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STATUTORY INSTRUMENTS

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**2017 No. 1047**

**The Water Abstraction (Transitional Provisions) Regulations 2017**

**PART 3**

Compensation

**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.

[<sup>F1</sup>(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 licenced 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.

[F<sup>2</sup>(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 [<sup>F3</sup>this regulation— ],

[<sup>F4</sup>(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 <sup>M1</sup>

[<sup>F5</sup>(b)] "the WFD Regulations" means the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.]

**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

**M1** 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).

**Changes to legislation:**

There are currently no known outstanding effects for the The Water Abstraction (Transitional Provisions) Regulations 2017, Section 9.