



Department
for Environment
Food & Rural Affairs



Llywodraeth Cymru
Welsh Government

Government response to consultation on changes to water abstraction licensing exemptions in England and Wales: New Authorisations

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Environment
Agency



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Executive Summary

Water is essential for people and the environment. It is vital to the economy and for health and is used to generate power, run industries and grow food. Access to clean, safe and secure water supplies is therefore fundamental to society. This is why the Environment Agency in England and Natural Resources Wales in Wales (the Regulator)¹ regulate water abstraction – the process of taking water from the environment, such as rivers or groundwater – through a licensing system.

As a result of increasing competing demands for water, areas of England and Wales are already experiencing water stress. Increasing demand for water from abstractors exempt from the licensing system is exacerbating this position. Other challenges such as a changing climate and population growth are expected to further increase the pressures on water resources.

An abstraction licensing system has been in place since the 1960s, however, certain abstractions have historically remained lawfully exempt from licensing control. This is largely because they were abstractions that were considered low risk or not widely used. As more information has become known about these exempt abstractions, our assessment and understanding of their risk has improved.

Currently around 5,000 significant abstractions are exempt from abstraction licensing. This compares with around 20,000 abstractors that are licensed. These exemptions create an unfair playing field, allowing some abstractors to put pressure on the environment and other water users without any controls, while requiring others to take the burden of addressing these risks. This unfairness can be strongly felt, for example, farmers that use spray irrigation are required to have an abstraction licence while those that use trickle irrigation are not.

The Water Act 2003 included provisions to remove these licensing exemptions in England and Wales. Implementing the legislation will help protect the water environment and make people's rights to take water fairer. This legislation also helps us meet the requirements of the Water Framework Directive (WFD) established in 2000 to make sure that EU Member States manage their water resources.

The WFD requires each Member State to have in place a programme of measures designed to achieve "Good" water body status. One of the basic requirements to help achieve "Good" status is to have in place a system of prior authorisation and control of

¹ We usually refer to the Environment Agency and Natural Resources Wales as the Regulator in this document.

significant water abstraction and impoundments. While we have had a licensing system since the 1960s, the exemptions still within it impact on achieving “Good” status.

We originally consulted on bringing these exempt activities into the licensing system in 2009². Following the responses we received, we worked with stakeholders to investigate the issues raised. Last year, we published a response to that consultation. It also included a further consultation, which we considered necessary to seek further views on a number of issues that had changed since 2009. Last year’s consultation was informed by an impact assessment, which estimated the administrative and economic costs to currently exempt abstractors of removing the exemptions.

In last year’s consultation, we proposed a light touch, risk based approach to bring exempt activities under licensing control. This included:

- Only removing exemptions for water use activities that have or might have significant environmental impacts. Several thousands of abstractions and impounding works with no significant impacts would remain exempt.
- Most abstractors would be granted licences reflecting the volumes they had previously abstracted under the exemption, although there may be cases where conditions are included to protect rivers at very low flows.
- Providing a considerable five-year transitional period from the date we end the exemptions: two years for abstractors to prepare and submit applications and three years for the Regulator to consider and determine applications. Abstractors could continue to take their existing volumes of water during this process.

We published a summary of responses in September 2016³.

As a result of the consultation response the UK and Welsh Governments will be making some technical changes to the licensing approach consulted on, to make the process of removing the exemptions even more light touch and risk-based regulation. We will be:

- allowing the Regulator flexibility to relax the requirements for volume limits on transfer licences (transfer licences are required to transfer water where there is no intervening use of the water) to avoid undue abstraction control costs on abstractors while still ensuring environmental protection;
- allowing the Regulator to be flexible in the application of flow controls so that it can recognise the wider conservation values; and
- allowing volume limits that better reflect business needs in dry periods by extending the qualifying period to include the dry weather in 2011.

² <http://webarchive.nationalarchives.gov.uk/20091205011114/http://www.defra.gov.uk/corporate/consult/water-act/index.htm>

³ <https://www.gov.uk/government/consultations/water-abstraction-licensing-changes-to-exemptions-in-england-and-wales>

Further to the consultation, we now set out our proposed final plans for changing exemptions to the licensing system in England and Wales by commencing the Water Act 2003 provisions. An updated impact assessment has been prepared to inform these plans. Our plans balance the needs of those currently exempt and the rights and responsibilities of all for creating a sustainable water abstraction licensing system.

We will lay the regulations in Parliament and the National Assembly for Wales. Changes to the exemptions will then come into force on 1 January 2018 at which point the two year licence application period will open.

The Regulator will engage further with all sectors and produce guidance for the application period and beyond.

1. Introduction

This document sets out the UK and Welsh Governments' response to the consultation with interested parties on changes to water abstraction licensing exemptions in England and Wales.

1.1 Why change the exemptions to abstraction licensing?

An abstraction licensing system has been in place since the 1960s. The licensing system has developed since. However, certain abstractions have historically remained lawfully exempt from licensing control because they had been considered low risk or the activity was not widely used since the 1960s.

Currently around 5,000⁴ significant abstractions are exempt from abstraction licensing in England and Wales. This compares with around 20,000 abstractions that are licensed.

Exempt abstractors can potentially take unlimited amounts of water, irrespective of availability and without regard to impacts on the environment or other abstractors. These exemptions are unfair when the impacts can be significant. They allow some abstractors to put pressure on the environment and other water users without any controls, while requiring others to take the responsibility of addressing these risks. This can deplete water resources and damage the environment. It creates an imbalance in the levels of cost and responsibility placed upon licensed abstractors. In addition, exemptions make it difficult for the Regulator to manage water resources effectively.

As a result of competing demands for access to water for abstraction, areas of England and Wales are already experiencing water stress. Increasing demand for water from those outside of the current licensing system is exacerbating this position. Other challenges such as a changing climate and population growth are expected to increase further the pressures on water resources.

We believe that all significant abstractors should be subject to regulation to help protect the water environment and make people's rights to take water fairer. However, we recognise that exempt abstractors have operated lawfully and rely upon their access to water. Our intention is to balance the needs of all abstractors and the environment.

The Water Act 2003 included provisions to remove licensing exemptions in England and Wales. This legislation helps us meet the requirements of the Water Framework Directive (WFD) established in 2000 to make sure that EU Member States manage their water resources. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK

⁴ Approximately 4,700 in England and 300 in Wales

remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the UK Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

We originally consulted on commencing those provisions and bringing these exempt activities under licensing control in 2009. Following the responses we received, we investigated a number of additional issues and spoke with stakeholders as part of the process.

On 15 January last year, the UK and Welsh Governments, the Environment Agency and Natural Resources Wales published the document '*Changes to water abstraction licensing exemptions*'⁵. It consisted of two parts:

- Part I was the Government response to the original 2009 consultation on the policy to implement the final abstraction elements of the Water Act 2003 to end exemptions to the existing abstraction licensing system; and
- Part II formed the further consultation on the revised policy, reflecting the responses to the 2009 consultation, further engagement with stakeholders, and wider related policy and legislative developments since 2009.

This was an open consultation across England and Wales and lasted for 12 weeks. It closed on 8 April last year. We received 86 responses from interested parties and published a summary of responses on 26 September last year.

In support of the consultation, we also published an impact assessment on the proposed policy and draft legislation.

1.2 The aims for changing the exemptions

Changing the exemptions will:

- help create a fairer system for all abstractors – both those already licensed and those that will become licensed when the exemptions are removed;
- enable the Regulator to manage water resources more effectively now and in response to increasing pressures on water resources in the future; and

⁵ January 2016 – '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'
https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions/consult_view

- be part of wider work to implement the Water Framework Directive and create a cleaner, healthier environment⁶.

Bringing all significant abstractions into regulation is an important part of plans to reform the licensing system. Reform will provide a modern licensing system that is fairer with more resilient local solutions. Our updated plans for reform will be set out in due course.

The UK and Welsh Governments are working together to reform abstraction management.

1.3 Impact assessment

The policy position in this document has been informed by an impact assessment⁷. This impact assessment updates the January 2016 consultation version⁸.

1.4 Working with interested parties

During the consultation period the UK and Welsh Governments, the Environment Agency and Natural Resources Wales held a series of consultation meetings with interested parties. The meetings were held to give participants the opportunity to seek further information or clarification and to tell us their views about the consultation proposals.

Their views were taken account of as part of this response document. Engagement with these abstractors is ongoing.

1.5 This document

This document responds to the responses received from the consultation and sets out the final policy for the changes to the water abstraction and impoundment licensing exemptions. The rest of the document is split into the following sections:

- Section 2 – provides our responses to the points raised in the consultation

⁶ For example, as set out in Defra's current departmental plan:

<https://www.gov.uk/government/publications/defra-single-departmental-plan-2015-to-2020/single-departmental-plan-2015-to-2020> and the forthcoming 25 year environment plan. In Wales, the Well-being of Future Generations (Wales) Act 2015 <http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en>

⁷ The final Impact Assessment accompanies the Water Act 2003 (Commencement no. 12) Order 2017, and can be found on: <http://www.legislation.gov.uk/>

⁸ Consultation Impact Assessment: https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions/supporting_documents/Annex%20D%20%20Consultation%20Impact%20Assessment%20for%20New%20Authorisations.pdf

- Section 3 – explains our final proposed policy to change exemptions to water abstraction licensing
- Section 4 – explains what happens next on making changes to exemptions to water abstraction licensing

In this document and for the purposes of this policy, the currently exempt abstractors being brought into the licensing system are often referred to as 'New Authorisations'.

2. The consultation

The consultation '*Changes to water abstraction licensing exemptions*' explained the proposed policy revised since the 2009 consultation, sought views on specific areas and, more broadly, on the proposed approach.

The specific questions asked in the consultation around the proposals were:

- Exemptions: the suitable period for the temporary construction abstraction exemption (Question 1);
- Planned abstractions⁹: the possible evidence required as part of the application process for planned abstractions (Question 2); excluding compensation provisions for planned abstractions from transitional arrangements to bring exempt abstractors into the licensing system (Question 3); and views on the main issues or challenges arising from the proposed approach regarding planned abstractions (Question 4);
- Application process: the evidence that an abstractor would be asked to provide as part of their application for a licence when their respective exemption ends (Question 5);
- Hands off flow conditions: the policy proposal to include a hands off flow condition on licences to protect the environment from the abstraction at times of low river flows (Questions 6-10);
- Transfer licences: the proposal to include authorised volumes on such licences (Question 11); and
- Compensation: proposals for how to fund any compensation arising from the policy (Questions 12-14).

We also asked for general comments on:

- the overall approach to the policy (Question 15); how it might be possible to further reduce any burdens for abstractors (Question 16); and
- the consultation in general (Question 17).

We received 86 consultation responses and published our summary of responses on 29 September last year.

⁹ Planned abstractions' are those where there are plans for new abstractions not currently taking place, or planned increases to existing exempt abstractions which will take effect post commencement of the regulations.

2.1 Exemptions

In the consultation, we set out the exemptions that would be removed and some additional low-risk exemptions that we proposed would continue. We explained that one exemption that would continue was temporary dewatering abstractions for construction purposes. We sought views on how long the ‘temporary’ time period should be.

What we proposed:

- an exemption for abstractions for temporary dewatering of underground strata; and
- an exemption for abstractions carried out for temporary diversions of waters to prevent interference with building or engineering works.

Where the abstraction:

- does not damage protected aquatic life nor damage the integrity of a site designated for nature conservation¹⁰; and
- is immediately discharged using a soakaway, if the water is from underground strata, or to surface waters.

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 50m³/day and takes place 500 metres 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).

The possible time periods suggested were: four weeks; three months; six months or longer than six months.

Most responses supported a period of six months or less. Those supporting a longer period were mainly respondents involved with engineering works, explaining that some construction projects lasted more than six months and that they were concerned about increased regulatory burden.

¹⁰ <https://www.gov.uk/check-your-business-protected-area>

We have considered the responses and the evidence provided and concluded that a temporary period of less than **six consecutive months** is appropriate. We understand this period will capture the majority of engineering and construction works and will therefore minimise unnecessary regulation, while avoiding harm to the environment or other abstractors. Abstraction taking place over a longer period increases the risk of wider environmental deterioration, which should be assessed as part of the licensing process. This decision takes account of the protections that will be in place for the environment and abstractors in the exemptions.

Final exemption:

The dewatering of underground strata and abstractions carried out from surface waters solely to prevent interference with building or engineering works where the abstraction is over a period of less than six consecutive months, provided the abstractor can demonstrate that the abstraction:

- does not cause damage or is not likely to cause damage to protected species nor the integrity of a site designated for nature conservation; and
- is immediately discharged to soakaway, if the water is from underground strata, or to surface waters.

In the case of dewatering of underground strata and where the abstraction is not immediately discharged to soakaway:

- (iii) 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
- (iv) the abstraction is less than 50m³/day and takes place 500 metres 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 5 and 6).

Suggestions made for other exemptions

While there was broad agreement about the exemption changes proposed in the consultation, some respondents made suggestions of other activities that should continue to be exempt from licensing.

Our approach to deciding if an abstraction activity should be licensed has been whether the activity in general could have a significant impact on water resources, and therefore detrimental consequences for the environment or other abstractors.

The exemptions suggested and the responses to those suggestions are:

- Small scale activities.

We believe the *de minimis* threshold¹¹ for abstraction licensing should continue to be based on the volume of water abstracted. A volume based threshold is the most suitable and fairest way to set a water resources threshold, compared to other suggestions made such as the area of business activity, as it is comparable across licensing activities and directly relates to the impact the abstraction may have on the water environment.

- Dewatering of isolated groundwater or of rainwater collected in mining, quarrying or other engineering works.

Where dewatering of groundwater takes place¹² a licence will be required where the abstracted water is from water contained in any underground strata whether hydraulically isolated or not. Establishing whether and how groundwater interacts with other water sources and the impacts this may have on the environment and other abstractors is part of the considerations of an abstraction licence decision.

A licence is not required for the dewatering of wholly or mainly rainwater from an excavation.

- Public or publicly funded bodies or statutory undertakers or bodies with statutory duties

We believe the abstraction licensing provisions should apply to public bodies. The removal of these exemptions is for the purpose of enabling the Regulator to perform its duties to manage the potential of all significant impacts on water resources caused by abstractions. Many other abstractors (including public bodies and the Regulator) require or will require an abstraction licence and also have to comply with various other duties, licences and permissions, so providing abstraction exemptions for one and not another body would not be fair. We have therefore not provided such exemptions.

- Internal Drainage Boards.

We do not consider that there is sufficient evidence to make a case to exempt all abstraction by Internal Drainage Boards because of the potential consequences for the environment and abstractors downstream of their abstraction intakes. We do however consider that there is good reason to exempt some, which is why the Water Act 2003 included provisions to continue exemptions for transfers within drainage districts and for any land drainage activities. We proposed in our consultation that impounding works within drainage districts should also be exempt; which we will implement.

- Other regulation should be used to protect the environment therefore there is no need for licensing.

¹¹ Currently 20m³/day per source of supply.

¹² Unless it is an exempt abstraction, for example, temporary dewatering.

We firmly believe there is a need to directly regulate what water is taken from the environment where it may have significant impacts to make sure there is enough water for people and the environment. However that does not mean we do not recognise the need more broadly for different permissions to better interact and the UK and Welsh Governments are continuing to take action to reduce unnecessary regulatory burdens. When exemptions are removed and if appropriate, we expect the Regulator to use any relevant information used in previous permissions in its decisions. This will help align decisions as far as possible and ensure regulatory effort is proportionate, effective and seeks to minimise negative business impacts.

- Abstraction in an emergency (ports).

We agree that the licensing requirements would be inappropriate in an emergency and we will include this as an exemption.

- Abstraction from navigable rivers into a navigation authority's water system.

Navigable rivers were excluded from the definition of a navigation authority's water system in the Water Act 2003. We have again reviewed the scenarios relating to navigable rivers and we believe that passive river to canal interactions, would not require licences. Circumstances where deliberate action such as artificial structures is taken to allow water to be diverted from a river into a canal would need a licence which is the intention of the Water Act 2003.

In section 3 below, we provide a full list of the additional licensing exemptions that will be made.

2.2 Planned abstractions

'Planned abstractions' are those where there are plans for new abstractions or planned increases to existing exempt abstractions.

What we proposed:

- To exclude planned abstractions from the new authorisations transitional arrangements (so abstractors could not apply for 'planned abstractions' through the transitional application process for currently exempt abstractions).
- To license any application for a planned abstraction through the standard abstraction application licensing process.
- To exclude planned abstractions also from transitional arrangements for compensation (which may be available where an abstractor can demonstrate loss or damage as a result of the Regulator granting the licence to a lesser extent or refusing to grant the licence).

Across all sectors, the main issue respondents raised was that many had invested in or anticipated future expansion. Excluding these plans from new licences therefore would block growth.

Respondents also noted that some permissions for planned activities had already considered the impact on water resources and so questioned the need for further regulation through licensing.

Respondents also noted however that the proposal made sure that the process was equitable for those existing, licensed abstractors who were planning to increase their abstraction to support business growth. They would need to apply through the standard application process to abstract additional water, and would not receive compensation if their application was refused.

If provision for planned abstractions were made in our transitional arrangements, it would place previously exempt abstractors in a much more favourable position than existing licensed abstractors. It would also prevent us from continuing to take a light touch risk based approach as an application, which included planned abstraction, could not be considered environmentally neutral.

In addition, our plans to end these exemptions have been public and expected since 2003. Abstractors should have been able to prepare for this, and taken account of the position in their business plans.

We understand the reasons for the negative responses received, however, we do not believe that these justify taking an approach which advantages currently exempt abstractors' growth over those currently licensed. We believe this approach to be equitable

and reasonable, as it places all abstractors who have plans to abstract on an equal footing.

We have therefore not changed the approach proposed in the consultation, however, we do not expect the Regulator to limit sustainable economic growth unnecessarily and will apply the principles of better regulation¹³ to license planned abstraction.

We expect the Regulator to use any relevant information, such as environmental reports used as evidence to support other permissions already in place for planned works, so that it aligns its abstraction licence decisions, as far as possible.

We also expect the Regulator to provide application forms that allow abstractions for previously exempt activities to be applied for together with planned (variations to increase) abstraction and to have in place internal processes that align the two application processes and are considerate to business needs.

¹³ As set out in:

For Environment Agency: <https://www.gov.uk/government/publications/regulators-code-and-the-environment-agency/how-the-environment-agency-meets-the-regulators-code>

For Natural Resources Wales: <https://naturalresources.wales/about-us/what-we-do/how-we-regulate-you/regulatory-principles/?lang=en>

2.3 Application process

What we proposed:

- That evidence of abstraction required to support the licence application could be flexible but could include meter readings, pump ratings, invoices for equipment, photos of infrastructure, or business receipts/contracts.

We sought views on other types of evidence that could be provided.

Given the different types of abstractions and operational circumstances, we proposed the Regulator would be flexible about the evidence of abstraction required as part of the application process. We concluded that a definitive list of relevant evidence may preclude relevant evidence from some abstractors.

We expect the Regulator to apply a flexible, risk-based approach regarding evidence. Applicants should be able to demonstrate to the reasonable satisfaction of the Regulator, by way of the application and supporting evidence, their abstraction requirements and entitlements and that abstraction has taken place within the qualifying period.

The Regulator will produce guidance on evidence requirements that will take account of the variability of abstractor working practices, including situations where abstraction volumes are not measured.

In turn, we expect abstractors to be able to provide sufficient evidence to make a valid application. If abstractors have concerns about what evidence can be used, the quality of the evidence available, or the potential impacts on current business activities, we strongly recommend speaking to the Regulator to discuss the concerns as early as possible in the two year application period.

In response to the consultation views, we have also extended the qualifying period.

Abstraction within the previous seven years will qualify. This has increased from the four years proposed in the consultation. Doing so, will allow abstractors greater flexibility, and cover a wider range of weather patterns, to demonstrate abstraction requirements.

2.4 Hands off flows

What we proposed:

- That the Regulator may apply environmental constraints to licences granted, without compensation, to protect the environment at low flows and during drought conditions. This will be a step towards sustainable abstraction.
- The Regulator would do this by including a basic Hands off Flow (HoF) condition on surface water abstraction or groundwater equivalent where the flow in a river is dependent on that groundwater¹⁴ on abstraction licences. By:
 - Placing a universal HoF of Qn95 on licences in catchments that are over-abstracted¹⁵; and
 - Placing a universal HoF of 75% of Qn99 on licences in catchments that are not over-abstracted.

The majority of respondents agreed with using hands off flow conditions. The main challenges were that the Regulator might impose unnecessarily stringent flow restrictions with uncertain consequences for businesses.

Other respondents meanwhile, while agreeing that these types of restrictions should be applied, thought that they were not at a suitable level to give enough protection to the

¹⁴ “Hands off flow”(HoF) conditions restrain abstraction when river flows are low. For example, a licence could restrain abstraction where the natural river flow is at or below the flow that is exceeded 95% of the time and this HoF would be shorthanded as Qn95 or 75% of Qn99, which is shorthand for 75% of Qn99 is 75% of the natural flow that is exceeded 99% of the time.

These conditions will be included at the Regulator’s discretion depending on environment need. The conditions will usually be set at Qn95 (or a groundwater equivalent in the case of groundwater where the flow in inland waters is dependent on that groundwater) in catchments where there is over abstraction and flows do not support WFD objectives. Where current flows support the WFD objectives i.e. catchments that are not over abstracted 75% of Qn99 will usually be applied.

¹⁵ Over abstracted: recent actual flows are below the environmental flow indicators (EFI). The EFI is the proportion of the natural flow in a river set aside for the ecological health of the water course and is used to prevent ecological deterioration. These indicators are aligned with WFD good status standards for rivers.

The Environment Agency’s and Natural Resources Wales’ current approach for assessing catchments is through Abstraction licensing Strategies and is the means for achieving the River Basin Management Plan objectives of sustainable management of abstraction and impoundment. For England: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562749/LIT_4892.pdf (pages 9 to 15) and: <https://www.gov.uk/government/collections/water-abstraction-licensing-strategies-cams-process> has the regional strategies in England. For Wales: <https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/water-available-in-our-catchments/?lang=en> – see relevant catchment Abstraction Licensing Strategy.

environment. These comments were in particular about a lack of protection for surface waters that are not over abstracted and groundwater not in connectivity with surface water.

The UK and Welsh Governments consider that applying these basic hands off flow conditions provides basic protection for rivers during low flows and in drought conditions and places a proportionate responsibility of reducing unsustainable abstraction on abstractors being brought under licensing control. These conditions are meant to be more favourable to currently exempt abstractors than conditions that are applied to licences for new abstractions as this policy approach acknowledges that these are existing abstractions relied upon by business.

As stated in the consultation, we believe that the proposals strike a fair balance between targeting immediate environmental improvements and recognising that investment has been made based on these existing abstractions.

The UK and Welsh Governments' decisions on priorities under the Water Framework Directive or other environmental legislation, as well as consideration of disproportionate costs, will therefore be taken into consideration for these previously exempt abstractors, as for all licensed abstractors. The policy is therefore a two stage approach to achieve environmental benefits and meeting the Water Framework Directive requirements. Once all significant abstraction is in the licensing system the Regulator will deliver any further improvements needed by taking account of the overall abstraction position in a catchment, to deliver improvements needed to meet Water Framework Directive water body objectives.

From comments received, we recognise, however, that the universal application of these basic conditions could, in some circumstances, perversely cause harm to the environment. We therefore do not expect the Regulator to apply hands off flows universally.

The UK and Welsh Governments expect the Regulator to help abstractors understand what they need to do to comply with hands off flow conditions and to make compliance reasonably straightforward.

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

Surface water status in abstraction licensing strategy (ALS/CAMS):	Flow / quantitative status supports WFD objectives	NAs HoF applied:
Water not available / Over abstracted catchments	Fail	Qn95
Restricted water available / Over licensed catchments	Pass	75% of Qn99
Water available	Pass	75% of Qn99

2.5 Transfer licences

What we proposed:

- To include volume conditions on transfer licences.

The majority of exempt abstraction activities (estimated at 4,000) that will become licensable in England will be for water transfers. We would expect the Regulator to issue these transfers with transfer licences¹⁶ to meet the policy objectives of maintaining existing rights and entitlements where it can. In Wales, water transfers are expected to make up a lower proportion of exempt activities than in England. The current legislation gives the Regulator discretion as to whether to include volume controls on transfer licences.

The majority of respondents supported the proposal to include volume conditions on transfer licences. Many respondents felt that volumes were necessary to enable the overall monitoring and control of the abstraction.

Those that disagreed did so primarily because their abstraction is difficult to measure or control.

Following our review of the consultation responses, the UK and Welsh Governments have concluded that adding volume limits to water transfers does not always reduce environmental risk and may add unnecessary business costs. We have therefore revised the consultation proposal.

The Regulator will have flexibility on the inclusion of volume conditions on a transfer licence. However, the final decision on whether to do so should be proportionate, reflecting environmental risk, impacts on other abstractors and the burdens it places on the abstractor. We expect, in particular, that in situations where an abstraction is currently unmeasured and / or not readily controlled and where there are satisfactory alternative ways to control the abstraction, for example conditions that describe the use of abstraction structures, that the Regulator uses a licensing approach that minimises regulatory burdens on the abstractor. This change from the consultation will reduce regulatory costs while achieving similar outcomes of licences that reflect abstraction requirements and prevent additional environmental impacts.

¹⁶ A 'transfer licence' is required to move water from one source of supply to another, or to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations, without intervening use.

2.6 Compensation arrangements

What we proposed:

Using the compensation charge element of the Regulator's water abstraction charges scheme (Environmental Improvement Unit Charge - EIUC) to fund any compensation, and specifically 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.
- Collect additional funds, if required, through the EIUC from non-water company charge payers, to pay any more compensation identified under New Authorisations.

The policy we consulted on 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 either granting a licence to a lesser extent than that of the abstraction the applicant was previously conducting; or refusing to grant a licence. We proposed that the existing compensation charge element of the Regulator's water abstraction charges scheme (Environmental Improvement Unit Charge - EIUC) be used to fund any compensation.

The majority of those who responded to this proposal favoured using compensation funds already collected or to collect additional funds, if required, via the compensation charge to meet any compensation claims. Currently exempt abstractors supported this approach. Those abstractors who are already licensed and have been paying into the compensation fund were not in favour.

The National Farmers' Union believed that the compensation funds collected to date should only be used for the Restoring Sustainable Abstraction programme, their original purpose, and that the rest should be refunded.

It is both the UK and the Welsh Governments' policy however for the Regulator to use charging schemes to recover their costs for relevant regulatory functions. Given the Governments have determined that compensation costs are part of the Regulator's water resources management function, the costs of this policy should also be recovered from abstractors through the Regulator's charges scheme as are other costs. In England and Wales, we will therefore continue with the compensation arrangements as set out in the consultation.

In Wales, the Welsh Government has agreed to consider specific support to Natural Resources Wales if compensation costs should materialise beyond a level that cannot reasonably be met from within the Natural Resources Wales' water resources income.

2.7 Other consultation areas

We asked three further questions on:

- any comment on the general, overall approach to New Authorisations;
- how it might be possible to further reduce any burdens for abstractors through the policy approach; and
- the overall consultation.

All comments to these questions have been considered and discussed with respondents as we have finalised the policy. In many cases, we have amended the final policy approach as explained in section 3.

For example, there were concerns about the overall approach included using a four year qualifying period of past abstraction, because it did not take sufficient account of the variability of weather patterns over time. As a result of further consideration and discussion with some respondents we have increased the period to seven years.

The National Farmers' Union and the Chartered Institution of Water and Environmental Management sought further clarification on the application of the Serious Damage provision and guidance on its use. The principles the Regulator would use to assess serious damage are set out in the 2012 consultation and the Government response on the issue¹⁷. As clarified in the 2016 consultation, if the abstraction is affecting, or has the potential to affect, a European site designated under Habitats Regulations, the Regulator will apply the precautionary principle in its determination decision of serious damage. This means that an abstraction would be restricted to protect from serious damage where the Regulator has insufficient evidence to conclude that no adverse effects to protected sites would be caused.

¹⁷ 2012 Serious Damage consultation: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>

3. The final policy approach

Our final policy approach takes account of the responses received to the consultation and our assessment of them as set out in section 2.

3.1 Exemptions

We can confirm that the exemptions we will end are:

- transferring water from one inland water 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 but not including land drainage activities;
- dewatering mines, quarries and engineering works, where the water is mostly groundwater rather than rain;
- 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 exemptions.

The normal licensing threshold will apply. This means that only those abstracting more than 20m³/day in aggregate from a source of supply will need to apply for an abstraction licence once these exemptions end.

We will also create new exemptions for some low risk abstractions and impoundments leaving them exempt¹⁸. We can confirm that these are:

- abstraction (transfers) downstream of the normal tidal limit by navigation, harbour and conservancy authorities, other than in the hour before or after low tide;

¹⁸ An appropriate assessment for the purposes of regulation 99(1)(c) of the Conservation of Habitats and Species Regulations 2010 has been prepared for: abstraction of saline water for ports and harbours; abstraction of water in connection with dredging operations; abstraction of a 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); and impounding works constructed by or on behalf of Internal Drainage Boards in exercise of their functions within their appointed areas. Exemptions not covered by these assessments may require the Regulator's consent under regulation 99(2) of the Conservation of Habitats and Species Regulations 2010.

- abstraction in connection with dredging operations authorised by an authority in the exercise of its statutory functions in relation to those waters upstream of the normal tidal limit and any abstraction downstream of the normal tidal limit;
- abstraction of water within managed wetland systems (subject to the main abstraction into the system being licensed) and impounding works solely for the management, operation or maintenance of water within managed wetland systems;
- 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);
- impounding works constructed by or on behalf of Internal Drainage Boards (IDBs) to exercise their functions within their appointed area;
- dewatering of underground strata and abstractions of surface waters to prevent interference with building or engineering works where the abstraction lasts less than six consecutive months (subject to restrictions¹⁹);
- third-party operated dry docks that transfer water to and from a navigation authority's water system;
- impounding works when required in an emergency; and
- emergency abstraction or impounding where undertaken by port, harbour or conservancy authorities.

3.2 Light-touch, risk based licensing approach

The UK and Welsh Governments expect the Regulator to take a light-touch, risk based approach to licensing these abstractions. A light touch, risk based approach means:

- The majority of licences will be granted based on existing abstraction requirements. Applicants should be able to demonstrate, to the reasonable satisfaction of the Regulator, their abstraction requirements and entitlements and that abstraction has taken place within the seven year qualifying period.
- Licences will normally have “hands off flow” conditions²⁰ to protect rivers during low flows and times of drought where these conditions provide benefits to the environment.

¹⁹ See the Water Abstraction and Impounding (Exemptions) Regulations 2017, which can be found at: <http://www.legislation.gov.uk/>

²⁰ Or a groundwater equivalent where the flow in an inland water is dependent on that groundwater.

- The Regulator will have flexibility on the inclusion of volume conditions on transfer licences to avoid undue abstraction control costs on abstractors while still ensuring environmental protection²¹.

It is expected that lawful abstractions will only be significantly curtailed or refused to protect the environment from serious damage²². However in exceptional circumstances applications may be refused or restricted for reasons other than serious damage, such as protecting a Site of Special Scientific Interest from damage but the Regulator does not consider this damage to be serious damage. In these circumstances, abstractors would be able to apply for compensation. We expect the Regulator to take a similar approach to its own abstractions that become licensable.

To support this approach in England, the UK Government will issue a direction to the Environment Agency that will apply to lawful abstractions that qualify for the transitional arrangements²³. The direction will recognise 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 neither remove the Environment Agency's existing duties, which will be complied with, nor detract from its independent assessment of individual licence applications.

In England, we expect Natural England to recognise that the Environment Agency has been directed in such a way and to advise accordingly.

The Welsh Government considers recent Welsh legislation sufficient for supporting a light touch, risk-based approach to licensing abstractions that qualify for the transitional arrangements, without making a direction to Natural Resources Wales²⁴.

²¹ Conditions could include for example details of the abstraction structure, which would prevent changes to that structure to allow increased abstraction.

²² The principles the Regulator would use to assess serious damage are set out in the 2012 consultation and Government response: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage> As clarified in the 2016 consultation, if the abstraction is affecting, or has the potential to affect, a European site, the Regulator will apply the precautionary principle in its serious damage risk assessment.

²³ Exempt abstractors who have abstracted within the seven years preceding the commencement of legislation.

²⁴ The Environment (Wales) Act 2016 placed sustainable management of natural resources at the core of how Natural Resources Wales should carry out its activities in a manner consistent with its obligations under the Well-being of Future Generations (Wales) Act 2015 and among Natural Resources Wales' seven Well-being Objectives is the objective to promote successful and responsible business that use natural resources without damaging them.

The UK and Welsh Governments' expectations are that the Regulator will normally grant licences with a time limit to the relevant common end date²⁵ in keeping with its published licensing position²⁶. Once within the licensing system, these abstractions will be treated like other licensed abstractors. While licences will be issued with time limits, it is the UK and Welsh Governments' intention to phase out time limits as part of abstraction reform.

Charging provisions for previously exempt abstractors are included in the Regulators' charging schemes, as may be amended²⁷.

3.3 Licensing: application period and Regulator determinations

We will allow two years for abstractors to apply for their licences. The Regulator will determine all applications within three years from the end of the two year application period.

We expect abstractors to provide sufficient evidence of historic abstraction to support the making of a valid application. If applicants are unable to demonstrate that abstraction has taken place during the qualifying period, they will need to apply via the standard licensing process²⁸. Evidence could include meter readings, pump ratings, calculations of abstracted quantities, invoices for equipment, photographs of infrastructure, or business receipts/contracts.

We recognise however that abstractors may have other evidence, which demonstrates to the satisfaction of the Regulator the abstraction taking place to meet existing abstraction requirements. We therefore expect the Regulator to be flexible in considering what evidence is suitable to support applications.

²⁵ In exceptional circumstances, the Regulator may issue long duration licences (up to 24 years) if certain tests are met. However, because it is the intention to phase out time limits as part of abstraction reform and because of the additional evidence requirements for applicants to support a valid long duration licence application, we do not generally expect applicants to apply for and the Regulator to be issuing further long duration licences.

²⁶ England: <https://www.gov.uk/government/collections/water-abstraction-licensing-strategies-cams-process> and Wales: <https://naturalresources.wales/guidance-and-advice/environmental-topics/water-management-and-quality/water-available-in-our-catchments/?lang=en>

²⁷ Current charging schemes are available on the Environment Agency and Natural Resources Wales websites.

²⁸ As set out in the Water Resources (Abstraction and Impounding) Regulations 2006 (<http://www.legislation.gov.uk/ukxi/2006/641/contents/made>, In some cases, this is likely to mean licences with more restrictive water access and that the abstraction cannot take place until a licence is issued.

In England: <https://www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence> or in Wales: <https://naturalresources.wales/apply-for-a-permit/water-abstraction-licences-and-impoundment-licences/?lang=en>

New or increased abstractions will be considered by the Regulator using its standard licensing arrangements. There will be no compensation payable where these licence applications are refused or not granted in full.

Once the regulations are in force, abstractors wishing to undertake a new abstraction or increase their existing abstraction should apply using the appropriate form provided by the Regulator. We expect the Regulator to provide application forms that allow abstractions for previously exempt activities to be applied for together with planned (variations to increase) abstraction and to have in place internal processes that align the two application processes and are considerate to business needs.

Except for the timeframes for applying for and determining licences, in most other respects, the process for dealing with licence applications from existing abstractors who become subject to licensing will be similar to those required under the Water Resources (Abstraction and Impounding) Regulations 2006. The Regulator's standard abstraction charges would also apply.

3.4 Regulator guidance for the application process

The UK and Welsh Governments expect the Regulator to provide guidance as part of the application process. It will provide clarity on the number and types of licences to be applied for. The Regulator is best placed to advise and may sometimes need to decide which type of abstraction licence²⁹ or the number of licences an applicant should apply for³⁰. When it does so, it will advise an applicant that it proposes to treat an application for a licence as being one of a different type to that sought before it proceeds to determine the application or publish the proposal. We do not consider that full licences will be necessary or desirable in most cases to regulate water transfers. We do not therefore expect applicants to use this process as a means of enhancing existing rights.

We strongly encourage applicants to make early applications to allow sufficient time for discussions about their application with the Regulator. If an application is received towards

²⁹ The Water Act 2003 amended the Water Resources Act 1991 to provide that licences will be one of three types: a 'full licence', a 'transfer licence' or a 'temporary licence' (which lasts for less than 28 days). A 'full licence' gives the holder a right to abstract water that is protected in law from any later licences that the Agency may grant and is required for any abstraction lasting 28 days or more. A 'transfer licence' is available for abstraction of water lasting 28 days or more to transfer water from one source of supply to another, or to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations, without intervening use.

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.

³⁰ As set out in section 36A of the Water Resources Act 1991. Section 36A enables the Regulator to require an applicant for one type of abstraction licence to apply instead for another type, or to group several related applications together. The applicant can appeal against the Regulator's decision.

the end of the application period the Regulator may be unable to carry out the necessary application validity checks before the application period closes. If the application turns out to be deficient and cannot be deemed a valid application, the applicant risks missing the transitional period, meaning the abstraction must stop at the end of the two year application period and an application submitted under standard licensing procedure where it will not be determined using the light touch risk based approach.

3.5 Minimising regulatory burden

We expect the Regulator to minimise the burden of the licensing process on the applicants as far as possible. For instance we expect the Regulator to:

- help abstractors minimise administrative costs by for example linking applications for abstractions from the same source of supply³¹;
- provide application forms that allow abstractions for previously exempt activities to be applied for together with planned (variations to increase) abstraction and to have in place internal processes that align the two application processes and are considerate to business needs³²;
- take a flexible risk based approach to licensing which accommodates the wide variety of situations abstractors may find themselves in to avoid unnecessary business burdens or controls.

3.6 Compensation arrangements

Compensation³³ may be applied for where loss or damage arises from a refused or constrained application for lawful³⁴ abstraction that is made within the qualifying period, except where refusal or curtailment is necessary to:

³¹ In the case of abstractions for mining, quarrying, engineering and building operations where the exact point of abstraction changes over time within a sites' area, we expect the Regulator to license this abstraction in a way that will also minimise the need for multiple licences or licence variations by for example referring to the existing worked area as being the point(s) of abstraction.

³² As explained in Section 4.2, the planned element of these abstractions will be considered by the Regulator under the Water Resources (Abstraction and Impounding) Regulations 2006.

³³ There may be exceptional cases where compensation will be paid. These are most likely to be affecting 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 but it does not consider the damage to be serious damage.

³⁴ Where licence conditions reflect other permissions and entitlements, for example constraints referred to in enabling Acts, conditions contained within planning permissions or to prevent any significant adverse effects

- protect the environment from serious damage³⁵;
- apply a basic “hands off flow³⁶” condition to restrict abstraction during low flows and drought conditions;
- reflect current operating constraints already in place e.g. canal acts, planning conditions, mechanisms to control abstractions during qualifying period in the case of transfer licences with no volumes specified; and
- apply a time limit in accordance with the Regulator’s current policy.

Any compensation liabilities will be funded through the Regulator’s existing mechanisms for generating water resources income and it should use existing compensation funds collected or, where required, any further collection of compensation funds³⁷³⁸.

As a general principle, public authorities or organisations 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. The Regulator will therefore not be liable to pay compensation where the applicant under the transitional provisions is a public authority.

If there is a dispute about a licence decision or what type or number of abstraction licences an applicant should apply for, the applicant will have a right of appeal. The appeals process will be consistent with the usual appeal process for abstraction licences³⁹.

identified under the Water Resources (Environmental Impact Assessment) Regulations 2003 as this will not constitute loss or damage.

³⁵ In relation to sites designated under the Habitats Regulations, serious damage includes instances where the precautionary principle is applied because the Regulator has insufficient evidence to conclude no adverse effects to protected sites would be caused.

³⁶ Compensation will not be payable where the Regulator applies a Qn95 or less restrictive condition in over-abstracted catchments, similarly 75% of Qn99 where flow supports the environment.

³⁷ In Wales, the Welsh Government has agreed to consider specific support to Natural Resources Wales if compensation costs should materialise beyond a level that can reasonably be met from within the Natural Resources Wales’ water resources income.

³⁸ When required, the Environment Agency and Natural Resources Wales use the “Environmental Improvement Unit Charge (EIUC)”, a component of its abstraction charges, to collect funds for compensation.

³⁹ Section 36A of the Water Resources Act 1991 for appeals against type or number of licence applications and section 43 of the Water Resources Act 1991 for decision on whether to grant or refuse a licence.

4. Timetable and Next Steps

4.1 Implementation timetable

We will make the changes to the exemptions in the abstraction licensing system by commencing the primary legislation and through secondary legislation.

We consulted on the draft secondary legislation in January last year as part of the consultation process. We will now lay the regulations in Parliament and the National Assembly for Wales.

The two year licence application process will commence, once the regulations come into force on 1 January 2018.

Abstraction that has taken place during the qualifying period can continue without a licence until the licence is determined or, if no application is made, until the application period closes.

4.2 Further work to achieve the policy

The Regulator will produce guidance on the licence application process before the regulations come into force, during the application period and beyond. The Regulator will continue engagement with abstractors throughout the application and determination processes.

Abstractors can contact their local Regulator offices⁴⁰ to discuss their individual circumstances.

⁴⁰ Abstractors in England can contact the Environment Agency's National Customer Contact Centre to speak to the appropriate contact on: 03708 506 506 or enquiries@environment-agency.gov.uk

Abstractors in Wales can contact Natural Resources Wales' Customer Care Centre to speak to the appropriate contact on: 0300 065 3000 or enquiries@naturalresourceswales.gov.uk

Glossary

Abstraction: Removal of water from a surface or groundwater source.

Abstraction conditions: Conditions attached to an abstraction licence, for example, which can stop or reduce abstraction at specified threshold values (a Hands-off Flow), a seasonal restriction or an expiry date.

Abstraction licence: The authorisation granted by the Environment Agency or Natural Resources Wales to allow the removal of water from a surface or groundwater source. Licences are currently needed where more than 20 cubic metres (approximately 4,400 gallons) a day per source of supply is removed unless a specific exemption applies.

The Water Act 2003 amended the Water Resources Act 1991 to provide that licences will be one of three types: a 'full licence', a 'transfer licence' or a 'temporary licence' (which lasts for less than 28 days). A 'full licence' gives the holder a right to abstract a specified volume of water that is protected in law from any later licences that the Environment Agency or Natural Resources Wales may grant and is required for any abstraction lasting 28 days or more. A 'transfer licence' is available for abstraction of water lasting 28 days or more to transfer water from one source of supply to another, or to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations, without intervening use.

Abstraction Licence Strategies /Catchment Abstraction Management Strategies definitions:

- **Water Available:** there is more than enough water to meet the needs of the environment.
- **Over Licensed:** the total volume of water licensed could compromise the needs of the environment. If all licensed water is abstracted, there will not be enough water left for the environment.
- **Over abstracted:** there is not enough water to meet the needs of the environment.

Environmental Improvement Unit Charge (EIUC): A component of the annual charge in the Regulators' charges schemes payable by abstractors which is used in some cases to cover the costs of compensating abstractors where their abstraction licences are compulsorily varied or revoked to reduce the risk of environmental damage caused by abstracting too much water.

Exemptions: The abstractions that can currently be lawfully made (and will be allowed in the future for low risk activities) without an abstraction or impoundment licence being needed.

Hands-off Flows (HoFs): A condition attached to an abstraction licence which states that if flow (in the river) reaches or falls below the threshold specified on the licence, the abstractor will be required to reduce or stop the abstraction.

Qn95 and Qn99: Qn95 is generally accepted to be a natural flow that is exceeded 95% of the time. Similarly Qn99 is the natural flow that is exceeded 99% of the time. 75% of Qn99 is 75% of Qn99 flow.

Regulator: Environment Agency in England and Natural Resources Wales in Wales

Restoring Sustainable Action (RSA) Programme: The programme involves the Environment Agency and Natural Resources Wales reviewing abstraction licences to find out whether water abstraction is causing environmental problems. Where they find licensed abstraction is a problem, they work with abstractors to find solutions.

Serious damage: The principles the Regulator would use to assess serious damage are set out in the 2012 consultation and Government response: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage> and the clarifications made in the 2016 New Authorisations consultation.