
STATUTORY INSTRUMENTS

2016 No. 0000

WATER RESOURCES, ENGLAND AND WALES

The Water Resources (Transitional Provisions) Regulations 2016

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Laid before the National Assembly for Wales</i>	***
<i>Coming into force</i> - -	***

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SCHEDULE — Application for and determination of licences
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The Secretary of State, in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations in exercise of the powers conferred by—

- (a) sections 34, 36A(5), 37(1), (4) and (6), 37A, 43(2)(a) and (3), 44(3)(a), 45, 59, 189 and 219(2)(f) of the Water Resources Act 1991(a); and
- (b) sections 103(1) to (3), 103(7) and 104(4) and (6) of the Water Act 2003(b).

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Water Resources (Transitional Provisions) Regulations 2016 and come into force on [Commencement Date].

Interpretation

2.—(1) In these Regulations—

“the 2006 Regulations” means the Water Resources (Abstraction and Impounding) Regulations 2006(c);

“abstraction” has the meaning given by section 221 and “abstract” is to be construed accordingly;

“the appropriate agency” means, in relation to Wales, the Natural Resources Body for Wales, and otherwise, the Environment Agency;

“the appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;

“inland waters” and “source of supply” have the meanings given by section 221;

“licence” means a licence to abstract water under Chapter 2 of Part 2;

“the restriction on abstraction” has the meaning given by section 72(1).

(2) In these Regulations—

- (a) any reference to a provision is, unless the context otherwise requires, a reference to a provision of the Water Resources Act 1991;

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- (a) 1991 c. 57. The power to make Regulations under this Act was transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (references to the Water Resources Act 1991 in that Schedule are treated as references to that Act as amended by the Water Act 2003 (c. 37) by virtue of section 100(6) of the Water Act 2003). Those functions were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). See also amendments to the Water Resources Act 1991 made by article 4(1)(a) and paragraphs 264 to 315 of Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)) making provision for the transfer of certain functions in relation to Wales from the Environment Agency to the Natural Resources Body for Wales. See section 221(1) for the definition of “prescribed”.
 - (b) 2003 c. 37. The power to make regulations under section 103 of this Act was conferred, by virtue of section 103(7), on the National Assembly for Wales in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, those functions were transferred to the Welsh Ministers.
 - (c) S.I. 2006/641, as amended by S.I. 2008/165.

- (b) any reference to an application for a licence includes a reference to an application for a variation of an existing licence;
- (c) any reference to the grant or refusal of a licence includes a reference to a grant or refusal of a variation of an existing licence.

PART 2

Transitional licence provisions

Scope of this Part

3.—(1) This Part applies to any person who—

- (a) in the four years prior to [Commencement Date] abstracted water—
 - (i) from a source of supply, or
 - (ii) from any of the inland waters of the Rivers Tweed, Esk or Sark (or their tributaries) in England,and who did not require a licence for that abstraction; or
- (b) is a successor to such a person.

(2) In paragraph (1)(b), “successor” means a person to whom a person described in paragraph (1)(a) transfers title, where the transfer of title—

- (a) is a transfer of title to the property from which water was abstracted as described in paragraph (1)(a) in the four years prior to [Commencement Date];
- (b) includes irrevocable transfer of the lawful right to abstract water as described in paragraph (1)(a) from that property; and
- (c) has effect on any date during the period beginning [Commencement Date] and ending [Commencement Date + two years].

Transitional procedures for applications by persons other than the appropriate agency

4.—(1) Any person (other than the appropriate agency) who—

- (a) falls within the scope of this Part, and
- (b) applies for a licence before [Commencement Date + two years],

must apply for that licence in accordance with the Schedule to these Regulations instead of in accordance with Part 2 of the 2006 Regulations, and any such application must be determined in accordance with that Schedule.

(2) If any person to whom this Part applies, applies for a licence under the 2006 Regulations before [Commencement Date + two years] in respect of an abstraction not within the scope of regulation 3(1), that person must—

- (a) disclose to the appropriate agency when so applying that they have abstracted water as described in regulation 3(1); and
- (b) must provide such additional information as the appropriate agency may reasonably require to perform its functions under the 2006 Regulations.

Transitional procedure for applications by the appropriate agency

5.—(1) If the appropriate agency falls within the scope of this Part and applies for a transfer licence before [Commencement Date + two years], paragraph 2(3) of Schedule 2 to the 2006

Regulations is modified so that the appropriate agency is not required to specify the quantity of water to be abstracted in the notice published in accordance with section 37.

(2) In paragraph (1), “transfer licence” has the meaning given by section 24A(1)(b)(a).

Continuation of abstraction during transitional period

6. Notwithstanding the restriction on abstraction, a person may continue to carry out any abstraction of water described in regulation 3—

- (a) if the person applies for a licence in respect of that abstraction, until the date on which that application (including any appeal under section 43) is determined; or
- (b) if no such application is submitted, until [Commencement Date + two years].

Register of licences

7.—(1) The register required to be kept by the appropriate agency under section 189(b) must contain, for each application for a licence submitted in accordance with this Part—

- (a) the name and address of the applicant;
- (b) the date of the application and brief particulars of its proposals;
- (c) particulars of any decision of the appropriate agency or the appropriate authority on the application (including the decision on any appeal) and the date of that decision;
- (d) the date of any licence granted;
- (e) the date on which that licence expires; and
- (f) the particulars of any notice of appeal.

(2) Subject to paragraphs (3) and (4), the appropriate agency must enter in the register—

- (a) the information referred to in paragraph (1)(a) and (1)(b) within 28 days of receipt of a valid application (as defined in paragraph 6 of the Schedule);
- (b) the information referred to in paragraph (1)(c) to (1)(e) within 28 days of a decision on an application;
- (c) the information referred to in paragraph (1)(f) within 28 days of receiving a notice of appeal.

(3) If any of the information in paragraph (1) falls to be determined under section 191A (national security)(c) and the appropriate authority determines that it should be included in the register, the appropriate agency must enter it within 28 days of receiving notice of that determination.

(4) If any of the information in paragraph (1) falls to be determined under section 191B (exclusion from registers of certain confidential information)(d) and is determined not to be commercially confidential, the appropriate agency must enter it in the register—

- (a) if no notice of appeal is served, within 28 days of the end of the period within which notice of appeal against that determination may be served;
- (b) if a notice of appeal is served, within 28 days of the date on which the appropriate agency receives notification of the determination or withdrawal of the appeal.

(5) The appropriate agency must record in the register the date each entry is made.

(6) The appropriate agency may keep the register, or any part of it, electronically.

(a) Section 24A of the Water Resources Act 1991 was inserted by section 1(1) of the Water Act 2003.

(b) Section 189 was amended by S.I. 2013/755.

(c) Section 191A was inserted by paragraph 170 of Schedule 22 to the Environment Act 1995 (c. 25).

(d) Section 191B was inserted by paragraph 170 of Schedule 22 to the Environment Act 1995.

PART 3

Compensation

Scope of this Part

8.—(1) This Part applies to any person, other than a public authority, who applies for a licence under these Regulations.

(2) In paragraph (1), “public authority” means any of the following—

- (a) a Minister of the Crown;
- (b) the Welsh Ministers;
- (c) a public body (including a government department, a local authority and a local planning authority, and any body, apart from the Natural Resources Body for Wales, to whom functions are transferred by virtue of an order made under the Public Bodies Act 2011(a));
- (d) a person holding an office—
 - (i) under the Crown;
 - (ii) created or continued in existence by a public general Act; or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament; and
- (e) a statutory undertaker.

(3) In paragraph (2)—

“local authority” means—

(a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council, a county borough council or a community council;

“local planning authority” has the same meaning as in the Town and Country Planning Act 1990(b);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975(c);

“statutory undertaker” means a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990.

Payment of compensation

9.—(1) The appropriate agency must pay compensation to any person falling within the scope of this Part—

- (a) whose application for a licence is—
 - (i) refused by the appropriate agency; or
 - (ii) granted by the appropriate agency but in respect of an abstraction of more limited extent than that person applied for;
- (b) whose appeal under section 43 in respect of a decision referred to in sub-paragraph (a) is dismissed by the appropriate authority;
- (c) who has suffered loss and damage as a result; and

(a) 2011 c. 24.

(b) 1990 c. 8; the definition of “local planning authority” was amended by section 18(3) and (4) of the Local Government (Wales) Act 1994 (c. 19) and section 31(1) of the Greater London Authority Act 2007 (c. 24).

(c) 1975 c. 26.

(d) who applies to the appropriate agency for compensation within the deadline specified in regulation 10.

(2) Paragraph (1) does not apply where the reason for a decision referred to in paragraph (1)(a) is that it is necessary in order to protect from serious damage—

- (a) any inland waters;
- (b) any water contained in any underground strata;
- (c) any underground strata themselves; or
- (d) any flora or fauna dependent on any of sub-paragraphs (a) to (c).

(3) In paragraph (1), an abstraction of more limited extent does not include a Qn95 hands-off flow constraint or 75% of Qn99 hands-off flow constraint on a licence.

(4) In this regulation—

“the Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(a);

“Qn95 hands-off flow constraint” means, in the event that the abstraction is from a body of inland waters or a body of groundwater where the recent actual flow or quantitative status of the source of supply does not support good ecological status or good quantitative status, a condition imposed by the appropriate agency on a licence which provides that the holder of the licence must cease the abstraction if—

- (a) the flow in the source of supply to which the licence relates, or
- (b) in the case of groundwater to which the licence relates, the flow in inland waters dependent on that groundwater,

is equal to or falls below the natural flow that is exceeded 95% of the time in that source of supply or inland waters;

“75% of Qn99 hands-off flow constraint” means, in the event that the abstraction is from a body of inland waters or a body of groundwater where the recent actual flow or quantitative status of the source of supply supports good ecological status and good quantitative status, a condition imposed by the appropriate agency on a licence which provides that the holder of the licence must cease the abstraction if—

- (a) the flow in the source of supply to which the licence relates, or
- (b) in the case of groundwater to which the licence relates, the flow in inland waters dependent on that groundwater,

is equal to or falls below 75% of the natural flow that is exceeded 99% of the time in that source of supply or inland waters;

“good ecological status” means the ecological status of a body of surface water which meets the classification in Annex V to the Directive;

“good quantitative status” means the quantitative status of a body of groundwater which meets the status defined in table 2.1.2 of Annex V to the Directive;

“underground strata” has the meaning given by section 221.

Deadline for receipt of applications

10. An application for compensation must be made to the appropriate agency within six years of the determination of the appeal by the appropriate authority under section 44.

Disputed compensation

11.—(1) Any question of disputed compensation must be referred by the person who made the application for compensation in regulation 10 to the Upper Tribunal for determination.

(a) OJ No L 327, 22.12.2000, p1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p32).

(2) The provisions of section 4 of the Land Compensation Act 1961(a) apply, subject to any necessary modifications, in relation to the determination of any such compensation.

Calculation of compensation

12.—(1) For the purpose of assessing compensation in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules in sections 5 and 5A of the Land Compensation Act 1961(b), so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where an interest in land is subject to a mortgage—

- (a) compensation is to be assessed as if the interest were not subject to the mortgage;
- (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the mortgagor;
- (c) compensation is only payable to any mortgagee of the interest in respect of the interest which is subject to the mortgage;
- (d) compensation which is payable in respect of the interest which is subject to the mortgage is to be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by that mortgagee as if it were the proceeds of sale of the interest.

Date *Name*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Date *Name*
Minister for Natural Resources, one of the Welsh Ministers

(a) 1961 c. 33; section 4 was amended by S.I. 2009/1307.
(b) Section 5 was amended by sections 70 and 84 of, and paragraph 1 of Schedule 15 and Part 3 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34), and S.I. 2009/1307. Section 5A was inserted by section 103 of the Planning and Compulsory Purchase Act 2004 (c. 5) and amended by S.I. 2009/1307.

SCHEDULE

Regulation 4

Application for, and determination of, licences

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PART 1

Application for a licence

Submission of licence applications

1. An application for a licence must be submitted to the appropriate agency.

Information to be included in an application

2. An application must include—
 - (a) details of any abstraction from the source of supply that is the subject of the application carried out in the four years prior to [Commencement Date];
 - (b) such other information, including maps, as the appropriate agency may reasonably require to determine the application.

Manner of application

- 3.—(1) An application must be—
- (a) made on a form issued by the appropriate agency for the purpose or electronically in a format accessible by the appropriate agency;
 - (b) accompanied by any fee payable under section 41(1)(a) of the Environment Act 1995^(a).
- (2) The form referred to in sub-paragraph (1)(a) and the information referred to in paragraph 2 must be provided in duplicate unless—
- (a) the appropriate agency agrees to accept a single copy; or
 - (b) the form and the information are provided electronically.

Provision of additional information in support of the application

4. The appropriate agency may, following receipt of an application, require the applicant to submit any further information or reports that it considers necessary to determine that application.

Type of application

5. The appropriate agency may decide that—
- (a) an application for a new licence ought to be for a variation of an existing licence, or
 - (b) an application for a variation of an existing licence ought to be for a new licence,
- and may proceed with the application accordingly.

PART 2

Determination of applications

Interpretation

6. In this Part, “valid application” means an application that complies with the provisions of paragraphs 1 to 4.

Provision of information to the applicant

7.—(1) The appropriate agency must, by [Commencement Date + 3 1/2 years], provide the applicant with the following information in relation to a valid application—

- (a) whether a notice of the application has been or will be published in accordance with section 37(1)^(b);
- (b) the date by which the applicant must be notified of the appropriate agency’s decision on the application;
- (c) the applicant’s entitlement to appeal, in accordance with section 43(1)(b), against any failure by the appropriate agency to give notice, within the time period prescribed by paragraph 10(1), of its decision on the application.

(2) But if, when it receives the application, the appropriate agency serves a notice on the applicant under section 36A^(c), and the applicant appeals against that notice, the appropriate agency must provide the information referred to in sub-paragraph (1) by [Commencement Date + 3 1/2 years] or within 28 days of the final determination of that appeal, whichever is the later.

(a) 1995 c. 25; section 41(1)(a) was amended by S.I. 2013/755.

(b) Section 37 was substituted by section 14(1) of the Water Act 2003.

(c) Section 36A was inserted by section 13(1) of the Water Act 2003.

Publication of an application

8.—(1) For the purposes of section 37(1), notice of an application must be published in at least one newspaper circulating in the locality of the proposed point of abstraction and on the appropriate agency’s website.

(2) The notice must be published by—

- (a) [Commencement Date + 3 ½ years]; or
- (b) if there is an appeal under section 36A in relation to the application, within 28 days of the determination of that appeal or by [Commencement Date + 3 ½ years], whichever is the later.

(3) The notice must specify—

- (a) the name of the applicant;
- (b) the type of licence being applied for;
- (c) the purpose of the abstraction;
- (d) the point of abstraction;
- (e) the period over which abstraction will take place;
- (f) in the case of an application for a full licence, the quantity of water to be abstracted;
- (g) where and when the application documents and the register containing details of the application may be inspected, and that such inspection is free of charge; and
- (h) the address to which any representations in relation to the application should be sent.

(4) The notice must not include any information that is to be excluded from a register by virtue of section 191A or 191B.

(5) The requirements of section 37(1) and (2) do not apply to any application if the appropriate authority notifies the appropriate agency that complying with those requirements in relation to that application would be contrary to the interests of national security.

(6) The requirements of section 37(1) and (2) may be dispensed with if it appears to the appropriate agency that the proposed abstraction would have no appreciable adverse effect on the environment.

(7) In sub-paragraph (3), “full licence” has the meaning given by section 24A(1)(a)(a).

Abstraction in National Parks or the Broads

9.—(1) This paragraph applies in the case of a valid application relating to abstraction in the area of a National Park or the Norfolk or Suffolk Broads.

(2) The appropriate agency must serve notice in writing of that application on the National Park authority for that Park or the Broads Authority, as the case may be, by [Commencement Date + 3 ½ years].

(3) The notice must include—

- (a) a copy of the application; and
- (b) a statement that that National Park authority or the Broads Authority may make representations in writing to the appropriate agency in relation to the application within three months, beginning on the date on which the notice is served.

(4) The appropriate agency—

- (a) must not decide on the application before the end of the three month period referred to in sub-paragraph (3)(b); and
- (b) must have regard to any representations made by the National Park authority or the Broads Authority when deciding on the application.

(a) Section 24A was inserted by section 1(1) of the Water Act 2003.

(5) This paragraph does not apply if the appropriate authority notifies the appropriate agency that giving such notice would be contrary to the interests of national security.

Notification of a decision

10.—(1) The appropriate agency must, by [Commencement Date + 5 years], notify the applicant in writing of its decision on an application for a licence.

(2) If the appropriate agency grants a licence on terms that are different in any material respect from the application, or refuses an application, the notification must—

- (a) include a statement of the appropriate agency's reasons for doing so; and
- (b) state the applicant's entitlement to appeal under section 43(1).

PART 3

Appeals procedure

Appeals to the Secretary of State under section 36A(4) (decision on type of abstraction licence)

11.—(1) The period within which any notice of appeal under section 36A(4) must be served is 28 days from the date on which notice of the decision to which the appeal relates is served on the applicant.

(2) A notice of appeal under section 36A(4) must state the grounds of appeal and be accompanied by a copy of—

- (a) the application to which the appeal relates;
- (b) any information or report submitted to the appropriate agency with the application;
- (c) the notice of the decision on the application; and
- (d) all other relevant correspondence with the appropriate agency.

Appeals to the Secretary of State under section 43 (decision on licence application)

12.—(1) For the purposes of section 43(3)(b), the prescribed period for serving a notice of appeal is 28 days.

(2) A notice of appeal under section 43 must state the grounds of appeal and be accompanied by a copy of—

- (a) the application to which the appeal relates;
- (b) any information or report submitted to the appropriate agency with the application;
- (c) the notice of the decision on the application, if any; and
- (d) all other relevant correspondence with the appropriate agency.

(3) The appropriate agency must, within 14 days of receiving a notice of appeal under section 43, serve a copy of that notice on—

- (a) any person who within the period referred to in section 37(4)(b) made representations in writing in relation to the application; and
- (b) any National Park authority or the Broads Authority served with a notice in accordance with paragraph 9(2) that, within the period referred to in paragraph 9(3)(b), made representations in writing in relation to the application.

(4) When serving a copy of a notice of appeal, the appropriate agency must notify the recipient in writing—

- (a) that the recipient may make further representations in writing in relation to the appeal;
- (b) of where any such representations must be sent; and

(c) of the date by which those representations must be received.

Prescribed periods

13.—(1) The prescribed period for the purposes of section 44(3)(a) is 21 days from the date on which notice of appeal is served on the persons referred to in section 43(5).

(2) The prescribed period for the purposes of section 45(2)(b) is 21 days from the date on which notice of appeal is served on the National Park authority or the Broads Authority.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations contain transitional provisions relating to the licensing of water abstraction by certain categories of persons, in the light of amendments made by the Water Act 2003 (c. 37) to the Water Resources Act 1991 (c. 57) (“the 1991 Act”). Those amendments, which come into force on the same date as these Regulations, limit or remove certain exemptions from the restriction on abstracting water in the 1991 Act.

Part 2 of, and the Schedule to, these Regulations set out the procedural requirements for making and determining certain licence applications and appeals. Regulation 3 provides that these requirements only apply to applicants who, in the four years before the coming into force of these Regulations, carried out an abstraction to which the restriction on abstraction did not apply, including an abstraction from any of the inland waters of the Rivers Tweed, Esk or Sark that are in England. Successors may also apply in certain circumstances. Regulation 4 provides that applications from persons falling within the scope of these Regulations must be made in accordance with the Schedule to these Regulations, instead of the provisions in Part 2 of the Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641) (“the 2006 Regulations”). Licence applications from the Environment Agency and Natural Resources Body for Wales (the “Regulators”) for previously exempt activities must be made in accordance with the normal application process for those Regulators in Part 3 of the 2006 Regulations. Regulation 5 provides a transitional procedure for such applications from the Regulators so that the notice of the application does not have to specify the amount of water to be abstracted.

Regulation 6 permits a person to continue the abstraction during the two year application process until their application for a licence is determined.

Regulation 7 makes provision for completion of the register required by section 189 of the 1991 Act, in respect of licence applications covered by these Regulations.

Part 3 provides for the payment of compensation to certain persons whose application for a licence is refused or granted but in respect of an abstraction of more limited extent than applied for. Regulation 9 sets out the classes of persons to whom compensation is payable. Regulation 9 sets out the circumstances in which compensation is payable, including describing the circumstances which do not qualify as an abstraction of more limited extent. Regulation 10 provides that applications for compensation must be made to the relevant Regulator within six years of the determination of an appeal under section 44 of the 1991 Act. Regulation 11 provides that any question of disputed compensation is to be determined by the Upper Tribunal.

A Regulatory Impact Assessment (“RIA”) was produced in connection with the Water Act 2003. This RIA set out the impacts of removing exemptions from the restriction on abstraction to which these Regulations relate. A further impact assessment was produced in respect of new authorisations for water abstraction in August 2015. Copies of the RIA and that impact assessment can be obtained from the Water Resources Management Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR and from the Water Branch, the Welsh Government, Cathays Park, Cardiff, CF10 3NQ. Both are published alongside the Explanatory Memorandum on www.legislation.gov.uk.