



## Annex D – Environment Agency

### Introduction

The Planning Inspectorate's Advice Note 11: Working with Public Bodies covers many of the generic points of interaction relevant to the Planning Inspectorate and the Environment Agency. The purpose of this Annex is to help Applicants understand the Environment Agency's particular role in infrastructure planning. It explains what permits, consents and licences the Environment Agency has power to issue and may be required in addition to a Development Consent Order (DCO) for a Nationally Significant Infrastructure Project (NSIP).

This Annex will be kept under review to ensure that it remains relevant and up to date, for example because of future organisational or legislative changes affecting the Environment Agency and / or the Planning Inspectorate. The Planning Inspectorate welcomes feedback on the content of this Annex.

### General statutory roles, functions and powers

The Environment Agency regulates certain activities that have the potential to harm the environment and people. It decides if relevant environmental permits and other consents and licences should be issued and, if so, what conditions should be applied. It monitors compliance with the permit / licence conditions and takes enforcement action if appropriate.

The Environment Agency is a competent authority for the purposes of certain EU Directives<sup>1</sup> and it also maintains an overview of risks to people and the environment from flooding and coastal erosion.

The Environment Agency's regulatory, licensing and advisory powers and duties derive (inter alia) from key Acts and Regulations, including:

- Environment Act 1995;
- Environmental Permitting (England & Wales) Regulations 2016;
- Water Resources Act 1991;
- Flood and Water Management Act 2010;
- Salmon and Freshwater Fisheries Act 1975 and Keeping and Introduction of Fish Regulations 2015;
- The Planning Act 2008 (the PA2008) and secondary legislation made under the PA2008;
- The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017; and
- Habitats Regulations.

### Other obligations

The Environment Agency is also subject to the provisions of the Environmental Information Regulations 2004, the Data Protection Act 1998 and the Freedom of Information Act 2000.

### Geographical extent of the Environment Agency's roles and responsibilities

The Environment Agency's responsibilities align to the terrestrial environment within England. In addition, for regulating emissions to the marine environment within 3 nautical miles and for Environmental Permitting Regulations up to 12 nautical miles of the coastline.

### Role of the Environment Agency under the PA2008

The roles and responsibilities of the Environment Agency under the PA2008 fall into the following categories:

- Statutory consultee, as a prescribed consultee by Applicants under S.42 of the PA2008 or by the Planning Inspectorate as a consultation body in relation to any EIA scoping; and
- Consenting body / authority.

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<sup>1</sup> For example the Habitats Directive 92/42/EEC which has been transposed into UK legislation through the Conservation of Habitats and Species Regulations 2010 (as amended) and the Seveso Directive 82/501/EEC on the major-accident hazards of certain industrial activities which has been transposed into UK legislation through the Control of Major Accident Hazards Regulations 1999 (as amended).

## **Pre-application consultee**

The Environment Agency is a prescribed consultee<sup>2</sup> under the PA2008 and secondary legislation made under it and may become an interested party<sup>3</sup> in the examination process. The Environment Agency, like all prescribed consultees, will input into the pre-application stage as set out in Advice Note 11. The Environment Agency recommends that Applicants review the appropriate National Policy Statements and follow any policy regarding pre-application engagement with the Environment Agency. The Environment Agency encourages Applicants to begin pre-application consultations at the earliest possible time and ensure that project timetables takes other regulatory requirements into account.

The Environment Agency provides environmental advice on matters that concern it. It provides Applicants with one free preliminary opinion for an initial enquiry and a free substantive response to the statutory consultation under S.42 of the PA2008. All subsequent requests for the Environment Agency's opinion and advice related to the DCO application will be subject to cost recovery. This will apply at any non-statutory stage of the DCO regime.

Where an environmental permit is required, under the Environmental Permitting Regulations 2016 (EPR), the preliminary opinion will also indicate one of three positions in relation to the likelihood of gaining the permit:

- Position 1 – No major permitting concerns;
- Position 2 – More detailed consideration is required and parallel tracking is recommended; or
- Position 3 – Don't proceed – unlikely to grant a permit.

Further guidance on the relationship between planning and permitting regimes is available [here](#).

Where other non-planning consents are also required, the Environment Agency encourages Applicants to discuss these consents at the earliest possible time. These discussions may be subject to the Environment Agency's cost recovery service, depending upon the nature and complexity of the non-planning consent required.

Section 120 of the PA2008 allows other types of consents to be included in a DCO. Section 150 provides that for 'prescribed' consents<sup>4</sup> the relevant body must give consent to the inclusion of the consent. Where the Environment Agency agrees a DCO can remove the requirement to obtain the specified separate consent, they usually give their consent conditional on the inclusion of Protective Provisions to be contained in the DCO to enable the risk associated with the activity to be managed. This process is usually referred to as agreeing to 'disapply' the legislation specified in the DCO.

If you are intending to seek to disapply any of the Environment Agency's legislation, contact them as early as possible. The Environment Agency are pro-actively providing their preferred version of protective provisions to Applicants.

To assist Applicants the Environment Agency will make available existing environmental baseline data and any environmental strategies that are relevant. We can advise Applicants on the appropriate scope for required environmental risk assessments / surveys.

## **EIA consultation body**

The Environment Agency has a statutory role as a consultation body under the Infrastructure (Environmental Impact Assessment) Regulations 2017. Where an Applicant has requested a scoping opinion from the Planning Inspectorate in relation to a proposed Environmental Impact Assessment (EIA) the Environment Agency will be consulted about the information they consider should be included in the environmental statement and will make information available to the Applicant<sup>5</sup>.

The Environment Agency also encourages Applicants to discuss with them the scope of any EIA at an early stage to explore, for example, whether careful site selection / mitigation could minimise or eliminate environmental impacts.

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<sup>2</sup> Under s.42(a) PA2008 and Schedule 1 of the Infrastructure Planning Applications: Prescribed Forms and Procedure) Regulations 2009

<sup>3</sup> Under s102(1) PA2008, the Infrastructure Planning (Interested Parties) Regulations 2010 and the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012

<sup>4</sup> 'Prescribed' consents are listed in (Schedule 2 Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015)

<sup>5</sup> Regulations 10 and 11 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017



Planning Inspectorate Advice Notes 3 and 7 set out detailed advice on the implications of EIA under the PA2008 regime.

## **Role of the Environment Agency as a consenting / licensing authority**

The Environment Agency has powers to grant permits, licences and consents under a number of enactments. It is the responsibility of Applicants to identify all the permits, consents and licences that are required in addition to the DCO, before an NSIP can be constructed or operated. Operating without an environmental permit is an offence.

For example, under the Water Resources Act 1991, licences which may be required include:

- Abstraction of water (surface water and groundwater); and
- Impounding surface water.

Consents that protect fish may be required under the Salmon and Freshwater Fisheries Act 1975, Keeping and Introduction of Fish Regulations 2015 and other fisheries legislation. Conditions to protect fish may be placed on other permits, licences and consents. For example, conditions may require measures that prevent fish entering water intakes, or limit heat pollution from water outlets.

## **Environmental Permitting**

The EPR 2016 require operators of certain facilities, which could harm the environment or human health, to obtain permits from the Environment Agency in addition to the DCO. Environmental permits can combine several activities into one permit. There are standard permits supported by 'rules' for straightforward situations and bespoke permits can be prepared for complex situations. Further information is available - [need an environmental permit](#).

The Environment Agency's environmental permits cover:

- Industry regulation;
- Waste management (waste treatment, recovery or disposal operations);
- Discharges to surface water;
- Groundwater activities;
- Radioactive substances activities;
- Placing structures in, under or over a main river; and
- Development within the byelaw distance of a main river or tidal flood defence or that includes raising of ground levels in the floodplain beside a main river.

Characteristics of environmental permits include:

- They are granted to operators (not to land);
- They can be revoked or varied by the Environment Agency;
- Operators are subject to tests of competence;
- Operators may apply to transfer environmental permits to other operators subject to a test of competence;
- Conditions may be attached; and
- Can be surrendered.

Permit assessments can provide useful information which will inform the Planning Inspectorate's recommendation to the Secretary of State. Applicants are therefore encouraged to consider the timing of their environmental permit application(s) in relation to their DCO application in order to facilitate timely decision-making.

The Environment Agency will only be able to say whether it is likely to grant a permit once it issues its final decision or draft decision for public consultation for proposals considered to be of high public interest. This will only happen at an advanced stage in the permitting process (see appendix 1). As such, if the DCO and permit application(s) are not appropriately coordinated, there is a risk that the Environment Agency will be unable to comment on detailed technical matters raised by the Inspectors during the examination of the DCO.

In the majority of cases it is recommended that developers submit their permit application at the same time as the submission of the DCO. This will allow us to proceed with our assessments and we may then be in a position to publish our intended decision, subject to further public consultation, before the DCO examination closes. This approach is recommended where the proposed technology is well understood and best available

techniques are being used. A depiction of how the DCO and EPR regimes can interlink is shown in Appendix 1.

However, where the NSIP is proposing to use to novel technology and there is only limited or no understanding of the best available techniques, early engagement and submission of the permit application will be key to align the permit decision (or draft decision) with the DCO examination. In such cases, and / or if a proposed development has the potential to affect a Habitats Regulations designated site, we recommend that permit application(s) are submitted at least 6 months prior to DCO submission.

Engaging early on environmental permitting matters and, where necessary, parallel-tracking<sup>6</sup> of the permit and DCO applications will identify any complex permitting issues at an early stage and minimise the risk of requirements under EPR conflicting with the works authorised by the DCO (e.g. a stack of greater height than that authorised by the DCO could be required) and the associated risks to implementation.

The Environment Agency provides a limited amount of permitting pre-application advice free of charge. Further advice can be provided, subject to an hourly fee.

### **Competent authority**

The Environment Agency is a competent authority for the purposes of the Habitats Regulations when determining applications for permits, consents and licences for which it is the regulatory authority. Where a NSIP has the potential to have a significant effect on European sites and a permit, consent or licence is also required, the Environment Agency (in addition to the competent authority under the Planning Act) will be required to assess the likelihood and scale of these effects and if necessary to then carry out appropriate assessment (and consult the relevant nature conservation body) before making a decision under the relevant legislation.

By involving the relevant regulatory bodies in this process, early discussions can be held on Habitats Regulations matters avoiding potential delay in the planning and permitting processes as a result of missing information. Applicants are encouraged to coordinate their own consultation with Natural England on the Habitats Regulations assessments. Planning Inspectorate Advice Note 10 provides further information.

The Environment Agency is also a competent authority for the Water Framework Directive (WFD) and has a general duty under the Water Environment (Water Framework Directive) (England & Wales) Regulations 2017 (the WFD Regulations). Regulation 3 requires the Environment Agency 'to exercise its relevant functions so as to secure compliance with the requirements of the Directive'. The requirements for each river basin are set out in River Basin Management Plans (RBMP). The second cycle of RBMP were published in February 2016 and run until December 2021.

Applicants are advised to seek the views of the Environment Agency early in the pre-application process and to continue this engagement through to (and during) the examination stage of the DCO. Planning Inspectorate Advice Note 18 provides further information.

For the Control of Major Accident Hazards Regulations 2015 (COMAH Regulations), the Environment Agency, jointly with the Health and Safety Executive (HSE), is the COMAH competent authority. If Applicants are unsure whether the COMAH Regulations apply to a NSIP they should contact the HSE or the Environment Agency.

### **Adapting to Climate Change**

The National Policy Statements make clear that NSIPs must be resilient to the impacts of climate change<sup>7</sup>. The EIA regulations 2017<sup>8</sup> also require that when screening Schedule 2 development the characteristics of the development should be considered in relation to the risk of major accidents and / or disasters relevant to

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<sup>6</sup> From Guidance for developments requiring planning permission and environmental permits; "parallel tracking means preparing and submitting a planning application to the planning authority at the same time as sending an environmental permit application to the Environment Agency. However, for NSIPs, if information about permitting issues is to be given for consideration within the examination, the permit application may need to be submitted before the DCO application."

<sup>7</sup> See section 4.8 of EN-1, 2.3 of EN-2, 2.3 of EN-3, 2.2 of EN-4, 2.4 of EN-5, 2.10 of EN-6, 4.3 and 4.4 of the draft NPS on National Networks, 4.6 of the draft NPS on Hazardous Waste, 3.6 on waste water infrastructure and 4.13 on ports. Other sections also contain more detailed advice on flooding, water resources and coastal change.

<sup>8</sup> See Schedule 3, paragraph 1 and Schedule 4, paragraph 5(f) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.



the development, including those caused by climate change. They also require that any NSIP which is EIA development must include a description of the impact of the project on climate and its vulnerability to climate change. Specific guidance is given in relation to flooding, water resources and coastal change. However, it should be noted that in order to be resilient to current and future climate risks other types of weather hazard also need to be considered.

The Environment Agency has statutory responsibilities for hazards related to flooding, coastal erosion and water resources and an advisory role in relation to other weather related hazards. This is summarised in Appendix 2, which also provides a list of information sources for use in assessing and planning for each hazard.

The environmental statement should provide a concise explanation of how weather and climate-related risks have been considered. This should include details of planned resilience measures and where there is allowance / flexibility for future measures. This is illustrated in Appendix 3, which can be used as a template. Applicants should be explicit about the information sources used and assumptions made, be aware that climate science is reviewed and refined on an ongoing basis and make sure that the latest climate projections are considered.

## **Relevant reports advice and guidance**

The Environment Agency's homepage on [Gov.uk](https://www.gov.uk) provides information on environmental topics relating to its statutory role and environmental regulation.

The Environment Agency has a Memorandum of Understanding with the [Highways England](https://www.highways.gov.uk) and Network Rail that is supported by technical guidance, which are relevant to highways and railway infrastructure proposals that requires DCO.

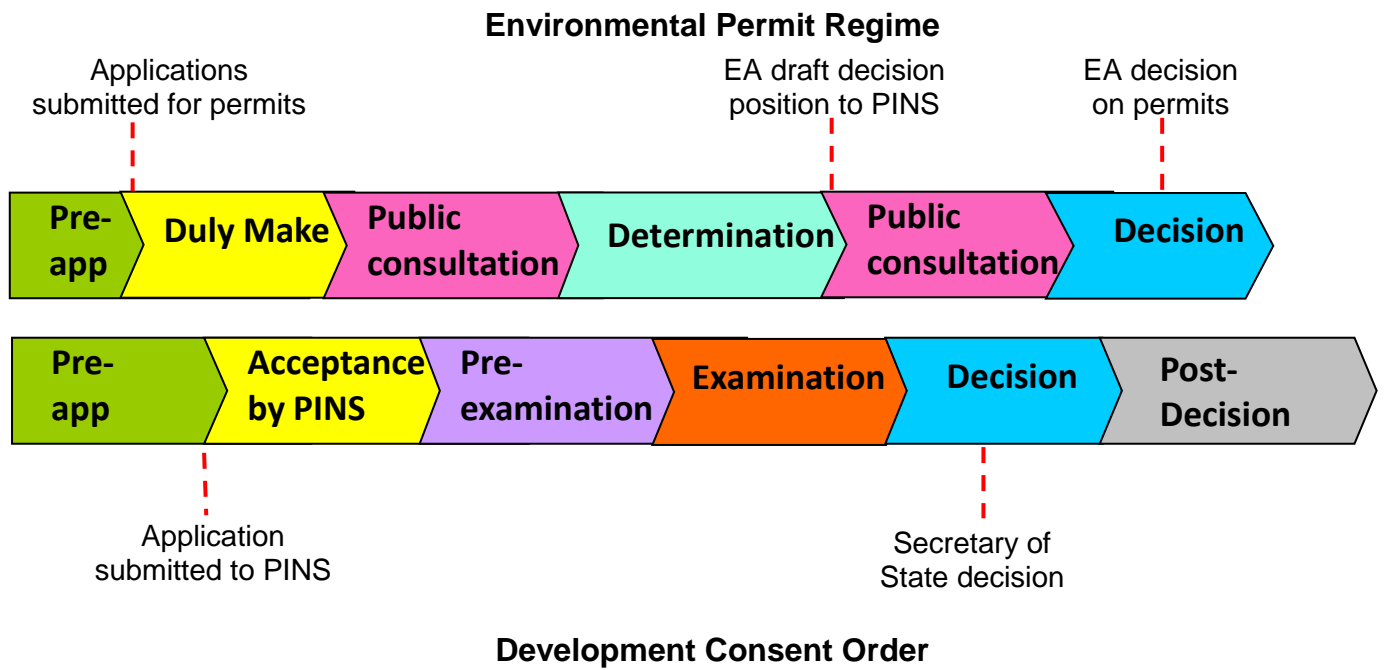
## **Contact Points**

In the first instance Applicants should contact the Environment Agency's National Customer Contact Centre:

- If you are in the UK by calling 03708 506 506;
- If you are outside the UK by calling 0044 1709 389201;
- By e-mail at: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)
- By mail at: National Customer Contact Centre, PO Box 544, Rotherham, S60 1BY

Applicants should remember to provide contact details so that the Environment Agency can reply promptly.

# Appendix 1: A depiction of how the DCO and EPR regimes interlink





## Appendix 2: Hazards, sources of information and the Role of the Environment Agency

Hazard	Sources of information	Role of EA
Flooding (river, coastal, surface water, reservoir, groundwater) and coastal erosion	<a href="#">Climate change allowances for Planners</a> <a href="#">Assessing flood risk as part of planning applications</a> Relevant Local Authority's Strategic Flood Risk Assessment Environment Agency detailed flood models (where available) <a href="#">Catchment Flood Management Plans</a> <a href="#">Shoreline Management Plans</a> <a href="#">Flood maps for planning</a> <a href="#">Internal Drainage Board area maps</a> <a href="#">Flood Resilient Construction of New Buildings</a> <a href="#">ACC: Advice for Flood for Risk Management Authorities<sup>9</sup></a>	Statutory responsibilities. In these areas it will appraise the standard of risk assessment, and consider whether future climate risks have been considered properly. It also encourages Applicants to make use of its expertise and information about these hazards.
Drought / reduced water availability	<a href="#">Catchment Abstraction Management Strategies</a> <a href="#">River Basin Management Plans</a> <a href="#">Water stress classification</a> Water Company Water Resource Plans (WRMP's) Water Company Drought Plans	
Hot weather, cold weather (including snow, ice and freezing fog), heavy rain, wind and lightening	The latest <a href="#">UK climate projections</a> <a href="#">Information on weather extremes in the current climate</a> <a href="#">ARCC Network resources on overheating</a> <a href="#">Institute for Sustainability Leadership IPCC briefings for business</a>	Advisory only. The Climate Ready service is no longer live. A legacy of guidance can help understand and tackle the challenges.

<sup>9</sup> See Annex 1 of this document for more extreme climate change allowances and page 4 for information on a “managed adaptive approach”.

### Appendix 3: Assessing and planning for weather and climate related risks

Hazard	Potential Impact	Likelihood of impact	Consequences	Material risk?	Resilience measures	Allowances for future measures	Monitoring
<i>Notes: The weather type or impact being considered. All of the hazards listed in Appendix 2 should be considered in turn</i>	<i>The ways in which the hazard could adversely affect the planned infrastructure or its users. There may be several potential impacts. Consider each separately.</i>	<i>Take into account the expected lifetime of the planned infrastructure, including end of life arrangements. Use a threshold, where this is known- i.e. the level of hazard that will result in the impact, in conjunction with the sources of information listed in Appendix 2, and expert judgement.</i>	<i>These could include: damage, disruption, and harm to the environment or human health. Include reference to the thing or person that will be affected. Quantify any consequences where possible, such as by estimating costs. Where available, include any thresholds i.e. the duration or magnitude of the impact that would result in a particular consequence.</i>	<i>Does the impact represent a material risk within the relevant future time period  Identify confidence level for the assessment, based on the availability of supporting information and the potential for socio-economic or geophysical changes to influence the level of the risk within that time</i>	<i>Measures to manage risks included in the design Include any thresholds that describe what level of resilience is provided e.g. to a 1 in 1000 year flooding event.</i>	<i>Include reference to the points in time when the decision for further resilience will be made. This could be when more information becomes available or in response to a change in a risk factor i.e. something that affects either the likelihood or magnitude of the consequences.</i>	<i>How will weather-related impacts and the effectiveness of resilience measures be monitored? What mechanisms are in place to act on the output of this monitoring?</i>
e.g. excessively high temperatures	Surface integrity of airfield is compromised	Medium	Aircraft skids; harm to the public; closure of runway; damage to runway; disruption to services; disruption of economic activity that is dependent on the transport of people through the airport; Costs of repair and disruption; Damaged reputation.	Yes  Medium confidence	Surfacing product selected, which conforms to an industry standard with a higher temperature tolerance	Airfield resurfacing schedule means that there is an annual opportunity to switch to a different tarmac product	Temperature monitoring linked to resurfacing schedule.