

SCHEDULE 25

Flood risk activities and excluded flood risk activities

PART 2

Excluded flood risk activities

SECTION 1

Introductory

1.—(1) The descriptions in this Part are set out in paragraphs 2 to 13, in their respective first sub-paragraphs.

(2) The specific conditions relating to each description in this Part are set out in paragraphs 2 to 13, in their respective second sub-paragraphs.

(3) The general condition for the descriptions in paragraphs 3 to 13 of this Part is that the activity is not carried out in, or (where the activity is carried out in Wales) within 100 metres of, a water body in Wales that is part of a main river classified as of high morphological status by the NRW in accordance with the relevant directions.

(4) For the purposes of paragraphs 3 and 4, “licensable marine activity” and “marine licence” have the same meaning as in Part 4 of the Marine and Coastal Access Act 2009(1).

(5) For the purposes of this Part, “relevant directions” means the Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015(2).

SECTION 2

Descriptions and conditions

Emergency activity

2.—(1) Any activity carried on in an emergency.

(2) For the purposes of this paragraph, the specific conditions are that—

- (a) the activity is not a pre-planned emergency activity, and
- (b) the person carrying on the activity provides the regulator with notice in writing as soon as practicable of the carrying on of the activity and the circumstances in which it was carried on.

(3) For the purposes of sub-paragraph (2)(a), a “pre-planned emergency activity” means any activity which has been planned in response to an emergency before it occurs.

(4) The power of the regulator to serve a remediation notice under paragraph 8 of Part 1 of this Schedule applies where an activity has been carried on in reliance on this exclusion as if that activity were an unauthorised activity.

(1) 2009 c. 23; Part 4 was amended by section 76(2) of the Energy Act 2016 (c. 20) and by S.I. 2011/405, 1043, 1210, 2015/374, 664 and 2016/738. It is prospectively amended by sections 76 to 80 of the Environment (Wales) Act 2016 (anaw. 3) from a date to be appointed.

(2) These Directions were made on 9th September 2015 in exercise of powers in section 40(2) of the 1995 Act and are available at http://www.legislation.gov.uk/ukxi/2015/1623/pdfs/ukxi0d_20151623_en.pdf. A copy may be obtained from the Flood Risk Management Team, the Department for Environment, Food and Rural Affairs, Area 3C, Nobel House, 17 Smith Square, London SW1P 3JR.

A licensable marine activity in England

- 3.—(1) A licensable marine activity in England.
- (2) For the purposes of this paragraph, the specific conditions are that—
- (a) an application for a marine licence has been made in respect of that activity,
 - (b) the Agency has received notice that the application has been made,
 - (c) in view of the terms and conditions that will be included in the marine licence, the Agency considers that an environmental permit is not necessary, and
 - (d) a notice to that effect has been issued by the Agency to the applicant.

A licensable marine activity in Wales

- 4.—(1) A licensable marine activity in Wales.
- (2) For the purposes of this paragraph, the specific condition is that an application for a marine licence has been made in respect of that activity.

Ladders and scaffold towers

- 5.—(1) The erection and use of ladders and scaffold towers (“equipment”).
- (2) For the purposes of this paragraph, the specific conditions are—
- (a) the suitability of river conditions is reviewed by the operator each working day,
 - (b) the equipment is erected on each working day on which it is required, and
 - (c) the equipment is removed at the end of each working day and is stored outside the river and its banks.

Service crossings within an existing structure

- 6.—(1) The construction and use of service crossings within an existing structure.
- (2) For the purposes of this paragraph, the specific conditions are—
- (a) the crossing is entirely within the original profile of the existing structure,
 - (b) the regulator has not sent a notification to the landowner that the structure has been identified for removal or modification in order to achieve the measures set out in the relevant River Basin Management Plan, within the meaning of Article 13 of the Water Framework Directive, that are designed to move a water body to good status pursuant to Article 4 of that Directive,
 - (c) equipment associated with the works is not stored on the bed or banks of the main river, and
 - (d) no works are carried out from the main river or from the banks of the main river.

Flood protection devices attached to buildings

- 7.—(1) The attachment of a flood protection device directly to a building in order to protect the interior of that building.
- (2) For the purposes of this paragraph, the specific condition is that the flood protection provided by the device extends only to the building to which the device is fitted.

Minor works on or affecting bridges and culverts

- 8.—(1) The carrying out of minor works on or affecting bridges and culverts for highways and public rights of way (“minor works”).

- (2) For the purposes of this paragraph, the specific conditions are—
 - (a) the minor works do not affect, or have the potential to affect, the bed, banks, water level, normal flow or flood flow in the main river,
 - (b) equipment associated with the minor works is not stored on the bed or banks of the main river, and
 - (c) no works are carried out from the main river or from the banks of the main river.

Fencing

- 9.—(1) The erection of fencing.
- (2) For the purposes of this paragraph, the specific conditions are—
 - (a) the fencing is not located on the bed or banks of the main river, and
 - (b) the fencing is constructed of—
 - (i) post and rail,
 - (ii) post and wire mesh of at least 100 mm spacing, or
 - (iii) post and wire strands.

Fish traps

- 10.—(1) The temporary use of fish traps.
- (2) For the purposes of this paragraph, the specific conditions are—
 - (a) the trap has dimensions of no greater than 2 metres x 1 metre x 0.75 metre,
 - (b) any trap, or combination of traps, placed in the main river is less than one third of the width of the channel,
 - (c) the trap is not used when the main river is in a condition of high flow, and
 - (d) the trap is located more than 50 metres upstream or downstream from any dam or other obstruction.

Notice boards

- 11.—(1) Erection of notice boards.
- (2) For the purposes of this paragraph, the specific conditions are—
 - (a) the board is attached to existing fencing or freestanding, permanent posts,
 - (b) the board is more than 2 metres from any culvert, remote defence or flood defence structure on the main river and from any sea defence, and
 - (c) the board is more than 2 metres from the landward side of the bank.

Purpose-built sediment traps

- 12.—(1) Clearance of purpose-built sediment traps.
- (2) For the purposes of this paragraph, the specific conditions are—
 - (a) only sand and silt is cleared from the trap,
 - (b) the works do not result in sand or silt being transmitted downstream, and
 - (c) where the sand and silt from the clearance is spread on the floodplain, it is spread to a depth of no more than 100mm and no closer than 8 metres from the landward side of either bank.

Status: This is the original version (as it was originally made).

Site investigation boreholes and trial pits

13.—(1) Site investigation boreholes and trial pits within a flood plain.

(2) For the purposes of this paragraph, the specific conditions are—

- (a) the works are more than 5 metres from any culvert, remote defence or flood defence structure on the main river and from any sea defence,
- (b) the works are more than 8 metres from the banks of a non-tidal main river,
- (c) the works are more than 16 metres from the banks of a tidal main river, and
- (d) the works are completed, including refilling of the borehole or pit, within 48 hours.