Changes to legislation: *The Water Abstraction (Transitional Provisions) Regulations 2017 is up to date with all changes known to be in force on or before 07 March 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 1047

WATER RESOURCES, ENGLAND AND WALES

The Water Abstraction (Transitional Provisions) Regulations 2017

Made - - - -	*30th October 2017*
Laid before Parliament	*31st October 2017*
Laid before National Assembly for Wales - - - -	*31st October 2017*
Coming into force - -	*1st January 2018*

The Secretary of State, in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations in exercise of the powers conferred by—

(a) sections 34, 36A(5), 37(1), (4) and (6), 37A, 43(2)(a) and (3), 44(3)(a), 45, 59, 189 and 219(2)(f) of the Water Resources Act 1991 [F1]; and

(b) sections 103(1) to (3) and (7) and 104(4) and (6) of the Water Act 2003 [F2].

F1 1991 c. 57. Section 34 was amended by paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25) ("the 1995 Act") and by paragraph 2 of Schedule 7 to the Water Act 2003 (c. 37) ("the 2003 Act"). Section 36A was inserted by section 13(1) of the 2003 Act. Section 37 was substituted by section 14(1) of the 2003 Act. Section 37A was inserted by section 14(2) of the 2003 Act. Section 45 was amended by paragraph 1 of Schedule 24 to the 1995 Act and by section 13(3) of the 2003 Act. Section 189 was amended by section 23(3) of the 2003 Act. Sections 34, 37, 37A, 45 and 189 were amended by S.I. 2013/755 (W. 90). See section 221(1) for the definitions of "prescribed" and "the Ministers". The power to make Regulations under this Act was transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (references to the Water Resources Act 1991 in that Schedule are treated as references to that Act as amended by the 2003 Act by virtue of section 100(6) of the 2003 Act). Those functions were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

F2 2003 c. 37. Section 103(3) was amended by S.I. 2013/755 (W. 90). The power of the National Assembly for Wales to make regulations under section 103 in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly was transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

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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 [F3];

"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.

F3 S.I. 2006/641, as amended by S.I. 2008/165 and 2013/755 (W. 90).

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 **[**F4on the transitional period end date**]**.

[F5(3) In this Part, "transitional period end date", in relation to England, means 30th June 2020.**]**

F4 Words in reg. 3(2)(c) substituted (E.) (31.12.2019) by The Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (S.I. 2019/1455), regs. 1(1), **2(2)(a)**

F5 Reg. 3(3) inserted (E.) (31.12.2019) by The Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (S.I. 2019/1455), regs. 1(1), **2(2)(b)**

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 F6, applies for a licence before **[**F7the transitional period end date**]**.

(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.

F6 See section 221 of the Water Resources Act 1991 for the definition of the "appropriate agency".

F7 Words in reg. 4(1) substituted (E.) (31.12.2019) by The Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (S.I. 2019/1455), regs. 1(1), **2(3)**

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 **[**F8the transitional period end date**]**.

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

F8 Words in reg. 5(1)(b) substituted (E.) (31.12.2019) by The Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (S.I. 2019/1455), regs. 1(1), **2(3)**

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 [F9]) is determined, or

(b) if no such application is submitted, until **[**[F10]the transitional period end date**]**.

F9 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).

F10 Words in reg. 6(b) substituted (E.) (31.12.2019) by The Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (S.I. 2019/1455), regs. 1(1), **2(3)**

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) [F11] 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) [F12] 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.

F11 Section 191A was inserted by paragraph 170 of Schedule 22 to the 1995 Act and amended by S.I. 2013/755 (W. 90).

F12 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).

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 [F13];

(b) the Welsh Ministers;

(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 [F14].

(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 [F15].

F13 1975 c. 26.
F14 1990 c. 8.
F15 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).

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