

Public Sector Co-operation Agreement User Guide October 2018

Executive Summary

Under section 13 of the Flood and Water Management Act 2010 (FWMA) 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 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”

The standard form of Public Sector Cooperation Agreement (PSCA) enables a risk management authority to undertake works and other activities on behalf of another.

This guide describes how to set up and use the standard form Public Sector Cooperation Agreement between two risk management authorities for carrying out flood risk management maintenance works and similar activities.

The Environment Agency and Association of Drainage Authorities (ADA) have agreed the template agreement document and user guide between any two public sector risk management authorities.

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

If you are considering setting up a PSCA, please contact the Environment Agency FCRM Senior Advisor, James Yarham, in the first instance @ james.yarham@environment-agency.gov.uk .

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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 this guide to ensure that procurement laws are complied with and there is no distortion of the commercial market place. The Authorising Parties procurement and legal teams will be able to assist with any queries which arise in relation to such matters.

We have designed these agreements so that maintenance works, similar activities and relevant services can be carried out by one risk management authority on behalf of another. Subject to agreement with procurement and legal teams, small capital works may also be undertaken under PSCAs. 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 flooding or coastal erosion. Please see the Frequently Asked Questions in Appendix A for further guidance on setting up a PSCA.

Suitable works for a PSCA

- System monitoring
- System operation
- Maintaining structures
- Grass cutting (Hand or mechanical)
- Environmental management
- De silting and dredging
- Pumping operations
- Bank re-profiling/ reinstatement

- Tree Works
- Defence Repair
- Work on flood storage reservoir
- Obstruction removal / debris clearance
- Asset improvement works
- Transportation of plant
- Weed control (mechanical and chemical)
- Support in managing a Flood Incident
- Recovery works following an incident

Suitable services for a PSCA

Asset condition inspection, to include:-

- Asset inspection
- Bridge inspection
- CCTV survey

Pre-works activities, to include:-

- Topographical survey
- Ecological survey
- Issuing of notices of entry served by Authorising Party
- Pre-works engagement
- Design

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 encourage and embrace the multiple benefits of partnership working
- 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. They are for use with the Environment Agency, IDBs, local authorities and other public sector risk management authorities. We do not at this stage plan to roll

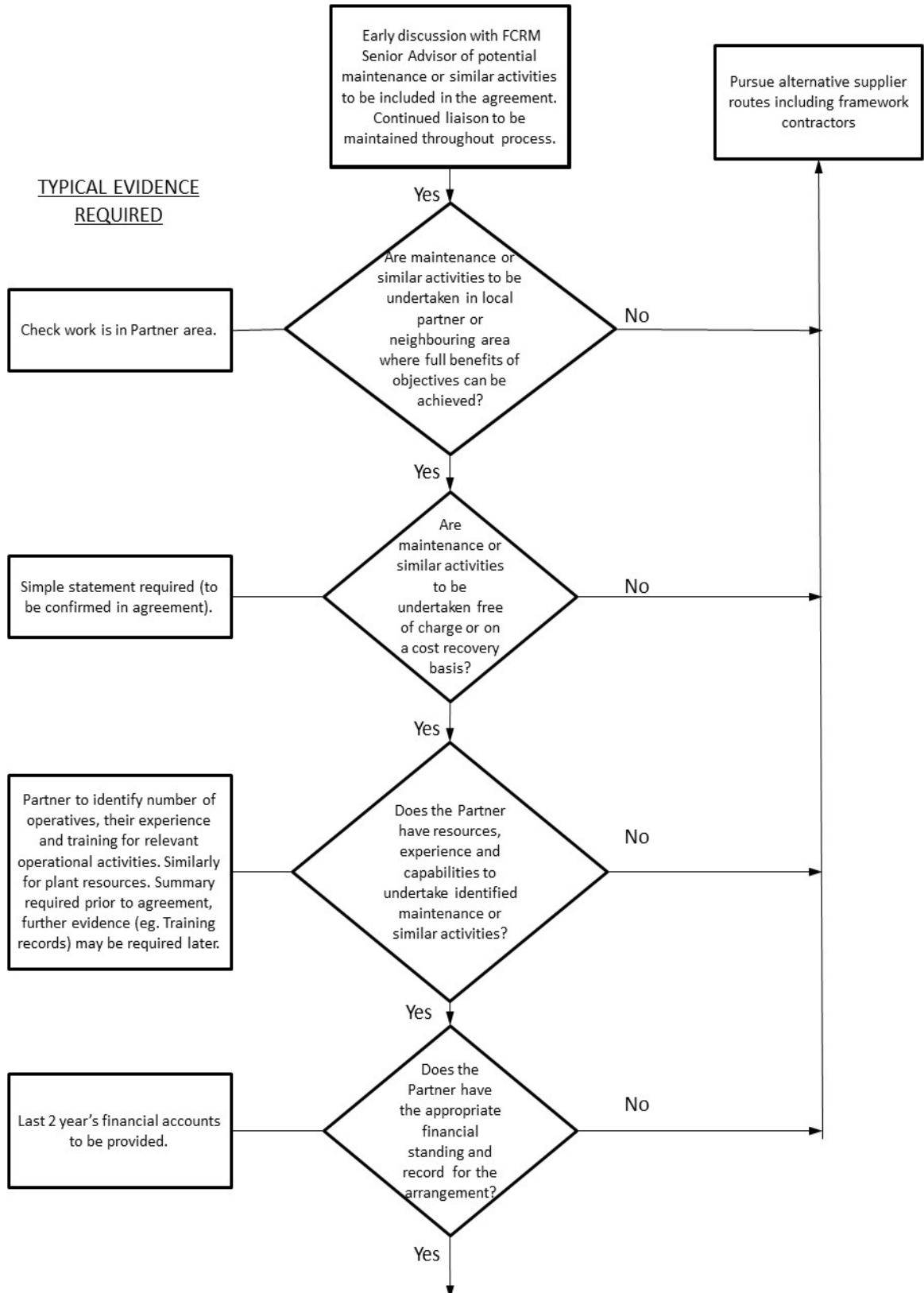
out the use of these agreements with water companies, which are privatised, due to procurement laws. But if you are considering an arrangement with a water company, speak to your legal team who can advise.

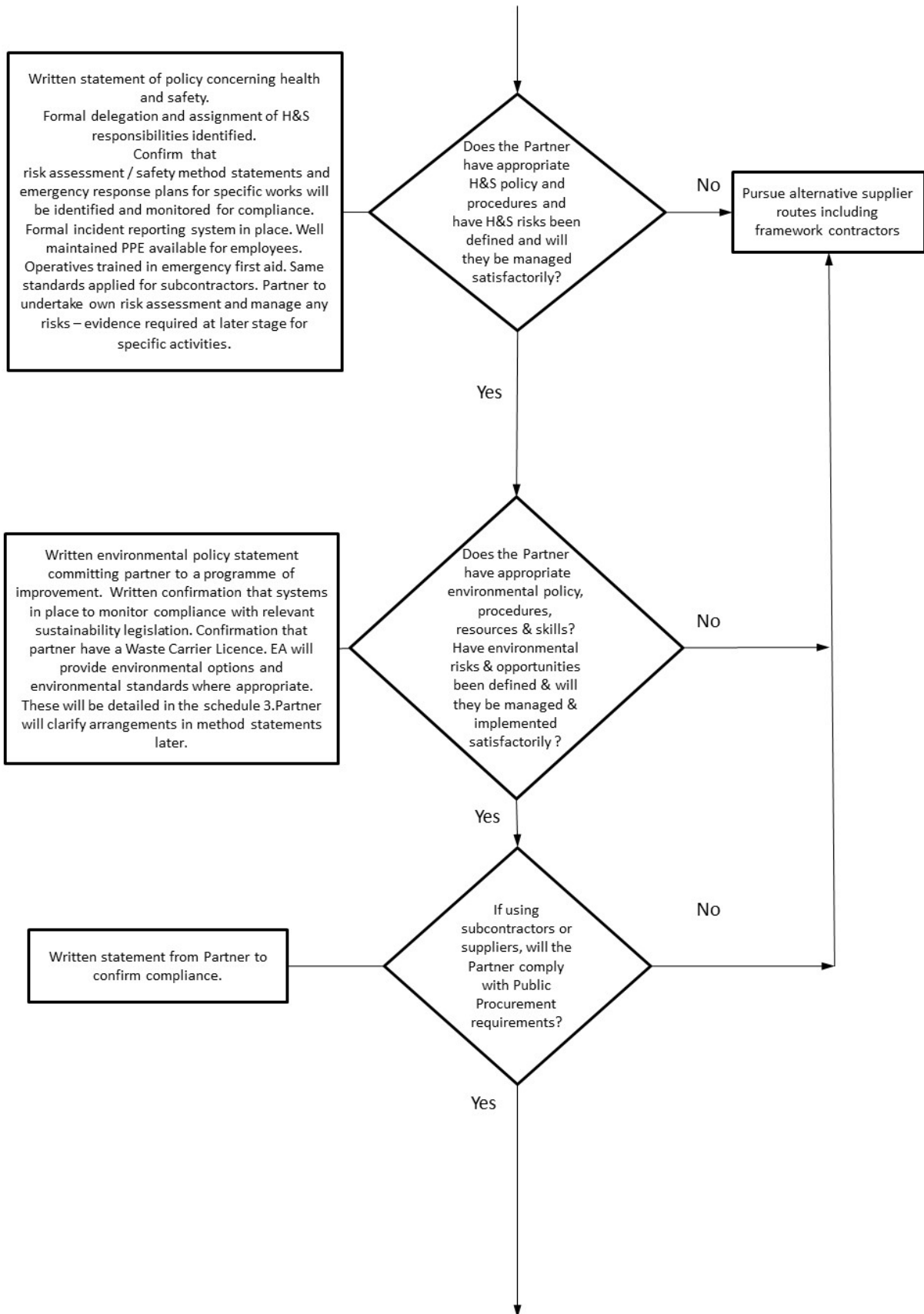
Conditions for a cooperation arrangement to be established

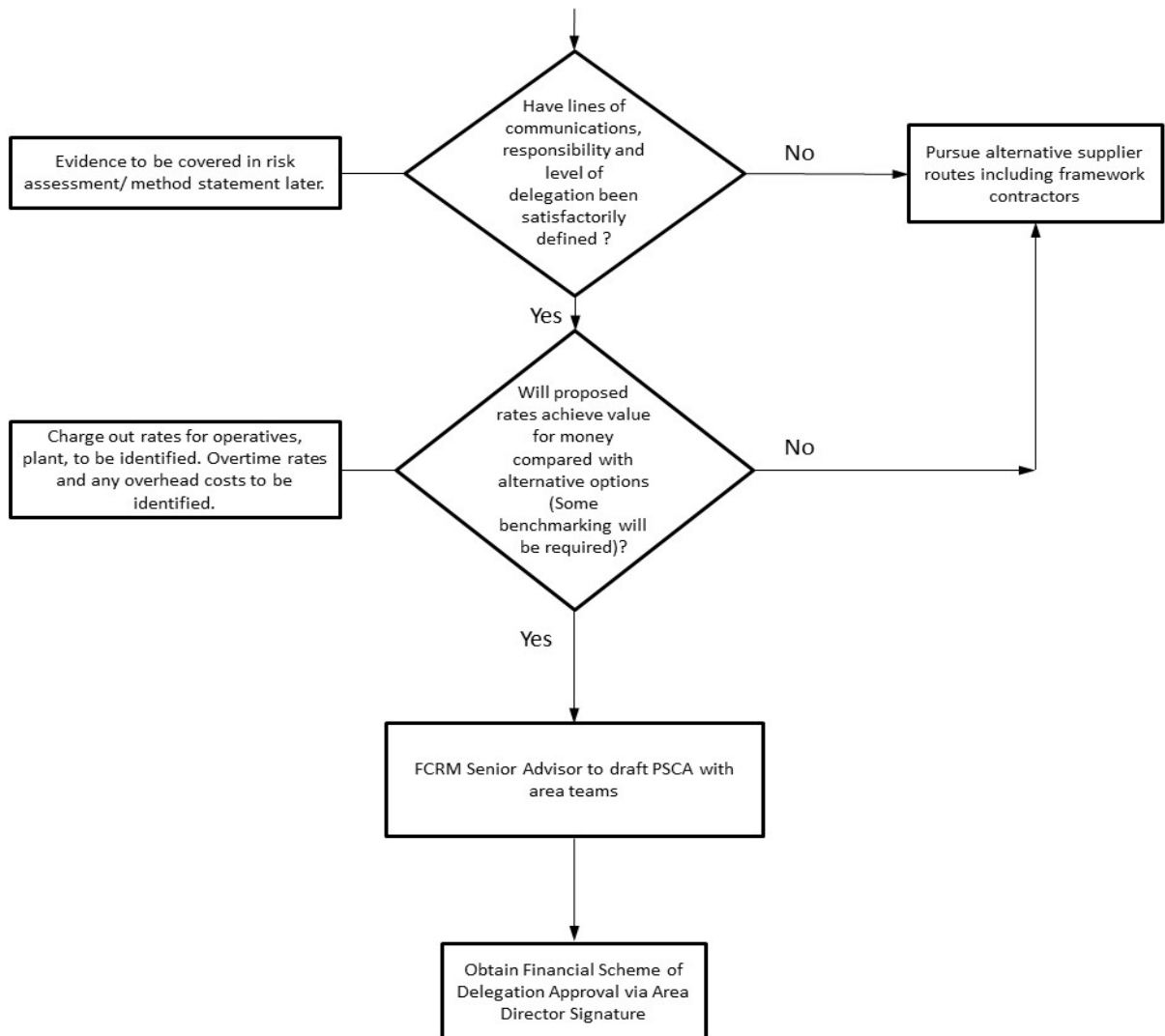
- The two risk management authorities, as public bodies and partners in the proposed arrangement, should have common aims and secure the shared performance of common tasks; they will be joint participants in the arrangement.
- The arrangement is a framework of genuine cooperation involving mutual rights 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 have environmental standards equivalent to the Environment Agency's. In this instance the Environment Agency's Area Fisheries, Biodiversity and Geomorphology team will be expected to be involved from the start of the process to identify the relevant environmental policies, processes, risks and opportunities associated with the proposed agreement.
- 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 will be appropriately managed. The Environment Agency requires potential partners to complete the evidence proforma in Appendix C for this purpose. We recognise that partner risk management authorities may also ask for checks on the Environment Agency.
- 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. For the Environment Agency this will be your Area Director.

Public Sector Cooperation Agreement – Flowchart 1

Checks for a successful working arrangement before signing a PSCA







PART B – Guidance on using a Public Sector Cooperation Agreement

What happens after the agreement is in place?

Once the agreement is in place it is valid for five years. The parties will normally agree an annual outline programme of work to be delivered, this may not be necessary if only ad hoc work is planned. It is recommended that annual planning is carried out to ensure that plans and expectations are clear and resources can be planned for accordingly. Where both parties are comfortable and confidence exists with future funding it is possible to commit to extended work programmes.

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.

Please see the Frequently Asked Questions in Appendix A for further guidance on using a PSCA.

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

Flowchart 2 at the end of part B should be used to check whether specific work you have in mind is suitable to be delivered under the PSCA. Records of compliance with flow chart 2 should be kept on file. If the flowchart indicates that the PSCA is not a suitable vehicle for the work you have in mind, speak to the Environment Agency's FCRM Senior Advisor 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 in Schedule 3 of the PSCA standard agreement which is contained in appendix B of this guide. This should be agreed and signed by both parties 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 on 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 (e.g. 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 your legal team if you're not sure – you'll need to explain what the proposed work or activity is and what risk it is designed to address.

The most common powers to do works, are the following (but check with your legal team 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 party 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 have the resources, skills and capacity to meet the environmental and conservation duties and environmental standards of the Authorising Party. For example, if the Environment Agency would have been required to produce a Water Framework Directive assessment for the work or undertake mitigation, compensation or enhancement, another risk management authority 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, it will be 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 your legal team 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.

Construction, Design & Management (CDM) Regulations 2015 and Health, Safety & Wellbeing.

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. A PSCA represents a partial delegation of powers from one body to the other.

Therefore when works are classed as construction under the CDM Regulations 2015 the parties will need to identify who is undertaking the relevant roles. Once agreed these should be set out in the Schedule 3 specification for the works. Guidance as to the identification of these duty holders' roles under the CDM Regulations 2015 can be

found on the HSE website: [Summary of Roles under CDM Regulations](#), a summary of the roles is shown below.

The **Client** is any individual or organisation for whom a construction project is carried out. Clients have a crucial influence over how projects are run, including the management of health and safety risks. Whatever the project size, the client has contractual control, appoints designers and contractors, and determines the money, time and other resources for the project.

Where there is more than one client for a construction project, those clients may agree in writing that only one of them is to be treated as the client for the purposes of the project. It is generally good practice to do this. Agreeing that there is only one client in this way does not affect the responsibility of the other 'clients' to provide pre-construction information or to co-operate with others involved in the project.

The **Designer** is an organisation or individual who, as part of their business, prepares or modifies designs relating to a structure (or a product or mechanical or electrical system intended for a particular structure) or arranges for or instructs others to do this. Designs include drawings, design details, specifications, bills of quantity and design calculations.

If it is not possible to agree who will be a designer for a project, any organisation or individual who acts as a designer for the project will be a designer.

Where there is more than one contractor, the client must appoint a **Principal Designer**. The Principal Designer must have control over the pre-construction phase of the project the pre-construction phase is the time when design or preparatory work is carried out for a project, and may continue into the construction phase. Principal designers have an important role in influencing how risks to health and safety are managed throughout a project.

The **Contractor** is an organisation or individual who as part of their business, carries out, manages or controls construction work. Contractors include sub-contractors and self-employed workers. They must have the skills, knowledge, experience and, if they are an organisation, the organisational capability to carry out the work safely and without risk to health.

The **Principal Contractor** is appointed by the Client to control the construction phase of any project involving **more than one** contractor.

Principal contractors have an important role in managing health and safety risks during the construction phase so they must have the skills, knowledge, experience and, where relevant, organisational capability to carry out this work safely and without risk to health.

In the context of a PSCA:

Client Role

Many of the duties of the Client under the CDM regulations can only be performed by someone with a direct contractual relationship with the Contractor (or Principal Contractor) and the Designer (or Principal Designer). For example, the Client must

ensure that the Contractor (or Principal Contractor) prepares a Construction Phase Plan and that any Principal Designer prepares a health and safety file.

Under the PSCA, the Party which has those direct contractual relationships will be the Delivery Party. The Authorising Party will not have a direct contractual relationship with the Contractor or Designer and so will not be able to perform those duties.

Therefore when undertaking works that are classed as construction the Delivery Party should always be the Client. Before progressing with construction works it is essential that the Delivery Party is competent and comfortable to undertake the role of the Client.

Designer & Principal Designer Role

Where works are undertaken on Main River the Authorising Party will be fund these and have vested interest. As such the Authorising Party is most likely to prepare the required specifications and designs. In this instance the Authorising Party will be the Designer.

There may be occasions when the Delivery Party have greater input into the design process. If this is the case the Delivery Party may be the Designer instead of the Authorising Party, or both the Delivery Party and Authorising Party may be designers.

Where works involve more than one contractor, such that a Principal Designer must be appointed, either the Authorising Party or the Delivery Party could be the Principal Designer, a third party could also be the Principal Designer. However, the Principal Designer must be a party which has overall control over the pre-construction phase. For Main River work, it is most likely to be the Authorising Party which is best placed to exercise that control.

Contractor & Principal Contractor Role

The Delivery Party will appoint the Contractor, or where there is more than one contractor, the Principal Contractor.

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

Risk Assessments & Method Statements (RAMS)

The Delivery Party will prepare Risk Assessments and Method Statements (RAMS) to reflect the extent and specification of works. These will be made available to the Authorising Party on request. If the works are classed as construction under the CDM Regulations 2015 then the Delivery Party will require the Contractor or Principal Contractor to produce a suitable Construction Phase Plan (CPP).

Safety, Health, Environment & Wellbeing (SHEW) Code of Practice (CoP)

The Environment Agency Safety, Health, Environment & Wellbeing (SHEW) Code of Practice (CoP) sets out risk management standards for construction work and is recognised as an example of industry best practice. It is recommended that before undertaking any construction works using the PSCA that consideration is given to the fundamental principles of the SHEW CoP.

The CoP is available on the Environment Agency's intranet here:-
<http://intranet.ea.gov/policies/55196.aspx> and on the ADA website here:-
<https://www.ada.org.uk/key-topics/health-safety-and-welfare/>

Environmental matters

Environmental standards, outcomes, constraints and / or opportunities should be integral to the works specification and clarified before work proceeds. This includes timing of the works. Refer also to page 11 regarding environmental duties and standards. Written records should be kept of the environmental screening and approval undertaken for each activity and be available to both parties. This will provide an audit trail and protect both parties in the event of challenges by third parties. Any environmental screening undertaken should be recorded within the Schedule 3.

Compensation

You will need to specify which party will be responsible for planned compensation to landowners and third parties, if any arises. Clauses 10.1,2,3 & 4 of the PSCA agreement outline the compensation requirements that can apply to specific works and activities.

Summary of clauses

10.1 Negligence

If the Delivery Party or anyone else for whom they are responsible is negligent whilst carrying out works under the agreement, and loss or damage results from such negligence, then they must indemnify the Authorising Party against all compensation or related claims that result.

This is subject to clauses 10.5 and 10.6.

10.2 Works paid for by the Delivery Party

The Delivery Party must indemnify the Authorising Party and their staff against all statutory compensation or related claims that arise from the Delivery Party carrying out works under the agreement.

This is subject to clauses 10.5 and 10.6.

10.3 Works paid for by the Authorising Party

The Authorising Party must indemnify the Delivery Party and their staff against all statutory compensation or related claims that arise from the Delivery Party carrying out works under the agreement.

This is subject to clauses 10.5 and 10.6.

10.4 Works paid for by both parties

The parties shall share between them the costs arising from all statutory compensation or related claims that arise from the Delivery Party carrying out works under the agreement. This should be proportional to the parties' financial contributions towards the works.

This is subject to clauses 10.5 and 10.6.

If you are not sure how to deal with compensation under the agreement it is important that you seek advice from your estates and legal teams.

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 costs must be agreed by the parties before work proceeds and recorded in the Schedule Estimates should include all costs required to undertake the work and consider elements such as pre-works activities and supervision. Bench marking of costs against alternative delivery options to ensure value for money should be undertaken.

Records should be retained on file so that efficiencies or other benefits achieved are captured. On completion of the work, payment is based on the actual outturn cost using agreed rates, not the estimate.

For all PSCAs between the Environment Agency and another risk management authority once the agreement has been set up and signed, procurement will issue a unique Contract Procurement Agreement (CPA) number. Each agreement will also have an expenditure ceiling, this will be dependent on the competency of the RMA and the anticipated value of works. These will be used to track the spend and it is essential that the CPA number is referenced on Schedule 3s for specific works and when raising any respective purchase orders.

Data recording and efficiency capture

For agreements with the Environment Agency Asset Information Management System (AIMS) Planning should be used to record all works undertaken via the PSCA. In future risk management authorities will have access to the AIMS Planning contractor portal

to receive documents, submit cost estimates, record start and finish dates and request variations in payments.

Any efficiencies generated by use of the agreements with the Environment Agency should be recorded using the relevant section of the Combined Efficiency Recording Tool (CERT).

Post works review

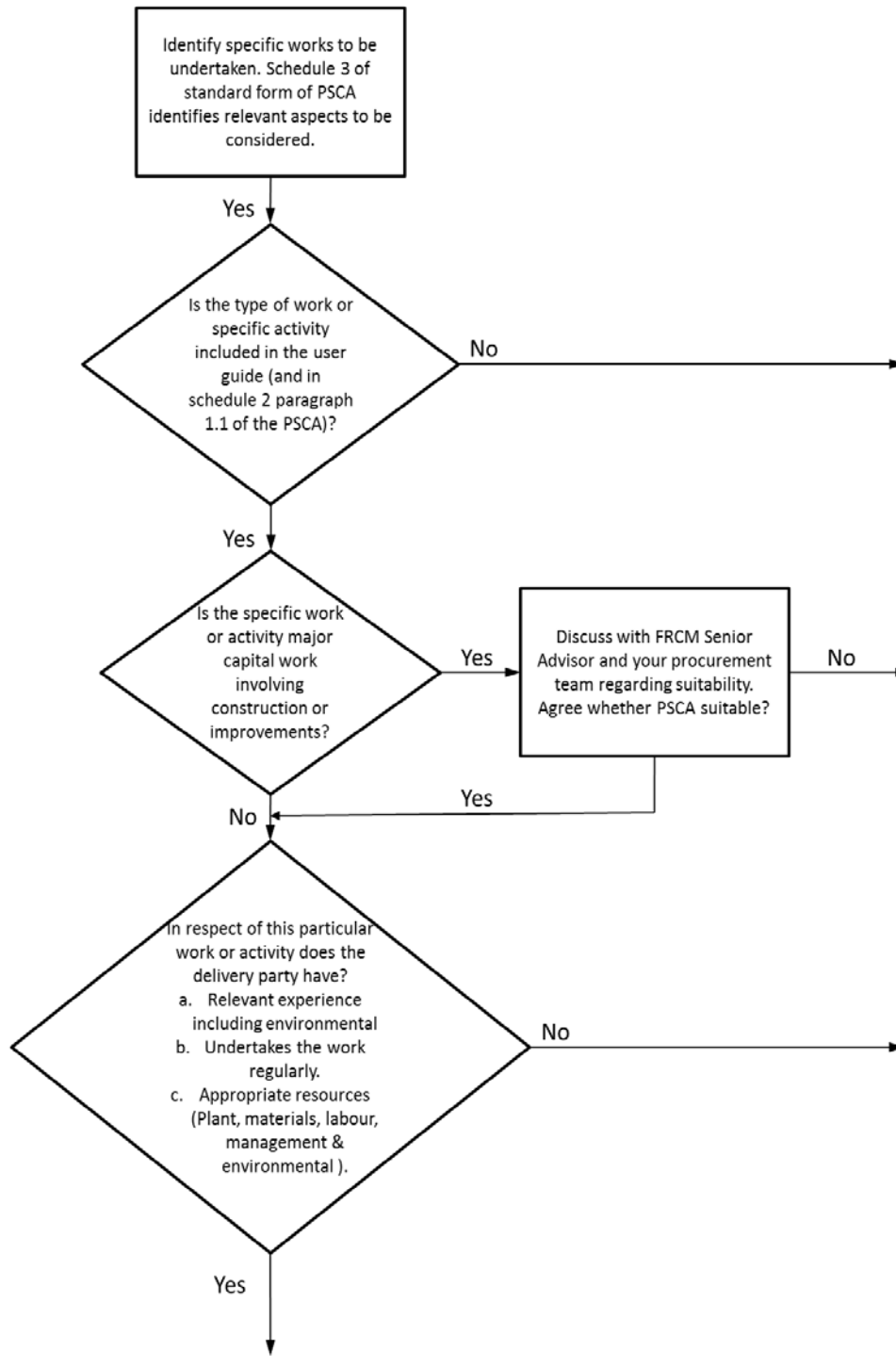
It is good practice to maintain liaison during the works. On completion, value for money, any other benefits and lessons learned including environmental compliance should be discussed and identified to benefit potential future use of the PSCA for this work /activity. This review should be kept as simple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

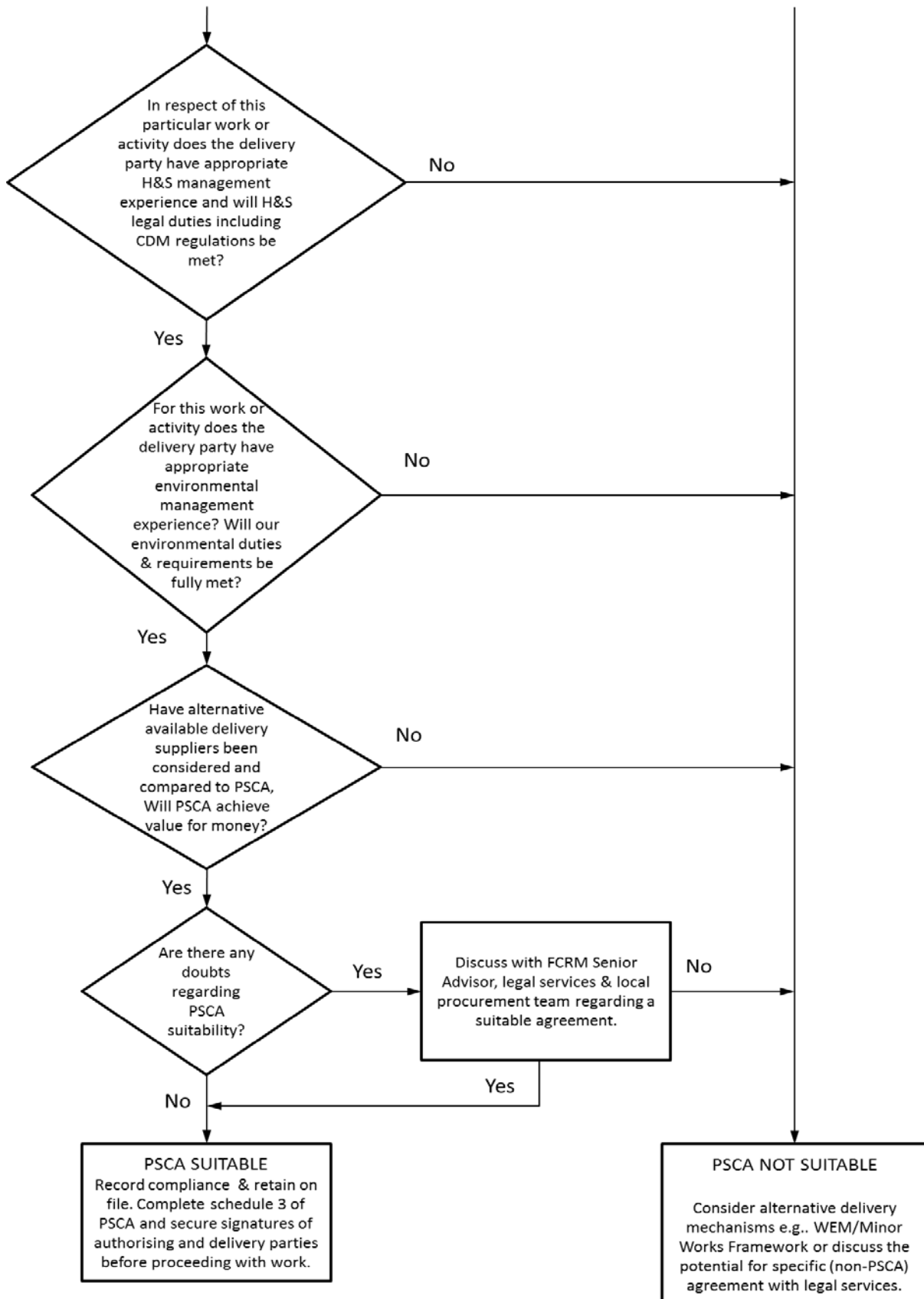
Where can I get more information?

Please contact the Environment Agency FCRM Senior Advisor, James Yarham in the first instance for information on establishing and using PSCAs @ james.yarham@environment-agency.gov.uk

Public Sector Cooperation Agreement – Flowchart 2

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





Appendix A – FAQ on setting up and using a PSCA

What is a Public Sector Cooperation Agreement (PSCA)?

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 risk management authorities fulfil their cooperation obligations under s13 FWMA.

Risk management authorities can put agreements in place to enable them to carry out work on the other’s behalf where it is more efficient to work in this way or where there are other mutual benefits. The Environment Agency and ADA have agreed a template legal agreement and this user guide to help establish these agreements, but other public sector risk management authorities may also enter into such agreements with the Agency where appropriate.

When can I use a standard form PSCA?

Under the standard form of PSCA, public sector risk management authorities can authorise another to carry out maintenance or similar flood risk management activities on assets and watercourses locally (and in some cases , small capital works and 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 “FCRM Asset Management Maintenance Standards (management system document 301_09_SD05).

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 involving the Environment Agency, you will need to consult the FCRM Senior Advisor in the first instance. Your local legal team and procurement team will also 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 as the end of part B.

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 Environment Agency’s FCRM Senior Advisor 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.

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 Environment Agency FCRM Senior Advisor in the first instance.

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 potential works are suitable, and whether the parties' experience, capacity, capability, policies and processes are all suitable and sufficient. Where another risk management authority is to undertake works for the Environment Agency, the Environment Agency's FCRM Senior Advisor will request and review evidence from the risk management authority to ensure the relevant competencies are met.

The terms of the agreement itself provide an over-arching framework 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.

Do I need to seek advice from procurement?

If you are intending to undertake any capital works or high value revenue works you will need to discuss this with the Environment Agency's FCRM Senior Advisor and your procurement team. A brief procurement strategy is required, to be agreed with your procurement team for all capital or high value revenue works to document the justification for using the PSCA as opposed to other potential procurement routes.

For all PSCAs between the Environment Agency and another risk management authority once the agreement has been set up and signed, procurement will issue a unique Contract Procurement Agreement (CPA) number. Each agreement will also have an expenditure ceiling, this will be dependent on the competency of the RMA and the anticipated value of works. These will be used to track the spend and it is essential that the CPA number is referenced on Schedule 3s for specific works and when raising any respective purchase orders.

The Environment Agency's FCRM Senior Advisor will arrange the issuing of the CPA number with the relevant area procurement team.

Do I need to seek advice from Fisheries, Biodiversity and Geomorphology?

Yes, where another risk management authority is to undertake works for the Environment Agency. This will ensure the PSCA is compliant with environmental law and Environment Agency environmental requirements.

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. For the Environment Agency this will be your Area Director.

For PSCA's between the Environment Agency and another risk management authorities the evidence which has been reviewed for the agreement will be kept on file. The Environment Agency FCRM Senior Advisor will provide copies of the evidence and signed agreement for retention.

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. 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. Before progressing any capital works or high value revenue works you should first discuss this with the Environment Agency FCRM Senior Advisor and local procurement team.

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 Environment Agency FCRM Senior Advisor 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.

A brief procurement strategy is required, to be agreed with the local procurement team, for all capital or high value revenue works to document the justification for using the PSCA as opposed to other potential procurement routes.

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

The Environment Agency Safety, Health, Environment & Wellbeing (SHEW) Code of Practice (CoP) sets out risk management standards for construction work and is recognised as an example of industry best practice. It is recommended that before undertaking any construction works using the PSCA that consideration is given to the fundamental principles of the SHEW CoP.

The CoP is available on the Environment Agency's intranet here:-
<http://intranet.ea.gov/policies/55196.aspx> and on the ADA website here
<https://www.ada.org.uk/key-topics/health-safety-and-welfare/>.

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?

Yes. The standard form has been agreed with ADA, and is designed to be used between two 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. (a full list of all risk management authorities is listed in Part A of this guide.)

If you are considering agreements with any risk management authorities, please contact the Environment Agency's FCRM Senior Advisor 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 a risk management authority (provided that such arrangements otherwise fit within this guide), but risk management authorities have 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 Environment Agency FCRM Senior Advisor and your legal and procurement teams early so that they can advise and guide you.

Can I set up a PSCA as a precursor for de-maining or decommissioning?

Yes. The PSCA can be used and is recommended as an interim arrangement for maintenance or asset operation prior to de-maining or asset decommissioning. The partner may gain considerable benefit in terms of experience of the watercourse and asset and resources needed to manage these. Please consult with the Environment Agency FCRM Senior Advisor and your legal team prior to using the agreement as a precursor for de-maining or asset decommissioning.

Can I use the PSCA for Incident Response activities?

Yes. The PSCA can be used for incident response support and recovery works. ADA and the Environment Agency are currently preparing “The IDB national incident support plan” for additional guidance. Please contact the Environment Agency’s FCRM Senior Advisor for further information.

Can I use the PSCA for Natural Flood Management (NFM) works?

Yes. Provided the works are within the scope of those permitted via the PSCA. The agreement can only be used for NFM works undertaken by an RMA. If further advice is required please contact the Environment Agency’s FCRM Senior Advisor.

Can I use the PSCA for loaning of plant?

Yes. A draft operational instruction is being produced to cover loaning of plant. For further advice please contact the Environment Agency’s FCRM Senior Advisor.

Appendix B – Schedule 3

SCHEDULE 3

PUBLIC SECTOR COOPERATION AGREEMENT (PSCA) FORM of Schedule for Specific Work or Activity

The following schedule must be

- a) agreed and signed by both parties before work commences;
- b) referred to throughout the works and activities; and
- c) checked and signed off by both parties on completion of works

The final cost of the works and activities and the efficiencies gained, need to be reported. Any issues and learning encountered may also be noted in order to inform future working between the parties.

Title of Specific Work or Activity	
PSCA between the EA/IDB/LLFA (insert name)	
and EA/IDB/LLFA (insert name)	
CPA Number (EA agreements only)	
Authorising Party for these Works / Activities & Contact name	
Delivery Party for these Works / Activities (this is the Party who will undertake work / activity and manage H&S and Environmental matters) & Contact name	
Watercourse or defence or asset name	
Identify whether works are on Main River or Ordinary Watercourse or other local source or tidal /sea defence	
Location of Specific Work / Activity	
Description of Specific Work / Activity (State type of work and reference to any relevant documents including environmental	

standards, specifications and drawings)	
Starting date and timescale for works or stages of works as appropriate	
<p>MAIN POWER AUTHORISED TO EXERCISE</p> <p>Which power(s) is the Authorising Party authorising the Delivery Party to use to carry out the Specific Works and Activities?</p>	<p><i>Set out the flood or coastal risk management function(s) which the Delivery party will be relying on in carrying out the specific works and activities. This should be the specific sections from legislation setting out the works powers or other relevant power. Consider if there will be more than one. Check whether the powers are Flood Risk Management powers (whether river or sea flooding etc.) delegated under 13(4) or Coastal Protection powers that can be delegated section 13(8).</i></p>
Are there any limits, constraints or guidance that the Delivery Party must be aware of or follow when using this power?	<p><i>E.g. legal environmental duties EA 1995 s6/7, NERC s40, WCA 1991, WFD/Hab Regs/Eel Regs, LDA 91 s60.</i></p>
<p>POWER OF ENTRY / OTHER ANCILLARY POWERS</p> <p>Which power of entry is being used? (please state power in legislation relied upon)</p>	
Is authority for personal warrants required to be given by the Authorising Party?	
What additional guidance must be followed related to access, entry and record keeping, and compliance with the Code of Practice Generally? (reference to relevant documents, please attach copy)	
Are notices of entry required to be served? These should always be served by the Authorising Party. What are the arrangements to liaise over this?	
Are there any other ancillary powers to take into account?	

<p>H&S</p> <p>Is the work classed as construction under CDM Regs 2015?</p>	
<p>If the CDM Regs apply specify which party (ies) have the duty holder roles as the :</p> <p>a) Client</p> <p>b) Designer(s)</p>	<p>a) .</p> <p>b) .</p>
<p>What hazard or other H&S information is available and who is providing this?</p>	
<p>Will Risk Assessments & Method Statements (RAMS) be prepared to reflect the extent & specification of the works? If the works are classed as construction under CDM Regs 2015 will a Construction Phase Plan (CPP) be produced?</p>	
<p>ENVIRONMENTAL</p> <p>Has environmental screening been under taken? What environmental constraints or opportunities have been identified? Is there guidance that should be followed and who is providing this information?</p> <p>(Attach any relevant documents including screening records)</p>	
<p>Are particular assessments required in order to comply with the Authorising Parties environmental and conservation duties or requirements?</p>	<p><i>e.g. Flood & Coastal Risk Management – conserving, enhancing and restoring biodiversity 634_08</i></p>
<p>CONSENTS</p> <p>What consents and permits and permissions are required for works?</p>	
<p>Who is securing consents?</p>	

FINANCIAL Which party or parties are funding this work?	
What rates are being used for this work?	
What is estimated cost?	
<p>Reports on progress and invoices for interim payments will be made monthly, with final costs and invoices submitted promptly at the conclusion of the work or activity.</p> <p>Does the Authorising party want updated estimates of costs from the Delivery Party as works progress? If so please indicate the frequency of providing estimates.</p>	
Will AIMS Planning be used to raise the contract & record the costs?	
<p style="text-align: center;">COMPENSATION & LIABILITY</p> <p>Set out which party is responsible for planned compensation to landowners or third parties? Check clauses 10.1, 10.2 and 10.3 of the Agreement for your answer. If clause 10.3 applies you need to set out the proportions in which compensation will be shared between the Parties for these Specific Works and Activities, if any arises.</p>	
<p style="text-align: center;">OTHER INFORMATION</p> <p>Any other information relevant to these works / activity?</p>	
<p style="text-align: center;">PRE WORKS SIGNATURES</p>	
<p style="text-align: center;">Environment Agency Name</p>	

Position Signature Date	
IDB / Local Authority RMA Name Position Signature Date	
POST WORKS	
What was final cost?	
Did works achieve expected outcome?	
Were there any variations to expected works? If so, describe them	
Did Works achieve value for money and what was estimated efficiency value (%) or other benefit	
Any lessons learned for future use on this type of works	
POST WORKS SIGNATURES	
Environment Agency Name Position Signature Date	
IDB / Local Authority RMA Name Position Signature Date	

Appendix C – Evidence Proforma

Item No.	Question	Evidence to be provided by RMA
1	Are the maintenance or similar activities / works within the RMA area or neighbouring area?	
2	Are maintenance or similar activities / works to be undertaken free of charge or on a cost recovery basis? Will proposed rates achieve value for money compared with alternative options?	Guidance – Confirm that a breakdown of the estimated costs for the works has been provided and that bench marking has taken place to ensure value for money. Supply a schedule of rates that will be used of future works, rates to be revised / agreed annually
3	Evidence of resources, experience and capabilities to undertake identified maintenance or similar activities / works. This includes environmental resources.	Guidance- -Insert number of operatives, experience, training & plant available or make reference to separate schedule. Only a summary required for setting up agreement. Further details such as training records , plant certificates can followed up later in method statement etc according to specific works as appropriate
4	If using subcontractors or suppliers, will the RMA comply with all Defra Commercial Group & Public Procurement directives?	
5	Evidence of financial standing – please provide the last 2 years of your publically available accounts.	
6	Evidence of appropriate H&S policy and procedures including knowledge of the 2015 CDM Regulations. Will H&S risks be defined and managed satisfactorily?	Guidance - Identify whether a H&S Policy is available and send as an attachment. In your reply please provide evidence of the following:-

		<p>i) Formal delegation of H&S responsibilities are set out within policy document</p> <p>ii) Risk assessments and method statements will be prepared to reflect extent and specification of work</p> <p>iii) Formal incident reporting system is outlined within H&S Policy</p> <p>iv) The RMA issues appropriate PPE to all employees. Where specific tasks are being undertaken e.g. chainsaw work, then specific PPE is provided to trained operatives.</p> <p>v) All employees have completed the ‘Emergency First Aid at Work’ course</p> <p>vi) First Aid kits are carried in all the Boards vehicles and held at depot/office.</p> <p>vii) If subcontractors are used (subject to agreement with EA) all H&S provisions will be to same standard.</p> <p>viii) Evidence of CDM training & understanding</p>
7	<p>Evidence of appropriate environmental policy and procedures and that environmental risks and enhancements have been defined and will they be managed satisfactorily?</p>	<p>Guidance - Identify here whether Environmental Policy and procedures are available and send as an attachment.</p> <p>In your reply please provide evidence of the following:-</p> <p>i) The RMA has access to an ecologist that screens works where required for environmental constraints and opportunities – give details of the ecologist.</p> <p>ii) The RMA has a procedure for identifying and implementing environment requirements / enhancements during both the activity design and implementation stages.</p> <p>iii) The RMA has developed its own Biodiversity Action Plan.</p> <p>iv) Training is provided to raise awareness of environmental issues relating to the maintenance and operation of watercourses and the wider catchment. This should include identification of alien species.</p> <p>v) The RMA’s waste carrier licence.</p>

Note:-

The PSCA cannot be signed until satisfactory evidence is provided, when this is received the EA will advise the RMA. The agreement will then be signed by both parties and each hold a copy. A Contract Procurement Agreement (CPA) number will be given to the agreement. All future work, carried out under the agreement will be referenced to this CPA number.