



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Consultation on proposals to amend some exemptions and exclusions in relation to flood risk activities in the Environmental Permitting (England and Wales) Regulations 2016

Summary of responses

September 2018



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1. Background

Defra and the Welsh Government consulted stakeholders on proposed changes to some of the flood risk exemptions and exclusions under the Environmental Permitting (England and Wales) Regulations 2016; these regulations came into force on 1 January 2017. These proposed changes will primarily affect individuals, businesses and organisations that carry out works on or near to main rivers, i.e. landowners/farmers; internal drainage boards; Canal and Rivers Trust; local authorities; riparian owners/householders; and environmental groups.

This document contains a summary of the responses to the consultation which was held between 11 April 2018 and 20 June 2018 (see consultation at: <https://consult.defra.gov.uk/flooding/environmental-permitting-regulations/>)

2. Objectives of the proposals

The policy objectives for undertaking these changes are to:-

- extend the level of de-regulation so that fewer people will face the restrictive conditions detailed in some of the exemptions;
- make the regulations clearer;
- remove barriers and introduce flexibility for individuals and businesses; and
- make it less bureaucratic for people without increasing the risk to the environment.

3. Analysis of the responses

Defra received 14 responses in total from individuals, local authorities and businesses:

- 1 from Caerphilly County Borough Council
- 1 from Civil Engineering
- 6 from individuals
- 1 from National Farmers Union (NFU)
- 1 from South West Water
- 1 from Speciality Steel UK Ltd
- 1 from the Tenant Farmers Association in England (TFA) and the Tenant Farmers Association in Wales (TFA Cymru)

- 1 from West Berkshire Council
- 1 from West Somerset Flood Group

11 of the respondents submitted their comments via the citizen space web site; whereas the NFU, South West Water and TFA/TFU Cymru sent separate emails. TFA/TFU Cymru only submitted comments in relation to the proposed change on fencing.

Overall, the majority of the respondents were in favour of the proposed changes.

4. Summary of responses

The tables below set out the responses (in terms of percentages) from those that submitted their replies via the citizen space web site.

Maintenance of structures: we are proposing to remove this exemption.

Questions	Responses		
	Yes	No	Not answered
Q7. Do you agree with the reason for removing this exemption?	73%	18%	9%
Q8. Do you intend to undertake works that you consider could impact the flow of water without altering the dimension of any structure?	27%	64%	9%
Q9. Do you agree that activities supporting maintenance on structures such as scaffolding and cofferdams/bunding may still need a permit in their own right?	82%	9%	9%

Comments from respondents

With regard to Q7, the majority of the respondents agreed with the proposal to remove the exemption. One respondent commented that removal of the exemption and creation of a qualification ties into flood risk activity/ land drainage permitting.

One respondent who did not agree with removal of the exemption suggested that the activity needs to be monitored. Another respondent who disagreed stated that by increasing the number of factors which require a licence will increase the likelihood that people will not apply or not know they need to apply. The respondent added that legislation is already overly complicated and open to interpretation. In trying to define everything, this has made the system too complex, and therefore legislators should aim to keep things simple.

With regard to Q8, the majority of respondents do not intend to undertake works they consider could impact the flow of water without altering the dimension of any structure. Three respondents answered they did intend to undertake works; one of those said potentially during civil engineering works on controlled waters and another said potentially maintenance works could impact the flow of water.

With regard to Q9, the majority of respondents agreed that activities supporting maintenance on structures may still need a permit. One respondent who agreed said that blockage risk needs to be assessed on a case by case basis; geomorphologic dynamic, heavily wooded or populated areas; along with time of year can affect the suspended content and material loading of a watercourse. This can heavily impact on the cross sectional area of the active channel to its detriment, either by blockage or erosion as hydraulic properties are changed in the active channel.

Another respondent who agreed on retaining the permit stated that temporary structures are consented under Section 23 of the Land Drainage Act 1991, therefore it would create consistency to cover such activity under the EPRs.

Another respondent who agreed with the permit added that it depends on the water course, for example, if structures such as scaffolding do not have an impact then no permit is required. They added that it would be good if working on main rivers had general binding rules or a position statement where it was clear where and when a permit was required.

By removing this exemption, Defra intends to make the regulations clearer. The proposed removal would reduce what the Environment Agency has to regulate, but it would not alter the Environment Agency's permitting approach for the enabling works. Activities such as scaffolding which are often required as part of maintaining river structures would not change.

Rafts for surveys: We are proposing to remove the 12 month timing constraint and include further conditions.

Questions	Responses		
	Yes	No	Not answered
Q10. Do you agree with removing the timing constraint of 12 months?	73%	9%	18%
Q11. With regard to inspections of the raft and the	9%	64%	27%

anchor(s), do you wish to see a more specific requirement on how regular the inspections should be?			
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The majority of the respondents agreed with the proposal to remove the timing constraint of 12 months. One respondent commented that the time limit is not the issue, however new text that is added needs to be appropriate.

One respondent who did not agree suggested that the time constraint is required or the rafts could be left in and become debris within the watercourse but they added that if the debris is biodegradable then they could be left as they will naturally decompose over time.

One respondent felt that activities should be recorded with a regulator and a fine should be imposed on the responsible party for any faults. Another respondent suggested six-monthly inspections of the rafts.

Since flood defence consents were brought into the EPRs, a 12 month deadline was included for removal of the rafts. There is now evidence, however, that surveys are undertaken over a longer period and so the structures are required in some instances to stay in for longer. Defra plans to add a condition proposing that the rafts should be removed when they are no longer required and should be inspected regularly.

Notches: We are proposing to remove the words “fish passage” so that other types of notches can be covered more generally.

Question 13: Are you content for the reference to fish passage to be removed?

73% of the respondents agreed with the changes. 9% did not agree with the proposed changes and 18% did not answer.

The majority of the respondents agreed with the proposal to remove the reference to fish passage. It was felt that it made more sense for the notches to cover more activities than just fish passages. Defra plans to remove the reference to fish passage.

Ladders and scaffold towers: We are proposing to add the words “other types of apparatus” to the exclusion.

Question 14: Do you agree with the proposal to include “other similar access or service apparatus”?

82% of the respondents agreed with the changes. 9% did not agree with the proposed changes and 9% did not answer.

A couple of respondents commented on the fact that the current exemption for scaffolds requires them to be removed overnight and this was considered to be impractical. It was felt that as long as the river conditions are reviewed and deemed appropriate each day and forward planning is carried out for the following day, the ladder or other equipment should not need to be removed, and this could be clarified under general binding rules.

One respondent commented that anything larger than ladders and scaffold towers is likely to introduce sediment mobilisation which could be detrimental. This risk is mitigated since the structures have to be removed from the watercourse each day, which means they are likely minor in terms of size and footprint. The timing constraint deters large complex structures being erected as they would need to be removed each working day, which is not cost effective. Defra plans to add *other apparatus* to the exclusion.

Fencing: We are proposing to extend this exclusion so fencing is not located on “flood defences” as well as beds and banks of the main river.

Question 15: Do you agree with the proposed change?

82% of the respondents agreed with the changes. 9% did not agree with the proposed changes and 9% did not answer.

One respondent who did not agree commented that flood defence structures can be embankments but they can also be flood walls, hard engineering like sheet piles. They felt that if fencing is not located on such hard engineered structures, it is likely to introduce safety issues, like falls from height at a sheet pile wall.

One respondent felt that property boundaries may be affected where landownership changes along the length of a defence structure, and also property security may be impacted upon if they are unable to provide alternate fencing than those listed. Another respondent added that fences erected on or near river banks could increase flood risk by trapped debris raising river levels. However, most agricultural tenancy agreements prohibit erecting new fences or removing existing ones without the consent of the landlord, so these tenants would be unable to comply with the proposed removal of this exemption. Defra will consider this issue further before making changes.

They also stated that the proposed change would appear to be in direct conflict with the new farming rules for water in England which came into force on 2 April, stating that all watercourses are to be fenced off from livestock to prevent poaching. Defra can confirm

that this proposed change is not in conflict with the farming rules for water, since the rules require farmers to take reasonable precautions to avoid poaching but – in common with the design principles of the rules – they are not prescriptive about which actions a farmer should take.

5. The way forward

Given the general support for these proposals, and the lack of any strong objections, our intention is to introduce these changes to the Environmental Permitting (England and Wales) Regulations 2016.

Defra is planning to take forward the majority of the changes by end of December 2018, and we expect the amendments on the fencing exclusion and update to the salmonid map to be taken forward in 2019.

If you have any queries about the Consultation please contact: Carol Tidmarsh on 0208 026 2851 or email: floodreports@defra.gsi.gov.uk.