

Regulatory position statement

Safe passage for eel July 2012



WE WILL FOLLOW THE APPROACH SET OUT IN THIS STATEMENT TO USE THE POWERS GRANTED TO US BY THE EELS REGULATIONS 2009 TO REQUIRE FISH PASSES, REMOVAL OF OBSTRUCTIONS AND/OR SCREENING AT WATER INTAKES AND OUTFALLS FOR THE PROTECTION OF EELS.

BACKGROUND

The Eels (England and Wales) Regulations 2009 (the Regulations) came into force on 15 January 2010 to support the UK in implementing EC Council Regulation (1100/2007) (the EC Eel Regulation). Under this European Regulation, the UK must take actions to halt and reverse the decline in the European eel stock, aiming to meet a target set for the number of mature adult eels leaving each river basin to return to spawn at sea. The EC Eel Regulation requires UK to consider eel passage as part of the solution.

We have prepared *Eel Management Plans* for Defra/Welsh Government for each River Basin District in England and Wales. These outline the current situation and how we intend to achieve the EC target. The Regulations give us powers to help achieve this target. *Part 4 of the Regulations provide us with new powers to ensure safe passage for eel as follows.*

PASSES. We may serve notice on a responsible person to, at their own cost, construct an eel pass on a dam or other obstruction where eel passage is or likely to be impeded. This applies to existing structures and to the construction of a new dam/obstruction, and to alterations or maintenance to an existing dam/ obstruction. Where eel passage is or likely to be impeded, we may require the person responsible for the site to, at their own cost, make alterations to an existing eel or fish pass or to remove an obstruction. We may serve notice requiring a responsible person at their own cost to operate an existing eel pass in accordance with any conditions stated in the notice. *A responsible person must, at their own cost, maintain an eel pass in an efficient state.*



SCREENING. Up to 1 January 2015, we may serve notice requiring the responsible person to, at their own cost, place a screen at any diversion structure capable of abstracting at least 20 cubic metres per day or any discharge to a channel, bed or sea (out to 6 nm) in order to protect eels. After 1 January 2015, it will become an offence not to have a screen on any such intake or outfall, unless we specifically issue notice to exempt the requirement. A by-wash may be required for screens sited other than at the entrances to intake channels. *The responsible person must, at their own cost, ensure an eel screen or by-wash is maintained in an efficient state.*

A 'responsible person' in these regulations is defined as the owner, occupier or person in charge of the land on which the obstruction, intake or outfall lies.





Our approach

We will seek to include these requirements within existing permits and licences to reduce extra administration to operators where possible.

WE WILL TAKE A RISK-BASED APPROACH. We will not seek measures for passage or screening in those parts of river catchments that are not, and/or have a low likelihood of being, naturally colonised by eel nor at sites where the risks of obstructing the movements of eel or of damaging eels in intakes are low.

WE WILL FOCUS THE NEED FOR SCREENING AT WATER INTAKES (abstraction points). For eel, we know that these pose a significantly greater risk than do outfall (discharge) channels. Eels may enter and even colonise outfall channels but usually are able to navigate in and out of these and are rarely at risk.

WHERE NEW IN-RIVER DEVELOPMENTS ARE PROPOSED, we will accept application for water resource licensing as notification under the Regulations. For those that pose a risk to eel, we will require that passes and/or screening will be provided as part of the development. Our requirements in these cases will be set out as conditions in the relevant abstraction or impoundment licence(s) or flood defence consent(s).

FOR EXISTING OBSTRUCTIONS, INTAKES OR OUTFALLS, WE WILL ADOPT A PHASED APPROACH to requiring action for eels as outlined in the table and paragraphs a - e below. This may require us to issue time limited exemptions that fit into planned work programs. Priorities will be determined from a combination of:

POSITION IN THE CATCHMENT (FURTHER DOWNSTREAM = HIGHER PRIORITY);
UPSTREAM USEABLE EEL HABITAT OBSTRUCTED;
VOLUME AND RATE OF WATER ABSTRACTED
PREDICTED PRESENCE OF EEL

Regulatory phases for requiring action on eel passage and screening

Action to be required for:	Phase 1 To 2015	Phase 2 2015 to 2021	Phase 3 2021 to 2027
High priority sites Solution low cost and non-complex	-----		
High priority sites Significant cost and/or complexity	-----	-----	
Lower priority sites Low cost, non-complex	-----	-----	
Lower priority sites Significant cost and/or complexity		-----	-----
New developments posing a risk	-----	-----	-----

a) Where the risk to eels is high and solutions straightforward and/or low cost, we expect early action, in the first phase, before 2015. For sites presenting a higher challenge and higher cost, we may accept solutions delivered over later phases, linked to planned refurbishment, maintenance or replacement.

b) For lower risk sites we will agree improvements planned for implementation over subsequent phases to 2027.



c) Where we agree deferment of action on screening intakes beyond 2014, we will serve time-limited exemptions.

d) We will seek removal of obstructions in preference to installing a fish pass wherever this is feasible, cost beneficial and does not cause significant detriment e.g. to flood or erosion risk, to navigation or to the rights of others. The removal of obstacles such as weirs supports a return to a natural river channel and habitat, consistent with sustaining improved ecological status.

e) From January 2015, to be legally compliant, all intakes and outfalls must be screened for eel unless we serve notice to provide an exemption.

In the approach to 2015 and thereafter, we will serve exemptions as follows

i) We will not enforce the requirement for screening for those intake sites in those parts of river catchments that are not, and/or have a low likelihood of being naturally colonised by eel. We will clearly identify and map these areas. Nor will we enforce the requirement for screening at outfalls.

ii) For sites where we agree to defer screening, we will issue exemptions with clear end dates, by which time screening must be installed.

iii) In the case of sites where screening would normally be deemed necessary but costs are agreed to be disproportionately high and/or no feasible technical solution can be identified, we will issue exemptions subject to mitigation/compensation agreements. Such exemptions may be reviewable in the event of significant change at the site (e.g. refurbishment or replacement of intake facilities) that provides opportunity for a practicable screening solution. Where this is the case it will be identified and agreed at the time of issue and will be stated in the exemption

ENFORCEMENT

Any use of enforcement action will be risk-based. We will normally take action where a site has been assessed as posing a significant risk to eels, where notice has been served requiring action and where action has not been forthcoming within the reasonable timescale identified in the notice.

For a more detailed explanation of this enforcement position, please see our [Enforcement and Sanctions](#) statement. This can be found on the '[How we regulate you](#)' page in the Business & Industry section of our web site.