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STATUTORY INSTRUMENTS

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**2006 No. 641**

**The Water Resources (Abstraction  
and Impounding) Regulations 2006**

**PART 2**

**APPLICATIONS AND APPEALS**

**Information to be included in an application**

- 3.—**(1) An application for an abstraction licence or an impounding licence—
- (a) must include such information, including maps, and
  - (b) must be accompanied by such reports,
- as the Agency reasonably requires in order to determine it.

**Manner of application**

- 4.—**(1) An application for an abstraction licence or an impounding licence—
- (a) must be made to the Agency on a form issued by the Agency for the purpose of the application being made;
  - (b) must be accompanied by any fee payable under section 41(1)(a) of the Environment Act 1995<sup>(1)</sup> in relation to making the application; and
  - (c) may be made electronically in a form accessible by the Agency.
- (2) The information and reports referred to in regulation 3 and the form referred to in paragraph (1) (a) of this regulation must be provided in duplicate unless—
- (a) the Agency agrees to accept a single copy; or
  - (b) they are provided electronically.

**The relevant date**

- 5.—**(1) The relevant date in relation to an application for a full licence, a transfer licence<sup>(2)</sup> or an impounding licence is—
- (a) except in the cases mentioned in sub-paragraph (b), the date 21 days after the day on which the Agency receives a valid application or such earlier date after the day on which the Agency receives a valid application as the Agency may determine; and
  - (b) in a case where, within 21 days beginning on the day the Agency receives a valid application for a full licence or transfer licence, the Agency serves notice on the applicant

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<sup>(1)</sup> 1995 c. 25.

<sup>(2)</sup> For the definitions of “full licence” and “transfer licence” see section 24A(1) (inserted by section 1(1) of the Water Act 2003, and section 72(1)).

of a decision under subsection (1) of section 36A(3) (applications: types of abstraction licence)—

- (i) if no notice of appeal is served, the date of the day after the end of the period within which notice of appeal against that decision may be served; or
- (ii) if notice of appeal is so served, the date of the day on which the Agency receives notice of the determination or withdrawal of that appeal.

(2) The relevant date in relation to an application for a temporary licence(4) is the date on which the Agency receives a valid application.

(3) The relevant date in relation to an application under section 51(2)(5) is the date on which the Agency receives the application.

### **Advertisement of an application**

6.—(1) Where the requirements of subsection (1) of section 37(6) (publication of application for licence) (including that section as applied by section 51(3), subject to the modifications made by section 51(4)) apply in relation to an application(7), and those requirements have not been dispensed with under regulation 7(4), notice of that application must be published—

- (a) in at least one newspaper circulating in the locality of the proposed point of abstraction or impounding; and
- (b) on the Agency's website.

(2) Except in the cases specified in paragraphs (3) to (5), the notice of application must be published by the date 28 days after the relevant date.

(3) In a case where, after the relevant date but on or before the date referred to in subparagraph (a), the Agency serves notice on the applicant of a decision under section 36A(1), the notice of the application must be published—

- (a) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that decision may be served; and
- (b) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal of the appeal.

(4) In a case where a matter in relation to a valid application falls to be determined under section 191A(8) (exclusion from registers of information affecting national security), the notice of the application must be published by the date 28 days after the day on which Agency receives notice of that determination.

(5) In a case where a matter in relation to a valid application falls to be determined under section 191B(9) (exclusion from registers of certain confidential information) the notice of the application must be published—

- (a) if the Agency determines under section 191B(4) that the information in question might be commercially confidential, by the date 28 days after the day on which Agency serves notice on the applicant of that determination; and

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(3) Section 36A was inserted by the WA, section 13(1).

(4) For the definition of "temporary licence" see section 24A(1) (inserted by section 1(1) of the Water Act 2003, and section 72(1)).

(5) Section 51(2) was amended by the EA, section 120 and Schedule 22, paragraph 128.

(6) Section 37 was substituted by the WA, section 14(1).

(7) The requirements of section 37(1) and (2) apply in relation to any application for a full, transfer or impounding licence (section 37(1)), and to certain applications by the holder of a licence to vary such a licence (section 51(3) and (4)(a)), except as otherwise provided by regulation 7.

(8) Section 191A was inserted by the EA, section 120 and Schedule 22, paragraph 170.

(9) Section 191B was inserted by the EA, section 120 and Schedule 22, paragraph 170.

- (b) if the Agency determines under section 191B(4) that the information in question is not commercially confidential—
  - (i) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that determination may be served; or
  - (ii) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal of the appeal.
- (6) Subject to paragraph (7), the notice must—
  - (a) state the name of the applicant;
  - (b) specify—
    - (i) the type of application being made including, if appropriate, the type of licence being applied for;
    - (ii) the purpose of the proposed abstraction or impounding;
    - (iii) the proposed point of abstraction or impounding<sup>(10)</sup>;
    - (iv) in the case of an application for an abstraction licence, the period over which abstraction would take place;
    - (v) in the case of an application for a full licence, the quantity of water to be abstracted; and
    - (vi) in the case of an application for an impounding licence, the proposed means of impounding;
  - (c) include such other particulars (if any) as the Agency considers necessary to explain the application; and
  - (d) state—
    - (i) where and when the application documents and the register containing details of the application may be inspected, and that such inspection is free of charge; and
    - (ii) the address to which any representations in relation to the application should be sent.
- (7) The notice must not include any information that is not to be included in a register by virtue of section 191A (exclusion from registers of information affecting national security) or 191B (exclusion from registers of information of certain confidential information).

### **Exemption from advertising requirements**

- 7.—(1) The requirements of section 37(1) and (2) do not apply to an application for a full licence or transfer licence if—
- (a) the proposed point of abstraction in relation to the application is the place where an existing licence held by the applicant authorises water to be abstracted; and
  - (b) the licence to which the application relates—
    - (i) would take effect immediately after the expiry of the existing licence;
    - (ii) would not permit a greater quantity of water to be abstracted than may be abstracted under the existing licence; and
    - (iii) would otherwise be subject to materially the same terms as the existing licence.
- (2) The requirements of section 37(1) and (2) do not apply to an application under section 51(2) (which provides for variation on application of licence holder) in relation to an existing abstraction licence that is to remain in force until revoked if—

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<sup>(10)</sup> For the definition of “proposed point of abstraction or impounding” see section 37(7) (inserted by section 14(1) of the Water Act 2003).

- (a) the application is for the existing licence to be varied so as to specify a date on which that licence will expire;
- (b) the varied licence would not permit the quantity of water that may be abstracted under the existing licence to be increased; and
- (c) the varied licence would otherwise be subject to materially the same terms as the existing licence.

(3) The requirements of section 37(1) and (2) do not apply to an application for a full licence, a transfer licence or an impounding licence, or the variation of such a licence, if the relevant authority notifies the Agency that complying with those requirements in relation to that application would be contrary to the interests of national security.

(4) The requirements of section 37(1) and (2) may be dispensed with if it appears to the Agency or, in the case of a called-in application, the Secretary of State or the Assembly (as the case may be) that the proposed abstraction or impounding would have no appreciable adverse effect on—

- (a) the environment;
- (b) any licensed abstraction; or
- (c) any abstraction to which the restriction on abstraction does not apply<sup>(11)</sup>.

(5) In paragraph (3) “the relevant authority” means—

- (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and
- (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

### **Acknowledgement of receipt**

8.—(1) The Agency must serve on the applicant an acknowledgement in writing—

- (a) in a case of an application for a full licence, a transfer licence or an impounding licence, other than a case falling within sub-paragraph (c), by the date 28 days after the relevant date;
- (b) in a case of an application under section 51(2) (which provides for variation on an application by the licence holder), by the date 28 days after the relevant date; and
- (c) in a case of an application for a full licence or transfer licence where, after the relevant date but on or before the date referred to in sub-paragraph (a), the Agency serves notice on the applicant of a decision under subsection (1) of section 36A (applications: types of abstraction licence)—
  - (i) if no notice of appeal is served, by the date 28 days after the end of the period within which notice of appeal against that decision may be served; or
  - (ii) if notice of appeal is so served, by the date 28 days after the day on which the Agency receives notice of the determination or withdrawal or that appeal.

(2) The acknowledgement must state—

- (a) the relevant date;
- (b) whether a notice of the application has been, or is to be, published in accordance with section 37(1);
- (c) the date, if known, by which the application is required to be determined; and

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<sup>(11)</sup> For the definition of “restriction on abstraction” see section 72(1).

- (d) the applicant's entitlement to appeal should the Agency fail, within the period referred to in paragraph (2), (3) or (4) (as the case may be) of regulation 10, to serve on the applicant notice in accordance with that regulation of the Agency's decision on the application or its reference to the Secretary of State or the Assembly.

### **Applications in National Parks or the Broads**

9.—(1) Subject to paragraph (5), where an application relates to abstraction or impounding in the area of a National Park or the Norfolk or Suffolk Broads, the Agency must serve notice in writing of the application on the National Park authority for that National Park or the Broads Authority (as the case may be) within 14 days beginning on the relevant date.

(2) Subject to paragraph (3), the notice must include—

- (a) a copy of the application; and
- (b) a statement that the authority may make representations in writing to the Agency in relation to the application within 28 days beginning on the date on which the notice is served.

(3) The notice must not include any information which appears to the Agency to be information that is commercially confidential.

(4) The Agency or, in the case of a called-in application, the Secretary of State or the Assembly (as the case may be)—

- (a) must not determine the application until after the end of the period referred to in paragraph (2)(b); and
- (b) in determining the application, must have regard to any representations duly made by the authority in relation to the application.

(5) Paragraph (1) does not apply if—

- (a) the application is one to which section 51(4) applies; or
- (b) in the case of an application in relation to abstraction or to impounding works, the relevant authority notifies the Agency that giving such notice in relation to that application would be contrary to the interests of national security.

(6) In paragraph (5) “the relevant authority” means—

- (a) in the case of an application in relation to abstraction or to impounding works in England, the Secretary of State; and
- (b) in the case of an application in relation to abstraction or to impounding works in Wales, the Secretary of State or the Assembly.

### **Duties of the Agency in dealing with applications**

10.—(1) The Agency must serve notice in writing on the applicant of—

- (a) its decision on the application; or
- (b) the reference of the application to the Secretary of State or the Assembly under section 41 (Secretary of State's power to call in applications).

(2) In the case of an application for a temporary licence, the notice referred to in paragraph (1) must be served—

(a) except in a case mentioned in sub-paragraph (b)—

- (i) in a case where, in accordance with regulation 9(1), notice of that application is served on a National Park authority or the Broads Authority, by the date 14 days after the end of the period referred to in paragraph (2)(b) of that regulation; and

- (ii) in a case where no notice under regulation 9(1) is served, by the date 28 days after the relevant date; and
  - (b) in a case where, on or before the date referred to in sub-paragraph (a)(i) or (ii) (as the case may be), the Agency serves notice on the applicant under section 201(12) (power to require information in respect of water resources functions) that it requires him to provide information in relation to the application, by the date 28 days after that information is received by the Agency.
- (3) In a case where regulation 6(1) applies, the notice referred to in paragraph (1) must be served by the date four months after the relevant date or (if later)—
- (a) in a case where, on or before the date four months after the relevant date, the Agency serves notice on the applicant under section 201 that it requires him to provide information in relation to the application, the date two months after that information is received by the Agency;
  - (b) in a case referred to in paragraph (3) of regulation 6, the date two months after the date calculated in accordance with that paragraph; and
  - (c) in a case referred to in paragraph (4) or (5) of regulation 6, the date two months after the date calculated in accordance with the relevant paragraph.
- (4) Except in a case mentioned in paragraph (2) or (3), the notice referred to in paragraph (1) must be served by the date three months after the relevant date or (if later)—
- (a) in a case where, on or before the date three months after the relevant date, the Agency serves notice on the applicant under section 201 that it requires him to provide information in relation to the application, the date two months after that information is received by the Agency; and
  - (b) in a case where, on or before the date three months after the relevant date, the Agency serves notice on the applicant of a decision under section 36A(1)—
    - (i) if no notice of appeal is served, the date two months after the end of the period within which notice of appeal against that decision may be served; or
    - (ii) if notice of appeal is so served, the date two months after the day on which the Agency receives notice of the determination or withdrawal of the appeal.
- (5) Where the Agency grants a licence subject to conditions or on terms which are different in any material respect from the application, or it refuses an application, the notice referred to in paragraph (1)(a) must—
- (a) include a statement of the Agency's reasons for doing so; and
  - (b) state the applicant's entitlement to appeal to the Secretary of State or the Assembly (as the case may be) if he is dissatisfied with the Agency's decision on the application.
- (6) Where the Agency refers an application to the Secretary of State or the Assembly under section 41, the notice referred to in paragraph (1)(b) must state—
- (a) the reasons, if any, given by the Secretary of State or the Assembly for directing that reference to be made;
  - (b) the applicant's entitlement to request to appear before, and be heard by, a person appointed for the purpose of determining the application; and
  - (c) that the decision on the application shall be final.

### **Application by the holder for revocation of impounding licence: time limit for determination**

**11.** The period referred to in section 51(1C)(b) within which the Agency must give notice of its decision on an application under subsection (1A) of section 51(**13**) (modification of licence on application of licence holder), except where a longer period is agreed, is four months beginning on the date on which the application is received by the Agency.

### **Time limits for bringing appeals**

**12.—**(1) The period within which any notice of appeal under subsection (4) of section 36A (applications: types of abstraction licence) must be served is 28 days beginning on the date on which notice of the decision to which the appeal relates is served on the applicant.

(2) The period referred to in subsection (3)(b) of section 43(**14**) (appeals to the Secretary of State) within which any notice of appeal under section 43(1) must be served is 28 days.

(3) The period referred to in section 51(1D)(b) (which relates to appeals against the revocation of an impounding licences) within which any notice of appeal under section 51(1C) must be served is—

- (a) in a case falling within section 51(1C)(a), 28 days beginning on the date on which the decision to which the notice relates is served on the applicant; and
- (b) in a case falling within section 51(1C)(b), 28 days beginning on the date which is the day after the expiry of the period referred to in regulation 10(3) or (4) (as the case may be) by which the Agency must serve notice under regulation 10(1).

### **Notice of appeal**

**13.—**(1) A notice of appeal under section 36A(4), 43 or 51(1C) must—

- (a) state the grounds on which the appeal is being made; and
- (b) be accompanied by a copy of—
  - (i) the application to which the appeal relates;
  - (ii) any information or report submitted to the Agency with the application;
  - (iii) the notice of the decision on the application, if any; and
  - (iv) all other relevant correspondence with the Agency.

(2) The Agency must, within 14 days beginning on the date on which it receives a notice of appeal under section 43, serve a copy of that notice on—

- (a) any person who, within the period referred to in subsection (4)(b) of section 37 (publication of application for licence), made representations in writing in relation to the application; and
- (b) any authority served with a notice in accordance with regulation 9(1) that, within the period referred to in regulation 9(2)(b), made representations in writing in relation to the application.

(3) The period referred to in subsection (3)(a) of section 44 (determination of appeals) and subsection (2)(b) of section 45(**15**) (regulations with respect to appeals) within which the recipient of a copy of a notice of appeal may make further representations in writing is, in each case, 21 days beginning on the date on which that notice is served on that person.

(4) When serving a copy of a notice of appeal in accordance with paragraph (2), the Agency must notify the recipient in writing—

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(13) Section 51 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, section 21.

(14) Section 43 was amended by the EA, section 120 and Schedule 22, paragraphs 128 and 134, and the WA, section 14(3)(c).

(15) Section 45 was amended by the EA, section 120 and Schedule 24, and by the WA, section 13(3).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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- (a) that he may make further representations in writing in relation to the appeal;
- (b) of where any such representations must be sent; and
- (c) of the date by which those representations must be received.