

**Please read these guidance notes carefully before you fill in the Land Drainage Consent application form.**

The purpose of this document is to provide general guidance on the procedures to be followed when making an application for works to Internal Drainage District (IDD) Ordinary Watercourses within the IDDs in Wales under the provisions of the Land Drainage Act 1991.

Matters that the Natural Resources Wales will take into account when considering an application are also outlined.

Where you see the term 'document reference', please provide the relevant document reference/s and send in these with your completed application form. Please note that if you provide documents that are not required these will not be assessed.

Before filling in the form we recommend that you contact us for advice on your proposal.

We have two months to make a decision on your application.

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## **1. Legal requirements**

- 1.1. Under the provisions of the Land Drainage Act 1991, Natural Resources Wales has a duty to exercise a general supervision over all matters relating to the drainage of land within their Drainage District. In addition to this, Byelaws made under Section 66 of the Act, further control works carried out and activities undertaken by others affecting watercourses within the Lower Wye, Caldicot and Wentlooge (Gwent Internal Drainage District), and Powysland Drainage Districts. The Byelaws permit Natural Resources Wales to control the

rate of surface water run-off from development sites into these Drainage Districts.

- 1.2. To meet the requirements of the Act and the Byelaws, any person proposing to undertake any works affecting a watercourse within the Internal Drainage Districts administered by Natural Resources Wales must submit details of their proposals to NRW. Before granting a Consent allowing the works to proceed, Natural Resources Wales may request any modifications to the proposals, which it considers necessary to satisfy its environmental duties and to control flood risk. There may be some instances, where mitigation measures are not readily available, where we will have to refuse to grant Consent.
- 1.3. Riparian owners, developers, and all other persons proposing to carry out any works affecting a watercourse must, therefore, obtain Land Drainage Consent from Natural Resources Wales before the work commences.
- 1.4. There are two different categories of watercourse - Main River and Ordinary Watercourses, whereby different legislative requirements apply to each.

## 2. Main rivers

- 2.1. A main river is legally defined as a watercourse that is shown on a main river map. If the location of your proposed activity is on a main river, you will need to apply for a Flood Risk Activity Permit from Natural Resources Wales under the Environmental Permitting Regulations (amendment) 2016.

**These Guidance Notes do not cover works affecting Main Rivers of which further information may be obtained using the following link:**

<http://www.naturalresources.wales/apply-for-a-permit/flood-risk-activities/?lang=en>

## 3. Ordinary Watercourses

- 3.1. The term "Ordinary" watercourse describes all other watercourses, streams, ditches, ponds, etc. within the Drainage District some of which may be tributaries of Main Rivers.
- 3.2. IDD ordinary watercourses are under the direct operational control of Natural Resources Wales. Natural Resources Wales has permissive (not mandatory) powers to carry out maintenance and improvement works on all ordinary watercourses within Internal Drainage Districts in Wales.
- 3.3. Natural Resources Wales also has regulatory powers in respect of all ordinary watercourses within its Drainage Districts.
- 3.4. In addition to the control of surface water run-off, the Land Drainage Byelaws applicable to the Gwent Internal Drainage District i.e. Lower Wye, Caldicot and Wentlooge; and Powysland IDDs, require persons to obtain prior Consent for

all activities in or adjacent to ordinary watercourses and their floodplains within the IDD boundary. Such activities include (but are not limited to) the erection of fences, the construction of culverts or bridges, the construction of outfalls, the placing of pipes or cables below the bed of IDD ordinary watercourses, tree planting, disposal of rubbish, and excavation which may affect the bed and banks of these watercourses.

#### 4. Application fees and other charges

- 4.1. Under Section 23 (2) of the Land Drainage Act 1991, Natural Resources Wales is authorised to charge an application fee in relation to an Application for Consent. The fee payable is to cover the cost of examining and approving the proposals. The fee amount is currently £50.00 (VAT exempt) and is payable in respect of each separate structure, channel, pond or other element forming the project.
- 4.2. Fees are non-refundable if an application is refused.
- 4.3. The Consent Application Form should be completed, detailing the number of structures (e.g. culverts, outfalls, new or re-aligned channels, ponds, etc.) forming the elements of the project, as appropriate. Applicants are advised to confirm the fee payable with Natural Resources Wales before submitting an application.

#### 5. How to obtain Consent

- 5.1. Completed Application Forms should be submitted, with the appropriate fee and supporting drawings, calculations and other documentation to Natural Resources Wales. Upon receipt of a full and complete application and correct fee Natural Resources Wales has 2 months in which to grant or refuse Consent. This time period does not start until Natural Resources Wales is satisfied that the application, including any required plans, drawings, flood risk assessments and design calculations, is complete in every respect.
- 5.2. The granting of Land Drainage Consent may be subject to Conditions such as to the time and manner in which the works are to be carried out, forms of construction, environmental mitigation works required, and the provisions to be made for future maintenance of the completed works. It is important that we are aware of who will be responsible for the works covered within the consent application.
- 5.3. Applicants are advised to discuss their proposals with Natural Resources Wales before submitting an application, to ensure they are aware of the principal requirements for the work envisaged.
- 5.4. A Consent granted by Natural Resources Wales is given solely for the purposes of the Land Drainage Act 1991 and Natural Resources Wales Byelaws, and should not be regarded by the applicant as in any way approving the design and soundness of any proposed structure, other than in relation to its impact on flows and its effects on the watercourse.

- 5.5. Natural Resources Wales accepts no liability for the structural integrity, the future stability or the future maintenance of any works for which Consent may be given. These matters are the sole responsibility of the applicant and their technical advisers.
- 5.6. Applicants are advised that a Land Drainage Consent does not override an adjacent landowner's rights nor does it permit interference with legally protected wildlife habitats.
- 5.7. If Natural Resources Wales fails, two months after the receipt of a full and duly made i.e. complete, application, to notify the applicant in writing of their determination with respect to the application, then Natural Resources Wales is deemed to have granted Consent by default.

## **6. General requirements**

- 6.1. Any modification, culverting or in filling of any ordinary watercourses within Natural Resources Wales internal drainage districts may require Land Drainage Consent from Natural Resources Wales. It is likely that any culverting will be opposed by Natural Resources Wales and, will only be considered for short lengths to facilitate access.
- 6.2. Any works undertaken are to be in strict accordance with the proposals contained in the submitted drawings. Failure to do so may result in enforcement action, forcing liable parties to undertake remedial works
- 6.3. Provision(s) must be made to accommodate any flood situation) which may occur during the construction period e.g. due to heavy rainfall/obstruction to watercourses etc.
- 6.4. Precautions must be taken to avoid pollution of the local land drainage system as advised by the local Natural Resource Management team.
- 6.5. Precautions must be taken to avoid any adverse and negative impacts to the nature conservation interests in the area (including Sites of Special Scientific Interest areas) to the requirements of Natural Resources Wales.

## **7. Requirements in Lower Wye, Caldicot and Wentlooge and Powysland IDD**

- 7.1. A strip of land is to be left clear between the top of bank and any building or obstruction, along both banks of any Natural Resources Wales IDD watercourse. This is necessary so that a watercourse can be maintained with heavy machinery. The distance is specified in the relevant byelaws.
- 7.2. Any works must not compromise the stability of the existing bank(s).
- 7.3. Precautions must be undertaken so that all existing surface water discharges flowing through the area are adequately catered for in any design proposals. This includes ensuring that there is no loss of capacity or connectivity in the watercourses and allowing for the construction of storage lagoons/tanks as

necessary to limit surface water discharges to greenfield or other appropriate runoff rate.

- 7.4. It is essential that any watercourse connecting the surface water discharge of a development to Natural Resources Wales IDD ordinary watercourse is maintained to ensure that flooding of land does not occur in years to come
- 7.5. Access arrangements to be provided to Natural Resources Wales personnel during the construction period to carry out maintenance operations and attend to flood emergencies etc.
- 7.6. At least one week's notice must be given to Natural Resources Wales prior to commencement of any works affecting Natural Resources Wales IDD watercourses.
- 7.7. Compliance with the relevant IDD Byelaws (where applicable) is essential of which copies are available on request.

## 8. Standards of protection – applicable to Lower Wye, Caldicot and Wentlooge and Powysland IDD

- 8.1. Where appropriate, and when required by Natural Resources Wales, applications for Land Drainage Consent shall include hydrological and hydraulic calculations.
- 8.2. The objectives of this procedure are:
  - For storm water runoff discharged from urban developments to replicate or achieve a reduction from the 'greenfield' response of the site over an extended range of storm probabilities (return periods);
  - To manage run-off on site during exceedance events.
- 8.3. This requires:
  - The peak rate of storm water run-off to be controlled within the site boundary;
  - The volume of run-off (post development) to be reduced where feasible to do so;
  - The pollution load to the receiving waters from storm water run-off to be avoided or minimised to an acceptable level;
  - The assessment of overland flows/routes and temporary flood storage within the site boundary.

For the range of annual flow rate probabilities, **up to and including the 1% annual event** probability (1 in 100 year event) the developed rate of run-off discharged from the site into a Natural Resources Wales ordinary watercourse shall be no greater than the undeveloped rate of run-off for the same event.

- 8.4. A minimum of three annual event probabilities shall be considered:
  - The 100% annual probability (1 in 1 year event)
  - The 33.3% annual probability (1 in 30 year event)
  - The 1% annual probability (1 in 100 year event).

- 8.5. The analysis of overland flows and their routes within the development site should use short duration high intensity rainfall events of between 15 and 60 minutes duration, with appropriate intermediate increments.
- 8.6. The potential effect of future climate change shall be undertaken by increasing the rainfall intensity in accordance with the latest guidance for computing storage volumes. No allowance for climate change will be necessary in calculating the 'greenfield' run-off rate.
- 8.7. In no case shall the level of protection of the proposed works be lower than the existing level of flood protection.
- 8.8. Applicants are advised that where proposals involve new development, a copy of the Flood Consequence Assessment (FCA) undertaken for the site, in accordance with Welsh Government Technical Advice Note (TAN) 15 – Development & Flood Risk, July 2004, if appropriate, should be submitted with the Land Drainage Consent Application.
- 8.9. Applicants are also advised that Natural Resources Wales supports and advocates the use of sustainable drainage systems to minimise the impact of surface water run-off on the environment. Applications for Land Drainage Consent should, therefore, demonstrate that appropriate techniques have been considered and applied to achieve flow reduction.

## 9. Effects on the environment

- 9.1. We have a legal duty to protect and improve the environment, so we must consider the environmental effects of your proposal.

### 9.2. Water Framework Directive

It is important that as part of the application process your proposals are assessed to see if they keep to the aims of the Water Framework Directive (WFD). Some activities may cause a water body to deteriorate in WFD status or prevent its ecological objectives from being met.

To achieve the goals of the WFD, we must make sure any new scheme or activity is assessed for compliance. If in doubt, you should contact us to discuss any requirement to carry out a WFD assessment before you send us your application.

Please see our 'Guide to your rights and responsibilities of riverside ownership in Wales' document for more information on the Water Framework Directive. This can be downloaded on the following link

<http://www.naturalresources.wales/flooding/managing-flood-risk/riverside-property-owners-know-your-rights-and-responsibilities/?lang=en>

### 9.3. Habitats Regulations Assessment

Under the European Habitats Regulations and National legislation, we must make sure that any Flood Risk Activities proposed do not have a direct or indirect negative effect on any protected site or species, including:

- special areas of conservation (SACs);

- special protection areas (SPAs);
- listed RAMSAR sites;
- Sites of Special Scientific Interest (SSSI);
- European and nationally protected species.

Any proposed works in, or adjacent to a European site may be subject to a Habitats Regulations Assessment (HRA).

Information on protected sites, species and habitats can be found on Welsh Governments geo-portal: Lle at <http://lle.wales.gov.uk/home> and the National Biodiversity Network website at [www.nbn.org.uk](http://www.nbn.org.uk).

More local information can be obtained from your Local Record Centre website at [www.nbn.org.uk/Tools-Resources/BusinessResources/Local-Record-Centres/LRC-database.aspx](http://www.nbn.org.uk/Tools-Resources/BusinessResources/Local-Record-Centres/LRC-database.aspx)

#### **9.4. Land Drainage Improvement Environmental Impact Assessment (EIA) Regs**

Under the Land Drainage Improvements (EIA) Regulations we must ensure that the proposed flood risk activity does not result in any significant environmental effects. You may need to carry out an environmental impact assessment to consider the effects of the activity to the environment. You should contact us before you send us your application so that we can advise you on this. If you don't, your application could be delayed.

Your environmental assessment should identify and consider all likely effects on the environment. You should consider the direct and indirect effects the work has on sites and features of interest and species of particular value. It should also include any specific measures you plan to implement to minimise disruption and reduce any unwanted effects while the work is ongoing, as well as set out any opportunities to improve the environmental value of the site. This may include creating water features, planting trees and shrubs that would normally grow at the site, providing bird nesting boxes or creating sustainable places for wildlife to live.

If as part of any planning permission we have asked for an environmental assessment, you must send it to us with all the other supporting documents we need.

#### **9.5. Other**

If your site falls within, is next to, or is linked in any way to a nature conservation, geological or historic site, contact us as soon as possible to discuss your proposals before you send us your application. We must consider the impacts of applications on sensitive environmental features including Local Wildlife and Geological Sites. We must also consider Scheduled Monuments. For activities that affect a scheduled monument a consent may be required from Cadw.

You may want to contact these organisations yourself to get their views on your proposal.

## **10. Right of appeal**

- 10.1. If an applicant believes that Land Drainage Consent had been unreasonably withheld, or that the conditions imposed are unreasonable, then the applicant has a right of appeal. This must be notified to the Engineer in the first instance. Under Section 23 of the Act, if agreement cannot be reached an independent arbitrator will be appointed to settle the matter.

## **11. Failure to obtain a Land Drainage Consent**

- 11.1. The failure to obtain Land Drainage Consent prior to carrying out the works is a criminal offence. Under Section 24 of the Land Drainage Act 1991, if works are executed in contravention of Section 23, or without first obtaining a formal Land Drainage Consent, Natural Resources Wales has the power to serve a Notice requiring abatement of the nuisance within a specified time.
- 11.2. Any person acting in contravention of Section 24 of the Land Drainage Act 1991, or any of Natural Resources Wales Byelaws, may be liable, on conviction, to a fine not exceeding level 5 on the standard scale. Any further failure to comply may result in an additional fine not exceeding £40 per day for every day during which the default continues.
- 11.3. Under Section 24 of the Land Drainage Act 1991, Natural Resources Wales may also remove, alter or pull down any unauthorised work and recover the expenses reasonably incurred in the process, from the person in default.

## **12. Other consents and permissions**

- 12.1. The issue of a Land Drainage Consent by Natural Resources Wales does not absolve a person proposing to execute works from the need to obtain such other licences, consents or permissions which may be required by law.
- 12.2. If the consent or approval of a third party is required before the applicant carries out any of the works proposed, documentary evidence of this consent or approval must be submitted with the application.

## **13. Where to send your application**

- 13.1. Please email your completed application form to the relevant team (details on Application Form) for the location of your proposed activity.

## **14. How to contact us**

If you need help filling in the form, please contact the person who sent it to you or contact us as shown below.

General enquiries: 0300 065 3000 (Monday to Friday, 8am to 5pm)

Email: [enquiries@naturalresourceswales.gov.uk](mailto:enquiries@naturalresourceswales.gov.uk)  
/ [ymholiadau@cyfoethnaturiolcymru.gov.uk](mailto:ymholiadau@cyfoethnaturiolcymru.gov.uk)



Website: [www.naturalresourceswales.gov.uk](http://www.naturalresourceswales.gov.uk) / [www.cyfoethnaturiolcymru.gov.uk](http://www.cyfoethnaturiolcymru.gov.uk)

Tick the box if you wish to have all communication about this application sent via email.