

EXPLANATORY MEMORANDUM TO
THE WATER ABSTRACTION (TRANSITIONAL PROVISIONS) (AMENDMENT)
(ENGLAND) REGULATIONS 2019

2019 No. 1455

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Water Abstraction (Transitional Provisions) Regulations 2017 (the “Transitional Regulations”) to extend the period during which abstractors currently exempt from obtaining a licence must make an abstraction licence application under the Transitional Regulations, if they wish to continue abstracting. The application deadline is extended by six months to 30th June 2020. This will allow businesses and individuals more time to apply for a licence. The date by which the Environment Agency must determine applications made under the Transitional Regulations (31st December 2022) will not change as a result of these amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 This instrument amends the Transitional Regulations, which contain transitional provisions relating to the licensing of water abstraction by certain categories of persons, in the light of amendments made by the Water Act 2003 (c. 37) to the Water Resources Act 1991 (c. 57) (“the 1991 Act”). Those amendments, which came into

force on the same date as the Transitional Regulations, limit or remove certain exemptions from the restriction on abstracting water in the 1991 Act.

- 6.2 Part 2 of, and the Schedule to, the Transitional Regulations set out the procedural requirements for making and determining certain licence applications. Regulation 4 provides that applications from persons other than the Environment Agency (the “appropriate agency”) must be made in accordance with the Schedule to the Transitional Regulations, instead of the provisions in Part 2 of the Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641) (“the 2006 Regulations”) and that an application must be made by 31st December 2019.
- 6.3 Regulation 6 permits a person to continue the abstraction until 31st December 2019 or, if they make an application under the Transitional Regulations by that date, until their application for a licence is determined.
- 6.4 This instrument extends the two-year period in which an application must be made under the Transitional Regulations, and during which abstraction may continue, by six months (until 30th June 2020). This will allow more time for those affected to apply for a licence and for their abstractions not to be rendered unlawful as from 1st January 2020. These changes will not affect the overall timetable for the implementation of the Transitional Regulations, including the date at by which the Environment Agency must determine applications under the Transitional Regulations (which remains 31st December 2022).

7. Policy background

What is being done and why?

- 7.1 In England, there are currently around 4000-5,000 significant abstractions that were previous exempt from abstraction licensing. This compares with around 20,000 abstractors that are licensed. These exemptions created an unfair playing field, allowing some abstractors to put pressure on the environment and other water users without any controls, while requiring others to take the burden of addressing these risks.
- 7.2 The Water Act 2003 and Environment Act 1995 included provisions to remove these licensing exemptions.
- 7.3 The removal of the exemptions should improve the Environment Agency's ability to manage water resources and prevent damage to the water environment. It also helps to meet the requirements of the EU Water Framework Directive.
- 7.4 These changes, which commenced on 1st January 2018, are the start of the process that removes existing exemptions for water use activities that have, or might have, significant environmental impacts:
 - transferring water from one inland water to another in the course of, or as the
 - result of, operations carried out by a navigation, harbour or conservancy authority;
 - abstraction of water into internal drainage districts but not including land drainage activities
 - dewatering mines, quarries and engineering works;
 - warping (abstraction of water containing silt for deposit onto agricultural land so that the silt acts as a fertiliser);

- all forms of irrigation (other than spray irrigation, which is already licensable), and the use of land drainage systems in reverse (including transfers into managed wetland systems) to maintain field water levels;
 - abstractions within currently geographically exempt areas, including some rivers close to the borders of Scotland; and
 - the majority of abstractions covered by Crown and visiting forces exemptions.
- 7.5 A five-year transitional period commenced on 1st January 2018. Abstractors had two years to prepare and submit an application. The Environment Agency then have up to three years to determine licences. Abstractors can continue taking water during this period.
- 7.6 The application period closes on 31st December 2019 and there have been fewer applications than expected. This is due to a combination of factors such as drought, other priorities for businesses, difficulty of identifying and contacting those affected, among other things.
- 7.7 These changes will support abstractors who are affected by these changes and enable a greater number to have continued access to the water that they need for their businesses for a longer period.
- 7.8 Extending the application period to 30th June 2020 will still allow the original policy objectives to be met within the same timeframe as the licence determination period will remain the same, whilst reducing business risks to those affected by allowing them a longer period to become compliant with the regulatory changes.
- 8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union and so no statements are required.
- 9. Consolidation**
- 9.1 No consolidation is required as a result of these changes.
- 10. Consultation outcome**
- 10.1 No consultation has taken place regarding these changes which extend a deadline but do not represent a significant change in policy in relation to these categories of abstraction.
- 11. Guidance**
- 11.1 No guidance is required as a result of these changes. The Environment Agency will ensure effective communication with those who have yet to make the necessary applications.
- 12. Impact**
- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there are no negative impacts on business from an extension to the deadline and the overall five-

year transition period during which applications made under the Transitional Regulations must be determined remains in place. A Regulatory Impact Assessment (“RIA”) was produced in connection with the Water Act 2003. The RIA set out the impacts of removing exemptions from the restriction on abstraction to which the Transitional Regulations relate. The Impact Assessments prepared for the Water Abstraction (Transitional Provisions) Regulations 2017 can be found at: <https://www.legislation.gov.uk/uksi/2017/1047/impacts>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is that no action is necessary as the regulations give small business more time to apply for a licence. During the extension, the Environment Agency will continue its efforts to ensure abstractors are aware of the need to apply.

14. Monitoring & review

- 14.1 In England, the Environment Agency regularly monitors and reviews the effectiveness of the abstraction licensing regimes.
- 14.2 The regulations do not include a statutory review clause because it is a time limited regulation which will cease six months after commencement.

15. Contact

- 15.1 Jenny Marshall-Reed at the Department for Environment, Food and Rural Affairs Telephone: 0208 225 6431 or email: jenny.marshall-reed@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Sophie Broadfield, Deputy Director for Water Services, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rebecca Pow MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.