Draft Regulations laid before Parliament and the National Assembly for Wales under sections 62(7) and (8) and 90(3) of the Water Act 2014, for approval by resolution of each House of Parliament and the National Assembly for Wales.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No. 000

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

FLOOD RISK MANAGEMENT, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016

Made - - - -	*****
Coming into force - -	*6th April 2016*

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These Regulations are made by the Secretary of State in relation to England and the Welsh Ministers in relation to Wales, in exercise of the powers conferred by sections 61 and 90 of, and Schedule 8 to, the Water Act 2014(**a**).

In accordance with section 61(5) of the Water Act 2014, the Secretary of State and the Welsh Ministers have consulted—

(a) the Environment Agency;

(b) the Natural Resources Body for Wales;

(c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate;

(d) such other bodies or persons as they consider appropriate.

In accordance with section 61(3) of that Act, the Secretary of State and the Welsh Ministers have had regard to the desirability of reducing burdens by ensuring that so far as is reasonably practicable any system established by regulations under that section is combined with, or is consistent with, systems for regulating activities or other matters that cause pollution.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to sections 62(7) and (8) and 90(3) of the Water Act 2014.

(**a**) 2014 c. 21. Section 61(9) contains the definition of "the Minister".

Citation, commencement, extent, application and interpretation

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016.

(2) These Regulations come into force on 6th April 2016.

(3) These Regulations extend to England and Wales only.

(4) These Regulations do not apply in relation to the Isles of Scilly.

(5) In these Regulations, "the 1991 Act" means the Water Resources Act 1991(**a**).

Amendment of the Environmental Permitting (England and Wales) Regulations 2010

2. The Environmental Permitting (England and Wales) Regulations 2010(**b**) (referred to in these Regulations as "the principal Regulations") are amended in accordance with regulations 3 to 28.

Amendment of regulation 2 (interpretation: general)

3. In regulation 2(1)—

(a) after the definition of "confidential information" insert—

""culvert" has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;";

(b) after the definition of "disposal" insert—

""drainage" has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;";

(c) after the definition of "establishment" insert—

""excluded flood risk activity" has the meaning given in paragraph 4 of Part 1 of Schedule 23ZA;";

(d) after the definition of "exempt facility" insert—

""exempt flood risk activity" has the meaning given in regulation 5;";

(e) after the definition of "extractive waste" insert—

""flood defence structure" has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;

"flood risk activity" has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;

"flood risk activity emergency works notice" means a notice served under paragraph 7 of Part 1 of Schedule 23ZA;

"flood risk activity notice of intent" means a notice served under paragraph 9(2) of Part 1 of Schedule 23ZA;

"flood risk activity remediation notice" means a notice served under paragraph 8 of Part 1 of Schedule 23ZA;";

(f) after the definition of "local authority" insert—

""main river" has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;";

(g) after the definition of "non-hazardous waste" insert—

""non-tidal main river" has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;";

(h) after the definition of "relevant territorial waters" insert—

""remote defence" has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;";

(i) after the definition of "revocation notice" insert—

(**a**) 1991 c. 57.
(**b**) S.I. 2010/675; relevant amending instruments are S.I. 2012/630, 2013/390, 2015/664 and 1756.

""river control works" has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;";

(j) after the definition of "rule-making authority" insert—

""sea defence" has the meaning given in paragraph 3 of Part 1 of Schedule 23ZA;";

(k) after the definition of "standard facility" insert—

""stand-alone flood risk activity" means a flood risk activity that is not carried on as part of the operation of a regulated facility of another class;"

(l) after the definition of "suspension notice" insert—

""tidal main river" has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;";

(m) after the definition of "waste operation" insert—

""watercourse" has the meaning given in paragraph 2 of Part 1 of Schedule 23ZA;".

Amendment of regulation 5 (interpretation: exempt facilities)

4. Regulation 5(1) is amended as follows—

(a) in the definition of "exempt facility"—

(i) omit the word "or" immediately preceding paragraph (b);

(ii) at the end, add—

", or

(d) an exempt flood risk activity";

(b) after the definition of "exempt facility" insert—

""exempt flood risk activity" means a flood risk activity that meets the requirements of paragraph 5B of Schedule 2;".

Amendment of regulation 7 (interpretation: operate a regulated facility and operator)

5. In regulation 7, in paragraph (b) of the definition of "operate a regulated facility"(**a**), for "or solvent emission activity" substitute ", solvent emission activity or flood risk activity".

Amendment of regulation 8 (interpretation: regulated facility and class of regulated facility)

6.—(1) In regulation 8(1)(**b**), at the end of sub-paragraph (i) add—

"(j) a flood risk activity".

(2) In regulation 8(2), at the end of sub-paragraph (c) add—

"(d) an excluded flood risk activity".

(3) In regulation 8(4)(**c**), at the end of sub-paragraph (f) add—

"(g) a flood risk activity".

Amendment of regulation 9 (interpretation: relevant function)

7. At the end of regulation 9 add—

"(g) exercising the power to serve a flood risk activity emergency works notice, a flood risk activity notice of intent or a flood risk activity remediation notice,

(h) exercising the power to take steps under paragraph 9(1) of Part 1 of Schedule 23ZA".

(**a**) Paragraph (b) of this definition was amended by S.I. 2013/390.
(**b**) Regulation 8(1) was amended by S.I. 2013/390.
(**c**) Regulation 8(4) was amended by S.I. 2013/390.

Substitution of regulation 15

8. For regulation 15 substitute—

"Conditions in relation to certain land

15.—(1) Conditions in an environmental permit may require the operator to carry out works or do other things in relation to land which the operator is not entitled to do or carry out without obtaining the consent of another person.

(2) If an environmental permit contains such a condition, the person whose consent is required must grant the operator such rights as are necessary to enable the operator to comply with the condition.

(3) Part 2 of Schedule 5 applies where such rights are granted.

(4) Conditions in an environmental permit authorising the carrying on of a flood risk activity have effect as a local land charge where those conditions—

(a) in accordance with the power in paragraph 6 of Part 1 of Schedule 23ZA, relate to—

(i) the operation or maintenance of any structure or works, or

(ii) access to any structure, works or watercourse by the regulator; and

(b) are expressed to apply from time to time.

(5) Where the Agency proposes to grant an application in relation to a flood risk activity in England subject to a condition in accordance with paragraph (4), the regulator must give notice of the proposed condition and the period within which representations on the proposed condition are to be made (which period must not expire less than 20 days after the day on which the notice is served) to—

(a) the landowner, lessee and occupier where none is the applicant;

(b) the landowner and lessee where the occupier is the applicant;

(c) the landowner and occupier where the lessee is the applicant;

(d) the lessee and occupier where the landowner is the applicant.

(6) Where the NRBW proposes to grant an application in relation to a flood risk activity in Wales subject to a condition in accordance with paragraph (4), the regulator must not issue the relevant permit unless the applicant has demonstrated to the satisfaction of the regulator that consent for that permit to be issued subject to such a condition has been given by—

(a) the landowner, lessee and occupier where none is the applicant;

(b) the landowner and lessee where the occupier is the applicant;

(c) the landowner and occupier where the lessee is the applicant;

(d) the lessee and occupier where the landowner is the applicant.

(7) In paragraphs (5) and (6), "landowner" means the person, other than a mortgagee not in possession, who—

(a) is receiving the rack rent of the land, whether on the person's own account or as agent or trustee for another person; or

(b) would receive the rack rent if the land were let at a rack-rent.".

Amendment of regulation 17 (single site permits etc.)

9. In regulation 17(2)(**a**)—

(a) after paragraph (b) insert—

(**a**) Regulation 17(2) was amended by S.I. 2012/630 and 2013/390.

"(ba) of more than one flood risk activity on the same site or on more than one site;";

(b) in paragraph (c), for "paragraph" substitute "paragraphs".

Amendment of regulation 18 (consolidation of an environmental permit)

10. After regulation 18(1)(a) insert—

"(aa) more than one flood risk activity on the same site or on more than one site;".

Amendment of regulation 20 (variation of an environmental permit)

11. In regulation 20, after paragraph (6), add—

"(7) With respect to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone flood risk activity, the regulator must not, without the agreement of the operator, of its own initiative vary any condition of the permit that relates to the flood risk activity unless—

(a) in the opinion of the regulator, the circumstances in which the activity is or is to be carried on have changed such that any of the objectives in paragraph 5 of Part 1 of Schedule 23ZA would no longer be met; and

(b) in the case of a variation that relates to an activity that involves any construction or works, the variation relates to aspects of the construction or works which have not yet been completed.

(8) Paragraph (7) does not apply if the regulator, of its own initiative, varies an environmental permit, or any condition of a permit, in order to comply with—

(a) an obligation of the United Kingdom under the EU Treaties; or

(b) a direction given by the appropriate authority under regulation 61.".

Amendment of regulation 21 (transfer of an environmental permit)

12. In regulation 21(3), for "or stand-alone groundwater activity" substitute ", stand-alone groundwater activity or a stand-alone flood risk activity".

Amendment of regulation 24 (notification of surrender of an environmental permit)

13. In regulation 24—

(a) in paragraph (1), at the end of sub-paragraph (c) add—

"(d) a stand-alone flood risk activity, except where the environmental permit has been granted subject to a condition that is to operate beyond the time when the activity is complete";

(b) in paragraph (3), for sub-paragraph (c) substitute—

"(c) specify the date on which the surrender is to take place, which—

(i) in all cases, must not be less than 20 working days after the date on which the notification is given; and

(ii) in the case of a stand-alone flood risk activity where the regulator has specified in the environmental permit a date by which the activity must be completed, must not be earlier than the day after that date.".

Amendment of regulation 31 (appeals to an appropriate authority)

14. In regulation 31(2)(f), for "or mining waste facility closure notice" substitute ", mining waste facility closure notice, flood risk activity emergency works notice, flood risk activity notice of intent or flood risk activity remediation notice".

Amendment of regulation 35 (specific provisions applying to environmental permits)

15. In regulation 35—

(a) in paragraph (1), for "23" substitute "23ZA";

(b) in paragraph (2), at the end of sub-paragraph (q) add—

"(r) Schedule 23ZA (flood risk activities)".

Amendment of regulation 36 (enforcement notices)

16. In regulation 36—

(a) in paragraph (3)(b), for "effects of pollution", substitute "environmental effects";

(b) after paragraph (3) insert—

"(3A) In paragraph (3)(b) "environmental effects" means—

(a) in relation to a flood risk activity—

(i) flooding or risk of flooding;

(ii) harm to the environment or risk of harm to the environment;

(iii) detrimental impact on drainage or risk of detrimental impact on drainage;

(b) in relation to any other class of regulated facility, the effects of pollution.".

Amendment of regulation 37 (suspension notices)

17. In regulation 37—

(a) in paragraph (2), after "risk of serious pollution" insert "or, in the case of a flood risk activity, a risk specified in paragraph (2A)";

(b) after paragraph (2) insert—

"(2A) The following are risks specified for the purposes of paragraph (2)—

(a) risk of serious flooding;

(b) risk of serious detrimental impact on drainage;

(c) risk of serious harm to the environment.";

(c) in paragraph (3A)(**a**), after "risk of pollution" insert "or, in the case of a flood risk activity, a risk specified in paragraph (3B)";

(d) after paragraph (3A) insert—

"(3B) The following are risks specified for the purposes of paragraph (3A)—

(a) risk of flooding;

(b) risk of detrimental impact on drainage;

(c) risk of harm to the environment.".

Amendment of regulation 38 (offences)

18. In regulation 38(3), for "or mining waste facility closure notice" substitute ", mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice".

Amendment of regulation 39 (penalties)

19. In regulation 39(**b**)—

(**a**) Paragraph (3A) was inserted by S.I. 2015/1756.

(**b**) Regulation 39(1) was amended by S.I. 2015/664.

(a) in paragraph (1), for "A person" substitute "Subject to paragraph (1A), a person";

(b) after paragraph (1) insert—

"(1A) A person guilty of offence under regulation 38(1), (2) or (3) in respect of a flood risk activity is liable—

(a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both;

(b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or both.";

(c) in paragraph (2), for "paragraph (1)(a) has" substitute "paragraphs (1)(a) and (1A)(a) have".

Amendment of regulation 42 (enforcement by the High Court)

20. In regulation 42(**a**), for "or mining waste facility closure notice" substitute ", mining waste facility closure notice, flood risk activity emergency works notice or flood risk activity remediation notice".

Insertion of regulation 57A

21. After regulation 57 insert—

"**Power of the regulator to prevent or remedy effects of flood risk activities**

57A.—(1) If the regulator considers that the carrying on of an exempt flood risk activity or a flood risk activity under an environmental permit involves a risk specified in paragraph (2), it may arrange for steps to be taken to remove that risk.

(2) The following are risks specified for purposes of paragraph (1)—

(a) risk of serious flooding;

(b) risk of serious detrimental impact on drainage;

(c) risk of serious harm to the environment.

(3) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator.

(4) But costs are not recoverable under paragraph (3)—

(a) if the steps referred to in paragraph (1) are taken in relation to a risk specified in paragraph (2) and the operator shows there was no such risk; or

(b) to the extent the operator shows that the costs were unnecessarily incurred by the regulator.".

Insertion of regulations 66A and 66B

22. After regulation 66 insert—

"**Consultation in relation to works affecting flood and coastal erosion risks**

66A.—(1) Before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010(**b**)) in Wales, the Agency must consult the NRBW.

(2) Before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk in England, the NRBW must consult the Agency.

(**a**) Regulation 42 was amended by S.I. 2015/1756.
(**b**) 2010 c. 29.

Functions with respect to flood risk activities

66B. In exercising any function under these Regulations that relates to a flood risk activity, the appropriate agency must have due regard to the interests of fisheries, including sea fisheries.".

Amendment of Schedule 2 (exempt facilities: general)

23.—(1) Schedule 2 is amended as follows.

(2) In paragraph 1, in paragraph (b) of the definition of "registered", for "or groundwater activity" substitute ", groundwater activity or flood risk activity,".

(3) After paragraph 2(5) add—

"(6) The exemption registration authority in relation to a flood risk activity falling within a description in Part 4 of Schedule 3 is the appropriate agency.".

(4) After paragraph 5A insert—

"**Exempt flood risk activities**

5B. An "exempt flood risk activity" is a flood risk activity that—

(a) falls within a description in Part 4 of Schedule 3;

(b) satisfies, in relation to an activity of that description, the relevant conditions specified in Part 4 of that Schedule;

(c) is registered; and

(d) is an activity in relation to which the operator is registered.".

(5) After paragraph 6(2) insert—

"(2A) An operator seeking to be registered in relation to a flood risk activity described in Part 4 of Schedule 3 must notify the exemption registration authority of the relevant particulars.".

(6) In paragraphs 6(3)(a)(ii), (6)(3)(b) and 6(3)(c), for "or groundwater activity" substitute ", groundwater activity or flood risk activity".

(7) In paragraph 7(2)(b), for "or exempt groundwater activity" substitute ", exempt groundwater activity or exempt flood risk activity".

(8) In paragraph 7(3)(b), for "and exempt groundwater activities" substitute ", exempt groundwater activities and exempt flood risk activities".

Amendment of Schedule 3 (exempt facilities: descriptions and conditions)

24. After Part 3 of Schedule 3, add new Part 4 set out in Schedule 1 to these Regulations.

Amendment of Schedule 5 (environmental permits)

25.—(1) Part 1 of Schedule 5 is amended as follows.

(2) For paragraph 2(2) substitute—

"(2) An application under regulation 13(1) for the grant of an environmental permit for a flood risk activity referred to in paragraph 3(1)(a) to (c) of Part 1 of Schedule 23ZA must be accompanied by—

(a) a fee of £50 for each flood risk activity to which the application relates, unless the regulator has made a charging scheme under section 41 of the 1995 Act; or

(b) where the regulator has made such a charging scheme, the fee prescribed under that scheme.

(3) Any other application must be accompanied by any fee prescribed in a charging scheme made by the regulator under section 41 of the 1995 Act or by the appropriate authority under regulation 65.".

(3) In paragraph 5(1)—

(a) omit the word "or" immediately preceding paragraph (d);

(b) at the end, add—

"; or

(e) a stand-alone flood risk activity—

(i) which is not likely to have a significant adverse effect on the environment; or

(ii) in respect of which public consultation has been carried out under another statutory requirement where that consultation addresses the potential environmental impact of the flood risk activity".

(4) In paragraph 5(4)—

(a) omit the word "or" immediately preceding paragraph (d);

(b) at the end, add—

"; or

(e) a stand-alone flood risk activity—

(i) which is not likely to have a significant adverse effect on the environment; or

(ii) in respect of which public consultation has been carried out under another statutory requirement where that consultation addresses the potential environmental impact of the flood risk activity".

(5) In paragraph 13(3), for "or stand-alone groundwater activity" substitute ", stand-alone groundwater activity or stand-alone flood risk activity".

(6) In paragraph 14(1)(a), after "facility" insert "and, in the case of a permit authorising the carrying on of a flood risk activity (in whole or in part), to avoid any of the risks specified in sub-paragraph (3)".

(7) After paragraph 14(2) add—

"(3) The risks specified in this sub-paragraph are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage.".

(8) After paragraph 15(3)(a) insert—

"(aa) in the case of an application for the grant or variation, in whole or in part, of an environmental permit relating to a stand-alone flood risk activity only, 2 months;".

(9) After paragraph 16(3)(b) insert—

"(ba) a period of 20 days after the service of a notice under regulation 15(5);

(bb) where regulation 15(6) applies, a period beginning with the day on which the regulator informs the applicant of the proposed condition and ending when the regulator is satisfied that the landowner has consented to that condition;".

Amendment of Schedule 6 (appeals to the appropriate authority)

26. In Schedule 6, in paragraph 3(1)(c), for "or landfill closure notice" substitute ", landfill closure notice, flood risk activity emergency works notice, flood risk activity notice of intent or flood risk activity remediation notice".

Insertion of new Schedule 23ZA (flood risk activities)

27. After Schedule 23, insert new Schedule 23ZA set out in Schedule 2 to these Regulations.

Amendment of Schedule 23A (enforcement undertakings)

28. In Schedule 23A, after paragraph 1(1) insert—

"(1A) But paragraph (1) does not apply to an offence in relation to a flood risk activity.".

Consequential amendments etc.

29. Schedule 3 has effect.

Repeals

30. Sections 109, 110 and 167A(3)(a) of the 1991 Act are repealed(**a**).

Transitional provision: existing consents

31.—(1) On the coming into force of these Regulations and subject to paragraph (2), an existing consent relating to a flood risk activity (as defined in the principal Regulations)—

(a) becomes an environmental permit under the principal Regulations, and

(b) that permit has effect subject to any conditions that applied to the existing consent immediately before the coming into force of these Regulations.

(2) Where an existing consent relates to an excluded or exempt flood risk activity (as defined in the principal Regulations)—

(a) the existing consent does not become an environmental permit and ceases to have effect;

(b) the conditions in paragraph 5B(b) of Schedule 2 to the principal Regulations as to registration do not apply; and

(c) the duties in respect of an exempt flood risk activity in paragraph 7 of Schedule 2 to the principal Regulations do not apply.

(3) In this regulation, "existing consent" means a consent which—

(a) is issued under section 109 of the 1991 Act or under any byelaw made by the regulator under section 210(1) of, and paragraph 5 of Schedule 25 to, that Act(**b**); and

(b) is in force immediately before the coming into force of these Regulations.

Transitional provision: applications for consent under the 1991 Act

32.—(1) Where an existing application in respect of a flood risk activity (as defined in the principal Regulations) has not been determined under the 1991 Act before the coming into force of these Regulations and the activity is not an exempt or excluded flood risk activity (as defined in the principal Regulations), the application is taken to have been made under the principal Regulations and paragraphs (2) and (3) apply in respect of the application.

(2) The application is taken to have been made on the date on which the application was made under the 1991 Act.

(3) Anything done under the 1991 Act in relation to the determination of the application before the coming into force of these Regulations is taken to have been done under the principal Regulations.

(4) Where an existing application in respect of a flood risk activity has not been determined under the 1991 Act and the activity is an exempt or excluded flood risk activity (as defined in the

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(**a**) Section 109 was amended by the Marine and Coastal Access Act 2009, section 82 and S.I. 2013/755. Section 110 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 128 and 147, the Flood and Water Management Act 2010 (c. 29), Schedule 2, paragraph 42 and S.I. 2013/755. Section 167A was inserted by S.I. 2013/755.

(**b**) Section 210(1) was amended by S.I. 2013/755. Paragraph 5 of Schedule 25 was amended by the Natural Environment and Rural Communities Act 2006 (c.16), section 100(1) and (2), the Marine and Coastal Access Act 2009, section 84 and Schedule 11, paragraph 3, the Flood and Water Management Act 2010 (c.29), Schedule 2, paragraph 49 and S.I. 2013/755.

principal Regulations), the application is to be disregarded on the coming into force of these Regulations.

(5) For the purposes of this regulation, an "existing application" means an application for consent made before the coming into force of these Regulations under section 109 of the 1991 Act or under any byelaw made by the regulator under section 210(1) of, and paragraph 5 of Schedule 25 to, that Act.

Transitional provision: existing notices

33.—(1) A notice served under a byelaw before the coming into force of these Regulations is taken to be an enforcement notice under the principal Regulations.

(2) For the purposes of paragraph (1), "byelaw" means a byelaw—

(a) made by the regulator under section 210(1) of and paragraph 5 of Schedule 25 to the 1991 Act; and

(b) under which a consent may be issued to an applicant.

Saving provision: arbitration

34. Section 110(4) of the 1991 Act(**a**) continues to apply in respect of any question referred under that provision to arbitration or to the Secretary of State or the Welsh Ministers(**b**) before the coming into force of these Regulations.

Name
Parliamentary Under Secretary of State
Date Department for Environment, Food and Rural Affairs

Name
Minister for Natural Resources
Date One of the Welsh Ministers

SCHEDULE 1

Regulation 24

Amendment of Schedule 3 to the Principal Regulations

"PART 4

Exempt flood risk activities: descriptions and conditions

General and interpretation

1.—(1) The descriptions in this Part are set out in paragraphs 2 to 28, in their respective first sub-paragraphs.

(**a**) Section 110(4) was amended by the Environment Act 1995 (c.25), Schedule 22, paragraphs 128 and 147(1) and (2).

(**b**) The functions of the Secretary of State under section 110(4) of the 1991 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I 1999/672), article 2(a) and Schedule 1. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by the Government of Wales Act 2006 (c.32), Schedule 11, paragraph 30.

(2) The specific conditions relating to each description in this Part are set out in paragraphs 2 to 28, in their respective second sub-paragraphs.

(3) The general conditions relating to all descriptions in this Part are that the activity is not carried out—

(a) on a designated site or—

(i) in the case of the description set out in paragraphs 2 to 4, 6, 8, 9, 12, 13, 15, 16, 18 to 20 and 25 to 28, in their respective first sub-paragraphs, within a 200 metre radius of a designated site;

(ii) in the case of the description set out in paragraphs 5, 7, 10, 11, 14 and 17, in their respective first sub-paragraphs, within a 500 metre radius of a designated site;

(iii) in the case of the description set out in paragraphs 21, 22 and 24, in their respective first sub-paragraphs, within one kilometre upstream of a designated site;

(iv) in the case of the description set out in paragraph 23, in its first sub-paragraph, within—

(aa) 5 kilometres upstream of a designated site notified for its freshwater habitats or species,

(ab) 1 kilometre upstream of a designated site that includes any part of the flood plain of the relevant main river but not the river itself, or

(ac) 1 kilometre upstream of any other designated site;

(b) in a water body in Wales that is part of a main river classified as of high morphological status by the NRBW in accordance with the relevant directions;

(c) where the activity is carried out in Wales, within 100 metres of a water body in Wales that is part of a main river classified as of high morphological status by the NRBW in accordance with the relevant directions; or

(d) in the case of the descriptions set out in paragraphs 3, 5, 7, 10 to 15, 18, 21 to 24 and 27, in their respective first sub-paragraphs, where the activity is carried out in England within 100 metres of a water body in Wales that is part of a main river classified as of high morphological status by the NRBW in accordance with the relevant directions.

(4) For the purposes of sub-paragraph (3), "designated site" means—

(a) a European site within the meaning of the Conservation of Habitats and Species Regulations 2010(**a**);

(b) a Ramsar site within the meaning of section 37A of the Wildlife and Countryside Act 1981(**b**);

(c) a site of special scientific interest designated as such under that Act; or

(d) a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949(**c**).

(5) For the purposes of this Part—

"designated salmonid river" means—

(a) in England, a river included in the dataset sealed by the Agency on 22nd October 2015, entitled "Rivers in England identified as salmonid for flood risk activities

(**a**) S.I. 2010/490, amended by S.I. 2012/1927; there are other amending instruments but none is relevant.
(**b**) 1981 c. 69; section 37A was inserted by the Countryside and Rights of Way Act 2001 (c.37), section 77 and was amended by the Natural Environment and Rural Communities Act 2006 Schedule 11, Part 1, paragraph 86.
(**c**) 1949 c. 97.

under the Environmental Permitting Regulations", and published by the Agency(**a**);

(b) in Wales, a river included on the map published by the NRBW on 20th October 2015 entitled "Rivers in Wales identified as salmonid for flood risk activities under the Environmental Permitting Regulations"(**b**);

"designated sensitive water body" means a water body included in the dataset sealed by the Agency on 20th October 2015 entitled "Water bodies in England identified as sensitive for flood risk activities under the Environmental Permitting Regulations because sediment management may compromise delivery of the environmental objectives of the Water Framework Directive" and published by the Agency(**c**);

"the dredging and removal of silt and sand requirements" means the document published by the Agency on 1st February 2016 entitled "Dredging and the removal of silt and sand from main rivers as a flood risk activity under the Environmental Permitting Regulations"(**d**);

"protected species" means—

(a) a species of a kind mentioned in Article 4(2) of Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(**e**) or listed in Annex I to that Directive or in Annex IV to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**f**);

(b) a species in respect of which any adverse impact is in accordance with a licence issued under section 16 of the Wildlife and Countryside Act 1981;

"relevant directions" means the Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015(**g**).

(6) In this Part, "bank" has the meaning given in paragraph 2(2)(a) in Part 1 of Schedule 23ZA and paragraph 2(2)(b) to (d) of that Schedule applies to this Part.

Electrical cable services

2.—(1) The erection of an electrical cable service crossing over a main river.

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

(a) the service crossing is within 10° of perpendicular to the direction of flow of the main river;

(b) the vertical and horizontal clearances of the service crossing comply with the requirements set out in the table below;

(c) permanent hazard markers are erected on both banks of the main river;

(d) the bed and banks of the main river are not disturbed by the works; and

(e) all excavated material not re-used on the site of the works is removed from the floodplain.

Voltage (kV)	*Vertical clearance[(1)](metres)*	*Horizontal clearance[(2)](metres)*
275	15	15

(**a**) A copy may be obtained from the Environment Agency, National Customer Contact Centre, PO Box 544, Rotherham, S60 1BY.

(**b**) The map is available at https://naturalresources.wales/media/5634/flood-epr-salmonids.pdf. A copy may be obtained from Natural Resources Wales, c/o Customer Care Centre, Ty Cambria, 29 Newport Road, Cardiff, CF24 0TP.

(**c**) A copy may be obtained from the Environment Agency at the address mentioned in footnote (a).

(**d**) A copy may be obtained from the Environment Agency at the address mentioned in footnote (a).

(**e**) OJ No. L 20, 26.1.2010, p.7, as amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

(**f**) OJ No. L 206, 22.7.1992, p.7, as last amended by Council Directive 2013/17/EU.

(**g**) These Directions were made on 9th September 2015 in exercise of powers in section 40(2) of the Environment Act 1995 and are available at http://www.legislation.gov.uk/uksi/2015/1623/pdfs/uksiod_20151623_en.pdf. A copy may be obtained from the Flood Risk Management Team, the Department for Environment, Food and Rural Affairs, Area 3C, Nobel House, 17 Smith Square, London SW1P 3JR.

400	15	15
132	12	15
66	12	15
33	9	10
11	9	10
6.6	9	10
4.15	6	9

(1) Vertical clearance above bank or flood bank crest level.

(2) Horizontal clearance of any tower or support landward from the top of the bank of the main river.

Service crossings below the bed of a main river

3.—(1) The erection of a service crossing below the bed of a main river by directional drilling not involving an open cut technique.

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

(a) the service crossing is within 10° of perpendicular to the direction of flow in the main river;

(b) a distance is maintained—

(i) of no less than 1.5 metres from the bed of the main river to the top of the service crossing; and

(ii) at the same height above sea level between points that are 5 metres beyond the top of each bank of the main river;

(c) the distance from the launch and reception pits to the landward side of each bank of the main river is—

(i) 8 metres or more in the case of a non-tidal main river;

(ii) 16 metres or more in the case of a tidal main river;

(d) the service crossing does not pass through any bank, culvert, remote defence or river control works on the main river or through any sea defence;

(e) the service crossing is 50 metres or more upstream of any impoundment or artificially raised channel;

(f) permanent hazard markers are erected on both banks of the main river;

(g) all excavated material not re-used on the site of the works is removed from the floodplain;

(h) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(i) the bed and banks of the main river are not disturbed by the works.

Service crossings attached to the outside of existing structures over a main river

4.—(1) Service crossings attached to the outside of existing structures over a main river.

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

(a) the service crossing does not project more than 1 metre horizontally from the structure;

(b) the service crossing follows the existing cross-sectional profile of the structure to the main river in both normal and flood flow;

(c) the service crossing does not pass through any bank, culvert, flood defence structure or river control works on the main river or through any sea defence;

(d) permanent hazard markers are erected on both banks of the main river; and

(e) a notification has not been sent by the regulator to the landowner that the structure has been identified for removal or modification in order to achieve the measures set out in the relevant River Basin Management Plan, within the meaning of Article 13 of the Water Framework Directive, that are designed to move a water body to good status pursuant to Article 4 of the Water Framework Directive.

Footbridges

5.—(1) The construction of footbridges.

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

(a) the length of the footbridge measured from the top of one bank of the main river to the top of the other bank is no more than 8 metres;

(b) the footbridge has no support in the watercourse, a deck width of no more than 1.5 metres and a kickerboard of no more than 100mm in height;

(c) the footbridge does not reduce the cross-sectional area of the channel in the main river;

(d) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act(**a**), that are not protected species;

(e) no works take place within 100 metres of any non-agricultural building in the floodplain or another man-made structure on or in the main river;

(f) the bed of the main river is not affected by the construction;

(g) the length of bank disturbed by the construction extends to no more than 1 metre on either side of the footbridge;

(h) the footbridge is securely attached to foundations which are no closer than 1 metre to the edge of the bank;

(i) construction of the footbridge does not require reinforcement of the bed or banks;

(j) the approach ramp or steps for the footbridge do not extend more than 4 metres from the landward side of the bank;

(k) the lowest point of the underside of the bridge is at least 600mm higher than the top of both banks of the main river;

(l) all excavated material not re-used on the site of the works is removed from the floodplain;

(m) the height of the land at each end of the footbridge is not changed by the construction;

(n) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(o) any parapet of the footbridge is of open construction comprising—

(i) post and rail;

(ii) post and wire mesh fencing of at least 100mm spacing; or

(iii) post and wire strands.

Temporary scaffolding in England

6.—(1) The erection and use of temporary scaffolding in or over a main river in England.

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

(**a**) Section 42 was amended by S.I. 2013/755.

(a) the scaffolding will be in place for no longer than 4 weeks;

(b) the scaffolding is not in place between 15th March and 15th June inclusive in any year;

(c) on a main river that is a designated salmonid river, the scaffolding is not in place between 1st October and 14th March inclusive in any year;

(d) the scaffolding does not occupy more than 10 metres of a river bank at any one time;

(e) the scaffolding projects into or over the main river no more than 1.2 metres or no more than 10% of the width of the main river, whichever is less;

(f) the scaffolding is located no less than 100 metres from any other scaffolding the erection and use of which is reliant on this exemption;

(g) except where it is unsafe to do so, debris lodged against the scaffolding is removed within 24 hours; and

(h) any transoms and walking decks are set no lower than 600 mm above water level.

Temporary dewatering in England

7.—(1) The temporary dewatering of a work area in England.

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

(a) the duration of the dewatering is no longer than 4 weeks;

(b) the dewatering is not in place between 15th March and 15th June inclusive in any year;

(c) on a main river that is a designated salmonid river, the dewatering is not in place between 1st October and 14th March inclusive in any year;

(d) the dewatering does not affect more than 10 metres of the bank of a main river at any one time;

(e) the dewatering is not within 8 metres of a flood defence structure or river control works;

(f) the depth of water adjacent to the dewatered area does not exceed 1.2 metres;

(g) the dewatering does not occur in, or within 500 metres upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006(**a**) or by Welsh Ministers under section 42 of that Act;

(h) all reasonable steps are taken to protect aquatic plants and aquatic animals found in the dewatered area;

(i) the dewatering structure projects into or over the main river no more than 1.2 metres or no more than 10% of the width of the main river, whichever is less;

(j) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(k) all excavated material not re-used on the site of the works is removed from the floodplain;

(l) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(m) any pumps used in the dewatering process are fitted with a 20mm mesh screen.

(**a**) 2006 c. 16.

Maintenance of raised river or sea defences

8.—(1) The maintenance of raised river or sea defences.

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

(a) the maintenance works use materials of the same kind as those present in the raised defences and do not alter the shape of those defences or the overall height of the protection afforded by those defences;

(b) the raised defences are carrying out the functions for which they were originally designed; and

(c) the works do not disturb the bed or, up to normal ground level, the banks of the main river.

Maintenance of structures within the channel of a main river

9.—(1) The maintenance of structures within the channel of a main river other than raised river or sea defences.

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

(a) the maintenance works do not alter any dimension of the structure;

(b) the structure is carrying out the functions for which it was originally designed;

(c) the maintenance works use materials of the same kind as those present in the structure;

(d) the maintenance works do not occur between 15th March and 15th June inclusive in any year;

(e) on a main river that is a designated salmonid river, the maintenance works do not occur between 1st October and 14th March inclusive in any year; and

(f) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species.

Drinking bays

10.—(1) The construction of a drinking bay on the bank of a main river.

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

(a) the bay is not located within 100 metres of any other man-made structure on or in the main river;

(b) the bay is surrounded by a post and rail fence which must project into or over the main river no more than 1.2 metres or 10% of the width of the main river, whichever is less;

(c) the base of the bay has a surface made of concrete, stone or inert hard core;

(d) all excavated material not re-used on the site of the works is removed from the floodplain;

(e) the works do not adversely affect any culvert, remote defence, river control works, sea defence or any raised embankment or wall forming part of the bank of the main river;

(f) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(g) the works do not occur in, or within 500 metres upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the

Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(h) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(i) the remainder of the bank is fenced so as to prevent damage to the bank.

Access platforms

11.—(1) The construction of access platforms on the bank of a main river or that project into or over a main river.

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

(a) the platform is not located within 50 metres of any other man-made structure;

(b) the platform projects no more than 1.2m into or over the main river and occupies no more than 2m of bank length;

(c) the works do not adversely affect any culvert, remote defence, river control works, sea defence or any raised embankment or wall forming part of the bank of the main river;

(d) that part of the platform which projects over the channel is constructed as a flat deck, with no solid infill beneath the platform, supported on piers or piles of no more than 300mm width;

(e) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(f) the works do not occur in, or within 500 metres upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(g) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(h) any steps cut into the bank are supported by timber risers on the vertical part of the step.

Outfalls

12.—(1) The construction of small outfall pipes and headwalls to main rivers.

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

(a) the headwall is not located within 50 metres of another man-made structure on or in the main river;

(b) in the case of a headwall to a non-tidal main river, the outfall pipe is aligned to an angle of between 30° and 60° to the direction of flow in the river;

(c) the diameter of the outfall pipe is less than 300mm;

(d) the height of the headwall is no more than 1.5 metres or no more than 75% of the height of the bank, whichever is less;

(e) the total length of bank affected during construction of the headwall is no more than 1.5 metres;

(f) the headwall, wing walls and apron do not project beyond the line of the bank prior to the works being carried out;

(g) the headwall is not within 8 metres of a flood defence structure or river control works;

(h) the outfall pipe does not pass through or under any culvert, remote defence, river control works or sea defence, or any raised embankment or wall forming part of the bank of the main river;

(i) all excavated material not re-used on the site of the works is removed from the floodplain;

(j) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(k) the works do not occur in, or within 200 metres upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(l) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

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

Repair and protection of banks using natural materials

13.—(1) The repair and protection of main river banks using natural materials.

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

(a) the length of bank affected by the works is no more than 10 metres;

(b) the works do not include the use of steel sheet piling, concrete, cement or concrete bagwork, brickwork, gabions or non-biodegradable materials;

(c) the works do not take place within 50 metres of a bank that has been reinforced;

(d) the works do not encroach into the channel of the main river beyond the line of the bank prior to the works being carried out;

(e) when the works are finished, the height of the bank does not exceed the lower of—

(i) the height of the bank on either side of the works, and

(ii) the height of the bank prior to the works being carried out;

(f) the works are securely fastened to the bank at each end so as to prevent erosion behind the works;

(g) the works do not involve the use of vehicles or wheeled or tracked machinery on the bed or bank of the main river;

(h) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(i) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(j) the works are not to a bank consisting of an earth cliff over 1 metre in height.

Repair of bank slips and erosion

14.—(1) Repair of bank slips and erosion.

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

(a) the works do not involve removal of material from the bed of the main river other than bank slippage;

(b) the works do not affect more than 10 metres of the bank at any one time;

(c) the works do not encroach into the channel of the main river beyond the line of the bank prior to the works being carried out;

(d) when the works are finished, the height of the bank does not exceed the lower of—

(i) the height of the bank on either side of the works, and

(ii) the height of the bank prior to the slip or erosion;

(e) the works are securely fastened to the bank at each end so as to prevent erosion behind the works;

(f) any repair of a bank slippage is made using as materials only material that has subsided from that bank;

(g) any repair of erosion uses materials of the same kind as those present on the relevant site;

(h) the works do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act(**a**), that are not protected species;

(i) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(j) the works do not involve the use of a vehicle or of wheeled or tracked machinery on the bed or banks of the main river.

Channel habitat structures made of natural materials

15.—(1) The installation of channel habitat structures made of natural materials (excluding weirs and berms).

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

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

(b) no part of the structure is higher than 0.3 metres above the level of the river bed or 25% of the height of the bank (excluding any wall or embankment forming part of the bank), whichever is greater;

(c) the structure is made from naturally occurring woody material and is securely fastened to the bed of the main river, the bank or both;

(d) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(e) no works take place within 100 metres of—

(i) a non-agricultural building in the floodplain;

(ii) another natural channel habitat structure;

(iii) stones or logs placed in the main river for habitat enhancement; or

(iv) a man-made structure on or in the main river.

(**a**) Section 42 was amended by S.I. 2013/755.

Rafts for surveys

16.—(1) The installation of rafts for surveys.

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

(a) the raft has dimensions of no greater than 1.5 metres x 1 metre x 0.15 metre;

(b) any equipment box used on the raft has a height of no more than 0.75 metre;

(c) the raft is permanently and securely attached to the bank;

(d) the raft is installed no less than 100 metres from any other raft;

(e) when the raft is installed, there are no more than four other rafts within a distance of one kilometre;

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

(g) the raft is not installed within 100 metres of any non-agricultural building in the floodplain or another man-made structure on or in the main river.

Gravel-cleaning for fish-spawning beds

17.—(1) Gravel-cleaning for fish-spawning beds.

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

(a) the works are only carried out in September or October in any year;

(b) the works are to no more than $20m^2$ of gravel per location, with a gap of at least 30 metres between locations;

(c) the works do not adversely affect the banks or established bed of the main river;

(d) the works are carried out using only hand tools or machinery carried and operated by one person; and

(e) the works do not occur in, or within 500 metres upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act.

Placement of stones or logs in a main river in England for habitat enhancement

18.—(1) Placement of stones or logs in the channel of a main river in England for habitat enhancement.

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

(a) any stones placed in the channel are of a type that occur naturally in the main river and do not exceed 400mm in any dimension;

(b) any log placed in the channel is less than 2 metres in length, less than 400mm in diameter and oriented at an angle of within 45° to the flow of water;

(c) any log placed in the channel—

(i) is from a type of tree that occurs naturally in the vicinity of the main river; and

(ii) is securely fixed to the bed or bank of the main river;

(d) the stones or logs are placed in the channel over no more than 20 metres of the length, and 20% of the width, of the main river;

(e) the placement of stones or logs does not occur in, or within 200 metres upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(f) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(g) no stones or logs are placed within 100 metres of—

(i) a non-agricultural building in the floodplain;

(ii) a natural channel habitat structure;

(iii) an existing emplacement of stones or logs placed in the main river for habitat enhancement; or

(iv) a man-made structure on or in the main river.

Eel pass devices

19.—(1) Construction of eel pass devices on existing structures.

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

(a) the existing structure is not located on a tidal river;

(b) the device is permanently and securely attached to the existing structure;

(c) the width of the device is no more than 5% of the width of the main river; and

(d) the device does not extend upstream or downstream from the existing structure more than the lesser of—

(i) 10 metres; or

(ii) the width of the channel measured between the top of each bank of the main river.

Fish passage notches

20.—(1) Construction of fish passage notches on an existing impoundment.

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

(a) the construction does not affect the structural integrity of the existing impoundment;

(b) construction of the notches does not change the water level in the main river by more than 20cm upstream or downstream from the existing structure;

(c) the existing impoundment is located on a main river with a width of no more than 5 metres measured between the top of each bank;

(d) the construction does not adversely affect the banks or established bed of the main river; and

(e) the notch is no more than 0.6 metre in width.

Removal of silt, sand and other material in England

21.—(1) The removal of silt and sand from within bridge arches in England and any material from within culverts in England.

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

(a) the works do not affect the structural integrity of the bridge arch or culvert;

(b) in the case of works within bridge arches, the removal of silt and sand is limited to the removal of accumulated silt and sand on the established bed of the main river;

(c) the works do not occur in, or within 1 kilometre upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(d) the works and the subsequent deposition of the removed material do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(e) the works do not occur between 15th March and 15th June inclusive in any year;

(f) on a main river that is a designated salmonid river, the works do not occur between 1st October and 14th March inclusive in any year;

(g) the works do not expose the structural foundations or footings of the bridge or culvert;

(h) the works and any equipment used to remove the sand and silt comply with the dredging and removal of silt and sand requirements;

(i) the works do not involve the use of machinery on the bed or banks of the main river more than 20 metres from the bridge or culvert;

(j) the works do not involve the use of a vehicle on the bed or banks of the main river;

(k) the works do not damage the culvert or the banks or bed of the main river; and

(l) the works are not carried out in, or within 1 kilometre upstream or 500 metres downstream of, a water body that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions.

Removal of silt and sand adjacent to in-river structures in England

22.—(1) The removal of silt and sand adjacent to in-river structures in England.

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

(a) the works take place no more than 10 metres upstream or downstream from the edge of the structure;

(b) the removal of silt and sand does not affect the structural integrity of the structure;

(c) the works do not damage the banks or bed of the main river;

(d) the works are limited to the removal of accumulated silt and sand on the established bed of the main river;

(e) the removal of silt and sand does not expose the structural foundations or footings of the structure;

(f) silt and sand is not removed to below the level of the base of the inside of an adjacent culvert;

(g) the works do not remove vegetation from the bed or banks of the main river, other than vegetation growing in or through the silt and sand;

(h) the works do not involve the use of a vehicle or machinery on the bed or banks of the main river;

(i) the removal of silt and sand does not occur in, or within 1 kilometre upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(j) the removal of silt and sand and its subsequent deposition do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(k) the removal of silt and sand does not occur between 15th March and 15th June inclusive in any year;

(l) on a main river that is a designated salmonid river, the removal of silt and sand does not occur between 1st October and 14th March inclusive in any year;

(m) the works and any equipment used to remove the sand and silt comply with the dredging and removal of silt and sand requirements;

(n) the works are not carried out in, or within one kilometre upstream or 500 metres downstream of, a water body that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(o) the removal of silt and sand does not occur in a designated sensitive water body.

Dredging of man-made ditches, land drains, agricultural drains and previously straightened watercourses in England

23.—(1) Dredging of no more than 1.5 kilometres of man-made ditches, land drains, agricultural drains and previously straightened watercourses classified as main rivers in England.

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

(a) the works do not occur in any location where dredging has been carried out within the previous three years;

(b) the works do not occur in any location on a watercourse where dredging has taken place within 1.5 kilometres upstream or downstream of that location in the previous 12 months;

(c) the works are completed within three years of registration of the exemption;

(d) the works do not damage the bed or banks of the main river;

(e) the dredging does not include the removal of gravel;

(f) the dredging is limited to the removal of accumulated silt and sand on the established bed of the main river;

(g) the works do not remove vegetation from the bed or banks of the main river, other than vegetation growing in or through the silt and sand;

(h) the works do not involve the use of a vehicle or machinery on the bed or banks of the main river;

(i) the works do not occur in, or within one kilometre upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(j) the dredging and subsequent deposition of dredged material do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(k) the works do not occur between 15th March and 15th June inclusive in any year;

(l) on a main river that is a designated salmonid river, the works do not occur between 1st October and 14th March inclusive in any year;

(m) the works and any equipment used comply with the dredging and removal of silt and sand requirements;

(n) the works are not carried out in, or within 1 kilometre upstream or 500 metres downstream of, a water body that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions;

(o) the works do not occur in a designated sensitive water body;

(p) on a non-tidal main river, the works do not occur within 8 metres of a flood defence structure or river control works; and

(q) on a tidal main river, the works do not occur within 16 metres of a flood defence structure or sea defence.

Dredging of any main river in England

24.—(1) Dredging of no more than 20 metres of any main river in England.

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

(a) no dredging has been carried out in the previous 12 months in the same main river and property;

(b) the works are completed within 12 months of registration of the exemption;

(c) the works do not damage the bed or banks of the main river;

(d) the dredging does not include the removal of gravel;

(e) the works do not remove vegetation from the bed or banks of the main river, other than vegetation growing in or through the silt and sand;

(f) the dredging is limited to the removal of accumulated silt and sand on the established bed of the main river;

(g) the works do not involve the use of a vehicle or machinery on the bed or banks of the main river;

(h) the works do not occur in, or within 1 kilometre upstream of, a type of habitat included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 or by Welsh Ministers under section 42 of that Act;

(i) the dredging and subsequent deposition of dredged material do not have a significant adverse effect on species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006, or by Welsh Ministers under section 42 of that Act, that are not protected species;

(j) the works do not occur between 15th March and 15th June inclusive in any year;

(k) on a main river that is a designated salmonid river, the works do not occur between 1st October and 14th March inclusive in any year;

(l) the works and any equipment used comply with the dredging and removal of silt and sand requirements;

(m) the works are not carried out in, or within 1 kilometre upstream or 500 metres downstream of, a water body that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(n) the dredging does not occur in a designated sensitive water body.

Excavation of scrapes and shallow wetland features

25.—(1) The excavation of scrapes and shallow wetland features in a floodplain.

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

(a) the area of the excavation is no more than 0.1 hectare and takes place at least 100 metres from any other excavation in the floodplain;

(b) the excavation is no more than 500mm deep at any point;

(c) where spoil from the excavation is spread on the floodplain, the spoil is spread to a depth of no more than 100mm; and

(d) the excavation is at least 8 metres from any structure forming part of a flood defence and from the landward side of each bank of the main river.

Raised flood defences in England

26.—(1) The construction of raised flood defences around one to six adjoining properties in England.

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

(a) the works are not within 8 metres of a main river;

(b) the dimensions of the flood defences are no more than 1 metre in height and 6 metres in width;

(c) the defences are located at least 20 metres from any building not owned by the owners of the properties;

(d) the total area protected by the defences is no more than 150m^2 for each property;

(e) the defences are to protect existing buildings; and

(f) the works are within the existing boundary of the properties.

Bankside wildlife refuge structures

27.—(1) Construction of bankside wildlife refuge structures.

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

(a) the length of bank excavated during construction of the structure is no more than 1.5 metres;

(b) the height of the structure is no more than 1.5 metres or no more than 75% of the height of the bank, whichever is less;

(c) the structure is not located within 50 metres of another man-made structure on or in the main river;

(d) the structure is not located within 8 metres of a flood defence structure or river control works;

(e) the works are not carried out in, or within 100 metres of, a water body in England that is part of a main river classified as of high morphological status by the Agency in accordance with the relevant directions; and

(f) the structure does not project beyond the line of the bank prior to the works being carried out.

Improvement works for tracks and paths

28.—(1) Improvement works for tracks and paths.

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

(a) the works are to an existing track or path;

(b) the works do not alter the route or width of the track or path;

(c) the works do not disturb the bed or banks of any main river;

(d) the works do not increase the level of the path by more than 100mm; and

(e) when the works are completed, all materials and debris are removed from the site."

SCHEDULE 2

Regulation 27

Insertion of Schedule 23ZA into the Principal Regulations

"SCHEDULE 23ZA

Regulation 35(r)

Flood risk activities and excluded flood risk activities

PART 1

Flood risk activities

Application

1. This Schedule applies in relation to every flood risk activity.

Interpretation

2.—(1) In this Schedule—

"application" has the meaning given in paragraph 1 of Schedule 5;

"drainage" has the meaning given in section 113(1) of the 1991 Act(**a**) and "drainage work" is to be construed accordingly;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding;

(b) serious detrimental impact on drainage;

(c) serious harm to the environment;

"flood defence structure" means any permanent works constructed, operated or maintained by the regulator for the purposes of managing flood risk;

"land" includes—

(a) water,

(b) land covered by water;

"main river" has the meaning given in section 113(1) of the 1991 Act(**b**);

"navigation authority" means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

"non-tidal main river" means any part of a main river that is not a tidal main river;

"tidal main river" means that part of a main river downstream of the normal tidal limit;

"unauthorised flood risk activity" means a flood risk activity which is not authorised by an environmental permit but excluding any exempt or excluded flood risk activities;

"watercourse" has the meaning given in section 221 of the 1991 Act(**c**), as read with section 113(1) of that Act.

(2) In this Schedule—

(a) except in the definition of "sea defence" in paragraph 3, "bank" means any bank, berm, wall or embankment that adjoins or confines any watercourse and includes

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(**a**) The definition of "drainage" was amended by the Environment Act 1995 (c. 25), section 100(1) and Schedule 24.
(**b**) The definition of "main river" was amended by the Water Act 2014 (c. 21), section 59(3).
(**c**) The definition of "watercourse" was amended by the Environment Act 1995, Schedule 22, paragraph 128, the Water Act 2014, section 59(4)(b) and S.I. 2013/755.

the side of the bank that stretches down to the mean low-water mark (in the case of a watercourse in which tidal waters flow) or to the bed of the watercourse (in any other case);

(b) for the purposes of paragraph (a), in the case of a watercourse in which tidal waters flow, the bank includes any wall or embankment constructed or maintained by the regulator in the sea or an estuary for the purposes of or in connection with a river;

(c) any reference to a distance of 8 metres or 16 metres from a river is a reference to that distance as measured horizontally from the foot of the bank on the landward side of the river;

(d) any reference to a distance of 8 metres or 16 metres from any flood defence structure or culvert is a reference to that distance as measured from the foot of the flood defence structure or from the outside edge of the culvert, as the case may be.

Meaning of "flood risk activity"

3.—(1) Subject to sub-paragraph (2), a "flood risk activity" means—

(a) erecting any structure (whether temporary or permanent) in, over or under a main river;

(b) the carrying out of any work of alteration or repair on any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work;

(c) erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river;

(d) any dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a main river (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging and desilting;

(e) 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;

(f) any activity within 8 metres of a non-tidal main river (or within 8 metres of any flood defence structure or culvert on that river) or any activity within 16 metres of a tidal main river (or within 16 metres of any flood defence structure or culvert on that river) which is likely to—

(i) cause damage to or endanger the stability of the banks of that river or of any culvert;

(ii) cause damage to any river control works;

(iii) alter, reconstruct, discontinue or remove any river control works;

(iv) divert or obstruct flood waters or affect the drainage of that river; or

(v) interfere with the regulator's access to or along that river;

(g) any activity (other than an allowed activity) on a flood plain that is—

(i) more than 8 metres from a non-tidal main river or more than 16 metres from a tidal main river, or

(ii) 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, to damage any river control works or to affect drainage;

(h) any activity within 16 metres of the base of a sea defence which is likely to—

(i) endanger the stability of, cause damage to or reduce the effectiveness of that sea defence, or

(ii) interfere with the regulator's access to or along that sea defence;

(i) any activity within 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage to or reduce the effectiveness of that defence, or

(ii) interfere with the regulator's access to or along that defence;

(j) any quarrying or excavation within 16 metres of the base of a remote defence which is likely to cause damage to or endanger the stability of that defence;

(k) any quarrying or excavation within 16 metres of a main river or any flood defence structure or culvert on that river which is likely to cause damage to or endanger the stability of the banks of that river.

(2) Paragraphs (e) to (k) of sub-paragraph (1) are excluded from the definition of flood risk activity in respect of a statutory function—

(a) exercisable by a person carrying on an undertaking protected by paragraph 1 of Schedule 22 to the 1991 Act(**a**); or

(b) relating to the management of flood risk exercisable by a risk management authority within the meaning of section 6(13) of the Flood and Water Management Act 2010(**b**).

(3) In this paragraph—

"allowed activity" means—

(a) any activity that has been granted planning permission by a local planning authority or the Secretary of State under the Town and Country Planning Act 1990(**c**), a certificate under section 191 of that Act or an established use certificate under section 192 of that Act, as originally enacted(**d**), which continues to have effect for the purposes of subsection (4) of section 192, or

(b) the construction of hay or straw stacks, clamps or manure (or similar) heaps, in accordance with accepted agricultural practice;

"conservancy authority" means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water and is not a navigation or harbour authority;

"culvert" means a covered channel or pipe which prevents the obstruction of a main river or drainage path by an artificial construction;

"harbour authority" has the meaning given in section 313 of the Merchant Shipping Act 1995(**e**), other than a navigation authority;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river, other than any berm, wall or embankment which is a bank within the meaning of paragraph 2(2);

"river control works" means any structure or appliance used for measuring or regulating—

(a) the level of water in a main river;

(b) the flow of water in, into or out of, a main river; or

(c) the drawing of water from, or the delivering of water into, a main river,

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(**a**) Paragraph 1 of Schedule 22 was amended by the Coal Industry Act 1994 (c. 21), Schedule 9, paragraph 43(1), the Transport Act 2000 (c. 38), Schedule 5, paragraph 15, the Communications Act 2003 (c. 21), Schedule 17, paragraph 114(2), the Energy Act 2004 (c. 20), Schedule 19, paragraph 18, the Postal Services Act 2011 (c. 5), Schedule 12, Part 3, paragraph 138 and S.I. 2001/1149, 2013/755.

(**b**) 2010 c.29; section 6(13) was amended by S.I. 2013/755.

(**c**) 1990 c. 8.

(**d**) Sections 191 and 192 were substituted by the Planning and Compensation Act 1991 (c. 34), section 10(1).

(**e**) 1995 c. 21; the definition of "harbour authority" was substituted by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 6, paragraph 19(2)(a).

and includes any sluices, flood gates, lashers, valves, paddles, penstocks, locks, weirs, dams, pumps, pumping machinery and pipes;

"sea defence" includes any bank, wall, embankment (and any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the regulator's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949(**a**) or by any local authority or any navigation, harbour or conservancy authority.

Excluded flood risk activities

4. An "excluded flood risk activity" means a flood risk activity that—

(a) falls within a description in Part 2 of this Schedule; and

(b) satisfies the conditions specified in Part 2 of this Schedule for an activity of that description.

Exercise of relevant functions

5. The regulator must exercise its relevant functions for the purposes of achieving the following objectives—

(a) managing flood risk;

(b) managing impacts on land drainage;

(c) environmental protection.

Conditions for operation and maintenance of structures and works

6. Without prejudice to its powers to grant an application subject to such conditions as it sees fit, the regulator may grant an application subject to such conditions relating to—

(a) the operation and maintenance of such structure or works as the regulator considers to be necessary—

(i) to manage impacts on land drainage;

(ii) to manage flood risk; or

(iii) to secure environmental protection;

(b) access by the regulator to any structure, works or watercourse, including access to any surrounding land where this is necessary to access the structure, works or watercourse.

Emergency works notice

7.—(1) In an emergency, the regulator may serve an emergency works notice on the operator, owner or occupier of the premises or any other person responsible for a flood risk activity ("A").

(2) An emergency works notice may be served whether or not the activity is an excluded or an exempt flood risk activity.

(3) An emergency works notice may require A—

(a) to remove any specified structure in accordance with requirements set out in the notice;

(**a**) 1949 c. 74.

(b) to modify any specified structure in accordance with requirements set out in the notice;

(c) to carry on the activity in accordance with requirements set out in the notice;

(d) to remedy the environmental effects caused by the activity in accordance with requirements set out in the notice;

(e) not to carry on the activity without an environmental permit, unless the activity is an excluded or exempt activity.

(4) An emergency works notice must—

(a) specify the period within which A must comply with the notice requirements;

(b) set out the rights of appeal that A has under regulation 31(2)(f).

(5) In sub-paragraph (3)(d), "environmental effects" means—

(a) flooding or risk of flooding;

(b) harm to the environment or risk of harm to the environment;

(c) detrimental impact on drainage or risk of detrimental impact on drainage.

Remediation notice

8.—(1) Where the regulator considers that an unauthorised flood risk activity is being or has been carried on, it may serve a remediation notice on the operator, owner or occupier of the premises or any other person responsible for the unauthorised flood risk activity ("A").

(2) The remediation notice must—

(a) state the regulator's view under sub-paragraph (1);

(b) specify the steps that must be taken by A;

(c) specify the period within which those steps must be taken;

(d) set out the rights of appeal that A has under regulation 31(2)(f).

(3) Steps that may be specified in the remediation notice include steps—

(a) to cease carrying on the activity;

(b) to carry on the activity in a particular manner;

(c) to remove or reduce flood risk;

(d) to remedy detrimental impact on drainage;

(e) to remedy harm to the environment;

(f) to restore the main river to its previous condition or a condition otherwise specified in the notice.

(4) Where—

(a) the regulator has served a notice on A, but A does not comply with the remediation notice within the time specified in the notice, or

(b) the regulator determines that it is not possible or practical to serve a remediation notice on A,

the regulator may serve a remediation notice on any other person who appears to the regulator to have the necessary authority to take the steps specified in the notice.

(5) Where a notice is served under sub-paragraph (4), sub-paragraphs (2) and (3) apply as if the references in those sub-paragraphs to "A" are references to the person on whom a notice under sub-paragraph (4) is served.

Regulator's power to take steps to remove and remedy etc.

9.—(1) Subject to paragraph 10(4) and (5), the regulator may take steps to—

(a) remove, alter or pull down any works carried out pursuant to an unauthorised flood risk activity;

(b) remedy the effects caused by an unauthorised flood risk activity.

(2) Before taking any steps under sub-paragraph (1) the regulator must serve a notice of intent on the person responsible for the unauthorised flood risk activity ("A").

(3) The requirement to serve a notice of intent under sub-paragraph (2) does not apply where the regulator—

(a) is required to act in an emergency; or

(b) cannot determine who is the person responsible for the unauthorised flood risk activity.

(4) A notice of intent must—

(a) specify the steps the regulator intends to take;

(b) specify the date on which the regulator intends to take those steps;

(c) set out the rights of appeal that A has under regulation 31(2)(f).

(5) Where the regulator determines that it is not possible or practical to serve a notice of intent on A, the regulator may serve the notice on any other person who it appears to the regulator may be affected.

(6) Where a notice is served under sub-paragraph (5), sub-paragraph (4)(c) applies as if the reference in that sub-paragraph to "A" is a reference to the person on whom a notice under sub-paragraph (5) is served.

(7) The regulator may recover from A, or a person served with a notice under sub-paragraph (5), the costs of any steps taken by the regulator under sub-paragraph (1).

Protected undertakings, railways and bridges

10.—(1) For the purposes of this paragraph, "protected undertaking" means the undertakings referred to in paragraph 1(4) of Schedule 22 to the 1991 Act, as read with sub-paragraphs (4A) and (5) of that paragraph.

(2) The regulator must not exercise its functions under these Regulations in relation to any flood risk activity in a manner that prejudices the exercise of any statutory power, authority or jurisdiction by a person carrying on a protected undertaking.

(3) Sub-paragraph (2) does not have the effect of exempting any person carrying on a protected undertaking from the requirement to hold an environmental permit.

(4) The regulator must obtain the consent of the person carrying on a protected undertaking where—

(a) the regulator is proposing to take steps under paragraph 9(1) that will directly or indirectly interfere with works or property (or with the use of works or property) vested in, or under the control of, a person carrying on that undertaking; and

(b) that interference will adversely affect those works, that property (or with the use of those works or that property) or the carrying on of that undertaking.

(5) Sub-paragraph (4) does not apply where the regulator is required to act in an emergency but, in such a case, the regulator must notify the person carrying on the protected undertaking as soon as possible of any steps that have been taken under paragraph 9(1).

(6) Without prejudice to the preceding provisions of this paragraph, nothing in these Regulations that relates to a flood risk activity authorises any person, except with the consent of the railway company in question, to interfere with—

(a) any railway bridge or any other work connected with a railway; or

(b) the structure, use or maintenance of a railway or the traffic on it.

(7) Where consent is required under sub-paragraph (4) or (6), the consent may be subject to reasonable conditions but must not be unreasonably withheld.

(8) There must be a referral to the arbitration of a single arbitrator, to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers(**a**), of any dispute as to whether—

(a) anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraphs (4) and (6);

(b) any consent for the purposes of this paragraph is being unreasonably withheld;

(c) any condition subject to which any such consent has been given is reasonable.

(9) Nothing in this Schedule affects any enactment requiring the consent of any government department, Minister or Welsh Minister for the erection of a bridge, or any powers exercisable by any government department, Minister or Welsh Minister in relation to a bridge.

PART 2

Excluded flood risk activities

SECTION 1

Introductory

1.—(1) The descriptions in this Part are set out in paragraphs 2 to 13, in their respective first sub-paragraphs.

(2) The specific conditions relating to each description in this Part are set out in paragraphs 2 to 13, in their respective second sub-paragraphs.

(3) The general condition for the descriptions in paragraphs 3 to 13 of this Part is that the activity is not carried out in, or (where the activity is carried out in Wales) within 100 metres of, a water body in Wales that is part of a main river classified as of high morphological status by the NRBW in accordance with the relevant directions.

(4) For the purposes of paragraphs 3 and 4, "licensable marine activity" and "marine licence" have the same meaning as in Part 4 of the Marine and Coastal Access Act 2009(**b**).

(5) For the purposes of this Part, "relevant directions" means the Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015(**c**).

SECTION 2

Descriptions and conditions

Emergency activity

2.—(1) Any activity carried on in an emergency.

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

(a) the activity is not a pre-planned emergency activity; and

(b) the person carrying on the activity provides the regulator with notice in writing as soon as practicable of the carrying on of the activity and the circumstances in which it was carried on.

(**a**) Registered charity number 210252.

(**b**) 2009 c. 23.

(**c**) These Directions were made on 9th September 2015 in exercise of powers in section 40(2) of the Environment Act 1995 and are available at http://www.legislation.gov.uk/uksi/2015/1623/pdfs/uksiod_20151623_en.pdf. A copy may be obtained from the Flood Risk Management Team, the Department for Environment, Food and Rural Affairs, Area 3C, Nobel House, 17 Smith Square, London SW1P 3JR

(3) For the purposes of sub-paragraph (2)(a), a "pre-planned emergency activity" means any activity which has been planned in response to an emergency before it occurs.

(4) The power of the regulator to serve a remediation notice under paragraph 8 of Part 1 of this Schedule applies where an activity has been carried on in reliance on this exclusion as if that activity were an unauthorised activity.

A licensable marine activity in England

3.—(1) A licensable marine activity in England.

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

(a) an application for a marine licence has been made in respect of that activity;

(b) the Agency has received notice that the application has been made;

(c) in view of the terms and conditions that will be included in the marine licence, the Agency considers that an environmental permit is not necessary; and

(d) a notice to that effect has been issued by the Agency to the applicant.

A licensable marine activity in Wales

4.—(1) A licensable marine activity in Wales.

(2) For the purposes of this paragraph, the specific condition is that an application for a marine licence has been made in respect of that activity.

Ladders and scaffold towers

5.—(1) The erection and use of ladders and scaffold towers ("equipment").

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

(a) the suitability of river conditions is reviewed by the operator each working day;

(b) the equipment is erected on each working day on which it is required; and

(c) the equipment is removed at the end of each working day and is stored outside the river and its banks.

Service crossings within an existing structure

6.—(1) The construction and use of service crossings within an existing structure.

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

(a) the crossing is entirely within the original profile of the existing structure;

(b) the regulator has not sent a notification to the landowner that the structure has been identified for removal or modification in order to achieve the measures set out in the relevant River Basin Management Plan, within the meaning of Article 13 of the Water Framework Directive, that are designed to move a water body to good status pursuant to Article 4 of that Directive;

(c) equipment associated with the works is not stored on the bed or banks of the main river; and

(d) no works are carried out from the main river or from the banks of the main river.

Flood protection devices attached to buildings

7.—(1) The attachment of a flood protection device directly to a building in order to protect the interior of that building.

(2) For the purposes of this paragraph, the specific condition is that the flood protection provided by the device extends only to the building to which the device is fitted.

Minor works on or affecting bridges and culverts

8.—(1) The carrying out of minor works on or affecting bridges and culverts for highways and public rights of way ("minor works").

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

(a) the minor works do not affect, or have the potential to affect, the bed, banks, water level, normal flow or flood flow in the main river;

(b) equipment associated with the minor works is not stored on the bed or banks of the main river; and

(c) no works are carried out from the main river or from the banks of the main river.

Fencing

9.—(1) The erection of fencing.

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

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

(b) the fencing is constructed of—

(i) post and rail;

(ii) post and wire mesh of at least 100 mm spacing; or

(iii) post and wire strands.

Fish traps

10.—(1) The temporary use of fish traps.

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

(a) the trap has dimensions of no greater than 2 metres x 1 metre x 0.75 metre;

(b) any trap, or combination of traps, placed in the main river is less than one third of the width of the channel;

(c) the trap is not used when the main river is in a condition of high flow; and

(d) the trap is located more than 50 metres upstream or downstream from any dam or other obstruction.

Notice boards

11.—(1) Erection of notice boards.

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

(a) the board is attached to existing fencing or freestanding, permanent posts;

(b) the board is more than 2 metres from any culvert, remote defence or flood defence structure on the main river and from any sea defence; and

(c) the board is more than 2 metres from the landward side of the bank.

Purpose-built sediment traps

12.—(1) Clearance of purpose-built sediment traps.

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

(a) only sand and silt is cleared from the trap;

(b) the works do not result in sand or silt being transmitted downstream; and

(c) where the sand and silt from the clearance is spread on the floodplain, it is spread to a depth of no more than 100mm and no closer than 8 metres from the landward side of either bank.

Site investigation boreholes and trial pits

13.—(1) Site investigation boreholes and trial pits within a flood plain.

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

(a) the works are more than 5 metres from any culvert, remote defence or flood defence structure on the main river and from any sea defence;

(b) the works are more than 8 metres from the banks of a non-tidal main river;

(c) the works are more than 16 metres from the banks of a tidal main river; and

(d) the works are completed, including refilling of the borehole or pit, within 48 hours.

”

SCHEDULE 3

Regulation 29

Consequential amendments etc.

PART 1

Public General Acts

Highways Act 1980

1. After section 339(1) of the Highways Act 1980(**a**) insert—

“(1A) Subsection (1) does not apply in respect of an activity which is a flood risk activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675).”.

Water Resources Act 1991

2. In section 221(1)(**b**) of the 1991 Act, in the definition of “flood defence functions”—

(a) at the end of paragraph (b) omit “and”;

(b) after paragraph (c) insert—

“(d) its functions with respect to securing the drainage of land or the management of flood risk contained in regulations made under section 61 of the Water Act 2014(**c**); and

(e) any other function of the appropriate agency under any provision of this Act or the 1995 Act so far as it relates to a function falling within paragraph (d);”.

Environment Act 1995

3.—(1) The Environment Act 1995(**d**) is amended as follows.

(2) In section 56(1)(**e**), in the definition of “environmental licence”, for paragraph (aa) substitute—

“(aa) a permit granted by the appropriate agency under—

(**a**) 1980 c.66; section 339 was amended by the Water Act 1989 (c.15), Schedule 25, paragraph 62, the Water Consolidation (Consequential Provisions) Act 1991 (c.60), Schedule 1, paragraph 36(2) and S.I. 1996/593.

(**b**) The definition of “flood defence functions” was substituted by the Environment Act 1995 (c. 25), Schedule 22, paragraph 177(7) and amended by S.I. 2013/755.

(**c**) 2014 c. 21.

(**d**) 1995 c.25.

(**e**) Paragraph (aa) of the definition of “environmental licence” was inserted by S.I. 2000/1973 and amended by 2013/755 and 2012/2788.

(i) regulations made under section 2 of the Pollution Prevention and Control Act 1999(**a**), other than regulations made for the purpose of implementing the EU ETS Directive,

(ii) regulations made under section 61 of the Water Act 2014.".

(3) In section 108—

(a) in subsection (1)—

(i) in paragraph (a), after the words "pollution control enactments" insert "or flood risk activity enactments";

(ii) in paragraph (b), after the words "pollution control functions" insert "or flood risk activity functions";

(b) in subsection (4)—

(i) for paragraph (g) substitute—

"(g) in the case of any article or substance found in or on any premises which the person has power to enter, being an article or substance which appears to that person to have caused or to be likely to cause—

(i) pollution of the environment,

(ii) harm to the environment,

(iii) flooding,

(iv) harm to human health, or

(v) a detrimental impact on drainage,

to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);";

(ii) in paragraph (h)(iii), after the words "pollution control enactments" insert "or flood risk activity enactments";

(iii) in paragraph (k)(i), after the words "pollution control enactments" insert "or flood risk activity enactments";

(c) in subsection (5), after the words "pollution control enactments" insert "or flood risk activity enactments";

(d) in subsection (15)—

(i) for the definition of "emergency" substitute—

""emergency" means a case in which it appears to the authorised person in question—

(a) that there is an immediate risk of serious harm or that circumstances exist which are likely to endanger life or health, and

(b) that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy,

and for this purpose "serious harm" means—

(i) serious pollution of the environment,

(ii) serious harm to the environment,

(iii) serious flooding,

(iv) serious harm to human health, or

(v) a serious detrimental impact on drainage;";

(ii) after the definition of "English waste collection authority"(**b**) insert—

(**a**) 1999 c. 24; section 2 was amended by the Water Act 2014, section 62(13) and S.I. 2013/755.

(**b**) The definition of "English waste collection authority" was inserted by the Protection of Freedoms Act 2012 (c. 9), Schedule 2, Part 1, paragraph 3(3).

""flood risk activity enactment", in relation to an enforcing authority, means an enactment relating to the flood risk activity functions of that authority;

"flood risk activity functions", in relation to the Agency or the Natural Resources Body for Wales, means the functions relating to flood risk activities conferred or imposed on it by or under regulations made under section 61 of the Water Act 2014;".

PART 2

Subordinate legislation

4. Any requirement of a byelaw made by the regulator before 6th April 2016 under section 210(1) of, and paragraph 5 of Schedule 25 to, the 1991 Act(**a**) for a person to obtain the consent of the regulator ceases to apply.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675) ("the EPRs") in order to extend the requirement for an environmental permit to flood risk activities.

Regulation 3 amends the EPRs so as to provide for relevant definitions. In particular the term "flood risk activity" is defined by reference to a new Schedule 23ZA to the EPRs (inserted by Schedule 2 to these Regulations).

Regulation 4 amends regulation 5 of the EPRs (exempt facilities) to provide for exempt flood risk activities. Regulations 5 to 7 amend definitions in the EPRs in order to bring flood risk activities within the class of operations that require an environmental permit.

Regulation 8 substitutes a new regulation 15 in the EPRs in connection with provision for permit applications to be granted subject to conditions relating to ongoing maintenance or access requirements by the regulator. Regulations 9 and 10 extend to flood risk activities current flexibilities in the EPRs concerning the grant by the regulator of a permit covering various activities by a single operator.

Regulations 11 to 13 extend the current provisions in the EPRs on variation, transfer and surrender of environmental permits so that they provide for flood risk activities. Regulation 14 make provision for appeals in relation to permits authorising flood risk activities. Regulation 15 adds flood risk activities to the list of specific provisions applying to environmental permits, set out in regulation 35 of the EPRs.

Regulations 16 to 20 extend the current provisions in the EPRs on enforcement and offences relating to permits so that they provide for flood risk activities. Regulation 21 gives the regulator power to arrange for steps to be taken to remove a risk of serious flooding, detrimental impact on drainage or harm to the environment, corresponding to the current power under the EPRs for the regulator to prevent or remedy pollution.

Regulation 22 requires the Environment Agency and the Natural Resources Body for Wales to consult each other before exercising a function relating to a flood risk activity which may affect a flood or coastal erosion risk in Wales or England respectively. It also requires the appropriate authority to have regard to the interests of fisheries, including sea fisheries, when exercising a power under the EPRs that relates to a flood risk activity.

(**a**) Section 210(1) was amended by S.I. 2013/755. Paragraph 5 of Schedule 25 was amended by the Natural Environment and Rural Communities Act 2006 (c. 16), section 100(1) and (2), the Marine and Coastal Access Act 2009, section 84 and Schedule 11, paragraph 3, the Flood and Water Management Act 2010 (c. 29), Schedule 2, paragraph 49 and S.I. 2013/755.

Regulations 23 and 24 amend Schedules 2 and 3 respectively to make provision in respect of exempt facilities for flood risk activities. Regulation 25 amends Schedule 5 to the EPRs in order to make provision in respect of the grant, variation and surrender of environmental permits that include flood risk activities (including provision as to fees for the grant of such permits). Regulation 26 adds provision in respect of flood risk activity enforcement notices to Schedule 6 to the EPRs (appeals to the appropriate authority). Regulation 28 amends Schedule 23A to the EPRs in order to exclude the option of accepting an enforcement undertaking in relation to flood risk activities. Regulation 30 repeals certain provisions of the Water Resources Act 1991(**a**).

Regulations 31 to 34 make transitional and saving provision in respect of existing flood defence consents, outstanding applications for flood defence consents, existing notices and arbitration matters.

Schedule 1 to these Regulations adds a new Part 4 to Schedule 3 to the EPRs (descriptions and conditions for exempt flood risk activities). Schedule 2 makes specific provision for flood risk activities included in environmental permits. This includes definitions, enforcement notices and excluded flood risk activities. Schedule 3 makes consequential amendments to primary and subordinate legislation.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Flood Risk Management Team, the Department for Environment, Food and Rural Affairs, Area 3C, Nobel House, 17 Smith Square, London SW1P 3JR and from the Flood and Coastal Erosion Risk Management Team, the Welsh Government, Cathays Park, Cardiff, CF10 3NQ, and is published alongside the Explanatory Memorandum for this instrument at www.legislation.gov.uk.

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(**a**) 1991 c.57.

UK201602026 02/2016 19585

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