
STATUTORY INSTRUMENTS

2016 No. 0000

WATER RESOURCES, ENGLAND AND WALES

The Water Resources (Exemptions) Regulations 2016

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

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SCHEDULE — Areas to which regulation 8(1) applies

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 sections 33A and 219(2)(f) of the Water Resources Act 1991(a).

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“the 1991 Act” means the Water Resources Act 1991;

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(b);

“conservation site” means—

(a) a site appearing on the list provided to the European Commission pursuant to regulation 10(5) of the 2010 Regulations(c);

(b) a special area of conservation within the meaning of regulation 11 of the 2010 Regulations;

(c) a special protection area or proposed special protection area within the meaning of regulations 12A and 12B, respectively, of the 2010 Regulations;

(d) in so far as not falling under sub-paragraph (e), a wetland designated under the Ramsar Convention, within the meaning of section 37A of the Wildlife and Countryside Act 1981(d);

(e) a site of special scientific interest confirmed by the Natural Resources Body for Wales or Natural England pursuant to section 28(5)(b) of the Wildlife and Countryside Act 1981(e);

(f) an area designated by order by the Natural Resources Body for Wales or Natural England under section 7 of the National Parks and Access to the Countryside Act 1949(f);

(g) a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949(g).

“managed wetland system” means—

(a) an area of land that is periodically inundated or saturated by abstracted water in order to provide ecological benefits to flora and fauna; or

(a) 1991 c. 57; section 33A was inserted by section 9 of the Water Act 2003 (c. 37). The functions under sections 33A and 219(2) were transferred, in relation to Wales, to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), with references to the Water Resources Act 1991 in that Schedule treated as referring to that Act as amended by the Water Act 2003, pursuant to section 100(6) of the Water Act 2003. The functions of the National Assembly for Wales 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).

(b) S.I. 2010/490, amended by S.I. 2011/603, 635, 2012/637, 1927 and 2013/755 (W. 90).

(c) The list is available on the website http://ec.europa.eu/environment/nature/natura2000/sites_hab/biogeog_regions.

(d) 1981 c.69; section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c. 37).

(e) Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 and amended by paragraph 79 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16) and paragraph 2(1) and (2) of Schedule 13 to the Marine and Coastal Access Act 2009 (c. 23). References to Natural England in section 28 have effect as if they were references to the Natural Resources Body for Wales in relation to land in Wales by virtue of section 27AA of the Wildlife and Countryside Act 1981.

(f) 1949 c.97. Functions conferred on Natural England under section 7 as respects England (or areas of any description in England) were conferred on the Natural Resources Body for Wales as respects Wales (or areas of a similar description in Wales) by virtue of section 4A of the National Parks and Access to the Countryside Act 1949.

(g) Section 21 was amended by paragraph 15 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 and Schedule 30 to the Local Government Act 1972 (c.70).

- (b) an area of land through which abstracted water flows, through a system of channels, sluices, carriers or other apparatus in order to provide ecological benefits to flora and fauna;

“normal tidal limit” means the normal tidal limit as marked on the Ordnance Maps (1:25,000 scale);

“protected species” means—

- (a) a European protected species within the meaning of regulation 40(1) of, and Schedule 2 to, the 2010 Regulations;
- (b) a species designated under section 9 of, and Schedule 5 to, the Wildlife and Countryside Act 1981(a); and
- (c) a species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006(b) or by the Welsh Ministers under section 42 of that Act(c).

(2) In these Regulations, references to alteration, in relation to impounding works, include the removal or partial removal of those works and cognate expressions are construed accordingly.

Navigation, harbour and conservancy authorities and dry docks

3.—(1) The restriction on abstraction does not apply to any abstraction of water that is carried out by, or on behalf of, a navigation authority, harbour authority or conservancy authority if—

- (a) the purpose of the abstraction is a transfer, without intervening use, of water from any inland waters downstream of the normal tidal limit to that authority’s water system; and
- (b) the water is abstracted at any time other than in the hour before or in the hour after low tide at the point of abstraction.

(2) The restriction on abstraction does not apply to any abstraction of water that is carried out if—

- (a) it is for the purpose of a transfer of water, without intervening use, into a dry dock from a water system of the authority for use within that dry dock; or
- (b) it is from that dry dock back into the same water system.

(3) In this regulation, “water system” has the meaning given by sections 26(4)(a) and (5) of the 1991 Act(d).

Small scale dewatering in the course of building or engineering works

4.—(1) The restriction on abstraction does not apply to any abstraction of water or series of abstractions of water carried out in the course of building or engineering works for the purpose of dewatering from a sump or excavation if—

- (a) either the first or second set of conditions is met;
- (b) the abstraction is temporary and in any event carried out over no more than one continuous period of [six] months;
- (c) the abstraction does not cause damage to a conservation site or specific features in such a site; and
- (d) the abstraction does not cause damage to protected species.

(2) The first set of conditions is—

- (a) the abstraction is undertaken at least 500 metres from a conservation site and at least 250 metres from a spring, well or borehole used to supply water for any lawful use; and

(a) Section 9 was amended by paragraph 5 of Schedule 12 to the Countryside and Rights of Way Act 2000. Schedule 5 was amended in relation to England and Wales by S.I. 1988/288, 1989/906, 1991/367, 1992/2350, 1998/878, 2007/1843, 2008/431, 1927 (W. 183), 2172 and 2011/2015.

(b) 2006 c.16.

(c) Section 42 was amended by S.I. 2013/755.

(d) Section 26(4) and (5) was inserted by section 5 of the Water Act 2003.

- (b) the water is either immediately discharged to a soakaway or, where the water is not immediately discharged to a soakaway, the volume of water abstracted is less than 100 cubic metres of water per day.
- (3) The second set of conditions is—
- (a) the abstraction is undertaken up to 500 metres from a conservation site or up to 250 metres from a spring, well or borehole used to supply water for any lawful use; and
 - (b) the water is either immediately discharged to a soakaway or, where the water is not immediately discharged to a soakaway, the volume of water abstracted is less than 50 cubic metres of water per day.

Surface water abstraction in the course of building or engineering works

5. The restriction on abstraction does not apply to any abstraction or series of abstractions of surface water carried out for the purpose of temporary diversion of inland waters in order to prevent interference with building or engineering works, if the following conditions are met—

- (a) the abstraction is temporary and in any event carried out over no more than one continuous period of [six] months;
- (b) the abstraction does not cause damage to a conservation site or specific features in such a site;
- (c) the abstraction does not cause damage to protected species; and
- (d) the water abstracted is immediately discharged downstream of the building or engineering works.

Abstraction in the course of dredging

6.—(1) The restriction on abstraction does not apply to any abstraction of water in the course of dredging —

- (a) in any inland waters downstream of the normal tidal limit; or
- (b) in any inland waters upstream of the normal tidal limit, if that dredging is carried out by, or on behalf of, any authority in the exercise of its functions in those inland waters.

(2) In paragraph (1), “authority” means the Environment Agency, the Natural Resources Body for Wales, any navigation authority, harbour authority, conservancy authority, any internal drainage board or any local authority.

Abstraction within a managed wetland system

7. The restriction on abstraction does not apply to any abstraction of water within a managed wetland system if—

- (a) the abstraction is for the sole purpose of the management, operation or maintenance of water levels or flows in that managed wetland system; and
- (b) the appropriate agency has given consent in writing to the abstraction in accordance with regulation 99(1)(d) of the 2010 Regulations.

Abstraction from specified saliferous strata

8.—(1) The restriction on abstraction and the other restrictions imposed by section 24(2) of the 1991 Act do not apply to the abstraction of water from the saliferous strata underlying the surface of the land in the areas listed in the Schedule to these Regulations(a).

(2) In paragraph (1), “saliferous strata” means strata which (whether in their natural state or when water is artificially introduced) yield an aqueous solution with a salt content of more than 100,000 milligrams per litre.

(a) These areas are delineated on a map available from the Environment Agency at www.environment-agency.gov.uk.

Construction of impounding works in emergencies

9.—(1) The restriction on impounding works does not apply to the construction or alteration of impounding works carried out in an emergency where the works are undertaken by the appropriate agency pursuant to its powers as enforcement authority under section 16 of the Reservoirs Act 1975(a).

(2) The restriction on impounding works does not apply to the construction or alteration of impounding works carried out in an emergency where the works are undertaken by any other person, if the conditions in paragraph (3) are met.

(3) The conditions are that the appropriate agency has given—

- (a) written consent to the works; and
- (b) consent where required under regulation 99(2) of the 2010 Regulations.

(4) The appropriate agency may not give consent under paragraph (3)(a) unless it is satisfied that the works are necessary and proportionate measures to prevent an immediate risk of—

- (a) death, personal injury or harm to health of a human being;
- (b) damage to property; or
- (c) damage to the environment.

(5) Paragraphs (6) to (8) apply in a case where the person referred to in paragraph (2) does not seek the appropriate agency's consent under paragraph (3)(a) before carrying out impounding works.

(6) The person referred to in paragraph (2) must give notice to the appropriate agency of—

- (a) the fact that the impoundment has taken place; and
- (b) the reason that person considered that—
 - (i) an emergency had arisen; and
 - (ii) the works were necessary and proportionate measures to prevent an immediate risk of the occurrences listed in paragraph (4).

(7) Notice under paragraph (6) must be given before the end of the period of five days beginning with the date on which the impounding works started.

(8) On receipt of a notice under paragraph (6), the appropriate agency may—

- (a) give consent under paragraph (3)(a) retrospectively; or
- (b) give notice to the person that—
 - (i) in the appropriate agency's opinion an emergency has not arisen; or
 - (ii) that the works are not, or are no longer, necessary for any of the reasons set out in paragraph (4).

(9) If the appropriate agency gives notice under paragraph (8)(b), the restriction on impoundment is to apply to the impoundment works from the time when the notice is served.

Construction of impounding works by internal drainage boards

10. The restriction on impounding works does not apply to the construction or alteration of impounding works within the district of an internal drainage board(b) if—

- (a) such works are constructed or altered by, or on behalf of, that board in connection with its functions; and

(a) 1975 c. 23. The functions of the Environment Agency in Wales under section 16 were transferred to the Natural Resources Body for Wales by virtue of article 4(1) of, and paragraph 119 of Schedule 2 to, the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755 (W. 90)).

(b) Schemes were made under sections 3(1)(a) and 4(3) of the Land Drainage Act 1991 (c. 59) by the Natural Resources Body for Wales and the Environment Agency making provision for the abolition of certain internal drainage boards, the creation of new internal drainage boards and provision that the Natural Resources Body for Wales shall be the drainage board in respect of those new districts. These schemes were confirmed by the Secretary of State and the Welsh Ministers under S.I. 2015/923 and by the Welsh Ministers under S.I. 2015/872 (W. 65).

(b) construction or alteration is commenced after the coming into force of these Regulations.

Construction of impounding works in a managed wetland system

11. The restriction on impounding works does not apply to any impounding works in a managed wetland system if they are works constructed or altered after the coming into force of these Regulations for the sole purpose of the management, operation or maintenance of water levels or flows in that managed wetland system.

Licences

12. A licence to abstract water granted under Chapter 2 of Part 2 of the 1991 Act^(a) ceases to have effect to the extent that it authorises an activity falling within regulation 6 or 7.

Transitional provision regarding managed wetland systems

13. Any person who, in the four years prior to the coming into force of these Regulations, abstracted water from a managed wetland system for the sole purpose of the management, operation or maintenance of water levels or flows in that managed wetland system, may continue that abstraction until—

- (a) the date an application for written consent to that abstraction under regulation 99(2) of the 2010 Regulations is determined by the appropriate agency; or
- (b) if no such application is submitted, [Commencement Date + two years].

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

Date Minister for Natural Resources, one of the Welsh Ministers

(a) Chapter 2 of Part 2 of the Water Resources Act 1991 was amended by Part 1 of the Water Act 2003.

SCHEDULE

Regulation 8(1)

Areas to which regulation 8(1) applies

**The following civil
parishes in the county of
Cheshire—**

Acton	Coole Pilate	Odd Rode
Agden	Crewe Green	Peckforton
Allostock	Darnhall	Peover Inferior
Alraham	Davenham	Peover Superior
Alsager	Delamere	Pickmere
Anderton with Marbury	Dodcott cum Wilkesley	Plumley
Arclid	Doddington	Poole
Ashley	Edleston	Ridley
Aston By Budworth	Egerton	Rostherne
Aston Juxta Mondrum	Faddiley	Rudheath
Audlem	Great Budworth	Rushton
Austerson	Great Warford	Sandbach
Baddiley	Hampton	Siddington
Baddington	Hankelow	Smallwood
Barthomley	Hartford	Snelson
Batherton	Haslington	Sound
Basford	Hassall	Sproston
Beeston	Hatherton	Spurstow
Betchton	Haughton	Stanthorne
Bexton	Henbury	Stapeley
Bickerton	Henhull	Stoke
Bickley	Hough	Tabley Inferior
Blakenhall	Hunsterson	Tabley Superior
Bostock	Hurleston	Tarporley
Bradley	Knutsford	Tatton
Bradwall	Lea	Tilstone Fearnall
Brereton	Little Bollington	Tiverton
Bridgemere	Little Budworth	Toft
Brindley	Little Warford	Tushingam cum Grindley
Broomhall	Lostock Gramam	Utkinton
Buerton	Lower Withington	Walgherton
Bulkeley	Macefen	Wardle
Bunbury	Marbury cum Quoisley	Warmingham
Burland	Marston	Weston
Byley	Marshall	Wettenhall
Calveley	Marton	Whitegate and Marton
Checkley cum Wrinehill	Mere	Wigland
Chelford	Middlewich	Willaston
Chidlow	Millington	Wimboldsley
Cholmondeley	Mobberley	Wincham
Cholmondeston	Moreton cum Alcumlow	Winsford
Chorley	Moston	Wirswall
Chorlton	Moulton	Worleston
Church Lawton	Nantwich	Wrenbury cum Frith
Church Minshull	Nether Alderley	Wybunbury
Comberbach	Nether Peover	
Congleton	Newbold Astbury	
	Newhall	
	Norbury	
	Northwich	
	Oakmere	

**The following civil
parishes in the county of
Shropshire—**

Whitchurch Rural
Whitchurch Urban
Whixall
Woore

**The following civil
parishes in the county of
Staffordshire—**
Audley Rural
Balterley

Betley

**The following civil
parishes in Trafford
District—**

Dunham Massey
Warburton

**The following civil parish
in Manchester District—**

Ringway

**The following civil parish
in Warrington—**

Lymm

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations provide for exemptions from the restriction on abstraction and the restriction on impounding works in the Water Resources Act 1991 (c. 57).

The Regulations provide exemptions (subject to certain conditions) for—

- (a) the transfer of water by a navigation, conservancy or harbour authority to that authority's water system and the transfer of water for use in a dry dock (regulation 3);
- (b) dewatering in the course of building or engineering works (regulation 4);
- (c) the abstraction of surface water in the course of building and engineering works (regulation 5);
- (d) the abstraction of water during dredging (regulation 6);
- (e) the abstraction of water within a managed wetland system for the management, operation or maintenance of water levels or flows in that managed wetland system (regulation 7); and
- (f) the abstraction of water from saliferous strata in the brinefields in areas listed in the Schedule (regulation 8(1)).

The Regulations provide exemptions from the restriction on impounding works in the case of the construction of impounding works—

- (a) undertaken in an emergency to avoid, or reduce the threat of, imminent loss of human life or damage to property or the environment (regulation 9);
- (b) in the area of an internal drainage board, if they are constructed by that board after the date these Regulations come into force (regulation 10); and
- (c) in a managed wetland system after the date these Regulations come into force, for the management, operation or maintenance of water levels or flows in that managed wetland system (regulation 11).

A Regulatory Impact Assessment (“RIA”) was produced in connection with the Water Act 2003 (c. 37). This RIA set out the impact 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.