

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Abstraction and Impounding

Sections 1 to 10 Restrictions on abstraction and impounding

32.

Section 1: Licences to abstract water.

This provides that abstraction licences will be of one of three types: a “full licence”, a “transfer licence” or a “temporary licence”.

33. One of these three forms of licence is required in order for a person to abstract any quantity of water which is above the licensing threshold (see section 6) and which is not otherwise exempt.

34. A “temporary licence” is required for any abstraction from a source of supply lasting less than 28 days.

35. A “transfer licence” is available for abstraction of water for 28 days or more for transfer from one source of supply to another without intervening use – for example, from one watercourse to another for the purposes of navigation. A transfer licence is also available for transfers between two points in the same source of supply where the abstraction is related to dewatering of works such as within a quarry. But it is possible to apply for a full licence if the applicant wants full protection from derogation for his transfer abstraction (see section 16).

36. A “full licence” is required for any other abstraction for 28 days or more. All current abstraction licences are of this type, by virtue of the provisions of section 102(1), even though some relate to abstractions that would require only a “transfer licence”. There is no need for existing licences to be converted unless the holder wishes to do it.

37. Provisions in this section are devolved to the Assembly.

38.

Section 2: Restrictions on impounding.

The current restriction on impounding of water makes it an offence to begin to construct or alter an impounding works unless an impounding licence has been obtained. This section amends the current restriction on impounding in order to impose controls throughout the lifetime of new impounding works. Impounding licences (whether issued before or after the coming into force of this section) will remain in force for the lifetime of the works, allowing the Agency to attach or modify conditions to the licence to ensure that impounding works do not cause damage to the environment.

39. Provisions in this section are devolved to the Assembly.

40.

Sections 3 and 4: Existing impounding works.

The new restriction on impounding introduced by section 2 does not apply retrospectively. However, there are impounding works that are unlicensed, either because their construction pre-dated the licensing regime or a licence has been revoked and some of these works are, or in the future may, cause environmental problems that cannot be addressed by the Agency under its current powers. Section 3 provides the EA with a new power to serve notice to require that an impounding licence is obtained and failure to comply with such a notice would be an offence. Section 4 provides the EA with a power to serve a works notice on the relevant person (normally the owner) to carry out remedial works on an existing impoundment that is causing environmental damage. Failure to comply with the notice is an offence.

41. Provisions in these sections are devolved to the Assembly.
42.

Section 5: Rights of navigation, harbour and conservancy authorities.

Under the current regime, all transfers of water from one area of inland water to another by navigation, harbour and conservancy authorities in the exercise of their functions as such are exempt from licence control. The effect of this section, taken with section 1, is to limit that exemption and to require the licensing of transfers of water from any source of supply to a water system operated by these authorities. While a transfer licence will suffice, those authorities may also apply for a full licence if they wish (see section 16). Transfers wholly within water systems operated by those authorities (for example, transfers from canal pounds to canal locks) do not require a licence. Neither do transfers between any such system and other inland waters which are connected only to that system (for example, ditches draining only to canals, or reservoirs capable of discharging only to canals). Where a transfer is made to another source of supply from which it is subsequently abstracted, the transfer will be licensable. Construction or alteration of impounding works by those authorities will remain exempt from licensing if the works do not have any effect beyond the authority's water system.

43. Provisions in this section are devolved to the Assembly.
44.

Section 6: Rights to abstract small quantities.

This section sets a quantity of 20 cubic metres in any period of 24 hours as the normal threshold above which an abstraction licence is required, irrespective of the source of supply or the purpose of the abstraction (unless it is otherwise exempt). This replaces the present, more complex exemptions framework for small abstractions, under which more than 20,000 abstractions of less than that quantity require licences. The section also provides that where a licence exists, the small quantity exemption does not apply in addition to the licensed quantity for abstractions for the same purpose, but it can be used in addition to a licensed abstraction for a different purpose.

45. The Agency may apply (or can be directed to apply) to the Secretary of State for an Order setting a different threshold, which may be greater or less than the normal figure in specified areas, inland waters or underground strata. If the threshold is reduced and a previously exempt abstractor is unable to obtain a licence to abstract the volume he had previously abstracted, then compensation may become payable for loss or damage caused to that abstractor.
46. Provisions in this section are devolved to the Assembly.
47.

Section 7: Rights to abstract for drainage purposes, etc.

Abstractions for dewatering mines, quarries or engineering excavations will generally require a licence (usually a temporary or transfer licence – see section 1). But this section also recognises that such abstractions may be required as an emergency measure and it therefore allows them to take place without a licence provided that the EA is notified within five days of their commencement. The Agency may determine that the abstraction is not necessary by reason of an emergency and is able to require a licence application to be made in the normal way. The Agency may also serve notice on the operator that it considers that what started out as an emergency abstraction has ceased to be one.

48. This section also removes two activities from the definition of “land drainage”, and thus from the exemption from licensing. These activities become subject to licensing control. They are: warping (which is the abstraction of water which contains silt onto agricultural land so that the silt can deposit and act as a fertiliser) and irrigation. At present, of those abstractions made for irrigation it is only those that are made for spray irrigation that require abstraction licensing. The growing use of trickle irrigation and the use of land drainage systems in reverse to maintain field water levels and for warping prompts the proposed change. Land drainage i.e. removal of flood water, remains exempt from abstraction licensing. The many minor transfers of water within an Internal Drainage Board district are exempt from licence control, but initial transfers into a Board’s district will be licensable.

49. Provisions in this section are devolved to the Assembly.

50.

Section 8: Amendments relating to section 7.

The amendments provided by this section are consequential on section 7. They move to sections 199 and 199A the provisions of sections 30 and 31 of the WRA, which require an operator to give prior notice to the EA of mining operations affecting water resources. The section provides that the Secretary of State may delegate decisions on appeals against notices to a third party. The section also brings the definition of flood defence for the purposes of defining minimum river flows in section 21 of the WRA into line with that used for flood defence purposes in section 113 of the Act.

51. Provisions in this section are devolved to the Assembly.

52.

Section 9: Power to provide for further exemptions.

This section provides the Secretary of State with the power to make regulations so that the restriction on abstraction and impounding works shall not apply in certain cases. Such cases are referred to as “exemptions”. Regulations ensure that an exemption must satisfy any prescribed conditions that may be attached to it, and provide the Agency with the power to determine whether any exemption should apply. Any exemption may apply generally or relate to a geographical area or particular source of supply. Again, this is intended to enable the Agency to exercise levels of control of water resources appropriate to the environmental impact of an abstraction in relation to local conditions.

53. Provisions in this section are devolved to the Assembly.

54.

Section 10: Orders under section 33 of the WRA, etc.

Existing legislation provides that a navigation, harbour or conservancy authority or the Agency may apply to the Secretary of State to remove the restriction on abstraction from any source of supply. This new provision provides for the Secretary of State to make regulations to revoke any such order. That revocation can include a similar order

*These notes refer to the Water Act 2003 (c.37)
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made under any local or private Act. In addition, the orders under this section can also repeal the provision in any local or private Act containing the power to make such an exception order in future, once all orders under that power have been revoked. The section also allows an order to make provision for the continuation of existing rights to abstract without a licence and for compensation where these are curtailed and result in loss or damages.

55. Provisions in this section are devolved to the Assembly.