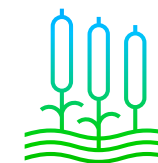




REWILDING FRESHWATER HABITATS



CORE TOPICS:

- The permissions, licences and authorisations that may be required to undertake rewilding of freshwater habitats.
- The potential legal liabilities that may arise from rewilding freshwater habitats in breach of these requirements, including for failure to obtain the relevant permissions, licences and authorisations.

KEY TAKEAWAYS:

- Planning permission may be required, which could include a flood risk assessment and (in rare cases) an environmental impact assessment. Rewilding on or near a protected site may be subject to additional restrictions and/or requirements.
- A flood risk activity permit may be required for works on or near a main river (among other locations). Works to watercourses other than a main river may require a land drainage consent. In each case, byelaws may also apply.
- Water resources licences may be required if water is to be abstracted or impounded, unless the activity is exempt or low risk.
- Wildlife licences may be required if a project is likely to have a significant effect on a protected site or to affect a protected species.
- A landholder could be held liable to neighbouring landholders for nuisance if rewilding activities cause flooding, subsidence or otherwise disturb neighbours' enjoyment of their land. A landholder can also be held liable to upstream and downstream landholders for breach of their riparian obligations.

TABLE OF CONTENTS

1. Introduction

2. Planning considerations

2.1 Planning permission

2.1.1 Permitted development rights

2.1.2 Local Plan

2.1.3 River Basin Management Plan

2.2 Environmental Impact Assessment

2.3 Protected sites

2.3.1 Common designations

2.3.2 Peatlands

2.4 Flood Risk Assessment

TABLE OF CONTENTS CONTINUED

3. Carrying out works on or near a main river or AN ordinary watercourse

3.1 Flood risk activity permits

3.1.1 *When is a flood risk activity permit required?*

3.1.2 *Exemptions and exclusions*

3.1.3 *How is a flood risk activity permit obtained?*

3.1.4 *What are the consequences of non-compliance?*

3.2 Land drainage consents

3.2.1 *When is a land drainage consent required?*

3.2.2 *How is a land drainage consent obtained?*

3.2.3 *What are the consequences of non-compliance?*

3.3 Byelaws

3.3.1 *Regional byelaws*

3.3.2 *Local byelaws*

3.3.3 *How is byelaw consent obtained?*

3.3.4 *What are the consequences of non-compliance?*

4. Water Resources licences

4.1 Abstraction licences

4.1.1 *When is an abstraction licence required?*

4.2 Impounding licences

4.2.1 *When is an impounding licence required?*

4.2.2 *Exemptions*

4.3 How is a water resources licence obtained?

4.3.1 *Application process in England*

4.3.2 *Application process in Wales*

4.4 What are the consequences of non-compliance?

5. Wildlife licences

5.1 *When is a wildlife licence required?*

5.2 *Application process*

5.3 *What are the consequences of non-compliance?*

6. Potential liabilities

6.1 *Liability to neighbouring landholders*

6.2 *Breach of riparian obligations*

6.2.1 *Riparian rights*

6.2.2 *Riparian responsibilities*

6.2.3 *Presumptions*

6.2.4 *What are the consequences of breach?*

7. Occupiers' liability

8. Examples

8.1 *Removal of a weir*

8.2 *Removal of land drains*

8.3 *Creation of ponds and scrapes*

8.4 *Re-meandering of a river*

8.5 *Peatland restoration*

9. Checklist

1. INTRODUCTION

Freshwater habitats include a range of water habitats such as bogs, fens, marshes, reedbeds, ponds, wet meadows, wet woodlands, washlands, rivers and streams. This note does not cover canals, to which specific rules may apply.¹ Practical actions that can be taken to rewild these habitats include:

- creating new ponds or enlarging existing ponds;
- restoring watercourses and freeing rivers and streams (for example, by removing dams, flood defences and other barriers);
- taking actions to reconnect rivers with their floodplains;
- allowing rivers to meander again;
- restoring peatlands and blanket bog;
- removing land drains; and
- ensuring the good health of the landscapes alongside watercourses (e.g. by restoring reedbeds and planting woodland).

This note covers the main legal obligations and requirements that may apply to projects seeking to rewild freshwater habitats in England and Wales, and outlines areas of potential liability that could arise. It is important to note that multiple permissions, licences and authorisations may be required, particularly for larger-scale rewilding projects, projects located in or near protected sites or projects where protected species are present.

Certain activities that may be relevant to rewilding freshwater habitats are covered in other Lifescape briefing notes, such as [Reintroduction of Animals](#), [Liability to Neighbouring Landholders](#), [Protected Areas and Planning Permission](#) and [Environmental Impact Assessments](#). You can access these notes at Lifescape's [Rewilding Law Hub for England and Wales](#). The Environment Agency ("EA") has also published general [Guidance on owning a watercourse](#), which sets out the responsibilities and rules to follow when dealing with watercourses on or near your property.

Legal requirements vary between England, Wales and Scotland. This note focuses on England and Wales only. While there are similarities between the primary legislative frameworks applicable in England and Wales, these frameworks are administered by different agencies in England (primarily the EA) and Wales (primarily Natural Resources Wales ("NRW")) and care should be taken to identify any regional differences that may apply to a particular rewilding project. Engagement with other public bodies, particularly the relevant local planning authority ("LPA"), may also be necessary for some aspects of rewilding projects; for example, if you are engaging in activities that require a land drainage consent.

Worked examples showing how the legal requirements may apply to common freshwater rewilding scenarios (such as removal of a weir, removal of land drains, creation of ponds and scrapes, re-meandering of a river and peatland restoration) can be found in section 7 below. A checklist of key requirements to consider can be found in section 8 below.

2. PLANNING CONSIDERATIONS

Where rewilding of freshwater habitats constitutes "development" for the purposes of the England and Wales planning regimes, planning permission may be required, which could require an environmental impact assessment ("EIA") and Flood Risk Assessment (for England) or Flood Consequence Assessment (for Wales) (together, "FRA") (among others).

2.1 Planning permission

Certain rewilding activities involving freshwater habitats may require planning permission from the LPA if they constitute "development". For these purposes, "development" is defined as:

- the carrying out of building, engineering, mining or other operations in, on, over or under land ("operational development"); or

- the making of any material change in the use of any buildings or other land ("material change of use").²

2.1.1 Permitted development rights

Not all "development" requires a planning application to be made: some planning applications are automatically permitted under "permitted development rights" granted by the government. To use these rights, certain criteria must be met and, in some cases, prior approval from the LPA is required.³

Specific permitted development rights exist for certain agricultural and forestry works, provided that (among other conditions) the works are "reasonably necessary" for the agricultural or forestry purposes of the land in question.⁴ There are also permitted development rights for "minor operations", including the erection or alteration of gates, fences, walls or other means of enclosure.⁵

In certain areas of England and Wales, LPAs have imposed restrictions on permitted development rights through a planning control called an "article 4 direction". Therefore, rewilders intending to rely on these rights should check the LPA's website to ensure that such permitted development rights have not been restricted.

The EA also has permitted development rights in relation to development in, on or under any watercourse or land drainage works required in connection with the improvement, maintenance or repair of that watercourse or those works.⁶ Rewilders may be able to rely on these rights if they are carrying out works in partnership with the EA.

The examples provided at section 7 below explore in more detail whether various common types of rewilding freshwater activities could count as "development" for planning purposes, and when it may be possible to rely on permitted development rights. For example, it seems likely that re-meandering a river may be a development requiring planning permission, although it could be possible to rely on agricultural or EA-permitted development rights if the relevant conditions are met. In contrast, it is possible that planning

permission would not be required to remove land drains or create ponds and scrapes but, as approaches taken by LPAs vary on this point, rewilders should consult the relevant LPA before commencing work to confirm what is required.

2.1.2 Local Plan

Where a planning application is required, it will be determined by the LPA in accordance with the planning policy framework, including the Local Plan.ⁱ The Local Plan sets out the LPA's policies for the development and use of land in its area, including for conserving and enhancing the natural environment. Planning decisions must be taken in accordance with the Local Plan unless material considerations indicate otherwise. Therefore, if you think planning permission could be required for your project, it is important to check the Local Plan for your area (which can be found on the LPA's website) to ensure that your project complies with the LPA's policies.

2.1.3 River Basin Management Plan

Rewilders intending to carry out a project within a river basin district should also check the relevant River Basin Management Plan, which describes how waters are to be managed and protected in that river basin district and is used by LPAs to inform planning decisions. The data for each river basin district can be accessed through the [catchment data explorer](#) and [map explorer](#) (for England) and the [water reports](#) (for Wales).

For further information on planning permission, including the different stages of the application process, see the [Planning Permission and Environmental Impact Assessments](#) briefing note.

ⁱ Although planning decisions are typically taken by the LPA, the Secretary of State for Housing, Communities and Local Government has the power to take over ("call in") planning applications. The Secretary of State will normally only do this if the application conflicts with national policy in important ways or is nationally significant.

2.2 Environmental Impact Assessment

In rare cases, a rewilding project may also require an EIA to be carried out as part of the application for planning permission. The requirement for an EIA is limited to projects that are likely to have significant effects on the environment⁷ and it is principally intended to be engaged on large-scale development projects in heavy industries, such as a power plant; therefore, it is unlikely to be required for most rewilding activities.

Activities for which it is possible (albeit highly unlikely) that an EIA could be required in relation to rewilding freshwater habitats include:⁸

- Water management projects for agriculture, including irrigation and land drainage projects where the area of the works exceeds 1 hectare (ha).
 - The indicative criteria and threshold for this activity are described as permanent changes to the character of more than 5ha of land.
 - Key issues to consider are: (a) the wider impacts of the proposal on hydrology and surrounding ecosystems; and (b) that an EIA will not normally be required for routine water management projects undertaken by farmers.
 - It is possible that breaking up land drains could require an EIA if this fits the description and criteria above, although as noted above it is very unlikely that an EIA will be required for activities involving rewilding freshwater habitats.
- Groundwater abstraction and artificial groundwater recharge schemes or works for the transfer of water resources between river basins, in each case provided that the area of the works exceeds 1ha.
 - The indicative criteria and threshold for these activities are described as works exceeding 1ha.
 - Key issues to consider are: (a) hydrology and ecology; (b) that such development can have

significant effects on environments some kilometres distant; and (c) that this is particularly important for wetland and other sites where the habitat and species within it are particularly dependent on an aquatic environment.

Where required, an EIA report (referred to as an Environmental Statement) is typically submitted with the application for planning permission. Therefore, an EIA should be undertaken before making the application. If rewilders are unsure of whether or not their project requires an EIA, they should seek advice from their LPA and, in borderline cases, request a screening opinion to confirm whether an EIA is necessary. For further information on EIAs, see the [Planning Permission and Environmental Impact Assessments](#) briefing note.

2.3 Protected sites

In England and Wales, certain areas of land and water that have particular importance for nature (for example, because they are home to rare plant species or to breeding sites for threatened animal species) are protected by laws that often restrict the management of that land and may limit the rewilding activities that can be pursued by landholders.

As further detailed in the [Rewilding in England and Wales: Protected areas](#) briefing note, rewilding activities being undertaken within protected areas, or which may impact protected areas, may require additional licences and consents.

2.3.1 Common designations

The most common designations in England and Wales are Sites of Special Scientific Interest, Special Areas of Conservation, Special Protection Areas, and Ramsar Sites. Ramsar Sites are of particular relevance to rewilding freshwater habitats as a Ramsar Site is a wetland designated for protection under the Convention on Wetlands of International Importance (Ramsar Convention).



The [designated sites system](#) can be used to identify these protected sites in England and the [Magic Map](#) can be used to identify these protected sites in Wales.

2.3.2 Peatlands

Due to the interaction of peatland habitats with a variety of land uses and their use in tackling a number of environmental issues (such as water quality and climate change), peatlands may also be protected under the designations referred to above and fall under a number of government policies, such as the [England Peat Action Plan](#) and the [Welsh National Peatlands Action Plan](#), which aim to improve the state of peatlands.

Both plans provide for the financing of peatland restoration, either through the establishment of new funds such as the Nature for Climate Fund (England) or through the provision of targeted grants (Wales). The England Peat Action Plan also introduced [regulations](#) to prohibit certain burning activities on peatland without a licence. As rewilding peatland does not typically involve burning, these regulations are not expected to constrain rewilding activities.

2.4 Flood Risk Assessment

A Flood Risk Assessment (for England) or Flood Consequence Assessment (for Wales) ("**FRA**") may be required if: (a) planning permission is needed;ⁱⁱ and (b) the proposed development (as defined in section 2.2 above) is located in an area at risk of flooding. Where required, an FRA is typically submitted with the application for planning permission and therefore should be undertaken before making the application. Failure to carry out an FRA when one is required may result in the refusal of planning permission.

The EA's [flood risk information service](#) can be used to check locations in England to ascertain whether an FRA is required as part of a planning application. NRW's [Development Advice Map](#) can be used to check flood risk for locations in Wales.

Rewilders can also check with their LPA to confirm whether a location has critical drainage problems.

The zoning and rules that set out when an FRA will be required differ between England and Wales:

	Zones	An FRA will be required for:
England	Zones 1, 2, 3a and 3b (<i>where zone 1 is the least susceptible to flooding</i>)	Development in zone 2 or 3; and Developments in zone 1 if certain criteria are met.
Wales	Zones A, B, C1 and C2 (<i>where zone A is the least susceptible to flooding</i>)	Development in zone C1 or C2. Rewilders looking to undertake development in zone B should check site levels against the extreme (0.1%) flood level provided by NRW.

Both English and Welsh planning policies emphasise the importance of avoiding development in areas at high/highest risk of flooding.⁹ For these purposes, high/highest risk constitutes zone C for Wales and zone 3 for England. Where development in such areas is necessary, FRAs must demonstrate (among other things) that the development will be safe and will not increase flood risk elsewhere.

- For England, the EA has published [Guidance on flood risk assessments if you're applying for planning permission](#), which sets out when you need an assessment and how to carry one out. The Government

has also published [Guidance on flood risk and coastal change](#), which includes guidance and a checklist for flood risk assessments.

- For Wales, NRW has published guidance on [Building in flood risk areas](#), which sets out the application process and the role of NRW.

If rewilders are unsure of whether or not an FRA is required they should seek advice from the EA or NRW (as applicable).

3. CARRYING OUT WORKS ON OR NEAR A MAIN RIVER OR AN ORDINARY WATERCOURSE

Rewilding activities undertaken on or near a main river or an ordinary watercourse may require prior permission and/or be subject to byelaws, primarily in order to regulate flood risk and safeguard the environment and human health from potential harm.

For these purposes, a main river means a watercourse shown as a main river on the Main River Map for [England](#) or [Wales](#) (examples include the Thames, the Severn and the Wye).¹⁰ An ordinary watercourse is a watercourse that is not a main river¹¹ (for example, any other rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers (other than a public sewer) and passages through which water flows).

3.1 Flood risk activity permits

The environmental permitting regime requires permits to be obtained (unless an exemption is relied on or an exclusion applies) for certain activities that could harm the environment or human health. This regime is regulated by the EA (for England) and NRW (for Wales).

ii This applies even if you are relying on permitted development rights.

In respect of rewilding freshwater habitats, the most relevant environmental permit is a flood risk activity permit. “Flood risk activities” are defined in statute as a group of activities carried out on or near a main river, flood defence, flood plain or sea defence.^{iii 12}

3.1.1 When is a flood risk activity permit required?

While the objective of rewilding freshwater habitats is not to create flood risk, a flood risk activity permit may nonetheless be required in certain circumstances to regulate the risk of flooding as an unintended consequence of rewilding. Potentially relevant “flood risk activities” include:

- **removing river control works within specified distances^v of a main river.** “River control works” include any sluices, flood gates, lashers, valves, paddles, penstocks, locks, weirs, dams, pumps, pumping machinery and pipes, and are generally defined as 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;¹³
- **altering structures (whether temporary or permanent) in, over or under a main river** (for example, a weir, a dam or erosion protection) where any such structure is designed to contain or divert the floodwaters of any part of a main river or where such alterations could affect the flow of water in the river or any drainage work;

iii “Sea defence” is included in this note because they include defences against the inundation of land by tidal water, such as from rivers or estuaries (see [Schedule 25 Part 1 Paragraph 3\(4\) of the Environmental Permitting \(England and Wales\) Regulations 2016](#) (“EPR”)).

iv Being 8m of a non-tidal main river (or within 8m of any flood defence structure or culvert on that river) or any activity within 16m of a tidal main river (or within 16m of any flood defence structure or culvert on that river) ([Schedule 25 Part 1 Paragraph 3\(1\)\(f\) of the EPR](#)).

- **certain activities within specified distances^v of a main river.** These are activities likely to: (a) cause damage to, or endanger the stability of, the banks of that river or of any culvert;^{vi} (b) cause damage to any river control works; (c) alter, reconstruct, discontinue or remove any river control works; (d) divert or obstruct floodwaters or affect the drainage of that river; or (e) interfere with the regulator’s access to or along that river;
- **certain activities carried out on the floodplain of a main river, within specified distances^{vii} of a main river, culvert or flood defence.** These are activities that are likely to divert or obstruct floodwaters, to damage any river control works or to affect drainage on the floodplain of a main river, unless planning permission has been granted; and
- **certain activities near a sea defence or remote defence.^{viii}** These are activities likely to endanger or damage, or reduce the effectiveness of, a sea defence or remote defence or interfere with the regulator’s access to it.

A full list of the “flood risk activities” can be found in the [Environmental Permitting Regulations](#) (“EPR”) and government guidance for [England](#) and [Wales](#).

3.1.2 Exemptions and exclusions

A flood risk activity permit is not required for activities that

v See specified distances set out above.

vi “Culvert” means a covered channel or pipe that prevents the obstruction of a main river or drainage path by an artificial construction ([Schedule 25, Part 1, Paragraph 3\(4\) EPR](#)).

vii Being more than 8m from a non-tidal main river or more than 1m from a tidal main river, or more than 8m from any flood defence structure or culvert on a non-tidal main river or more than 16m from any flood defence structure or culvert on a tidal main river ([Schedule 25 Part 1 Paragraph 3\(1\)\(g\) of the EPR](#)).

viii “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 river (unless excluded) ([Schedule 25, Part 1, Paragraph 3\(4\) EPR](#)).

are either exempt or excluded, and different requirements and processes apply for each of these categories.

Exempt activities

Some “flood risk activities” are exempt from requiring a flood risk activity permit, provided that: (a) the exemption is registered; (b) the activity meets the required conditions for that exemption; and (c) the activity is not carried out on (or within a specified distance of): (i) a protected site; or (ii) in respect of Wales only, a main river that is classified as being of “high morphological status” (see further detail on protected sites at section 2.3 above).¹⁴

For freshwater habitat rewilding, the most relevant exemptions¹⁵ are:

- **repairing and protecting a section of riverbank of a main river** – provided that the required conditions are met, including that the section is no more than 10m long and only “natural materials” are used, meaning materials other than steel sheet piling, concrete, cement or concrete bagwork, brickwork, gabions or non-biodegradable materials;
- **installing channel habitat structures made of natural materials (excluding weirs and berms)** – provided that the required conditions are met, including that the structure meets the size and height requirements, occupies no more than half the width of the cross-sectional area of the channel in the main river and no more than 20m of the length of the main river, is securely fastened to the riverbed, the bank or both, is made from naturally occurring woody material and meets various location requirements. The width condition means that this exemption is unlikely to be available for a leaky dam;
- **placing stones or logs in a main river (in England only) to enhance habitats** – provided that the required conditions are met, including that any such stones or logs meet the size and placing requirements and are of a type that occur naturally in the main river or in its vicinity;

- **excavating scrapes and shallow wetland features** – provided that the required conditions are met, including that the area of the excavation is no more than 0.1 ha, takes place at least 100m from any other excavation in the floodplain, and is no more than 50cm deep at any point;
- **constructing bankside wildlife refuge structures** – provided that the required conditions are met, including that the structure meets the size and height requirements and is not located within specified distances of either another man-made structure on or in the main river, a flood defence structure or river control works, or a water body in England that is classified as being of “high morphological status”;
- **constructing eel pass devices on existing structures** – provided that the required conditions are met, including that the existing structure is not located on a tidal river and the device is permanently and securely attached to the existing structure and meets the size requirements; and
- **constructing notches on an existing impoundment** – provided that the required conditions are met, including that the construction does not affect the structural integrity of the impoundment or adversely affect the banks or established bed of the main river, or change the water level in the main river by more than 20cm.

The list of conditions which must be met for each exemption may extend beyond those mentioned above. See the Department for Environment, Food & Rural Affairs (“DEFRA”) guidance on [Exempt flood risk activities](#) for details of the relevant conditions for each exemption.

Excluded activities

Some “flood risk activities” are excluded from the requirement for a permit or registration, provided that rewilders operate within the description and conditions of the exclusion. The most relevant exclusion for rewilding purposes is for activities requiring a marine licence.

For this exclusion to apply in England and Wales, the activity must be a licensable marine activity for which an application for a marine licence has been made.¹⁶

In addition:

- For England, the EA must also receive notice of the marine licence application and notify the applicant that in view of the terms and conditions that will be included in that licence, the flood risk activity permit is not required.
- For Wales, the activity must not be carried out in, or within 100m of, a water body that is part of a main river classified as being of “high morphological status”.¹⁷

See Defra’s guidance on [Excluded flood risk activities](#) for a full list of the exclusions, which also include: (a) erecting fencing near a main river or on a floodplain; and (b) attaching noticeboards to existing fencing or freestanding permanent posts (each of which is conditional on satisfying the relevant description and conditions).

3.1.3 How is a flood risk activity permit obtained?

Application process in England

There are currently three ways to obtain permission to carry out a “flood risk activity”:

- **Register an exemption.** For exempt flood risk activities, you do not need a permit but the exemption must be registered with the EA before carrying out any work. Failure to do so would constitute a breach of the EPR. It is free to register an exemption and you can do so online.¹⁸ The EA will notify you of whether it has registered the exemption within 10 working days. You can [contact the EA](#) before filling in your registration to check whether the activity is eligible for an exemption; if it is not eligible, a permit may be required.
- **Apply for a standard rules permit.** This applies to work

that fits fully within one of the [Standard Rules](#), which include: (a) channel habitat structures made of natural materials occupying up to 100m of a main river; (b) repairing and protecting up to 20m of main riverbank; and (c) the excavation of a wetland or pond in a main river flood plain. To apply for a standard rules permit, complete forms B11, A and F3,¹⁹ post these to your local EA office and pay the requisite fee set out in the EA’s [Charging Scheme](#). You can find your local EA office by checking the EA’s [Office access and opening times](#).

- **Apply for a bespoke permit.** You must apply for a bespoke permit if your activities do not fit within any of the Standard Rules, exemptions or exclusions. To apply for a bespoke permit, complete forms B10, A and F3, post these to your local EA office and pay the requisite fee (as outlined for standard rules permit applications).

It is important to note that a single flood risk activity permit may authorise a person to carry out more than one “flood risk activity”.²⁰ When applying for a permit for more than one “flood risk activity”, the charge per activity is amended (see further detail in the [Charging Scheme](#)).

The EA has changed the way it processes flood risk activity permits. Since summer 2024, the EA processes all applications through its National Permitting Service (“NPS”). NPS has become the central point for applications and process and issue permits, although local teams continue to provide pre-application advice.

The EA offers a pre-application advice service, providing:

- free advice on which type of permit you need and the application process, and information on whether your activity may have an impact on heritage and nature conservation sites or protected species and habitats; and
- paid advice for more complex requests (on matters such as complex modelling and preparing risk assessments).



Rewilders can find out more about the pre-application advice service [here](#) and request advice [here](#).

Application process in Wales

There are two ways to obtain permission to carry out a “flood risk activity”:

- **Register an exemption.** You can register an exemption, provided that you meet the conditions set out in the [Technical Guidance: Flood risk activity exemptions](#). It is free to register an exemption and you can do so online.²¹ NRW does not specify a timescale for processing applications, but once registered your exemption details will appear on the flood risk activity exemption public register. As for England, you must not carry on the activity until the exemption is registered.
- **Apply for a permit online.** Applications for flood risk activity permits in Wales are made online to NRW.²² The timescale to make a decision is normally within two months of receiving a complete application and the correct fee. NRW also provides a one-to-one advice service²³ to assist with the application process. NRW has published guidance on the [Information you will need to provide](#).

NRW offers a paid pre-application advice service, providing advice on whether a permit is required and assistance with applications. Rewilders can find out more about the pre-application advice service [here](#) and request advice [here](#).

3.1.4 What are the consequences of non-compliance?

It is a criminal offence to carry out a regulated “flood risk activity” (as defined in section 3.1 above) (or to cause or knowingly permit a regulated flood risk activity to be carried out) without a flood risk activity permit or to breach a condition of such a permit.²⁴ If in doubt as to whether a permit is required you should seek advice from the relevant regulator.

3.2 Land drainage consents

3.2.1 When is a land drainage consent required?

A land drainage consent (also known as an ordinary watercourse consent) is required to carry out certain works to an ordinary watercourse (i.e. any watercourse other than a main river).^{ix} In England, if the ordinary watercourse in question is located within an area managed by an internal drainage board (“IDB”), consent is obtained from that IDB, otherwise it is obtained from the lead local flood authority (“LLFA”). In Wales, consent is obtained from NRW. The [IDB Map](#) can be used to identify IDBs in England. The EA’s [Long Term Flood Risk service](#) can be used to identify the relevant LLFA.

Activities requiring land drainage consent that may be relevant to rewilding freshwater habitats include altering or removing an existing mill, dam, weir or similar obstruction to the flow of the ordinary watercourse, or altering a culvert in a manner that would be likely to affect the flow of an ordinary watercourse.²⁵ A consent may not be required to remove a land drain unless these circumstances (or others prescribed in byelaws introduced by the relevant IDB or LLFA) are met.

3.2.2 How is a land drainage consent obtained?

The application process to obtain a land drainage consent will be prescribed by the relevant IDB or LLFA. It will generally involve the completion of an application form and payment of a £50 fee. Some authorities offer pre-application advice and assistance. A relevant authority will typically provide a decision within two months. If it fails to do so, that authority is deemed to have given its consent.²⁶

3.2.3 What are the consequences of non-compliance?

^{ix} The requirement for land drainage consent is not subject to any statutory threshold (e.g. with respect to the minimum size of the ordinary watercourse or proposed works); however, it may be easier to obtain consent where the potential flood risk is low, such as for a smaller watercourse.

If a regulated activity is carried out without the required land drainage consent, the IDB or LLFA may serve an abatement notice on the person responsible. It is a criminal offence to contravene or fail to comply with an abatement notice and is punishable by a fine.²⁷ The IDB or LLFA also has the power to remove unauthorised work and recover the costs of doing so.²⁸ If in doubt as to whether a land drainage consent is required, you should seek advice from the relevant authority.

3.3 Byelaws

Regional and local byelaws may impose further legal requirements or restrictions on carrying out rewilding activities on or near a main river, flood defence, flood plain, sea defence or an ordinary watercourse.

3.3.1 Regional byelaws

Regional byelaws were typically put in place by local authorities but may have been transferred to the EA or NRW (as applicable).

In England, there are nine sets of regional flood defence and land drainage byelaws, and each is different. To find the regional byelaws for the location of your activity in England, check the EA’s [Statutory guidance on regional flood defence and land drainage byelaws](#).

NRW has [Land drainage consent guidance notes](#), which include further information about regional byelaws in Wales.

Regional byelaws typically set out requirements and prohibitions. Examples of these byelaws that may be relevant for the rewilding of freshwater habitats include prohibitions on:

- putting any object (such as a tree or branches) into a river so as to impede the flow of water;²⁹
- planting any tree or shrub within a specified distance of the bank without the previous consent of the Thames Water Authority;³⁰ and

- carrying out works adjacent to a main river that limit the LPA's ability to deposit soil in accordance with its statutory powers.³¹

The EA and NRW also have powers to introduce new byelaws.³²

3.3.2 Local byelaws

Local byelaws may also apply. These are typically based on model byelaws,³³ and so will be similar to other byelaws of the same type. In addition to requirements and prohibitions, the model byelaws provide that various activities are permitted, provided that the prior consent of the relevant authority (the local authority, IDB or navigation authority^x) is obtained. Examples of these byelaws that may be relevant for the rewilding of freshwater habitats include:

- a prohibition on taking any action to stop up any watercourse or divert or impede or alter the level of or direction of the flow of water in, into or out of any watercourse without the previous consent of the relevant authority;³⁴
- a requirement for any person having control of any watercourse to, upon the receipt of a notice by the relevant authority requiring them so to do, cut down and keep cut down all vegetation, including trees, growing in or on the bank of a watercourse;³⁵ and
- a prohibition on the removal of any material forming part of any bank of any watercourse without the previous consent of the relevant authority (save for temporary work executed in an emergency).³⁶

IDBs, LLFAs, local authorities and navigation authorities may also introduce new byelaws requiring consent for additional activities (such as activities likely to increase the flow or volume of water in any watercourse).³⁷ It is therefore important to check the specific requirements of the relevant authority.

3.3.3 How is byelaw consent obtained?

Where byelaws provide that activities may be carried out with the relevant authority's consent, it is important to check the relevant authority's byelaw consent process. For local byelaw consent, it is likely to be a similar process as for land drainage consents.

3.3.4 What are the consequences of non-compliance?

Acting in contravention of applicable regional byelaws is likely to be a criminal offence if your activities increase flood risk and cause harm to land drainage or the environment. Acting in contravention of applicable local byelaws is a criminal offence punishable by a fine, and the relevant authority may take actions to remedy the contravention or failure and recover the costs of doing so.³⁸

4. WATER RESOURCES LICENCES

A water resources licence may be required for activities involving certain levels of abstraction or impoundment of water.³⁹ Licences are issued by the EA (for England) and NRW (for Wales).

4.1 Abstraction licences

"Abstraction" refers to taking water from a surface or an underground source, such as rivers, streams, drains, lakes, springs and aquifers, unless the water is taken from a discrete source (such as a pond that has no outlet to another surface water source or connection to groundwater).⁴⁰

4.1.1 When is an abstraction licence required?

Rewilders would not typically abstract water for ecological restoration purposes and would generally allow newly created features such as ponds to fill up with water without human intervention. However, if in a particular case a rewilders is considering abstraction of water (for example, to create new wetland features such as ponds or scrapes) and plans to

abstract more than 20,000 litres of water on a given day, an abstraction licence is likely to be required.⁴¹ Exemptions apply in some cases (for example, where the abstraction takes place within 'managed wetland systems', provided that the relevant conditions are met⁴²). Additional requirements may apply in relation to the abstraction of groundwater. Further information can be found in [Guidance: Check if you need a licence to abstract water](#) (for England) and [Water abstraction and impoundment licences](#) (for Wales).

4.2 Impounding licences

An impoundment is a structure within inland water bodies that can permanently or temporarily change the level or flow of water, such as a dam, weir or fish pass.⁴³

4.2.1 When is an impounding licence required?

- Although rewilders are unlikely to want to build any such structures, an impounding licence will be required to alter or remove any such existing structures if they are not already licensed.⁴⁴
- Rewilders intending to carry out activities that could obstruct or impede the flow of any inland water body (such as filling in straightened channels for river re-meandering works or inserting material into a channel to bring it level with a floodplain) should check with the EA/NRW to determine whether an impounding licence is required.

4.2.2 Exemptions

There are various exemptions. For example, there is an exemption that applies if the impounding works are solely for the management, operation or maintenance of water within managed wetland systems.⁴⁵ However, this is unlikely to be relevant to rewilding projects, which typically will not be actively managing wetlands using channels, sluices, etc.

^x See a list of the navigation authorities in the UK here: <https://waterways.org.uk/waterways/uk-canal-map/who-maintains-the-uks-canals-and-rivers>

In addition, some impoundment activities are designated low risk, for which a licence is not normally required. These activities include:

- placing a notch in a weir to encourage fish migration;
- placing woody debris across part of the channel to diversify flows;
- fish easements or passes that have formal written approval from the EA and do not significantly affect the distribution of flow over the weir (although these would not be a first choice for rewilders, who would ideally prefer to remove the obstruction);
- managing vegetation; and
- works that temporarily divert water during construction or maintenance of a structure and do not affect any other water users, rights or the environment.

Further information can be found in [Guidance: Check if you need a licence to impound water](#) (for England) and [equivalent guidance](#) (for Wales). Both sets of guidance include a low-risk impoundment checklist. If you answer 'no' to all of the questions on this checklist you are not likely to need an impounding licence.

You should keep a copy of the completed checklist for your records as the EA/NRW may ask to see it, together with any supporting evidence that shows how you determined that you did not need a licence.

4.3 How is a water resources licence obtained?

4.3.1 Application process in England

To apply for an abstraction or impounding licence, rewilders should complete and submit the [necessary forms](#) to the EA, being parts A, B, C and E for abstraction and parts A, D and E for impounding. It will not be necessary to complete Part E if you are applying for environmentally beneficial abstraction or impounding, as explained in the guidance on charges (see detail below).

The EA will usually make a decision on temporary licence applications within 28 days (although the EA may extend this by up to 56 days to consult with third parties if the abstraction or impoundment is near a protected site (as defined in section 2.3)) and within four months for all other licence applications.

You will be required to pay an application fee for a new licence or to vary an existing licence. If you are applying to abstract over 20m³ of water a day for 28 days or more, you may also be charged an annual subsistence charge to hold a full abstraction licence. The Government has published guidance on [when and how you are charged](#) to enable you to calculate the correct fee.

The EA offers free and paid-for [pre-application services](#) to assist applicants with the process or if they are unsure of whether a licence is required.

For further information, see the EA's [Guidance: Apply for a water abstraction or impounding licence](#).

4.3.2 Application process in Wales

To apply for an abstraction or impounding licence you will need to complete the relevant online application forms, provide NRW with the required supporting information and pay the correct fee. The relevant forms are WRA and WRD (for abstraction) and WRA and WRE (for impounding).⁴⁶

For information on the applicable fees, see NRW's [Charges for abstraction and impoundment licence applications](#).

NRW will make a decision on temporary abstraction licence applications within 20 working days and, for other applications, within three months (or four months if the application needs to be advertised).

For further information about the application process, see NRW's guidance: [Apply for a water abstraction or impoundment licence](#).

4.4 What are the consequences of non-compliance?

Rewilders who impound or abstract water, or alter or remove an existing impounding structure without the relevant licence, where one is required, could face a civil sanction and/or criminal proceedings.⁴⁷

Civil sanctions can be imposed by the EA and include monetary penalties and notices requiring the recipient to take, or refrain from taking, prescribed actions.⁴⁸ In certain circumstances, the EA can also accept undertakings from the non-compliant person (for example, to restore any harm arising from the non-compliance).⁴⁹

Non-compliance may also constitute a criminal offence punishable by a fine; however, if a civil sanction has already been issued criminal proceedings for the offence cannot be instituted unless the person fails to comply with a notice or an undertaking. Failure to comply with a stop notice prohibiting a person from carrying on an activity is itself a criminal offence, punishable by a fine, imprisonment, or both.⁵⁰

If in doubt as to whether a licence is required, rewilders can seek advice from the EA's enhanced pre-application service (for England) or NRW (for Wales).

5. WILDLIFE LICENCES

5.1 When is a wildlife licence required?

Wildlife licences are required for any project that would impact identified protected species. For example, a licence would be required if rewilding water activities would:

- cause harm to animals that are a "European Protected Species", including:
 - deliberately capturing, injuring, killing or disturbing them, or taking or destroying their eggs; or



- whether deliberately or otherwise, damaging or destroying their breeding site or resting place.⁵¹

A number of species dependent on freshwater habitats are European Protected Species, including the Eurasian Beaver, Common Otter, Natterjack Toad and Great Crested Newt (among others).

- cause harm to certain animals specified in the Wildlife and Countryside Act 1981, including:
 - intentionally killing, injuring or taking them; or
 - intentionally or recklessly: (a) damaging or destroying any structure or place used by them for shelter or protection; (b) disturbing them while they are occupying any such structure or place; or (c) obstructing their access to any such structure or place.⁵²

A number of species dependent on freshwater habitats are protected under the Act, including the Water Vole, Lesser Silver Water Beetle, Fen Raft Spider and Freshwater Pearl Mussel (among others).

- cause harm to wild birds, their nests or eggs, including intentionally:
 - killing, injuring or taking any wild bird; or
 - taking, damaging or destroying their nest or eggs.⁵³

5.2 Application process

There are various types of wildlife licence for different activities and species, which are obtained through different processes. For example, in England, activities may require:

- a general licence (which is free and does not require an application to be made but you must follow the licence's conditions of use);
- a class licence (which must be registered with Natural England); or

- an individual licence or organisational licence (which you must apply for).

Where an application is required it should be made to Natural England or NRW (as appropriate).⁵⁴ You may need to show that the work is necessary and that there is no alternative way to do the work without affecting the protected species.

For more information on the application process in England, see Natural England's guidance on [Wildlife licences: when you need to apply](#) and [European protected species](#), which sets out which licences you may need to carry out work in England that affects wildlife and its habitat, how to apply and when you might need to pay.

For more information on the application process in Wales, see NRW's [Guidance notes on applying for a protected species licence](#), which sets out the activities and species covered by the Welsh regime and the various application processes.

5.3 What are the consequences of non-compliance?

Carrying out a regulated activity without a wildlife licence is a criminal offence punishable by an unlimited fine or up to six months in prison, or both.⁵⁵ In England only (there is no equivalent provision in Wales), Natural England can issue civil sanctions for certain breaches of the Wildlife and Countryside Act 1981 (please see further detail on civil sanctions and their interaction with criminal proceedings at section 4.4 above). If in doubt as to whether a wildlife licence is required rewilders should seek advice from the relevant licensing authority.

6. POTENTIAL LIABILITIES

In addition to the consequences of non-compliance with legal requirements discussed above, the following further potential liabilities may arise in connection with carrying out rewilding of freshwater habitats:

- liability to neighbouring landholders; and
- breach of riparian obligations.

6.1 Liability to neighbouring landholders

Landholders can be held liable for doing something on their land that interferes with a neighbour's land or their enjoyment of it. In the context of activities relating to the rewilding of freshwater habitats, the key risks are flooding and subsidence.

Neighbours adversely impacted by flooding or subsidence caused by their neighbour's actions (for example removing dams or infrastructure designed to control flooding, or refraining from maintaining riverbanks to enable a river to meander) may be able to claim compensation for physical damage and loss of enjoyment, and landholders may be required to take action to stop or prevent things from occurring on their land if they are impacting their neighbours.

Rewilders should check with their insurance broker regarding the extent to which the risk of liability to neighbouring landholders is or can be covered by their insurance. For further information, see the [Rewilding in England and Wales: Liability to neighbouring landholders](#) briefing note.

6.2 Breach of riparian obligations

One aspect of potential liability to neighbouring landholders relates to riparian rights and responsibilities.

Those who own land through or along which watercourses run ("riparian" owners) benefit from special legal rights and are subject to certain responsibilities. These rights and responsibilities derive from common law, and some have since been codified in statute or byelaw and constitute the obligations detailed at section 3 of this note. Section 6 of this note will focus on the potential liabilities that remain governed by common law and would constitute disputes between individuals as opposed to enforcement action brought by a regulator or public body.



6.2.1 Riparian rights

Rights enjoyed by riparian owners include:

- to receive a flow of water in its natural state, without undue interference in quantity or quality;
- to protect their property from flooding and erosion, provided that they obtain prior approval for any flood defence measures from the relevant authority (see section 3 for further detail); and
- to fish in their section of the watercourse (using a legal method with a valid EA or NRW rod licence), although fishing rights can also be reserved to a previous owner or be sold or leased.

6.2.2 Riparian responsibilities

Riparian owners also have numerous responsibilities, which include:

- to pass on flow without obstruction, pollution or diversion that affects the rights of others;
- to accept flood flows through their land, even if caused by inadequate capacity downstream;
- to maintain the beds and banks of the watercourse (including trees and shrubs growing on the banks, and to clear any debris, even if it did not originate on their land); and
- to keep the bed and banks clear from any matter that could cause obstruction.

6.2.3 Presumptions

In determining who owns a stretch of watercourse, and therefore who is obligated to comply with the riparian responsibilities, two presumptions apply:

- If the land boundary runs alongside a watercourse,

the landholder owns the land up to the centre of the watercourse unless it is owned by someone else.

- If the watercourse runs through or underneath the land, the landholder owns that stretch of the watercourse, unless it is the responsibility of a third party (which would more commonly occur with artificial watercourses).

If rewilders are unsure of who owns a watercourse they should check the title documentation, which is available from the [Land Registry](#).

6.2.4 What are the consequences of a breach?

If a landholder is a riparian owner and, by virtue of carrying out rewilding activities in relation to freshwater habitats, breaches any riparian responsibility or infringes on the riparian rights of others, liability could arise under various common law causes of action, in particular:

1. **Nuisance** – where there is a foreseeable risk of the type of damage that occurred, and either the use of or interference with the land is not reasonable or the landowner fails to take reasonable care.
2. **Negligence** – where there is proof of a foreseeable risk of damage and a failure to take reasonable care.
3. **Strict liability** – usually where there is an escape of water (where it accumulated unnaturally, for example through the construction of a dam), which spreads onto neighbouring land and causes substantial damage.

As with liability to neighbouring landholders, remedies for breach of riparian obligations are typically damages and/or injunctive relief.

For further information, see sections 3 and 4 of the [Rewilding in England and Wales: Liability to neighbouring landholders](#) briefing note and the EA's [guide to the rights and responsibilities of riverside ownership](#). If you are unsure

of which riparian rights and responsibilities may apply to you (including those codified into statute and/or byelaw), your local council may have published guidance on this point.

7. OCCUPIERS' LIABILITY

Rewilders taking steps to rewild freshwater habitats should also be aware that they may be liable for injury, or loss of or damage to property, to people entering or on the land if reasonable steps are not taken to keep the land safe. For further details see the [Rewilding in England and Wales: liability to individuals on land](#) briefing note.

8. EXAMPLES

8.1 Removal of a weir

Landowner A wants to remove a redundant weir in a river flowing over their land, to restore a more natural river course and facilitate movement of aquatic wildlife. The river is an ordinary watercourse.

- The removal of a weir would be likely to constitute “engineering operations” and therefore be “development” requiring planning permission. If a weir is located in an area at risk of flooding, an FRA may be required as part of the application for planning permission. Early engagement with the LPA is advisable to confirm what is required.
- Landowner A will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land.
- As the river is an ordinary watercourse, land drainage consent will be needed. Landowner A should also check whether any further requirements are imposed by regional or local byelaws.



- If the river is a main river, Landowner A would need a flood risk activity permit, rather than a land drainage consent. As there is no standard rules permit available for this activity, Landowner A would need to apply for a bespoke permit.
- An impounding licence will be required if the weir does not already have an impounding licence.
- Landowner A will also need to consider whether any wildlife licences are required (for example, if there are protected species living on site that might be impacted).
- Finally, Landowner A will need to consider the possibility of legal liability to neighbouring landowners; for example, if removing the weir causes neighbouring land to flood. Landowner A may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

8.2 Removal of land drains

Landowner B owns an area of former agricultural land containing land drains. Landowner B wants to remove the land drains to create a wetland. There is an ordinary watercourse nearby.

- LPAs may take different approaches to whether this activity constitutes minor works (which do not require planning permission) or “development” (which does). Their decision may be impacted by the specific circumstances of the project, including its scale, likely impact and the applicable planning policies. If planning permission is required, an FRA may also be required if the project is located in an area at risk of flooding. Landowner B should consult with the LPA in advance of undertaking such works to confirm what is required.
- Landowner B will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land, or whether any wildlife licences are required.

- Landowner B may require a byelaw consent or land drainage consent if the removal of the land drains would be likely to affect the flow of the nearby ordinary watercourse, or other criteria prescribed by applicable byelaws are met.
- Finally, Landowner B should consider how the works may impact their neighbours’ land; for example, whether removing the land drains may cause flooding to that land, which could result in legal action for compensation or to stop the drains being removed. Landowner B may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

8.3 Creation of ponds and scrapes

Landowner C wants to create new wetland features on agricultural land, including ponds and scrapes, which will be dug and left to fill up with water and be planted. There is a main river nearby.

- As with Landowner B, LPAs may take different approaches to whether planning permission (and potentially an FRA) is required, and Landowner C should consult with the LPA in advance of undertaking such works. As the land is used for agriculture, Landowner C may be able to rely on permitted development rights, provided that:
 - those rights have not been restricted by the relevant LPA; and
 - Landowner C satisfies the relevant conditions (including that the works are “reasonably necessary for the purposes of agriculture within that unit”).
- Landowner C will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land, or whether any wildlife licences are required.

- Landowner C would need to apply for a flood risk activity permit if the works: (i) would be within 8m of a non-tidal main river or within 16m of a tidal main river; and (ii) are likely to affect the drainage of that river. However, Landowner C may be able to rely on an exemption, provided they satisfy the relevant conditions, including that the exemption is registered and the area of excavation is no more than 0.1ha (among others).
- Landowner C should check whether any further requirements are imposed by regional or local byelaws. In particular, Landowner C should note that byelaws may restrict activities such as planting trees or shrubs within a specified distance of a riverbank.
- As the scrapes and ponds will be left to fill up with water by themselves, an abstraction licence is not required.
- Finally, Landowner C should consider how the works may impact their neighbours’ land; for example, whether the wetland creation works may unduly interfere with the flow of water to neighbours downstream. Landowner C may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

8.4 Re-meandering of a river

Landowner D owns an area of land with a straightened river running through it. Landowner D wants to restore meanders to the river. Landowner D plans to do so by digging out a new meandering channel, connecting this to the river and filling in the straightened channel. The river is an ordinary watercourse.

- The re-meandering of a river would be likely to constitute “engineering operations” and “other” operations and therefore be “development” requiring planning permission. However, if the land is currently used for agriculture, Landowner D may be able to rely on permitted development rights, subject to the same restrictions set out above in respect of Landowner C.

- Alternatively, it may be possible to rely on the EA's permitted development rights if Landowner D is undertaking the works in partnership with the EA. This would depend on the relevant conditions being met, including that the development is "required in connection with the improvement, maintenance or repair of the watercourse".
- If planning permission is required, an FRA may also be needed if the project is located in an area at risk of flooding. Early engagement with the LPA is advisable to confirm what is required.
- Landowner D will also need to check whether the works would take place on or near any protected sites, which could impose additional requirements and affect what can be done on the land, or whether any wildlife licences are required. For example, if Landowner D intends to remove fish from the original channel by electrofishing, Landowner D will need to consider whether this might affect any protected species and, if so, whether a licence would be required to do so.
- It is likely that byelaw consent will be required as the works involve diverting the flow of water in the watercourse. Land drainage consent may also be required if it is necessary to erect a temporary obstruction to enable the works to take place. Landowner D should contact the relevant local authority before starting the works.
- Landowner D should check with the EA/NRW whether an impounding licence will be required; for example, if the re-meandering works will include the creation of impoundments.
- Finally, Landowner D will need to consider the possibility of liability to neighbouring landowners; for example, if the engineering works to create the meander reduce the flow of water to neighbouring land. Landowner D may wish to consider obtaining additional insurance cover in case they are required to pay compensation.

8.5 Peatland restoration

Landowner E owns an area of degraded peatland in England. Landowner E wants to use peatland restoration techniques (such as installing bunds and blocking land drains) to restore the peatland. There is a main river nearby.

- It is possible that the restoration works may count as "development" for planning permission purposes, depending on the scale and type of work being carried out. Landowner E should engage with the relevant LPA to confirm whether planning permission is required.
- Landowner E may also need to obtain licences if, for example, the peatland is on or near a protected site or if protected wildlife might be impacted by the restoration works. Landowner E should also take note of Government policies relating to peatlands such as the England Peat Action Plan.
- As there is a main river close by, Landowner E will also need to consider whether a flood risk activity permit is needed. Landowner E should discuss this possibility with the EA. Depending on the circumstances, if a flood risk activity permit is required it may be possible to register an exemption (for example, the exemption for excavating scrapes and shallow wetland features may be available, depending on factors including the area, depth and location of any excavations, among others).
- Landowner E should consider whether an impounding licence will be required for any of the works. Landowner E should engage with the EA to determine whether an impounding licence would be required.
- Landowner E should also consider the possible impacts of the works on neighbouring land and whether insurance would be desirable to cover any risk of liability.
- Landowner E should also consider whether there are any byelaws applying to the proposed restoration activities.

- If there is also an ordinary watercourse nearby, a land drainage consent from the IDB or LLFA (as appropriate) may also be required; for example, if the restoration activities might affect the flow of the ordinary watercourse.

9. CHECKLIST

- Would the works constitute "development" for planning purposes? If so, can you rely on permitted development rights or will you need to apply for planning permission (see section 2.1)?
- If planning permission is required:
 - Could the works have "significant effects" on the environment? If so, an EIA may be required (see section 2.2).
 - Are the works located in an area at risk of flooding? If so, an FRA may be required (see section 2.4).
- Would the works take place on or near any protected sites (for example, an SSSI or an SAC)? If so, restrictions may apply and additional consents may be required (see section 2.3).
- Is the project located on or near a main river, flood defence, flood plain or sea defence? If so, a flood risk activity permit may be required (see section 3.1).
- Are you planning to carry out works to an ordinary watercourse? If so, a land drainage consent may be required (see section 3.2).
- Do any regional or local byelaws impose further legal requirements or restrictions on your proposed rewilding activities? If so, you may need byelaw consent (see section 3.3).
- As part of your rewilding activities, are you planning to abstract more than 20,000 litres of water on a given day? If so, you are likely to need an abstraction licence (see section 4.1).



- Are you planning to create, alter or remove an impoundment (for example, a weir, dam or fish pass)? If so, you may need an impounding licence (see section 4.2).
- Could your project have an impact on protected species? If so, you may need a wildlife licence (see section 5).
- Could the works adversely impact neighbours' land (for example, by causing flooding or reducing the flow of water)? If so, you may wish to consider obtaining additional insurance cover in case they require compensation (see section 6).

DISCLAIMERS

It is important to note that, where the guidance documents issued by public authorities referred to above interpret or apply legislation or regulations, the interpretation provided is a reflection of the relevant body's interpretation of the law at a point in time, which may or may not be the correct legal interpretation. The guidance does not override the requirements of underlying legislation.

Thank you to Clifford Chance LLP for their legal support in producing this briefing note.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.

The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of October 2025.

ENDNOTES

- 1 For example, canals can be created by primary legislation, which may contain specific restrictions, and they may also be subject to byelaws. As canals may feed into or otherwise be connected to rivers, the rules relating to canals may be relevant even if no direct works are being done on a canal. For projects involving canals, advice can be sought from the Inland Waterways Advisory Council and/or the Association of Inland Navigation Authorities.
- 2 S. 55(1) of the Town and Country Planning Act 1990.
- 3 A list of permitted development rights and the applicable conditions for each is set out in Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "Order").
- 4 For rights relating to agriculture and forestry works, see Part 6 of Schedule 2 of the Order.
- 5 For rights relating to the erection or alteration of a gate, fence, wall or other enclosure, see Part 2 of Schedule 2 of the Order.
- 6 For the EA's permitted development rights, see Class D(b) of Part 13 of Schedule 2 of the Order.
- 7 Regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 provides that "EIA development" means development that is either Schedule 1 development or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location. Regulation 3 provides that planning permission for EIA development must not be granted unless an EIA has been carried out.
- 8 The activities are listed at Schedule 2 paragraph 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. The indicative criteria and threshold and key issues to consider are set out in guidance provided by the Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government, available here: <https://assets.publishing.service.gov.uk/media/5a75aa4440f0b67f59fcea7e/eia-thresholds-table.pdf>.
- 9 For England, this is set out in s. 165 of the National Planning Policy Framework. For Wales, this is set out in s. 3.1 of Technical Advice Note. 15 Development and Flood Risk
- 10 S. 113(1) of the Water Resources Act 1991. It also includes any structure or appliance for controlling the flow of water into, in or out of the channel, which is situated in the channel or its banks and is not controlled by an internal drainage board.
- 11 S. 72(1) of the Land Drainage Act 1991.
- 12 "Flood risk activities" and "excluded flood risk activities" are listed at Schedule 25 of the Environmental Permitting (England and Wales) Regulations 2016. "Exempt flood risk activities" are listed at Schedule 3 Part 4 of those Regulations.
- 13 Schedule 25 Part 1 Paragraph 3(4) of the Environmental Permitting (England and Wales) Regulations 2016.
- 14 Schedule 2 paragraph 9 of the EPR sets out the definition of "exempt flood risk activities" and Schedule 3 part 4 sets out the descriptions and conditions for exempt flood risk activities.
- 15 The exemptions mentioned are set out in Schedule 3 part 4 paragraph[s] 13, 18, 23 and 25 of the Environmental Permitting (England and Wales) Regulations 2016.
- 16 Schedule 25 Part 1 paragraph 4 of the EPR sets out the definition of "excluded flood risk activity" and Schedule 25 Part 2 sets out the descriptions and conditions for excluded flood risk activities.
- 17 For England, see Schedule 25 Part 2 paragraph 3(2) of the EPR. For Wales, see Schedule 25 Part 2 paragraph 1(3).
- 18 For England, you may register a flood risk activity exemption.
- 19 <https://www.gov.uk/government/publications/application-for-an-environmental-permit-part-b11-standard-rules-permit-for-flood-risk-activities>; <https://www.gov.uk/government/publications/application-for-an-environmental-permit-part-a-about-you>; <https://www.gov.uk/government/publications/application-for-an-environmental-permit-part-f3-charging-for-flood-risk-activities-and-declarations>.
- 20 Regulation 17(2)(e) of the EPR.
- 21 For Wales, you can register an exemption.
- 22 For Wales, you can apply for a flood risk activity permit.
- 23 The one-to-one advice service is available by contacting enquiries@naturalresourceswales.gov.uk.
- 24 Regulation 7 together with regulation 12(1)(a) and regulation 38(1) and (2) of the EPR.

- 25 S. 23(1) of the Land Drainage Act 1991.
- 26 S. 23(3)(b) of the Land Drainage Act 1991.
- 27 S. 24 of the Land Drainage Act 1991.
- 28 S. 24(4) of the Land Drainage Act 1991.
- 29 S. 9 of the South West region flood defence and land drainage byelaws.
- 30 S. 14 of the Thames region flood defence and land drainage byelaws.
- 31 S. 29 of the Wessex region flood defence and land drainage byelaws.
- 32 Schedule 25 paragraph 5 of the Water Resources Act 1991.
- 33 See the model byelaws, available in Defra's guidance on flood risk and land drainage byelaws.
- 34 S. 6 of the Model Land Drainage Byelaws Internal Drainage Boards.
- 35 S. 9 of the Black Sluice IDB byelaws.
- 36 S. 17(b) of the River Stour (Kent) IDB byelaws.
- 37 S. 66 of the Land Drainage Act 1991.
- 38 S. 66(6)-(7) of the Land Drainage Act 1991.
- 39 Chapter II of Part II of the Water Resources Act 1991 (as amended by the Water Act 2003 and the Water Act 2014).
- 40 S. 221(1) of the Water Resources Act 1991.
- 41 S. 24A of the Water Resources Act 1991 together with s. 27(1).
- 42 Regulation 2(1) (setting out the definition of managed wetland system) and regulation 8 of the Water Abstraction and Impounding (Exemptions) Regulations 2017.
- 43 S. 25(8) of the Water Resources Act 1991.
- 44 S. 25(1) and (1A) of the Water Resources Act 1991.
- 45 Regulation 12 of the Water Abstraction and Impounding (Exemptions) Regulations 2017.
- 46 See the relevant application forms available here: <https://naturalresources.wales/permits-and-permissions/water-abstraction-and-impoundment/apply-for-a-water-abstraction-or-impoundment-licence/?lang=en>.
- 47 S. 24(4) and s. 25(2) of the Water Resources Act 1991.
- 48 See Schedules 1 to 5 of The Environmental Civil Sanctions (England) Order 2010 (for England) and The Environmental Civil Sanctions (Wales) Order 2010 (for Wales).
- 49 Schedule 4 of The Environmental Civil Sanctions (England) Order 2010 (for England) and The Environmental Civil Sanctions (Wales) Order 2010 (for Wales).
- 50 Schedule 3 paragraph 6 of The Environmental Civil Sanctions (England) Order 2010 (for England) and The Environmental Civil Sanctions (Wales) Order 2010 (for Wales).
- 51 Regulations 42 and 43 of the Conservation of Habitats and Species Regulations 2017. European Protected Species are listed in Schedule 2.
- 52 S. 9 of the Wildlife and Countryside Act 1981. The species protected are listed in Schedule 5.
- 53 S. 1 of the Wildlife and Countryside Act 1981.
- 54 Regulation 55 of the Conservation of Habitats and Species Regulations 2017 provides for licences to be issued in relation to European Protected Species. S. 16 of the Wildlife and Countryside Act provides for licences to be issued in relation to species protected under s. 9 of that Act.
- 55 S. 21 of the Wildlife and Countryside Act 1981 and regulation 43 and regulation 60 of the Conservation of Habitats and Species Regulations 2017.