

SCHEDULE 1

ENABLING POWERS

- 1.—(1) The following sections of the Act(1)—
- (a) section 25A(7)(a) (including as applied by section 4(3) of the Water Act 2003);
 - (b) sections 34 and 36A(5);
 - (c) section 37(4) and (6) (including as applied by section 51(3));
 - (d) section 37A (including as applied by section 51(3));
 - (e) section 43(2)(a) and (3) (including as applied by section 51(3));
 - (f) sections 45, 51(1C)(b) and (1D), 52(4), 55(4), 59(1) and 64;
 - (g) section 161B(5), (6) and (7) (as applied by section 25B and section 4(3) of the Water Act 2003);
 - (h) section 161C(3) and (4) (as applied by section 25B and by section 4(3) of the Water Act 2003);
 - (i) sections 189, 199(1), 199A(2) and (6), 219(2)(d), (e) and (f) and 221(1).
- (2) Section 3(5) of the Water Act 2003.

SCHEDULE 2

Regulations 2(1) and 16

APPLICATIONS BY THE AGENCY

Agency applications

- 1.—(1) Where the Agency proposes—
- (a) to undertake abstraction or impounding works in relation to which this Schedule applies, or
 - (b) a variation of an Agency licence, other than where section 51(4) applies,
- it must prepare an application accordingly.
- (2) That application must—
- (a) be in the form, include such information and be accompanied by such reports as would be required if it were an application to the Agency for a licence; and
 - (b) be accompanied by a draft licence setting out all the matters the Agency considers appropriate for inclusion in the licence sought.
- (3) The Agency must—
- (a) send a copy of any Agency application to the appropriate authority; and

(1) 1991 c. 57; sections 25A(7)(a) and 25B were inserted by s. 30 of the Water Act 2003 (c. 37) (“the WA”); section 34 was amended by the Environment Act 1995 (c. 25) (“the EA”), section 120 and Schedule 24 and the WA, section 101(1) and Schedule 7, paragraph 2; section 36A(5) was inserted by the WA, section 13(1); section 37(4) and (6) were substituted by the WA, section 14(1), and section 37A by section 14(2); section 43(2) was amended by the EA, section 120 and Schedule 22, paragraph 128; section 45 was amended by the EA, section 120 and Schedule 24 and the WA, section 13(3); section 51(1C)(b) and (1D) were inserted by the WA, section 21; section 52(4) and (6) were amended by the WA, section 22; section 64 was amended by the WA, section 2(7); sections 161B(5) and (6) and 161C(3) and (4) were inserted by the EA, section 120 and Schedule 22, paragraph 162; section 189 was amended by the WA, section 23(3); section 199(1) was amended by the WA, section 8(5); section 199A(2) and (6) were inserted by the WA, section 8(6); and section 219(2) was amended by the EA, section 120 and Schedule 22, paragraph 176 and Schedule 24. References in the Act to the Agency were substituted by the EA 1995, section 120 and Schedule 22, paragraph 128.

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- (b) make that application available for public inspection at all reasonable times at the Agency’s office in the relevant area in which the abstraction or impounding works to which the application relates would take place.
- (4) In sub-paragraph (3), and in paragraphs 6 and 8(1) “the appropriate authority” means—
 - (a) in relation to abstraction or to impounding works in England, the Secretary of State; and
 - (b) in relation to abstraction or to impounding works in Wales, the Assembly.

Advertisement of Agency application

2.—(1) Subsections (1) and (2) of section 37(2) (publication of application for licence) apply in relation to an Agency application as if that application had been made to the Agency.

(2) Where the requirements of subsections (1) and (2) of section 37 apply in relation to an Agency application, notice of that application must be published—

- (a) in at least one newspaper circulating in the locality of the proposed point of abstraction or impounding; and
- (b) on the Agency’s website.
- (3) Subject to sub-paragraph (4), the notice must—
 - (a) state that the Agency is the applicant;
 - (b) specify—
 - (i) the type of licence being applied for;
 - (ii) the purpose of the proposed abstraction or impounding;
 - (iii) the proposed point of abstraction or impounding;
 - (iv) in the case of an application for an abstraction licence, the quantity of water to be abstracted and the period over which abstraction would take place; and
 - (v) in the case of an application for an impounding licence, the proposed means of impounding; and
 - (c) state—
 - (i) where and when the register containing details of the application may be inspected and that such inspection is free of charge;
 - (ii) the address to which any representations in relation to the application are to be sent; and
 - (iii) that, after the expiry of the period within which representations may be made in relation to the application, the Agency may approve the application in accordance with paragraph 6 unless the application is referred to the Secretary of State or the Assembly under section 41.

(4) The notice must not include any information that is not to be included in a register by virtue of section 191A (exclusion from registers of information affecting national security) or 191B (exclusion from registers of certain confidential information).

Exemption from advertising requirements

- 3.—(1) The requirements of section 37(1) and (2) do not apply—
- (a) to an Agency application for a full licence or transfer licence if—

(2) Section 37 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, section 14(1).

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- (i) the application relates to abstraction at a proposed point of abstraction permitted under an existing licence held by the Agency;
 - (ii) it would take effect immediately after the expiry of that licence;
 - (iii) it would not permit the quantity of water to be abstracted under that licence to be increased; and
 - (iv) it would otherwise be subject to materially the same terms as that licence;
- (b) to an Agency application under section 51(2) (which provides for the variation of a licence on the application of a licence holder) in relation to an existing abstraction licence held by the Agency that is to remain in force until revoked, if—
- (i) the application is for the existing licence to be varied so as to specify a date on which that licence will expire;
 - (ii) the varied licence would not permit the quantity of water that may be abstracted under the existing licence to be increased; and
 - (iii) the varied licence would otherwise be subject to materially the same terms as the existing licence; or
- (c) to an application for a full licence, a transfer licence or an impounding licence, or the variation of such a licence, if the relevant authority notifies the Agency that complying with those requirements in relation to that application would be contrary to the interests of national security.
- (2) In paragraph (1) “the relevant authority” means—
- (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and
 - (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

Agency application in National Parks or the Broads

4.—(1) Subject to sub-paragraph (4), where an Agency application relates to abstraction or impounding in the area of a National Park or the Norfolk or Suffolk Broads, the Agency must serve notice in writing of the application on the National Park authority for that National Park or the Broads Authority (as the case may be).

- (2) Subject to sub-paragraph (3), the notice must include—
- (a) a copy of the application;
 - (b) the information referred to in paragraph 2(3); and
 - (c) a statement that the authority may make representations in writing to the Agency in relation to the application within 28 days beginning on the date on which the notice is served.
- (3) A notice must not include any information which appears to the Agency to be information that is commercially confidential.
- (4) Sub-paragraph (1) does not apply if—
- (a) the application is one to which section 51(4) applies; or
 - (b) in the case of an application in relation to a licence relating to abstraction or impounding, the relevant authority has notified the Agency that publication would be contrary to the interests of national security.
- (5) In paragraph (4) “the relevant authority” means—
- (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and

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- (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

Notification of the appropriate authority

5.—(1) The Agency, having considered any representations received in relation to an Agency application, must serve notice in writing on the appropriate authority that it intends to—

- (a) proceed with the application, with or without modification; or
- (b) abandon it.

(2) The notice must not be served before the expiry of the periods referred to in section 37(4)(b) and paragraph 4(2)(c).

(3) Where the Agency serves notice in accordance with sub-paragraph (1)(a), that notice must—

- (a) be accompanied by a copy of any notice published in accordance with the requirements of section 37(1) and paragraph 2, and a copy of any notice served under paragraph 4(1);
- (b) be accompanied by a copy of any written representations received by the Agency in relation to the application; and
- (c) state whether the Agency proposes any modification to the application or draft licence and, if so, set out the terms of any such modification and the reasons for it.

Approval by the Agency

6.—(1) The Agency may approve an Agency application where—

- (a) notice in relation to that application has been served in accordance with paragraph 5(1)(a);
- (b) the period of 28 days beginning on the date on which the notice is served has expired; and
- (c) the appropriate authority has not, within that period, given directions to the Agency under section 41 (Secretary of State’s power to call-in applications) requiring the application to be referred to the authority.

(2) Where the Agency approves an application under sub-paragraph (1), the draft licence accompanying the application (modified in accordance with any terms specified pursuant to paragraph 5(3)(c)) will be deemed to have been granted, on the date of the Agency’s approval, in accordance with a determination by the appropriate authority under section 42(1) (consideration of called-in applications).

Consideration by the appropriate authority

7. Section 42(3) (consideration of called-in applications) has effect in relation to an Agency application that is a called-in application as if—

- (a) in subsection (2)—
 - (i) the reference in paragraph (b) to the Agency were a reference to any person who has duly made representations in relation to the application; and
 - (ii) the words “or the Agency” were omitted;
- (b) for subsection (4), there were substituted—

“(4) Subject to subsection (4A) below, in determining any called-in application the Secretary of State must consider whether the grant of a licence would so authorise—

 - (a) the abstraction of water, or

(3) Section 42 was amended by the EA, section 120 and Schedule 22, paragraph 128, and the WA, section 14(3)(b) and section 16(6).

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- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
as to derogate from rights which, at the time of that determination, are protected rights for the purposes of this Chapter.”; and
- (c) subsection (5) were omitted.

Other exceptions and modifications to the Act in relation to Agency applications

8.—(1) Section 35(4) (restrictions on persons who may make applications for abstraction licences) has effect—

- (a) in relation to an Agency application that is a called-in application, as if references to the Agency were references to the appropriate authority; and
- (b) in relation to any other Agency application, as if that application were contained in an application made to the Agency.

(2) Section 36A (applications: types of abstraction licence) does not apply in relation to an Agency application.

(3) Section 38(5) (general consideration of applications) has effect in relation to an Agency application (other than a called-in application) as if—

- (a) the application were made to the Agency;
- (b) references to the determination of the application were to its approval under paragraph 6;
- (c) subsection (2) were omitted; and
- (d) in subsection (3), the word “and” at the end of paragraph (a) and paragraph (b) were omitted.

(4) Section 39(6) (obligation to have regard to existing rights and privileges) has effect in relation to an Agency application (other than a called-in application) as if the references—

- (a) in subsection (1), to the grant of a licence, and
- (b) in subsection (1A), to a determination,

were references to an approval under paragraph 6.

(5) Sections 40(1) (obligation to take river flow etc. into account) and 41 (Secretary of State’s power to call-in applications) have effect as if the application were made to the Agency.

(4) Section 35 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, section 11.

(5) Section 38 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, sections 14(3), 15 and 31(2).

(6) Section 39 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, sections 16 and 101(2) and Schedule 9, Part 1.