

# **Transfer of regulatory powers on ordinary watercourses from the Environment Agency to Lead Local Flood Authorities (LLFAs) under the Flood and Water Management Act (2010) (FWMA)**

February – March 2012

# Introduction

⇒ Why?

⇒ Who?

⇒ When?

⇒ What?

⇒ How?

⇒ Contacts

# Why?

➔ Why is ordinary watercourse regulation important?



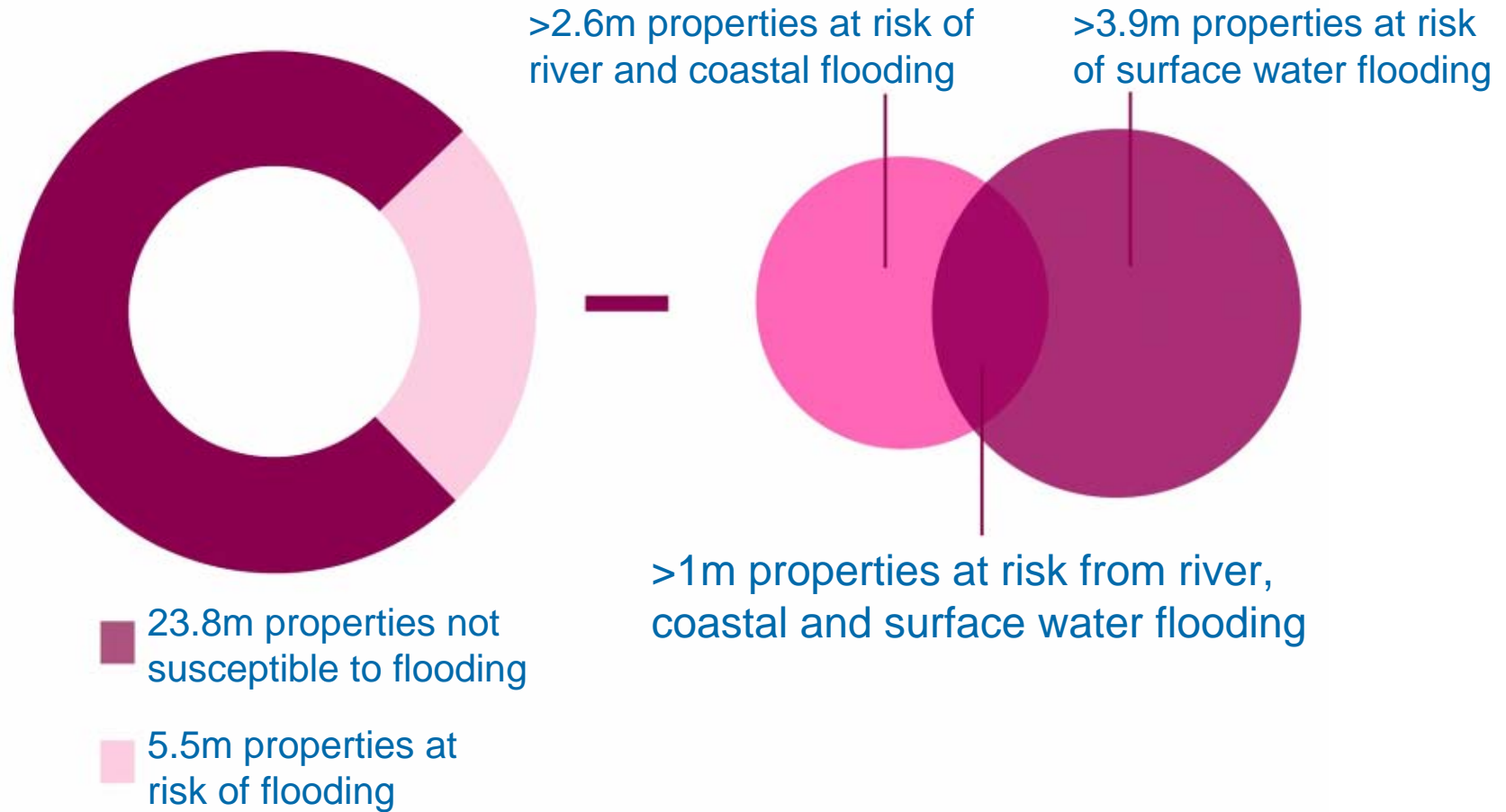
# Why?

## Background and Context

- ➔ Recent flooding from all sources of flooding
- ➔ The 2007 summer floods
- ➔ Sir Michael Pitt's independent review
- ➔ Recommendations included local control
- ➔ The Flood and Water Management Act 2010

# Why?

## ➔ Properties at risk of flooding



# Why?

## Flood and Water Management Act 2010

- ➔ Amends the Land Drainage Act 1991 with regard to ordinary watercourse regulation
- ➔ Transfers ordinary watercourse regulation powers, other than within Internal Drainage Districts, from the Environment Agency to Lead Local Flood Authorities
- ➔ Covers both England and Wales

# Definitions

What is an “ordinary watercourse”?

- ➔ A “watercourse” that is not a “main river”
- ➔ There is a map showing the “main rivers”

# When?

➔ The transfer of powers takes place on

**Friday 6 April 2012**



# What is regulation?

- ➔ Regulation is the management of proposed activities affecting Ordinary Watercourses, to ensure that flood risk is managed appropriately.

**“Regulation” is made up of two aspects:**

- ➔ Consenting
- ➔ Enforcement

# What?

## ➔ What are the legislation changes?

**The amended Land Drainage Act 1991 defines what requires “consent”:**

- ➔ The erection of any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or the raising or otherwise alteration of any such obstruction, or;
- ➔ The erection of a culvert in an ordinary watercourse, or;
- ➔ The alteration of a culvert in a manner that would be likely to affect the flow of an ordinary watercourse.

# What?

➔ What are the legislation changes?

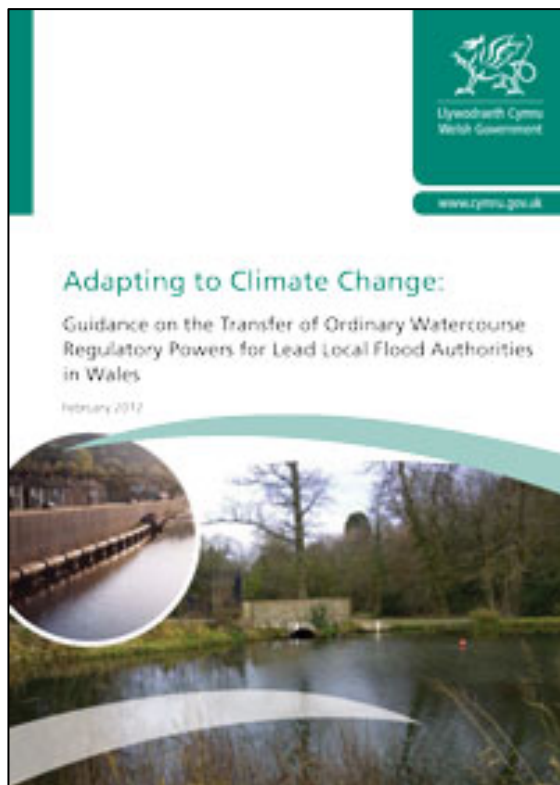
**And the amended Act also says:**


- ➔ Such “consent” may be given subject to reasonable conditions
- ➔ The LLFA must consult the Environment Agency before carrying out its own work that may otherwise have required consent
- ➔ The LLFA must have regard to any guidance issued by the Environment Agency about the exercise of its ordinary watercourse regulatory functions

# How?

**I expect you are asking how you, LLFAs,  
will do this**

# How? – Environment Agency help





## Advice Note

### Ordinary Watercourse Regulation - Consenting January 2012


This advice note aims to assist the transfer of ordinary watercourse consenting Powers from the Environment Agency to Local Authorities as required in the Flood and Water Management Act (FWMA) 2010 in England only.

#### Introduction

Local Authorities will lead on ordinary watercourse consenting and enforcement unless it is in an Internal Drainage District where Internal Drainage Boards (IDBs) will retain their existing powers. The Land Drainage Act 1991 will underpin ordinary watercourse regulation undertaken by Local Authorities. This will occur following commencement of paragraphs 32-34 of Schedule 2 of the Flood and Water Management Act 2010.

- Changes to ordinary watercourse management have been made by the Flood and Water Management Act 2010 (FWMA). In particular paragraph 32 (principally) of Schedule 2 of the FWMA amends section 23 of the Land Drainage Act 1991 (LDA1991).
- This note covers the transfer of regulatory powers (consenting and enforcement) on Ordinary Watercourses from the Environment Agency to Lead Local Flood Authorities (LLFAs). Together ordinary watercourse consenting and enforcement are referred to as regulation.
- The purpose of ordinary watercourse regulation is to control certain activities that might have an adverse flooding impact.
- Defra and Welsh Government may choose, separately or jointly, to produce further documentation on the transfer of ordinary watercourse consenting.
- Currently ordinary watercourse consenting and enforcement, other than in an 'internal drainage district' is undertaken by the Environment Agency, however Local Authorities already have enforcement powers under s25 of the Land Drainage Act 1991.
- This note is to assist Environment Agency Area Development and Flood Risk and Asset System Management Teams in consistently sharing their expertise in these two roles (consenting and enforcement, together described as regulation) with Lead Local Flood Authorities, and for ongoing reference by LLFAs.
- Ordinary watercourse regulation within Internal drainage districts is undertaken by internal drainage boards (IDBs). IDBs can operate as either:
  - "stand alone";
  - more than one internal drainage board working together as a "consortium";
  - Internal drainage boards operated by the Environment Agency.

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## Appendix to Advice Note

### Ordinary Watercourse Regulation December 2011

This appendix supports the Advice Note assisting the transfer of ordinary watercourse consenting and enforcement Powers from the Environment Agency to Local Authorities as required in the Flood and Water Management Act (FWMA) 2010.


#### Contents

- Appendix 1: Map showing distribution of consents 2010/11
- Appendix 2: Cross sections of consentable activities
- Appendix 3: Template consent application form and supporting letters
- Appendix 4: Standard conditions / informatives
- Appendix 5: Applying Enforcement Sanctions
- Appendix 6: List of other Environmental Permits
- Appendix 7: Water Framework Directive Requirements

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# How? – Environment Agency help




## Appendix 2


### Cross sections of consentable activities




Pipe Culvert (including extension and removal of) - **Consent Required** under Section 23 1(b).




Oversized Box Culvert (including extension and removal of) - **Consent Required** under Section 23 1(b).




Trash Screens - **Consent Required** as it is an alteration to a culvert and has the potential to obstruct flow.




Bank Protection Works - **Not Consentable** under LDA 91, (Temporary works may require consent).




Pipe Crossing (in channel) - **Consent Required** under Section 23 1(a)




Pipe Crossing (above bank) - **Not Consentable** under LDA 91 as it does not interfere with flow.




Pipe Crossing (below bed) - **Not Consentable** under LDA 91 as it does not interfere with flow – Potential temporary works consent.




Protuding Pipe Outfall - **Not Consentable** under LDA 91 as it will not act like a dam/weir or like obstruction.




Outfall within Bank profile - **Not Consentable** under LDA 91 as it does not interfere with flow – Potential temporary works consent.




Weir/Dam or impoundment or temporary works that obstruct flow - **Consent Required** under Section 23 1(a)




Bridge (where soffit level is below bank top level) - **Consent Required** under Section 23 1(a) if it has the potential to affect flow.




Bridge (abutments protruding but not reducing flow area/width) - **Not Consentable** under LDA 91 as does not interfere with flow.



Bridge (Abutments restricting flow) or Flume - **Consent Required** under Section 23 1(b)




Clear span bridge - **Not Consentable** as it does not interfere with flow



Bridge with support in channel - **Not Consentable** under LDA 91 as it will not act like a dam/weir or like obstruction. Need to consider size of pier against size of watercourse, but would want to discourage the use of a pier in the watercourse.

Note: "flow" should be determined as bank full flow conditions

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## Appendix 3

### Template consent application form and supporting letters

### [Insert LLFA] Authority Application for Ordinary Watercourse Land Drainage Consent

#### Introduction

Before completing this form you are recommended to contact us for advice on your proposal.

Please read through the guidance notes and the application form carefully before you fill in the form.

It should take you about 20 mins to fill in this form.

If you are not sure about anything in this form, contact us using the details at the bottom of this form.

#### Contents

1. About you, the applicant
2. Your address
3. Contact details
4. Interest in the Land
5. Location of Work
6. Description and Purpose of Proposed Work
7. Plans and Sections
8. Construction Details
9. Environment Agency Interests
10. Planning Approvals
11. Maintenance of Structure
12. Effects on the Environment
13. Fees
14. Checklist
15. Declaration

#### 1 The Applicant

Are you applying as a company, an individual, a group of individuals (partnership) or a public body?

**Company** - Go to section 1.1  
**Individual** - Go to section 1.2  
**Group of individuals** - Go to section 1.3  
**Public body** - Go to section 1.4

#### 1.1 Applications from companies

To apply as a company, you must be a registered company formally registered with Companies House. Please see [Companies House](http://CompaniesHouse) website for more information.

**Company name, as registered with Companies House** \_\_\_\_\_

**Company registration number** \_\_\_\_\_

Now go straight to section 2.

#### 1.2 Applications from individuals

Give your full name.  
Title (Mr, Mrs, Miss and so on) \_\_\_\_\_  
First name \_\_\_\_\_  
Last name \_\_\_\_\_

Now go straight to section 2.

#### 1.3 Applications from groups of individuals

**What type of group are you?**

Charity ☐  
Group of individuals ☐  
Club ☐  
Partnership ☐  
Other ☐

**Name of your group** \_\_\_\_\_

**Give details of your group's main representative**

Title (Mr, Mrs, Miss and so on) \_\_\_\_\_  
First name \_\_\_\_\_  
Last name \_\_\_\_\_  
Position \_\_\_\_\_  
Address \_\_\_\_\_  
Postcode \_\_\_\_\_  
Country \_\_\_\_\_

Contact numbers, including the area code  
Phone \_\_\_\_\_  
Fax \_\_\_\_\_  
Mobile \_\_\_\_\_  
Email \_\_\_\_\_

Now go straight to section 2.

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# How?

## ⇒ Advice for England

⇒ <http://www.environment-agency.gov.uk/research/planning/136423.aspx>

## ⇒ Welsh Government Guidance

⇒ <http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/flooding/nationalstrategy/guidance/?lang=en>

## ⇒ E Learning package

⇒ <http://www.environment-agency.gov.uk/research/planning/136423.aspx>

# How?

## Alternative arrangements

- ➔ LLFAs can arrange for another 'flood risk management authority' to exercise its ordinary watercourse regulation role
- ➔ LLFAs could appoint agents to undertake some aspects of the role
- ➔ However, the legal responsibility remains with the LLFA



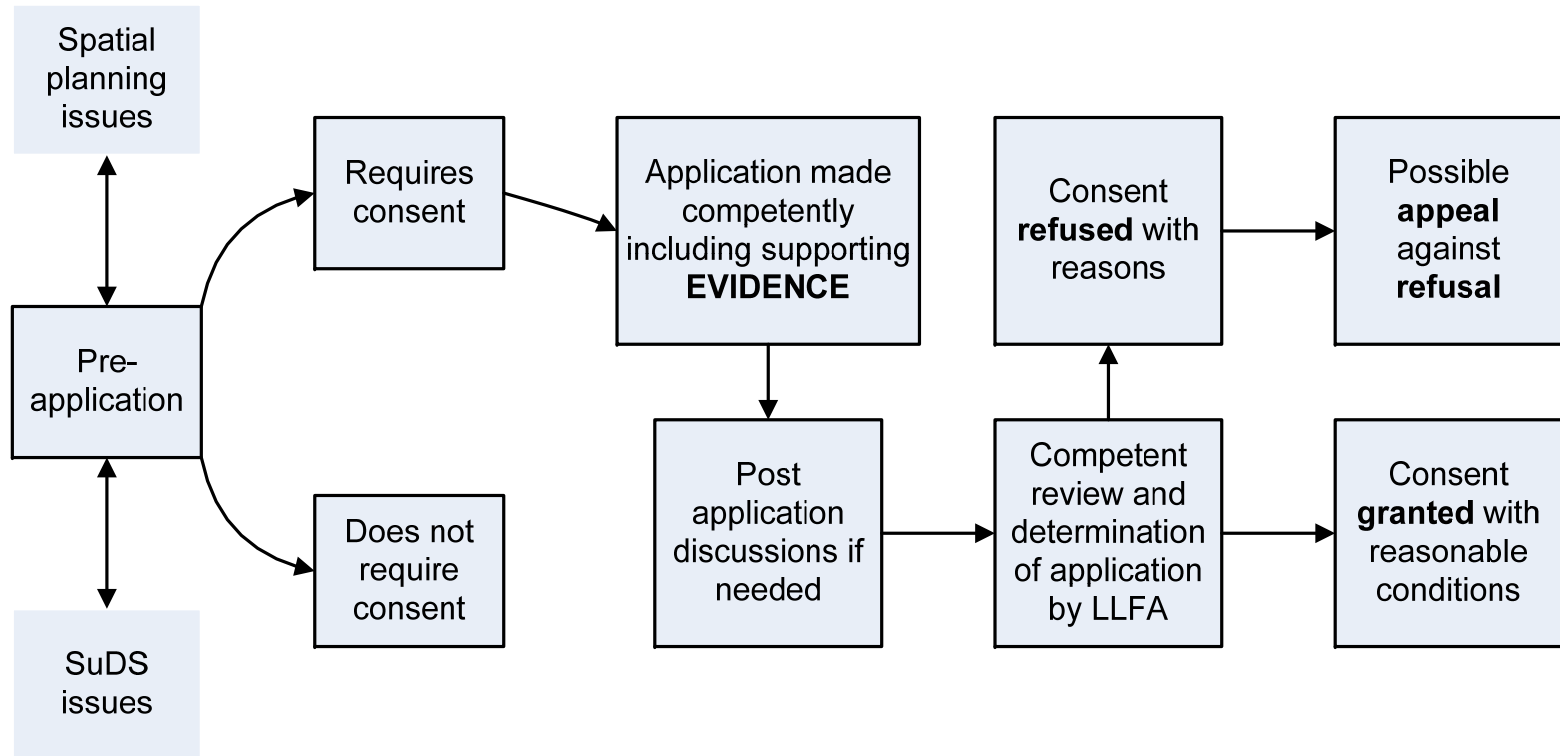
# How?

Having the right people to exercise these responsibilities

- ➔ Responsibility for determination of consent applications rests with the determining officer who has appropriate authority
- ➔ Enforcement officers should be appropriately trained and warranted

# How?

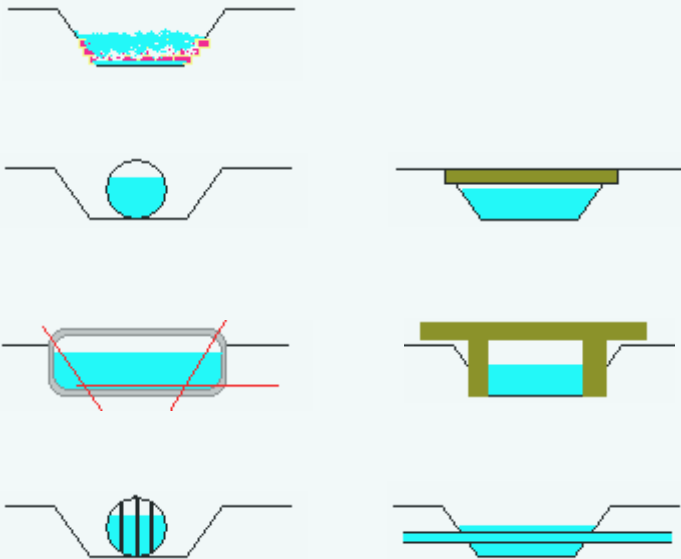
## ➔ The ordinary watercourse consenting process



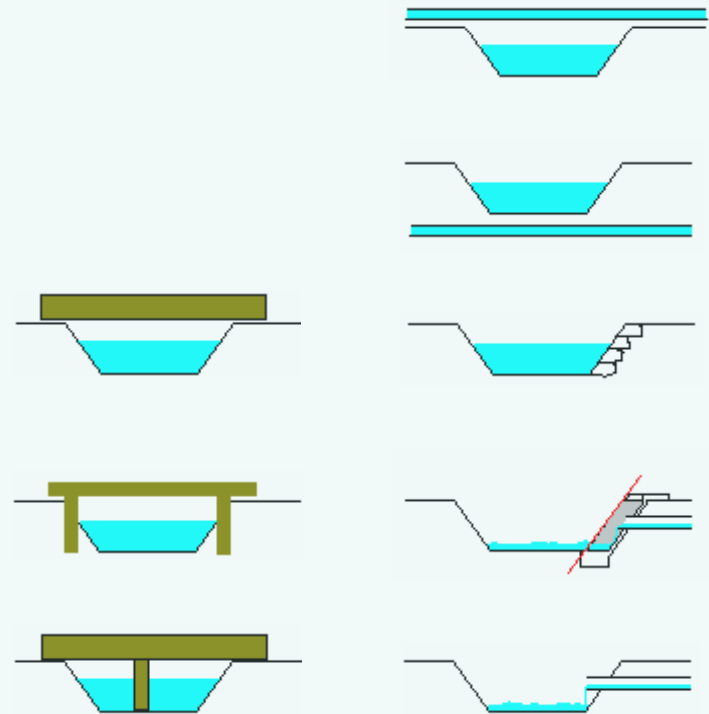
# How?

## ➔ What can be consented?

### ➔ requires consent



### ➔ does **not** require consent



# How?

## Applying for ordinary watercourse consent

### ➔ Applications must be

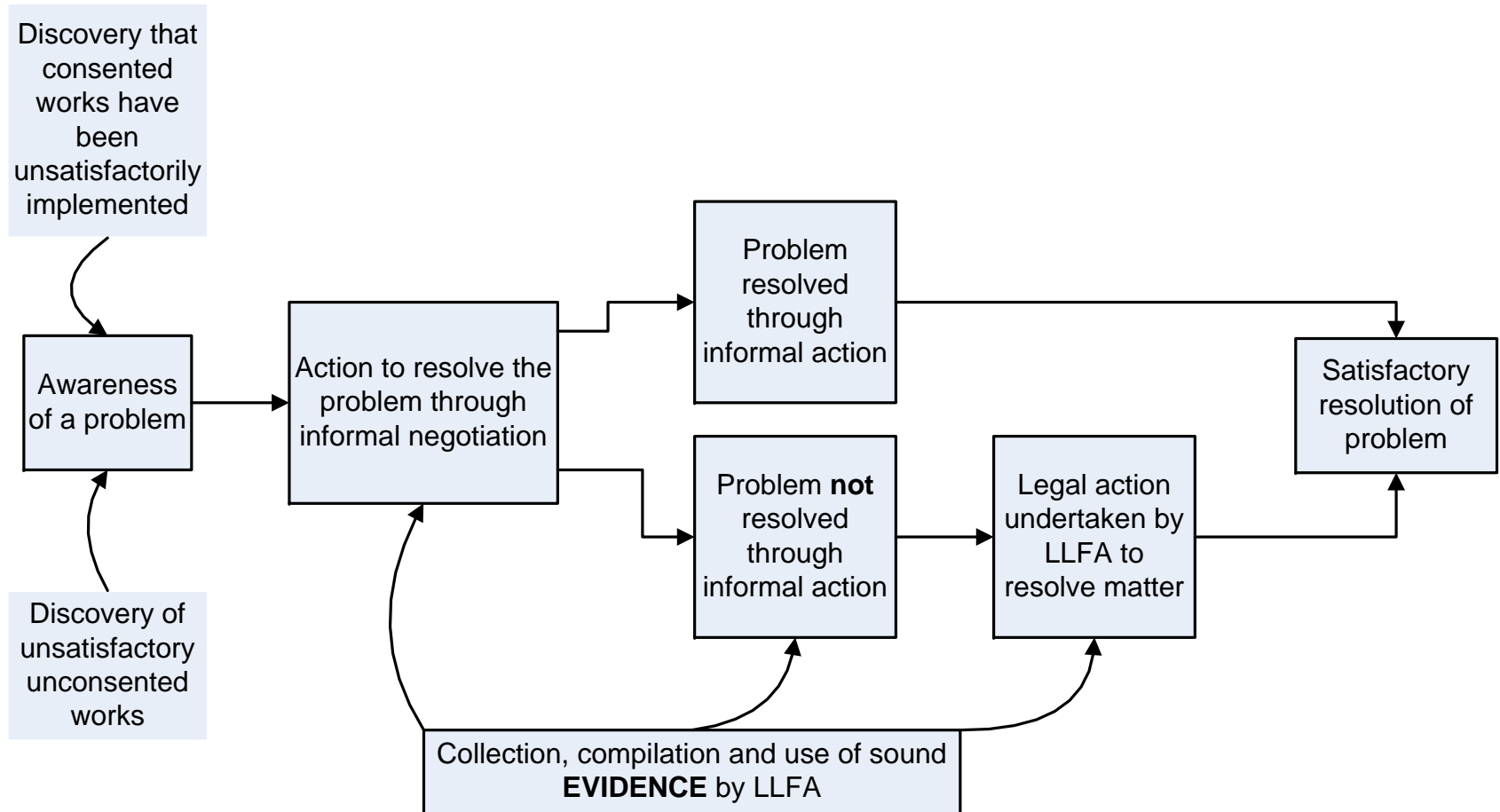
- ➔ in writing, and;
- ➔ accompanied by the necessary fee.

### ➔ Applications should have sufficient supporting evidence, including

- ➔ location map
- ➔ plans and cross-sections
- ➔ calculations (if necessary)

# How?

## ➔ The ordinary watercourse enforcement process



# How? - Achieving improvements

➔ Before



➔ After





# How?- When enforcement is necessary

- ➔ Inappropriate service crossings – Obstruction to flow



# How? - Why enforcement is necessary

➡ Lack of maintenance – obstruction to flow





# Unconsented works

➡ Rock dam requiring removal



# Unconsented works

## ➔ Inadequate culvert





# How? Some examples

## Erection of weirs – Obstructions to flow



# How - Support for LLFAs

**Our local area staff have been sharing their experiences including:**

- ➔ Information on the current numbers and complexity of consents and enforcements;
- ➔ The methods we use including letter and consent templates;
- ➔ The sources of information we use

# How - Support for LLFAs

- ➔ The current capacity building workshops – February – March 2012
- ➔ The E-Learning module available to LLFAs
- ➔ The advice note and appendices (England)
- ➔ Guidance from Welsh Government

# How - After transfer of powers

- ➔ Each LLFA will benefit from advice from local staff but the Environment Agency will not;
  - ➔ determine ordinary watercourse consents on behalf of the LLFAs
  - ➔ respond to consultation requests except where proposed works affect our interests

# Questions

# Contacts

## For further information contact:

- ➔ Your local area Environment Agency Development and Flood Risk Team
- ➔ <http://www.environment-agency.gov.uk/research/planning/136423.aspx>