

2006 No. 984 (C. 30)

WATER, ENGLAND AND WALES

The Water Act 2003 (Commencement No. 6, Transitional Provisions and Savings) Order 2006

Made - - - -

30th March 2006

The Secretary of State makes the following Order in exercise of the powers conferred on her by sections 104(6)(a) and 105(3) to (6) of the Water Act 2003(a), and having consulted the National Assembly for Wales(b):

Citation and interpretation

1.—(1) This Order may be cited as the Water Act 2003 (Commencement No. 6, Transitional Provisions and Savings) Order 2006.

(2) In this Order—

“the Act” means the Water Act 2003; and

“the Agency” means the Environment Agency.

Provisions coming into force on 1st April 2006

2. The following provisions of the Act come into force on 1st April 2006—

- (a) section 1 (licences to abstract water);
- (b) section 2 (restrictions on impounding);
- (c) section 3 (existing impounding works);
- (d) section 4 (existing impounding works: works notices);
- (e) in section 8 (amendments relating to section 7), subsections (3) to (7) and subsection (1) in so far as it relates to those subsections;
- (f) section 11 (who may apply for a licence);
- (g) section 12 (abolition of combined licences);
- (h) section 13 (applications: types of abstraction licence);
- (i) section 14 (publication of application for licence);
- (j) section 19 (form, contents and effect of licences) for all remaining purposes;
- (k) section 21 (modification of licences);
- (l) section 22 (proposals for modification at instance of Agency or Secretary of State);

(a) 2003 c. 37.

(b) The power in section 105(3) of the Act to appoint a day on which provisions of the Water Act 2003 shall come into force is vested in the “appropriate authority”. The appropriate authority in relation to provisions of the Act for which a day is appointed by this Order is the Secretary of State after consulting “the Assembly” (the National Assembly for Wales: section 105(2) of the Act).

- (m) section 23 (transfer and apportionment of licences);
- (n) section 25 (compensation for modification of licence on direction of Secretary of State) for all remaining purposes;
- (o) section 30 (enforcement notices, and related procedures and offences);
- (p) section 33 (application of certain water resources provisions to the Act);
- (q) section 62 (water resources management plans) in so far as it has effect to insert into the WIA(a) section 37A and 37D, and for all remaining purposes as respects the insertion into the WIA of section 37B;
- (r) in section 100 (devolution: Wales)—
 - (i) subsection (2)(c);
 - (ii) subsection (2)(g) in so far as it relates to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article;
 - (iii) subsection (4)(b)(iii);
 - (iv) subsection (6) in so far as it relates to references to provisions amended or introduced by any provision of the Act which is brought into force by virtue of this article; and
 - (v) subsection (7) in so far as it relates to subsection (6) (so far as brought into force by sub-paragraph (iv) above) or the amendments made by subsections (2) and (4) (so far as brought into force by sub-paragraphs (i) and (iii) above); and
- (s) in section 101 (minor and consequential amendments and repeals)—
 - (i) subsection (1) in so far as it relates to the amendments made by paragraphs 4, 7, 8, 10 to 13 and 15 of Schedule 7 to the Act, and paragraph 1 in so far as it relates to those paragraphs; and
 - (ii) subsection (2) in so far as it relates to the repeals specified in Schedule 9 of sections 30, 31, 36, 49, 50, 52(8) and 125(2) of the WRA(b) and the repeal in relation to section 25(2) of that Act.

Transitional and savings provisions

- 3.**—(1) The transitional and savings provisions in the Schedule to this Order have effect.
 (2) Paragraph (1) comes into force on 1st April 2006.

Date 30th March 2006

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

(a) See section 105(2)(a) of the Act.
 (b) See section 105(2)(b) of the Act.

TRANSITIONAL PROVISIONS AND SAVINGS

Conversion of certain licences into transfer licences

1.—(1) The Agency must, before 1st May 2006—

- (a) take all reasonable steps to identify the holder of every relevant licence containing relevant provisions; and
- (b) serve on every such holder so identified notice in writing of his entitlement under sub-paragraph (2) and of the requirements of sub-paragraph (3).

(2) The holder of a relevant licence containing relevant provisions may make an application to the Agency for the grant of a transfer licence in substitution for that part of the relevant licence which contains the relevant provisions.

(3) An application must—

- (a) be received by the Agency before 1st October 2006;
- (b) be made on a form issued by the Agency for the purpose; and
- (c) provide, or be accompanied by, such information as the Agency may reasonably request in connection with the application.

(4) Where it receives an application, the Agency must before the relevant date—

- (a) grant to the applicant a transfer licence in materially the same terms as the relevant provisions of the relevant licence to which the application relates; and
- (b) on granting the transfer licence—
 - (i) in the case of a relevant licence which authorises an abstraction otherwise than by virtue of the relevant provisions, vary the relevant licence by omitting the relevant provisions; and
 - (ii) in any other case, revoke the relevant licence.

(5) In sub-paragraph (4), the “relevant date” is the date of the day after the end of the period of six months beginning on the day the application is received by the Agency.

(6) Subsection (5)(b) of section 46 of the WRA(a) (form and content of licences) does not apply in relation to a licence granted in accordance with sub-paragraph (4)(a) of this paragraph.

(7) In relation to a relevant licence to which sub-paragraph (2) applies, section 24A of the WRA(b) (abstraction licences) and subsection (1) of section 102 of the Act (specific transitional and transitory provisions) apply as if section 1 of the Act came into force—

- (a) where an application under sub-paragraph (2) is received by the Agency before 1st October 2006, on the day after the day on which the application is finally disposed of; and
- (b) in any other case, on 1st October 2006.

(8) Subsection (1)(a) of section 43 of the WRA(c) (appeals to the Secretary of State) has effect in relation to the decision of the Agency on an application under sub-paragraph (2)—

- (a) to grant a transfer licence under sub-paragraph (4)(a), and
- (b) to vary or revoke a relevant licence under sub-paragraph (4)(b),

(a) Section 46 of the WRA was amended by section 19 of the Act.

(b) Section 24A of the WRA was inserted by section 1 of the Act.

(c) Section 43 of the WRA was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 134, and section 14 of the Act.

as if it were a decision on an application to the Agency for a licence under Chapter 2 of Part 2 of the WRA.

(9) In this paragraph an application is to be considered finally disposed of when—

- (a) the application is withdrawn;
- (b) the period within which notice of appeal under subsection (1)(a) of section 43 of the WRA against the decision of the Agency may be given has ended without any such notice having been given; or
- (c) notice of appeal under subsection (1)(a) of section 43 of the WRA against that decision has been given and the appeal has been withdrawn or determined.

(10) In this paragraph—

“relevant licence” means a licence (other than a combined licence) to abstract water which was in force immediately before 1st April 2006; and

“relevant provisions” means provisions which authorise the abstraction of water from one source of supply over a period of twenty-eight days or more for the purpose of transferring water to another source of supply without intervening use.

(11) In this paragraph and paragraph 2, “combined licence” means a licence under section 36 of the WRA^(a) (application for combined abstraction and impounding licence) which is in force immediately before 1st April 2006.

Conversion of combined licences

2.—(1) The Agency must, in relation to a combined licence, before 1st April 2007—

- (a) grant to the holder of that licence an impounding licence in materially the same terms as the provisions of the combined licence which authorise the holder to obstruct or impede the flow of inland waters by means of impounding works; and
- (b) vary the combined licence by omitting the provisions referred to in paragraph (a).

(2) A licence granted in accordance with sub-paragraph (1)(a) must provide for the licence to take effect on 1st April 2007.

(3) A combined licence varied in accordance with sub-paragraph (1)(b) must provide for the variations to take effect on 1st April 2007.

(4) In relation to a combined licence, section 24A of the WRA (abstraction licences) and subsection (1) of section 102 of the Act (specific transitional and transitory provisions) apply as if section 1 of the Act came into force on 1st April 2007.

(5) A licence granted in accordance with sub-paragraph (1)(a) in respect of particular impounding works is to be taken to satisfy the condition referred to in paragraph (a) of section 25(1A) of the WRA^(b) (which sets out the conditions under which the restriction on impounding does not apply) in respect of those impounding works.

(6) Subsection (1)(a) of section 43 of the WRA (appeals to the Secretary of State) has effect in relation to a licence—

- (a) granted in accordance with sub-paragraph (1)(a), or
- (b) varied in accordance with sub-paragraph (1)(b),

as if that licence had been granted or varied (as the case may be) on an application to the Agency.

(7) In relation to a combined licence to which, if it did not authorise the holder to obstruct or impede the flow of inland waters by means of impounding works, paragraph 1 would apply—

- (a) sub-paragraph (4) of this paragraph does not apply; and
- (b) paragraph 1 applies as if—

(a) Section 36 of the WRA was repealed by section 12 of the Act.

(b) Section 25(1A) of the WRA was inserted by section 2 of the Act.

- (i) in sub-paragraph (4), for “the relevant date” there were substituted “1st April 2007”, and paragraph (b)(ii) did not apply at any time before the Agency has complied with sub-paragraph (1) of this paragraph;
- (ii) sub-paragraph (5) were omitted;
- (iii) in sub-paragraph (7)(a), after “on” where it first appears, there were inserted “1st April 2007, or (if later)”;
- (iv) in sub-paragraph (7)(b), for “1st October 2006” there were substituted “1st April 2007”; and
- (v) in sub-paragraph (10), in the definition of “relevant licence”, the words “(other than a combined licence)” were omitted.

(8) In this paragraph, “impounding licence” means a licence(a) under Chapter 2 of Part 2 of the WRA to obstruct or impede the flow of inland waters by means of impounding works.

Information to be placed on the register

3. Subsections (1) and (2) of section 189 of the WRA(b) (register of abstraction and impounding licences), and any regulations having effect under that section, apply in relation to any licence issued, varied or revoked by virtue of paragraph 1 or 2 as if it were a licence under Chapter 2 of Part 2 of the WRA.

Offences of contravening a conservation notice

4.—(1) Subsection (4) of section 30 of the WRA (notices with respect to borings not requiring licences) continues to have effect in relation to any notice under section 30(2) of that Act given before the repeal of section 30 by virtue of section 8(3) and (5) of the Act.

(2) Subsections (2) and (4) of section 199 of the WRA(c) (notice etc. of mining operations which may affect water conservation) continue to have effect in relation to any notice under section 30(2) of that Act (as applied by section 199(2)) given before the coming into force of section 8(5) of the Act as they had effect immediately before the coming into force of that section.

Appeals against conservation notices

5. Section 31 of the WRA (appeals against conservation notices under section 30) continues to have effect in relation to any notice of appeal served on the Secretary of State under subsection (1) of section 31 of the WRA before the repeal of that section by virtue of section 8(3) of the Act.

Eligibility to make application to abstract water

6. Section 35 of the WRA(d) (restrictions on persons who may make applications for abstraction licences) continues to have effect in relation to any application for a licence to abstract water under Chapter 2 of Part 2 of the WRA a notice of which was published by the applicant in accordance with section 37 of the WRA(e) (publication of application for licence) before 1st April 2006.

Notice of an application which has been published in accordance with section 37 of the WRA before 1st April 2006

7.—(1) In relation to any application for a licence under Chapter 2 of Part 2 of the WRA a notice of which was published before 1st April 2006 in accordance with section 37 of the WRA, that section continues to have effect as it had effect immediately before that date.

(a) For the definition of “licence” in this context, see sections 25(6) and (7) and section 72(1) of the WRA.

(b) Section 198 of the WRA was amended by section 23 of the Act.

(c) Section 199 of the WRA was amended by section 8(5) of the Act.

(d) Section 35 of the WRA was amended by section 11 of the Act.

(e) Section 37 of the WRA was substituted by section 14(1) of the Act.

(2) Sub-paragraph (1) does not apply in relation to an excepted application.

(3) Paragraph 6 (above), and regulation 36 of the Water Resources (Abstraction and Impounding) Regulations 2006^(a), do not have effect in relation to an excepted application.

(4) In this paragraph “an excepted application” means an application submitted to the Agency on or after 1st April 2007.

Effect of provisions in relation to water resources management plans

8.—(1) So far as it has not been given effect before the coming into force of this Schedule, section 37B of the WIA^(b) (water resources management plans: publication and representations) has effect only in so far as it enables the Secretary of State to make regulations or give directions in relation to water resources management plans.

(2) Section 37A (water resources management plans: preparation and review) and section 37D (water resources management plans: supplementary) of the WIA^(c) have effect only in so far as they enable the Secretary of State to give directions in relation to water resources management plans under those sections.

Devolution: Wales

9. So far as it has not been given effect before the date of this Order, subsection (6) of section 100 (devolution: Wales) does not have effect in relation to references to any Act generally except to the extent that any such Act has been amended by the Act by virtue of the provisions of this Order.

^(a) S.I. 2006/641.

^(b) Section 37B of the WIA was inserted by section 62 of the Act.

^(c) Sections 37A and 37D of the WIA were inserted by section 62 of the Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st April 2006 in England and Wales certain provisions of the Water Act 2003 (“the Act”), and makes transitional provision and savings in respect of some of those provisions.

The provisions of Part 1 of the Act brought into force by these Regulations relate to the licensing of abstraction and impounding of water.

The provisions of Part 3 of the Act brought into force by these Regulations enable the Secretary of State to make regulations and give directions in relation to water resources management plans.

Transitional provisions and savings consequential upon the coming into force of certain provisions in Part 1 of the Act are made in the Schedule to this Order.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Water Act 2003 have been brought into force in England and Wales by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 6	1.4.2004 & 1.4.2005	2004/641 (C.24) & 2005/968 (C.43)
s. 9	1.4.2004	2004/641 (C.24)
s. 10	1.4.2004 & 1.4.2005	2004/641 (C.24) & 2005/968 (C.43)
s. 15	1.4.2004	2004/641 (C.24)
s. 16	1.4.2004 & 1.4.2005	2004/641 (C.24) & 2005/968 (C.43)
s. 17	1.4.2005	2005/968 (C.43)
s. 18	1.4.2004	2004/641 (C.24)
s. 19 (partially)	1.4.2004	2004/641 (C.24)
s. 20	1.4.2004	2004/641 (C.24)
s. 24	1.4.2005	2004/641 (C.24)
s. 25 (partially)	1.4.2004	2004/641 (C.24)
s. 26	1.10.2004	2004/2528 (C.106)
s. 27	1.4.2004	2004/641 (C.24)
ss. 28 and 29	1.10.2004	2004/2528 (C.106)
s. 31	1.10.2004	2004/2528 (C.106)
s. 35 (partially)	1.8.2005 & 1.10.2005	2005/968 (C.43) & 2005/2714 (C.109)
s. 36 (partially) & Sch. 3 ^(‡)	1.4.2005	2005/968 (C.43)
s. 37	1.4.2004	2004/641 (C.24)
s. 38	1.10.2004 & 1.10.2005	2004/2528 (C.106) & 2005/2714 (C.109)
ss. 39 to 42	1.4.2005	2005/968 (C.43)
ss. 43 to 47	1.10.2005	2005/2714 (C.109)
s. 48	1.10.2004 & 1.4.2005	2004/2528 (C.106) & 2005/968 (C.43)
ss. 49 and 50	1.10.2004	2004/2528 (C.106)
s. 51	1.4.2005	2005/968 (C.43)
s. 53 ^(*)	1.4.2004	2004/641 (C.24)
ss. 54 and 55	1.10.2004	2004/2528 (C.106)

s. 56 & Sch. 4	1.4.2004, 1.8.2005, 1.10.2005 & 1.12.2005	2004/641 (C.24), 2005/968 (C.43) & 2005/2714 (C.109)
s. 57	1.4.2004	2004/641 (C.24)
s. 59	1.10.2004	2004/2528 (C.106)
ss. 60 and 61	1.4.2004	2004/641 (C.24)
s. 62 (partially)	1.10.2004 & 1.10.2005	2004/2528 (C.106) & 2005/2714 (C.109)
s. 63	1.10.2004 & 1.10.2005	2004/2528 (C.106) & 2005/2714 (C.109)
ss. 64 and 65	1.4.2004	2004/641 (C.24)
s. 66 ^(†)	1.4.2004	2004/641 (C.24)
s. 67	1.4.2004	2004/910 (W. 93) (C.39)
s. 68 [†]	1.4.2004	2004/641 (C.24)
s. 70	1.4.2005	2005/968 (C.43)
s. 71	1.4.2004	2004/641 (C.24)
s. 72	1.4.2004	2004/641 (C.24)
s. 74 ^(*)	1.10.2004	2004/2528 (C.106)
s. 76 ^(†)	1.10.2004	2004/2528 (C.106)
s. 79	1.10.2004	2004/2528 (C.106)
ss. 82 to 84	1.4.2004	2004/641 (C.24)
s. 85 ^(*) & Sch. 5 & 6	1.4.2004	2004/641 (C.24)
s. 87	1.10.2004	2004/2528 (C.106)
ss. 90 to 97	28.5.2004	2004/641 (C.24)
s. 99	28.5.2004	2004/641 (C.24)
s. 100 (partially)	17.3.2004, 1.4.2004, 28.5.2004, 1.10.2004, 1.4.2005, 1.8.2005, 1.10.2005 & 1.12.2005	2004/641 (C.24), 2004/2528 (C.106), 2005/968 (C.43) & 2005/2714 (C.109)
s. 101(1) & Sch. 7 (partially)	1.4.2004, 1.10.2004, 29.12.2004, 1.4.2005, 1.8.2005 & 1.10.2005	2004/641 (C.24), 2004/2528 (C.106), 2005/968 (C.43) & 2005/2714 (C.109)
s. 101(1) & Sch. 8	1.4.2004, 1.10.2004 & 1.12.2005	2004/641 (C.24), 2004/2528 (C.106) & 2005/2714 (C.109)

s. 101(2) & Sch. 9 (partially)	1.4.2004, 28.5.2004, 1.10.2004, 1.4.2005, 1.10.2005 & 1.12.2005	2004/641 (C.24), 2004/2528 (C.106), 2005/968 (C.43) & 2005/2714 (C.109)
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(*) These provisions also extend partially to Scotland (section 105(9) of the Act) and were brought into force in Scotland by the same Order.

(†) These provisions also extend to Scotland (section 105(9) of the Act) and were brought into force in Scotland by the same Order.

(‡) These provisions also extend to Scotland and Northern Ireland (section 105(8) of the Act) and were brought into force in Scotland and Northern Ireland by the same Order.

The following provisions of the Water Act 2003 have been brought into force in England by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 58 (partially)	18.2.2005	2005/344 (C.12)
s. 69	17.3.2004	2004/641 (C.24)
s. 75	1.4.2004	2004/641 (C.24)
ss. 77 and 78	1.10.2004	2004/2528 (C.106)
s. 80	1.10.2004	2004/2528 (C.106)
s. 81	1.4.2004	2004/641 (C.24)
s. 86 (partially)	1.10.2004	2004/2528 (C.106)
s. 101(1) & Sch. 7 (partially)	17.3.2004 & 1.10.2004	2004/641 (C.24) & 2004/2528 (C.106)
s. 101(2) & Sch. 9 (partially)	17.3.2004	2004/641 (C.24)

The following provisions of the Act have been brought into force in Wales by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 69	1.4.2004	2004/910 (W.93) (C.39)
s. 75	1.4.2004	2004/910 (W.93) (C.39)
ss. 77 and 78	11.11.2004	2004/2916 (W.255) (C.120)
ss. 80 and 81	11.11.2004	2004/2916 (W.255) (C.120)
s. 86 (partially)	11.11.2004	2004/2916 (W.255) (C.120)
s. 101(1) & Sch. 7 (partially)	1.4.2004 & 11.11.2004	2004/910 (W.93) (C.39) & 2004/2916 (W.255) (C.120)
s. 101(2) & Sch. 9 (partially)	1.4.2004 & 11.11.2004	2004/910 (W.93) (C.39) & 2004/2916 (W.255) (C.120)

The following provisions of the Act will be brought into force in England and Wales by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
s. 34 (partially)	1.4.2006	2005/2714 (C.109)
s. 35	1.4.2006	2005/2714 (C.109)
s. 36	1.4.2006	2005/2714 (C.109)
s. 52	1.4.2006	2005/2714 (C.109)
s. 100 (partially)	1.4.2006	2005/2714 (C.109)
s. 101(1) & Sch. 7 (partially)	1.4.2005	2005/2714 (C.109)
s. 101(2) & Sch. 9 (partially)	1.4.2005	2005/2714 (C.109)

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