STATUTORY RULES OF NORTHERN IRELAND

2006 No. 482

ENVIRONMENTAL PROTECTION

Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006

Made - - - - 27th November 2006

Coming into operation- 1st February 2007

The Department of the Environment makes the following Regulations in exercise of its powers under Articles 20(1), (3) and (4), 30(1) and 61(2) of the Water (Northern Ireland) Order 1999(**1**):

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 and shall come into operation on 1st February 2007.

Interpretation

2. In these Regulations—

"authorisation" means an authorisation under regulation 5 or 10;

"controlled activity" means—

(a) the abstraction of water from underground strata or waterways; and

(b) the construction, alteration or operation of any impounding works;

"land" includes any works, plant or fixed machinery in, on or over land;

"licence" means an authorisation granted under regulation 10;

"operator" in relation to a controlled activity, means any person who carries on that activity;

"permitted controlled activity" has the meaning given in regulation 5;

"the Order" means the Water (Northern Ireland) Order 1999;

(**1**) S.I. 1999/662 (N.I. 6) as amended by S.I. 2006/1946 (N.I. 15)

"the 1995 Regulations" means the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(**2**)**;**

"the register" means the register maintained by the Department under Article 30 of the Order;

"water environment" means—

(a) any waterway,

(b) any water contained in underground strata,

(c) any underground strata themselves,

or any flora or fauna dependent on any of them.

Exemptions

3.—(1) These Regulations shall not apply to a person who—

(a) holds a licence under Article 10(1)(a) of the Electricity (NI) Order 1992(**3**) (licences to supply electricity etc); and

(b) is acting in accordance with an authorisation obtained from the Department under paragraph 2 of Schedule 5 to that Order (abstraction, diversion and use of water for hydro-electric generating stations).

(2) Regulation 4 shall not apply—

(a) to the doing of anything for—

(i) extinguishing fires;

(ii) protecting life and property in the event of fire; or

(iii) for the purpose of testing apparatus used for either of those purposes or for training or practice in the use of such apparatus; and

(b) to any abstraction by machinery or apparatus installed on a vessel, where the water is abstracted for use on that, or any other, vessel.

Prohibition

4.—(1) No person shall carry on, or cause or permit another to carry on, any controlled activity except insofar as it is—

(a) authorised under these Regulations; and

(b) carried on in accordance with that authorisation.

PART 2

Authorisations

Permitted controlled activities

5.—(1) A controlled activity is authorised under this regulation if it is specified in Column 1 of Schedule 1 and, in cases where conditions are specified in the corresponding entry in Column 2 of that Schedule, is carried on in accordance with those conditions.

(2) A controlled activity authorised under this regulation shall be known as a permitted controlled activity.

(**2**) SR 1995 No. 380; relevant amending Regulations are SR 2004 No. 435
(**3**) S.I. 1992/231 (N.I.1)

Licence

6.—(1) A controlled activity may be licensed by the Department under regulation 10.

(2) A licence shall be granted subject to such terms and conditions as the Department considers necessary or expedient for the purpose of protecting the water environment.

(3) A licence shall specify the person to whom it is granted and, subject to regulation 14(5), that person is the holder of the licence for the purposes of these Regulations.

PART 3

Permitted Controlled Activities

Directions relating to permitted controlled activities

7.—(1) If the Department is satisfied that any permitted controlled activity should not continue to be carried on unless a licence is granted for it on an application under regulation 8, the Department may direct that the authorisation granted under regulation 5 shall cease to apply to that controlled activity.

(2) Notice of any direction made under paragraph (1) shall be served by the Department on the operator of the controlled activity in question and such direction shall come into force within 3 months of the date on which the notice was served.

PART 4

Licences

Form and content of application for licence

8. An application to the Department for a licence shall be made on a form provided by the Department for the purpose and accompanied by such information in such form as the Department may reasonably require.

Advertisement of application

9.—(1) Where the Department receives an application under regulation 8 it may, where it considers that the controlled activity is likely to have a significant adverse impact on the water environment, require the application to be advertised in accordance with this regulation.

(2) The Department shall serve notice requiring the applicant to advertise the application within 28 days beginning with the date on which the notice was served.

(3) The Department shall specify in a notice under paragraph (2)—

(a) the form of the advertisement;

(b) the text to be included in the advertisement;

(c) the publications or locations in which the advertisement should be placed; and

(d) the dates between which the advertisement should be placed.

(4) Any person affected or likely to be affected by, or having an interest in, the application may make representations to the Department in writing within 28 days beginning with the date of the advertisement.

(5) The requirements of this regulation shall not apply insofar as they would require the advertisement of information which is not required to be included in the register by virtue of Article 31 or 32 of the Order.

(6) This regulation shall not apply to an application to which the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005(**4**) apply.

Consideration and determination of application for licence

10.—(1) An application under regulation 8 shall be determined in accordance with this regulation.

(2) In deciding whether to grant a licence the Department—

(a) shall have regard to all controlled activities being carried on or likely to be carried on in the area of the water environment likely to be affected by the controlled activity to which the application relates;

(b) shall have regard to any representations received pursuant to regulation 9(4); and

(c) may have regard to any agreement reached between different persons concerning controlled activities carried on in the area of the water environment likely to be affected by the controlled activity to which the application relates.

(3) The Department may grant a licence unconditionally or subject to conditions or it may refuse to grant a licence.

(4) The Department shall notify the applicant of its decision and, in the case of a refusal, the reasons for that decision.

(5) This regulation has effect subject to regulation 11.

Applications affecting certain sites

11.—(1) Subject to paragraph (2), regulations 43, 44 and 48 of the 1995 Regulations (requirement to consider effect on certain sites) apply with the necessary modifications to the granting or modification of a licence under these Regulations as they apply to the matters specified in regulations 49 to 64 of the 1995 Regulations but as if—

(a) references to the competent authority were references to the Department;

(b) references to any consent, permission or other authorisation were references to a licence under these Regulations;

(c) references to any plan or project were references to any controlled activity; and

(d) regulations 43(3) and 44(3),(4), (5) and (6) were omitted.

(2) Nothing in paragraph (1) shall require the making of an appropriate assessment in connection with a controlled activity where such an assessment has already been carried out in connection with that activity under any other statutory provision.

(3) In this regulation "appropriate assessment" has the same meaning as in the 1995 Regulations.

Review of licence

12.—(1) The Department shall periodically review a licence and may do so at any time.

(2) Without prejudice to the generality of paragraph (1), regulations 45, 46 and 48 of the 1995 Regulations (requirement to review existing decisions and consents, etc.) apply with the necessary modifications to a licence granted under these Regulations as they apply to the matters specified in regulations 49 to 64 of the 1995 Regulations but as if—

(**4**) S.R. 2005 No. 32

(a) references to the competent authority were references to the Department;

(b) references to any consent, permission or other authorisation were references to a licence under these Regulations;

(c) references to any plan or project were references to any controlled activity;

(d) in regulation 45(1) the words "or if later, the commencement of these Regulations" were omitted;

(e) in regulation 45(2) for the words "regulation 43(2) to (4)" there were substituted the words "regulation 43(2) and (4)"; and

(f) regulation 46(4) was omitted.

Modification of licence

13.—(1) The Department may—

(a) on its own initiative and whether as a result of a review under regulation 12 or otherwise; or

(b) upon application of the holder of a licence,

modify a licence.

(2) An application under paragraph (1)(b) shall be made on a form provided by the Department for the purpose and accompanied by such information in such form as the Department may reasonably require.

(3) Regulations 9 and 10(2) apply with the necessary modifications to an application under paragraph (1)(b) as they apply to an application under regulation 8.

(4) Any modification of a licence under this regulation shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect which in the case of a modification under paragraph (1)(a) shall be not less than 3 months from the date on which the notice was served.

Transfer of licence

14.—(1) A licence may be transferred to another person in accordance with paragraphs (2) to (5).

(2) Where the holder of a licence desires that the licence be transferred to another person ("the proposed transferee") the licence holder and the proposed transferee shall jointly make an application to the Department for a transfer of the licence.

(3) An application under paragraph (2) shall be made on a form provided by the Department for the purpose and accompanied by such information in such form as the Department may reasonably require.

(4) The Department may effect a transfer of a licence or refuse to effect a transfer and where it refuses to do so it shall notify the applicants of the reasons for its decision.

(5) The Department may effect a transfer under this regulation by causing the licence to be endorsed with the name and other particulars of the proposed transferee as the holder of the licence from such date specified in the endorsement as may be agreed with the applicants.

Surrender of licence

15.—(1) A licence may be surrendered by its holder to the Department in accordance with this regulation.

(2) A licence may only be surrendered if the Department accepts it.