
STATUTORY INSTRUMENTS

2017 No. 1047

The Water Abstraction (Transitional Provisions) Regulations 2017

PART 3

Compensation

Scope of this Part

- 8.**—(1) This Part applies to a person who applies for a licence under these Regulations.
- (2) Paragraph (1) does not apply to—
- (a) a Minister of the Crown, where “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 ^{M1};
 - (b) the Welsh Ministers;
 - (c) a public body (including a government department, a local authority and a local planning authority);
 - (d) a person holding an office—
 - (i) under the Crown,
 - (ii) created or continued in existence by a public general Act, or
 - (iii) the remuneration in respect of which is paid out of money provided by Parliament;
 - (e) a person who is or is deemed to be a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990 ^{M2}.
- (3) In paragraph (2)—
- “local authority” means—
- (a) in relation to England, a county council, a district council, a parish council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
 - (b) in relation to Wales, a county council, a county borough council or a community council;
- “local planning authority” has the same meaning as in Part 1 of the Town and Country Planning Act 1990 ^{M3}.

Marginal Citations

M1 1975 c. 26.

M2 1990 c. 8.

M3 The definition of “local planning authority” was amended by section 18(3) and (4) of the [Local Government \(Wales\) Act 1994 \(c. 19\)](#) and section 31(1) of the [Greater London Authority Act 2007 \(c. 24\)](#).

Payment of compensation

9.—(1) The appropriate agency must pay compensation to any person falling within the scope of this Part—

- (a) whose application for a licence is—
 - (i) refused by the appropriate agency, or
 - (ii) granted by the appropriate agency but in respect of an abstraction of more limited extent than that of the abstraction the person was carrying out in the seven years before the coming into force of these Regulations,
- (b) whose appeal under section 43 in respect of a decision referred to in sub-paragraph (a) is dismissed by the appropriate authority,
- (c) who has suffered loss and damage as a result, and
- (d) who applies to the appropriate agency for compensation within the deadline specified in regulation 10.

(2) Paragraph (1) does not apply where the reason for a decision referred to in paragraph (1)(a) is that it is necessary—

- (a) in order to protect from serious damage—
 - (i) any inland waters,
 - (ii) any water contained in any underground strata,
 - (iii) any underground strata themselves, or
 - (iv) any flora or fauna dependent on any of paragraphs (i) to (iii), or
- (b) to comply with any relevant legal requirement.

[^{F1}(3) In paragraph (1), an abstraction of more limited extent does not include—

- (a) a Qn95 hands-off flow constraint on a licence where the licensed abstraction is from a body of inland waters or a body of groundwater where the recent actual flow or quantitative status of the source of supply does not support good ecological potential, good ecological status or good quantitative status, or
- (b) 75% of Qn99 hands-off flow constraint on a licence where the licensed abstraction is from a body of inland waters or a body of groundwater where the recent actual flow or quantitative status of the source of supply supports good ecological potential, good ecological status or good quantitative status.]

(4) In paragraph (3)—

“75% of Qn99 hands-off flow constraint” means a licence condition which provides that the licence holder must cease the abstraction if—

- (a) the flow in the source of supply to which the licence relates, or
- (b) in the case of groundwater to which the licence relates, the flow in inland waters dependent on that groundwater,

is equal to or falls below 75% of the natural flow that is exceeded 99% of the time in that source of supply or inland waters;

“good ecological potential” means the ecological status of a heavily modified or an artificial body of water, which meets the classification in Annex V to the Directive;

“good ecological status” means the ecological status of a body of surface water which meets the classification in Annex V to the Directive;

“good quantitative status” means the quantitative status of a body of groundwater which meets the status defined in table 2.1.2 of Annex V to the Directive;

“Qn95 hands-off flow constraint” means a licence condition which provides that the licence holder must cease the abstraction if—

- (a) the flow in the source of supply to which the licence relates, or
- (b) in the case of groundwater to which the licence relates, the flow in inland waters dependent on that groundwater,

is equal to or falls below the natural flow that is exceeded 95% of the time in that source of supply or inland waters.

[^{F2}(4A) In paragraph (4)—

- (a) in the definitions of “good ecological potential” and “good ecological status”, references to Annex 5 to the Directive are to be read as if in Annex 5—

- (i) a reference to one or more member States in a provision imposing an obligation, or conferring a discretion, on a member State or member States is to be read as a reference to the appropriate authority or appropriate agency which, immediately before exit day, was responsible for the United Kingdom's compliance with that obligation, or was able to exercise that discretion, in respect of England or Wales;

- (ii) references in tables 1.2.1 to 1.2.5 to Directive [91/414/EC](#), in each place they occur, were references to Regulation [\(EC\) 1107/2009](#) of the European Parliament and of the Council concerning the placing of plant protection products on the market;

- (iii) references in tables 1.2.1 to 1.2.5 to Directive [98/8/EC](#), in each place they occur, were references to Regulation [\(EC\) 528/2012](#) of the European Parliament and of the Council concerning the making available on the market and use of biocidal products;

- (iv) in section 1.4.1—

- (aa) in point (iii), for the words from “shall be established” to the end there were substituted “ is as set out in Commission Decision 2018/229 establishing, pursuant to Directive [2000/60/EC](#) of the European Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise ”;

- (bb) points (iv) to (ix) were omitted;

- (b) in the definition of “good quantitative status”, the reference to table 2.1.2 of Annex 5 to the Directive is to be read as if the reference to environmental objectives under Article 4 were a reference to the environmental objectives—

- (i) in relation to the Solway Tweed River Basin District, as defined in regulation 2 of the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004;

- (ii) in relation to the Northumbria River Basin District, referred to in the WFD Regulations as applied and modified by regulation 5 of the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003;

- (iii) in relation to any other river basin district, within the meaning of the WFD Regulations.]

(5) In [^{F3}this regulation—],

[^{F4}(a)] “the Directive” means Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy ^{M4}

[^{F5}(b)] “the WFD Regulations” means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.]

Textual Amendments

- F1** Reg. 9(3) substituted (1.6.2018 for E. and 17.12.2018 for W.) by The Environment, Food and Rural Affairs (Miscellaneous Amendments) (England) Regulations 2018 (S.I. 2018/575), regs. 1(2), **14**; The Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018 (S.I. 2018/1216), regs. 1(3), **15**
- F2** Reg. 9(4A) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **22(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 9(5) substituted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **22(b)(i)**; 2020 c. 1, Sch. 5 para. 1(1)
- F4** Reg. 9(5)(a) renumbered (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **22(b)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Reg. 9(5)(b) inserted (31.12.2020) by The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/558), regs. 1(1), **22(b)(iii)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

- M4** OJ No L 327, 22.12.2000, p1, as last amended by Commission Directive 2014/101/EU (OJ No L 311, 31.10.2014, p32).

Deadline for receipt of applications

10. An application for compensation must be made to the appropriate agency within six years of the determination of the appeal by the appropriate authority under section 44.

Disputed compensation

11.—(1) Any question of disputed compensation must be referred by the person who made the application for compensation in regulation 10 to the Upper Tribunal for determination.

(2) The provisions of section 4 of the Land Compensation Act 1961 ^{M5} apply, subject to any necessary modifications, in relation to the determination of any such compensation.

Marginal Citations

- M5** 1961 c. 33; section 4 was amended by S.I. 2009/1307.

Calculation of compensation

12.—(1) For the purpose of assessing compensation in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules in sections 5 and 5A of the Land Compensation Act 1961 ^{M6}, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where an interest in land is subject to a mortgage—

- (a) compensation is to be assessed as if the interest were not subject to the mortgage;
- (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the mortgagor;
- (c) compensation is only payable to any mortgagee of the interest in respect of the interest which is subject to the mortgage;

- (d) compensation which is payable in respect of the interest which is subject to the mortgage is to be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by that mortgagee as if it were the proceeds of sale of the interest.

Marginal Citations

M6 Section 5 was amended by sections 70 and 84 of, and paragraph 1 of Schedule 15 and Part 3 of Schedule 19 to, the [Planning and Compensation Act 1991 \(c. 34\)](#), [section 32](#) of the [Neighbourhood Planning Act 2017 \(c. 20\)](#) and [S.I. 2009/1307](#). Section 5A was inserted by section 103 of the [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#) and amended by paragraph 1 of Schedule 16, and paragraph 9 of Part 2 of Schedule 18 to the [Housing and Planning Act 2016 \(c. 22\)](#), and by [S.I. 2009/1307](#).

Changes to legislation:

There are currently no known outstanding effects for the The Water Abstraction (Transitional Provisions) Regulations 2017, PART 3.