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STATUTORY INSTRUMENTS

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**2006 No. 641**

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

**PART 3**

**ABSTRACTION AND IMPOUNDING BY THE AGENCY**

**Modifications to the restrictions on abstraction and impounding works, and related restrictions**

**14.**—(1) The restriction on abstraction and the restriction on impounding works<sup>(1)</sup> have effect in relation to abstraction and impounding by the Agency as if the references in section 24(1)<sup>(2)</sup> and section 25(1)(a) and (b)<sup>(3)</sup> to a licence were references to a licence granted, or, by virtue of paragraph 6(2) of Schedule 2, deemed to have been granted, to the Agency under section 42<sup>(4)</sup> (consideration of called-in applications).

(2) Subsection (3) of section 32<sup>(5)</sup> (miscellaneous rights to abstract) has effect in relation to—

- (a) the restriction on abstraction as it has effect, as modified by paragraph (1), in relation to abstraction by the Agency, and
- (b) the other restrictions imposed by section 24 as they apply to the Agency,

as if all the words after “subsection (4) below” were omitted.

**Emergency abstractions by the Agency**

**15.** Section 29<sup>(6)</sup> (rights to abstract for drainage purposes etc) has effect in relation to abstraction of water by the Agency from sources of supply as if subsections (2B) and (2C) were omitted.

**Proposals for abstraction or impounding by the Agency**

**16.** Schedule 2, and the exceptions from, and modifications to, the Act made by it, has effect in relation to—

- (a) proposals for abstraction or impounding by the Agency for which an abstraction licence or impounding licence is required; and
- (b) proposals under section 51<sup>(2)</sup> (which provides for the variation of an abstraction licence or an impounding licence on the application of a licence holder) (modified in accordance with

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(1) For the definition of “the restriction on impounding works” see section 72(1) (amended by section 2(9) of the Water Act 2003).  
(2) Section 24(1) was amended by The Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593), regulation 3 and Schedule 2, paragraph 8, and the EA, section 120 and Schedule 22, paragraph 128.  
(3) Section 25(1) was substituted by the WA, section 2(1) and (2).  
(4) Section 42 was amended by the EA, section 120 and Schedule 22, paragraph 128, and the WA, section 14(3)(b) and section 16(6).  
(5) Section 32 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the Fire and Rescue Services Act 2004 (c. 21), section 53(1) and Schedule 1, paragraph 79.  
(6) Section 29 was amended by the WA, section 7. Section 7 of the WA was not in force on the date these Regulations were made. See regulation 1(2) for the date on which this regulation comes into force.

regulation 18) in relation to a licence held by the Agency, other than where section 51(4) applies.

### **Renewal of Agency licence**

**17.** Section 46A(7) (limited extension of abstraction licence validity) has effect in relation to a full licence or transfer licence held by the Agency as if in subsection (2)—

- (a) the reference to a “valid” application included a reference to an Agency application;
- (b) the reference to the Agency receiving a valid application were a reference to the Secretary of State or the Assembly (as the case may be) receiving an Agency application; and
- (c) the reference to the Agency agreeing a later date were a reference to the Secretary of State or the Assembly (as the case may be) agreeing a later date.

### **Modification of Agency licence on application of the Agency**

**18.** Section 51 (modification of licence on application of licence holder) has effect in relation to an abstraction licence or an impounding licence held by the Agency subject to the following modifications—

- (a) for subsection (1) (which provides for the revocation of an abstraction licence or an impounding licence) substitute—
  - “(1) The Agency may at any time revoke any abstraction licence held by itself.”;
- (b) in subsection (1A) (which provides for the revocation of an impounding licence), for “the Agency”, in each place where it occurs, substitute “the Secretary of State or the National Assembly for Wales (as the case may be)”;
- (c) in subsection (1B) (which provides for the imposition of conditions before the revocation of an impounding licence), for “the Agency”, in each place where it occurs, substitute “the Secretary of State or the National Assembly for Wales (as the case may be)”;
- (d) subsections (1C) to (1G) were omitted; and
- (e) for subsection (2) (which provides for the variation of an abstraction licence or an impounding licence) substitute—
  - “(2) The Agency may—
    - (a) at any time vary any abstraction licence held by itself, where the variation of the licence is solely for the purpose of reducing the quantity of water authorised to be abstracted in pursuance of that licence during one or more periods;
    - (b) propose the variation of any abstraction licence held by itself, where the variation is for a purpose other than that mentioned in paragraph (a); or
    - (c) propose the variation of any impounding licence held by itself.”.

### **Modification of Agency licence at instance of the Secretary of State or the Assembly**

**19.—(1)** Section 52(8) (proposals for modification at instance of the Agency or the Secretary of State) has effect in relation to an abstraction licence or an impounding licence held by the Agency as if—

- (a) subsections (1) and (1A) were omitted;
- (b) in subsection (2)—

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(7) Section 46A was inserted by the WA, section 20.

(8) Section 52 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, sections 22 and 101(2) and Schedule 9, Part 1.

- (i) in paragraph (a), the word “but”, and
  - (ii) paragraph (b),
- were omitted;
- (c) in subsection (4), paragraph (a) were omitted; and
  - (d) in subsection (6)(b), references to the Agency were references to the Secretary of State or the Assembly (as the case may be).
- (2) Section 53(9) (modification in pursuance of proposals under section 52) has effect in relation to proposals formulated under section 52, as modified by paragraph (1), as if—
- (a) in subsection (1)—
    - (i) for the word “may” there were substituted “shall”; and
    - (ii) in paragraph (b), the words after “those proposals” were omitted; and
  - (b) in subsection (4)—
    - (i) the reference to the holder of the licence were a reference to the Secretary or State or the Assembly; and
    - (ii) the words after “Secretary of State” were omitted.
- (3) Section 54(10) (reference of modification proposals to the Secretary of State) has effect in relation to proposals referred to the Secretary of State or Assembly under section 53, as modified by paragraph (2), as if—
- (a) in subsection (1)—
    - (i) for paragraph (b), there were substituted—
      - “(b) any representations in writing made by the Agency in relation to the proposals”; and
    - (ii) in paragraph (c), the reference to the Agency were a reference to the Secretary of State or the Assembly (as the case may be);
  - (b) in subsection (2), the references to the holder of the licence were omitted;
  - (c) in paragraph (c) of subsection (4), the reference to subsection (1) of section 54 were a reference to that subsection as modified by sub-paragraph (a) of this paragraph;
  - (d) for subsection (5), there were substituted—
    - “(5) Where the Secretary of State or the Assembly (as the case may be) determines under subsection (1) that the licence in question should be revoked or varied, she or it may revoke or vary the licence in accordance with that determination.”; and
  - (e) in subsection (6), the reference to a decision were a reference to a determination in accordance with subsection (5) as substituted by sub-paragraph (d) of this paragraph.

### **Modification of Agency licence on application of owner of fishing rights**

**20.**—(1) Section 55(11) (application for modification of licence by owner of fishing rights) has effect in relation to an abstraction licence held by the Agency as if, in subsection (4), the words “and on the holder of the licence” were omitted and for the words “each of them” there were substituted “it”.

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(9) Section 53 was amended by the EA, section 120 and Schedule 22, paragraph 128.

(10) Section 54 was amended by the EA, section 120 and Schedule 22, paragraph 128.

(11) Section 55 was amended by the EA, section 120 and Schedule 22, paragraph 128.

(2) Section 56(12) (determination of application under section 55) has effect in relation to a licence held by the Agency as if—

- (a) subsection (1), the words “or from the holder of the licence” and, in subsection (2)(b), the words “, the holder of the licence “ were omitted;
- (b) for subsection (6) there were substituted—
  - “(6) Where the Secretary of State or the Assembly (as the case may be) determines on an application under section 55 above that a licence should be revoked or varied, she or it may revoke or vary the licence in accordance with that determination.”; and
- (c) in subsection (7), the reference to a decision were a reference to a determination in accordance with subsection (6) as substituted by sub-paragraph (b) of this paragraph.

### **Transfer of Agency licence or of other licence to the Agency**

**21.**—(1) Section 59A(13) (transfer of licence) has effect in relation to any licence referred to in subsection (1)(a), (b) or (c) of that section—

- (a) that is held by the Agency, or
- (b) that it is proposed to transfer to the Agency,

subject to the modifications in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

- (a) for subsections (2) and (3), there is substituted—

“(2) Where—

- (a) the Agency and another person agree that—
  - (i) an Agency licence should be transferred to the other person, or
  - (ii) a licence held by the other person should be transferred to the Agency, and
- (b) in the case of a full licence or transfer licence held by the Agency, the Agency is satisfied that the other person—
  - (i) has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction, and
  - (ii) will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),

the Agency must give notice (a “transfer notice”) to the other person of the date from which it is intended that the transfer will take effect.

(3) The Agency must amend the licence to which a transfer notice relates by substituting the name of the transferee as holder of the licence.”; and

- (b) subsections (4) and (5) are omitted.

### **Apportionment of Agency licence or of part of other licence to the Agency**

**22.**—(1) Section 59C(14) (apportionment of licence to abstract) has effect in relation to the apportionment of a licence held by the Agency subject to the modifications in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

- (a) for subsections (1) to (3) there is substituted—

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(12) Section 56 was amended by the EA, section 120 and Schedule 22, paragraph 128.

(13) Section 59A was inserted by the WA, section 23(1).

(14) Section 59C was inserted by the WA, section 23(1).

“(1) Where the Agency is the holder of a full licence or transfer licence (the “old licence”), it may divide its right to abstract water in accordance with the old licence and transfer—

- (a) to another person part, or to a number of other persons parts, not amounting to the whole, or
- (b) to a number of other persons parts amounting in all to the whole,

of that right in accordance with the following provisions of this section.

(2) Subsection (3) applies where—

- (a) in relation to an old licence, the Agency as holder of the old licence and another person (the “successor”) proposing to exercise a right in respect of a part (“the relevant part”) of the abstraction authorised by the old licence in place of the Agency agree that—

- (i) the right conferred by the old licence should be divided; and
- (ii) a right in respect of the relevant part should be transferred to the successor; and

(b) the Agency is satisfied that—

- (i) the successor has, or at the time when the proposed grant to him of a new licence under subsection (3) below is to take effect will have, a right of access in relation to each point of abstraction; and
- (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner).

(3) Where this subsection applies, the Agency must—

- (a) revoke the old licence;
- (b) if the Agency proposes to continue to exercise a right of abstraction in respect of that part not transferred to the successor and a licence is required under this Chapter for that purpose, grant itself a licence relating to that part; and
- (c) grant to the successor a licence relating to the relevant part of the abstraction.”;

(b) subsections (4) and (5) are omitted;

(c) in subsections (6) and (7) for “subsection (5)” there is substituted “subsection (3)”;

(d) for subsection (8) there is substituted—

“(8) The revocation of the old licence and the grant of a new licence under subsection (3)(b) or (c) takes effect from the date on which the Agency revokes the old licence and grants the new one.”; and

(e) in subsection (13), for “subsection (5)” there is substituted “subsection (3)”.

(3) Section 59C (apportionment of licence to abstract) has effect in relation to the transfer to the Agency of part of a right to abstract water in accordance with a licence as if—

(a) in subsection (2) after “any person” there is inserted “, other than the Agency,”; and

(b) in subsection (5) after “above,” there is inserted “and, so far as the apportionment notice relates to the transfer to the Agency of a right in respect of part of an authorised abstraction, the Agency agrees to that transfer,”.

### **Liability for derogation from protected right by Agency licence**

**23.** Section 60(**15**) (liability of the Agency for derogation from protected right) has effect in relation to—

- (a) the grant to the Agency of an abstraction licence or an impounding licence (including any such grant made under section 42 (as modified by paragraph 7 of Schedule 2)),
- (b) or any grant which, by virtue of paragraph 6(2) of Schedule 2 is deemed to have been made on the Agency's approval of an Agency application, or
- (c) the variation of any such licence,

as if, in subsection (1), the reference to the duty imposed by subsection (1) of section 39 has effect as if it included a reference to that duty as modified by paragraph 8(4) of Schedule 2.

### **Compensation of Agency on modification of Agency licence**

**24.** Section 61(**16**) (compensation where licence modified on direction of the Secretary of State) does not apply in relation to the revocation or variation of a licence held by the Agency.

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(15) Section 60 was amended by the EA, section 120 and Schedule 22, paragraph 128.

(16) Section 61 was amended by the EA, section 120 and Schedule 22, paragraph 128, and by the WA, sections 25 and 101(1) and Schedule 7, paragraphs 1 and 6.