Agenda – Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Lleoliad:
Ystafell Bwyllgora 2 – y Senedd
Dyddiad: Dydd Llun, 22 Chwefror 2016
Amser: 13.00

I gael rhagor o wybodaeth cysylltwch a:
Gareth Williams
Clerc y Pwyllgor
0300 200 6565
SeneddMCD@Cynulliad.Cymru

1 Cyflwyniad, ymddiheuriadau, dirprwyon a datgan buddiannau

2 Tystiolaeth gan y Prif Weinidog mewn perthynas â gwaith etifeddiaeth y Pwyllgor

(Tudalennau 1 – 5)

Y Gwir Anrch. Carwyn Jones AC, Y Prif Gweinidog
Hugh Rawlings, Llywodraeth Cymru
Dylan Highes, Llywodraeth Cymru

CLA(4)-04-16 – Papur briffio gan y Gwasanaeth Ymchwil

3 Offerynnau nad ydynt yn cynnwys materion i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 neu 21.3

(Tudalennau 6 – 13)

Offerynnau'r weithdrefn penderfyniad negyddol

CLA656 – Gorchymyn Awdurdodau Lleol (Cod Ymddygiad Enghreifftiol) (Cymru) (Diwygio) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 27 Ionawr 2016; Fe'u gosodwyd ar: 1 Chwefror 2016; Yn dod i rym ar: 1 Ebrill 2016

CLA657 - Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Meddygol Sylfaenol a Gwasanaethau Deintyddol Sylfaenol) (Cymru) (Diwygio a Darpariaeth Drosiannol) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 27 Ionawr 2016; Fe'u gosodwyd ar: 2 Chwefror 2016; Yn dod i rym ar: 1 Ebrill 2016

CLA659 - Rheoliadau Cynllunio Gwlad a Thref (Gweithdrefn Apelau Dilysu) (Cymru) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 27 Ionawr 2016; Fe'u gosodwyd ar: 1 Chwefror 2016; Yn dod i rym ar: 16 Mawrth 2016

CLA660 - Rheoliadau Cynllunio Gwlad a Thref (Asesu Effeithiau Amgylcheddol) (Cymru) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 27 Ionawr 2016; Fe'u gosodwyd ar: 1 Chwefror 2016; Yn dod i rym ar: 1 Mawrth 2016, ar wahân i reoliad 38, atodlenni 8 a 9, paragraff 8(3), sy'n dod i rym yn unol â Rheoliad 1

CLA665 - Gorchymyn Datblygiadau o Arwyddocâd Cenedlaethol (Gweithdrefn) (Cymru) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 27 Ionawr 2016; Fe'u gosodwyd ar: 2 Chwefror 2016; Yn dod i rym yn unol ag erthygl 1

CLA666 - Rheoliadau'r Gwasanaeth Iechyd Gwladol (Rhestri Cyflawnwyr) (Cymru) (Diwygio) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 27 Ionawr 2016; Fe'u gosodwyd ar: 2 Chwefror 2016; Yn dod i rym ar: 1 Mawrth 2016

CLA671 - Rheoliadau Awdurdodau Lleol (Cyllid Cyfalaf a Chyfrifyddu) (Cymru) (Diwygio) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 28 Ionawr 2016; Fe'u gosodwyd ar: 3 Chwefror 2016; Yn dod i rym ar: 31 Mawrth 2016

CLA672 - Gorchymyn Cyflogau Amaethyddol (Cymru) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 3 Chwefror 2016; Fe'u gosodwyd ar: 3 Chwefror 2016; Yn dod i rym ar: 26 Chwefror 2016

CLA673 - Rheoliadau Tatws Hadyd (Cymru) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 2 Chwefror 2016; Fe'u gosodwyd ar: 4 Chwefror 2016; Yn dod i rym ar: 29 Chwefror 2016

CLA675 - Rheoliadau Llywodraethu Ysgolion a Gynhelir (Gofynion Hyfforddi ar gyfer Llywodraethwyr) (Cymru) (Diwygio) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 3 Chwefror 2016; Fe'u gosodwyd ar: 9 Chwefror 2016; Yn dod i rym ar: 1 Mawrth 2016

CLA682 - Rheoliadau Ymddiriedolaeth Gwasanaeth Iechyd Gwladol Iechyd Cyhoeddus Cymru (Aelodaeth a Gweithdrefn) (Diwygio) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 28 Ionawr 2016; Fe'u gosodwyd ar: 2 Chwefror 2016; Yn dod i rym ar: 15 Mawrth 2016

CLA684 - Rheoliadau'r Gwasanaeth Iechyd Gwladol (Diwygiadau Canlyniadol Diwygio Lles) (Cymru) 2016

Y weithdrefn negyddol; Fe'u gwnaed ar: 28 Ionawr 2016; Fe'u gosodwyd ar: 2 Chwefror 2016; Yn dod i rym ar: 1 Ebrill 2016

Offerynnau'r Weithdrefn Penderfyniad Cadarnhaol

CLA668 - Gorchymyn Panel Cynghori ar Amaethyddiaeth Cymru (Sefydlu) 2016

Y weithdrefn gadarnhaol; Fe'i gwnaed ar: dyddiad heb ei nodi; Fe'i gosodwyd ar: dyddiad heb ei nodi; Yn dod i rym ar: 1 Ebrill 2016

CLA669 - Rheoliadau Datblygiadau o Arwyddocâd Cenedlaethol (Meini Prawf Penodedig a Chydsyniadau Eilaidd Rhagnodedig) (Cymru) (Diwygio) 2016

Y weithdrefn gadarnhaol; Fe'i gwnaed ar: dyddiad heb ei nodi; Fe'i gosodwyd ar: dyddiad heb ei nodi; Yn dod i rym ar: dyddiad heb ei nodi

CLA676 - Rheoliadau Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (Diwygiadau Canlyniadol) 2016

Y weithdrefn gadarnhaol; Fe'i gwnaed ar: 28 Ionawr 2016; Fe'u gosodwyd ar: 3 Chwefror 2016; Yn dod i rym ar: 31 Mawrth 2016

4 Offerynnau sy'n cynnwys materion i gyflwyno adroddiad arnynt i'r Cynulliad o dan Reol Sefydlog 21.2 neu 21.3

Offerynnau Cyfansawdd y Weithdrefn Penderfyniad Negyddol

CLA674 - Rheoliadau Deddf Bywyd Gwyllt a Chefn Gwlad 1981 (Cymru a Lloegr) (Diwygio) 2016 (Saesneg yn unig)

(Tudalennau 14 - 22)

Y weithdrefn negyddol cyfansawdd; Fe'u gwnaed ar: 3 Chwefror 2016; Fe'u gosodwyd ar: 5 Chwefror 2016; Yn dod i rym ar: 6 Ebrill 2016

CLA(4)-04-16 – Papur 2 – Adroddiad

CLA(4)-04-16 – Papur 3 – Rheoliadau

CLA(4)-04-16 – Papur 4 – Memorandwm Esboniadol

Offerynnau Cyfansawdd y Weithdrefn Penderfyniad Cadarnhaol

CLA670 – Rheoliadau Trwyddedu Amgylcheddol (Cymru a Lloegr) (Diwygio) (Rhif 2) 2016

(Tudalennau 23 - 99)

Y weithdrefn gadarnhaol; Fe'i gwnaed ar: dyddiad heb ei nodi; Fe'i gosodwyd ar: dyddiad heb ei nodi; Yn dod i rym ar: dyddiad heb ei nodi

CLA(4)-04-16 – Papur 5 – Adroddiad

CLA(4)-04-16 – Papur 5 – Rheoliadau

CLA(4)-04-16 – Papur 7 – Memorandwm Esboniadol

5 Papurau i'w nodi

(Tudalennau 100 - 150)

CLA(4)-04-16 – Papur 8 – Barn Resymegol gan Dŷ'r Cyffredin (Diwygio Cyfraith Etholiadol yr UE) 3 Chwefror 2016

CLA(4)-04-16 – Papur 9– Llythyr gan Gadeirydd Cyd-bwyllgor Hawliau Dynol Tŷ'r Cyffredin at y Llywydd

CLA(4)-04-16 – Papur 9– **Atodiad**

CLA(4)-04-16 – Papur 10 – Datganiad gan y Prif Weinidog: Adroddiad ar weithredu cynigion Comisiwn y Gyfraith

CLA(4)-04-16 – Papur 11 – Adroddiad Pwyllgor Gweinyddiaeth Gyhoeddus a Materion Cyfansoddiadol Tŷ'r Cyffredin ar ddyfodol yr Undeb, rhan un: Pleidleisiau Lloegr ar gyfer cyfreithiau Lloegr

6 Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y busnes canlynol:

Adroddiad Etifeddiaeth Drafft

(Tudalennau 151 - 185)

CLA(4)-04-16 – Papur 12 – Adroddiad Drafft

Crynodeb o Waith Ewropeaidd a wnaed yn ystod y Pedwerydd Cynulliad

(Tudalennau 186 - 199)

CLA(4)-04-16 – Papur 13 – Crynodeb

Rhestr o Argymhellion a wnaed mewn perthynas ag Ymchwiliadau Polisi

(Tudalennau 200 - 215)

CLA(4)-04-16 – Papur 14 – Rhestr o Argymhellion

Mae cyfyngiadau ar y ddogfen hon

Cynulliad Cenedlaethol Cymru

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Offerynnau Statudol sydd ag Adroddiadau Clir

08 Chwefror 2016

CLA648 - Rheoliadau Dileu Atebolrwydd dros Fenthyciadau i Fyfyrwyr at Gostau Byw (Cymru) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn llywodraethu atebolrwydd dros fenthyciad myfyrwyr sydd gan fyfyrwyr sy'n cael benthyciadau at gostau byw gan Weinidogion Cymru ar gyfer y flwyddyn academaidd 2016/2017.

At hynny, mae'r Rheoliadau hyn yn darparu ar gyfer dileu hyd at £1,500 o atebolrwydd pob benthyciwr am fenthyciad at gostau byw mewn amgylchiadau penodol, gydag effaith o'r diwrnod ar ôl y dyddiad y bernir bod ei ad-daliad cyntaf ar ei fenthyciad wedi ei dderbyn.

CLA652 - Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Cymru) (Diwygio) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn diwygio Rheoliadau Addysg (Cymorth i Fyfyrwyr) (Cymru) 2015 ('Rheoliadau 2015') sy'n darparu cymorth ariannol i fyfyrwyr sy'n preswylio fel arfer yng Nghymru ac sy'n dilyn cyrsiau addysg uwch dynodedig mewn cysylltiad â blynyddoedd academaidd sy'n dechrau ar neu ar ôl 1 Medi 2015.

Ymhellach, mae'r Rheoliadau hyn yn gwneud diwygiadau i Reoliadau 2015, a fydd yn gymwys i ddarparu cymorth i fyfyrwyr mewn perthynas â blwyddyn academaidd sy'n dechrau ar neu ar ôl 1 Medi 2016. Mae'r Rheoliadau hyn hefyd yn cywiro gwallau teipograffyddol yn Rheoliadau 2015.

CLA653 – Rheoliadau Gwarchod Plant a Gofal Dydd (Cymru) (Diwygio) 2016

Gweithdrefn: Negyddol

Mae Rheoliadau Gwarchod Plant a Gofal Dydd (Cymru) (Diwygio) 2016 yn diwygio Rheoliadau Gwarchod Plant a Gofal Dydd (Cymru) 2010 i:

- adlewyrchu'r newidiadau canlyniadol sy'n codi o'r Gorchymyn Rheoleiddio Gwarchod Plant a Gofal Dydd (Cymru) 2016 sy'n ymestyn y terfyn oedran uchaf ar gyfer cofrestru darpariaeth gofal plant o wyth i 12 mlwydd oed;
- dileu'r gofyniad i geisydd gyflwyno cais i Weinidogion Cymru am dystysgrif cofnod troseddol fanylach ac i Weinidogion Cymru gydlofnodi'r cais hwnnw;

- dileu'r gofyniad i dystysgrif gofrestru gynnwys enw'r person â chyfrifoldeb pan fo un wedi ei benodi;
- dileu gofynion penodol sy'n ymwneud â darpariaeth chwarae mynediad agored.

CLA654 - Rheoliadau Deddf Gofal Plant 2006 (Asesiadau Awdurdodau Lleol) (Cymru) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn dirymu ac yn disodli, gyda newidiadau, Reoliadau Deddf Gofal Plant 2006 (Asesiadau Awdurdodau Lleol) (Cymru) 2013 (Y Rheoliadau). Mae'r Rheoliadau yn gosod dyletswydd ar Awdurdodau Lleol i gynnal asesiadau o ddigonolrwydd gofal plant yn ardal eu hawdurdod lleol a hefyd yn rhagnodi'r materion sydd i'w cynnwys yn yr asesiad, gan gynnwys gofynion ymgynghori a chyhoeddi, cynllun gweithredu a gofynion adrodd blynyddol.

CLA655 – Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Meddygol Sylfaenol a Gwasanaethau Deintyddol Sylfaenol) (Cymru) (Diwygio a Darpariaeth Drosiannol) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn diwygio'r canlynol gydag effaith o 1 Mawrth 2016:-

- Rheoliadau'r Gwasanaeth Iechyd Gwladol (Contractau Gwasanaethau Meddygol Cyffredinol) (Cymru) 2004;
- Rheoliadau'r Gwasanaeth Iechyd Gwladol (Contractau Gwasanaethau Meddygol Cyffredinol) (Rhagnodi Cyffuriau etc) (Cymru) 2006;
- Rheoliadau'r Gwasanaeth Iechyd Gwladol (Contractau Gwasanaethau Deintyddol Cyffredinol) (Cymru) 2004;
- Rheoliadau'r Gwasanaeth Iechyd Gwladol (Cytundebau Gwasanaethau Deintyddol Personol) (Cymru) 2006

Bydd y diwygiadau yn :-

- caniatáu i gontractwr gwasanaethau meddygol cyffredinol dderbyn aelod o luoedd arfog Ei Mawrhydi yn glaf am uchafswm o ddwy flynedd;
- codi'r cyfyngiad presennol ar ragnodi oseltamivir i fabanod o dan flwydd oed;
- ychwanegu avanafil at y rhestr o driniaethau cyfyngedig a thynnu apomorphin, thymoxamine a moxisylute oddi ar y rhestr;
- gwahardd ymarferwyr Deintyddol Cyffredinol sy'n contractio gyda bwrdd iechyd lleol yng Nghymru rhag defnyddio rhifau ffôn annaearyddol wrth ddarparu gwasanaethau deintyddol cyffredinol;
- ymestyn yr amserlen sydd ar gael i ystad deiliad contract ymadawedig i gadarnhau eu bod yn dymuno parhau i ddal y contract;

- darparu i Weinidogion Cymru glywed anghydfodau sy'n deillio o gontractau a ystyrir yn gontractau meddygol cyffredinol, contractau deintyddol cyffredinol neu gontractau gwasanaethau personol y gwasanaeth iechyd gwladol er bod y contractwr yn ddiweddarach yn newid statws y contract o gontract y gwasanaeth iechyd gwladol i gontract y tu allan i'r gwasanaeth iechyd gwladol.

CLA658 Rheoliadau Cynllunio Gwlad a Thref (Gwasanaethau Cyn-ymgeisio) (Cymru) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn gwneud darpariaeth o dan adrannau 61Z1 a 61Z2 Deddf Cynllunio Gwlad a Thref 1990 ar gyfer darparu gwasanaethau gan awdurdodau cynllunio lleol cyn bo cais cymwys wedi ei wneud.

CLA661 - Rheoliadau Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) (Cymru) (Diwygio) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn cywiro gwall yn nhestun Cymraeg Rheoliadau Cynllunio (Adeiladau Rhestredig ac Ardaloedd Cadwraeth) (Cymru) 2012 (O.S. 2012/793 (Cy 108)).

CLA662 - Gorchymyn Datblygiadau o Arwyddocâd Cenedlaethol (Cymhwyso a Deddfiadau) (Cymru) 2016

Gweithdrefn: Negyddol

Mae'r Gorchymyn hwn yn cymhwyso amryw o ddeddfiadau i geisiadau a wneir i Weinidogion Cymru am ganiatâd cynllunio ar gyfer datblygiad sydd o arwyddocâd cenedlaethol. Mae'r Gorchymyn hefyd yn addasu'r deddfiadau hynny, pan fo'n briodol gwneud hynny.

CLA663 – Rheoliadau Datblygiadau o Arwyddocâd Cenedlaethol (Cymru) 2016

Gweithdrefn: Negyddol

Mae'r Rheoliadau hyn yn ymwneud â gwahanol faterion sy'n ymwneud â datblygiad sydd o arwyddocâd cenedlaethol i Gymru.

Mae'r Rheoliadau hyn yn:

- gwneud darpariaeth o dan adrannau 61Z1 a 61Z2 o Ddeddf Cynllunio Gwlad a Thref 1990 ("Deddf 1990") ar gyfer darparu gwasanaethau gan awdurdodau cynllunio lleol a Gweinidogion Cymru

cyn bo cais am ganiatâd cynllunio wedi ei wneud ar gyfer datblygiad o arwyddocâd cenedlaethol (Rhan 2);
- rhagnodi swyddogaethau sydd i'w cyflawni gan berson penodedig ar ran Gweinidogion Cymru, mewn perthynas â cheisiadau o'r fath a chydsyniadau eilaidd (Rhan 3);
- gwneud darpariaeth ar gyfer y weithdrefn sydd i'w dilyn wrth archwilio ceisiadau o'r fath (Rhannau 4 i 10);
- gwneud darpariaeth ar gyfer y modd y trinnir cydsyniadau eilaidd neu geisiadau am gydsyniadau eilaidd gan Weinidogion Cymru (Rhan 11);
- addasu deddfiadau cymwysadwy mewn perthynas â chydsyniadau eilaidd (Rhan 11 ac Atodlenni 2 i 10); a
- rhagnodi pa geisiadau a wneir o dan adran 73 o Ddeddf 1990 (penderfynu ceisiadau i ddatblygu tir heb gydymffurfio ag amodau a osodwyd yn flaenorol) sydd i'w trin fel ceisiadau ar gyfer datblygiad o arwyddocâd cenedlaethol (Rhan 12).

CLA664 - Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) (Diwygio) 2016

Gweithdrefn: Negyddol

Bydd y Gorchymyn yn diwygio Gorchymyn Cynllunio Gwlad a Thref (Gweithdrefn Rheoli Datblygu) (Cymru) 2012 ("Gorchymyn 2012") Bydd y Gorchymyn yn newid y modd caiff ceisiadau sy'n ymwneud â chynllunio eu cyflwyno i awdurdodau cynllunio lleol, sut y cânt eu trin, sut y cânt eu hysbysebu a sut y mae'n rhaid i ddatblygwyr roi gwybod i'r awdurdodau cyn dechrau gweithio ar y safle.

Mae'r Gorchymyn yn gwneud darpariaeth ar gyfer y materion canlynol i weithredu Deddf Cynllunio (Cymru) 2015:

- Gofyniad i gynnal ymgynghoriad cyn ymgeisio (Adran 17 Deddf Cynllunio (Cymru));
- Ceisiadau annilys: hysbysu ac apelio (Adran 29 Deddf Cynllunio (Cymru));
- Hysbysiadau Penderfynu (Adran 33 Deddf Cynllunio (Cymru);
- Hysbysiad am Ddatblygiad (Adran 34 Deddf Cynllunio (Cymru));
- Ymgynghori mewn cysylltiad â cheisiadau penodol sy'n ymwneud â chaniatâd cynllunio (Adran 37 Deddf Cynllunio (Cymru));

CLA649 - Rheoliadau Deddf Cymwysterau Cymru 2015 (Diwygiadau Canlyniadol) 2016

Gweithdrefn: Cadarnhaol

Mae'r Rheoliadau hyn yn cael eu gwneud o ganlyniad i Ddeddf Cymwysterau Cymru 2015 ("y Ddeddf") Cymwysterau, a sefydlodd Cymwysterau Cymru yn rheolydd annibynnol cymwysterau yng Nghymru. Mae'r Rheoliadau hyn yn diweddaru cyfeiriadau mewn deddfwriaeth arall er mwyn adlewyrchu'r system newydd o reoleiddio cymwysterau yng Nghymru o ganlyniad i'r Ddeddf.

CLA667 - Rheoliadau Plant (Llety Diogel) (Cymru) (Diwygio) 2016

Gweithdrefn: Cadarnhaol

Mae'r rheoliadau hyn yn diwygio Rheoliadau Plant (Llety Diogel) (Cymru) 2015. Diben y diwygiadau hyn yw:

- sicrhau bod y gofynion a osodir ar awdurdodau lleol Cymru mewn perthynas â lleoliadau mewn llety diogel yn gymwys pa un a ydynt yn lleoli plant yng Nghymru neu yn Lloegr;
- dileu'r gwaharddiad ar awdurdodau lleol sy'n gwneud cais i'r llys am awdurdod i leoli plant 16 a 17 oed mewn llety diogel pan fo'r plant hynny wedi eu lletya o dan adran 76 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014;
- Sicrhau bod y rhwymedigaeth ar swyddog dalfa i symud pobl ifanc sydd wedi eu harestio i lety awdurdod lleol wedi ei hestyn i blant o dan 18 oed; a
- Chadw'r gofyniad ei bod yn ofynnol i awdurdod lleol gael awdurdod gan y llys mewn achos lle caiff plentyn ei roi ar remánd mewn llety diogel am gyfnod sy'n hwy na 28 o ddiwrnodau.

Cynulliad Cenedlaethol Cymru

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA674 - Deddf Bywyd Gwyllt a Chefn Gwlad 1981 (Cymru a Lloegr) (Diwygio) Rheoliadau 2016

Cefndir a Phwrpas

Mae'r Rheoliadau cyfansawdd hyn yn diwygio adran 1 o Ddeddf Bywyd Gwyllt a Chefn Gwlad 1981 ac, yn benodol, y ddarpariaeth sy'n sefydlu'r drosedd o fod ym meddiant neu reolaeth wy aderyn gwyllt (neu unrhyw ran o wy o'r fath). Yn fwy penodol, maent yn diwygio'r eithriad statudol i'r drosedd honno, fel na fydd person yn euog os gall ddangos fod yr wy (neu unrhyw ran ohono) yn ei feddiant neu ei reolaeth cyn daeth rhan I o Ddeddf 1981 i rym. Mae hyn yn adfer y sefyllfa gyfreithiol cyn cyflwyno gwelliannau yn 2004, pan gyfyngwyd, yn anfwriadol, ar yr eithriad.

Mae'r Rheoliadau'n ddarostyngedig i'r weithdrefn negyddol yng Nghynulliad Cenedlaethol Cymru ac yn Senedd y DU.

Mae paragraff 2(2) o Atodlen 2 i Ddeddf y Cymunedau Ewropeaidd 1972 yn darparu ar gyfer dewis rhwng y weithdrefn gadarnhaol a negyddol wrth arfer y pŵer o dan adran 2(2) o'r Ddeddf honno.

Mae'r Memorandwm Esboniadol yn nodi bod y weithdrefn negyddol " is deemed the appropriate procedure because the subject-matter of the instrument is of relatively minor detail in the overall legislative scheme and is technical in nature. This instrument does not impose duties, burdens or create any criminal offences. Rather, it provides for a benefit by expanding the statutory exemptions under section 1(3) of the 1981 Act, and as such, is considered appropriate for the negative procedure."

Gweithdrefn

Y weithdrefn negyddol cyfansawdd

Craffu Technegol

Nodir y pwyntiau a ganlyn i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2(ix) – nad yw wedi'i wneud neu i'w wneud yn Gymraeg ac yn Saesneg].

Dywed y Memorandwm Esboniadol "As this instrument will be subject to both the National Assembly for Wales and UK Parliamentary scrutiny, it is not considered reasonable practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation".

Craffu ar rinweddau

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Ymateb y Llywodraeth

Bydd y Rheoliadau cyfansawdd hyn yn gymwys i Gymru a Lloegr ac maent yn ddarostyngedig i'r weithdrefn penderfyniad negyddol yng Nghynulliad Cenedlaethol Cymru ac yn nau Dŷ Senedd y Deyrnas Unedig. Gan y bydd Senedd y Deyrnas Unedig yn craffu ar y Rheoliadau, ni chredir ei bod yn rhesymol ymarferol i wneud na gosod yr offeryn hwn yn ddwyieithog.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
21 Ionawr 2016

STATUTORY INSTRUMENTS

2016 No. 127

WILDLIFE, ENGLAND AND WALES

The Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2016

Made - - - -	*3rd February 2016*
Laid before Parliament	*5th February 2016*
Laid before the National Assembly for Wales	*5th February 2016*
Coming into force - -	*6th April 2016*

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to the environment(**b**), and the Welsh Ministers are designated for those purposes in relation to the conservation of natural habitats and of wild fauna and flora(**c**).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2016.

(2) These Regulations come into force on 6th April 2016 and extend to England and Wales.

Amendment of the Wildlife and Countryside Act 1981

2.—(1) The Wildlife and Countryside Act 1981(**d**) is amended as follows.

(2) In section 1 (protection of wild birds, their nests and eggs), after subsection (3) insert the following subsection—

> "(3ZA) A person shall not be guilty of an offence under subsection (2)(b) if the person shows that the egg, or the part of the egg, was in any person's possession or control before 28th September 1982.".

(**a**) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(**b**) S.I. 2008/301.
(**c**) S.I. 2002/248, amended by S.I. 2006/3329, 2011/1043. The designation is subject to the exceptions set out in Schedule 2 to that Order. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, the functions having been transferred by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Following the repeal of section 29 of the Government of Wales Act 1998 (c. 38), S.I. 2002/248 has effect as if made under section 59(1) of the Government of Wales Act 2006, by virtue of section 162 of, and paragraph 28(1) of Schedule 11, to that Act.
(**d**) 1981 c. 69.

(3) In section 27 (interpretation of Part 1)(**a**), in subsection (1), in the definition of "the Wild Birds Directive" for "Council Directive 79/409/EEC on the conservation of wild birds" substitute "Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds".

Rory Stewart
Parliamentary Under Secretary of State
3rd February 2016 Department for Environment, Food and Rural Affairs

Carl Sargeant
Minister for Natural Resources
2nd February 2016 One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England and Wales, amend the Wildlife and Countryside Act 1981(c. 69) ("the 1981 Act"). They relate to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ No. L 20, 26.1.2010, p. 7).

The effect of the amendments made by these Regulations is to revert to the position ("the pre-2004 position") that existed before amendments made to the 1981 Act in 2004 came into force (14th July 2004 in relation to England by S.I. 2004/1487, and 2nd August 2004 in relation to Wales by S.I. 2004/1733). The amendments made in 2004 made it an offence under section 1(2)(b) of the 1981 Act to be in possession or control of the egg of a wild bird, or any part of such an egg, if it was taken from the wild in contravention of (amongst other things) the Protection of Birds Acts 1954 – 1967.

By virtue of these Regulations, the pre-2004 position is restored so that it is no longer an offence under section 1(2)(b) of the 1981 Act to be in possession or control of an egg, or part of an egg, of a wild bird if the person charged can show it was in the possession or control of any person, before the date on which Part 1 of the 1981 Act came into force (28th September 1982 - see S.I. 1982/1217).

An impact assessment has not been produced for these Regulations as no, or no significant, impact on the private, voluntary or public sector is foreseen.

(**a**) Section 27(1) was amended by S.I. 2007/1843.

Explanatory Memorandum to **the Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2016**

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Wildlife and Countryside Act 1981 (England and Wales) (Amendment) Regulations 2016.

Carl Sargeant
Minister for Natural Resources
5 February 2016

1. Description

This instrument amends section 1 of the Wildlife and Countryside Act 1981 ('the 1981 Act') and in particular, the provision that establishes the offence of being in possession or control of an egg of a wild bird (or any part of such an egg). More specifically, it amends the statutory exemption to that offence, so that a person will not be guilty if they can show the egg (or any part) was in the possession or control of any person before Part I of the 1981 Act came into force. This reinstates the legal position before amendments made in 2004, when the exemption was inadvertently narrowed.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument is being made on a composite basis with the Secretary of State for DEFRA and amends earlier England and Wales legislation. The 1981 Act transposes Directive 2009/147/EC on the conservation of wild birds (the Wild Birds Directive) into law in England and Wales and it is desirable to have a common England-Wales regulatory regime covering transposition. The policy in Wales on this specific matter is identical to that in England and as such the textual amendment is identical if 'Wales only' and 'England only' statutory instruments were pursued. Maintaining a consistent approach in Wales with England is considered beneficial for those individuals and organisations wishing to possess wild bird eggs and the relevant law enforcement agencies. It is considered that a composite instrument also removes the potential for confusion that having two separate statutory instruments producing the same legal effect may cause.

This instrument is subject to the negative resolution procedure in the National Assembly for Wales and in the UK Parliament. This is deemed the appropriate procedure because the subject-matter of the instrument is of relatively minor detail in the overall legislative scheme and is technical in nature. This instrument does not impose duties, burdens or create any criminal offences. Rather, it provides for a benefit by expanding the statutory exemptions under section 1(3) of the 1981 Act, and as such, is considered appropriate for the negative procedure.

As this instrument will be subject to both the National Assembly for Wales and UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually. The instrument is not amending earlier bi-lingual legislation.

3. Legislative background

The taking of wild bird eggs is governed by the Wild Birds Directive. It requires Member States to establish a system to protect wild birds, and their eggs. It is transposed into domestic law via Part 1 of the 1981 Act.

The National Assembly for Wales was designated under section 2(2) of the European Communities Act 1972 in relation to measures relating to the

conservation of natural habitats and of wild fauna and flora. This designation now vests in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of schedule 11 to, the Government of Wales Act 2006.

Paragraph 2(2) of Schedule 2 to the European Communities Act 1972 provides for a choice between the affirmative and negative procedure when exercising the power under section 2(2) of that Act. The negative procedure is considered appropriate for reasons outlined above.

4. Purpose & intended effect of the legislation

The overarching purpose of this instrument is to ensure a proportionate regime in Wales in relation to the possession of wild birds' eggs in a manner that continues to meet the requirements of the Wild Birds Directive.

Specifically, this instrument provides that possession or control of an egg of any wild bird, or any part of it, taken in contravention of certain legislation (namely the Protection of Bird Acts 1954 to 1967) prior to Part 1 of the 1981 Act coming into force, is no longer an offence under section 1(2)(b) of the 1981 Act.

When the 1981 Act was enacted, section 1(2)(b) made possession of a wild bird egg, or any part of such an egg, illegal, unless a statutory exemption applied. The statutory exemptions included that the egg had not been taken from the wild in contravention of Part 1 of the 1981 Act or orders made under it. This meant a person was not guilty of possession under section 1(2)(b) if they could show the egg was taken before that section came into force (namely 28 September 1982) even though it may have been taken in contravention of earlier legislation such as the Protection of Birds Acts 1954-1967. This commonly became known as the 'Pre-1981 Defence'.

Amendments made in 2004, by SI 2004/1487 ('the 2004 Regulations') and made applicable in Wales by SI 204/1733 had the effect of narrowing the statutory exemptions to the offence of possessing an egg of a wild bird, or any part of it. Following the amendments, a person in possession of an egg of a wild bird, or any part of it, committed an offence unless they could show (amongst other things) that there had been no contravention of the Protection of Birds Acts 1954-1967. Therefore, possession of any egg, or any part of it, which a person could not show was taken before 1954 became illegal (unless an exception within the legislation applied or a licence under section 16 of the 1981 Act permitted the possession).

The effect of the change introduced by the 2004 Regulations, in that they removed the Pre-1981 Defence in relation to the possession of an egg of a wild bird, was not subject to full public consultation. It has been accepted that, to this limited extent, the 2004 Regulations were made unlawfully insofar as they removed the Pre-1981 Defence without full prior public consultation.

The amendments brought about by this instrument follow a public consultation and review of the policy. The majority of those who responded concluded that the Pre-1981 Defence should be reinstated.

The effect of the amendments made by this instrument is therefore to revert to the position prior to the 2004 amendments, i.e. to reinstate the Pre-1981 Defence such that possession of an egg of a wild bird, or part of such an egg, is not an offence under section 1(2)(b) of the 1981 Act if the person charged can show it was taken (i.e. a person was in possession of it) before Part 1 of the 1981 Act came into force.

By reinstating the Pre-1981 Defence the uncertainty for those possessing eggs of wild birds, or any part of such eggs, collected after 1954 such as museums, scientific research organisations and private collectors is removed. This should prevent historical collections with scientific value from being destroyed. It allows museums and similar institutions to continue to possess and use such eggs for research purposes without fear or prosecution and removes unnecessary burdens on these institutions in obtaining licences to possess such eggs under section 16 of the 1981 Act.

This instrument also amends section 27 of the 1981 Act by updating the definition of the Wild Birds Directive which was consolidated in 2009.

This instrument will affect anyone wishing to possess or control any egg of a wild bird, or any part of such an egg in Wales. It ensures a consistent legal framework across Wales and England concerning the possession or control of any egg of a wild bird, or any part of such an egg.

5. Consultation

A joint England and Wales public consultation was held titled “establishing the grounds for an offence of the possession of wild bird eggs”. The consultation was launched on 14 October 2014 and was open for views until 9 December 2014.

The consultation set out two options:-

- **Option 1. Maintain the Pre-1954 exception in respect of wild bird egg possession.** This would mean possession of eggs would be illegal unless;
    - they were held under a licence issued under section 16(1) of the 1981 Act,
    - a legislative exemption applies, or
    - it could be shown by the person in possession that they were taken from the wild before 1954.
- **Option 2. Reinstate the Pre-1981 Defence in respect of wild bird egg possession.** Re-instating the Pre-1981 Defence, would mean possession of eggs would be illegal unless;

- they were held under a licence issued under section 16(1) of the 1981 Act,
- a legislative exemption applies, or
- it could be shown by the person in possession that they were taken from the wild before Part 1 of the 1981 Act came into force (28 September 1982).

There were 34 responses to the consultation. The consultation asked respondents to confirm whether their response applied to England (29%), Wales (12%) or England and Wales (56%). Nearly three quarters of respondents to the consultation supported option 2; to re-instate the original offence (the Pre-1981 Defence). Of the 4 respondents specifying they were responding in relation to Wales, 3 preferred option 2 and 1 preferred option 1 (to maintain the pre-1954 defence).

A summary of consultation responses has been published on gov.uk, with a link from the Welsh Government consultation webpages ahead of this instrument being laid in the National Assembly for Wales.
http://gov.wales/consultations/environmentandcountryside/possession-of-wild-bird-eggs-establishing-grounds-for-an-offence/?status=closed&lang=en).

All respondents have been notified of the publication of the summary document and outcome.

6. Regulatory Impact Assessment (RIA)

Having considered the Welsh Ministers' code of practice, a Regulatory Impact Assessment has not been prepared for these Regulations. No impact on the private, public or voluntary sectors is foreseen separate to that already covered by the substantive provisions of the 1981 Act.

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

CLA670 - The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (Saesneg yn unig)

Cefndir a Phwrpas

Mae'r Rheoliadau cyfansawdd hyn yn darparu ar gyfer rheoleiddio "gweithgareddau perygl llifogydd". Maent yn sefydlu trefn newydd dan y fframwaith Trwyddedu Amgylcheddol ar gyfer rheoleiddio gweithgareddau ar neu'n agos at gyrsiau dŵr yng Nghymru a Lloegr.

Mae'r drefn newydd hon yn golygu y bydd gweithgareddau perygl llifogydd yn cael eu hintegreiddio mewn i'r fframwaith Trwyddedu Amgylcheddol sydd eisoes yn bodoli. Bwriedir y bydd hyn yn fwy syml na'r drefn bresennol lle mai gweithgareddau perygl llifogydd yn gweithredu dan gyfundrefnau amrywiol.

Gweithdrefn

Y Weithdrefn gyfansawdd

Craffu Technegol

Nodwyd un pwynt i gyflwyno adroddiad arno dan Reol Sefydlog 21.2(ix) mewn perthynas â'r offeryn hwn, sef nad yw wedi'i wneud neu i'w wneud yn Gymraeg ac yn Saesneg.

Offeryn cyfansawdd yw hwn, ac mae yn y Saesneg yn unig. Mae'r Pwyllgor yn nodi'r esboniad yn y Memorandwm Esboniadol i'r Rheoliadau, syn dweud:

"As this instrument will be subject to both the National Assembly for Wales and UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually." (Saesneg yn unig)

Craffu ar rinweddau

Ni nodwyd unrhyw bwyntiau i gyflwyno adroddiad arnynt o dan Reol Sefydlog 21.2 mewn perthynas â'r offeryn hwn.

Ymateb y Llywodraeth

Mae'r Rheoliadau cyfansawdd hyn yn gymwys i Gymru a Lloegr ac yn ddarostyngedig i'w cymeradwyo gan Gynulliad Cenedlaethol Cymru a Senedd y Du. O ganlyniad, nid ystyrir ei bod yn rhesymol ymarferol i'r Offeryn hwn gael ei osod na'i wneud yn ddwyieithog.

Cynghorwyr Cyfreithiol
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol
21 Ionawr 2016

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*

CONTENTS

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

(**a**) Paragraph (3A) was inserted by S.I. 2015/1756.
(**b**) Regulation 39(1) was amended by S.I. 2015/664.

(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.

(**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.

(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 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

(**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.

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.

(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**);

(**a**) S.I. 2010/490, amended by S.I. 2012/1927; there are other amending instruments but none is relevant.

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

(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(**b**).

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

(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"(**d**);

"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(**e**);

"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"(**f**);

"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(**g**) 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(**h**);

(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(**i**).

(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**) 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.

(**b**) 1949 c. 97.

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

(**d**) 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.

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

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

(**g**) 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).

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

(**i**) 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.

(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
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;

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

(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) 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;

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

(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.

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;

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

(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.

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;

(**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).

"watercourse" has the meaning given in section 221 of the 1991 Act(**a**), 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 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

(**a**) 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.

(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

(**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).

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,

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.

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

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;

(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.

(**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

(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.

(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);□.

(**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.

Environment Act 1995

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

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

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

(i) regulations made under section 2 of the Pollution Prevention and Control Act 1999(**c**), 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,

(**a**) 1995 c.25.

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

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

(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"(**a**) insert—

□"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(**b**) 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

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(**a**) 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).

(**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.

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.

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.

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

Explanatory Memorandum to The Environmental Permitting (England & Wales) (Amendment) (No 2) Regulations 2016

This Explanatory Memorandum has been prepared by Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Environmental Permitting (England & Wales) (Amendment) (No 2) Regulations 2016.

I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Natural Resources
2 February 2016

1. Description

This instrument provides for the regulation of “flood risk activities” within the Environmental Permitting framework. The new scheme is intended to reduce administrative burdens on applicants undertaking activities which require prior approval because they may impact on flood risk or flood risk management. It enables the regulators (Environment Agency and Natural Resources Wales) to concentrate their resources on higher risk activities.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations are being made through a composite process as the principal Regulations to be amended were made on a joint England and Wales basis. As this instrument will be subject to both the National Assembly for Wales and UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.

3. Legislative background

Section 109 of the Water Resources Act 1991 and local land drainage and sea defence byelaws made by the Environment Agency and Natural Resources Wales under powers in Schedule 25 to that Act require prior consent by those bodies before certain activities are undertaken on main rivers. (A main river is defined as a watercourse marked as such on a main river map. Main rivers are usually larger streams and rivers, but also include some smaller watercourses.). In addition, section 339 of the Highways Act 1980 requires that highway authorities and others wishing to undertake certain highways activities that impact on main rivers must seek the permission of the Environment Agency and Natural Resources Wales. In many cases this means that the highways authorities must apply for both a Highways Act consent and a flood defence consent.

This instrument is made under powers in sections 61 and 90 of, and Schedule 8 to, the Water Act 2014. This instrument establishes a new scheme under the Environmental Permitting framework to regulate activities on or near watercourses in England and Wales.

4. Purpose & intended effect of the legislation

If poorly executed, construction works or maintenance activities on or near watercourses can cause problems such as increasing flood risk, cause or exacerbate flooding and/or cause environmental damage. Prior permission (known as a flood defence consent) is needed to avoid these problems being created. The Environment Agency and Natural Resources Wales issue about 5,000 flood defence consents each year.
There is no intention to change the general requirement for a permit, but improvements are needed to the way the scheme operates:

- consents are required under the Water Resources Act 1991, regional byelaws and the Highways Act 1980. These various regimes have differing charges, application times, appeal mechanisms and other provisions leading to a complex position for someone trying to take forward a proposal and determine the requirements of the legislation that applies.
- applicants must follow the same process for low risk activities as for high risk activities. In many cases this level of regulation is unnecessary for either flood risk management or environmental protection purposes.
- Much of the process is enshrined in primary legislation which makes it difficult to readily amend the regime to suit changing circumstances.

We are proposing to integrate into the environmental permitting framework all flood defence consent and enforcement activities on and near main rivers. The framework, established by the Environmental Permitting (England and Wales) Regulations 2007 and expanded in 2010 has rationalised various permitting regimes into a common platform that is easier to understand and use by utilising a common set of processes and controls for the permitting of specified activities. Making the current flood defence consents scheme more risk-based and proportionate will help to cut red tape, and should increase clarity and certainty for stakeholders regarding the contribution of the system to the reduction of flood risk and protection of the environment.

The UK and Welsh Governments considered a non-legislative approach to improving the flood defence consents regime, but concluded that the benefits were too limited to pursue; legislation is needed to remove lower risk activities from the need for a bespoke permit, and to permit the issuing of a single permit for activities that would normally need a number of permits from several different schemes. The only benefit from a non-legislative approach would be the introduction of improved guidance which would help the application process.

5. Consultation

A Regulatory Impact Assessment (RIA) has been completed alongside this Explanatory Memorandum.

Details of the consultation are included within the RIA.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

This Impact Assessment considers three options;

Option 0 - 'do nothing'. This models the status quo, whereby the Flood Defence Consenting regime remains in isolation from the Environmental Permitting regime
Option 1 - incorporate flood defence consents into the Environmental Permitting regime. This option is the preferred option as it is expected to cut unnecessary red tape, reduce the current administrative costs, and increase clarity.
Option 2 – make improvements to admin burdens through non-legislative means.

The key driver for change is the need to modernise regulation, with particular emphasis on administrative burdens to applicants and increasing transparency and accountability. This Regulatory Impact Assessment therefore considers two options which aim to deliver such changes (as well as a "do nothing" comparator).

Each policy option relates only to flood defence consents affecting main rivers. The possibility of making changes to the permitting system affecting other watercourses has been discounted, since under the current legislation only a limited range of exclusively high-risk activities currently necessitate a permit. This restricts potential for standard rules to be implemented, as most applications warrant individual consideration.

Option 0 is the 'do nothing' option (model baseline). This, as its name suggests, models the status quo, whereby the Flood Defence Consent regime remains distinct from the Environmental Permitting regime.

Policy Option 1 is to incorporate Flood Defence Consenting for main rivers within the Environmental Permitting Regime. This is the preferred option (following consultation) as it is expected to lead to a larger reduction in red tape than alternatives whilst continuing to protect the environment and human health, and to increasing clarity and certainty for all stakeholders on how the system protects the environment.

Environmental permitting comprises a common set of definitions, processes and controls for the permitting of specified activities. In doing so, it seeks to rationalise various permitting regimes into a common framework that is intended to be easier to understand and use. For example, it allows businesses that would otherwise require several permits for activities falling under the regulations on a single site to complete a single application, and to be issued with a single permit. The provision for standard rules permits, exemptions and exclusions enables regulators to focus resources on higher risk activities. In general, Environmental Permitting does not change the substantive requirements of permits, but it is expected to reduce the administration

necessary to deliver those requirements. The delivery of this policy option would be implemented by the Environment Agency and Natural Resources Wales.

Policy Option 2 is for non-legislative changes to be made to the Flood Defence Consent regime. This would achieve some of the benefits which are likely to be associated with Policy Option 1, but without any associated legislative change. It is likely that improvements can be made to the existing system (i.e. clearer guidance) which will not require any changes to the legislation. Improving guidance would benefit businesses administrative costs, and benefit the regulators by reducing the queries arising regarding watercourse activity permits. Again the delivery of Policy Option 2 would be implemented by the Environment Agency and Natural Resources Wales.

Costs & benefits

In the analysis, costs and benefits for Policy Option 1 and 2 are compared with the 'do nothing' option. For the purposes of this relative analysis the costs and benefits of the 'do nothing' option are considered to be zero. However, Section 4.2 sets out the basis for estimating the costs of the do nothing option. Where possible, the risks and key assumptions relating to the analysis are presented. In recognition of the distinct responsibilities of the Environment Agency and Natural Resources Wales, the costs and benefits have been split between England and Wales where these can be calculated. These are outlined within each section of the assessment.

The costs and benefits described in this impact assessment have been modelled using data gathered from two key sources:

- the Environment Agency has provided details regarding the number and characteristics of consents under the current system, and regarding the effort and costs involved in processing them (this information covers both England and Wales)
- a small-scale survey was carried out in Spring 2014 to seek information from recent flood defence consent applicants regarding their experience of the current system, and their expectations regarding the potential impact of the changes envisaged in the policy options. Structured telephone interviews were carried out with nineteen organisations, yielding useful results in all cases. The findings were averaged and the results used as the basis for estimates of the amount of time and level of staff they employ within the flood defence consent process.

The majority of the impacts have been assessed using the Standard Cost Model (SCM). The SCM method is a way of breaking down the costs of regulation into manageable components that can be measured. The model breaks down the costs of complying with regulations into:

1) '*substantive compliance costs*', which are the costs incurred in achieving the intended results of the policy (for example, the costs of fitting a filter to comply with environmental requirements), and

2) '*administrative burden costs*', which are the administrative activities that businesses are required to conduct in order to comply with the information obligations of central government regulation (for example, the costs of documenting and reporting that the filter has been fitted).

Administrative burdens are calculated using the formula:

N x W x T, where:

N is the number of businesses affected;

W is the cost per hour taken to meet the obligation; and

T is the number of hours taken per year.

It is assumed that the working year for both the Environment Agency and applicants is 218 days. The productive working day is assumed to be 7.5 hours.

The costs and benefits in this Impact Assessment are measured over a 10 year period[1], with the net present values (NPVs) shown for the period (NPVs effectively show the value of a stream of costs and benefits over a period of time in 'today's terms'). In line with the HM Treasury Green Book[2], a 3.5% discount rate has been used to calculate the NPVs.

The costs and benefits presented in this impact assessment are in real terms (2014 prices).

The impacts associated with the preparation of each of the policy options commenced in 2015, prior to implementation in 2016. These costs have therefore already been incurred, but have been included here in order to provide a complete picture of the costs and benefits. The last year covered by the impact assessment is 2024.

Following implementation, it is recognised that some of the benefits associated with the policy options will not have an immediate effect. Based on previous experience[3], the full impact of benefits tend to be realised over a period of time, rather than being delivered instantaneously. As such, the majority of the modelling assumes a transitional period between 2016 and 2018. Benefits are expected to be lower in during implementation of the new policy; i.e. during 2016 (the first year of implementation) it is expected that 50% of the expected benefits will be realised. In 2017, 75% are expected and in 2018 it is expected that 100% of the benefits will be realised. A modified transitional period has been used for the introduction of standard rules permits in Wales. NRW proposes to consider proposals for standard rules later in 2015. At this stage it has been assumed that the same proportion of applications will be eligible for Standard Rules Permits as in England (i.e. 11%), and that the transitional period, and the realisation of benefits will be delayed by 1 year compared to that set out above.

[1] Standard period for Government Impact Assessments.

[2] http://www.hm-treasury.gov.uk/data_greenbook_index.htm

[3] EPP1 Post Implementation Review

There are a number of groups of activities relating to the introduction of each policy option which will result in the accrual of costs and benefits.

Table **1**, shown below, summarises the main impacts associated with the Policy Options described in Section **Error! Reference source not found.**.

Table 1: High Level Summary of Impacts by Policy Option

Impact	Policy Option 0 – Do Nothing Option	Policy Option 1 – Environmental Permitting Option	Policy Option 2 – Non-legislative Option
Preparation and management of regime changes	×	✓	✓
Introduction of standard rules permits	×	✓	×
Ability to make integrated application transactions	×	✓	×
Delivery of new guidance	×	✓	✓
Ability to make single applications for multiple sites	Partial[4]	✓	Partial
Reduced administrative costs	×	✓	✓

The costs and benefits associated with each of these areas and for each policy option are provided in more detail in the following sections. Where possible, costs and benefits have been separately calculated for different actors in the economy, these include:

- Applicants[5];
- the Environment Agency;
- Natural Resources Wales;
- Government; and
- Consultees.

Each impact of the proposed policy options is presented so as to make clear its contribution to the overall costs and benefits shown in the summary tables, Table 13 and Table 17.

[4] Currently regulators are able to form an opinion as to what constitutes an application, so it is possible for multiple sites on occasion to fall under a single permit.

[5] The term 'applicants' refers to all applicants for Flood Defence Consents, which include businesses, members of the public, public bodies, rural landowners, charities, clubs and other institutions. In April-June 2012, 17% of applications came from utilities; 15% from landowners and agricultural businesses; and 25% from other businesses (See Annex 2), The unusually broad range of applicants means that there is no representative 'industry body' and there are many more one off applicants than for other environmental permits.

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1.1 Model Baseline

The costs and benefits for each of the policy options assessed in this impact assessment are measured against a common baseline. The baseline is in effect a prediction of future events under a "do nothing" scenario. It projects the numbers of permits (applications, inspections etc.) and the profile of these over time. The baseline is also quantified, so that the annual costs to both the regulator and applicants in using the system can be estimated, and to facilitate estimation of savings applying under the policy options.

For the purposes of this impact assessment, the baseline was considered to be static (i.e. the same number of new licence applications each year for the ten years of the impact assessment) to reflect the fact that there has been no observed trend in changes to application numbers over recent years.

Table 2, summarises the number of new applications currently received by the Environment Agency and Natural Resources Wales per annum. Whilst in practice there is a degree of variability in the number of applications received, it is assumed that an average of 4,829 applications per annum will continue to be received by the Environment Agency and 500 by Natural Resources Wales over the ten year period covered by this Impact Assessment.

Table 2: Estimated Quantity of New Applications per Annum[6]

Description	Quantity Per Annum – England	Quantity Per Annum – Wales
Main rivers: New applications for a single activity	4,283	463
Main rivers: New applications for multiple structures on one consent	546	37
Total	**4,829**	**500**

In the course of determining applications, regulators also conduct site inspections to determine the acceptability of the applications. Conversations with the Environment Agency indicate that approximately three quarters of all applications require a site inspection (whether that be prior, during or after consent). As part of this project, interviews with applicants indicated that around 45% of applications involve a site inspection. Whilst this survey represents the strongest available evidence on which to base an assessment of the behaviour and practices of applicants, it is less good for deriving aggregate statistics as it drew on a limited sample, from a heterogeneous pool. In this regard, the Environment Agency has a better overview of the global picture, and therefore in this instance the Agency's estimate has been used to model the costs.

[6] These figures are based on Environment Agency data for 2012/13 covering both England and Wales, and excludes 171 rolling programme consents.

1.1.1 Costs of the Flood Defence Consent Regime

Prior to the establishment of Natural Resources Wales in April 2013, administering the Flood Defence Consent regime on main rivers[7] in England and Wales is estimated to have cost the Environment Agency £2.31m (£2.05m in England and £0.26m in Wales) in 2010. In addition to these frontline costs, there are also additional 'back office' costs which the Environment Agency and Natural Resources Wales currently incur. These are estimated at £0.1m. All figures are derived from management statistics.

Costs to applicants comprise administrative burdens and some potential other direct costs. Administrative burdens will include activities such as reading and understanding guidance on the scheme, compiling relevant information and completing the application, and attending inspections if required. Where technical assessments are required in order to demonstrate that their proposals will not impact on flood risk or the environment, applicants generally need to pay for their production. There may also be additional costs if applicants need to engage consultants to advise on or assist with the application.

In the absence of definitive information on applicant's costs, it is estimated that each applicant currently spends approximately £973 per application (staff time x hourly rate). These costs are based on industry interviews and comprise the staff time spent:

- obtaining pre-application advice from the regulator (1.8 hours);
- completing the application form (18.5 hours);
- assembling supporting documentation;
- dealing with queries or clarifications (3.5 hours);
- and preparing for and supervising site visits (for an average of 75% of applications (source: EA estimate), requiring 5.7 hours each).

An average hourly rate of £34.53[8] is assumed, including 28% on-costs, equalling a day rate of £259. Explicitly, these costs only represent an estimate of the administrative costs associated with applications; excluding the financial costs associated with application fees. Application fees are not within the scope of this assessment, but it should be noted that reductions in the costs to the regulator are likely to help reduce application fees and make them smaller than they would be otherwise.

Therefore, using the numbers of applications from Table 2, and the costs per application above, it is estimated that applicants in England spend £4.7m per annum on the Flood Defence Consenting regime, while those in Wales spend £487k.

1.1.2 Benefits of the Flood Defence Consent Regime

The primary benefit of the Flood Defence Consenting regime is the avoidance of direct flooding as a result of poorly designed structures. Examples include culverts that are too small and lead to the flooding of surrounding property, erosion protection works that prevent the restriction of the capacity of

[7] Although at that time the EA was also responsible for administering the regime on ordinary watercourses (outside of Internal Drainage Board areas) the costs for this aspect have been excluded.

[8] See table 22, Annex 1 for further details of assumptions behind wage rates.

watercourses leading to flooding, and inadequate design of flood control structures (new or altered) leading to failure and flooding that affects applicants or other parties.

The regime also:

- Enables prevention of blocked access to a structure that would otherwise lead to an increased cost of operation by the operating authority;
- Ensures works contribute to environmental objectives. For example, prevention of ecological damage caused by the use of unsuitable materials such as concrete bank protection where more natural banks with habitat provision might be retained, or the destruction of habitat through unnecessary over-dredging by a landowner; and
- Supports UK compliance with certain EU directives such as the Water Framework Directive.

The benefits of the existing regulatory regime are difficult to quantify. This is due principally to the variation in scale of works proposed, from minor to highly significant, and variation in the quality of submissions and the degree of involvement needed from the operating authority to ensure a suitable outcome. There is also considerable variation in benefit depending on what structure is consented (ranging from simple outfall to major defence repair or alterations, or highway bridge for example), and how much intervention is needed from the operating authority to ensure the eventual design is suitable.

However, the Environment Agency estimate that in an average case the damage avoided (e.g. flooding of buildings, roads and vehicles) is approximately £5,000 per consent issued, based on a single avoided event. This has been based on the value of a car written off, small scale domestic damage, or replacement of erosion protection or outfall structure following failure, as examples of typical damage). This implies a total benefit of the main river flood defence consents of approximately £27m per annum (5,329 consents @ £5,000), of which £2.5m relates to Wales. These estimates may be conservative to the extent that some events may occur more than once in the absence of control (i.e. a single event does not lead to the landowner correcting the situation, perhaps because of externalities or lack of information regarding solutions).

In addition, there are various non-monetised benefits as “spin-offs” from the generally locally-based operation of the existing regime. These include;

- negotiated improvements to works to provide positive benefit, rather than just offsetting negative impacts of the proposal;
- benefits to other interests such as the natural environment through habitat creation, public recreation through provision of walkways, access or improvements to river based navigation interests;
- prevention and reduction of pollution through construction and in the final design of works; and

- delivery of some Water Framework Directive improvements by suitable design and use of materials (e.g. naturalised river bank erosion protection).

These benefits arise in individual cases rather than across the board. Occasionally, consented works can contribute to a flood alleviation scheme promoted by the Environment Agency or Natural Resources Wales, as a developer can carry out works that fit into the wider flood risk management plan of a given catchment. The use of standard rules permits may, however, limit such opportunities in the future, as the conditions under which an activity may be undertaken are already set out.

1.2 Preparation Costs and Benefits

1.2.1 Policy Option 1 – Environmental Permitting Option

There are a number of preparation activities which are expected to be undertaken in order to prepare for the Flood Defence Consents regime transferring in to the Environmental Permitting regime. Accordingly, the majority of the activities (see below) are expected to take place before the system is implemented in 2016 (i.e. during 2015). The key activities modelled in this impact assessment comprise:

- the management of the changes to the Flood Defence Consents regime;
- the development of standard permits, exemptions and consultations.

In addition, there is also expected to be a reduction in process efficiency experienced during this period.

The Environment Agency and Natural Resources Wales will be the bodies required to take action to implement the changes in order to align the watercourse permitting system with the Environmental Permitting regime. The Environment Agency has already drawn up a set of standard rules permits for England, however Natural Resources Wales will not consider proposals for standard rules until after the Environment Bill for Wales is published. Part of the Bill will introduce a new integrated approach to managing Natural Resources Wales, including flood risk, and new powers for NRW to exercise accordingly.

The total preparation costs are expected to be £0.25m in the first year, £0.03m in the second; the 10 year net present value (NPV) is £0.28m.

- For the regulators, the largest cost is expected to be a reduction in process efficiency during the transition period, as staff engaged in processing applications will take time to reach full efficiency in operating the new system – for example, needing to make more frequent reference to written guidance, and to undertake additional checks to ensure that permits are completed accurately. This is estimated by the Environment Agency to be 5% of application processing costs for a single year, which would amount to £0.10m in England in 2015 (i.e. 5% of £2.05m). In Wales, it has been assumed that the costs will be spread over two years to reflect the delay in introducing standard rules. Costs in Wales are

therefore expected to be £6k for each of 2015 and 2016 (i.e. 5% of £260k).

- The implementation of the new regime would also necessitate the development of standard permits, exemptions and the consultation process with statutory consultees. We have used as a basis the estimate used for the development of standard rules and permits for the Water Discharge and Impoundment regime in the impact assessment for phase 2 of the Environmental Permitting Programme (EPP2 IA)[9](£75k). We have assumed that three quarters of the costs accrue to the first year to reflect the work in drawing up exemptions and exclusions for both countries, and standard rules permits for England, and one quarter to the second year when Natural Resources Wales will consider their proposals for standard rules permits. Considering the split of the costs for the first year between England and Wales, it is assumed that the same processes would be required for both countries. Rather than duplicating effort, it would be reasonable for the costs to be shared between the two regulators. In the absence of any formula as to how that might be achieved, the simplest way of splitting these costs is to use the respective percentages of applications in England and Wales. The first year's costs are £56k; 51k in England, 5k in Wales. The costs of the second year (£19k) accrue wholly to Wales.
- Managing the process change is expected to cost around £88k or the equivalent of 1.5 FTE grade 6 staff members (source: EA estimate) at a day rate of £270 (including 28% non-wage costs).[10] These costs have again been apportioned between England and Wales based on each country's percentages of applications; £80k in England, 8k in Wales.

The total costs are therefore £233k in England in 2015, and £20k in Wales in 2015, £25k in Wales in 2016.

These costs are all transitional costs.

A summary of the costs by actor is shown in Table 3.

[9] Department for Environment Food and Rural Affairs, and Department of Energy and Climate Change (2010) *Explanatory Memorandum to the Environmental Permitting (England and wales) Regulations 2010 No. 675*, 2010, http://www.legislation.gov.uk/uksi/2010/675/pdfs/uksiem_20100675_en.pdf

[10] See Annex 1 for further information on wage rates.

Table 3: Policy Option 1 - Summary of Preparation Costs (£k)

	Actor	2015	2016	2017	2018…	…2024	TOTAL (NPV)
Costs	Applicants	£0	£0	£0	£0	£0	**£0**
	Environment Agency/ Natural Resources Wales	£253	£25	£0	£0	£0	**£278**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£253**	**£25**	**£0**	**£0**	**£0**	£278

1.2.2 Policy Option 2 – Non-legislative Option

For Policy Option 2, it is expected that only a small number of activities would be required in order to prepare for non-legislative changes to the Flood Defence Consents regime. Unlike Policy Option 1, undertaking Policy Option 2 would not require the development of standard permits, exemptions and consultations.

The key impact associated with the non-legislative option is the requirement for resources to manage the implementation of the changes – these would largely comprise of project management resources. Since processes remain largely unchanged, it is assumed that no transitional process inefficiency is introduced. The impact is most likely to fall on the Environment Agency and Natural Resource Wales in the year prior to changes being made (i.e. 2015), and is equivalent to approximately £88k or 1.5 FTE grade 6 member of staff at a day rate of £270 (including 28% on-costs).

Table 4 summarises the costs for each of the main actors. As can be observed in the table, the costs associated with Policy Option 2 are small in comparison to Policy Option 1 (less than a third).

Table 4: Policy Option 2 - Summary of Preparation Costs (£k)

	Actor	2015	2016	2017	2018 …	…2024	TOTAL (NPV)
Costs	Applicants	£0	£0	£0	£0	£0	**£0**
	Environment Agency/ Natural Resources Wales*	£88	£0	£0	£0	£0	**£88**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£88**	**£0**	**£0**	**£0**	**£0**	**£88**
* indicates transitional costs (2015 – 2018)							

Considering the split of these costs between England and Wales it is assumed that, like Policy Option 1, the same processes would be required for both the Environment Agency and Natural Resources Wales. Based on that assumption the costs in England will be £80k, and £8k to Wales.

1.3 Standard Rules Permits Costs and Benefits

1.3.1 Policy Option 1 – Environmental Permitting Option

One of the key benefits associated with the Environmental Permitting regime is the ability for the regulator to provide Standard Rules Permits. The regulator designs a Standard Rules Permit for an activity by assessing the risk and drawing up and publishing a set of conditions. If the applicant is able to meet those conditions, then a simplified application process can be followed, reducing regulators' and applicants' costs.

However, unlike bespoke permits, once granted, Standard Rules Permits cannot be varied and are therefore not suitable for higher risk and more complex activities. It is currently assumed that no inspections will be carried out for those applicants opting for Standard Rules Permits. These features also reduce the cost of application and ongoing costs for applicants, as well as for the regulators.

The availability and uptake of Standard Rules Permits will vary depending on the type of activity proposed. Calculations at the time of the initial impact assessment suggested that some 35% of applications could be eligible for Standard Rules Permits. Subsequently these activities were reassessed with a view to moving the lowest risk activities into exemptions or exclusions. (The public consultation reflected more detailed work in identifying appropriate activities, although there was insufficient time to reflect these details in the initial impact assessment). As a result of this review, together with further refinements suggested through the public consultation, the Environment Agency now considers that some 20 % of applications will be eligible for

Standard Rules Permits (with a corresponding increase in applications being eligible for exemptions and exclusions). This reduces the benefits of introducing standard rules permits from that suggested in the previous impact assessment, but increases those due to the provision of exemptions and exclusions.

Natural Resources Wales proposes to consider proposals for standard rules following publication, in May 2015, of the Environment Bill for Wales. Part of the Bill will introduce a new integrated approach to managing the natural resources of Wales, including flood risk, and new powers for Natural Resources Wales to exercise accordingly. Natural Resources Wales will consult on any proposals. For the purposes of this IA it has been assumed that the same proportion of applications will be eligible for Standard Rules Permits (i.e. 20%), but that these will not be introduced until 2016. Table 5 summarises the assumptions used in this assessment.

Table 5: Estimate of the Percentage of Applications Eligible for Standard Rules Permits

Description	Environment Agency	Natural Resources Wales
% of applications eligible for Standard Rules Permits	20%	20%

Whilst there is a cost associated with converting current permits to Standard Rules Permits at the buying point, the savings far outweigh them. Savings are expected to be released in the following activity areas:

- No inspections (regulators and applicants);
- Saving on licence administration costs (regulators only);
- Reduction in costs incurred in the process of obtaining new permits (regulators and applicants); and
- Reduction in the costs of consultation for new permit applications (regulators and consultees)

Examining who the costs and benefits are expected to fall upon, the largest beneficiary group is predicted to be the applicants who are expected to accrue savings from the easier method of undertaking new applications of approximately £461k per annum in England and £48k in Wales. This is calculated as being a 40% saving on the average cost of an application (3.19 days, based on the industry interviews undertaken in spring 2014) multiplied by an average day rate of £259, (see table 22, Annex 1); plus 100% savings on costs associated with site visits (75% of 0.76 days, again, based on the industry interviews). These assumptions are consistent with the baseline. The estimate of a 40% saving for standard rules permit applications is consistent with the savings estimate for standard rules permits previously used in the EPP2 impact assessment.

Savings for the Environment Agency and Natural Resources Wales would arise from cheaper processing of the Standard Rules Permits. These would amount to £153k per annum in England and £16k in Wales. These result from an average saving of 62.5% on both the provision of pre-application advice and the application determination process (source: National Flood Defence Consent Register (NFDCR)) and 100% saving on time taken for inspections. The total savings across England and Wales are thus made up of those resulting from reduced pre-application discussions (£48k), less time required to process each application (£74k) and fewer inspections (£47k).

Annual savings from reduced pre-application discussions are £48k, calculated by multiplying the following:

- The percentage of applications requiring pre-application advice (92.5%; source: EA estimate);
- The average time taken for pre-application advice (4 hours; source: NFDCR data); and
- The wage rate of the licence administration team (£145 per day, calculated from an assumed time split of 80% EA grade 3-equivalent staff, 10% grade 4 and 10% grade 5, as used in the EPP2 impact assessment).
- Expected 62.5% savings (as above)

Annual savings related to application determination are £74k, calculated by multiplying:

- The time taken for application determination (5.75 hours; source: EA staff activity survey 2011)
- The wage rate of the licence administration team (£145 per day; source: as above)
- Expected 62.5% savings (as above)

Annual savings related to fewer inspections are £47k, calculated by multiplying:

- The time taken for site visits (3 hours; source: EA estimate)
- The wage rate of the licence administrations team (£145 per day; source: as above)
- Expected 100% savings (as above)

Table 6 summarises these assessments. The division of the costs and benefits between England and Wales is expected to be consistent with the number of permits within the respective countries. The 10 year NPV relating to the

introduction of Standard Rules Permits is £4.23m in England and £0.38m in Wales.

Table 6: Policy Option 1 - Summary of Standard Rules Permits Benefits (£k)

	Actor	2015	2016	2017	2018 …	…2024	TOTAL (NPV)
Benefits	Applicants	£0	£231	£370	£497	£509	**£3,464**
	Environment Agency/ Natural Resources Wales	£0	£76	£122	£165	£169	**£1,147**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£0**	**£307**	**£492**	**£662**	**£678**	**£4,611**
Please note that numbers may not add due to rounding.							

1.3.2 Policy Option 2 – Non-legislative Option

The replacement of the current system with a compulsory system of Standard Rules Permits is understood to require legislation, therefore would not be available within Policy Option 2. Therefore no costs or benefits are foreseen for this activity within Policy Option 2.

1.4 Integration of Regimes Costs and Benefits

1.4.1 Policy Option 1 – Environmental Permitting Option

A proportion of Flood Defence Consent applicants also hold permits that are currently within the Environmental Permitting regime, such as those relating to water discharge activities, or in schemes the Government has committed to bringing into the Environmental Permitting regime such as water abstraction and impoundment activities.

Should the Flood Defence Consents regime be integrated into the Environmental Permitting regime, the cost of processing an application 'transaction' is expected to be reduced where the applicant has a number of

other permits. This saving would only apply where there is a common regulator, and therefore would only arise where all related permits are determined by one of the Environment Agency or Natural Resources Wales.

In order to estimate the benefits of the integration of regimes a method was developed for this impact assessment to represent the likely distribution of permits among activities. This approach involves a starting assumption that, where there are 2, 3, or 4 permits required for a location, if the permitting tasks were 100% replicated across the regimes and these could be merged then there would be incremental savings of 50 per cent, 67 per cent or 75 per cent on the typical cost of administering separate permits, respectively. This percentage saving is then adjusted by the following factors:

a) The actual degree of replication of permitting tasks between regimes. Estimates are made of the degree to which the administering of environmental permits is common in terms of the information required and therefore time taken; and

b) The probability that an applicant would require tasks, such as application 'transactions' or inspections, to be processed at the same time for any site.

Box 1 illustrates the methodology used in this impact assessment with a worked example.

Box 1: Integration of Permitting Regimes Cost Savings – Worked Example

Taking just one example of some of the savings that are achievable by bringing together permitting regimes, it is estimated that 5% of the total 5,329 Flood Defence Consents are for sites that also hold one other Environment Agency/Natural Resources Wales permit; 0.7% are thought to be subject to two other permits and 0.2% three other permits (source: EA estimates).

The model assumes that where a permit is held on a site with one other permit, then under a common permitting approach (and assuming the requirements were identical for both permits) the administrative burdens could be cut in half. In this case, effectively 50% of the associated costs for each regime would be avoided. Similarly, where a site holds three permits, the implication is a 67% overlap (the same tasks repeated under each regime). Since some sites have two permits and others have three or four etc., the weighted average savings for any overlapping permits with identical requirements, based on the estimated overlaps in the previous paragraph, is calculated to be 52.9%, while the total percentage of Flood Defence Consents deemed to overlap with other permits is 5.9% (the sum of the estimated overlaps from the previous paragraph). Multiplying these two factors, the total savings that could be expected under a common permitting approach, assuming identical requirements, is 3.1% across all Flood Defence Consents.

To calculate the actual savings due to overlapping permits, the 3.1% then has to be adjusted for the actual degree of common ground between the different permitting regimes. In terms of time spent transferring permits by the Environment Agency or Natural Resources Wales, the actual common ground between regimes is estimated to be 10% of the full transfer process (source:

EPP2 impact assessment). For the applicants, the actual common ground in application related tasks is estimated to be 15% (source: EPP2 impact assessment).

Overall, these factors suggest that savings of 0.31% (3.1% x 10%) from the total baseline permit transfer costs are possible under a common permitting approach for the Environment Agency or Natural Resources Wales, while a saving of 0.47% (3.1% x 15%) could be achieved by applicants.

The savings due to these overlaps have then been multiplied by the relevant baseline costs. The majority of savings from new applications for watercourse activity permits where there is an overlap with another application for an Environmental Permit are expected to occur for applicants. There are also benefits for the Environment Agency or Natural Resource Wales, as described above.

Table **7** summarises the total benefits by actor. Once a 'steady state' has been reached, the total savings are estimated to be £24k per annum during the operation of the policy, derived by multiplying:

- the percentage savings described in the box above by
- the respective cost of:
  - application determination and pre-application advice (1.3 days, calculated as described earlier, multiplied by the licence administration wage rate of £145 per day); and
  - submission of the application (3.2 days, calculated as described earlier, multiplied by the average applicant wage of £259 per day).

The 10 year NPV relating to the integration of regimes is £163k.

Table 7: Policy Option 1 - Summary of Integration of Regimes Benefits (£k)

	Actor	2015	2016	2017	2018 …	…2024	TOTAL (NPV)
Benefits	Applicants	£0	£10	£15	£21	£21	**£142**
	Environment Agency/ Natural Resources Wales	£0	£2	£2	£3	£3	**£21**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£0**	**£12**	**£18**	**£24**	**£24**	**£163**

Please note that numbers may not add due to rounding.

Considering the breakdown of the benefits between England and Wales, like the other aspects of the policy it would be expected that the breakdown would be consistent with the proportion of applications within the respective countries. Consequently it is expected that in England the benefits will be £148k (£129k to

applicants and £19k to the Environment Agency). In Wales the benefits are expected to be more modest, totalling £15k (£13k to applicants and £2k to Natural Resources Wales) over the 10 year period.

1.4.2 Policy Option 2 – Non-legislative Option

As the Flood Defence Consent regime will remain distinct from the Environmental Permitting regime, the non-legislative option would not realise any of the costs or benefits associated with the integration of regimes. Joint applications will not be able to be made for new activities, and thus no impacts upon the baseline are expected.

1.5 Simplified Guidance Costs and Benefits

1.5.1 Policy Option 1 – Environmental Permitting Option

Bringing guidance for the Flood Defence Consent regime into line with the Environmental Permitting guidance is expected to realise benefits to applicants as the guidance will be more easily understood. It will thus not be necessary to spend as much time reading and digesting it and the number of queries arising regarding watercourse activity permits will reduce.

In order to release the benefits for applicants, the Environment Agency and Natural Resources Wales would need to invest in re-writing the guidance and training staff to understand it. This is expected to cost £141k and be incurred prior to the Flood Defence Consent regime transferring in to the Environmental Permitting regime. This is based on an estimate that one FTE senior member of staff will be responsible for re-writing the guidance (£59k, calculated based on an EA grade 6 wage rate of £270 per day, including 28% on-costs; source: EA estimate) and that 136 staff members will spend approximately 4 days of time reading and being trained on the new guidance (£82k, calculated based on an average of EA grade 3 and grade 4 wages - £135 and £166 per day, respectively, including on-costs; source: EA estimate).

It is also expected that consultees would assist in the process of re-writing the guidance and therefore also incur a cost, estimated at £6k (assumed to be 10% of the effort of the Environment Agency and Natural Resources Wales; source: EPP2 Impact Assessment).

In addition, some applicants who are familiar with the current regime, will also need to invest time in reading and understanding the new guidance and are therefore expected to incur a cost of £105k per annum from 2014 to 2016 – the first three years of the guidance being made available. This relates to an estimated cost of 1.9 hours (or 0.25 of a day, at a wage rate of £259 per day, as described in the baseline; source: industry interviews) for 30% of applicants. 30% is an expert estimate of the number of applicants each year who have previously applied and would therefore need to read new guidance at an additional cost. It is estimated that 100% of these previous applicants would read the new guidance (source: industry interviews). For applicants who have not used the scheme before, it is assumed that no additional cost will be

received as there would be a requirement for these applicants to read some guidance anyway.

These three costs are all transitional costs.

Benefits are expected to accrue through a reduction in time spent applying for consents compared with the baseline scenario. The model includes an estimated 5% saving in time for new licence applications as a result of the new guidance introducing process simplifications, in line with the assumptions of the EPP2 Impact Assessment. These annual benefits would therefore be £219.9k (calculated based on 23.9hours taken to apply for a consent, and £259 average daily wage (see section 4.2.1).

Table 8 summarises total costs and benefits by actor. The overall 10 year discounted benefit relating to simplified guidance is approximately £1.5m, whilst the costs associated with developing simplified guidance are around £440k.

Table 8: Policy Option 1 - Summary of the Simplified Guidance Costs and Benefits (£k)

	Actor	2015	2016	2017	2018…	…2024	TOTAL (NPV)
Costs	Applicants*	£0	£105	£105	£105	£0	**£294**
	Environment Agency/ Natural Resources Wales*	£141	£0	£0	£0	£0	**£141**
	Consultees*	£6	£0	£0	£0	£0	**£6**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£147**	**£105**	**£105**	**£105**	**£0**	**£440**
Benefits	Applicants	£0	£110	£165	£220	£220	**£1,515**
	Environment Agency/ Natural Resources Wales	£0	£0	£0	£0	£0	**£0**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£0**	**£110**	**£165**	**£220**	**£220**	**£1,515**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

A split between the Welsh and English impacts has been calculated based on the estimated number of licence holders within each country. The overall costs in England are estimated to be £399k, whilst the benefits are estimated to be £1.4m. For Wales the estimated costs are estimated to be £41k, whilst the benefits are forecast to be £142k.

1.5.2 Policy Option 2 – Non-legislative Option

One of the key changes associated with the non-legislative option is the drafting of new guidance. Although the Flood Defence Consents and Environmental Permitting regimes will be distinct, guidance could be crafted so to ensure that the terminologies and processes contained in the two regimes can be aligned and understood more easily than at present.

Consequently, it is expected that the costs and benefits associated with this policy would be identical to Policy Option 1.

Table 9: Policy Option 2 - Summary of the Simplified Guidance Costs and Benefits (£k)

	Actor	2015	2016	2017	2018…	…2024	TOTAL (NPV)
Costs	Applicants	£0	£105	£105	£105	£0	**£294**
	Environment Agency/ Natural Resources Wales	£141	£0	£0	£0	£0	**£141**
	Consultees	£6	£0	£0	£0	£0	**£6**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£147**	**£105**	**£105**	**£105**	**£0**	**£440**
Benefits	Applicants	£0	£110	£165	£220	£220	**£1,515**
	Environment Agency/ Natural Resources Wales	£0	£0	£0	£0	£0	**£0**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£0**	**£110**	**£165**	**£220**	**£220**	**£1,515**
Please note that numbers may not add due to rounding.							

As with Policy Option 1, a split between the Welsh and English impacts has been calculated, based on the estimated number of licence holders within each country. Consequently, the overall costs in England are estimated to be £399k, whilst the benefits are estimated to be £1.4m. For Wales the estimated costs are estimated to be £41k, whilst the benefits are forecast to be £142k.

1.6 Single Applications for Multiple Sites

1.6.1 Policy Option 1 – Environmental Permitting Option

The Environmental Permitting regime allows the option for a single application to be made for common activities on a number of sites. As the Flood Defence Consents regime already allows for such applications to take place, it is assumed that there would be no significant change in the incidence or process for such applications due to incorporation of Flood Defence Consents in the Environmental Permitting regime, and therefore no additional costs or benefits in comparison with the baseline associated with such activities.

1.6.2 Policy Option 2 – Non-legislative Option

As described in Section 1.6.1, the Flood Defence Consents regime already allows for single applications to be made for common activities on a number of sites. No change is envisaged under the non-legislative option, and therefore no change in the costs or benefits associated with such activities are expected.

1.7 Other Costs and Benefits

1.7.1 Policy Option 1 – Environmental Permitting Option

In addition to the costs and benefits outlined in the previous sections, there are a small number of other benefits related to the Environmental Permitting option which do not readily fall under a single description. These are presented in this section.

As a result of implementing Policy Option 1, it is expected that the average number of regulatory questions received by the Environment Agency and Natural Resources Wales, relating to the relevant regulations, will be reduced by 5%. This assumption reflects the previous experience with other regimes being incorporated within the Environmental Permitting system, together with the impact of clearer guidance.

Additionally, the current legislation requires that applications for Flood Defence Consents must be determined within 2 months, or be deemed by default to have been consented. As a result, if the Environment Agency or Natural Resources Wales does not, for example, receive all the papers necessary to consider an application they will refuse consent in order to ensure flood risk management is not compromised. The applicant must then submit a new application together with a new fee. Under the Environmental Permitting regime, it will be allowable – and a lot easier – for the regulator to “stop the clock” on any incomplete application, advise the applicant of what further information is necessary, and restart the same application as appropriate. By providing more management information and centralised control, the regime should thus help reduce default refusals, and save the applicant money. These benefits have not been quantified, as fee savings are transfers but also there is

a lack of clear data regarding the current incidence of such default refusals, which may be significant.

Table 10 summarises the other benefits for each actor. The 10 year NPV is estimated to be £37k, which relates to savings to regulators from reduced enquiries, calculated as 5% of the policy team's costs, estimated at the equivalent of 3 FTE EA grade 5 staff members.

Table 10: Policy Option 1 - Summary of Other Benefits (£k)

	Actor	2015	2016	2017	2018…	…2024	TOTAL (NPV)
Benefits	Applicants	£0	£0	£0	£0	£0	**£0**
	Environment Agency/ Natural Resources Wales	£0	£3	£4	£5	£5	**£37**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£0**	**£3**	**£4**	**£5**	**£5**	**£37**

Considering the impacts on England and Wales, again the savings are split using the number of applications in Wales and England. Based on that apportionment, the savings in Wales are forecast to be £4k, and the savings in England are forecast to be £33k.

1.7.2 Policy Option 2 – Non-legislative Option

Like Policy Option 1, Policy Option 2 (the non-legislative option) is expected to incur impacts over and above those outlined in the previous sections. These cannot be satisfactorily categorised are instead included here.

As a result of clearer guidance being provided (see Section 1.2.2), it is expected that the average number of regulatory questions received by the regulator relating to the relevant regulations will be reduced by 5%. As shown in **Table 11**, this would result in £37k of benefits for the regulator being realised each year.

Table 11: Policy Option 2 - Summary of other Benefits (£k)

	Actor	2015	2016	2017	2018…	…2024	TOTAL (NPV)
Benefits	Applicants	£0	£0	£0	£0	£0	**£0**
	Environment Agency/ Natural Resources Wales	£0	£3	£4	£5	£5	**£37**
	Consultees	£0	£0	£0	£0	£0	**£0**
	Government	£0	£0	£0	£0	£0	**£0**
	Total	**£0**	**£3**	**£4**	**£5**	**£5**	**£37**

Considering the separate impacts for Wales and England, it is forecast that £4k will be received by the former and £33k will be received by the latter.

1.8 Summary of Costs and Benefits

1.8.1 Policy Option 1 – Environmental Permitting Option

Table 13 sets out where the costs and benefits are expected to be allocated. As a result of implementing Policy Option 1, over the 10 year period, a net benefit of £18.1m in NPV terms is anticipated. 82% (£14.8m) of net benefits are expected to be received by applicants, the largest beneficiary of the policy. Assuming that the sample of applicants from April-June 2012 is representative, and that there is no significant difference in the costs incurred by applicants of different types, 65% of this (£9.6m) would be received by businesses (based on the split in applicant type set out in Annex 2). The Environment Agency is expected to receive 17% (£3.0m) of the total benefits and Natural Resources Wales 3% (£258k). Consultees are expected to end up with a net cost of £6k, whilst no costs or benefits are expected for Government. [11]

[11] Please note that 'sunk costs'(i.e. those costs already occurred prior to 2015) are not included in this assessment and thus no costs or benefits are forecast for Government.

Table 12: Policy Option 1 - Summary of Net Costs and Benefits by Actor (£k)

	Actor	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Applicants*	£0	£105	£105	£105	£0	£294
	Environment Agency/ Natural Resources Wales*	£394	£25	£0	£0	£0	£418
	Consultees*	£6	£0	£0	£0	£0	£6
	Total	**£400**	**£130**	**£105**	**£105**	**£0**	**£718**
Benefits	Applicants	£0	£1,074	£1,635	£2,183	£2,195	£15,083
	Environment Agency/ Natural Resources Wales	£0	£261	£399	£533	£537	£3,687
	Consultees	£0	£0	£0	£0	£0	£0
	Total	**£0**	**£1,334**	**£2,033**	**£2,716**	**£2,732**	**£18,770**
Net Benefits	Applicants	£0	£969	£1,530	£2,078	£2,195	£14,789
	Environment Agency/ Natural Resources Wales	-£394	£235	£399	£533	£537	£3,268
	Consultees	-£6	£0	£0	£0	£0	-£6
	Total	**-£400**	**£1,204**	**£1,929**	**£2,612**	**£2,732**	**£18,051**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

A summary of the net costs and benefits by activity area is shown in Table 14. The largest share of savings is expected to result from the use of 'Standard Rules Permits' (£4.6m) as described in Section 1.3.1 and the introduction of additional exemptions and exclusions (£12.4m) as described in Section **Error! Reference source not found.**. The only activity area expected to result in a

net cost is the preparatory work laying the ground for the policy itself (-£278k) (see Section 4.3.1).

Table 14: Policy Option 1 - Summary of Net Costs and Benefits by Activity Area (£k)

	Activity	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Preparation*	£253	£25	£0	£0	£0	£278
	Simplified Guidance*	£147	£105	£105	£105	£0	£440
	Total	**£400**	**£130**	**£105**	**£105**	**£0**	**£718**
Benefits	Standard Permits	£0	£307	£492	£364	373	£2,536
	Integration of Regimes	£0	£12	£18	£24	£24	£163
	Simplified Guidance	£0	£110	£165	£220	£220	£1,515
	Exemptions and Exclusions	£0	£903	£1,354	£1,806	£1,806	£12,444
	Other Savings	£0	£3	£4	£5	£5	£37
	Total	**£0**	**£1,334**	**£2,033**	**£2,716**	**£2,732**	**£18,770**
	Total Net Benefits	**-£400**	**£1,204**	**£1,929**	**£2,612**	**£2,732**	**£18,051**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

Considering the distribution of impacts between England and Wales, it is expected that the majority of benefits are expected to fall within England. This is due to the majority of the applications relating to activities carried out in England. The total NPV for England is demonstrated in

Table 15. It is forecast that the 10 year NPV will be £16.6m.

For Wales, the savings are forecast to be proportionately less.

Table 16 shows that the 10 year NPV is forecast to be £1.5m.

Table 15: Policy Option 1 - Summary of Net Costs and Benefits by Activity Area – England (£k)

	Activity	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Preparation*	£233	£0	£0	£0	£0	£233
	Simplified Guidance*	£133	£95	£95	£95	£0	£399
	Total	**£366**	**£95**	**£95**	**£95**	**£0**	**£632**
Benefits	Standard Permits	£0	£307	£461	£614	£614	£4,232
	Integration of Regimes	£0	£11	£16	£21	£21	£148
	Simplified Guidance	£0	£100	£149	£199	£199	£1,373
	Exemptions and Exclusions	£0	£827	£1,241	£1,655	£1,655	£11,403
	Other Savings	£0	£2	£4	£5	£5	£33
	Total	**£0**	**£1,247**	**£1,871**	**£2,494**	**£2,494**	**£17,190**
	Total: Net Benefit	**-£366**	**£1,152**	**£1,1776**	**£2,399**	**£2,494**	**£16,557**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

Table 16: Policy Option 1 - Summary of Net Costs and Benefits by Activity Area – Wales (£k)

	Activity	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Preparation*	£20	£25	£0	£0	£0	£44
	Simplified Guidance*	£14	£10	£10	£10	£0	£41
	Total	**£34**	**£35**	**£10**	**£10**	**£0**	**£86**
Benefits	Standard Permits	£0	£0	£32	£48	£64	£378
	Integration of Regimes	£0	£1	£2	£2	£2	£15
	Simplified Guidance	£0	£10	£15	£21	£21	£142
	Exemptions and Exclusions	£0	£76	£113	£151	£151	£1,041
	Other Savings	£0	£0.3	£0.4	£1	£1	£3
	Total	**£0**	**£87**	**£163**	**£222**	**£238**	**£1,580**
	Total: Net Benefit	**-£34**	**£52**	**£153**	**£212**	**£238**	**£1,494**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

1.8.2 Policy Option 2 – Non-legislative Option

Table 17 sets out where the costs and benefits for Option 2 are expected to be allocated. Over a 10 year period, Policy Option 2 is expected to result in approximately £1m of net benefits (after costs) in NPV terms. All of the positive net benefits are expected to flow to applicants (£1.2m in total). The Environment Agency (-£174k) and Natural Resources Wales (-£18k), and consultees (£6k) are expected to experience a small net cost as a result of the implementation of the policy. No costs or benefits are expected for Government.

Table 17: Policy Option 2 - Summary of Net Costs and Benefits by Actor (£k)

	Actor	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Applicants*	£0	£105	£105	£105	£0	£294
	Environment Agency/ Natural Resources Wales*	£229	£0	£0	£0	£0	£229
	Consultees*	£6	£0	£0	£0	£0	£6
	Total	**£235**	**£105**	**£105**	**£105**	**£0**	**£529**
Benefits	Applicants	£0	£110	£165	£220	£220	**£1,515**
	Environment Agency/ Natural Resources Wales	£0	£3	£4	£5	£5	**£37**
	Consultees	£0	£0	£0	£0	£0	£0
	Total	**£0**	**£113**	**£169**	**£225**	**£225**	**£1,552**
Net Benefits	Applicants	£0	£5	£60	£115	£220	£1,221
	Environment Agency/ Natural Resources Wales	-£229	£3	£4	£5	£5	-£192
	Consultees	-£6	£0	£0	£0	£0	-£6
	Total	**-£235**	**£8**	**£64**	**£120**	**£225**	**£1,024**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

Table 18, shown below, summarises the costs and benefits associated with the Policy Option for each of the activity areas. The largest share of the benefits is expected to result from simplified guidance.

Table 18: Policy Option 2 - Summary of Net Costs and Benefits by Activity Area (£k)

	Activity	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Preparation*	£88	£0	£0	£0	£0	£88
	Simplified Guidance*	£147	£105	£105	£105	£0	£440
	Total	**£235**	£105	£105	£105	**£0**	**£529**
Benefits	Simplified Guidance	£0	£110	£165	£220	£220	£1,515
	Other Savings	£0	£3	£4	£5	£5	**£37**
	Total	**£0**	**£113**	**£169**	**£225**	**£225**	**£1,552**
	Total Net	**-£235**	**£8**	**£64**	**£120**	**£225**	**£1,024**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

Considering the impacts for England and Wales, like Policy Option 1, the main proportion of benefits are expected to flow to England. The 10 year NPV is forecast to be £928k for England and £96k for Wales. These are modest savings when compared to Policy Option 1.

Table 19: Policy Option 2 - Summary of Net Costs and Benefits by Activity Area – England (£k)

	Activity	2015	2016	2017	2018	…2024	TOTAL (NPV)
Costs	Preparation*	£80	£0	£0	£0	£0	£80
	Simplified Guidance*	£133	£95	£95	£95	£0	£399
	Total	**£213**	**£95**	**£95**	**£95**	**£0**	**£479**
Benefits	Simplified Guidance	£0	£100	£149	£199	£199	£1,373
	Other Savings	£0	£2	£4	£5	£5	£33
	Total	**£0**	**£102**	**£153**	**£204**	**£204**	**£1,407**
	Total Net	**-£213**	**£7**	**£58**	**£109**	**£204**	**£928**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

Table 20: Policy Option 2 - Summary of Net Costs and Benefits by Activity Area – Wales (£k)

	Activity	2015	2016	2017	2018	…202	TOTAL

						4	(NPV)
Costs	Preparation*	£8	£0	£0	£0	£0	£8
	Simplified Guidance*	£14	£10	£10	£10	£0	£41
	Total	**£22**	**£10**	**£10**	**£10**	**£0**	**£50**
Benefits	Simplified Guidance	£0	£10	£15	£21	£21	£142
	Other Savings	£0	£0.3	£0.4	£ 1	£1	£3
	Total	**£0**	**£11**	**£16**	**£21**	**£21**	**£146**
	Total Net	**-£22**	**£1**	**£6**	**£11**	**£21**	**£96**

Please note that numbers may not add due to rounding.
* indicates transitional costs (2015 – 2018)

Consultation

A joint public consultation was held by Department for Environment, Food and Rural Affairs (Defra) and Welsh Government between 10 December 2014 and 17 February 2015. This consultation lasted 10 weeks in line with the Government's consultation principles. The Environment Agency held a linked consultation at the same time on proposals for standard rules that would apply to permits for standard activities in England. (There are no standard rules permits proposed for Wales at this time.) These consultations were coordinated in order to give stakeholders a clearer idea of the complete scheme.

Out of the 53 responses received from various sectors, 74% supported the proposals described in the consultation. The majority of comments related to the detail of the standard rules permits, exemptions, exclusions, making proposals to broaden their scope and to make a number of technical amendments. As a result a series of amendments were made to improve clarity, ensure practicality or more carefully control the activity. For example, an exclusion allowing the erection of agricultural fencing was extended to cover all fencing of particular specified construction no matter its purpose. Further details are included in the Government response to points made in the consultation; https://www.gov.uk/government/consultations/making-flood-defence-consents-part-of-the-environmental-permitting-framework

Competition Assessment

The competition filter test

Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Post implementation review

The Environmental Permitting (England and Wales) Regulations 2010 have been amended 12 times thus far. The UK and Welsh Governments are working towards a revised consolidated set of Regulations.

Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

concerning

a Proposed Council Decision adopting the provisions amending the Act concerning the election of the members of the European Parliament by direct universal suffrage ("the proposal")[18]

1. The UK House of Commons firstly notes that Protocol No 2 on the application of the principles of subsidiarity and proportionality (the Protocol) applies to the proposal since it is an "initiative from the European Parliament"[19] and a "draft legislative act".[20] The European Parliament is therefore subject to the obligations set out in Articles 1, 4, 5 and 7 of the Protocol.

2. The House of Commons considers that the proposal fails to meet the requirements of Article 5(3) TEU[21] and the Protocol for the following reasons:

a) It fails to comply with essential procedural requirements set out in Article 5 of the Protocol. This states that:

> *"any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact, and in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative, and whenever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved."*

The European Parliament fails to provide this detailed statement within the draft legislative act itself as this does not contain any substantive recitals.

18 Council document: Unnumbered; European Parliament document: 2015/0907/APP.

19 Article 3.

20 This proposal is based on Article 223 (1) TFEU, which specifies a "special legislative procedure" and does not fall within the exclusive competence of the Union.

21 Article 5(3) TEU provides that "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional or local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level".

b) As the Resolution[22] of the European Parliament and the "European Added Value Assessment on the Reform of the Electoral Law of the European Union"[23] are not included in the draft legislative act, the House of Commons does not consider that they meet the requirements of Article 5 of the Protocol. In any event, the substantiation they provide is insufficient to enable national Parliaments to assess compliance of the proposal with subsidiarity principle. This is because:

   i) The Resolution is mostly of a general and theoretical nature and not all of the individual proposals made in the draft legislative act have been specifically justified, either on a quantitative or qualitative basis (for example, ineligibility of members of regional parliaments and assemblies with legislative powers to become MEPs, replacing unanimity by QMV for implementing measures and posting of election materials to voters); and

   ii) The "European Added Value Assessment does not provide sufficient substantiation. For example, apart from some very broad consideration of cost implications for Member States to implement electronic voting, the document does not contain other "*assessment of the proposal's financial impact*". Page 13 of the Assessment makes clear that such assessment of "feasibility" that is provided, is focussed on assessing how proposals will meet the unanimity and ratification requirement of Member States and the diversity of national electoral law on EP elections, despite the recognition that the measures could have "to varying degrees, have impacts on Member States, national political parties as well as citizens". So there is little assessment of the burdens that will be placed on national electoral bodies as a result of measures proposed.[24] Furthermore, the document does not address all the measures in the proposal (in particular, those on a common deadline for the electoral roll– Article 1(4) of the Proposal and ineligibility of members of regional parliaments and assemblies to be MEPs – Article 1(8) of the Proposal.). Yet it does address measures that are not included in the proposal (common voting day and minimum voting age of 16). In any case, it is not linguistically accessible to all national parliaments[25] nor it is integrated into the more linguistically accessible Resolution. The House sets out further examples of deficiencies in the European Added Value Assessment in the substantive subsidiarity objections which follow.

3. The House of Commons recognises as the objective of both Article 223(1) TFEU and this proposal of creating a uniform procedure for direct universal suffrage to the European Parliament in order to enhance its democratic legitimacy through electoral equality. However, it does not consider that the objective requires harmonisation at a level of detail that in fact detracts from that legitimacy by divorcing the European Parliament's electoral procedure from that which is well-established and recognised in Member States.

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22 This accompanies, but is not part of the proposal i.e. the draft legislative act.

23 This is only referenced by the Resolution: "The Reform of the Electoral Law of the European Union: a European Added Value Assessment" produced by the EU Added Value Unit of the European Parliamentary Research Service, September 2015.

24 There is some recognition in relation to the common minimum deadline for establishing candidate lists at national level that having a different deadline to the domestic electoral deadlines could "put pressure on domestic electoral bureaucracies and parties, especially the smaller ones" (P.16).

25 It has not been translated into all the official languages of the EU and it only available in English, French, German and Polish).

4. With this in mind, the House raises the following specific objections to EU level action on the grounds that the measures in question do not comply with the principle of subsidiarity[26]:

a) Given the wide diversity of types of elected bodies that exist at sub-national level across Member States and their range of powers, we consider it more appropriate to leave to Member States the question of whether to make members of regional parliaments and assemblies "vested with legislative powers" ineligible to become MEPs (Article 1(8) of the proposal). There is also no assessment of the impacts of such a prohibition and no identification of any expected benefits in either the Resolution or the European Added Value Assessment;

b) As the "European Added Value Assessment" itself recognises, the question of gender equality of candidates (Article 1(4) of the proposal) is a matter which is politically sensitive for Member States and that a "softer, non-binding approach" would be "wiser"[27]. A simple requirement to ensure the gender equality of candidates implies the need for legal quotas which would, in our view, require further consideration and assessment.

c) There is potential for a decreased voter turnout in the UK for EP elections if certain administrative inconsistencies created between EU and national arrangements by the proposal meant that the UK could no longer combine them with local elections. Such inconsistences might arise in relation to common deadlines for both lists of candidates and electoral rolls (Article 1(4) of the Proposal). This would undermine the EP's objective of increasing voter participation in the elections (Preamble B and E of the Resolution). The House notes that it is only in relation to common deadlines for candidate lists that the potential burden of different electoral practices required by the proposal on national electoral bureaucracies is recognised by the European Added Value Assessment (Page 16). Even then, it is dismissed on the grounds that this would only be a five-yearly burden and that differences would mark out the EP elections as being distinct from other elections, without any attempt to quantify the burdens to be imposed or demonstrates why this distinction promotes the objective;

d) The European Parliament would like Member States to use electronic voting at EP elections (Article 1(5) of the proposal). The fact that this is on a non-mandatory basis[28] does not exempt the European Parliament from the obligation to provide sufficient subsidiarity justification of the measure for those Member States who may adopt the measure as a result of the proposal. The House considers that the consideration of costs implications in the European Added Value Assessment on this measure is limited and unclear: the Assessment acknowledges the lack of empirical evidence linking voter turnout and electronic voting and, in default, the sole example of one Member State, Estonia, having used the system in the EP elections of 2009 and 2014 is used to justify the recommendation for all. This is despite the fact that although in 2009 turnout in that country increased by 16% compared with 2004, there was then a 7% decrease in

26 Article 5(3) TEU.

27 See footnote 6, p.29.

28 Though the consequential requirement to ensure the reliability of the result, secrecy of the vote and data protection is itself mandatory.

2014. The recommendation is also made despite the adverse experience of the Netherlands in piloting a system which was insecure, the German Constitutional Court having declared it unconstitutional and a generalised conclusion based on a study by one Member State[29] that electronic voting if used as a substitute for paper voting, could be more cost-effective (Pages 26, 27 and 28 of the Assessment). However, the House notes that the UK Government considers that the costs of implementing electronic voting in the UK could be "substantial"[30] and is also concerned that the uncertain integrity of electronic voting systems and the attendant risk of electoral fraud could undermine the EP's objective of increasing its own democratic legitimacy (Preamble B of the Resolution); and

e) The European Value Assessment provides unclear substantiation of the need for a mandatory 3-5% mandatory threshold for gaining a seat in the European Parliament (Article 1(3) of the Proposal). It describes the legal practice of mandatory electoral thresholds as "widespread" in Member States but the evidence it provides indicates that only 15 Member States have already introduced the required threshold (Page 17 of the Assessment). But the remaining 13 Member States not adopting that practice represent a sizeable number of non-practising Member States. The evident varied practice of Member States and their differing political and electoral circumstances suggests that this is a matter best decided at national level. The House also considers that such a requirement could undermine the European Parliament's objective of enhancing its democratic legitimacy (Preamble B and E of the Resolution) and broadening its composition if, as a consequence, it excludes minority and independent candidates.

29 A study by published by the French Senate but which is not accessible from the link provided.

30 See para 41 of the Explanatory Memorandum of the Minister for Europe of the UK Government (Mr David Lidington) of 4 January 2016.

Joint Committee on Human Rights
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From Rt Hon Harriet Harman MP, Chair

Rosemary Butler AM
Presiding Officer
National Assembly for Wales
Cardiff Bay
CN99 1NA

27 January 2015

Dear Rosemary,

I am writing to draw your attention to a letter I have sent to the Lord Chancellor following a recent visit by the Joint Committee on Human Rights to Edinburgh. During this visit, the Committee's attention was drawn to the need to ensure that the Scottish Parliament and the other devolved institutions, along with their committees and other relevant public bodies, are given a full opportunity to contribute to the Government's forthcoming consultation on its proposal to repeal the Human Rights Act and replace it with a British Bill of Rights.

You will see from my letter to Mr Gove that the JCHR has sought assurances from him that "no part of the consultation period will overlap with the period where purdah applies or the Scottish Parliament will be dissolved". I added that "clearly this will be a matter of importance not only for Scotland but also for Wales and Northern Ireland".

If the National Assembly for Wales or any of its committees wish to submit views on this matter, or on the Government's proposals, to the JCHR, I and my colleagues would be most happy to receive them, before or after the launch of the Government's consultation.

Yours sincerely,

Harriet Harman

Rt Hon Harriet Harman
Chair of the Joint Committee on Human Rights

Joint Committee on Human Rights
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From Rt Hon Harriet Harman MP, Chair

Rt Hon Michael Gove MP
Lord Chancellor and Secretary of State for Justice
102 Petty France
London
SW1H 9AJ

20 January 2015

Dear Michael,

I am writing following the visit last week of the Joint Committee on Human Rights to Edinburgh. The Committee took the opportunity to meet with the Scottish Parliament's European and External Relations Committee, the Scottish Human Rights Commission, representatives from NGOs, academics and lawyers to discuss, amongst other things, the Government's proposal to repeal the Human Rights Act and replace it with a Bill of Rights.

We are concerned to ensure that the voice of Scotland is fully heard as you consider how to take this proposal forward. It is not just that they need to have their say, we need to be able to hear from them to benefit from their views and experience.

It is now under 10 weeks till the commencement of purdah in respect of the Scottish Parliament election, when the Scottish Parliament will be dissolved. The Scottish Parliament has, through its European and External Relations Committee, considered the issue of the the potential implications for Scotland of the repeal of the Human Rights Act and its replacement with a British Bill of Rights in some considerable depth. Your consultation would undoubtedly benefit from their contribution. But bearing in mind the delay in publication of the consultation document it might be the case that they would not be able to comment as the consultation will overlap with purdah. This would clearly inhibit the possibility of taking note of, and learning from, the specific and different cultural traditions – particularly of Scotland and Northern Ireland.

We note your previous promise to us to engage with the devolved administrations and consult with all citizens of the United Kingdom, in your letter dated 27 November. Accordingly, we would like to seek your assurances that no part of the consultation period will overlap with the period where purdah applies or the Scottish Parliament will be dissolved. I would ask for a response at your earliest opportunity as clearly this will be a matter of importance not only for Scotland but also for Wales and Northern Ireland.

Yours sincerely,

Harriet Harman

Rt Hon Harriet Harman
Chair of the Joint Committee on Human Rights

cc. Rt Hon Oliver Letwin MP

Llywodraeth Cymru
Welsh Government

www.llyw.cymru

Adroddiad ar weithredu cynigion Comisiwn y Gyfraith

Chwefror 2016

Cyflwynwyd i Gynulliad Cenedlaethol Cymru yn unol ag Adran 3C Deddf Comisiynau'r Gyfraith 1965 fel y'i mewnosodwyd gan Adran 25 Deddf Cymru 2014.

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Cynnwys

Cyflwyniad

Mae'n bleser gennyf gyflwyno'r adroddiad hwn sy'n ymwneud â gweithredu cynigion Comisiwn y Gyfraith. Hwn yw'r adroddiad blynyddol cyntaf i'w gyflwyno yn dilyn pasio Deddf Cymru 2014.

Mae Deddf Cymru 2014, a ddaeth i rym ar 17 Chwefror 2015, yn diwygio Deddf Comisiynau'r Gyfraith 1965 i roi dyletswydd ar Weinidogion Cymru i gyflwyno adroddiad i Gynulliad Cenedlaethol Cymru bob blwyddyn ar y graddau y mae cynigion Comisiwn y Gyfraith sy'n gysylltiedig â materion sydd wedi'u datganoli i Gymru wedi'u gweithredu gan Weinidogion Cymru. Mae'r adroddiad hwn yn cwmpasu'r cyfnod o 17 Chwefror 2015 i 16 Chwefror 2016.

Mae Deddf Cymru 2014 hefyd yn darparu'r sail statudol ar gyfer y protocol rhwng Gweinidogion Cymru a Chomisiwn y Gyfraith. Cytunwyd ar y protocol hwn ym mis Gorffennaf 2015 ac mae'n cyflwyno sut y dylai Gweinidogion Cymru a Chomisiwn y Gyfraith gydweithio ar brosiectau diwygio'r gyfraith.

Mae Llywodraeth Cymru yn ymrwymedig i ddeddfwriaethau Cymru sy'n gyson â'r rheol gyfreithiol, sy'n effeithiol ac yn hygyrch i'r dinesydd cyffredin. Mae gwaith Comisiwn y Gyfraith yn elfen hollbwysig o'r ymdrech hon, ac rwy'n falch iawn bod Deddf Cymru 2014 a'r protocol yn rhoi hyn ar sail statudol.

Mae'r adroddiad hwn yn dangos bod Llywodraeth Cymru yn gweithredu gwaith rhagorol Comisiwn y Gyfraith. Am y tro cyntaf yn hanes Comisiwn y Gyfraith, mae'r Ddeuddegfed Rhaglen o Ddiwygio'r Gyfraith yn cynnwys prosiectau sy'n ymwneud yn unig â materion sydd wedi'u datganoli i Gymru. Yr wyf yn edrych ymlaen at ganlyniad yr adolygiad o gyfreithiau cynllunio yng Nghymru, yn ogystal â'r prosiect ymgynghorol ar ffurf a hygyrchedd cyfreithiau sy'n berthnasol yng Nghymru. Credaf y bydd y prosiectau hyn yn arwain y gwaith o weithredu cynigion pellach Comisiwn y Gyfraith yn y blynyddoedd i ddod.

Y Gwir Anrhydeddus Carwyn Jones AC
Prif Weinidog Cymru

16 Chwefror 2016

Cwmpas yr adroddiad

1. Mae Adran 3C Deddf Comisiynau'r Gyfraith1965, fel y'i mewnosodwyd gan Adran 25 Deddf Cymru 2014, yn rhoi dyletswydd ar Weinidogion Cymru i adrodd i Gynulliad Cenedlaethol Cymru bob blwyddyn ar y graddau y mae cynigion Comisiwn y Gyfraith wedi'u gweithredu gan Lywodraeth Cymru.

2. Hwn yw'r adroddiad blynyddol cyntaf i'w gyhoeddi gan Weinidogion Cymru o dan y Ddeddf. Mae'r adroddiad yn cwmpasu'r cyfnod o 17 Chwefror 2015 i 16 Chwefror 2016.

3. Fel y nodir yn y Ddeddf, mae'r adroddiad yn cwmpasu cynigion Comisiwn y Gyfraith sy'n ymwneud â materion datganoledig, sydd wedi'u gweithredu gan Lywodraeth Cymru yn ystod y flwyddyn, cynigion sy'n ymwneud â materion sydd wedi'u datganoli i Gymru nad ydynt wedi'u gweithredu, yn cynnwys cynlluniau i weithredu a phenderfyniadau a gymerwyd i beidio gweithredu cynigion.

4. Mae'r adroddiad ond yn cwmpasu adroddiadau Comisiwn y Gyfraith Cymru a Lloegr, i'r graddau y maent yn berthnasol i faterion sydd wedi'u datganoli i Gymru.

Cynigion sydd wedi'u gweithredu

Diwygio'r Sector Tai Rhent

5. Mae Deddf Rhentu Cartrefi (Cymru) 2016 yn seiliedig ar Fil drafft a ddarparwyd gan Gomisiwn y Gyfraith ar ôl iddynt gwblhau eu prosiect i ddiwygio'r sector tai rhent. Derbyniodd Comisiwn y Gyfraith gais gan Lywodraeth Cymru i adolygu a diweddaru ei argymhellion i ddiwygio cyfreithiau tai, o ganlyniad i ymrwymiad Llywodraeth Cymru i gyflwyno, yn ystod oes y Cynulliad presennol, bil tai a oedd wedi'i fodelu'n agos ar gynigion Comisiwn y Gyfraith. Ar 9 Ebrill 2013, cyhoeddodd Comisiwn y Gyfraith eu Hadroddiad ar Rentu Cartrefi yng Nghymru.

6. Cyflwynwyd y Bil Rhentu Cartrefi (Cymru) i'r Cynulliad ar 9 Chwefror 2015, a derbyniodd Gydsyniad Brenhinol ar 18 Ionawr 2016.

7. Y Ddeddf hon yw un o ddarnau o ddeddfwriaeth fwyaf arwyddocaol y Cynulliad hwn, a bydd yn helpu dros un filiwn o bobl yng Nghymru sy'n rhentu eu cartrefi. Mae'r Ddeddf yn gwella a symleiddio'r trefniadau ar gyfer rhentu cartrefi drwy ddisodli nifer o'r darnau gwahanol a chymhleth o ddeddfwriaeth gydag un ddeddfwriaeth. Mae hefyd yn disodli'r nifer fawr o wahanol fathau o denantiaethau a thrwyddedau gyda dim ond dau fath o gontract - un ar gyfer y sector rhentu preifat ac un ar gyfer y sector rhentu cymdeithasol.

Gofal Cymdeithasol Oedolion

8. Mae Deddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 yn gweithredu'r mwyafrif o'r argymhellion a wnaed yn adroddiad Comisiwn y Gyfraith yn 2011 ar Ofal Cymdeithasol Oedolion. Derbyniodd y Ddeddf Gydsyniad Brenhinol ym mis Mai 2014 a bydd yn dod i rym ar 1 Ebrill 2016.

Rheoleiddio Gweithwyr Iechyd a Gofal Cymdeithasol Proffesiynol

9. Cafodd Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ei llywio gan adroddiad 2014 a bil drafft Comisiwn y Gyfraith ar reoleiddio gweithwyr iechyd yn y DU a gweithwyr cymdeithasol yn Lloegr. Roedd adroddiad Comisiwn y Gyfraith yn darparu tystiolaeth bwysig a chanllawiau ar gyfer datblygu rheoleiddio'r gweithlu yn y Ddeddf, sy'n gwella ansawdd y gofal a'r cymorth yng Nghymru ac yn atgyfnerthu diogelwch i ddinasyddion.

10. Cyflwynwyd y Bil ar 23 Chwefror 2015 a derbyniodd Gydsyniad Brenhinol ar 18 Ionawr 2016.

11. Mae'r Ddeddf yn diwygio'r gyfundrefn reoleiddio ar gyfer gwasanaethau gofal a gwasanaethau cymorth, ac mae'n sefydlu gofynion ar gyfer awdurdodau lleol a Gweinidogion Cymru i gynnal asesiadau o sefydlogrwydd y sector yn y dyfodol. Mae'n diwygio'r gyfundrefn arolygu ar gyfer swyddogaethau gwasanaethau cymdeithasol awdurdodau lleol, ac mae'n ailffurfio ac yn ailenwi Cyngor Gofal Cymdeithasol yn Gofal Cymdeithasol Cymru, ac yn ehangu ei gylch gwaith. Mae'r Ddeddf hefyd yn diffinio'r broses o reoleiddio'r gweithlu gofal cymdeithasol.

Rheolaeth amgylcheddol dros anifeiliaid a rhywogaethau planhigion

12. Yn Chwefror 2014, cyhoeddodd Comisiwn y Gyfraith adroddiad, 'Wildlife Law: Control of Invasive Non-native Species' (fel rhan o'i adolygiad o gyfreithiau bywyd gwyllt). Cafodd yr elfen benodol hon o brosiect cyffredinol ar gyfreithiau Bywyd Gwyllt ei datblygu ymhellach ar gais Adran yr Amgylchedd, Bwyd a Materion Gwledig Llywodraeth y DU a Gweinidogion Cymru, er mwyn rhoi ystyriaeth gynharach i gyflwyno deddfwriaeth ar y mater.

13. Mae Rhan IV Deddf Seilwaith (DU) 2015 yn darparu ar gyfer Cytundebau Rheoli Rhywogaethau a Gorchmynion Rheoli Rhywogaethau ar gyfer rhywogaethau estron goresgynnol o anifeiliaid neu blanhigion, a chafodd ei llywio gan adroddiad 2014 Comisiwn y Gyfraith. Dechreuodd Rhan IV y Ddeddf ar 12 Ebrill 2015 mewn cysylltiad â Chymru.

Cynigion nad ydynt wedi'u gweithredu hyd yma

Cyfraith Bywyd Gwyllt

14. Cynigiwyd prosiect cyfraith bywyd gwyllt gan Adran yr Amgylchedd, Bwyd a Materion Gwledig Llywodraeth y DU i'w gynnwys yn Unfed Raglen ar Ddeg Comisiwn y Gyfraith o Ddiwygio'r Gyfraith. Mae'r prosiect yn cynnwys ystyried y gyfraith sy'n ymwneud â chadwraeth, rheoli, diogelu ac ecsbloetiaeth bywyd gwyllt yng Nghymru a Lloegr. Y cylch gorchwyl oedd: *Adolygu'r gyfraith ar warchod, rheoli, defnyddio a lles bywyd gwyllt yng Nghymru a Lloegr, a gwneud argymhellion i'w symleiddio a'i moderneiddio.*

15. Roedd y prosiect yn ymwneud â fframwaith y gyfraith, yn hytrach na newidiadau i'r polisi presennol. Felly, gofynnwyd i Gomisiwn y Gyfraith lunio cynigion nad oes angen iddynt wyro oddi wrth y polisi presennol, ac eithrio pan fydd angen hynny i wella cydymffurfiaeth â Chyfarwyddebau Ewropeaidd (Cyfarwyddebau Cynefinoedd ac Adar)

16. Cyhoeddodd Comisiwn y Gyfraith ei adroddiad terfynol a'i Fil drafft ar gynigion i ddiwygio cyfreithiau bywyd gwyllt yng Nghymru a Lloegr ym mis Tachwedd 2015. Roedd yr adroddiad yn cynnwys 287 o argymhellion, nifer ohonynt o natur dechnegol a chymhleth.

17. Mae Gweinidogion Cymru yn ystyried cynigion Comisiwn y Gyfraith yn awr.

Prosiectau Presennol Comisiwn y Gyfraith

18. Mae nifer o brosiectau Comisiwn y Gyfraith sy'n ymwneud â materion sydd wedi'u datganoli i Gymru yn cael eu cynnal yn awr fel rhan o'r Ddeuddegfed Rhaglen o Ddiwygio'r Gyfraith. Mae un prosiect, sy'n ymwneud â Chyfraith Etholiadol, yn cwmpasu'r DU gyfan ac mae'n brosiect teiran sy'n cael ei chynnal ar y cyd gyda Chomisiwn y Gyfraith yr Alban a Chomisiwn y Gyfraith Gogledd Iwerddon.

19. Felly, bydd y cynigion a wneir yn y prosiectau hyn yn destun adroddiadau yn y dyfodol ac fe'u nodir isod er gwybodaeth.

Rheoli cynllunio a datblygiadau yng Nghymru

20. Mae'r prosiect hwn yn adolygu'r gyfraith ar gynllunio gwlad a thref yng Nghymru, a bydd yn gwneud argymhellion i symleiddio a moderneiddio'r gyfraith, gan ystyried y rhaglen bresennol o ddiwygiadau drwy Ddeddf Cynllunio (Cymru) 2015. Er bod y cylch gorchwyl yn eang, ffocws gwreiddiol y prosiect oedd rheoli datblygiadau a pherthynas hyn gyda'r system cynlluniau datblygu.

21. Er mwyn hysbysu'r prosiect, cynhaliodd y Comisiwn archwiliad beirniadol o'r ffordd y mae'r broses rheoli datblygiadau yn gweithredu yn y gyfraith ac yn ymarferol, ac archwilio'r posibilrwydd o atgyfnerthu'r cyswllt rhwng rheoli datblygiadau a llunio cynlluniau.

22. Wrth gynnal yr ymarferiad hwn, ni wnaeth y Comisiwn ganfod unrhyw wendidau sylfaenol yn y system rheoli datblygiadau nac angen brys am ddiwygiadau sylweddol. Fodd bynnag, roedd yn amlwg bod angen proses ehangach o symleiddio'r gyfraith. Yn benodol, fe ddangosodd yr adolygiad bod y gyfraith yn ddiangen o gymhleth ac, mewn mannau, yn anodd ei deall.

23. O ganlyniad, cafodd y prosiect ei ailstrwythuro i ganolbwyntio ar ddarparu deddfwriaeth gynllunio sydd wedi'i hatgyfnerthu a'i symleiddio. Bydd yn darparu argymhellion ar dermau deddfwriaeth gynllunio yng Nghymru sydd wedi'i symleiddio a'i hatgyfnerthu, er mwyn disodli ac integreiddio deddfwriaeth bresennol i Ddeddf neu Ddeddfau cynllunio newydd i Gymru.

24. Bydd Comisiwn y Gyfraith yn cyhoeddi papur cwmpasu yn ystod gwanwyn 2016, a fydd yn ceisio sefydlu graddau'r diwygiadau sydd eu hangen i'r deddfwriaethau cynllunio o safbwynt symleiddio ac atgyfnerthu. Bydd papur ymgynghori mwy manwl yn dilyn hyn.

Ffurf a Hygyrchedd y gyfraith sy'n berthnasol yng Nghymru: prosiect ymgynghorol

25. Mae'r prosiect hwn yn ystyried y trefniadau presennol ar gyfer ffurf, cyflwyniad a hygyrchedd y gyfraith sy'n ymwneud â Chymru, a bydd yn gwneud argymhellion i sicrhau gwelliannau i'r agweddau hynny o'r gyfraith bresennol a deddfwriaethau yn y dyfodol.

26. Cyhoeddwyd papur ymgynghori ym mis Gorffennaf 2015, a oedd yn ystyried nifer o faterion yn cynnwys atgyfnerthu, cyfundrefnu, systemau effeithiol ar gyfer creu cyfreithiau, prosesau i alluogi llunwyr polisi a chyfreithiau i gymryd golwg mwy ystyriol o'r iaith Gymraeg yn y broses o greu cyfreithiau a sicrhau bod deddfwriaethau yn fwy hygyrch i'r cyhoedd.

27. Daeth yr ymgynghoriad i ben ym mis Hydref 2015 a disgwylir i'r adroddiad, a fydd yn gwneud argymhellion i Lywodraeth Cymru, gael ei gyhoeddi yn ystod gwanwyn 2016.

Cyfraith Etholiadol

28. Mae Comisiwn y Gyfraith yng Nghymru, Lloegr, yr Alban a Gogledd Iwerddon yn adolygu cyfraith etholiadol yn awr a byddant yn gwneud argymhellion ar gyfer newidiadau. Nodau'r prosiect yw atgyfnerthu ffynonellau niferus presennol cyfraith etholiadol, a moderneiddio a

symleiddio'r gyfraith, a'i gwneud yn fwy addas ar gyfer etholiadau yn yr 21ain ganrif.

29. Disgwylir i'r adroddiad terfynol a'r Bil gael eu cyhoeddi ar ddechrau 2017. O dan gynigion a gyhoeddir gan Lywodraeth y DU yn y fersiwn drafft o Fil Cymru, byddai Cynulliad Cenedlaethol Cymru yn sicrhau cymhwysedd deddfwriaethol yn ystod 2017 o ran etholiadau'r Cynulliad a llywodraeth leol Cymru. Ar y rhagdybiaeth y bydd hyn yn digwydd, yna Llywodraeth Cymru a'r Cynulliad Cenedlaethol fyddai'n ystyried hyn, a phe byddai'n briodol gweithredu mewn deddfwriaeth, argymhellion yr adroddiadau am eu bod yn berthnasol i etholiadau'r Cynulliad a llywodraeth leol yng Nghymru.

Galluedd Meddyliol a Cholli Rhyddid

30. Mae Adran Iechyd Llywodraeth y DU wedi noddi prosiect Comisiwn y Gyfraith ar y gyfraith galluedd meddyliol a cholli rhyddid. Mae'r prosiect yn ymwneud â chyfraith galluedd meddyliol yng Nghymru a Lloegr a Gweinidogion Cymru sy'n gyfrifol am lunio'r rheoliadau ar gyfer Cymru o dan y Trefniadau Diogelu Rhag Colli Rhyddid. Mae cymhwysedd deddfwriaethol ar gyfer iechyd meddwl wedi'i ddatganoli i Gymru hefyd.

31. Cyhoeddodd Comisiwn y Gyfraith bapur ymgynghori ar 7 Gorffennaf 2015 sydd wedi dod i ben yn awr. Disgwylir adroddiad terfynol, a fydd yn cynnwys argymhellion a Bil drafft yn 2016.

Penderfyniadau a gymerwyd i beidio gweithredu

32. Nid oes unrhyw gynigion gan Gomisiwn y Gyfraith sy'n ymwneud â materion sydd wedi'u datganoli i Gymru y mae Gweinidogion Cymru wedi penderfynu peidio eu gweithredu.

House of Commons

Public Administration and Constitutional Affairs Committee

The Future of the Union, part one: English Votes for English laws

Fifth Report of Session 2015–16

HC 523

House of Commons

Public Administration and Constitutional Affairs Committee

The Future of the Union, part one: English Votes for English laws

Fifth Report of Session 2015–16

Report, together with formal minutes relating to the report

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The Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

Current membership

Mr Bernard Jenkin MP *(Conservative, Harwich and North Essex) (Chair)*

Ronnie Cowan MP (*Scottish National Party, Inverclyde*)

Oliver Dowden MP (*Conservative, Hertsmere*)

Paul Flynn MP (*Labour, Newport West*)

Rt Hon Cheryl Gillan MP (*Conservative, Chesham and Amersham)*

Kate Hoey MP (*Labour, Vauxhall*)

Kelvin Hopkins MP (*Labour, Luton North*)

Rt Hon David Jones MP (*Conservative, Clwyd West*)

Gerald Jones MP (*Labour, Merthyr Tydfil and Rhymney*)

Tom Tugendhat MP (*Conservative, Tonbridge and Malling*)

Mr Andrew Turner MP (*Conservative, Isle of Wight*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/pacac and by The Stationery Office by Order of the House.

Evidence relating to this report is published on the relevant inquiry page of the Committee's website.

Committee staff

The current staff of the Committee are: Dr Rebecca Davies (Clerk); Ms Rhiannon Hollis (Clerk); Ms Laura Criddle (Second Clerk); Dr Adam Evans (Committee Specialist); Ms Luanne Middleton (Committee Specialist); Dr Henry Midgley; (Committee Specialist); Ms Penny McLean (Committee Specialist); Ms Jane Kirkpatrick (PSA Intern), Ana Ferreira (Senior Committee Assistant); James Camp (Committee Assistant); and Mr Alex Paterson (Media Officer).

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Contents

1 Introduction: EVEL and the Future of the Union

1. Our predecessor committee, PASC re-acquired its broader remit in the new Parliament, and has been renamed Public Administration and Constitutional Affairs Select Committee (PACAC) to reflect this.[1] During this Parliament, PACAC is undertaking a range of inquiries, which will address the broader consequences of devolution to the parliaments or assemblies of Scotland, Wales and Northern Ireland for the future of the Union of the United Kingdom of Great Britain and Northern Ireland, and decentralisation to London and other Local Government entities in England. This is urgent following the Scottish Independence Referendum of September 2014.[2] PACAC launched a multi-phase inquiry entitled 'The Future of the Union' on 21 July 2015.[3] This is the first of the series of Reports we will publish in the course of that inquiry.[4]

2. In 1979, the then Labour Government brought forward a set of proposals for devolution to Scotland and Wales. These proposals were subsequently defeated in referendums and the issue of devolution was put to one side at Westminster.[5] Following the 1997 General Election, the new Labour Government once again brought forward a set of proposals for devolution to Scotland and Wales. This time, the Government's proposals also included plans for a measure of devolution to Northern Ireland, and for the creation of a London Mayor and Assembly.[6] All were approved through referendums in 1997/98. The Government also later published plans for regional government in England and the creation of regional Assemblies in England. A referendum was held in the North East in 2004, but the proposals were rejected by a margin of 78% to 22%.[7]

3. Since then, the devolution settlements in Scotland and Wales have evolved: the Scotland Act 2012 granted further tax raising powers to the Scottish Parliament, while the Government of Wales Act 2006 and Wales Act 2014 devolved primary law making,

1 Standing Order No.146, as agreed by the House of Commons on 5 June 2015, reconstituted what was the Public Administration Select Committee as the Public Administration and Constitutional Affairs Committee. The Committee's remit is "to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs."

2 The Scottish independence referendum, held on 18 September 2014, saw voters in Scotland vote against independence by a margin of 55.3% to 44.7%. The turnout was 84.6%.

3 For the terms of reference for our inquiry into English Votes for English Laws and the Future of the Union, see: EVEL

4 In the current phase of this inquiry, PACAC is looking at Inter-institutional relations in the UK

5 In 1979, Scotland voted in favour of a devolved assembly (by a margin of 51.6% to 48.4%), however, as a result of the requirement that a yes vote should constitute at least 40% of the eligible electorate, the referendum failed to see the implementation of the 1978 Scotland Act (which was subsequently repealed). In contrast, Wales voted comprehensively against devolution, by a margin of 79.7% to 20.3%.

6 Devolution to Northern Ireland was one strand of the Good Friday process, the other two strands focused on Northern Ireland's relationship with the Republic of Ireland and the relationship between the United Kingdom and the Republic of Ireland. Two referendums were held on the implementation of the Good Friday Agreement, one in Northern Ireland and the other in the Republic of Ireland. The Northern Ireland referendum endorsed the Good Friday Agreement by a margin of 71.1% to 28.9%, on an 81.1% turnout. In London, the referendum on the creation of the Greater London Authority (consisting of a Mayor and Assembly) were approved by a margin of 72% to 28%, on a turnout of 34.6%.

7 On Thursday 4 November 2004, voters in the North East of England rejected the Government's proposal to establish a regional assembly by a margin of 78% to 22%. The turnout in this referendum was 47.8% of the region's 1.9 million voters.

and some tax raising, powers to the National Assembly for Wales (NAW).[8] However, until 2015, there have been no Government proposals to address the 'English' question and the anomaly created by national devolution to Scotland and Wales—that MPs representing constituencies in Scotland can vote in Westminster on policy issues which are devolved to Scotland—and where Westminster legislation only applies in England.[9]

4. Whilst in opposition, the Conservative Party undertook a series of internal reviews considering how to address the West Lothian question (see paragraph 15 of this Report), and what some now call the English question. The Conservative Government has since brought forward a series of proposals for decentralisation to Cities within England and has introduced a system of English Votes for English Laws through changes to the House of Commons' Standing Orders.[10]

5. However, the implementation of proposals to decentralise power to Cities and Combined Authorities in England does not address the anomaly created by devolution to Scotland, Wales and Northern Ireland i.e. the ability of those Members to vote in Westminster on policy affecting England only. This was brought into sharp focus in the debate leading up to the Scottish Independence Referendum in 2014.

6. On the morning of 19 September 2014, a few hours after Scotland had voted against Independence, the Prime Minister made a statement on the steps of Downing Street in which he announced the formation of the cross-party 'Smith Commission' to consider the further devolution of tax, spending and welfare powers to the Scottish Parliament.[11] In that statement, the Prime Minister also added an endorsement of the principle behind English Votes for English Laws (EVEL); "as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland

8 The Scotland Act 2012 provided the Scottish Parliament with the power to raise or lower income tax by ten pence in the pound, subject to a 'lockstep' whereby changes in one rate would also have to apply to the other two main rates of income tax, alongside the devolution of responsibility for minor taxes such as the landfill tax and stamp duty land tax, enhanced borrowing powers and increased competence over a limited range of areas including drugs and airguns The Government of Wales Act 2006 formally separated the National Assembly for Wales and Welsh Government as two separate bodies, banned dual candidacy on both the list and constituency ballots at Assembly elections, and provided a two stage approach for the Assembly to acquire primary law making powers. The first stage enabled the Assembly to bid for legislative competence to be devolved on a case by case basis by Westminster, via Legislative Competence Orders, so long as this bid fell within the subject areas already devolved to the Assembly. The Act provided that following a referendum, the Assembly could move to the second stage of legislative devolution, with legislative competence devolved outright in those devolved subject areas. The Wales Act 2014 devolved responsibility for minor taxes such as stamp duty land tax and the landfill tax to the Assembly and, pending a referendum, provided for the partial devolution of income tax powers.

9 The West Lothian Question also applies to MPs representing Welsh seats in relation to votes on policy matters that are otherwise devolved to the National Assembly for Wales (NAW), but it has been mostly associated with MPs representing Scottish constituencies.

10 The Cities and Local Government Devolution Bill (currently awaiting Royal Assent) allows for the delivery of bespoke devolution packages to Local Authorities in England that have agreed to form Mayoral Combined Authorities. The Greater Manchester deal, for example, provides for the devolution of powers relating to strategic planning, transport, business support budgets, the Apprenticeship Grant and Health and Social Care to the new Mayor of Greater Manchester and the Greater Manchester Combined Authority.

11 Other Committees in both Westminster and the Scottish Parliament have conducted inquiries into the Smith process. The Scottish Affairs Committee are currently conducting an inquiry into the Fiscal Framework that will be a key feature of the Scottish Parliament's new tax powers and have previously held an inquiry into the Smith Commission proposals. The Devolution (Further Powers) Committee in the Scottish Parliament has also inquired widely into the Smith Commission and the Fiscal Framework.

must have a bigger say over theirs".[12] For England this meant taking forward "the question of English votes for English laws… in tandem with, and at the same pace as" the process of extending devolution in Scotland.[13]

7. The UK has undergone major constitutional reform since 1997, which has radically altered the UK's constitution, but which has also resulted in some unintended consequences and anomalies.[14] During the course of this Parliament, PACAC will undertake a series of inquiries to evaluate these issues, to attempt to take a strategic overview of the UK's constitution.

8. The first strand of PACAC's inquiry into the UK's constitution, and the principal focus of this Report, is therefore how EVEL has been implemented via amendments to the Standing Orders of the House of Commons. On 2 July 2015, the Government published its initial set of proposed amendments to Standing Orders, with the intention for the House to debate and vote on these changes on the 15 July. Following an emergency debate on EVEL on 7 July, sought by Rt Hon Alistair Carmichael MP under SO No.24, the Government released an amended set of proposals on 9 July and announced that a vote would be postponed until after the House returned from the summer recess. A final set of proposals were tabled on 15 October and were approved, following a debate in the House of Commons, on 22 October 2015. PACAC launched this inquiry into the Government's changes to Standing Orders, and into the broader constitutional implications of the introduction of EVEL to the House of Commons, on 21 July 2015.

9. PACAC is one of three House of Commons Committees that has inquired into EVEL since July 2015. The Procedure Committee undertook an interim evaluation of the-then proposed Standing Orders, and published its Report *English votes for English laws Standing Orders: interim report* in October 2015. The Procedure Committee has committed to undertake a full technical evaluation of the new Standing Orders before the end of the 2015–16 Parliamentary session. The Scottish Affairs Committee has also taken evidence on the Standing Orders, but has not published a report to date.[15]

10. PACAC's inquiry has also explored the broader implications of implementing the principle of EVEL, public attitudes to EVEL, responses to EVEL and its potential constitutional implications. We took evidence from Professor Richard Wyn Jones, Professor the Lord Norton of Louth and two former Clerks of the House of Commons, Sir William McKay and Lord Lisvane. A full list of those who gave evidence can be found at the back of this Report. We thank all of those who gave evidence to this inquiry.

12 Scottish Independence Referendum: statement by the Prime Minister, 19 September 2014

13 The timetable outlined for further Scottish devolution (and by implication, answering the West Lothian Question) by the Prime Minister in his statement was for the Smith Commission to produce a cross-party agreement by November, with draft legislation to be published by January. The Smith Commission published its report on 27 November 2014, and on 22 January 2015, the UK Government published a Command Paper, *Scotland in the United Kingdom: an enduring settlement*, Cm 8990, containing draft clauses which aimed to take forward the Heads of Agreement contained in the Smith Commission Report. See paragraphs 22–32 of this report for the process which led to the passage of the new Standing Orders and the implementation of EVEL.

14 The 1997 Labour Government was elected on a manifesto pledging a package of constitutional reform including devolution to Scotland and Wales, the creation of a Mayor of London and Greater London Authority, legislating to allow referendums to be held, subject to local popular demand, on devolution to the regions of England, reform of the House of Lords and the incorporation of the European Convention of Human Rights in a Human Rights Act.

15 The Scottish Affairs Committee took evidence from Chris Bryant MP and Rt Hon Chris Grayling MP (Scottish Affairs Committee, Oral evidence: English Votes for English Laws, HC 399, 13 October 2015) and Michael Clancy OBE, Professor Charlie Jeffery, Sir William McKay, (Scottish Affairs Committee Oral evidence: English Votes for English Laws, HC 399, 8 September 2015)

2 Context: Devolution, the West Lothian Question and English Votes for English Laws

11. Though a variant of the West Lothian Question was first asked in the context of Irish Home Rule, its most famous iteration came in the guise of Tam Dalyell MP's contributions during the devolution debates of the late 1970s. In an intervention in the Commons' debate on the Gracious Address on 3 November 1977, Dalyell asked the-then Prime Minister Rt Hon James Callaghan MP:

> Under the new Bill, shall I still be able to vote on many matters in relation to West Bromwich but not West Lothian, as I was under the last Bill, and will my right hon. Friend be able to vote on many matters in relation to Carlisle but not Cardiff?[16]

Dalyell's argument was elaborated in much more strident fashion in the second reading of the Scotland Bill on 14 November 1977:

> For how long will English constituencies and English hon. Members tolerate not just 71 Scots, 36 Welsh and a number of Ulstermen but at least 119 hon. Members from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on English politics while they themselves have no say in the same matters in Scotland, Wales and Ireland? Such a situation cannot conceivably endure for long.[17]

In the course of his contributions to this debate, the Rt Hon Enoch Powell MP would christen this 'the West Lothian Question', a label that has survived to the current day:[18]

> This afternoon the Secretary of State for Scotland [Rt Hon Bruce Millan MP] showed himself unable to explain what would be the function of Scottish Members in this House. But behind there looms the much larger question not of the function of Scottish Members in this House in regard to Scottish affairs, but of the whole functioning of this House, when 71 of its Members come from a part of the United Kingdom where the responsibility for a great range of legislation, and consequently of policy, is borne by elected representatives elsewhere.
>
> This is the question with which, by an iteration for which he should be praised rather than blamed, the hon. Member for West Lothian (Mr. Dalyell) has identified himself. It is not the fault of the hon. Gentleman that the Government cannot answer the question. Nor does it answer his question to say that if he goes on asking it he will not be allowed to vote. Nor does it solve the question, or resolve the dilemma, to tell the House that the measure is to be whipped through on a three-line Whip, or to whisper outside the Chamber about votes on matters of confidence…

16 HC Deb 03 November 1977 vol 938 c30
17 HC Deb 14 November 1977 vol 939 c123
18 HC Deb 14 November 1977 vol 939 c91

> …. Let us by all means devolve, and devolve to democratic assemblies, the administration of the laws which are made in this House and of the policies which are framed in this House. That we can do without incurring the curse which this Bill incurs. But if we go beyond that, there arises again the West Lothian question, to tell us "In that event you must resolve the Union into a federation unless you are to end up in inextricable contradictions and injustices in the House of Commons, which is the essence of our Parliamentary Union."[19]

12. As a result of the relative failures of the Scottish and Welsh devolution referendums in 1979, the West Lothian Question largely lay dormant until the 1990s when, as a result of national devolution to Scotland, Wales and Northern Ireland, it awoke once again as part of the new 'English Question(s)'.[20]

13. Notwithstanding these concerns, the then Labour Government, upon its election in 1997, proceeded to implement its manifesto commitments for devolution for Scotland and Wales without addressing the West Lothian Question. **It is highly regrettable that the 1997 Parliament voted to proceed with devolution to Scotland and Wales without proper consideration being given to the well-rehearsed West Lothian Question. It was a failure to do so then that has led to the difficulties that the present Government is now seeking to address through EVEL.**

14. The question of how England should be governed, post-devolution, has attracted a variety of different answers, ranging from an English Parliament to regional Assemblies.[21] A form of EVEL, however, has been the most prominent of these responses (see paras 15–19 of this Report below).

English Votes for English Laws: past proposals for reform

15. As Professor Michael Kenny and Daniel Gover have noted, "there is a spectrum of alternatives for implementing EVEL".[22] However, at its simplest it entails an amendment to House of Commons procedure so that English MPs are given a distinctive voice on matters which affect England, but are devolved to Scotland, Wales and Northern Ireland.

16. There have been a number of proposals for a scheme of EVEL. In 2000, for example, The Commission to Strengthen Parliament, (Norton Commission) established by the Conservative Party under the chairmanship of Professor the Lord Norton of Louth, proposed a variant of EVEL which recommended that Bills certified as either England,

19 HC Deb 14 November 1977 vol 939 cc 87 and 91

20 Following the election of the Labour Government in 1997, and as a result of policies developed in the party's latter years in opposition, the public in Scotland and Wales were offered another opportunity of devolved government. In Scotland, a primary law making parliament, with limited tax varying powers, was proposed. While in Wales, a model of executive devolution was proposed, which would see a National Assembly with secondary legislative powers established. The 1997 referendums, however, saw Scotland vote comprehensively in favour of a Scottish Parliament (by a margin of 74.3% to 25.7%) and for tax raising powers (63.5% to 36.5%), while Wales narrowly voted in favour of an assembly (50.3% to 49.7%). With power sharing for Northern Ireland following in 1998, as a result of the Good Friday Agreement, England, with the exception of the Greater London Authority established following the 2000 referendum in London, was the sole nation without a scheme of devolution, though a model of regional devolution in the North-East of England was rejected by the electorate in 2004.

21 For an overview of the different responses to the English Question, see the Fifth Report from the Justice Committee, Session 2008–09, *Devolution: a Decade On*, HC 529–I. *See also Hazell, R. (ed.) The English Question, 2006, Manchester University Press.*

22 *English Votes for English Laws: A viable answer to the English Question?*, Centre for Constitutional Change Research Briefing, p.1.

or England and Wales only would go through exclusively English/English and Welsh second reading, committee and report stages (though not applying to third reading, where all MPs would be able to vote).[23] In 2008, the Democracy Task Force, established by the Conservative Party under the chairmanship of the Rt Hon Kenneth Clarke MP, recommended a scheme of EVEL that would have seen certified Bills go through an English only Committee and Report Stage.[24] As Kenny and Gover explain, the Clarke proposals would have given "English MPs [the] exclusive right to amend such legislation, but requiring final approval from UK-wide MPs".[25]

17. Following the 2010 General Election, the Conservative-Liberal Democrat Coalition Government's Programme for Government, pledged the creation of a "commission to consider the 'West Lothian question'. In 2012, the Commission began its work under the chairmanship of Sir William McKay, a former Clerk of the House of Commons, and with the following terms of reference:

> To consider how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.[26]

18. Reporting in 2013, the McKay Commission recommended that the following principle be adopted by a resolution of the House of Commons:

> Decisions at the United Kingdom level with a separate and distinct effect for England (or for England-and-Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England-and-Wales).

19. According to the Commission, adherence to this principle "would be facilitated by the declaratory resolution [outlined above] and changes to Standing Orders." With regards to the latter issue, the Commission proposed the following "menu of proposed adaptations to parliamentary procedure to hear the voice of England":

- an equivalent to a legislative consent motion (LCM) in Grand Committee or on the floor before second reading would be a useful procedure;
- use of a specially-constituted public bill committee with an English or English-and-Welsh party balance is the minimum needed as an effective means of allowing the voice from England (or England-and-Wales) to be heard; it would retain the opportunity at report stage for amendments to be made to a bill to implement compromises between the committee's amendments and the Government's view, or even – though we would expect rarely – overriding in the House what was done in committee;
- that procedure might however be disapplied in a particular case, provided that either (a) a motion under the LCM-analogy procedure or (b) a debatable motion dis-applying committal to a specially-constituted public bill committee had been agreed to;

23 *The Report of the Commission to Strengthen Parliament*, July 2000
24 The Conservative Democracy Task Force, 2008
25 *English Votes for English Laws: A viable answer to the English Question?*, Centre for Constitutional Change Research Briefing, p.1
26 *Report of the Commission on the Consequences of Devolution for the House of Commons*, 2013, p.7

- the English (or English-and-Welsh) report committee and the appeal after report to a similar report committee are practicable and no less effective than the other options, though they depart further than other suggestions from familiar bill procedures, perhaps rendering them more likely to give rise to controversy;
- a specially-constituted committee for relevant Lords Amendments would be straightforward in operation;
- pre-legislative scrutiny is also likely to be useful, but only when circumstances allow; and
- the double-count is a good indicator of the views of England (or England-and-Wales) MPs and the part of the UK from which an MP is elected should be shown in division lists, but its impact might be easily disregarded

Public Opinion

20. In addition to variants of EVEL being recommended by two Conservative Party policy reviews and the McKay Commission, the principle of EVEL also seems to command significant popular support in England. While, as Professor Wyn Jones noted, for much of the early years of devolution there was little evidence of an English backlash to Scottish and Welsh devolution, social attitudes data since 2011 appears to suggest a "really big shift in attitudes" in England. [27]

21. According to the findings of a series of surveys,[28] support for the constitutional status quo in England now commands the support of "only around one in five in England".[29] The Mile End Institute also highlighted a growing dissatisfaction about England's constitutional place within the UK "over recent years" and drew attention to the work undertaken in this area by the Future of England project.[30]

22. In terms of explaining how "benign indifference" had given way to a collapse in support for the status quo, Professor Wyn Jones, explained that "it looks as if there was a shift in attitudes in England around 2007 to 2008",[31] and that this shift "accompanied increasing awareness in England that public services were being delivered differently in Scotland and Wales".[32]

23. The picture that has emerged from the last four Future of England Surveys, is a sense, within the English public, "that England should be recognised".[33] Furthermore, "what seems to have happened over the last two surveys is that English votes for English laws has emerged as the favourite option in terms of the governance of England".[34] In the 2014 report, for example, 62% of respondents in England agreed that should Scotland vote no in the independence referendum, 'Scottish MPs should be prevented from voting on laws

27 Q 4 Oral evidence 27 October 2015
28 The Future of England project has published three surveys since 2011, a fourth is currently awaiting publication.
29 Q 13 Oral evidence 27 October 2015
30 EVE08 Mile End Institute
31 Q 5 Oral evidence 27 October 2015
32 Q 5 Oral evidence 27 October 2015
33 Q 8 Oral evidence 27 October 2015
34 Q 8 Oral evidence 27 October 2015

that apply only to England'.[35] In each of the three sets of institutional options for the future governance of England trialled in the 2014 survey, EVEL commanded plurality support.

Constitutional Preferences for England, 2014 Future of England Survey

	Option 1			Option 2			Option 3		
	All	British	English	All	English	British	All	English	British
Status Quo	18	17	21	25	21	32	22	17	27
EVEL	**40**	**43**	**41**	**31**	**37**	**27**	**36**	**44**	**35**
Regions	9	7	9	—	—	—	—	—	—
English Parliament	16	19	13	13	14	12	25	29	21
Independence	—	—	—	15	17	12	—	—	—
Don't Know	17	13	17	16	10	18	17	16	10

Source: Taking England Seriously: The New English Politics, the Future of England Survey 2014, p.19

24. However, there are "lots of interesting questions as to how much people understand about English votes for English laws" and in particular the minutiae of the different EVEL proposals that have been tabled in recent years.[36] As Professor Wyn Jones conceded, "frankly, surveys of the kind that we undertake are not good at getting into the nitty-gritty of whether people think the McKay Commission's version is better than what has just been passed and so on".[37]

25. Despite suggestions that EVEL might fuel division within the United Kingdom, data from Scotland and Wales, according to Professor Wyn Jones, suggests "on balance, that there is support for the principle of English votes for English laws in Scotland and in Wales".[38] While Professor Wyn Jones again stressed that "support for the general principle [of EVEL] is not necessarily the same as support for a particular version of English votes for English laws in action… it would be wrong to assume that English votes for English laws is necessarily seen as a threat by the Welsh and Scottish electorates".[39]

26. Pressed to respond to those "who don't want English votes for English laws and… don't think that we need to do anything to address this," Professor Wyn Jones identified "a genuine problem that needed to be addressed".[40] He continued, "only a quarter or even a fifth in England think that the status quo for England within the UK is acceptable," so "sticking one's head in the sand would be a big mistake".[41]

35 Taking England Seriously, p.13
36 Q 8 Oral evidence 27 October 2015
37 Q 8 Oral evidence 27 October 2015
38 Q 10 Oral evidence 27 October 2015
39 Q 10 Oral evidence 27 October 2015
40 Q 27 Oral evidence 27 October 2015
41 Q 27 Oral evidence 27 October 2015

27. The issue of Scotland's influence on England's affairs became even more significant during the 2015 General Election campaign. With polling indicating a hung Parliament and the return of a substantial bloc of SNP MPs, the Conservative Party's campaign emphasised the possibility of a minority Labour administration, dependent for its survival on the Scottish National Party.[42] The Prime Minister, for example, during a pre-election interview with Andrew Marr warned that a Labour-SNP deal:

> …would be the first time in our history that a group of nationalists from one part of our country would be involved in altering the direction of our country and I think that is a frightening prospect.[43]

This strategy was criticised by a number of unionist politicians in Scotland, including the Conservative peer and former Secretary of State for Scotland, Lord Forsyth who described it as a "short term and dangerous view which threatens the integrity of our country".[44]

28. **As devolution from the UK level to Scotland, Wales and Northern Ireland continues to develop, there is a growing body of evidence that suggests an increasing impatience with the constitutional anomalies to which this gives rise in England. This was amplified during the 2015 General Election campaign, in which the Conservatives focused voters' minds on the possibility of SNP MPs holding the balance of power. Of all the potential remedies to the "English Question" that have arisen from devolution, the principle of English Votes for English Laws commands consistent and substantial popular support. Put simply, there appears to be a strong English demand for English Votes for English Laws. As we heard from Professor Wyn Jones, "on balance, [the data suggest] that there is support for the principle of English votes for English laws in Scotland and in Wales".[45] As yet however, we have very little evidence about whether this support extends to the present scheme and its effects. Nor, as is explored later in this Report, does this support extend to any political party in the House of Commons other than the Conservative Party.**

42 As the Conservative Party's campaign director, Lynton Crosby has readily admitted, International Business Times, 6 August 2015.

43 Rt Hon David Cameron, quoted in The Guardian, 19 April 2015.

44 Lord Forsyth of Drumlean, quoted in The Guardian, 21 April 2015.

45 Q 10 Oral evidence 27 October 2015

3 The new Standing Orders

The 2014 White Paper and the 2015 Conservative Manifesto

29. During the latter stages of the Scottish independence referendum, the three main Unionist Party leaders signed 'the vow', committing them to delivering "extensive new powers" for the Scottish Parliament. On 19 September 2014, a few hours after Scotland had voted to remain in the Union, the Prime Minister made the statement on the steps of Downing Street in which he announced that Lord Smith of Kelvin would chair a cross-party Commission "to take forward the devolution commitments with powers over tax, spending and welfare all agreed by November and draft legislation published by January."

30. The Prime Minister also stated that "as the people of Scotland will have more power over their affairs, so it follows that the people of England, Wales and Northern Ireland must have a bigger say over theirs" Importantly, for England this meant taking forward "the question of English votes for English laws… in tandem with, and at the same pace as" the process of extending devolution in Scotland.[46] So, as the Prime Minister announced a Commission led by Lord Smith to take forward devolution in Scotland, he also unveiled a Cabinet Committee, chaired by Rt Hon William Hague MP, aimed at developing EVEL proposals. These proposals "would be ready to the same timetable" as the Smith Commission for Scotland.

31. Consequently, in December 2014, the Government published a White Paper, The Implications of Devolution for England, aimed at moving forward the political debate on English Votes for English Laws. This paper outlined a range of different proposals for implementing EVEL, including three options favoured by the Conservative Party.

32. **Option 1: 'Reformed consideration of Bills at all stages'**, was informed by the Norton Commission report and proposed that Bills certified by the Speaker as England, or England and Wales, only would have their Second Reading in a Grand Committee, comprising all the MPs from the relevant nation(s). For England and Wales Bills, the same would also apply to their Committee Stage and Report and Third Reading would be governed by a convention whereby MPs from other nations did not vote -However, England only Bills would proceed entirely through an entirely England only process. According to the White Paper, the key advantage of this proposal is its "simplicity and the absence of the need for any new stages in the legislative process."

46 The timetable outlined for further Scottish devolution (and by implication, answering the West Lothian Question) by the Prime Minister in his statement was for the Smith Commission to produce a cross-party agreement by November, with draft legislation to be published by January). The Smith Commission published its report on 27 November 2014 and, on 22 January 2015, the UK Government published a Command Paper, *Scotland in the United Kingdom: an enduring settlement*, Cm 8990, containing draft clauses which aimed to take forward the Heads of Agreement contained in the Smith Commission Report. See paragraphs 29-38 of this report for the process which led to the passage of the new Standing Orders and the implementation of EVEL.

33. **Option 2, 'Reformed Amending Stages of Bills'**, on the other hand, was based on the recommendations of Rt Hon Kenneth Clarke MP's 2008 Democracy Task Force. Under this scheme, a Bill certified as relating solely to English, or English and Welsh matters, would pass as normal at Second Reading, but its Committee Stage would be taken from MPs representing those respective areas only, in proportion to their party representation in the House of Commons. While MPs from the affected territory would be able to vote on the Bill's Report Stage, all MPs would be able to vote on its Third Reading. The main advantage of the proposal was considered to be that it "allows MPs from England, or from England and Wales, to have the decisive say over the content of legislation while not excluding MPs from other stages and not introducing any new stages to the legislative process."

34. **Option 3, 'Reformed Committee Stage and Legislative Consent Motions'** was described as a "significantly strengthened version of the McKay Commission proposals." It would reserve the Committee stage of certified Bills to English or, as appropriate, English and Welsh only MPs and provide those members with an "effective veto over such legislation." Bills would not have to be England or England and Wales only in their entirety, as individual clauses and schedules within Bills would also be certified. While Report stage would be taken as normal by all MPs, a new stage would be established between Report and Third Reading whereby a Legislative Grand Committee (England or for England and Wales) would be established to vote on a Legislative Consent Motion (LCM) for the certified parts of the Bill.

35. As Third Reading could only take place once a LCM had been approved, the Legislative Grand Committee would therefore provide English and Welsh MPs with the ability to grant their consent to, or exercise a veto against, relevant parts of, a bill. The principle of requiring consent from an English Grand Committee could be applied to levels of taxation and welfare benefits where the equivalent rates have been devolved to Scotland or elsewhere

36. According to the Command Paper, this proposal would "give English, or English and Welsh MPs, a crucial say over the content of legislation and a secure veto over its passing, while not excluding other MPs from its consideration in the full House of Commons".[47]

37. The Conservative Party's 2015 General Election manifesto suggested that of the three proposals outlined above, Option 3 would be the scheme a Conservative Government would seek to implement.

47 *The Implications of Devolution for England*, Cm 8989 p.26, December 2014

38. Box 1: 2015 Conservative Party Manifesto

- We will maintain the Westminster Parliament as the UK and England's law-making body. But we want Parliament to work in a way that ensures decisions affecting England, or England and Wales, can only be taken with the consent of the majority of MPs representing constituencies in England, or in England and Wales. We will end the manifest unfairness whereby Scotland is able to decide its own laws in devolved areas, only for Scottish MPs also to be able to have the potentially decisive say on similar matters that affect only England and Wales. We will maintain the integrity of the UK Parliament by ensuring that MPs from all parts of the UK continue to deliberate and vote together, including to set overall spending levels. But we will:
- Change parliamentary procedures so that the detail of legislation affecting only England or England and Wales will be considered by a Committee drawn in proportion to party strength in England or England and Wales.
- Add a new stage to how English legislation is passed; no bill or part of a bill relating only to England would be able to pass to its Third Reading and become law without being approved through a legislative consent motion by a Grand Committee made up of all English MPs, or all English and Welsh MPs.
- Extend the principle of English consent to financial matters such as how spending is distributed within England and to taxation – including an English rate of Income Tax – when the equivalent decisions have been devolved to Scotland.

Source: The Conservative Party Manifesto 2015, p.70

39. Following the return of a majority Conservative Government in the 2015 General Election, a pledge to implement EVEL was included in the Government's first Queen's Speech, and on 2 July, the Government tabled its first set of proposed amendments to the Standing Orders of the House of Commons. While the initial intention was for the Standing Orders to be approved before the summer recess, the Government instead tabled a revised set of Standing Orders on 9 July, to be voted upon in the House in the autumn. After further revisions to the proposals on 15 October, a final set of proposals were laid before, and approved by, the House on 22 October 2015.[48] The Government has pledged to hold a review of the operation of the Standing Orders after the first 12 months of their operation.

48 Cabinet Office, English Votes for English Laws: Proposed Changes to the Standing Orders of the House of Commons and Explanatory Memorandum, July 2015; Cabinet Office, English Votes for English Laws: revised proposed changes to the Standing Orders of the House of Commons and Explanatory Memorandum, July 2015; Cabinet Office, English Votes for English Laws: proposed changes to the Standing Orders of the House of Commons and Explanatory Memorandum, October 2015

The New Standing Orders

40. On the 22 October 2015, the House of Commons voted, by a margin of 312 to 270, to amend Standing Orders so as to establish a system of English Votes for English Laws. The new Standing Orders[49] mean that, from now on, prior to Second Reading, the Speaker will certify Bills as a whole, or provisions within those Bills, as "relating exclusively to England or to England and Wales" (even if, provisions within, a Bill have "minor or consequential effects outside the area in question").[50]

41. For Bills certified in their entirety as English only, an English only Public Bill Committee, or English Members on the floor of the House, will examine it at Committee stage. However, the key change, affecting English only and English and Welsh only (and in the case of Finance Bills and their preparatory resolutions, English, Welsh and Northern Ireland only) Bills or provisions of Bills are the new post-report stage procedures.

a) Firstly, new Standing Order 83L will result in a recertification of the bill after report stage: this is to ensure English/English and Welsh MPs are asked to consent to the Bill, or English/English and Welsh provisions within it, in the LCM process. The same test is applied as in the first certification.

b) Legislative Grand Committees (LGCs) are then to be established, post recertification, to vote on a consent motion for qualifying Bills. Legislative Consent Motions (LCMs) can be amended if MPs wish to veto specific clauses/schedules, rather than the entirety of a Bill.

c) Reconsideration: This would essentially be a disputes resolution mechanism between the House as a whole and English/English and Welsh MP in the event of an LCM being rejected or amended so as not to give consent to all the relevant proposals. If, following reconsideration, the LGC continues to withhold consent to a Bill as a whole then it may not be given a third reading. However, if the LGC withholds consent to specific clauses/schedules, but not the Bill as a whole, then the Bill will be amended to remove those provisions. This amended Bill proceeds to third reading.

d) Consequential Consideration: The purpose of this proposed new stage is to consider "minor or technical changes in consequence of the removal of provisions" at reconsideration stage.

42. EVEL will also apply to (provisions within) Finance Bills, so that MPs from England, England and Wales or England, Wales and Northern Ireland (as appropriate) are asked to consent to those provisions within Finance Bills which relate exclusively to those areas and concern devolved taxes. A Legislative Grand Committee would consider Consent Motions required in respect of Finance Bills or provisions within Finance Bills that relate exclusively to England, Wales and Northern Ireland.

43. Lords amendments to Bills will be certified by the Speaker if they relate either to England or England and Wales and where there is a vote on a certified Lords amendment, a double majority, of both the whole House and of English or English and Welsh MPs,

49 Addendum to the Standing Orders of the House of Commons Relating to Public Business, 22 October 2015
50 Addendum to the Standing Orders of the House of Commons Relating to Public Business, 22 October 2015

must be secured. This is ascertained in a single vote, with the votes of the whole House and English/English and Welsh MPs "recorded separately". The same procedure will apply to Statutory Instruments certified as relating exclusively to England/England and Wales.

44. These new Standing Orders "will not apply to votes on the Government's annual spending plans (known as the estimates), nor to the legislation (known as Supply and Appropriation Bills) that provides statutory authority for this expenditure." In addition, "where there are financial implications associated with any bill [money resolutions]… all MPs will be able to vote on these decisions."

45. The Housing and Planning Bill was the first Bill to be certified under the new Standing Orders and, on 12 January 2016, was the first in respect of which the new Legislative Grand Committee processes operated. Neither the England and Wales or England LCMs were contested in the case of this Bill.[51]

Problems arising from the new Standing Orders

46. The House of Commons Procedure Committee examined the new Standing Orders in its Report, *Government proposals for English Votes for English Laws Standing Orders: interim report*.[52] This Report provided a thorough assessment of the Standing Orders. **We do not attempt to duplicate the ongoing work of the Procedure Committee. Instead, we outline some broad areas of concern and to examine the wider constitutional implications arising from the changes to the new Standing Orders and the introduction of this new procedure**. .

Complexity

47. Concerns about the complexity and workability of the new Standing Orders were a prominent theme during PACAC's evidence sessions. Sir William McKay, a former Clerk of the House of Commons, suggested that the Standing Orders do not "have the merit of simplicity".[53] Indeed, such is the complexity of the new Standing Orders that Sir William noted that having "spent 40 years trying to grapple with procedure", he still has "great difficulty in discovering what each of these Standing Orders… means".[54] **That a former Clerk of the House with such experience should describe the new Standing Orders as a "forest in which I lose myself" should be particularly worrying**.[55]

48. For Lord Lisvane, former Clerk of the House:

> Good procedural rules have three characteristics. First, they are consistent: the same things, or similar things, are dealt with in the same way. Secondly, they are certain and do not shift about. Thirdly, they are clear, so that what they regulate may be the subject of contention but the rules themselves do not become the subject of contention.[56]

51 HC Deb 12 January 2016 Vol 604, cc.794–807
52 House of Commons Procedure Committee, First Report of Session 2015–16, *Government proposals for English votes for English laws Standing Orders: Interim Report, HC 410.*
53 Q 65 Oral evidence 27 October 2015
54 Q 65 Oral evidence 27 October 2015
55 Q 65 Oral evidence 27 October 2015
56 Q 115 Oral evidence 27 October 2015

In his opinion, the new Standing Orders do not "pass that third test." This has great significance for the certification process where potentially contentious rulings will have to be made by the Speaker and, as Lord Lisvane noted, "for the credibility of the process, the House needs to see and understand the clockwork".[57]

49. This complexity appears to be a consequence of the Government's use of Parliamentary draftsmen (who, as Sir William McKay explained, "work for the Government and not the House")[58] to draft the Standing Orders. More than one witness commented on the way in which the new Standing Orders read "like a Bill on which, in the end, a judge will have to determine its meaning".[59] However, the Standing Orders are not a piece of legislation, to be interpreted by Judges and lawyers, this is, as Sir William McKay pointed out, "something for the House, and the House will have to determine its meaning".[60] According to Lord Lisvane, that the Standing Orders have been drafted in this way is "a very regrettable thing".[61]

50. ***The new Standing Orders do require further consideration and evaluation if they are to be anything more than a short-term experiment in the House's internal procedures. That former Clerks of the House of Commons, individuals steeped in decades of learning about Parliamentary procedure, should have difficulty in discerning what these Standing Orders mean should raise serious further doubts about how sustainable they are. It is regrettable that the new Standing Orders have been drafted like legislation, by Government Parliamentary draftsmen. Never again should Standing Orders be drafted by the Government, rather than Clerks. In taking forward any amendments to the Standing Orders, a different approach to drafting will be required. The revisions made to the Standing Orders, to make them more coherent and transparent, should be made by the House, for the House.***

Sustainability of the Standing Orders

51. An additional problem the House faces over the new Standing Orders is their sustainability. As evidenced from the House of Commons debates on the subject, since the first set of proposals were unveiled on 2 July 2015, the Government's EVEL policy has attracted significant criticism from members on the opposition benches. For example, during the response to the Leader of the House's statement outlining the initial set of proposed revised Standing Orders, the then Shadow Leader of the House, Angela Eagle MP attacked both the Government's approach and their proposals, including the veto for English MPs, for going "much further than the McKay commission envisaged in its 2013 report".[62] These proposals, she concluded, "risk the Union" and represented a "cynical attempt by a Government with an overall majority of just 12 to use procedural trickery to manufacture themselves a very much larger one." The SNP were similarly vocal in their criticism, describing the package as "constitutional bilge" that would create two classes of MP and place the Speaker in an "intolerable and politically invidious position" where he would be "dragged into a political role." Pete Wishart MP suggested that England would

57 Q 115 Oral evidence 27 October 2015
58 Q 82 Oral evidence 27 October 2015
59 Q 82 Oral evidence 27 October 2015
60 Q 82 Oral evidence 27 October 2015
61 Q 115 Oral evidence 27 October 2015
62 HC Deb 2 July 2015, c1648

be better served with an English Parliament, than "this cobbled-together, unworkable mess".[63] The Liberal Democrats and DUP similarly aired their opposition to the proposals.

52. In contrast, Conservative MPs were broadly receptive of the Government's plans. The Rt Hon John Redwood MP, for example, said he was "pleased that the Government now have an answer to… the question of who speaks for England",[64] and James Gray MP described it as a "major, major step in the right direction".[65] Indeed, the main criticism on the Government benches was that the plans could perhaps have been more radical.[66]

53. While it should be noted that concern about the Government's proposals were expressed from a number of Conservative MPs on 22 October when the House voted to approve the proposed amendments to Standing Orders,[67] the broader division between Government and Opposition on the question of the proposed changes to the Standing Orders was a constant thread throughout the House of Commons' deliberations on EVEL. In the division on 22 October 2015, all 312 MPs voting in favour of the new Standing Orders came from the Conservative benches, while the 270 MPs voting against demonstrated that every other party in the House of Commons was opposed to the implementation of the principle of EVEL via Standing Orders.[68]

54. **The stridency of the opposition to the new Standing Orders from the Opposition Benches underlines their vulnerability. With only the Conservative Party in favour of the new arrangements, these Standing Orders face a high risk of being overridden as soon as there is a non-Conservative majority in the House of Commons. Mr Bryant noted in his evidence to the Committee, "it is certainly feasible, if not probable" that a future Labour administration would revoke the new Standing Orders.[69] That the Standing Orders have attracted such hostility and can be removed on the basis of a simple majority must raise doubts as to whether they can ever be more than a temporary expedient, and currently they cannot be considered to be part of a stable constitutional settlement that will endure.**

The potential constitutional implications of EVEL

55. While it is too early to comment with any certainty on the constitutional implications of the new Standing Orders, a number of potential constitutional issues arising from implementing the principle of EVEL were raised with us:

Barnett Consequentials

56. As the Mile End Institute suggests, "the most high-profile example of spillover [effects from the new Standing Orders] concerns funding to the devolved administrations through the Barnett formula".[70] As a result of the Barnett Formula, spending decisions in

63 HC Deb 2 July 2015, c1651
64 HC Deb, 2 July 2015, c1652
65 HC Deb, 2 July 2015, c1653
66 See for example the contributions of Peter Bone MP (HC Deb, 2 July 2015, c1656), Nigel Mills MP (HC Deb, 2 July 2015, c1657), Bob Blackman MP (HC Deb, 2 July 2015, c1661) and Chris Heaton-Harris MP (HC Deb, 2 July 2015, c1667).
67 See, for example Bernard Jenkin MP's contribution on 22 October 2015 (HC Deb 22 October 2015 c.1197) and those of Sir Edward Leigh MP (HC Deb 22 October 2015 cc.1202–1203) and Sir William Cash MP (HC Deb 22 October 2015 c.1218)
68 HC Deb 22 October 2015 cc. 1248–1252
69 Q 138 Oral evidence 10 November 2015
70 EVE08 Mile End Institute

England help to determine the block grants of the Scottish, Welsh and Northern Ireland devolved administrations, arguably providing MPs from those nations with a mandate to vote on otherwise ostensibly English-only affairs.[71] While the new Standing Orders do not apply to votes on the estimates and supply and appropriation bills, as the Procedure Committee noted in its report on EVEL,

> …in reality, the estimates and supply procedures of the House validate prior decisions about policy, including those which have been given effect through primary legislation… neither money resolutions nor ways and means resolutions are in modern practice, used as instruments for fine tuning public spending.[72]

57. **While we note that the Procedure Committee will continue to pay close attention to how the new Standing Orders impact upon the consideration of the financial consequences of the Barnett Formula, we draw attention to concerns that, as a result of the new Standing Orders, there may be "decisions made that will have implications for funding levels in Scotland, Wales and Northern Ireland".[73] It is difficult to reconcile the implementation of EVEL and the continued retention of the Barnett Formula and PACAC notes the Justice Committee's conclusion, in its 2009 report *Devolution: a Decade on*, that a "change [in the funding system for Scotland, Wales and Northern Ireland] would be a necessary pre-requisite to any system of English votes for English laws".[74] The Barnett Formula has been subject to a considerable degree of scrutiny[75] and we draw no conclusions, at this stage of our inquiry, on its continued retention. The implications of constitutional change for the Barnett Formula, and alternative schemes of territorial funding, will be examined in a later stage of our inquiry.**

The devolution test and consequential effects

58. The new Standing Orders provide that the Speaker should certify any public Bill, or clause or schedule within such a Bill, presented by the Government, which, in the Speaker's opinion, "relates exclusively to England or to England and Wales, and is within devolved legislative competence".[76] Furthermore, in certifying a provision as relating exclusively to England or to England and Wales, the Speaker must disregard "any minor or consequential effects outside the area in question."

59. According to the Leader of the House, Rt Hon Chris Grayling MP, this is a "very simple test, a devolution test about whether something should be certified or not".[77] However, as Sir William McKay highlights, the devolution boundaries, particularly in the case of the evolving Welsh devolution settlement, are anything but clear.[78] Adjudicating

71 V. Bogdanor, *The West Lothian Question*, Parliamentary Affairs, 2010, Vol.63 No.1, pp.163-164
72 HC [2015–16] 410, para.42
73 Q 30 Oral evidence 27 October 2015
74 HC [2008-09] 529–I, para.194
75 See for example, the 2009 report of the House of Lords Select Committee on the Barnett Formula and the House of Lords Select Committee on Economic Affairs' 2015 report, *A Fracturing Union? The Implications of Financial Devolution to Scotland*, para 22–30 and Annex 3 to the report.
76 Addendum to the Standing Orders of the House of Commons Relating to Public Business, 22nd October 2015, p.25
77 Q 210 Oral evidence 10 November 2015
78 Q 78 Oral evidence 27 October 2015

where the devolution boundary lies in Wales has led to a succession of legal challenges in the Supreme Court.[79]

60. The Welsh experience illustrates the additional difficulty, posed by the new Standing Orders, of identifying what constitutes a minor or consequential effect. As the Procedure Committee noted in its interim report on EVEL, while "the interpretation of 'minor effects' may be considered straightforward**,** the interpretation of 'consequential effects', in the overall context of the devolution settlement, is much less clear cut".[80] According to Lord Lisvane, the insistence that minor or consequential effects be disregarded makes the process of certification "more complicated".[81] **The Supreme Court referrals of Welsh legislation represent a worrying portent of the potential controversy that may arise from attempts to adjudicate both where the devolution boundaries lie and working out what minor or consequential effects on devolved competence might be.**

61. To illustrate this potential complication, Lord Lisvane drew attention to the fact that he lived in Herefordshire where there is a cross-border flow of patients using the health service on either side of the England-Wales border.[82] Such "cross border phenomena", he suggested, are not considered "minor or consequential" for those living in the affected areas, "but it might be that, looked at from a UK-wide perspective, the Speaker might be advised they were minor and consequential." On this question of how minor or consequential effects interact with cross-border issues, the Procedure Committee's report noted that:

> England-only legislation may well affect constituencies in Wales adjacent or close to the border with England. Legislation for the NHS in England which has an effect on the structure or services provided by NHS Trusts or Foundation Trusts near the border with Wales will inevitably affect people in Wales referred to such services. Members with constituents likely to be affected by such changes may wish to argue for the right to vote on such measures. On a strict interpretation of the proposed standing orders, as drafted, the Speaker is not able to consider such effects in deciding whether to certify.[83]

62. An illustration of the potential confusion that might arise from the adjudication of a minor or consequential effect can be witnessed in the point of order raised by Sylvia Lady Hermon MP on 13 January 2016, the day after the House's consideration, including in the form of Legislative Grand Committees for England, and for England and Wales, of the Housing and Planning Bill. This point of order highlighted Lady Hermon's dissatisfaction with the certification of clause 62 of the Housing and Planning Bill as England only, despite the fact that the said clause also made reference to Wales. According to Lady Hermon, the designation of this clause, despite the fact that it made reference to an additional territory, was "inherently ambiguous and contradictory." In response, the Speaker noted that the

79 Judgment: Local Government Byelaws (Wales) Bill 2012 –– Reference by the Attorney General for England and Wales, Supreme Court, 21 November 2012, Michaelmas Term [2012] UKSC 53; Judgment: Agricultural Sector (Wales) Bill ––Reference by the Attorney General for England and Wales, 9 July 2014, Trinity Term [2014] UKSC 43

80 HC [2015–16] 410, p.15

81 Q 120 Oral evidence 27 October 2015

82 Q 120 Oral evidence 27 October 2015

83 House of Commons Procedure Committee, First Report of Session 2015–16, *Government proposals for English votes for English laws Standing Orders: Interim Report, HC 410*

Clause's relation to Wales was judged to be of a minor or consequential character "as, crucially, it makes no change in the law applying in Wales".[84]

63. ***The devolution test for certification is not a "very simple test" and, alongside the instruction that "minor or consequential effects" be disregarded, risks putting the Speaker in an unnecessarily controversial position. At the very least, it is highly likely that interested parties from inside and outside the House will want to make representations to the Speaker on how he adjudicates: a) where the devolution boundaries lie, and b) whether the effects of a Bill, or a clause or schedule of a Bill, are more than minor or consequential. PACAC therefore agrees with the Procedure Committee that there is a case for the Speaker to establish and publish a procedure for how he would handle such representations.***[85] ***While we note that the Speaker has issued a statement that outlined how the new Standing Orders would be implemented and recommended that representations should be made to the Clerk of Legislation, we nonetheless feel that a more thorough set of guidelines regarding representations would be beneficial for Members.***[86]

Two Classes of MP?

64. In its report, the McKay Commission warned against a system of EVEL "which could be accused of creating, by whatever means, two classes of MP," and argued that, while a voice for England should be expressed, "MPs from outside England should not be prevented from voting on matters before Parliament." As such, they concluded that an English 'veto' should be avoided.[87] The new Standing Orders, however, provide for such a veto, in the form of the Legislative Grand Committee stage for certified England or England and Wales Bills, prompting Chris Bryant to argue that they create "two tiers of MPs".[88]

65. It is worth acknowledging, as even Mr Bryant appeared to concede, that there are already at least two classes of MP.[89] Indeed, that there are different classes of MP, post-devolution, is at the heart of the West Lothian Question, as Lord Norton highlighted in his evidence to the Committee:

> My starting point is there are already two, because that is the point of devolution. The West Lothian question is premised on that very existence of two classes of MPs. If there weren't, you would not be having the West Lothian question.[90]

66. The key issue, therefore, facing Parliamentarians is how the difference in tiers of MP is contained. Sir William McKay stressed the importance of avoiding a "serious manifestation of the two classes [of MP], in which one was distinctly subordinate to the other".[91] Similarly, while Lord Lisvane used the examples of the Scottish Standing Committee and the territorial Grand Committees to illustrate that "there have always been proceedings of some sort or another where Members are treated differently", he

84 HC Deb, 13 January 2016, c861
85 HC [2015–16] 410, p.17
86 English votes for English laws: Speaker's Statement, 26 October 2015.
87 *Report of the Commission on the Consequences of Devolution for the House of Commons*, 2013, p.44.
88 Qq 158–159 Oral evidence 10 November 2015
89 Q 160 Oral evidence 10 November 2015
90 Q 73 Oral evidence 27 October 2015
91 Q 73 Oral evidence 27 October 2015

noted that the key difference between these procedures and the new Standing Orders is that "with all those procedures there is a confluence later in the process and the whole House is then asked to endorse it." While the whole House will continue to vote on key stages in the legislative process under the new Standing Orders, the inclusion of the Legislative Grand Committee and the ability of England or England and Wales MPs to veto legislation represents, according to Lord Lisvane, a step "further than I would comfortably have gone".[92]

Other possible outcomes

67. The discussion above is by no means an exhaustive analysis of the potential constitutional implications arising from the new Standing Orders. In attempting to resolve the anomalies created by devolution to Scotland, Wales and Northern Ireland, principally in the form of the West Lothian Question, these Standing Orders risk creating a whole set of potential additional anomalies. For example, the Standing Orders do not apply to the House of Lords. As Chris Bryant MP highlighted, the new Standing Orders mean that Peers who are Scottish born and bred, may have been elevated to the peerage after being an MP for a Scottish constituency and who continue to live in Scotland, "can vote on measures that a [Scottish] Member in the House of Commons cannot".[93]

68. Another unintended consequence may be that the new Standing Orders, far from satiating opinion in England, may fuel demands for an even stronger representation of England. As Lord Lisvane hypothesised:

> For example, what about other ways of calling the Executive to account? Might there be pressure for an England-only Question Time, for example? Might the idea of this separation spread into other types of proceedings?[94]

69. With so little certainty about the potential consequences of the new Standing Orders, there is a danger that EVEL, an attempt to remedy the anomaly of the West Lothian Question e.g. the questions raised by so-called 'Barnett Consequentials', could create further anomalies. This risk is in part a result of, and exacerbated by, the tendency of successive Governments to consider constitutional reform on an ad-hoc and piecemeal basis. A number of witnesses, from academics to former Clerks of the House of Commons, highlighted the "splintered" way in which devolution issues have been considered by Government and Parliament.[95] Lord Norton in his evidence to PACAC commented that "the Government tends to look at it [the constitution] in isolation and does not stand back, look at the links and, in this context, look at the United Kingdom as the United Kingdom and how it relates to one another".[96] According to Lord Lisvane, EVEL alongside the Government's proposed devolution to 'Mayoral Combined Authorities', such as Greater Manchester, present a "whole series of balances that you have to tackle and get right".[97] In Lord Lisvane's opinion, this "only underlines the complexity of finding an integrated and sustainable long-term solution".[98] Both Lord Norton and Lord Lisvane emphasised their preference for a constitutional forum, or to use Lord Norton's phrase a 'constitutional

92 Q 114 Oral evidence 27 October 2015
93 Q 140 Oral evidence 10 November 2015
94 Q 117 Oral evidence 27 October 2015
95 Qq 44; 87–88 Oral evidence 27 October 2015
96 Q 87 Oral evidence 27 October 2015
97 Q 126 Oral evidence 27 October 2015
98 Q 126 Oral evidence 27 October 2015

convocation', to take stock of the UK's constitution and the issues raised by devolution, including the West Lothian Question.[99]

70. **It is too soon to say with any certainty what the constitutional implications of the new Standing Orders will be. The ad-hoc approach to change in the constitution of the Union, that dates back to the devolution reforms initiated by the then Labour Government in 1997, and has treated each of Scotland, Wales and Northern Ireland in different ways at different times, has been characteristic of constitutional reform since the 1990s. This Report illustrates the need for Government to abandon this ad-hoc approach and to explore a comprehensive strategy for the future of relationships between the Westminster Parliament and the component parts of the United Kingdom.** ***The Government should be working towards a new and durable constitutional settlement for the United Kingdom that reflects the scale of constitutional change since the 1997 devolution referendums. This will be the subject of our continuing inquiry into the Future of the Union and of our subsequent Reports on the subject.***

99 Qq 87; 127 Oral evidence 27 October 2015

4 The next steps

The 2016 Review of the new Standing Orders

71. During a House of Commons debate on EVEL on 2 July 2015, the Leader of the House committed the Government to a review of the new Standing Orders twelve months after they come into operation.[100] The Procedure Committee will also be undertaking a technical evaluation of the new Standing Orders to feed into this review.

72. ***While there is evidence that the principle behind EVEL commands popular support, including, as we heard from Professor Wyn Jones, in Scotland and Wales, we have significant doubts that the current Standing Orders are the right answer or that they represent a sustainable solution. They may be unlikely to survive the election of a Government that cannot command a double majority of both English and UK MPs. The Government should use the remainder of the twelve month period in the run-up to their promised review of the Standing Orders to rethink the issue and to develop proposals that are more comprehensible, more likely to command the confidence of all political parties represented in the House of Commons, and therefore likely to be constitutionally durable.***

100 HC Deb, 2 July 2015, c1649

Conclusions and recommendations

Context: Devolution, the West Lothian Question and English Votes for English Laws

1. It is highly regrettable that the 1997 Parliament voted to proceed with devolution to Scotland and Wales without proper consideration being given to the well-rehearsed West Lothian Question. It was a failure to do so then that has led to the difficulties that the present Government is now seeking to address through EVEL. (Paragraph 13)

2. As devolution from the UK level to Scotland, Wales and Northern Ireland continues to develop, there is a growing body of evidence that suggests an increasing impatience with the constitutional anomalies to which this gives rise in England. This was amplified during the 2015 General Election campaign, in which the Conservatives focused voters' minds on the possibility of SNP MPs holding the balance of power. Of all the potential remedies to the "English Question" that have arisen from devolution, the principle of English Votes for English Laws commands consistent and substantial popular support. Put simply, there appears to be a strong English demand for English Votes for English Laws. As we heard from Professor Wyn Jones, "on balance, [the data suggest] that there is support for the principle of English votes for English laws in Scotland and in Wales." As yet however, we have very little evidence about whether this support extends to the present scheme and its effects. Nor, as is explored later in this Report, does this support extend to any political party in the House of Commons other than the Conservative Party. (Paragraph 28)

The new Standing Orders

3. The new Standing Orders do require further consideration and evaluation if they are to be anything more than a short-term experiment in the House's internal procedures. That former Clerks of the House of Commons, individuals steeped in decades of learning about Parliamentary procedure, should have difficulty in discerning what these Standing Orders mean should raise serious further doubts about how sustainable they are. It is regrettable that the new Standing Orders have been drafted like legislation, by Government Parliamentary draftsmen. Never again should Standing Orders be drafted by the Government, rather than Clerks. In taking forward any amendments to the Standing Orders, a different approach to drafting will be required. The revisions made to the Standing Orders, to make them more coherent and transparent, should be made by the House, for the House. (Paragraph 50)

4. The stridency of the opposition to the new Standing Orders from the Opposition Benches underlines their vulnerability. With only the Conservative Party in favour of the new arrangements, these Standing Orders face a high risk of being overridden as soon as there is a non-Conservative majority in the House of Commons. Mr Bryant noted in his evidence to the Committee, "it is certainly feasible, if not probable" that a future Labour administration would revoke the new Standing Orders. That the Standing Orders have attracted such hostility and can be removed on the basis

of a simple majority must raise doubts as to whether they can ever be more than a temporary expedient, and currently they cannot be considered to be part of a stable constitutional settlement that will endure. (Paragraph 54)

5. While we note that the Procedure Committee will continue to pay close attention to how the new Standing Orders impact upon the consideration of the financial consequences of the Barnett Formula, we draw attention to concerns that, as a result of the new Standing Orders, there may be "decisions made that will have implications for funding levels in Scotland, Wales and Northern Ireland." It is difficult to reconcile the implementation of EVEL and the continued retention of the Barnett Formula and PACAC notes the Justice Committee's conclusion, in its 2009 report *Devolution: a Decade on*, that a "change [in the funding system for Scotland, Wales and Northern Ireland] would be a necessary pre-requisite to any system of English votes for English laws." The Barnett Formula has been subject to a considerable degree of scrutiny and we draw no conclusions, at this stage of our inquiry, on its continued retention. The implications of constitutional change for the Barnett Formula, and alternative schemes of territorial funding, will be examined in a later stage of our inquiry. (Paragraph 57)

6. The Supreme Court referrals of Welsh legislation represent a worrying portent of the potential controversy that may arise from attempts to adjudicate both where the devolution boundaries lie and working out what minor or consequential effects on devolved competence might be. (Paragraph 60)

7. The devolution test for certification is not a "very simple test" and, alongside the instruction that "minor or consequential effects" be disregarded, risks putting the Speaker in an unnecessarily controversial position. At the very least, it is highly likely that interested parties from inside and outside the House will want to make representations to the Speaker on how he adjudicates: a) where the devolution boundaries lie, and b) whether the effects of a Bill, or a clause or schedule of a Bill, are more than minor or consequential. PACAC therefore agrees with the Procedure Committee that there is a case for the Speaker to establish and publish a procedure for how he would handle such representations. While we note that the Speaker has issued a statement that outlined how the new Standing Orders would be implemented and recommended that representations should be made to the Clerk of Legislation, we nonetheless feel that a more thorough set of guidelines regarding representations would be beneficial for Members. (Paragraph 63)

8. It is too soon to say with any certainty what the constitutional implications of the new Standing Orders will be. The ad-hoc approach to change in the constitution of the Union, that dates back to the devolution reforms initiated by the then Labour Government in 1997, and has treated each of Scotland, Wales and Northern Ireland in different ways at different times, has been characteristic of constitutional reform since the 1990s. This Report illustrates the need for Government to abandon this ad-hoc approach and to explore a comprehensive strategy for the future of relationships between the Westminster Parliament and the component parts of the United Kingdom. (Paragraph 70)

9. The Government should be working towards a new and durable constitutional settlement for the United Kingdom that reflects the scale of constitutional change since the 1997 devolution referendums. This will be the subject of our continuing inquiry into the Future of the Union and of our subsequent Reports on the subject. (Paragraph 70)

The next steps

10. While there is evidence that the principle behind EVEL commands popular support, including, as we heard from Professor Wyn Jones, in Scotland and Wales, we have significant doubts that the current Standing Orders are the right answer or that they represent a sustainable solution. They may be unlikely to survive the election of a Government that cannot command a double majority of both English and UK MPs. The Government should use the remainder of the twelve month period in the run-up to their promised review of the Standing Orders to rethink the issue and to develop proposals that are more comprehensible, more likely to command the confidence of all political parties represented in the House of Commons, and therefore likely to be constitutionally durable. (Paragraph 72)

Formal Minutes

Tuesday 26 January 2016

Members present:

Bernard Jenkin, in the Chair

Ronnie Cowan	Gerald Jones
Oliver Dowden	Mr David Jones
Mr Paul Flynn	Tom Tugendhat
Mrs Cheryl Gillan	Mr Andrew Turner
Kelvin Hopkins	

Draft Report (*The Future of the Union, part one: English Votes for English Laws*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Paragraph—(Mr David Jones)—brought up and read, as follows:

Notwithstanding these concerns, the Blair administration, upon its election in 1997, proceeded to implement its manifesto commitments for devolution for Scotland and Wales without addressing the West Lothian Question. It is highly regrettable that Parliament decided to proceed with devolution for Scotland and Wales with such haste. Proper consideration should have been given to the well-rehearsed West Lothian Question when designing the devolution settlements. A failure to do so then has led to the difficulties that the present Government is now seeking to address through EVEL.

Question put, That the paragraph be read a second time.

The Committee divided:

Ayes, 6	Noes, 3
Oliver Dowden	Ronnie Cowan
Rt Hon Cheryl Gillan	Mr Paul Flynn
Kelvin Hopkins	Gerald Jones
Rt Hon David Jones	
Tom Tugendhat	
Andrew Turner	

Ordered, That the paragraph be read a second time.

Amendment proposed, in line 1, to leave out "It is highly regrettable that … been" and insert "It would have been preferable if Parliament had decided to proceed with devolution for Scotland and Wales with proper consideration being".—(Ronnie Cowan.)

Question put, That the Amendment be made.

The Committee divided:

Ayes, 1	Noes, 8
Ronnie Cowan	Oliver Dowden
	Mr Paul Flynn
	Rt Hon Cheryl Gillan
	Kelvin Hopkins
	Rt Hon David Jones
	Gerald Jones
	Tom Tugendhat
	Andrew Turner

Question negatived.

Paragraph (now paragraph 13) inserted.

Paragraphs 14 to 72 read and agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 2 February at 10.00am.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page.

Tuesday 27 October 2015	*Question number*
Professor Richard Wyn Jones, Cardiff University	Q1–44
Professor the Lord Norton of Louth, University of Hull, and **Sir William McKay KCB,** Chair of the McKay Commission and former Clerk of the House of Commons	Q45–107
Lord Lisvane KCB DL, former Clerk of the House of Commons	Q108–135

Tuesday 10 November 2015	
Chris Bryant MP, Shadow Leader of the House of Commons	Q136–202
Rt Hon Chris Grayling MP, Leader of the House of Commons	Q203–271

Published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page. EVE numbers are generated by the evidence processing system and so may not be complete.

1 Better Government Initiative (EVE0002)

2 Constitution Reform Group (EVE0001)

3 Dr Andrew Mycock and Dr Arianna Giovannini, University of Huddersfield (EVE0015)

4 Dr Michael Gordon (EVE0009)

5 Electoral Reform Society (EVE0006)

6 Federation of Small Businesses (EVE0010)

7 Mile End Institute (EVE0008)

8 Professor Adam Tomkins (EVE0007)

9 Professor Arthur Aughey (EVE0011)

10 The Constitution Society (EVE0012)

11 The Federal Trust for Education and Research (EVE0013)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/pacac.

Session 2015–2016

First Report	Follow-up to PHSO Report: Dying without dignity	HC 432
Second Report	Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe	HC 658
Third Report	The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators	HC 431
Fourth Report	The collapse of Kids Company: lessons for charity trustees, professional firms, the Charity Commission, and Whitehall	HC 433
First Special Report	Developing Civil Service Skills: a unified approach: Government Response to the Public Administration Select Committee's Fourth Report of Session 2014–15	HC 526
Second Special Report	Lessons for Civil Service impartiality for the Scottish independence referendum: Government Response to the Public Administration Select Committee's Fifth Report of Session 2014–15	HC 725
Third Special Report	Follow-up to PHSO Report: Dying without dignity: Government response to the Committee's First Report of Session 2015–16	HC 770

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