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The NFU represents 47,000 farm businesses in England and Wales. In addition we have 40,000 countryside members with an interest in farming and the country.

## Consultation on Standard Rules No13 - Watercourses

The NFU recognises that there is a role for farmers as riparian owners to undertake some routine maintenance works clearing blockages, removing accumulations of silt and controlling vegetation along watercourses on their land, including those designated as main river. However, to facilitate this, Defra and the Environment Agency (EA) need to establish better, more straightforward, regulation to enable farmers to undertake such works in a timely manner, without undue bureaucracy or cost, whilst providing protection to the environment.

The challenges to riparian maintenance have been investigated by the Defra/EA River Maintenance Pilots and the NFU hopes the lessons learned will be applied in easy to follow guidance and regulation for farmers in the future. Under Environmental Permitting Regulations for maintenance activities on Main Rivers what is needed is a proportionate range of exclusions, exemptions and permits. The draft regulations set out in this consultation suggest that substantial work is still needed to strike a fair balance that facilitates farmers to undertake such works whilst continuing to protect the environment.

In summary, the key issues from the NFU perspective are:

- Concern that the regulatory regime will become more complex and bureaucratic for riparian owners
- The proposed system is restrictive and likely to be confusing for farmers who will need to make use of an array of exclusions, exemptions, standard rules permits under the proposals for basic watercourse maintenance works
- Concern about the likely need for riparian owners in lowland areas to seek bespoke permits for routine watercourse activities and subsequent increase in costs
- Combination of restrictions, burden and costs at the same time as withdrawal of maintenance by the EA is likely to increase flood risk to both agricultural land and rural communities
- Defra and the Agency need to establish better, more straightforward, regulation to facilitate farmers to undertake such works in a timely manner, without undue bureaucracy or cost, whilst providing protection to the environment.

The NFU has been engaging with farmers on the issue of watercourse maintenance as they seek to find remedies to flooding affecting their, and neighbouring, land and property. In talking to our members, it is clear that there is a great deal of uncertainty within the farming community around what maintenance activities can be conducted by riparian owners on main rivers and ordinary watercourses in any given set of circumstances and which of these activities require consent from a statutory authority. Furthermore, and perhaps most importantly, there is very little guidance available for riparian owners in terms of describing how to undertake basic works (such as weed cutting, bank repairs, or de-silting) to a standard that a) achieves the desired channel conveyance and capacity, b) does not adversely affecting flood risk to riparian owners downstream and c) ensures that the works are undertaken a suitably environmentally sensitive way.

The approach of standard rules as outlined in the consultation would enable our members to be able to undertake many of their riparian duties, and some basic day to day land management functions under standard rules. This could reduce the financial burden of bespoke Permits and increase riparian maintenance levels. The standard rules as outlined in the consultation, however, are restrictive and would not enable the full range of maintenance activities to occur. We outline the key issues that we have identified with each of the Standard Rules in the section below.

Our key concern is that the restrictive Standard Rules, at this stage, would put a large additional financial burden on our members - which is currently not there. We believe that this would actively discourage maintenance and encourage noncompliance. The conditions set out in the Standard Rules do need to be adjusted to allow regular maintenance to be undertaken with clear allowances for mowing, de silting and bank repairs and for a flat simple fee. A guidance document will need to be produced to allow applicants to see a typical detail for bank repairs, outfall structures and de silting works. A simplified version of the Natural England and ADA guide Drainage Channel Biodiversity Manual would aid members in undertaking maintenance.

Some of the standard rules have the requirement that:

“The activities shall not be carried out on or within:

- (a) 1 kilometre of designated nature conservation sites;
- (b) 50 metres of a Local Nature Reserve, National Nature Reserve, Local Wildlife Site, Ancient Woodland or Scheduled Monument;
- (c) 50m of an area identified as containing a Priority Habitat;”

This requirement would mean that many activities that could be undertaken under the Standard Rule would not be undertaken due to proximity to the sites specified. This applies even where the activity will have little or no impact on the site of interest. The Standard Rule applications should include a section for a method statement to be written. This method statement can then be read to verify the works will not impact the area of interest and the above requirement can be removed.

Historically in some areas consent from the Environment Agency has not necessarily meant work can go ahead. Where other agencies are involved, such as the Marine Management Organisation or Natural England, the new permitting under the Standard Rule needs to allow work to proceed without an objection from the MMO. If this is not allowed to occur any work that could be undertaken under a Standard Rule would be prevented by other DEFRA lead organisations. By not bringing other government departments approval within the permitting system will mean that multiple permits are required for the same work - which will lead to over complication of the application system and confusion among applicants.

In addition, the charging system will need to ensure that in the future and work being undertaken under an Exemption or Exclusion remains fee free.

#### **Standard Rule 26:**

Examples of the type of work which may require the temporary dewatering of an area of the nature outlined in the Standard Rule are likely to include repairing the bank or abutments of a structure or flood defence. We note that the proposal is to exclude areas where there is a proximity to man-made structures, flood defences or drainage work. However, this would mean that a very restricted range of activities could be undertaken under this rule. If the rule were to include explicitly works to flood defences and bridge structures then this would enable land owners to undertake repair works to decks, abutments and footings without applying for a bespoke permit. The repair works to the structures could be costly and the extra financial burden of bespoke permits for our members would mean many structures are not maintained.

#### **Standard Rule 27:**

Fields and large areas of land will often be drained via land drainage channels constructed with 100mm perforated pipe or 150mm carrier pipes. The lower specification of 300mm proposed within the Standard Rule will mean that a permit will be required to connect a 150mm land carrier drain to a watercourse. This will mean that landowners have to apply for a potentially costly bespoke permit or that outfalls will be connected to 300mm pipes just to reduce the financial burden of the permit. Our preference would be for more flexibility within the Standard Rule specifications to allow a new pipe to connect to a main river.

**Standard Rule 28:**

The conditions of Standard Rule will mean that for many smaller watercourses the sections will be culverted in line with the Standard Rule 32. Our concern is, however, that for larger watercourses (>2m) a bespoke permit would be needed to allow a bridge structure - as in many cases it would not be feasible to create a clear span bridge with 2m clearance of the bank tops and no abutments in flood plain.

The current standards for ordinary watercourse consents indicate that consent would not be needed if the bridge is bank top to bank top and without abutments in the normal channel. We believe that this same guidance should be applied to this Standard Rule. In some cases, by raising the deck to 2m higher than the banks this could cause the approach ramps to create a greater blockage to flood flows than the deck itself.

If a deck is a flat concrete slab type with minimal barriers on the sides there is no reason that this could not be included in the standard rule and at bank height. The structure could have a requirement similar to that in Rule 32 that allows flood flows to locally overtop or bypass the structure and to re-enter the watercourse downstream. This would allow many farm crossings to be created while not culverting, (in contradiction of the EA Policy on Culverting) or significantly impacting flood flows by creating structures in the flood plain.

**Standard Rule 29:**

This standard rule has been well thought out and should provide an opportunity for our members to temporarily store and then spread new material on fields. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 30:**

This Standard Rule is well thought out and should provide an opportunity to temporarily divert a main river, should the need arise.

**Standard Rule 31:**

This Standard Rule is well thought out and should provide an opportunity to install habitat structures in watercourses. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 32:**

This Standard Rule is well thought out and should provide an opportunity to install new crossings.

**Standard Rule 33:**

This Standard Rule is well thought out and should provide an opportunity to deliver erosion protection on watercourses; however the length should be increased to 100m. This would allow riparian owners to repair lengths of bank where severe weather has impacted the banks.

In addition, it would be helpful to clarify whether the Standard Rule will allow for wooden supports to be installed to stabilise livestock drinking points. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 34:**

This Standard Rule is well thought out and should provide an opportunity to repair structures that abut watercourses. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 35:**

This Standard Rule is well thought out and should provide an opportunity to deliver habitats in flood plains. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 36:**

This Standard Rule is well thought out and should provide an opportunity to undertake site investigations within flood plains. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 37:**

This Standard Rule is well thought out and should provide an opportunity to deliver maintenance to maintain the capacity of watercourses. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Standard Rule 38:**

This Standard Rule is well thought out and should provide an opportunity to deliver maintenance to maintain the capacity of watercourses. This could also be achieved with an Exemption or Exclusion and would reduce the resource burden.

**Other activities that we believe could be described in future Standard Rules or Exemption/Exclusions include:**

- Repairing bridge structures
- Repairing flood defences
- Repairing damaged river banks
- Replacing crossing with “like for like”
- Fencing within the flood plain