



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Changes to water abstraction licensing exemptions

**Government response to the 2009 consultation and further
consultation on implementing the abstraction elements of
the Water Act 2003**

January 2016





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<https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions>

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Executive summary

Water is a precious resource. It is essential for people and the environment. It is vital to the economy, our health and well-being and it is used to generate power to run industries and grow food. Access to clean, safe and secure water supplies is fundamental to society. As a result of the competing demands for water many areas of England and Wales are placing significant pressure on their sources. With climate change and population growth that pressure is expected to increase.

Water abstraction is the process of taking water directly from surface water, such as rivers, or ground water. Abstraction can significantly affect both water flow and level, with impacts on the water body and the environment it supports. This is why most abstractions are licensed. However, as the water abstraction licensing system in England and Wales has developed over several decades certain abstractions have remained exempt from licensing control.

The current abstraction licensing system in England and Wales has been in place since the 1960s. At the end of 2000, the Water Framework Directive¹ was adopted and this included a requirement that Member States introduce measures to control the abstraction and impoundment of water. Member States could exempt abstractions and impoundments from that control where there was no significant impact on water resource standards. The Water Act 2003 subsequently introduced a number of changes to further comply with the Directive by amending the Water Resources Act 1991.

Presently, exempt abstractors benefit as they can legally take an unlimited supply of water, while licensed abstractors are subject to controls. Some of these exempt abstractions are causing environmental damage, including in areas already water stressed, but are able to go on unchecked. This makes it difficult for the Regulators² to manage water resources effectively. We recognise however that these exempt abstractions have taken place lawfully and as we move forward our intention is to balance the needs of all abstractors and the environment.

To create a level playing field for all abstractors **the UK and Welsh Governments will end most exemptions from water abstraction licensing control and bring these abstractions into the licensing system.** The abstractors we are bringing into licence control are generally referred to as **'New Authorisations'** for the purposes of this policy. Abstractions that are considered low risk will remain exempt.

Ending most exemptions from water abstraction licensing is part of the wider work being undertaken by UK and Welsh Governments and the Regulator to better manage our water resources in a sustainable way, now and for future generations.

¹ Water Framework Directive: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l28002b>.

² The Environment Agency is the Regulator in England and Natural Resources Wales is the Regulator in Wales.

Reform of the abstraction management system in England and Wales is another part of this work. In 2013 the UK and Welsh Governments issued a joint consultation³ on proposals for abstraction reform and have continued to work with interested parties since then to develop these proposals further. The UK and Welsh Governments responses to the 2013 consultation have been recently published and set out plans for reforming the system in England and Wales respectively⁴, balancing the needs of different business users and the environment.

Our policy approach to ending most exemptions from water abstraction licensing recognises that all abstractors should be treated fairly, both now as we bring these exemptions to an end and in future under the reformed abstraction system.

The policy background

In 2009, the UK and Welsh Governments jointly consulted on ‘implementing the abstraction elements of the Water Act 2003’⁵ (the 2009 consultation). The 12 week consultation invited responses from anyone with an interest in water abstraction and its impact on the environment. We sought views on removing and creating exemptions from abstraction licence control in England and Wales.

Consultation responses were received from a range of sectors and a summary of these were published later in 2009⁶. We had intended to bring changes into force in 2009 following the consultation, at the same time as commencing the various sections of the Water Act 2003. However, while responses to the consultation were largely supportive they also highlighted some complex issues which the UK and Welsh Governments have since worked to address. This has involved taking account of interested parties’ views and wider policy developments concerning the management of our water resources, which are set out in [Part I](#) of this document.

In order to ensure consistency and clarity **this document contains a government response to the 2009 consultation in [Part I](#) and a further consultation to explain and invite views on our revised proposal and the remaining questions in [Part II](#)**. The further consultation in Part II is being undertaken with the additional partnership of the Environment Agency and Natural Resources Wales⁷ both of whom will be directly involved in the implementation of the proposed policy approach.

³ Consultation on abstraction reform: <https://consult.defra.gov.uk/water/abstraction-reform/>.

⁴ UK Government response for England: <https://www.gov.uk/government/consultations/reforming-the-water-abstraction-management-system-making-the-most-of-every-drop> and Welsh Government response: <http://gov.wales/consultations/environmentandcountryside/making-the-most-of-every-drop/?skip=1&lang=en>.

⁵ 2009 consultation paper and relevant attachments, which includes a summary of responses: <http://webarchive.nationalarchives.gov.uk/20091205011114/http://www.defra.gov.uk/corporate/consult/water-act/index.htm>.

⁶ See above.

⁷ Natural Resources Wales are a Welsh Government sponsored body, which became operational from 1 April 2013[3] when it took over the management of the natural resources of Wales.[It was formed from a merger of the Countryside Council for Wales, Environment Agency Wales, and the Forestry Commission Wales, and also assumes some other roles formerly taken by Welsh Government.

The proposed changes

We propose to start the process to bring New Authorisations into the licensing system in 2016 to allow sufficient time to place all abstractors on a level playing field before reform.

The normal licensing threshold of 20m³/day will apply, **including in previously exempt areas**. Those abstracting more than 20m³/day will need to apply for an abstraction licence. Those abstracting less than 20m³/day will continue to be exempt.

The exemptions we will end are:

- transferring water from one inland water system to another in the course of, or as the result of, operations carried out by a navigation, harbour or conservancy authority;
- abstraction of water into internal drainage districts;
- dewatering mines, quarries and engineering works;
- warping (abstraction of water containing silt for deposit onto agricultural land so that the silt acts as a fertiliser);
- all forms of irrigation (other than spray irrigation, which is already licensable), and the use of land drainage systems in reverse (including transfers into managed wetland systems) to maintain field water levels;
- abstractions within currently geographically exempt areas, including some rivers close to the borders of Scotland; and
- the majority of abstractions covered by Crown and visiting forces.

Following responses to the 2009 consultation **we propose allowing two years for abstractors to apply for their licences**. The Regulator will determine all applications within three years from the end of the application period.

The Government expects the Regulator to take a light-touch, risk based approach to licensing these abstractions. **Licences will be granted with conditions to protect rivers during very low flows and in line with volumes abstracted over the four years preceding the exemption removal**. Abstractions will only be significantly curtailed or refused where there is a risk of serious damage to the environment. Potential evidence to support applications could include meter readings, pump ratings, invoices for equipment, photos of infrastructure, or business receipts/contracts.

The Government expectation is that **the Regulator will normally grant licences with a time limit to the relevant common end date**⁸, in keeping with its published position. Once within the licensing system, these abstractions will be dealt with alongside all other abstractions. This will include becoming subject to proposals to remove time limits as part of the transition to a reformed system. Charging provisions for previously exempt abstractors are included in the Regulators' current charging schemes.

The policy approach also considers any potential compensation liabilities. **We expect to make provision for compensation to be paid for loss or damage arising from a refused or constrained application, but not where:**

- the abstraction is causing serious damage; or
- a "hands off flow"⁹ condition is included in the licence.

We do not intend to include applications for new or increased abstractions (planned abstractions) in our transitional arrangements and there will not be compensation provisions for these. This is because if we were to make provision for future (increased) abstractions we consider this would confer a more favourable position on previously exempt abstractions than enjoyed by licensed abstractors. Applications for additional abstractions can be made through the usual application process.

Next steps

The consultation will close on 8 April 2016. Following consultation we will analyse the responses and use these to inform our final policy proposal. The UK and Welsh Governments, the Environment Agency and Natural Resources Wales are working together closely so the changes can take place at the same time in England and Wales.

⁸ Time limits are normally set by reference to the Regulator's Catchment Abstraction Management Strategies, which provide details of common end dates, when all time limited licences in a catchment are reviewed. Depending on when the licences are granted, the normal duration can range between 6 and 18 years.

⁹ "Hands off flow" conditions restrain abstraction when water levels are low. For example, a licence could restrain abstraction where river flow is at or below the flow that is exceeded 95% of the time.

Introduction

1. [Part I](#) of this document sets out the UK and Welsh Governments' response to the 2009 consultation¹⁰ on implementing the abstraction elements of the Water Act 2003¹¹. [Part II](#) of this document is a further consultation undertaken by the UK and Welsh Governments, the Environment Agency and Natural Resources Wales on revised and more detailed elements of the proposed policy. These revisions are intended to reflect the responses to the 2009 consultation, further engagement with interested parties and wider related policy and legislative developments in the intervening period.
2. We recognise that a significant period of time has elapsed since we last consulted on our intended policy approach to end most exemptions from abstraction licensing control and bring these abstractors (referred to as 'New Authorisations') into the water abstraction licensing system.
3. We also hope to demonstrate how we have listened to your concerns such as where we have extended the application period for New Authorisations from one year to two years, and where we have already undertaken further consultation, such as in regard to our proposals around the withdrawal of compensation on the grounds of Serious Damage¹².
4. The consultation questions are set out throughout the policy proposal and are listed at [Annex A](#). We are particularly interested in views on:
 - the small scale dewatering exemption period ([Question 1](#));
 - our revised approach to planned abstractions ([Questions 2-4](#));
 - evidence requirements for the licence application ([Question 5](#));
 - the inclusion of hands off flow conditions on the licences ([Questions 6-10](#));
 - transfer licence volumes ([Question 11](#));
 - compensation funding ([Questions 12-14](#)); and
 - general comments on the proposals ([Questions 15-17](#)).

¹⁰ 2009 consultation paper and relevant attachments, which includes a summary of responses: <http://webarchive.nationalarchives.gov.uk/20091205011114/http://www.defra.gov.uk/corporate/consult/water-act/index.htm>.

¹¹ Water Act 2003: <http://www.legislation.gov.uk/ukpga/2003/37/contents>.

¹² Consultation on serious damage: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>.

5. This document also sets out how we expect to raise money through abstraction licence charges (from non-water company abstractors) as this may be of interest to abstractors that are already licensed.
6. This consultation concerns those abstractions that are currently exempt from licensing. However, this is part of wider work to manage our water resources more sustainably and continue to tackle the problem of abstractions that have the potential to cause damage to our rivers and groundwater now and in the future.
7. The policy proposal presented in this document sits alongside the policy set out in the UK and Welsh Governments' responses¹³ to their 2013 consultation entitled 'Making the most of every drop – a consultation on reforming the water abstraction management system' which was published in December 2013¹⁴. Reform of the system (Abstraction Reform) aims to create a better, fairer and more modernised approach that will reduce water waste, cut red tape and help businesses to focus on investment and growth. The UK and Welsh Governments are working to implement Abstraction Reform in the early 2020s.
8. Bringing currently unlicensed abstractors into the system is a key stage along the path to Abstraction Reform. New Authorisations will enable the Environment Agency and Natural Resources Wales to manage water resources effectively at a catchment level, ensuring all abstractors are on a level playing field for the transition to the reformed system. We aim to start implementing New Authorisations in 2016 to allow sufficient time for exempt abstractors to come into the system before reform.
9. This consultation will run for 12 weeks from 15 January 2016 to 8 April 2016. This is a joint consultation between the UK and Welsh Governments, Environment Agency and Natural Resources Wales and as such, relates to policy in England and Wales.
10. All references to 'the Minister' in this document refer to the Secretary of State and Welsh Ministers, unless otherwise stated. All references to 'the Regulator' refer to the Environment Agency (for England) and Natural Resources Wales (for Wales). References to 'the Government' refer to UK and Welsh Governments collectively.

Water abstraction background

11. Abstraction of water from rivers and groundwater can significantly affect both water flow and levels. This can have an impact on the water body and the environment it supports. For example, in rivers, the amount and type of sediment

¹³ UK Government response for England: <https://www.gov.uk/government/consultations/reforming-the-water-abstraction-management-system-making-the-most-of-every-drop> and Welsh Government response: <http://gov.wales/consultations/environmentandcountryside/making-the-most-of-every-drop/?skip=1&lang=en>.

¹⁴ See <https://consult.defra.gov.uk/water/abstraction-reform/>.

that is carried and where it is deposited can be affected, which in turn affects the amount and quality of available habitat as well as water quality. The impacts of abstraction can be wide-ranging. It can have a substantial economic impact and affect the environment, including important nature conservation sites and public access to rivers for leisure purposes.

12. We already face challenges in water availability. Many catchments have no spare water that can be allocated for further abstraction.
13. The water abstraction licensing system in England and Wales has developed over several decades but certain abstractions have remained exempt from licensing control. This means that those exempt abstractions can potentially take unlimited amounts of water, irrespective of availability and without regard to impacts on the environment or other abstractors. This can lead to a detrimental impact on water resources and the environment and creates an imbalance in the levels of cost and responsibility placed upon licensed abstractors. To enable the Regulator to manage water resources effectively at a catchment level and to create a level playing field for all abstractors, it is necessary to bring currently exempt abstractions within the licensing system.
14. In recognition of this need to manage water resources effectively, the European Union's Water Framework Directive (WFD)¹⁵ requires Member States to have a system of prior authorisation and control of abstractions and impoundments, other than those that have no significant impact on water status.
15. When the WFD was adopted at the end of 2000, the then Governments consulted extensively on how to implement the changes required to the abstraction licensing system. This resulted in the Water Act 2003. This legislation included provisions to end most abstraction exemptions in England and Wales, whilst retaining or introducing new exemptions for low risk abstractions, e.g. abstractions of less than 20 cubic metres per day (m³/day). It also included provisions for making transitional arrangements for ending exemptions. These provisions allow regulations to be developed for making and determining licence applications to bring existing lawful exempt abstractions under licence control. Draft legislation has been developed to commence the relevant provisions of the Water Act 2003 for bringing New Authorisations into licence control, to make the transitional arrangements for doing so and to create a small number of further low risk exemptions.
16. Charts [1](#) and [2](#) show the estimated number of abstractions that are currently taking place in England and Wales. [Chart 1](#) shows all abstractions, both licensed and unlicensed (licensed abstractors broken down by sector) and shows the proportion of all abstractions that are estimated to fall into the New Authorisations

¹⁵http://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF.

bracket (about 5,000 out of over 26,000), to which the policy outlined in this document will apply. [Chart 2](#) breaks down these estimated New Authorisations abstractions by sector, showing that quarries and mining and managed wetland systems are thought to be the largest New Authorisations sectors, followed by trickle irrigation farms.

Chart 1 estimated number of abstraction licences (number of abstraction licences in force by purpose in England and Wales (2013) and estimated number new authorisations abstractors)

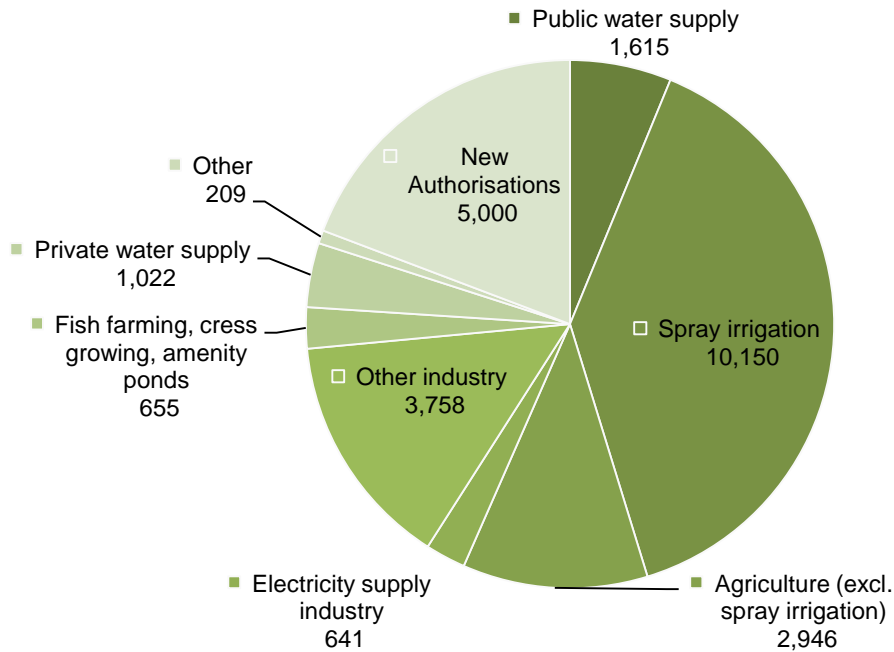
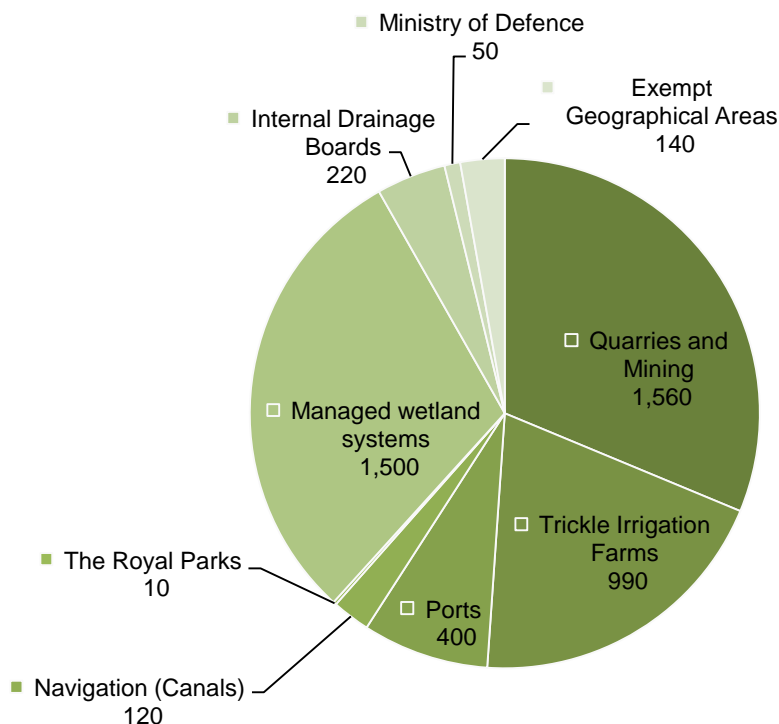


Chart 2 estimated number of new authorisations by activity



Tackling unsustainable abstraction

17. The Regulator has been working with abstractors and other interested parties to put measures in place as part of a wide effort to better manage our water resources sustainably and to help get on the pathway to healthy ecosystems.

River Basin Management Plans

18. The river basin management planning process requires a holistic approach to the protection and improvement of our water environment. River Basin Management Plans (RBMPs) are currently being reviewed, with final updated Plans due for publication early 2016.

19. The process requires the Regulator to understand key pressures, establish statutory objectives for each of our water bodies (more than 5000 in England and less than 1000 in Wales), and put in place cost-effective actions to tackle the pressures in order to aim to achieve Good Status under the Water Framework Directive by 2015, unless use of exemptions to extend the deadline to 2021 or 2027 or to set less stringent objectives can be justified.

20. The updated RBMPs therefore identify where there is a risk that abstractions could cause deterioration of the water environment or prevent improvements. They set out what is needed to achieve sustainable abstraction up to 2021 and whether further action is required up to 2027 and potentially beyond. Meeting water body objectives may require improvements to flow. This will include dealing with unsustainable abstraction, taking account of the costs and benefits of taking such actions.

21. It may take time to realise the benefits of dealing with unsustainable abstraction on the catchment scale but, if effective combinations of measures can be introduced, then we can expect an increase in the number of water bodies supporting a healthy ecology by 2021.

Restoring Sustainable Abstraction

22. The Restoring Sustainable Abstraction process has intensified work to restore sustainable abstraction to our rivers. This programme was set up to address sites that have been identified as having possible abstraction related issues. The Regulator has worked with abstractors to make many voluntary abstraction licence changes and, where necessary, made compulsory changes. It is the Regulators' ambition to deliver the Restoring Sustainable Abstraction programme by 2020.

Serious Damage

23. Section 27 of the Water Act 2003 came into force in July 2012. These provisions enable the Regulator to change or revoke certain licences without compensation payments where this is to prevent serious damage to the environment. The Regulator is using these provisions as it continues to address unsustainable abstractions.

Water Act 2014

24. The Water Act 2014 included a measure to remove water companies' right to statutory compensation for costs resulting from changes to their abstraction licences. This change helps address unsustainable abstraction more effectively at the same time as delivering better value for customers. Water companies now include the costs of ensuring sustainable abstraction and possible licence changes in their normal business planning processes with funding agreed through Ofwat's price review process¹⁶.

Abstraction Reform

25. Looking forward, the Government is working to reform the whole abstraction management system in both England and Wales. We set out the implications of these changes for New Authorisations further in the section on [future abstraction policy](#).

26. In relation to England, the UK Government's 2011 White Paper 'Water for Life'¹⁷ set out its vision for reform of the abstraction management system to make it more responsive to future uncertainty and enable more effective management of England's water resources.

27. The Water Strategy for Wales¹⁸ sets out the Welsh Government's vision to ensure that Wales continues to have a thriving water environment which is sustainably managed to support healthy communities, flourishing businesses and the environment. The Welsh Government want the people of Wales to receive first class, value for money, water services with water used efficiently, safely and respectfully by all. In order to support this vision, the Welsh Government has committed to the reform of the abstraction licensing system in Wales.

¹⁶ Ofwat's price review: <https://www.ofwat.gov.uk/pricereview/>.

¹⁷ Water for Life HM Government White Paper, 2011: <https://www.gov.uk/government/publications/water-for-life>.

¹⁸ The water strategy for Wales, 2015: <http://gov.wales/topics/environmentcountryside/epg/waterflooding/publications/water-strategy/?lang=en>.

28. In 2013, the Government consulted on reform of the water abstraction management system. Both Governments have recently published their responses for reforming the abstraction management system¹⁹.

29. In summary, the new abstraction system will mean:

- **From the early 2020s replacement abstraction permits will be issued with permitted volumes that at least reflect current business use and have a similar reliability to current licences.**
- **At any time when flows are high, abstractors will be able to take water to store it.**
- **All abstractors directly affecting surface water will have conditions on their permits that enable flow based controls to protect the environment.**
- **Abstractors will be able to trade water in a quicker and easier way in catchments where there are potential benefits.**
- **No permits will be time limited, providing a fairer approach.**

30. The Abstraction Reform proposals aim to provide a more flexible and adaptive approach to managing water resources. However, as long as some abstractors were to remain outside of licensing control and were able to abstract without regard to other licensed abstractors or the environment, a reformed system would not be able to maximise the use of available water through flexible and adaptable allocations. This underlines the need for the policy approach to New Authorisations on which we are now consulting.

¹⁹ UK Government response for England: <https://www.gov.uk/government/consultations/reforming-the-water-abstraction-management-system-making-the-most-of-every-drop> and Welsh Government response: <http://gov.wales/consultations/environmentandcountryside/making-the-most-of-every-drop/?skip=1&lang=en>.

Part I - Government response to the 2009 consultation on implementing the abstraction elements of the Water Act 2003

32. In 2009, the UK and Welsh Governments jointly consulted on ‘implementing the abstraction elements of the Water Act 2003’ (the 2009 consultation)²⁰. The 12 week consultation invited responses from anyone with an interest in water abstraction and its impact on the environment. We sought views on:

- removing some exemptions from abstraction licence control and the provisions related to the payment of compensation that could arise from the changes described; and
- creating new exemptions for some low risk abstractions that would otherwise be brought into the licensing system when we implemented the remaining provisions of the Water Act 2003.

33. Forty-one consultation responses were received from a range of sectors and a summary of these were published later in 2009²¹. We had intended to bring changes into force in 2009 following the consultation, at the same time as commencing the various sections of the Water Act 2003. However, while the majority of those who responded agreed with most of the proposals, there were also some complex issues to address, as well as suggestions for further exemptions. These issues have been explored further in the intervening years and the policy in this area has been developed taking account of interested parties’ views.

34. We have therefore considered these issues in some detail, taking account of how wider related policy has developed, while concentrating on developing an approach which is fair for both licensed and unlicensed abstractors and also gathering evidence to support further exemptions. We set out our response to the consultation further below.

35. As set out in the introduction, [Part II](#) of the document requests your views on the policy proposal we revised as a result of the 2009 consultation. These changes reflect the consultation responses we received and take account of wider policy developments, including the then UK Government’s 2011 White Paper ‘Water for Life’²², the Welsh Government’s Strategic Policy Position Statement on Water 2011, the 2012 consultation ‘The Water Act 2003: withdrawal of compensation on

²⁰ 2009 consultation paper and relevant attachments, which includes a summary of responses:

<http://webarchive.nationalarchives.gov.uk/20091205011114/http://www.defra.gov.uk/corporate/consult/water-act/index.htm>.

²¹ See above.

²² Water for Life HM Government White Paper, 2011: <https://www.gov.uk/government/publications/water-for-life>.

the grounds of Serious Damage'²³, the responses to the 2013 consultation on wider Abstraction Reform 'Making the Most of Every Drop'²⁴, the establishment and launch of Natural Resources Wales, the Water Act 2014²⁵ and the Welsh Government's 'Water Strategy for Wales'²⁶, published in May 2015.

Timetable

36. A common concern raised was the implementation timetable and the resource commitment that this would require. Specific concerns were raised that the proposed one year period to submit a licence application to the Regulator was not long enough. **We are therefore proposing to allow two years rather than one year for abstractors to apply for New Authorisations licences.**
37. In addition, **we are proposing to reduce the timeframe for the Regulator to assess and determine applications from five years to three years.**

Exemptions

38. In the 2009 consultation we proposed to create new exemptions that would leave some low risk abstractions outside licence control. Responses were positive about the exemptions and suggested some further exemptions. **We have considered and included the following further exemptions in this policy proposal.** They are:

- small scale abstraction for building and engineering works;
- third-party operated dry docks that transfer water to and from a navigation authority's system;
- impounding works when needed in an emergency; and
- broadening the water meadow exemption to include secondary abstractions within managed wetland systems²⁷.

Ports and harbours

39. A response to the 2009 consultation suggested that all saline abstraction by ports and harbours should be exempt. We looked closely at the 2009 consultation proposal that the exemption should apply to abstractions except in the hour before or after low tide at the point of abstraction. The Regulator remains

²³ Consultation on serious damage: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>.

²⁴ Abstraction Reform consultation, 2013: <https://consult.defra.gov.uk/water/abstraction-reform>.

²⁵ <http://www.legislation.gov.uk/ukpga/2014/21/contents/enacted>.

²⁶ The water strategy for Wales, 2015: <http://gov.wales/topics/environmentcountryside/epg/waterflooding/publications/water-strategy/?lang=en>.

²⁷ We discuss managed wetland systems further in paragraphs 42-44 and 68-71.

concerned that abstractions during these times at certain sites may have an adverse impact on the environment. **We therefore propose that whilst most abstractions from tidal waters into ports and harbours would be exempt from licensing, abstraction during the hour before or after low tide would not be exempt and would require a licence.** A salinity rule was also suggested. However, we believe this would make the legislation complicated and would be difficult to monitor and enforce and so this is not being considered further.

Dredging

40. In consultation responses a concern was raised about whether environmental appraisals for dredging activities included an assessment of damage which may be caused to archaeological sites. As an Environmental Statement is prepared for tidal areas which takes account of archaeology under the Marine and Coastal Access Act 2009, it was felt that there is no need for further legislation in this area. Regarding non tidal rivers, as maintenance dredging will have already removed any artefacts, it is only capital dredging which could do harm, however it seems improbable that control on the abstraction of water would be an effective mechanism to take account of the concerns raised.
41. In response to queries raised, **our proposal is that as a general rule, dredging by third parties, where it is to mitigate against the risk of flooding, would not need to be licensed. However this would need to be determined on a case by case basis by the Regulator.**

Managed wetland systems

42. **We have broadened the exemption for water meadows since the 2009 consultation to include abstraction within other wetlands where water levels are managed** (the primary transfer into the wetland will be licensable). These are collectively referred to as 'managed wetland systems'.
43. There was concern in the responses to the consultation that because a consent under regulation 99 of the Habitats Regulations was required, it automatically placed a requirement for an appropriate assessment to be undertaken. This is not necessarily the case; it will depend on the individual site whether an appropriate assessment is required and the normal processes of assessment under which regulation 61 of the Habitats Regulations applies. Where any managed wetland system abstraction is necessary for conservation management of a European site, it will not require an assessment.
44. In cases where consent is required and the abstraction is necessary to maintain the integrity of the managed wetland system in England, we expect that Natural England will work closely with the Environment Agency to develop streamlined and simple consenting procedures which will not place an unnecessary

administrative burden on applicants. Natural Resources Wales will be responsible for developing consenting procedures in Wales.

Internal Drainage Boards

45. A concern was raised in consultation responses that exemption of Internal Drainage Board (IDB) impounding works could adversely affect the groundwater regime and the preservation potential for archaeological remains. Abstraction for IDBs was part of the debate during the passage of the Water Act 2003 through Parliament. In England, IDBs have environmental duties in the exercise of their functions under the Land Drainage Act 1991, the Wildlife and Countryside Act 1981 and as competent authorities under the Habitats Regulations. We do not believe that the abstraction or impoundment licensing system is the appropriate mechanism to manage or protect local archaeological sites and we propose to include IDBs as an exemption in the new regulations. Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment.

46. As of 1 April 2015, Natural Resources Wales now carries out all of the functions previously undertaken by IDBs in Wales. Where appropriate, Natural Resources Wales would be expected to consult with or include Cadw (the historic environment service of the Welsh Government) in its decision making, in a manner consistent with its wider environmental obligations.

Rail network

47. It was suggested in the responses to the 2009 consultation that the rail network should also be exempt. We do not believe such an exemption could be justified as a low risk abstraction as these ongoing abstractions may have significant impacts on water status. There are also already provisions for emergency abstraction, for example in cases of flooding, but where operations²⁸ are planned to take place as part of a scheme or project a licence should be required.

Communications

48. Respondents requested clear guidance on what abstractors would need to do to comply with the changes, covering both the transitional arrangements and the further exemptions. We agree and **the Regulator will provide guidance to abstractors on what is required by abstractors to comply with these changes.**

²⁸Some projects may meet the requirements of the proposed exemption for temporary construction.

Part II - Further consultation: policy proposal for changes to water abstraction exemptions

49. In addition to the Government Response set out in [Part I](#) of this document, we are also consulting on policy changes that have taken place since the 2009 consultation on implementing the abstraction elements of the Water Act 2003. The policy set out in this section has been developed with the Regulator and revised to take into account views expressed in the 2009 consultation. We are also seeking views on certain aspects of the changes and on proposals for the Regulator's decisions on licences.
50. We intend to end most exemptions from abstraction licensing control and bring these abstractions into the water licensing system. Abstractions that are considered low risk will remain exempt.
51. The Government expects the Regulator to take a light-touch, risk based approach to licensing these abstractions, but in doing so will tackle environmental damage caused by unlicensed abstractions. Our preferred approach is to end exemptions for most of the few remaining exempt abstraction activities, granting a licence in line with recent volumes abstracted where appropriate, and curtailing or refusing licences where there is a risk of serious damage to the environment.
52. Whilst abstractions are outside of the licensing system they restrict the ability of the Regulator to manage water resources effectively for the benefit of all abstractors and the environment in the long term. Overall therefore, it is more beneficial to bring these abstractions within the system as soon as possible, even if some non-serious sustainability issues were not addressed in the short term, than to allow them to continue causing greater environmental damage over the longer term outside of regulatory control.
53. The policy approach recognises that these abstractions have taken place lawfully and that all abstractors should be treated in a fair and consistent manner, both when these abstraction exemptions are ended and when the abstraction is moved into the reformed abstraction system. The approach also considers any potential compensation liabilities if these abstractors were refused or curtailed and the fairness of existing abstraction charge payers funding that liability. The policy proposal aims to balance these different considerations.
54. The flow chart in [Annex B](#) sets out how we propose the licensing process should work.

Which abstractions will be affected?

55. The Water Act 2003 set an exemption for abstractions of 20m³/day or less. This can be varied by the Minister²⁹. This would normally be considered on advice from the Regulator. As agreed in responses to the 2009 consultation, the normal licensing threshold of 20m³/day will apply, including in previously exempt areas³⁰. Those currently abstracting more than 20m³/day will need to apply for an abstraction licence.

56. Other than where we are proposing further exemptions, the abstractions which will no longer be exempt and will therefore need a licence when we commence certain provisions in the Water Act 2003 are:

- transferring water from one inland water system to another in the course of, or as the result of, operations carried out by a navigation, harbour or conservancy authority (by commencing section 5 of the Water Act 2003);
- abstraction of water into internal drainage districts (section 7);
- dewatering mines, quarries and engineering works (section 7);
- warping (abstraction of water containing silt for deposit onto agricultural land so that the silt acts as a fertiliser) (section 7);
- all forms of irrigation (other than spray irrigation, which is already licensable), and the use of land drainage systems in reverse (including transfers into managed wetland systems) to maintain field water levels (section 7);
- abstractions within currently geographically exempt areas (using powers in section 10), including some rivers close to the borders of Scotland (section 73); and
- the majority of abstractions covered by Crown³¹ and visiting forces (section 32).

Exemptions

57. The exemptions we included in the 2009 consultation will remain for certain low risk abstractions:

²⁹ Section 27A of the Water Resources Act 1991 allows the Minister, by order made by statutory instrument, to vary the 20 m³/day abstraction threshold for specific waters or areas.

³⁰ Refer to the draft regulation at Annex F which lists various local exemptions that are being removed. This is available at: <https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions>.

³¹ Paragraph 2(4), Schedule 21 and section 116 of the Environment Act 1995.

- abstraction downstream of the normal tidal limit for ports and harbours, other than in the hour before or after low tide (draft regulation 3 of The Water Resources (Exemptions) Regulations included at Annex E);
- abstraction authorised by the Regulator and any abstraction downstream of the normal tidal limit in connection with dredging operations (draft regulation 6);
- abstraction of water within managed wetland systems and impounding works solely for the management, operation or maintenance of water within managed wetland systems (referred to as 'water meadows' in the 2009 consultation) (draft regulation 7);
- abstraction of water with a high saline content from underground strata in the Cheshire basin (part of an existing exemption given to the former Mersey and Weaver River Authority in 1968) (draft regulation 8); and
- impounding works constructed by or on behalf of Internal Drainage Boards to exercise their functions within their appointed area (draft regulation 10).

58. Following the 2009 consultation we intend to include additional exemptions covering:

- temporary abstraction for construction (draft regulation 4);
- third-party operated dry docks that transfer water to and from a navigation authority's water system (draft regulation 3(2));
- impounding works in an emergency (draft regulation 9); and
- broadening the water meadow exemption to include secondary abstractions within all managed wetland systems (draft regulation 7).

Ports and harbours

59. For ports and harbours, as most respondents agreed in the 2009 consultation, the exemption will apply as follows:

- the exemption will only apply to abstractions made by, or on behalf of, a navigation, harbour or conservancy authority in carrying out its functions as such an authority (draft regulation 3(1));
- the purpose of the abstraction is a transfer, without intervening use, of water from any inland waters downstream of the normal tidal limit to a water system in relation to which the authority has functions;

- 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; and
- the proposed exemption will not apply to any abstraction upstream of the normal tidal limit (i.e. freshwater abstractions).

Dry docks

60. Exemptions will continue for transfers of water within or from an authority's water system. However, a response to the 2009 consultation was that abstractions by third parties used to operate dry docks above the standard threshold of 20m³/day to and from authorities' systems would have become subject to licence control.

61. Part of the normal infrastructure of these authorities' systems relates to the use of dry docks adjacent to main navigations or harbours which are used for the maintenance of vessels and craft. These are filled periodically when required, to allow vessels or craft to enter and are then drained to allow maintenance to be carried out. **Where such dry docks belong to a navigation, harbour or conservancy authority and the abstraction is carried out by them, then the exemption³² will apply.**

62. In some cases however, the operation of these dry docks is carried out by third party businesses, which would mean an abstraction licence is required, even though the dry docks form an integral part of the infrastructure. To avoid this **we propose to exempt abstractions for dry docks operated by third parties as well as authorities.** This is because where this abstraction does take place, we consider it to be low environmental risk due to the relatively small volumes required for the dry docks, the high salinity in relation to harbour systems and in many cases return of the water to the water system from which it was taken. We therefore see no benefit in seeking regulatory control of these third party cases when the majority of these abstractions will remain exempt (draft regulation 3(2)).

Temporary construction abstraction

63. As noted in the 2009 consultation responses, an unintended consequence of removing licensing exemptions controlling abstraction is the potential regulatory impact on small scale construction³³. It would have meant that all abstractions from both surface waters and groundwater in excess of 20m³/day would become licensable.

64. There is limited information available on the exact number of temporary abstraction operations which commence each year, but there is the potential for

³² In relation to abstraction under the revised section 26 of the Water Resources Act 1991.

³³ Section 7 of the 2003 Act amends section 29(2) of the Water Resources Act 1991 by removing the exemption that applies to dewatering works except in an emergency.

thousands of additional licences each year. Licensing abstractions at all of these sites would require significant resource inputs and for small scale and temporary activities would bring negligible benefits for the management of water resources or to the environment, providing the proposed criteria of this exemption are met.

65. We therefore propose to exempt dewatering of underground strata and abstractions carried out for temporary diversion of waters to prevent interference with building or engineering works where the abstraction is temporary, provided:

- the abstraction does not damage protected aquatic life nor damage the integrity of a site designated for nature conservation³⁴; and
- the abstraction is immediately discharged back into the source of the abstraction;

or, in the case of dewatering and where the abstraction is not immediately discharged to soakaway:

- (i) the abstraction is less than 100m³/day where the abstraction takes place more than 500 metres from a designated nature conservation site and more than 250 metres from a spring, well or borehole used to supply water for any lawful use of abstracted water; or
- (ii) the abstraction is less than 50 m³/day and takes place 500 meters or less from a designated nature conservation site, or 250 metres or less from a spring, well or borehole used to supply water for any lawful use of abstracted water (draft regulations 4 and 5).

66. The proposed exemption will not affect the requirements to obtain other permits such as water discharge or groundwater activity permits.

67. We anticipate that the temporary exemption must be limited and have considered periods of either four weeks, three months or six months but welcome your views.

³⁴ To satisfy Regulation 99(2) of the Conservation of Habitats and Species Regulations 2010, the Regulator, as a competent authority, would need to issue a written consent before the operator could benefit from the exemption.

Q1. How long do you think the period applicable for the temporary construction abstraction exemption should be?

Four weeks

Three months

Six months

Longer than six months

Please explain the reasons for your answer above.

Managed wetland systems

68. 'Managed wetland systems' include traditional water meadows as well as Environmental Stewardship Schemes and other agri-environment schemes where land is either periodically inundated with water or water is transferred through a system of channels, sluices, ditches, carriers or other apparatus.

69. The abstraction of water into the system will not be exempt. These initial or primary transfers will still require a licence. **Abstraction and impoundment within the managed wetland systems solely for the management, operation or maintenance of the system will be exempt** from licensing provided that the Regulator has given consent in writing in accordance with the Habitats Regulations and it provides a benefit of local flora or fauna (draft regulation 7).

70. Existing abstraction and impounding licences within managed wetland systems for the sole management of that system will cease to have effect (draft regulation 12).

71. Taking into account the potential wildlife interest of managed wetland systems, we consider that the cost and effort required to license each abstraction in the whole system to be over-regulatory and that there should be little risk posed to the environment.

Dredging

72. As supported by the response in 2009 consultation, **we propose that dredging activities will be exempt where they are carried out by or on behalf of a navigation, harbour or conservancy authority in the exercise of their functions (draft regulation 6(1)(b)) or by anyone in inland waters downstream of the normal tidal limit (draft regulation 6(1)(a)).**

Emergency impounding works

73. At present, a licence to impound water is required as a consequence of the general restriction on impounding works under section 25 of the Water Resources Act 1991 to construct or alter (including the removal or partial removal) any works that obstruct or impede the flow of an inland water. Unless works are limited to repairs and maintenance, the law requires a licence to be held, which could take three to four months to obtain. We believe that this requirement should be set aside in an emergency where there is an immediate risk to human life or a threat to property or to the environment, provided that the person seeks retrospective consent from the Regulator. An exemption will provide legal certainty and clarity for altering impounding works in an emergency or when safety is at risk.
74. **We propose an exemption for impounding works carried out by the Regulator when exercising their powers under the Reservoirs Act 1975 or such works carried out by any person in an emergency** in order to reduce or avoid an immediate threat to human life, property or the environment (draft regulation 9).

Cheshire Basin

75. As proposed in the 2009 consultation, and supported by consultees, **we propose the current Mersey and Weaver River Authority exemption will be retained.** This relates to abstraction of water of a salt content of more than 100,000 mg/l from underground strata in the Cheshire Basin (draft regulation 8).

Construction of impounding works by Internal Drainage Boards

76. Internal Drainage Boards (IDBs) have used and operated impounding works since the licensing system was introduced, with no available evidence of issues or concerns. We do not consider that impounding works constructed by or on behalf of IDBs pose any significant environmental risks that cannot be dealt with through other legislation. In light of IDBs statutory duties with regard to flood risk management and land drainage, **we propose that all new and any alterations to impounding works constructed by or on behalf of IDBs within their areas should be exempt from licence control.** Existing impounding licences will cease to have effect. Natural Resources Wales now carries out all of the functions previously undertaken by IDBs in Wales (draft regulation 10).

Scottish border rivers and existing consents

77. In the absence of any licensing functions being exercised by the Environment Agency in relation to abstractions from the Scottish Border Rivers, Natural England has consented certain abstraction projects in these areas under section 28 of the Wildlife and Countryside Act 1981 as amended. Where an abstraction is

made from these rivers that exceeds the standard threshold of 20m³/day, a licence will be required, regardless of whether a consent has been given. There will be no need for these consents to continue once normal licence controls are extended to the Border Rivers. Existing consents should expire naturally. We expect Natural England to maintain these consents until replacement abstraction licences are granted. In the interim, these consents should contain appropriate conditions to mitigate impacts on any designated sites. We expect the Environment Agency to undertake communications in the affected areas to raise awareness of the changes.

Planned abstractions

78. In the 2009 consultation our proposals included provisions for compensation for applications declined or curtailed where there were plans for new abstractions not currently taking place, or increased abstractions (referred to as ‘planned abstractions’). Since the 2009 consultation, there have been important changes in both water policy and the wider economic and policy landscape³⁵. We have therefore reviewed the compensation proposals in the 2009 consultation and, as explained below, have concluded those proposals would be inconsistent with current water policy. Such provisions would also be incompatible with the policy approach set out in the Water Strategy for Wales³⁶ to maximise economic and social benefits in an equitable way, while protecting vital ecosystems and the environment.

79. We consider that including provisions to compensate those who have plans to abstract, would, in effect, allocate future resources disproportionately to currently exempt abstractors who plan to abstract or increase abstraction, compared to those already subject to licensing controls, who do not have an expectation or right to future water needs. Abstractors brought into the system under these arrangements would be in a much more favourable position than other licensed abstractors. We do not believe this is fair to licensed abstractors who would face costs either in the form of reduced access to water, or potentially higher abstraction fees to meet compensation costs. The policy approach to licensing New Authorisations is based on the premise that licensing an existing abstraction would not change the status quo. This is not the case with planned abstractions, which would remove additional water and, therefore, pose a risk of deterioration to the water environment.

80. We therefore propose that planned abstractions should be licensed through the normal abstraction licensing process, as with any other new application, rather than as part of the New Authorisations transitional

³⁵ Water for Life HM Government White Paper, 2011: <https://www.gov.uk/government/publications/water-for-life>.

³⁶ Water Strategy for Wales, 2015 <http://gov.wales/topics/environmentcountryside/epg/waterflooding/publications/water-strategy/?lang=en>

arrangements. This also means that no compensation would be payable for these planned abstractions if a licence application were refused, or granted to a lesser extent than applied for.

Q2. The Impact Assessment at Annex D discusses the evidence for the proposal around planned abstractions. Please let us know of any other evidence you are aware of that should be considered in respect of planned abstractions?

Q3. Do you agree with the Government's proposal to exclude from transitional arrangements compensation provisions for those who have plans to abstract in the future?

Please explain the reasons for your answer above.

Q4. What do you think are the main issues or challenges that might arise from excluding planned abstractions from the New Authorisations transitional arrangements?

What do you think are the main benefits?

Application process

Timing

81. We propose allowing two years (rather than one year, as proposed in 2009) for abstractors to apply for their licences. This follows responses to the 2009 consultation which indicated that one year would be too tight a deadline. Two years will allow sufficient time for abstractors to collect the required evidence of volumes and any other supporting evidence required.

82. The Regulator will determine all applications within three years from the end of the application period (rather than five years, as proposed in 2009). This will provide the Regulator with enough time to manage the high volume of applications from newly licensable abstractions.

Eligibility

83. The Water Act 2003 has amended the Water Resources Act 1991 to mean that the only qualification necessary to apply for an abstraction licence is a right of

access to the land where the abstraction is to take place. Applicants will have to be able to satisfy the Regulator that they have the right of access to the point of abstraction.

84. In addition to a right of access, to be eligible to apply for a licence under the transitional provisions **we propose that applicants for these previously exempt activities must be able to demonstrate that they have actually abstracted water from the source of supply at any time within a period of four years preceding the removal of exemptions.** The proposed period of four years is similar to previous transitional provisions under the Water Resources Act 1963 and the Water Act 1989 and is consistent with other provisions of the licensing system. If the abstraction did not take place during the previous four years then abstractors must apply under the normal application process. We do not consider it appropriate that operators with no recent history of previous abstraction at a site should be placed at an advantage by having water “reserved” for them ahead of other potential abstractors.
85. Applicants should be able to demonstrate to the reasonable satisfaction of the Regulator, by way of application and supporting evidence, their actual abstraction requirements and entitlements and that such abstraction has taken place at any time within a period of four years preceding the removal of exemptions.
- 86. Applicants who do not qualify must apply under the normal application process. This includes abstractors who wish to increase the amount of water they abstract.**

Evidence

87. Examples of evidence to be able to demonstrate an abstraction is eligible for the New Authorisations transitional arrangements include meter readings, pump ratings, invoices for equipment, photos of infrastructure, or business receipts/contracts.
88. This will be used as evidence that the abstraction qualifies under the transitional arrangements, which are different to the standard application process. If applicants are unable to demonstrate that abstraction has taken place during the four year qualifying period, they will need to apply through the standard licensing process.
89. The Regulator will be able to advise on the evidence required.
90. Not all information will be needed at the application stage, though there will be a basic level of information required. This will make the application process simpler, by allowing a standard application to meet the criteria³⁷ for a ‘valid application’ at

³⁷ As explained at paragraph 96.

and so reducing the risk for applicants of not meeting the deadline. In more complex cases, the Regulator will have the right to ask for additional information but this will not affect the status of any applications already received as being valid. Examples of additional information could include further evidence about potential for environmental impact, or further information about the volume of water abstracted. The Regulator will specify the arrangements for additional information on a case by case basis as appropriate.

Q5. What other pieces of evidence do you think abstractors could use to meet the evidence requirements for applications?

Types of licence

91. Currently there are three types of abstraction licence: a 'full licence', a 'transfer licence' or a 'temporary licence'. A 'full licence' is required for any abstraction lasting 28 days or more. A temporary licence is required when abstraction lasts less than 28 days. A 'transfer licence' is required to move water from one source of supply to another without intervening use.

92. We expect the Regulator to provide guidance as part of the application process to provide clarity on the number and types of licences to be applied for. We encourage applicants to allow sufficient time for discussions about their application with the Regulator.

93. Transfer licences do not attract protected rights under the Water Resources Act 1991 and therefore this will be the case when currently exempt abstractions become regulated. *Taking Water Responsibly*³⁸ set out the previous Government's expectation that the licence type for a transfer activity was a transfer licence. Our aim (and that of the Water Act 2003) is to help manage the movement of large volumes of water within the licensing system but with the minimum regulatory burden. The Government expects that the Regulator will license New Authorisations abstractors with broadly the same volumes on their transfer licences to reflect the abstractor's current operating regime. (See section on [transfer licence volumes](#) for more information).

Confirmation of receipt

94. The Regulations do not require the Regulator to formally acknowledge receipt of a valid application, as this does not act as a trigger for setting the "Relevant Date"

³⁸ The then Government's decisions following a consultation on changes to the water abstraction licensing system in England and Wales:
<http://webarchive.nationalarchives.gov.uk/20021021185057/http://www.defra.gov.uk/environment/waterservices/index.htm>.

(unlike the Water Resources (Abstraction and Impounding) Regulations 2006). We would however, expect the Regulator to have administrative processes in place so that, where applications are received in good time prior to the closure of the application period, applicants would be informed if their application does not meet the standard for a valid application. We expect the Regulator to explain how it proposes to administer this in the application documentation.

95. It is important that applicants recognise the benefits of submitting applications in a timely manner. Applications that are received within the final three months of the application period may not have their applications validated and confirmed before the two year application period closes. If these applications are subsequently found to be deficient, it is possible they may be rejected as invalid and the statutory deadline to resubmit an application under the transitional regulations will have passed.

96. To be a 'valid application' the applicant must ensure they meet the following requirements:

- the right type(s) of licence(s) for the proposal has been applied for;
- the correct application form is used;
- all the sections on the form relevant to the proposal are completed;
- all the information requested (maps, drawings, proof of eligible abstraction) are included; and
- the correct application fee(s) is included.

Charging

97. Once a currently exempt abstraction becomes licensable under the Water Resources Act 1991 and if a full licence is granted, it will be subject to annual charges in accordance with the Regulators' charging scheme^{39, 40}, as consulted on and approved by the Minister.

98. Charging provisions for previously exempt abstractions are included in the Regulators' current charging scheme following consultation in 2003, 2005 and 2007.

99. The majority of new entrants for transfer licences will not attract any annual charges but will pay the higher application charge (currently £1,500). Those

³⁹ Information about the Environment Agency's abstraction charges scheme:
<https://www.gov.uk/government/publications/abstraction-charges-scheme-april-2014-to-march-2015>

⁴⁰ Information about Natural Resources Wales' abstraction charges scheme:
<http://naturalresources.wales/media/3559/abstraction-charges-scheme-2015-16.pdf?lang=en>

applying for a full licence will pay the lower application charge (currently £135) and be charged annually in accordance with the schemes.

100. The relevant abstraction licence application fee will be charged at the initial application. However, any additional costs associated with providing supporting information such as environmental reports for the application may be incurred later in the determination period.
101. You should note that the Regulators review, consult on and update their charging schemes annually and these arrangements may be subject to change. In particular, the Regulators are proposing to review charging schemes in light of abstraction reform.

Assessment of applications and licence decisions

102. Since the 2009 consultation, in developing the transitional arrangements, we have focused on the need to treat abstractors, those subject to licensing control and those who will become subject to licensing control, equitably, whilst also taking account of wider policy, environmental and social interests. We recognise that the exempt abstractions are taking place lawfully and these abstractors will have made similar business investments to licensed abstractors. We also recognise that issuing a licence in respect of an existing and ongoing abstraction does not alter the current water situation or cause a water body or the environment to deteriorate and that abstractors as a group contribute to the environmental impacts caused by unsustainable abstraction. Therefore, we are proposing a balanced approach where the costs of addressing unsustainability and improving water bodies fall proportionately upon all abstractors.
103. The Government intends to direct the Regulator⁴¹ on the general approach to licensing decisions. The Government expects that the effect of this Direction will be that the Regulator will be able to grant licences in the majority of cases where there are existing lawful entitlements, except where the abstraction may cause serious environmental damage. We consider this will stop the most significant environmental impacts, whilst balancing the needs of existing (currently exempt and licensed) and ongoing abstraction. We propose that the Direction will reinforce the position that existing volumes of ongoing abstraction for New Authorisations are environmentally neutral. This approach recognises that to grant a licence for an existing abstraction to the same extent does not in itself change the environmental impact or increase any damage. The Direction will not remove the Regulator's existing legal duties which will still need to be complied with, or detract from its independent assessment of individual licence

⁴¹ Using section 40 of the Environment Act 1995 in England, the Welsh Ministers may direct Natural Resources Wales pursuant to article 11 of the Natural Resources for Wales (Establishment) Order 2012 (as amended).

applications. We expect that some abstractions will need to be constrained to protect the environment.

104. We are therefore proposing a **two stage approach** to achieve environmental benefits and to meet WFD requirements of ending the exemptions. This will be **by first bringing exempt abstractors into the licensing system and so under prior authorisation and control, except for those that may be causing serious environmental damage. Then once in the system the Regulator will use the RBMP process⁴² to deliver improvements needed to meet WFD water body objectives, taking account of all abstraction in a catchment.** This will ensure that Government decisions around priorities for action under WFD, as well as consideration of disproportionate costs will be taken into consideration for these previously exempt abstractors, as for all licensed abstractors.
105. The Regulator **will determine all applications within three years from the end of the application period.** This proposal has been reduced from five years following the 2009 consultation on implementing the abstraction elements of the Water Act 2003. We expect the light-touch, risk based, approach to its decisions should reduce the Regulator's administrative resource to determine the applications so we believe it is now realistic to reduce this timeframe to three years. The Regulator intends to prioritise applications depending on the level of risk of environmental impact.
106. All applications will be considered on the basis of what has been abstracted over the preceding four years. To implement this policy the Government proposes that in most cases the Regulator grants a licence with standard licence conditions based on the volume of water that has been abstracted previously (during the four year qualifying period).
107. However, this process will take into account issues of environmental protection where appropriate. The Regulator should take a more cautious approach to licensing decisions if it suspects the abstraction may cause serious damage to the environment. The Regulator should refuse or grant more restrictive licences where assessments show this may prevent serious damage. This will be in keeping with the proposal in the 2009 consultation and the principles for serious damage on which the Government consulted in 2012⁴³. Similarly to section 27 of the Water Act 2003, **no compensation will be payable in circumstances where the Regulator refuses or issues to a lesser extent a licence application, in order to prevent serious damage to the environment.** In addition, there may also be a small number of cases, mainly affecting

⁴² Currently informed by the Regulator's Catchment Abstraction Management Strategy (CAMS) process, which assesses the availability of water resources for each river catchment, produces a strategy and feeds into investigations to identify failing water quality.

⁴³ Consultation on serious damage: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>.

damaged Sites of Special Scientific Interest (SSSIs), where the Regulator's duties either prevent it from granting licences or mean it must apply more restrictive licence conditions.

Hands off flow

108. **We propose that the Regulator may also apply environmental constraints to protect the environment at low flows or drought conditions without compensation.** To do so the Regulator will be able to include a generic licence condition such as a hands off flow (HoF)⁴⁴ on New Authorisations abstraction licences as a way of moving towards sustainable abstraction prior to catchment reviews.

109. To be compliant with the overall approach required by the WFD we expect the licences will be subject to the minimum protection standards that would normally be applied to other newly licensed abstractions and be consistent with the minimum acceptable flow identified as part of the Catchment Abstraction Management Strategies (CAMS) process⁴⁵. In over-abstracted catchments⁴⁶ where flow does not support WFD objectives⁴⁷, this will normally be set at Qn95⁴⁸ (or a groundwater equivalent). For all other catchments where flow supports WFD objectives, 75% of Qn99 will be applied. This is based on the current licensing process but with a less stringent approach to meeting Environmental Flow Indicator (EFI) targets at the initial point of grant. This will improve the sustainability of a catchment by protecting it from environmental damage caused at low flows. Full sustainability, as required by the WFD, will be achieved through future catchment reviews as part of RBMP.

⁴⁴ A hands off flow (HoF) or level (HoL) condition allows the Regulator to reduce or stop abstraction when flows at a gauging station, or levels in a borehole, pass a specified threshold.

⁴⁵ The Regulator's Catchment Abstraction Management Strategies (CAMS) which provides details of common end dates, at which point all time limited licences in a catchment are reviewed.

⁴⁶ Recent actual flows are below the environmental flow indicators. These indicators are aligned with the UK water resource WFD good status standards for rivers.

⁴⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307788/river-basin-planning-standards.pdf
Sets out the environmental standards used to help assess risks to the ecological quality of the water environment and to identify the scale of improvements that would be needed to bring waters under pressure including flow pressures back into a good condition.

⁴⁸ See page 11 of the document linked for the Environment Agency's current approach for assessing catchments that are over abstracted. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297309/LIT_4892_2of775.pdf. We propose that a Qn95 condition is applied in catchments where "water not available for licensing" the red category in table 3.1. Qn95 is generally accepted to be a natural flow that is exceeded 95 percent of the time. Similarly Qn99 is the natural flow that is exceeded 99% of the time.

Table 1 – summary of how we propose HoF conditions will normally apply

CAMS surface water status:	Flow / quantitative status supports WFD objectives?	NAs HoF applied:
Over abstracted catchments (red or purple areas in CAMS)	Fail	Qn95
Over licensed catchments (yellow & orange areas in CAMS)	Pass	75% of Qn99
Water available (grey or green areas in CAMS)	Pass	75% of Qn99

110. The Government considers this approach will place a fair burden of reducing unsustainable abstraction on all lawful abstractors, whilst allowing the Regulator to comply with legal duties. The Regulator will continue to take action to tackle unsustainable abstraction through the programme of measures set out in the RBMPs, for example the Restoring Sustainable Abstraction Programme, or the CAMS process⁴⁹. The catchment reviews process in a reformed abstraction system will also enable the Regulator to address environmental impacts as evidence of unsustainability arises. When the exempt abstractions are brought within the licensing system, the Regulator will have a better understanding of all the issues caused by abstraction within a water body or catchment. The Regulator will therefore be able to manage any required reductions in a more effective, fair and consistent manner than is currently possible with no regulatory control over currently exempt abstractions.

Q6. Do you think putting basic universal HoFs on New Authorisations licences to protect the environment from damage caused by low river flows or drought is an effective control to protect against environmental damage?

Q7. Do you think a universal HoF of Qn95 on New Authorisations licences is the right level for licences in over-abstracted catchments?

⁴⁹ <https://www.gov.uk/government/publications/managing-water-abstraction>
 Local CAMS: <https://www.gov.uk/government/collections/water-abstraction-licensing-strategies-cams-process>.

Q8. Do you think a universal HoF of 75% of Qn99 on New Authorisations licences is the right level in catchments that are not over abstracted?

Q9. What do you think are the main issues or challenges that might arise from using basic universal HoFs?

What do you think are the main benefits?

Q10. Do you think there is an alternative approach that should be used to ensure environmental protection?

Please explain your response.

111. Except for the timeframes for applying and determining licences⁵⁰, in most other respects, the process for dealing with licence applications from existing abstractors who become subject to licensing will be the same as those required under the Water Resources (Abstraction and Impounding) Regulations 2006⁵¹. The Regulator's standard abstraction charges would also apply.

112. Subject to the right of appeal, the Regulator will be able to change the type or number of licences applied for, or treat an application as a variation of an existing licence. This is consistent with current legislation (notably sections 36A and 51 of the Water Resources Act 1991) for licence application processes. When doing so, the Regulator will advise an applicant that it proposes to treat an application for a licence as being of a different type to that sought, before it proceeds to determine the application or advertise the proposal.

Time limits

113. Legislation⁵² requires all abstraction licences to be granted with a time limit. Time limits are normally set by reference to the Regulator's CAMS, which provide details of common end dates, when all time limited licences in a catchment are reviewed. Depending on when the licences are granted, the normal duration can range between 6 and 18 years. The Government's expectation is that the Regulator will grant licences to the relevant common end date, in keeping with its

⁵⁰ The application period (we now propose two years) and the Regulator's determination period (three years) are also notably differences to the standard application processes.

⁵¹ The Water Resources (Abstraction and Impounding) Regulations 2006:
<http://www.legislation.gov.uk/ukSI/2006/641/contents/made>.

⁵² Section 46(5) Water Resources Act 1991, as amended by Section 19(4) Water Act 2003. This section does not specify a licence length, which is for the Regulator to determine.

published position. Once within the licensing system, abstractions will then be dealt with alongside all other abstractions through catchment reviews, where pressures on the catchment require action. Given the timeframe for application and determination (5 years) and that licences will be granted to common end dates (with a range of 6-18 years in practice), this means that environmental improvements are likely to be delivered towards end of, or beyond, 2027.

114. However, Abstraction Reform proposes removing the requirement for time limits, including on existing licences, in the reformed system. The implementation of Abstraction Reform is expected to happen after New Authorisations licences have been granted. If the proposed Abstraction Reform changes happen before New Authorisations licences are granted, licences or permits will be granted without a time limit.

115. In exceptional circumstances, the Regulator may grant short duration licences which expire before the normal common end date. This would be decided on a case by case basis, considering the needs of the environment. The Regulator should make these decisions in line with its published position.

116. In other exceptional circumstances, the Regulator may also grant long duration licences up to 24 years. However, in view of the proposals to remove time limits as part of Abstraction Reform and because of the additional evidence required to support long duration licence applications, we would not expect many businesses to choose to apply for these licences. During the licence application period, the Government will expect the Regulator to keep abstractors informed about Abstraction Reform, including the reform approach to move to risk based reviewable permitting without time limits, so abstractors can take this into consideration in their licence applications.

Transfer licence volumes

117. The majority of exempt activities that will come into licensing under New Authorisations in England will be for water transfers (estimated to be as high as 4,000). In Wales, water transfers are expected to make up a lower proportion of exempt activities than in England.

118. The current legislation gives the Regulator discretion as to whether to include volumetric conditions on transfer licences. To date, the Regulator has only included volumes on transfer licences by exception (in total only around 200 transfer licences have been issued since 2006). However, if New Authorisations transfer licences were granted using the existing approach, approximately 20% of all licences could have no volumetric limits; this would potentially undermine the intended policy approach of maintaining the status quo and also the intended benefit of a more flexible and responsive water resources management system under Abstraction Reform. It is therefore our intention that volumes will be

included⁵³, where possible, on all transfer licences as part of the New Authorisations process. We expect the Regulator to give volumes on transfer licences that reflect the current volumes abstracted.

119. A number of drivers have led to us to reconsider the current policy in relation to transfer licences and the process of bringing currently exempt activities into regulation for the first time:

- consistency and equity with existing licensed abstractions;
- requirement to move towards more sustainable abstraction and higher environmental standards;
- providing a stable platform for transition into a future reformed system; and
- the need to demonstrate sufficient control of significant abstractions to comply with the Water Framework Directive.

120. This can be achieved within our “light touch” approach without requiring such rigorous monitoring and reporting standards as when compared to the normal standards required for full licences. For example, we expect the Regulator would not normally require daily records of abstraction to be taken and that monthly records could be sufficient. It could also be more appropriate to rely on other methods of assessment rather than detailed measurement through the use of metering which would be difficult in many of these cases.

Q11. Do you agree with the proposal to include volumes on transfer licences under New Authorisations?

Please explain the reasons for your answer above.

Serious damage

121. In 2012, the Government consulted on the principles to be used in applying the provision of serious damage in section 27 of the Water Act 2003 and the provisions in the regulations for New Authorisations⁵⁴. The serious damage consultation and the Government response sets out the background to this provision, comparisons with other legislation, the principles to be used and examples of what should be classed as serious damage.

122. For an abstraction to be classed as serious damage, the Regulator will use the three principles set out in the 2012 serious damage consultation and

⁵³ Section 46 Water Resources Act 1991.

⁵⁴ Consultation on serious damage: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>.

response to guide an assessment of available evidence and draw a conclusion about whether serious damage is caused or not. These are:

Principle 1: establish the qualitative nature of the damage.

Principle 2: establish the extent and magnitude of the damage.

Principle 3: establish whether the damage is reversible and how long recovery may take.

123. Evidence sources will include those provided by the applicant, as explained at paragraph 87, including the evidence the applicant provides about the environmental effects of the abstraction.

124. The approach to assessing serious damage will depend on what the abstraction is affecting. If the abstraction is affecting, or has the potential to affect, a European site, the Regulator will apply the precautionary principle in its risk assessment. This means that an abstraction would be restricted to protect from serious damage where there is insufficient evidence to be certain there would be no adverse effect on the integrity of the European site.

125. However, if the abstraction is affecting a site which is for example designated through domestic legislation (e.g. Sites of Special Scientific Interest) or non-designated sites where the precautionary principle is not usually applied, then the Regulator will use available evidence of the risk to conclude that the abstraction is causing or may cause serious damage.

126. When applying the three tests, the Regulator will pay particular attention to the way in which the abstraction could impact on surface water or groundwater.

127. In exceptional cases, the Regulator may be unable to grant a licence because it considers that there is an unacceptable impact on a site protected by environmental legislation but where it does not consider this would be to prevent serious damage.

Compensation

128. The regulations will allow claims to be made for compensation in certain circumstances where a qualifying applicant can demonstrate loss or damage as a result of the Regulator: i) granting a licence to a lesser extent than applied for under the provisions; or ii) refusing to grant a licence.

129. To claim compensation, the applicant must appeal against the Regulator's decision, using the procedure for appeals in section 43 of the Water Resources Act 1991 (see [Appeals](#) section, later in this document, on page 42).

130. The following are examples of circumstances in which we propose not to pay compensation:

- where applications are refused or conditions imposed to prevent serious damage in accordance with the proposed regulations;
- where flow/level conditions have been used to provide environmental protection in accordance with the policy approach detailed [above](#) in order to provide a basic level of protection;
- where time limits are applied in accordance with the Regulator's published policy on common end dates as all licences are legally required to have a time limit;
- where licence conditions reflect other permissions and entitlements, for example constraints referred to in enabling Acts or as conditions contained within planning permissions as this will not constitute loss or damage; and
- where any licences granted are transitioned into a future reformed system before the current time limit expires as detailed in Government consultation responses on Abstraction Reform.

131. As explained in the section on Planned Abstractions, abstractions that are not currently taking place will not be included in these transitional arrangements and will not be eligible for compensation.

132. As a general principle, public authorities or organisations⁵⁵ should not expect to seek recompense or claim compensation from other publicly funded authorities in the proper exercise of their statutory functions. This approach was supported by consultees in the 2009 consultation on implementing the abstraction elements of the Water Act 2003. The Regulator will therefore not be liable to pay compensation where the applicant under the transitional provisions is a public authority.

133. As set out in the 2009 consultation, no compensation will be payable, either through refusal of a licence or granting a licence to a lesser extent than sought, where the Minister is of the opinion that the abstraction causes, or could cause, serious damage to any waters, or underground strata, or any flora and fauna dependent on them. This exclusion matches the effect of section 27 of the Water Act 2003; which already applies to licensed abstractors. The majority of respondents to the 2009 consultation agreed with this approach.

⁵⁵ Including government departments, local authorities, local planning authorities, bodies created or continued in existence by a public general Act, bodies remunerated by money provided by Parliament and statutory undertakers

134. The Regulator is expected to apply generic environmental constraints to licences as a way of moving towards sustainable abstraction and to protect the environment at low flows or in drought conditions (see paragraphs on [HoFs](#) 108-112). We consider these to be standard licence conditions, and in keeping with the approach to such conditions, they will not give rise to any liability for the payment of compensation. Only where HoF conditions have been applied that are more restrictive than the generic conditions might compensation be payable.
135. An example of where more restrictive conditions could apply is where currently exempt activities are taking place in close proximity to water dependent Sites of Special Scientific Interest which are in poor or unfavourable condition.
136. There may be exceptional cases where the Regulator is unable to grant licences because it considers that there is an unacceptable impact on sites protected by environmental legislation but where it does not consider this would amount to serious damage. In these cases, any refusal or restrictions could trigger the right to claim compensation for any loss or damage. The Regulator will need to use the existing charging mechanism to plan for and raise compensation through its abstraction charges.

Compensation mechanism

137. As part of the consultations in 2003, 2005 and 2007, the Government determined that compensation costs are part of the Regulator's water resources management function and must be recovered from abstractors through the Regulator's charges scheme. It was decided in 2008, that the Environmental Improvement Unit Charge (EIUC) would be the funding mechanism to raise these compensation costs.
138. In relation to England, the UK Government expects the Environment Agency to continue to use the existing charging mechanism, the EIUC, to plan for and raise compensation through its abstraction charges scheme.
139. In relation to Wales, the Welsh Government has directed Natural Resources Wales to deliver a funding mechanism to support potential compensation costs that might arise during the implementation of New Authorisations. Natural Resources Wales's charges and funding mechanisms reflect a remit that is expanded from that of the bodies from which it was created (which included the Environment Agency Wales), but it is expected that the EIUC will continue to play at least some part in this process. The Welsh Government has agreed to consider specific support to Natural Resources Wales if compensation costs were to arise beyond a level that can reasonably be funded from within Natural Resources Wales' water resources income.

140. Since 2008 the Regulators have raised funds using the EIUC to fund compensation when they modify or revoke a licence without the agreement of the licence holder under the Restoring Sustainable Abstraction programme. The Regulator anticipates that the Restoring Sustainable Abstraction programme will be complete by 2020 when unsustainable abstractions identified under the programme will have been addressed (licence holders have 6 years to make a claim for compensation from the date a decision on a compulsory licence change is provided by the Regulator).
141. The Regulators have worked closely with licence holders to implement licence changes to deliver environmental outcomes. This has resulted in many licence changes being secured under voluntary agreement with licence holders, solutions being delivered at lower costs and original compensation estimates being refined. As a consequence, the level of EIUC charges recovered each year is reviewed and consulted upon, and appropriate changes made. In recent years, annual EIUC charges in most charging regions have reduced or ceased. As the Regulators continue to work with abstractors to deliver solutions through the Restoring Sustainable Abstraction programme up to 2020, it is possible that some EIUC funds already collected may no longer be required for the Restoring Sustainable Abstraction programme and therefore could help fund the potential compensation for New Authorisations.
142. The Environment Agency's current estimate for the cost of compensation identified under New Authorisations is £3 million potentially split across four regional charging areas (Anglian, Midlands, Southern and South West). The Environment Agency will continue to review these estimates and may consult on setting the EIUC values as part of its strategic review of charges consultation in 2016, with a view to implement a new charges scheme in April 2017.
143. In those four regional charging areas, under current Restoring Sustainable Abstraction and New Authorisations compensation estimates, it is anticipated that the potential liability for both initiatives could be funded through EIUC funds already collected.
144. If the Environment Agency is not able to use funds already collected and needs to raise and ring-fence new funds for New Authorisations compensation from April 2017, customers' bills could potentially be required to increase by up to 10% year on year until 31 March 2019 in the Anglian and Midlands regional charging areas. In the Southern and South West regional charge areas collection would be needed up until March 2018 but at a lower rate than the current rate.
145. The UK Government therefore expects the Environment Agency to raise funds (where appropriate), and use existing funds, collected through the EIUC (from non-water company charge payers) to pay any compensation identified under New Authorisations.

146. Natural Resources Wales's current estimate for the cost of compensation identified under New Authorisations is negligible within its charging area. Natural Resources Wales will continue to review this estimate upon receipt of applications and will carry out further consultations on the use of the EIUC to support compensation costs resulting from the delivery of New Authorisations in Wales as necessary at the relevant time(s).

Q12. Do you agree with the intention of Government and the Regulator to use EIUC funds already collected, that are potentially no longer required for the completion of the Restoring Sustainable Abstraction programme, to fund any compensation that may result from the implementation of New Authorisations?

Please explain the reasons for your answer above.

Q13. The Government expects the Regulator to raise and use funds collected through the EIUC from non-water company charge payers to pay any compensation identified under New Authorisations. Taking into consideration that there is unlikely to be additional Government money available, do you agree with this approach?

Please explain the reasons for your answer above.

Q14. Can you suggest any alternative ways to fund compensation?

Appeals

147. Where there is a dispute about the process e.g. about a licence decision or what type or number of abstraction licences an applicant should apply for, the applicant has a right of appeal to the Secretary of State or Welsh Ministers against the Regulator's decision.

148. The time limit for bringing an appeal will be 28 days from the date of the Regulator's decision. This is consistent with the Water Resources (Abstraction and Impounding) Regulations 2006⁵⁶ and is the standard the Regulator uses for all water abstraction licence appeals. Following the 2009 consultation, we do not feel it is necessary to have a different time limit.

⁵⁶ The Water Resources Regulations, 2006: <http://www.legislation.gov.uk/ukxi/2006/641/contents/made>.

149. Where the appeal is dismissed, and the Regulator's decision stands, then the applicant will be eligible to make a claim for compensation in certain circumstances.

150. The deadline for compensation claims in this category will be within six years of the determination of an appeal by the Secretary of State or Welsh Ministers or by 1 October 2024, whichever is earlier. Following the 2009 consultation, we consider in all circumstances that six years is a reasonable period. It is also consistent with claims generally under the statute of limitations⁵⁷. We see no reason for a different approach for claims arising from the transitional process and it would be inappropriate for the liability to apply indefinitely.

Overview

Q15. Having read the Government response to the 2009 consultation on implementing the abstraction elements of the Water Act 2003 in Part I and taking account of the revised proposals in Part II, do you have any other comments about the overall policy approach to New Authorisations?

151. We have looked at ways of minimising the costs to abstractors of coming into licensing control, by taking a light touch approach, providing flexibility about the evidence used to support applications and by developing a more streamlined application process to suit user preferences. As part of the overall package, we have also proposed further exemptions that will keep a further estimated 20,000 - 30,000 low risk cases out of regulation. However we welcome suggestions for ways in which we can make the process for obtaining a licence under new authorisations less burdensome for abstractors.

Q16. Do you have any suggestions as to how we could implement the requirement for licensing control in a way that further reduces the burdens for abstractors, whilst achieving effective regulation?

Q17. If there is anything else you would like to add to your response please include it here.

⁵⁷ Limitation Act, 1980: <http://www.legislation.gov.uk/ukpga/1980/58>.

Next steps - future abstraction policy

152. As set out in the [Abstraction Reform](#) section, the UK and Welsh Governments have published details of their plans for reform of the abstraction management system in their respective areas.
153. New Authorisations licence decisions are intended to be made and licences granted before Abstraction Reform changes are brought in during the early 2020s. Once Abstraction Reform is implemented, the changes it brings will affect all licensed abstractions, including New Authorisations. [Table 2](#) sets out the key changes planned.

Table 2 – summary of key planned reforms of the abstraction system

Now	Reformed System
Most licences permit fixed volumes being taken, regardless of availability	Improve links to water availability particularly in enhanced catchments ⁵⁸
Some licences have seasonal restrictions	Removal of seasonality but improved links to water availability
Individually approved trades, take up to 4 months to agree	Pre-approved trading rules to make it quick and easy to trade in enhanced catchments
Compensation paid if changes made to licences in some circumstances except those with time-limits	No compensation will be payable but all permits will be equally subject to risk based reviews
Complex process to individually investigate abstraction licences	Review abstraction conditions across whole catchment if environmental risks identified

154. Proposals for the transition to the new abstraction system include removing unused licensed water from permits where it poses a risk to the environment. This though will not affect New Authorisations, as licences will already be granted on the basis of their historical use.
155. Newly licensed New Authorisations will be subject to the same terms and conditions as other abstractors and the changes most likely to affect abstractors in the future will include:

⁵⁸ Enhanced catchments are those where water is more scarce and improved management of water provides benefits to abstractors.

- removal of seasonal licences;
- removal of time limits;
- removal of compensation;
- a catchment based review process;
- reform of the charging system;
- discharge management, which would place conditions on abstraction permits to require abstractors that are not 100% consumptive and that discharge, to continue to discharge a proportion of water abstracted; and
- facilitation of trading.

How to respond

156. Please send responses to:

Email: waterresources.consultations@defra.gsi.gov.uk

Or by post to:

**New Authorisations
Water Resources Management
Area 3D Nobel House
17 Smith Square
London
SW1P 3JR**

157. If your comments are specifically in relation to or have implications for Wales, please copy your response to:

Email: water@wales.gsi.gov.uk

Or by post to:

**New Authorisations
Water Branch
The Welsh Government
Cathays Park
Cardiff
CF10 3NQ**

158. The questions asked throughout this document are listed at [Annex A](#). When responding, please state whether you are responding as a private individual or on

behalf of an organisation or company. You do not need to answer every question to submit a response.

159. We will consider all responses that are received by the closing date.
160. The UK and Welsh Government will publish a response within 12 weeks of the closing date of the consultation. This may include copies of the responses we receive, unless you have specifically requested that we keep your response confidential. Please indicate in your response if you want us to treat it as confidential.
161. Respondents should also be aware that there may be circumstances in which Defra and the Welsh Government will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000.
162. This consultation complies with HM Government's Consultation Principles.

Annex A – Consultation questions

Q1. How long do you think the period applicable for the temporary construction abstraction exemption should be?

Four weeks

Three months

Six months

Longer than six months

Please explain the reasons for your answer above.

Q2. The Impact Assessment at Annex D discusses the evidence for the proposal around planned abstractions. Please let us know of any other evidence you are aware of that should be considered in respect of planned abstractions?

Q3. Do you agree with the Government's proposal to exclude from transitional arrangements compensation provisions for those who have plans to abstract in the future?

Please explain the reasons for your answer above.

Q4. What do you think are the main issues or challenges that might arise from excluding planned abstractions from the New Authorisations transitional arrangements?

What do you think are the main benefits?

Q5. What other pieces of evidence do you think abstractors could use to meet the evidence requirements for applications?

Q6. Do you think putting basic universal HoFs on New Authorisations licences to protect the environment from damage caused by low river flows or drought is an effective control to protect against environmental damage?

Q7. Do you think a universal HoF of Qn95 on New Authorisations licences is the right level for licences in over-abstracted catchments?

Q8. Do you think a universal HoF of 75% of Qn99 on New Authorisations licences is the right level in catchments that are not over abstracted?

Q9. What do you think are the main issues or challenges that might arise from using basic universal HoFs?

What do you think are the main benefits?

Q10. Do you think there is an alternative approach that should be used to ensure environmental protection?

Please explain your response.

Q11. Do you agree with the proposal to include volumes on transfer licences under New Authorisations?

Please explain the reasons for your answer above.

Q12. Do you agree with the intention of Government and the Regulator to use EIUC funds already collected, that are potentially no longer required for the completion of the Restoring Sustainable Abstraction programme, to fund any compensation that may result from the implementation of New Authorisations?

Please explain the reasons for your answer above.

Q13. The Government expects the Regulator to raise and use funds collected through the EIUC from non-water company charge payers to pay any compensation identified under New Authorisations. Taking into consideration that there is unlikely to be additional Government money available, do you agree with this approach?

Please explain the reasons for your answer above.

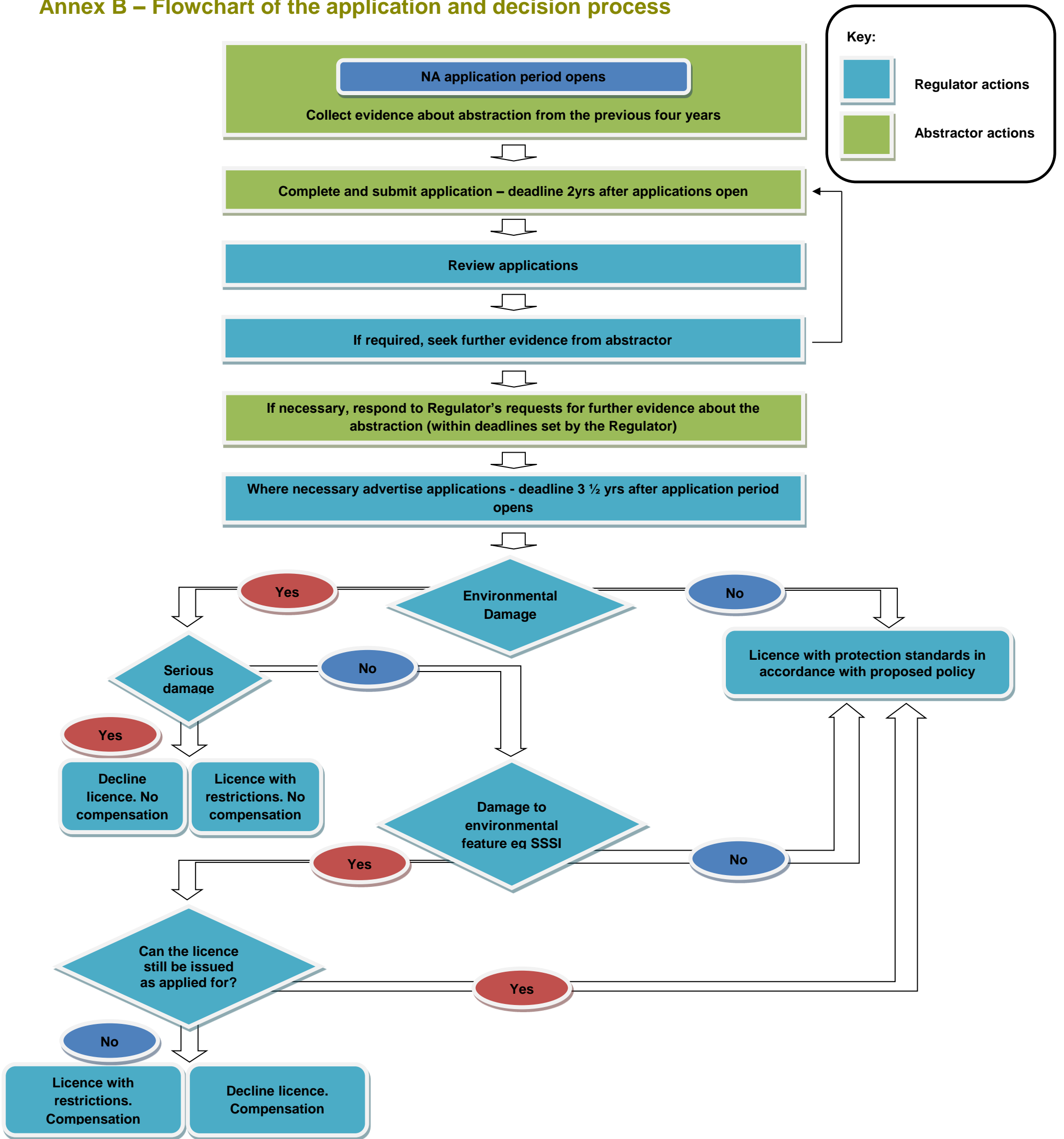
Q14. Can you suggest any alternative ways to fund compensation?

Q15. Having read the Government response to the 2009 consultation on implementing the abstraction elements of the Water Act 2003 in Part I and taking account of the revised proposals in Part II, do you have any other comments about the overall policy approach to New Authorisations?

Q16. Do you have any suggestions as to how we could implement the requirement for licensing control in a way that further reduces the burdens for abstractors, whilst achieving effective regulation?

Q17. If there is anything else you would like to add to your response please include it here.

Annex B – Flowchart of the application and decision process



Annex C – Glossary

2009 consultation	The 2009 consultation on implementing the abstraction elements of the Water Act 2003.
CAMS	Catchment Abstraction Management Strategies
Common end date	Time limits are normally set by reference to the Regulator’s Catchment Abstraction Management Strategies, which provide details of common end dates, when all time limited licences in a catchment are reviewed. Depending on when the licences are granted, the normal duration can range between 6 and 18 years.
European site	Sites designated under the Habitats or Birds Directives and implemented in the UK through the Conservation of Habitats and Species Regulations 2010, as amended and sites that are afforded similar protection as a matter of Government policy.
Habitats Regulations	The Conservation of Habitats and Species Regulations 2010 (as amended)
Hands off Flow (HoF) and Hands off Level (HoL)	A hands off flow (HoF) or level (HoL) abstraction licence condition allows the Regulator to reduce or stop abstraction when flows at a gauging station, or levels in a borehole, pass a specified threshold.
IDB	Internal Drainage Board
Light-touch risk based approach	The Government expects the Regulator will be able to grant licences based on current water use in the majority of cases and may apply standard environmental constraints in line with the proposed policy.
New Authorisations	The abstractors we are bringing into licence control.

Qn95 and Qn99	Qn95 is generally accepted to be a natural flow that is exceeded 95 percent of the time. Similarly Qn99 is the natural flow that is exceeded 99% of the time.
RBMPs	River Basin Management Plans
Regulator	Environment Agency and Natural Resources Wales
SSSIs	Sites of Special Scientific Interest
The Government	The UK and Welsh Governments
The Minister	The Secretary of State and Welsh Ministers
WFD	The Water Framework Directive (2000/60/EC)