowing the operator to store materials within the flood plain. The materials should be related to specific works and shall be stored adjacent to the works. The rules limit the storage to no more than 4 weeks.

The proposed charge for the new standard permit would comprise:

- no charge

3.5 New rules and risk assessment for temporary diversion of a main river. SR2015 No.30

The proposed rules cover a watercourse activity allowing the operator to install a temporary structure to divert the flow of water for a period of no more than 4 weeks. The watercourse shall be no wider than 8 metres. These rules do not apply within a tidal watercourse.

The proposed charge for the new standard permit would comprise:

- no charge

3.6 New rules and risk assessment for the installation of a habitat structure made from natural materials occupying up to 100m of a main river. SR2015 No.31

The proposed rules cover a watercourse activity for the operator to install habitat structures made from natural materials occupying up to 100m of a main river; the structures will occupy less than half of the watercourse width

The proposed charge for the new standard permit would comprise:

- an application charge of £50*
- no subsistence charge

3.7 New rules and risk assessment for the installation of an access culvert on a main river. SR2015 No.32

The proposed rules cover a watercourse activity allowing the operator to construct an access culvert of no more than 5 metres length. The watercourse should be no more than 2 metres wide.

The proposed charge for the new standard permit would comprise:

- an application charge of £50*
- no subsistence charge

3.8 New rules and risk assessment for repair and protection of the bank of a main river using natural materials. SR2015 No.33

The proposed rules cover a watercourse activity allowing the operator to repair and protect the bank using materials which will naturally rot; for example willow for willow spilling, or hurdles made from hazel. The length of the works shall be less than 20 metres.

The proposed charge for the new standard permit would comprise:

- no charge

3.9 New rules and risk assessment for the use of temporary scaffolding affecting up to 20 metres of the bank of a main river. SR2015 No.34

The proposed rules cover a watercourse activity allowing the operator to install temporary scaffolding to up to 20 metres of bank for a maximum of 4 weeks. The watercourse must have at least 4 metres in width.

The proposed charge for the new standard permit would comprise:

- an application charge of £50*
- no subsistence charge

3.10 New rules and risk assessment for the excavation of a wetland or pond in a main river floodplain. SR2015 No.35

The proposed rules cover a watercourse activity allowing the operator to create a wetland or pond within the floodplain of a main river provided that all excavated material is removed from the floodplain. The pond or wetland should be at least 16 metres away from the bank top and the flood plain should not be reduced.

The proposed charge for the new standard permit would comprise:

- no charge

3.11 New rules and risk assessment for installation of site investigation boreholes and temporary trial pits within a main river floodplain. SR2015 No.36

The proposed rules cover a watercourse activity allowing the operator to install trial pits and boreholes within the flood plain, for a period of less than 4 weeks. The rules limit the works to being carried out at least 5 metres from the bank on the landward side.

The proposed charge for the new standard permit would comprise:

- no charge

3.12 New rules and risk assessment for the removal of accumulated silt and sand from up to 1.5 kilometres of certain main rivers. SR2015 No.37

The proposed rules cover a watercourse activity allowing the operator to dredge up to 1500 metres of man-made ditches, land drains and previously agricultural drains classified as main river. The activity shall be limited to the removal of accumulated silt and sand that sits on top of the established bed of the watercourse.

The proposed charge for the new standard permit would comprise:

- no charge

3.13 New rules and risk assessment for the removal of a total of 100 metres of exposed gravel from bars and shoals over a 1 kilometre length of main river. SR2015 No.38

The proposed rules cover a watercourse activity allowing the operator to remove up to 100 metres of exposed gravel from bars and shoals over 1000 metres of watercourse length. The rules limit the works to being carried out in the dry and can only be carried out once every 5 years.

The proposed charge for the new standard permit would comprise:

- no charge

* For activities needing a standard rules permit we intend to continue the current level of fees for the time being – the £50 charge for those activities that would previously have been charged at this level. However, the fees associated with a flood defence consent application have remained the same since 1991. This level of fee does not recover our costs of regulation. We will therefore be carrying out a full review of our fees and will consult on any change during 2015 as part of our regular consultation on our charging scheme for Environment Permitting. The costs of a Standard Rules permit will undoubtedly need to increase in order to be reflective of the costs we incur in determining them and carrying out relevant compliance activity.

4. Consultation questions

This consultation is your opportunity to contribute towards the development of the next sets of standard rules and some proposed revisions to existing sets. They should be published in summer 2015.

We would particularly welcome your feedback on the questions below:

1. Do you agree with our approach to use standard rules for watercourse activities?
2. Do you agree with the proposed new rules that we have set out in section 3 of this consultation?
3. Have we correctly identified all the risks for each activity, as described in the generic risk assessments associated with the consultation?
4. Are there any barriers to complying with the standard rules?
5. 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.
6. Are there any other activities that you think would benefit from the standard permitting approach or future revisions?
7. Please tell us if you have any other views or comments on these proposed revisions that have not been covered by previous questions.
8. How did you find out about this consultation?

5. Responding to this consultation

5.1 Key dates

This consultation will start on 10 December 2014 and closes on 3 March 2015.

In accordance with our Public Participation Statement, we must consult on any changes to standard rules for a period of 12 weeks.

5.2 How to respond

You can view the consultation documents and questions online at <https://consult.environment-agency.gov.uk/portal/ho/flood/risk/sr13>. Here you can submit your response using our online tool which will enable you to manage your comments more effectively. It will also help us to gather and summarise responses quickly and accurately as well as reduce the costs of the consultation.

If you would like to ask for a printed version of the document to be posted to you, please contact 03708 506 506 (mon-fri, 8am - 6pm), or email floodriskpermit@environment-agency.gov.uk.

If you would prefer to submit your response by email or letter, please send your completed response form by 3 March 2015 to:

floodreports@defra.gsi.gov.uk

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

5.3 What will the responses be used for

We will publish our full response to the consultation with our review report in summer 2015. It will include information on responders, a summary of views and our recommendations made in light of the consultation. The report will be made available on our website and will be circulated to all consultees and other interested parties.

5.4 How we will use your information

Throughout the consultation we will make all comments (apart from personal information) publicly available on the Environment Agency website. This includes comments received online, by email, post and by fax, unless you have specifically requested that your response be kept confidential. Only names of organisations that respond and not individuals will be published.

If you respond online or provide an email address, you will receive an acknowledgement of your response. After the consultation has closed a summary of the responses will be published on the Environment Agency website by summer 2015. You will be contacted to let you know when this is available. You will also be notified of any forthcoming river basin consultations unless you request otherwise.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation, but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

5.5 Consultation Principles

We are running this consultation in accordance with the criteria set out in the government's [Consultation Principles](#).

If you have any queries or complaints about the way this consultation has been carried out, please contact:

emma.hammonds@environment-agency.gov.uk

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