

living on the edge

a guide to the rights
and responsibilities
of riverside occupation



We are the Environment Agency. It's our job to look after your environment and make it a **better place** – for you, and for future generations.

Your environment is the air you breathe, the water you drink and the ground you walk on. Working with business, Government and society as a whole, we are making your environment cleaner and healthier.

The Environment Agency. Out there, making your environment a better place.

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If you own land or property alongside a river or other watercourse, this guide is for you.

➔ It explains your rights and responsibilities as an owner. It also explains our role and that of other organisations with which you may need to work.

➔ It explains who is responsible for flood defences and what that means in practice.

➔ It shows how we can work together to protect and enhance the natural environment of our rivers and streams.

We are publishing this guide because we have powers and responsibilities relating to rivers and watercourses throughout England and Wales. Our work often affects people who live nearby. A watercourse is any natural or artificial channel through which water flows, such as a river, brook, beck, or mill stream.

Our job is to protect and manage the environment – land, air and water. Our day-to-day activities include pollution prevention and control, waste regulation, water resources and flood risk management. We also have duties relating to fisheries, recreation and conservation.

your rights and responsibilities

If you own land adjoining a watercourse, you have certain rights and responsibilities. In legal terms you are a **'riparian owner'**.

Your rights have been established in common law for many years. However there are some circumstances in which these rights may be affected by other law. There will also be activities for which you will need permission from a third party – such as your local authority or the Environment Agency. There is more information on this later on.

If you only rent the land, you should check with the owner who is to manage these rights and responsibilities. You will need to agree on this between you.



Your rights

→ You are presumed to own the land up to the centre of the watercourse – unless it is known to be owned by someone else.

→ Water should flow onto your land in its natural quantity and quality.

→ You have the right to protect your property from flooding, and your land from erosion. However, in most cases we must agree your plans before you start work. See pages 9 and 10 for more details.

→ You usually have the right to fish in your watercourse. However, you must use a legal method. You must also have a valid Environment Agency rod licence – unless you're less than 12 years old. Sometimes your rights will have been sold or leased. Check your facts.

→ You will almost certainly need an abstraction licence if you want to:

- remove or abstract water from a surface source such as a river, stream or canal; and
- take more than 20 cubic metres (approximately 4,400 gallons) a day.

If you are proposing to abstract water, contact your local Environment Agency office as soon as possible. A guide is available on request: *Abstracting water – a guide to getting your licence*.

These rights will be affected by your duty to other riverside landowners, to the rest of the community and to the environment.

Before you start work on or near a watercourse, you should submit your plans both to us and to your local authority. We will need to decide if you require consent from us. Your local authority will decide whether you need planning permission. Some sites are important for conservation or are of archaeological value. If your work would affect one of these sites, you may need further permissions from the relevant English or Welsh authorities. Many environmental factors are taken into account in decisions to authorise work. These factors include flood risk, wildlife conservation, fisheries, and the reshaping of the river and landscape.



Rivers can be dangerous

Water may look harmless, but it can hide strong flows. Water can be deep and powerful, especially near weirs and sluices.

Your responsibilities

➔ You have the responsibility to pass on flow without obstruction, pollution or diversion affecting the rights of others. Others also have the right to receive water in its natural quantity and quality.

➔ You must accept flood flows through your land, even if these are caused by inadequate capacity downstream. There is no duty in common law for a landowner to improve the drainage capacity of a watercourse.

➔ You must maintain the bed and banks of the watercourse, and also the trees and shrubs growing on the banks. You must also clear any debris, even if it did not originate from your land. This debris may be natural or man-made, and includes litter and animal carcasses. See pages 9 and 10 for information on consent for these works. Your local authority can advise you on the removal of animal carcasses.

➔ You must not cause any obstructions – either temporary or permanent – that would prevent the free passage of fish.

➔ You must keep the bed and banks clear of any matter that could cause an obstruction, either on your land or downstream if it is washed away. Please help us to protect

water quality – do not use riverbanks for the disposal of any form of garden or other waste where there is any danger that it will be washed into the river. This includes grass clippings, which are highly polluting.

➔ You must keep any structures that you own clear of debris. These structures include culverts, trash screens, weirs and mill gates.

➔ On your property you may have flood defences such as walls and embankments. These are vital for your protection and that of others. You should discuss their maintenance with us.

➔ You are responsible for protecting your property from water that seeps through natural or man-made banks. Where such seepage threatens the structural integrity of a flood defence, we may wish to see that it is repaired.

➔ You must control any invasive alien species such as Japanese knotweed. If you suspect such a species is present, please get in touch. We can advise you on how to manage and control these species.

➔ If you do not carry out your responsibilities, you could face legal action.

flood risk

→ Land and property near rivers could be at risk from flooding. We can tell you what that risk is, how flood warnings will be issued, and what to do when a flood occurs.

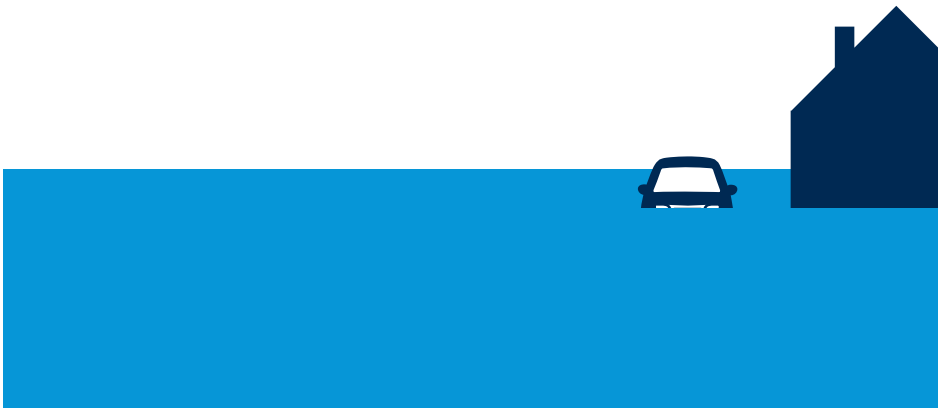
→ Information on local flood warnings is available from our local offices.

→ There are maps available which show the general extent of flooding. These are available from our local offices or on our website:

www.environment-agency.gov.uk/maps.

The website's *What's in your backyard?* section also gives local environmental information. Our Flood Map is multi-layered and has information on flooding from rivers and the sea for England and Wales. The Flood Map also shows flood defences and the areas they protect.

→ Telephone our **Floodline** service on **0845 988 1188** for information about flood risk in your area.



mills and weirs

A river control structure is a structure that affects river levels and flow. Examples include mills, dams and weirs.

If you own a river control structure, you are legally obliged to maintain and operate the structure properly. You must also fulfil any obligations you have under land drainage byelaws. You may be sued in the civil courts by anyone who suffers as a result of your actions or neglect.

- Keep gates and screens clear of obstructions, so that they work properly.
- Our engineers are always willing to discuss maintenance and operation with the owners of river control structures.

→ If you are buying a property with a river control structure, contact our local office to introduce yourself. You can find out how you can work with us and learn about what problems may arise.

→ You may need an abstraction licence if you intend to take water from the river. For more details see page 12.

→ You must contact us first if you wish to construct a weir, sluice gate or other control structure – or if you would like to modify an existing structure. You may need our formal consent, and possibly an impounding licence. We generally discourage obstructions to watercourses because of their environmental impacts.



the role of the Environment Agency

Protecting the river environment and managing flood risk are part of our job. This means that some of our duties and powers affect riparian owners.

New European legislation is changing the way we manage rivers. The Water Framework Directive is already being implemented in England and Wales with the purpose, amongst other things, of mitigating the effects of floods, and it also promotes the use of river basin planning. For more information, see www.environment-agency.gov.uk/wfd.

A Floods Directive should also come into force in due course, which promotes the large scale planning of flood risk management.

Powers

Under the Water Resources Act 1991, we have powers to maintain and improve main rivers (for explanation of terms, see page 15), in order to ensure the efficient passage of flood flow and to manage water levels. These powers allow us to do work; they do not oblige us to carry out either maintenance or construction of new works on main rivers.

- ➔ We can construct and maintain defences against flooding, issue flood warnings, and manage water levels.
- ➔ We can dispose of dredgings by depositing them on land within the reach of the dredging machine's boom.
- ➔ We are unlikely to carry out maintenance on a watercourse just for amenity reasons, or to stop erosion where this does not increase overall flood risk.
- ➔ We also have powers to make byelaws. There are 10 sets of byelaws covering England and Wales; our local office can provide you with the correct set for your area.

Duties

Our principal duty is to contribute to sustainable development. This is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. It includes protecting the environment and the prudent use of natural resources.

➔ Under the Environment Act 1995, we have a duty to supervise all matters relating to flood defence.

➔ In our work managing water, we also have a duty to promote conservation of the aquatic environment. This applies to the wildlife, landscape, and archaeology of rivers, watercourses, wetlands and associated land. We also have powers for estuaries and coasts. When we consider proposals, we assess the likely impact on the environment.

➔ The Water Framework Directive will bring greater consistency to the management of water across Europe. The Directive aims:

- to protect and enhance our water environment;
- to promote sustainable water consumption;
- to reduce water pollution;
- to lessen the effects of floods and droughts.

The Directive is being implemented in England and Wales through the River Basin Management Planning process. There are local liaison panels for each river basin district. For further information see www.environment-agency.gov.uk/wfd.

Flood defence consents

The Water Resources Act 1991 and associated byelaws require you to apply for formal consent for works in, over, under or adjacent to main rivers. This is to ensure that such activities do not cause or make worse an existing flooding problem, interfere with our work, and do not adversely affect the local environment, fisheries, wildlife, and flood defences. These consents are referred to as ‘flood defence consents’; in the past they were sometimes called ‘land drainage consents’, after the old legislation that applied.

Under the Land Drainage Act 1991, you also need our consent if you want to construct a culvert or flow control structure (such as a weir) on any ordinary watercourse. There is a definition of an ordinary watercourse on page 15.

We generally oppose culverts and in-channel structures because of their environmental impacts. Our publication *Environment Agency Policy Regarding Culverts* is available from our offices.

Contact us as soon as possible to discuss your plans. We will want to see full details of the work you propose at least two months before you intend to start. Talking to us early on helps everyone and avoids delays and wasted effort. Once preliminary details have been agreed, we will ask you to fill in an

application form. This must be returned with the appropriate fee. You can obtain details of the charges from our local offices.

We will not approve works that we believe would harm the environment or would increase flood risk – even if the works appear to be sound from an engineering or structural point of view. As noted above, we discourage the culverting of watercourses, and we also promote ‘soft engineering’ methods to control erosion. For example, we prefer using natural materials such as woven willow spiling or natural planting to limit erosion where practical, rather than steel sheet piles, unless conditions at the location require that piles are used.

If consent is refused, and you think it has been withheld unreasonably, you may appeal. There is a procedure for such appeals, which are heard by an agreed independent arbitrator. We will tell you more about how this works at the time we decide whether to grant consent or not.

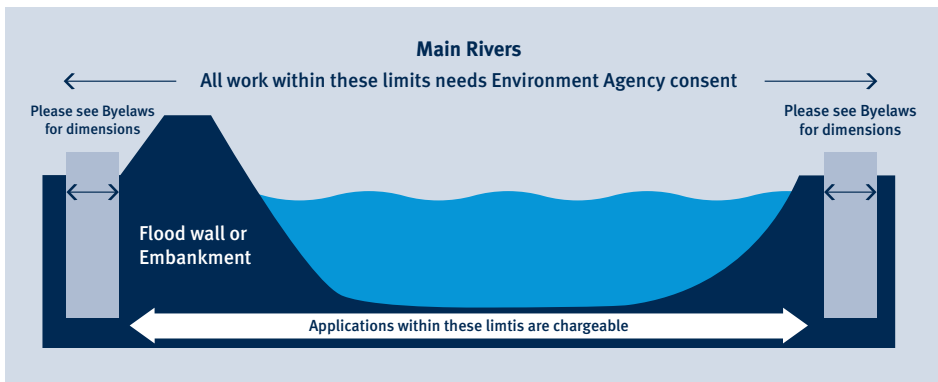
You must not carry out work without consent. If you do, the consequences can be expensive. We can reclaim from you the cost of whatever action we decide is necessary to remove or alter your work. Or, we can require you to put things right. Carrying out works without prior consent or failing to rectify problems may be a criminal offence.

Our consent only covers the impact of the structure on flood risk and the environment:

- We do not confirm that a proposed structure is of sound design.
- We do not check whether your plan complies with other legislation, such as health and safety.
- Our consent does not allow you to carry out works on land or rivers that you do not own. You must have the landowner's permission as well as ours.

If you are a landowner affected by flooding, you may wish to consider some of the

coastal or flood plain options within Environmental Stewardship schemes operating in England and Wales. Our local office or our website can give more advice. You may also be able to apply to a conservation scheme for the restoration or creation of features either on a watercourse or within the floodplain. However, you will still require our consent for works and possibly other permissions like those mentioned elsewhere in this booklet. You may have to show this consent before you receive any funding payment from a conservation scheme. Contact our local office before you make a funding application: this will avoid unnecessary delays.



Planning

We are a statutory consultee, and have to be consulted in the town and country planning process. Our representations to local planning authorities relate to the environmental matters that we are responsible for reviewing, including flooding. We only comment on planning policies or applications – we do not decide them.

Our advice is aimed at protecting flood plains from inappropriate development. Our local offices can provide advice on development issues. For details of government policy on development and flood risk, see:

➔ *Planning Policy Statement 25*, published by the Department for Communities and Local Government in England

➔ *Technical Advice Note 15*, published by the Welsh Assembly Government in Wales.

These publications are available on the Internet or from the relevant organisations.

Flood risk management

More than two million properties in England and Wales are at risk from flooding. Changes in our climate, resulting in fiercer storms and wetter winters, will increase this risk. It will never be possible to prevent flooding entirely – what we can do is manage flood risks. This reduces the likelihood of flooding and its impact.

We now use the term flood risk management to describe our work. We aim to reduce the likelihood of flooding by:

- ➔ managing river and coastal systems;
- ➔ constructing and managing defences, where appropriate.

We work to reduce the impact of floods through:

- ➔ influencing land use planning;
- ➔ better flood warning;
- ➔ faster emergency responses.

Floodwater can come from land, rivers and the sea. For rivers, we draw up Catchment Flood Management Plans (CFMPs). For sea flooding and coastal erosion there are Shoreline Management Plans (SMPs). We prepare these with the other coastal authorities. These management plans look at flood risk on a large scale. This allows us to see how reducing risk in one area might change, or even increase, the risk elsewhere.

Other consents and licences

You may also need our permission for other activities. Contact our local office for more details.

Water resources

You will need a licence from us to abstract or impound water from or on a watercourse. We have to ensure that:

- ➔ your proposals will not harm the environment;
- ➔ existing abstraction rights are protected;
- ➔ water resources are managed in the best interests of the environment and other lawful users.

Discharge consents

You will need our consent to discharge any trade or sewage effluent to 'controlled waters'. Controlled waters include main rivers, ordinary watercourses, some lakes and ponds, canals, reservoirs and underground sources. You may also need a separate flood defence consent if you are building a physical structure for discharges. We use the consents system to protect the quality of water and its environmental value. We set water quality objectives and ensure compliance with standards laid down in European Directives.

Fisheries

We have a duty to maintain, improve and develop fisheries. We do this through stock assessment, habitat improvements and restocking. We grant and regulate licences for the introduction and removal of fish, as well as issuing rod licences and commercial eel and salmon licences. The Salmon and Freshwater Fisheries Act 1975, the Salmon Act 1986, and various byelaws cover this work. We also enforce regulatory constraints on structures, sluices and dams that have been built to catch and/or retain freshwater fish, salmon, trout and eels.

You must have an Environment Agency rod licence if you are fishing for salmon, trout, freshwater fish or eels in:

- ➔ England (except the River Tweed);
- ➔ Wales;
- ➔ the Border Esk and its tributaries in Scotland.

Money from the sale of licences helps to fund our management of fisheries. If you are caught fishing without a licence, you are cheating other anglers and could be fined up to £2,500. You do not need a rod licence if you are less than 12 years of age.

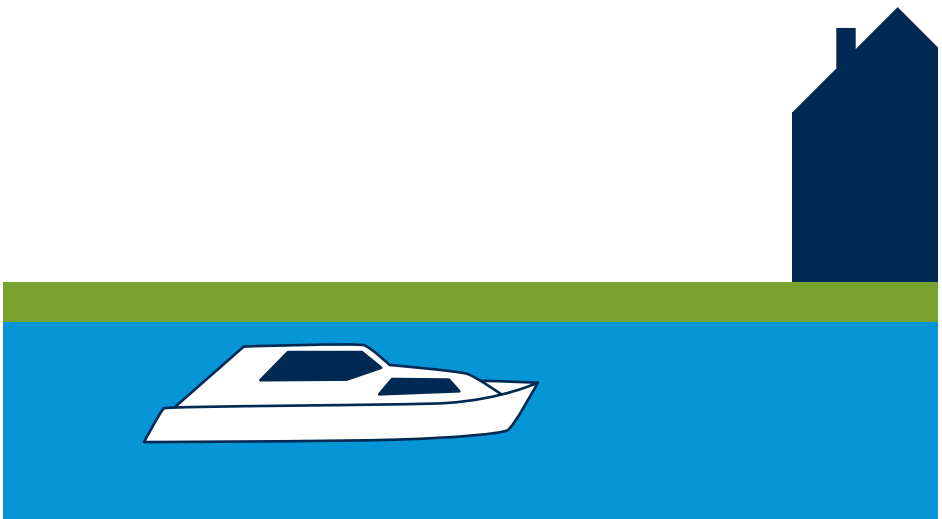
Recreation and navigation

We have a duty to encourage the appropriate recreational use of watercourses. On some rivers we are also responsible for navigation. In this role we provide details of special licensing or restrictions that we may place on plans for the bed or banks of the river. These could affect proposals for mooring and landing facilities. You may also require a licence for any boat that you wish to use on the river.

Right of entry

We may need to come onto your land to carry out our work, for example to manage flood defences. We have statutory powers of entry in order that we can do our job properly and without delay. Whenever possible, we try to co-operate with landowners and others. However, we can obtain a warrant from the courts if entry is refused. All our staff carry identity cards.

We try to make sure that we always have access to riverbanks, so that we can carry out maintenance and other work safely.



the role of other organisations

Internal Drainage Boards

In some places, Internal Drainage Boards (IDBs) have operational and regulatory powers on ordinary watercourses. See page 15 for a definition of an ordinary watercourse. These powers are similar to ours for main rivers. IDBs also have a similar duty regarding conservation.

Local authorities

Under the Land Drainage Act 1991, the local authority is the operating authority for ordinary watercourses where there is no IDB. Local authorities have powers to carry out works on ordinary watercourses for certain purposes. They sometimes have their own regulations and byelaws. These affect what you can and cannot do on an ordinary watercourse. Local authorities may also take enforcement action against you if you fail to maintain the flow of the watercourse alongside your property.

During a flood, the local authority provides emergency aid to householders. This may extend to supplying sandbags.

Works on any watercourse may require planning permission from the local authority, as well as our consent.

Navigation authorities

The tidal reaches of many rivers have public rights of navigation. Where applicable, harbour authorities may have a degree of control. There is no public right of navigation on most non-tidal watercourses. Some specific larger rivers and canals are administered by navigation authorities, such as British Waterways, private companies or the Environment Agency.

Nature conservation

Sometimes you will need permission from the relevant conservation body, as well as from us. You may, for example, intend to carry out works or change the flow characteristics of a watercourse that is within or near a site protected by law (for example a site of special scientific interest or Habitat site). Or you may wish to trap, release, kill or manage a species or habitat associated with the river or wetlands.

If you are planning this type of activity or work, you must contact the relevant conservation body. These are:

➔ Natural England (formerly English Nature). Their website is www.naturalengland.org.uk

➔ Countryside Council for Wales. Their website is www.ccw.gov.uk

If you're unsure which organisation you should be talking to, please ask us for advice.

explanation of terms

Main rivers

Main rivers are usually larger streams and rivers. However, they do include smaller watercourses of local significance. A main river is a watercourse marked as such on a main river map. This is an official document. A main river can include any structure or appliance that controls or regulates the flow of water in, into, or out of, the main river. Our powers to carry out flood defence works apply to main rivers only, but our other duties and functions extend to all watercourses. In England, Defra decides which are the main rivers. The Welsh Assembly Government does this in Wales. Our local offices have copies of main river maps.

Ordinary watercourse

An ordinary watercourse is every river, stream, ditch, drain, cut, dyke, sluice, sewer (other than a public sewer) and passage through which water flows and which does not form part of a main river. The local authority, or IDB where relevant, has powers for ordinary watercourses that are similar to those we can use on main rivers. Our powers to carry out flood defence works apply to main rivers only, but our other duties and functions extend to all watercourses.

Erosion

Moving water wears away riverbanks – causing erosion. It is a natural process that can be made worse by channel narrowing, by inappropriate reinforcement, and by the

overgrazing of sheep and cattle. Generally, you the landowner are responsible for any work to reduce bank erosion. You will probably need our consent before carrying out any protection work. We do not usually get more involved unless natural erosion either threatens a flood defence, or may create a significant change to the nature of the river and the land alongside it.

Farmland should be managed in ways that prevent rainwater from carrying off topsoil into the watercourse. This run-off damages the land and the ecology, quality and carrying capacity of the receiving water. For guidance, please see our booklet, *Best farming practice: profiting from a good environment* (2003).

In certain circumstances, allowing such run-off may constitute a criminal offence. If you are a farmer, this could threaten your single farm payment. For guidance on preventing soil erosion, please see the Defra booklet *Single Payment Scheme. Cross Compliance. Guidance for Soil Management* (2006), or Welsh Assembly Government *Farmer's Guide to Cross Compliance*. Under the Environmental Stewardship scheme, you could even be paid for improving your management practices. For more information go to our website. For construction sites, please see our pollution prevention guidance advice, also on our website or available from our local office.

Flood defence

Some legislation, such as the Acts mentioned earlier, still use the terms ‘flood defence’ or ‘land drainage’. We now refer to the activities that these cover as ‘flood risk management’ overall, but may use the other terms when referring to legal matters.

In law the term flood defence also refers to irrigation (other than spray irrigation) and the management of water levels. The term flood defence can also refer to a structure built for the purpose of managing the flow and storage of floodwater, such as an embankment for example.

Flood plain

A flood plain is an area of land over which river or seawater flows, or is stored in times of flood. Flood plains usually extend beyond the land immediately next to a watercourse. There is often pressure to build on them. However, if buildings or other man-made objects obstruct flood plains, water cannot flow away efficiently and the effects of flooding are made worse.

Flooding can also occur from other sources such as water mains or sewers. These are the responsibilities of other organisations.



**Would you like to find out more about us,
or about your environment?**

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