

EXPLANATORY NOTES



INTRODUCTION

The Environment Agency has general supervisory duties on all matters relating to flood defence (Section 6(4) Environment Act 1995). In order to carry out our role successfully, it is essential that anyone who intends carrying out works affecting a watercourse, as described in the Legal Provisions on page 4 of this document and in the relevant Byelaws, obtains our consent **before** starting the work. The reason for this is to ensure that any works do not endanger life or property by increasing the risk of flooding or cause harm to the water environment.

As from April 2012, Local Authorities will lead on ordinary watercourse consenting and enforcement unless it is in an Internal Drainage District where Internal Drainage Boards (IDBs) will retain their existing powers. The Land Drainage Act 1991 will underpin ordinary watercourse regulation undertaken by Local Authorities. This will occur following commencement of paragraphs 32-34 of Schedule 2 of the Flood and Water Management Act 2010. In Cumbria, the County Council takes on the duties of the Lead Local Flood Authority (LLFA) responsible for consenting works on ordinary watercourses.

When making an application it is essential to fill in the application form accurately and for any accompanying information, including drawings, maps and calculations submitted to be clear. Further details of the information required by Cumbria County Council are given in these notes. In order to ensure that appropriate details are submitted you may wish to discuss the information required with our officers before you make your formal application.

HOW TO OBTAIN CONSENT

When you have fully completed your application form please send it with the correct fee and supporting documents to the Cumbria LLFA. Please refer to our Ordinary Watercourse Consent Guidance Notes to assist you with completing your application form.

PERMANENT WORK AND TEMPORARY WORKS CONSENTS

As part of the Ordinary Watercourse Flood Defence Consent application process you will be asked if the works are permanent or temporary. Permanent works generally refer to a new structure that is proposed, whereas the temporary works relate to the temporary structures that may be within the watercourse as part of the construction phase. (e.g. temporary scaffolding, cofferdams, diversion channels, plant/machinery etc).

Consent for temporary works will require detailed method statements to be undertaken outlining precisely how this work will be undertaken.

DETERMINATION

Upon receipt of an application we have two months in which to determine (grant or refuse) a consent. An incomplete application can be determined by refusal.

You should be aware that in accordance with Environment Agency environmental duties, consent may be refused if the proposed works are considered detrimental to the environment.

The County Council has due regard to the Water Framework Directive as part of the determination process. Therefore, your proposals will be assessed against this legislation.

Ordinary Watercourse consent is given solely on flood risk, sustainability and environmental consideration. The granting of the consent should not be regarded by the applicant as in any way approving the engineering design of the proposed works.

RIGHT OF APPEAL

If you believe that consent has been unreasonably withheld or conditions unreasonably imposed then you have a right to appeal.

OTHER CONSENTS

You may also require further consents from us under the Water Resources Act 1991 (e.g. for impounding, water abstraction etc.), under the Salmon and Freshwater Fisheries Act 1975 (in respect of fish passes) or under the Environmental Protection/Waste Regulation legislation. Consent from other organisation such as Natural England or the Local Authority may also be required.

OTHER AUTHORITY PERMISSIONS (sec 9 in forms)

As Lead Local Flood Authority our role is to consider the applications for flood defence consents under s.23 of the Land Drainage Act. The purpose of this regime is to ensure that any works do not endanger life or property by increasing the risk of flooding or cause harm to the water environment.

This regime does not look at the proposed works from the planning regime perspective which would look in more depth at the material considerations relevant to any potential planning application e.g. construction, overshadowing/loss of outlook, loss of privacy, loss or effect on trees and so on. It will be for the local planning authority (District or NPA) to decide if the proposed works are development for the purposes of S.55 of the Town and Country Planning Act 1990. If they are deemed development then they will

require planning permission under S.57 of the Town and Country Planning Act unless it is permitted development under the Permitted Development Order currently in place.

Permitted development order currently states:

A. Permitted development

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Unless:

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater

LEGAL PROVISIONS (For your information the legal provisions are as follows)

Land Drainage Act 1991 (Section 23) Ordinary Watercourses as Amended by The Flood and Water Management Act 2010.

23 Prohibition on obstructions etc. in watercourses

(1) No person shall—

(a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or

(b) erect a culvert in an ordinary watercourse, or

(c) alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse,

without the consent in writing of the drainage board concerned.

(1A) Consent under this section may be given subject to reasonable conditions.

(1B) An internal drainage board or lead local flood authority must consult the Environment Agency before carrying out work within subsection (1)(a), (b) or (c) if the board or authority is “the drainage board concerned” for the purposes of this section.

(1C) The drainage board concerned must have regard to any guidance issued by the Environment Agency about the exercise of the board's functions under this section.

Water Resources Act 1991 (Section 109) Main Rivers

(i) “No person shall erect any structure in, over or under a watercourse which is part of the main river except with the consent of and in accordance with plans and sections approved by the Authority.

(ii) No person shall, without the consent of the Authority, carry out any work of alteration or repair on any structure in, over or under a watercourse which is part of main river if the work is likely to affect the flow in the watercourse or impede any drainage works.

(iii) No person shall erect or alter any structure designed to contain or divert the floodwaters of the main river except with the consent of and in accordance with plans and sections approved by the Authority.”

Note

Information on the river or watercourse designation and copies of the Environment Agency Byelaws can be obtained from the appropriate Environment Agency office.

Environment Agency (NRA) Byelaws

Schedule 25. Section 5(1) of the Water Resources Act 1991 states that:-

“The Authority may make such Byelaws in relation to any particular locality or localities as it considers necessary for securing the efficient working of any drainage system including the proper defence of any land against sea or tidal water”

FAILURE TO APPLY FOR A CONSENT

Land Drainage Act 1991

Under Section 23 if works are carried out without first obtaining a formal written consent from the Lead Local Flood Authority, notice may be served under Section 24 requiring you to abate the nuisance within a specified time.

Water Resources Act 1991

Under Section 109(4), the Environment Agency has power to remove unauthorised work and recover the costs of doing so.