Department for Environment Food & Rural Affairs

Changes to the regulatory framework for abstraction and impounding licensing in England

Moving into the Environmental Permitting Regulations regime

Supplementary Document

September 2021

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

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water.abstraction@defra.gov.uk

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About this document

This is a supplementary document providing additional detail and technical information, where necessary, for some of the proposals in the main consultation document. We have not provided supplementary information for all proposals/all parts of proposals set out in the main consultation document.

Some of the proposals (for example, form and content of a permit) have several legislative elements to them and green boxes have been used in such cases to signpost each different part of the proposal.

Proposals for existing abstraction and impounding licences

Proposal 1 - Existing abstraction and impounding licences transitioning into the Environmental Permitting Regulations

In progress applications

We propose that applications for a new abstraction and impounding activity which are in progress and have not been determined by the implementation date for the abstraction and impounding licensing regime to transition into the Environmental Permitting (England and Wales) Regulations 2016[1] (the **Environmental Permitting Regulations**), will be determined under the Environmental Permitting Regulations. The permit holder will have to meet the definition of 'operator' under the Environmental Permitting Regulations. The Environment Agency will ensure this is communicated to applicants in the run-up to transition.

We also propose that in progress applications for surrender, transfer, apportionment, vesting and applicant led variations, not determined by the Environmental Permitting Regulations implementation date, will be determined under the Environmental Permitting Regulations.

We propose that in progress applications for the revocation of an abstraction licence by a licence holder will proceed based on the application received under the Water Resources Act 1991[2] (WRA 1991). This is because such applications once received can be granted

[1] http://www.legislation.gov.uk/uksi/2016/1154/contents/made

[2] http://www.legislation.gov.uk/ukpga/1991/57/contents

without consideration or delay. We propose that in progress applications for the revocation of an impounding licence by a licence holder will be progressed under the Environmental Permitting Regulations. The reason for this difference between in progress applications for revocation of abstraction and impounding licences is because there are specific provisions solely relating to impoundings in section 51(1A) -(1G) WRA 1991 which concern restoring the site as a condition of the revocation process so that the revocation process for impounding is different and much longer than for abstraction. For this reason, in progress revocations of an impounding licence need to complete under the terms of the Environmental Permitting Regulations if they have not completed before the transition.

We propose that in progress regulator led revocations (under section 52 WRA 1991) should be progressed as Environmental Permitting Regulations regulator initiated revocations.

We have proposed to adopt the Environmental Permitting Regulations provision for vesting/death of a sole operator for transitional permits; see **proposal 16** for further information.

In progress enforcement

We propose that on the implementation of the Environmental Permitting Regulations, any in progress enforcement action will be taken as being originally initiated under the Environmental Permitting Regulations and follow the Environmental Permitting Regulations processes.

Transitional (in progress) appeal periods

On the implementation of the Environmental Permitting Regulations, we propose that any active appeal periods will automatically align with the Environmental Permitting Regulations appeal periods, unless the current period is greater. For example, a new licence granted within 28 days of the implementation will have its appeal period automatically extended to 6 months from the initial grant. The table below shows the appeal periods most relevant to abstraction and impounding.

Any new decisions made, or notices served after implementation will align with the Environmental Permitting Regulations appeal periods.

Appealing against[3]	Current abstraction & impounding appeal period	Environmental Permitting Regulations appeal period

[3] Only includes those relevant to A&I

Permit condition on grant of application (new, variation, surrender/revocation, transfer, apportionment)	28 days	6 months
Permit condition on grant of EA led variation	28 days	2 months
Revocation notice	28 days	20 working days
Deemed withdrawal	n/a	15 working days
Refusal/deemed refusal of application	28 days	6 months
Enforcement and suspension notices	n/a	2 months
Variation issued following a part transfer, surrender or revocation	n/a	6 months
Claim for confidentiality	21 days	15 working days
WRA 1991 Section 25A enforcement notice	21 days	n/a
Abstraction or impounding activity notice of intent (new)	n/a	2 months
Abstraction or impounding activity remediation notice (new)	n/a	2 months
WRA 1991 Section 36A notice of change to type of abstraction licence	28 days	2 months
WRA 1991 Section 57 emergency variation	n/a	n/a
WA 2003 Section 3 notice to apply for impounding licence	28 days	2 months
WA 2003 Section 4 notice to carry out impounding works	21 days	2 months

Table 1. relevant appeal periods.

Proposal 3 – Transitional abstraction permits with a time limit

The Environment Agency has, since the early 1990s, progressively granted time limited abstraction licences to reflect its sustainability duties (this change was introduced under

the Water Act 2003[4] (WA 2003) which amended section 46 of the WRA 1991 to enable the EA to grant time limited licences). This enables resources to be reviewed and reallocated on a whole catchment basis in line with the Environment Agency's Catchment Abstraction Management process[5]. This means that under the WRA 1991, all licences are granted with a time limit. Currently when a time limited licence expires the licence holder must apply for a new licence to continue abstracting. Section 38(1A), (1B) and (1C) and section 39(1A) of the WRA 1991 allows this new application to be treated as a "renewal" (differently to other new applications) and means the Environment Agency does not need to consider the impact of derogating from existing protected rights as part of the application; the abstractor does not go to the back of the queue in terms of water availability.

The criteria for an application to be treated as a renewal application rather than as any other new application are that the new licence;

- Would take effect immediately after the expiry of an existing licence;
- Is for the same licence type (e,g. full or transfer);
- Would be held by the same person as the licence holder.

We propose to carry these criteria over to the Environmental Permitting Regulations. Under the current licensing system, a renewal must be applied for by the existing licence holder. However, under the Environmental Permitting Regulations only an operator can be the holder of a permit and the applicant (previous licence holder) must meet the definition of 'operator'. Failure to do so will likely result in the application to renew the permit being refused. There may be circumstances where the permit holder of a transitional time limited permit may not be the operator of the abstraction. If this is the case and the permit holder does not wish to put measures in place to meet the requirements of operator under the Environmental Permitting Regulations, then they will have to transfer the permit to the operator (the abstractor) as part of this process. See **proposal 6** on operator and permit holder for further information on what it means to be an operator.

Section 46A of the 1991 Act allows time limited licences to be extended when the application to renew has been received 3 months before the licence was due to expire and the regulator has not made a decision by the expiry date. This is known as limited extension of licence validity (LEV). The licence is extended until;

- The new licence is granted or;
- If the licence is refused;
    - the date at the end of the appeal period,

[4] http://www.legislation.gov.uk/ukpga/2003/37/contents

[5] https://www.gov.uk/government/collections/water-abstraction-licensing-strategies-cams-process

- or if an appeal is made the date the appeal is withdrawn or if the Secretary of State decides no licence should be granted, the date the applicant is notified.

We propose that a similar provision to section 46A WRA 1991 should be included within the Environmental Permitting Regulations transitional regulations for transitional time limited permits. LEV only applies to licences which have been in place for longer than 12 months. It also does not apply to renewal of time limited variations of licences by virtue of section 51(3) of the WRA 1991. Section 38(1A) (b), (1B) and (1C) deal with the scenario where the applicant is applying for a renewal but on different terms; the application is considered as a licence holder initiated variation before being considered as a renewal. We propose that this is included within the Environmental Permitting Regulations transitional regulations for transitional time limited permits.

Proposals for new permits in the Environmental Permitting Regulations

Proposal 5 – Abstraction and impounding activities under the Environmental Permitting Regulations

We propose to retain certain specific abstraction and impounding terminology set out in section 72 and 221 of the WRA 1991 that does not exist within the Environmental Permitting Regulations.

Sections 72 and 221 WRA 1991 contain interpretations and definitions of some of the key terms used in the WRA 1991. Terms such as derogate, protected right, spray irrigation - along with many others.

The Environmental Permitting Regulations also defines terms used within the regulations. However, it does not currently cover those terms which are specific to abstraction and impounding. These will be new terms within the Environmental Permitting Regulations and it will be necessary to carry across the current definitions into the Environmental Permitting Regulations.

We propose to add water abstraction and water impounding activities to the Environmental Permitting Regulations and further categorise abstraction into the following:

- full abstraction activity;
- transfer abstraction activity;
- temporary abstraction activity; and
- groundwater investigation abstraction activity.

We propose to allow abstraction and impounding activities to be carried out as part of a multi-activity operation.

The definition of regulated facility can be found in regulation 8(1) of the Environmental Permitting Regulations. The Environmental Permitting Regulations specify which activities require a permit; these are collectively described as 'regulated facilities. We propose to add the following classes of regulated facility to regulations 7(b) and 8(1) of the Environmental Permitting Regulations:

- a water abstraction activity,
- a water impounding activity.

Separate schedules will be required for these two new regulated facility classes as is the case now for the current classes. We propose to further categorise abstraction into the following activities. These are based on the three current types of abstraction licence and groundwater investigation consents. There is more information below on groundwater investigation consents.

- full abstraction activity,
- transfer abstraction activity,
- temporary abstraction activity,
- groundwater investigation abstraction activity.

The current approach of having different licence types in the abstraction licensing regime (full, transfer, temporary) does not align with the Environmental Permitting Regulations framework. In order for abstraction and impounding to fit into the framework and work alongside the other regimes (for example for consolidation purposes) it is necessary to adopt the Environmental Permitting Regulations approach of having an overarching, high level activity description as the regulated facility class. The proposed approach would allow us to appropriately represent the current three different types of abstraction licence (full, transfer, temporary) under section 24A of the WRA 1991 and what is currently referred to as a groundwater investigation, as allowed under a consent given under section 32(3) of the WRA 1991 which excludes such activity from requirement for an abstraction licence. It also allows us to carry across existing legislative provisions for each abstraction category into the Environmental Permitting Regulations, such as those specifying when protected rights apply and the advertising requirements. We propose that future permits attract protected rights in the same way as under the present system: a full

abstraction activity will continue to have protected rights but transfer/temporary/groundwater investigation abstraction and water impounding activities will not attract protected rights.

We propose to introduce a groundwater investigation abstraction activity in place of Groundwater Investigation Consents; a permit will be required to abstract for the purpose of investigating groundwater.

Groundwater Investigation Consents (GICs) are currently issued under section 32 WRA 1991 to allow the construction or extension or any well, borehole or other work, installation of abstraction apparatus or machinery and abstraction for the purpose of investigating groundwater. This is an exclusion from the requirement to have a licence as long as a consent is obtained and conditions imposed in the consent by the Environment Agency are followed. There are no equivalent permissions for investigations under the Environmental Permitting Regulations. We propose to include a new groundwater investigation abstraction activity within the Environmental Permitting Regulations to allow abstractions for the purpose of groundwater investigation to be permitted in circumstances where a permit has been obtained.

Issuing a permit rather than 'giving consent' means there will be a more robust regulatory regime for groundwater investigation abstractions. For example, there is currently no legal mechanism, other than judicial review, to challenge the refusal of a GIC. An applicant would be able to bring an appeal in relation to a groundwater investigation abstraction activity application the same way they can for any other Environmental Permitting Regulations permit application. Other aspects of issuing a permit would also apply to a groundwater investigation abstraction activity permit, such as statutory determination timescales; currently there are no timeframes set out in legislation for issuing a GIC.

It is proposed that groundwater investigation abstraction activities will not have a protected right (see **proposal 18**), and applications will not require advertising or a right of access; this will maintain the current differences between GICs and abstraction licences. As these abstractions are investigations they do not require the protection of protected rights. Investigations into groundwater are by their nature usually of a short duration and any permit issued for such an activity would be conditioned to reflect this. If the investigation was to progress to a longer term abstraction (a full or transfer abstraction activity), a permit would be required and the application would be advertised at this stage.

The duty not to derogate from existing protected rights, the obligation to take river flows into account and the requirement to have regard to (consider) lawful uses will not be applied to groundwater investigation abstraction activity applications, in line with the current GIC requirement. The nature of an investigation means it is not always possible to be reasonably certain of the outcome before the activity takes place, therefore without this distinction it would not be possible to permit groundwater investigation activities.

Currently there are certain activities in respect of which a Groundwater Investigation Consent (GIC) is granted although strictly speaking they are not defined as such under the WRA 1991. We are therefore proposing to tweak the wording of the new groundwater investigation abstraction activity definition in the Environmental Permitting Regulations to ensure such activities come within the definition and so a permit would be required. This would include where there is a project which would require you to understand the impact on nearby wetlands. Wetlands which are not inland waters would not be captured by the current definition hence the need to add "underground strata" to the definition – this is because a change to/impact on groundwater will have a knock on effect on some types of wetlands.

We propose that a revision is made to the definition for a Groundwater Investigation Abstraction Activity when it is brought across into the Environmental Permitting Regulations so that it is defined as follows (currently under section 32(4)(a)-(b) WRA 1991):

To abstract water from underground strata via any well, borehole or other work for:

- The purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
- The purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole [or other work **[or any underground strata]** or any inland waters.

We propose to move the current approach to borehole construction to the Environmental Permitting Regulations so that permission is needed from the Environment Agency to construct or extend a borehole, well or other work to abstract groundwater, except where an abstraction permit is not needed

Under section 24 WRA 1991 permission in the form of an abstraction licence or groundwater investigation consent is required from the Environment Agency to construct or extend a borehole, well or other work to abstract from groundwater; unless the abstraction is exempt from licensing.

The depth and construction of these works is important as this will affect where the water is drawn from which will affect the impact the abstraction will have on the environment and other abstractors. The control on construction is therefore required to ensure the Environment Agency can manage water resources.

We propose to move the current restrictions on impounding into the Environmental Permitting Regulations and add a new class of regulated facility under the Environmental Permitting Regulations for impounding: 'a water impounding activity'.

An impoundment (or impounding works) is a structure within inland waters that can permanently or temporarily change the water level or flow or can obstruct the flow of water. Impoundments may be connected with abstraction. A licence to impound must be in place before any work commences on a structure, even in an emergency, unless an exemption applies. With the move to the Environmental Permitting Regulations, we propose that impounding is categorised as a separate class of regulated facility, a 'water impounding activity', given that impounding is very different in nature to abstraction.

On-stream impounding works can significantly impact the environment and downstream users. Therefore, under section 25(8) of the WRA 1991, unless a statutory exception applies, a licence to impound is required to construct, alter or remove works that impound, obstruct or impede the flow in an inland water, for example a dam, weir or similar works. These may vary from a weir to create a small wetland to a large reservoir for hydropower or water supply purposes.

If impounding work proposals are deemed to be low risk, then the Environment Agency will not as a matter of policy pursue an application for a licence although people can still apply for a licence if they wish to do so.

There are several statutory exceptions from the need for a licence to impound. These are:

- Works constructed without a licence before 1 April 2006[6], except when a notice is served under section 3 of the 2003 Act requiring application for a licence.
- Where a navigation, harbour or conservancy authority constructs any new impounding works, alters existing impounding works or obstructs/impedes the flow of inland waters in the course of its statutory functions[7] . A licence will be required if the works do not relate to their statutory functions.
- Where the impounding works are authorised by a drought order[8] (for example, where the Secretary of State has agreed to the impounding as a measure to help water companies in a drought situation).

[6] Section 3(1) Water Act 2003

[7] Section 26(3) of the 1991 Act as amended by section 5 Water Act 2003

[8] Section 74 and 78 of the 1991 Act granted only by the Secretary of State or Welsh ministers

- Where the impounding works are authorised by an "alternative statutory provision"[9] (for example, Acts of Parliament pre-dating the Water Resources Act 1963).

For unlicensed impounding works constructed before 1 April 2006, a licence must be applied for in order to alter the structure. Any changes which are purely cosmetic or are routine maintenance activities such as de-silting an associated reservoir are not classed as alterations (provided that the level or control structures are not changed).

Where a licence is needed, it must be obtained before the new impounding works are constructed or before the alteration or removal of any existing impounding works can start. Diversion works in connection with the construction of impounding works, which might otherwise constitute an abstraction, are also regarded as impounding works and should be included within the scope of any licence granted[10].

The construction of weirs and dams on-stream are also subject to controls under land drainage legislation. An applicant may need to apply for a Flood Risk Activity Permit under the Environmental Permitting Regulations or an exemption in addition to an impounding licence if the structure will be on a 'main river'. The local authority/internal drainage board provide consents for those on 'ordinary watercourses' such as small rivers, streams, ditches.

A licence to impound can only authorise one impounding works and any associated by-pass works carried out during construction. However, there are cases where the Environment Agency could regard several structures as 'one impounding works'. Structures must be:

- impounding the same inland water
- constructed together as part of one scheme
- reliant upon each other to allow the overall impoundment scheme to work (for example, constructing several small weirs to provide a gradual increase water level to ease fish passage)
- constructed in close proximity to one another.

It is proposed that this process will remain the same upon the move to the Environmental Permitting Regulations and we will carry this across.

We propose that the definition of an impounding activity should be based on the wording in section 25(1)(a) and (b) of the WRA 1991 which relates to licensing of impounding works. The wording within section 25(1)(a) and (b) refers to 'impounding works' and we therefore

[9] Section 25(4)-(7) of the 1991 Act

[10] Section 25(8)(b) of the 1991 Act

propose that the definition of 'impounding works' under section 25(8) and 25(9) of the WRA 1991 should also be replicated within the appropriate parts of the definition of impounding activity in the Environmental Permitting Regulations. We propose to bring across the majority of the provisions from within current legislation into the Environmental Permitting Regulations and not change how we regulate impounding activities:

- Impounding licences (permits) do not have a time limit
- Impoundments do not have protected rights
- Impounding licences (permits) cannot be apportioned (part transferred)
- Impounding licences (permits) must be in place before construction/alteration/removal of impounding works takes place.

Section 25(4)-(7) provides exceptions to the need for impoundment licences for impounding works authorised under "alternative statutory provisions", for example reservoirs constructed for water supply purposes now under control of water companies, but then provides the Environment Agency with the ability to override those statutory provisions contained in Acts of Parliament pre-dating the Water Resources Act 1963 and enabling acts. We propose that these exceptions will be retained after abstraction and impounding has moved into the Environmental Permitting Regulations.

Low risk impoundment activities currently managed under guidelines[11] will become exclusions on the move to the Environmental Permitting Regulations. Please refer to **proposal 7** for more detail.

We propose to adopt the Environmental Permitting Regulations approach to permit consolidation.

Under the WRA 1991, an abstraction and an impoundment cannot be authorised under the same licence. Under Regulation 18 of the Environmental Permitting Regulations the Environment Agency can consolidate multiple permits, where they are held by the same operator, at the same site, into one single permit. For example, where an operator holds multiple permits for the same operation, such as a separate abstraction and impounding permit for a hydropower scheme.

Adopting the Environmental Permitting Regulations approach will allow for the consolidation of water abstraction and water impoundment activities with other regulated facilities. For example, incorporating an existing water abstraction activity with an existing installation activity. This can only be undertaken where the operator is the same for both permits that are to be consolidated.

[11] Water management: abstract or impound water

It is expected that the Environment Agency will not normally exercise this power without the agreement of the operator.

Proposal 6 – Operator and permit holder

We propose to adopt the Environmental Permitting Regulations approach so that only the operator can be the permit holder.

We propose to make an amendment to the Environmental Permitting Regulations for transitional permits, to allow a person who is not the permit holder to undertake a permitted abstraction activity in accordance with the current regime.

Under the current abstraction licensing regime under the WRA 1991 abstraction of water can be undertaken by a licence holder or a person who is not the licence holder so long as there is a licence for the abstraction and the abstraction is in accordance with it. Section 24(1) of the 1991 Act allows a licence holder to "*cause or permit any other person so to abstract any water*". This is a common situation in abstraction for agriculture where a landlord will hold the abstraction licence, but the tenant farmer will undertake the abstraction and be responsible for abstraction equipment and where water is used.

Under regulation 13 of the Environmental Permitting Regulations a permit can only be granted to the operator. Therefore, only the operator can be the permit holder. Operator is defined in regulation 7 of the Environmental Permitting Regulations as being "*the person who has control over the operation of the regulated facility*" (regulated facility being one of the activities listed in regulation 8).

For abstraction there are situations where the person actually undertaking the abstraction would not be the permit holder, as illustrated in the agricultural example above. We propose to preserve the position whereby abstractors who do not hold permits can carry out their abstraction lawfully but also allow for current licence holders to continue to be permit holders after the move into the Environmental Permitting Regulations irrespective of whether or not they actually undertake the abstraction.

On transition to the Environmental Permitting Regulations, we propose that the current licence holder will become the operator even if they do not satisfy the requirements under the Environmental Permitting Regulations i.e. do not meet the definition of operator in regulation 7 of the Environmental Permitting Regulations.

We propose that once abstraction licensing is in the Environmental Permitting Regulations, anyone applying for a new permit or, a transitional permit holder seeking to vary or transfer their transitional permit, will need to come within the definition of an 'operator' under the Environmental Permitting Regulations. In most cases the abstractor is the operator and will have control over the activity. However, as described above, there are scenarios, particularly in the agricultural sector, where landowners rent their land to tenants and in such cases it may not be possible for a landowner to demonstrate total

'control'. This landlord/tenant scenario will continue following the transition to the Environmental Permitting Regulations.

The Environment Agency will therefore, in guidance, provide operators with a set of criteria against which to demonstrate 'sufficient control' whilst still allowing a third party to carry out the activity. In line with the rest of the Environmental Permitting Regulations, the Environment Agency could then grant permits to operators who can demonstrate sufficient control, but with someone else abstracting. The **Technical Annex** for operator provides more information on how the Environment Agency will implement operator for water abstraction and impounding activities.

We do not propose to adopt the Environmental Permitting Regulations approach to operator competence for abstraction and impounding activities in line with the current approach to stand-alone water discharge, groundwater and flood risk activities.

Operator competency is covered in paragraph 13 of Part 1 of Schedule 5 to the Environmental Permitting Regulations.

The competency of operators is central to the Environmental Permitting Regulations regime. The Environmental Permitting Guidance - Core Guidance[12] document requires that operators must:

- have an adequate management system,
- be technically competent,
- not have a poor historic compliance record; and
- be financially competent.

There are further technical and financial competency requirements under the Environmental Permitting Regulations that are only relevant to installation activities and waste operations (in paragraph 13(2)(b) Schedule 5). We propose that these two requirements will not apply to abstraction and impounding activities; this would be in line with the current approach under the Environmental Permitting Regulations for a stand-alone water discharge activity, groundwater activity or flood risk activity to which these competencies do not apply (which are excluded under paragraph 13(3) of Schedule 5 of the Environmental Permitting Regulations).

[12] https://www.gov.uk/government/publications/environmental-permitting-guidance-core-guidance--2

However, an operator still needs to have sufficient control of the permitted activities and must comply with the permit conditions, which includes operating in accordance with an adequate Environment Management System, see **proposal 7** for more detail.

Proposal 7 – Content and Form of a Permit

We propose to adopt the Environmental Permitting Regulations provisions regarding the content and form of a permit supplemented by the detail within the Environmental Permitting Guidance - Core Guidance document.

We propose to adopt the Environmental Permitting Regulations approach of using a hierarchy of generic, regulated facility-specific and activity-specific conditions within a permit.

Section 46 WRA 1991 contains provisions detailing the information that should be contained within a licence. Similarly, regulation 14 in the Environmental Permitting Regulations details the requirements of what must be included within a permit and there is further detail provided in the Environmental Permitting Guidance - Core Guidance document.

The Environmental Permitting Regulations adopts a hierarchy of conditions. All permits have a set of generic conditions which allow the Environment Agency to deal with common regulatory issues in the same way. This helps to maintain a consistent approach to permitting across the different types of regulated facility. The generic conditions are supplemented by regulated facility-specific and/or activity-specific conditions.

The Environment Agency can include conditions in the permit setting out steps to be taken during, prior to and after the operation of the activity.

We propose to adopt the Environmental Permitting Regulations provisions on content and form of a permit to ensure there is a consistent approach across regimes.

We propose to adopt the Environmental Permitting Regulations approach to offsite permit conditions.

Under regulation 15 in the Environmental Permitting Regulations the Environment Agency can impose conditions on permits requiring operators to carry out activities which they are not entitled to do without the consent of another person. For example, the taking of a water sample on land not owned by the permit holder. Regulation 15 of the Environmental Permitting Regulations applies to permit conditions only and it does not give the power to allow an operator to carry out permitted activities on someone else's land. However, the person whose consent is required must grant the operator consent to carry out the activity in line with the permit condition.

There are no provisions within the current abstraction and impounding legislation in relation to offsite licence conditions and we propose to adopt regulation 15 of the Environmental Permitting Regulations for abstraction and impounding. This is a rarely used regulation and we would not expect this to change for abstraction and impounding. The Environment Agency would consider whether the proposal was in the public interest and if there are any viable alternatives before enforcing it.

We propose to adopt the Environmental Permitting Regulations approach to reporting. This is a change of terminology only and we do not propose to change any returns requirements as a result of the move to the Environmental Permitting Regulations.

Abstraction returns (the amount of water used within the licensed period) allow the Environment Agency to check compliance with the authorised quantities on a licence and also help in allowing the Environment Agency to effectively manage the abstraction of water and our water resources.

Section 38(2) WRA 1991 allows the Environment Agency to grant a licence containing any conditions which it deems to be appropriate. This can include the requirement for abstraction returns to be submitted.

Section 201 WRA 1991 gives the Environment Agency the powers to require information in respect of water resources functions; this can ultimately include the power to require abstraction returns to be submitted where returns are not provided voluntarily or to comply with a licence condition.

Under the Environmental Permitting Regulations, much like the WRA 1991, the legislation allows for the Environment Agency to include conditions on a permit which it deems to be appropriate. This is covered under paragraph 12(2) of Part 1 of Schedule 5 of the Environmental Permitting Regulations. Regulation 61 of the Environmental Permitting Regulations also replicates the provision allowing the Environment Agency the power to require information.

There will be a change of terminology in that the Environmental Permitting Regulations specify ‘reporting’ rather than ‘returns’; however this will be a change of terminology only and will not change what is required of those who hold a permit.

We propose to adopt the Environmental Permitting Regulations approach of different classes of regulation: exclusion; exemption; standard rules permits and permits.

We also propose to:

- retain the right to alter the threshold of small quantity abstractions; and
- have the ability to create new exemptions and exclusions where appropriate.

We propose that existing licence types will become permitted activities within permits. We propose that the provision to create standard rules permits will be retained but no standard rules permits are proposed at this time.

Under the WRA 1991 there are different types of licences for different classes of abstraction activity and for impounding activity:

- full abstraction,
- transfer abstraction,
- temporary abstraction, and
- impounding.

In the Environmental Permitting Regulations there are permit classes relating to different activities; standard rules permits or permits. There will also be exemptions and exclusions for activities where a formal permit is not required.

Exclusions

There are currently a number of abstraction and impounding activities which do not require a licence. These are known as 'exemptions' and are contained within both the WRA 1991 and the Water Abstraction and Impounding (Exemptions) Regulations 2017[13].

The majority of the current exemptions under the WRA 1991 contain certain criteria that need to be met. If the criteria can be met then no licence is required. There is no registration process or fees associated with these current WRA 1991 exemptions. We propose that a registration process or fees will continue to not be required as part of the move to the Environmental Permitting Regulations.

It is proposed to carry across these unregulated abstraction and impounding activities into the Environmental Permitting Regulations. Activities which are completely excluded from

[13] https://www.legislation.gov.uk/uksi/2017/1044/contents/made

regulation under the Environmental Permitting Regulations are termed as 'exclusions'. Therefore, these activities will be referred to as 'exclusions' once under the Environmental Permitting Regulations.

The move into the Environmental Permitting Regulations provides the opportunity to exclude some low risk impoundings from regulation. The Environment Agency has a policy relating to certain low risk impounding works. This policy was originally published under a regulatory position statement (RPS) but is now on GOV.UK[14]. Impounding works normally require a licence; however Environment Agency policy allows for certain low risk impounding works to be in place without the need for a licence. We propose that this policy should be replaced with a new exclusion in the Environmental Permitting Regulations to make it clear that these low risk impounding works do not require regulation as long as the activity fits within the exclusion criteria within the proposed Environmental Permitting Regulations impounding activity schedule.

Exemptions

In contrast to exclusions, 'exemptions' under the Environmental Permitting Regulations require some form of regulation (albeit of a light touch nature). For example, a registration process may be required as part of the criteria to qualify as an exempt activity. But, provided all of the criteria can be met under the exemption, then no permit is required for the activity. At the present time there are no proposals to create any abstraction or impounding exemptions under the Environmental Permitting Regulations.

Section 33A of the WRA 1991 provides a power to create further exemptions. In addition section 33A also allows for exempt geographical areas to be defined. We propose retaining the power to create further exemptions with regards to geographical areas in the Environmental Permitting Regulations i.e. to preserve the powers under section 33A.

Section 27A of the WRA 1991 provides the provision to alter the threshold for abstraction below which volume a licence is not required. We propose to retain section 27A as part of the move to the Environmental Permitting Regulations in order to ensure a power to alter the current threshold of 20 cubic metres per day above which an abstraction licence is required should we need to alter the threshold. We do not plan to alter this at the point of moving across into the Environmental Permitting Regulations.

Standard Rules Permits

Standard rules permits allow for a generic pre-defined set of conditions. Those conditions are deemed to be environmentally acceptable with no further determination required.

[14] Low risk impoundment activities - https://www.gov.uk/guidance/water-management-abstract-or-impound-water#impoundment

At present we have not identified any circumstances for which a set of pre-defined conditions would benefit a large number of abstraction and impounding operations. Considerations for one watercourse will not have exactly the same set of considerations as another (there will be different flow considerations, designations and species for instance). In addition to this the considerations for different parts of the country will not be the same as each other.

The provision to create standard rules permits will be available in the Environmental Permitting Regulations. However due to the likely bespoke nature of all applications within this sector no standard rules for abstraction and impounding activities are proposed at this present time.

Permits

We propose that all existing licences will become transitional permits containing the same provisions as originally issued. All new applications will be issued under and in accordance with the Environmental Permitting Regulations and will be permits until and unless any standard rules for abstraction or impounding activities are proposed.

We propose to adopt the use of the Environmental Permitting Regulations Environment Management System (EMS) conditions in permits. This will be new for abstraction and impounding under the Environmental Permitting Regulations as management conditions are not currently imposed in abstraction and impounding licences under WRA 1991.

In the Environmental Permitting Regulations, the EMS is a key concept and forms part of the permit as a general management condition. The permit condition will specify the requirement to have an EMS document detailing how the operator will manage their activity. The EMS is incorporated into the permit and referred to during any compliance checks. If the operator holds multiple permits they can be covered under one EMS; however, it will require individual site specific detail.

The EMS ensures there is a level of operator competency surrounding the activity and that they have a suitable level of understanding about the risks and requirements of undertaking such an activity. The operator can develop and maintain their own management system or use an environmental management system scheme, for example ISO14001:2015.

The information in the management system should explain how it is intended to minimise the risk of harm to the environment or pollution (depending on the activity). Information on what should be included within an EMS can be viewed at GOV.UK or in the **Technical annex: EMS**. The information and assessments contained within the EMS are designed to minimise the risk of the activity/activities on site, and as such the level of detailed required will vary.

We propose that all new permits issued under the Environmental Permitting Regulations will require an EMS. We propose that transitional permits will not require an EMS until they are varied or transferred under the Environmental Permitting Regulations, or where the Environment Agency specifies that an EMS is required. If your permit contains the management condition and you do not have an EMS, or if you fail to operate within the parameters of the EMS, you would be in breach of your permit conditions.

Proposal 8 – Site and source of supply

We propose to adopt the Environmental Permitting Regulations approach for site.

Under the WRA 1991, the Environment Agency issues abstraction licences permitting abstraction at a particular abstraction point, reach or area. Impounding licences are issued for works at an impounding point, between two points for a large impounding structure or at multiple points within close proximity. This will continue for water abstraction and water impounding activities in the Environmental Permitting Regulations.

Section 46 WRA 1991 prescribes what needs to be included in a licence including the source of supply and location of abstraction or impounding. In regulation 14(4) of the Environmental Permitting Regulations, permits are required to include a map, plan or other description of the 'site' showing the geographical extent of the site of the regulated facility (with certain exceptions e.g. mobile plant activity). Some regimes in the Environmental Permitting Regulations draw a boundary around the regulated activities on the permit however this is not true for all and is not required by the legislation. Most permits contain site plans which include boundaries around where the activities can take place. There is no legal definition of 'site' within the Environmental Permitting Regulations; the Environmental Permitting Guidance - Core Guidance document says that the regulator should consider the following factors in determining whether the facilities are operated on the same site: proximity, coherence of a site and management systems.

Due to the way the current licensing regime has evolved over the years, abstraction licences are very variable in terms of inclusion of maps and content. Some licences cover a big area, many licences have multiple points of abstraction from the same source of supply; older licences may have multiple points of abstraction from several sources of supply. Currently, the EA could be in a position where they would have to issue multiple permits for what is currently a single abstraction. One licence could have a number of surface water abstraction points from the same source of supply for example. We propose that the Environment Agency continues to have the flexibility to produce permits with multiple points from the same source of supply.

We propose that the Environment Agency will determine the extent of a site for an abstraction activity or impounding activity on a permit on a case by case basis within a set of principles created within its guidance. A site could be made up of one or more points/reaches and one or more regulated facilities. More information is available in the accompanying **Technical annex: site**.

We propose to amend the current provision in the WRA1991 and allow abstraction from more than one source of supply on a permit.

Presently section 24A WRA 1991 stipulates that a licence can authorise abstraction from only one source of supply (surface water or groundwater). We propose to amend this on the move to the Environmental Permitting Regulations; a permit for a water abstraction activity could allow for the abstraction of water from more than one source of supply. As an example, a farm with a borehole abstraction point and watercourse abstraction point could have both points on one permit.

There may be some limited circumstances where it is preferable that abstractions from different sources of supply need to be on separate permits. In such situations the Environment Agency may want to consider issuing separate permits and this will be considered on a case-by-case basis within a set of principles detailed within guidance.

Proposal 9 – Variations, transfers, revocations and surrenders

We propose to adopt the Environmental Permitting Regulations approach to permit **surrender** by an operator. We propose to include an amendment to include 'risk of harm to the environment' for abstraction and impounding activities as one of the surrender criteria.

Under section 51 WRA 1991 a licence holder can surrender a licence by applying to the Environment Agency. For abstraction licences, the licence holder applies to revoke (surrender) an abstraction licence under section 51(1) and the application is granted. No additional conditions have to be met to be able to revoke a licence.

To remove licensed impounding works or to revoke an impounding licence, a licence holder makes an application to the Environment Agency under section 51(A) who specifies what changes, if any, are required so the site is left in a satisfactory state. Section 51(1B) allows the Environment Agency to require conditions to be met before the revocation takes effect. This may include conditions:

- requiring the removal of all or part of the impounding works;
- as to the restoration of the site of the impounding works to a state which is satisfactory to the Environment Agency;
- relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.

This is achieved through issuing a letter with conditions in which need to be met. As per section 51(1A) and (1B) the Environment Agency may require the licence holder to undertake certain works prior to revocation. Once completed the Environment Agency revokes the licence. If the Environment Agency is not satisfied it does not grant the revocation. The licence holder has a right of appeal against conditions the Environment

Agency may require, its decision not to revoke or if the Environment Agency fails to determine within the determination period. The Secretary of State can allow/dismiss the appeal, vary or reverse the Environment Agency's decision on any part of the licence or determine it themselves. There is no appeal right for unconditional revocations under section 51(1A) and no appeal rights to the final revocation under section 51(1B).

If someone wants to alter or remove an unlicensed impounding structure, and it is not low risk, they will first need to apply for licence (section 25) to alter or remove the works. Once the modification has been carried out as per the licence conditions the holder will be able to apply for a revocation under section 51.

In the Environmental Permitting Regulations there are two ways an operator can wholly or partly surrender their permit or activities. Regulation 24 provides for a simple notification process which tends to be for the lower risk facilities, where it is less likely that any restorative or remedial works need to be carried out when an activity stops. The operator notifies the Environment Agency of their intention to surrender and no less than 20 working days later it takes effect. This happens automatically and the Environment Agency do not have any technical input or mechanism to refuse. If the operator is surrendering part of a permit the Environment Agency may decide that they need to vary the permit to remove the relevant parts.

Under Regulation 25 applications are required for the higher risk activities, all those not listed under Regulation 24.

Similarly, under regulation 25 and Schedule 5 of the Environmental Permitting Regulations, an operator can apply to surrender all or part of a permit. To surrender under Regulation 25 of the Environmental Permitting Regulations, an operator's application needs to provide evidence that any necessary changes have been made to demonstrate that two criteria have been satisfied:

- that they have avoided risks from the operation of their activities. For most activities this is pollution risk. For flood risk activities this is risk of flooding; risk of harm to the environment; or risk of detrimental impact on drainage,
- that they have returned the site to a satisfactory state.

This might be to remove or secure abstraction structures if an impact is likely to be caused otherwise or satisfactorily cap an artesian borehole.

The extent of the evidence required would be proportionate to the risk of what is being surrendered. For low risk activities the level of detail needed in an application would be basic. For higher risk activities a greater level of detail would be needed. This regulation allows the Environment Agency to return (refuse to accept) an application for surrender if the two measures stated above have not been completed. A person can appeal conditions that the Environment Agency sets as part of a partial surrender or if the Environment Agency refuses an application. There is no provision to appeal a full surrender because the Environment Agency would either be satisfied with the measures taken by the operator or dissatisfied and would refuse the application.

For surrendering impounding activities, similar criteria already apply, although the new process will be slightly different. We propose that the Environment Agency retains control over how an impoundment is removed and ensures that the operator cannot undertake impounding works without being authorised. In the Environmental Permitting Regulations, the only mechanism to change permit conditions is through a variation; either operator or regulator led. If the operator applies for a variation to remove their impounding works, prior to applying to surrender, we consider this to conflict with regulation 20(2), which does not allow the extent of a regulated facility to be reduced through a variation. As such, even if the Environment Agency was minded to grant the variation, we consider it may find that regulation 20(2) prevents it from doing so. Therefore, we are proposing that the operator first applies for a variation to obtain the relevant conditions to alter/remove the impoundment and then apply for the subsequent surrender. We propose to create an exception for impounding activities in regulation 20(3) so that a variation can reduce the extent of a site. The variation would be assessed and the resulting permit would legally authorise the changes. The subsequent surrender application should be a formality. This process will maintain appeal rights and align with the existing Environmental Permitting Regulations process.

To remove unlicensed impounding works, we propose that a new permit will need to be applied for. This will contain the conditions for removal, and therefore bringing the site back to a satisfactory state. Once this has been completed the permit can be surrendered. This is the same as the current process.

We propose to adopt regulation 25 for both abstraction and impounding activities as we want the Environment Agency to be able to have technical input to ensure the operator has taken measures to avoid harm to the environment from the operation of an abstraction or impounding activity and/or to return the site of the abstraction or impounding activity to a satisfactory state. For many abstractions the operator may not need to do anything and the application is essentially treated as if it was a notification. This is in line with how the Environmental Permitting Regulations surrenders are processed currently and does not require any amendments to regulation 25.

We propose to adopt the Environmental Permitting Regulations approach for undertaking **variations** to permits.

We propose to move certain provisions that currently relate to variations across from the WRA 1991 into the Environmental Permitting Regulations: ensuring the appropriate protected right status is maintained for an abstraction activity and to maintain the required considerations of:

- an applicant's reasonable requirements,
- protected rights and lawful uses; and
- river flow objectives.

Under the WRA 1991 a licence can be varied under either section 51(2) or section 52(1). Section 51(2) allows a licence holder to vary their abstraction or impounding licence.

Section 52(1) allows for the regulator to vary an abstraction or impounding licence. Both sections 53 and 54 relate to certain further requirements and the appeals process respectively for section 52 variations. The WRA 1991 does not differentiate between licence variations (i.e. a major variation or a minor variation). All variations are formal variations although there may be different procedural requirements, for example no requirement to advertise a particular variation application.

Regulation 20(1) of the Environmental Permitting Regulations is the overarching regulation for variations for environmental permits and covers both those requested by the operator ('operator initiated variation') and those undertaken by the regulator ('regulator initiated variation'). Permits may also be varied as a consequence of a transfer, part transfer, part revocation or part surrender.

We propose to adopt the Environmental Permitting Regulations provisions for undertaking variations to permits to ensure there is a consistent approach across all regimes.

There are some specific aspects of the abstraction and impounding regime not within the Environmental Permitting Regulations, such as the requirement on the Environment Agency to consider the applicant's reasonable requirements, consideration of protected rights, lawful uses and river flows when making a decision. We propose that these provisions will be moved across into the Environmental Permitting Regulations for water abstraction and water impounding activities. Section 51(2A) of the WRA 1991, is a specific provision relating to abstraction licences that does not allow the licence holder to vary the type of abstraction licence e.g. to change it from a transfer licence to a full licence. The type of licence ultimately dictates as to whether protected rights apply or not. We propose therefore to include a similar rule in the Environmental Permitting Regulations so that a permit cannot be varied to change the abstraction activity prescribed by it. This is to ensure that there is an adequate process for determining protected rights.

In **proposal 11** we have described how we will carry out permit reviews when we move to the Environmental Permitting Regulations. If a variation is required following a permit review the mechanism will be regulator initiated variations.

The current process under the Environmental Permitting Regulations is different in terms of when notice of a proposed regulator initiated variation is (i) served on the operator and (ii) brought to the attention of third parties. Under the WRA 1991 there is a requirement to serve notice on all licence holders of the proposed section 52 variation. The WRA 1991 also requires notice to be served on either a navigation authority, harbour authority or conservancy authority where the variation proposed could affect an inland water under their authority.

Under the Environmental Permitting Regulations, we are required to both notify the operator and to take appropriate steps to inform a person who will be affected by, is likely to be affected by, or has an interest in a proposed regulator initiated variation, where the variation falls within the scope of public participation. As required under regulation 60 the

Environmental Permitting Regulations, the Public Participation Statement[15] will need to set out as to when the Environment Agency will consult on both operator initiated variations and regulator initiated variations. The Environment Agency will continue to consult with those organisations where we have an existing working together agreement. These agreements will require an update to reflect the move to the Environmental Permitting Regulations. Under the Environmental Permitting Regulations, we will also be required to serve notice on any affected, likely to be affected or interested parties in the event that the operator appeals against the varied permit that has been issued to them.

Under section 52(6) of the WRA 1991, the licence holder can object to the variation by giving notice in writing (be it on either technical grounds or compensation grounds, the latter to ensure that the licence holder would be eligible for compensation if any change is made even if they accept proposed changes to their licence). The objection would then be referred to the Secretary of State under section 53(4) of the WRA 1991. Under the Environmental Permitting Regulations, where a notice is served on the operator the Environment Agency either must apply or consider applying paragraph 8 of Part 1 of Schedule 5 (Public Participation for a regulator initiated variation). The operator would be entitled to submit an objection that would require consideration during the determination of the variation. However, the matter would only be referred to the Secretary of State (and delegated to the Planning Inspectorate) where the operator subsequently appealed against the varied permit.

Ultimately, the outcome is similar in that a final decision is made as to whether the variation would stand or not and as to whether, where it applies, compensation could be payable. Under paragraph 3(1)(c) of Schedule 6 of the Environmental Permitting Regulations 2016, the operator has 2 months to appeal from date of issue of the regulator initiated variation permit.

Whilst these provisions will apply to subsequent variations of new 'post Environmental Permitting Regulations implementation' abstraction and impounding permits, it is important to note that for transitional permits for which compensation will still apply, the current position around allowing for a claim for compensation to be made up to 6 years after the varied permit has been issued would still apply under the move to the Environmental Permitting Regulations (section 61 of the WRA 1991) see **proposal 24**.

The timescale for an operator to appeal against either an Environment Agency initiated variation or operator initiated variation will increase from 28 days to 2 or 6 months respectively under the Environmental Permitting Regulations.

[15] How and when we consult - https://www.gov.uk/government/publications/environmental-permits-when-and-how-we-consult

Under Regulation 20(2) of the Environmental Permitting Regulations, a variation cannot allow the reduction in the extent of the 'site' covered by the environmental permit. There are certain activities that are exceptions from this restriction which are listed under Regulation 20(3). This restriction is in place for those activities where it is necessary to consider the condition of the land to ultimately ensure that the 'site' within the permit is returned to a 'satisfactory state'. Therefore, to ensure that the operator carries this out, then a part surrender (by application – Regulation 25 of the Environmental Permitting Regulations) is undertaken. The permit is then varied accordingly to reflect the reduction in the site within the permit. Regulation 23 of the Environmental Permitting Regulations allows for the regulator to require the operator to undertake the necessary actions, where the part revocation involves a reduction in the extent of the site.

We are proposing that impounding works be subject to the requirements under both part surrender by application (Regulation 25) or by a part revocation process (Regulation 23) to ensure that the 'site' is left in a satisfactory state following any form of alteration to the impoundment. We have also proposed that the Environment Agency has the necessary control, where appropriate, when dealing with the removal of (an) abstraction borehole(s) from an abstraction permit. Therefore, we propose to adopt regulation 20(2) for water abstraction activities only. We want to add water impounding activities to the list of exclusions in regulation 20(3)(b). This will ensure that the appropriate permitting mechanism is followed where further works could be required to be undertaken by the operator, as a result of a proposal to reduce the extent of the site on an impounding or abstraction permit. The table below sets out sections 51-52 WRA 1991 and their equivalent provisions under the Environmental Permitting Regulations:

Water Resources Act 1991	Interpretation	Environmental Permitting Regulations equivalent	Summary
Sections 51(2) & 52(1)	Allows for the licence holder or the Environment Agency to apply to vary a licence.	Regulation 20(1)	Allows for either the operator or the Environment Agency to apply to vary a permit.
Section 51(2A)	Does not allow the licence holder to vary the 'type' of their licence.	None	Licence 'types' will become 'activities' within a permit. There will be a similar approach not to vary an activity within a permit.
Section 52(4)(a)	Requirement to serve notice of a licence variation that is proposed by the Environment Agency on the licence holder.	Paragraph 8(1)(b), Part 1 of Schedule 5	Notice is served in respect off an Environment Agency initiated variation where it falls within the scope of public participation.
Section 52(4)(b)	Requirement to inform of a licence variation that is proposed by the Environment Agency to 3rd parties who could be affected by the proposal.	Paragraph 8(2)(a), Part 1 of Schedule 5	There is a requirement to inform persons who will be affected, likely to be affected or interested in an Environment Agency initiated variation where it falls within the scope of public participation.

Water Resources Act 1991	Interpretation	Environmental Permitting Regulations equivalent	Summary
Section 52(5)	A specific requirement to inform any navigation authority, harbour authority or conservancy authority where an Environment Agency proposed licence variation is located on an inland water which is under the responsibility of that authority.	None	Whilst there is no specific legal requirement to serve a notice of an Environment Agency initiated variation to these authorities, the Environment Agency will continue to consult with these authorities and follow the working together agreements that are already in place and discuss any required changes to these as a result of moving abstraction and impounding into the Environmental Permitting Regulations.
Section 53(4)	Where a licence holder objects to the variation proposed (within the 28 day timescale) then this will be referred to the Secretary of State.	Paragraph 8(1)(b), Part 1 of Schedule 5 Paragraph 3(1)(c) of Schedule 6	The Environmental Permitting Regulations allows for the permit holder to make a representation to the proposed Environment Agency initiated variation. Provided that the representation is considered then the Environment Agency can still decide to issue the varied permit. The permit holder (if aggrieved by the decision) could then appeal. The permit holder has 2 months from the date of the varied permit being issued.
Section 53(5)	The Environment Agency must still consider the requirements under sections 38(3), 39(1) and (2) and 40 of the WRA 1991 when determining a proposed licence variation under section 52.	None	This requirement will be moved across into the Environmental Permitting Regulations. This is to ensure the continuation of considerations of reasonable requirements, derogation and river flow objectives. Section 38(3)(a) of the WRA 1991 will already be covered by paragraph 11 of Schedule 5 within the Environmental Permitting Regulations.

Table 2 Summary of changes in relation to permit variations

We propose to adopt the Environmental Permitting Regulations approach for Environment Agency led **revocations** of a permit.

We propose to change the criteria for requiring an operator to take steps following a revocation from 'pollution' to 'harm to the environment' to more accurately reflect the potential impacts from abstraction and impounding activities.

Section 52 WRA 1991 covers revocations initiated by the Environment Agency (including on direction by the Secretary of State). The Environmental Permitting Regulations covers Environment Agency led revocations under Regulations 22, 23, 29 and 30 of the Environmental Permitting Regulations.

Under section 52 WRA 1991, the Environment Agency can make proposals to cancel (revoke) or change (vary) a licence. The Secretary of State may also direct the Environment Agency to formulate proposals to revoke. Revocations in the 1991 Act means a revocation in full. Any modification initiated by the regulator resulting in a varied licence being issued is classed as a variation. There is no such thing as a part revocation as there is in the Environmental Permitting Regulations. If the Environment Agency proposes to revoke or vary a licence, the licence holder will be notified, including the reasons why and when this will happen. The licence holder is allowed a period of 28 days to challenge the proposals. The proposed licence revocation is also advertised to allow for the public to provide comments. If the licence holder does not challenge the proposals to revoke the licence it will happen on the date provided to the licence holder.

If the licence holder does challenge the proposals to revoke the licence it is passed to the Secretary of State to make a decision. The views of all sides, including those of members of the public in response to the advertisement, are considered. The Secretary of State will then direct the Environment Agency how to proceed.

There are similar provisions under the Environmental Permitting Regulations under regulation 22. The Environment Agency can make proposals to revoke a permit, this includes wholly or partially. If the Environment Agency does propose to revoke all or part of a permit, the operator will be notified, including the reasons why, to what extent and when this will happen. The operator has 20 working days to appeal the notice. If an appeal is made it is dealt with by the Secretary of State. A representations period is initiated within 10 days of any appeal being made and there are 15 days to make representations. These are considered by the Secretary of State with the appeal documents. If no appeal is made the revocation takes place. The Environment Agency may issue a varied permit to reflect a part revocation. Part revocations are a useful tool in the Environmental Permitting Regulations as there may be permits with multiple regimes, activities or sources of supply on enabling the Environment Agency to target the part of the permit that is of concern.

Regulation 23 allows the regulator to set steps to be completed by the operator after the revocation takes effect with the aim of avoiding pollution from the regulated facility and to return the site to a satisfactory state. These steps may be applied to all activities apart

from part B (excluding waste operations), mobile plant, stand-alone water discharge activities and stand-alone groundwater activities. The steps are treated as permit conditions, i.e. are subject to enforcement. The Environment Agency issues a certificate of completion once the steps have been met. The operator is allowed at least 20 working days to challenge (appeal) the proposals and any steps they would be required to carry out. The Environment Agency may change any remaining permit to reflect part revocations. For part revocations the Environment Agency may require steps in addition to issuing a varied permit. The steps required are specified in the revocation notice under regulation 22, so the operator has the right of appeal against them.

If the operator does challenge the proposals to revoke all or part of a permit, the Secretary of State considers the details of the proposals and the challenge. At this point the proposal is advertised and public comments are invited for a period of 15 days; and similar to the current abstraction and impounding process both the operator and Environment Agency have a chance to make comment. The Secretary of State will then direct the Environment Agency how to proceed.

We propose to adopt the Environmental Permitting Regulations, regulations 22, 23, 29, 30, 31 and Schedule 6. Regulation 22 sets general provisions for revocation and also introduces part revocations, something not covered in the WRA 1991. We propose that this is applied to abstraction and impounding activities as it is to all other regulated facility classes.

We propose that rather than demonstrating that 'pollution risks' have been avoided during operation it would refer to showing that 'risks of harm to the environment' have been avoided. See **proposal 12** for more detail.

We consider that regulation 23 would be necessary for impounding activities as the Environment Agency needs a mechanism to be able to require that where any structure is altered or removed it is undertaken to a satisfactory state. For abstraction activities regulation 23 could be used to consider and deal with the state of boreholes.

The use of the revocation notice to set out steps to be taken for the operator would be new for abstraction and impounding activities, although the same effect can currently be achieved through varying an impounding licence or the EA issuing a letter then revoking it.

For impounding works the Environmental Permitting Regulations revocations process does not provide the Environment Agency with any more powers, but it does alter the process to make it more efficient. For abstractions it would be a new power but would only need to be applied in certain circumstances.

Moving to the Environmental Permitting Regulations will alter the point at which third party representations can be made. For the Environmental Permitting Regulations this is done only if there is an appeal, whereas under the WRA 1991 it is done for all revocations and variations at the point the notice is served on the licence holder. However, in either case, representations are only considered in the event of an objection/appeal and only by the Secretary of State. Adopting the Environmental Permitting Regulations process means the

Environment Agency only invites representations if there is an appeal, thereby reducing unnecessary representations if no appeal is made. This would be a positive change.

There may also be occasions where parts of a permit might need to be removed or altered if the Environment Agency revokes related standard rules conditions or they change an authorised activity to become an exempt or excluded activity. We propose to adopt the Environmental Permitting Regulations provisions as to how this would be carried out.

We propose to adopt the Environmental Permitting Regulations approach to allow an operator to **transfer** a permit to a new operator, either in whole or part, for a water abstraction or water impounding activity.

We propose to carry over some provisions from the WRA 1991 including:

- The rights of access requirements that currently apply to a potential transferee of an abstraction licence.
- That when a partial transfer of a permit takes place, any existing abstraction rights do not need to be considered; and when granted the protected rights status for the new permits shall date back to the issue of the original permit.

The WRA 1991 allows a licence holder to transfer, either in whole or part, their licence to a new licence holder. Apportionment as referred to in section 59C of the WRA 1991 is in effect a partial transfer of a permit. Currently the 1991 Act allows for the holder of a full or transfer abstraction licence to serve notice on the Environment Agency to divide some or all of their licence between two or more new licence holders subject to certain constraints. The apportionment of an abstraction licence involves the issuing of new licences and the revocation of the original 'old licence'.

Currently transfers and apportionments are done by notification rather than by application. The protected rights status of the old licence is preserved by the new licences granted under the apportionment as though they had been in effect from the issue of the old licence under section 59C(13) of the WRA 1991. Sections 34 to 45 of the WRA 1991 do not apply to the new licence(s) including advertising, consideration of other protected rights and appeals.

The notice for both transfers (section 59A) and apportionments (section 59C) must contain such information as the Environment Agency can reasonably require and a declaration that rights of access criteria can be satisfied where relevant. The notice may also state a date upon which the transfer is to take place. If the licence holder becomes such, as a result of a licence vesting, the transfer can only take effect if the Environment Agency has received notice as described in s.59B(4) of the WRA 1991. A licence transfer is effective from the date that the Environment Agency amends the licence; or from a later date as may be required by the transfer notice. The licence holder remains responsible for complying with the licence conditions until the transfer has been effected. Notification is a simple process for the applicant however it gives the Environment Agency no opportunity

for scrutiny or refusal of the transfer or apportionment. Particularly, the current process of apportioning a licence can be a lengthy and complex procedure.

The Environmental Permitting Regulations follow a similar approach to the WRA 1991. Regulation 21 allows the transfer of an environmental permit or any part of an environmental permit to a proposed transferee. With the exception of a stand-alone water discharge activity, groundwater activity or flood risk activity, for which transfer by notification is possible, the Environmental Permitting Regulations allow for a permit to be transferred upon the joint application by the permit holder and the new operator. For any partial transfer of a permit the Environmental Permitting Regulations specifies that the usual activities that are undertaken when considering a new application for a permit, currently detailed in Schedules 5 and 6 of the Environmental Permitting Regulations, are disapplied. This is similar to what is currently provided for by section 59C(6) of the WRA 1991 and regulation 22(2)(c) of the 2006 Regulations (The Water Resources (Abstraction and Impounding) Regulations 2006)[16]. When considering a partial transfer of a permit for a water resources activity sections 34-45 of the WRA 1991 do not apply (apportionment of a licence takes place, any existing abstraction rights do not need to be considered; and when granted the protected rights status for the new licences dates back to the issue of the original licence). We propose to carry over this approach to the Environmental Permitting Regulations.

It is important to ensure that, as currently provided for, any new permits issued as the result of a partial transfer do not change the overall effect of the original permit; that is there can be no overall increase in the amount of water available for abstraction; nor a change in the purpose or point of abstraction or flow conditions etc. The resulting permits shall have the same overall effect as the old permit.

Through the move to the Environmental Permitting Regulations, we propose to change the process to transfer and apportionment by application by adopting Regulation 21(1) rather than notification. The Environment Agency would be able to scrutinise applications and refuse them if necessary. Moving to applications would be a way of future proofing the regulations by giving the Environment Agency the necessary regulatory control. The Environment Agency are considering having a deemed acceptance policy as a way to maintain the current low level of licence holder burden required to transfer or apportion a licence i.e. the Environment Agency would mostly use the deemed approval process but they would be able to look at the application if they need to.

We propose that the rights of access requirements that currently apply to a potential transferee of an abstraction licence under section 59A(3)(b)(i)-(ii) of the WRA 1991 and Regulation 21(2)(a) of the 2006 Regulations should be applied in the Environmental Permitting Regulations. To align with the transfer provisions for the other Environmental

[16] https://www.legislation.gov.uk/uksi/2006/641/contents/made

Permitting Regulations regimes the transfer should take effect from the date specified as part of the application process.

Continuing to allow for a permit holder for a water resources activity to transfer their permit to another operator would maintain the current arrangements and will also allow water resources to align with the other Environmental Permitting Regulations regimes.

We propose to move across the Emergency variation of licences for spray irrigation purposes under the WRA 1991 into the Environmental Permitting Regulations.

Under section 57 WRA 1991 the Environment Agency can restrict abstraction for spray irrigation at times of exceptional shortage of rain (or other emergency) to protect our rivers and groundwater. Section 57 notices are one of a number of tools that can be used during drought related incidents but are normally served as a last resort when other restrictions or appropriate measures have been exhausted.

Section 72(2) of the WRA 1991 provides the definition for spray irrigation. However, not all spray irrigation will be subject to section 57. The Spray Irrigation (Definition) Order 1992 [SI 1992/1096] defines the circumstances where a spray irrigation activity is not subject to section 57, as follows:

- within a building or other structure, whether fixed or mobile, used for the production of agricultural produce, being a building or structure, which excludes from the plants growing in or under it water falling as rain;
- on land in the immediate vicinity of cloches, in or under which plants are growing, for the purpose of securing a supply of moisture to those plants;
- on containers or pots in the open in which plants intended for sale are grown in such a way as to be unable to take moisture from the soil.

Section 57 restrictions are only likely to be required if there are no 'Hands Off Flow' (HOF) or minimum residual flow (MRF) controls on abstraction licences. Environment Agency Area drought teams impose section 57 restrictions when river flows drop to a certain pre-determined level, based on an exceptional shortage of rain. The restrictions are only enforceable if spray irrigators are taking water from rivers, not ponds or reservoirs (such as winter storage reservoirs) where these are discrete waters. The Environment Agency can only restrict abstraction from groundwater if abstraction is likely to affect the flow, level or volume of inland water such as a river, stream or wetland within the affected catchment.

There is nothing equivalent within the Environmental Permitting Regulations that can restrict a particular subset of abstractors in response to a natural event. Therefore, we propose to move these provisions into the Environmental Permitting Regulations. Regulation 37 suspension notices under the Environmental Permitting Regulations apply where it is considered appropriate to suspend an activity authorised under a permit, to protect the environment, human health or both. In a drought incident, there may be good

reason to serve both a section 57 notice and regulation 37 notice to achieve the same environmental outcome.

Proposal 10 - Appeals

Sections 43, 44 and 45 WRA 1991 and Regulations 12 and 13 of the 2006 Regulations set out appeals provisions. The appeal provisions in the Environmental Permitting Regulations are set out in Regulation 31 and Schedule 6 of the Environmental Permitting Regulations. The current appeals provisions for abstraction and impounding notices are included within the relevant section which deals with a specific type of notice and are therefore distributed throughout the WRA 1991.

Abstraction and impounding legislation and the Environmental Permitting Regulations contain similar provisions which allow an applicant or operator to appeal the Environment Agency's decisions; for example, within England appeals are made to the appropriate authority (the Secretary of State) and are generally delegated to the Planning Inspectorate.

The Environmental Permitting Regulations set out a person can make an appeal when:

- their application is refused,
- they are aggrieved by a decision to impose a permit condition,
- they are aggrieved by the deemed withdrawal of a duly made application; or
- a notice is served on them.

The timescales to bring an appeal within the Environmental Permitting Regulations are either the same or longer than within the current abstraction and impounding legislation. For example, presently an applicant has 28 days to appeal the refusal of an application for a full abstraction licence. Under the Environmental Permitting Regulations the same applicant for a permit for a water abstraction activity would have 6 months to submit any appeal application.

We propose to adopt the Environmental Permitting Regulations appeals provisions to ensure there is a consistent approach across all regimes.

There are some specific aspects to the abstraction and impounding appeals regime which mean they are not included under the Environmental Permitting Regulations, such as the requirement for the Secretary of State to consider protected rights, lawful uses and river flows when making a decision with regards to an appeal. We propose that these requirements will be included within the Environmental Permitting Regulations for abstraction and impounding to ensure the Secretary of State has the same duty to protect abstraction rights and the environment in the future as they do now.

See **proposal 1** for our proposals with regards to appeals for applications in progress or appeals for applications whose appeal period spans the abstraction and impounding regime transition into the Environmental Permitting Regulations.

Proposal 11 – Permit Review Process

All abstraction and impounding licences are currently reviewable under the WRA 1991 irrespective of whether they have a time limit or not. If a licence is reviewed and varied, and this causes the licence holder to incur loss or damage, they are potentially able to claim compensation from the Environment Agency.

There are a few exceptions to this including:

- where a permanent licence is causing serious damage,
- where the licence is held by a water company,
- when the authorised abstraction has not been used for a period of 4 years; or
- where an applicable minimum value condition has been included on the licence.

Licences which include a time limit currently operate a renewal approach largely based on Abstraction Licence Strategy (ALS) review dates; sometimes referred to as the catchment common end date. The timing of the ALS review dates are staggered based on catchments. In some circumstances there are renewal dates which are shorter than the ALS common end date; such as where there are sustainability issues. When considering an application to renew a licence the Environment Agency is, with suitable evidence, able to change any licence condition without the licence holder being able to successfully claim for compensation. The licence holder would still have the usual right to appeal to the Secretary of State with regard to any decision made on their application.

When determining a licence renewal application, the Environment Agency considers the following three tests in order to establish whether a licence is sustainable and can be issued on the same terms or not. The three tests are:

- environmental sustainability,
- justification of need,
- efficient use of water.

Under the Environmental Permitting Regulations, the Environment Agency has a legal duty to review all permits periodically under Regulation 34(1). A permit review is undertaken to assess the permit in its current form and whether any changes need to be made to it. We propose that all existing abstraction and impounding licences will become transitional permits on the transition to the Environmental Permitting Regulations and we propose that all permits will be subject to periodic review.

Permit operators will be notified that a review will take place and be informed of the purpose of the review.

It is proposed there will be two different types of review:

- programmed periodic reviews – these will be periodic planned reviews that are primarily based on catchment sustainability and an assessment as to whether abstraction is sustainable in catchments that are approaching their common end dates.

- individual review – it may be necessary in some cases for the EA to review and potentially vary a permit outside of the periodic review programme. It is proposed that abstraction and impounding adopt the Environmental Permitting Regulations approach of periodically reviewing permits.

More information can be found in the accompanying **Technical annex: permit review process.**

Proposal 12 – Enforcement and suspension

We propose to adopt Environmental Permitting Regulations enforcement and suspension notices.

We propose to amend the regulations for these two notices to include 'harm to the environment' as a reason for using the notice, in place of 'pollution'. This more appropriately reflects the potential impacts of abstraction and impounding.

Under section 25A WRA 1991 the Environment Agency can serve a notice (enforcement notice) where an abstraction or impounding works:

- takes place without a licence and is not an activity exempt from licensing, or
- does not comply with the licence terms and conditions, and
- is causing or is likely to cause significant damage to the environment (from 1 April 2006).

On transition to the Environmental Permitting Regulations, we propose to adopt the following two core notices used for enforcement in the Environmental Permitting Regulations:

- enforcement notices (Regulation 36),
- suspension notices (Regulation 37).

Enforcement notices – Regulation 36

Enforcement notices can only be used in relation to permit conditions. They cannot be used on unauthorised activity outside of a permitted facility. If the Environment Agency considers an operator has contravened, is contravening or is likely to contravene (breach) permit conditions an enforcement notice may be served on them. There is no requirement to link to environmental impacts. However, if the contravention has led to an 'environmental effect' remedial steps can be set. The primary aim of this notice is to bring the operations back in to compliance and to remediate any environmental impacts.

"Environmental effects" is defined in the Environmental Permitting Regulations regulation 36(4) specifically for flood risk activities and pollution. For most permitting regimes environmental effect is defined as "pollution" which is further defined in regulation 2. For flood risk activities it is defined as: flooding or risk of flooding; detrimental impact on

drainage or risk of detrimental impact on drainage; or harm to the environment or risk of harm to the environment.

We propose to define "environmental effect" for abstraction and impounding activities as where there is 'harm to the environment' or 'risk of harm to the environment', this terminology is already used for flood risk activities. The details of what this means can be set in Environment Agency guidance as 'significant damage' is for section 25A notices under the WRA 1991. This means the Environment Agency would be able to issue an enforcement notice containing remedial works when there is a permit breach causing "harm to the environment" or "risk of harm to the environment" for abstraction and impounding activities.

Suspension notices – Regulation 37

Suspension notices can only be used at permitted facilities so cannot be used on unauthorised activities that are not within a permitted facility. There are two instances where a suspension notice may be served by the Environment Agency on an operator:

- If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution or a risk specific to a flood risk activity. This applies whether or not the manner of operating the regulated facility which involves the risk is subject to or contravenes an environmental permit condition.
- If the regulator considers that the manner of operating a regulated facility contravenes an environmental permit condition, and that such contravention involves a risk of pollution or a risk specific to a flood risk activity.

The 'risks' are currently defined as 'risk of pollution', or for flood risk activities:

- 'risk of flooding',
- 'risk of detrimental impact on drainage', or
- 'risk of harm to the environment'.

Suspension notices will suspend operations until the risk has been removed to the satisfaction of the Environment Agency. The suspension may apply to some or all operations depending on the risks identified. The primary purpose of suspension notices is to prevent harm to the environment where there is a risk of it occurring, although they can be used if the operator has not paid their annual subsistence charge. For water abstraction and impounding activities it may be necessary to suspend permits in circumstances such as preventing saline intrusion, during pollution incidents and where there are impacts on the environment as a result of prolonged low flows. When a suspension notice in in effect, subsistence charges are still payable and protected rights will not be affected.

We propose to adopt the Environmental Permitting Regulations enforcement and suspension notices for abstraction and impounding activities. These two notices are fundamental tools of the Environmental Permitting Regulations and would enable the Environment Agency to effectively and appropriately address permit condition breaches and actual or potential harm to the environment as with other regulated facilities.

We propose to amend the Environmental Permitting Regulations to include relevant impacts from abstraction and impounding activities. 'Environmental effect' for enforcement notices would be defined as 'harm to the environment' and 'risk of harm to the environment'. The 'risks' for suspension notices would be 'risk of harm to the environment' and 'risk of serious harm to the environment'. See below for further details on what 'harm to the environment' means.

The term 'pollution' within the Environmental Permitting Regulations does not fully reflect the potential impacts of abstraction and impounding activities. We propose using an alternative term, 'harm to the environment', to reflect their impacts on the environment.

Under the Environmental Permitting Regulations there are several regulations which refer to the impacts of pollution and how they are to be prevented or mitigated. For example, if an operator breaches their permit conditions and causes pollution as a result, the Environment Agency can require the operator to remediate the effects of that pollution. 'Significant damage' is a term used in a similar way under the WRA 1991 but is not the equivalent to the Environmental Permitting Regulations definition of 'pollution'.

The term 'pollution' within the Environmental Permitting Regulations does not fully reflect the potential impacts of abstraction and impounding activities. As abstraction and impounding is moved into the Environmental Permitting Regulations, we propose to include an alternative term to reflect their impacts on the environment. We propose using a term already used in the Environmental Permitting Regulations for flood risk activities – 'harm to the environment'.

'Harm to the environment' would be used in the Environmental Permitting Regulations in place of 'pollution' for permit surrender, revocation (Environment Agency led), remedial powers and enforcement and suspension notices.

'Harm to the environment' would not be defined in the Environmental Permitting Regulations but would be contained in guidance. This allows the Environment Agency to apply the term appropriately and proportionately on a case-by-case basis. This is consistent with the use of the same term for flood risk activities and is also consistent with the current approach for 'significant damage' relating to the use of enforcement notices under the WRA 1991 (section 25A).

We propose the following definition:

'Harm to the environment' means a result of human activity which may:

- cause harm to the conservation, protection and enhancement of any species and habitats designated under any enactment as having special protection or priority; or
- prevent the achievement of environmental objectives within the meaning of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017; or

- cause pollution; or
- otherwise adversely affect the protection and enhancement of the environment.

This is based on the definition used in flood risk activity permits under the Environmental Permitting Regulations. The application of this term and definition for abstraction and impounding activities would therefore be consistent with flood risk activities and is already established within the Environmental Permitting Regulations.

'Harm to the environment' should not be confused with the use of 'serious damage' and 'significant damage' which exist elsewhere in environmental legislation. Although there may be many similarities between the terms they are used for different purposes.

We propose to move the following notices from current abstraction and impounding legislation into the Environmental Permitting Regulations for use in relation to abstraction and impounding activities only:

- An 'existing impounding works notice' would replace the section 3 WA 2003 notice.
- A 'works notice' would replace the section 4 WA 2003 notice.

Adopt the Environmental Permitting Regulations approach to serving notices and rights of appeal for these notices.

For unlicensed impounding works constructed before 1 April 2006, two notices can be served. Under section 3 WA 2003 a notice can be served to require a person to apply for a licence where it is regarded necessary for the impounding works to be regulated. A section 4 WA 2003 notice can be served to require a person to undertake works including to alter or remove impounding works where necessary for the protection of the environment, or to allow the Environment Agency to perform its water resources management functions. The impounding works can remain unlicensed.

These two notices in the WA 2003 are specific and necessary to abstraction and impounding management and do not currently exist in the Environmental Permitting Regulations. Therefore, we propose to move these sections, with some amendments, into the Environmental Permitting Regulations for use on abstraction and impounding activities. The way in which the notices are served would align with other Environmental Permitting Regulations notices for consistency. The reasons for serving these notices and their requirements would not change.

Works requiring a section 4 WA 2003 notice may mean access to third party land is necessary. The third party must grant access upon request from the person requiring access. The third party can apply for compensation from that person. We propose retaining these provisions for the proposed impounding works notices.

If a person is served with a section 3 WA 2003 or section 4 WA 2003 notice they can currently appeal the notice within 21 days. We propose retaining the right of appeal

however the appeal period would become two months, aligning with the majority of notices in the Environmental Permitting Regulations.

We propose that the Environment Agency is enabled to take steps to remedy the impacts from permitted and unauthorised abstraction and impounding or request such remedial steps to be taken by a responsible person/operator.

We propose to continue to enable the Environment Agency to recover costs, from the responsible person/operator, incurred when undertaking remedial steps.

In certain scenarios, the Environment Agency can require action to be taken to remedy environmental impacts or to remove the risk of it happening. The Environment Agency can also carry out such action and recover costs incurred.

The Environmental Permitting Regulations has similar provisions to the WRA 1991 which differ depending on the type of activity that's being undertaken and also the severity of impacts.

Exempt and permitted abstraction and impounding activities – regulation 58A

We propose that the current Regulation 58 for flood risk activities be replicated for exempt and permitted abstraction and impounding activities with an amendment to tailor it to those activities which are at risk of causing serious harm to the environment. The Environment Agency will be able to seek to recover costs incurred. We propose to insert Regulation 58A (power of the Environment Agency to prevent or remedy effects of water abstraction activities and water impounding activities).

Unpermitted abstraction and impounding[17] activities – new remediation notices

We propose to introduce into the Environmental Permitting Regulations a remediation notice and a notice of intent for the Environment Agency to be able to require action to be taken where a person needs to remedy the environmental impacts of unpermitted abstraction and impounding activities. This will be to:

- require the activity to cease,
- to remedy any harm to the environment,
- to alter or remove impounding works,
- to restore a river to its previous condition or other condition as may be specified,
- to recover costs incurred by the Environment Agency for carrying out the action.

[17] Does not include unpermitted impounding works built before 1 April 2006

A person will be able to appeal both of these notices within a period of 2 months of them being served. Not complying with the remediation notice is an offence, the penalty for which is an unlimited fine and/or up to 12 month in prison for a summary conviction or an unlimited fine and a maximum of 2 years in prison for a conviction by indictment. See **proposal 13** on offences and penalties for more information on these types of offences.

	Environment Agency requires remediation if	Environment Agency can remedy if
Permitted polluting activities	Pollution is caused by a breach of a permit condition[18]	Serious pollution is caused by a permitted activity Pollution is caused by a breach of a permit condition A regulation 36 enforcement notice is not complied with
Unpermitted polluting activities	n/a	Pollution is caused by an unpermitted activity
Permitted abstraction and impounding activities	Harm to the environment is caused by a breach of a permit condition[19]	Serious harm to the environment is caused by a permitted activity
Unpermitted abstraction and impounding activities	Harm to the environment is caused by an unpermitted activity. Includes action such as ceasing the activity, removing works and restoring the river.	Harm to the environment is caused by an unpermitted activity. Includes action such as ceasing the activity, removing works and restoring the river.

Table 3 remediation activities summary table.

[18] Regulation 36 enforcement notice

[19] Regulation 36 enforcement notice

We propose to retain the use of three civil sanctions that are currently used for offences under the WRA 91: fixed monetary penalties, variable monetary penalties and third party undertakings in relation to variable monetary penalties.

The Regulatory Enforcement and Sanctions Act 2008 gave the Environment Agency a range of new powers to impose civil (or non-criminal) sanctions, depending on the circumstances of the offence. The Environmental Civil Sanctions (England) Order 2010 applies 6 sanctions to the WRA 1991 offences. These 6 are:

- Compliance notice: take action to bring offender back into compliance.
- Restoration notice: damage from offence to be put right.
- Stop Notice: suspension of activity and reduce risk or harm.
- Fixed monetary penalty: for minor non-environmental offences, e.g. consecutive failures to submit returns.
- Variable monetary penalty: for more serious offences. Used for environmental impact, mismanagement/negligence.
- Enforcement undertaking: voluntary offer from offender to put effects and impacts right. Restore or environmental benefit/improvement and compensation.

The Environmental Permitting Regulations were amended in April 2015 to allow Enforcement Undertakings (EU) to be accepted in response to an offence under regulations 38(1), (2), (4)(a), (5)(a) or (6) of the Environmental Permitting Regulations, for regulated or exempt facilities for offences in England. In 2018, the Environmental Permitting Regulations was amended to allow for EUs to be accepted for flood risk activities which joined the Environmental Permitting Regulations in 2016.

Further information on the use of civil sanctions can be found in the Environment Agency's approach to applying civil sanctions and accepting enforcement undertakings[20].

Civil sanctions are only available for particular offences. The table below shows which civil sanctions can be used for these particular offences under the WRA 1991, WA 2003, the Environmental Permitting Regulations and the Environment Act 1995.

[20] Annex 1: RES Act – the Environment Agency's approach to applying civil sanctions and accepting enforcement undertakings.

	Sanctions					
	Variable monetary penalty	Enforcement undertaking	Compliance notice	Restoration notice	Stop notice	Fixed monetary penalty
Water Resources Act 1991 Offence						
Abstraction or impounding without licence[21]	X	X	X	X	X	X
Failure to comply with licence conditions	X	X	X	X	X	X
Failure to comply with a section 25A WRA 1991 enforcement notice	X					
Failure to provide information for Environment Agency functions	X					
Making false statements	X					
Power of entry offences	X					
Water Act 2003 Offence						
Failure to comply with a section 4 WA 2003 impounding works notice	X					
Environmental Permitting Regulations Offence						
Operating without a permit		X				
Failure to comply with permit conditions		X				

[21] Not complying with a section 3 WA 2003 notice means a person is impounding without a licence.

	Sanctions					
Failure to provide information for Environment Agency functions		X				
Causing someone else to offend		X				
Environment Act 1995 Offence						
Power of entry offences under Environment Act 1995	X					

Table 4 civil sanctions summary table.

We therefore only propose to retain and bring across into the Environmental Permitting Regulations regime (for abstraction and impounding activities only):

- fixed monetary penalties;
- variable monetary penalties; and
- third party undertakings in relation to variable monetary penalties.

We propose that civil sanctions will operate under the Environmental Permitting Regulations as they do under current legislation.

Proposal 13 – Offences and Penalties

We propose to adopt the Environmental Permitting Regulations approach to offences and penalties; set the maximum prison term at 2 years.

Offences and penalties are in sections 24, 25, 25C, 201, 206, 173 and 174 WRA 1991 and section 4 WA 2003. Regulation 38 of the Environmental Permitting Regulations contains all offences and regulation 39 of the Environmental Permitting Regulations contains all penalties. Section 110 Environment Act 1995 (EA 1995) contains offences which are relevant to the Environmental Permitting Regulations; these are not contained in the Environmental Permitting Regulations itself.

The Environment Agency is responsible for the enforcement of legislation. If an offence has been committed it has various response options available and will decide on the most appropriate response.

There are two types of offence. Summary offences are heard by a magistrates' court and are for the less serious offences. Indictable offences are heard by a Crown Court in front of a judge and jury. Some offences can lead to a summary conviction only, while others can lead to either a summary conviction or conviction by indictment. This is relevant as there are different fines and prison terms for the two types of offence.

Under the Environmental Permitting Regulations, fines and prison terms are referred to as penalties:

- for all Environmental Permitting Regulations offences, the maximum penalty for summary offences is unlimited fine and/or 12 months prison,
- for indictable offences it is an unlimited fine and/or 2 or 5 years prison.

Environmental permitting powers of entry are under the Environment Act 1995, not the Environmental Permitting Regulations. The penalty for being found guilty is different for each individual type of offence but are comparable to the penalties available in the Environmental Permitting Regulations.

Under the Environmental Permitting Regulations, the operator is required to have sufficient control of the operations carried out as authorised by a permit. They are liable for offences relating to permits. If a third party, such as a contractor, undertakes the permitted activities and contravenes its conditions, the operator would face enforcement action.

Most offences in the WRA 1991 have a clear equivalent in the Environmental Permitting Regulations offence, including the liability of corporate bodies.

We propose to align abstraction and impounding activity offences with those in the Environmental Permitting Regulations. In some instances, we propose to adopt offences in the Environmental Permitting Regulations for abstraction and impounding activities (which do not exist under current water resources legislation) and in others we propose to bring across into the Environmental Permitting Regulations those offences specific to abstraction and impounding activities only (**Table 5** details of the offences and penalties and can be found at the end of this document):

- We propose to create a new offence (for the Environmental Permitting Regulations) which was formerly section 206(3) WRA 1991 for abstraction and impounding activities. Section 206(3) of the WRA 1991 is an offence for wilfully altering or interfering with a meter, gauge or other required under the provisions of a licence.
- We propose to create a new offence (for the Environmental Permitting Regulations) which was formerly section 71 of the Water Industry Act 1991 for abstraction activities. Section 71 of the Water Industry Act 1991 is an offence for causing or allowing any underground water to run to waste from any well, borehole or other work or to abstract from any well, borehole or other work, water in excess of their reasonable requirements.
- We propose to adopt a new offence for abstraction and impounding activities (which is already in the Environmental Permitting Regulations) under regulation 38(6) which states it is an offence for someone else to cause another to commit an offence.
- We propose to adopt a new offence under section 110(2) of the Environment Act 1995 for abstraction and impounding activities (powers of entry).

For abstractors currently utilising the licence of another holder, section 24(1)(b) of the WRA 1991 provides a defence against abstracting from a licensed abstraction point

without being the holder of that licence. As described in the **proposal 6**, we propose to preserve the position for transitional permit holders only, whereby abstractors who do not hold permits can carry out their abstraction from a permitted abstraction point lawfully but also allow for current licence holders to continue to be permit holders after the move into the Environmental Permitting Regulations irrespective of whether or not they undertake the abstraction. For transitional permits for abstraction activities, there will still be the flexibility to take action against the operator (transitional permit holder) or an abstractor, even if they are not the operator.

For most offences, the penalties for being found guilty are more serious under the Environmental Permitting Regulations, particularly with regards to prison terms. We propose to align abstraction and impounding activity offences and penalties with those in the Environmental Permitting Regulations and set the maximum prison term at 2 years rather than 5 years as this more closely reflects the current abstraction and impounding legislation and also the potential impacts of an offence. The effect of this change is that for some abstraction and impounding related offences which don't currently carry a potential prison sentence, when we move into the Environmental Permitting Regulations, they will.

Current						**Recommended equivalent**					
Offence	**Penalty**	**Summary offence**		**Indictable offence**		**Offence**	**Penalty**	**Summary offence**		**Indictable offence**	
s24(4)	s24(5)	Fine	-	Fine	-	38(1)/38(2)	39(2)	Fine	12 m	Fine	2 yrs
s25(2)	S25(3)	Fine	-	Fine	-	38(1)/38(2)	39(2)	Fine	12 m	Fine	2 yrs
s25C(1)	s25C(2)	Fine	-	Fine	-	38(3)	39(2)	Fine	12 m	Fine	2 yrs
s4(4) [a]	s4(5)	Fine	-	Fine	-	38(3)	39(2)	Fine	12 m	Fine	2 yrs
s201(3)	s201(3)	Fine	-	Fine	2 yrs	38(4)	39(4)	Fine	12 m	Fine	2 yrs
s206(1)/(3A)	s206(5)	Fine	-	Fine	2 yrs	38(4)	39(4)	Fine	12 m	Fine	2 yrs
s206(3)	s206(5)	Fine	-	Fine	2 yrs	38(2)	39(2)	Fine	12 m	Fine	2 yrs
s173	Sch.20, p7	Fine	-	Fine	2 yrs	s110(1) [b]	s110(4)(a)	Fine	12 m	Fine	2 yrs
							s110(4)(b)	Fine	12 m	-	-
s174(1)/(2)	s174(1)	Fine	-	Fine	2 yrs	s110(3) [b]	s110(5)	Fine	-	-	-
						s110(2) [b]	s110(5)	Fine	-	-	-

[a] WA2003
[b] EA1995

Table 6: Brief comparison of changes to offences and penalties. Under the Environmental Permitting Regulations enforcement undertakings are applicable to all offences, also see proposal 12 on civil sanctions for more detail.

We propose to adopt the powers of entry provision under the Environment Act 1995 to align abstraction and impounding activities with other regimes under the Environmental Permitting Regulations.

We propose that the powers of entry provision that covers the misuse of water from underground sources is either referenced or incorporated into the Environment Act 1995 power of entry provisions.

Powers of entry give the Environment Agency a wide range of essential legal powers to enter onto land or premises in order to assess compliance with environmental protection legislation.

Currently the powers of entry for abstraction and impounding sit within the WRA 1991. Sections 169 to 174, together with the supplementary provisions within Schedule 20 to the WRA 1991 cover powers of entry. Abstraction and impounding are not specifically referred to within these sections and the powers will continue to apply to certain other functions under the WRA 1991 even when we have moved to the Environmental Permitting Regulations.

In aligning with Environmental Permitting Regulations, we propose that abstraction and impounding activities be subject to the same powers of entry and inspection as other regimes under the Environmental Permitting Regulations, sections 108-110 of the Environment Act 1995. This will align abstraction and impounding with other regimes under the Environmental Permitting Regulations that already use the powers of entry provisions under the Environment Act 1995. This will also be beneficial in terms of Environment Agency internal processes as there won't be a need to separate out the powers of entry provisions between abstraction and impounding activities and other regimes under the Environmental Permitting Regulations. A beneficial example of this would be that the Environment Agency would only need one set of documents/notices/paperwork for powers of entry for all Environmental Permitting Regulations regimes.

Whilst both the WRA 1991 and EA 1995 contain similar powers of entry provisions, the latter contains both additional and a more robust sets of powers, particularly around what can be undertaken once on and around a premises. In respect of section 71 of the Water Industry Act 1991 there is a cross over with the Water Industry Act 1991 Schedule 6 with regards to powers of entry. We propose to ensure that the powers of entry provision that covers the misuse of water from underground sources is either referenced or incorporated into the EA 1995 power of entry provisions on transition to the Environmental Permitting Regulations.

We propose to maintain the emergency specific abstraction and impounding 'exemption' and move it into the Environmental Permitting Regulations as an 'exclusion'.

Under sections 29 and 32 WRA 1991 and regulations 4 and 10 Water Abstraction and Impounding (Exemptions) Regulations 2017, abstraction and impounding can be undertaken in the event of an emergency without the requirement of a licence.

The following is a summary of the current emergency specific exemptions:

- emergency abstractions in connection with land drainage activities,
- emergency abstractions to prevent immediate danger from certain operations,
- firefighting and the testing of equipment for that purpose,
- emergency abstractions by navigation, harbour and conservancy authorities; and
- construction or alteration of impounding works in emergencies.

As has been set out within **proposal 7** all current abstraction and impounding 'exemptions' (including those relating to emergencies) will be moved across into the Environmental Permitting Regulations. These will continue to be excluded from regulation and thus will be termed as 'exclusions' under the Environmental Permitting Regulations.

Regulation 40(1) of the Environmental Permitting Regulations provides a defence for any actions undertaken in an emergency, where:

- a permit would normally be needed to carry out that activity,
- a condition of a permit was breached; or
- failure to comply with an issued notice.

For the defence to apply, the overarching reason must be that the action was undertaken to avoid danger to human health. In addition to this all reasonably practicable steps must have been taken to minimise pollution and the regulator must have been notified as soon as was reasonably practicable.

We propose that by retaining the current emergency specific exemptions definitions and moving them into the Environmental Permitting Regulations we do not need to adopt Regulation 40 of the Environmental Permitting Regulations for abstraction and impounding activities. We consider that this approach is preferable so that it continues to be clear under what circumstances an emergency abstraction or impounding activity will apply as emergencies for abstraction and impounding would be set out within their respective schedules. There will also be the ability to create new abstraction and impounding activity exclusions (in circumstances of emergency) within the Environmental Permitting Regulations should this be needed.

With regard to drought permits, drought orders or emergency drought orders, the legislative provisions in respect of these will continue to apply under the WRA 1991 and will not be subject to any provision under the Environmental Permitting Regulations.

Proposal 14 – Public Register

Section 189 of the WRA 1991 and regulation 34 of the 2006 Regulations require the Environment Agency to keep a public register of all applications for abstraction and impounding licences and decisions on those applications. The public register contains:

- details of the applicant,
- a brief summary of the proposal,
- key dates such as the decision date; and
- information on any changes to a licence, e.g. requests for revocation, transfer, vesting, or apportionment.

Sections 191A and 191B of the WRA 1991 specify exclusions from all registers kept or maintained under the WRA 1991 for information affecting national security and certain confidential information respectively. Regulation 34 specifies which information is to be contained on the register. Entries, including failed applications under sections 191A and 191B, must be made on the register within 14 days from the relevant date (for licence applications) or from receipt for other activities. The public register must be available for inspection by members of the public and we do this by making it accessible at a number of our offices; either as a paper or electronic record.

The Environmental Permitting Regulations also requires the Environment Agency to maintain a public register under Part 5 regulations 45 to 56 however, the requirements are more comprehensive. Paragraphs 1 to 4 of Schedule 27 to the Environmental Permitting Regulations further sets out what details must be kept within the register. Exclusions from any register kept or maintained by the Environment Agency are detailed in regulations 47 and 48 of the Environmental Permitting Regulations.

The public register must contain the following information, as set out under Schedule 27 to the Environmental Permitting Regulations:

- a copy of all applications to grant, vary, transfer or surrender a permit,
- any notice requesting further information,
- all representations made in respect of an application (unless a request to omit the representation is accepted),
- every determination or notice of a decision on an application,
- every notice relating to enforcement, revocation or suspension of a permit,
- all documents pertaining to an appeal,
- all information obtained through monitoring and/or that is required by the conditions on the permit,
- all information resulting from the discharge of permit conditions and as a result of compliance with relevant notices,

- all reports produced by the Environment Agency to assess the environmental impact of an installation,
- a copy of any direction given to the Environment Agency by an appropriate authority; except in matters of national security,
- details of any convictions, enforcement or formal caution in respect to an existing permit; or failure to apply for a permit,
- Details of any fees and charges.

The Environmental Permitting Regulations also specifically excludes from the public register information affecting national security which could include, for example, the details of the precise location of a borehole used for public water supply. Similarly, information may be withheld from the public register where it is considered that it is commercially confidential; this could include, for example, information about the quantity of water used within a novel industrial process.

We propose to adopt the Environmental Permitting Regulations approach to maintaining the public register for applications and permits for a water abstraction or impounding activity. Adopting the Environmental Permitting Regulations approach would not place any more burden on the abstractor than is currently the case. This change to approach will result in an increase in the amount of information that the Environment Agency is required to place on the public register and bring abstraction and impounding into line with the other Environmental Permitting Regulations regimes. The existing public register will be available for inspection by members of the public.

Proposal 18 – Protected Rights, Derogation and Lawful Use

Currently, full abstraction licences and some exempt (unlicensed) abstractions attract protected rights under section 39A WRA 1991.

The Environment Agency has a statutory duty not to derogate (without the consent of the licence holder) from a protected right when granting or varying an abstraction or impounding licence. The definition of derogation is about preventing someone from abstracting water to the extent permitted by their licence (or a qualifying exemption). As an example, the Environment Agency is unable to grant a new abstraction licence upstream of an existing abstraction with protected rights if it would prevent them from abstracting the full quantities of water stated in their abstraction licence (or exemption) as it would be considered to derogate from their protected right to abstract.

If the Environment Agency grants or varies a licence which derogates from an abstraction with a protected right the owner of the protected right can claim compensation from the Environment Agency under section 60 of the WRA 1991. Derogation from a protected right is unique to abstraction and impounding legislation and there is no similar provision within the Environmental Permitting Regulations.

We propose including the current section 39A WRA 1991 definition of what is a protected right in the Environmental Permitting Regulations for abstraction and impounding activities.

We also propose retaining the duty of the Environment Agency not to derogate from existing protected rights when choosing to grant or vary a permit for an abstraction or impounding activity. This would be with the exception of an application for a permit for a groundwater investigation abstraction activity; see **proposal 5** for more detail. The liability of the Environment Agency to pay compensation if it grants or varies a permit which derogates a protected right would also be brought into the Environmental Permitting Regulations. These proposals will maintain the rights of existing licence holders (i.e. transitional permit holders) and will be available to future abstractors in new permits.

Currently within abstraction and impounding legislation the Secretary of State can direct the Environment Agency to grant or vary a licence which would cause derogation from a protected right. For example, they may consider it necessary to do this where a proposed abstraction was in the public interest. In these circumstances the holder of the protected right can claim compensation from the Environment Agency.

We propose that these provisions are included within the Environmental Permitting Regulations for abstraction and impounding on transition.

We propose to move across to the Environmental Permitting Regulations the existing provisions for abstraction and impounding activities:

- the duty for the Environment Agency to 'have regard to' existing lawful uses when granting a new abstraction and impounding permit.

Transfer and temporary abstractions, as well as many unlicensed abstractions, do not attract protected rights and are instead considered lawful uses under sections 21(4) and (5) and 39 WRA 1991. Full abstraction activities are also existing lawful uses.

The Environment Agency must consider abstractions that are existing lawful uses when it chooses to grant or vary an abstraction or impounding licence and the Environment Agency can, having given due consideration to the potential effect, decide to grant a licence even if it would impact an existing lawful use abstraction.

We propose that these provisions are included within the Environmental Permitting Regulations for abstraction and impounding.

Proposal 19 – Applying for a permit

We propose to adopt the Environmental Permitting Regulations approach to applying for a permit for a water abstraction or water impounding activity.

In addition to the current Environmental Permitting Regulations approach, we propose to include a 28 day relevant period in the Environmental Permitting Regulations to allow for applications for a permit for a temporary abstraction activity.

Under section 34 of the WRA 1991 and Part 2 of the supporting 2006 Regulations, a person can apply to the Environment Agency for an impounding licence or an abstraction licence using the applicable forms; the Environment Agency has a duty to make a decision on that application.

Regulation 5 of the 2006 Regulations allows a period of 21 days to check whether the application is valid, which means that it contains all of the right technical information and supporting documentation to allow the Environment Agency to make an informed decision. If it can be accepted as valid, the relevant date can be set and determination of the application can begin. The relevant date is the date upon which the Environment Agency will start to work on the application.

Once the relevant date is set the Environment Agency is required to make a decision (under regulation 10) on an abstraction or impounding licence application within a determination period of:

- 3 months if advertising is not required; or
- 4 months if advertising is required.

The Environment Agency has a period of 28 days to make a decision on a temporary abstraction licence application.

The current regulations also prescribe at which of the different stages the Environment Agency must write to the applicant with key information about their application. If the applicant needs to provide more information to allow a decision to be made this has to be carried out during the determination period. The applicant can also agree to extend the determination period. Should the Environment Agency fail to reach a decision and notify the applicant within the determination period, the applicant can appeal directly to the Secretary of State for non-determination.

There is a similar process under the Environmental Permitting Regulations (paragraphs 15 and 16 of Schedule 5). The Environmental Permitting Regulations do not specifically prescribe how to deal with an application in the way that the current abstraction and impounding legislation does; other than by stating that the Environment Agency must grant or refuse a 'duly made' application (paragraph 12(1) of Schedule 5). Instead the Environmental Permitting Regulations rely on the Environmental Permitting Guidance - Core Guidance document to inform them how to decide whether a valid application has

been made and the steps that must then take place. How to decide whether a valid application has been made and the steps that must then take place.

In the Environmental Permitting Regulations there is no 'relevant date'; the Environmental Permitting Regulations uses the term 'duly made' when referring to accepting a valid application. A valid and duly made application should give all the information needed to make a determination. The duly made date is the date on which the valid application was received – there is no 21 day period for the technical checks to take place as there is under the current regime.

Once a duly made application is made the Environment Agency is required to then make a decision on the application within a relevant period (the determination period) under paragraph 15 of Schedule 5 of:

- 3 months if no public participation (the equivalent of advertising) is required; or
- 4 months if public participation is required.

The applicant can also agree to extend the relevant period to allow for further work to take place.

	Current WRA process	The Environmental Permitting Regulations process
Period allowed for the technical checks on the application to take place.	Up to 21 days	N/A
Work commences on the application.	The determination period starts up to 21 days after a valid application is received. This is the relevant date.	The relevant period starts on the date on which a valid application is received. This is the duly made date.
Period allowed to make a decision on an application where advertising/public participation is required.	4 months	4 months
Period allowed to make a decision on an application where advertising/public participation is not required.	3 months	3 months
Period allowed to make a decision on an application for a temporary abstraction licence.	28 days	28 days

Table 7. Timeline summary table

In the Environmental Permitting Regulations the relevant period is the time allocated to the Environment Agency to make a decision on the application. Under the current system under the WRA 1991 this is referred to as the determination period.

If, during the relevant period, it is decided that further supporting information is required from the applicant the Environmental Permitting Regulations allows the Environment Agency to halt the relevant period by serving a notice (paragraph 4 of Part 1 of Schedule 5 to the Environmental Permitting Regulations) on the applicant requesting that the information is submitted by a specified date. If the information is not submitted, the application is regarded to have been withdrawn.

Under paragraph 15 of Schedule 5, at the end of the relevant period the application is deemed to have been refused if the Environment Agency has not made a decision on the application and a notice has been served by the applicant. The applicant then has a right of appeal against the deemed refusal.

We propose to adopt the Environmental Permitting Regulations approach to application for a water abstraction or water impounding activity. In addition to the current Environmental Permitting Regulations approach we propose to include a new 28-day time limit for determination of applications for a temporary licence.

We propose to adopt the Environmental Permitting Regulations approach for referring permit applications to the appropriate authority.

We propose to amend the Environmental Permitting Regulations so that the appropriate authority (Secretary of State in England) has regard to lawful uses and derogation from protected rights in their determination of applications.

The current abstraction and impounding legislation for referral of applications to the Secretary of State is in sections 41 and 42 WRA 1991. Within the Environmental Permitting Regulations referrals of applications to the Secretary of State is in Regulation 63.

Under current abstraction and impounding legislation, the appropriate authority (Secretary of State in England) can request that an application is referred to them for determination; this may be for particular applications or for certain types of application. The Secretary of State can decide to grant or refuse the application as they consider appropriate but must consider lawful uses and derogation from protected rights. There is opportunity for both the applicant and the Environment Agency to make representations to the Secretary of State. In these cases, the Environment Agency is instructed by the Secretary of State to either grant or refuse the application.

Under the Environmental Permitting Regulations, the Secretary of State can also request that an application is referred to them for determination and they can instruct the Environment Agency to either grant or refuse it.

We propose to adopt the Environmental Permitting Regulations approach to referrals to the Secretary of State and include in the Environmental Permitting Regulations the requirement for the Secretary of State to take into account lawful uses and protected rights when considering an application for a permit for an abstraction or impounding activity.

We propose to move across to the Environmental Permitting Regulations the entitlement to apply (rights of access) provisions for a water abstraction activity.

Under Section 35 WRA 1991 all applicants must have an 'entitlement to apply' when they apply for a licence to abstract water of any type. This also applies to applications to transfer or apportion an existing (full or transfer) licence. To meet this requirement the applicant must either have:

- a right of access,
- a prospective right of access; or
- occupy the land.

This does not apply for an application for an impounding licence.

Entitlement to apply checks are required to confirm that an applicant has sufficient legal basis to abstract and to ensure any riparian owners would not have their basic rights of property affected.

We consider that rights of access checks are fundamental to the underlying principles of water resources management and propose that they should be retained. No such specific provision currently exists within the Environmental Permitting Regulations however permits do contain conditions stating that other plans or permissions might be required to conduct an activity.

We propose that it will be a requirement of the Environmental Permitting Regulations that a permit for a water abstraction activity state the purpose for which the abstraction of water is authorised.

Under section 46 WRA 1991 there is a requirement to include the purpose of the abstraction on the licence. The purpose details how the water is to be used, for example spray irrigation or water bottling. In part this is used to help establish the potential water loss from the environment as a result of that abstraction. In addition to this, section 57 WRA 1991, which details the special requirements for spray irrigation purposes in circumstances of emergency variation, also requires the purpose to be stated.

Within the Environmental Permitting Regulations, the Environment Agency can include any conditions on the permit which are deemed to be suitable (paragraph 12(2) Schedule 5. The different regimes in the Environmental Permitting Regulations currently detail what

the purpose or use of the activity covered under the permit is, for example – discharge of secondary treated sewage effluent or what waste operation is being conducted on site.

Abstraction purpose and loss is also linked to how the Environment Agency manages our water resources and administers the current subsistence based charging scheme. In addition, as part of compliance checks undertaken by the Environment Agency, one of the requirements is to check that water is being used for the purpose as specified on the licence.

We propose that the requirement to state the abstraction purpose will be retained when abstraction and impounding moves into the Environmental Permitting Regulations for a permit for a water abstraction activity.

We propose to retain the provisions of section 38 WRA 1991 that covers the general consideration of applications.

Section 38 WRA 1991 is concerned with the consideration of applications and contains specific abstraction and impounding provisions which are essential to abstraction and impounding licensing.

Specifically section 38 WRA 1991 concerns:

- public participation,
- licence renewals,
- protected rights and derogation,
- the applicant justifying their need for water; and
- bulk supplies.

We propose to retain those parts of section 38 WRA 1991 where there are currently no similar Environmental Permitting Regulations provisions and carry these across into the Environmental Permitting Regulations. These include the consideration of protected rights and derogation; the justification of the need for water and bulk supplies.

We propose to carry across to the Environmental Permitting Regulations the ability for the Environment Agency to serve a notice on an applicant where it is considered the wrong type of abstraction activity has been applied for.

Currently section 36A WRA 1991 allows the Environment Agency to serve a notice on an applicant where they consider that they have applied for the wrong type of abstraction licence; for example where they have applied for a full abstraction licence when a transfer licence would be more appropriate. The Environment Agency would then determine the

application for what they consider is the correct type of licence. The applicant has a right of appeal against this notice.

There is no equivalent process under the Environmental Permitting Regulations. If an applicant applied for the wrong Environmental Permitting Regulations permit activity the Environment Agency would work with the applicant to determine the correct activity.

We propose to retain the ability to serve an application notice as it is possible that some applicants may apply for a permit for a full abstraction activity where a transfer abstraction activity would be better suited. For example, if the Environment Agency were to issue a permit for a full abstraction activity rather than a transfer abstraction activity it might risk curtailing the ability of the Environment Agency to grant further abstraction permits upstream due to the potential for derogation from a protected right associated with the erroneously granted permit for a full abstraction activity.

There are circumstances where it may be appropriate for a water transfer to attract protected rights, such as where the transfer is supporting a wetland, or is later re-abstracted for public water supply; in these circumstances the applicant can make a case to the Environment Agency that a permit for a full abstraction activity should be issued for an activity which meets the definition of a transfer abstraction activity.

We propose to bring across into the Environmental Permitting Regulations the ability for the Environment Agency to serve a notice on an applicant where they consider the applicant has applied for the wrong abstraction activity, the Environment Agency would then, subject to the outcome of any appeal, determine the application for the correct abstraction activity.

Proposal 24 - Compensation

Under section 61 WRA 1991 if the Environment Agency proposes to revoke or vary an abstraction licence, and the licence holder objects and the objection is not upheld by the Secretary of State, the Environment Agency is liable to pay the licence holder compensation if this causes them to suffer loss or damage (in accordance with the relevant legislation).

Compensation is not payable:

- if it is shown that no water was abstracted pursuant to the licence for 4 years prior to the date on which the proposals were made (section 61(4) of the 1991 Act);
- if the licence is held by a water company (Section 61(1) of the 1991 Act as amended by section 58 of the Water Act 2014);
- if the licence is expressed to have a minimum value and it is to be reduced to its minimum value, subject to certain other conditions applying (section 61(4A) and (4B) of the 1991 Act); and
- if the licence was granted before 1 April 2006, the licence is expressed to remain in force until revoked and the Secretary of State is satisfied that the revocation

or variation is necessary in order to protect from 'serious damage' to any of the following: any inland waters, any water in underground strata, any underground strata, or any flora or fauna dependent on any of them (section 27 of the Water Act 2003 (the 2003 Act)). 'Serious damage' is not defined in legislation. Defra's policy as to what constitutes "serious damage" is set out in a consultation response published in November 2012.

In the **main consultation document in proposal 24** we explained that when a permit holder voluntarily applies for some variations the permit holder will be issued with an Environmental Permitting Regulations permit which does not contain any statutory compensation rights. If the variation applied for falls under a 'minor change' such as a change of name, or there is a benefit to the environment or reduction in risk to the environment from the proposed variation, then the Environmental Permitting Regulations permit issued will retain the statutory compensation rights for any future variation or revocation. We propose that where one of the following variations is applied for an Environmental Permitting Regulations permit will be issued that retains statutory compensation rights for any future variation or revocation:

- change of trading title/address,
- change of name or change of address,
- change of measurement from hours run x pump capacity or other means to a meter,
- rewording a permit to make the meaning clearer without substantive change,
- altering imperial units to metric units,
- removing a condition relating to the area of land on which water may be used, where there are no other changes and we are not concerned about any possible disadvantage. For example, we might be concerned about disadvantage if the licence affected a designated conservation area,
- updating the permit map where the abstraction point has been changed but is within the existing National Grid Reference,
- splitting permits with multiple sources,
- change of means of abstraction which is comparable to what went before (e.g. diesel pump to electric pump),
- taking off an abstraction point where separate quantities are not specified for each point.
- a reduction in abstraction quantities,
- a change or removal of a purpose where the impact on the environment is neutral or improved,
- a change or removal of a point/reach where the impact on the environment is neutral or improved,
- a change to an abstraction period where the impact on the environment is neutral or improved.

Table 5 How offences, penalties and civil sanctions map from the water resource legislation to the Environmental Permitting Regulations

Current Offence	Current penalty	Current Civil Sanction	New Offence	New penalty
Section 24(4)(a) offence in relation to: **Section 24(1)(a) and (b)** To (a) abstract without a licence, or other than in accordance with a licence or a Groundwater Investigation Consent (GIC) or abstract without a valid exemption or (b) cause or permit any other person to do the same. **Section 24(2)** To construct, extend, install or modify any works, apparatus or machinery for the purpose of abstraction of groundwater without, or other than in accordance with a licence, a groundwater investigation consent or a valid exemption or cause or permit any other person to do the same.	**s24(5)**	**FMP, VMP, CN, RN, SN, EU**	**Reg 38(1)(a)** (referring back to Regulation 12(1)) Operate a regulated facility except under and to the extent authorised by an environmental permit. This will also apply to abstractors who are not the holders under transitional arrangements of s24(1)(b).	**39(2)**
Section 24(4)(b) Failure of a licence holder to comply with other conditions of a licence.	**s24(5)**	**FMP, VMP, CN, RN, SN, EU**	**Reg 38(2)** Fail to comply with or contravene a permit condition.	**39(2)**
Section 25(2)(a) offence in relation to: **Section 25(1)(a)** To begin to construct or alter impounding works without a licence or cause or permit any other person to do the same. **Section 25(1)(b)** To impound water without a licence or to cause or permit any other person to do the same.	**s25(3)**	**FMP, VMP, CN, RN, SN, EU**	**Reg 38(1)(a)** (referring back to Regulation 12(1)) Operate a regulated facility except under and to the extent authorised by an environmental permit.	**39(2)**
Section 25(2)(b) Failure of a licence holder to comply with the conditions of an impounding licence.	**s25(3)**	**FMP, VMP, CN, RN, SN, EU**	**Reg 38(2)** Fail to comply with or contravene a permit condition.	**39(2)**

Section 25C Failure to comply with an enforcement notice served under Section 25A of the 1991 Act**.**	**s25C(2)**	**VMP**	**n/a** **Section 25A notice not being retained under the Environmental Permitting Regulations**	**n/a**
Section 4 of WA2003 Failure to comply with an impounding works notice served under Section 4(1) WA 2003.	**s4(5)**	**VMP**	**Reg 38(3)** We are proposing to retain the use of s4 notices and bring across to the Environmental Permitting Regulations.	**39(2)**
--	**--**		For new enforcement and suspension notices and remediation notice for abstraction and impounding: **Reg 38(3)** To fail to comply with the requirements of a notice.	**39(2)**
			Section 110(2) EA1995 Failure to comply with any requirement imposed under Section 108. Failure/refusal to provide facilities or assistance reasonably required by an EA officer. Prevent any other person from appearing before or from answering any questions to an EA officer.	**s110 (5)**
Section 201(3) Failure to supply information required by a Section 201 notice in the 1991 Act, requesting information for carrying out WR functions.	**s201(3)**	**VMP**	**Reg 38(4)(a)** Fail to comply with a Regulation 61(1) information notice. 201(3) will remain in the 1991 Act for other functions.	**39(4)**
Section 206(1) Knowingly or recklessly making materially false statements. Example: In support of a licence application	**s206(5)**	**VMP**	**Reg 38(4)(b)** Knowingly or recklessly make a statement which is false or misleading: in purported compliance with a requirement to provide information imposed by or under these regulations; or for a permit application, transfer, renewal, variation or surrender; or for obtaining, renewing or amending the registration of an exempt facility. s206 will remain in the 1991 Act for other functions, e.g. drought	**39(4)**

Section 206(3A) Intentionally making a false entry in any record required to be kept under an abstraction licence.	**s206(5)**	**VMP**	**Reg 38(4)(c)** Intentionally make a false entry in a record required to be kept under an environmental permit condition. s206 will remain in the 1991 Act for other functions, e.g. drought	**39(4)**
Section 206(3) Wilfully altering or interfering with a meter, gauge or other required under the provisions of a licence.	**s206(5)**	**VMP**	**Copy section 206(3) into the Environmental Permitting Regulations, suggested to include under 38(4)** s206 will remain in the 1991 Act for other functions, e.g. drought.	**39(4)**
Section 173 & Sched. 20, Paragraph 7 Obstructing an EA Officer exercising powers of entry.	**Sched 20, para 7**	**VMP**	**Section 110(1) EA1995** Obstruction of EA officer. s173 and Sched.20, para 7 will remain in the 1991 Act for other functions.	**s110(4)(a)** **s110(4)(b)**
Section 174 Impersonating an EA officer.	**s174**		**Section 110(3) EA1995** Falsely pretend to be an authorised person. s174 will remain in the 1991 Act for other functions.	**s110 (5)**
--	**--**		New for abstraction and impounding as a result of adopting powers of entry in EA 1995. **Section 110(2)** Failure to comply with any requirement imposed under Section 108. Failure/refusal to provide facilities or assistance reasonably required by an EA officer. Prevent any other person from appearing before or from answering any questions to an EA officer.	**s110(5)**
Section 217(1) and (2) Criminal liability of directors, managers and secretaries in relation to offences that their company (body corporate) is guilty of and which are proved to have been committed with the consent, connivance or attributable to their neglect. Liability of members of a body corporate where they manage the company affairs.	**--**		**Reg 41(1) and (2)** Liability of directors, managers and secretaries in relation to offences that their company (body corporate) is guilty of and which are proved to have been committed with the consent, connivance or attributable to their neglect. Liability of members of a body corporate where they manage the company affairs.	**--**