



Protocol for the maintenance of flood and coastal risk management assets (England only)

Version 4, 27/01/2014

We are the Environment Agency. We protect and improve the environment and make it a better place for people and wildlife.

We operate at the place where environmental change has its greatest impact on people's lives. We reduce the risks to people and properties from flooding; make sure there is enough water for people and wildlife; protect and improve air, land and water quality and apply the environmental standards within which industry can operate.

Acting to reduce climate change and helping people and wildlife adapt to its consequences are at the heart of all that we do.

We cannot do this alone. We work closely with a wide range of partners including government, business, local authorities, other agencies, civil society groups and the communities we serve.

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This document

Purpose	This document describes the approach the Environment Agency will follow in implementing its guidance on maintenance <i>titled</i> ‘How we review the maintenance of flood risk management assets’ . It also describes how we will engage with landowners and other affected parties in situations where we permanently stop maintaining some assets we have previously maintained for flood and coastal erosion risk management purposes.
Note on contents	This document consists of two parts: <ul style="list-style-type: none"> • Protocol - main document outlining the principles of our approach. • Appendices - additional practical guidance, advice and supporting information (see list at the end of this protocol).
References to assets, landowners and other parties	<p>A flood and coastal risk management (FCRM) asset is a structure or feature that reduces the likelihood or impact of flooding from rivers and the sea, to people, property or infrastructure.</p> <p>The term ‘asset’ is used throughout this document to describe all structures and features that the Environment Agency own and maintain for FCRM purposes. It is also used to describe any similar structures or features including watercourse channels that we do not own but which we maintain using our statutory powers.</p> <p>In relation to the maintenance and operation of such assets and on matters of general consultation the term ‘landowner’ should be taken to include tenant or occupier as well as the owner of the land on which the maintained assets are located.</p> <p>Other affected parties is used to describe anyone else who may be directly affected by us not maintaining or operating particular assets and includes neighbours, other operating authorities, community groups and so on.</p>
Earlier version	This document builds on and replaces: “Protocol for the maintenance of flood and coastal risk management assets (England only)” which was published in December 2011.
What has changed	This new version extends the principles already in place and as summarised in a new section entitled ‘Overview and principles’. We have updated and reformatted the content and included additional explanation of technical processes where this has been requested by users of the document. Where possible we have included all supporting details in the appendices.
Review	We will review this document as often as necessary to reflect any changes in legislation and government guidance, or to address practical issues arising from its implementation.

Overview and principles

Use of this protocol

This protocol outlines the approach that the Environment Agency takes to the maintenance of flood and coastal risk management (FCRM) assets and describes how we will go about discontinuing permanently some activities that we have previously undertaken.

The protocol is not a set of actions or instructions that will be followed in every circumstance but a set of principles that apply to our maintenance activities. These principles will be applied in a way that is proportionate to the scale and significance of the activity.

We must obtain the best value for money from our maintenance work which means that sometimes we need to make changes to our work programmes. In some situations we may need to accelerate or delay the timing of work or change the methods that we employ. In other situations we may need to stop permanently all maintenance of some assets that we have maintained previously.

Overview

This protocol describes our approach to change and sets out:

- a practical and cost effective approach to engagement with those affected
- how we will consider relevant factors and the concerns of those affected before changes are made
- a clear framework that is fair to those involved with mechanisms for decisions to be challenged if appropriate.

The appendices to the protocol contain additional advice and guidance.

The principles that underpin this protocol

We will follow the approach set out in this asset maintenance protocol and:

- give relevant landowners and affected parties an opportunity to comment and highlight any factors which should be considered
- make sure that landowners and affected parties are clear on their respective roles and responsibilities
- engage pro-actively, positively and openly with the landowners and affected parties
- take a proportionate and flexible approach to engagement, reflecting the scale, significance and nature of the impacts arising from the proposed change
- take reasonable measures to ensure that everyone who wants to has an opportunity to engage in discussions
- enable the landowners and affected parties to understand where appropriate:
 - the flood and land drainage characteristics of the area
 - the impact which the proposed change in management would have on the local area, including on the environment, farming, homes, businesses and infrastructure
 - the range of options that may be available to them for future management of the assets and their likely costs, benefits and impacts. The options may include options for continued maintenance of assets by local groups, and options involving less or no maintenance
- work with landowners and affected parties in an open and impartial way to facilitate their consideration of the options and, where possible, reach a broad consensus on the preferred way forward
- where new arrangements are agreed, work in partnership with the landowners and affected parties to support the transition to the new arrangement
- be clear from the outset about the likely timing of any stopping of the maintenance of the assets concerned, allowing reasonable time for the landowners and affected parties to consider fully the impacts and identify a preferred solution
- be reasonably flexible over the exact timing for any stopping of maintenance, provided the landowners and affected parties are working actively and making clear progress towards an agreed solution.

Background

Delivering flood and coastal risk management

The Environment Agency is a non-departmental public body responsible to the Secretary of State for Environment, Food and Rural Affairs.

We aim to protect and improve the environment and to contribute to sustainable development. We play a central role in delivering the environmental priorities of the UK government through our functions and roles including flood and coastal risk management (FCRM).

Our legal powers relating to FCRM are permissive and are largely set out in the Water Resources Act 1991 and the Flood and Water Management Act 2010. The term permissive means that we have the power to undertake flood and coastal risk management works but are not legally obliged to provide such works.

In using these powers we must also comply with European legislation particularly the Habitats and Birds Directives, the Floods Directive and the Water Framework Directive and any other legal requirements.

Priorities

The Government's overall approach to flood and coastal erosion risk management is set out in the [National Strategy](#), Understanding the risks, empowering communities, building resilience: the national flood and coastal erosion risk management strategy for England which was published in July 2011. You can [view or download a copy](#) by clicking on this link: (<http://www.official-documents.gov.uk/document/other/9780108510366/9780108510366.asp>)

The Environment Agency's FCRM role is set out in legislation and in our corporate plan, "[Creating a better place 2010-2015](#)", which is approved by Government.

Shoreline management plans and catchment flood management plans set out broad proposals for managing flood and coastal risks locally.

We prioritise our investment in flood and coastal risk management works according to Government policy and in line with Treasury guidance on economic appraisal. We design our investment criteria to implement Government policy such that public money is spent on the works that provide the greatest benefits to society, is spent efficiently and effectively and reflects a partnership approach.

We assess the costs, economic benefits, environmental impact and flood risk to set our spending priorities. Maintaining some assets that we have maintained in the past may be economically justifiable no longer or the work may not have a high enough priority for central government FCRM funding over the longer term. In these circumstances, we might decide not to maintain them in the future.

Pitt Review

Our approach is consistent with Sir Michael Pitt's independent review following the summer floods of 2007, which set out 92 recommendations on managing the increasing risk of flooding due to climate change and other factors. The present Government has confirmed its commitment to taking forward the review's findings.

One of the recommendations from the review was that flood and coastal risk management authorities should work with communities and other relevant parties to:

- understand the community perspective of flooding and coastal erosion
- help communities understand and actively prepare for the risks
- encourage communities to have direct involvement in decision-making and risk management actions.

This includes giving communities:

- a bigger say in what action is taken to reduce flood risk
- greater responsibility for managing their own risks and decisions on local funding priorities
- greater accountability for the level of safety and protection achieved and the way risks are managed.

The review also concluded that involving communities at risk can help inform local decisions and identify beneficiaries able to contribute towards the costs of investment, so that costs and benefits are shared fairly overall.

Purpose, scope and aims

Purpose and scope

This protocol applies to the river and coastal assets that are currently maintained by the Environment Agency. It applies when we decide to stop permanently maintenance work at a particular location in situations:

- where our costs are greater than the benefits and it is uneconomic for us to continue these works
- where the priority of the maintenance work may be lower than that required to attract the funding needed to carry out the work now and in the foreseeable future.

The protocol explains the sequence of actions and the principles that we will follow to ensure that the impact on individual landowners and other affected parties is minimised, and that they have the opportunity and advice to make alternative arrangements.

The protocol will be applied in a way proportionate to the scale of the change being proposed.

Further advice on applying the protocol is included in Appendix 1.

This protocol also applies to the maintenance of any assets in Wales that are funded by the Environment Agency in the interests of flood and coastal risk management in England.

What is outside the scope of the protocol?

The following are outside the scope of this protocol:

- habitat creation schemes
- routine maintenance variations and reductions in maintenance due to the activity being lower priority in a particular year
- assets maintained by others
- welsh assets.

Habitat creation

The Environment Agency does not set out to create or restore habitat by discontinuing the maintenance of existing flood and coastal defences. We make decisions to stop any maintenance activities based on economics and flood risk.

We will promote and fund schemes that create new habitats or are part of managed realignment schemes on their own merits, with appropriate compensation being taken into account. If we want landowners to stop maintaining assets to create habitat, we will negotiate our options with them as part of a specific project.

Maintenance variations

We will from time to time vary the type and extent of maintenance on particular assets. We might, for example, mow the grass on a flood bank more or less often in different years depending on the rate of growth. Such variations may also occur because an activity may be lower priority than required to attract funding in the short term but the priority is likely to increase in the longer term. For example, silt removal may be deferred for a number of years until the priority for the work increases. These decisions are taken locally and fall outside of the scope of this protocol.

Assets maintained by others

This protocol does not apply to private defences (where the Environment Agency has no involvement or direct interest in their management), or to defences owned or maintained by other public bodies.

Welsh assets

This protocol does not apply to assets in Wales or England owned or maintained by Natural Resources Wales relating to FCRM matters in Wales.

Aims

This protocol aims to:

- Ensure that our processes and procedures are clear to landowners and other affected parties where we are proposing permanent changes.
- Ensure that landowners and affected parties are aware of their options which may include maintaining the assets themselves, adopting an alternative land use or seeking other funding.
- Provide guidance to landowners and affected parties so as to help them develop plans to reduce the risk of flooding.
- Ensure that landowners and affected parties are given reasonable time to make alternative arrangements before we stop maintaining certain assets.

Legal and policy aspects of the protocol

Policy basis of the protocol	This protocol incorporates current policy advice from the Department for Environment, Food and Rural Affairs (Defra). It provides additional practical guidance and should be read in conjunction with our guidance statement entitled How we review the maintenance of flood risk management assets , document number 01_10 first issued in January 2010.
Government policy	Nothing in this protocol supersedes or overrides government policy or the guidance issued to the Environment Agency by Defra on the implementation of that policy.
Legal status	<p>Compliance with this protocol does not absolve anyone wishing to undertake construction or maintenance works from the need to obtain consents, licences or permissions that may be required in law prior to commencing such works on site. It also does not prejudice or preclude any legal rights, claims or remedies.</p> <p>(See Appendix 2 regarding consents and Appendix 3 regarding other legal issues.)</p>
Environment Agency statutory powers	We have statutory permissive powers, but not a duty to construct and maintain works in the interests of flood and coastal risk management (See Appendix 3 for a further explanation).
Why do we need to make changes?	<p>In the past, many flood defence schemes primarily provided drainage and other support for farming. Our need to prioritise investment of public money in FCRM has led to a shift of focus to locations where the probability of flooding, economic damage and risk to life are greatest.</p> <p>The shift means that we are no longer able to justify maintaining assets which predominantly drain land and provide little flood risk benefit. In some areas it is no longer possible for the Environment Agency to provide some or all of the funds for the long-term management of those assets.</p> <p>Many people and properties benefit from assets and systems that we routinely maintain using our permissive powers. We will continue to maintain many of these assets, but we cannot guarantee that we will continue to maintain all of them indefinitely.</p>
Landowners' rights to maintain in the future	When we decide to stop maintaining assets or significantly change the maintenance regime for the foreseeable future, in almost all situations we will give landowners and affected parties the opportunity to continue the maintenance work we have previously done.

Options for landowners

We will work with landowners and affected parties to help identify all available options, and support them where possible in establishing their own maintenance practices (see Appendix 2).

Strategic framework

Flood and coastal risk management strategies and plans

The [National Strategy](#) builds on existing approaches to flood and coastal erosion risk management. It encourages the use of a wider range of measures such as: individual property protection and resilience, sustainable urban drainage systems and flood storage, and managing flooding and erosion in a co-ordinated way that balances the needs of communities, the economy and the environment.

In addition to the National Strategy we have in place:

- catchment flood management plans (CFMPs) that identify long term plans for the future management of the river network;
- shoreline management plans (SMPs) that are produced by Local Authorities and the Environment Agency and set out strategic options for managing coastal assets;
- change project plans for some specific geographical locations that set out in more detail the proposals in a CFMP or SMP;
- our [Asset management plan 2011-2015](#) that sets out our approach to asset management.
- our System Asset Management Plans (SAMPs). These are long-term plans covering a collection of assets that protect a discrete area known as a system. They include information on costs for maintaining and replacing assets over their life as well as details of the economic benefits within the system.

High level plans and stopping maintenance

We will consider stopping maintenance where an approved high-level plan such as a catchment flood management plan (CFMP), or shoreline management plan (SMP) indicates this may be appropriate in order to fulfil the sustainable objective for a particular location.

However, we might decide to stop some maintenance works in advance of the timescales put forward in these plans. This may include situations where an activity is of low priority and unlikely to attract funding in the foreseeable long-term future.

High level plans and strategies help clarify how a decision in one place might affect risk and other impacts in another throughout the catchment or coastal area. However, we cannot guarantee that a CFMP or SMP policy, say to hold the line, maintain or improve a defence, will be implemented at a specific location.

Economic appraisal

Our decisions based on costs and benefits are informed by the economic appraisal of proposals which compare the whole life costs of an option with the whole life benefits.

We use economic appraisals to decide and prioritise where to do works and help identify where we should stop. Economic appraisal compares the costs of doing work against the benefits of doing that work in addition to taking into account things that can not be given a monetary value. If the costs are higher than the benefits, then the work is not economic. If the benefits are greater than the costs, it is economic. However funding will only be available where the work is of sufficient priority.

Our approach

Consultation

After carrying out our initial assessment we will consult with other relevant flood and coastal risk management authorities, Natural England, and those who would be affected by permanent changes to our maintenance activities. This is to ensure that we have considered their views as part of the evaluation and prioritisation of our maintenance activities, before any final decisions on the future management of the assets are taken.

Assessment and categorisation

We will use strategies and other high level plans such as CFMPs to identify where we intend to reduce our maintenance activities.

We will also use our system asset management plans (SAMPs) to identify systems and assets which are uneconomic, and therefore candidates for stopping maintenance.

We will then assess in more detail those assets and categorise them into one of the four categories set out in section 5.3 of the National Strategy and as explained below. This assessment will include consideration of the potential environmental impacts of our decision (see Appendix 4).

We will apply this approach as and when we consider assets to be uneconomic and as part of our routine planning of maintenance work.

The four categories

The maintenance of asset systems is carried out using a risk-based approach so that investment is made where activities contribute most towards reducing the potential for damage, and where it is economically and environmentally justified.

Future investment in maintenance will continue to be prioritised to ensure that the greatest possible overall outcome is achieved with the available funding.

Since a range of factors are relevant when the required level of maintenance for an asset is reviewed, four broad categories are initially considered:

- assets for which there is an economic case for maintenance to reduce the risk from flooding to people and property
- assets that are required to protect internationally designated environmental features from the damaging effect of flooding
- assets that do not fit categories one and two above, but where work is justified due to legal commitments
- assets that do not fit the above three categories.

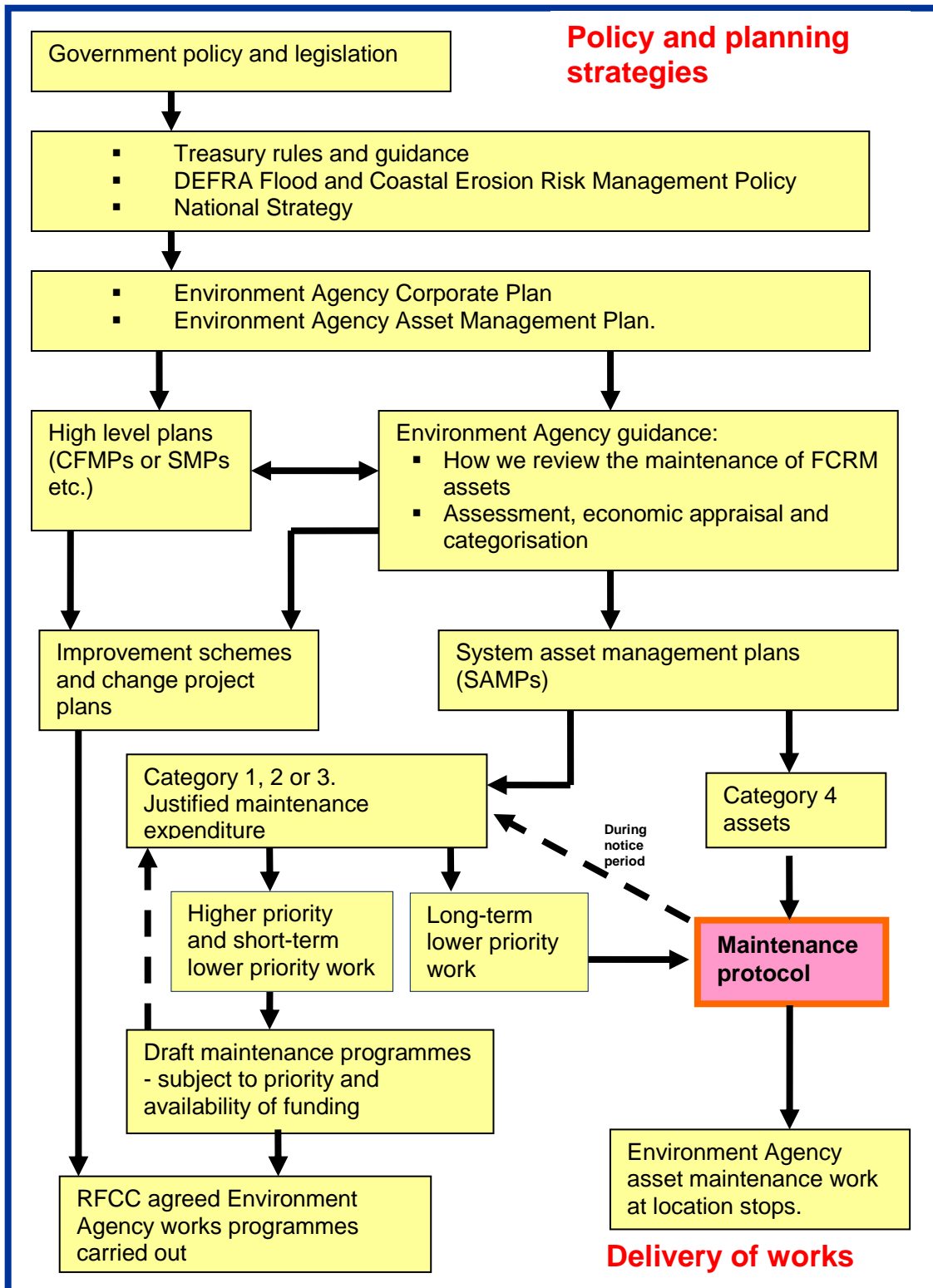
This categorisation of assets influences our allocation of funding but inclusion within a particular category does not guarantee or preclude such funding. (See *When will we continue maintenance?* below).

Summary diagram

The purpose of diagram 1 is to indicate how this protocol relates to the key stages from government policy through to our FCRM works programmes.

The diagram omits governance and consultation for simplicity, including the role of Regional Flood and Coastal Committees (RFCCs), but these are essential aspects of the process. Further details on the role of RFCCs in relation to this protocol are included in the *Reaching a decision and role of the RFCC* section below.

Diagram 1: summary diagram



When will we continue maintenance?

We aim to maintain those assets we are responsible for in the first three categories, subject to available funding. The longer-term future of those assets in category three will be determined through detailed local studies. The effects of asset deterioration and climate change could change the outcomes of the analysis as time progresses.

Although our approach is based on assessment of risk and economics, we have also to take into account our environmental obligations and any legal or contractual commitments to continue maintenance.

When will we consider stopping maintenance?

We will consider permanently stopping our maintenance of any assets in category 4, where there is insufficient economic, environmental or flood risk management justification for us to continue.

We will also consider permanently stopping our work for some assets in categories 1, 2 and 3 in situations where FCRM funding for maintenance is unlikely in the foreseeable long term.

Assets in category 2 protecting international sites are not automatically exempt from economic and priority tests, but a case for overriding public interest would need to be accepted before we could discontinue our maintenance work on such sites.

In situations where stopping maintenance is appropriate, we will aim to stop maintaining the assets at the end of a notice period, which will be specific to the site and allow a reasonable period for the landowner and affected parties to put alternative arrangements in place.

The most uneconomic situations will be considered first. We will consult with landowners and affected parties and, as soon as is reasonably and practically possible, cease maintenance to be able to fulfil priorities elsewhere.

Other possible options we will consider include:

- changing or reducing our activities to the point where the costs are justifiable and have a high enough priority for funding from a flood and coastal risk management perspective.
- provided the work we fund is economic, continuing as at present but seeking contributions from those benefiting from the activity; for example if the activity has additional benefits such as draining land for agricultural production.
- handing over responsibility for maintaining the asset system to another party, such as a local authority or Internal Drainage Board (IDB), by agreement or through a change in the legal status of the watercourse.

The appropriate option for a specific situation would be chosen in consultation with landowners and other affected parties.

If we can no longer continue current or past maintenance activities

Where we are considering stopping permanently the maintenance of certain assets we will ensure that:

- we consult those with a direct interest
- we carefully evaluate the options available to us and to others and consider their consequences
- we communicate openly with those with a direct interest
- we give landowners and affected parties the opportunity to undertake the maintenance of any assets themselves, subject to appropriate consents and approvals
- those affected understand the reasons for us stopping our work and what it means for them, including their options relating to the future maintenance of the assets
- we take into account the needs of those affected and agree a suitable notice period so that a new maintainer has a reasonable amount of time to prepare before we permanently stop our maintenance.

Further details are included in Appendix 1.

Short-term and longer term views

We will consider the short-term maintenance of an asset as well as the long-term maintenance. If an existing asset is economic to maintain in the short-term we may choose to continue to maintain it while it provides FCRM benefits that justify the expenditure. It is possible, however, that the future replacement or refurbishment of the asset may be uneconomic and that maintenance of the asset will be discontinued at that time.

We use short-term in the protocol to mean in any one year. We use long-term to mean over a Government Spending Review period as this determines our national funding settlement for that period of time.

Reduced maintenance

A reduced level of maintenance and a reduced standard of service or delaying work rather than totally ceasing all maintenance may be more appropriate in some situations particularly where the priority for more expensive works may be low.

In such circumstances, landowners and affected parties may then wish to consider seeking our approval and if necessary apply for consent to do additional maintenance or repair work themselves.

Additional maintenance work by landowners and affected parties may also be appropriate in situations where maintenance is justifiable but is of low priority for the Environment Agency.

Unexpected major damage to category one, two and three assets

We will normally undertake repairs to assets within the first three categories that unexpectedly fail. This may be, for example, as a result of an extreme flood event. If we consider major repairs to be uneconomic, we would explore possible alternatives with the landowners and affected parties with a view to creating a more long-term solution.

(See also major damage to category four assets during the notice period in Appendix 1.)

Residual risk In some cases there may be no economic justification to continue maintenance, but stopping maintenance would leave a significant risk to people and property, the environment or some other risk that we would consider unacceptable. Decisions on these assets will be made in line with local strategies and following appropriate risk assessment and consultation.

Before we stop maintaining any assets we will take reasonable measures to manage any residual risk, either through advance works, such as the disconnection of an electricity supply to a pumping station that is to be closed, or by handing over the assets to someone else to operate and maintain.

This might be appropriate where, for example, we are currently maintaining land drainage assets which could be managed by an internal drainage board or someone who directly benefits from the assets.

We will also consider implementing ways of reducing the consequences of future flooding such as:

- our flood warning service or emergency planning measures
- individual property protection measures
- managed realignment schemes
- liaising with Natural England to explore options for environmental stewardship schemes to support alternative land management regimes.

Public safety It may be necessary for us to continue a reduced level of maintenance to ensure public safety after we stop our main maintenance work. This might be appropriate for example on a pumping station where we have removed the pumps and switch gear but the building remains. We would need to ensure the building did not pose a future public safety risk and so we would continue to inspect and carry out work as required.

How long should it all take? The timescale for this process is not fixed because it needs to be appropriate for the circumstances at the particular location.

We will ensure that our actions are reasonable, fair and openly communicated. In particular people affected need to be given time to understand, challenge and prepare for the proposed change. Timescales will vary to meet local requirements.

The main variable will be the notice period which will take into account the impact of proposed changes which will vary from site to site. For example, the timescales applicable to coastal assets may be very different from assets on rivers where the flood risk and consequences of maintenance changes may be less significant or rapid than they are at the coast.

Details about how the notice period will be determined and what it means for those affected can be found in Appendix 1.

Reaching a decision and role of the RFCC

Where we intend to stop our maintenance of assets permanently, we will include this intent in the regional maintenance programme that is presented to and agreed by our Regional Flood and Coastal Committees on an annual basis.

As required under Section 23 (1) of the Flood and Water Management Act 2010, we will consult the relevant Regional Flood and Coastal Committee (RFCC) and take into account any representations made by the Committee prior to implementing the programme of work. We will also carefully consider and evaluate all responses from the people and organisations we consult and we will review our intentions if new evidence becomes available.

The Environment Agency's Area Manager will reach a decision on stopping maintenance and include his/ her decision in the planned regional maintenance programme, based on all the evidence and representations made to us. By law the programme may not be implemented unless and until it has been agreed by the RFCC. So the planned programme including those activities we propose to stop after a fixed period of time will then be considered by the RFCC. If it is agreed we will notify those directly affected in writing and, if appropriate, the wider community, via our website or other means. We will state the reasons for stopping maintenance.

If anyone wishes to challenge the decision to stop maintenance they should write to the Environment Agency's Regional Director. The Regional Director will review the decision of the Area Manager and confirm or otherwise to the person or organisation making the challenge if the decision was fair and reasonable.

We will advise the RFCC of any challenges made and the findings of the Regional Director on those challenges. We will ask the Committee if it wants to change the regional programme, including those activities listed for stopping, in the light of the advice given.

Our powers to undertake maintenance are permissive and therefore there is no special appeals process against the decision to stop maintenance set out in law. Anyone not happy with a decision of the Environment Agency or the RFCC can ask the Local Government Ombudsman to investigate.

The Local Government Ombudsman (LGO) looks at complaints about councils and some other authorities and organisations and is there to investigate complaints in a fair and independent way. If there is a complaint about the Environment Agency it should first be made to us, but if this is not satisfactorily resolved the LGO may be able to help.

Further information

Landowner information pack

A summary of the information in this protocol and its appendices is available as an [information pack](#) that we will give to landowners and other affected parties where appropriate.

We want to help anyone who will be affected by the proposed changes to understand fully:

- what is happening and why
- how will it affect them
- their rights and responsibilities
- what they can do for themselves to reduce flood risk
- how they need to prepare for the changes that will happen
- how to contact us
- how we can help.

List of appendices

Appendices

The nine appendices to this document as listed below are published as a separate document entitled [Appendices to the protocol for the maintenance of flood and coastal risk management assets \(England only\)](#).

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