

**Appendix 1 - Guidance Notes****Leicestershire County Council  
Application for  
Ordinary Watercourse Land Drainage Consent****Introduction**

Please read through these guidance notes and the application form carefully before you fill the form in. If you are not sure about anything in these guidance notes, contact us using the details at the bottom of this form. These guidance notes give you information to help you fill in your application for Ordinary Watercourse Land Drainage Consent.

Before completing this form you are recommended to contact us for advice on your proposal. Under the Land Drainage Act 1991, you need consent if you want to build a culvert or structure (such as a weir) to control the flow of water on any ordinary watercourse.

There is a charge of £50 for each structure or operation for applications made under the Land Drainage Act.

**1 The Applicant**

Please tick one box to indicate the type of applicant you are. Then:

- if you are applying as a company, go straight to section 1.1;
- if you are applying as an individual, go straight to section 1.2;
- if you are applying as a group of individuals, go straight to section 1.3; or
- if you are applying as a public body, go straight to section 1.4.

**1.1 Applications from companies**

Fill in this section if you would like to apply for Land Drainage Consent as a registered company. To apply as a company, you must be a registered company formally registered with Companies House. Any Land Drainage Consent you get will be in the company name registered with Companies House.

You will need to give us your company name, as registered with Companies House, your company registration number, and the full name of the company director, and their official position.

Once you have filled in all of this section, go to section 2

**1.2 Applications from individuals**

Fill in this section if you would like to apply as an individual. Give us your full name.

The name you give will be the name on any Land Drainage Consent we grant.

Once you have filled in section 1.2, go to section 2.

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**1.3 Applications from groups of individuals**

Fill in this section if you would like to apply as a charity, group of individuals, club or partnership.

Tick the relevant box to tell us whether you are a charity, group of individuals, club or partnership.

Give us the name of your group. The name you give will be the name on any Land Drainage Consent we grant. If you are a limited liability partnership, please give the full name.

Give us the full name, position, full address and contact details of your group's main representative.

Once you have filled in all parts of section 1.3, go to section 2.

**1.4 Applications from public bodies**

Fill in this section if you would like to apply as a public body such as a local authority or an NHS trust.

Please give us the full name of the public body. The name you give will be the name on any Land Drainage Consent we grant.

Please specify what type of public body you are.

Once you filled in all parts of section 1.4, go to section 2.

**2 Your address**

All applicants must fill in this section. You must give us your full UK address. The address you give here will be the address your Land Drainage Consent will be registered to and will be shown on any Land Drainage Consent we grant.

If you are applying as a company, fill in **2.1**. Give your office address registered with Companies House. If this address is outside the UK, give the address of your main UK office in **2.2**.

We will not be able to process your application if you do not give us a UK address.

If you are applying as an individual, a group of individuals or a public body, go straight to **2.2** and give the address of your main office in the UK.

We will not be able to process your application if you do not give us a UK address.

Once you filled in all parts of section 2, go to section 3.

**3 Contact details**

Who we can contact about your application?

All applicants must fill in this section.

You need to tell us who we should contact about your application for Land Drainage consent. You can nominate someone other than the person named on any Land Drainage consent (for example, a consultant or agent).

You need to give us your or the relevant person's full name, address and contact details.

**4 Your Interest in the Land**

We need to know what interest you have in the land where the works will be carried out (for example, whether you are the landowner or tenant).

If any work will be carried out on land that you do not own, you will need permission from whoever owns the land.

**5 Location of the Proposed Works**

We need to be able to easily identify where the proposed works will be carried out. Please give details of:

The location of the site;

The name of the watercourse; and

The National Grid Reference (12 figures)

**6 Description and purpose of the proposed works.**

It is important that you accurately describe the proposals for the application being made.

Please tell us the purpose of the works and the number of structures you need consent for.

**7 Plans and Sections**

To consider your proposals we need to receive plans and drawings, drawn by a competent engineer or surveyor and showing Ordnance Datum Newlyn (the height above sea level)

You need to provide three copies of all relevant drawings. The drawings must be no larger than A0 size, and they need to include the following.

**Location Plan**

This must be at an appropriate scale and be based on an Ordnance Survey map. It must clearly show the general location of the site where the proposed work will be carried out and include general features and street names. It must also identify the watercourse or other bodies of water in the surrounding area.

**Site Plan (general arrangement)**

You must provide a plan of the site showing:

- The existing site, including any watercourse;
- Your proposals
- The position of any structures which may influence local river hydraulics, including bridges, pipes and ducts, ways of crossing the watercourse, culverts and screens, embankments, walls, outfalls and so on; and existing fish passes or structures intended to allow fish to pass upstream and downstream;

The plan should be drawn to an appropriate scale, which must be clearly stated.

**Cross Sections**

Where works encroach into any watercourse, you should provide cross sections both upstream and downstream of the proposed works. Cross sections should be drawn as if looking downstream on the watercourse and should include details of existing and proposed features and water levels.

**Longitudinal sections**

Longitudinal sections taken along the centre line of the watercourse are needed. These must show the existing and proposed features including water levels, bed levels and structures. They should extend both upstream and downstream of the proposed work.

**Detailed drawings**

These are to show details of the existing and proposed features such as the following:

- The materials to be used for any structures.
- The location of any proposed service pipes or cables which may affect the future maintenance of the watercourse.
- Details of any tree, shrub, hedgerow, pond or wetland area that may be affected by the proposed works.
- Details of any planting or seeding.

- Dams and weirs. (We need a plan showing the extent of the water impounded (held back) under normal and flood conditions so that we can assess the possible effect on land next to the river. The plan must also show any land drains to be affected.)

**8 Construction details**

You need separate consents for the permanent works and any temporary works that do not form part of the permanent works. Temporary works could include, for example, cofferdams (watertight enclosures) across a watercourse, or temporary diversions of water while work is carried out.

For any temporary work, we need to know how you are proposing to carry out the work. So you need to send us a "method statement" that includes details of the specific measures you plan to take to keep disruption to a minimum and reduce any unwanted effects while the work is being carried out.

We need to know when you are proposing to carry out the work and how long you think it will take. When you are planning the work you need to make sure that you have allowed enough time for us to consider your application.

**9 Environment Agency Interests**

Please tick the appropriate boxes.

If you answer "yes" to any of the questions, you will probably need extra licenses or consents from the Environment Agency before you start work

You should make sure that you have enough time to get all approvals you need before you start work. If you don't, this could delay the work.

**10 Planning Approvals**

Please provide details of any planning permissions you may have or are applying for that relates to this proposal.

**11 Maintaining the Structure**

We need to know who will be responsible for maintenance both during construction work and after the work has finished.

**12 Effects on the environment**

We have a legal duty to protect and improve the environment, so we must consider the environmental effects of your proposal

You may need to carry out an environmental appraisal to assess the effects of your work. You should contact us before you send us your application so that we can give you advice on this. If you don't, your application could be delayed.

The environmental appraisal should identify all likely effects on the environment. You should consider the direct and indirect effects the work has on sites and features of interest and species of particular value.

Include any specific measures you plan to keep disruption to a minimum and reduce any unwanted effects while the work is being carried out.

Set out any opportunities for you to improve the environmental value of the site. This may include creating water features, planting trees and shrubs that would normally grow at the site, providing bird nesting boxes or creating sustainable places for wildlife to live.

If as part of a planning permission we have asked for an environmental appraisal, you must send it to us with all the other supporting documents we need.

If your site falls within, is next to or is linked to a nature conservation site, contact us as soon as possible to discuss your proposals before you send us your application. Under the European Habitats Regulations, we must make sure that Land Drainage Consent does not have a direct or indirect negative effect on any site specified in the regulations, including:

- Sites of Special Scientific Interest (SSSIs)
- Designated Special Areas of Conservation (SACs);
- Special Protection Areas (SPAs);
- Listed RAMSAR sites; and
- Scheduled Ancient Monuments (SAMs)

Under the Habitats Regulations, we must consult Natural England or Countryside Council for Wales. You may want to contact these organisations yourself to get their views on your proposal.

**13 Fees**

The fee for Land Drainage Consent, where applicable is £50 per structure requiring consent. A cheque should be provided with the ordinary watercourse consent application made payable to 'Leicestershire County Council'.

**14 Checklist**

Tick the relevant documents in this section so that we know what you are sending

**The Data Protection Act 1998**

This section sets out our rights and responsibilities under the Data Protection Act 1998.

**15 Declaration**

By signing this section you are declaring that, as far as you know, the information you have provided, including the map and any supporting documents, is true. We will not accept any application that is not signed.

- If you are applying as a company which has trustees, all trustees must sign the declaration.
- If you are applying as a limited company, a company secretary or a director must sign the declaration.

**Next steps**

Please return the "LCC Consent Application Form" and any supporting documents to the Flood Risk Management team in the Environment and Transport Department. If you are able to please include a copy of all the documents in electronic format on CD or DVD.

If you need help filling in this form, contact the person who sent it to you or contact us as shown below.

General enquiries: 0116 3050001

Email: [flooding@leics.gov.uk](mailto:flooding@leics.gov.uk)

Website: <http://www.leics.gov.uk/Flooding>

Postal Address: Flood Risk Management Team,  
Environment & Transport Department, Leicestershire  
County Council, County Hall, Glenfield, Leicestershire,  
LE3 8RJ.

Please tell us if you have any communication needs such as needing information in a different language or alternative format (for example, in large print, in Braille or on CD).

### Appendix 2 - Cross sections of consentable activities



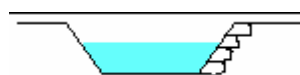
Pipe Culvert (including extension and removal of) - **Consent Required** under Section 23 1(b).



Oversized Box Culvert (including extension and removal of) - **Consent Required** under Section 23 1(b).



Trash Screens - **Consent Required** as it is an alteration to a culvert and has the potential to obstruct flow.



Bank Protection Works - **Not Consentable** under LDA 91, **Temporary works may require consent.**



Pipe Crossing (in channel) - **Consent Required** under Section 23 1(a)



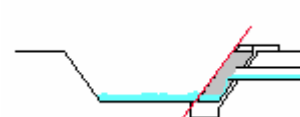
Pipe Crossing (above bank) - **Not Consentable** under LDA 91 as it does not interfere with flow.



Pipe Crossing (below bed) - **Not Consentable** under LDA 91 as it does not interfere with flow – **Temporary works may require consent.**



Protruding Pipe Outfall - **Not Consentable** under LDA 91, as it will not act like a "dam/weir or the like" obstruction.



Outfall within Bank profile - **Not Consentable** under LDA 91 as it does not interfere with flow – **Temporary works may require consent.**



Weir/Dam or impoundment or temporary works that obstruct flow - **Consent Required** under Section 23 1(a)



Bridge (where soffit level is below bank top level) - **Consent Required** under Section 23 1(a) if it has the potential to affect flow.



Bridge (abutments protruding but not reducing flow area/width) - **Not Consentable** under LDA 91 as it does not interfere with flow.



Bridge (Abutments that are restricting flow) or Flume - **Consent Required** under Section 23 1(b)



Clear span bridge - **Not Consentable** as it does not interfere with flow



Bridge with support in channel - **Not Consentable** under LDA 91 as it will not act like a dam/weir or like obstruction. Need to consider size of pier against size of watercourse, but would want to discourage the use of a pier in the watercourse.

**Appendix 3 - Suggested Conditions**

Under the changes proposed by the Flood and Water Management Act 2010 the Lead Local Flood Authority (LLFA) may choose to attach “reasonable conditions” to the granting of an ordinary watercourse consent.

Not everything that a LLFA might wish to inform an applicant of alongside a Consent can be the subject of a Condition. For example informing the applicant of the possible need for other necessary consents, permits and approvals is valuable to the applicant but not a matter that is subject to a Condition. Thus the LLFA may wish to consider the non exhaustive issues below as “Conditions” to attach to a “Consent” or “Informatives” that can accompany the Consent.

It is suggested that the particular Conditions that the LLFA intend to attach to a Consent and Informatives they intend to accompany the Consent are supplied to the applicant prior to the grant of Consent to obtain the applicant’s confirmation that he can satisfy these Conditions and understands these Informatives. The applicant should draw all of these matters to the attention of those who will undertake the works.

Below is a non exhaustive list of issues that the Lead Local Flood Authority may wish to consider.

**General**

Because circumstances may change it is wise to specify a finite period (from the consent date) within which the work must be completed otherwise the consent expires. This is to avoid extant but unimplemented consents existing indefinitely and perhaps becoming an embarrassment.

In particular if the ecological status of the site is changing (improving) it may be wise to consider a shorter period of validity to completion.

It is sensible to remind the applicant that:-

- Works should be arranged to ensure there is no increase in flood risk to third parties.
- That the LLFA does not accept any responsibility for the design and construction of the works that are the subject of this Consent and any liability for any loss or damage which may arise out of their design, construction, maintenance or use.
- It is his responsibility to ensure he obtains the consent / permission of any owners and occupiers affected by the works.
- This Consent does not remove from the applicant the necessity to obtain other licences, consents, approvals or permissions (including planning permission) which may be required in law or in order to comply with any duties or responsibilities for conservation or protection of the environment.
- This Consent does not confer any rights of entry or rights over property

**In support of the application**

The applicant should be told that the works must be undertaken in accordance with the approved plans, drawings, calculations, specifications and other documents and proceed entirely in accordance with the approved method statement (which should include a programme).



**Before construction starts**

If the method statement was not provided with the application it is recommended that it should be required of the applicant, along with a construction programme, to be submitted to the LLFA a reasonable period before the applicant intends to commence works. Commencement of works on site should be conditional on the approval of the method statement, in writing, by the LLFA.

A non exhaustive list of issues that the LLFA may wish the method statement to cover includes:-

- Construction methods
- Temporary Works
- Programme
- Management of flood risk during construction
- Pollution protection arising from the construction of the works
- How issues associated with flora and fauna will be managed

Should the applicant not commence the works immediately upon receiving approval of the method statement the LLFA may wish to require that the applicant gives a reasonable period of notice of his intention to commence works to the LLFA.

To enable potential “out of hours” problems (particularly flooding or pollution incident) to be managed the LLFA may require the applicant to provide a 24 hour emergency contact telephone number to the LLFA prior to construction commencing.

The works may impact on the activities of a fisheries association. The LLFA may wish to require that the applicant consult any fisheries association likely to be affected by the works a reasonable period before the works commence.

**Construction**

The LLFA may wish to remind the applicant that once works commence they must proceed entirely in accordance with the approved design and method statement (which should contain a construction programme).

The LLFA may wish to draw the applicant’s attention to the requirement that, in addition to the permanent works Consent, a separate temporary works Consent may be required.

A non exhaustive list of issues that the LLFA may wish remind the applicant of with regard to construction includes:-

- Taking all reasonable precautions during the undertaking of the works so as not to obstruct, impede or interfere with the flow of water in, into or out of the watercourse and not to damage the banks or bed or any drainage works without the approval of the Lead Local Flood Authority.
- The LLFA may choose to permit minimal obstruction to flows during construction but these temporary restrictions must not increase flood risk to others and they must be capable of being overtopped in higher flows.

- Works must be undertaken fully in accordance with PPG5, the pollution prevention guidelines on works or maintenance in or near water. These guidelines are important and comprehensive and should be studied carefully by those contemplating works.
- Should any pollution problems occur on site the Environment Agency must be informed immediately 0800 807060 and the LLFA also informed.
- There may be stated restriction(s) on working periods because of fish activity (including migratory activities and spawning)
- If over pumping is used a suitable screen / strainer should be used to prevent fish and other material being drawn in.
- Over pumping should be undertaken only in a manner that minimises bed disturbance, avoids movement of silt and minimises scour.
- Wet concrete must not be released into the watercourse because of the adverse impact upon fish.
- Material used for backfilling must be inert and not contain any material that could potentially leach out into the watercourse.
- There may be stated restriction(s) on working periods because of bird activity (including nesting)
- There may be stated restriction(s) on working periods because of mammal activity (e.g. water voles)
- There may be stated restriction(s) on working periods because of specific flora.
- Any landscaping of banks must be restricted to native species only.
- Invasive species such as Japanese Knotweed, if encountered, must be managed and controlled on site.
- Netting and other arrangements must be used to ensure that debris does not fall into the watercourse.
- No excavated material or debris arising from the construction of the works shall be disposed of on the site or the flood plain without the prior approval of the LLFA.

**Where permanent works may not require a consent**

Where works involve apparatus crossing a watercourse below bed level in open cut a Consent will be required for temporary works. Issues to consider include:

- A minimum specified cover from the top of the apparatus to the firm bed of the watercourse.
- Other specified protection to the buried apparatus.
- Whether the apparatus should be placed at this specified level for a certain distance on each side of the watercourse
- Whether informative marker posts should be erected on each side of the watercourse indicating the presence of buried apparatus



**Upon completion of works**

- Upon completion of the works all debris and surplus materials must be removed from the site of the works and the banks left in a stable condition.
- The banks and / or the bed of the watercourse where disturbed shall be restored to the reasonable satisfaction of the LLFA•
- Notice in writing must be given immediately by the applicant to the LLFA upon completion of the works
- As built drawings of the work must be provided to the Lead Local Flood Authority within a specified time period

## **Appendix 4 – List of Other Environmental Permits**

### **Flood Risk Management Works and the Requirements of Protected Areas and Species Protection Legislation**

#### **Conservation legislation**

Domestic and European conservation legislation focuses on protected areas, such as Sites of Special Scientific Interest (SSSIs), European Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), or listed protected species, such as water voles, which may be found outside of protected areas in the wider countryside.

Land managers and public bodies, including Lead Local Flood Authorities, have a range of duties, principally under the Wildlife and Countryside Act and the Habitats Regulations, to help ensure that these sites and species are conserved and protected. A number of activities may require the consent of Natural England.

#### **Protected Areas: consents for flood risk management works**

##### **Sites of Special Scientific Interest**

SSSIs are the country's very best wildlife and geographical sites. There are over 4,000 SSSIs in England, covering about 7% of England's land area. Over half of them, by area, are internationally important for their wildlife, and are designated as Special Areas of Conservation (SACs), Special Protection Areas (SPAs) or Ramsar sites.

SSSIs are legally protected under the Wildlife and Countryside Act 1981 as amended by the Countryside and Rights of Way Act 2000 and the Natural Environment and Rural Communities Act 2006 ("the Act"). The legislation gives Natural England powers to ensure better protection and management of SSSIs and safeguard their existence into the future.

The SSSI legislation places a number of legal obligations on owners and occupiers of land within the SSSI and public bodies. Further details of these regulatory regimes are given below.

Public bodies, which include the Environment Agency, Internal Drainage Boards and Local Flood Authorities (known as Section 28G Bodies under the Act) have a duty under Section 28G of the Act to *'take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.'*

**SSSI owner/occupiers**

Generally, where SSSI owners and occupiers are proposing to carry out, cause or permit operations on a SSSI, they have to comply with their legal obligation to give prior written notice to Natural England for any operation included in the SSSI notification.

Some of the operations may include works on channels, such as modification of the structure of drainage channels or management of aquatic and bankside vegetation for drainage purposes. Natural England will consider the implications of the proposal and may consent to the operation if it will not cause any damage or disturbance to the special interest features of the site. Where Natural England is of the opinion that the operation will damage or disturb the special interest features of the SSSI, we may condition the consent or give notice refusing the consent. Recipients have a right of appeal to the Secretary of State against Natural England's decision.

In circumstances where a owner or occupier requires the permission, consent or authorisation of another regulatory body, such as consent from a Lead Local Flood Authority to undertake works on an ordinary watercourse, that body has a statutory obligation under section 28I of the Act to give formal notice to Natural England of the proposal. This includes works that require authorisation under the Water Resources Act 1991 or the Land Drainage Act 1991.

This process is triggered when a proposal within a SSSI, or outside but affecting a SSSI, is received. The statutory body has to give Natural England 28 days to respond. If Natural England has no objections then we will respond immediately. Similarly, if we are made aware that a situation is urgent, Natural England advisors will work with statutory bodies to ensure applications are not delayed.

If Natural England advises against permitting the operation or that certain conditions should be attached, but the statutory body does not follow that advice, then that body must give a second notice to Natural England with details of the permission, its terms and a statement of how (if at all) it has taken account of Natural England's advice. The statutory body must not grant a permission which would allow the operations to start before the end of the period of 21 days beginning with the date of the second notice to Natural England.

A flow chart illustrating the section 28H and 28I processes can be found in the SSSI Code of Guidance Sites of Special Scientific Interest: Encouraging positive partnerships (Defra 20031).

**Public bodies**

Where public bodies are undertaking operations that are likely to damage the special interest features of a SSSI, and those operations are part of their functions, then under Section 28H of the Act they must give notice to Natural England before carrying out the operation. This applies equally to works that are outside a SSSI but likely to affect it.

Natural England will respond by granting assent, assenting with conditions or refusing assent.

Natural England has 28 days to respond to the notice. If a public body decides not to comply with Natural England's response, they must give Natural England a second notice with details of when the proposed operation will start (which cannot be until a further 28 days), and how (if at all) they have taken account of any written advice. They are also required to carry out the operation causing as little damage to the SSSI as is reasonably practical, and to restore the site to its former condition, so far as is reasonably practical, if any damage does occur.

For flood risk management works, it is likely that the flood operating authority, as part of its functions, will be carrying out the operations, either themselves or through contractors working on their behalf. In these circumstances, if the proposed operations are likely to damage the special interest of the SSSI, then the flood operating authority needs to follow the section 28H process outlined above prior to carrying out the works.

### **Habitats Regulations**

The procedures in the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations') will also apply if the works affect a European protected site. Many of the areas designated as SSSIs are also of European importance and are designated as SACs and/or SPAs under this legislation. Where the works affect a European site a Habitats Regulations Assessment under Regulation 61 must be undertaken and recorded.

Proposals which are not necessary for the management of the European site for its designated habitat and species features and which are judged likely to have a significant effect on those features – either alone or in combination with other plans or projects – must be subject to a fuller assessment by the Competent Authority (public bodies). For flood risk management proposals this will normally be the flood operating authority (if applying for assent) or the Environment Agency depending on which regulatory body gives consent or permission. Under the Habitats Regulations, the competent authority cannot consent activities which would adversely affect the integrity of these sites.

The regulatory regimes that protect the nationally-important Sites of Special Scientific Interest exist to ensure any operations (including flood risk management works) are consistent with the conservation and enhancement of the SSSI's special interest. Similarly, the Habitats Regulations ensure that the integrity of the Natura 2000 site is maintained. In many cases, proposals to manage flood risk management assets are entirely consistent with maintaining the interest of the designated site, and can be permitted without delay. However, where proposals are likely to result in damage to a protected site then it is appropriate to ensure our general duties towards SSSI and our duties under the Habitats Regulations are fulfilled.

**Protected Species: consents for flood risk management works****Flood risk management works are potentially affected by laws protecting wild animals in two key ways:**

The need to avoid incidental harm to protected species from maintenance or improvement works (such as dredging, vegetation management, channel re-profiling, repairing embankments and controlling unprotected species, e.g. using poisons). This includes impacts on:

- wild birds (nesting); otter (holts); great crested newts; water voles (burrows)

The need to prevent damage to flood defences caused by certain wildlife, particularly the following burrowing species:

- badgers (a protected species); rabbit, moles, rats, signal crayfish (not protected)

**Key legal constraints**

All wild birds and some other animal species, usually those of conservation concern, benefit from legal protection. The degree of protection varies between species. In some cases it is only an offence to kill or harm an animal, whereas for some species it is also an offence to disturb the animal or to damage, destroy or obstruct access to places of shelter or breeding.

- The key species protection legislation with relevance to flood risk management works are:
- Wildlife and Countryside Act 1981 (as amended). This protects all wild birds and some animal species.
- Conservation of Habitats and Species Regulations 2010. This protects 'European Protected Species' such as great crested newts, otters and dormice.
- Protection of Badgers Act 1992.

Under UK and EU law, a principle of 'no net loss' applies to activities or projects potentially impacting European Protected Species.

**Flood risk management works within species protection law****Planning:**

With adequate planning potential conflicts with protected species can be avoided. For example, timing works to avoid sensitive periods is a relatively straightforward measure that will allow many routine maintenance activities to proceed. The success of such measures hinges on understanding and taking full account of: the legal protection and, the ecology of each affected species.

**Aim of protection:**

Species protection legislation aims to prevent adverse impacts on the conservation status of species populations and to protect the welfare of animals: the laws do not seek to prevent or impede legitimate activities, such as flood risk management works. Consequently, legislation includes provisions to enable these activities to proceed where suitably justified.

**Using legal derogations:**

Where it is not possible to avoid impacts on protected species, or where a protected species is the cause of the problem (e.g. burrowing badgers damaging a flood embankment), then laws include derogation provisions to allow legitimate activities to proceed, where suitably justified. The main types of derogations are 'defences' and 'licences'.

**Defences**

Some laws will include a legal 'defence' (exceptional circumstances, stated in the law, where the prohibition does not apply) that permit action to be taken, for example, to protect public health and safety without a licence. Typically, people will rely on defences only when it is not possible to obtain a licence (e.g. in emergency situations), as they may commit an offence if they are unable to adequately justify, if challenged, use of the defence.

**Licences**

Licences can be issued (by Natural England or Defra) to allow flood risk management works to proceed where impacts on species cannot be avoided. Applications for licences must be supported by suitable evidence to justify putting aside legal protection. In general, evidential requirements for applications to 'preserve public health and safety' are not onerous, but some legislation (e.g. relating to European Protected Species) requires that suitable mitigation or compensation is provided to negate any harmful effects on populations of a protected species. In all cases, there should be 'no satisfactory alternative' to the proposed activity if it is going to impact a protected species.

The body undertaking the works is required to apply directly to Natural England for a licence.

**Organisation licences**

Licences can be issued for individual projects, but there is also scope to apply 'lighter-touch' regulation through licences issued to organisations, or more generally to categories or groups of people, for activities that are either of a low risk to the species concerned, or of high importance to human interests. For example:

Internal Drainage Boards are issued with a single 'organisational' badger licence to cover all routine works affecting badger setts in their area;

Supermarkets can register to use a 'class licence' that allows them to trap and release any birds (such as sparrows or robins) on public health and safety grounds that become trapped in stores without the need to apply for a licence each time;

Airports, local authorities and most landowners and occupiers are able to control certain problem bird species (e.g. feral pigeons, crows, etc.) to protect public health and safety under a 'general licence' without needing to apply or register to use the licence.



## **Appendix 5 – Water Framework Directive Requirements**

***The WFD requires authorities to aim to achieve good status or potential in all water bodies by deadlines set out in River Basin Management Plans (RBMPs). RBMPs describe the main issues for the water environment within each river basin district. They describe, at a local level, which actions and measures need to be implemented to achieve the objectives of the WFD.***

The WFD includes an obligation to prevent deterioration in the overall status of water bodies, referred to as no deterioration. New activities such as flood alleviation schemes, maintenance activities, or in-channel engineering works may affect the water environment impacting on its biology, hydromorphology or chemistry. These impacts could lead to deterioration.

New activities and schemes may also prevent proposed actions and mitigation measures included in RBMPs from being delivered. This may lead to a water body failing to meet its ecological objectives.

A WFD assessment may need to be undertaken as part of a consent application to establish if a proposal will:

- cause deterioration; or
- prevent the achievement of ecological objectives set out in RBMPs

Applicants should undertake WFD assessments before applying for consent because assessments can be time consuming.

When issuing Consents, authorities need to screen the proposal to see if a WFD assessment is needed. If an assessment is needed, the authority needs to be able to give the applicant general advice and explain how an assessment would tie-in with a consent application. It is the responsibility of the applicant to undertake the WFD assessment.

If a WFD assessment is needed but has not been undertaken, the Consent should be refused using the WFD as a reason for refusal. Consent refusals on nature conservation grounds are supported by: Land Drainage Act (Section 61B); Wildlife and Countryside Act for SSSIs (Section 28G and 28I) and NERC Act (Section 40).

If a consent is issued for a proposal which causes deterioration or prevents the objectives of the WFD from being met, this will be reported to the European Union. This could result in the UK Government facing infraction (financial penalties) from the European Union.