

PSCA USER GUIDE

User Guide to the Standard Form Public Sector Cooperation Agreement (PSCA) between the Environment Agency and a Risk Management Authority to undertake flood or coastal risk management work

This guide describes how to set up and use the standard form Public Sector Cooperation Agreement between the Environment Agency and other risk management authorities for carrying out flood risk management maintenance works and similar activities (and in some cases coastal risk management maintenance works as well).

The standard form of Public Sector Cooperation Agreement (PSCA) enables the Environment Agency to work with an Internal Drainage Board (IDB) or other risk management authority so that they can undertake works and other activities on behalf of each other. The Environment Agency and Association of Drainage Authorities (ADA) have agreed the template agreement document and guidance note but these arrangements can similarly be used with other risk management authorities, subject to that authority being willing to accept these terms.

PSCAs should always be considered as first approach before bespoke agreements for individual works are pursued.

If you are considering setting up a PSCA, please contact the Partnerships Manager, Ian Russell, in the first instance @ ian.russell@environment-agency.gov.uk.

This guide is in 2 parts:-

PART A - Guidance on setting up a Public Sector Cooperation Agreement

This gives the background, legal basis and objectives for PSCA partnership working and explains the mandatory conditions that must be met for a PSCA to be established. It also describes the checks and the level of evidence that the Environment Agency will require before setting up an agreement. The prospective partner risk management authority may also ask for checks and evidence from the Environment Agency. The PSCA is a framework agreement for cooperation so that works and activities can be carried out in future, under the overall framework. Specific authority then needs to be given for specific works and activities to be carried out (see Part B). Part A also gives advice on some common questions on setting up a PSCA.

PART B - Guidance on using a Public Sector Cooperation Agreement

Once a PSCA is entered into, the Parties will normally agree an annual outline programme of work to deliver under the PSCA. Part B explains how to do this, and what you need to do to agree and record the details of the specific works and activities that are delivered under the agreement. It includes a flowchart to help determine whether a particular item of work or activity is suited to being carried out under a PSCA and also gives advice on some common questions

PART A - Guidance on setting up a Public Sector Cooperation Agreement

Operating authorities are encouraged to improve working arrangements to achieve optimal use of available resources and improved management of flood risk and coastal erosion. Section 13 of the Flood and Water Management Act 2010 (FWMA) places duties on risk management authorities to cooperate and share information. Under section 13(4) of that Act, “a risk management authority may arrange for a flood risk management function to be exercised on its behalf by another public sector risk management authority”. A risk management authority (Section 6(13)) is:

- a) The Environment Agency,
- b) A lead local flood authority,
- c) A district council for an area for which there is no unitary authority,
- d) An internal drainage board,
- e) A water company,
- f) A highway authority.

For coastal areas, under section 13(8) FWMA “The Environment Agency...may arrange for a coastal erosion risk management function to be exercised on its behalf by--

- a) a coast protection authority,
- b) a lead local flood authority, or
- c) an internal drainage board.”

Arrangements under s.13(4) and s.13(8) FWMA can be made using an agreement of “cooperation between public bodies”, subject to satisfying the objectives and conditions in the list below to ensure that procurement laws are complied with and there is no distortion of the commercial market place. Early consultation with the local procurement and legal teams is essential to securing a successful agreement.

We have designed these agreements so that maintenance works and similar activities can be carried out by one risk management authority on behalf of another. We anticipate that these arrangements will be used to authorise the Environment Agency to carry out work on an ordinary watercourse or for an IDB or a local authority to carry out work on a main river or to address sea flooding or coastal erosion. The type of work expected to be carried out under these agreements includes the following:

- Asset condition inspection
- Operational inspection
- System monitoring
- System operation
- Maintaining structures
- Grass cutting (Hand or mechanical)
- Tree Works
- Defence Repair
- Work on flood storage reservoir
- Environmental management
- De silting and dredging
- Pumping operations
- Bank re-profiling/ reinstatement
- Asset improvement works
- Transportation of plant
- Weed control (mechanical and chemical), pest/vermin control.
- Support in managing a Flood

- Obstruction removal / debris clearance

Incident by carrying out any of the activities above

Objectives of PSCAs

- To secure benefits of public sector bodies working together in cooperation based on the provisions in section 13(4) and 13(8) of the Flood and Water Management Act 2010 (FWMA)
- To secure efficient local working arrangements which will achieve value for money in delivering operational maintenance or similar activities
- To take advantage of local skills and experience including local knowledge of geography, associated river/ drainage systems and operational practices, to benefit local communities
- To secure flexible partnership working arrangements to supplement existing resources on an outline programme of maintenance and similar activities. It is suggested that agreements may cover a period of up to 5 years with annual reviews to refine the specific extent of activities to be carried out

These agreements have been developed by the Environment Agency in partnership with ADA for use with IDBs initially, but we expect that the arrangements will also be used with other public sector risk management authorities. We do not at this stage plan to roll out the use of these agreements with water companies, which are privatised, due to procurement laws. But if you are considering an arrangement with a water company, speak to your legal team who can advise.

Conditions for a cooperation arrangement to be established

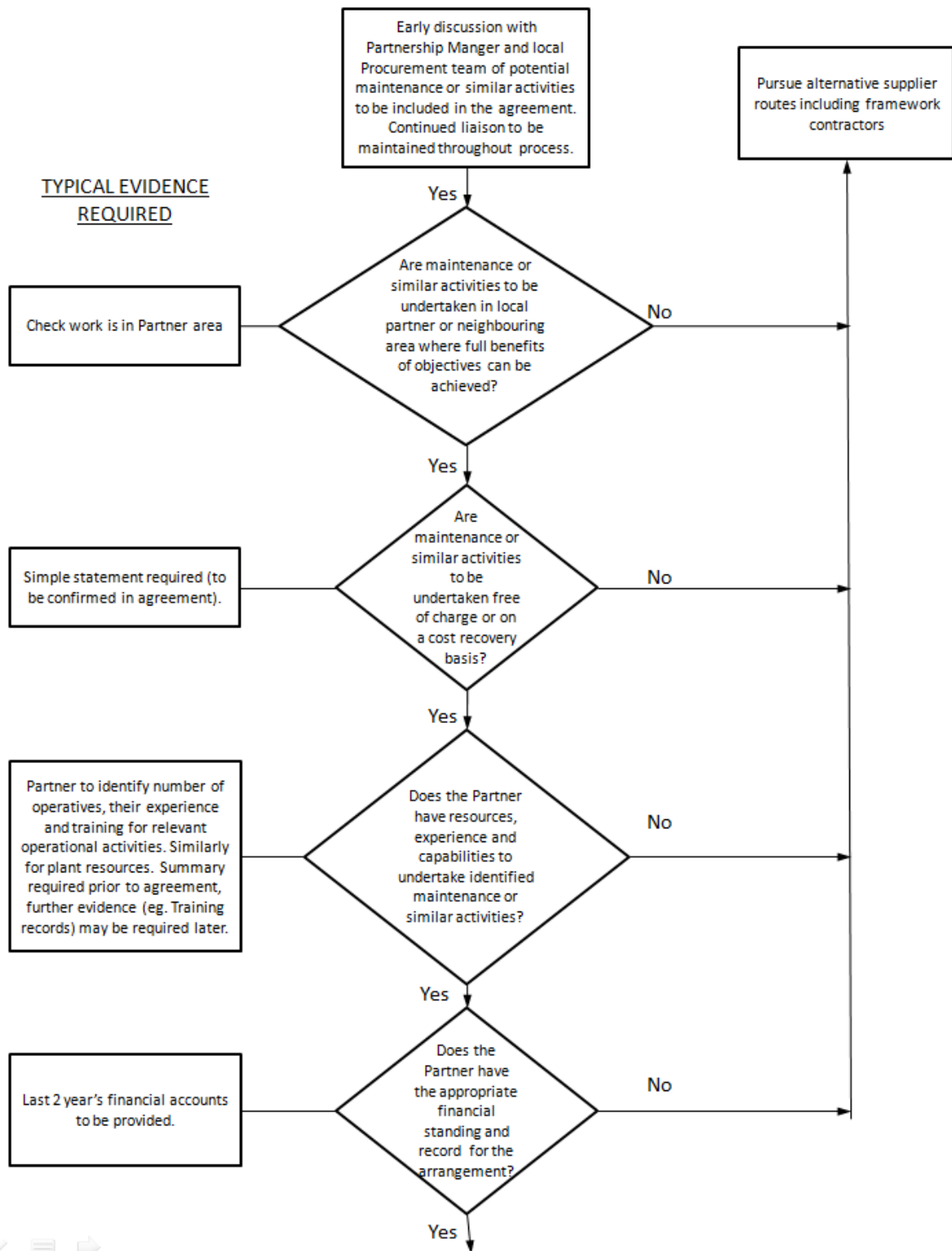
- The Environment Agency and the risk management authority, as public bodies and partners in the proposed arrangement, should have common aims and secure the shared performance of common tasks; they will be joint participants in the arrangement.
- The arrangement is a framework of genuine cooperation involving mutual rights and obligations, and the partners will be able to demonstrate mutual benefits.
- Because the arrangement is for the carrying out of common tasks, the kinds of tasks not normally undertaken by one partner could not be carried out by them under this arrangement on behalf of the other partner.
- The maintenance works or similar activities under the arrangement shall be carried out either free of charge or at cost (and not for profit). Any reimbursement will be of actual costs corresponding to the carrying out of the activity. Costing models will be fully transparent.
- Maintenance works or similar activities should usually be carried out in-house using the partner's own equipment and staff resources. If a third party is engaged to carry out works or services, the delegate authority (the Delivery Party) must procure works or services using transparent procurement

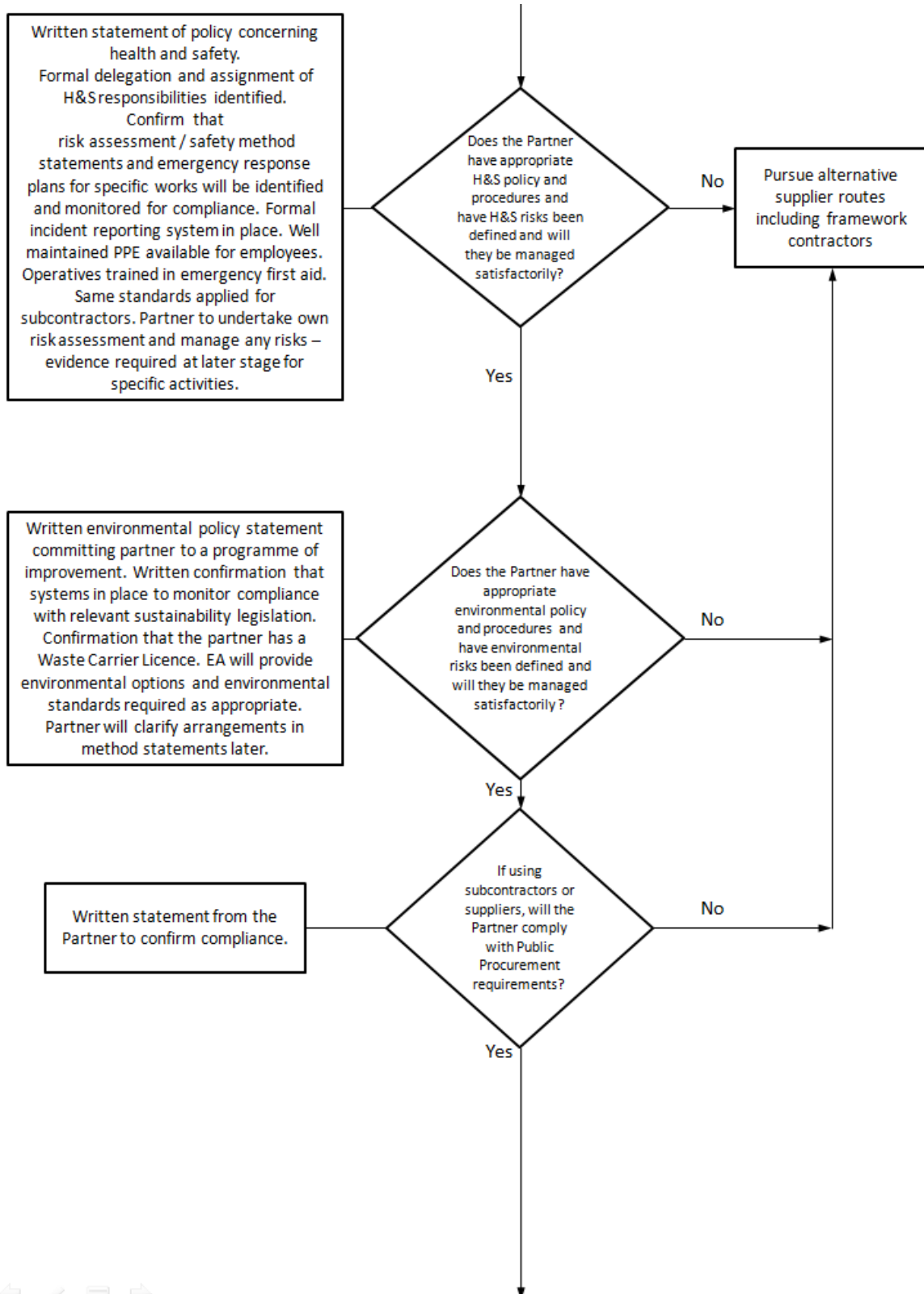
procedures in accordance with the Public Contracts Regulations and EC Treaty.

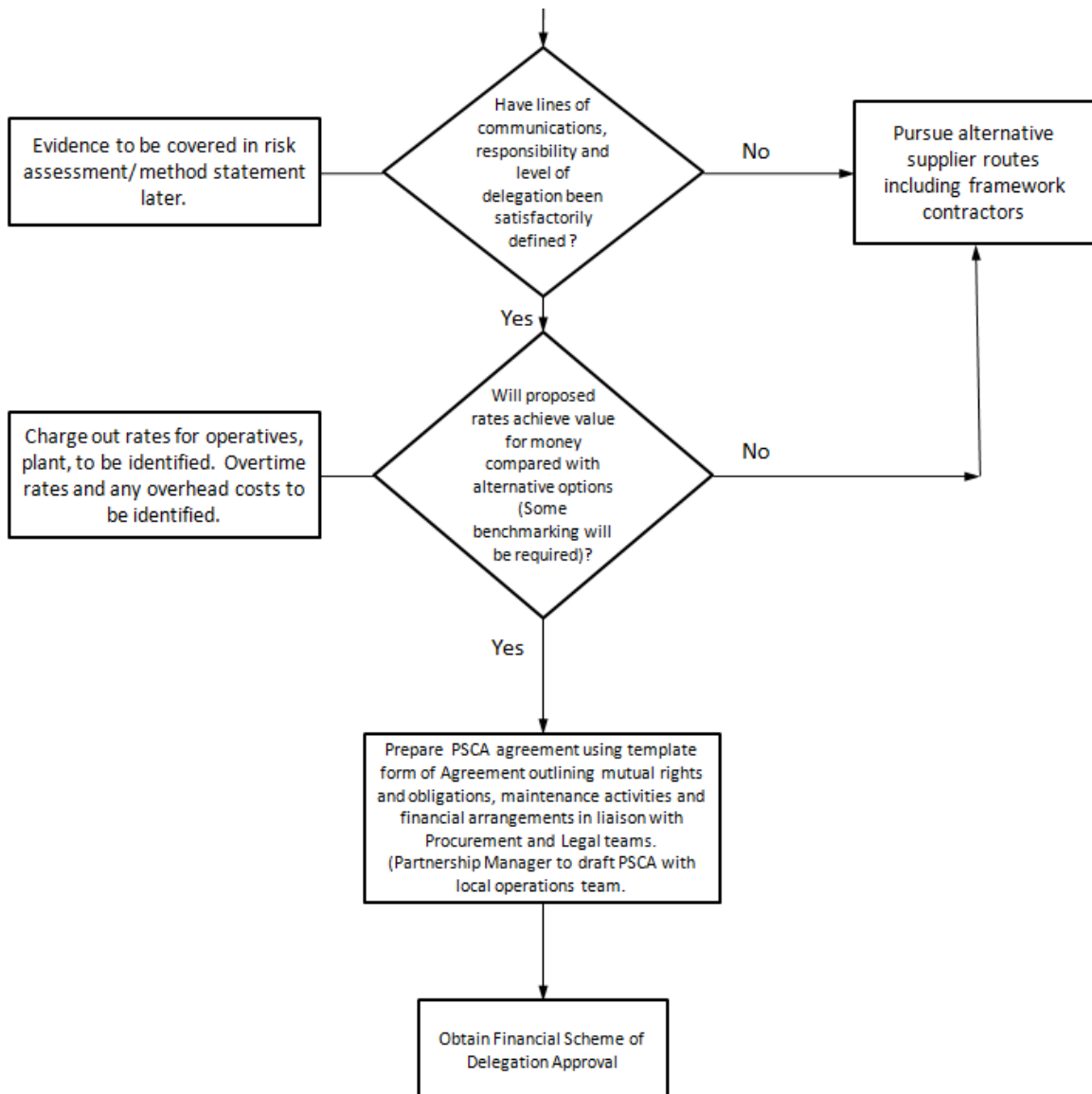
- Because the work is to be carried out by one partner on behalf of another, a risk management authority carrying out work for the Environment Agency will need to meet the Environment Agency's own environmental standards set in legislation.
- The appropriate checks in Flowchart 1 are carried out before an agreement is entered into, so that the partners are confident they can work together and that risks are appropriately managed. Some of these are checks that Environment Agency requires to be carried out on its partners procedures, policies, finances and insurances: we recognise that partner risk management authorities may also ask for checks on the Environment Agency, where the Environment Agency is planning to do work on behalf of a another risk management authority.
- The partners will enter into a public sector cooperation agreement to govern their arrangement.

Public Sector Cooperation Agreement – Flowchart 1

Checks for successful working arrangement before signing PSCA







Common questions on setting up a Public Sector Cooperation Agreement

What is a public sector cooperation agreement?

A public sector cooperation agreement (PSCA) is a standard form of cooperation agreement for carrying out flood or coastal risk management maintenance works and similar activities on a “not for profit basis”. PSCAs help us and other risk management authorities fulfil our cooperation obligations under s13 FWMA. The Environment Agency and other risk management authorities can put agreements in place to enable them to carry out work on each other’s behalf where it is more efficient to work in this way. The Environment Agency and ADA have agreed a template legal agreement and this guidance note to help establish these agreements, but they can be used with other public sector risk management authorities where appropriate.

When can I use a standard form PSCA?

Under the standard form of PSCA, the Environment Agency and another risk management authority can authorise each other to carry out maintenance or similar flood risk management activities on assets and watercourses locally (and in some cases coastal erosion works as well). This means, for example, that the Environment Agency can be authorised to carry out work on an ordinary watercourse, or an IDB or local authority can carry out work on a main river or to address sea flooding or coastal erosion. The types of maintenance or similar activity envisaged are set out in Part A of this guide, based on the Environment Agency management system document “Delivering consistent standards for sustainable asset management” (management system document 301_09_SD051).

The expectation is that the Delivery Party will carry out activities which are within its normal range of activities on the watercourses and assets it is responsible for, but carry them out on other watercourses or assets on behalf of another authority. This form of agreement may not be suitable where you want to ask another authority to carry out major works, works that permanently deprive a person from using any part of their land, or work outside the Delivery Party’s normal expertise and experience, as these would usually be of too great a risk to satisfy the standard checks that we undertake when using a standard PSCA. If you want to enter into an arrangement which includes one or more of these issues, you will need to consult the Partnerships Manager, your local legal team and procurement team for advice on how to proceed.

Guidance on whether a particular work item or activity can appropriately be undertaken using PSCA is shown in flowchart 2.

The PSCA is a standard form of agreement and should not be amended by users, other than adding in particular details in the specification relevant for the local programme of works and activities which it relates to. The Partnerships Manager will draft the PSCA to ensure national consistency of approach and to maintain coordination of PSCAs in use. If you want to make a similar arrangement for works outside of the normal range of activities for a PSCA, or if a risk management authority wants to amend *any* of the terms and conditions, specific legal advice should be taken and a bespoke arrangement *may* be needed.

Can I use it for construction or capital works?

The standard form PSCA is designed for maintenance or similar works. Small asset improvement or replacement works funded through capital may be suitable under the PSCA if they satisfy the requirements of flowchart 2. If there is any doubt, you should first consult the Partnerships Manager and the local legal team. It may be appropriate for major construction works but only if the RMA has the relevant experience, capability and resources to do so and can satisfy requirements of flowchart 2. You should first discuss this type of work with the Partnerships Manager and local procurement team before pursuing this type of works.

If you want to make a similar arrangement to do works outside of the normal range of activities for a PSCA (such as major construction or improvement works, or works outside of the normal experience of the delivery body, or works which interfere significantly with a person's land) specific legal advice should be taken and a bespoke arrangement *may* be needed. Your legal team, together with procurement and the Partnerships Manager will advise on your specific circumstances including consideration of compensation, powers of entry, insurances, health and safety, and payment. Your legal team may be satisfied that the PSCA is appropriate *or* they may recommend a bespoke agreement to deal with any particular risks or concerns. This will need to be negotiated between the parties to ensure everyone is comfortable with the arrangement and approvals have been obtained.

If a PSCA is suitable additional checks may be needed in addition to those in flowchart 2.

Is this a contract for works or services?

No. The PSCA arrangement is not intended to be a contract for works or services in the sense of a commercial contract. Where one party carries out work on behalf of the other using a PSCA under s.13(4) or 13(8) FWMA, it is acting under the powers and duties of the other. It is a partial delegation of powers from one body to the other. Although the Delivery Party may be paid for the direct costs of the work, the Delivery Party must not make a profit and is not a contractor for services or works.

The PSCA enables the public sector partners to carry out activities under a cooperation agreement that is in the mutual interest of the parties. As such, the risk sharing arrangements are different. The agreement has to be of mutual benefit for the parties to achieve efficiencies. We need to be able to demonstrate that using this arrangement gives us better value for money than our other options. Neither party can make a profit from the arrangement.

Can I set up a PSCA with a local authority?

PSCAs can be used between the Environment Agency and any of the public sector risk management authorities (a full list of all risk management authorities is listed in Part A of this Guide). The standard form we use with IDBs has been agreed with ADA, but is designed to be used with other public sector risk management authorities, provided that they are willing to accept the terms of the standard agreement and the proposed arrangement otherwise fits within this Guide.

If you are considering agreements with any risk management authorities, please contact the Partnerships Manager and your legal and procurement teams early so that they can advise and guide you.

Can I set up a PSCA with a Navigation Authority?

Navigation Authorities are not defined as a risk management authority in the FWMA. A navigation authority may perform a flood risk function on behalf of a risk management authority but there is no reciprocal arrangement. This means a navigation authority may, undertake works and activities for the Environment Agency (provided that such arrangements otherwise fit within this Guide), but the Environment Agency has no authority to undertake works for the navigation authority. If you are considering agreements with a navigation authority, you will need to take specific legal and procurement advice on whether the arrangement is genuinely mutually beneficial (and therefore in compliance with procurement laws). Please contact the Partnerships Manager and your legal and procurement teams early so that they can advise and guide you.

How do I set up a PSCA?

You will need to begin by having exploratory discussions with the prospective partner risk management authorities to understand whether there is a mutual interest in carrying out maintenance on behalf of each other. You should not make any binding commitments at this stage. **If you are considering setting up a PSCA, please contact the Partnerships Manager in the first instance.** He will normally attend joint meeting of the parties to explain PSCA and draft the PSCA with you. Procurement and legal services teams should also be contacted early on in your discussions.

You must follow the process set out in Part A of this Guide, to establish whether it is appropriate to set up an agreement. This requires checking whether the works are suitable, and whether the parties' experience, capacity, capability, policies and processes are all suitable and sufficient. Procurement can help you with this.

The terms of the agreement itself provide an over-arching framework, typically covering a 5 year period, within which specific programmes of work and activities can be delivered. Unless and until the agreement is entered into and the programme of works is identified and agreed, no specific works or activities should be carried out.

What approvals do I need to enter into a PSCA?

The PSCA agreement will need to be signed by a person who is authorised to sign the agreement on behalf of their respective organisation for the anticipated aggregated value of work over the period of the PSCA. All necessary internal approvals should be in place before the agreement is signed. **Please see your organisation's internal schemes of delegation or standing orders for further guidance.**

The evidence which has been gathered to support the need for the agreement should be kept on the file, together with the evidence of internal authorisations and a copy of the completed (and signed) agreement.

PART B – Guidance on using a Public Sector Cooperation Agreement

What happens after the agreement is in place?

Once the agreement is in place, the parties will normally agree an annual outline programme of work to be delivered under the agreement. Sometimes this will not be necessary as only ad hoc work is planned to be delivered under the agreement. It is recommended that annual planning is carried out to ensure that plans and expectations are clear and resources can be planned for accordingly.

The agreement is a framework for cooperation, so it does not oblige the partners to do any particular works and activities, unless and until specific tasks are agreed.

Is PSCA appropriate for the specific work or activity being considered?

The flowchart 2 below should be used to check whether specific work you have in mind is suitable to be delivered under the PSCA. If the flowchart indicates that the PSCA is not a suitable vehicle for the work you have in mind, speak to the Partnerships Manager and your procurement and legal advisers.

Confirming arrangements for Specific Works and Activities (Schedule 3)

The parties will agree the details of specific works and activities that they intend to deliver in writing using the form at Schedule 3 of the PSCA standard agreement. This should all be agreed before any work is commenced. The form is fairly self explanatory and refers where necessary to clauses in the agreement. Some points merit further guidance:

Description of Work or Activity

This should focus the works required to be done and the outcome to be achieved and not the method to achieve it unless it will affect the outcome and is necessary for legal compliance. Timescales or other constraints should be identified.

Identify the powers being used to deliver the works and activities

The form requires you to set out clearly what powers are being exercised by the Delivery Party on behalf of the Authorising Party. These will usually be works powers primarily, but there may be more than one power (eg works powers and a power to take surveys). Please consider carefully what powers are being exercised under which legislation, for example the Water Resources Act 1991, Land Drainage Act 1991 or Coast Protection Act 1949. This will depend whether the works are in connection with flooding from a main river, ordinary watercourse, surface water or groundwater flooding, sea flooding or coastal erosion works. Check with legal if you're not sure – you'll need to explain what the work or activity is proposed and what risk it is designed to address and legal will help you identify the power you need to be use.

The most common powers to do works, are the following (but check with legal which one applies for your specific works or activities):

- Flood risk management works on or in connection with a main river or sea flooding: Section 165 Water Resources Act 1991 together with section 37 of the Environment Act 1995
- Flood risk management works on or in connection with an ordinary watercourse: these may be under Section 11, 14 or 14A Land Drainage Act 1991 depending on the nature of the works. Please check.
- Flood risk management works in connection with surface water or ground water flooding: Section 14A Land Drainage Act 1991
- Coastal works to sea and tidal defences: section 165(2) Water Resources act 1991 together with section 27 of the Environment Act 1995
- Coast protection works: section 4 Coast Protection Act 1949

Identify any limits, constraints or guidance the delivery part must follow or be aware of

Sometimes the Delivery Party will be authorised to act with only limited authority, and will need to revert to the Authorising Party if it wants to go further than the limited authority it is given. Set out any restrictions which limit the Delivery Party's authority in this section.

The Delivery Party will be authorised to act on behalf of the Authorising Party, and in doing so must meet the environmental and conservation duties and environmental standards of the Authorising Party. For example, if the Environment Agency would have been required to do a habitats regulations assessment or water framework directive assessment for the work, an IDB acting on its behalf will also have to do that assessment and complete the work to the same environmental standard. The Authorising Party is the expert on what these standards are and must make sufficient information available to the Delivery Party so that they know what is required of them.

Powers of entry and other ancillary powers

Given the range of work that can be delivered under these agreements, its especially important that officers understand what power of entry they are using, and where necessary that they are properly authorised by the Authorising Party to exercise powers of entry as provided for in the legislation and required by the Statutory Code of Practice on Powers of Entry. Identify in the table the specific power of entry that is being used, seeking guidance from legal services to help you identify the legal power of entry you need to use. The appropriate power of entry will depend on what works power you are using. The most usual ones are the following (but check with legal which one applies for your specific works or activities):

- Entry in connection with works under s.165 Water Resources Act 1991 where the works are for maintenance of existing works or watercourses: the power of entry is included within the power to do works, see section 165(6) Water Resources Act 1991

- Entry in connection with all other works under s.165 Water Resources Act 1991 : power of entry under section 172 and schedule 20 Water Resources Act 1991
- Entry in connection with works under s.11, 14 or 14A of the Land Drainage Act 1991: Power of entry under section 64 Land Drainage Act 1991
- Entry in connection with works under section 4 Coast Protection Act 1949: power of entry under section 25 Coast Protection Act 1949

Training, authorisation and guidance for individual officers of the Delivery party must be given to those officers before any powers of entry are exercised. The Statutory Code of Practice requires records to be maintained. A temporary authorisation will need to be issued to any officers of the Delivery Party who need to exercise powers of entry. Seek guidance from your internal advisers on the requirements for your respective organisation.

Where Notices of entry onto land are required, these should always be signed and served by the Authorising Party. The Parties will need to work closely to ensure that they are properly discharging their legal duties in terms of notices and powers of entry and complying with the Statutory Code of Practice on Powers of Entry.

Health, Safety & Wellbeing including CDM Regulations

The PSCA arrangement is not intended to be a contract for works or services in the sense of a commercial contract. Where one party carries out work on behalf of the other using a PSCA under s.13(4) or 13(8) FWMA, it is acting under the powers and duties of the other. It is a partial delegation of powers from one body to the other. Depending on the details for the specific works and activities, the Authorising Party may be more prescriptive or less prescriptive when it asks the Delivery Party to do works on its behalf. The parties will therefore need to consider who is the client and who is / are the Designer(s) under the Construction Design and Management (CDM) Regulations 2015 for the specific works and activities in any case, and set out the agreed arrangements in the Schedule 3 specification for specific works and activities. Guidance to identify these duty holders roles under the CDM Regulations 2015 can be found on the HSE website: [Summary of Roles under CDM Regulations](#)

The Client as defined in the regulations is the organisation that the construction work is carried out for. There may be more than one Client under the definition in the regulations, and if there is more than one, the parties can agree who will adopt this legal role. It's the Clients responsibility to appoint other Duty holders for the work.

The Designer(s) will be the organisation(s) that prepare or modify designs for a building product or system relating to construction work. There may be more than one Designer who contributes to the design of the works, and each must fulfil their duties under the regulations as a Designer.

In the context of a PSCA:

- a) Generally, **where works are carried out under a PSCA on the Authorising Party's owned asset** or land, the Authorising Party will be the Client. The Delivery Party will be a Designer. The Authorising Party may also be a Designer if they have been quite prescriptive, so as to have contributed to the

preparation or modification of designs for a building, product or system relating to construction work. If the Authorising Party has detailed the method of work, they will take on Designer duties under the CDM Regulations.

b) Where works are being carried out on a watercourse or on third party land or assets:

- i) **If the Delivery Party is paying for the works** then the Delivery Party will usually be the Client, because they will have the primary interest in wanting the works to be done and will have a wider discretion in how the works are carried out. Usually in this case, the Authorising Party will not be the Client (or the Designer).
- ii) **If the Authorising Party is paying for the works**, then the Authorising Party will usually be the Client because they will have the primary interest in wanting the works to be done. The Delivery Party will be a Designer. The Authorising Party may also be a Designer if they have been quite prescriptive, so as to have contributed to the preparation or modification of designs for a building, product or system relating to construction work. If the Authorising Party has detailed the method of work, they will take on Designer duties under the CDM Regulations.
- iii) **If the Parties are jointly paying for the works**, it is likely that both will fall within the definition of the Clients as they will usually both have an interest in the works. In this case they should specify in Schedule 3 who will take the role of Client – this will usually be the Delivery Party. The Delivery Party will be a Designer. The Authorising Party may also be a Designer if they have been quite prescriptive, so as to have contributed to the preparation or modification of designs for a building, product or system relating to construction work. If the Authorising Party has detailed the method of work, they will take on Designer duties under the CDM Regulations

The Delivery Party will be the Principal Contractor under CDM

Known hazard information can be provided without affecting the above roles.

Environmental Matters

Environmental standards, outcomes, constraints and / or opportunities should be clarified before work proceeds. This includes timing of the works. Refer also to page 12 regarding environmental duties and standards.

Compensation

You need to specify which party is responsible for planned compensation to landowners and third parties, if any arises. Specify which of clauses 10.1, 10.2 or 10.3 applies to these specific works and activities. If clause 10.3 applies you need to set out the proportions in which compensation will be shared between the parties. Take advice from legal (and estates if appropriate), if you are not sure how to deal with compensation under the agreement.

Financial Arrangements

The PSCA allows work to be undertaken irrespective of funding source, provided that the party who is paying is identified before works proceed (e.g. Authorising Party, Delivery Party) and the Parties are sure that sufficient funding is available. In the case of joint funding, the split of funding needs to be agreed to meet the financial outturn cost of the work. If third party funding is being contributed, either the Authorising Party or the Delivery Party needs to be responsible for securing those funds and then contributing them under this PSCA arrangement. The third party funder is not a party to the PSCA agreement.

Rates should be reviewed annually or at other times as agreed.

Rates for the work and the estimated cost must be agreed by the parties before work proceeds. On completion of the work, payment is based on the actual outturn cost using agreed rates, not the estimate.

Post Works Review

It is good practice to maintain liaison during the works. On completion, value for money and any lessons learned should be discussed and identified to benefit potential future use of the PSCA for this work /activity. This review should be kept as simple as possible according to type of works and risks involved.

Where can I get more information?

Please contact the Partnerships Manager in the first instance for information on establishing and using PSCAs.

You should also contact your local legal services and procurement teams regarding specific agreements which are outside of the usual scope of PSCA agreements.

For further details contact ian.russell@environment-agency.gov.uk

Ian Russell

Environment Agency/ADA Partnership Manager

March 2016.

Public Sector Cooperation Agreement - Flowchart 2- Is PSCA appropriate for specific work or activity being considered?

