

# **WATER ACT 2003**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Abstraction and Impounding**

##### ***Sections 15 to 18 Consideration of licence applications***

61. Provisions in sections 15 to 18 are devolved to the Assembly.

62.

##### **Section 15: General consideration of licence applications**

This section provides that where an application for the renewal of a time-limited abstraction licence is sought on terms that would constitute a variation of the licence if the licence were continuing, the licence is considered in two stages. Firstly, those aspects that constitute the variation element would be determined, and then the application is determined for the licence as a whole, so that the impact of the variation element on the protected rights of other abstractors (see sections 16 and 17) can be assessed for the new licence. Where renewal is sought on the same terms as the expiring licence then this two stage determination is not applied, because there would be no need to reconsider the impact on existing protected rights.

63. The section also provides that the EA is to have regard to the statutory duties of bodies such as drainage and navigation authorities brought into the licensing system by sections 5 and 7 when considering licence applications from those bodies.

64.

##### **Section 16: Protection from derogation.**

Under the current legislation, the EA cannot grant an abstraction or impounding licence that derogates from any “protected rights”, except with the consent of the person entitled to those rights. Those rights recognise an established entitlement to abstract a certain quantity of water, for certain purposes. This section limits the protection against derogation for new licence holders to rights arising from a full licence. For transfer and temporary licences however, some effective protection of licence-holders’ rights is delivered by the continuing requirement upon the EA to have regard to river flow levels and other lawful uses of inland waters when granting licences. Existing licence holders who fall outside licensing as a result of the revised threshold introduced by section 6 continue to benefit from protection from derogation. Where an application is made to renew an existing time-limited licence, then that application will be assessed against the protected rights of other abstractors which existed at the time of the original grant. The rights of those later abstractors will therefore not trump the rights of earlier, established abstractors.

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## **Section 17: Protected rights.**

Currently, owners of land bordering rivers or lying above groundwater are taken for the purpose of the WRA to have rights to abstract up to 20 m<sup>3</sup> of water per day for domestic purposes or agricultural purposes other than irrigation (e.g. for stock watering). Section 17 preserves the classes of abstractor that benefit from the protected rights. The volume of water to which the protected right applies may, however, be reduced to coincide with a lower threshold introduced by an order made under new section 27A (section 6). Should the threshold subsequently rise, the protected right will remain at the lower level. Examples of how this works are given in the box below

The exemption threshold – worked examples  
Consider the case of an abstractor A who has a protected right for his abstraction from groundwater for domestic purposes and is in a position to abstract 13 cubic metres per day in an area where the exemption threshold is 20 cubic metres per day.

- i) Case 1. Where the local threshold is raised to 25 cubic metres per day. The abstractor may abstract up to 25 cubic metres per day but his protected right remains at 13 cubic metres per day (assuming he remains in a position to abstract that amount).
- ii) Case 2. Where the local threshold is reduced to 10 cubic metres per day Abstractor A will require an abstraction licence for 13 cubic metres per day, and (if that were granted) would enjoy corresponding protected rights by reason of that licence.
  - a) If abstractor A can only obtain a licence for 10 cubic metres per day, then he may be able to seek compensation in relation to losses suffered as a result of the difference in volume between what he could previously abstract, and what he can now abstract.
  - b) Where the licence is issued for 13 cubic metres per day then no loss arises.
- iii) Case 3. If the threshold under case 2 is raised at a later date to 25 cubic metres per day. In this case, the licence would no longer be required and the protected right would be set at the previously licensed volume of 10 (case 2 a) or 13 (case 2 b). But abstractor A could take up to 25 cubic metres per day in total without an abstraction licence.
- iv) Case 4. If the threshold under case 3 is lowered to 5 cubic metres per day then a licence to abstract more than this volume would again be required. Compensation could become payable if a licence cannot be granted for the volume being abstracted under the protected right (either 10 or 13 cubic metres per day). The protected right under the licence will be set at 5 cubic metres per day. If a further change results in the threshold rising again, then the protected right for the unlicensed abstraction will remain at 5 cubic metres per day, but abstractor A can abstract volumes up to the new threshold without a licence.

66. The section also applies a protected right to those abstractors whose licence lapses by virtue of falling below the relevant volume or purpose threshold for so long as they continue to abstract. The protected right lapses after four years of non-abstraction unless the abstraction is irregular in nature (e.g. it is only required under certain conditions) in which case it may continue if the Agency agrees. These provisions will also apply where a person transfers part of his licensed abstraction rights to someone else, and that part (or his remaining part) no longer requires an abstraction licence (provided some abstraction occurs within any given period of four years).

67.

## **Section 18: Register of certain protected rights.**

In water stressed areas, it may be necessary for the EA to have detailed knowledge of all the protected rights to which it must have regard in its licensing activity. Section 18 provides a power to make regulations to set up a Register of Protected Rights in such areas. Where a Register exists, an abstractor will need to register his protected right within two years of the Register coming into existence if he wants that right to continue.