

WATER ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 3

Environmental Regulation

Section 61: Regulation of the water environment

219. This section enables the Secretary of State (in relation to England and in relation to such parts of the River Esk as are situated in Scotland) and the Welsh Ministers (in relation to Wales) to make regulations about water abstraction and impounding licences, flood defence consents and requirements for fish passes and screens. The regulation making power is modelled upon the power in the single environmental permitting regime created under the Pollution Prevention and Control Act 1999 (the PPC Act). Regulations under this section may be combined with regulations made under that regime to create a common system of environmental regulation.
220. Under the PPC Act, Ministers have powers to regulate polluting activities under a single regime. However, they do not have a power to place abstraction and impoundment licensing, flood defence consents or fish passage within that regime, as these do not relate to pollution as defined.
221. Integrating the permitting and regulatory regimes for abstraction, impounding, flood defence and fish passage will allow regulators to use one common process and compliance framework. The framework allows different levels of control to be applied to a particular activity, according to risk: bespoke permits; standard permits; exemptions from the requirement to hold a permit if specified conditions are satisfied.
222. Subsection (1) empowers the Secretary of State and the Welsh Ministers to make regulations for the purposes set out in Part 1 of Schedule 8. Under subsection (2), any provision made by such regulations must be made for or in connection with regulating: the use of water resources; securing the drainage of land or the management of flood risk; or safeguarding the movement of freshwater and migratory fish through regulated waters. Under subsection (3), Ministers must have regard to reducing burdens by combining regulations made under this section with systems for regulating activities causing pollution. Subsection (4) is a power to make consequential amendments to legislation, including primary legislation. Subsection (5) requires consultation before any regulations are made. Under subsection (11), regulations in relation to the passage of fish may apply to so much of the Border Esk River with its banks and tributary streams up to their source as situated in Scotland, and will not apply in the lower reaches of the River Tweed in England on the assumption that they will be regulated under law made by the Scottish Ministers. Historically, English legislation on salmon and freshwater fisheries has applied to the Scottish as well as the English River Esk and its tributaries. Conversely, Scottish legislation has applied to the English as well as the Scottish Tweed.