

Legal considerations and Health and Safety

Issues

As part of the planning process for any project, consideration must be given to the legal requirements that must be observed. These can vary from project to project. However, many are common to each project. Key issues and constraints for each section of legislation are covered below. This

information is provided as guidance only; The WTT does not provide detailed legal advice, neither is it a specialist in Health and Safety. It is the responsibility of those developing and managing projects to ensure that they obtain expert advice on legal issues where appropriate.

Legal consents required

Enhancement projects may require consents/licences under some or all of the following legislation:

Land drainage consent

Rivers are classified into two broad categories with respect to Land Drainage legislation; Main Rivers and Ordinary Watercourses. Any work to the bed, or banks up to 8m from a Main River, will require written consent under the land drainage legislation. Simpler rules apply to ordinary watercourses, allowing basic works to be undertaken without consent. In all cases, an approach to the local Environment Agency Development Control officer at the planning stage will provide clear advice as to which scheme elements will require consenting. The Development Control officer will also be able to provide the necessary application forms and detail the fee that will need to accompany any application.

Flood Risk Assessment

A Flood Risk Assessment (FRA) may be required as part of a Land Drainage application for larger, more complex enhancement projects. FRAs provide a professional assessment of the increased flood risk occasioned by the proposed works. They are often easily undertaken with minimal expenditure, but in more complex cases, they may require a topographic level survey and subsequent hydraulic modelling of flows to satisfy the requirements of the EA, who should be able to provide a list of suitable contractors. No works should increase flood risk to property.

Waste Licensing

Where the planned work is likely to generate an appreciable volume of spoil, for instance when marginal shelf excavation is undertaken, it may be possible to dispose of it along the bank of the river. Alternatively, it may be a requirement of the Land Drainage consent that this material is taken out of the flood plain and disposed of elsewhere, ideally by incorporation onto nearby arable farm land. In either case, an exemption under the Waste Licensing Regulations will be required. There are a number of potentially free options under this legislation, although some requirements for disposal can be expensive, necessitating the analysis of samples of both the spoil and the soil on the receiving land. Detailed advice should be obtained from Waste Regulation staff at the EA.

Planning permission

Planning permission (under the Town and Country Planning Act) is rarely required for most enhancement projects. However, larger schemes that may have a significant impact on the landscape, or involve the erection of bridges, or other structures, or result in the generation of large amounts of spoil or a change in usage of land, may fall within the boundaries of this legislation. A call to the local authority planning officer will confirm whether planning permission is required.



The information available in this manual is not intended to be comprehensive or definitive; in particular, details or topics relevant to particular circumstances may well not be included. Readers are advised to seek full professional advice before considering acting on any of the recommendations in this manual, and the WTT does not accept any liability for its content.

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Legal consents required

TPO/felling licence

Individual trees may be the subject of Tree Preservation Orders (TPOs). These protect trees from felling or cutting of limbs. Generally, TPOs are more commonly used in built up areas (including villages), offering protection to visually important specimens. However, there is no way of knowing which trees are protected. Contact the local authority's planning department to find out. Further details on TPOs can be found at:

http://www.planningni.gov.uk/Devel_Control/info_leaflets/TPO/tpo.htm

A felling licence is required to cut down trees, with the following exemptions;

- Less than 5 cubic metres is felled in any calendar quarter.

- The trees have the following diameters when measured 1.3 metres from the ground
 - 8cm or less
 - 10 cm or less for thinnings
 - 15cm or less for cutting coppice
- The work is necessary for Health and Safety. Details relating to felling licences can be found at: <http://www.forestry.gov.uk/forestry/infd-5ygfrm>

Herbicide consent:

Only herbicides approved for use in and by water can legally be used alongside chalkstreams. In addition, a written consent is required from the Environment Agency for their use under the Control of Pesticides Regulations (1986 as amended). Application forms are available from the EA website or from their local office.

Habitat and species protection

Some chalkstreams are statutorily designated, either under European legislation as Sites of Special Scientific Interest (SSSI) or under European legislation as Special Areas of Conservation (SAC). These designations recognise the importance of these chalkstreams both in a world-wide, European and National context. Chalkstreams are a rare, and geographically restricted habitat. Natural England is tasked with making decisions on the management of designated chalkstreams in England, on the basis of the ability of the habitat to support characteristic chalkstream assemblages of flora and fauna. Proposals for any restoration or enhancement work on these rivers must therefore be consistent with their conservation objectives and must receive the formal consent from Natural England prior to the commencement of any work.

In addition to the designation of rivers as SSSIs or SACs, there is a range of species that receive special protection under various European and UK law. These include (amongst many others) water vole *Arvicola terrestris*, otter *Lutra lutra*, Desmoulin's whorl snail *Vertigo moulinsiana*, white-clawed crayfish *Austropotomobius pallipes*, and Allis shad *Alosa alosa* and Twaite shad.

Details of all SSSI's and SAC's can be found on the **MAGIC** website <http://www.magic.gov.uk/>.

Alternatively, the local **Natural England** office <http://www.naturalengland.org.uk> can provide details.

WHITE-CLAWED CRAYFISH
– A PROTECTED SPECIES.



Health and Safety

Health and Safety

Health and Safety is everyone's responsibility. This collective responsibility is enshrined in law (see www.hse.gov.uk). It is not acceptable for anyone to take risks on site, or to ask others to take risks on their behalf. To minimise these risks, a few simple rules must be followed:

- Always consider using suitable qualified contractors for major works. Obtain references where possible.
- Formulate, write down and circulate an agreed project plan, and work programme. This will help those working on the job to understand clearly the steps involved.
- Appoint a Health and Safety officer. He/she should be responsible for all Health and Safety on the site. Each day should start with a site meeting at which all Health and Safety issues are discussed.
- Undertake a risk assessment for all key tasks. This need not be onerous, or complicated. It should however be a clear, and realistic assessment of the potential dangers involved in a job, with agreed protocols to avoid or reduce these to ensure staff and public safety.
- Risk assessments should be provided to all workers on site in a written form. A copy should be placed in the project file for future reference.
- Undertake a formal search for buried services before any digging or ground penetration takes place.
- Get adequate training. This is particularly important with respect to machinery and plant operation. Chain saws, winches, strimmers and brushcutters are all potentially lethal items of equipment.

DO NOT USE THEM UNLESS PROPERLY TRAINED!

- Wear suitable safety equipment. Helmets, gloves, ballistic trousers, goggles, and ear protectors are provided for a purpose.

WEAR THEM!



A SELECTION OF PROTECTIVE EQUIPMENT. **USE IT!**

Health and Safety

- Follow suppliers and manufacturers instructions for the use of products and equipment. Do not deviate outside of the stated usage.
- Provide a first aid kit on site, and ensure as many team members as possible are first aid trained. Have a working mobile phone on site and an agreed access point/route into the site for emergency vehicles if required.
- Make use of signs and barriers to keep the public away from working areas. Barriers can also be used to guide working vehicles along safe routes, for instance stream crossing points.



GUIDE BARRIERS, USED DURING WORK ON THE RIVER GLAVEN.

**This may all sound onerous; it isn't.
A little bit of basic
planning may just help save serious injury or worse
to someone on site, perhaps even you!**