

2006 No. 641

WATER RESOURCES, ENGLAND AND WALES

**The Water Resources (Abstraction and Impounding)
Regulations 2006**

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Coming into force in accordance with regulation 1(2)

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SCHEDULE 1 — ENABLING POWERS

SCHEDULE 2 — APPLICATIONS BY THE AGENCY

The Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales, make the following Regulations in exercise of the powers conferred by the sections of the Water Resources Act 1991(a) and the Water Act 2003(b) specified in Schedule 1 and now vested in them(c):

(a) 1991 c. 57.

(b) 2003 c. 37.

(c) The power to make regulations under the provisions of the Water Resources Act 1991 has been transferred, so far as exercisable in relation to Wales, to the Assembly: National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1 (amended by section 100(4)(b)(iii) of the Water Act 2003 (c. 37) (“the WA”), with references to the Water Resources Act 1991 in that Schedule treated as referring to the Act as amended by the WA (the WA, section 100(6)).

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Water Resources (Abstraction and Impounding) Regulations 2006.

(2) Regulation 15 shall come into force on the date on which section 7(3) of the Water Act 2003 comes into force, and all other provisions of these Regulations shall come into force on 1st April 2006.

Interpretation

2.—(1) In these Regulations—

“abstraction licence” means a licence under Chapter 2 of Part 2 of the Act to abstract water(a);

“the Act” means the Water Resources Act 1991;

“Agency application” means an application by the Agency for an abstraction licence or an impounding licence, or for the variation of such a licence, prepared in accordance with paragraph 1 of Schedule 2;

“the Assembly” means the National Assembly for Wales;

“called-in application” means an application referred to the Secretary of State or the Assembly (as the case may be) in accordance with directions given under section 41(b) (Secretary of State’s power to call in applications);

“impounding” means the obstruction or impeding of the flow of inland waters by means of impounding works(c) or the construction or alteration of impounding works;

“impounding licence” means a licence(d) under Chapter 2 of Part 2 of the Act to obstruct or impede the flow of inland waters by means of impounding works;

“register” means a register kept by the Agency in accordance with section 189(e) (register of abstraction and impounding licences);

“relevant date” has the meaning given by regulation 5; and

“valid application” means an application for an abstraction licence or an impounding licence that complies with the requirements of regulations 3 and 4.

(2) Unless the contrary intention appears, any reference in these Regulations to a section is a reference to a section of the Act.

PART 2

APPLICATIONS AND APPEALS

Information to be included in an application

3.—(1) An application for an abstraction licence or an impounding licence—

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- (a) A reference to a licence to abstract water is to be taken as a reference to all types of licence (i.e., full, transfer or temporary licences) unless it is clear that a different meaning is intended (section 24A(2)), and “full licence”, “temporary licence” and “transfer licence” have the meanings given in section 24A(1) (section 72(1)).
- (b) Section 41 was amended by the Environment Act 1995 (c. 25) (“the EA”), section 120 and Schedule 22, paragraph 128, and the Water Act 2003 (2003 c. 37) (“the WA”), section 13(2). Functions of the Secretary of State under section 41 so far as exercisable in relation to Wales have been transferred to the Assembly (National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, article 2 and Schedule 1).
- (c) For the definition of “impounding works” see sections 25(8) and 72(1).
- (d) For the definition of “licence” in this context, see sections 25(6) and (7) and section 72(1).
- (e) Section 189 was amended by the EA, section 120 and Schedule 22, paragraph 128, and the WA, section 23(3).

- (a) must include such information, including maps, and
 - (b) must be accompanied by such reports,
- as the Agency reasonably requires in order to determine it.

Manner of application

- 4.—(1) An application for an abstraction licence or an impounding licence—
- (a) must be made to the Agency on a form issued by the Agency for the purpose of the application being made;
 - (b) must be accompanied by any fee payable under section 41(1)(a) of the Environment Act 1995(a) in relation to making the application; and
 - (c) may be made electronically in a form accessible by the Agency.
- (2) The information and reports referred to in regulation 3 and the form referred to in paragraph (1)(a) of this regulation must be provided in duplicate unless—
- (a) the Agency agrees to accept a single copy; or
 - (b) they are provided electronically.

The relevant date

- 5.—(1) The relevant date in relation to an application for a full licence, a transfer licence(b) or an impounding licence is—
- (a) except in the cases mentioned in sub-paragraph (b), the date 21 days after the day on which the Agency receives a valid application or such earlier date after the day on which the Agency receives a valid application as the Agency may determine; and
 - (b) in a case where, within 21 days beginning on the day the Agency receives a valid application for a full licence or transfer licence, the Agency serves notice on the applicant of a decision under subsection (1) of section 36A(c) (applications: types of abstraction licence)—
 - (i) if no notice of appeal is served, the date of the day after the end of the period within which notice of appeal against that decision may be served; or
 - (ii) if notice of appeal is so served, the date of the day on which the Agency receives notice of the determination or withdrawal of that appeal.
- (2) The relevant date in relation to an application for a temporary licence(d) is the date on which the Agency receives a valid application.
- (3) The relevant date in relation to an application under section 51(2)(e) is the date on which the Agency receives the application.

Advertisement of an application

- 6.—(1) Where the requirements of subsection (1) of section 37(f) (publication of application for licence) (including that section as applied by section 51(3), subject to the modifications made by section 51(4)) apply in relation to an application(g), and those requirements have not been dispensed with under regulation 7(4), notice of that application must be published—

(a) 1995 c. 25.
(b) For the definitions of “full licence” and “transfer licence” see section 24A(1) (inserted by section 1(1) of the Water Act 2003, and section 72(1)).
(c) Section 36A was inserted by the WA, section 13(1).
(d) For the definition of “temporary licence” see section 24A(1) (inserted by section 1(1) of the Water Act 2003, and section 72(1)).
(e) Section 51(2) was amended by the EA, section 120 and Schedule 22, paragraph 128.
(f) Section 37 was substituted by the WA, section 14(1).
(g) The requirements of section 37(1) and (2) apply in relation to any application for a full, transfer or impounding licence (section 37(1)), and to certain applications by the holder of a licence to vary such a licence (section 51(3) and (4)(a)), except as otherwise provided by regulation 7.

- (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.
- (2) Except in the cases specified in paragraphs (3) to (5), the notice of application must be published by the date 28 days after the relevant date.
- (3) In a case where, after the relevant date but on or before the date referred to in sub-paragraph (a), the Agency serves notice on the applicant of a decision under section 36A(1), the notice of the application must be published—
- (a) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that decision may be served; and
 - (b) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal of the appeal.
- (4) In a case where a matter in relation to a valid application falls to be determined under section 191A(a) (exclusion from registers of information affecting national security), the notice of the application must be published by the date 28 days after the day on which Agency receives notice of that determination.
- (5) In a case where a matter in relation to a valid application falls to be determined under section 191B(b) (exclusion from registers of certain confidential information) the notice of the application must be published—
- (a) if the Agency determines under section 191B(4) that the information in question might be commercially confidential, by the date 28 days after the day on which Agency serves notice on the applicant of that determination; and
 - (b) if the Agency determines under section 191B(4) that the information in question is not commercially confidential—
 - (i) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that determination may be served; or
 - (ii) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal of the appeal.
- (6) Subject to paragraph (7), the notice must—
- (a) state the name of the applicant;
 - (b) specify—
 - (i) the type of application being made including, if appropriate, the type of licence being applied for;
 - (ii) the purpose of the proposed abstraction or impounding;
 - (iii) the proposed point of abstraction or impounding(c);
 - (iv) in the case of an application for an abstraction licence, the period over which abstraction would take place;
 - (v) in the case of an application for a full licence, the quantity of water to be abstracted; and
 - (vi) in the case of an application for an impounding licence, the proposed means of impounding;
 - (c) include such other particulars (if any) as the Agency considers necessary to explain the application; and
 - (d) state—

(a) Section 191A was inserted by the EA, section 120 and Schedule 22, paragraph 170.
 (b) Section 191B was inserted by the EA, section 120 and Schedule 22, paragraph 170.
 (c) For the definition of “proposed point of abstraction or impounding” see section 37(7) (inserted by section 14(1) of the Water Act 2003).

- (i) where and when the application documents and the register containing details of the application may be inspected, and that such inspection is free of charge; and
- (ii) the address to which any representations in relation to the application should be sent.

(7) 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 information of certain confidential information).

Exemption from advertising requirements

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

- (a) the proposed point of abstraction in relation to the application is the place where an existing licence held by the applicant authorises water to be abstracted; and
- (b) the licence to which the application relates—
 - (i) would take effect immediately after the expiry of the existing licence;
 - (ii) would not permit a greater quantity of water to be abstracted than may be abstracted under the existing licence; and
 - (iii) would otherwise be subject to materially the same terms as the existing licence.

(2) The requirements of section 37(1) and (2) do not apply to an application under section 51(2) (which provides for variation on application of licence holder) in relation to an existing abstraction licence that is to remain in force until revoked if—

- (a) the application is for the existing licence to be varied so as to specify a date on which that licence will expire;
- (b) the varied licence would not permit the quantity of water that may be abstracted under the existing licence to be increased; and
- (c) the varied licence would otherwise be subject to materially the same terms as the existing licence.

(3) The requirements of section 37(1) and (2) do not apply 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.

(4) The requirements of section 37(1) and (2) may be dispensed with if it appears to the Agency or, in the case of a called-in application, the Secretary of State or the Assembly (as the case may be) that the proposed abstraction or impounding would have no appreciable adverse effect on—

- (a) the environment;
- (b) any licensed abstraction; or
- (c) any abstraction to which the restriction on abstraction does not apply^(a).

(5) In paragraph (3) “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.

Acknowledgement of receipt

8.—(1) The Agency must serve on the applicant an acknowledgement in writing—

(a) For the definition of “restriction on abstraction” see section 72(1).

- (a) in a case of an application for a full licence, a transfer licence or an impounding licence, other than a case falling within sub-paragraph (c), by the date 28 days after the relevant date;
 - (b) in a case of an application under section 51(2) (which provides for variation on an application by the licence holder), by the date 28 days after the relevant date; and
 - (c) in a case of an application for a full licence or transfer licence where, after the relevant date but on or before the date referred to in sub-paragraph (a), the Agency serves notice on the applicant of a decision under subsection (1) of section 36A (applications: types of abstraction licence)—
 - (i) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that decision may be served; or
 - (ii) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal or that appeal.
- (2) The acknowledgement must state—
- (a) the relevant date;
 - (b) whether a notice of the application has been, or is to be, published in accordance with section 37(1);
 - (c) the date, if known, by which the application is required to be determined; and
 - (d) the applicant’s entitlement to appeal should the Agency fail, within the period referred to in paragraph (2), (3) or (4) (as the case may be) of regulation 10, to serve on the applicant notice in accordance with that regulation of the Agency’s decision on the application or its reference to the Secretary of State or the Assembly.

Applications in National Parks or the Broads

9.—(1) Subject to paragraph (5), where an 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) within 14 days beginning on the relevant date.

- (2) Subject to paragraph (3), the notice must include—
- (a) a copy of the application; and
 - (b) 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) The notice must not include any information which appears to the Agency to be information that is commercially confidential.

(4) The Agency or, in the case of a called-in application, the Secretary of State or the Assembly (as the case may be)—

- (a) must not determine the application until after the end of the period referred to in paragraph (2)(b); and
- (b) in determining the application, must have regard to any representations duly made by the authority in relation to the application.

(5) 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 abstraction or to impounding works, the relevant authority notifies the Agency that giving such notice in relation to that application would be contrary to the interests of national security.

(6) In paragraph (5) “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.

Duties of the Agency in dealing with applications

- 10.**—(1) The Agency must serve notice in writing on the applicant of—
- (a) its decision on the application; or
 - (b) the reference of the application to the Secretary of State or the Assembly under section 41 (Secretary of State’s power to call in applications).
- (2) In the case of an application for a temporary licence, the notice referred to in paragraph (1) must be served—
- (a) except in a case mentioned in sub-paragraph (b)—
 - (i) in a case where, in accordance with regulation 9(1), notice of that application is served on a National Park authority or the Broads Authority, by the date 14 days after the end of the period referred to in paragraph (2)(b) of that regulation; and
 - (ii) in a case where no notice under regulation 9(1) is served, by the date 28 days after the relevant date; and
 - (b) in a case where, on or before the date referred to in sub-paragraph (a)(i) or (ii) (as the case may be), the Agency serves notice on the applicant under section 201(a) (power to require information in respect of water resources functions) that it requires him to provide information in relation to the application, by the date 28 days after that information is received by the Agency.
- (3) In a case where regulation 6(1) applies, the notice referred to in paragraph (1) must be served by the date four months after the relevant date or (if later)—
- (a) in a case where, on or before the date four months after the relevant date, the Agency serves notice on the applicant under section 201 that it requires him to provide information in relation to the application, the date two months after that information is received by the Agency;
 - (b) in a case referred to in paragraph (3) of regulation 6, the date two months after the date calculated in accordance with that paragraph; and
 - (c) in a case referred to in paragraph (4) or (5) of regulation 6, the date two months after the date calculated in accordance with the relevant paragraph.
- (4) Except in a case mentioned in paragraph (2) or (3), the notice referred to in paragraph (1) must be served by the date three months after the relevant date or (if later)—
- (a) in a case where, on or before the date three months after the relevant date, the Agency serves notice on the applicant under section 201 that it requires him to provide information in relation to the application, the date two months after that information is received by the Agency; and
 - (b) in a case where, on or before the date three months after the relevant date, the Agency serves notice on the applicant of a decision under section 36A(1)—
 - (i) if no notice of appeal is served, the date two months after the end of the period within which notice of appeal against that decision may be served; or
 - (ii) if notice of appeal is so served, the date two months after the day on which the Agency receives notice of the determination or withdrawal of the appeal.
- (5) Where the Agency grants a licence subject to conditions or on terms which are different in any material respect from the application, or it refuses an application, the notice referred to in paragraph (1)(a) must—
- (a) include a statement of the Agency’s reasons for doing so; and

(a) Section 201 was substituted by the WA, section 70.

- (b) state the applicant's entitlement to appeal to the Secretary of State or the Assembly (as the case may be) if he is dissatisfied with the Agency's decision on the application.

(6) Where the Agency refers an application to the Secretary of State or the Assembly under section 41, the notice referred to in paragraph (1)(b) must state—

- (a) the reasons, if any, given by the Secretary of State or the Assembly for directing that reference to be made;
- (b) the applicant's entitlement to request to appear before, and be heard by, a person appointed for the purpose of determining the application; and
- (c) that the decision on the application shall be final.

Application by the holder for revocation of impounding licence: time limit for determination

11. The period referred to in section 51(1C)(b) within which the Agency must give notice of its decision on an application under subsection (1A) of section 51(a) (modification of licence on application of licence holder), except where a longer period is agreed, is four months beginning on the date on which the application is received by the Agency.

Time limits for bringing appeals

12.—(1) The period within which any notice of appeal under subsection (4) of section 36A (applications: types of abstraction licence) must be served is 28 days beginning on the date on which notice of the decision to which the appeal relates is served on the applicant.

(2) The period referred to in subsection (3)(b) of section 43(b) (appeals to the Secretary of State) within which any notice of appeal under section 43(1) must be served is 28 days.

(3) The period referred to in section 51(1D)(b) (which relates to appeals against the revocation of an impounding licences) within which any notice of appeal under section 51(1C) must be served is—

- (a) in a case falling within section 51(1C)(a), 28 days beginning on the date on which the decision to which the notice relates is served on the applicant; and
- (b) in a case falling within section 51(1C)(b), 28 days beginning on the date which is the day after the expiry of the period referred to in regulation 10(3) or (4) (as the case may be) by which the Agency must serve notice under regulation 10(1).

Notice of appeal

13.—(1) A notice of appeal under section 36A(4), 43 or 51(1C) must—

- (a) state the grounds on which the appeal is being made; and
- (b) be accompanied by a copy of—
 - (i) the application to which the appeal relates;
 - (ii) any information or report submitted to the Agency with the application;
 - (iii) the notice of the decision on the application, if any; and
 - (iv) all other relevant correspondence with the Agency.

(2) The Agency must, within 14 days beginning on the date on which it receives a notice of appeal under section 43, serve a copy of that notice on—

- (a) any person who, within the period referred to in subsection (4)(b) of section 37 (publication of application for licence), made representations in writing in relation to the application; and

(a) Section 51 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, section 21.

(b) Section 43 was amended by the EA, section 120 and Schedule 22, paragraphs 128 and 134, and the WA, section 14(3)(c).

- (b) any authority served with a notice in accordance with regulation 9(1) that, within the period referred to in regulation 9(2)(b), made representations in writing in relation to the application.

(3) The period referred to in subsection (3)(a) of section 44 (determination of appeals) and subsection (2)(b) of section 45(a) (regulations with respect to appeals) within which the recipient of a copy of a notice of appeal may make further representations in writing is, in each case, 21 days beginning on the date on which that notice is served on that person.

(4) When serving a copy of a notice of appeal in accordance with paragraph (2), the Agency must notify the recipient in writing—

- (a) that he may make further representations in writing in relation to the appeal;
- (b) of where any such representations must be sent; and
- (c) of the date by which those representations must be received.

PART 3

ABSTRACTION AND IMPOUNDING BY THE AGENCY

Modifications to the restrictions on abstraction and impounding works, and related restrictions

14.—(1) The restriction on abstraction and the restriction on impounding works(b) have effect in relation to abstraction and impounding by the Agency as if the references in section 24(1)(c) and section 25(1)(a) and (b)(d) to a licence were references to a licence granted, or, by virtue of paragraph 6(2) of Schedule 2, deemed to have been granted, to the Agency under section 42(e) (consideration of called-in applications).

(2) Subsection (3) of section 32(f) (miscellaneous rights to abstract) has effect in relation to—

- (a) the restriction on abstraction as it has effect, as modified by paragraph (1), in relation to abstraction by the Agency, and
- (b) the other restrictions imposed by section 24 as they apply to the Agency,

as if all the words after “subsection (4) below” were omitted.

Emergency abstractions by the Agency

15. Section 29(g) (rights to abstract for drainage purposes etc) has effect in relation to abstraction of water by the Agency from sources of supply as if subsections (2B) and (2C) were omitted.

Proposals for abstraction or impounding by the Agency

16. Schedule 2, and the exceptions from, and modifications to, the Act made by it, has effect in relation to—

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- (a) Section 45 was amended by the EA, section 120 and Schedule 24, and by the WA, section 13(3).
 - (b) For the definition of “the restriction on impounding works” see section 72(1) (amended by section 2(9) of the Water Act 2003).
 - (c) Section 24(1) was amended by The Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593), regulation 3 and Schedule 2, paragraph 8, and the EA, section 120 and Schedule 22, paragraph 128.
 - (d) Section 25(1) was substituted by the WA, section 2(1) and (2).
 - (e) 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).
 - (f) Section 32 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the Fire and Rescue Services Act 2004 (c. 21), section 53(1) and Schedule 1, paragraph 79.
 - (g) Section 29 was amended by the WA, section 7. Section 7 of the WA was not in force on the date these Regulations were made. See regulation 1(2) for the date on which this regulation comes into force.

- (a) proposals for abstraction or impounding by the Agency for which an abstraction licence or impounding licence is required; and
- (b) proposals under section 51(2) (which provides for the variation of an abstraction licence or an impounding licence on the application of a licence holder) (modified in accordance with regulation 18) in relation to a licence held by the Agency, other than where section 51(4) applies.

Renewal of Agency licence

17. Section 46A(a) (limited extension of abstraction licence validity) has effect in relation to a full licence or transfer licence held by the Agency as if in subsection (2)—

- (a) the reference to a “valid” application included a reference to an Agency application;
- (b) the reference to the Agency receiving a valid application were a reference to the Secretary of State or the Assembly (as the case may be) receiving an Agency application; and
- (c) the reference to the Agency agreeing a later date were a reference to the Secretary of State or the Assembly (as the case may be) agreeing a later date.

Modification of Agency licence on application of the Agency

18. Section 51 (modification of licence on application of licence holder) has effect in relation to an abstraction licence or an impounding licence held by the Agency subject to the following modifications—

- (a) for subsection (1) (which provides for the revocation of an abstraction licence or an impounding licence) substitute—
“(1) The Agency may at any time revoke any abstraction licence held by itself.”;
- (b) in subsection (1A) (which provides for the revocation of an impounding licence), for “the Agency”, in each place where it occurs, substitute “the Secretary of State or the National Assembly for Wales (as the case may be)”;
- (c) in subsection (1B) (which provides for the imposition of conditions before the revocation of an impounding licence), for “the Agency”, in each place where it occurs, substitute “the Secretary of State or the National Assembly for Wales (as the case may be)”;
- (d) subsections (1C) to (1G) were omitted; and
- (e) for subsection (2) (which provides for the variation of an abstraction licence or an impounding licence) substitute—
“(2) The Agency may—
 - (a) at any time vary any abstraction licence held by itself, where the variation of the licence is solely for the purpose of reducing the quantity of water authorised to be abstracted in pursuance of that licence during one or more periods;
 - (b) propose the variation of any abstraction licence held by itself, where the variation is for a purpose other than that mentioned in paragraph (a); or
 - (c) propose the variation of any impounding licence held by itself.”.

Modification of Agency licence at instance of the Secretary of State or the Assembly

19.—(1) Section 52(b) (proposals for modification at instance of the Agency or the Secretary of State) has effect in relation to an abstraction licence or an impounding licence held by the Agency as if—

- (a) subsections (1) and (1A) were omitted;

(a) Section 46A was inserted by the WA, section 20.

(b) Section 52 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, sections 22 and 101(2) and Schedule 9, Part 1.

- (b) in subsection (2)—
 - (i) in paragraph (a), the word “but”, and
 - (ii) paragraph (b),
 were omitted;
- (c) in subsection (4), paragraph (a) were omitted; and
- (d) in subsection (6)(b), references to the Agency were references to the Secretary of State or the Assembly (as the case may be).

(2) Section 53(a) (modification in pursuance of proposals under section 52) has effect in relation to proposals formulated under section 52, as modified by paragraph (1), as if—

- (a) in subsection (1)—
 - (i) for the word “may” there were substituted “shall”; and
 - (ii) in paragraph (b), the words after “those proposals” were omitted; and
- (b) in subsection (4)—
 - (i) the reference to the holder of the licence were a reference to the Secretary or State or the Assembly; and
 - (ii) the words after “Secretary of State” were omitted.

(3) Section 54(b) (reference of modification proposals to the Secretary of State) has effect in relation to proposals referred to the Secretary of State or Assembly under section 53, as modified by paragraph (2), as if—

- (a) in subsection (1)—
 - (i) for paragraph (b), there were substituted—
 - “(b) any representations in writing made by the Agency in relation to the proposals”;
 - and
 - (ii) in paragraph (c), the reference to the Agency were a reference to the Secretary of State or the Assembly (as the case may be);
- (b) in subsection (2), the references to the holder of the licence were omitted;
- (c) in paragraph (c) of subsection (4), the reference to subsection (1) of section 54 were a reference to that subsection as modified by sub-paragraph (a) of this paragraph;
- (d) for subsection (5), there were substituted—
 - “(5) Where the Secretary of State or the Assembly (as the case may be) determines under subsection (1) that the licence in question should be revoked or varied, she or it may revoke or vary the licence in accordance with that determination.”; and
- (e) in subsection (6), the reference to a decision were a reference to a determination in accordance with subsection (5) as substituted by sub-paragraph (d) of this paragraph.

Modification of Agency licence on application of owner of fishing rights

20.—(1) Section 55(c) (application for modification of licence by owner of fishing rights) has effect in relation to an abstraction licence held by the Agency as if, in subsection (4), the words “and on the holder of the licence” were omitted and for the words “each of them” there were substituted “it”.

(2) Section 56(d) (determination of application under section 55) has effect in relation to a licence held by the Agency as if—

(a) Section 53 was amended by the EA, section 120 and Schedule 22, paragraph 128.
 (b) Section 54 was amended by the EA, section 120 and Schedule 22, paragraph 128.
 (c) Section 55 was amended by the EA, section 120 and Schedule 22, paragraph 128.
 (d) Section 56 was amended by the EA, section 120 and Schedule 22, paragraph 128.

- (a) subsection (1), the words “or from the holder of the licence” and, in subsection (2)(b), the words “, the holder of the licence “ were omitted;
- (b) for subsection (6) there were substituted—
 - “(6) Where the Secretary of State or the Assembly (as the case may be) determines on an application under section 55 above that a licence should be revoked or varied, she or it may revoke or vary the licence in accordance with that determination.”; and
- (c) in subsection (7), the reference to a decision were a reference to a determination in accordance with subsection (6) as substituted by sub-paragraph (b) of this paragraph.

Transfer of Agency licence or of other licence to the Agency

21.—(1) Section 59A(a) (transfer of licence) has effect in relation to any licence referred to in subsection (1)(a), (b) or (c) of that section—

- (a) that is held by the Agency, or
- (b) that it is proposed to transfer to the Agency,

subject to the modifications in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

- (a) for subsections (2) and (3), there is substituted—

“(2) Where—

- (a) the Agency and another person agree that—
 - (i) an Agency licence should be transferred to the other person, or
 - (ii) a licence held by the other person should be transferred to the Agency, and
- (b) in the case of a full licence or transfer licence held by the Agency, the Agency is satisfied that the other person—
 - (i) has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction, and
 - (ii) will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),

the Agency must give notice (a “transfer notice”) to the other person of the date from which it is intended that the transfer will take effect.

(3) The Agency must amend the licence to which a transfer notice relates by substituting the name of the transferee as holder of the licence.”; and

- (b) subsections (4) and (5) are omitted.

Apportionment of Agency licence or of part of other licence to the Agency

22.—(1) Section 59C(b) (apportionment of licence to abstract) has effect in relation to the apportionment of a licence held by the Agency subject to the modifications in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

- (a) for subsections (1) to (3) there is substituted—

“(1) Where the Agency is the holder of a full licence or transfer licence (the “old licence”), it may divide its right to abstract water in accordance with the old licence and transfer—

- (a) to another person part, or to a number of other persons parts, not amounting to the whole, or

(a) Section 59A was inserted by the WA, section 23(1).
 (b) Section 59C was inserted by the WA, section 23(1).

(b) to a number of other persons parts amounting in all to the whole, of that right in accordance with the following provisions of this section.

(2) Subsection (3) applies where—

(a) in relation to an old licence, the Agency as holder of the old licence and another person (the “successor”) proposing to exercise a right in respect of a part (“the relevant part”) of the abstraction authorised by the old licence in place of the Agency agree that—

- (i) the right conferred by the old licence should be divided; and
- (ii) a right in respect of the relevant part should be transferred to the successor; and

(b) the Agency is satisfied that—

- (i) the successor has, or at the time when the proposed grant to him of a new licence under subsection (3) below is to take effect will have, a right of access in relation to each point of abstraction; and
- (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner).

(3) Where this subsection applies, the Agency must—

- (a) revoke the old licence;
- (b) if the Agency proposes to continue to exercise a right of abstraction in respect of that part not transferred to the successor and a licence is required under this Chapter for that purpose, grant itself a licence relating to that part; and
- (c) grant to the successor a licence relating to the relevant part of the abstraction.”;

(b) subsections (4) and (5) are omitted;

(c) in subsections (6) and (7) for “subsection (5)” there is substituted “subsection (3)”;

(d) for subsection (8) there is substituted—

“(8) The revocation of the old licence and the grant of a new licence under subsection (3)(b) or (c) takes effect from the date on which the Agency revokes the old licence and grants the new one.”; and

(e) in subsection (13), for “subsection (5)” there is substituted “subsection (3)”.

(3) Section 59C (apportionment of licence to abstract) has effect in relation to the transfer to the Agency of part of a right to abstract water in accordance with a licence as if—

(a) in subsection (2) after “any person” there is inserted “, other than the Agency,”; and

(b) in subsection (5) after “above,” there is inserted “and, so far as the apportionment notice relates to the transfer to the Agency of a right in respect of part of an authorised abstraction, the Agency agrees to that transfer.”.

Liability for derogation from protected right by Agency licence

23. Section 60(a) (liability of the Agency for derogation from protected right) has effect in relation to—

- (a) the grant to the Agency of an abstraction licence or an impounding licence (including any such grant made under section 42 (as modified by paragraph 7 of Schedule 2)),
- (b) or any grant which, by virtue of paragraph 6(2) of Schedule 2 is deemed to have been made on the Agency’s approval of an Agency application, or
- (c) the variation of any such licence,

(a) Section 60 was amended by the EA, section 120 and Schedule 22, paragraph 128.

as if, in subsection (1), the reference to the duty imposed by subsection (1) of section 39 has effect as if it included a reference to that duty as modified by paragraph 8(4) of Schedule 2.

Compensation of Agency on modification of Agency licence

24. Section 61(a) (compensation where licence modified on direction of the Secretary of State) does not apply in relation to the revocation or variation of a licence held by the Agency.

PART 4

ENFORCEMENT, WORKS AND CONSERVATION NOTICES

Content of enforcement notices

- 25.** An enforcement notice under section 25A(b) (enforcement notices) must—
- (a) state the name and address of the person on whom the notice is served;
 - (b) describe the breach or failure to comply to which the notice relates;
 - (c) describe the significant damage to the environment which is being, or is likely to be, caused by that breach or failure;
 - (d) identify the source of supply or inland waters that are subject, or likely to be subject, to that damage;
 - (e) specify the works or operations (if any) required to be carried out and give the Agency's reasons for requiring those works or operations to be carried out;
 - (f) inform the person on whom the notice is served of—
 - (i) his right to appeal under section 161C(c) (appeals against works notices), as applied by section 25B(d) (rights of entry and appeals), including the time for appealing; and
 - (ii) the requirements imposed by regulation 3 of the Anti-Pollution Works Regulations 1999(e), as applied by regulation 28, in relation to the exercise of that right; and
 - (g) set out the provisions of section 25C(f) (consequences of not complying with an enforcement notice).

Enforcement notices: abstraction and impounding by the Agency

26. Sections 25A, 25B and 25C (which relate to enforcement notices) do not apply in relation to any breach or failure to comply by the Agency, being a breach of the kind referred to in section 25A(1)(a) or (b).

Content of works notices

27. A works notice under section 4 of the Water Act 2003 (existing impounding works: works notices) must—

- (a) state the name and address of the person on whom the notice is served;
- (b) specify the impounding works to which the notice relates;
- (c) specify the works or operations required to be carried out and give the Agency's reasons for requiring those works or operations to be carried out;

(a) Section 61 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, sections 25 and 101(1) and Schedule 7, paragraphs 1 and 6.
(b) Section 25A was inserted by the WA, section 30.
(c) Section 161C was inserted by the EA, section 120 and Schedule 22, paragraph 162.
(d) Section 25B was inserted by the WA, section 30.
(e) S.I. 1999/1006.
(f) Section 25C was inserted by the WA, section 30.

- (d) state why it appears to the Agency to be necessary to serve the notice;
- (e) inform the person on whom the notice is served of—
 - (i) his right to appeal under section 161C (appeals against works notices), as applied by section 4(3) of the Water Act 2003, and of the time for appealing; and
 - (ii) the requirements imposed by regulation 3 of the Anti-Pollution Works Regulations 1999, as applied by regulation 28, in relation to the exercise of that right; and
- (f) set out the provisions of section 4(4) to (7) of the Water Act 2003 (which provide for consequences of not complying with a works notice).

Enforcement notices and works notices: appeals

28. Regulations 3 to 7 (appeals, written representations, hearings, notification of determination, and compensation for grant of rights under section 161B) of the Anti-Pollution Works Regulations 1999 apply in relation to—

- (a) an enforcement notice under section 25A, and
- (b) a works notice under section 4 of the Water Act 2003,

as they apply to a works notice under section 161A(a) (notices requiring persons to carry out anti-pollution works and operations).

Notice of mining operations which may affect water conservation

29. The notice required by subsection (1) of section 199(b) (notice etc. of mining operations which may affect water conservation) must be given in such form as the Agency determines.

Conservation notices: appeals

30. Regulations 3 to 6 of the Anti-Pollution Works Regulations 1999 apply in relation to an appeal under section 199A(c) (appeals against conservation notices under section 199) as if—

- (a) in regulation 3 (appeals)—
 - (i) paragraph (1) were omitted;
 - (ii) the references to the notice of appeal were a reference to a notice of appeal under section 199A(1);
 - (iii) in paragraph (2)(a), the words “and of all persons to be served with a copy of the notice of appeal” were omitted; and
 - (iv) in paragraph (4), the word “and” in sub-paragraph (a) and sub-paragraph (b) were omitted;
- (b) in regulation 4(1) (written representations), the words “, and any party to the appeal other than the appellant,” were omitted;
- (c) in regulations 4(4) and (5) and 5(1), (2) and (6) any reference to a party to the appeal were a reference to the appellant and the Agency; and
- (d) in regulation 6(2) (notification of determination), the words “and to every other party to the appeal.” were omitted.

(a) Section 161A was inserted the EA, section 120 and Schedule 22, paragraph 162.
 (b) Section 199 was amended by the WA, section 8(5).
 (c) Section 199A was inserted by the WA, section 8(6).

PART 5

MISCELLANEOUS

Advertisement of Agency proposals to modify a licence

31.—(1) Subject to paragraph (2), where proposals have been formulated under section 52 (proposals for modification at instance of the Agency or Secretary of State) (including that section as modified by regulation 19), the notice referred to in subsection (4) of that section must—

- (a) explain the general effect of the proposals;
- (b) in the case of proposals for varying the licence, specify—
 - (i) the current point of abstraction or impounding and, if different, that which is proposed;
 - (ii) in relation to a full licence, the proposed quantity of water to be abstracted; and
 - (iii) in relation to an impounding licence, the object and means of impounding;
- (c) state—
 - (i) where and when the register containing brief particulars about the proposals may be inspected and that such inspection is free of charge; and
 - (ii) the address to which any representations with respect to the proposals may be sent; and
- (d) be published—
 - (i) in at least one newspaper circulating in the locality of the current (and, if different, proposed) point of abstraction or impounding; and
 - (ii) on the Agency’s website.

(2) The notice must not include any information—

- (a) 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); or
- (b) of which, in the case of proposals 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.

(3) In paragraph (2) “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.

Notice of certain applications to modify an abstraction licence

32. The notice required by subsection (4) of section 55 (application for modification of licence by owner of fishing rights) must be given in such form as the Agency determines.

Licensing of existing impounding works: notices of appeal

33.—(1) Any notice of appeal served under section 3(4) of the Water Act 2003 (which provides for appeals against notices requiring existing impounding works to be licensed) must be served within 21 days beginning on the date of service of the notice served under section 3(2) of that Act.

(2) Regulations 3 to 6 of the Anti-Pollution Works Regulations 1999 apply in relation to an appeal under section 3(4) of the Water Act 2003 as if—

- (a) in those regulations, references to the Secretary of State were references to the appropriate authority^(a); and
- (b) in regulation 3, references to a notice of appeal were references to a notice of appeal under section 3(4) of the Water Act 2003.

Register of abstraction and impounding licences

34.—(1) The register must contain—

- (a) in the case of every application made to the Agency for an abstraction licence or an impounding licence, or the revocation or variation of such a licence, and every Agency application—
 - (i) the name and address of the applicant, the date of the application and brief particulars of its proposals;
 - (ii) particulars of the decision, if any, of the Agency, the Secretary of State or the Assembly on the application (including the decision on any appeal), and the date of that decision;
 - (iii) any notice of appeal served in relation to the application; and
 - (iv) particulars of any licence granted or deemed to be granted, or revocation or variation effected, by virtue of a decision on the application and any appeal, including the date (if any) on which a licence expires;
- (b) in the case of a licence transferred in accordance with section 59A (transfer of licence)—
 - (i) the name and address of the transferee;
 - (ii) the date on which the Agency received (or, in the case of the transfer of a licence held by the Agency, served) the transfer notice;
 - (iii) particulars of the transfer notice; and
 - (iv) the date on which the transfer took effect;
- (c) in the case of a licence vesting in accordance with section 59B^(b) (vesting of licence on death or bankruptcy of holder) in relation to which notice has been given to the Agency under subsection (4) of that section—
 - (i) the name and address of the person in whom the licence has vested; and
 - (ii) the date of the vesting; and
- (d) in the case of a licence granted in accordance with section 59C(5)—
 - (i) the name and address of the holder;
 - (ii) particulars of the licence granted;
 - (iii) the date on which it was granted;
 - (iv) the date from which it has effect; and
 - (v) the date on which it expires.

(2) The Agency must—

- (a) within 14 days beginning on—
 - (i) in relation to an application mentioned in paragraph (1)(a), the relevant date, or
 - (ii) in relation to a case mentioned in paragraphs (1)(b), (c) or (d), the date on which the particulars in question become available to the Agency,
 enter the appropriate particulars referred to in paragraph (1) on the register; and
- (b) keep records on the register showing the date on which those entries are made.

^(a) For the definition of “appropriate authority” see section 3(12) of the Water Act 2003.

^(b) Section 59B was inserted by the WA, section 23(1).

(3) Paragraphs (1) and (2) do not apply to any information required to be excluded from the register by or under section 191A (exclusion from registers of information affecting national security) or section 191B (exclusion from registers of certain confidential information).

(4) The Agency may keep the register, or any part of it, electronically.

Revocations

35. Subject to regulation 36, the following instruments are revoked—

- (a) the Water Resources (Licences) Regulations 1965(a);
- (b) the Water Resources (Miscellaneous Provisions) Regulations 1965(b); and
- (c) the Water Resources (Licences) (Amendment) Regulations 1989(c).

Transitional and saving provisions

36. The Regulations revoked by regulation 35(a) and (c) continue to have effect in relation to any application under Chapter 2 of Part 2 of the Act a notice of which, before the coming into force of these Regulations, was published by the applicant in accordance with section 37 of the Act.

Signed on behalf of the National Assembly for Wales,

7th March 2006

D. Elis-Thomas
The Presiding Officer of the National Assembly

6th March 2006

Elliot Morley
Minister of State,
Department for Environment, Food and Rural Affairs

SCHEDULE 1

ENABLING POWERS

1.—(1) The following sections of the Act(d)—

- (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;

(a) S.I. 1965/534; amended by S.I. 1989/336.

(b) S.I. 1965/1092.

(c) S.I. 1989/336.

(d) 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.

- (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
- (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(a) (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;

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

- (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—
 - (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
- (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(a) (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
 - (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(b) (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(c) (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(d) (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

(a) 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).

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

(c) 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).

(d) 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.

(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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions relating to the licensing of abstraction and impounding of water in England and Wales in the light of amendments made by the Water Act 2003 to the Water Resources Act 1991 (“the Act”).

Part 2 relates to procedural requirements, including time limits in relation to the making of licence applications and in relation to appeals from decisions on licence applications for the abstraction or impounding of water. All applications for an abstraction licence or an impounding licence, other than those seeking to vary such a licence so as to reduce the quantity of water authorised to be abstracted, must be made to the Environment Agency (“the Agency”) containing the information specified in regulation 3 and in the manner specified in regulation 4. The Act requires the Agency, on receipt of certain applications, to advertise the application. Regulation 6 prescribes the manner in which notice of such applications must be published, while regulation 7 provides exceptions to the requirement to advertise. These Regulations also require the Agency to acknowledge receipt of an application, providing the applicant with specified information within the time prescribed in regulation 8. Special provisions apply where the application relates to abstraction or impounding in a National Park or the Broads (regulation 9). The Agency must make a decision on an application and serve notice of that decision on an applicant or refer the matter to the Secretary of State, or (in the case of abstraction or impounding works in Wales) the National Assembly for Wales, within specified time limits (regulation 10). Any appeal must be made within the time limits specified in regulation 12 and in the form specified in regulation 13.

Part 3 of, and Schedule 2 to, these Regulations make modifications to the Act as it applies to abstraction or impounding by the Agency. The Agency must effectively follow similar procedures and comply with similar requirements as any other applicant, and the Regulations prescribe procedures, requirements and time limits in relation to the process of making, deciding and challenging Agency licence applications.

Part 4 of these Regulations relates to the content of enforcement notices in relation to a breach of a restriction on the abstraction or impounding of water (regulation 25) and works notices in relation to the protection of the environment (regulation 27). It also applies procedures in the Anti-Pollution Works Regulations 1999 (S.I. 1999/1006) to appeals which may be brought against enforcement, works and conservation notices (regulations 28 and 30).

Part 5 of these Regulations makes miscellaneous provisions, in particular: prescribing the content of and the procedure for publishing notices of proposals by the Agency to modify a licence issued under the Act (regulation 31); permitting the Agency to determine the form of a notice to be given by an owner of fishing rights applying to modify a licence (regulation 32); specifying a 21 day time-limit for serving a notice of appeal against a notice requiring existing, unlicensed impounding works to be licensed and applying, with modifications, appeals provisions under the Anti-Pollution Works Regulations 1999 to such an appeal (regulation 33); and prescribing what information must be contained on the register of abstraction and impounding licences (regulation 34).

A full Regulatory Impact Assessment has been prepared in connection with these Regulations and placed in the library of each House of Parliament. Copies can be obtained from the Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs, 55 Whitehall, c/o 3-8 Whitehall Place, London SW1A 2HH and from Environment Protection and Quality Division, Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ.

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