STATUTORY INSTRUMENTS

2017 No. 1044

WATER RESOURCES, ENGLAND AND WALES

The Water Abstraction and Impounding (Exemptions) 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 sections 33A and 219(2)(f) of the Water Resources Act 1991 [F1].

F1 1991 c. 57; section 33A was inserted by section 9 of the Water Act 2003 (c. 37), and was amended by S.I. 2013/755 (W. 90). See section 221(1) of the Water Resources Act 1991 for the definition of "the Ministers". The functions under sections 33A and 219(2) were transferred, in relation to Wales, to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), with references to the Water Resources Act 1991 in that Schedule treated as referring to that Act as amended by the Water Act 2003, pursuant to section 100(6) of the Water Act 2003. The functions of the National Assembly for Wales 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).

Modifications etc. (not altering text)

C1 Regulations applied (Isles of Scilly) (27.3.2020) by The Isles of Scilly (Application of Water Legislation) Order 2020 (S.I. 2020/214), arts. 2(1), **5(aa)**

PART 1

Introduction

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

"the 1991 Act" means the Water Resources Act 1991;

[F2"the 2017 Regulations" means the Conservation of Habitats and Species Regulations 2017;**]**

"conservation site" means—

(a) **[**F3a European site within the meaning of regulation 8(1)(e) of the 2017 Regulations;**]**

(b) a special area of conservation within the meaning of **[**F4**[**F5regulation 12**]** of the 2017 Regulations**]**;

(c) a special protection area or proposed special protection area within the meaning of **[**F6regulations 15 and 16, respectively, of the 2017 Regulations**]**;

(d) a site of special scientific interest confirmed by the Natural Resources Body for Wales or Natural England pursuant to section 28(5)(b) of the Wildlife and Countryside Act 1981 F7;

(e) in so far as not falling under sub-paragraph (d), a wetland designated under the Ramsar Convention, within the meaning of section 37A of the Wildlife and Countryside Act 1981 F8;

(f) an area designated by order by the Natural Resources Body for Wales or Natural England under section 7 of the National Parks and Access to the Countryside Act 1949 F9;

(g) a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949 F10;

"managed wetland system" means—

(a) an area of land that is periodically inundated or saturated by abstracted water in order to provide ecological benefits to flora and fauna, or

(b) an area of land through which abstracted water flows, through a system of channels, sluices, carriers or other apparatus in order to provide ecological benefits to flora and fauna;

"normal tidal limit" means the normal tidal limit as marked on the Ordnance Maps (1:25,000 scale);

"protected species" means—

(a) a European protected species within the meaning of **[**F11regulation 42(1) of, and Schedule 2 to, the 2017 Regulations**]**;

(b) a species designated under section 9 of, and Schedule 5 to, the Wildlife and Countryside Act 1981 F12;

(c) a species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006 F13 or by the Welsh Ministers under section 7 of the Environment (Wales) Act 2016 F14.

(2) In these Regulations, references to alteration, in relation to impounding works, include the removal or partial removal of those works and cognate expressions are construed accordingly.

F2 Words in reg. 2(1) substituted (E.) (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **35(2)(a)**; and (W.) (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **16(2)(a)**

F3 Words in reg. 2(1) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **21(a)** (as amended by S.I. 2019/559, regs. 1(2), 5(a)); 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in reg. 2(1) substituted (E.) (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **35(2)(b)(ii)**; and (W.) (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **16(2)(b)(ii)**

F5 Words in reg. 2(1) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **21(b)** (as amended by S.I. 2019/559, regs. 1(2), 5(b)); 2020 c. 1, Sch. 5 para. 1(1)

F6 Words in reg. 2(1) substituted (E.) (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **35(2)(b)(iii)**; and (W.) (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **16(2)(b)(iii)**

F7 Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 (c. 37) and amended by paragraph 79 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16) and paragraph 2(1) and (5) of Schedule 13 to the Marine and Coastal Access Act 2009 (c. 23). References to Natural England in section 28 have effect as if they were references to the Natural Resources Body for Wales in relation to land in Wales by virtue of section 27AA of the Wildlife and Countryside Act 1981 (c. 69).

F8 Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 and amended by S.I. 2013/755 (W.90).

F9 1949 c. 97. Section 2 was amended by paragraph 10(c) of Schedule 11 to the Natural Environment and Rural Communities Act 2006. Functions conferred on Natural England under section 7 as respects England (or areas of any description in England) were conferred on the Natural Resources Body for Wales as respects Wales (or areas of a similar description in Wales) by virtue of section 4A.

F10 Section 21 was amended by Schedule 30 to the Local Government Act 1972 (c.70), **paragraph 100** of Schedule 27 to the Local Government (Scotland) Act 1973 (c. 65), **section 10** of the Local Government and Planning (Scotland) Act 1982 (c. 43), **Schedule 14** to the Local Government etc. (Scotland) Act 1994 (c.39), **paragraphs 15** and 19 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 and paragraph 1(4) of Schedule 2(1) to the Environment (Wales) Act 2016 (anaw. 3).

F11 Words in reg. 2(1) substituted (E.) (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **35(2)(c)**; and (W.) (17.12.2018) by The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **16(2)(c)**

F12 Section 9 was amended in relation to England and Wales by paragraph 5 of Schedule 12 to the Countryside and Rights of Way Act 2000 and by S.I. 2007/1843. Schedule 5 was amended in relation to England and Wales by S.I. 1988/288, 1989/906, 1991/367, 1992/2350, 1998/878, 2007/1843, 2008/431, 1927 (W. 183), 2172 and 2011/2015.

F13 2006 c.16.

F14 2016 anaw 3.

PART 2

Exemptions from restriction on abstraction

Navigation, harbour and conservancy authorities and dry docks

3.—(1) The restriction on abstraction does not apply to any abstraction of water that is carried out by, or on behalf of, a navigation authority, harbour authority or conservancy authority if—

(a) the purpose of the abstraction is a transfer, without intervening use, of water from any inland waters downstream of the normal tidal limit to that authority's water system, and

(b) the water is abstracted at any time other than in the hour before or in the hour after low tide at the point of abstraction.

(2) The restriction on abstraction does not apply to any abstraction of water that is carried out if it is for the purpose of a transfer of water, without intervening use—

(a) into a dry dock from a water system of the authority for use within that dry dock, or

(b) from that dry dock back into the same water system.

(3) In this regulation, "water system" has the meaning given by sections 26(4)(a) and (5) of the 1991 Act [F15].

F15 Section 26(4) and (5) was inserted by section 5 of the Water Act 2003.

Emergency abstractions by navigation, harbour and conservancy authorities

4.—(1) The restriction on abstraction does not apply to any abstraction of water that is carried out by, or on behalf of, a navigation authority, harbour authority or conservancy authority in connection with its functions as such an authority if—

(a) the purpose of the abstraction is a transfer of water without intervening use,

(b) the abstraction is an emergency abstraction as defined in paragraph (2), and

(c) the authority gives notice in accordance with paragraphs (3) and (4) (but see paragraph (5)).

(2) An abstraction of water is an emergency abstraction if, in the opinion of the authority, an emergency has arisen which makes the abstraction necessary to prevent immediate danger of interference with any operations relating to that authority or, in relation to such operations, to prevent an immediate risk of—

(a) death, personal injury, or harm to health of a human being,

(b) damage to property, or

(c) damage to the environment.

(3) The authority referred to in paragraph (2) must give notice to the appropriate agency of —

(a) the fact that the abstraction has taken place and of the source of supply in question, and

(b) the reason that the authority considered that—

(i) an emergency had arisen, and

(ii) the abstraction was a necessary measure to prevent an immediate danger or risk identified in paragraph (2).

(4) Notice under paragraph (3) must be given before the end of the period of five days beginning with the date on which the abstraction started.

(5) On receipt of a notice under paragraph (3), the appropriate agency may give notice to the authority that—

(a) in the appropriate agency's opinion an emergency has not arisen, or

(b) that the abstraction is not, or is no longer, necessary for any of the reasons set out in paragraph (2).

(6) If the appropriate agency gives notice under paragraph (5), the restriction on abstraction applies to the abstraction from the time when the notice is served (and, where appropriate, the restriction imposed by section 24(2) of the 1991 Act also applies accordingly).

Small scale dewatering in the course of building or engineering works

5.—(1) The restriction on abstraction does not apply to an abstraction or series of abstractions of water carried out in the course of building or engineering works for the purpose of dewatering from a sump or excavation if—

(a) the abstraction or series of abstractions are temporary and in any event carried out over a period of less than six consecutive months beginning with commencement of the first abstraction,

(b) each abstraction does not cause or is not likely to cause damage to a conservation site or specific features in such a site,

(c) each abstraction does not cause or is not likely to cause damage to protected species, and

(d) either—

(i) the water abstracted is immediately discharged to a soakaway, or

(ii) the volume of water abstracted is less than 100 cubic metres of water per day and there is no intervening use of that water before discharge (but see paragraph (2)).

(2) Where the abstraction is undertaken within 500 metres of a conservation site or within 250 metres of a spring, well or borehole used to supply water for any lawful use, paragraph (1)(d)(ii) applies in respect of that abstraction as if the reference to 100 cubic metres of water per day were a reference to 50 cubic metres of water per day.

Surface water abstraction in the course of building or engineering works

6. The restriction on abstraction does not apply to any abstraction or series of abstractions of surface water in order to prevent interference with building or engineering works, if the following conditions are met—

(a) the abstraction or series of abstractions are temporary and in any event carried out over a period of less than six consecutive months beginning with the commencement of the first abstraction;

(b) each abstraction does not cause or is not likely to cause damage to a conservation site or specific features in such a site;

(c) each abstraction does not cause or is not likely to cause damage to protected species;

(d) the water abstracted is immediately discharged downstream of the building or engineering works.

Abstraction in the course of dredging

7.—(1) The restriction on abstraction does not apply to any abstraction of water in the course of dredging —

(a) in inland waters downstream of the normal tidal limit, or

(b) in inland waters upstream of the normal tidal limit, if that dredging is carried out by, or on behalf of, any authority in the exercise of its functions in those inland waters.

(2) In paragraph (1)(b), "authority" means the Environment Agency, the Natural Resources Body for Wales, a navigation authority, a harbour authority, a conservancy authority, an internal drainage board or a local authority.