
STATUTORY INSTRUMENTS

2017 No. 1047

The Water Abstraction (Transitional Provisions) Regulations 2017

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Water Abstraction (Transitional Provisions) Regulations 2017 and come into force on 1st January 2018.

Interpretation

2.—(1) In these Regulations—

“the 2006 Regulations” means the Water Resources (Abstraction and Impounding) Regulations 2006(1);

“the appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;

“licence” means a licence to abstract water under Chapter 2 of Part 2.

(2) In these Regulations—

- (a) any reference to a provision is, unless the context otherwise requires, a reference to a provision of the Water Resources Act 1991;
- (b) any reference to an application for a licence includes a reference to an application for a variation of an existing licence;
- (c) any reference to the grant or refusal of a licence includes a reference to a grant or refusal of a variation of an existing licence.

PART 2

Transitional licence provisions

Scope of this Part

3.—(1) This Part applies to a person who—

- (a) in the seven years prior to 1st January 2018 abstracted water—
 - (i) from a source of supply, or

- (ii) from any of the inland waters of the Rivers Tweed, Esk or Sark (or their tributaries) in England,
 - and who did not require a licence for that abstraction, or
 - (b) is a successor to such a person.
- (2) In paragraph (1)(b), “successor” means a person to whom a person described in paragraph (1) (a) transfers title, where the transfer of title—
- (a) is a transfer of title to the property from which water was abstracted as described in paragraph (1)(a),
 - (b) includes irrevocable transfer of the right to abstract water as described in paragraph (1) (a) from that property, and
 - (c) has effect on any date during the period beginning 1st January 2018 and ending 31st December 2019.

Transitional procedures for applications by persons other than the appropriate agency

4.—(1) This regulation applies where a person to whom this Part applies, other than the appropriate agency⁽²⁾, applies for a licence before 31st December 2019.

(2) Where the licence application relates to the abstraction described in regulation 3(1)(a), the application must be made and determined in accordance with the Schedule to these Regulations instead of in accordance with Part 2 of the 2006 Regulations.

(3) Where the licence application relates to an abstraction other than the one described in regulation 3(1)(a), in addition to complying with the requirements of Part 2 of the 2006 Regulations, that person must—

- (a) disclose to the appropriate agency when so applying that they have abstracted water as described in regulation 3(1)(a), and
- (b) provide such additional information as the appropriate agency may reasonably require to perform its functions under the 2006 Regulations.

Transitional procedure for applications by the appropriate agency

5.—(1) Paragraph (2) applies where—

- (a) this Part applies to an appropriate agency by virtue of regulation 3(1), and
- (b) that appropriate agency applies for a transfer licence before 31st December 2019.

(2) The 2006 Regulations apply to that transfer licence application as if the reference in paragraph 2(3)(b)(iv) of Schedule 2 to the 2006 Regulations requiring the specification of the quantity of water to be abstracted were omitted.

Continuation of abstraction during transitional period

6. Notwithstanding the restriction on abstraction, a person may continue to carry out an abstraction of water described in regulation 3(1)(a)—

- (a) if the person applies for a licence in respect of that abstraction, until the date on which that application (including any appeal under section 43(3)) is determined, or
- (b) if no such application is submitted, until 31st December 2019.

(2) See section 221 of the Water Resources Act 1991 for the definition of the “appropriate agency”.

(3) Section 43 was amended by paragraph 134 of Schedule 22 to the 1995 Act, section 14(3) of the 2003 Act and by [S.I. 2013/755 \(W.90\)](#).

Register of licences

7.—(1) The register required to be kept by the appropriate agency under section 189 must contain, for each application for a licence submitted in accordance with this Part—

- (a) the name and address of the applicant;
 - (b) the date of the application and brief particulars of its proposals;
 - (c) particulars of any decision of the appropriate agency or the appropriate authority on the application (including the decision on any appeal) and the date of that decision;
 - (d) the date of any licence granted;
 - (e) the date on which that licence expires;
 - (f) the particulars of any notice of appeal.
- (2) Subject to paragraphs (3) and (4), the appropriate agency must enter in the register—
- (a) the information referred to in paragraph (1)(a) and (1)(b) within 28 days of determining that the application is a valid application (as defined in paragraph 5 of the Schedule);
 - (b) the information referred to in paragraph (1)(c) to (1)(e) within 28 days of a decision on an application;
 - (c) the information referred to in paragraph (1)(f) within 28 days of receiving a notice of appeal.

(3) If any of the information in paragraph (1) falls to be determined under section 191A (national security)(4) and the appropriate authority determines that it should be included in the register, the appropriate agency must enter it within 28 days of receiving notice of that determination.

(4) If any of the information in paragraph (1) falls to be determined under section 191B (exclusion from registers of certain confidential information)(5) and is determined not to be commercially confidential, the appropriate agency must enter it in the register—

- (a) if no notice of appeal is served, within 28 days of the end of the period within which notice of appeal against that determination may be served;
 - (b) if a notice of appeal is served, within 28 days of the date on which the appropriate agency receives notification of the determination or withdrawal of the appeal.
- (5) The appropriate agency must record in the register the date each entry is made.
- (6) The appropriate agency may keep the register, or any part of it, electronically.

PART 3

Compensation

Scope of this Part

- 8.—(1) This Part applies to a person who applies for a licence under these Regulations.
- (2) Paragraph (1) does not apply to—
- (a) a Minister of the Crown, where “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975(6);
 - (b) the Welsh Ministers;

(4) Section 191A was inserted by paragraph 170 of Schedule 22 to the 1995 Act and amended by S.I. 2013/755 (W. 90).

(5) Section 191B was inserted by paragraph 170 of Schedule 22 to the 1995 Act and was amended by S.I. 2010/675 and 2013/755 (W. 90).

(6) 1975 c. 26.

- (c) a public body (including a government department, a local authority and a local planning authority);
 - (d) a person holding an office—
 - (i) under the Crown,
 - (ii) created or continued in existence by a public general Act, or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
 - (e) a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990⁽⁷⁾.
- (3) In paragraph (2)—
- “local authority” means—
- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
 - (b) in relation to Wales, a county council, a county borough council or a community council;
- “local planning authority” has the same meaning as in Part 1 of the Town and Country Planning Act 1990⁽⁸⁾.

Payment of compensation

9.—(1) The appropriate agency must pay compensation to any person falling within the scope of this Part—

- (a) whose application for a licence is—
 - (i) refused by the appropriate agency, or
 - (ii) granted by the appropriate agency but in respect of an abstraction of more limited extent than that of the abstraction the person was carrying out in the seven years before the coming into force of these Regulations,
 - (b) whose appeal under section 43 in respect of a decision referred to in sub-paragraph (a) is dismissed by the appropriate authority,
 - (c) who has suffered loss and damage as a result, and
 - (d) who applies to the appropriate agency for compensation within the deadline specified in regulation 10.
- (2) Paragraph (1) does not apply where the reason for a decision referred to in paragraph (1)(a) is that it is necessary—
- (a) in order to protect from serious damage—
 - (i) any inland waters,
 - (ii) any water contained in any underground strata,
 - (iii) any underground strata themselves, or
 - (iv) any flora or fauna dependent on any of paragraphs (i) to (iii), or
 - (b) to comply with any relevant legal requirement.

(3) In paragraph (1), an abstraction of more limited extent does not include a Qn95 hands-off flow constraint or 75% of Qn99 hands-off flow constraint on a licence where the licensed abstraction is from a body of inland waters or a body of groundwater where the recent actual flow or quantitative

⁽⁷⁾ 1990 c. 8.

⁽⁸⁾ The definition of “local planning authority” was amended by section 18(3) and (4) of the Local Government (Wales) Act 1994 (c. 19) and section 31(1) of the Greater London Authority Act 2007 (c. 24).

status of the source of supply does not support good ecological potential, good ecological status or good quantitative status.

(4) In paragraph (3)—

“75% of Qn99 hands-off flow constraint” means a licence condition which provides that the licence holder must cease the abstraction if—

- (a) the flow in the source of supply to which the licence relates, or
- (b) in the case of groundwater to which the licence relates, the flow in inland waters dependent on that groundwater,

is equal to or falls below 75% of the natural flow that is exceeded 99% of the time in that source of supply or inland waters;

“good ecological potential” means the ecological status of a heavily modified or an artificial body of water, which meets the classification in Annex V to the Directive;

“good ecological status” means the ecological status of a body of surface water which meets the classification in Annex V to the Directive;

“good quantitative status” means the quantitative status of a body of groundwater which meets the status defined in table 2.1.2 of Annex V to the Directive;

“Qn95 hands-off flow constraint” means a licence condition which provides that the licence holder must cease the abstraction if—

- (a) the flow in the source of supply to which the licence relates, or
- (b) in the case of groundwater to which the licence relates, the flow in inland waters dependent on that groundwater,

is equal to or falls below the natural flow that is exceeded 95% of the time in that source of supply or inland waters.

(5) In paragraph (4), “the Directive” means [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy⁽⁹⁾.

Deadline for receipt of applications

10. An application for compensation must be made to the appropriate agency within six years of the determination of the appeal by the appropriate authority under section 44.

Disputed compensation

11.—(1) Any question of disputed compensation must be referred by the person who made the application for compensation in regulation 10 to the Upper Tribunal for determination.

(2) The provisions of section 4 of the Land Compensation Act 1961⁽¹⁰⁾ apply, subject to any necessary modifications, in relation to the determination of any such compensation.

Calculation of compensation

12.—(1) For the purpose of assessing compensation in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules in sections 5 and 5A of the Land Compensation Act 1961⁽¹¹⁾, so far as applicable and subject to any necessary modifications, have

(9) OJ No L 327, 22.12.2000, p1, as last amended by Commission [Directive 2014/101/EU](#) (OJ No L 311, 31.10.2014, p32).

(10) [1961 c. 33](#); section 4 was amended by [S.I. 2009/1307](#).

(11) Section 5 was amended by sections 70 and 84 of, and paragraph 1 of Schedule 15 and Part 3 of Schedule 19 to, the Planning and Compensation Act 1991 ([c. 34](#)), section 32 of the Neighbourhood Planning Act 2017 ([c. 20](#)) and [S.I. 2009/1307](#). Section 5A was inserted by section 103 of the Planning and Compulsory Purchase Act 2004 ([c. 5](#)) and amended by paragraph 1 of Schedule 16, and paragraph 9 of Part 2 of Schedule 18 to the Housing and Planning Act 2016 ([c. 22](#)), and by [S.I. 2009/1307](#).

effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

- (2) Where an interest in land is subject to a mortgage—
- (a) compensation is to be assessed as if the interest were not subject to the mortgage;
 - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the mortgagor;
 - (c) compensation is only payable to any mortgagee of the interest in respect of the interest which is subject to the mortgage;
 - (d) compensation which is payable in respect of the interest which is subject to the mortgage is to be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by that mortgagee as if it were the proceeds of sale of the interest.

30th October 2017

24th October 2017

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs
Lesley Griffiths
Cabinet Secretary for the Environment and Rural
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