

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 20 November 2017	Committee Clerk
Meeting time: 14.30	0300 200 6362
	<a href="mailto:SeneddCLA@assembly.wales">SeneddCLA@assembly.wales</a>

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## 1 Introduction, apologies, substitutions and declarations of interest

## 2 Regulation of Registered Social Landlords (Wales) Bill: Evidence from the Minister for Housing and Regeneration

(Pages 1 – 17)

Rebecca Evans AM, Minister for Housing and Regeneration

Ian Williams, Welsh Government

Katie Wilson, Welsh Government

CLA(5)–27–17 – Paper 1– Letter from the Cabinet Secretary for Communities  
and Children regarding Policy intent

CLA(5)–27–17 – Legal Services briefing

[Regulation of Registered Social Landlords \(Wales\) Bill, as introduced](#) (PDF  
120KB)

[Explanatory Memorandum](#) (PDF 1MB)

## 3 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 18 – 21)

CLA(5)–27–17 – Paper 2 – Statutory instruments with clear reports

Negative Resolution Instruments



**3.1 SL(5)143 – The Tax Collection and Management (Administration) (Wales) Regulations 2017**

**3.2 SL(5)145 – The National Health Service (General Dental Services Contracts and Personal Dental Services Agreements) (Wales) (Amendment) Regulations 2017**

**3.3 SL(5)146 – The Water Resources (Miscellaneous Revocations) (Wales) Order 2017**

Affirmative Resolution Instruments

**3.4 SL(5)142 – The Tax Collection and Management (Permitted Disclosures) (Wales) Regulations 2017**

**3.5 SL(5)151 – The Official Statistics (Wales) Order 2017**

#### **4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

**4.1 SL(5)144 – The Private Water Supplies (Wales) Regulations 2017**

(Pages 22 – 92)

CLA(5)–27–17 – Paper 3 – Regulations

CLA(5)–27–17 – Paper 4 – Explanatory Memorandum

CLA(5)–27–17 – Paper 5 – Report

**4.2 SL(5)147 – The Water Abstraction (Transitional Provisions) Regulations 2017**

(Pages 93 – 169)

CLA(5)–27–17 – Paper 6 – Regulations

CLA(5)–27–17 – Paper 7 – Explanatory Memorandum

CLA(5)–27–17 – Paper 8 – Report

**4.3 SL(5)148 – The Water Abstraction and Impounding (Exemptions) Regulations 2017**

(Pages 170 – 245)

CLA(5)–27–17 – Paper 9 – Regulations

CLA(5)–27–17 – Paper 10 – Explanatory Memorandum

CLA(5)–27–17 – Paper 11 – Report

**4.4 SL(5)149 – The Conservation of Habitats and Species Regulations 2017**

(Pages 246 – 365)

CLA(5)–27–17 – Paper 12 – Regulations

CLA(5)–27–17 – Paper 13 – Explanatory Memorandum

CLA(5)–27–17 – Paper 14 – Report

**5 SICM(5)1 – Statutory Instrument Consent Memorandum**

(Pages 366 – 372)

CLA(5)27–17 – Paper 15 – Letter from the Cabinet Secretary for Economy and Transport

CLA(5)27–17 – Paper 16 – Statutory Instrument Consent Memorandum

**6 Paper(s) to note**

**6.1 Change of Member in Charge of Bills**

(Page 373)

CLA(5)–27–17 – PTN1 – Letter from the First Minister – 9 November 2017

**6.2 Letter to the UK Government on the European Union (Withdrawal) Bill**

(Pages 374 – 377)

CLA(5)–27–17 – PTN2 – Letter from the Chair of the External Affairs and Additional Legislation Committee to the Secretary of State for Wales and the Parliamentary Under Secretary of State for Exiting the European Union – 9 November 2017

Break (5 mins)

**7 Election of a Temporary Chair under Standing Order 17.22**

## **8 Instrument that raises issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instrument

### **8.1 SL(5)150 – The Agricultural Wages (Wales) Order 2017**

(Pages 378 – 459)

CLA(5)–27–17 – Paper 17 – Regulations

CLA(5)–27–17 – Paper 18 – Explanatory Memorandum

CLA(5)–27–17 – Paper 19 – Report

CLA(5)–27–17 – Paper 20 – Letter from the Leader of the House and Chief Whip

## **9 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

Items 10 and 11

### **10 Regulation of Registered Social Landlords (Wales) Bill: Consideration of evidence**

### **11 Forward Work Programme**

(Pages 460 – 568)

CLA(5)27–17 – Paper 21 – Forward work programme

CLA(5)27–17 – Paper 22 – A Stronger Voice for Wales: Draft report

CLA(5)27–17 – Paper 23 – Letter from the Llywydd to the Chair on Disqualification – 26 October 2017

CLA(5)27–17 – Paper 24 – Letter from the Chair to the Llywydd– 4 October 2017

CLA(5)27–17 – Paper 25 – Letter from the Llywydd to the Chair – 18 August 2017

**Date of the next meeting**

27 November 2017

Carl Sargeant AC/AM  
Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children

Agenda Item 2  


Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA - L/CS/0645/17

David Rees AM  
Chair  
External Affairs and Additional Legislation  
Committee  
National Assembly for Wales  
Ty Hywel  
Cardiff Bay  
Cardiff  
CF99 1NA

17<sup>th</sup> October 2017

Dear David

### **Regulation of Registered Social Landlords (Wales) Bill**

Following the introduction of the Regulation of Registered Social Landlords (Wales) Bill into the National Assembly for Wales on 16 October 2017, please find attached a copy of the statement of policy intent. This document is provided to support the Committee's scrutiny of the Bill.

I look forward to providing evidence to the Committee in due course.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely



**Carl Sargeant AC/AM**  
Ysgrifennydd y Cabinet dros Gymunedau a Phlant  
Cabinet Secretary for Communities and Children

Bae Caerdydd • Cardiff Bay  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Regulation of Registered Social Landlords (Wales) Bill – Statement of Policy Intent

Section	Description	Policy intention
<p>Section 5</p> <p>Inserts new paragraph 13 into Schedule 1 to the Housing Act 1996</p>	<p>The Welsh Ministers may give directions about the delivery, form and content of a notification given to the Welsh Ministers under paragraphs 9, 11, 12 or 13 relating to constitutional changes of the RSL.</p> <p>Directions may also include a deadline for giving a notification, and may dispense with the requirement to give a notification.</p> <p>Directions may be given generally in respect of all RSLs, or in respect of particular RSLs or types of RSL, and may make provision about notifications generally, or about particular notifications or types of notification.</p>	<p>The directions will specify the types of changes which RSLs must notify to the Welsh Ministers. These will include restructuring, company arrangements and reconstruction, dissolutions and constitutional changes.</p> <p>The directions will set out the information which must be provided in the notification and the time period in which it must be made which will vary depending on the type of notification. Notification will be retrospective.</p> <p>The directions will also specify the circumstances in which a notification is not required.</p>
<p>Section 14</p> <p>Inserts new section 9(3) into the Housing Act 1996</p>	<p>The Welsh Ministers may give directions about the delivery, form and content of notification given by an RSL in respect of a disposal of land.</p> <p>Directions may also include a deadline for giving notification, and may dispense with the requirement to give a notification.</p> <p>Directions may be given generally in respect of all RSLs, or in respect of particular RSLs or types of RSL, and may make provision about notifications generally, or about particular notifications or types of notification.</p>	<p>The directions will specify the types of disposals and transactions which RSLs must notify to the Welsh Ministers. The directions will also specify the circumstances in which a notification is not required.</p> <p>The directions will set out the information which must be provided in the notification and the time period in which it must be made which will vary depending on the type of notification. Notification will be retrospective and specified routine disposals may be provided in a periodic (quarterly) return.</p>

Section	Description	Policy intention
Section 18	<p>The Welsh Ministers may, by regulations make such provision amending, repealing or revoking any enactment as they consider appropriate in consequence of any provision made by or under this Bill, or for the purpose of giving full effect to any provision made under this Bill.</p>	<p>This power will only be used for making changes to other legislation needed in consequence of the provisions of this Bill.</p>
Section 19	<p>The Welsh Ministers may, by order, provide for provisions of the Bill to come into force on a day appointed by the Welsh Ministers.</p> <p>The Welsh Ministers may appoint different days for different purposes and make transitional, transitory or saving provision in connection with the coming into force of a provision in this Bill.</p>	<p>The intention is for sections 7A to 7D of the Housing Act 1996, inserted by Schedule 1 to the Bill, to come into force two months after Royal Assent. This will have the effect that RSLs have six months to reduce the number of local authority appointees on their boards to below the 24% limit.</p> <p>The remaining provisions in Schedule 1 relating to local authority influence on RSLs will come into force six months after Royal Assent.</p> <p>The other provisions in the Bill are intended to be commenced two months after Royal Assent.</p> <p>Suitable transitional provisions will be made where required, for example there will be transitional arrangements to direct the use of the sums in the disposal proceeds fund and specify a time limit for their use until abolition of the requirement.</p>



Section	Description	Policy intention
Schedule 1 Inserts section 7J(1) into the Housing Act 1996	The Welsh Ministers may by order provide that the provisions relating to limits on local authority influence over RSLs are not to apply to RSLs that are wholly controlled local authority subsidiaries.	This power will only be used if the current policy position changes to allow local authorities to be the “parent” of an RSL, which is not permitted at present. In the case that an RSL is a wholly controlled local authority subsidiary, the limits on local authority influence do not need to apply.
Schedule 1 Inserts 7J(7) into the Housing Act 1996	The Welsh Ministers may by order make provision for a registered social landlord of a description specified in the order to be treated as being a wholly controlled local authority subsidiary for the purpose of section 7J (power to dis-apply provisions relating to local authority influence) .	<p>Currently, the provisions relating to wholly controlled local authority subsidiaries in section 7J (power to dis-apply provisions relating to local authority influence) allow for subsidiary RSLs to be companies or registered societies.</p> <p>This power, to treat RSLs as a wholly controlled local authority subsidiary, is only intended to be used where there is a model proposed by a local authority which the Welsh Ministers consider should be exempt from the provisions limiting local authority influence.</p>

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 3

## Regulations with Clear Reports

20 November 2017

### SL(5)142 – The Tax Collection and Management (Permitted Disclosures) (Wales) Regulations 2017

#### Procedure: Affirmative

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The Regulations amend section 18(1) of the Tax Collection and Management (Wales) Act 2016 (the Act), to allow a relevant official (as defined by section 17(2) of the Act) to disclose protected taxpayer information (as defined by section 17(3) of the Act), to Her Majesty's Revenue and Customs (HMRC) and to Revenue Scotland. This can happen where the disclosure is in connection with the functions of HMRC, Revenue Scotland, or the Welsh Revenue Authority.

**Parent Act:** Tax Collection and Management (Wales) Act 2016

**Date Made:** Not stated

**Date Laid:** 25 October 2017

**Coming into force date:** Not stated

### SL(5)143 – The Tax Collection and Management (Administration) (Wales) Regulations 2017

#### Procedure: Negative

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These Regulations make provision for various matters in respect of the administration of the devolved taxes.

Regulation 3 prescribes the Natural Resources Body for Wales as a person to whom the Welsh Revenue Authority (WRA) may delegate any of its functions, in respect of landfill disposals tax.

Regulation 4 establishes that the WRA's first planning period will be 1 April 2018 to 31 March 2019 (for the purposes of its corporate plan).

Part 3 of the Regulations provides for rates of late payment interest and repayment interest.



Part 4 provides procedures to determine disputes in respect of whether information or documentation, requested by the WRA, is protected by legal professional privilege.

**Parent Act:** Tax Collection and Management (Wales) Act 2016

**Date Made:** 23 October 2017

**Date Laid:** 26 October 2017

**Coming into force date:** 1 April 2018 except for regulations contained in Parts 1 and 2 which come into force on 21 November 2017

## SL(5)145 – The National Health Service (General Dental Services Contracts and Personal Dental Services Agreements) (Wales) (Amendment) Regulations 2017

### Procedure: Negative

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These Regulations amend the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006 (“the GDS Regulations”) and the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 (“the PDS Regulations”).

The GDS Regulations set out a framework for Wales for general dental services contracts. Regulation 3 amends paragraph 38 of Schedule 3 to the GDS Regulations to allow for electronic submission of certain information.

The PDS Regulations set out a framework for Wales for personal dental services agreements. Regulation 4 amends paragraph 39 of Schedule 3 to the PDS Regulations to allow for electronic submission of certain information.

**Parent Act:** National Health Service (Wales) Act 2006

**Date Made:** 25 October 2017

**Date Laid:** 31 October 2017

**Coming into force date:** 1 December 2017



## SL(5)146 – The Water Resources (Miscellaneous Revocations) (Wales) Order 2017

### Procedure: Negative

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This Order is made as part of a collection of subordinate legislation relating to water resources. Composite Regulations have been made for England and Wales in relation to exemptions from the restrictions on the abstracting and impounding of water (The Water Abstraction and Impounding (Exemptions) Regulations 2017). Transitional provision was also made by the composite Water Abstraction (Transitional Provisions) Regulations 2017. This Order forms the third element, as it revokes local orders relating to Welsh waters, which will be replaced by the Regulations referred to above.

**Parent Act:** Water Act 2003

**Date Made:** 24 October 2017

**Date Laid:** 31 October 2017

**Coming into force date:** 1 January 2018

## SL(5)151 – The Official Statistics (Wales) Order 2017

### Procedure: Affirmative

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This Order provides that the statistics produced, or to be produced, by the persons listed in the Schedule are official statistics for the purpose of Part 1 of the Statistics and Registration Service Act 2007 (“the Act”). Part 1 establishes the Statistics Board which is responsible for promoting and safeguarding good practice in gathering and assessing official statistics. “Official statistics” is defined in section 6(1) of the Act and includes, in subsection (1)(b)(iii), statistics as specified by order made by the Welsh Ministers.

Section 6(2) of the Act provides that an order made under subsection (1)(b) may specify a description of statistics produced or the person producing them.

Official statistics produced by persons listed in the Schedule do not include statistics produced by the Statistics Board, government departments, devolved administrations or any other person acting on behalf of the Crown.

**Parent Act:** Statistics and Registration Service Act 2007



**Date Made:** Not stated

**Date Laid:** Not stated

**Coming into force:** Coming into force in accordance with article 1(2)



# Agenda Item 4.1

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2017 No. 1041 (W. 270)**

**WATER, WALES**

**The Private Water Supplies (Wales)  
Regulations 2017**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations implement Council Directive 98/83/EC on the quality of water intended for human consumption (OJ No. L 330, 5.12.1998, p. 32) in relation to private water supplies and Council Directive 2013/51/Euratom laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (OJ No. L 296, 7.11.2013, p. 12). These Regulations revoke and replace the Private Water Supplies (Wales) Regulations 2010 (S.I. 2010/66 (W. 16)).

These Regulations apply to private water supplies (as defined in regulation 2) intended for human consumption. Part 1 of the Regulations makes miscellaneous provision in relation to water standards for private water supplies. It defines the circumstances in which water is to be regarded as “wholesome” (regulation 4 and Part 1 of Schedule 1). It also sets out the requirements which apply where water is disinfected (regulation 5) and imposes a duty on each local authority to carry out a risk assessment of every private water supply in its area (regulation 6).

Part 2 of the Regulations places a duty on local authorities to monitor private water supplies (regulations 7 to 13 and Schedule 2) and to ensure that each sample taken is analysed in the ways set out in Schedule 4 (regulation 14). It sets out the specific monitoring requirements for radioactive substances (indicative dose, radon and tritium) (regulation 12 and 13 and Schedule 3). The indicator parameters for radioactive substances are set out in Table D in Part 3 of Schedule 1. It also requires the local authority to make and keep records for every private water supply in its area (regulation 16 and Schedule 5) and to send a copy of the records to the Drinking Water Inspectorate

and upon request, to the Welsh Ministers (regulation 16).

Part 3 of the Regulations sets out the procedures to be followed if the water is not wholesome, or it constitutes a potential danger to human health. It requires local authorities to provide information to those people likely to consume the water (regulation 17) and to carry out an investigation (regulation 18). If the cause of the unwholesome water is in the pipework within a domestic premises, local authorities must offer advice on measures necessary for the protection of human health. Local authorities may, in defined circumstances, grant a time-limited authorisation of different standards (regulation 19).

Part 4 of the Regulations requires a notice to be served on the “relevant person” (as defined in regulation 2) if any supply constitutes a potential danger to human health (regulation 20) and makes provision for appeals and penalties in connection with such notices (regulations 21 and 22).

Part 5 of the Regulations makes provision for the payment of fees (regulation 23 and Schedule 6), revocations (regulation 24) and consequential amendments (regulation 25). It also contains transitional provisions (regulation 26).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.



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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2017 No. 1041 (W. 270)**

**WATER, WALES**

**The Private Water Supplies (Wales)  
Regulations 2017**

*Made* 25 October 2017

*Laid before the National Assembly for Wales*  
30 October 2017

*Coming into force* 20 November 2017

The Welsh Ministers are designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the quality of water intended for domestic purposes or for use in food production undertaking.

The Welsh Ministers have carried out the consultation required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(3)</sup>.

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- (1) S.I. 2004/3328, as amended by S.I. 2005/850, S.I. 2007/1349, S.I. 2008/301, S.I. 2012/1759 and S.I. 2014/1362. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).
- (2) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
- (3) OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) No. 652/2014 (OJ No. L 189, 27.6.14, p. 1).

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 67, 77(3) and (4) and 213(2) of the Water Industry Act 1991(1).

## PART 1

### Water standards

#### **Title, application and commencement**

1. The title of these Regulations is the Private Water Supplies (Wales) Regulations 2017; they apply in relation to Wales and come into force on 20 November 2017.

#### **Interpretation**

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Water Industry Act 1991;

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(1) 1991 c. 56. The functions of the Secretary of State under section 67 were transferred to the National Assembly for Wales (“the Assembly”) (a) for the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales and (b) for the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (“the 1999 Order”); the functions of the Secretary of State under section 77 of that Act were transferred to the Assembly in relation to Wales by the same provisions of the 1999 Order; the functions of the Secretary of State under section 213 (as amended by paragraph 28 of Schedule 1 to the Competition and Service (Utilities) Act 1992 (c. 43), by section 36(2) of, and paragraph 49(3) of Schedule 8 to, the Water Act 2003 (c. 37) and by section 56 of, and paragraph 119(4) of Schedule 7 to, the Water Act 2014 (c. 21)) of that Act were exercisable by the Assembly to the same extent as the powers to which that section applies were made exercisable by the Assembly by virtue of the same provision of the 1999 Order: *see* the entry in Schedule 1 to the 1999 Order for the Act as substituted by paragraph (e) of Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) and amended by section 100(2) of the Water Act 2003 (c. 37); there are other amending instruments but none are relevant. References in Schedule 1 to the 1999 Order to specific sections of the Act are treated by section 100(6) of the Water Act 2003 as referring to those sections as amended by the Water Act 2003. *See* section 219(4A) of the Act as inserted by section 101(1) of, and paragraphs 2 and 50 of Schedule 8 to, the Water Act 2003 for the definition of “supply system”. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006, the functions conferred on the Assembly are now exercisable by the Welsh Ministers.

“the 2010 Regulations” (“*Rheoliadau 2010*”) means the Private Water Supplies (Wales) Regulations 2010(1);

“the Chief Inspector of Drinking Water” (“*y Prif Arolygydd Dŵr Yfed*”) means the person designated by the Welsh Ministers under section 86(1B) of the Act (assessors for the enforcement of water quality)(2);

“consumer” (“*defnyddiwr*”) mean a person to whom a private water supply is provided for human consumption purposes;

“disinfection” (“*diheintio*”) means a process of water treatment to remove, or render harmless to human health, every pathogenic micro-organism and pathogenic parasite that would otherwise be present in the water;

“domestic tenancy” (“*tenantiaeth ddomestig*”) has the same meaning as in section 2 of the Housing (Wales) Act 2014 (meaning of key terms)(3);

“indicative dose” (“*dos dangosol*”) means the committed effective dose for 1 year of ingestion resulting from all the radionuclides whose presence has been detected in a supply of water intended for human consumption, of natural and artificial origin, excluding tritium, potassium-40, radon and short-lived radon decay products;

“monitoring for Group A parameters” (“*monitro ar gyfer paramedrau Grŵp A*”) has the meaning given in paragraph 1 of Schedule 2;

“monitoring for Group B parameters” (“*monitro ar gyfer paramedrau Grŵp B*”) has the meaning given in paragraph 3 of Schedule 2;

“NTU” (“*NTU*”) means Nephelometric Turbidity Unit;

“parameter” (“*paramedr*”) means a property, element, organism or substance listed in the first column of the Tables in the Schedule 1 as read, where appropriate, with the notes to that Schedule and those Tables;

“prescribed concentration or value” (“*crynodiad neu werth rhagnodedig*”) in relation to any parameter, means the maximum or minimum concentration or value specified in relation to that parameter in the Tables in Schedule 1 as measured by reference to the unit of measurement so specified, and as read, where appropriate, with the notes to that Schedule and those Tables;

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- (1) S.I. 2010/66 (W. 16), as amended by S.I. 2010/147 (W. 22), S.I. 2010/1384 (W. 123), S.I. 2013/235, S.I. 2015/1867 (W. 274), S.I. 2016/411 (W. 129), and S.I. 2017/506.
- (2) Section 86(1B) was inserted by section 57(3) of the Water Act 2003 (c. 37).
- (3) 2014 anaw 7.

“private water supply” (“*cyflenwad dŵr preifat*”) means a supply of water other than a supply provided directly by a water undertaker<sup>(1)</sup> or water supply licensee<sup>(2)</sup>, and which is comprised of all physical assets from the point of abstraction to the point of use, including associated pipes, fittings and tanks;

“relevant person” (“*person perthnasol*”) means—

- (a) the owner and occupier (who may be the same or different persons) of premises which are supplied with water for domestic or food production purposes by means of a private water supply;
- (b) the owner and occupier (who may be the same or different persons) of land on which any part of the supply is situated;
- (c) any other person who exercises powers of management or control in relation to that supply;

“risk assessment” (“*asesiad risg*”) means a risk assessment carried out under regulation 6.

### Scope

3.—(1) These Regulations apply in relation to private water supplies intended for human consumption; and for these purposes “water intended for human consumption” means—

- (a) all water either in its original state or after treatment, intended for drinking, cooking, food preparation or other domestic purposes, regardless of its origin and whether it is supplied from a distribution network, from a tanker, or in bottles or containers;
- (b) all water used in any food production undertaking for the manufacture, processing, preservation or marketing of products or substances intended for human consumption unless, in accordance with Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs<sup>(3)</sup>, the competent authority<sup>(4)</sup> is satisfied that the quality of the water cannot affect the wholesomeness of the foodstuff in its finished form.

(2) These Regulations do not apply in relation to—

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- (1) See section 6 of the Act for the meaning of “water undertaker”.
  - (2) See section 17A of the Act for the meaning of “water supply licensee”. Section 17A was substituted by section 1(1) of the Water Act 2014 (c. 21).
  - (3) OJ No. L 139, 30.4.2004, p. 1 as last amended by Regulation (EC) No. 219/2009 (OJ No. L 87, 31.3.2009, p. 109).
  - (4) The competent authority for the purpose of this Regulation is the Food Standards Agency; see S.I. 2006/31 (W. 5).

- (a) water to which the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015<sup>(1)</sup> apply;
- (b) water that is a medicinal product within the meaning of the Medicines Act 1968<sup>(2)</sup>;
- (c) water used solely for washing a crop after it has been harvested and that does not affect the fitness for human consumption of the crop or of any food or drink derived from the crop.

#### **Wholesomeness**

4.—(1) A private water supply is to be regarded as wholesome if all the following conditions are met—

- (a) it does not contain any micro-organism, parasite or substance, alone or in conjunction with any other substance, at a concentration or value that would constitute a potential danger to human health;
- (b) it complies with the prescribed concentration or value for each parameter; and
- (c) the water satisfies the formula “[nitrate]/50 + [nitrite]/3 ≤ 1”, where the square brackets signify the concentrations in mg/l for nitrate (NO<sub>3</sub>) and nitrite (NO<sub>2</sub>).

(2) A reference in these Regulations to water being unwholesome means the requirements in paragraph (1) not being met.

#### **Use of products or substances in private water supplies and disinfection arrangements**

5.—(1) Any product or substance used in the preparation or distribution of a private water supply, or impurities associated with such products or substances, must not be present in water at the point of use at levels that would make it unwholesome or constitute a potential danger to human health.

(2) Where disinfection forms part of the preparation or distribution of water, the relevant person must—

- (a) design, operate and maintain the disinfection process so as to keep the presence of disinfection by-products as low as possible without compromising the effectiveness of the disinfection process;
- (b) ensure that the effectiveness of the disinfection process is maintained;
- (c) keep records of the maintenance and monitoring which have been undertaken in

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(1) S.I. 2015/1867 (W. 274).

(2) 1968 c. 67.

order to verify the effectiveness of the disinfection process; and

- (d) keep copies of those records available for inspection by the local authority, for a period of 5 years.

### **Requirement to carry out a risk assessment**

**6.—**(1) A local authority<sup>(1)</sup> must carry out a risk assessment for every private water supply in its area and review and update that risk assessment every 5 years (or earlier if it considers that the existing risk assessment is inadequate).

(2) In the case of a supply provided to a single dwelling, the duty in paragraph (1) applies only where that supply is provided as part of a commercial or public activity or as part of a domestic tenancy.

(3) In the case of a supply provided to a single dwelling not falling within paragraph (2), a local authority must carry out a risk assessment if requested to do so by the owner or occupier of that dwelling.

(4) A risk assessment must—

- (a) establish whether there is a significant risk of supplying water that would constitute a potential danger to human health;
- (b) satisfy the requirements of the Security of Drinking Water Supply Guidelines for Risk and Crisis Management<sup>(2)</sup>; and
- (c) take into account the results from the monitoring programmes established by the second paragraph of Article 7(1) of Directive 2000/60/EC of the European Parliament and of the Council<sup>(3)</sup>.

(5) A local authority must within 12 months of having carried out a risk assessment provide the Welsh Ministers with a summary of the results of that assessment.

## **PART 2**

### **Monitoring**

#### **Monitoring**

**7.—**(1) A local authority must monitor all private water supplies in its area in accordance with this Part

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(1) See section 219 of the Act (as amended by paragraph 2(2) of Schedule 11 to the Local Government (Wales) Act 1994 (c. 19)) for the meaning of “local authority”.

(2) EN 15975-2.

(3) OJ No. L 327, 22.12.2000, p. 1, as last amended by Commission Directive 2014/101/EU (OJ No. L 311, 31.10.2014, p. 32).

when carrying out its duties under section 77(1) of the Act (general functions of local authorities in relation to water quality).

(2) The local authority must discharge the obligation in paragraph (1) by establishing a monitoring programme which consists of either—

- (a) the collection and analysis of discrete water samples;
- (b) measurement recorded by a continuous monitoring process; or
- (c) a combination of the methods in subparagraphs (a) and (b).

(3) Monitoring programmes may include either or both of—

- (a) inspections of records of the functionality and maintenance status of equipment;
- (b) inspections of the catchment area, water abstraction, treatment, storage and distribution infrastructure.

#### **Further distribution of supplies from water undertakers or water supply licensees**

**8.** Where water is supplied by a water undertaker or a water supply licensee and is then further distributed by a person other than a water undertaker or a water supply licensee, the local authority must carry out any monitoring which the risk assessment shows to be necessary.

#### **Large supplies and supplies as part of a commercial or public activity**

**9.**—(1) This regulation applies to a private water supply, other than that specified in regulation 8, that—

- (a) supplies an average daily volume of water of 10m<sup>3</sup> or more; or
- (b) supplies water as part of a commercial or public activity.

(2) The local authority must monitor a private water supply falling within this regulation in accordance with Schedule 2 and carry out any additional monitoring that the risk assessment shows to be necessary.

#### **Supplies to a single dwelling**

**10.**—(1) This regulation applies to a private water supply to a single dwelling not used as part of a commercial or public activity (in which case regulation 9 applies) or as part of a domestic tenancy (in which case regulation 11 applies).

(2) Where this regulation applies, the local authority—

- (a) may monitor the supply in accordance with the requirements in regulation 11(1); and
- (b) must do so if requested to do so by the owner or occupier of that dwelling.

**Other private supplies including supplies as part of a domestic tenancy**

**11.**—(1) In the case of a private water supply not covered by regulation 8, 9 or 10, the local authority must monitor for—

- (a) conductivity;
- (b) enterococci;
- (c) *Escherichia coli* (*E. coli*);
- (d) hydrogen ion concentration;
- (e) turbidity;
- (f) any parameter in Part 1 or 2 of Schedule 1 identified in the risk assessment as being at risk of not complying with the concentrations or values in those Parts of that Schedule; and
- (g) anything else identified in the risk assessment as a potential danger to human health.

(2) The local authority must carry out the monitoring required by this regulation at least every 5 years and more frequently if the risk assessment shows this to be necessary.

**Monitoring of radioactive substances: general**

**12.**—(1) A local authority must monitor each private water supply in its area (other than a supply to which regulation 13 applies) for the parameters contained in the radioactive substances parameters table in accordance with this regulation and Schedule 3.

(2) In this regulation and Schedule 3, “the radioactive substances parameters table” means Table D in Part 3 of Schedule 1.

(3) Where a local authority is satisfied that a parameter in the radioactive substances parameters table is not likely to be present in a private water supply in its area in concentrations which could exceed the prescribed concentration or value for the relevant parameter in that table, the local authority may, for such a time as it sees appropriate, decide to exclude the parameter in question from the monitoring duty in paragraph (1).

- (4) A decision under paragraph (3) must be made—
- (a) on the basis of representative surveys, monitoring data or other reliable information (including any risk assessment carried out in accordance with regulation 6); and
  - (b) taking into account any guidance issued by the Welsh Ministers.



(5) The local authority must provide the Welsh Ministers with the grounds for its decision under paragraph (3) and the necessary documentation supporting the decision (including the findings of any surveys, monitoring or assessments carried out in accordance with paragraph (4)(a)).

(6) The Welsh Ministers must communicate the grounds for a decision under paragraph (3) to the European Commission with the documentation provided under paragraph (5) supporting the decision.

(7) Where—

- (a) a decision has previously been made under paragraph (3), and
- (b) the local authority is no longer satisfied that the basis for the decision exists,

the exclusion from monitoring under paragraph (3) will no longer apply and the local authority must inform the Welsh Ministers in writing accordingly.

(8) In case of naturally occurring radionuclides, where previous results (including representative surveys, monitoring data or other reliable information) show that the concentration of radionuclides in a supply within a local authority's area is stable, the minimum sampling and analysis frequencies are to be decided by the local authority, and confirmed by notice in writing to the Welsh Ministers, taking into consideration the risk to human health.

#### **Monitoring of radioactive substances: supplies to specified single dwellings**

**13.**—(1) This regulation applies to a private water supply to a single dwelling not provided as part of a commercial or public activity or as part of a domestic tenancy.

(2) A local authority may monitor a supply falling within paragraph (1) for the parameters contained in Table D in Part 3 of Schedule 1 in accordance with Schedule 3 and Part 3 of Schedule 4, and must do so if requested to do so by the owner or occupier.

#### **Sampling and analysis**

**14.**—(1) When a local authority monitors a private water supply it must take a sample—

- (a) if the water is supplied for domestic purposes, from a tap normally used to supply water for human consumption, and which, if there is more than one tap, is representative of the water supplied to the premises;
- (b) if the water is used in a food production undertaking, at the point at which it is used in the undertaking;

- (c) if the water is supplied from a tanker, at the point at which it emerges from the tanker;
- (d) in any other case at a suitable point.

(2) A random daytime sample of one litre volume must be taken from a consumer's tap without prior flushing for the purpose of sampling for the copper, lead and nickel parameters.

(3) Sampling under this regulation—

- (a) for chemical parameters in the distribution network must be undertaken in accordance with ISO 5667-5, other than where the sample is taken from a consumer's tap;
- (b) for microbiological parameters must be undertaken in accordance with—
  - (i) EN ISO 19458 sampling purpose A in the distribution network; and
  - (ii) EN ISO 19458 sampling purpose B at the consumer's tap.

(4) The local authority must ensure that the sample is analysed in accordance with Schedule 4.

### **New supplies**

**15.**—(1) Where a local authority becomes aware of a private water supply that is to be, or is being, used for the first time (or for the first time after being out of use for a period of 12 months or more), the requirements of regulation 6 to 14 and 16 to 19 must be complied with as soon as reasonably practicable.

(2) A private water supply must not be brought into use or used until the local authority is satisfied that the supply does not constitute a potential danger to human health.

### **Records**

**16.**—(1) A local authority must make and keep records in respect of every private water supply in its area in accordance with Schedule 5.

(2) By 31 January of every year, a local authority must—

- (a) send the Chief Inspector of Drinking Water a copy of the records referred to in paragraph (1); and
- (b) upon request, send the Welsh Ministers a copy of those records.

## PART 3

### Action in the event of failure

#### Provision of information

**17.** If a local authority considers that a private water supply in its area is a potential danger to human health it must promptly take appropriate steps to ensure that people likely to consume water from it—

- (a) are informed that the supply constitutes a potential danger to human health;
- (b) where possible, are informed of the nature and degree of the potential danger; and
- (c) are given advice to allow them to minimise any such potential danger.

#### Investigation

**18.—**(1) Where a local authority suspects that a private water supply fails to comply with—

- (a) the requirements of regulation 4, or
- (b) the concentrations or values in Part 2 or Part 3 of Schedule 1 for an indicator parameter,

it must carry out an investigation to establish the cause of the failure.

(2) Once a local authority has carried out an investigation and established the cause of the failure, it must act in accordance with paragraphs (3) to (5).

(3) If the cause of the failure is due to the distribution system within a domestic premises (whether or not the water is made available to the public in those premises) the local authority must promptly inform the people likely to be affected and offer them advice on measures necessary for the protection of human health.

(4) In addition to the duty in paragraph (3) (where it applies), the local authority must act in accordance with paragraph (5) if the cause of the failure is due to—

- (a) the distribution system within domestic premises where water is made available to the public; or
- (b) a distribution system not within domestic premises.

(5) Where this paragraph applies, the local authority must—

- (a) if the water is a potential danger to human health and the conditions in regulation 20 are fulfilled, serve a notice under that regulation; or

- (b) within 28 days of establishing the cause of the failure, and if appropriate remedial action has not been taken, serve a notice in accordance with section 80 of the Act (remedial powers of local authorities in relation to private supplies) unless the local authority grants an authorisation in accordance with regulation 19(2).

(6) Where this regulation applies and a local authority's monitoring obligations in respect of the supply have previously been reduced (or otherwise varied) under Schedule 2 to these Regulations, such variation is to cease immediately and the standard frequencies outlined in Tables 2 and 3 in Schedule 2 must be reinstated.

### **Authorisations of different standards**

**19.**—(1) Any relevant person may apply to a local authority for the grant of an authorisation under this regulation.

(2) A local authority may grant an authorisation of different standards under this regulation if—

- (a) the only cause of the water being unwholesome is that a parameter in Table B of Part 1 of Schedule 1 (chemical parameters) is not complied with;
- (b) the local authority has consulted all water users who will be affected by the authorisation and the Public Health Wales National Health Service Trust and has taken their views into account;
- (c) granting the authorisation does not cause a potential danger to human health; and
- (d) the private water supply cannot be maintained by any other reasonable means.

(3) An authorisation must require the applicant to take action over a period of time to ensure that the necessary parameters are complied with, and must specify—

- (a) the person to whom the authorisation is granted;
- (b) the private water supply concerned;
- (c) the grounds for granting the authorisation;
- (d) the parameters concerned, previous relevant monitoring results, and the maximum permissible values under the authorisation;
- (e) the geographical area, the estimated quantity of water supplied each day, the number of persons supplied and whether or not any food production undertaking is affected;

- (f) an appropriate monitoring scheme, with an increased monitoring frequency where necessary;
- (g) a summary of the plan for the necessary remedial action, including a timetable for the work and an estimate of the cost and provisions for reviewing progress; and
- (h) the duration of the authorisation.

(4) If a local authority grants an authorisation, and the person to whom it is granted takes action in accordance with the timetable specified in the authorisation, the local authority may not serve a notice under section 80 of the Act concerning the matters specified in the authorisation without first amending or revoking the authorisation.

(5) The duration of the authorisation must be as short as possible and in any event may not exceed 3 years.

(6) The local authority must ensure that people supplied are promptly informed of the authorisation and its conditions and, where necessary, ensure that advice is given to particular groups for which the authorisation could present a special risk.

(7) If the private water supply exceeds 1,000 m<sup>3</sup> a day as an average or serves more than 5,000 persons the local authority must send a copy of the authorisation to the Chief Inspector of Drinking Water and the Welsh Ministers within 1 month.

(8) The local authority must keep the progress of the remedial action under review.

(9) If necessary, the local authority may grant a second authorisation for up to a further 3 years with the prior consent of the Welsh Ministers, but if it does so it must, as soon as is reasonably practicable, send a copy of the authorisation together with the grounds for its decision to the Chief Inspector of Drinking Water and the Welsh Ministers.

(10) The local authority may revoke or amend the authorisation at any time, and in particular may revoke or amend it if the timetable for remedial action has not been adhered to.

## PART 4

### Notice procedure

#### Notices

**20.**—(1) If any private water supply constitutes a potential danger to human health, a local authority must serve a notice under this regulation on the relevant person instead of a notice under section 80 of the Act.

(2) The notice must—

- (a) identify the private water supply to which it relates;
- (b) specify the grounds for serving the notice;
- (c) prohibit or restrict the use of that supply;
- (d) specify what other action is necessary to—
  - (i) protect human health;
  - (ii) restore the wholesomeness of the private water supply;
  - (iii) maintain the continued wholesomeness of the private water supply following its restoration; and
- (e) specify the date by which the action required must be taken.

(3) The local authority must promptly inform consumers of the private water supply to which the notice relates and provide any necessary advice.

(4) The notice may be subject to conditions and may be amended by further notice at any time.

(5) The local authority must revoke the notice as soon as it becomes aware that there is no longer a potential danger to human health.

(6) It is an offence for a relevant person on whom a notice is served under this regulation to fail to comply with it.

(7) Where a relevant person (“P”) fails to take the action required by the date specified in a notice served under paragraph (1), the local authority which served the notice may take such action themselves.

(8) Where any action is taken by a local authority under paragraph (7) in relation to any premises—

- (a) the local authority may recover from P any expenses reasonably incurred by it in taking that action; and
- (b) where a person, other than the local authority, is liable to make payments to P, sums paid by virtue of sub-paragraph (a) are to be deemed to be expenses incurred in the taking of action by P.

## Appeals

**21.**—(1) Any person who is aggrieved by a notice served under regulation 20 may appeal to a magistrates’ court within 28 days of service of the notice.

(2) The procedure on an appeal to a magistrates’ court under paragraph (1) is by way of complaint, and the Magistrates’ Courts Act 1980(1) applies to the proceedings.

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(1) 1980 c. 43.

(3) A notice remains in force unless suspended by the court.

(4) On an appeal, the court may either cancel the notice or confirm it, with or without modification.

### **Penalties**

**22.**—(1) A person who commits an offence under regulation 20 is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 3 months or both; or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or both.

(2) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar person of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

that person is guilty of the offence as well as the body corporate.

(3) In paragraph (2), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

## **PART 5**

### **Miscellaneous**

#### **Fees**

**23.** Schedule 6 makes provision for fees.

#### **Revocations**

**24.**—(1) The following instruments are revoked—

- (a) the 2010 Regulations;
- (b) the Private Water Supplies (Wales) (Amendment) Regulations 2010(1);
- (c) the Private Water Supplies (Wales) (Amendment) (No. 2) Regulations 2010(2); and

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(1) S.I. 2010/147 (W. 22).

(2) S.I. 2010/1384 (W. 123).

- (d) the Private Water Supplies (Wales) (Amendment) Regulations 2016<sup>(1)</sup>.

(2) Paragraph 142 of Schedule 2 to the National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Savings Provisions) Order 2013<sup>(2)</sup> is revoked.

### **Consequential amendment**

**25.** In regulation 21(7)(b) of the Water Supply (Water Quality) Regulations 2010<sup>(3)</sup>, for “regulation 15 or 16 of the Private Water Supplies (Wales) Regulations 2010” substitute “regulation 18 of the Private Water Supplies (Wales) Regulations 2017”.

### **Transitional provisions**

**26.**—(1) On the coming into force of these Regulations—

- (a) an authorisation granted under regulation 17(2) of the 2010 Regulations which is in force immediately before the coming into force of these Regulations is taken to be an authorisation granted under regulation 19(2) of these Regulations;
- (b) a second authorisation granted under regulation 17(9) of the 2010 Regulations which is in force immediately before the coming into force of these Regulations is taken to be a second authorisation granted under regulation 19(9) of these Regulations;
- (c) a notice served under regulation 18 of the 2010 Regulations which is in force immediately before the coming into force of these Regulations (“an existing notice”) is taken to be a notice served under regulation 20 of these Regulations.

(2) An appeal may be made under regulation 21(1) of these Regulations against an existing notice if, on the date these Regulations come into force, the time for making an appeal under regulation 19(1) of the 2010 Regulations had not expired.

(3) A local authority which has—

- (a) reduced the frequency of sampling for a parameter under paragraph 2(2) in Part 1 of Schedule 2 (monitoring) to the 2010 Regulations, or

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(1) S.I. 2016/411 (W. 129).

(2) S.I. 2013/235.

(3) S.I. 2010/994 (W. 99); as amended by S.I. 2011/14 (W. 7), S.I. 2013/235, S.I. 2013/1387, S.I. 2016/410 (W. 128) and S.I. 2017/506.



- (b) excluded a parameter from audit monitoring under paragraph 3(3) in Part 2 of Schedule 2 to the 2010 Regulations,

must upon the coming into force of these Regulations bring any such reduction or exclusion to an end, and instead begin to monitor in accordance with the provision made in Schedule 2 to these Regulations.

(4) A local authority may rely upon any data collected in the 36 month period ending with the day on which these Regulations come into force to justify any variation in monitoring under Part 4 of Schedule 2.

(5) Table 2 (prescribed performance characteristics for methods of analysis) in Schedule 4 remains in force until 23:59 on 31 December 2019 following which it is revoked for all purposes.

*Lesley Griffiths*

Cabinet Secretary for Environment and Rural Affairs,  
one of the Welsh Ministers

25 October 2017

**SCHEDULE 1** Regulations 2, 11, 12, 13, 18 and 19  
Concentrations or Values

**PART 1**  
Wholesomeness

**TABLE A:**  
**MICROBIOLOGICAL PARAMETERS**

<b>Parameters</b>	<b>Maximum concentration or value</b>	<b>Units of Measurement</b>
<b>Prescribed concentrations or values</b>		
<i>Escherichia coli</i> ( <i>E. coli</i> )	0	Number/100ml
Enterococci	0	Number/100ml
<b>In the case of water in bottles or containers:</b>		
<i>Escherichia coli</i> ( <i>E.coli</i> )	0	Number/250ml
Enterococci		Number/250ml
<i>Pseudomonas aeruginosa</i>	0	Number/250ml
Colony count 22°C	100	Number/ml

**TABLE B:**  
**CHEMICAL PARAMETERS**

<b>Parameters</b>	<b>Maximum concentration or value</b>	<b>Units of Measurement</b>
<b>Prescribed concentrations or values</b>		
Acrylamide <sup>(1)</sup>	0.10	µg/l
Antimony	5.0	µg/l
Arsenic	10	µg/l
Benzene	1.0	µg/l
Benzo(a)pyrene	0.010	µg/l
Boron	1.0	mg/l
Bromate	10	µg/l
Cadmium	5.0	µg/l
Chromium	50	µg/l
Copper	2.0	mg/l
Cyanide	50	µg/l
1,2 dichloroethane	3.0	µg/l
Epichlorohydrin <sup>(1)</sup>	0.10	µg/l
Fluoride	1.5	mg/l
Lead	10	µg/l
Mercury	1.0	µg/l
Nickel	20	µg/l
Nitrate <sup>(2)</sup>	50	mg/l
Nitrite <sup>(2)</sup>	0.5 (or 0.1 in the	mg/l

	case of treatment works)	
Pesticides <sup>(3)</sup> —		
	Aldrin	0.030 µg/l
	Dieldrin	0.030 µg/l
	Heptachlor	0.030 µg/l
	Heptachlor epoxide	0.030 µg/l
	Other pesticides	0.10 µg/l
	Pesticides total <sup>(4)</sup>	0.50 µg/l
Polycyclic aromatic hydrocarbons <sup>(5)</sup>		0.10 µg/l
Selenium		10 µg/l
Tetrachloroethene and Trichloroethene <sup>(6)</sup>		10 µg/l
Trihalomethanes: Total <sup>(7)</sup>		100 µg/l
Vinyl chloride <sup>(1)</sup>		0.50 µg/l

<sup>(1)</sup> The parametric value refers to the residual monomer concentration in the water as calculated according to specifications of the maximum release from the corresponding polymer in contact with the water. This is controlled by product specification.

<sup>(2)</sup> See also the nitrate-nitrite formula in regulation 4(1)(c).

<sup>(3)</sup> For these purposes “Pesticides” means:

- organic insecticides
- organic herbicides
- organic fungicides
- organic nematocides
- organic acaricides
- organic algicides
- organic rodenticides
- organic slimicides
- related products (inter alia, growth regulators) and their relevant metabolites, degradation and reaction products. Only those pesticides likely to be present in a given supply need be monitored.

<sup>(4)</sup> “Pesticides total” means the sum of the concentrations of the individual pesticides detected and quantified in the monitoring process.

<sup>(5)</sup> The specified compounds are:

- benzo(b)fluoranthene
- benzo(k)fluoranthene
- benzo(ghi)perylene
- indeno(1,2,3-cd)pyrene.

The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

<sup>(6)</sup> The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

<sup>(7)</sup> The specified compounds are:

- chloroform
- bromoform
- dibromochloromethane
- bromodichloromethane.

The parametric value applies to the sum of the concentrations of the individual compounds detected and quantified in the monitoring process.

**National requirements – Prescribed concentrations or values**

<b>Parameters</b>	<b>Maximum concentration or value</b>	<b>Units of Measurement</b>
Aluminium	200	µg/l
Colour	20	mg/l Pt/Co
Iron	200	µg/l
Manganese	50	µg/l
Odour	Acceptable to consumers and no abnormal change	
Sodium	200	mg/l
Taste	Acceptable to consumers and no abnormal change	
Tetrachloromethane	3	µg/l
Turbidity	4	NTU

**PART 2**

**Indicator Parameters**

**TABLE C:**

**Prescribed concentrations, values or states**

<b>Parameters</b>	<b>Maximum concentration or value</b>	<b>Units of Measurement</b>
Ammonium Chloride <sup>(1)</sup>	0.50 250	mg/l mg/l
<i>Clostridium perfringens</i> (including spores)	0	Number/100ml
Coliform bacteria	0	Number/100ml (Number/250ml in the case of water put into bottles or containers)
Colony counts	No abnormal change	Number/ml at 22°C
Conductivity <sup>(1)</sup>	2500	µS/cm at 20°C
Hydrogen ion	9.5 (maximum) 6.5 (minimum) (in the case of still water put into bottles or containers the minimum is 4.5)	pH value pH value
Sulphate <sup>(1)</sup>	250	mg/l
Total organic carbon (TOC)	No abnormal change	mgC/l
Turbidity <sup>(2)</sup>	1	NTU

<sup>(1)</sup> The water should not be aggressive.

<sup>(2)</sup> Only in the case of surface water or groundwater that has been influenced by surface water.

**PART 3**

**Radioactive substances parameters**

**TABLE D:**

**Prescribed values for radon, tritium and indicative dose of water intended for human consumption**

<b>Parameters</b>	<b>Maximum concentration or value</b>	<b>Units of Measurement</b>
Indicative dose (for radioactivity)	0.10	mSv
Radon <sup>(1)</sup>	100	Bq/l
Tritium (for radioactivity) <sup>(2)</sup>	100	Bq/l

<sup>(1)</sup> Enforcement action by the local authority is deemed justified on radiological protection grounds without further consideration where radon concentrations exceed 1,000 Bq/l.

<sup>(2)</sup> If tritium concentration exceeds its parametric value, an investigation (which may include analysis) of the presence of artificial radionuclides must be carried out.

## SCHEDULE 2

Regulations 2, 9, 18 and 26

## Monitoring

## PART 1

## Monitoring for Group A parameters

**Sampling**

1.—(1) A local authority must undertake monitoring for Group A parameters in accordance with this Part.

(2) “Monitoring for Group A parameters” means sampling for each parameter listed in column 1 of Table 1 in the circumstances listed in the corresponding entry for that parameter in column 2 of that Table, in order to—

- (a) determine whether or not water complies with the concentrations or values in Schedule 1;
- (b) provide information on the organoleptic and microbiological quality of the water; and
- (c) establish the effectiveness of the treatment of the water, including disinfection.

**Table 1****Group A parameters**

<b>Parameter</b>	<b>Circumstances</b>
Aluminium	If used as a water treatment chemical
Ammonium	If chloramination is used
<i>Clostridium perfringens</i> (including spores)	Where the water originates from, or is influenced by, surface waters
Coliform bacteria	In all supplies
Colony counts	In all supplies
Colour	In all supplies
Conductivity	In all supplies
<i>Escherichia coli</i> ( <i>E. coli</i> )	In all supplies
Hydrogen ion concentration	In all supplies
Iron	If used as a water treatment chemical
Manganese	Where the water originates from, or is influenced by, surface waters
Nitrate	If chloramination is used
Nitrite	If chloramination is used
Odour	In all supplies
<i>Pseudomonas aeruginosa</i>	Only in the case of water in bottles or containers
Taste	In all supplies
Turbidity	In all supplies

**Frequency of sampling**

2. Sampling for Group A parameters must be carried out at frequencies specified in Table 2.

**Table 2**

**Sampling frequency for Group A parameters**

<i>Volume m<sup>3</sup>/day</i>	<i>Sampling frequency per year</i>
≤10	1
> 10 ≤ 100	2
> 100 ≤ 1,000	4
> 1,000 ≤ 2,000	10
> 2,000 ≤ 3,000	13
> 3,000 ≤ 4,000	16
> 4,000 ≤ 5,000	19
> 5,000 ≤ 6,000	22
> 6,000 ≤ 7,000	25
> 7,000 ≤ 8,000	28
> 8,000 ≤ 9,000	31
> 9,000 ≤ 10,000	34
> 10,000	4 + 3 for each 1,000 m <sup>3</sup> /day of the total volume (rounding up to the nearest multiple of 1,000 m <sup>3</sup> /day)

**PART 2**

**Monitoring for Group B parameters**

**Sampling**

3.—(1) A local authority must undertake monitoring for Group B parameters in accordance with this Part.

(2) “Monitoring for Group B parameters” means sampling for each parameter listed in Part 1 or 2 of Schedule 1 (other than Group A parameters already being sampled under Part 1 of this Schedule)—

- (a) in order to provide information necessary to determine whether or not the private water supply satisfies each concentration, value or state specified in either of those Parts of that Schedule; and
- (b) if disinfection is used, to check that disinfection by-products are kept as low as possible without compromising the effectiveness of disinfection.

**Frequency of sampling**

4. Sampling for Group B parameters must be carried out at the frequencies specified in Table 3.

**Table 3**

**Sampling frequency for Group B parameters**

<i>Volume m<sup>3</sup>/day</i>	<i>Sampling frequency per year</i>
≤10	1
> 10 ≤ 3,300	2
> 3,300 ≤ 6,600	3
> 6,600 ≤ 100,00	4
> 10,000 ≤ 100,000	3 + 1 for each 10,000 m <sup>3</sup> /day of the total volume (rounding up to the nearest multiple of 10,000 m <sup>3</sup> /day)

> 100,000	10 + 1 for each 25,000 m <sup>3</sup> /day of the total volume (rounding up to the nearest multiple of 25,000 m <sup>3</sup> /day)
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### PART 3

Minimum frequency for both monitoring for Group A parameters and monitoring for Group B parameters for water put into bottles or containers

<i>Volume<sup>a</sup> of water produced in bottles or containers each day (m<sup>3</sup>)</i>	<i>Monitoring for Group A parameters: number of samples per year</i>	<i>Monitoring for Group B parameters: number of samples per year</i>
≤10	1	1
> 10 ≤ 60	12	1
> 60	1 for each 5 m <sup>3</sup> /day of the total volume (rounding up to the nearest multiple of 5 m <sup>3</sup> /day)	1 for each 100 m <sup>3</sup> /day of the total volume (rounding up to the nearest multiple of 100 m <sup>3</sup> /day)

<sup>a</sup> The volumes are calculated as averages taken over a calendar year.

### PART 4

Variation of monitoring requirements for Group A and Group B parameters

#### Variation of sampling frequency

5.—(1) A local authority may reduce the sampling frequencies required for a parameter (other than for *Escherichia coli* (*E. coli*)) under Part 1 or 2 of this Schedule provided that—

- (a) the results from samples taken in respect of that parameter collected at regular intervals over the preceding 3 years are all at less than 60% of the parametric value;
- (b) the results of a risk assessment are considered, and that risk assessment indicates that no factor can be reasonably anticipated to be likely to cause deterioration of the quality of the water for human consumption;
- (c) data collected in the course of discharging its monitoring obligations under this Part are taken into account; and
- (d) at least one sample is taken per year.

(2) A local authority may set a higher frequency for any parameter if it considers it appropriate taking into account the findings of any risk assessment.

#### Variation of parameters

6.—(1) A local authority may cease to monitor a parameter (other than *Escherichia coli* (*E. coli*)) otherwise required to be monitored under Part 1 or 2 of this Schedule provided that—

- (a) the results from samples taken in respect of that parameter collected at regular intervals over the preceding 3 years are all at less than 30% of the parametric value;
- (b) the results of a risk assessment are considered, and that risk assessment indicates that no factor can be reasonably anticipated to be likely to cause deterioration of the quality of the water for human consumption; and
- (c) data collected in the course of discharging its monitoring obligations under this Part are taken into account.



(2) A local authority may monitor for other properties, elements, organisms or substances not included as a parameter if it considers it appropriate taking into account the findings of any risk assessment.

**SCHEDULE 3**

Regulations 12 and 13

**Monitoring of radioactive substances****Radon**

1.—(1) In relation to the radon parameter in the radioactive substances parameters table, a local authority—

- (a) must ensure that a representative survey is carried out in accordance with sub-paragraph (2) to determine the likelihood of a private water supply failing to comply with the relevant parametric concentration or value specified in the radioactive substances parameters table; and
  - (b) must carry out monitoring where there is reason to believe, on the basis of the results of the representative surveys or other reliable information, including any risk assessment carried out in accordance with regulation 6, that the parametric value for the radon parameter laid down in the radioactive substances parameters table might be exceeded.
- (2) A representative survey must be designed in such a way—
- (a) as to be capable of determining the scale and nature of likely exposure to radon in water intended for human consumption originating from different types of groundwater sources and wells in different geological areas; and
  - (b) that underlying parameters, especially the geology and hydrology of the area, radioactivity of rock or soil, and well type, can be identified and used to direct further action to areas of likely high exposure to radon.

**Tritium**

2.—(1) In relation to the tritium parameter in the radioactive substances parameters table, a local authority—

- (a) must carry out monitoring where an anthropogenic source of tritium or other artificial radionuclides is present within the catchment area and it cannot be shown on the basis of other surveillance programmes or investigations, including any risk assessment carried out in accordance with regulation 6, that the level of tritium is below the parametric value listed in the radioactive substances parameters table; and
- (b) must carry out an investigation of the presence of other artificial radionuclides if the concentration of tritium exceeds the parametric value listed in the radioactive substances parameters table.

(2) Where monitoring is required by sub-paragraph (1)—

- (a) it must be carried out at the frequencies as set out for monitoring for Group B parameters in Table 3 in Part 2 of Schedule 2; or
- (b) it must (in the case of a private water supply falling within the scope of regulation 11(1)) be carried out at least every 5 years or more frequently if the risk assessment referred to under sub-paragraph (1)(a) shows this to be necessary.

**Indicative Dose**

3.—(1) In relation to the indicative dose parameter in the radioactive substances parameters table, a local authority must carry out monitoring where a source of artificial radioactivity or elevated natural radioactivity is present and it cannot be shown on the basis of other surveillance programmes or investigations, including any risk assessment carried out in accordance with regulation 6, that the level of indicative dose is below the parametric value listed in the radioactive substances parameters table.

(2) Where monitoring is required by sub-paragraph (1) in relation to artificial radionuclides—

- (a) it must be carried out at the frequencies as set out for monitoring for Group B parameters in Table 3 in Part 2 of Schedule 2; or
  - (b) it must (in the case of a private water supply falling within the scope of regulation 11(1)) be carried out at least every 5 years or more frequently if the risk assessment shows this to be necessary.
- (3) Where monitoring is required by sub-paragraph (1) in relation to a source of elevated natural radioactivity—
- (a) the local authority—
    - (i) may decide the frequency of monitoring in its area depending on the screening strategy adopted by the authority; and
    - (ii) must notify the Welsh Ministers in writing of its decision under sub-paragraph (i); and
  - (b) the frequency of monitoring decided under paragraph (a)(i) may vary from a single check measurement to the frequencies as set out for monitoring for Group B parameters in Table 3 in Part 2 of Schedule 2.
- (4) Where a local authority decides under sub-paragraph (3) that a single check measurement for natural radioactivity is appropriate, the local authority must carry out a further check if any change occurs in relation to the private water supply which is likely to influence the concentrations of radionuclides in the supply.

#### **Water treatment**

4. Where treatment to reduce the level of radionuclides in a private water supply has been undertaken, the local authority must monitor the supply for total indicative dose, radon and tritium in accordance with the provisions of this Part and the frequencies as set out for monitoring for Group B parameters in Table 3 in Part 2 of Schedule 2 to verify the continued efficacy of that treatment.

#### **Averaging**

5. Where a parametric value in the radioactive substances parameters table is exceeded in relation to a particular sample taken by a local authority, the Welsh Ministers must specify, by notice in writing to the local authority, the extent of resampling necessary to ensure that the measured values are representative of an average activity concentration for a full year.

**SCHEDULE 4**                      Regulations 13 and 14  
**Sampling and analysis**

**PART 1**

**General**

**Samples: general**

**1.**—(1) The local authority must ensure, so far as reasonably practicable, that the appropriate requirements are satisfied when—

- (a) taking, handling, transporting and storing a sample required to be taken in accordance with this Schedule;
  - (b) analysing such a sample; or
  - (c) causing any such sample to be taken, handled, transported, stored or analysed.
- (2) In this paragraph, “the appropriate requirements” means such of the following as are applicable—
- (a) the sample is representative of the quality of the water at the time of sampling;
  - (b) the person taking a sample is subject to a system of quality control to an appropriate standard checked from time to time by a suitably accredited body;
  - (c) the sample is not contaminated when being taken;
  - (d) the sample is kept at such a temperature and in such conditions as secure that there is no material alteration of the concentration or value for the measurement or observation of which the sample is intended;
  - (e) the sample is analysed as soon as reasonably practicable after it has been taken—
    - (i) by, or under the supervision of, a person who is competent to perform that task; and
    - (ii) with the use of such equipment as is suitable for the purpose;
  - (f) the collection and transportation of samples, or measurements recorded by continuous monitoring must be subject to a system of quality control to an appropriate standard checked from time to time by a suitably accredited body.
- (3) When undertaking the activity described in—
- (a) sub-paragraph (1)(a), the local authority must demonstrate compliance with any of EN ISO/IEC 17024, EN ISO/EIC 17025, or another equivalent standard accepted at international level;
  - (b) sub-paragraph (1)(b), the local authority must demonstrate compliance with EN ISO/EIC 17025 or another equivalent standard accepted at international level.
- (4) Implementation of the requirement in sub-paragraph (3)(a) may be delayed for a period of no more than 24 months beginning on the day on which these Regulations come into force.
- (5) In this paragraph, “suitably accredited body” means any person accredited by the United Kingdom Accreditation Service<sup>(1)</sup>.

**Analysing samples: microbiological parameters**

**2.** For each parameter specified in the first column of Table 1 in Part 2 of this Schedule the method of analysis is specified in the second column of that table.

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<sup>(1)</sup> See S.I. 2009/3155 for the appointment of the United Kingdom Accreditation Service as the national accreditation body.

### **Analysing samples: chemical and indicator parameters**

3.—(1) On or before 31 December 2019, the local authority may apply the method of analysis for chemical and indicator parameters in either sub-paragraph (3) or sub-paragraph (4).

(2) After 31 December 2019, the local authority must apply the method of analysis for chemical and indicator parameters in sub-paragraph (4).

(3) For each parameter specified in the first column of Table 2 in Part 2 of this Schedule the method is one that is capable of—

- (a) measuring concentrations and values with the trueness and precision specified in the second and third columns of that table, and
- (b) detecting the parameter at the limit of detection specified in the fourth column of that table.

(4) For each parameter specified in the first column of Table 3 in Part 2 of this Schedule the method is one that is capable of measuring concentrations equal to—

- (a) the parametric value with a limit of quantification of 30% or less of the relevant parametric value (as contained in Schedule 1), and
- (b) the uncertainty of measurement in the second column of that table.

(5) The method of analysis used for odour and taste parameters must be capable of measuring values equal to the parametric value with a precision of 1 dilution number at 25°C.

(6) For these purposes—

- (a) “limit of detection” is—
  - (i) three times the relative within-batch standard deviation of a natural sample containing a low concentration of the parameter; or
  - (ii) five times the relative within-batch standard deviation of a blank sample;
- (b) “precision” (the random error) is twice the standard deviation (within a batch and between batches) of the spread of results about the mean. Acceptable precision is twice the relative standard deviation. Further specifications are set out in ISO 17025;
- (c) “trueness” (the systematic error) is the difference between the mean value of the large number of repeated measurements and the true value. Further specifications are set out in ISO 17025;
- (d) “uncertainty of measurement” is a non-negative parameter characterising the dispersion of the quantity values being measured, based on the information used.

### **Authorisation of alternative methods of analysis**

4.—(1) The Welsh Ministers may authorise a method different from those set out in paragraph 3(2) or 3(3) if satisfied that it is at least as reliable.

(2) An authorisation may be time-limited and may be revoked at any time.

### **Sampling and analysis by persons other than local authorities**

5.—(1) A local authority may enter into an arrangement for any person to take and analyse samples on its behalf.

(2) A local authority must not enter into an arrangement under sub-paragraph (1) unless—

- (a) it is satisfied that the task will be carried out promptly by a person competent to perform it, and
- (b) it has made arrangements that ensure that any breach of these Regulations is communicated to it immediately, and any other result is communicated to it within 28 days.

## PART 2

### Analytical methods

**Table 1**

**Prescribed methods of analysis for microbiological parameters**

<i>Parameter</i>	<i>Method</i>
<i>Escherichia coli</i> (E. coli)	EN ISO 9308-1 or EN ISO 9308-2
Enterococci	EN ISO 7899-2
<i>Pseudomonas aeruginosa</i>	EN-ISO 16266
Colony count 22°C — enumeration of culturable microorganisms	EN ISO 6222
Colony count 36°C — enumeration of culturable microorganisms	EN ISO 6222
<i>Clostridium perfringens</i> (including spores)	EN ISO 14189

**Table 2**

**Prescribed performance characteristics for methods of analysis for chemical and indicator parameters: trueness, precision and limit of detection (on or before 31 December 2019)**

<i>Parameter</i>	<i>Trueness % of prescribed concentration or value or specification (except for pH)</i>	<i>Precision % of prescribed concentration or value or specification (except for pH)</i>	<i>Limit of detection % of prescribed concentration or value or specification (except for pH)</i>
Aluminium	10	10	10
Ammonium	10	10	10
Antimony	25	25	25
Arsenic	10	10	10
Benzene	25	25	25
Benzo(a)pyrene	25	25	25
Boron	10	10	10
Bromate	25	25	25
Cadmium	10	10	10
Chloride	10	10	10
Chromium	10	10	10
Colour	10	10	10
Conductivity	10	10	10
Copper	10	10	10
Cyanide <sup>(1)</sup>	10	10	10
1,2-dichloroethane	25	25	10
Fluoride	10	10	10
Hydrogen ion concentration pH (expressed in pH units)	0.2	0.2	
Iron	10	10	10
Lead	10	10	10
Manganese	10	10	10
Mercury	20	10	20
Nickel	10	10	10
Nitrate	10	10	10
Nitrite	10	10	10
Oxidisability <sup>(2)</sup>			
Pesticides and related products <sup>(3)</sup>	25	25	25
Polycyclic aromatic hydrocarbons <sup>(4)</sup>	25	25	25
Selenium	10	10	10

Sodium	10	10	10
Sulphate	10	10	10
Tetrachloroethene <sup>(5)</sup>	25	25	10
Tetrachloromethane	20	20	20
Trichloroethene <sup>(5)</sup>	25	25	10
Trihalomethanes:			
Total <sup>(4)</sup>	25	25	10
Turbidity <sup>(6)</sup>	10	10	10
Turbidity <sup>(7)</sup>	25	25	25

<sup>(1)</sup> The method of analysis should determine total cyanide in all forms.

<sup>(2)</sup> EN ISO 8476.

<sup>(3)</sup> The performance characteristics apply to each individual pesticide and will depend on the pesticide concerned. Values for the uncertainty of measurement as low as 30% can be achieved for several pesticides, higher values up to 80% may be allowed for a number of pesticides.

<sup>(4)</sup> The performance characteristics apply to the individual substances specified at 25% of the parametric value in Table B of Part 1 of Schedule 1.

<sup>(5)</sup> The performance characteristics apply to the individual substances specified at 50% of the parametric value in Table B of Part 1 of Schedule 1.

<sup>(6)</sup> The performance characteristics apply to the prescribed value of 4 NTU.

<sup>(7)</sup> The performance characteristics apply to the specification of 1 NTU for surface waters or ground waters influenced by surface water.

**Table 3**

**Method of analysis for chemical and indicator parameters: uncertainty of measurement<sup>(1)</sup>**

<i>Parameter</i>	<i>Uncertainty of measurement % of parametric value (except for pH)</i>
Aluminium	25
Ammonium	40
Antimony	40
Arsenic	30
Benzene	40
Benzo(a)pyrene <sup>(2)</sup>	50
Boron	25
Bromate	40
Cadmium	25
Chloride	15
Chromium	30
Conductivity	20
Copper	25
Cyanide <sup>(3)</sup>	30
1,2-dichloroethane	40
Fluoride	20
Hydrogen ion concentration pH (expressed in pH units)	0.2
Iron	30
Lead	25
Manganese	30
Mercury	30

Nickel	25
Nitrate	15
Nitrite	20
Oxidizability <sup>(4)</sup>	50
Pesticides <sup>(5)</sup>	30
Polycyclic aromatic hydrocarbons <sup>(6)</sup>	50
Selenium	40
Sodium	15
Sulphate	15
Tetrachloroethene <sup>(7)</sup>	30
Trichloroethene <sup>(7)</sup>	40
Trihalomethanes: total <sup>(6)</sup>	40
Total organic carbon (TOC) <sup>(8)</sup>	30
Turbidity <sup>(9)</sup>	30

<sup>(1)</sup> The uncertainty of measurement must not be used as an additional tolerance to the parametric values set out in Schedule 1.

<sup>(2)</sup> If the value of uncertainty of measurement cannot be met, the best available technique should be selected (up to 60%).

<sup>(3)</sup> The method of analysis should determine total cyanide in all forms.

<sup>(4)</sup> EN ISO 8476.

<sup>(5)</sup> The performance characteristics apply to each individual pesticide and will depend on the pesticide concerned. Values for the uncertainty of measurement as low as 30% can be achieved for several pesticides, higher values up to 80% may be allowed for a number of pesticides.

<sup>(6)</sup> The performance characteristics apply to the individual substances specified at 25% of the parametric value in Table B of Part 1 of Schedule 1.

<sup>(7)</sup> The performance characteristics apply to the individual substances specified at 50% of the parametric value in Table B of Part 1 of Schedule 1.

<sup>(8)</sup> The uncertainty of measurement must be estimated at the level of 3mg/l of TOC. CEN 1484 Guidelines for the determination of TOC and dissolved organic carbon must be used.

<sup>(9)</sup> The uncertainty of measurement must be estimated at the level of 1,0 NTU in accordance with EN ISO 7027.

## PART 3

### Monitoring for indicative dose and analytical performance characteristics

6. A local authority may use reliable screening strategies to indicate the presence of radioactivity in water intended for human consumption.

7. The strategies referred to in paragraph 6 may include screening for—

- (a) certain radionuclides or individual radionuclide; or
- (b) gross alpha activity or gross beta activity (where appropriate gross beta activity may be replaced by residual beta activity after subtraction of the K-40 activity concentration).

### Screening for certain radionuclides, or screening for an individual radionuclide

8. If one of the activity concentrations exceeds 20% of the corresponding derived value or the tritium concentration exceeds its parametric value listed in Part 3 of Schedule 1 an analysis of additional radionuclides is required.

9. A local authority must, in deciding which radionuclides require to be measured for each supply, take into account all relevant information about likely sources of radioactivity.



**Screening strategies for gross alpha activity and gross beta activity**

10. Subject to paragraph 11 the recommended screening levels are—

- (a) 0,1Bq/l for gross alpha activity; and
- (b) 1,0Bq/l for gross beta activity.

11. If the gross alpha activity exceeds 0,1Bq/l or the gross beta activity exceeds 1,0Bq/l, analysis for specific radionuclides is required.

12. The Welsh Ministers may set alternative screening levels for gross alpha activity and gross beta activity where it can be demonstrated by the local authority that the alternative levels are in compliance with an indicative dose of 0,1 mSv.

**Calculation of the indicative dose**

13. The indicative dose must be calculated from—

- (a) the measured radionuclide concentrations and the dose coefficients laid down in Annex III, Table A of Directive 96/29/Euratom(1) ; or
- (b) more recent information recognised by the Welsh Ministers, on the basis of the annual intake of water (730 l for adults).

14. Where the following formula is satisfied, it can be assumed that the indicative dose is less than the parametric value of 0,1 mSv and no further investigation is required—

**Derived concentrations for radioactivity in water intended for human consumption <sup>(1)</sup>**

Origin	Nuclide	Derived concentration
Natural	U-238 <sup>3</sup>	3,0 Bq/l
	U-234 <sup>3</sup>	2,8 Bq/l
	Ra-226	0,5 Bq/l
	Ra-228	0,2 Bq/l
	Pb-210	0,2 Bq/l
	Po-210	0,1 Bq/l
Artificial	C-14	240 Bq/l
	Sr-90	4,9 Bq/l
	Pu-239/Pu-240	0,6 Bq/l
	Am-241	0,7 Bq/l
	Co-60	40 Bq/l
	Cs-134	7,2 Bq/l
	Cs-137	11 Bq/l
	1-131	6,2 Bq/l

<sup>(1)</sup> This table allows only for the radiological properties of uranium, not for its chemical toxicity.

**Performance characteristics and methods of analysis**

15. For the following parameters and radionuclides, the method of analysis used must, as a minimum, be capable of measuring activity concentrations with a limit of detection specified below:

Parameters and radionuclides	Limit of detection (Notes 1,2)	Notes
Tritium	10 Bq/l	Note 3
Radon	10 Bq/l	Note 3
gross alpha	0,04 Bq/l	Note 4

(1) OJ No. L 159, 29.6.1996, p. 1, prospectively repealed and replaced by Directive 2013/59 Euratom (OJ L 13, 17.1.2014, p. 1) with effect from 6 February 2018.

gross beta	0,4 Bq/l	Note 4
U-238	0,02 Bq/l	
U-234	0,02 Bq/l	
Ra-226	0,04 Bq/l	
Ra-228	0,02 Bq/l	Note 5
Pb-210	0,02 Bq/l	
Po-210	0,01 Bq/l	
C-14	20 Bq/l	
Sr-90	0,4 Bq/l	
Pu-239/Pu-240	0,04 Bq/l	
Am-241	0,06 Bq/l	
Co-60	0,5 Bq/l	
Cs-134	0,5 Bq/l	
C2-137	0,5 Bq/l	
1-131	0,5 Bq/l	

Note 1: The limit of detection must be calculated according to the ISO standard 11929: Determination of the characteristic limits (decision threshold, detection limit, and limits of confidence interval) for measurements of ionising radiation — Fundamentals and application, with probabilities of errors of 1st and 2nd kind of 0,05 each.

Note 2: Measurement uncertainties must be calculated and reported as complete standard uncertainties, or as expanded uncertainties with an expansion factor of 1,96 according the ISO Guide for the Expression of Uncertainty in Measurement.

Note 3: The limit of detection for tritium and for radon is 10% of its parametric value of 100 Bq/l.

Note 4: The limit of detection for gross alpha activity and gross beta activities are 40% of the screening values of 0,1 and 1,0 Bq/l respectively.

Note 5: This limit of detection applies only to initial screening for indicative dose for a new water source; if initial checking indicates that it is not plausible that Ra-228 exceeds 20% of the derived concentration, the limit of detection may be increased to 0,08 Bq/l for routine Ra-228 nuclide specific measurements, until a subsequent re-check is required.

## SCHEDULE 5

Regulation 16

### Records

#### Initial records

1.—(1) A local authority must record the number of private water supplies in its area, and for each supply must record—

- (a) the name of the supply, together with a unique identifier;
- (b) the type of source;
- (c) the geographical location using a grid reference;
- (d) an estimate of the number of people supplied;
- (e) an estimate of the average daily volume of water supplied in cubic metres;
- (f) the type of premises supplied;
- (g) detail of any treatment process, together with its location

(2) It must review and update the record at least once a year.

(3) It must keep the record for at least 30 years.

**Additional records**

2.—(1) For each supply referred to in paragraph 1(1), the local authority must record, within 28 days of each of the following taking place—

- (a) a plan and description of the supply;
- (b) the monitoring programme for the supply;
- (c) the risk assessment;
- (d) a summary of the results of the risk assessment;
- (e) a summary of the reasons for a decision to reduce or exempt altogether the monitoring of a particular parameter under Part 4 of Schedule 2;
- (f) the date, results and location of any sampling and analysis relating to that supply, and the reason for taking the sample;
- (g) the results of any investigation undertaken in accordance with these Regulations;
- (h) any authorisation;
- (i) any notices served under section 80 of the Act, or regulation 20;
- (j) any action agreed to be taken by any person under these Regulations;
- (k) any request for the local authority to carry out sampling and analysis, undertake a risk assessment or give advice;
- (l) a summary of any advice given in relation to the supply.

(2) It must keep the risk assessment and records of sampling and analysis for at least 30 years, and all other records under this paragraph for at least 5 years.

**SCHEDULE 6**

Regulation 23

**Fees**

**Fee**

1. The local authority may charge a fee, payable on invoice, for the activities in the following table, and the fee is the reasonable cost of providing the service subject to the following maximum amounts.

<b>Service</b>	<b>Maximum fee (£)</b>
Risk assessment (each assessment):	
regulation 9 supply	700
regulation 10 and 11 supplies	300
Sampling (each visit) <sup>(1)</sup>	100
Investigation (each investigation):	250
Granting an authorisation (each authorisation):	100
Analysing a sample—	
taken under regulation 10 or 11:	25
taken during monitoring for	110
Group A parameters:	
taken during monitoring for	600
Group B parameters:	

<sup>(1)</sup> No fee is payable where a sample is taken and analysed solely to confirm or clarify the results of the analysis of a previous sample.

**Persons liable to pay**

2.—(1) Any person requesting anything under these Regulations is liable for the cost.

(2) Except where sub-paragraph (1) applies, fees are payable, as specified in the invoice, by the relevant person.

(3) Where more than one person is liable, in determining who is required to make payment the local authority—

- (a) may apportion the charge between them; and
- (b) must have regard to any agreement or other document produced to the local authority relating to the terms on which water is supplied.

**Explanatory Memorandum to The Private Water Supplies (Wales) Regulations 2017.**

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Cabinet Secretary/Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Private Water Supplies (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Lesley Griffiths AM,  
Cabinet Secretary for Environment and Rural Affairs  
30 October 2017

## **1. Description**

The Private Water Supply (Wales) Regulations 2017 will revoke and replace the Private Water Supply (Wales) Regulations 2010 transposing additional requirements of Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787 of 6 October 2015.

On 6 October 2015, Commission Directive 2015/1787 (“the 2015 Directive”) amended Annexes II and III of the Drinking Water Directive. The amendments made by the 2015 Directive need to be transposed in to National law by 27 October 2017.

The Regulations introduce new requirements for local authorities which will give them in the future an opportunity to monitor drinking water parameters at more appropriate frequencies. The regulations provides an option to perform the drinking water monitoring in a more flexible way, provided a risk assessment is performed ensuring full protection of public health. It follows the principle of ‘hazard analysis and critical control point’ (HACCP) used already in food legislation, and the water safety plan approach laid down in the WHO Guidelines for Drinking Water Quality. These amendments will allow a better and more problem-oriented monitoring of small water supplies. The new monitoring and control system allows to reduce unnecessary analyses and to concentrate on those controls that matter.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

Paragraph 3 of this Memorandum explains that these Regulations are made partly in reliance on section 2(2) of the European Communities Act 1972. By virtue of section 59(3) of the Government of Wales Act 2006 (“GoWA 2006”), the Welsh Ministers are to determine whether an instrument made in exercise of the section 2(2) powers is to be subject to the negative or affirmative procedure.

These Regulations are made to ensure correct transposition of the 2015 Directive and so there is little discretion involved. The Regulations also do not amend any provision of an Assembly Act or Measure. The Welsh Ministers have therefore determined that the negative resolution procedure is appropriate for making these Regulations.

The transposition deadline for the 2015 Directive is 27 October 2017.

## **3. Legislative background**

These Regulations are made by the Welsh Ministers in exercise of the powers conferred by—

- (i) section 2(2) of the European Communities Act 1972 (“the 1972 Act”), in relation to the Welsh Ministers’ designation in relation to the quality of water intended for domestic purpose or for use in a food production undertaking; and
- (ii) sections 67, 77(3) & (4) and 213 of the Water Industry Act 1991 (“the 1991 Act”).

Section 2(2) of the 1972 Act provides that Ministers may be designated to make provision for the purpose of implementing EU obligations, or for the purpose of dealing with matters arising out of or related to any such obligation. Section 59(1) of GoWA 2006 provides that section 2(2) may be used to designate the Welsh Ministers. The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to the quality of water intended for domestic purposes or for use in food production undertaking. The National Assembly for Wales was originally designated by means of The European Communities (Designation)(No 7) Order 2002 and those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to GoWA 2006.

The relevant functions of the Secretary of State under the 1991 Act were transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 as follows—

- Functions under section 67 were transferred for
  - a) the making of regulations concerning water supplied using the supply system of a water undertaker, in relation to the supply system of any water undertaker whose area is wholly or mainly in Wales; and
  - b) the making of regulations concerning water supplied other than using the supply system of a water undertaker, in relation to Wales, by article 2 of, and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999.
- Functions under section 77 were transferred in full.
- Functions under section 213 were transferred to the Assembly to the same extent as the powers, duties and other provisions to which that section applies were exercisable by the Assembly

The functions conferred on the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, GoWA 2006.

As outlined above, the Regulations are subject to the negative procedure.

#### **4. Purpose & intended effect of the legislation**

This instrument applies to Wales.

The objective of the Regulations is to include updated EU requirements for the risk assessment, sampling, monitoring and analysis of private water supplies in Wales.

officials are also taking the opportunity to clarify certain aspects of the 2010 Regulations.

Officials will consolidate the 2010 Regulations into new regulations, rather than amending regulations being issued.

The Private Water Supply (Wales) Regulations apply in Wales only.. Separate regulations are made in Scotland, England and Northern Ireland.

The Private Water Supply Regulations were first introduced in 1991 to provide a legislative framework for the quality of water intended for human consumption that is not supplied by water companies or water supply licensee(s). The rural nature of much of Wales means that many people rely on their own, private, water supplies. The 1991 Regulations were revoked and replaced by the Private Water Supply (Wales) Regulations 2010 (“the 2010 Regulations”), which transposed the requirements of Council Directive 98/83/EC on the quality of water intended for human consumption (known as the Drinking Water Directive).

It is estimated that over 87,000 people in Wales live or work in a premises supplied by a private water supply. In certain local authorities in Wales more than 10 per cent of the population may be using a private water supply rather than a mains supply.

The Council of the European Union adopted the amendments to Annexes II and III of the Drinking Water Directive on 6th October 2015.

The regulations update requirements for local authorities to monitor and carry out risk assessments.

The amendments provide an opportunity to monitor drinking water parameters at more appropriate frequencies. The new Annex II provides an option to perform the drinking water monitoring in around 100,000 water supply zones in Europe in a more flexible way, provided a risk assessment is performed ensuring full protection of public health. It follows the principle of ‘hazard analysis and critical control point’ (HACCP) used already in food legislation, and the water safety plan approach laid down in the World Health Organisation Guidelines for Drinking Water Quality.

These amendments will allow a better and more problem-oriented monitoring of all private water supplies. The amendments put in place criteria to ensure a consistent approach, to reduce unnecessary analyses and to concentrate on those controls that matter.

Annexes II and III to the Drinking Water Directive lay down the minimum requirements of the monitoring programmes for all water intended for human consumption and the specifications for the method of analysis of different



parameters.

Annex II to the Drinking Water Directive grants a certain degree of flexibility in performing the audit monitoring (group B parameters) and check monitoring (group A parameters), allowing for less frequent sampling under certain circumstances. The specific conditions to perform the monitoring of parameters at appropriate frequencies and the range of monitoring techniques need to be clarified in the light of scientific progress.

Since 2004, the World Health Organisation has developed the water safety plan approach which is based on risk assessment and risk management principles, laid down in its Guidelines for Drinking Water Quality<sup>1</sup>. Those Guidelines, together with standard EN 15975-2 concerning security of drinking water supply, are internationally recognised principles on which the production, distribution, monitoring and analysis of parameters in drinking water is based. Annex II of the Drinking Water Directive is therefore aligned to the latest updates of those principles, and our regulations will also need to reflect this alignment.

The relevant requirements in the regulations are set out below:

Regulation 6: Will require a local authority to carry out a risk assessment which meets EN15975 concerning guidelines for risk management around security of a drinking water supply. The Drinking Water Inspectorate's risk assessment tool will meet the above criteria.

Regulation 14 sets out the sampling and analysis requirements for a local authority. The amendments to the directive now require copper, lead and nickel samples to be taken as an unflushed sample.

Schedule 2: The tables detailing the monitoring requirements for local authorities have been updated to meet the new requirements of Annex II of The Drinking Water Directive.

The schedule also details the requirements for varying a sampling frequency or parameter on a private supply.

## **5. Consultation**

A consultation was published on 11 April 2017. The consultation was open for 12 weeks and closed on 12 July 2017. Details of the consultation undertaken are included in the RIA below.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

A private water supply is one which is not provided by a water company. About 1% of the population in England and Wales do not have a public supply of mains water to their home and instead rely on a private water supply. Mostly, but not exclusively, these occur in the more remote, rural parts of the country.

It is estimated that over 87,000 people in Wales live or work in a premises supplied by a private water supply. In certain local authorities in Wales more than 10 per cent of the population may be using a private water supply rather than a mains supply.

The Private Water Supply Regulations (Wales) 2017 are intended to safeguard users of a private water supply who may not benefit from the same stringent standards applied to drinking water available from a mains supplied source. The Regulations do not apply to single domestic dwellings, unless the owner/occupier requests a risk assessment.

Owners/users of private water supplies have responsibility under the private water supplies regulations to supply water that is wholesome and safe to drink.

Where a supply is identified as not being safe or wholesome then following an investigation, remedial actions may be necessary to meet the drinking water quality standards.

Businesses in Wales using a private water supply have an economic advantage over businesses using a mains supply, as they are not paying a metered water bill. The Welsh Government does not expect this advantage to come at the expense of the health and safety of the consumers of a private water supply.

## **Options**

**Option 1:** Do nothing – make no amendments to the Private Water Supplies (Wales) Regulations 2010.

**Option 2:** transpose new requirements without amending the fees schedule or minor changes to clarify certain aspects of the regulations.

The Regulations would be amended to meet the new requirements in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787 of 6 October 2015, by amending the Regulations to include the updated requirements of Annexes II and III.

The Fees schedule would be left as it is in the 2010 Regulations with no amendments.

Clarifications would not be made to the Regulations.

**Option 3:** Preferred option –as consulted on - transpose new requirements, amend fees in lines with updated fees table proposal and update regulations to ensure clarity.

The Regulations would be amended to meet the new requirements in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive

2015/1787 of 6 October 2015, by amending the Regulations to include the updated requirements of Annexes II and III.

The regulations would amend the fees schedule in line with the proposed fees table (see Annex 1) from the Drinking Water Inspectorate's research into fees.

The regulations would be amended to clarify certain aspects of the Regulations that have caused confusion in their interpretation in the past.

**Option 4:** transpose new requirements, amend fees schedule to remove the fees table and update the regulations to ensure clarity.

The Regulations would be amended to meet the new requirements in Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787 of 6 October 2015, by amending the Regulations to include the updated requirements of Annexes II and III.

The regulations would amend the fees schedule to remove the fees table, which sets maximum amounts for the local authorities to charge and instead insert a requirement for local authorities to cover their costs.

The regulations would be amended to clarify certain aspects of the Regulations that have caused confusion in their interpretation in the past in relation.

Respondents to the consultation expressed concerns about removing the fees table because it meant the risk assessments could potentially be used as an income generating mechanism for Local Authorities and it also reduced a supply owner's ability to plan for future fee payments. For these reasons, this option has been discounted and is not included in the assessment of costs and benefits.

## **Costs & benefits**

### **Option 1 (do nothing)**

#### **Costs**

Wales could face infraction from the EU if the new requirements of the Drinking Water Directive are not adhered to. Infraction would carry significant costs to the Member State. In this case, the UK Government would be fined and it is assumed that the costs would be passed on to the Welsh Government.

An applicable example of infraction occurred in 2012, involving Ireland's failure to regulate the installation and use of septic tanks. The European Court of Justice found that Ireland had failed to fulfil obligations on wastewater which is disposed of in septic tanks, threatening drinking water and putting human health at risk.

Ireland was fined a lump sum of €2m plus daily a charge of €12,000 until compliance was met. Ireland was also fined a further €1.5 million for failing to

comply with other regulations regarding Environmental Impact Assessments (EIAs).

However, the EU executive wanted to fine higher amounts, seeking a lump sum of €5.5m and plus a daily penalty of over €26,000 for the septic tanks infringement. They also pressed for around €4.4 million over the EIA issue. The court had issued lower penalties because ability to pay was diminished due to the economic difficulties Ireland was facing at the time. Given that the relatively healthier economic conditions that currently prevail, fines might not be softened if infraction occurred now.

Although the infraction example for Ireland is not identical to the infraction Wales could face, the fines incurred by Ireland provide a proxy for the possible costs to Wales. In paying the fines, recipients of public services would be adversely affected as the fines would have to be paid from the public purse.

### **Benefits**

There are no benefits identified with option 1.

**Option 2:** transpose new requirements without amending the fees schedule or clarifying the regulations.

Local Authorities have expressed concerns during the review of these regulations and during the consultation period that the current fees do not allow them to recoup the costs of complying with these Regulations. In practice this means that local authorities are not able to sufficiently resource themselves to carry out their duties in full.

The Drinking Water Inspectorate's annual report for 2016 noted that at present the statutory requirements of the Regulations are not being fully met by the local authorities with 32% of regulation 9 supplies not being sampled by LA's in 2016.

In 2016 the local authorities reported 2,744 private water supplies in Wales (excluding single domestic dwellings). Of these 1,448 supplies fell into the Regulation 9<sup>1</sup> category, and approximately 70% of the 1,448 supplies are used by the tourism and leisure sector and 20% serve food premises. (11.5% of private water supplies sampled in Wales during 2016 were of unsafe microbiological quality containing E.coli).

The lack of compliance creates a risk that members of the public will be exposed to water supplies that are a potential danger to human health on a more frequent basis.

### **Costs**

The changes reflecting the latest amendments to Drinking Water Directive are not expected to incur any additional costs to supply owners, as the

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<sup>1</sup> Large supplies and supplies used in a public building or a commercial activity

amendments allow for a more risk based approach to sampling and monitoring (which should reduce costs in the long term).

Research carried out by the Drinking Water Inspectorate indicated that a number of local authorities felt that the fees schedule as it stands does not provide a sufficient funding resource to carry out certain functions required by the Regulations. (An example being risk assessments which currently have a maximum level of £500 for risk assessments both Reg 9 and Reg 10<sup>2</sup> supplies.

The research highlighted that these two regulations had differing levels of complexity and that a case could be made to reduce the maximum fee for Reg 10 supplies and increasing the maximum fees for Reg 9 supplies {which tend to be more complex to risk assess due to their commercial nature}).

The fee schedule is not amended under this option and so is no additional cost to supply owners or any change in the fees received by Local Authorities. The following section sets out the existing fees and

### Risk Assessment Fees

Risk assessments are required by the regulations at least once every 5 years (or if the supply owner identifies a change which will impact on the supply)

Cost of RA	Change/ difference for supply owner
£500	0

- The DWI's research seemed to indicate that in general Regulation 9 supplies are large and more complex to risk assess than a Regulation 10 supply.
- At present there may be an element of cross subsidy with Regulation 10 supplies (shared domestic supplies) subsidising Reg 9 supplies.

### Investigation Fees

Investigations are carried out where a risk assessment or sample has identified a risk to human health in the supply. The cost indicated below is the current maximum cost that a local authority can charge for an investigation.

Cost of investigation	change	Estimated numbers affected
£100	0	24,130

- Investigations are only required where the local authority suspects or has evidence of an unwholesome supply (this can occur from LA's noting concerns from a risk assessment or from a failed water quality sample).

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<sup>2</sup> Small, shared domestic supplies

- Estimated numbers affected is taken from the Drinking Water Inspectorate data for investigations in Wales, who recorded 24,130 investigations in Wales.
- Local authorities have already expressed concerns on numerous occasions, that the current cost does not cover the actual cost of all investigations. As the current fee would cover less than a day of an officer's time, while a more complex investigation is normally expected to take approximately 2-3 days of an officer's time. So at present a number of investigations are carried out at a significant loss to the local authority.
- Local authorities are concerned that this is leading to the risk of insufficient investigations being carried out on suspected supplies, which may mean that if there is more than one issue contributing to a sample failure it may not always be identified as the local authority officer does not have sufficient time to investigate the supply in any detail. This in effect could lead to supply owners paying twice when a sample fails again at a later date due to additional unidentified risk factors which were not being picked up in the initial investigation, meaning that further investigations are carried out until supply samples become compliant.
- An insufficient investigation may also fail to identify continuing hazards to the water supply, continuing to put anyone using the supply at risk.

#### Monitoring and Analysis

Monitoring and analysis are carried out in line with the requirements in the schedules of the Regulations. For supplies of less than 10 m<sup>3</sup>/day this is carried out once a year. This then increases proportionally based on the volume of water used.

Cost of analysis	change	Estimated numbers affected
Check £100	0	2,744
Audit £500	0	2,744

#### Check

- The fees for analysis which tends to be carried out by commercial laboratories have remained the same since the Regulations were implemented in 2010.
- There has been no adjustment for inflation, so a number of local authorities are sending samples for analysis at a loss.

#### Audit

- Local authorities have expressed concerns that this is not sufficient to cover costs at present so they are running at a loss.
- Additional parameters were added to the Regulations in 2016 to meet the requirements of the Euratom Directive, however no adjustment was made to the fees at the time.

Local authorities will not have sufficient resource to carry out their duties in full, leading to risk of an increase in supplies that are a risk to public health.

## **Benefits**

Private water supply owners who tend to be located in more rural areas will not see an increase in costs of owning and maintaining a private water supply.

As with Option 3, this option will bring the Regulations in Wales into line with the latest EC Directive, removing the risk of infraction fines being imposed on the UK/Wales.

Compliance with the amendments to the current regulations would require private water supplies to be risk assessed, monitored, sampled and analysed as before, but will allow for local authorities to remove certain parameters from their assessments in the long run if they can provide sufficient evidence to the regulator confirming that a parameter is not a risk to a particular supply. This will potentially allow local authorities to reduce the burden of risk assessments, sampling and monitoring once sufficient evidence is gathered to rule out certain parameters being a risk to private water supplies.

## **Option 3 (preferred option)**

According to the Drinking Water Inspectorate's (DWI) 2016 report on Private Water supplies there are an estimated 14,981 private water supplies in Wales, of which 1,448 are large supplies used for supplying public buildings or for commercial purposes, 1,284 used as small shared supplies, 12 private distribution systems and 12,205 are to single private dwellings.

No monitoring of private supplies is required for single domestic dwellings not used for commercial purposes, unless the authority is requested to do so by the owner or occupier or the authority considers it is necessary to fulfil its general duty under section 77 of the Water Industry Act 1991.

Compliance with the amendments to the current regulations would require private water supplies to be risk assessed, monitored, sampled and analysed as before, but will allow for local authorities to remove certain parameters from their assessments in the long run if they can provide sufficient evidence to the regulator confirming that a parameter is not a risk to a particular supply. This will potentially allow local authorities to reduce the burden of risk assessments, sampling and monitoring once sufficient evidence is gathered to rule out certain parameters being a risk to private water supplies.

Additional amendments have been made to this version of the Regulations to clarify points where local authorities have interpreted the regulations differently and requested further guidance. This should make little material difference to how the local authorities carry out their duties as where the regulations were previously unclear, authorities would request further guidance and advice from the Drinking Water Inspectorate (the Drinking Water Regulator).

The fees table would also be amended to reflect the changes in costs to the local authorities since the regulations were initially brought into force in 2010.

**Costs**

The costs of the assessment would be recouped by the local authorities from the business (private water supply owner) involved.

The affected supplies would primarily be located in rural areas as they are more likely to be serviced by private water suppliers.

The changes reflecting the latest amendments to Drinking Water Directive are not expected to incur any additional costs to supply owners, as the amendments allow for a more risk based approach to sampling and monitoring (which should reduce costs in the long term).

*Sampling and analysis fees*

At present local authorities are already required to carry out risk assessments on relevant private water supplies to establish whether there is a significant risk of supplying water that would constitute a potential danger to human health. The new regulations do not change the required frequencies of these risk assessments.

The Private Water Supplies (Wales) Regulations 2010 set the current maximum fees chargeable by the local authorities (see Annex 1 for the original fees table and the proposed fees table) for a risk assessment for private water supplies at £500 with sampling costs of £100 per visit (analysis of samples can be anything from £25 to £500) and investigations contingent on a failed sample costing £100.

Remedial works to premises

If failures or risks are identified with the supply then the cost of remedial work that is necessary to the remove the threat would fall on affected supply owner.

This in turn could produce further costs if the supply is essential to a business, which would have to shut down temporarily whilst remediation takes place.

Risk Assessment Fees

Risk assessments are required by the regulations at least once every 5 years (or if the supply owner identifies a change which will impact on the supply)

Cost of RA	change	Numbers affected by change	Est cost per year to each supply	Change in total risk assessment fees per annum
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Reg 10 <sup>3</sup> = £300	Decrease of £200	1,284	£40 saving	-£51,360
Reg 9 <sup>4</sup> = £700	Increase of £200	1,448	£40 increase	£57,920

- An addition of £40 year per supply for Regulation 9 (commercial) supplies. .
- Shared supplies, which tend to be domestic set ups would make a saving of £40 per year per supply.
- Shared supplies which tend to be made up of domestic dwellings will no longer be cross subsidising commercial supplies.

## Investigations

Investigations are carried out where a risk assessment or sample has identified a risk to human health in the supply. Last year in Wales there were 24,130 investigations carried out<sup>5</sup>.

Cost of investigation	change	Estimated numbers affected	Est additional cost to supply owners per year <sup>6</sup>
£250	£150	24,130	£3,619,500

- The increase of fee is a maximum amount that the supply owner can be charged, however the regulations do make it clear that local authorities should only be covering the cost to themselves of each investigation, so we would expect a number of these investigations not to require the maximum fee of £250.
- The maximum increase of £150 per supply will only apply to supplies which local authorities believe or have evidence of being unwholesome (and which require more time during the investigation).
- The additional amount will allow local authorities to recover costs of carrying out an investigation based on an assumption that an investigation can take two working days to complete.
- Although there is a proposed increase on the supply owner, this cost is generally avoidable, by a supply owner complying with local authority advice in relation to management and treatment of a private water supply. The increased cost may help to incentivise better supply management, which will have public health benefits to those using the supply.

<sup>3</sup> Regulation 10 applies to all supplies other than those where water from a public supply is further distributed and where water is used for a commercial activity or to the public, or where it supplies >10m<sup>3</sup> per day (Regulation 9).

<sup>4</sup> Regulation 9 Regulation 9 applies to all private supplies where the water:

(a) Supplies an average daily volume of water of 10m<sup>3</sup> or more for domestic purposes. (Note. where volume cannot be ascertained this equates approximately with 50 persons or more); or

(b) Supplies water to premises where the water is used for a commercial activity or to public premises.

<sup>5</sup> Local authorities must provide the DWI with data on investigations carried out, each year.

<sup>6</sup> Based on the assumption that every supply requires the full £250 investigation cost and not taking into account the cost saving of a number of supplies not requiring repeat investigations.

- The increase in fee allows a local authority to investigate the failure thoroughly and provide informative advice to avoid further failures on the supply in question in the future.
- The increase in fee should mean that a supply owner will not be subject to as many separate investigations from a local authority, as the authority will have more time to establish the causes of issues in a water supply.
- The estimated additional cost on all supply owners of £3,619,50 does not take into account the sliding scale of investigation fees (with some supplies only needing minimal investigations so continuing to have investigation charges that are under £250).
- The estimated additional cost has also not taken into consideration the potential saving to supply owners from repeat investigation charges if the local authority is able to identify the causes of quality issues with the supply during an earlier more detailed investigation.

### Monitoring and Analysis

Monitoring and analysis are carried out in line with the requirements in the schedules of the Regulations. For supplies of less than 10 m<sup>3</sup>/day, this is carried out once a year. This then increases proportionally based on the volume of water used.

Cost of analysis	change	Estimated numbers affected	Estimated additional cost to supply owners per year
Check £110	£10	2,744 <sup>7</sup>	£27,440
Audit £600	£100	2,744	£274,400

#### Check

- An increase to £10 would account for laboratory analytical costs increase by 8% since 2010 (calculation used by the DWI economist and research)

#### Audit

- Increasing the maximum cost would cover the vast majority of circumstances. The additional cost would also include sampling accreditation (over 3 years), inflation, radioactive substances (where risk is identified).
- Although there is an increase in both sets of fees it is also worth noting that the Regulations have changed to allow samples and analysis to be dropped for certain parameters if the authorities have sufficient data from previous samples to discount the parameters risks. Over the long run this should allow for a number of supplies to benefit from reduced fees on check and audit monitoring.

<sup>7</sup> Based on the number of recorded reg 9 and 10 supplies in the DWI's drinking water quality report for Wales 2016.

The changes to the fees will, in most cases, increase the costs incurred by supply owners for the risk assessment and monitoring work. In total, the additional cost to supply owners is estimated to be £3,927,900 per annum, with the majority of this cost associated with investigative work where a risk to human health has been identified. There will be a corresponding increase in the fees received by Local Authorities, with the fees better reflecting the cost of the work undertaken. The net impact of the amendments to the fees table is therefore zero.

### ***Benefits***

Making the Regulations will ensure compliance with the latest EC Directives and remove the risk of infraction fines being imposed on the UK/Wales.

The amendments will also allow for local authorities to reduce the sampling and monitoring of certain parameters once there is sufficient evidence to discount a risk of certain parameters from a particular water supply. This will mean that in the long run supply owners should benefit from reduced monitoring and sampling requirements on certain parameters, as the Regulations will move to a more risk based approach.

#### *Public health benefits*

According to the Drinking water Inspectorate's 2016 drinking water report 5.2% of tests on private water supplies failed to meet water quality standards specified by the Drinking Water Directive. Of these failures 11.5% of samples contained E.coli and 11.3% contained Enterococci in Wales, which are failures related to faecal contamination. Almost 3 quarters of the supplies failing were recorded as large supplies or supplies to commercial or public premises, where those accessing the water for use have no power to safeguard themselves against the risks from the supply.

Increasing the fees will allow for the local authorities to continue to resource the risk assessing, monitoring, sampling and analysis of these supplies, which ensures that supplies that are a risk to human health are identified and investigated with remediation measures put in place.

Without sufficient fees in place it is likely that local authorities will try to prioritise their supplies based on the resource available, which would mean more supplies that are a risk to public health not being identified or remediated.

### **Summary of the preferred option**

Transposing the amendments to the Drinking Water Directive by amending Private Water Supplies (Wales) Regulations 2010 and increasing the fees (option 3) is the preferred option due to a range of factors.

Infraction could occur from non-compliance, which would impose significant costs in terms of fines to the member state. These costs would be avoided through transposing the Directive.

There would be slightly increased costs incurred by Welsh businesses for risk assessments, monitoring, sampling and analysis of their private water supplies. However in the long run there is the opportunity for sampling, monitoring and analysis costs to reduce, once a local authority has sufficient evidence to discount certain parameters as a risk to a supply.

There are potential public health benefits associated with option 3. Private water supplies continue to be a higher risk to public health than mains supplied water. With a number of water borne illnesses potentially occurring from a poorly managed supply.

Therefore option 3 is the preferred option as it would continue to allow local authorities to deliver public health benefits with sufficient resource to carry out their duties, whilst incurring lower costs relative to the 'do nothing' option.

## **Consultation**

Officials attend the Water Health Partnerships Private Water Supply Task and Finish Group (which is comprised of local authority environmental health officers, who apply the regulations, Welsh Government, Public Health Wales and the Drinking Water Inspectorate). Between October 2015 and April 2017 officials have discussed the proposed changes to the Regulations at the task and finish group as a rolling agenda item, as any changes to the Regulations would directly impact members of the task and finish group.

Officials publically consulted on the draft Regulations and amendments to the fees for 12 weeks between 11 April 2017 and 12 July 2017. 24 Responses were received from a combination of individuals, local authorities, health bodies and arms length government organisations.

A summary of the out come of the consultation can be found at annex 2 (Welsh Government Summary of Responses)

The consultation specifically highlighted 3 fees options:

Option 1: no change

Option 2: amended fees table

Option 3: uncapped fees

Option 2 received the most support with local authorities noting the requirement for more funding to cover costs. This is covered in more detail in the summary of responses at annex 1. This reflects the preferred option for the new regulations.

## Annex 1: Fees Table

### Original fees table:

Service		Fee
Risk Assessment (each Assessment)		£500
Sampling (each visit)		£100
Investigation (each investigation)		£100
Granting an authorisation (each authorisation)		£100
Analysing a sample		
	Taken under Reg 10	£25
	Taken during check monitoring	£100
	Taken during audit monitoring	£500

### Proposed amended table:

Service		Maximum fee (£)
Risk assessment (each assessment):		
	regulation 9 supply	700
	regulation 10 and 11 supplies	300
Sampling (each visit) <sup>a</sup> :		100
Investigation (each investigation):		250
Granting an authorisation (each authorisation):		100
Analysing a sample—		
	taken under regulation 10 or 11 <sup>8</sup> :	25
	taken during monitoring for Group A parameters:	110
	taken during monitoring for Group B parameters:	600

<sup>8</sup> Regulation 10 has been split a bit further into a regulation 11, to allow for clarification on tenanted properties, which have previously been unclear in previous versions of the regulations.

## **Annex 2: summary of responses:**

### **Introduction**

The “Review of Private Water Supplies (Wales) Regulations 2010” consultation was launched on the 11 April 2017 and was open for responses until 12 July 2017. The consultation was split into 4 parts, dealing with mandatory European Drinking Water Directive requirements, amendments to clarify certain sections of the Regulations, amendments to the fees schedule and future policy direction for private water supplies and the Regulations.

A total of 15 questions were set within the consultation and an online response form was also provided for ease of email return.

Below is a summary of responses, organised into responses for the different parts of the consultation:

Part 1: Transposition of the Drinking Water Directive

Part 2: additional amendments

Part 3: potential changes to the Regulations (Fees Schedule)

Part 4: Future changes to Regulations and additional issues raised during pre consultation discussions (future policy on private water supplies).

### **Responses**

In total 24 responses were received for this consultation. The responses were received by a combination of email responses and online consultation response form submissions. The responses represented organisational groups as follows:

- Public sector bodies and group responses (not including specific local authority responses) 6
- Local authority responses 6
- Private individual responses 7
- Agricultural union responses 1
- Private representative organisation responses 2
- Public health group responses 1
- Charity responses 1

## ***Part 1: Transposition of the Drinking Water Directive***

In October 2015 the European Commission brought into force updates to Annexes II and III of the Drinking Water Directive, with a requirement for member states to transpose the amendments by 27 October 2017.

Part one of the consultation detailed the amendments to the Regulations required to ensure that the Regulations reflect updates in the Drinking Water Directive.

### **Question 1: are there any aspects of the new requirements that you require further clarity?**

This question was intended to capture only comments in relation to the new requirements of the Drinking Water Directive detailed in section 1.

There were 13 responses to this question.

A number of respondents (7) used this section to call for further clarity in relation to exemptions in Regulation 3 and the definition of tenancies in Regulation 10 (8 respondents).

These responses will be considered under the relevant consultation questions, further on in the summary of responses.

One respondent seeks further clarification in relation to accreditation required for sampling, transport and analysis of drinking water within the scope of the Regulations.

The Welsh Government considered this issue and following further engagement with the local authorities. The Welsh Government will commission a training session for the local authorities, to share the Drinking Water Inspectorate's (DWI) Guidance documents and best practice in relation to Risk Assessments, sampling and Analysis within the scope of the Regulations.

Two respondents called for further clarification regarding how the fees are applied to supply owners in different circumstances.

The Welsh Government will continue to work with the DWI and local authorities to ensure that there is comprehensive guidance in the application of fees and that local authorities publish the fees breakdown.

## ***Part 2: additional amendments***

**Question 2: do you have any comments in relation to widening the existing exemption in Regulation 3 for crop washing so that it covers water used in any food production process, so long as the wholesomeness of the foodstuff is not affected.**

There were 13 responses to this question.

Seven of the responses noted that Regulation 3 seems to overlap food production legislation, expressing concern that if not worded carefully this regulation may undermine or conflict food legislation.

Six of the respondents were in support of the widening of the exemption of Regulation 3, three of those in support further caveated this on the proviso that it did not compromise existing food legislation and that the Food Standard Agency (FSA) was satisfied with any proposed exemptions.

The FSA's response was in support of this regulation as long as any changes do not compromise the requirements of Regulation 852/2004 (specifically Annex I Part A (II) and Annex II Chapter II, III and VII).

Several respondents from local authorities also expressed a desire to see more input from the FSA where LA's were trying to determine issues around this Regulation as well as clarification on how a decision is made and who makes the decision on this exemption.

Respondents from local authorities also felt it would be beneficial to have their officers trained and accredited in Hazard and Critical Control Point (HACCP).

The Welsh Government will ensure that the wording around regulation 3 is not ambiguous or in conflict with the regulation 852/2004.

The Welsh Government will work with the DWI to ensure that the DWI's guidance to local authorities gives a clear decision making process for this regulation.

The Welsh Government would also encourage local authorities to ensure that the officers with responsibility for private water supplies are HACCP trained.

**Q3. Do you have any comment on the types of tenancies that we plan to exclude through the Drinking water Inspectorates guidance?**

There were 14 responses to this question.

Seven of the respondents (mainly local authorities) suggested clarifying the criteria for a tenancy within the Regulations as "whether rent is paid". Six respondents suggested cross referencing the tenancy definition with relevant housing legislation in Wales.



Seven responses (from a combination of LA's, health bodies and CLA and FUW) noted that there should not be any exclusions if the regulations were there to protect public health and all tenancies should be offered an equal measure of protection from the Regulations. Two responses (one local authority and one personal response) were supportive of the exclusions proposed in the consultation. One response felt that landlords and businesses should be excluded from the Regulations if they had their own risk assessment/monitoring and sampling process in place.

A number of responses also suggested that closer working between local authority officers carrying out duties in relation to private water supplies and officers dealing with housing inspections would be beneficial.

The Welsh Government will look to align the definition of tenancy with that given in Welsh housing legislation and will ask the DWI to provide further direction within their guidance for clarity.

**Q4: do you have any comments in relation to the requirement to undertake a risk assessment for new supplies?**

There were 16 responses to this question.

Six respondents saw the advantages of using this regulation to ensure that commercial/ regulation 9 supplies are assessed before use.

A number of respondents cautioned this approach on single domestic dwellings, commenting that it was not clear if they were included in this regulation.

A number of respondents were keen to see if something could be added to the planning application process to identify and flag where there was an intention to use a private supply, in order to allow the relevant local authority officers to assess this information in a timely manner.

Six respondents felt that if the supplies were in relation to food then they needed to follow HACCP principles and receive validation before coming into use (or following a period of non use).

Three responses were completely against a risk assessment being carried out prior to a new supply being brought in, as they felt that those bringing in new supplies already follow good practice in respect of design, infrastructure and building, and that this requirement would duplicate work already carried out by a supply owner.

The Welsh Government notes this comment but also notes that in the DWI's annual reports, the water quality failure rate of private water supplies is consistently considerably higher than for mains provided supplies, with 5.2% of private water supplies failing to meet national standards. In 2016 187 private water supplies in Wales were recorded as a potential danger to human health, with local authorities serving Regulationn18 notices on the supplies, of these failures 70% of them were large supplies or supplies to commercial or public premises. This seems to indicate that a number of private water supplies are not following good practice in relation to design, construction and management.

A number of respondents were concerned that local authorities may not have the resource to carry out this regulation in a timely manner, and called for the Welsh Government or DWI to produce a code of practice to establish prioritisation regarding risk assessment and sampling of private water supplies.

Concerns were also expressed that the lack of legal obligation on the supply owner to declare their supplies makes the task more challenging for local authorities.

The Welsh Government will ensure that the wording of the regulation and guidance makes it clear that this regulation is in relation to regulations 8, 9 and 10 supplies. The Welsh Government will discuss with the Drinking Water Inspectorate whether their guidance can provide some direction to local authorities in relation to prioritisation.

### ***Part 3: potential changes to the Regulations (Fees Schedule)***

#### **Q5: Do you have any comment in relation to the proposed amendments to the fees schedule?**

There were 17 responses to this question.

Two respondents were content with the proposed new fees table. Eight respondents noted that the increase in fees was justifiable but questioned whether the increase would cover costs in all cases. The eight respondents also called for a fees toolkit as used in similarly regulated areas such as food.

Four respondents felt that the proposed amendments were not acceptable. The main comment for these concerns was that the fees impose a cost on supply owners who do not have an option to move to a mains supply and have no other method of maintaining their supply other than through compulsory legislation. Respondents felt there should be a way of risk assessing and monitoring their own supplies and self declaring to local authorities.

The Country Land and Business Association stated that every effort should be made to keep costs as low as possible whilst it is mandatory to carry out this work.

**Q6: do you feel that an upper limit for fees should be removed instead of fees amendments?**

There were 16 responses to this question.

Of the 16 responses only one respondent was in favour of removing the upper limit on the fees on the understanding that the fees should be self limiting.

Respondents believe that a cap on the fees should remain in place for the following reasons:

- It gives a cost certainty to those requiring risk assessment and monitoring.
- The cap allows the local authority and supply owner to build an element of trust in the regulatory relationship, which may be lost if supply owners are suspicious over the costs being charged in an individual authority.
- Concern that if the cap was removed the fees could become unregulated and unlimited and fees may be used to generate income rather than recover costs.

Seven respondents agreed with the cap, but expressed a desire to see an element of flexibility around 'unforeseen circumstances' such as certain parameters costing more to test.

Two responses were completely against the principles of fees in the first place cap or no cap.

**Q7: Do you envision any issues with this as a potential approach?**

There were 15 responses to this question.

Eight responses highlighted concern that removing a cap or non specific wording on this regulation would allow local authorities to use this regulation as a tool to raise income for the local authority.

Seven respondents noted that there are already existing challenges regarding non payment.

Two respondents noted that there would be a higher risk of owners not declaring their supplies if they saw the fees as unreasonable, and also noting that charging fees is counter productive to ensuring self declaration of supplies.

Two responses were concerned that this could lead to inconsistency of what is seen as a 'realistic cost' by different local authorities, and that LA's may apply an over cautious approach resulting in additional costs. There was also concern that the interpretation of 'reasonable' could lead to legal challenges if supply owners did not agree with a local authority's interpretation.

Concern was also raised the more remote supplies may suffer from higher costs with vulnerable rural communities facing higher costs for service provision needs out side of their control.

Following the consultation responses the Welsh Government will implement the proposed fees table rather than removing the cap. The Welsh Government will ask the DWI to provide detailed guidance on how the fees are to be applied and to investigate whether a fees toolkit can be developed for the local authorities to use.

The Welsh Government reminds the local authorities that they have a duty to publish their fees so that supply owners can see what their individual local authority charges.

The Welsh Government will also investigate options available to offset some of the costs in relation to fees. However the Welsh Government also notes that private water supply owners using their water for commercial purposes have the economic advantage of not paying water bills.

#### *Part 4: Future changes to Regulations and additional issues raised during pre consultation discussions (future policy on private water supplies).*

#### **Q8: do you have any comments in relation to the possibility of exploring options around identifying and recording all private water supply sources in Wales?**

There were 18 responses to this question.

Seven respondents were completely supportive of the idea of exploring options to identify all private water supplies, noting that it would have public health benefits and assist local authorities in identification and notification of supplies at risk following pollution or contamination events. Four respondents noted that greater knowledge of private water supplies in Wales would assist in further understanding issues around water sufficiency and abstraction.

Six respondents were supportive of the idea but questioned whether local authorities currently have the resource or ability to manage private water supplies already identified.

Four respondents were against any further work in identification of private water supplies due to concerns regarding the cost and resource of implementing anything with no defined benefit.

A number of respondents suggested looking in to placing a requirement in planning applications to declare how water will be supplied to a development as one method of increasing the data held on private water supplies and also to see if there was a method of declaring supplies when ownership of property changes.

**Q9: do you consider it appropriate to look at a requirement to register all Private Water Supplies in Wales either within this legislation or through new legislation if required.**

There were 18 responses to this question: 10 in favour, 5 not in favour and 3 neutral responses.

Reasons given for the positive responses include:

- Identifying previously unknown private water supplies (especially commercial ones)
- Improving public health and allowing the FSA and LA's to look at planning inspection programmes accordingly
- Ability to identify supplies at risk from pollution or contamination
- Ability to understand all water abstraction in a water resource zone.

Reasons given for the negative responses include:

- Unnecessary bureaucracy and cost
- LA's already holding registers for the supplies they check
- Not seeing the tangible link between a register and resolving problems with supplies as they happen any more effectively

Respondents noted that there would potentially be a heavy reliance in information being provided by users and that any approach would require further resourcing and enforcement to ensure that information was up to date and accurate.

Four respondents also noted that if a requirement was placed on borehole drillers to register all boreholes with the local authority it would be easier to keep a register accurate.

**Q10a: Do you have any thoughts in relation to the possibility of developing a Wales wide data base to hold information of Private water supplies?**

**10b: if a database holding information on all private water supplies in Wales was developed who do you feel would be best placed to hold over all ownership of it?**

There were 19 responses to question 10a, 14 positive and 5 negative.

Supportive respondents saw possible advantages including:

- A streamlining of data and formats between the local authorities
- Access to cross boundary risk assessments
- Identification of at risk groups from pollution or sufficiency issues and implications of abstraction
- Ability to identify unknown commercial premises on a private water supply
- A Wales wide data base would breakdown the LA based boundaries which do not apply to changes in environmental factors) i.e. land use, geology...) – helping to improve the understanding between water quality, water security and water health.

- Assist in future land use policy and planning
- Potential to reduce the burden of responding to FOI and EIW requests and allowing wider access to information for relevant stakeholders

The respondents who opposed the idea of a database expressed concerns in relation to bureaucracy, costs and how the information would be used.

For question 10b the dominant responses was for a lead local authority to be resourced to develop and hold a Wales wide data base. Some respondents suggested an approach similar to that of Rent Smart.

Other responses included a suggestion the Natural Resource Wales (NRW) hold the information due to overlap with abstraction information and septic tank information held by NRW.

Two responses felt this should sit with the DWI as it is felt that they are the relevant regulator for drinking water.

Three responses felt that the data base should be developed in partnership allowing certain organisations such as NRW and the food regulators relevant access to the information.

**Q11: do you have any comments regarding proposals to look at a separate piece of legislation placing a requirement on commercial and new suppliers using register treatment installers and borehole drillers.**

There were 20 responses to this question: 12 positive, 3 negative and 5 neutral responses.

Some of the responses highlighted confusion in understanding existing legislation and regulation in place in relation to boreholes.

17 respondents could see possible advantages with a legislative approach but expected certain caveats to be considered in the process including:

- A quality assurance scheme for installers and drillers (like the WRAS plumbing scheme) to ensure that the borehole/ instillation of the supply was of an acceptable quality).
- If this could be linked into the planning process, to ensure that supplies are quality assured in good time before being brought into use.
- On the proviso that existing guidance and good practice is updated and existing legislation on this enforced more due to examples of poor instillations.

2 respondents were not aware of any evidence to support a legislative requirement on registration of boreholes and called for more evidence to be collected in order to understand the issue before potentially adding something which could prove to be costly to those requiring boreholes for new supplies.

Those against any further legislation expressed strong concerns that the cost would fall to the supply owners, who in many cases have no other option other than to be on a private water supply.

The Welsh Government has noted the responses to questions 8 through to 11 and will take these responses into consideration before taking any steps to address these issues.

**Q12: we should be grateful for any general comments you wish to make on the proposals for the draft private water supplies (Wales) regulations 2017.**

There were 15 additional comments in relation to the Regulations.

Six respondents have asked for further guidance to be provided in relation to regulation 11 and monitoring for radioactive substances.

A number of respondents noted that they would like to see a consistent approach carried out by all local authorities in Wales. They noted that fees and certain regulations are approached differently by each local authority.

Three responses note that exempting single domestic dwellings still raises discussion and trying to explain the logic of this exclusion to the public can be difficult. One response noted that the majority of people using a private supply in Wales would be from a single domestic dwelling, so the regulations do not adequately protect the bulk of people potentially at risk from a private water supply.

A number of responses from personal respondents indicated hostility to the Regulations and the Government's intervention into private water supplies, expressing concerns over the escalating costs of supplies complying with the Regulations.

Some respondents suggested looking at more voluntary approaches or allowing the supply owners to demonstrate their supplies are wholesome to the local authorities

**Q13: We would like to know you're views on the effects that the Private Water Supply Regs would have on the Welsh language, specifically on:**

- i) Opportunities for people to use Welsh and
- ii) Treating the Welsh language no less favourably than English.

**What effects do you think there would be? How could the positive effects be increased, or negative effects be migrated?**

**Q14: please also explain how you believe the proposed regulations could be formulated or changed so as to have:**

- i) Positive effects or increased positive effects on opportunities for people to use the Welsh language and on

- treating the Welsh language no less favourably than the English language.**
- ii) **No adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

There were 6 responses to questions 13 and 14 which respondents linked together in their responses.

Three respondents noted that private water supplies tend to have a rural nature, potentially meaning a higher number of Welsh speakers would be impacted by the Regulations.

Respondents noted the importance of the regulations, guidance, reports and any further public discussion material regarding private water supplies being provided in both English and Welsh.

One respondent noted the importance of local authority officers dealing with private water supplies being able to communicate in Welsh.

The Welsh Government produces these regulations in both English and Welsh.

The Welsh Government will ensure that when there is public engagement in relation to developing further policy and regulations which will impact private water supplies opportunities are given for consideration in both English and Welsh.

**Q15: We have asked a number of specific questions. If you have any related issues which have not specifically been addressed please use this space to report them**

There were 4 responses to this question.

One respondent would like to see more done in terms of how private water supply owners can be encouraged to plan for supply interruptions and managing them, including clear information and processes on who to contact to ask for help from.

One response wanted correspondence from local authorities to be standardised and clear, as they had noted that a number of supply owners had received correspondence which seemed to give misleading information in relation to single domestic supplies.

The issue of grants being made available to assist supply owners in upgrading their private water supplies was raised by one respondent.

2 respondents requested further clarification around the wording of specific regulations.



The Welsh Government also noted a number of responses questioning the need to amend Regulations which relate to a European Directive, following the referendum to leave Europe.

The Welsh Government is committed to maintaining a high standard of drinking water quality in Wales and has committed within the Water Strategy for Wales to ensure everyone in Wales has access to clean, wholesome drinking water. The Drinking Water Directive itself is based on recommendations made by the World Health Organisation in relation to drinking water quality. The Drinking Water Directive aligns with the Welsh Government's policy.

The UK will remain part of the European Union until it formally exits the Union in 2019, and as such remains legally bound to comply with all relevant European legislation until the exit process has been completed.

### ***Next steps***

***The Welsh Government must make the relevant changes in the regulations in relation to the Drinking Water Directive's annexes by October 2017.***

***The Welsh Government will take responses into consideration, while finalising the wording of the draft regulations to ensure that points of clarity are cleared up.***

***The Welsh Government will work with the DWI and local authorities to ensure that guidance provided to the local authorities in carrying out their duties is clear and unambiguous.***

***The Welsh Government will arrange a training session for the local authorities regarding best practice for risk assessments, sampling and monitoring of private water supplies.***

***The Welsh Government will investigate whether there is a funding stream that can be utilised to assist in improving the quality of private water supplies.***

### ***Additional considerations for Welsh Government as a result of the Consultation***

***The consultation raised a number of points regarding escalating costs for both the local authorities and supply owners. We will investigate whether there are alternative options available in the longer term to ensure that drinking water quality improves for those who are currently on private water supplies, without continually increasing the financial burden on those who do not have any alternative options in relation to their supply of drinking water.***

*We will look at ways of encouraging local authorities to share best practice and knowledge with each other (and between internal departments), and look to see if there are ways of providing tools that streamline the delivery of the regulations to ensure greater consistency between local authorities.*

## **Full list of respondents**

### **Public sector bodies and group responses**

- British Geological Survey
- Food Standards Agency Wales
- Natural Resources Wales
- Public Health Wales
- Wales Food Safety Expert Panel
- Wales Heads of Environmental Health Group

### **Local Authority Responses**

- Caerphilly Council
- Denbighshire Council
- Monmouth Council
- Pembrokeshire Council
- Powys Council
- Rhondda Cynnon Taf Council

### **Private Individual responses**

- 7 respondents all who specified a desire to remain anonymous

### **Agricultural union responses**

- Farmers Union Wales

### **Private Representative Organisation responses**

- Central Association of Agricultural Valuers
- Country Land and Business Association (CLA)

### **Public health group (not public sector) responses**

- Water Health Partnership

### **Charity responses**

- Llanthony Valley and District Show Society

# SL(5)144 - The Private Water Supplies (Wales) Regulations 2017.

## Background and Purpose

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These Regulations revoke and replace the Private Water Supply (Wales) Regulations 2010 transposing additional requirements of Council Directive 98/83/EC on the quality of water intended for human consumption in relation to private water supplies, as amended by Commission Directive 2015/1787.

These Regulations implement Council Directive 98/83/EC on the quality of water intended for human consumption and lay down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

These Regulations apply to private water supplies (as defined in regulation 2) intended for human Consumption.

Part 1 of the Regulations makes provision in relation to water standards for private water supplies.

Part 2 of the Regulations places a duty on local authorities to monitor private water supplies and to ensure that each sample taken is analysed in a prescribed manner.

## Procedure

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Negative.

## Technical Scrutiny

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No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

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Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. These Regulations are made under section 2(2) of the European Communities Act 1972. The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to these Regulations. The negative procedure has been chosen, which seems appropriate given that they do not amend any provision of an Assembly Act or Measure. [21.3 (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.]
2. These Regulations are made to ensure the transposition of Commission Directive 2015/1787. The transposition deadline for this Directive was 27<sup>th</sup> October 2017. Late implementation of a directive can give rise to infraction proceedings. The European Commission is responsible for ensuring that Community law is correctly applied. The Commission has the option of commencing infringement proceedings under Article 258 (ex Article 226 TEC) of the Treaty on the Functioning of the European Union whenever it considers that a Member State has breached Community law. Given the very slight delay this is highly unlikely. However the Welsh Government have not given reasons for the late implementation of Directive 2015/1787. [21.3 (iv) that it inappropriately implements European Union legislation.]



## Implications arising from exiting the European Union

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The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced.

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

## Government Response

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A government response is required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**14 November 2017**



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STATUTORY INSTRUMENTS

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**2017 No. 1047**

**WATER RESOURCES, ENGLAND AND WALES**

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

*Made* - - - - - *30th October 2017*  
*Laid before Parliament* *31st October 2017*  
*Laid before National Assembly for Wales* *31st October 2017*  
*Coming into force* - - - *1st January 2018*

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The Secretary of State, in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations in exercise of the powers conferred by—

- (a) sections 34, 36A(5), 37(1), (4) and (6), 37A, 43(2)(a) and (3), 44(3)(a), 45, 59, 189 and 219(2)(f) of the Water Resources Act 1991(a); and
- (b) sections 103(1) to (3) and (7) and 104(4) and (6) of the Water Act 2003(b).

## PART 1

### Introduction

#### Citation and commencement

1. These Regulations may be cited as the Water Abstraction (Transitional Provisions) Regulations 2017 and come into force on 1st January 2018.

#### Interpretation

2.—(1) In these Regulations—

“the 2006 Regulations” means the Water Resources (Abstraction and Impounding) Regulations 2006(c);

“the appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;

“licence” means a licence to abstract water under Chapter 2 of Part 2.

(2) In these Regulations—

- (a) any reference to a provision is, unless the context otherwise requires, a reference to a provision of the Water Resources Act 1991;
- (b) any reference to an application for a licence includes a reference to an application for a variation of an existing licence;
- (c) any reference to the grant or refusal of a licence includes a reference to a grant or refusal of a variation of an existing licence.

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- (a) 1991 c. 57. Section 34 was amended by paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25) (“the 1995 Act”) and by paragraph 2 of Schedule 7 to the Water Act 2003 (c. 37) (“the 2003 Act”). Section 36A was inserted by section 13(1) of the 2003 Act. Section 37 was substituted by section 14(1) of the 2003 Act. Section 37A was inserted by section 14(2) of the 2003 Act. Section 45 was amended by paragraph 1 of Schedule 24 to the 1995 Act and by section 13(3) of the 2003 Act. Section 189 was amended by section 23(3) of the 2003 Act. Sections 34, 37, 37A, 45 and 189 were amended by S.I. 2013/755 (W. 90). See section 221(1) for the definitions of “prescribed” and “the Ministers”. The power to make Regulations under this Act was transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (references to the Water Resources Act 1991 in that Schedule are treated as references to that Act as amended by the 2003 Act by virtue of section 100(6) of the 2003 Act). Those functions were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
  - (b) 2003 c. 37. Section 103(3) was amended by S.I. 2013/755 (W. 90). The power of the National Assembly for Wales to make regulations under section 103 in relation to provision dealing with matters with respect to which functions are exercisable by the Assembly was transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
  - (c) S.I. 2006/641, as amended by S.I. 2008/165 and 2013/755 (W. 90).

## PART 2

### Transitional licence provisions

#### Scope of this Part

**3.**—(1) This Part applies to a person who—

- (a) in the seven years prior to 1st January 2018 abstracted water—
  - (i) from a source of supply, or
  - (ii) from any of the inland waters of the Rivers Tweed, Esk or Sark (or their tributaries) in England,and who did not require a licence for that abstraction, or
- (b) is a successor to such a person.

(2) In paragraph (1)(b), “successor” means a person to whom a person described in paragraph (1)(a) transfers title, where the transfer of title—

- (a) is a transfer of title to the property from which water was abstracted as described in paragraph (1)(a),
- (b) includes irrevocable transfer of the right to abstract water as described in paragraph (1)(a) from that property, and
- (c) has effect on any date during the period beginning 1st January 2018 and ending 31st December 2019.

#### Transitional procedures for applications by persons other than the appropriate agency

**4.**—(1) This regulation applies where a person to whom this Part applies, other than the appropriate agency<sup>(a)</sup>, applies for a licence before 31st December 2019.

(2) Where the licence application relates to the abstraction described in regulation 3(1)(a), the application must be made and determined in accordance with the Schedule to these Regulations instead of in accordance with Part 2 of the 2006 Regulations.

(3) Where the licence application relates to an abstraction other than the one described in regulation 3(1)(a), in addition to complying with the requirements of Part 2 of the 2006 Regulations, that person must—

- (a) disclose to the appropriate agency when so applying that they have abstracted water as described in regulation 3(1)(a), and
- (b) provide such additional information as the appropriate agency may reasonably require to perform its functions under the 2006 Regulations.

#### Transitional procedure for applications by the appropriate agency

**5.**—(1) Paragraph (2) applies where—

- (a) this Part applies to an appropriate agency by virtue of regulation 3(1), and
- (b) that appropriate agency applies for a transfer licence before 31st December 2019.

(2) The 2006 Regulations apply to that transfer licence application as if the reference in paragraph 2(3)(iv) of Schedule 2 to the 2006 Regulations requiring the specification of the quantity of water to be abstracted were omitted.

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(a) See section 221 of the Water Resources Act 1991 for the definition of the “appropriate agency”.



### Continuation of abstraction during transitional period

6. Notwithstanding the restriction on abstraction, a person may continue to carry out an abstraction of water described in regulation 3(1)(a)—

- (a) if the person applies for a licence in respect of that abstraction, until the date on which that application (including any appeal under section 43(a)) is determined, or
- (b) if no such application is submitted, until 31st December 2019.

### Register of licences

7.—(1) The register required to be kept by the appropriate agency under section 189 must contain, for each application for a licence submitted in accordance with this Part—

- (a) the name and address of the applicant;
- (b) the date of the application and brief particulars of its proposals;
- (c) particulars of any decision of the appropriate agency or the appropriate authority on the application (including the decision on any appeal) and the date of that decision;
- (d) the date of any licence granted;
- (e) the date on which that licence expires;
- (f) the particulars of any notice of appeal.

(2) Subject to paragraphs (3) and (4), the appropriate agency must enter in the register—

- (a) the information referred to in paragraph (1)(a) and (1)(b) within 28 days of determining that the application is a valid application (as defined in paragraph 5 of the Schedule);
- (b) the information referred to in paragraph (1)(c) to (1)(e) within 28 days of a decision on an application;
- (c) the information referred to in paragraph (1)(f) within 28 days of receiving a notice of appeal.

(3) If any of the information in paragraph (1) falls to be determined under section 191A (national security)(b) and the appropriate authority determines that it should be included in the register, the appropriate agency must enter it within 28 days of receiving notice of that determination.

(4) If any of the information in paragraph (1) falls to be determined under section 191B (exclusion from registers of certain confidential information)(c) and is determined not to be commercially confidential, the appropriate agency must enter it in the register—

- (a) if no notice of appeal is served, within 28 days of the end of the period within which notice of appeal against that determination may be served;
- (b) if a notice of appeal is served, within 28 days of the date on which the appropriate agency receives notification of the determination or withdrawal of the appeal.

(5) The appropriate agency must record in the register the date each entry is made.

(6) The appropriate agency may keep the register, or any part of it, electronically.

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(a) Section 43 was amended by paragraph 134 of Schedule 22 to the 1995 Act, section 14(3) of the 2003 Act and by S.I. 2013/755 (W.90).

(b) Section 191A was inserted by paragraph 170 of Schedule 22 to the 1995 Act and amended by S.I. 2013/755 (W. 90).

(c) Section 191B was inserted by paragraph 170 of Schedule 22 to the 1995 Act and was amended by S.I. 2010/675 and 2013/755 (W. 90).

## 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(a);
  - (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(b).
- (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(c).

#### 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—

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(a) 1975 c. 26.

(b) 1990 c. 8.

(c) 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).

- (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.

(3) In paragraph (1), an abstraction of more limited extent does not include a Qn95 hands-off flow constraint or 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 does not support 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.

(5) In paragraph (4), “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(a).

### **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(b) apply, subject to any necessary modifications, in relation to the determination of any such compensation.

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(a) 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).

(b) 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(a), 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.

30th October 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

24th October 2017

*Lesley Griffiths*  
Cabinet Secretary for the Environment and Rural Affairs  
One of the Welsh Ministers

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(a) 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.

## SCHEDULE

### Application for, and determination of, licences

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##### PART 1

###### Application for a licence

###### **Submission of licence applications**

1. An application for a licence must be submitted to the appropriate agency.

###### **Information to be included in an application**

2. An application must include—
  - (a) details of any abstraction from the source of supply that is the subject of the application carried out in the seven years prior to 1st January 2018;
  - (b) such other information, including maps, as the appropriate agency may reasonably require to determine the application.

### **Manner of application**

3. An application must be—
- (a) made on a form issued by the appropriate agency for the purpose of the application being made or electronically in a form accessible by the appropriate agency;
  - (b) accompanied by any fee payable under section 41(1)(a) of the Environment Act 1995(a).

### **Type of application**

4. The appropriate agency may decide that—
- (a) an application for a new licence ought to be for a variation of an existing licence, or
  - (b) an application for a variation of an existing licence ought to be for a new licence,
- and may proceed with the application accordingly.

## **PART 2**

### **Determination of applications**

#### **Interpretation**

5. In this Part, “valid application” means an application that complies with the provisions of paragraphs 1 to 3.

#### **Provision of additional information in support of the application**

6. The appropriate agency may, following receipt of a valid application, require the applicant to submit any further information or reports that it considers necessary to determine that application.

#### **Provision of information to the applicant**

7.—(1) The appropriate agency must, by 30th June 2021, provide the applicant with the following information in relation to a valid application—

- (a) whether a notice of the application has been or is to be published in accordance with section 37(1)(b);
- (b) the date by which the applicant must be notified of the appropriate agency’s decision on the application;
- (c) the applicant’s entitlement to appeal, in accordance with section 43(1)(b), against any failure by the appropriate agency to give notice, within the time period prescribed by paragraph 10(1), of its decision on the application.

(2) But if, when it receives the application, the appropriate agency serves a notice on the applicant under section 36A(c), and the applicant appeals against that notice, the appropriate agency must provide the information referred to in sub-paragraph (1) by 30th June 2021 or within 28 days of the final determination of that appeal, whichever is the later.

#### **Publication of an application**

8.—(1) For the purposes of section 37(1), notice of an application must be published in at least one newspaper circulating in the locality of the proposed point of abstraction and on the appropriate agency’s website.

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(a) 1995 c. 25; section 41(1)(a) was amended by S.I. 2013/755 (W. 90).

(b) Section 37 was substituted by section 14(1) of the 2003 Act, and amended by S.I. 2013/755 (W. 90).

(c) Section 36A was inserted by section 13(1) of the 2003 Act.

- (2) The notice must be published by—
- (a) 30th June 2021, or
  - (b) if there is an appeal under section 36A in relation to the application, within 28 days of the determination of that appeal or by 30th June 2021, whichever is the later.
- (3) The notice must specify—
- (a) the name of the applicant;
  - (b) the type of licence being applied for;
  - (c) the purpose of the abstraction;
  - (d) the point of abstraction;
  - (e) the period over which abstraction will take place;
  - (f) in the case of an application for a full licence, the quantity of water to be abstracted;
  - (g) where and when the application documents and the register containing details of the application may be inspected, and that such inspection is free of charge;
  - (h) the address to which any representations in relation to the application should be sent.
- (4) The notice must not include any information that is to be excluded from a register by virtue of section 191A or 191B(a).
- (5) The requirements of section 37(1) and (2) do not apply to any application if the appropriate authority notifies the appropriate agency that complying with those requirements in relation to that application would be contrary to the interests of national security.
- (6) The requirements of section 37(1) and (2) may be dispensed with if it appears to the appropriate agency that the proposed abstraction would have no appreciable adverse effect on the environment.

#### **Abstraction in National Parks or the Broads**

- 9.**—(1) This paragraph applies in the case of a valid application relating to abstraction in the area of a National Park or the Norfolk or Suffolk Broads.
- (2) The appropriate agency must serve notice in writing of that application on the National Park authority for that Park or the Broads Authority, as the case may be, by 30th June 2021.
- (3) The notice must include—
- (a) a copy of the application;
  - (b) a statement that the National Park authority or the Broads Authority may make representations in writing to the appropriate agency in relation to the application within three months, beginning on the date on which the notice is served.
- (4) The appropriate agency—
- (a) must not decide on the application before the end of the three month period referred to in sub-paragraph (3)(b);
  - (b) must have regard to any representations made by the National Park authority or the Broads Authority when deciding on the application.
- (5) This paragraph does not apply if the appropriate authority notifies the appropriate agency that giving such notice would be contrary to the interests of national security.

#### **Notification of a decision**

- 10.**—(1) The appropriate agency must, by 31st December 2022, notify the applicant in writing of its decision on an application for a licence.

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(a) Sections 191A and 191B were inserted by paragraph 170 of Schedule 22 to the 1995 Act and amended by S.I. 2013/755 (W. 90). Section 191B was amended by S.I. 2010/675.

(2) If the appropriate agency grants a licence on terms that are different in any material respect from the application, or refuses an application, the notification must—

- (a) include a statement of the appropriate agency's reasons for doing so;
- (b) state the applicant's entitlement to appeal under section 43(1).

## PART 3

### Appeals procedure

#### **Appeals to the Secretary of State or the Welsh Ministers under section 36A(4) (decision on type of abstraction licence)**

**11.**—(1) The period within which any notice of appeal under section 36A(4) must be served is 28 days from the date on which notice of the decision to which the appeal relates is served on the applicant.

(2) A notice of appeal under section 36A(4) must state the grounds of appeal and be accompanied by a copy of—

- (a) the application to which the appeal relates;
- (b) any information or report submitted to the appropriate agency with the application;
- (c) the notice of the decision on the application;
- (d) all other relevant correspondence with the appropriate agency.

#### **Appeals to the Secretary of State or the Welsh Ministers under section 43 (decision on licence application)**

**12.**—(1) For the purposes of section 43(3)(b), the prescribed period for serving a notice of appeal is 28 days.

(2) A notice of appeal under section 43 must state the grounds of appeal and be accompanied by a copy of—

- (a) the application to which the appeal relates;
- (b) any information or report submitted to the appropriate agency with the application;
- (c) the notice of the decision on the application, if any;
- (d) all other relevant correspondence with the appropriate agency.

(3) The appropriate agency must, within 14 days of receiving a notice of appeal under section 43, serve a copy of that notice on—

- (a) any person who within the period referred to in section 37(4)(b) made representations in writing in relation to the application;
- (b) any National Park authority or the Broads Authority served with a notice in accordance with paragraph 9(2) that, within the period referred to in paragraph 9(3)(b), made representations in writing in relation to the application.

(4) When serving a copy of a notice of appeal, the appropriate agency must notify the recipient in writing—

- (a) that the recipient may make further representations in writing in relation to the appeal;
- (b) of where any such representations must be sent;
- (c) of the date by which those representations must be received.

#### **Prescribed periods**

**13.**—(1) The prescribed period for the purposes of section 44(3)(a) is 21 days from the date on which notice of appeal is served on the persons referred to in section 43(5).



(2) The prescribed period for the purposes of section 45(2)(b) is 21 days from the date on which notice of appeal is served on the National Park authority or the Broads Authority.

### **EXPLANATORY NOTE**

*(This note is not part of these Regulations)*

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

Part 2 of, and the Schedule to, these Regulations set out the procedural requirements for making and determining certain licence applications and appeals. Regulation 3 provides that these requirements only apply to applicants who, in the seven years before the coming into force of these Regulations, carried out an abstraction to which the restriction on abstraction did not apply, or that person’s successor in title. Regulation 4 provides that applications from persons other than the Environment Agency or the Natural Resources Body for Wales (each of which are an “appropriate agency”) must be made in accordance with the Schedule to these Regulations, instead of the provisions in Part 2 of the Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641) (“the 2006 Regulations”). Part 3 of the 2006 Regulations continues to apply to licence applications from an appropriate agency, but subject to a modification that the notice of the application does not have to specify the amount of water to be abstracted (regulation 5).

Regulation 6 permits a person to continue the abstraction during the two year application process and until their application for a licence is determined.

Regulation 7 makes provision for completion of the register required by section 189 of the 1991 Act, in respect of licence applications covered by these Regulations.

Part 3 provides for the payment of compensation to certain persons whose application for a licence is refused or granted but in respect of an abstraction of more limited extent than previously abstracted. Regulation 9 sets out the circumstances in which compensation is payable, including describing the circumstances which do not qualify as an abstraction of more limited extent. Regulation 10 provides that applications for compensation must be made to the relevant appropriate agency within six years of the determination of an appeal under section 44 of the 1991 Act. Regulation 11 provides that any question of disputed compensation is to be determined by the Upper Tribunal.

A Regulatory Impact Assessment (“RIA”) was produced in connection with the Water Act 2003. This RIA set out the impacts of removing exemptions from the restriction on abstraction to which these Regulations relate. A further impact assessment was produced in respect of new authorisations for water abstraction in October 2017. Copies of the RIA and the impact assessment can be obtained from the Water Resources Management Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR and from the Water Branch, the Welsh Government, Cathays Park, Cardiff, CF10 3NQ. Both are published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **Explanatory Memorandum to:**

- 1. The Water Abstraction and Impounding (Exemptions) Regulations 2017**
- 2. The Water Abstraction (Transitional Provisions) Regulations 2017**
- 3. The Water Resources (Miscellaneous Revocations) (Wales) Order 2017**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1. The Water Abstraction and Impounding (Exemptions) Regulations 2017
2. The Water Abstraction (Transitional Provisions) Regulations 2017
3. The Water Resources (Miscellaneous Revocations) (Wales) Order 2017

I am satisfied that the benefits justify the likely costs.

**Lesley Griffiths AM**

**Cabinet Secretary for Environment and Rural Affairs**

**31 October 2017**

## **1. Description**

This is a single explanatory memorandum for three Statutory Instruments which together provide:

- transitional arrangements for preparing and determining licence applications for abstractions that become licensable when relevant provisions of the Water Act 2003 are commenced;
- exemptions for abstraction activities that have insignificant impacts on the environment, which would have become licensable when the Water Act 2003 provisions are commenced;
- for the removal of some area based exemptions from abstraction licensing;
- and amendments to Natural Resources Wales' usual considerations of minimum acceptable flows and existing rights and privileges for these licence applications.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

This Explanatory Memorandum covers three separate Statutory Instruments; two of which are composite with England and one which is Wales only. Each Statutory Instrument is subject to the negative procedure and the titles are specified below:

- The Water Abstraction and Impounding (Exemptions) Regulations 2017
- The Water Abstraction (Transitional Provisions) Regulations 2017
- The Water Resources (Miscellaneous Revocations) (Wales) Order 2017

The position in relation to powers to make the legislation associated with this policy is complex, as are the wider issues related to the cross-border management of water resources and water abstraction across two different administrative boundaries and under different regulatory bodies.

These Statutory Instruments are dependant on the commencement of certain provisions of the Water Act 2003, which are being commenced on the same date (the Legislative Background is set out in more detail in the next section). In relation to the relevant commencement orders, the powers lie with the Secretary of State (also in relation to Wales), after consulting the Welsh Ministers. With regard to the Exemption Regulations, the Transitional Regulations and the Revocations Order, the powers lie with the Welsh Ministers in relation to Wales; however, the policy intention has always been to apply a common approach in England and Wales.

For these reasons, the development of this area of policy and the consultations held on the regulations intended to give effect to it in both 2009 and 2016 were carried out on an England and Wales basis, with the participation of both the Environment Agency and Natural Resources Wales.

The two composite Statutory Instruments (the Exemption Regulations and the Transitional Regulations) apply to both England and Wales, and are subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable for these instruments to be made bilingually. The third Statutory Instrument (the Revocations Order) applies to Wales only and is therefore being made bilingually.

These three Statutory Instruments are reliant on each other and are interlinked through various references. It would not be possible to interpret the individual impacts of each statutory instrument in isolation without explaining the wider legislative context. Thus, a composite Explanatory Memorandum has been prepared to describe these statutory instruments. The territorial application of these instruments is England and Wales except the Water Resources (Miscellaneous Revocations) (Wales) Order 2017 which applies to Wales only.

### **3. Legislative background**

The Water Resources Act 1991, as amended by the Water Act 2003, provides the relevant provisions for delivering the basic measures to achieve the requirements of the Water Framework Directive. The power to commence those amendments rests with the Secretary of State (after consulting the Welsh Ministers). The Secretary of State is therefore making the Water Act 2003 (Commencement No. 12) Order 2017, and the Environment Act 1995 (Commencement No. 25) Order 2017, on the same day as the Exemption Regulations, the Transitional Regulations and the Revocations Order are being made, all to come into force on 1 January 2018.

These instruments together implement the abstraction elements of the Water Act 2003 in Wales. The Water Act 2003 introduced a number of changes to ensure further compliance with the Water Framework Directive on the control of significant abstractions by amending the Water Resources Act 1991. Together these statutes provide the legislative framework for abstraction licensing and will bring previously exempt abstractions under licence control. The two commencement orders need to be made by the Secretary of State and the changes in the Water Act 2003 will be brought into effect at the same time as these instruments come into force.

To implement these changes it is necessary to make the appropriate regulations (the Water Abstraction (Transitional Provisions) Regulations 2017) to provide for the application for, and determination of, abstraction licences to bring previously exempt abstractions under licence control. The Water Abstraction and Impounding (Exemptions) Regulations 2017 will provide for some further exemptions from the licensing restrictions under the Water Resources Act 1991. In order to end most area-based exemptions from

abstraction licensing, the Water Resources (Miscellaneous Revocations) (Wales) Order 2017 will revoke Orders deemed to be made under section 33 of the Water Resources Act 1991.

These Statutory Instruments are subject to annulment of the Assembly (negative procedure), they do not amend any provision of an Assembly Act or Measure nor do they impose obligations of special importance. Accordingly, the Welsh Ministers have determined that this legislation be subject to the negative resolution procedure.

The Water Abstraction and Impounding (Exemptions) Regulations 2017 are made in exercise of the powers conferred by sections 33A and 219(2)(f) of the Water Resources Act 1991.

The Water Abstraction (Transitional Provisions) Regulations 2017 are made in exercise of the powers conferred by sections 34, 36A(5), 37(1), (4) and (6), 37A, 43(2)(a) and (3), 44(3)(a), 45, 59, 189 and 219(2)(f) of the Water Resources Act 1991; and sections 103(1) to (3), 103(7) and 104(4) and (6) of the Water Act 2003.

The Water Resources (Miscellaneous Revocations) (Wales) Order 2017 is made in exercise of the powers conferred by section 10(1) of the Water Act 2003.

#### **4. Purpose & intended effect of the legislation**

Under the water abstraction licensing regime which has been in place since the 1960s, a number of water abstraction activities and areas in Wales have been exempt from the requirement for a licence. These abstractors have been able to take unlimited quantities of water with few controls over their impact on the environment or other abstractors.

Our Water Strategy for Wales includes a commitment to reforming the abstraction licensing system in Wales. It is our expectation that commencing the relevant provisions of the Water Act 2003 which this legislation helps to implement will:

- help us to create a level playing field for all abstractors;
- help to ensure the sustainability and resilience of our water resources for current and future generations;
- help us to meet our obligations under the Environment Act
- and help to ensure our compliance with the Water Framework Directive.

In England and Wales there are currently around 5,000 significant abstractions that are exempt from abstraction licensing. This compares with around 20,000 abstractors that are licensed. These exemptions create 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. This unfairness can be strongly felt, for example, farmers that use spray irrigation are required to have an abstraction licence while those that use trickle irrigation are not.

The Water Act 2003 and Environment Act 1995 included provisions to remove these licensing exemptions. Removing the exemptions will improve Natural Resources Wales' ability to manage water resources and prevent damage to the water environment. It will also help meet the requirements of the Water Framework Directive (WFD), which was established in 2000 to make sure that EU Member States manage their water resources effectively. The WFD requires a system of prior authorisation and control over the abstraction of surface water and groundwater and the impoundment of fresh surface water, including a register or registers of water abstraction.

We are removing 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;
- and the majority of abstractions covered by Crown and visiting forces exemptions.

We are keeping exemptions for abstraction where there are no significant impacts which would otherwise have become licensable without the Water Abstraction and Impounding (Exemptions) Regulations 2017:

- abstraction (transfers) downstream of the normal tidal limit by navigation, harbour and conservancy authorities, other than in the hour before or after low tide;
- abstraction in connection with dredging operations authorised by an authority in the exercise of its statutory functions in relation to those waters upstream of the normal tidal limit and any abstraction downstream of the normal tidal limit;

- abstraction of water within managed wetland systems (subject to the main abstraction into the system being licensed) and impounding works solely for the management, operation or maintenance of water within managed wetland systems;
- impounding works constructed by or on behalf of Natural Resources Wales where it is exercising its functions as the internal drainage board in relation to Wales;
- dewatering of underground strata and abstractions of surface waters to prevent interference with building or engineering works where the abstraction lasts less than six consecutive months (subject to restrictions);
- third-party operated dry docks that transfer water to and from a navigation authority's water system;
- impounding works when required in an emergency; and
- emergency abstraction or impounding where undertaken by port, harbour or conservancy authorities.

A five-year transitional period to determine all abstraction licence applications is provided for. Abstractors would have two years to prepare and submit an application. Natural Resources Wales will have up to three years to subsequently determine licences. Abstractors can continue taking water during this period.

This legislation will help us to plan and sustainably manage our water and other natural resources in a joined-up way, to prioritise natural resource opportunities and to ensure we have the evidence needed to inform the shape and direction of sustainable economic growth and development. This legislation will help to ensure Wales has a prosperous economy alongside a healthy and resilient environment and in so doing will contribute to the well-being goals in the Well-being of Future Generations (Wales) Act 2015.

The controls that this legislation introduces will help to deliver Part 1 of the Environment (Wales) Act 2016 through delivering the Sustainable Management of Natural Resources (SMNR) approach and enabling Wales' resources to be managed in a more proactive, sustainable and joined-up way. This approach will help to tackle the water resource challenges we face (such as climate change, and increasing demand) while remaining focused on the opportunities our water resources provide.

Consistent with the SMNR approach, bringing exempt abstractions into the licensing system will bring significant economic, social and environmental benefits to Wales, helping to support and complement our work to help secure Wales' long-term well-being, so that current and future generations benefit from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

## 5. Consultation

Following the Water Act 2003, in 2009 the Welsh Government and Defra jointly consulted on “Implementing the abstraction elements of the Water Act 2003”. The 12 week consultation invited responses from anyone with an interest in water abstraction and its impact on the environment. We sought views on proposals in two main areas:

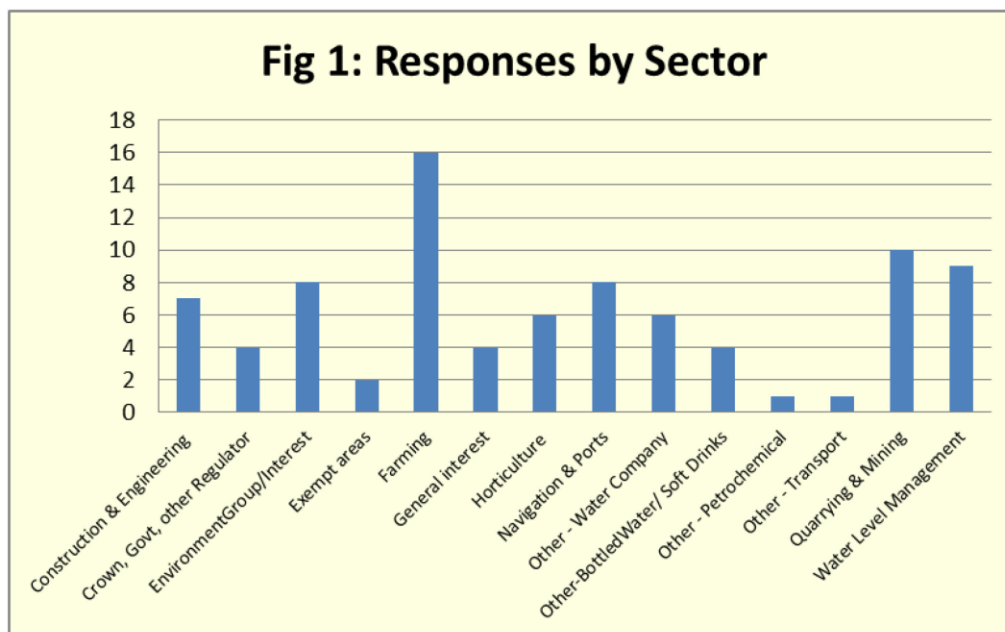
- transitional provisions for the removal of various exemptions to licence control; and
- provisions relating to the payment of compensation which may arise from the changes.

A summary of responses was published later in 2009 and is available at: <http://webarchive.nationalarchives.gov.uk/20091118143456/http://www.defra.gov.uk/corporate/consult/water-act/summary-of-responses.pdf>. Forty-one consultation responses were received from a range of sectors including public bodies, the minerals sector, environmental bodies, agriculture and others. While the majority of those who responded agreed with most of the proposals, there were also some complex issues on which we worked closely with Defra to address, not least with regards to eligibility for (and the funding of) compensation and also some suggestions for further exemptions.

These issues were explored in some detail in the intervening years and the policy in this area was further developed to take account of interested parties’ views and of wider related policy developments, all the while concentrating on developing an evidence based approach which would be fair for both licensed and unlicensed abstractors.

Between January and May 2016 we issued a “Government response to the 2009 consultation and further consultation on implementing the abstraction elements of the Water Act 2003”, which is available here: <http://gov.wales/docs/desh/consultation/160115-implementing-the-abstraction-elements-of-the-water-act-2003-new-authorisations-en.pdf>. As a result of the 2009 consultation responses, we proposed in the 2016 consultation a light-touch, risk-based approach to licensing. This means that most abstractors would be granted licences reflecting the volumes they had previously abstracted under the exemption unless the Environment Agency or Natural Resources Wales considered that abstraction may cause ‘serious environmental damage’ (for the purposes of section 27 of the Water Act 2003). Licences might also be issued with conditions to protect rivers at low flows.





A summary of responses to the January-May 2016 consultation was published in the following September and is available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/556850/water-abstraction-consult-sum-resp.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556850/water-abstraction-consult-sum-resp.pdf). Fig 1 above shows the breakdown of responses by sector. The total number of consultation responses received was 86 and the highest number from any one sector (16) was from farming.

Among the key themes discernible from the responses to the 2016 consultation were:

- Support for a light touch approach to bring currently exempt abstractors into the abstraction licensing system
- Broad agreement that it is fair to end most exemptions to licensing;
- General support for the change from the 2009 policy so that planned abstractions should not be compensated, though concern about the impact of not making allowances for planned abstractions or including 'headroom' for growth in the licensed volumes under the transitional arrangements;
- Suggestion that flexibility is required in terms of the type of evidence submitted with applications;

- Agreement in principle to flow controls being placed on licences, but questions about the approach of using universal Hands off Flows (HoFs);
- Concern about volumes being placed on transfer licences and the requirements to measure and monitor those volumes.

As a result of the 2016 consultation responses, working with Defra we have amended the policy approach we expect the Environment Agency and Natural Resources Wales to take when licensing, in order to allow:

- flexibility on the requirements for volume limits on transfer licences (transfer licences are required to transfer water where there is no intervening use of the water) to avoid undue abstraction control costs on abstractors while still ensuring environmental protection;
- flexibility in the application of flow controls so that it can recognise the wider conservation values; and
- abstraction volume limits that better reflect business needs in dry periods by extending the qualifying period to include the dry weather in 2011.

More detail around the joint Government Response to the 2016 consultation may be found on the Welsh Government website at [GOV.WALES](http://GOV.WALES).

## **6. Regulatory Impact Assessment (RIA)**

A joint Impact Assessment was carried out by Defra which informed the consultation that took place between 15 January and 8 April 2016. The final policy position that this legislation implements was supported by an updated version of that Impact Assessment which is published alongside the corresponding Explanatory Memorandum prepared by Defra on the [legislation.gov.uk](http://legislation.gov.uk) website and is reproduced in full over the pages that follow.

<b>Title:</b> Removing water abstraction licence exemptions <b>IA No:</b> DEFRA0046  <b>RPC Reference No:</b> RPC-3028(2)-DEFRA  <b>Lead department or agency:</b> Department for Environment, Food and Rural Affairs <b>Other departments or agencies:</b> The Environment Agency, Welsh Government and Natural Resources Wales	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 07/06/2017			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU			
	<b>Type of measure:</b> Secondary Legislation			
<b>Contact for enquiries:</b> Adrian Brookes Adrian.Brookes@defra.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£-59.01	£-57.62m	£3.0m	Not in scope	Non qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**  
 Many areas of the country are experiencing water stress as a result of competing demand for the available water for human uses and flora and fauna in the environment. Population growth and climate change are expected to increase that pressure. Abstraction is the process of extracting water from a source. An abstraction licensing regime has been in place for several decades but abstraction for a number of purposes has remained outside licensing control, allowing some users to take water irrespective of the needs of other users or the environment. The Water Act 2003 was passed with provisions to end these exemptions by awarding them "New Authorisations" to enable effective management of water resources.

**What are the policy objectives and the intended effects?**  
 (1) To enable better management of water resources: that is consistent and fair for all water users, to tackle serious environmental damage caused by unlicensed abstractions and it is an important part of our plans to reform abstraction management;  
 (2) To extend the licensing regime in a way that is cost effective and equitable;  
 (3) To meet statutory obligations under the EU Water Framework Directive.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Business as Usual: do not bring exempt abstractors into licensing but rely on existing regulations on environmental protection to improve management of over-abstracted water bodies.  
 Option 1: Commence new authorisations without the inclusion of a transitional arrangement;  
 Option 2: Commence new authorisations with the inclusion of a transitional period for pre-existing abstractions;  
 Option 2 is our final preferred option as it treats exempt abstractions on an equal footing with those already licensed and gives a reasonable transitional period for applications for new licences to be prepared, submitted and processed and for new licensees to adapt. While this option delays benefits to other abstractors and the environment, this option achieves a fair balance with the costs to new authorisation abstractors by including a reasonable implementation timeframe.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 01/2025				
Does implementation go beyond minimum EU requirements?			No	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0	<b>Non-traded:</b> 0

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

**Signed by the responsible Minister** \_\_\_\_\_ **Date:** \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Commence the licensing requirement for currently exempt abstractions with no transitional period

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2018	Time Period Years 25	Net Benefit (Present Value (PV)) (£m)		
			Low: -218.94	High: -43.17	Best Estimate: -74.27

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	2.8	63.1
High	26.9	8.6	229.7
Best Estimate	1.9	3.8	89.6

### Description and scale of key monetised costs by 'main affected groups' relative to base line

Compliance and administration costs for licensing (total all sectors £19.1m) and loss of output (total all sectors £70.5m) for currently unlicensed water users in the following sectors: quarries and mines £36.3m; trickle irrigation farming £33.9m; canals £6.3m; ports £0.6m; water meadows £6.1; drainage boards £0.8m; road and rail £0.8m; Royal Parks and MoD £2.4m; exempt geographical areas £2.5m. All figures in present value terms. Most lost output is due to restricting abstraction causing serious environmental damage.

### Other key non-monetised costs by 'main affected groups'

No transitional arrangements may limit applicants' time to adapt their businesses, leading to less than optimal responses, however the policy has been expected since 2003. Small indirect costs via supply chain links, e.g. canal boat operators; cement works. Possible logistical problems – significant difficulty for the regulators to assess all licence applications within the usual determination period.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.5	10.7
High	0	0.9	19.9
Best Estimate	0	0.7	15.3

### Description and scale of key monetised benefits by 'main affected groups'

As trickle irrigators are brought into the licensing system, this "levels the playing field" for existing licensed abstractors in agriculture and horticulture. At times of high demand, the restrictions on trickle irrigators will increase the volume of water available for existing abstractors leading to a monetised benefit estimated at £15.3m (in present value terms). It has not been possible to monetise other more important benefits (see below).

### Other key non-monetised benefits by 'main affected groups'

Environmental benefit through preventing damage to the ecosystem by over-abstraction especially in key dry periods when these benefits would be substantial.  
Levelling the playing field through reducing unfairness arising from over consumption by exempt abstractors will also benefit other categories of non-agricultural abstractors in drought periods, including water companies abstracting for household and business supplies.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
There is no transitional period available to those seeking new authorisations. Abstractors take up cost effective/feasible mitigation options when faced with restrictions to their abstraction activities providing they are cost-beneficial. Regulator does not licence abstraction causing serious environmental damage or when river flows are very low.		

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: 4.5	Benefits: 0.8	Net: -3.7	
			N/A

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Commence the licensing requirements with two years for transitional arrangements

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2018	Time Period Years 25	Net Benefit (Present Value (PV)) (£m)		
			Low: -174.61	High: -33.92	Best Estimate: -59.01

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	2.2	50.1
High	26.9	6.6	183.3
Best Estimate	1.9	3.1	71.4

### Description and scale of key monetised costs by 'main affected groups'

The transitional period that allows for a further two years of exempt abstraction and so defers the impacts. Compliance and administration costs for licensing (total all sectors £15.7m) and loss of output (total all sectors £55.7m) for currently unlicensed water users in the following sectors: quarries and mines £29.3m; trickle irrigation farming £26.5m; canals £4.9m; ports £0.4m; water meadows £5.2; drainage boards £0.6m; road and rail £0.6m; Royal Parks and MoD £1.9m; exempt geographical areas £2.1m.

### Other key non-monetised costs by 'main affected groups'

As for Option 1, although the transitional period would ease logistical problems for the regulator and allow more optimal adjustments for newly licensed abstractors.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.4	8.7
High	0	0.8	16.1
Best Estimate	0	0.6	12.4

### Description and scale of key monetised benefits by 'main affected groups'

As for Option 1, additional water available to existing licensed abstractors in agriculture and horticulture leading to additional crop output. It has not been possible to monetise other more important benefits (see below).

### Other key non-monetised benefits by 'main affected groups'

As for Option 1, benefits from preventing environmental damage and avoiding/reducing restrictions to other licensed abstractors in dry periods. As with business costs, benefits to other abstractors and the environment would be deferred and therefore lower than in Option 1.

### Key assumptions/sensitivities/risks

Similar to Option 1.

### Discount rate (%)

3.5

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 3.7	Benefits: 0.9	Net: -2.8	
			N/A

# Evidence Base (for summary sheets)

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# 1. Overview

- 1.1. This Impact Assessment (IA) presents an appraisal of the lead options for implementing the provisions of the Water Act 2003 to widen water abstraction licensing to cover currently unlicensed water abstraction activities within England and Wales. Implementing these provisions will meet an EU requirement. This policy is known as “New Authorisations”. The IA provides the analytical justification for our approach<sup>1</sup>.
- 1.2. Currently around 5,000 significant abstractions are exempt from abstraction licensing. This compares with around 20,000 abstractors that are licensed. These exemptions create an unfair playing field, allowing some abstractors to put pressure on the environment without any controls, while requiring others to take the burden of addressing risks to the environment. This unfairness can be strongly felt, for example, farmers that use spray irrigation are required to have an abstraction licence while those that use trickle irrigation are not.
- 1.3. We would remove exemptions for abstractions that can have significant impacts on the environment by commencing remaining provisions from the Water Act 2003. Several thousands of abstractions that have insignificant environmental costs will remain exempt. Doing so meets a Water Framework Directive (WFD) requirement. This policy is also an important part of our plan to reform abstraction management.
- 1.4. Our policy is to take a light touch approach to licensing. This means:
  - Only removing exemptions for water use activities that have or might have significant environmental impacts. Types of abstraction where licensing cost are disproportionate to the environmental benefits will remain exempt.
  - Most abstractors would be granted licences reflecting the volumes they have previously abstracted. Licences may include conditions to protect rivers at very low flows.
  - A reasonable five-year transitional period from the date we end the exemptions. Abstractors would have two years to prepare and submit applications. The regulator would have up to three years to consider, determine and grant the licence. Abstractors can continue to take water during this period.<sup>2</sup>
- 1.5. Our policy for implementation will enable almost all abstractors to operate as they do currently, unless the environmental impact of the abstraction is causing serious environmental damage or abstraction is taking place when river flows are very low.
- 1.6. As a result of feedback in the 2016 consultation, we plan to improve the regulatory approach further in places, including:
  - Allowing abstractors to provide additional evidence of previous abstraction during the dry period in 2011 so licensed volumes reflect dry weather needs; and
  - Removing most monitoring and reporting requirements for licences required for water transfers, where there is no intervening use of the water.
- 1.7. This impact assessment uses two pieces of analysis that Defra commissioned to provide key evidence for this appraisal. The analysis collates existing data from a variety of sources and gathered new information through interviews with representatives of the abstractors. This analysis is supplemented by further discussions with abstractors and the evidence provided in the 2009 and

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<sup>1</sup> The Water Act 2003 IA “Water Bill-Regulatory Impact Assessment, Environmental and Equal Treatment Appraisals” provided an initial assessment of the impact of the proposal for debate of the WA2003 in Parliament. This latest IA updates that earlier IA.

<sup>2</sup> We have balanced the length of transitional period and related costs to exempt abstractors of licensing with the delayed benefits to other abstractors and the environment.

2016 consultation responses, more detailed evidence from the regulator and the improvements to the policy.

- 1.8. The estimated monetised costs of our final preferred option are £71 million Net Present Value (NPV) of which around 20% is due to the administration and compliance costs of licensing, while 80% is due to impact on economic output mainly due to abstraction restrictions to prevent serious environmental damage. Monetised benefits to existing licensed abstractors from levelling the playing field for water resources access are around £18 million NPV. We expect there to be further non-monetised benefits to other abstractors (existing licensed abstractors and insignificant abstractors who will remain exempt). There will also be important non-monetised environmental benefits associated with reducing over-abstraction of water, a problem likely to grow given the increasing pressures from climate change and population growth, particularly when it is dry or there is a drought.



## 2. Policy background

### *The Problem under Consideration*

- 2.1. Water is a precious resource for many human uses (public water supply, agriculture, energy production, business or industrial processes, amenity and leisure) and for flora and fauna in the environment. Areas of England and Wales are already experiencing water stress as a result of competing demands for access to the water available. Increasing demand for water by those outside of the current regulatory framework for licensing that water is exacerbating these pressures. Climate change along with population and economic growth is expected to increase that pressure further.
- 2.2. Water abstraction is the process of taking water from the environment (e.g. river or groundwater). Some existing water abstractions, both licensed and unlicensed, are having a damaging effect on the environment.
- 2.3. An abstraction licensing system to regulate water abstraction has been in place since the 1960s. The system is operated in England by Environment Agency and in Wales by Natural Resources Wales (both referred to as “the regulator”).
- 2.4. However, abstraction for a number of purposes has remained outside licensing. These have historically been considered low risk activities, but the risk assessment for many of these activities has now increased. Exemptions also create an unfair playing field, as they allow some groups to take water irrespective of the needs of other users or the environment, while those that are currently licensed take the burden of addressing risks to the environment. For example, farmers that use spray irrigation are required to have an abstraction licence, to have a limit on the amount of water they can take, to pay for the water they take and to reduce their water use at specific times of pressures on the environment, while none of these conditions applies to those that use trickle irrigation and they can also increase their abstractions.
- 2.5. Alongside the development of the policy that became the Water Act 2003, the Water Framework Directive (WFD) was also set up in 2000 to manage water resources. The WFD requires each Member State to have in place a programme of measures designed to deliver “Good” water body status. One of the basic requirements to help deliver “Good” status is to have in place a system of prior authorisation and control of water abstraction and impoundments. The Water Act 2003 included the provisions to remove remaining licensing exemptions in England and Wales and help us meet this requirement. Annex A contains further background about the development of the Water Act 2003 and the Water Framework Directive requirements.
- 2.6. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 2.7. In 2016<sup>3</sup> and 2009<sup>4</sup> we consulted on bringing these exempt abstractors under licensing control. There has also been ongoing dialogue with stakeholders and the regulator about the balance of rights and responsibilities for creating a sustainable water abstraction licensing regime.

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<sup>3</sup> <https://www.gov.uk/government/consultations/water-abstraction-licensing-changes-to-exemptions-in-england-and-wales>

<sup>4</sup> <http://webarchive.nationalarchives.gov.uk/2009105011111/http://www.defra.gov.uk/corporate/consult/water-act/index.htm>

2.8. Both Governments consulted in December 2013 on reform of the water abstraction licensing system. Their respective responses to the consultation were published in January 2016<sup>5 6</sup>. In particular supporting abstractors to manage the risks from future pressure on water. If the currently exempt abstractors (approximately 20% of all those abstracting) were to remain outside of licensing control and continued to abstract without regard to other licensed abstractors or the environment, we would not be able to maximise the available water and the possible financial benefits available.<sup>7</sup> The impact of further reform is outside the scope of this IA.

#### *The Current Abstraction Licensing System*

2.9. Water abstraction licensing in England and Wales has developed over many decades. The first licences were granted in the 1960s. They were issued without regard to the environment, sharing out the water in a catchment amongst those that wanted to use it, effectively in perpetuity. They also gave abstractors compensation rights against derogation of the licensed water. This results in restricted access to water for new abstractors in stressed catchments, even if the existing licences are now unused or under used. Over recent years the licensing system has evolved where possible to take more regard of the environment and provide greater protection. This has also sought to ensure water use is efficient and adequately valued to reflect water scarcity and competing demands.

2.10. The current licensing system uses a range of tools to help maintain environmental protection and the rights of downstream abstractors. These may include both daily and annual abstraction limits. Water abstraction licences for rivers issued since 2003 also incorporate 'Hands-off-Flow' (HoF) restrictions, whereby, upon notice, all licensed abstractors with a HoF within a given catchment must stop abstracting when the river flow drops below a defined threshold. A similar condition applies to groundwater abstraction that instead refers to the levels of water - a 'Hands-off-Level' condition.

2.11. There are three types of abstraction licence:

- a full licence for abstractions lasting more than 28 days;
- a temporary licence for abstractions lasting less than 28 days; and
- a transfer licence where water is abstracted for more than 28 days to be moved from one source to another with no intervening use for example where a water company moves water to another company to abstract for the public water supply.

2.12. A transfer licence has a higher up front cost to the abstractor but has no annual charge from the regulator and usually has little or no abstraction volume reporting conditions. Most (>95%) existing licences are full licences. This will be different for New Authorisations because of the type of activity being licensed. We estimate that overall about 80 per cent of New Authorisations in England will require a transfer licence, however in Wales we expect most will be full licences (75-80%).

2.13. All licence holders pay a licence application fee and associated costs for example advertising or environmental reports. Full licence holders also pay an annual charge.

2.14. Full and transfer licences have been issued on a time limited basis as a matter of policy since 2001, and as a legal requirement since 2003, typically for 12 years after which renewal is required.

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<sup>5</sup> <https://consult.defra.gov.uk/water/abstraction-reform>

<sup>6</sup> <http://gov.wales/betaconsultations/environmentandcountryside/making-the-most-of-every-drop/?lang=en>

<sup>7</sup> The case for reforming the abstraction system was originally set out in the Water White Paper – Water for Life: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228861/2280.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228861/2280.pdf)

If a licensed abstractor requires more water it applies to the regulator for a new licence or to vary the terms of an existing licence.

**Table 1.1: Number of Abstraction Licences in force by type in England & Wales as at 2014**

	Public water supply	Spray irrigation	Agriculture (excl. spray irrigation)	Electricity supply industry	Other industry	Fish farming, cress growing, amenity ponds	Private water supply	Other	Total
Wales	160	583	168	253	334	49	50	9	1606
England	1425	9484	2745	476	3368	591	973	192	19254
England & Wales	1585	10067	2913	729	3702	640	1023	201	20860

Source: Environment Agency / Natural Resources Wales 2014

#### Approach to removing exemptions

2.15. The approach to removing abstraction exemptions will be light-touch and risk-based, taking account of responses from the 2009 and 2016 consultations.

2.16. In the 2016 consultation, we proposed a light touch approach. This means:

- Only removing exemptions for water use activities that have or might have significant environmental impacts. Types of abstraction with no significant environmental impacts will remain exempt as environmental benefits will be disproportionate to licensing costs.
- Most abstractors would be granted licences reflecting the volumes they have previously abstracted. Licences may however include conditions to protect rivers at very low flows.
- A generous five-year transitional period from the date we end the exemptions. Abstractors would have two years to prepare and submit applications. The regulator would have up to three years to consider, determine and grant the licence. Abstractors can continue to take water during this period.

2.17. These transitional arrangements will help ensure that currently exempt abstractors are treated as equitably as possible with other abstractors that are already the subject of licence control.

2.18. As these abstractions are already taking place, the act of licensing them will not cause an environmental impact. In circumstances where there is no risk of serious environmental damage taking place, the licence that will be granted would be based on the volume of water abstracted in the previous six<sup>8</sup> years. Licences may also be issued with HoF conditions to protect the environment when flows are very low in catchments. The intended effect is to help minimise the regulatory impact while providing some basic environmental protection.

2.19. The WFD allows that abstractions which have insignificant impact on water body status to remain exempt. Therefore, abstractions considered to be insignificant will remain exempt from licensing (for example, abstractions of less than 20 cubic metres per day). Deregulation measures in the Water Act 2003 removed around 24,000 abstractors from the abstraction licensing regime, reducing licensed abstractors to their current level of around 21,000. We have carefully considered the impacts of types of abstraction and we will introduce further exemptions, which will ensure several thousand abstractions will continue to benefit from being exempt from abstraction licensing.

<sup>8</sup> Increased from four years as a result of feedback to the 2016 consultation. This may change depending on a final implementation date to take account of the dry weather in 2011.

2.20. Where it is considered that there is a risk of serious damage to the environment from a currently exempt abstraction, the regulator will issue a licence curtailing the amount of water that can be abstracted to remove the risk. In limited circumstances a licence may be refused. The impact of an abstraction on the environment depends on a combination of factors that include the type/rarity of habitat or species affected the scale and longevity of the impact and how easily it can be rectified.<sup>9</sup>

2.21. Under this light-touch approach, we anticipate that most exempt abstractors will receive licences. Any applications refused or restricted due to serious environmental damage would not receive compensation<sup>10</sup>.

2.22. Upon commencement, we propose that each applicant will have a two year window in which to make a licence application. This will involve them gathering, recording and submitting information to the regulator to support their application. Afterwards there will be a three year period for the regulator to assess and determine each application. Up until the point a decision has been made on the application, each abstractor will be able to continue their current abstraction activities without interruption, provided they have submitted a valid application. Should an abstractor want to increase abstraction or have plans for a new abstraction they should also apply to the regulator, these applications will be considered under the standard abstraction licence application process.

*Who does it apply to?*

2.23. The abstraction activities that will have their exempt status removed are:

- **Dewatering of engineering-works** (such as ongoing road and rail activities), quarries and mines.
- **Trickle Irrigation:** All forms of irrigation (other than spray irrigation, which is already licensed).
- The use of land drainage systems in reverse to maintain field water systems and; abstraction of water containing silt for deposit onto agricultural land where the silt acts as fertiliser (a process known as warping). Collectively the issues relate to **Managed Wetland Systems**.
- The transfer of water from one inland water system to another in the course of, or as the result of, operations carried out by conservancy authority, **navigation or ports**.
- Abstraction of water into **Internal Drainage Districts**.
- The majority of abstractions covered by **Crown Estate** exemption.
- Abstractions within currently **exempt geographical areas**.

2.24. A breakdown of the estimated number of abstractors by activity that we expect to bring into the licensing regime is provided in Table 6.2 (Section 6). The environmental and hydrological issues for each of these currently exempt activities are discussed in Annex B of this Impact Assessment.

2.25. We will retain some exemptions for insignificant abstractions that will not require a licence. These activities are:

- The abstraction of saline water for ports and harbours, in connection with dredging systems and into internal drainage districts.
- The abstraction of water with a high saline content from underground strata in the Cheshire basin. This is part of an existing exemption given to the former Mersey and Weaver River Authority in 1968.

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<sup>9</sup> The principles by which the regulator will assess serious damage are set out in guidance available at: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>

<sup>10</sup> In exceptional circumstances, applications based on water use in the previous six years may be refused or restricted for reasons other than serious damage or to protect the environment during low flows. In these circumstances, abstractors would be able to apply for compensation if there is an impact on their business. As we expect this to be exceptional we have not analysed this policy in the impact assessment.

- The abstraction of water and impounding work solely for the management, operation or maintenance of water within managed wetland systems.
- Impounding works constructed by or on behalf of internal drainage boards in exercise of their appointed area functions.
- Small scale dewatering used in construction activity.
- Third-party operated dry docks that transfer water within a navigation authority's system.
- Some additional abstraction and impounding works when needed to maintain safety or in an emergency.

### 3. Objectives

- 3.1. The aim is to bring the exempt abstractions posing most significant risk of environmental impact into the water abstraction licensing system. The objectives are to:
- i) Enable better future management of water resources in England and Wales: doing so in a way that is consistent and fair for all water users, that tackles the serious environmental damage caused by unlicensed abstractions, and that supports further reform of the abstraction licensing system;
  - ii) To widen the licensing regime in a way that is cost effective and equitable: for instance through allowing activities that pose a low-risk to the water environment to remain out of scope, ensuring all abstractions are managed on an equal footing, and giving sufficient transitional period for abstractors to assess their strategic options and calculate their required volumes; and
  - iii) To meet statutory obligations under the EU Water Framework Directive.

## 4. Rationale for Intervention

- 4.1. This section explores the economic and wider political rationale for bringing exempt abstractions under licence control.

### *Future Pressures on Water*

- 4.2. Water resources are already under pressure in many areas of England and Wales. Water supply is highly seasonal and inherently uncertain. In the future, emerging climate pressures and the demands of an increasing population will affect the volumes and certainty of water availability at different times of the year. Short duration droughts (12-18 months) are likely to become more frequent, while by the 2030s, those areas already experiencing water stress<sup>11</sup> face having a potentially increased population of over 40 per cent (particularly the river basin of the Thames and South East England).<sup>12</sup> This all points to a risk of less resilient water resources and a need to be more effective at managing them.
- 4.3. The UK and Welsh Governments reforms of the abstraction licensing system will create a system that is fairer and more resilient to future pressures, whilst being able to promote economic growth and protect the environment. This will bring benefits to abstractors by increasing water availability. However, while some significant abstractors remain outside of the current licensing system benefits of reform cannot be fully realised.

### *Levelling the Playing Field*

- 4.4. A key rationale for intervention is to seek equity amongst all water abstractors.
- 4.5. Exempt abstractors are able to remove as much water as they want without needing to have regard to the environment or the other licensed abstractors. Where action is taken to balance the needs of abstractors and the environment, the burden falls only on those that are regulated through the licensing regime. This leads to responsibility and costs being imposed only on licensed abstractors as well as undermining efforts to manage water resources. This also leads to negative externalities to other licensed abstractors, as their rights over their access to water are uncertain.
- 4.6. Licensing all abstraction activities, other than those where it would be disproportionately costly to licence because the impacts on the environment or water resources are insignificant, will help create a level playing field across abstractors and deliver water resources and environmental policy.

### *Existing UK Legislation*

- 4.7. The existing abstraction licensing system with its current extent of exemptions is neither fully effective at securing the proper use of our water resources, nor does it achieve control of environmental impacts caused by those exemptions. It also provides insufficient protection for existing licensed abstractors' water needs, yet places an unfair burden on them.
- 4.8. Although there are existing regulatory measures which could be used to control abstraction outside of licensing, in practice they are ineffective because they are inflexible and not designed for abstraction as they do not allow the regulator to control when and how water may be taken.

### *Market Failures in water abstraction*

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<sup>11</sup> Water stressed areas – final classification [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244333/water-stressed-classification-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244333/water-stressed-classification-2013.pdf)

<sup>12</sup> Environment Agency's *The case for change – current and future water availability* <http://webarchive.nationalarchives.gov.uk/20140320084602/http://www.environment-agency.gov.uk/research/planning/135501.aspx>

- 4.9. The main economic rationale behind bringing exempt abstractors under licence control is that fresh water in the environment is generally a “common pool resource”. It rains, flows and dissipates without regard to any geographic boundary. Water is, to a great extent, non-excludable and is rival in so far as if one abstractor takes water that water cannot be used by another abstractor. This means its use is not readily restricted to those who want access. It is difficult to assign property rights to water.
- 4.10. As a common pool resource, access to a finite amount of water is available to many users across a wide geographic area. Without the assignment of property rights to all users of the water, individuals may not take into account the effects on others of their own abstraction activities or on the environment. This leads to issues of over-abstraction, such as reduced volumes available to other, licensed abstractors and how best to allocate the long-term available resource of water for future generations. This overuse can put serious environmental pressure on water bodies and on the ecosystems dependent upon them, leading to adverse effects described as “negative externalities” for others not involved in the decision to abstract when the regulator needs to make abstraction changes to protect the environment.
- 4.11. A licensing system that includes all significant abstractions is essential for effective management of this common pool resource and is a necessary step to tackling these market failures.



## 5. Options Appraisal

5.1. This section sets out the options which were appraised and also the methodology used to assess them. The appraisal considered three core options for New Authorisations relative to the baseline of continuing the current system:

Option 0: **Business as Usual:** the baseline, where we do not bring exempt abstractors into licensing but rely on existing legislation to meet our statutory requirements on water bodies.

Option 1: Commence the new licensing requirement for currently exempt abstractors **without the inclusion of transitional arrangements** for currently pre-existing exempt abstractors.

Option 2: Commence the new licensing requirement for currently exempt abstractors with the **inclusion of transitional arrangements** for pre-existing abstractions.  
(This is the option selected)

5.2. In the 2016 consultation, we included the option to commence the new licensing requirement for currently exempt abstractors with the inclusion of transitional arrangements as in option 2, and also to award **compensation for the loss of future planned increases in abstraction**. However following the consultation response we have not considered this option further as we have concluded this option unfairly allocates water rights to exempt abstractors compared to licensed abstractors who have no compensation rights for planned abstraction.

5.3. The core analysis focused on a set of light-touch options. This is because the environmental protection threshold (i.e. curtailing abstractions at risk of causing serious environmental damage) is anticipated to only apply in extreme instances. Most exempt abstractors will receive licences through a 'light touch' review requiring minimal scrutiny that limits the burden on both exempt abstractors and the regulator. The options are set out in more detail below, with further information on assumptions and methodology in Section 6.

### *Option 0: Business as Usual (this option would not meet EU requirements)*

5.4. This is the baseline that the other three options will be compared to. The baseline is the use of existing legislation to tackle environmental damaging exempt abstraction. Under this option, regulator will have limited enforcement options to address unsustainable abstractions.

5.5. Actions to tackle environmental damaging abstraction would be severely constrained by incomplete information on exempt abstractions, regulator's resources, cost impacts on the regulator and licensed abstractors and the associated uncertainty around the time taken to achieve an environmental outcome. To reflect this difficulty for the regulator, the actions were assumed to operate at a much slower pace than can be achieved by licensing – we estimate it would take on average an additional ten years to fully capture the effect of exempt abstractors causing serious damage to the environment. We therefore assume that all impacts surrounding changes to economic output are incurred from appraisal year 10 in the baseline. This also delays the benefits to licensed abstractors and to the environment.

### *Option 1: No Transitional Arrangements*

5.6. Under this option the policy will commence immediately at the start of the appraisal period. Without transitional arrangements all licence exempt abstractions would become unlawful and would have to cease once the provisions are commenced unless, that is, a licence was granted. Therefore the costs would fall on exempt abstractors immediately. This would also create significant regulatory uncertainty and potentially create costly disruptions to businesses where licence decisions could

only be made in time with significant effort by the regulator. Furthermore, businesses may not have the time to comply with abstraction licence restrictions.

5.7. This option would meet the EU WFD statutory obligations on prior authorisation and control of abstractions, as well as treat exempt abstractions equitably to those already licensed. It would also bring benefits to the environment and other abstractors immediately.

#### *Option 2: Two Year Transitional Arrangement*

5.8. This is the selected option whereby we begin the new licensing requirement after a two-year transitional application period and determine all applications in a three-year period following the application period. It would help to meet our environmental obligations for prior authorisation and control of all significant abstractions. Apart from allowing for the transitional period, it would help to treat previously exempt abstractions on an equal footing with those already licensed and also to tackle the market failures outlined in the previous section.

5.9. The Water Act 2003 gave the Secretary of State and Welsh Ministers powers to make regulations that provide transitional arrangements for those abstracting lawfully prior to removal of their exemption. This option proposes transitional arrangements that give a two year application period for abstractors to make an application. It would allow abstraction to continue until decisions were made on the licence application up to three years after the application period closes.

5.10. This option would implement the Water Act 2003 and Water Framework Directive requirements by licensing abstractors who might pose a significant risk to the environment; while treating them equitably with those already subject to licence control. However the transitional period would delay the benefits to other abstractors and the environment compared with option 1.

### **Analytical Methodology**

5.11. Here we describe the methodology used to analyse the options.

5.12. Our approach uses two pieces of analysis Defra commissioned to provide key evidence for this appraisal. This analysis is supplemented by further discussions with abstractors and the evidence provided in the 2009 and 2016 consultation responses, more detailed evidence from the regulator and revisions to the detail of the policy.

#### *Sources of Evidence*

5.13. At the outset, evidence on exempt abstractions was seriously limited. Defra commissioned an evidence study to scope and understand the impact of ending the exemptions on affected sectors in England and Wales. The study was carried out by consultants HR Wallingford and Vivid Economics<sup>13</sup>.

5.14. The evidence report analysed:

- The scale of current exempt abstraction activities and associated costs and benefits;
- Likelihood of abstractors receiving curtailments or restrictions placed on their licence;
- What impact both curtailing abstraction volumes and imposing Hands-off-Flow licence restrictions (if applicable) will have on each activity.

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<sup>13</sup> HR Wallingford (2013) "The Impact of New Authorisations on water abstractions", published by Defra <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=Notes&Completed=0&ProjectID=18618>

5.15. The approach was to collate existing data from a variety of sources and to gather new information through interviews with representatives of the exempt abstractors.<sup>14</sup> In particular, the interviewees provided information on volumes of water abstracted, on the value of this abstracted water to their activities and on the likely mitigating options exempt abstractors may choose to take. Based on this evidence, aggregate abstraction volumes for each of the exempt sectors were estimated.

5.16. The appraisal methodology is constructed as follows:

- Identify mitigation options for maintaining output levels together with their associated costs;
- Develop a model to assess the impact of restricting or refusing future licences.

5.17. In this assessment, the three options were considered against three separate licence scenarios. In the licensing scenarios a cautious view was taken over the level of what constitutes 'serious damage' to the environment. In itself, curtailing abstractions that cause serious damage will not be enough to meet all of our environmental targets. The licence scenarios under consideration range from setting environmental criteria designed to prevent abstractions causing serious damage, to environmental criteria that will not meet all our environmental objectives. More explicitly, the three licensing scenarios considered are:

Scenario A - is a precautionary scenario under which all licence applications would be refused if the activity contributes to a water body not meeting any of its environmental objectives (much more precautionary than our proposal to refuse or curtail licences that may cause serious damage), or where catchments are over-abstracted or over-licensed. This would also include licence refusal for all seriously damaging abstractions, and Hands-off-Flow restrictions where applicable.

Scenario B - covers a situation where approximately half of licence applications would be refused where the activity contributed most towards a water body not meeting any of its environmental objectives, or where catchments are over-abstracted or over-licensed. This would also include licence refusal for all seriously damaging abstractions, and Hands-off-Flow restrictions where applicable.

Scenario C - covers the least severe licensing restrictions and only looks at licence refusal for all seriously damaging abstractions, and Hands-off-Flow restrictions where applicable. This is light-touch approach for exempt abstractors while meeting our environmental objectives in a phased and consistent way as set out in the 2015 WFD River Basin Management Plans<sup>15</sup>. Any future abstraction licence changes that may be needed can be made to all consistently to all abstractors. This is the option we selected and is adopted in all of the core option analysis.

5.18. More background on this top-down assessment is in Annex D.

5.19. The evidence report estimates the numbers of abstraction activities that are potentially at risk of causing serious damage to the environment and what the impact of a Hands-off-Flow restriction on licences might be.

#### *The Agent Based Model*

5.20. The first assessment gives us an estimate of the impact on production and changes to abstraction volumes for an individual activity in isolation from other abstractors. However this approach does not take full account of the dynamic interaction effects on the decision making process such as seasonal rainfall patterns or the impact of one abstractor's activity on water flows on another

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<sup>14</sup> Interviews were carried out to gather information on how the exempt sectors were using their exempt abstractors. The interviewees were asked for data on volumes of water abstracted and the value of this abstracted water to their activities. Not all were able to provide the information. As such the information in the top-down assessment is based on the available existing data and supplemented by the information gathered in interview.

<sup>15</sup> <https://www.gov.uk/government/collections/river-basin-management-plans-2015>

abstractor. Instead it uses expert judgements to suggest what the optimal choices individual abstractors will take. Usually these are judgements made for the average abstractor.

- 5.21. To help further our understanding of the dynamic effects, the analysis also considers a model of the choices that exempt abstractors may make in the face of New Authorisations. This is an Agent Based Model (or the 'ABM').
- 5.22. The ABM underpins all of the analysis in Defra's separate abstraction reform impact assessment and was adapted by the contractors to test and therefore inform this assessment.
- 5.23. However not many of the currently exempt sectors can be modelled using the ABM: The model does not incorporate ports, exempt geographical areas or most Crown abstraction. The ABM coverage of canals, internal drainage boards and Ministry of Defence abstractions is too limited to be useable in the assessment. Even where the model incorporated an exempt abstractor, for example irrigators, without the quality of information we have about licensed abstractors the results of the model varied significantly depending on the assumptions made about the abstraction particularly the exact location of abstractions. The ABM results were therefore judged less reliable than the top down assessment.

#### *Assessing options*

- 5.24. The methodology used in this appraisal is summarised here:
  - We first developed new evidence on licence exempt abstractors where none existed previously. This evidence base has evolved and is informed by the 2016 consultation responses, engagement with abstractors during and post the consultation and refinement to our final implementation policy as a result (such as moving away from universal volume conditions on transfer licences). This evidence helped to formulate the base line through scoping the total numbers of exempt abstractors, the scale of their operations, the likelihood and implications of bringing them into the licensing regime and also what strategies they are likely to adopt upon policy commencement;
  - The ABM was used to test the analysis where it could be applied;
  - We assume that in the base line (option 0) exempt abstractors would face economic impacts similar to option 1 and 2, where the predominant driver in differences between the options will be the point at which environmental action is taken and licensing costs. For this we choose to set out the approach for each sector alongside the impacts for the base line (option 0) against which options 1 and 2 are then assessed.
  - We assess each of the core options 1 and 2 within a range of high and low estimates of the cost of financing optimal mitigation strategies pursued by licence exempt sectors. This is because our evidence typically provides us with central estimates that are appropriate for the average abstraction activity; flexing inputs within a range helps us to account for any uncertainty in cost assumptions and also variation in the average size of abstraction operations.
- 5.25. As discussed we also develop a base line that assumes existing legislation will eventually force action with regard to detrimental water abstraction. This is to reflect that a lot of the costs incurred by current licence exempt abstractors will happen at some point in time (assumed to be ten years). The predominant driver in the differences in cost estimates between options is due to differences in when action is taken – we are mostly delaying the point at which costs of tackling detrimental exempt abstractions are incurred. As such we provide detail for analysis for the sectors in the base line and note that the approach is replicated across all options.

5.26. The cost and benefit categories under consideration are outlined in the table below:

**Table 5.1: Business Cost and Benefit categories**

Impact	Description
Compliance & Administration	Costs to currently licence exempt abstractors from having to apply for and comply with the licensing system.
Economic Output	Changes to output that arise from one or a combination of a) having to invest in technology to mitigate against the impact of reductions in allowed abstraction volumes b) reductions in profits directly as a consequence of reduction in allowed water abstraction volume c) having to switch to a new activity, location or perhaps close operations.
Levelling the playing field	This is an extension to the economic output but relates to existing licence holders. Improvements to the availability and level of water flows may help existing licence holders to expand their output.
Environmental Benefits	The associated environmental (natural capital) benefit from improving flows in water bodies.

*Compliance and Administration costs*

5.27. All exempt abstractors will face the cost of complying with the abstraction licensing regime as they are brought into it. These are split into those occurring as a one-off, those occurring annually (for full licences only) and those expected to recur every 12 years at the point of licence renewal (or 3 times over our 25 year appraisal period).

5.28. The range of impacts was set out in the 2009 consultation Impact Assessment, which in turn built on the 2003 assessment around the commencement of the Water Act. The impacts are based on data collection and local knowledge.<sup>16</sup> The various cost categories have remained the same but the estimates have been revised for this analysis. These business costs are categorised:

One-off costs:

- Advertising (costs to the regulator and to place in a local newspaper/online);
- Providing an environmental report;
- Seeking professional advice;

Annual costs:

- Annual licence charge (applicable to full licences only);
- Record keeping, reporting and making payments (applicable to full licences and small proportion of transfer licences);

Every 12 years:

- Metering/measurement of required water volumes;
- Time spent gathering data and completing the licence application
- The application fee.

5.29. It is unlikely that all these costs categories will apply on an individual abstractor and those which do are likely to vary for each abstractor. We have identified a range of cost estimates and also a likelihood of the coverage of the costs to generate an 'expected' unit cost for each of these

<sup>16</sup> See Sections 3 and 4 of the 2009 consultation impact assessment for more detail.

charges. It is also assumed that, with the exception of two categories ('professional advice' and 'abstraction charges'), the average unit cost for each of these categories will be identical for all abstractors; any variation in sector compliance cost is driven by the number of abstractions needing licences in each sector.

5.30. We use these average figures and their associated ranges to calculate the NPV impact of licence compliance for each sector. In all of our assessment none of these costs are expected to be sufficiently large on their own to influence the behaviour of currently exempt abstractors. So for those activities (most of them) which do not face licence restrictions or curtailment to their abstraction volumes, we do not expect any adjustment to their behaviour when facing the cost of licensing and compliance alone.

5.31. In our option analysis we assume that all of the one-off costs occur at the end of the transitional period. In practice, if there is a transitional period, it may be the case that some of the abstractors may decide to incur the one-off costs earlier in the transition; our assumption on the timing of these costs may be to underestimate the overall NPV impact of licensing and compliance cost.

5.32. An overview of the compliance and administration costs is in Annex E.

### Assumptions

5.33. Key assumptions are set out in the table below:

**Table 5.2 - Key assumptions**

Input	Description	Assumption
Transitional Arrangements / Period	This refers to the process to bring exempt abstractors into the licensing regime. It includes both the period of time allocated to allow currently exempt abstractors to apply for a licence and also time for the regulator to make a decision on whether to award a licence.	Application and Determination period modelled as one. We assume policy impacts incur from the end of the application period. Abstractors to carry on activities as normal until then. Various lengths of time considered. We assume abstractors do not change their abstraction behaviours leading up to licensing and that abstractors will be comply with the licensing requirements <sup>17</sup> .
Compensation	Compensation could be payable unless the licence is refused or constrained due to association with an activity causing serious environmental damage or to protect rivers at very low flows. As such, we would expect only minimal compensation claims.	We assume no compensation will be payable under any option.
Hands-off-Flow	Regulatory control applied to licences that require holders to stop abstracting when the flow of surface water in a river drops below a particular depth. Occurs from licence commencement.	Treated differently depending upon analytical approach. For the studies have taken evidence to determine likely impact; for ABM we analysed a HoF restriction to a Q-level of 70% and 95% <sup>18</sup>

<sup>17</sup> We believe it will be in abstractors' interest to comply rather than risk not being able to take advantage of the light touch approach.

<sup>18</sup> For a HoF condition of Q(x): x refers to level of river flow that is exceeded for x% of the year - the HoF restriction will kick in when the flow drops below this level. We chose a level of Q70 for our Agent Based Modelling as this was felt best to mimic the impact of the HoF on trickle irrigators in the evidence report suggested by HR Wallingford. This level of HoF is substantially more restrictive than abstractors should normally expect when licences are issued. Other than in serious damage cases, our proposal is that in almost all catchments that are already over abstracted will be issued with Q95, in all other catchments 75% of Q99

Licence Costs	New Authorisations face fees associated with licensing. These are a mixture of: fixed charges towards regulator costs; an annual charge for the management of abstraction and the cost of compensating abstractions associated with revocation of licences. Around 80% of New Authorisations will be transfer licences.	All New Authorisations would incur these costs. The New Authorisations receiving transfer licences will not pay an annual charge.
Curtailment	Abstractors at risk of causing serious damage to the environment may face curtailment to their activities. In the extreme a licence may be refused outright. Occurs at the licence determination stage.	We used a relatively strict view of what constitutes serious damage (based on the definition consulted on in 2012) underpins the evidence assessment that feeds into the analysis. Impacts assumed to take place at the end of the Transitional Period.
Mitigation	What currently exempt abstractors could do to mitigate the impact of New Authorisations.	We consider the [combination of] mitigation options that were deemed most suitable or cost-effective when scoping out the evidence. The ABM lets us compare the choice of mitigation which emerges dynamically.
Licence Review Period	New Authorisations are time limited for a period of around twelve years.	We do not model explicitly in the top-down approach, but this is accounted for in the Agent Based Modelling.
Compliance	Separate to administration cost and refers to the direct costs faced by currently exempt abstractors in complying with licence arrangements.	All New Authorisations incur these costs.

5.34. Common to all options is the decision making process each modelled abstractor is assumed to take:

- Prior to commencement abstractors can carry on abstracting without a license and without any potentially associated conditions, in line with volumes abstracted within the qualifying period.
- This unlicensed and unconstrained use will continue until the end of the transitional period<sup>19</sup>. Abstractors will react to any licence restrictions immediately after this period. This modelling simplification keeps the analysis tractable and, although abstractors may receive licences with restrictions at various points during the transitional period, this is impossible to predict in advance and has a negligible impact on the cost-benefit profile.

5.35. Throughout the transitional period an abstractor assesses strategically how they might respond to possible curtailments or restrictions to their abstraction when licensing commences; they will have a reasonable expectation of the likely scale of restrictions given their knowledge of their own abstraction/activity.<sup>20</sup> The abstractor will consider:

- Administration and compliance costs associated with licensing. This will be incurred by all abstractors;

<sup>19</sup> Once the transitional regulations come into force, any increases in abstraction will need to be applied for through the usual licensing application route, but a licence will need to have been secured before any change in abstraction practice may occur.

<sup>20</sup> In practice abstractors will use part of the transition arrangement period to gather information to submit to the regulator. They are likely to have a reasonably accurate expectation of the restrictions they may face. Only when the regulator has assessed the application will the abstractor know precisely what implications, if any, they might face.

- An assessment of the impact of having their activities curtailed where they are at risk of causing serious damage to the environment. This is an impact that would occur at the point of receiving a licence. In the extreme curtailment may lead to outright refusal of an abstraction licence;
- An assessment of the impact that Hands-off-Flow restrictions on licences might have on their future activity. This is an impact that may have an effect throughout owning a licence and is based on water availability within a catchment.

5.36. In most instances a likely response will be to carry on as normal but incur cost of complying with the licensing regime. Yet for some where the restrictions at the point of licensing or due to the Hands-off-Flow condition on the licence are strong, the abstractor may choose one or a combination of the following:

- Invest in technology to mitigate against the impact of reductions in allowed abstraction volumes;
- Accept a reduction in abstraction volume and face a reduction in profits/ output volume of the end product;
- Switch to an alternative activity or location;
- In the extreme the abstractor may decline the offer of a licence and prefer to close down its activity.
- Improve efficiency of production<sup>21</sup>

5.37. Each of the decisions an abstractor will choose to take will depend on the activity associated with it. The most cost-effective choice(s) for each abstractor are taken from the scoping analysis done by HR Wallingford/ Vivid Economics.<sup>22</sup> In our base line assessment we consider each of the impacted sectors in turn and have summarised at the beginning of each section the types of decision abstractors in the sector will make.

5.38. Our choice of appraisal period is **25 years** to effectively represent admin costs and the benefits to licensed abstractors. This is in consideration that many significant impacts typically materialise over this time frame using our modelling approach. For example, the decision making to invest in assets such as reservoirs are based on a 20 year lifetime, while the licence review period takes place approximately every 12 years. Importantly, the baseline (current policy) includes costs to business in years 11 to 25 that would be brought forward or altered in the other options (see section 6 following).

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<sup>21</sup> This is not a direct response to restrictions on water use but is the results of an up-front capital investment that leads to greater efficiency in water use. For example, a trickle irrigation farm might choose to invest in rainwater harvesting which requires a sizeable upfront cost but in turn leads to a lower marginal cost of water use.

The scope for improvements in productive efficiency – the ability to carry out existing tasks with fewer inputs – was examined in our Evidence Study produced by HR Wallingford. For all of our sectors under considering none the scope for improvements in productive efficiency is considered minimal as mismanagement of water directly leads to greater operating costs in all sectors. See HR Wallingford (2013), page 68.

<sup>22</sup> These were in turn based on interviews with current licence exempt sectors, expert judgement and economic theory.



## 6. Options Assessment

- 6.1. This section shows our assessment of the options. It begins with an assessment of the baseline option 0, taking each impacted sector in turn, and then looks at the aggregate impacts of the remaining options.
- 6.2. At a high-level we expect the main driver in the variation in net impacts between options to be the compliance and administration costs faced by currently licence-exempt abstractors and the point at which licensing commences – the way we calculate the impacts in the base line and across our three options is the same, but the point in time at which the cost-benefit impacts commence will differ between them.

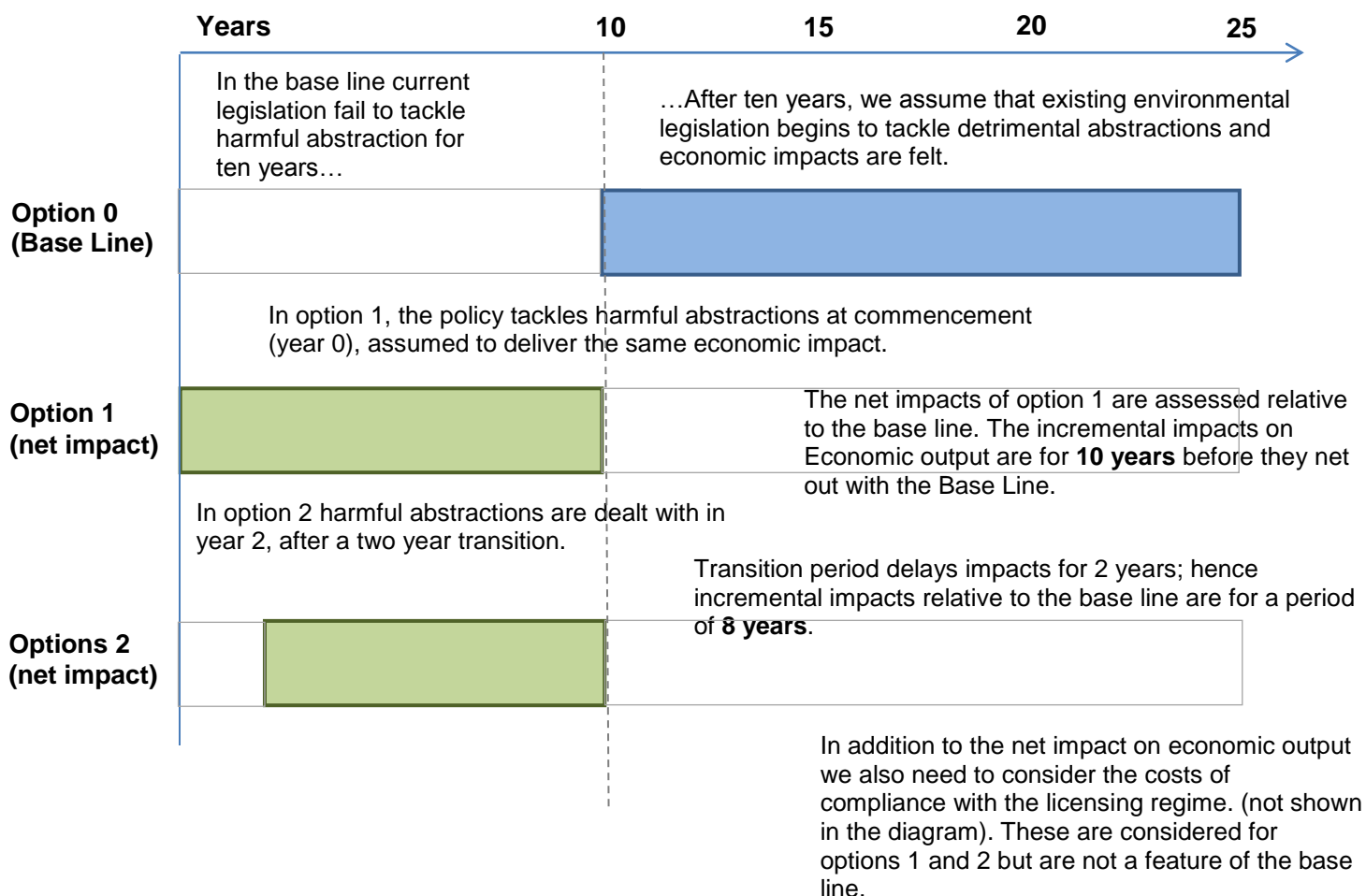
**Table 6.1: Timing of impacts for options 1 and 2 and the Base Line**

Option	Period in which impacts occur (over 25 year appraisal period)	Key Assumption	Compliance and Administration Costs?
Option 0 - The Base Line	Ten years of no impacts followed by 15 years of impact on economic output and benefits from tackling detrimental abstraction to the environment and other abstractors	Existing legislation begins to tackle detrimental abstractions from appraisal year ten. This is assessed in the same way we assess the impacts of other options.	There would be substantial effort tackling this in an ad hoc case basis).
Option 1 - No Transition	Assessment is relative to the base line. Incremental impacts are for a ten year period which incur from appraisal year 1 to year 10 inclusive.	From appraisal year ten, the incremental impacts on economic output are zero relative to the base line and begin to net out.	Yes – starting from the beginning of the appraisal (year 0)
Option 2 - Two Year Transition (The option selected)	Assessment is relative to the base line. Incremental impacts are for an 8 year period and are incurred from appraisal year 3 to year 10 inclusive.	From appraisal year ten the incremental impacts on economic output are zero relative to the base line and begin to net out.	Yes – starting from appraisal year 2

- 6.3. The approach set out in the table above gives a high-level representation of when impacts are incurred in each affected sector.<sup>23</sup> This high-level representation is also explained in figure 6.1:

<sup>23</sup> Regarding sectors analysed by the ABM: the incremental impacts of new authorisations evolve over time in ways that are dependent on the socio-economic, investor and hydrological conditions at the time the policy is commenced. As these vary year by year, the incremental impacts when comparing, Option 1 and 2 will not exactly net out with the base line from year ten. Similarly for quarries the length of the transitional period and the commencement date of the policy plays a role in determining the scale and persistence of the impact, to the extent that they do not net out precisely with the base line from appraisal year ten

**Figure 6.1: Illustrative timing of impacts for options 1 and 2 and the Base Line**



**Option 0: Base Line Assessment**

- 6.4. In the base line it is assumed that existing legislation will eventually have its intended effect. This assumption is a simplification aimed at achieving a coherent methodological structure for the analysis. In practice this is unlikely to be the case, existing legislation is likely to take a gradual effect and tackle detrimental abstractions earlier or later than ten years into the appraisal period. This assumption does not affect the relative attractiveness of options 1 and 2.
- 6.5. The assessment considers nine licence exempt abstraction sectors, as well as the impact on existing licence holders and the environment. Numbers of exempt abstractors are given below by sector.

**Table 6.2: Expected Numbers of Exempt Abstractions by activity.**

Sector	Number of Abstractions Exempt from Licensing
Quarries and Mining	790
Trickle Irrigation Farms	990
Ports	12
Navigation (Canals)	350
Managed wetland systems	1500
Internal Drainage Boards	200
Ministry of Defence / Crown	150
Road and rail	200
Exempt Geographical Areas	600

Source: Environment Agency and Natural Resources Wales

## Quarries and Mining

- 6.6. It is estimated there are around 790 quarries and mines in England and Wales that are currently exempt from abstraction licensing. The economic importance of this type of site is sizeable with an approximate turnover of £2.9billion<sup>24</sup>. These activities are also regulated through reviewable planning permits which in the majority of cases will be informed by Environmental Impact Assessments balanced with other interests. Expected impacts on the water environment have thus already been taken into account as far as possible prior to operation, so it is thought that only a very small number of the abstractions for dewatering used in quarrying and mining sector may cause serious damage to the environment. Here it is assumed that around half a dozen cases (less than 1% of all operations) may occur. This assumption was discussed with the sector who agreed it seemed a reasonable estimate for use in an impact assessment.
- 6.7. Abstractions by quarries and mines are for the purposes of dewatering – the process of removing groundwater, which is necessary to prevent interference with their activities. There are no Hands-off-Flow restrictions for dewatering licences.
- 6.8. Mitigation measures to maintain output are likely to be implemented by operators when facing curtailment or restriction of their current levels of water abstraction. The range of plausible mitigation options identified were:
- *Prevention* measures to avoid the need for drawing water from below the water table (the act of drawdown);
  - *Control* measures to restrict the depth, extent or duration of the need to drawdown;
  - *Compensation* measures to ameliorate the impacts of drawdown, such as return water to the aquifer.
- 6.9. All of these measures are characterised by high associated costs.<sup>25</sup> Interviews carried out for the evidence study suggested that a quarry or mining site was very unlikely to remain commercially viable if it must undertake high cost mitigation strategies; therefore sites facing curtailment are assumed to find closing down the site (and opening another site) preferable over mitigation strategies. We believe this is a reasonable assumption given the small scale of restrictions we estimate (affecting around 0.7% of 790 quarries) and the relative availability of alternative sources of minerals, although we note the sector's concerns about assuming that operators could switch readily to alternative sites and that the impacts could be significant on the operators affected.
- 6.10. The ABM results support the view that quarries and mines may prefer to close their operations early when facing a restriction to their abstraction activity (dewatering).
- 6.11. This is plausible as mitigation options may only be feasible for quarries that have considerably longer operating lives than average. However, as it has been the intention to commence the Water Act 2003 provisions for 14 years, it would be expected that any site opened since this date will have been chosen commercially to avoid risk of harm to water bodies and, as noted above, the industry is regulated through reviewable planning permits which the industry suggests will have adequately addressed significant environmental concerns through the planning Environmental Impact Assessment process.
- 6.12. Our options assessment thus looks at the impact of bringing forward the expected closure date of a quarry or mine. We present the impacts of a quarry or mine deciding to close down in light of restrictions to dewatering on lost output/revenue. The approach we have taken is as follows:

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<sup>24</sup> Aggregate Minerals Survey 2009; UK Minerals Yearbook 2011. Turnover figures relate to relevant subdivision: 'quarrying of stone, sand and clay'.

<sup>25</sup> HR Wallingford Report (2013)

- First, we take the assumption that quarries and mines are equally likely to be at any point in their life horizon, such that on average a quarry's or mine's remaining life is half of its typical life.
- At the point exempt abstractions are ended quarries/mines decide to stop any resource extraction that involves dewatering. Some of the extraction can be done without dewatering so that each site will not necessarily close immediately but will continue to exhaust all resources above the water table before closing. An assumption over how much resource above or below the water table is needed.
- We assume that quarries/mines deplete the resource available to them at a fixed rate over time. Throughout the lifetime of the site, the operator's return will be used in part to finance the next site; this notional amount is accrued evenly over the site's lifetime.
- We then look at the cost of the next available site that will be opened and calculate what the required annuity value will be over the remainder of its life, assuming dewatering is still exempt from licensing. This factors that some of the cost will have been recovered as in expectation the site will be half way through its lifetime at the start of the appraisal period.
- Then the same exercise is repeated but this time we look at the annuity value of having to pay for the next available site over a shorter time frame- that of the remaining life assuming the operator will discontinue with extraction that makes use of dewatering.
- These values are annuitised over the 25 year appraisal period. This difference in annuity value reflects the cost of lost production to a quarry/mine.

6.13. In doing this we have made the following assumptions on the following figures, drawing on figures provided jointly by HR Wallingford and Vivid Economics for the *average* quarry or mine:

- The financing cost is **7%** (pre-tax, real).  
*We apply a sensitivity test for alternative rates at 6% and at 9%. This is to reflect any potential uncertainty around our central estimate due to our small sample of operators and possible variation to an individual operator's financing costs*
- Only a proportion of each site requires dewatering for mineral extraction to take place. Any resource to be extracted that is above the water table will not be impacted by restrictions on dewatering. It is assumed that **50%** of the remaining resource is above the water table based on interview evidence that suggested this proportion of resource extraction is currently dependent upon dewatering.  
*We also examine what if 25% of the remaining resource is above the water table to capture any potential uncertainty in our central estimate, given that it is based on a small sample of operators.*
- The economic life of a quarry or mine is around **40 years**.<sup>26</sup> For the purposes of this analysis it is thus assumed that the average quarry has been in operation for 20 years (it is at its mid-point) expected remaining lifetime for our average quarry or mine will be 20 years. If a quarry chooses to stop its dewatering activities it will close earlier than anticipated but not right away – it will continue to extract resources above the water table at the same rate. For instance, at 50% of resource above the water table our average quarry could continue for another 10 years. For the base line the quarry will continue to finance the next site as normal for ten years and then, from the point environmental action commences, it will only have five (ten x

50%) further years of its life remaining whereby it is restricted to extracting resources without dewatering – the quarry is assumed the spread the remaining financing cost over this period.

- The overall resource available to be extracted in each quarry or mine is around **20million tonnes**<sup>27</sup> (so on average we would expect about 10million tonnes to remain). The rate which resource is extracted is around **500,000 tonnes per year**<sup>28</sup>.
- The cost of replacing production capacity/ moving to a new site is around **£35million**<sup>29</sup>. For simplicity and in the absence of further evidence, we also are implicitly assuming that abstractors are evenly distributed across groundwater sites 'at risk of serious damage' and that any Hands-off-Level restriction will have little-to-no effect on operations. It is expected that quarries or mines are able to use the lowest cost methods to mitigate for the effects of temporary water restrictions. There is a mark-up of 2% on the cost of the next quarry.<sup>30</sup>

6.14. To further test uncertainties associated with the cost of replacing production capacity/ moving to a new site which could vary within a range of 30% higher or lower, we have applied sensitivity testing within this range of 30% more or less than the central average value. The mark-up is tested also at 0% and 4% for the low and high ranges respectively.

6.15. These estimates are for an *average* quarry/mine. Clearly there will be some variation around this for an individual quarry or mine. As such we have looked at high and low estimates based on plausible combinations of the assumptions listed above. These scenarios layer a number of benign or stricter assumptions (relative to the average) to give a cautious, but extreme range of the costs around the average.

- **Central costs:** all of our central assumptions listed above;
- **Low cost:** as central estimate yet with a lower financing cost of 6%, and a replacement cost figure 30% lower than the central figure (to capture unknown variation around the average and uncertainty in our assumptions). There is no mark-up on financing the next quarry;
- **High cost:** as central estimate yet with a higher financing cost of 9%, none of the remaining resource is above the water table (i.e. site has to close immediately) and a replacement cost figure 30% higher than the central figure. There is a mark-up of 4% on financing the next quarry.

6.16. Addressing abstractions causing serious environmental damage in the mining and quarrying sector may yield sizeable benefit, not limited to those just from abstraction.

6.17. The table below shows the impact of preventing harmful abstractions relating to the Quarries and Mining sector in the base line. The quantified cost reflects that quarries will choose to close when faced with curtailments to their output that is causing serious damage to the environment.

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<sup>27</sup> HR Wallingford (2013)

<sup>28</sup> HR Wallingford (2013)

<sup>29</sup> HR Wallingford (2013)

<sup>30</sup> It is assumed that the expected market value of the natural resource is captured in these financing assumptions (notably the financing cost) of the quarry, and each operator finances the next site over the life-time of the current site. In addition, evidence from HR Wallingford suggests there are a significant number of potential sites for a quarry operator to move to indicating that supply is relatively elastic. Together this suggests there is low opportunity cost of not-extracting the full potential resource from a site; the imposition of water restrictions to a quarry raises the marginal cost of resource extraction, such that it becomes more cost effective to move to an alternative site with little disruption in output – we do assume the operator pays a mark-up on the next available quarry, yet the value paid captures the anticipated return over the total cost of the site. What is lost is the anticipated return over the forgone resource. Crucially the remaining resource from the original site is still available and can be extracted at a future time should it become profitable to do so.

6.18. There are likely to be environmental benefits (not quantified) from curtailing abstractions here as it is estimated that this sector contributes a small proportion of the 40% of groundwater bodies at risk of failing to meet its environmental objectives (basically more water is taken out of the groundwater than is going in over the longer term ie a negative mass balance). In addition, curtailments may lead to the relocation to sites in low-risk areas, and perhaps with the take up of more efficient technology.

<b>Impact on business of preventing harmful abstractions relating to Quarries and Mining in the Base Line (met by existing policies) PV £million</b>		
<i>High cost</i>	<b>Central</b>	<i>Low cost</i>
-94.1	-38.7	-25.0

#### *Trickle Irrigation Farming*

6.19. Trickle or drip irrigation is a specialised technique that delivers precise quantities of water through tubes to the soil close to the roots of plants. It requires specialised and relatively expensive equipment that is expensive to move around. In the UK it is therefore used mainly for small areas of high value crops that depend on steady supplies of water under controlled conditions. Examples are soft fruit, orchard fruit, runner beans, hops and ornamental horticulture. Many of these operations have rainwater storage to maintain their own supply in periods of low rainfall. About 20% of trickle irrigators use only mains water, leaving 80% that may use unlicensed abstraction from surface or groundwaters to feed their systems.

6.20. Drawing on several different sources of data, HR Wallingford estimated that there are 990 farmers and growers in England and Wales using exempt abstractions for trickle irrigation. A regional breakdown is shown in table 6.3.

**Table 6.3 - Estimated number of exempt abstractors using trickle irrigation, England & Wales**

Region	Number of exempt abstractors
North East	7
North West	67
Yorkshire and the Humber	99
East Midlands	84
West Midland	124
East of England	262
South East & London	187
South West	144
England	974
Wales	16
<b>Total (England and Wales)</b>	<b>990</b>

*Source: HR Wallingford estimates*

6.21. Because of the type of crops involved, restriction of access to water supplies could have major implications on crop yields and quality and therefore it will impact the revenue and profitability of the business. In the extreme, restrictions could force growers of high value crops to switch to lower value crops that do not depend on the same highly controlled regular supply of water and can be rain-fed. The economic impact of this situation can be estimated by considering a typical horticultural unit. Averaging the two most recent years' data from the Defra Farm Business Survey shows that an average horticulture business produced £331,000 output from 27 hectares of

agricultural land, giving a farm business income (a measure of profit) of £33,000. This compares with the average cereal farm, producing £276,000 output from 198 hectares at a profit of £40,000. If the horticulture unit were forced to switch to cereals on the same relatively small farm holding, it would effectively be scaling down its business in monetary terms, achieving a far lower output from the same area, although saving some costs too. Specifically the assumption is that the output (£1,045) and variable cost (£516) per hectare of the unit would fall to those of the cereal farm, as would fixed costs (£1,642) with the exception of unpaid labour (£1,039). Costs and revenues relating to other cost centres of the business (non-agricultural operations and payments from public policy schemes) would remain as they were for an average horticultural unit. The result would be a drop in profit from £33,000 to a loss of £13,000, a net reduction of £46,000. This assumes that the farm would continue but would not be able to cut all its fixed costs down to the level per hectare that is possible for a typical larger cereal farm because of its economies of scale. This position would not apply in the real world because the business would become unviable but the assumption is used here in the context of an impact assessment to demonstrate the scale of first round cost to business that this could involve.

6.22. Because of the very high cost of losing trickle irrigated enterprises, businesses that might be affected by restrictions would anticipate the situation by adopting mitigation strategies.

HR Wallingford identified and costed four main mitigation options that might be considered: on-farm reservoir storage, rainwater harvesting, greywater recycling and more efficient water use. Further information is available in the Annex B.

6.23. It is not possible to know the exact strategies under different types of restriction for different businesses but HR Wallingford suggested that several possible packages of options might be used. These are set out with HR Wallingford's estimate of the annual costs to the business in Table 6.4. For comparison, the option of applying all four of the above strategies would cost over £140,000 a year and can be ruled out as a realistic approach for any business.

**Table 6.4 – Mitigation packages for trickle irrigators applied in HRW analysis**

Situation	Description	% of annual water usage supplied	Annualised cost
<b>Major restriction</b>	Farms invest in one high cost measure (reservoir storage) and one low cost measure (rainwater harvesting). This package yields highest volume of water at lowest cost.	100%	£41,000
<b>Minor restriction</b>	Farms invest in two low cost measures – rainwater harvesting and improving water efficiency (both at £1,150). This package yields the required amount of water (30% of annual usage) to mitigate the HoF condition. This package has been used in the HoF cost calculations.	35%	£2,300

*Source HRW model, accompanying HRW report.*

6.24. The current best estimate is that major restrictions on water use might apply to 50 (5%)<sup>31</sup> of the 990 unlicensed trickle irrigators involved in unsustainable abstraction, typically larger operations than the average considered above. Of these 50, it is possible that 80%<sup>32</sup> would find it worthwhile to invest in reservoir storage with rainwater harvesting at an annualised cost of £41,000. The remainder would have no option but to switch to crops requiring less water, taking the full loss in farm business income considered above, expecting major structural change to follow (e.g. amalgamation with other businesses). In addition, around 60%<sup>33</sup> of the 990 trickle irrigators might experience hands off flow restrictions at an annual equivalent cost of £2,300. As mentioned above, many trickle irrigators already have rainwater collection systems that would be used to mitigate the impact of restrictions. Table 6.5 shows the combined total of these impacts.

**Table 6.5 – Combined impacts on trickle irrigators**

		Number	Cost per business per year	Total cost per year
Total trickle irrigators		990		
Major restrictions apply	5%	50	£42,000	£2.1m
Of which:				
Reservoir + rainwater harvesting	80%	40	£41,000	£1.6m
Switch cropping	20%	10	£46,000	£0.5m
HoF restrictions only	60%	594	£2,300	£1.4m
Total restricted	65%	644		£3.5m
Unrestricted	35%	346		

Source Defra from HRW report.

6.25. The table below shows the impact of preventing harmful abstractions relating to the trickle irrigation farm sector in the base line. The estimates show the combined impact of tackling harmful abstraction by either curtailing output at the point of commencement or placing restrictions on abstraction use (equivalent to receiving a HoF condition on an abstraction licence), which is substantial at a cost of around £20 million over the 25 years.

<b>Impact on business of preventing harmful abstractions relating to Trickle Irrigation in the Base Line (met by existing policies) PV £million</b>		
<i>High cost</i>	<b>Central</b>	<i>Low cost</i>
-26.1	-20.1	-14.0

#### *Navigation (Canals)*

6.26. There are around 350 abstractions made by canals currently exempt from licensing. Navigable canals are artificial constructions that connect to natural waterways and improve the efficiency of passenger and freight transport. An estimated 250 abstractions are made by the Canal and River Trust (CRT) for navigation in England and Wales, whom are responsible for around 75% of the canal network (this number has been appropriately scaled to give the overall figure).

6.27. Overall we estimate that 10% of the 350 may face a more restrictive HoF than their current operations while possibly 1% may be refused a licence on the grounds of risk of causing serious environmental damage. These estimates are based on discussions with CRT and the Association of Inland Navigation Authorities.

<sup>31</sup> HRW report licensing scenario

<sup>32</sup> HRW report (based on expert judgement and consultation feedback)

<sup>33</sup> Estimated proportion abstracting from surface waters



6.28. The following cost estimates are derived from HR Wallingford/ Vivid Economics (2013) and based on information provided by the Canal and River Trust.

6.29. Canals facing either HoF restrictions or curtailments are assumed to use a combination of low-cost mitigation methods. These include: system optimisation; the development of new surface water sources, and; back pumping. Only once these are explored will the canal operator respond by investing in higher cost options such as developing new groundwater sources or extending reservoirs where it is viable to do so.

6.30. Typically canals are expected to prioritise service levels and will attempt to maintain the integrity of the network (if they can) prior to restricting usage. With these service obligations in mind, it has been assumed that canal operators will invest to manage the risk of temporary HoF restrictions in the same way as they would for other licence restrictions: through a combination of mitigation options, using the lower costs option more extensively than higher cost options.

6.31. The approach to assessing canals is as follows:

- We assume that the nearly all canal operators take to the same combination of low cost mitigation methods. These include the development of new surface water sources, leakage reduction and back pumping. It is estimated that the average mitigation cost per MI of Water per year is around £263. This is an average figure based on judgement over the appropriate choice of mitigation measures. To reflect the underlying uncertainty, the estimate is flexed by 30% for the high and low.
- The average combined impact of HoF restrictions and licence curtailment will lead to a loss in abstraction activity of around 9,800 MI per year for the sector as a whole (compared to around 455,000 MI abstracted in total per year). Again this assumption is flexed by 30% for the high and low ranges.
- Canal operators have a duty to maintain their water levels and as such are required to mitigate all losses in abstraction volumes. Thus the central estimate of the capital cost needed to maintain water levels is around £2.6 million (i.e. yearly loss in abstraction volume multiplied by yearly mitigation cost of water loss or 9,800MI x £263/MI). An assumed financing cost 6% and a payback period of 25 years are used to calculate the central estimate of the annualised cost of mitigation. The financing cost is varied by +- 2% for the high and low ranges.
- In addition to the capital costs there are recurrent operating costs estimated to be around £38 per MI of water pumped. Combining the annualised capital costs and the operating cost gives a yearly cost of mitigation around **£574,000 per year**.

6.32. The table below shows the impact of preventing harmful abstractions relating to the Navigation sector in the base line. The assessment by the regulator that around 10% of abstractions harm the environment and would lead to some environmental enforcement action (equivalent to a HoF restriction on a licence). In addition, an estimated 1% could potentially face curtailment due to serious damage. The combined impact of restrictions and serious damage curtailment are quantified below.

<b>Impact on business of preventing harmful abstractions relating to canals in the base line (met by existing policies) PV £million</b>		
<i>High cost</i>	<b>Central</b>	<i>Low cost</i>
-7.5	-4.9	-2.9

## Ports

- 6.33. There are an estimated 116 ports in England and Wales that are currently exempt from licensing. The majority of these ports are or can be maintained by saline water and will not become licensable. This is because most ports and harbours are also covered by a proposed exemption for abstractions from saline waters.
- 6.34. An estimated 12 of the 116 ports and harbours in England and Wales instead require the use of abstracted fresh-water to replenish depleting water in their enclosed docks. It also is not anticipated that these fresh-water abstractions will be refused licences. There was also little evidence to suggest that fresh-water abstraction use by Port authorities is causing environmental deterioration. As such no ports are expected to face licence refusal but freshwater ports are assumed to face issue with low flow restrictions that is assumed to prevent 1.5% of freshwater abstractions.
- 6.35. A licence refusal would necessitate ports to purchase an 'impounding pump' (used to import saline water into the port to maintain water level) should the port not have one in place already. However a Hands-off-Flow restriction, one that leads to a temporary reduction in output, would be unlikely to result in operators investing in impounding pumps. Only under substantial, permanent restrictions might a port operator find this mitigating investment commercially viable.
- 6.36. From the evidence available to us, we would expect the operator to respond to the Hands-off-Flow restriction by a combination of temporarily reducing the level of water in docks, or through restricting the size of ships that could dock (this is assuming the port does not already have an impounding pump installed). Even an assumed revenue loss of 15% due to Hands-off-Flow restrictions in our high case scenario, this loss would not be sufficient for an operator to prefer investment in an impounding pump.
- 6.37. In our analysis we assume that 4 of a total of 12 may stand to lose revenue due to the HoF restrictions. The remaining 8 ports own impounding pumps already. Key assumptions in our approach are as follows:
- We examine the cost of installing an impounding pump and also the impact of reductions in revenue associated with the Hands-off-Flow restriction.
  - An impounding pump is assumed to cost the operator around £15m and will have a central expected lifetime of 25 years. The financing cost associated with the pump is 10%. The yearly maintenance costs are 10% of the initial value of the asset and the operating cost is estimated to be £200k/year. The cost estimates are estimated within a range of 10% above and below for our high and low estimates. The lifetime of the pump is 25 years in all scenarios. Financing cost is varied +/- 3%.
  - Data for ports has come from the Association of British Ports, which owns around 25% of all ports. The figures are scaled up by a factor of four to obtain a national estimate – with the remaining exempt licences all covered by harbours. Only ports that make use of freshwater abstractions and without impounding pumps are affected by HoF restrictions. There are an estimated 4 freshwater ports without impounding pumps.
  - From this we assume that the 4 ports without freshwater pumps will be unable to abstract for 1.5% of the time, leading to a loss of 1.5% of their average annual revenue.
- 6.38. The table below shows the impact of preventing harmful abstractions relating to the Port in the base line. The freshwater abstractions made by ports are not anticipated to be causing environmental problems but a small proportion of ports may face small reductions in revenue as

the environmental enforcement (equivalent to imposing a HoF condition on a licence) will prevent ports from abstracting water for around 1.5% of the year.

<b>Impact on business of preventing harmful abstractions relating to ports in the Base Line (met by existing policies) PV £million</b>		
<i>High cost</i> -0.3	<b>Central</b> -0.2	<i>Low cost</i> -0.1

#### *Further Exempt Sectors*

6.39. The remaining sectors/ activities currently exempt from licensing:

- Managed wetland systems;
- Internal Drainage Boards;
- Road and rail
- Ministry of Defence / The Royal Parks; and
- Exempt Geographical Areas.

6.40. Our research into these areas indicates there is no or a very small current risk of serious environmental water issues associated with each activity. As such, somewhat trivially in the options analysis there is expected to be no impact on IDBs either due to curtailment associated with serious damage or due to the imposition of a Hands-off-Flow condition placed on the licence. Nonetheless, there will be administration and licensing costs for each of these sectors to bear in the options analysis.

6.41. Managed wetland systems: There are approximately 190 water meadows and up to 4,000 wet grassland systems within England and Wales. Of these it is estimated that **1,500** activities (entirely located in England) may need water control in order to function.

6.42. The evidence research assumes that no water meadow are in breach of serious damage to the environment and will not be impacted by HoF conditions that maybe incorporated in their licence. We estimate that there are no discernible impacts on business activity or environmental stewardship schemes.

6.43. Internal Drainage Boards: The Land Drainage sector covers the Internal Drainage Boards (IDBs) within England and Wales, covering 123 in total. In Wales, the functions of IDBs are carried out by Natural Resources Wales. In England, the Environment Agency estimate that around 200 abstractions made by IDBs are under exempt status. These are typically located in areas with special drainage requirements, such as floodplains of rivers or broad open areas. IDBs indirectly support farming. IDBs typically raise income from levies on farmers, other occupiers and Local Authorities - our research base from the evidence study was unable to reliably estimate this indirect impact on income.

6.44. We are in ongoing discussion with IDBs about their abstraction and none of these discussions has led us to believe that there will be curtailment of IDB abstraction for serious environmental damage. However there is still some uncertainty due to the legal and technical complexity of quantifying which abstraction will need to be licensed. We have not attempted to expand upon this as we feel it would command a disproportionate amount of effort to the overall analysis.

6.45. Nonetheless impacts of any potential curtailment have been identified but we have not been able to take any further steps towards quantification. We feel the impacts would be indirect and limited to IDBs with extensive agriculture: the crop production of farms could be impacted as water is being abstracted on their behalf. Reductions in water use would perhaps be manageable as IDBs

take an active role in moving water to where it is most needed. In any event the regulator can already intervene if agricultural abstraction is causing environmental damage and is licensed.

- 6.46. Road and rail: through discussions with regulators during the consultation we have estimated that road and rail operators currently dewater tunnels at approximately 200 sites to maintain road and rail networks. Based on the current evidence we are not expecting abstractions to be curtailed because of serious environmental damage.
- 6.47. Ministry of Defence: it is estimated the Ministry of Defence (MoD) occupies around 1% of UK land areas. This estate provides accommodation and training for employees, the armed services, civil servants and industry partners all to help enable military operations. It abstracts water for a number of uses, particularly for domestic use (88% of water use) such as drinking water for housing and barracks, but also for operational purposes (remaining 12% of water use) such as vehicle washing, cleaning and fire-fighting.
- 6.48. Most of water is supplied from water companies but, for around 30% of supply, some water is abstracted where there is no mains supply available. Much of the information on abstraction activities, costs and volumes are not publically available. However, through interview, it was determined that potential reductions in water use could affect the ability to deliver their services which could impact on whether the MoD was able to support its personnel in domestic military duty.
- 6.49. Based on the evidence available we do not expect that abstractions will be curtailed or restricted due to risk of serious environmental damage.
- 6.50. The Royal Parks manage nine parks located within Greater London consisting of around 5,000 acres of historic parkland. During the 2009 consultation it was indicated that the largest abstraction volumes take place during dry summers when other water sources, such as lakes, become unavailable. An estimated 63 abstractions take place (although this number highly contingent on weather patterns).
- 6.51. None of these abstractions are likely to be curtailed as there is no current identified risk of serious damage to the environment. Yet there are likely to be Hands-off-Flow licence restrictions placed on abstractions during period of drought where the Parks will be unable to irrigate. Mitigation measures (such as rainwater harvesting) might reduce any impact of a potential constraint but it was not clear whether Royal Parks would choose to invest in these.
- 6.52. To capture the effect of Hands-off-Flow restrictions on revenue we have assumed a modest reduction in yearly annual income in the central scenario of 1%.<sup>34</sup> The low scenario assumes a 0% and the high scenario 2%. In addition, the cost estimates have been flexed within a range of 30% above and below the central figure. Our central figure is based on the average of the last three reported years of data available in annual accounts. The average total income for the Royal Parks over the three financial years from 2010 to 2013 was **£20.8million**.
- 6.53. The table below shows the impact of preventing harmful abstractions relating to the Royal Parks in the base line.

<b>Impact on business of preventing harmful abstractions relating to Royal Parks in the Base Line (met by existing policies) PV £million</b>		
<i>Low</i>	<i>Central</i>	<i>High</i>
-4.6	-1.8	0

<sup>34</sup> This figure was proposed by engineering consultants HR Wallingford and Vivid Economics in their research into Royal Parks.

- 6.54. Exempt Geographical Areas: there are estimated to be around 600 abstractions in geographical areas in England and Wales that are exempt from licence control. Abstractions activities in these areas are in general expected to be small and as such individual abstractions are unlikely to have an environmental impact. However we are also aware that there is some larger abstraction taking place in exempt areas, where the bottled water industry has developed, and there are concerns about effective regulation to protect access to water particularly in some Welsh exempt areas.
- 6.55. In our discussions with the bottled water industry, representatives suggested that their abstractions were sustainably managed in the interests of their businesses. We nevertheless acknowledge the possibility that some such abstractions in these areas may be impacting the environment, or other abstractors' access to water, even in cases where the impact is such that serious damage provisions are not likely to apply. It is not however possible to assess these impacts without knowing the precise locations, associated activities and volumes abstracted. We therefore are unable to comment and determine the costs to the environment and other abstractors, although we would anticipate that they are likely to be localised to specific sites.

#### Impact on Existing Licence Holders

- 6.56. Here we use the ABM to quantify some of the direct benefit to abstractors that are already within the licensing system – those that are considered to be *levelling the playing field* in allowing more efficient use of water amongst all abstractors. This is only a partial analysis as it mainly encapsulates **benefits to the agricultural sector only**. These benefits effectively arise from transferring some of the restriction between previously unlicensed and licensed abstractors. Higher costs to the newly licensed are partly reflected in benefits (reduced costs) to existing licence-holders. In order to eliminate random fluctuations between model runs, we took an average ratio of modelled benefits to modelled costs (roughly 0.2) and applied it to the top-down agricultural cost estimate for each of the policy options appraised to derive the monetised benefit estimate.
- 6.57. The HoF restrictions and licence curtailments imposed on those entering the licensing system will make more water available in the catchment to the benefit of the environment and/or existing licensed abstractors, particularly at low flows.
- 6.58. High and Low estimates for existing licence holders are based on the variation in the national level results from looking at the ABM's constituent catchment models.
- 6.59. The table below shows the impact of preventing harmful abstractions relating to the existing licence holders in the base line. There are clear economic benefits to existing licensed abstractors due to maintaining or improvements in access to, and reliability of water flows from curtailing harmful abstractions.
- 6.60. The benefits to licensed abstractors are likely to be higher than quantified here as the ABM estimated only the benefit of ceasing harmful abstractions from trickle irrigators to the rest of the agriculture and horticulture sector. Including all New Authorisations and including a complete set of all abstractors would increase the overall benefit.

<b>Impact to Existing Licence Holders in the Base Line (met by existing policies)</b>		
<i>NPV £million</i>		
<i>Low</i> +2.9	<b>Central</b> +4.1	<i>High</i> +5.3

#### *Base Line Summary*

- 6.61. The following table 6.6 shows the aggregate impact of tackling detrimental abstractions under the base line, summarising the above sector analysis. Costs are shown as negative impacts.

**Table 6.6 - Summary of impacts in the Base Line (NPV £m 2014)**

Sector	Low	Central	High
Quarries and Mining	-94.1	-38.7	-25.0
Trickle Irrigation Farming	-26.1	-20.1	-14.0
Navigation	-7.5	-4.9	-2.9
Ports	-0.3	-0.2	-0.1
Royal Parks	-4.6	-1.8	0
Managed Wetland Systems	0	0	0
Internal Drainage Boards	0	0	0
Ministry of Defence	0	0	0
Exempt Geographical Areas	0	0	0
Existing Licence Holders	+2.9	+4.1	+5.3
<b>Total</b>	<b>-129.7</b>	<b>-61.5</b>	<b>-36.7</b>

### Options 1 and 2: Overview

6.62. Here we set out the aggregate impacts of options 1 and 2 *relative to the Base Line (option 0)* as covered above. The methodology for calculating the costs for each of these sectors is the same as for the Base Line; yet the key driver of difference in the results will be that they fall earlier in the appraisal period as we choose to take environmental protection earlier.<sup>35</sup> In addition, they will also include licence compliance and administration costs as environmental protection will be achieved through licensing.

#### Option 1: No Transition

6.63. Without Transitional Arrangements, abstractions would become unlawful and have to cease once provisions are commenced, unless and until a licence were granted.

6.64. The key driver of the difference in these costs relative to the base line is that New Authorisations under option 1 deliver immediate reductions (at the point of commencement) in abstractions causing serious damage.<sup>36</sup> The costs to the exempt abstractors incurred in either having to maintain or reduce output and the benefits to the environment and other abstractors are felt throughout the entire 25 year appraisal period – by contrast with the base line where the impacts are felt after ten years and option 2 where they are felt after two years.

6.65. Immediate commencement may limit the time available to abstractors to respond by implementing mitigation measures and cause the regulator resourcing issues. We assume this is unlikely to have notable bearing on costs for the following reasons nevertheless there is likely to be non-monetised costs:

- Exempt abstractors and the regulator have been aware of potential commencement of licensing provisions since the Water Act 2003. In addition, curtailments and restrictions are also possible under the base line environmental protection regulations. Given the size of the main sectors affected it is highly likely these risks are already reflected in business planning. Evidence from sector interviews<sup>37</sup> support this;
- The mitigation options identified in the evidence report used in assessment are considered to be the most plausible in terms of their cost effectiveness and time-intensity.

<sup>35</sup> Paragraphs 5.2 and 5.3 earlier in this section outline the difference in the timing of New Authorisations amongst the options considered.

<sup>36</sup> Exempt abstractors would be curtailed or restricted as soon as being brought into the regime.

<sup>37</sup> These were carried out by HR Wallingford and Vivid Economics.

6.66. The table 6.7 shows the range of impacts incremental to the base line for implementing option 1.  
Figures are NPV £m.

**Table 6.7 – Summary of option 1 net impacts (NPV £m 2014)**

Sector	Impact	Low	Central	High
Quarries and Mining	Economic Output	-81.4	-33.3	-23.5
	Administration and Compliance	-5.1	-3.0	-2.5
	Total	-86.5	-36.3	-26.1
Trickle Irrigation Farming	Economic Output	-38.8	-29.8	-20.9
	Administration and Compliance	-26.4	-4.1	-3.2
	Total	-65.1	-33.9	-24.1
Navigation	Economic Output	-7.6	-5.0	-3.0
	Administration and Compliance	-2.3	-1.3	-1.1
	Total	-9.9	-6.3	-4.1
Ports	Economic Output	-0.9	-0.5	-0.2
	Administration and Compliance	-0.1	-0.0	-0.0
	Total	-1.0	-0.6	-0.3
Royal Parks	Economic Output	-4.7	-1.8	0
	Administration and Compliance	-1.7	-0.3	-0.2
	Total	-6.3	-2.0	-0.2
Water Meadows	Economic Output	0	0	0
	Administration and Compliance	-39.9	-6.1	-4.9
	Total	-39.9	-6.1	-4.9
Internal Drainage Boards	Economic Output	0	0	0
	Administration and Compliance	-1.3	-0.8	-0.6
	Total	-1.3	-0.8	-0.6
Ministry of Defence	Economic Output	0	0	0
	Administration and Compliance	-2.3	-0.4	-0.3
	Total	-2.3	-0.4	-0.3
Road and Rail	Economic Output	0	0	0
	Administration and Compliance	-1.3	-0.8	-0.6
	Total	-1.3	-0.8	-0.6
Exempt Geographical Areas	Economic Output	0	0	0
	Administration and Compliance	-16.0	-2.5	-1.9
	Total	-16.0	-2.5	-1.9
Existing Licence Holders	Economic Output	+10.7	+15.3	+19.9
	Administration and Compliance	0	0	0
	Total	+10.7	+15.3	+19.9
Total all sectors	Economic Output	-122.6	-55.1	-27.7
	Administration and Compliance	-96.3	-19.1	-15.5
	Total	-218.9	-74.3	-43.2

6.67. Under our central analysis the net impact of option 1 will be an NPV cost of £74 million. Of this, £55 million is due to net costs on abstractors having to either maintain their abstraction volumes



due to business need or facing reductions in output. These costs arise to protect the environment from serious damage and rivers at low flows. The remaining £19 million reflects the cost of having to comply with the licensing system. Quarries and Mining, and Trickle Irrigation Farms are the largest impacted sectors, making up respectively around 40% and 38% of the cost to all new authorisations.

6.68. However it is worth noting that licensing is a more efficient mechanism for the prevention of serious environmental damage and will deliver environmental benefits at a faster pace relative to the base line and option 2. As well as the biggest environmental benefits it will have the most benefits to other existing licensed abstractors in terms of 'levelling the playing field' on top of those we've been able to quantify here. The ABM analysis gives indication of the types of benefit to existing licence holders.

Option 2: Two Year Transitional Period

6.69. This option allows for a two year transitional period whereby licence exempt abstractors can continue their activities as usual until licensing is enforced. This will delay the benefits from preventing serious environmental damage and other abstractors but also delays the point at which exempt abstractors are impacted from New Authorisations.

**Table 6.8: Summary of option 2 net Impacts (NPV £m 2014)**

Sector	Impact	Low	Central	High
Quarries and Mining	Economic Output	-65.6	-27.0	-18.9
	Administration and Compliance	-4.0	-2.3	-1.9
	Total	-69.6	-29.3	-20.8
Trickle Irrigation Farming	Economic Output	-29.9	-23.0	-16.1
	Administration and Compliance	-21.3	-3.4	-2.7
	Total	-51.2	-26.5	-18.8
Navigation	Economic Output	-5.9	-3.9	-2.3
	Administration and Compliance	-1.8	-1.0	-0.8
	Total	-7.7	-4.9	-3.1
Ports	Economic Output	-0.7	-0.4	-0.2
	Administration and Compliance	-0.1	-0.0	-0.0
	Total	-0.7	-0.4	-0.2
Royal Parks	Economic Output	-3.6	-1.4	0
	Administration and Compliance	-1.4	-0.2	-0.2
	Total	-4.9	-1.6	-0.2
Water Meadows	Economic Output	0	0	0
	Administration and Compliance	-32.3	-5.2	-4.1
	Total	-32.3	-5.2	-4.1
Internal Drainage Boards	Economic Output	0	0	0
	Administration and Compliance	-1.0	-0.6	-0.5
	Total	-1.0	-0.6	-0.5
Ministry of Defence	Economic Output	0	0	0
	Administration and Compliance	-1.9	-0.3	-0.2
	Total	-1.9	-0.3	-0.2
Road and Rail	Economic Output	0	0	0
	Administration and Compliance	-1.0	-0.6	-0.5
	Total	-1.0	-0.6	-0.5
Exempt Geographical Areas	Economic Output	0	0	0
	Administration and Compliance	-12.9	-2.1	-1.6
	Total	-12.9	-2.1	-1.6
Existing Licence Holders	Economic Output	+8.7	+12.4	+16.1
	Administration and Compliance	0	0	0
	Total	+8.7	+12.4	+16.1
Total all sectors	Economic Output	-97.0	-43.3	-21.4
	Administration and Compliance	-77.6	-15.7	-12.6
	Total	-174.6	-59.0	-33.9

6.70. Under our central analysis the net incremental impact of option 2 will be an NPV cost of £59 million. Of this, £43 million is due to net costs on abstractors having to either maintain their output

or facing reductions in output to prevent serious environmental damage or protect rivers at low flows. The remainder reflects the cost of complying with the licensing system. The net impacts here are lower than those under option 1 as the policy is launched after a two year delay. Similarly as under option 1, the majority of the costs fall on the two sectors Quarries & Mining and Trickle Irrigation farms.

- 6.71. Licensing will deliver greater environmental and economic benefit compared to the base line but this will be delivered later than compared with option 1.
- 6.72. Despite commissioning work and seeking stakeholder advice we have not monetised the benefits to the environment and all the benefits to other abstractors to demonstrate conclusively this should be the preferred option. However, we consulted on the transitional timeframes to provide further evidence – stakeholders found this option to be the most acceptable. We therefore concluded this option provides the best balance between a reasonable implementation timeframe for exempt abstractors and the regulator and delayed environmental and other abstractor benefits. We also believe this option will meet our EU obligations noting it does not fully mitigate risks as option 1 would. We believe a period for much longer than 2 years would be difficult to justify as being a reasonable period to delay implementation of the benefits.

### **Non-Monetised Impacts**

- 6.73. As previously mentioned the current abstraction licensing system is being reviewed as the Government works to reform abstraction management. Control of water resources across a catchment will be essential for the reform of abstraction licensing to work effectively. As discussed we sought evidence to inform our decision on the length of the transitional period through consultation and have made a policy decision trading off between a reasonable transitional period for exempt abstractors versus delaying the benefits to other abstractors and the environment.
- 6.74. Three other types of benefit from New Authorisations have been identified but cannot be quantified or monetised. They are discussed qualitatively here.
- 6.75. Environmental and Natural Capital Benefits: a major part of the rationale for New Authorisations is to help maintain and improve the environmental status of water bodies. There will be benefit to curtailing abstractions at risk of causing serious damage to the environment, and also benefit from putting restrictions on water usage (through Hands-off-Flow conditions) that prevent environmental damage taking place at times of water scarcity.
- 6.76. The abstraction licensing system aims to ensure that groundwater and surface water resources are managed sustainably and with minimal impact on the environment. In order to maintain the biodiversity and ecosystem services associated with groundwater and freshwater systems, at least a minimum requirement of water must remain within these systems. Groundwater and surface water bodies that are over-abstracted do not meet their environmental flow requirements and thus the environmental quality may decline. This may be characterised by impacts on water quality and ecology.
- 6.77. There may be a number of ecosystem services affected through the impact of exempt abstractions on the environment. The total value of these ecosystem service is substantial for instance the annual value of ecosystem service flows related to water abstracted for public use is estimated to be £1.2billion/yr<sup>38</sup>. However it is difficult to monetise the environmental benefits here. The site-specific abstraction data necessary to assess the scale of damage and improvement in environmental flows or ecological status is limited. for instance, groundwater abstraction has very

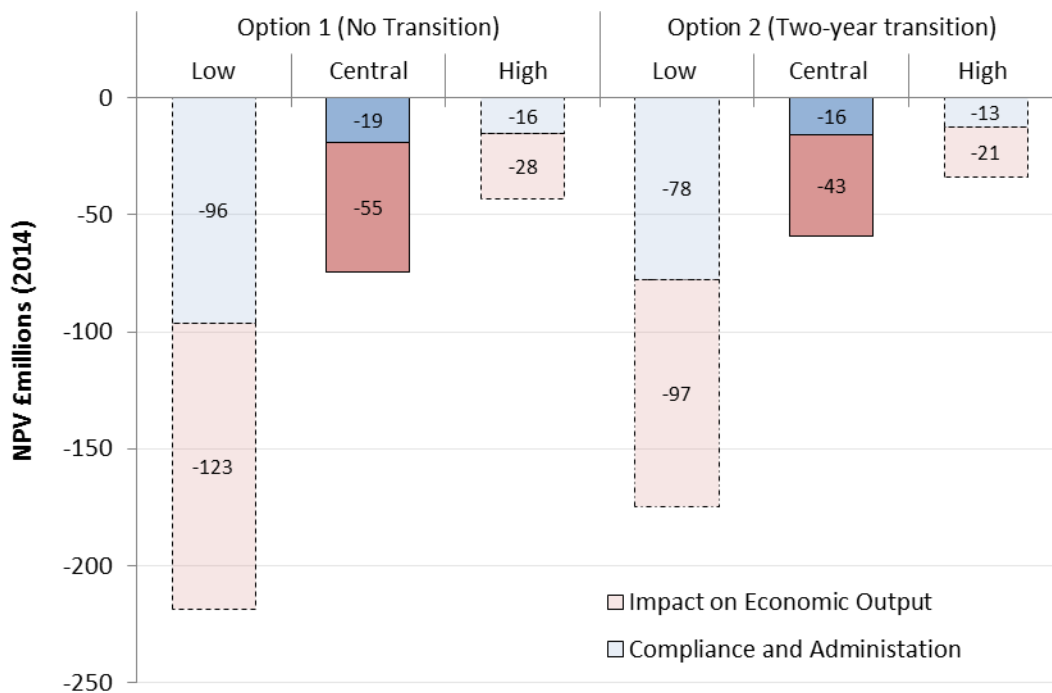
complex interactions with surface flow levels. Any estimates of environmental benefit would need to link to specific water bodies on a case-by-case basis and substantial further evidence would be needed about specific exempt abstraction for which data is limited.

- 6.78. Levelling the playing field: Over-abstraction can reduce the availability of water for existing licence holders. The incentives faced by licence exempt abstractors are different to those of their licensed counterparts: the social cost of their actions diverges from their private cost.
- 6.79. Unlicensed abstractions that deplete water flows over a sustained period are deteriorating the water availability in water bodies. Gradually the existing baseline licensing system would reflect this with stronger abstraction restrictions imposed on abstractors in the licensing system but, relative to unlicensed abstractors, those that are licensed will incur higher associated costs. Bringing abstractions into licensing control will correct for this.
- 6.80. The monetised analysis includes an estimate of the benefit for existing licence holders in the agricultural sector from availability of additional water as unlicensed abstraction is controlled. There could also be some similar gains in other sectors and potentially overall a more efficient allocation of water amongst abstractors once all activities are brought within licence control. Finally there is an intangible benefit through the perception of greater even-handedness or fairness.
- 6.81. Costs of not having a transition period: The transitional arrangements are designed to let exempt abstractors gather information, to assess strategically their response to New Authorisations and to carry out any necessary investments; a longer transition would be associated with a more efficient long term outcome.
- 6.82. It has not been possible to model the benefit to abstractors of knowing in advance when restrictions will happen. In the ABM, it is possible that a small part of the differences in the results between the different transition periods could have arisen from aspects of the model that incorporate some element of these transitional gains:
- Modelled abstractors will observe more years of emerging climate with a longer transition period, so they can compare their production growth plans against the availability of water over a longer period (reservoir investment decisions for example are based over several years), and;
  - The optimum adaptation strategy can change depending on when the restrictions bite due to the modelling circumstances in that particular year.
- 6.83. In practice we might expect abstractors to be able to plan for and mitigate against the impacts of potential water restrictions. The other benefit of a longer transition is the delay to cost impacts on the affected sectors which have been captured in the analysis.

## 7. Conclusion

- 7.1. The overall costs of options 1 and 2 relative to the Base Line are illustrated in *figure 7.1*. It is worth noting that in all options most costs fall to the quarry and mining and the agriculture sectors because of the potential risk of serious environmental damage. Although we do not believe many abstractors are causing serious damage, however where they are, costs can be high. The agriculture sector would also face the costs due to hands off flow restrictions but these costs are distributed more evenly.
- 7.2. The costs of option 1 are the greatest mostly due to the immediate commencement date of environmental protection and the subsequent impact on business. Whereas for option 2, the transitional arrangements allow for two years of avoided costs to business and similarly delay delivery of environmental benefits from curtailing and restricting harmful abstractions and economic benefits to other abstractors. For both options, the combination of non-monetised benefits and requirements of EU law provide the justification for the monetised net costs. The choice between options 1 and 2 is a judgement made based on stakeholders views about practicality. Option 2 provides a reasonable transitional period that allows the regulator to carry out the new licensing and currently exempt abstractors to adapt their operations to comply with the licensing arrangements, while not unreasonably delaying benefits to the environment and other abstractors.

**Figure 7.1: Summary of monetised net impacts of New Authorisations for options 1 and 2**



## 8. One-In, Three Out and other regulatory impact considerations

- 8.1. This policy is out of scope because it is an EU requirement.
- 8.2. New Authorisations will meet the requirements of the European Union Water Framework Directive (WFD). WFD requires Member States to have: “controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status.”

### Small and medium sized business

- 8.3. Small and medium sized business that abstract water at rates of less than 20 cubic metres a day have already been removed from licence control by provisions in the Water Act 2003. This has been particularly beneficial to the agricultural sector and other small to medium size enterprises. This will not change as a result of the proposal to remove exempt area designations. Only those who abstract more than 20 cubic metres of water a day will need to apply for a licence.
- 8.4. The current exemptions may be perceived as being unfair to those small and medium sized business who do not benefit from them. Removing the exemptions will ensure fair and equal treatment to all business sectors and abstractors of the same category or class. This policy will remove exemptions that may previously have provided a competitive advantage.

### Minimum EU requirements

- 8.5. This proposal is the minimum required under WFD and involves no “gold plating”:
- The date proposed for implementation is beyond the deadline for the measure to be in place (which was December 2012);
  - The licensing system is considered the least-cost and most efficient way to help meet the WFD requirement on water abstraction. This was set out in the Cave review of competition and innovation in the water markets<sup>39</sup>, and is also set out in the abstraction reform impact assessment.
  - Defra and Welsh Government will direct that the level at which the regulator refuses to issue licences is at ‘serious damage’. Only targeting abstractions that are causing serious damage is seen as a cautious but necessary initial step to improving the status of water bodies. In addition, abstractors considered to be of low environmental impact will continue to remain exempt under the Water Act 2003.
  - The licences will be issued based on historic rates of abstraction to ensure currently exempt abstractors are given their fair allocation.
  - The scheme will also grant a transitional period that allows currently exempt abstractors sufficient time to submit their licence application. During this application and determination period, applicants will be able to continue abstracting water. Once brought into the licensing regime, all abstractors will be treated on the same-level playing field.
  - We are providing additional further licence exemptions in accordance with Better Regulation principles.

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<sup>39</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69462/cave-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69462/cave-review-final-report.pdf)

Option	Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as...
	Costs	Benefits	Net		
Option 1	4.5	0.8	-3.7	No	N/A
Option 2	3.7	0.7	-3.0	No	N/A

## Annex A: Policy Background

Understanding of environmental issues has developed significantly since the Water Resources Act 1963 created the current framework for abstraction licensing.

The debate about these and other abstraction licensing improvements began at a Water Summit in May 1997. This resulted in a review of the abstraction licensing system in place at the time. Following consultation, the then Government's decisions on abstraction licensing were published in Taking Water Responsibly in March 1999.

In November 2000, the then Government published a draft Water Bill for public consultation.

The then Government's response to the consultation was published in May 2002 and considered the questions and concerns raised by respondents on the proposals set out in the draft Bill. The Water Act 2003 contained those changes to improve the existing abstraction licensing system set out in the Water Resources Act 1991.

In parallel to the Water Act 2003 abstraction improvements, the European Union Water Framework Directive (WFD) was set up to help Member States manage their water resources effectively. The WFD requires each Member State to have in place a programme of measures designed to deliver "Good" water body status. To meet the objectives of the WFD, Government goes through an iterative process of first identifying issues within each of the water bodies, and then drawing up a programme of measures designed to tackle the identified environmental issues within each water body. One of the basic requirements in the initial tranche of programme of measures is to have in place prior authorisation and control of water abstraction and impoundments, except for those that have no significant impact on water status.

The Water Act 2003 included the provisions to remove remaining abstraction exemptions in England and Wales. These exempt abstractors may cause significant impacts on the environment and therefore jeopardise our ability to meet WFD requirements. The act allows us to retain or introduce new exemptions for abstractions which are low risk to the environment, eg abstractions of less than 20 cubic metres per day.

The removal of these exemptions were planned to be implemented as part of a wider package of measures introduced under the Water Act 2003. Significant benefits have been achieved through the commenced parts of this legislation, for example, the deregulation of over 20,000 low risk abstraction licences (compared to the 5,000 we expect to bring into the licensing system) and reduced advertising costs as part of the administrative process.

The Water Act 2003 allows us to make the transitional regulations that will govern the creation and determination of licence applications to bring exempt abstractions under licence control. Secondary legislation is also required to create low risk exemptions.



## Annex B: Profile of Currently Exempt Abstractors

- 1 Here we set out both the hydrological and environmental characteristics for each of the groups currently exempt from licensed abstraction. The following groups are currently exempt:
  - i) Quarries and Mining
  - ii) Trickle Irrigation
  - iii) Managed Wetland Systems
  - iv) Navigation and Ports
  - v) Land Drainage
  - vi) The Crown
  - vii) Exempt Geographical Areas.
- 2 In setting out hydrological and environmental characteristics for each group, it is worth considering the some of the differences in characteristics of abstraction source type: surface-water and ground-water.<sup>1</sup>
- 3 Surface-water is that consisted in rivers, lakes or wetlands. It is to a large extent renewable, mostly by the rainfall from the clouds, but also with waste-water resulting from the consumption of water by individuals and industry. Ground-water is water held underground in the soil or in pores and crevices in rock. By contrast ground-water holds more characteristics of being a non-renewable resource: while its stock is replenished the rate of renewal is considerable low.
- 4 Surface-water is considerably easier to obtain than ground-water but is in general of a lower quality. The quality problem is exacerbated by pollution from agricultural, urban and industrial waste. The supply of surface water is highly uncertain and may drop below subsistence levels during periods of drought.
- 5 All of these characteristics affect the decisions exempt abstractors take and the source of abstraction will have differing degrees of environmental and hydrological impact for each sector. Much of the information here has been sourced from an evidence project commissioned by Defra and produced by consultants HR Wallingford.<sup>2</sup>

### *Quarries and Mining*

- 6 The abstraction activities of Quarries and Mines relate to the process of dewatering – the process of removing water from a resource. It is necessary to remove water because hard rock quarries must be worked dry to allow stone to be cut. Sand and Gravel quarries are usually worked dry also; in this context dewatering acts to reduce operating costs as more of the extracted resource can be recovered if the material is worked dry. However these soft compounds can be worked wet if necessary; some are worked wet out of choice where dewatering is impractical or costly.
- 7 Dewatering applies to the access (or ingress) of ground-water, either locally or from a neighbouring watercourse, or from rainfall collected in quarries and mines.
- 8 Abstractions for the purpose of dewatering are anticipated to lower the stock of ground-water in the local vicinity; the abstracted water is typically discharged to surface-water systems. Subsequently these activities are unusually deemed to be non-consumptive overall, i.e. the abstracted water is discharged back to the water environment, usually to the most convenient watercourse. This practice however, usually results in a loss to the groundwater resource. There is some consumptiveness in that a small amount may be lost to evaporation.

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<sup>1</sup> See J. Dalhuisen (1999) for a more complete discussion on the characteristics of water.

<sup>2</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=More&Module=More&Location=None&Completed=0&ProjectID=18618>

- 9 Both surface-water and ground-water can be affected by this drawdown of water. It has the potential to influence water resources, surface water features and a number of environmental designations.<sup>3</sup>
- 10 Dewatering can affect water resources and subsequently its quality through working below the water table as well as the silting of watercourses from discharges. Where fragile ecosystems are concerned (e.g. wetlands), even small scale dewatering operations may have an impact.<sup>4</sup>
- 11 Finally, dewatering tends to run counter-seasonal to water shortages. For instance, in winter months or at times of high rainfall, it is common to observe higher dewatering volumes as both rainfall and groundwater volumes are higher. This seasonal pattern is site-specific and depends on factors such as geology, local climate and weather.

#### *Trickle Irrigation*

- 12 Trickle irrigation is where water falls by drop from a pipe near to the roots of plants. It is used mainly for horticulture (i.e. the cultivation of fruit and vegetables), particularly in glasshouse production, and in some cases for pot plants by farms for arable crops. The greatest proportion of water use is in the cultivation of soft fruits; water management here has a direct and sensitive impact on the quality of a high value product.
- 13 Constant abstractions can place pressure on the environment in water stressed locations. The timing and volume of water abstracted for trickle irrigation tends to be driven by the seasons – it is linked to specific crop growing seasons as well as local weather conditions. Crops grown in glass houses tends to be less seasonal and require more constant irrigation.
- 14 Unsustainable abstractions from agriculture can affect groundwater as well as surface water flows. This can be to prolong or worsen low flows that in turn may affect the ecological status of water bodies and have impact on licensed abstractors. Irrigation from groundwater pumping may reduce the flows from springs and impact on overall water levels. This can have a detrimental impact on groundwater fed wetlands in regions such as East Anglia.
- 15 For the agriculture and horticulture sector as a whole, where trickle irrigation is licensed but become constrained, a small reduction in water would lead to a large loss in crop value. A number of mitigation options may be available to the farm businesses (each with an associated cost). These mitigation options are highlighted in the report.

#### *Managed Wetland Systems*

- 16 Water meadows are areas of land either periodically inundated with water or areas over which water flows; these flows help to insulate from frost and act to deposit of nutrients and silt which encourage grass growth. More broadly most other managed wetland systems are in place to enhance the conservation of a local environmental feature.
- 17 The management of water flows to managed wetland systems for growing grass was historically a widespread agricultural practice but has declined due to changes in practice. Managed wetland systems are now recognised as an important habitat with high levels of biodiversity. Grants exist for managing wetland systems under the Countryside Stewardship scheme in England and Glastir

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<sup>3</sup> Smith, R.J., Johnson, K., and Stewart, R. (2009) the relationship between aggregate extraction, the hydrology of the surrounding landscape and Sites of Special Scientific Interest in England. Unpublished Report to Natural England for the Department of the Environment, Food and Rural Affairs. The Centre for Construction Innovation Northwest, University of Salford, Manchester

<sup>4</sup> Wheeler, B.D, Gowing, D.J.G, Shaw, S.C., Mountford, I.O. and Money, I.P. (2004) Ecohydrological Guidelines for Lowland Plant Communities (eds.) Brooks, A.W., José, P.V. and Whiteman, M. Environment Agency (Anglian Region), Peterborough.

in Wales. The removal of exemption from licensing will mean land managers must seek a licence for the abstraction of water from a river to a managed wetland system.

- 18 The abstraction from a donor river for feeding a managed wetland system may result in depleted reaches and associated environmental impacts on the donor river. The managed wetland systems provide many services to ecosystems with regard to valuable habitat, water quality and value of natural landscape. There is considered to be a minimal loss of water resource.

#### *Navigation and Ports*

- 19 Ports, harbours and navigable canals are artificial constructions that connect to natural waterways, typically to improve the efficiency of passenger and freight transport. The water levels in impounding docks and canals have to be maintained for the assets to operate effectively; a consistent supply of water is required to maintain water levels. In most cases water is supplied from surface water, although is sometimes drawn from groundwater abstraction or water impounded in reservoirs as typically occurs in the case of canals.
- 20 In some cases the relevant authority may have an operating agreement for individual abstraction with the environmental regulator. This is an agreement to reduce water abstraction when the river flow is low. Canals may need greater amounts of water to maintain levels during dry years when evaporation increases. Water levels are typically only topped up during the summer boating season. The canal network requires water abstractions in order to maintain function. If an abstraction licence was not granted then a combination of demand management and mitigation would be needed (such as the repair of leakages on the network).
- 21 Harbours and Ports will be covered by a proposed exemption for saline abstractions below fixed tidal limits (i.e. that abstractions from saline waters will be exempt). There is no evidence that the freshwater abstraction used by port authorities is causing environmental problems. The risk of licence refusal is considered to be very low and is assumed in our analysis that no operators are refused a licence. It is expected that under hands-off-flow conditions, ports and harbours can respond to the reduction in freshwater abstraction by substituting for saline abstractions where economically viable. More extreme measures would be to impose temporary or permanent restrictions on ship size using impounded docks, or even the suspension/ cessation of dock services.

#### *Internal Drainage Boards*

- 22 Here we refer to the Internal Drainage Boards (IDBs) of England and Wales. An IDB is a local public authority that manages water levels and are located in areas with special drainage requirements either within the floodplains or in broad open areas (eg the fenlands). They are typically concentrated mainly in Cambridgeshire, Kent, Lincolnshire, Norfolk, Nottinghamshire, Somerset and Yorkshire. IDB's typically abstract water to redistribute to drainage channels. This for example includes activities such as irrigation, wet fencing and warping. In Wales, the functions of IDBs are carried out by Natural Resources Wales.
- 23 Each IDB has a Biodiversity Action Plan and holds a duty to further the conservation and enhancement of all designated environmental sites within their districts.
- 24 While of low-risk, any curtailment of abstractions by IDBs may affect third parties that are dependent on this activity. For instance, in IDBs with extensive agriculture, farms would be affected as water is currently being abstracted on their behalf. Large reductions in volumes abstracted would mostly impact on crop production (both quality and type of crop), reducing farm revenues.

- 25 The current exemptions for the Crown extends to land owned by the Ministry of Defence (MoD) and the Royal Parks.
- 26 The MoD abstracts water, generally in areas where there is no mains supply, for a number of uses that include drinking water for housing and barracks accommodation (domestic demand, making up 88% of water use), and for operational water (12%), e.g. for vehicle washing, cleaning and water for emergency fire-fighting supplies. The majority of these abstractions come from groundwater sources, with minimal abstractions from surface water. A number of abstractions are located in or adjacent to sensitive aquatic habitats with no readily available alternative water source. Licensing may have economic impacts for specific sites but is unlikely to result in large scale disruption of operations. Since the MoD abstractions support drinking water and sanitation uses, this high priority water use would be taken into account in licensing decisions and hence is felt likely that only a small number of licences (if any) would be refused.
- 27 The Royal Parks manages nine parks located in the London area, consisting of 5,000 acres of historic parkland. The largest volumes of water are abstracted during dry summers when other water sources, such as lakes, become unavailable. The Royal Parks is actively looking to increase sustainable development in the management of the parks and monitors their water usage. Our analysis assumes that under licensing, environmental regulators may issue hands off flow conditions. If there is the risk of serious environmental damage the Parks to be unable to irrigate during dry periods. There are likely to be mitigation measures (such as rainwater harvesting) that reduce any impacts of this constraint.

*Exempt geographical areas*

- 28 Exempt areas are those geographical areas where a general exemption has been given from the need for abstractions to be licensed. Abstractions in exempt areas are expected to be small and therefore individual abstractions are unlikely to have an environmental impact, although it is recognised that a number of these activities in the exempt areas may have a cumulative impact on the environment or impacts on the accessibility of nearby abstractors to water. Therefore, it is assumed for the purposes of this analysis that almost all of these abstractors are likely to be granted licences, although hands off flow conditions could be implemented if there is a risk of serious damage.
- 29 We nevertheless acknowledge the possibility that some such abstractions in these areas may be impacting the environment, or other abstractors' access to water, even in cases where the impact is such that serious damage provisions are not likely to apply. It is not however possible to assess these impacts without knowing the precise locations, associated activities and volumes abstracted. We therefore are unable to comment and determine the costs to the environment and other abstractors, although we would anticipate that they are likely to be localised to specific sites.

## Annex C: Agent Based Modelling

- 1 This annex gives further detail of abstraction behaviour used in our analysis. The model used is referred to as the 'Agent Based Model' (hereafter ABM) and where possible it is our preferred approach to assessment the full range of impacts.
- 2 The modelling here was developed by consultants Risk Solutions in support of the impact assessment on the abstraction reform. The full detail of the ABM model specification is covered in a supporting report published alongside abstraction reform impact assessment.<sup>5</sup> Nonetheless we recapture some of the high-level information here and set-out the few adjustments to the model done for this analysis.
- 3 The ABM is the integration of two interacting models: a hydrological model of river catchment areas combined with an 'agent based' behavioural model of water abstraction. Together they help to explore the effects of different policies concerning water abstraction and allow for the comparison of economic costs and benefits, and the environmental performance of each option.

## Annex D: Top-Down Assessment

- 1 The majority of our evidence is founded on a Defra research study into the scale and impact of New Authorisations; if not drawn upon directly in the analysis in the Impact Assessment, some of the study's findings will have underpinned input assumptions in the Agent Based Model.
- 2 This study was published by DEFRA in 2013 and was the result of work commissioned by consultants HR Wallingford and Vivid Economics.<sup>6</sup> The findings of the study then feed into our top-down analytical assessment. In particular estimates on the numbers of licences to be refused due to risk of serious damage, and what impact (qualitative or quantitative) will a Hands-off-Flow restriction have are used in our core assessment.
- 3 This work was commissioned to help contribute towards an evidence base where little-to-no information on exempt licence activities had existed previously. It has made possible the top-down analytical work to be completed.

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<sup>6</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=No%2FCompleted=0&ProjectID=18618>

## Annex E: Compliance and Administration Costs

1 Note these costs are not NPV figures and are in 2008/09 prices as they originate from the original 2009 consultation on secondary legislation. They have been represented as 2014 prices in our final analysis. Orange estimates indicate uses of updated figures that have been revised down to 2008/09 prices.

<b>Transfer Licence</b>		<b>Cost</b>			<b>% of exempt abstractor costs occur to</b>			<b>Expected Cost</b>		
2008/09 Prices		Best	Low	High	Best	Low	High	Best	Low	High
<b>Cost Category</b>	<b>Frequency</b>	<b>Cost Best</b>	<b>Cost Low</b>	<b>Cost High</b>	<b>Coverage Best</b>	<b>Coverage Low</b>	<b>Coverage High</b>	<b>Expected Best</b>	<b>Expected Low</b>	<b>Expected High</b>
Metering/measurement	12 years	0	0	0	50%	50%	50%	0	0	0
time gathering data	12 years	182	91	910	100%	100%	100%	182	91	910
application fee	12 years	1309	1309	1309	100%	100%	100%	1309	1309	1309
advertising (newspaper)	One-off	350	300	400	5%	5%	5%	18	15	20
advertising (admin)	One-off	87	87	87	5%	5%	5%	4	4	4
environment report	One-off	5000	5000	5000	5%	0%	20%	250	0	1000
professional advice	One-off	1500	1500	1500	5%	0%	20%	75	0	300
annual charge	Annual	0	0	0	100%	100%	100%	0	0	0
Record keeping, etc..	Annual	0	0	0	100%	100%	100%	0	0	0
<b>Full Licence</b>										
2008/09 Prices		Best	Low	High	Best	Low	High	Best	Low	High
<b>Cost Category</b>	<b>Frequency</b>	<b>Cost Best</b>	<b>Cost Low</b>	<b>Cost High</b>	<b>Coverage Best</b>	<b>Coverage Low</b>	<b>Coverage High</b>	<b>Expected Best</b>	<b>Expected Low</b>	<b>Expected High</b>
Metering/measurement	12 years	400	400	5000	50%	50%	100%	200	200	5000
time gathering data	12 years	182	91	910	100%	100%	100%	182	91	910
application fee	12 years	118	118	118	100%	100%	100%	118	118	1309
advertising (newspaper)	One-off	350	300	400	5%	5%	5%	18	15	20
Advertising (admin)	One-off	87	87	87	5%	5%	5%	4	4	4
environment report	One-off	5000	0	5000	5%	0%	20%	250	0	5000
professional advice	One-off	2000	2000	2000	5%	0%	20%	100	0	2000
Annual charge	Annual	120	22	300	100%	100%	100%	36	22	36
Record keeping, etc..	Annual	102	102	102	100%	100%	100%	102	102	102

## Annex F: England and Wales Impact Disaggregation

- 1 Below is a rough breakdown of the net impact between England and Wales for options 1 and 2 (figures are £million NPV).

Option	Country	Low	Central	High
Option 1: No Transitional Arrangements	England	-204.7	-69.4	-40.2
	Wales	-14.2	-4.9	-3.0
	Total (E&W)	-218.9	-74.3	-43.2
Option 2: Two-Year Transitional Arrangement	England	-163.2	-55.1	-31.6
	Wales	-11.4	-3.9	-2.4
	Total (E&W)	-174.6	-59.0	-33.9

- 2 These figures have been derived by apportioning the total England & Wales impact between the two. Where possible, this was based on numbers of affected agents in each country taken from the HR Wallingford / Vivid Economics Evidence Study, we have made use of this in splitting out the combined England & Wales impact. Otherwise the impacts are apportioned by population. The table below sets this out by sector and type of impact.

	Impact on Economic Output	Compliance and Administration Cost
Quarries and Mining	Apportioned using the number of relevant abstractions. From the HR Wallingford/ Vivid Economics Evidence Study, an estimated 11% of all quarry and mining abstractions in England & Wales, are in Wales.	
Trickle Irrigation Farming	Apportioned using shares of the number of relevant abstractions in England and Wales. From the HR Wallingford / Vivid Economics Evidence Study, an estimated 1.6% of the trickle irrigation abstractions are in Wales.	
Ports	HR Wallingford / Vivid Economics Evidence Study indicates equal numbers of ports in England & Wales that could be affected by restrictions	Apportioned using the population shares of England and Wales.
Navigation	Apportioned using the population shares of England and Wales	Apportioned using the population shares of England and Wales.
The Crown (MoD and Royal Parks)	Royal Parks all in England. No effect on economic output for MoD.	Royal Parks all in England. MoD admin costs apportioned using population shares.
Managed Wetland Systems, Internal Drainage Boards, Road and Rail, Exempt Geographical Areas	No impact on economic output for these sectors	Apportioned using the population shares of England and Wales
Existing Licence Holders	Apportioned using the population shares of England and Wales	
Compensation payments	Apportioned using the population shares of England and Wales	



# SL(5)147 - The Water Abstraction (Transitional Provisions) Regulations 2017

## Background and Purpose

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

## Procedure

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Negative

## Technical Scrutiny

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The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

1. These Regulations are made in English only (Standing Order 21.2(ix). The Explanatory Memorandum states that the Regulations, being a composite Statutory Instrument, "apply to both England and Wales, and are subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable [by the Welsh Ministers] for these instruments to be made bilingually."
2. Regulation 5(2) refers to 'paragraph 2(3)(iv) of Schedule 2 to the Water Resources (Abstraction and Impounding) Regulations 2006. This should refer to paragraph 2(3)(b)(iv). As the intention is clear, this would have been appropriate for correction on publication, had the Regulations not already been published. (Standing Order 21.2(vi))

## Merits Scrutiny

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The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

3. A footnote to regulation 4(1) refers the reader to section 221 of the Water Resources Act 1991 for the definition of "appropriate agency". As the explanation is Natural Resources Wales in relation to Wales and the Environment Agency in relation to England, it would have been more helpful to have said so.

## Implications arising from exiting the European Union

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The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

4. The Regulations contain references to classifications and a definition in Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy. Whilst they would continue to work following the UK's departure from the European Union, their appropriateness will need to be reviewed. This will be particularly important in relation to water, where, as in the current case, a common position is needed for England and Wales. It would be appropriate for the Welsh Ministers and the Secretary of State to amend the references using the powers relied upon to make these Regulations.



## Government Response

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No government response is required.

**Legal Advisers**  
**Constitutional and Legislative Affairs Committee**  
**November 2017**



# Agenda Item 4.3

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STATUTORY INSTRUMENTS

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## 2017 No. 1044

### WATER RESOURCES, ENGLAND AND WALES

#### The Water Abstraction and Impounding (Exemptions) Regulations 2017

<i>Made</i> - - - -	<i>30th October 2017</i>
<i>Laid before Parliament</i>	<i>31st October 2017</i>
<i>Laid before National Assembly for Wales</i>	<i>31st October 2017</i>
<i>Coming into force</i> - -	<i>1st January 2018</i>

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SCHEDULE — Areas to which regulation 9(1) applies 8

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations in exercise of the powers conferred by sections 33A and 219(2)(f) of the Water Resources Act 1991(a).

## PART 1

### Introduction

#### Citation and commencement

1. These Regulations may be cited as the Water Abstraction and Impounding (Exemptions) Regulations 2017 and come into force on 1st January 2018.

#### Interpretation

2.—(1) In these Regulations—

“the 1991 Act” means the Water Resources Act 1991;

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(b);

“conservation site” means—

- (a) a site appearing on the list provided to the European Commission pursuant to regulation 10(5) of the 2010 Regulations(c);
- (b) a special area of conservation within the meaning of regulation 11 of the 2010 Regulations;
- (c) a special protection area or proposed special protection area within the meaning of regulations 12A and 12B, respectively, of the 2010 Regulations;
- (d) a site of special scientific interest confirmed by the Natural Resources Body for Wales or Natural England pursuant to section 28(5)(b) of the Wildlife and Countryside Act 1981(d);

- 
- (a) 1991 c. 57; section 33A was inserted by section 9 of the Water Act 2003 (c. 37), and was amended by S.I. 2013/755 (W. 90). See section 221(1) of the Water Resources Act 1991 for the definition of “the Ministers”. The functions under sections 33A and 219(2) were transferred, in relation to Wales, to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), with references to the Water Resources Act 1991 in that Schedule treated as referring to that Act as amended by the Water Act 2003, pursuant to section 100(6) of the Water Act 2003. The functions of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
  - (b) S.I. 2010/490, amended by S.I. 2011/603, 625, 2012/630, 635, 637, 1927, 2013/755 (W.90), 2015/377, 2020 and 2016/1154.
  - (c) The list is available on the website [http://ec.europa.eu/environment/nature/natura2000/sites\\_hab/biogeog\\_regions](http://ec.europa.eu/environment/nature/natura2000/sites_hab/biogeog_regions) and a copy of the list can be obtained from the Water Resources Management Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR and from the Water Branch, the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.
  - (d) Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 (c. 37) and amended by paragraph 79 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16) and paragraph 2(1) and (5) of Schedule 13 to the Marine and Coastal Access Act 2009 (c. 23). References to Natural England in section 28 have effect as if they were references to the Natural Resources Body for Wales in relation to land in Wales by virtue of section 27AA of the Wildlife and Countryside Act 1981 (c. 69).

- (e) in so far as not falling under sub-paragraph (d), a wetland designated under the Ramsar Convention, within the meaning of section 37A of the Wildlife and Countryside Act 1981(a);
- (f) an area designated by order by the Natural Resources Body for Wales or Natural England under section 7 of the National Parks and Access to the Countryside Act 1949(b);
- (g) a nature reserve established by a local authority under section 21 of the National Parks and Access to the Countryside Act 1949(c);

“managed wetland system” means—

- (a) an area of land that is periodically inundated or saturated by abstracted water in order to provide ecological benefits to flora and fauna, or
- (b) an area of land through which abstracted water flows, through a system of channels, sluices, carriers or other apparatus in order to provide ecological benefits to flora and fauna;

“normal tidal limit” means the normal tidal limit as marked on the Ordnance Maps (1:25,000 scale);

“protected species” means—

- (a) a European protected species within the meaning of regulation 40(1) of, and Schedule 2 to, the 2010 Regulations;
- (b) a species designated under section 9 of, and Schedule 5 to, the Wildlife and Countryside Act 1981(d);
- (c) a species included in a list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006(e) or by the Welsh Ministers under section 7 of the Environment (Wales) Act 2016(f).

(2) In these Regulations, references to alteration, in relation to impounding works, include the removal or partial removal of those works and cognate expressions are construed accordingly.

## PART 2

### Exemptions from restriction on abstraction

#### Navigation, harbour and conservancy authorities and dry docks

3.—(1) The restriction on abstraction does not apply to any abstraction of water that is carried out by, or on behalf of, a navigation authority, harbour authority or conservancy authority if—

- (a) the purpose of the abstraction is a transfer, without intervening use, of water from any inland waters downstream of the normal tidal limit to that authority’s water system, and
- (b) the water is abstracted at any time other than in the hour before or in the hour after low tide at the point of abstraction.

- 
- (a) Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 and amended by S.I. 2013/755 (W.90).
  - (b) 1949 c. 97. Section 2 was amended by paragraph 10(c) of Schedule 11 to the Natural Environment and Rural Communities Act 2006. Functions conferred on Natural England under section 7 as respects England (or areas of any description in England) were conferred on the Natural Resources Body for Wales as respects Wales (or areas of a similar description in Wales) by virtue of section 4A.
  - (c) Section 21 was amended by Schedule 30 to the Local Government Act 1972 (c.70), paragraph 100 of Schedule 27 to the Local Government (Scotland) Act 1973 (c. 65), section 10 of the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 14 to the Local Government etc. (Scotland) Act 1994 (c.39), paragraphs 15 and 19 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 and paragraph 1(4) of Schedule 2(1) to the Environment (Wales) Act 2016 (anaw. 3).
  - (d) Section 9 was amended in relation to England and Wales by paragraph 5 of Schedule 12 to the Countryside and Rights of Way Act 2000 and by S.I. 2007/1843. Schedule 5 was amended in relation to England and Wales by S.I. 1988/288, 1989/906, 1991/367, 1992/2350, 1998/878, 2007/1843, 2008/431, 1927 (W. 183), 2172 and 2011/2015.
  - (e) 2006 c.16.
  - (f) 2016 anaw 3.

(2) The restriction on abstraction does not apply to any abstraction of water that is carried out if it is for the purpose of a transfer of water, without intervening use—

- (a) into a dry dock from a water system of the authority for use within that dry dock, or
- (b) from that dry dock back into the same water system.

(3) In this regulation, “water system” has the meaning given by sections 26(4)(a) and (5) of the 1991 Act(a).

#### **Emergency abstractions by navigation, harbour and conservancy authorities**

**4.**—(1) The restriction on abstraction does not apply to any abstraction of water that is carried out by, or on behalf of, a navigation authority, harbour authority or conservancy authority in connection with its functions as such an authority if—

- (a) the purpose of the abstraction is a transfer of water without intervening use,
- (b) the abstraction is an emergency abstraction as defined in paragraph (2), and
- (c) the authority gives notice in accordance with paragraphs (3) and (4) (but see paragraph (5)).

(2) An abstraction of water is an emergency abstraction if, in the opinion of the authority, an emergency has arisen which makes the abstraction necessary to prevent immediate danger of interference with any operations relating to that authority or, in relation to such operations, to prevent an immediate risk of—

- (a) death, personal injury, or harm to health of a human being,
- (b) damage to property, or
- (c) damage to the environment.

(3) The authority referred to in paragraph (2) must give notice to the appropriate agency of —

- (a) the fact that the abstraction has taken place and of the source of supply in question, and
- (b) the reason that the authority considered that—
  - (i) an emergency had arisen, and
  - (ii) the abstraction was a necessary measure to prevent an immediate danger or risk identified in paragraph (2).

(4) Notice under paragraph (3) must be given before the end of the period of five days beginning with the date on which the abstraction started.

(5) On receipt of a notice under paragraph (3), the appropriate agency may give notice to the authority that—

- (a) in the appropriate agency’s opinion an emergency has not arisen, or
- (b) that the abstraction is not, or is no longer, necessary for any of the reasons set out in paragraph (2).

(6) If the appropriate agency gives notice under paragraph (5), the restriction on abstraction applies to the abstraction from the time when the notice is served (and, where appropriate, the restriction imposed by section 24(2) of the 1991 Act also applies accordingly).

#### **Small scale dewatering in the course of building or engineering works**

**5.**—(1) The restriction on abstraction does not apply to an abstraction or series of abstractions of water carried out in the course of building or engineering works for the purpose of dewatering from a sump or excavation if—

- (a) the abstraction or series of abstractions are temporary and in any event carried out over a period of less than six consecutive months beginning with commencement of the first abstraction,

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(a) Section 26(4) and (5) was inserted by section 5 of the Water Act 2003.

- (b) each abstraction does not cause or is not likely to cause damage to a conservation site or specific features in such a site,
- (c) each abstraction does not cause or is not likely to cause damage to protected species, and
- (d) either—
  - (i) the water abstracted is immediately discharged to a soakaway, or
  - (ii) the volume of water abstracted is less than 100 cubic metres of water per day and there is no intervening use of that water before discharge (but see paragraph (2)).

(2) Where the abstraction is undertaken within 500 metres of a conservation site or within 250 metres of a spring, well or borehole used to supply water for any lawful use, paragraph (1)(d)(ii) applies in respect of that abstraction as if the reference to 100 cubic metres of water per day were a reference to 50 cubic metres of water per day.

#### **Surface water abstraction in the course of building or engineering works**

**6.** The restriction on abstraction does not apply to any abstraction or series of abstractions of surface water in order to prevent interference with building or engineering works, if the following conditions are met—

- (a) the abstraction or series of abstractions are temporary and in any event carried out over a period of less than six consecutive months beginning with the commencement of the first abstraction;
- (b) each abstraction does not cause or is not likely to cause damage to a conservation site or specific features in such a site;
- (c) each abstraction does not cause or is not likely to cause damage to protected species;
- (d) the water abstracted is immediately discharged downstream of the building or engineering works.

#### **Abstraction in the course of dredging**

**7.—(1)** The restriction on abstraction does not apply to any abstraction of water in the course of dredging —

- (a) in inland waters downstream of the normal tidal limit, or
- (b) in inland waters upstream of the normal tidal limit, if that dredging is carried out by, or on behalf of, any authority in the exercise of its functions in those inland waters.

(2) In paragraph (1)(b), “authority” means the Environment Agency, the Natural Resources Body for Wales, a navigation authority, a harbour authority, a conservancy authority, an internal drainage board or a local authority.

#### **Abstraction within a managed wetland system**

**8.** The restriction on abstraction does not apply to any abstraction of water within a managed wetland system if the abstraction is for the sole purpose of the management, operation or maintenance of water levels or flows in that managed wetland system.

#### **Abstraction from specified saliferous strata**

**9.—(1)** The restriction on abstraction and the restrictions imposed by section 24(2) of the 1991 Act do not apply to the abstraction of water from the saliferous strata underlying the surface of the land in the areas listed in the Schedule to these Regulations(a).

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(a) These areas are delineated on a map available from the Environment Agency at [www.gov.uk/government/organisations/environment-agency](http://www.gov.uk/government/organisations/environment-agency) and a copy of the map can be obtained from the Environment Agency, National Customer Contact Centre, PO Box 544, Rotherham S60 1BY.

(2) In paragraph (1), “saliferous strata” means strata which (whether in their natural state or when water is artificially introduced) yield an aqueous solution with a salt content of more than 100,000 milligrams per litre.

## PART 3

### Exemptions from restriction on impounding works

#### Construction or alteration of impounding works in emergencies

**10.**—(1) The restriction on impounding works does not apply to the construction or alteration of impounding works carried out in an emergency where the works are undertaken—

- (a) by the appropriate agency pursuant to its powers as enforcement authority under section 16 of the Reservoirs Act 1975(a);
- (b) by, or on behalf of, a navigation authority, a harbour authority or a conservancy authority in connection with its functions, or by any other person, with the prior written consent of the appropriate agency given in accordance with paragraph (2) (but see paragraphs (3) to (5)).

(2) The appropriate agency may not give consent under paragraph (1)(b) unless it is satisfied that the works are necessary to prevent an immediate risk of—

- (a) death, personal injury or harm to health of a human being,
- (b) damage to property, or
- (c) damage to the environment.

(3) Where an authority or person does not seek the appropriate agency’s consent before carrying out impounding works, the authority or person must give notice to the appropriate agency of—

- (a) the fact that the impounding works have been carried out, and
- (b) the reason that the authority or the person considered that—
  - (i) an emergency had arisen, and
  - (ii) the works were necessary to prevent an immediate risk identified in paragraph (2).

(4) Notice under paragraph (3) must be given before the end of the period of five days beginning with the date on which the impounding works started.

(5) On receipt of a notice under paragraph (3), the appropriate agency may either—

- (a) give written consent retrospectively for the impounding works carried out, or
- (b) give notice to the authority or person that—
  - (i) in the appropriate agency’s opinion an emergency has not arisen, or
  - (ii) that the works are not, or are no longer, necessary to prevent an immediate risk identified in paragraph (2).

(6) If the appropriate agency gives notice under paragraph (5)(b), the restriction on impounding works applies to the impounding works from the time when the notice is served.

#### Construction or alteration of impounding works by internal drainage boards

**11.** The restriction on impounding works does not apply to the construction or alteration of impounding works within the district of an internal drainage board(b) if—

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(a) 1975 c. 23.  
 (b) Schemes were made under sections 3(1)(a) and 4(3) of the Land Drainage Act 1991 (c. 59) by the Natural Resources Body for Wales and the Environment Agency making provision for the abolition of certain internal drainage boards, the creation of new internal drainage boards and provision that the Natural Resources Body for Wales shall be the drainage board in respect of those new districts. These schemes were confirmed by the Secretary of State and the Welsh Ministers under S.I. 2015/923 and by the Welsh Ministers under S.I. 2015/872 (W. 65).



- (a) the works are constructed or altered by, or on behalf of, that board in connection with its functions, and
- (b) construction or alteration is commenced after the coming into force of these Regulations.

**Construction or alteration of impounding works in a managed wetland system**

**12.** The restriction on impounding works does not apply to the construction or alteration of impounding works in a managed wetland system if—

- (a) the sole purpose of the works is the management, operation or maintenance of water levels or flows in that managed wetland system, and
- (b) construction or alteration is commenced after the coming into force of these Regulations.

**PART 4**

**Miscellaneous**

**Existing licences for abstraction**

**13.** A licence to abstract water granted under Chapter 2 of Part 2 of the 1991 Act<sup>(a)</sup> ceases to have effect to the extent that it authorises an activity falling within regulation 7 or 8.

**Transitional provision regarding managed wetland systems**

**14.**—(1) Paragraph (2) applies where—

- (a) a person has, in the seven years prior to the coming into force of these Regulations, abstracted water from a managed wetland system for the sole purpose of the management, operation or maintenance of water levels or flows in that managed wetland system, and
- (b) written consent under regulation 99(2) of the 2010 Regulations is required for that abstraction.

(2) The person may continue that abstraction in paragraph (1) until—

- (a) the date an application for such consent to that abstraction is determined by the appropriate agency, or
- (b) if no such application is submitted, 31st December 2019.

30th October 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

*Lesley Griffiths*  
Cabinet Secretary for the Environment and Rural Affairs, one of the Welsh Ministers  
24th October 2017

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(a) Chapter 2 of Part 2 of the Water Resources Act 1991 was amended by Part 1 of the Water Act 2003.

## SCHEDULE

Regulation 9(1)

## Areas to which regulation 9(1) applies

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*Areas*

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In the County of Cheshire, the following civil parishes:

Acton  
Agden  
Allostock  
Alpraham  
Alsager  
Anderton with Marbury  
Arclid  
Ashley  
Ashton By Budworth  
Aston Juxta Mondrum  
Audlem  
Austerson  
Baddiley  
Baddington  
Barthomley  
Batherton  
Basford  
Beeston  
Betchton  
Bexton  
Bickerton  
Bickley  
Blakenhall  
Bostock  
Bradley  
Bradwall  
Brereton  
Bridgemere  
Brindley  
Broomhall  
Buerton  
Bulkeley  
Bunbury  
Burland  
Byley  
Calveley  
Checkley cum Wrinehill  
Chelford  
Chidlow  
Cholmondeley  
Cholmondeston  
Chorley  
Chorlton  
Church Lawton  
Church Minshull

Comberbach  
Congleton  
Coole Pilate  
Crewe Green  
Darnhall  
Davenham  
Delamere  
Dodcott cum Wilkesley  
Doddington  
Edleston  
Egerton  
Faddiley  
Great Budworth  
Great Warford  
Hampton  
Hankelow  
Hartford  
Haslington  
Hassall  
Hatherton  
Haughton  
Henbury  
Henhull  
Hough  
Hunsterson  
Hurleston  
Knutsford  
Lea  
Little Bollington  
Little Budworth  
Little Warford  
Lostock Gralam  
Lower Withington  
Macefen  
Marbury cum Quoisley  
Marston  
Marthall  
Marton  
Mere  
Middlewich  
Millington  
Mobberley  
Moreton cum Alcumlow  
Moston  
Moulton  
Nantwich  
Nether Alderley  
Nether Peover  
Newbold Astbury  
Newhall  
Norbury  
Northwich  
Oakmere

Odd Rode  
Peckforton  
Peover Inferior  
Peover Superior  
Pickmere  
Plumley  
Poole  
Ridley  
Rostherne  
Rudheath  
Rushton  
Sandbach  
Siddington  
Smallwood  
Snelson  
Sound  
Sproston  
Spurstow  
Stanthorne  
Stapeley  
Stoke  
Tabley Inferior  
Tabley Superior  
Tarpорley  
Tatton  
Tilstone Fearnall  
Tiverton  
Toft  
Tushingham cum Grindley  
Utkinton  
Walgherton  
Wardle  
Warmingham  
Weston  
Wettenhall  
Whitegate and Marton  
Wigland  
Willaston  
Wimboldsley  
Wincham  
Winsford  
Wirswall  
Worleston  
Wrenbury cum Frith  
Wybunbury

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In the District of Manchester, the civil parish of Ringway

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In the county of Shropshire, the civil parishes of Whitchurch Rural, Whitchurch Urban, Whixall and Woore

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In the county of Staffordshire, the civil parishes of Audley Rural, Balterley and Betley

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In the District of Trafford, the civil parishes of Dunham Massey and Warburton

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In Warrington, the civil parish of Lymm

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## EXPLANATORY NOTE

*(This note is not part of these Regulations)*

These Regulations provide for exemptions from the restriction on abstraction and the restriction on impounding works in the Water Resources Act 1991 (c. 57).

The Regulations provide exemptions (subject to certain conditions) for—

- (a) the transfer of water by a navigation, conservancy or harbour authority to that authority's water system and the transfer of water for use in a dry dock (regulation 3) and emergency abstractions by such authorities (regulation 4);
- (b) dewatering in the course of building or engineering works (regulation 5);
- (c) the abstraction of surface water in the course of building and engineering works (regulation 6);
- (d) the abstraction of water during dredging (regulation 7);
- (e) the abstraction of water within a managed wetland system for the management, operation or maintenance of water levels or flows in that managed wetland system (regulation 8);
- (f) the abstraction of water from saliferous strata in the brinefields in areas listed in the Schedule (regulation 9).

The Regulations provide exemptions from the restriction on impounding works in the case of the construction or alteration of impounding works—

- (a) undertaken in an emergency to avoid, or reduce the threat of, imminent loss of human life or damage to property or the environment (regulation 10);
- (b) in the area of an internal drainage board, if they are constructed by that board after the date these Regulations come into force (regulation 11);
- (c) in a managed wetland system after the date these Regulations come into force, for the management, operation or maintenance of water levels or flows in that managed wetland system (regulation 12).

A Regulatory Impact Assessment (“RIA”) was produced in connection with the Water Act 2003 (c. 37). This RIA set out the impact of removing exemptions from the restriction on abstraction to which these Regulations relate. A further impact assessment was produced in respect of new authorisations for water abstraction in October 2017. Copies of the RIA and the impact assessment can be obtained from the Water Resources Management Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR and from the Water Branch, the Welsh Government, Cathays Park, Cardiff, CF10 3NQ. Both are published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **Explanatory Memorandum to:**

- 1. The Water Abstraction and Impounding (Exemptions) Regulations 2017**
- 2. The Water Abstraction (Transitional Provisions) Regulations 2017**
- 3. The Water Resources (Miscellaneous Revocations) (Wales) Order 2017**

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

1. The Water Abstraction and Impounding (Exemptions) Regulations 2017
2. The Water Abstraction (Transitional Provisions) Regulations 2017
3. The Water Resources (Miscellaneous Revocations) (Wales) Order 2017

I am satisfied that the benefits justify the likely costs.

**Lesley Griffiths AM**

**Cabinet Secretary for Environment and Rural Affairs**

**31 October 2017**

## **1. Description**

This is a single explanatory memorandum for three Statutory Instruments which together provide:

- transitional arrangements for preparing and determining licence applications for abstractions that become licensable when relevant provisions of the Water Act 2003 are commenced;
- exemptions for abstraction activities that have insignificant impacts on the environment, which would have become licensable when the Water Act 2003 provisions are commenced;
- for the removal of some area based exemptions from abstraction licensing;
- and amendments to Natural Resources Wales' usual considerations of minimum acceptable flows and existing rights and privileges for these licence applications.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

This Explanatory Memorandum covers three separate Statutory Instruments; two of which are composite with England and one which is Wales only. Each Statutory Instrument is subject to the negative procedure and the titles are specified below:

- The Water Abstraction and Impounding (Exemptions) Regulations 2017
- The Water Abstraction (Transitional Provisions) Regulations 2017
- The Water Resources (Miscellaneous Revocations) (Wales) Order 2017

The position in relation to powers to make the legislation associated with this policy is complex, as are the wider issues related to the cross-border management of water resources and water abstraction across two different administrative boundaries and under different regulatory bodies.

These Statutory Instruments are dependant on the commencement of certain provisions of the Water Act 2003, which are being commenced on the same date (the Legislative Background is set out in more detail in the next section). In relation to the relevant commencement orders, the powers lie with the Secretary of State (also in relation to Wales), after consulting the Welsh Ministers. With regard to the Exemption Regulations, the Transitional Regulations and the Revocations Order, the powers lie with the Welsh Ministers in relation to Wales; however, the policy intention has always been to apply a common approach in England and Wales.

For these reasons, the development of this area of policy and the consultations held on the regulations intended to give effect to it in both 2009 and 2016 were carried out on an England and Wales basis, with the participation of both the Environment Agency and Natural Resources Wales.

The two composite Statutory Instruments (the Exemption Regulations and the Transitional Regulations) apply to both England and Wales, and are subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable for these instruments to be made bilingually. The third Statutory Instrument (the Revocations Order) applies to Wales only and is therefore being made bilingually.

These three Statutory Instruments are reliant on each other and are interlinked through various references. It would not be possible to interpret the individual impacts of each statutory instrument in isolation without explaining the wider legislative context. Thus, a composite Explanatory Memorandum has been prepared to describe these statutory instruments. The territorial application of these instruments is England and Wales except the Water Resources (Miscellaneous Revocations) (Wales) Order 2017 which applies to Wales only.

### **3. Legislative background**

The Water Resources Act 1991, as amended by the Water Act 2003, provides the relevant provisions for delivering the basic measures to achieve the requirements of the Water Framework Directive. The power to commence those amendments rests with the Secretary of State (after consulting the Welsh Ministers). The Secretary of State is therefore making the Water Act 2003 (Commencement No. 12) Order 2017, and the Environment Act 1995 (Commencement No. 25) Order 2017, on the same day as the Exemption Regulations, the Transitional Regulations and the Revocations Order are being made, all to come into force on 1 January 2018.

These instruments together implement the abstraction elements of the Water Act 2003 in Wales. The Water Act 2003 introduced a number of changes to ensure further compliance with the Water Framework Directive on the control of significant abstractions by amending the Water Resources Act 1991. Together these statutes provide the legislative framework for abstraction licensing and will bring previously exempt abstractions under licence control. The two commencement orders need to be made by the Secretary of State and the changes in the Water Act 2003 will be brought into effect at the same time as these instruments come into force.

To implement these changes it is necessary to make the appropriate regulations (the Water Abstraction (Transitional Provisions) Regulations 2017) to provide for the application for, and determination of, abstraction licences to bring previously exempt abstractions under licence control. The Water Abstraction and Impounding (Exemptions) Regulations 2017 will provide for some further exemptions from the licensing restrictions under the Water Resources Act 1991. In order to end most area-based exemptions from



abstraction licensing, the Water Resources (Miscellaneous Revocations) (Wales) Order 2017 will revoke Orders deemed to be made under section 33 of the Water Resources Act 1991.

These Statutory Instruments are subject to annulment of the Assembly (negative procedure), they do not amend any provision of an Assembly Act or Measure nor do they impose obligations of special importance. Accordingly, the Welsh Ministers have determined that this legislation be subject to the negative resolution procedure.

The Water Abstraction and Impounding (Exemptions) Regulations 2017 are made in exercise of the powers conferred by sections 33A and 219(2)(f) of the Water Resources Act 1991.

The Water Abstraction (Transitional Provisions) Regulations 2017 are made in exercise of the powers conferred by sections 34, 36A(5), 37(1), (4) and (6), 37A, 43(2)(a) and (3), 44(3)(a), 45, 59, 189 and 219(2)(f) of the Water Resources Act 1991; and sections 103(1) to (3), 103(7) and 104(4) and (6) of the Water Act 2003.

The Water Resources (Miscellaneous Revocations) (Wales) Order 2017 is made in exercise of the powers conferred by section 10(1) of the Water Act 2003.

#### **4. Purpose & intended effect of the legislation**

Under the water abstraction licensing regime which has been in place since the 1960s, a number of water abstraction activities and areas in Wales have been exempt from the requirement for a licence. These abstractors have been able to take unlimited quantities of water with few controls over their impact on the environment or other abstractors.

Our Water Strategy for Wales includes a commitment to reforming the abstraction licensing system in Wales. It is our expectation that commencing the relevant provisions of the Water Act 2003 which this legislation helps to implement will:

- help us to create a level playing field for all abstractors;
- help to ensure the sustainability and resilience of our water resources for current and future generations;
- help us to meet our obligations under the Environment Act
- and help to ensure our compliance with the Water Framework Directive.

In England and Wales there are currently around 5,000 significant abstractions that are exempt from abstraction licensing. This compares with around 20,000 abstractors that are licensed. These exemptions create 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. This unfairness can be strongly felt, for example, farmers that use spray irrigation are required to have an abstraction licence while those that use trickle irrigation are not.

The Water Act 2003 and Environment Act 1995 included provisions to remove these licensing exemptions. Removing the exemptions will improve Natural Resources Wales' ability to manage water resources and prevent damage to the water environment. It will also help meet the requirements of the Water Framework Directive (WFD), which was established in 2000 to make sure that EU Member States manage their water resources effectively. The WFD requires a system of prior authorisation and control over the abstraction of surface water and groundwater and the impoundment of fresh surface water, including a register or registers of water abstraction.

We are removing 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;
- and the majority of abstractions covered by Crown and visiting forces exemptions.

We are keeping exemptions for abstraction where there are no significant impacts which would otherwise have become licensable without the Water Abstraction and Impounding (Exemptions) Regulations 2017:

- abstraction (transfers) downstream of the normal tidal limit by navigation, harbour and conservancy authorities, other than in the hour before or after low tide;
- abstraction in connection with dredging operations authorised by an authority in the exercise of its statutory functions in relation to those waters upstream of the normal tidal limit and any abstraction downstream of the normal tidal limit;

- abstraction of water within managed wetland systems (subject to the main abstraction into the system being licensed) and impounding works solely for the management, operation or maintenance of water within managed wetland systems;
- impounding works constructed by or on behalf of Natural Resources Wales where it is exercising its functions as the internal drainage board in relation to Wales;
- dewatering of underground strata and abstractions of surface waters to prevent interference with building or engineering works where the abstraction lasts less than six consecutive months (subject to restrictions);
- third-party operated dry docks that transfer water to and from a navigation authority's water system;
- impounding works when required in an emergency; and
- emergency abstraction or impounding where undertaken by port, harbour or conservancy authorities.

A five-year transitional period to determine all abstraction licence applications is provided for. Abstractors would have two years to prepare and submit an application. Natural Resources Wales will have up to three years to subsequently determine licences. Abstractors can continue taking water during this period.

This legislation will help us to plan and sustainably manage our water and other natural resources in a joined-up way, to prioritise natural resource opportunities and to ensure we have the evidence needed to inform the shape and direction of sustainable economic growth and development. This legislation will help to ensure Wales has a prosperous economy alongside a healthy and resilient environment and in so doing will contribute to the well-being goals in the Well-being of Future Generations (Wales) Act 2015.

The controls that this legislation introduces will help to deliver Part 1 of the Environment (Wales) Act 2016 through delivering the Sustainable Management of Natural Resources (SMNR) approach and enabling Wales' resources to be managed in a more proactive, sustainable and joined-up way. This approach will help to tackle the water resource challenges we face (such as climate change, and increasing demand) while remaining focused on the opportunities our water resources provide.

Consistent with the SMNR approach, bringing exempt abstractions into the licensing system will bring significant economic, social and environmental benefits to Wales, helping to support and complement our work to help secure Wales' long-term well-being, so that current and future generations benefit from a prosperous economy, a healthy and resilient environment and vibrant, cohesive communities.

## 5. Consultation

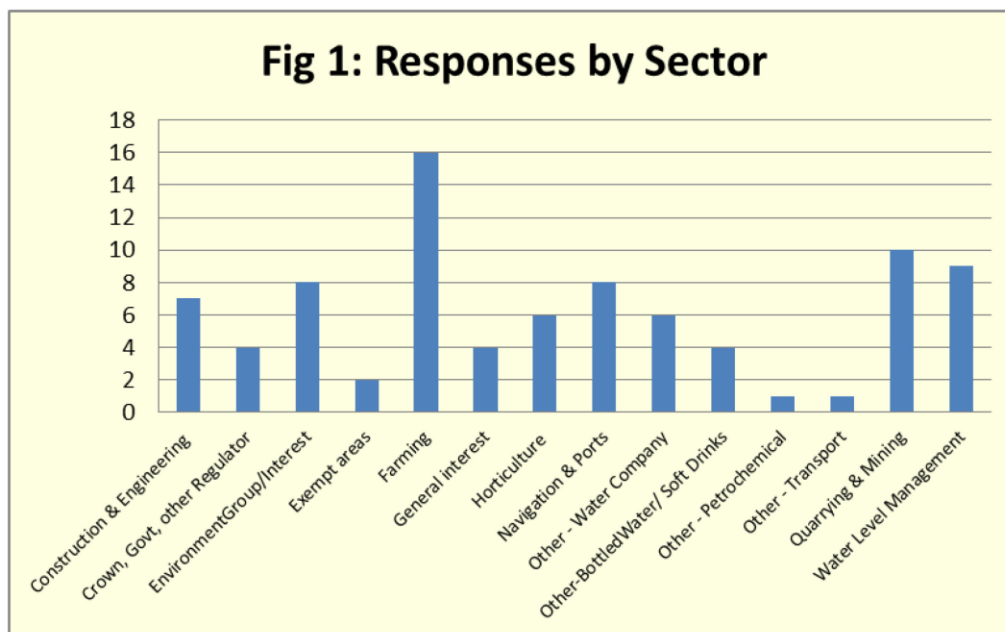
Following the Water Act 2003, in 2009 the Welsh Government and Defra jointly consulted on “Implementing the abstraction elements of the Water Act 2003”. The 12 week consultation invited responses from anyone with an interest in water abstraction and its impact on the environment. We sought views on proposals in two main areas:

- transitional provisions for the removal of various exemptions to licence control; and
- provisions relating to the payment of compensation which may arise from the changes.

A summary of responses was published later in 2009 and is available at: <http://webarchive.nationalarchives.gov.uk/20091118143456/http://www.defra.gov.uk/corporate/consult/water-act/summary-of-responses.pdf>. Forty-one consultation responses were received from a range of sectors including public bodies, the minerals sector, environmental bodies, agriculture and others. While the majority of those who responded agreed with most of the proposals, there were also some complex issues on which we worked closely with Defra to address, not least with regards to eligibility for (and the funding of) compensation and also some suggestions for further exemptions.

These issues were explored in some detail in the intervening years and the policy in this area was further developed to take account of interested parties’ views and of wider related policy developments, all the while concentrating on developing an evidence based approach which would be fair for both licensed and unlicensed abstractors.

Between January and May 2016 we issued a “Government response to the 2009 consultation and further consultation on implementing the abstraction elements of the Water Act 2003”, which is available here: <http://gov.wales/docs/desh/consultation/160115-implementing-the-abstraction-elements-of-the-water-act-2003-new-authorisations-en.pdf>. As a result of the 2009 consultation responses, we proposed in the 2016 consultation a light-touch, risk-based approach to licensing. This means that most abstractors would be granted licences reflecting the volumes they had previously abstracted under the exemption unless the Environment Agency or Natural Resources Wales considered that abstraction may cause ‘serious environmental damage’ (for the purposes of section 27 of the Water Act 2003). Licences might also be issued with conditions to protect rivers at low flows.



A summary of responses to the January-May 2016 consultation was published in the following September and is available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/556850/water-abstraction-consult-sum-resp.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/556850/water-abstraction-consult-sum-resp.pdf). Fig 1 above shows the breakdown of responses by sector. The total number of consultation responses received was 86 and the highest number from any one sector (16) was from farming.

Among the key themes discernible from the responses to the 2016 consultation were:

- Support for a light touch approach to bring currently exempt abstractors into the abstraction licensing system
- Broad agreement that it is fair to end most exemptions to licensing;
- General support for the change from the 2009 policy so that planned abstractions should not be compensated, though concern about the impact of not making allowances for planned abstractions or including 'headroom' for growth in the licensed volumes under the transitional arrangements;
- Suggestion that flexibility is required in terms of the type of evidence submitted with applications;

- Agreement in principle to flow controls being placed on licences, but questions about the approach of using universal Hands off Flows (HoFs);
- Concern about volumes being placed on transfer licences and the requirements to measure and monitor those volumes.

As a result of the 2016 consultation responses, working with Defra we have amended the policy approach we expect the Environment Agency and Natural Resources Wales to take when licensing, in order to allow:

- flexibility on the requirements for volume limits on transfer licences (transfer licences are required to transfer water where there is no intervening use of the water) to avoid undue abstraction control costs on abstractors while still ensuring environmental protection;
- flexibility in the application of flow controls so that it can recognise the wider conservation values; and
- abstraction volume limits that better reflect business needs in dry periods by extending the qualifying period to include the dry weather in 2011.

More detail around the joint Government Response to the 2016 consultation may be found on the Welsh Government website at [GOV.WALES](http://GOV.WALES).

## **6. Regulatory Impact Assessment (RIA)**

A joint Impact Assessment was carried out by Defra which informed the consultation that took place between 15 January and 8 April 2016. The final policy position that this legislation implements was supported by an updated version of that Impact Assessment which is published alongside the corresponding Explanatory Memorandum prepared by Defra on the [legislation.gov.uk](http://legislation.gov.uk) website and is reproduced in full over the pages that follow.

<b>Title:</b> Removing water abstraction licence exemptions <b>IA No:</b> DEFRA0046  <b>RPC Reference No:</b> RPC-3028(2)-DEFRA  <b>Lead department or agency:</b> Department for Environment, Food and Rural Affairs <b>Other departments or agencies:</b> The Environment Agency, Welsh Government and Natural Resources Wales	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 07/06/2017			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU			
	<b>Type of measure:</b> Secondary Legislation			
<b>Contact for enquiries:</b> Adrian Brookes Adrian.Brookes@defra.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£-59.01	£-57.62m	£3.0m	Not in scope	Non qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**  
 Many areas of the country are experiencing water stress as a result of competing demand for the available water for human uses and flora and fauna in the environment. Population growth and climate change are expected to increase that pressure. Abstraction is the process of extracting water from a source. An abstraction licensing regime has been in place for several decades but abstraction for a number of purposes has remained outside licensing control, allowing some users to take water irrespective of the needs of other users or the environment. The Water Act 2003 was passed with provisions to end these exemptions by awarding them "New Authorisations" to enable effective management of water resources.

**What are the policy objectives and the intended effects?**  
 (1) To enable better management of water resources: that is consistent and fair for all water users, to tackle serious environmental damage caused by unlicensed abstractions and it is an important part of our plans to reform abstraction management;  
 (2) To extend the licensing regime in a way that is cost effective and equitable;  
 (3) To meet statutory obligations under the EU Water Framework Directive.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Business as Usual: do not bring exempt abstractors into licensing but rely on existing regulations on environmental protection to improve management of over-abstracted water bodies.  
 Option 1: Commence new authorisations without the inclusion of a transitional arrangement;  
 Option 2: Commence new authorisations with the inclusion of a transitional period for pre-existing abstractions;  
 Option 2 is our final preferred option as it treats exempt abstractions on an equal footing with those already licensed and gives a reasonable transitional period for applications for new licences to be prepared, submitted and processed and for new licensees to adapt. While this option delays benefits to other abstractors and the environment, this option achieves a fair balance with the costs to new authorisation abstractors by including a reasonable implementation timeframe.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 01/2025				
Does implementation go beyond minimum EU requirements?			No	
Are any of these organisations in scope?			<b>Micro</b> Yes	<b>Small</b> Yes
			<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> 0	<b>Non-traded:</b> 0

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

**Signed by the responsible Minister** \_\_\_\_\_ **Date:** \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Commence the licensing requirement for currently exempt abstractions with no transitional period

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2018	Time Period Years 25	Net Benefit (Present Value (PV)) (£m)		
			Low: -218.94	High: -43.17	Best Estimate: -74.27

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	2.8	63.1
High	26.9	8.6	229.7
Best Estimate	1.9	3.8	89.6

### Description and scale of key monetised costs by 'main affected groups' relative to base line

Compliance and administration costs for licensing (total all sectors £19.1m) and loss of output (total all sectors £70.5m) for currently unlicensed water users in the following sectors: quarries and mines £36.3m; trickle irrigation farming £33.9m; canals £6.3m; ports £0.6m; water meadows £6.1; drainage boards £0.8m; road and rail £0.8m; Royal Parks and MoD £2.4m; exempt geographical areas £2.5m. All figures in present value terms. Most lost output is due to restricting abstraction causing serious environmental damage.

### Other key non-monetised costs by 'main affected groups'

No transitional arrangements may limit applicants' time to adapt their businesses, leading to less than optimal responses, however the policy has been expected since 2003. Small indirect costs via supply chain links, e.g. canal boat operators; cement works. Possible logistical problems – significant difficulty for the regulators to assess all licence applications within the usual determination period.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.5	10.7
High	0	0.9	19.9
Best Estimate	0	0.7	15.3

### Description and scale of key monetised benefits by 'main affected groups'

As trickle irrigators are brought into the licensing system, this "levels the playing field" for existing licensed abstractors in agriculture and horticulture. At times of high demand, the restrictions on trickle irrigators will increase the volume of water available for existing abstractors leading to a monetised benefit estimated at £15.3m (in present value terms). It has not been possible to monetise other more important benefits (see below).

### Other key non-monetised benefits by 'main affected groups'

Environmental benefit through preventing damage to the ecosystem by over-abstraction especially in key dry periods when these benefits would be substantial.  
Levelling the playing field through reducing unfairness arising from over consumption by exempt abstractors will also benefit other categories of non-agricultural abstractors in drought periods, including water companies abstracting for household and business supplies.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
There is no transitional period available to those seeking new authorisations. Abstractors take up cost effective/feasible mitigation options when faced with restrictions to their abstraction activities providing they are cost-beneficial. Regulator does not licence abstraction causing serious environmental damage or when river flows are very low.		

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: 4.5	Benefits: 0.8	Net: -3.7	
			N/A



# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Commence the licensing requirements with two years for transitional arrangements

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2018	Time Period Years 25	Net Benefit (Present Value (PV)) (£m)		
			Low: -174.61	High: -33.92	Best Estimate: -59.01

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	2.2	50.1
High	26.9	6.6	183.3
Best Estimate	1.9	3.1	71.4

### Description and scale of key monetised costs by 'main affected groups'

The transitional period that allows for a further two years of exempt abstraction and so defers the impacts. Compliance and administration costs for licensing (total all sectors £15.7m) and loss of output (total all sectors £55.7m) for currently unlicensed water users in the following sectors: quarries and mines £29.3m; trickle irrigation farming £26.5m; canals £4.9m; ports £0.4m; water meadows £5.2; drainage boards £0.6m; road and rail £0.6m; Royal Parks and MoD £1.9m; exempt geographical areas £2.1m.

### Other key non-monetised costs by 'main affected groups'

As for Option 1, although the transitional period would ease logistical problems for the regulator and allow more optimal adjustments for newly licensed abstractors.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.4	8.7
High	0	0.8	16.1
Best Estimate	0	0.6	12.4

### Description and scale of key monetised benefits by 'main affected groups'

As for Option 1, additional water available to existing licensed abstractors in agriculture and horticulture leading to additional crop output. It has not been possible to monetise other more important benefits (see below).

### Other key non-monetised benefits by 'main affected groups'

As for Option 1, benefits from preventing environmental damage and avoiding/reducing restrictions to other licensed abstractors in dry periods. As with business costs, benefits to other abstractors and the environment would be deferred and therefore lower than in Option 1.

### Key assumptions/sensitivities/risks

Similar to Option 1.

### Discount rate (%)

3.5

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 3.7	Benefits: 0.9	Net: -2.8	
			N/A

# Evidence Base (for summary sheets)

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# 1. Overview

- 1.1. This Impact Assessment (IA) presents an appraisal of the lead options for implementing the provisions of the Water Act 2003 to widen water abstraction licensing to cover currently unlicensed water abstraction activities within England and Wales. Implementing these provisions will meet an EU requirement. This policy is known as “New Authorisations”. The IA provides the analytical justification for our approach<sup>1</sup>.
- 1.2. Currently around 5,000 significant abstractions are exempt from abstraction licensing. This compares with around 20,000 abstractors that are licensed. These exemptions create an unfair playing field, allowing some abstractors to put pressure on the environment without any controls, while requiring others to take the burden of addressing risks to the environment. This unfairness can be strongly felt, for example, farmers that use spray irrigation are required to have an abstraction licence while those that use trickle irrigation are not.
- 1.3. We would remove exemptions for abstractions that can have significant impacts on the environment by commencing remaining provisions from the Water Act 2003. Several thousands of abstractions that have insignificant environmental costs will remain exempt. Doing so meets a Water Framework Directive (WFD) requirement. This policy is also an important part of our plan to reform abstraction management.
- 1.4. Our policy is to take a light touch approach to licensing. This means:
  - Only removing exemptions for water use activities that have or might have significant environmental impacts. Types of abstraction where licensing cost are disproportionate to the environmental benefits will remain exempt.
  - Most abstractors would be granted licences reflecting the volumes they have previously abstracted. Licences may include conditions to protect rivers at very low flows.
  - A reasonable five-year transitional period from the date we end the exemptions. Abstractors would have two years to prepare and submit applications. The regulator would have up to three years to consider, determine and grant the licence. Abstractors can continue to take water during this period.<sup>2</sup>
- 1.5. Our policy for implementation will enable almost all abstractors to operate as they do currently, unless the environmental impact of the abstraction is causing serious environmental damage or abstraction is taking place when river flows are very low.
- 1.6. As a result of feedback in the 2016 consultation, we plan to improve the regulatory approach further in places, including:
  - Allowing abstractors to provide additional evidence of previous abstraction during the dry period in 2011 so licensed volumes reflect dry weather needs; and
  - Removing most monitoring and reporting requirements for licences required for water transfers, where there is no intervening use of the water.
- 1.7. This impact assessment uses two pieces of analysis that Defra commissioned to provide key evidence for this appraisal. The analysis collates existing data from a variety of sources and gathered new information through interviews with representatives of the abstractors. This analysis is supplemented by further discussions with abstractors and the evidence provided in the 2009 and

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<sup>1</sup> The Water Act 2003 IA “Water Bill-Regulatory Impact Assessment, Environmental and Equal Treatment Appraisals” provided an initial assessment of the impact of the proposal for debate of the WA2003 in Parliament. This latest IA updates that earlier IA.

<sup>2</sup> We have balanced the length of transitional period and related costs to exempt abstractors of licensing with the delayed benefits to other abstractors and the environment.

2016 consultation responses, more detailed evidence from the regulator and the improvements to the policy.

- 1.8. The estimated monetised costs of our final preferred option are £71 million Net Present Value (NPV) of which around 20% is due to the administration and compliance costs of licensing, while 80% is due to impact on economic output mainly due to abstraction restrictions to prevent serious environmental damage. Monetised benefits to existing licensed abstractors from levelling the playing field for water resources access are around £18 million NPV. We expect there to be further non-monetised benefits to other abstractors (existing licensed abstractors and insignificant abstractors who will remain exempt). There will also be important non-monetised environmental benefits associated with reducing over-abstraction of water, a problem likely to grow given the increasing pressures from climate change and population growth, particularly when it is dry or there is a drought.

## 2. Policy background

### *The Problem under Consideration*

- 2.1. Water is a precious resource for many human uses (public water supply, agriculture, energy production, business or industrial processes, amenity and leisure) and for flora and fauna in the environment. Areas of England and Wales are already experiencing water stress as a result of competing demands for access to the water available. Increasing demand for water by those outside of the current regulatory framework for licensing that water is exacerbating these pressures. Climate change along with population and economic growth is expected to increase that pressure further.
- 2.2. Water abstraction is the process of taking water from the environment (e.g. river or groundwater). Some existing water abstractions, both licensed and unlicensed, are having a damaging effect on the environment.
- 2.3. An abstraction licensing system to regulate water abstraction has been in place since the 1960s. The system is operated in England by Environment Agency and in Wales by Natural Resources Wales (both referred to as “the regulator”).
- 2.4. However, abstraction for a number of purposes has remained outside licensing. These have historically been considered low risk activities, but the risk assessment for many of these activities has now increased. Exemptions also create an unfair playing field, as they allow some groups to take water irrespective of the needs of other users or the environment, while those that are currently licensed take the burden of addressing risks to the environment. For example, farmers that use spray irrigation are required to have an abstraction licence, to have a limit on the amount of water they can take, to pay for the water they take and to reduce their water use at specific times of pressures on the environment, while none of these conditions applies to those that use trickle irrigation and they can also increase their abstractions.
- 2.5. Alongside the development of the policy that became the Water Act 2003, the Water Framework Directive (WFD) was also set up in 2000 to manage water resources. The WFD requires each Member State to have in place a programme of measures designed to deliver “Good” water body status. One of the basic requirements to help deliver “Good” status is to have in place a system of prior authorisation and control of water abstraction and impoundments. The Water Act 2003 included the provisions to remove remaining licensing exemptions in England and Wales and help us meet this requirement. Annex A contains further background about the development of the Water Act 2003 and the Water Framework Directive requirements.
- 2.6. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
- 2.7. In 2016<sup>3</sup> and 2009<sup>4</sup> we consulted on bringing these exempt abstractors under licensing control. There has also been ongoing dialogue with stakeholders and the regulator about the balance of rights and responsibilities for creating a sustainable water abstraction licensing regime.

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<sup>3</sup> <https://www.gov.uk/government/consultations/water-abstraction-licensing-changes-to-exemptions-in-england-and-wales>

<sup>4</sup> <http://webarchive.nationalarchives.gov.uk/2009105011111/http://www.defra.gov.uk/corporate/consult/water-act/index.htm>

2.8. Both Governments consulted in December 2013 on reform of the water abstraction licensing system. Their respective responses to the consultation were published in January 2016<sup>5 6</sup>. In particular supporting abstractors to manage the risks from future pressure on water. If the currently exempt abstractors (approximately 20% of all those abstracting) were to remain outside of licensing control and continued to abstract without regard to other licensed abstractors or the environment, we would not be able to maximise the available water and the possible financial benefits available.<sup>7</sup> The impact of further reform is outside the scope of this IA.

#### *The Current Abstraction Licensing System*

2.9. Water abstraction licensing in England and Wales has developed over many decades. The first licences were granted in the 1960s. They were issued without regard to the environment, sharing out the water in a catchment amongst those that wanted to use it, effectively in perpetuity. They also gave abstractors compensation rights against derogation of the licensed water. This results in restricted access to water for new abstractors in stressed catchments, even if the existing licences are now unused or under used. Over recent years the licensing system has evolved where possible to take more regard of the environment and provide greater protection. This has also sought to ensure water use is efficient and adequately valued to reflect water scarcity and competing demands.

2.10. The current licensing system uses a range of tools to help maintain environmental protection and the rights of downstream abstractors. These may include both daily and annual abstraction limits. Water abstraction licences for rivers issued since 2003 also incorporate 'Hands-off-Flow' (HoF) restrictions, whereby, upon notice, all licensed abstractors with a HoF within a given catchment must stop abstracting when the river flow drops below a defined threshold. A similar condition applies to groundwater abstraction that instead refers to the levels of water - a 'Hands-off-Level' condition.

2.11. There are three types of abstraction licence:

- a full licence for abstractions lasting more than 28 days;
- a temporary licence for abstractions lasting less than 28 days; and
- a transfer licence where water is abstracted for more than 28 days to be moved from one source to another with no intervening use for example where a water company moves water to another company to abstract for the public water supply.

2.12. A transfer licence has a higher up front cost to the abstractor but has no annual charge from the regulator and usually has little or no abstraction volume reporting conditions. Most (>95%) existing licences are full licences. This will be different for New Authorisations because of the type of activity being licensed. We estimate that overall about 80 per cent of New Authorisations in England will require a transfer licence, however in Wales we expect most will be full licences (75-80%).

2.13. All licence holders pay a licence application fee and associated costs for example advertising or environmental reports. Full licence holders also pay an annual charge.

2.14. Full and transfer licences have been issued on a time limited basis as a matter of policy since 2001, and as a legal requirement since 2003, typically for 12 years after which renewal is required.

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<sup>5</sup> <https://consult.defra.gov.uk/water/abstraction-reform>

<sup>6</sup> <http://gov.wales/betaconsultations/environmentandcountryside/making-the-most-of-every-drop/?lang=en>

<sup>7</sup> The case for reforming the abstraction system was originally set out in the Water White Paper – Water for Life: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228861/6270.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228861/6270.pdf)

If a licensed abstractor requires more water it applies to the regulator for a new licence or to vary the terms of an existing licence.

**Table 1.1: Number of Abstraction Licences in force by type in England & Wales as at 2014**

	Public water supply	Spray irrigation	Agriculture (excl. spray irrigation)	Electricity supply industry	Other industry	Fish farming, cress growing, amenity ponds	Private water supply	Other	Total
Wales	160	583	168	253	334	49	50	9	1606
England	1425	9484	2745	476	3368	591	973	192	19254
England & Wales	1585	10067	2913	729	3702	640	1023	201	20860

Source: Environment Agency / Natural Resources Wales 2014

#### Approach to removing exemptions

2.15. The approach to removing abstraction exemptions will be light-touch and risk-based, taking account of responses from the 2009 and 2016 consultations.

2.16. In the 2016 consultation, we proposed a light touch approach. This means:

- Only removing exemptions for water use activities that have or might have significant environmental impacts. Types of abstraction with no significant environmental impacts will remain exempt as environmental benefits will be disproportionate to licensing costs.
- Most abstractors would be granted licences reflecting the volumes they have previously abstracted. Licences may however include conditions to protect rivers at very low flows.
- A generous five-year transitional period from the date we end the exemptions. Abstractors would have two years to prepare and submit applications. The regulator would have up to three years to consider, determine and grant the licence. Abstractors can continue to take water during this period.

2.17. These transitional arrangements will help ensure that currently exempt abstractors are treated as equitably as possible with other abstractors that are already the subject of licence control.

2.18. As these abstractions are already taking place, the act of licensing them will not cause an environmental impact. In circumstances where there is no risk of serious environmental damage taking place, the licence that will be granted would be based on the volume of water abstracted in the previous six<sup>8</sup> years. Licences may also be issued with HoF conditions to protect the environment when flows are very low in catchments. The intended effect is to help minimise the regulatory impact while providing some basic environmental protection.

2.19. The WFD allows that abstractions which have insignificant impact on water body status to remain exempt. Therefore, abstractions considered to be insignificant will remain exempt from licensing (for example, abstractions of less than 20 cubic metres per day). Deregulation measures in the Water Act 2003 removed around 24,000 abstractors from the abstraction licensing regime, reducing licensed abstractors to their current level of around 21,000. We have carefully considered the impacts of types of abstraction and we will introduce further exemptions, which will ensure several thousand abstractions will continue to benefit from being exempt from abstraction licensing.

<sup>8</sup> Increased from four years as a result of feedback to the 2016 consultation. This may change depending on a final implementation date to take account of the dry weather in 2011.

- 2.20. Where it is considered that there is a risk of serious damage to the environment from a currently exempt abstraction, the regulator will issue a licence curtailing the amount of water that can be abstracted to remove the risk. In limited circumstances a licence may be refused. The impact of an abstraction on the environment depends on a combination of factors that include the type/rarity of habitat or species affected the scale and longevity of the impact and how easily it can be rectified.<sup>9</sup>
- 2.21. Under this light-touch approach, we anticipate that most exempt abstractors will receive licences. Any applications refused or restricted due to serious environmental damage would not receive compensation<sup>10</sup>.
- 2.22. Upon commencement, we propose that each applicant will have a two year window in which to make a licence application. This will involve them gathering, recording and submitting information to the regulator to support their application. Afterwards there will be a three year period for the regulator to assess and determine each application. Up until the point a decision has been made on the application, each abstractor will be able to continue their current abstraction activities without interruption, provided they have submitted a valid application. Should an abstractor want to increase abstraction or have plans for a new abstraction they should also apply to the regulator, these applications will be considered under the standard abstraction licence application process.

*Who does it apply to?*

2.23. The abstraction activities that will have their exempt status removed are:

- **Dewatering of engineering-works** (such as ongoing road and rail activities), quarries and mines.
- **Trickle Irrigation**: All forms of irrigation (other than spray irrigation, which is already licensed).
- The use of land drainage systems in reverse to maintain field water systems and; abstraction of water containing silt for deposit onto agricultural land where the silt acts as fertiliser (a process known as warping). Collectively the issues relate to **Managed Wetland Systems**.
- The transfer of water from one inland water system to another in the course of, or as the result of, operations carried out by conservancy authority, **navigation or ports**.
- Abstraction of water into **Internal Drainage Districts**.
- The majority of abstractions covered by **Crown Estate** exemption.
- Abstractions within currently **exempt geographical areas**.

2.24. A breakdown of the estimated number of abstractors by activity that we expect to bring into the licensing regime is provided in Table 6.2 (Section 6). The environmental and hydrological issues for each of these currently exempt activities are discussed in Annex B of this Impact Assessment.

2.25. We will retain some exemptions for insignificant abstractions that will not require a licence. These activities are:

- The abstraction of saline water for ports and harbours, in connection with dredging systems and into internal drainage districts.
- The abstraction of water with a high saline content from underground strata in the Cheshire basin. This is part of an existing exemption given to the former Mersey and Weaver River Authority in 1968.

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<sup>9</sup> The principles by which the regulator will assess serious damage are set out in guidance available at: <https://www.gov.uk/government/consultations/the-water-act-2003-withdrawal-of-compensation-on-the-grounds-of-serious-damage>

<sup>10</sup> In exceptional circumstances, applications based on water use in the previous six years may be refused or restricted for reasons other than serious damage or to protect the environment during low flows. In these circumstances, abstractors would be able to apply for compensation if there is an impact on their business. As we expect this to be exceptional we have not analysed this policy in the impact assessment.



- The abstraction of water and impounding work solely for the management, operation or maintenance of water within managed wetland systems.
- Impounding works constructed by or on behalf of internal drainage boards in exercise of their appointed area functions.
- Small scale dewatering used in construction activity.
- Third-party operated dry docks that transfer water within a navigation authority's system.
- Some additional abstraction and impounding works when needed to maintain safety or in an emergency.

### 3. Objectives

- 3.1. The aim is to bring the exempt abstractions posing most significant risk of environmental impact into the water abstraction licensing system. The objectives are to:
- i) Enable better future management of water resources in England and Wales: doing so in a way that is consistent and fair for all water users, that tackles the serious environmental damage caused by unlicensed abstractions, and that supports further reform of the abstraction licensing system;
  - ii) To widen the licensing regime in a way that is cost effective and equitable: for instance through allowing activities that pose a low-risk to the water environment to remain out of scope, ensuring all abstractions are managed on an equal footing, and giving sufficient transitional period for abstractors to assess their strategic options and calculate their required volumes; and
  - iii) To meet statutory obligations under the EU Water Framework Directive.

## 4. Rationale for Intervention

- 4.1. This section explores the economic and wider political rationale for bringing exempt abstractions under licence control.

### *Future Pressures on Water*

- 4.2. Water resources are already under pressure in many areas of England and Wales. Water supply is highly seasonal and inherently uncertain. In the future, emerging climate pressures and the demands of an increasing population will affect the volumes and certainty of water availability at different times of the year. Short duration droughts (12-18 months) are likely to become more frequent, while by the 2030s, those areas already experiencing water stress<sup>11</sup> face having a potentially increased population of over 40 per cent (particularly the river basin of the Thames and South East England).<sup>12</sup> This all points to a risk of less resilient water resources and a need to be more effective at managing them.
- 4.3. The UK and Welsh Governments reforms of the abstraction licensing system will create a system that is fairer and more resilient to future pressures, whilst being able to promote economic growth and protect the environment. This will bring benefits to abstractors by increasing water availability. However, while some significant abstractors remain outside of the current licensing system benefits of reform cannot be fully realised.

### *Levelling the Playing Field*

- 4.4. A key rationale for intervention is to seek equity amongst all water abstractors.
- 4.5. Exempt abstractors are able to remove as much water as they want without needing to have regard to the environment or the other licensed abstractors. Where action is taken to balance the needs of abstractors and the environment, the burden falls only on those that are regulated through the licensing regime. This leads to responsibility and costs being imposed only on licensed abstractors as well as undermining efforts to manage water resources. This also leads to negative externalities to other licensed abstractors, as their rights over their access to water are uncertain.
- 4.6. Licensing all abstraction activities, other than those where it would be disproportionately costly to licence because the impacts on the environment or water resources are insignificant, will help create a level playing field across abstractors and deliver water resources and environmental policy.

### *Existing UK Legislation*

- 4.7. The existing abstraction licensing system with its current extent of exemptions is neither fully effective at securing the proper use of our water resources, nor does it achieve control of environmental impacts caused by those exemptions. It also provides insufficient protection for existing licensed abstractors' water needs, yet places an unfair burden on them.
- 4.8. Although there are existing regulatory measures which could be used to control abstraction outside of licensing, in practice they are ineffective because they are inflexible and not designed for abstraction as they do not allow the regulator to control when and how water may be taken.

### *Market Failures in water abstraction*

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<sup>11</sup> Water stressed areas – final classification [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/244333/water-stressed-classification-2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/244333/water-stressed-classification-2013.pdf)

<sup>12</sup> Environment Agency's *The case for change – current and future water availability* <http://webarchive.nationalarchives.gov.uk/20140320084602/http://www.environment-agency.gov.uk/research/planning/135501.aspx>

- 4.9. The main economic rationale behind bringing exempt abstractors under licence control is that fresh water in the environment is generally a “common pool resource”. It rains, flows and dissipates without regard to any geographic boundary. Water is, to a great extent, non-excludable and is rival in so far as if one abstractor takes water that water cannot be used by another abstractor. This means its use is not readily restricted to those who want access. It is difficult to assign property rights to water.
- 4.10. As a common pool resource, access to a finite amount of water is available to many users across a wide geographic area. Without the assignment of property rights to all users of the water, individuals may not take into account the effects on others of their own abstraction activities or on the environment. This leads to issues of over-abstraction, such as reduced volumes available to other, licensed abstractors and how best to allocate the long-term available resource of water for future generations. This overuse can put serious environmental pressure on water bodies and on the ecosystems dependent upon them, leading to adverse effects described as “negative externalities” for others not involved in the decision to abstract when the regulator needs to make abstraction changes to protect the environment.
- 4.11. A licensing system that includes all significant abstractions is essential for effective management of this common pool resource and is a necessary step to tackling these market failures.

## 5. Options Appraisal

5.1. This section sets out the options which were appraised and also the methodology used to assess them. The appraisal considered three core options for New Authorisations relative to the baseline of continuing the current system:

Option 0: **Business as Usual:** the baseline, where we do not bring exempt abstractors into licensing but rely on existing legislation to meet our statutory requirements on water bodies.

Option 1: Commence the new licensing requirement for currently exempt abstractors **without the inclusion of transitional arrangements** for currently pre-existing exempt abstractors.

Option 2: Commence the new licensing requirement for currently exempt abstractors with the **inclusion of transitional arrangements** for pre-existing abstractions.  
(This is the option selected)

5.2. In the 2016 consultation, we included the option to commence the new licensing requirement for currently exempt abstractors with the inclusion of transitional arrangements as in option 2, and also to award **compensation for the loss of future planned increases in abstraction**. However following the consultation response we have not considered this option further as we have concluded this option unfairly allocates water rights to exempt abstractors compared to licensed abstractors who have no compensation rights for planned abstraction.

5.3. The core analysis focused on a set of light-touch options. This is because the environmental protection threshold (i.e. curtailing abstractions at risk of causing serious environmental damage) is anticipated to only apply in extreme instances. Most exempt abstractors will receive licences through a 'light touch' review requiring minimal scrutiny that limits the burden on both exempt abstractors and the regulator. The options are set out in more detail below, with further information on assumptions and methodology in Section 6.

### *Option 0: Business as Usual (this option would not meet EU requirements)*

5.4. This is the baseline that the other three options will be compared to. The baseline is the use of existing legislation to tackle environmental damaging exempt abstraction. Under this option, regulator will have limited enforcement options to address unsustainable abstractions.

5.5. Actions to tackle environmental damaging abstraction would be severely constrained by incomplete information on exempt abstractions, regulator's resources, cost impacts on the regulator and licensed abstractors and the associated uncertainty around the time taken to achieve an environmental outcome. To reflect this difficulty for the regulator, the actions were assumed to operate at a much slower pace than can be achieved by licensing – we estimate it would take on average an additional ten years to fully capture the effect of exempt abstractors causing serious damage to the environment. We therefore assume that all impacts surrounding changes to economic output are incurred from appraisal year 10 in the baseline. This also delays the benefits to licensed abstractors and to the environment.

### *Option 1: No Transitional Arrangements*

5.6. Under this option the policy will commence immediately at the start of the appraisal period. Without transitional arrangements all licence exempt abstractions would become unlawful and would have to cease once the provisions are commenced unless, that is, a licence was granted. Therefore the costs would fall on exempt abstractors immediately. This would also create significant regulatory uncertainty and potentially create costly disruptions to businesses where licence decisions could

only be made in time with significant effort by the regulator. Furthermore, businesses may not have the time to comply with abstraction licence restrictions.

5.7. This option would meet the EU WFD statutory obligations on prior authorisation and control of abstractions, as well as treat exempt abstractions equitably to those already licensed. It would also bring benefits to the environment and other abstractors immediately.

#### *Option 2: Two Year Transitional Arrangement*

5.8. This is the selected option whereby we begin the new licensing requirement after a two-year transitional application period and determine all applications in a three-year period following the application period. It would help to meet our environmental obligations for prior authorisation and control of all significant abstractions. Apart from allowing for the transitional period, it would help to treat previously exempt abstractions on an equal footing with those already licensed and also to tackle the market failures outlined in the previous section.

5.9. The Water Act 2003 gave the Secretary of State and Welsh Ministers powers to make regulations that provide transitional arrangements for those abstracting lawfully prior to removal of their exemption. This option proposes transitional arrangements that give a two year application period for abstractors to make an application. It would allow abstraction to continue until decisions were made on the licence application up to three years after the application period closes.

5.10. This option would implement the Water Act 2003 and Water Framework Directive requirements by licensing abstractors who might pose a significant risk to the environment; while treating them equitably with those already subject to licence control. However the transitional period would delay the benefits to other abstractors and the environment compared with option 1.

### **Analytical Methodology**

5.11. Here we describe the methodology used to analyse the options.

5.12. Our approach uses two pieces of analysis Defra commissioned to provide key evidence for this appraisal. This analysis is supplemented by further discussions with abstractors and the evidence provided in the 2009 and 2016 consultation responses, more detailed evidence from the regulator and revisions to the detail of the policy.

#### *Sources of Evidence*

5.13. At the outset, evidence on exempt abstractions was seriously limited. Defra commissioned an evidence study to scope and understand the impact of ending the exemptions on affected sectors in England and Wales. The study was carried out by consultants HR Wallingford and Vivid Economics<sup>13</sup>.

5.14. The evidence report analysed:

- The scale of current exempt abstraction activities and associated costs and benefits;
- Likelihood of abstractors receiving curtailments or restrictions placed on their licence;
- What impact both curtailing abstraction volumes and imposing Hands-off-Flow licence restrictions (if applicable) will have on each activity.

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<sup>13</sup> HR Wallingford (2013) "The Impact of New Authorisations on water abstractions", published by Defra <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=New&Location=Normal&Completed=0&ProjectID=18618>

5.15. The approach was to collate existing data from a variety of sources and to gather new information through interviews with representatives of the exempt abstractors.<sup>14</sup> In particular, the interviewees provided information on volumes of water abstracted, on the value of this abstracted water to their activities and on the likely mitigating options exempt abstractors may choose to take. Based on this evidence, aggregate abstraction volumes for each of the exempt sectors were estimated.

5.16. The appraisal methodology is constructed as follows:

- Identify mitigation options for maintaining output levels together with their associated costs;
- Develop a model to assess the impact of restricting or refusing future licences.

5.17. In this assessment, the three options were considered against three separate licence scenarios. In the licensing scenarios a cautious view was taken over the level of what constitutes 'serious damage' to the environment. In itself, curtailing abstractions that cause serious damage will not be enough to meet all of our environmental targets. The licence scenarios under consideration range from setting environmental criteria designed to prevent abstractions causing serious damage, to environmental criteria that will not meet all our environmental objectives. More explicitly, the three licensing scenarios considered are:

Scenario A - is a precautionary scenario under which all licence applications would be refused if the activity contributes to a water body not meeting any of its environmental objectives (much more precautionary than our proposal to refuse or curtail licences that may cause serious damage), or where catchments are over-abstracted or over-licensed. This would also include licence refusal for all seriously damaging abstractions, and Hands-off-Flow restrictions where applicable.

Scenario B - covers a situation where approximately half of licence applications would be refused where the activity contributed most towards a water body not meeting any of its environmental objectives, or where catchments are over-abstracted or over-licensed. This would also include licence refusal for all seriously damaging abstractions, and Hands-off-Flow restrictions where applicable.

Scenario C - covers the least severe licensing restrictions and only looks at licence refusal for all seriously damaging abstractions, and Hands-off-Flow restrictions where applicable. This is light-touch approach for exempt abstractors while meeting our environmental objectives in a phased and consistent way as set out in the 2015 WFD River Basin Management Plans<sup>15</sup>. Any future abstraction licence changes that may be needed can be made to all consistently to all abstractors. This is the option we selected and is adopted in all of the core option analysis.

5.18. More background on this top-down assessment is in Annex D.

5.19. The evidence report estimates the numbers of abstraction activities that are potentially at risk of causing serious damage to the environment and what the impact of a Hands-off-Flow restriction on licences might be.

#### *The Agent Based Model*

5.20. The first assessment gives us an estimate of the impact on production and changes to abstraction volumes for an individual activity in isolation from other abstractors. However this approach does not take full account of the dynamic interaction effects on the decision making process such as seasonal rainfall patterns or the impact of one abstractor's activity on water flows on another

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<sup>14</sup> Interviews were carried out to gather information on how the exempt sectors were using their exempt abstractors. The interviewees were asked for data on volumes of water abstracted and the value of this abstracted water to their activities. Not all were able to provide the information. As such the information in the top-down assessment is based on the available existing data and supplemented by the information gathered in interview.

<sup>15</sup> <https://www.gov.uk/government/collections/river-basin-management-plans-2015>

abstractor. Instead it uses expert judgements to suggest what the optimal choices individual abstractors will take. Usually these are judgements made for the average abstractor.

- 5.21. To help further our understanding of the dynamic effects, the analysis also considers a model of the choices that exempt abstractors may make in the face of New Authorisations. This is an Agent Based Model (or the 'ABM').
- 5.22. The ABM underpins all of the analysis in Defra's separate abstraction reform impact assessment and was adapted by the contractors to test and therefore inform this assessment.
- 5.23. However not many of the currently exempt sectors can be modelled using the ABM: The model does not incorporate ports, exempt geographical areas or most Crown abstraction. The ABM coverage of canals, internal drainage boards and Ministry of Defence abstractions is too limited to be useable in the assessment. Even where the model incorporated an exempt abstractor, for example irrigators, without the quality of information we have about licensed abstractors the results of the model varied significantly depending on the assumptions made about the abstraction particularly the exact location of abstractions. The ABM results were therefore judged less reliable than the top down assessment.

#### *Assessing options*

5.24. The methodology used in this appraisal is summarised here:

- We first developed new evidence on licence exempt abstractors where none existed previously. This evidence base has evolved and is informed by the 2016 consultation responses, engagement with abstractors during and post the consultation and refinement to our final implementation policy as a result (such as moving away from universal volume conditions on transfer licences). This evidence helped to formulate the base line through scoping the total numbers of exempt abstractors, the scale of their operations, the likelihood and implications of bringing them into the licensing regime and also what strategies they are likely to adopt upon policy commencement;
- The ABM was used to test the analysis where it could be applied;
- We assume that in the base line (option 0) exempt abstractors would face economic impacts similar to option 1 and 2, where the predominant driver in differences between the options will be the point at which environmental action is taken and licensing costs. For this we choose to set out the approach for each sector alongside the impacts for the base line (option 0) against which options 1 and 2 are then assessed.
- We assess each of the core options 1 and 2 within a range of high and low estimates of the cost of financing optimal mitigation strategies pursued by licence exempt sectors. This is because our evidence typically provides us with central estimates that are appropriate for the average abstraction activity; flexing inputs within a range helps us to account for any uncertainty in cost assumptions and also variation in the average size of abstraction operations.

5.25. As discussed we also develop a base line that assumes existing legislation will eventually force action with regard to detrimental water abstraction. This is to reflect that a lot of the costs incurred by current licence exempt abstractors will happen at some point in time (assumed to be ten years). The predominant driver in the differences in cost estimates between options is due to differences in when action is taken – we are mostly delaying the point at which costs of tackling detrimental exempt abstractions are incurred. As such we provide detail for analysis for the sectors in the base line and note that the approach is replicated across all options.



5.26. The cost and benefit categories under consideration are outlined in the table below:

**Table 5.1: Business Cost and Benefit categories**

Impact	Description
Compliance & Administration	Costs to currently licence exempt abstractors from having to apply for and comply with the licensing system.
Economic Output	Changes to output that arise from one or a combination of a) having to invest in technology to mitigate against the impact of reductions in allowed abstraction volumes b) reductions in profits directly as a consequence of reduction in allowed water abstraction volume c) having to switch to a new activity, location or perhaps close operations.
Levelling the playing field	This is an extension to the economic output but relates to existing licence holders. Improvements to the availability and level of water flows may help existing licence holders to expand their output.
Environmental Benefits	The associated environmental (natural capital) benefit from improving flows in water bodies.

*Compliance and Administration costs*

5.27. All exempt abstractors will face the cost of complying with the abstraction licensing regime as they are brought into it. These are split into those occurring as a one-off, those occurring annually (for full licences only) and those expected to recur every 12 years at the point of licence renewal (or 3 times over our 25 year appraisal period).

5.28. The range of impacts was set out in the 2009 consultation Impact Assessment, which in turn built on the 2003 assessment around the commencement of the Water Act. The impacts are based on data collection and local knowledge.<sup>16</sup> The various cost categories have remained the same but the estimates have been revised for this analysis. These business costs are categorised:

One-off costs:

- Advertising (costs to the regulator and to place in a local newspaper/online);
- Providing an environmental report;
- Seeking professional advice;

Annual costs:

- Annual licence charge (applicable to full licences only);
- Record keeping, reporting and making payments (applicable to full licences and small proportion of transfer licences);

Every 12 years:

- Metering/measurement of required water volumes;
- Time spent gathering data and completing the licence application
- The application fee.

5.29. It is unlikely that all these costs categories will apply on an individual abstractor and those which do are likely to vary for each abstractor. We have identified a range of cost estimates and also a likelihood of the coverage of the costs to generate an 'expected' unit cost for each of these

<sup>16</sup> See Sections 3 and 4 of the 2009 consultation impact assessment for more detail.

charges. It is also assumed that, with the exception of two categories ('professional advice' and 'abstraction charges'), the average unit cost for each of these categories will be identical for all abstractors; any variation in sector compliance cost is driven by the number of abstractions needing licences in each sector.

5.30. We use these average figures and their associated ranges to calculate the NPV impact of licence compliance for each sector. In all of our assessment none of these costs are expected to be sufficiently large on their own to influence the behaviour of currently exempt abstractors. So for those activities (most of them) which do not face licence restrictions or curtailment to their abstraction volumes, we do not expect any adjustment to their behaviour when facing the cost of licensing and compliance alone.

5.31. In our option analysis we assume that all of the one-off costs occur at the end of the transitional period. In practice, if there is a transitional period, it may be the case that some of the abstractors may decide to incur the one-off costs earlier in the transition; our assumption on the timing of these costs may be to underestimate the overall NPV impact of licensing and compliance cost.

5.32. An overview of the compliance and administration costs is in Annex E.

### Assumptions

5.33. Key assumptions are set out in the table below:

**Table 5.2 - Key assumptions**

Input	Description	Assumption
Transitional Arrangements / Period	This refers to the process to bring exempt abstractors into the licensing regime. It includes both the period of time allocated to allow currently exempt abstractors to apply for a licence and also time for the regulator to make a decision on whether to award a licence.	Application and Determination period modelled as one. We assume policy impacts incur from the end of the application period. Abstractors to carry on activities as normal until then. Various lengths of time considered. We assume abstractors do not change their abstraction behaviours leading up to licensing and that abstractors will be comply with the licensing requirements <sup>17</sup> .
Compensation	Compensation could be payable unless the licence is refused or constrained due to association with an activity causing serious environmental damage or to protect rivers at very low flows. As such, we would expect only minimal compensation claims.	We assume no compensation will be payable under any option.
Hands-off-Flow	Regulatory control applied to licences that require holders to stop abstracting when the flow of surface water in a river drops below a particular depth. Occurs from licence commencement.	Treated differently depending upon analytical approach. For the studies have taken evidence to determine likely impact; for ABM we analysed a HoF restriction to a Q-level of 70% and 95% <sup>18</sup>

<sup>17</sup> We believe it will be in abstractors' interest to comply rather than risk not being able to take advantage of the light touch approach.

<sup>18</sup> For a HoF condition of Q(x): x refers to level of river flow that is exceeded for x% of the year - the HoF restriction will kick in when the flow drops below this level. We chose a level of Q70 for our Agent Based Modelling as this was felt best to mimic the impact of the HoF on trickle irrigators in the evidence report suggested by HR Wallingford. This level of HoF is substantially more restrictive than abstractors should normally expect when licences are issued. Other than in serious damage cases, our proposal is that in almost all catchments that are already over abstracted will be issued with Q95, in all other catchments 75% of Q99.

Licence Costs	New Authorisations face fees associated with licensing. These are a mixture of: fixed charges towards regulator costs; an annual charge for the management of abstraction and the cost of compensating abstractions associated with revocation of licences. Around 80% of New Authorisations will be transfer licences.	All New Authorisations would incur these costs. The New Authorisations receiving transfer licences will not pay an annual charge.
Curtailment	Abstractors at risk of causing serious damage to the environment may face curtailment to their activities. In the extreme a licence may be refused outright. Occurs at the licence determination stage.	We used a relatively strict view of what constitutes serious damage (based on the definition consulted on in 2012) underpins the evidence assessment that feeds into the analysis. Impacts assumed to take place at the end of the Transitional Period.
Mitigation	What currently exempt abstractors could do to mitigate the impact of New Authorisations.	We consider the [combination of] mitigation options that were deemed most suitable or cost-effective when scoping out the evidence. The ABM lets us compare the choice of mitigation which emerges dynamically.
Licence Review Period	New Authorisations are time limited for a period of around twelve years.	We do not model explicitly in the top-down approach, but this is accounted for in the Agent Based Modelling.
Compliance	Separate to administration cost and refers to the direct costs faced by currently exempt abstractors in complying with licence arrangements.	All New Authorisations incur these costs.

5.34. Common to all options is the decision making process each modelled abstractor is assumed to take:

- Prior to commencement abstractors can carry on abstracting without a license and without any potentially associated conditions, in line with volumes abstracted within the qualifying period.
- This unlicensed and unconstrained use will continue until the end of the transitional period<sup>19</sup>. Abstractors will react to any licence restrictions immediately after this period. This modelling simplification keeps the analysis tractable and, although abstractors may receive licences with restrictions at various points during the transitional period, this is impossible to predict in advance and has a negligible impact on the cost-benefit profile.

5.35. Throughout the transitional period an abstractor assesses strategically how they might respond to possible curtailments or restrictions to their abstraction when licensing commences; they will have a reasonable expectation of the likely scale of restrictions given their knowledge of their own abstraction/activity.<sup>20</sup> The abstractor will consider:

- Administration and compliance costs associated with licensing. This will be incurred by all abstractors;

<sup>19</sup> Once the transitional regulations come into force, any increases in abstraction will need to be applied for through the usual licensing application route, but a licence will need to have been secured before any change in abstraction practice may occur.

<sup>20</sup> In practice abstractors will use part of the transition arrangement period to gather information to submit to the regulator. They are likely to have a reasonably accurate expectation of the restrictions they may face. Only when the regulator has assessed the application will the abstractor know precisely what implications, if any, they might face.

- An assessment of the impact of having their activities curtailed where they are at risk of causing serious damage to the environment. This is an impact that would occur at the point of receiving a licence. In the extreme curtailment may lead to outright refusal of an abstraction licence;
- An assessment of the impact that Hands-off-Flow restrictions on licences might have on their future activity. This is an impact that may have an effect throughout owning a licence and is based on water availability within a catchment.

5.36. In most instances a likely response will be to carry on as normal but incur cost of complying with the licensing regime. Yet for some where the restrictions at the point of licensing or due to the Hands-off-Flow condition on the licence are strong, the abstractor may choose one or a combination of the following:

- Invest in technology to mitigate against the impact of reductions in allowed abstraction volumes;
- Accept a reduction in abstraction volume and face a reduction in profits/ output volume of the end product;
- Switch to an alternative activity or location;
- In the extreme the abstractor may decline the offer of a licence and prefer to close down its activity.
- Improve efficiency of production<sup>21</sup>

5.37. Each of the decisions an abstractor will choose to take will depend on the activity associated with it. The most cost-effective choice(s) for each abstractor are taken from the scoping analysis done by HR Wallingford/ Vivid Economics.<sup>22</sup> In our base line assessment we consider each of the impacted sectors in turn and have summarised at the beginning of each section the types of decision abstractors in the sector will make.

5.38. Our choice of appraisal period is **25 years** to effectively represent admin costs and the benefits to licensed abstractors. This is in consideration that many significant impacts typically materialise over this time frame using our modelling approach. For example, the decision making to invest in assets such as reservoirs are based on a 20 year lifetime, while the licence review period takes place approximately every 12 years. Importantly, the baseline (current policy) includes costs to business in years 11 to 25 that would be brought forward or altered in the other options (see section 6 following).

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<sup>21</sup> This is not a direct response to restrictions on water use but is the results of an up-front capital investment that leads to greater efficiency in water use. For example, a trickle irrigation farm might choose to invest in rainwater harvesting which requires a sizeable upfront cost but in turn leads to a lower marginal cost of water use.

The scope for improvements in productive efficiency – the ability to carry out existing tasks with fewer inputs – was examined in our Evidence Study produced by HR Wallingford. For all of our sectors under considering none the scope for improvements in productive efficiency is considered minimal as mismanagement of water directly leads to greater operating costs in all sectors. See HR Wallingford (2013), page 68.

<sup>22</sup> These were in turn based on interviews with current licence exempt sectors, expert judgement and economic theory.

## 6. Options Assessment

- 6.1. This section shows our assessment of the options. It begins with an assessment of the baseline option 0, taking each impacted sector in turn, and then looks at the aggregate impacts of the remaining options.
- 6.2. At a high-level we expect the main driver in the variation in net impacts between options to be the compliance and administration costs faced by currently licence-exempt abstractors and the point at which licensing commences – the way we calculate the impacts in the base line and across our three options is the same, but the point in time at which the cost-benefit impacts commence will differ between them.

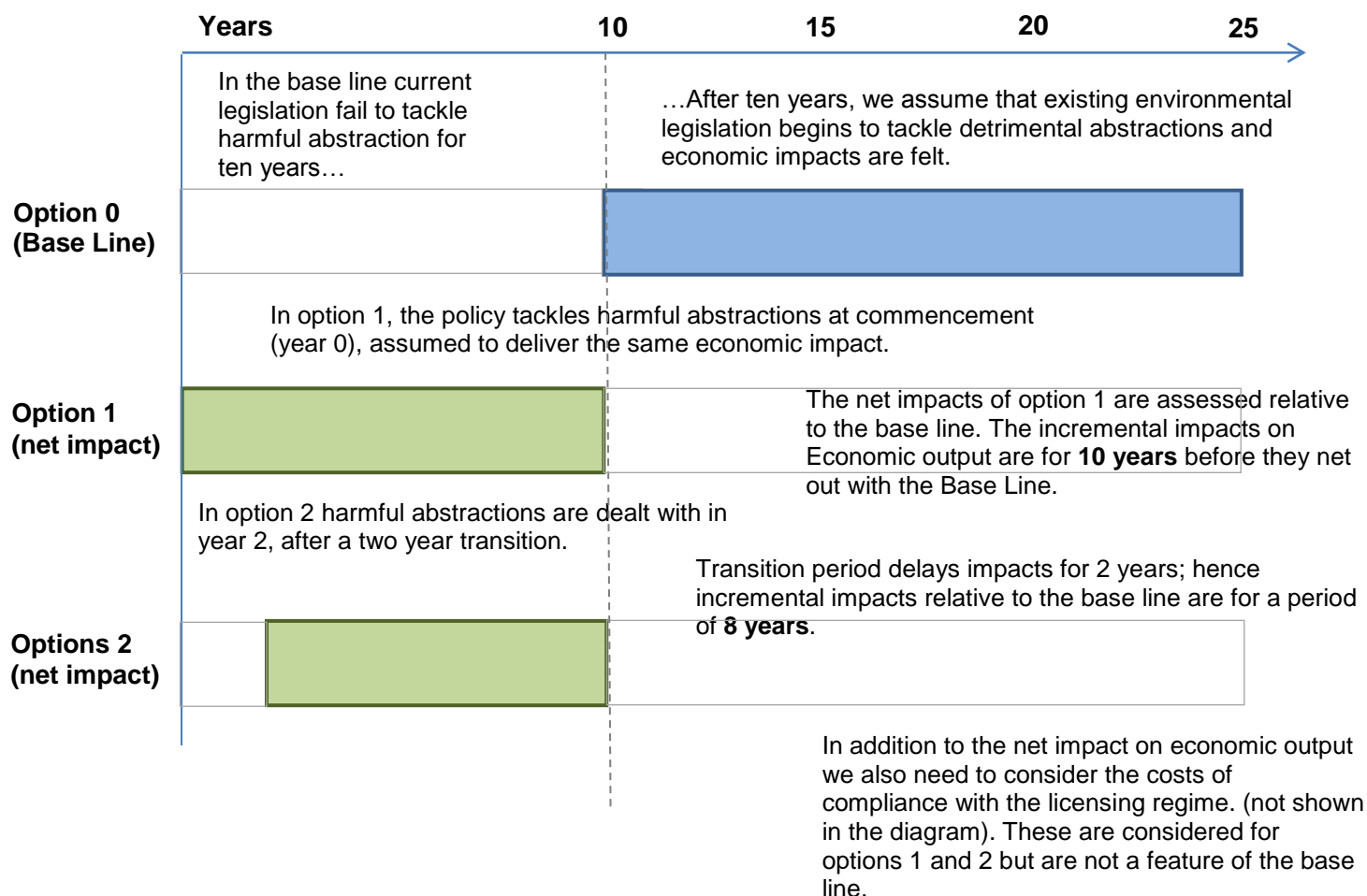
**Table 6.1: Timing of impacts for options 1 and 2 and the Base Line**

Option	Period in which impacts occur (over 25 year appraisal period)	Key Assumption	Compliance and Administration Costs?
Option 0 - The Base Line	Ten years of no impacts followed by 15 years of impact on economic output and benefits from tackling detrimental abstraction to the environment and other abstractors	Existing legislation begins to tackle detrimental abstractions from appraisal year ten. This is assessed in the same way we assess the impacts of other options.	There would be substantial effort tackling this in an ad hoc case basis).
Option 1 - No Transition	Assessment is relative to the base line. Incremental impacts are for a ten year period which incur from appraisal year 1 to year 10 inclusive.	From appraisal year ten, the incremental impacts on economic output are zero relative to the base line and begin to net out.	Yes – starting from the beginning of the appraisal (year 0)
Option 2 - Two Year Transition (The option selected)	Assessment is relative to the base line. Incremental impacts are for an 8 year period and are incurred from appraisal year 3 to year 10 inclusive.	From appraisal year ten the incremental impacts on economic output are zero relative to the base line and begin to net out.	Yes – starting from appraisal year 2

- 6.3. The approach set out in the table above gives a high-level representation of when impacts are incurred in each affected sector.<sup>23</sup> This high-level representation is also explained in figure 6.1:

<sup>23</sup> Regarding sectors analysed by the ABM: the incremental impacts of new authorisations evolve over time in ways that are dependent on the socio-economic, investor and hydrological conditions at the time the policy is commenced. As these vary year by year, the incremental impacts when comparing, Option 1 and 2 will not exactly net out with the base line from year ten. Similarly for quarries the length of the transitional period and the commencement date of the policy plays a role in determining the scale and persistence of the impact, to the extent that they do not net out precisely with the base line from appraisal year ten

**Figure 6.1: Illustrative timing of impacts for options 1 and 2 and the Base Line**



**Option 0: Base Line Assessment**

- 6.4. In the base line it is assumed that existing legislation will eventually have its intended effect. This assumption is a simplification aimed at achieving a coherent methodological structure for the analysis. In practice this is unlikely to be the case, existing legislation is likely to take a gradual effect and tackle detrimental abstractions earlier or later than ten years into the appraisal period. This assumption does not affect the relative attractiveness of options 1 and 2.
- 6.5. The assessment considers nine licence exempt abstraction sectors, as well as the impact on existing licence holders and the environment. Numbers of exempt abstractors are given below by sector.

**Table 6.2: Expected Numbers of Exempt Abstractions by activity.**

Sector	Number of Abstractions Exempt from Licensing
Quarries and Mining	790
Trickle Irrigation Farms	990
Ports	12
Navigation (Canals)	350
Managed wetland systems	1500
Internal Drainage Boards	200
Ministry of Defence / Crown	150
Road and rail	200
Exempt Geographical Areas	600

Source: Environment Agency and Natural Resources Wales

## *Quarries and Mining*

- 6.6. It is estimated there are around 790 quarries and mines in England and Wales that are currently exempt from abstraction licensing. The economic importance of this type of site is sizeable with an approximate turnover of £2.9billion<sup>24</sup>. These activities are also regulated through reviewable planning permits which in the majority of cases will be informed by Environmental Impact Assessments balanced with other interests. Expected impacts on the water environment have thus already been taken into account as far as possible prior to operation, so it is thought that only a very small number of the abstractions for dewatering used in quarrying and mining sector may cause serious damage to the environment. Here it is assumed that around half a dozen cases (less than 1% of all operations) may occur. This assumption was discussed with the sector who agreed it seemed a reasonable estimate for use in an impact assessment.
- 6.7. Abstractions by quarries and mines are for the purposes of dewatering – the process of removing groundwater, which is necessary to prevent interference with their activities. There are no Hands-off-Flow restrictions for dewatering licences.
- 6.8. Mitigation measures to maintain output are likely to be implemented by operators when facing curtailment or restriction of their current levels of water abstraction. The range of plausible mitigation options identified were:
- *Prevention* measures to avoid the need for drawing water from below the water table (the act of drawdown);
  - *Control* measures to restrict the depth, extent or duration of the need to drawdown;
  - *Compensation* measures to ameliorate the impacts of drawdown, such as return water to the aquifer.
- 6.9. All of these measures are characterised by high associated costs.<sup>25</sup> Interviews carried out for the evidence study suggested that a quarry or mining site was very unlikely to remain commercially viable if it must undertake high cost mitigation strategies; therefore sites facing curtailment are assumed to find closing down the site (and opening another site) preferable over mitigation strategies. We believe this is a reasonable assumption given the small scale of restrictions we estimate (affecting around 0.7% of 790 quarries) and the relative availability of alternative sources of minerals, although we note the sector's concerns about assuming that operators could switch readily to alternative sites and that the impacts could be significant on the operators affected.
- 6.10. The ABM results support the view that quarries and mines may prefer to close their operations early when facing a restriction to their abstraction activity (dewatering).
- 6.11. This is plausible as mitigation options may only be feasible for quarries that have considerably longer operating lives than average. However, as it has been the intention to commence the Water Act 2003 provisions for 14 years, it would be expected that any site opened since this date will have been chosen commercially to avoid risk of harm to water bodies and, as noted above, the industry is regulated through reviewable planning permits which the industry suggests will have adequately addressed significant environmental concerns through the planning Environmental Impact Assessment process.
- 6.12. Our options assessment thus looks at the impact of bringing forward the expected closure date of a quarry or mine. We present the impacts of a quarry or mine deciding to close down in light of restrictions to dewatering on lost output/revenue. The approach we have taken is as follows:

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<sup>24</sup> Aggregate Minerals Survey 2009; UK Minerals Yearbook 2011. Turnover figures relate to relevant subdivision: 'quarrying of stone, sand and clay'.

<sup>25</sup> HR Wallingford Report (2013)

- First, we take the assumption that quarries and mines are equally likely to be at any point in their life horizon, such that on average a quarry's or mine's remaining life is half of its typical life.
- At the point exempt abstractions are ended quarries/mines decide to stop any resource extraction that involves dewatering. Some of the extraction can be done without dewatering so that each site will not necessarily close immediately but will continue to exhaust all resources above the water table before closing. An assumption over how much resource above or below the water table is needed.
- We assume that quarries/mines deplete the resource available to them at a fixed rate over time. Throughout the lifetime of the site, the operator's return will be used in part to finance the next site; this notional amount is accrued evenly over the site's lifetime.
- We then look at the cost of the next available site that will be opened and calculate what the required annuity value will be over the remainder of its life, assuming dewatering is still exempt from licensing. This factors that some of the cost will have been recovered as in expectation the site will be half way through its lifetime at the start of the appraisal period.
- Then the same exercise is repeated but this time we look at the annuity value of having to pay for the next available site over a shorter time frame- that of the remaining life assuming the operator will discontinue with extraction that makes use of dewatering.
- These values are annuitised over the 25 year appraisal period. This difference in annuity value reflects the cost of lost production to a quarry/mine.

6.13. In doing this we have made the following assumptions on the following figures, drawing on figures provided jointly by HR Wallingford and Vivid Economics for the *average* quarry or mine:

- The financing cost is **7%** (pre-tax, real).  
*We apply a sensitivity test for alternative rates at 6% and at 9%. This is to reflect any potential uncertainty around our central estimate due to our small sample of operators and possible variation to an individual operator's financing costs*
- Only a proportion of each site requires dewatering for mineral extraction to take place. Any resource to be extracted that is above the water table will not be impacted by restrictions on dewatering. It is assumed that **50%** of the remaining resource is above the water table based on interview evidence that suggested this proportion of resource extraction is currently dependent upon dewatering.  
*We also examine what if 25% of the remaining resource is above the water table to capture any potential uncertainty in our central estimate, given that it is based on a small sample of operators.*
- The economic life of a quarry or mine is around **40 years**.<sup>26</sup> For the purposes of this analysis it is thus assumed that the average quarry has been in operation for 20 years (it is at its mid-point) expected remaining lifetime for our average quarry or mine will be 20 years. If a quarry chooses to stop its dewatering activities it will close earlier than anticipated but not right away – it will continue to extract resources above the water table at the same rate. For instance, at 50% of resource above the water table our average quarry could continue for another 10 years. For the base line the quarry will continue to finance the next site as normal for ten years and then, from the point environmental action commences, it will only have five (ten x



50%) further years of its life remaining whereby it is restricted to extracting resources without dewatering – the quarry is assumed the spread the remaining financing cost over this period.

- The overall resource available to be extracted in each quarry or mine is around **20million tonnes**<sup>27</sup> (so on average we would expect about 10million tonnes to remain). The rate which resource is extracted is around **500,000 tonnes per year**<sup>28</sup>.
- The cost of replacing production capacity/ moving to a new site is around **£35million**<sup>29</sup>. For simplicity and in the absence of further evidence, we also are implicitly assuming that abstractors are evenly distributed across groundwater sites 'at risk of serious damage' and that any Hands-off-Level restriction will have little-to-no effect on operations. It is expected that quarries or mines are able to use the lowest cost methods to mitigate for the effects of temporary water restrictions. There is a mark-up of 2% on the cost of the next quarry.<sup>30</sup>

6.14. To further test uncertainties associated with the cost of replacing production capacity/ moving to a new site which could vary within a range of 30% higher or lower, we have applied sensitivity testing within this range of 30% more or less than the central average value. The mark-up is tested also at 0% and 4% for the low and high ranges respectively.

6.15. These estimates are for an *average* quarry/mine. Clearly there will be some variation around this for an individual quarry or mine. As such we have looked at high and low estimates based on plausible combinations of the assumptions listed above. These scenarios layer a number of benign or stricter assumptions (relative to the average) to give a cautious, but extreme range of the costs around the average.

- **Central costs:** all of our central assumptions listed above;
- **Low cost:** as central estimate yet with a lower financing cost of 6%, and a replacement cost figure 30% lower than the central figure (to capture unknown variation around the average and uncertainty in our assumptions). There is no mark-up on financing the next quarry;
- **High cost:** as central estimate yet with a higher financing cost of 9%, none of the remaining resource is above the water table (i.e. site has to close immediately) and a replacement cost figure 30% higher than the central figure. There is a mark-up of 4% on financing the next quarry.

6.16. Addressing abstractions causing serious environmental damage in the mining and quarrying sector may yield sizeable benefit, not limited to those just from abstraction.

6.17. The table below shows the impact of preventing harmful abstractions relating to the Quarries and Mining sector in the base line. The quantified cost reflects that quarries will choose to close when faced with curtailments to their output that is causing serious damage to the environment.

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<sup>27</sup> HR Wallingford (2013)

<sup>28</sup> HR Wallingford (2013)

<sup>29</sup> HR Wallingford (2013)

<sup>30</sup> It is assumed that the expected market value of the natural resource is captured in these financing assumptions (notably the financing cost) of the quarry, and each operator finances the next site over the life-time of the current site. In addition, evidence from HR Wallingford suggests there are a significant number of potential sites for a quarry operator to move to indicating that supply is relatively elastic. Together this suggests there is low opportunity cost of not-extracting the full potential resource from a site; the imposition of water restrictions to a quarry raises the marginal cost of resource extraction, such that it becomes more cost effective to move to an alternative site with little disruption in output – we do assume the operator pays a mark-up on the next available quarry, yet the value paid captures the anticipated return over the total cost of the site. What is lost is the anticipated return over the forgone resource. Crucially the remaining resource from the original site is still available and can be extracted at a future time should it become profitable to do so.

6.18. There are likely to be environmental benefits (not quantified) from curtailing abstractions here as it is estimated that this sector contributes a small proportion of the 40% of groundwater bodies at risk of failing to meet its environmental objectives (basically more water is taken out of the groundwater than is going in over the longer term ie a negative mass balance). In addition, curtailments may lead to the relocation to sites in low-risk areas, and perhaps with the take up of more efficient technology.

<b>Impact on business of preventing harmful abstractions relating to Quarries and Mining in the Base Line (met by existing policies) PV £million</b>		
<i>High cost</i>	<b>Central</b>	<i>Low cost</i>
-94.1	-38.7	-25.0

#### *Trickle Irrigation Farming*

6.19. Trickle or drip irrigation is a specialised technique that delivers precise quantities of water through tubes to the soil close to the roots of plants. It requires specialised and relatively expensive equipment that is expensive to move around. In the UK it is therefore used mainly for small areas of high value crops that depend on steady supplies of water under controlled conditions. Examples are soft fruit, orchard fruit, runner beans, hops and ornamental horticulture. Many of these operations have rainwater storage to maintain their own supply in periods of low rainfall. About 20% of trickle irrigators use only mains water, leaving 80% that may use unlicensed abstraction from surface or groundwaters to feed their systems.

6.20. Drawing on several different sources of data, HR Wallingford estimated that there are 990 farmers and growers in England and Wales using exempt abstractions for trickle irrigation. A regional breakdown is shown in table 6.3.

**Table 6.3 - Estimated number of exempt abstractors using trickle irrigation, England & Wales**

Region	Number of exempt abstractors
North East	7
North West	67
Yorkshire and the Humber	99
East Midlands	84
West Midland	124
East of England	262
South East & London	187
South West	144
England	974
Wales	16
<b>Total (England and Wales)</b>	<b>990</b>

*Source: HR Wallingford estimates*

6.21. Because of the type of crops involved, restriction of access to water supplies could have major implications on crop yields and quality and therefore it will impact the revenue and profitability of the business. In the extreme, restrictions could force growers of high value crops to switch to lower value crops that do not depend on the same highly controlled regular supply of water and can be rain-fed. The economic impact of this situation can be estimated by considering a typical horticultural unit. Averaging the two most recent years' data from the Defra Farm Business Survey shows that an average horticulture business produced £331,000 output from 27 hectares of

agricultural land, giving a farm business income (a measure of profit) of £33,000. This compares with the average cereal farm, producing £276,000 output from 198 hectares at a profit of £40,000. If the horticulture unit were forced to switch to cereals on the same relatively small farm holding, it would effectively be scaling down its business in monetary terms, achieving a far lower output from the same area, although saving some costs too. Specifically the assumption is that the output (£1,045) and variable cost (£516) per hectare of the unit would fall to those of the cereal farm, as would fixed costs (£1,642) with the exception of unpaid labour (£1,039). Costs and revenues relating to other cost centres of the business (non-agricultural operations and payments from public policy schemes) would remain as they were for an average horticultural unit. The result would be a drop in profit from £33,000 to a loss of £13,000, a net reduction of £46,000. This assumes that the farm would continue but would not be able to cut all its fixed costs down to the level per hectare that is possible for a typical larger cereal farm because of its economies of scale. This position would not apply in the real world because the business would become unviable but the assumption is used here in the context of an impact assessment to demonstrate the scale of first round cost to business that this could involve.

6.22. Because of the very high cost of losing trickle irrigated enterprises, businesses that might be affected by restrictions would anticipate the situation by adopting mitigation strategies.

HR Wallingford identified and costed four main mitigation options that might be considered: on-farm reservoir storage, rainwater harvesting, greywater recycling and more efficient water use. Further information is available in the Annex B.

6.23. It is not possible to know the exact strategies under different types of restriction for different businesses but HR Wallingford suggested that several possible packages of options might be used. These are set out with HR Wallingford's estimate of the annual costs to the business in Table 6.4. For comparison, the option of applying all four of the above strategies would cost over £140,000 a year and can be ruled out as a realistic approach for any business.

**Table 6.4 – Mitigation packages for trickle irrigators applied in HRW analysis**

Situation	Description	% of annual water usage supplied	Annualised cost
<b>Major restriction</b>	Farms invest in one high cost measure (reservoir storage) and one low cost measure (rainwater harvesting). This package yields highest volume of water at lowest cost.	100%	£41,000
<b>Minor restriction</b>	Farms invest in two low cost measures – rainwater harvesting and improving water efficiency (both at £1,150). This package yields the required amount of water (30% of annual usage) to mitigate the HoF condition. This package has been used in the HoF cost calculations.	35%	£2,300

*Source HRW model, accompanying HRW report.*

6.24. The current best estimate is that major restrictions on water use might apply to 50 (5%)<sup>31</sup> of the 990 unlicensed trickle irrigators involved in unsustainable abstraction, typically larger operations than the average considered above. Of these 50, it is possible that 80%<sup>32</sup> would find it worthwhile to invest in reservoir storage with rainwater harvesting at an annualised cost of £41,000. The remainder would have no option but to switch to crops requiring less water, taking the full loss in farm business income considered above, expecting major structural change to follow (e.g. amalgamation with other businesses). In addition, around 60%<sup>33</sup> of the 990 trickle irrigators might experience hands off flow restrictions at an annual equivalent cost of £2,300. As mentioned above, many trickle irrigators already have rainwater collection systems that would be used to mitigate the impact of restrictions. Table 6.5 shows the combined total of these impacts.

**Table 6.5 – Combined impacts on trickle irrigators**

		Number	Cost per business per year	Total cost per year
Total trickle irrigators		990		
Major restrictions apply	5%	50	£42,000	£2.1m
Of which:				
Reservoir + rainwater harvesting	80%	40	£41,000	£1.6m
Switch cropping	20%	10	£46,000	£0.5m
HoF restrictions only	60%	594	£2,300	£1.4m
Total restricted	65%	644		£3.5m
Unrestricted	35%	346		

Source Defra from HRW report.

6.25. The table below shows the impact of preventing harmful abstractions relating to the trickle irrigation farm sector in the base line. The estimates show the combined impact of tackling harmful abstraction by either curtailing output at the point of commencement or placing restrictions on abstraction use (equivalent to receiving a HoF condition on an abstraction licence), which is substantial at a cost of around £20 million over the 25 years.

<b>Impact on business of preventing harmful abstractions relating to Trickle Irrigation in the Base Line (met by existing policies) PV £million</b>		
<i>High cost</i>	<b>Central</b>	<i>Low cost</i>
-26.1	-20.1	-14.0

#### *Navigation (Canals)*

6.26. There are around 350 abstractions made by canals currently exempt from licensing. Navigable canals are artificial constructions that connect to natural waterways and improve the efficiency of passenger and freight transport. An estimated 250 abstractions are made by the Canal and River Trust (CRT) for navigation in England and Wales, whom are responsible for around 75% of the canal network (this number has been appropriately scaled to give the overall figure).

6.27. Overall we estimate that 10% of the 350 may face a more restrictive HoF than their current operations while possibly 1% may be refused a licence on the grounds of risk of causing serious environmental damage. These estimates are based on discussions with CRT and the Association of Inland Navigation Authorities.

<sup>31</sup> HRW report licensing scenario

<sup>32</sup> HRW report (based on expert judgement and consultation feedback)

<sup>33</sup> Estimated proportion abstracting from surface waters

6.28. The following cost estimates are derived from HR Wallingford/ Vivid Economics (2013) and based on information provided by the Canal and River Trust.

6.29. Canals facing either HoF restrictions or curtailments are assumed to use a combination of low-cost mitigation methods. These include: system optimisation; the development of new surface water sources, and; back pumping. Only once these are explored will the canal operator respond by investing in higher cost options such as developing new groundwater sources or extending reservoirs where it is viable to do so.

6.30. Typically canals are expected to prioritise service levels and will attempt to maintain the integrity of the network (if they can) prior to restricting usage. With these service obligations in mind, it has been assumed that canal operators will invest to manage the risk of temporary HoF restrictions in the same way as they would for other licence restrictions: through a combination of mitigation options, using the lower costs option more extensively than higher cost options.

6.31. The approach to assessing canals is as follows:

- We assume that the nearly all canal operators take to the same combination of low cost mitigation methods. These include the development of new surface water sources, leakage reduction and back pumping. It is estimated that the average mitigation cost per MI of Water per year is around £263. This is an average figure based on judgement over the appropriate choice of mitigation measures. To reflect the underlying uncertainty, the estimate is flexed by 30% for the high and low.
- The average combined impact of HoF restrictions and licence curtailment will lead to a loss in abstraction activity of around 9,800 MI per year for the sector as a whole (compared to around 455,000 MI abstracted in total per year). Again this assumption is flexed by 30% for the high and low ranges.
- Canal operators have a duty to maintain their water levels and as such are required to mitigate all losses in abstraction volumes. Thus the central estimate of the capital cost needed to maintain water levels is around £2.6 million (i.e. yearly loss in abstraction volume multiplied by yearly mitigation cost of water loss or 9,800MI x £263/MI). An assumed financing cost 6% and a payback period of 25 years are used to calculate the central estimate of the annualised cost of mitigation. The financing cost is varied by +- 2% for the high and low ranges.
- In addition to the capital costs there are recurrent operating costs estimated to be around £38 per MI of water pumped. Combining the annualised capital costs and the operating cost gives a yearly cost of mitigation around **£574,000 per year**.

6.32. The table below shows the impact of preventing harmful abstractions relating to the Navigation sector in the base line. The assessment by the regulator that around 10% of abstractions harm the environment and would lead to some environmental enforcement action (equivalent to a HoF restriction on a licence). In addition, an estimated 1% could potentially face curtailment due to serious damage. The combined impact of restrictions and serious damage curtailment are quantified below.

<b>Impact on business of preventing harmful abstractions relating to canals in the base line (met by existing policies) PV £million</b>		
<i>High cost</i>	<b>Central</b>	<i>Low cost</i>
-7.5	-4.9	-2.9

## Ports

- 6.33. There are an estimated 116 ports in England and Wales that are currently exempt from licensing. The majority of these ports are or can be maintained by saline water and will not become licensable. This is because most ports and harbours are also covered by a proposed exemption for abstractions from saline waters.
- 6.34. An estimated 12 of the 116 ports and harbours in England and Wales instead require the use of abstracted fresh-water to replenish depleting water in their enclosed docks. It also is not anticipated that these fresh-water abstractions will be refused licences. There was also little evidence to suggest that fresh-water abstraction use by Port authorities is causing environmental deterioration. As such no ports are expected to face licence refusal but freshwater ports are assumed to face issue with low flow restrictions that is assumed to prevent 1.5% of freshwater abstractions.
- 6.35. A licence refusal would necessitate ports to purchase an 'impounding pump' (used to import saline water into the port to maintain water level) should the port not have one in place already. However a Hands-off-Flow restriction, one that leads to a temporary reduction in output, would be unlikely to result in operators investing in impounding pumps. Only under substantial, permanent restrictions might a port operator find this mitigating investment commercially viable.
- 6.36. From the evidence available to us, we would expect the operator to respond to the Hands-off-Flow restriction by a combination of temporarily reducing the level of water in docks, or through restricting the size of ships that could dock (this is assuming the port does not already have an impounding pump installed). Even an assumed revenue loss of 15% due to Hands-off-Flow restrictions in our high case scenario, this loss would not be sufficient for an operator to prefer investment in an impounding pump.
- 6.37. In our analysis we assume that 4 of a total of 12 may stand to lose revenue due to the HoF restrictions. The remaining 8 ports own impounding pumps already. Key assumptions in our approach are as follows:
- We examine the cost of installing an impounding pump and also the impact of reductions in revenue associated with the Hands-off-Flow restriction.
  - An impounding pump is assumed to cost the operator around £15m and will have a central expected lifetime of 25 years. The financing cost associated with the pump is 10%. The yearly maintenance costs are 10% of the initial value of the asset and the operating cost is estimated to be £200k/year. The cost estimates are estimated within a range of 10% above and below for our high and low estimates. The lifetime of the pump is 25 years in all scenarios. Financing cost is varied +/- 3%.
  - Data for ports has come from the Association of British Ports, which owns around 25% of all ports. The figures are scaled up by a factor of four to obtain a national estimate – with the remaining exempt licences all covered by harbours. Only ports that make use of freshwater abstractions and without impounding pumps are affected by HoF restrictions. There are an estimated 4 freshwater ports without impounding pumps.
  - From this we assume that the 4 ports without freshwater pumps will be unable to abstract for 1.5% of the time, leading to a loss of 1.5% of their average annual revenue.
- 6.38. The table below shows the impact of preventing harmful abstractions relating to the Port in the base line. The freshwater abstractions made by ports are not anticipated to be causing environmental problems but a small proportion of ports may face small reductions in revenue as

the environmental enforcement (equivalent to imposing a HoF condition on a licence) will prevent ports from abstracting water for around 1.5% of the year.

<b>Impact on business of preventing harmful abstractions relating to ports in the Base Line (met by existing policies) PV £million</b>		
<i>High cost</i> -0.3	<b>Central</b> -0.2	<i>Low cost</i> -0.1

#### *Further Exempt Sectors*

6.39. The remaining sectors/ activities currently exempt from licensing:

- Managed wetland systems;
- Internal Drainage Boards;
- Road and rail
- Ministry of Defence / The Royal Parks; and
- Exempt Geographical Areas.

6.40. Our research into these areas indicates there is no or a very small current risk of serious environmental water issues associated with each activity. As such, somewhat trivially in the options analysis there is expected to be no impact on IDBs either due to curtailment associated with serious damage or due to the imposition of a Hands-off-Flow condition placed on the licence. Nonetheless, there will be administration and licensing costs for each of these sectors to bear in the options analysis.

6.41. Managed wetland systems: There are approximately 190 water meadows and up to 4,000 wet grassland systems within England and Wales. Of these it is estimated that **1,500** activities (entirely located in England) may need water control in order to function.

6.42. The evidence research assumes that no water meadow are in breach of serious damage to the environment and will not be impacted by HoF conditions that maybe incorporated in their licence. We estimate that there are no discernible impacts on business activity or environmental stewardship schemes.

6.43. Internal Drainage Boards: The Land Drainage sector covers the Internal Drainage Boards (IDBs) within England and Wales, covering 123 in total. In Wales, the functions of IDBs are carried out by Natural Resources Wales. In England, the Environment Agency estimate that around 200 abstractions made by IDBs are under exempt status. These are typically located in areas with special drainage requirements, such as floodplains of rivers or broad open areas. IDBs indirectly support farming. IDBs typically raise income from levies on farmers, other occupiers and Local Authorities - our research base from the evidence study was unable to reliably estimate this indirect impact on income.

6.44. We are in ongoing discussion with IDBs about their abstraction and none of these discussions has led us to believe that there will be curtailment of IDB abstraction for serious environmental damage. However there is still some uncertainty due to the legal and technical complexity of quantifying which abstraction will need to be licensed. We have not attempted to expand upon this as we feel it would command a disproportionate amount of effort to the overall analysis.

6.45. Nonetheless impacts of any potential curtailment have been identified but we have not been able to take any further steps towards quantification. We feel the impacts would be indirect and limited to IDBs with extensive agriculture: the crop production of farms could be impacted as water is being abstracted on their behalf. Reductions in water use would perhaps be manageable as IDBs

take an active role in moving water to where it is most needed. In any event the regulator can already intervene if agricultural abstraction is causing environmental damage and is licensed.

- 6.46. Road and rail: through discussions with regulators during the consultation we have estimated that road and rail operators currently dewater tunnels at approximately 200 sites to maintain road and rail networks. Based on the current evidence we are not expecting abstractions to be curtailed because of serious environmental damage.
- 6.47. Ministry of Defence: it is estimated the Ministry of Defence (MoD) occupies around 1% of UK land areas. This estate provides accommodation and training for employees, the armed services, civil servants and industry partners all to help enable military operations. It abstracts water for a number of uses, particularly for domestic use (88% of water use) such as drinking water for housing and barracks, but also for operational purposes (remaining 12% of water use) such as vehicle washing, cleaning and fire-fighting.
- 6.48. Most of water is supplied from water companies but, for around 30% of supply, some water is abstracted where there is no mains supply available. Much of the information on abstraction activities, costs and volumes are not publically available. However, through interview, it was determined that potential reductions in water use could affect the ability to deliver their services which could impact on whether the MoD was able to support its personnel in domestic military duty.
- 6.49. Based on the evidence available we do not expect that abstractions will be curtailed or restricted due to risk of serious environmental damage.
- 6.50. The Royal Parks manage nine parks located within Greater London consisting of around 5,000 acres of historic parkland. During the 2009 consultation it was indicated that the largest abstraction volumes take place during dry summers when other water sources, such as lakes, become unavailable. An estimated 63 abstractions take place (although this number highly contingent on weather patterns).
- 6.51. None of these abstractions are likely to be curtailed as there is no current identified risk of serious damage to the environment. Yet there are likely to be Hands-off-Flow licence restrictions placed on abstractions during period of drought where the Parks will be unable to irrigate. Mitigation measures (such as rainwater harvesting) might reduce any impact of a potential constraint but it was not clear whether Royal Parks would choose to invest in these.
- 6.52. To capture the effect of Hands-off-Flow restrictions on revenue we have assumed a modest reduction in yearly annual income in the central scenario of 1%.<sup>34</sup> The low scenario assumes a 0% and the high scenario 2%. In addition, the cost estimates have been flexed within a range of 30% above and below the central figure. Our central figure is based on the average of the last three reported years of data available in annual accounts. The average total income for the Royal Parks over the three financial years from 2010 to 2013 was **£20.8million**.
- 6.53. The table below shows the impact of preventing harmful abstractions relating to the Royal Parks in the base line.

<b>Impact on business of preventing harmful abstractions relating to Royal Parks in the Base Line (met by existing policies) PV £million</b>		
<i>Low</i>	<i>Central</i>	<i>High</i>
-4.6	-1.8	0

<sup>34</sup> This figure was proposed by engineering consultants HR Wallingford and Vivid Economics in their research into Royal Parks.



- 6.54. Exempt Geographical Areas: there are estimated to be around 600 abstractions in geographical areas in England and Wales that are exempt from licence control. Abstractions activities in these areas are in general expected to be small and as such individual abstractions are unlikely to have an environmental impact. However we are also aware that there is some larger abstraction taking place in exempt areas, where the bottled water industry has developed, and there are concerns about effective regulation to protect access to water particularly in some Welsh exempt areas.
- 6.55. In our discussions with the bottled water industry, representatives suggested that their abstractions were sustainably managed in the interests of their businesses. We nevertheless acknowledge the possibility that some such abstractions in these areas may be impacting the environment, or other abstractors' access to water, even in cases where the impact is such that serious damage provisions are not likely to apply. It is not however possible to assess these impacts without knowing the precise locations, associated activities and volumes abstracted. We therefore are unable to comment and determine the costs to the environment and other abstractors, although we would anticipate that they are likely to be localised to specific sites.

#### Impact on Existing Licence Holders

- 6.56. Here we use the ABM to quantify some of the direct benefit to abstractors that are already within the licensing system – those that are considered to be *levelling the playing field* in allowing more efficient use of water amongst all abstractors. This is only a partial analysis as it mainly encapsulates **benefits to the agricultural sector only**. These benefits effectively arise from transferring some of the restriction between previously unlicensed and licensed abstractors. Higher costs to the newly licensed are partly reflected in benefits (reduced costs) to existing licence-holders. In order to eliminate random fluctuations between model runs, we took an average ratio of modelled benefits to modelled costs (roughly 0.2) and applied it to the top-down agricultural cost estimate for each of the policy options appraised to derive the monetised benefit estimate.
- 6.57. The HoF restrictions and licence curtailments imposed on those entering the licensing system will make more water available in the catchment to the benefit of the environment and/or existing licensed abstractors, particularly at low flows.
- 6.58. High and Low estimates for existing licence holders are based on the variation in the national level results from looking at the ABM's constituent catchment models.
- 6.59. The table below shows the impact of preventing harmful abstractions relating to the existing licence holders in the base line. There are clear economic benefits to existing licensed abstractors due to maintaining or improvements in access to, and reliability of water flows from curtailing harmful abstractions.
- 6.60. The benefits to licensed abstractors are likely to be higher than quantified here as the ABM estimated only the benefit of ceasing harmful abstractions from trickle irrigators to the rest of the agriculture and horticulture sector. Including all New Authorisations and including a complete set of all abstractors would increase the overall benefit.

<b>Impact to Existing Licence Holders in the Base Line (met by existing policies)</b>		
<i>NPV £million</i>		
<i>Low</i>	<b>Central</b>	<i>High</i>
+2.9	+4.1	+5.3

#### *Base Line Summary*

- 6.61. The following table 6.6 shows the aggregate impact of tackling detrimental abstractions under the base line, summarising the above sector analysis. Costs are shown as negative impacts.

**Table 6.6 - Summary of impacts in the Base Line (NPV £m 2014)**

Sector	Low	Central	High
Quarries and Mining	-94.1	-38.7	-25.0
Trickle Irrigation Farming	-26.1	-20.1	-14.0
Navigation	-7.5	-4.9	-2.9
Ports	-0.3	-0.2	-0.1
Royal Parks	-4.6	-1.8	0
Managed Wetland Systems	0	0	0
Internal Drainage Boards	0	0	0
Ministry of Defence	0	0	0
Exempt Geographical Areas	0	0	0
Existing Licence Holders	+2.9	+4.1	+5.3
<b>Total</b>	<b>-129.7</b>	<b>-61.5</b>	<b>-36.7</b>

### Options 1 and 2: Overview

6.62. Here we set out the aggregate impacts of options 1 and 2 *relative to the Base Line (option 0)* as covered above. The methodology for calculating the costs for each of these sectors is the same as for the Base Line; yet the key driver of difference in the results will be that they fall earlier in the appraisal period as we choose to take environmental protection earlier.<sup>35</sup> In addition, they will also include licence compliance and administration costs as environmental protection will be achieved through licensing.

#### Option 1: No Transition

6.63. Without Transitional Arrangements, abstractions would become unlawful and have to cease once provisions are commenced, unless and until a licence were granted.

6.64. The key driver of the difference in these costs relative to the base line is that New Authorisations under option 1 deliver immediate reductions (at the point of commencement) in abstractions causing serious damage.<sup>36</sup> The costs to the exempt abstractors incurred in either having to maintain or reduce output and the benefits to the environment and other abstractors are felt throughout the entire 25 year appraisal period – by contrast with the base line where the impacts are felt after ten years and option 2 where they are felt after two years.

6.65. Immediate commencement may limit the time available to abstractors to respond by implementing mitigation measures and cause the regulator resourcing issues. We assume this is unlikely to have notable bearing on costs for the following reasons nevertheless there is likely to be non-monetised costs:

- Exempt abstractors and the regulator have been aware of potential commencement of licensing provisions since the Water Act 2003. In addition, curtailments and restrictions are also possible under the base line environmental protection regulations. Given the size of the main sectors affected it is highly likely these risks are already reflected in business planning. Evidence from sector interviews<sup>37</sup> support this;
- The mitigation options identified in the evidence report used in assessment are considered to be the most plausible in terms of their cost effectiveness and time-intensity.

<sup>35</sup> Paragraphs 5.2 and 5.3 earlier in this section outline the difference in the timing of New Authorisations amongst the options considered.

<sup>36</sup> Exempt abstractors would be curtailed or restricted as soon as being brought into the regime.

<sup>37</sup> These were carried out by HR Wallingford and Vivid Economics

6.66. The table 6.7 shows the range of impacts incremental to the base line for implementing option 1.  
Figures are NPV £m.

**Table 6.7 – Summary of option 1 net impacts (NPV £m 2014)**

Sector	Impact	Low	Central	High
Quarries and Mining	Economic Output	-81.4	-33.3	-23.5
	Administration and Compliance	-5.1	-3.0	-2.5
	Total	-86.5	-36.3	-26.1
Trickle Irrigation Farming	Economic Output	-38.8	-29.8	-20.9
	Administration and Compliance	-26.4	-4.1	-3.2
	Total	-65.1	-33.9	-24.1
Navigation	Economic Output	-7.6	-5.0	-3.0
	Administration and Compliance	-2.3	-1.3	-1.1
	Total	-9.9	-6.3	-4.1
Ports	Economic Output	-0.9	-0.5	-0.2
	Administration and Compliance	-0.1	-0.0	-0.0
	Total	-1.0	-0.6	-0.3
Royal Parks	Economic Output	-4.7	-1.8	0
	Administration and Compliance	-1.7	-0.3	-0.2
	Total	-6.3	-2.0	-0.2
Water Meadows	Economic Output	0	0	0
	Administration and Compliance	-39.9	-6.1	-4.9
	Total	-39.9	-6.1	-4.9
Internal Drainage Boards	Economic Output	0	0	0
	Administration and Compliance	-1.3	-0.8	-0.6
	Total	-1.3	-0.8	-0.6
Ministry of Defence	Economic Output	0	0	0
	Administration and Compliance	-2.3	-0.4	-0.3
	Total	-2.3	-0.4	-0.3
Road and Rail	Economic Output	0	0	0
	Administration and Compliance	-1.3	-0.8	-0.6
	Total	-1.3	-0.8	-0.6
Exempt Geographical Areas	Economic Output	0	0	0
	Administration and Compliance	-16.0	-2.5	-1.9
	Total	-16.0	-2.5	-1.9
Existing Licence Holders	Economic Output	+10.7	+15.3	+19.9
	Administration and Compliance	0	0	0
	Total	+10.7	+15.3	+19.9
Total all sectors	Economic Output	-122.6	-55.1	-27.7
	Administration and Compliance	-96.3	-19.1	-15.5
	Total	-218.9	-74.3	-43.2

6.67. Under our central analysis the net impact of option 1 will be an NPV cost of £74 million. Of this, £55 million is due to net costs on abstractors having to either maintain their abstraction volumes

due to business need or facing reductions in output. These costs arise to protect the environment from serious damage and rivers at low flows. The remaining £19 million reflects the cost of having to comply with the licensing system. Quarries and Mining, and Trickle Irrigation Farms are the largest impacted sectors, making up respectively around 40% and 38% of the cost to all new authorisations.

6.68. However it is worth noting that licensing is a more efficient mechanism for the prevention of serious environmental damage and will deliver environmental benefits at a faster pace relative to the base line and option 2. As well as the biggest environmental benefits it will have the most benefits to other existing licensed abstractors in terms of 'levelling the playing field' on top of those we've been able to quantify here. The ABM analysis gives indication of the types of benefit to existing licence holders.

Option 2: Two Year Transitional Period

6.69. This option allows for a two year transitional period whereby licence exempt abstractors can continue their activities as usual until licensing is enforced. This will delay the benefits from preventing serious environmental damage and other abstractors but also delays the point at which exempt abstractors are impacted from New Authorisations.

**Table 6.8: Summary of option 2 net Impacts (NPV £m 2014)**

Sector	Impact	Low	Central	High
Quarries and Mining	Economic Output	-65.6	-27.0	-18.9
	Administration and Compliance	-4.0	-2.3	-1.9
	Total	-69.6	-29.3	-20.8
Trickle Irrigation Farming	Economic Output	-29.9	-23.0	-16.1
	Administration and Compliance	-21.3	-3.4	-2.7
	Total	-51.2	-26.5	-18.8
Navigation	Economic Output	-5.9	-3.9	-2.3
	Administration and Compliance	-1.8	-1.0	-0.8
	Total	-7.7	-4.9	-3.1
Ports	Economic Output	-0.7	-0.4	-0.2
	Administration and Compliance	-0.1	-0.0	-0.0
	Total	-0.7	-0.4	-0.2
Royal Parks	Economic Output	-3.6	-1.4	0
	Administration and Compliance	-1.4	-0.2	-0.2
	Total	-4.9	-1.6	-0.2
Water Meadows	Economic Output	0	0	0
	Administration and Compliance	-32.3	-5.2	-4.1
	Total	-32.3	-5.2	-4.1
Internal Drainage Boards	Economic Output	0	0	0
	Administration and Compliance	-1.0	-0.6	-0.5
	Total	-1.0	-0.6	-0.5
Ministry of Defence	Economic Output	0	0	0
	Administration and Compliance	-1.9	-0.3	-0.2
	Total	-1.9	-0.3	-0.2
Road and Rail	Economic Output	0	0	0
	Administration and Compliance	-1.0	-0.6	-0.5
	Total	-1.0	-0.6	-0.5
Exempt Geographical Areas	Economic Output	0	0	0
	Administration and Compliance	-12.9	-2.1	-1.6
	Total	-12.9	-2.1	-1.6
Existing Licence Holders	Economic Output	+8.7	+12.4	+16.1
	Administration and Compliance	0	0	0
	Total	+8.7	+12.4	+16.1
Total all sectors	Economic Output	-97.0	-43.3	-21.4
	Administration and Compliance	-77.6	-15.7	-12.6
	Total	-174.6	-59.0	-33.9

6.70. Under our central analysis the net incremental impact of option 2 will be an NPV cost of £59 million. Of this, £43 million is due to net costs on abstractors having to either maintain their output

or facing reductions in output to prevent serious environmental damage or protect rivers at low flows. The remainder reflects the cost of complying with the licensing system. The net impacts here are lower than those under option 1 as the policy is launched after a two year delay. Similarly as under option 1, the majority of the costs fall on the two sectors Quarries & Mining and Trickle Irrigation farms.

- 6.71. Licensing will deliver greater environmental and economic benefit compared to the base line but this will be delivered later than compared with option 1.
- 6.72. Despite commissioning work and seeking stakeholder advice we have not monetised the benefits to the environment and all the benefits to other abstractors to demonstrate conclusively this should be the preferred option. However, we consulted on the transitional timeframes to provide further evidence – stakeholders found this option to be the most acceptable. We therefore concluded this option provides the best balance between a reasonable implementation timeframe for exempt abstractors and the regulator and delayed environmental and other abstractor benefits. We also believe this option will meet our EU obligations noting it does not fully mitigate risks as option 1 would. We believe a period for much longer than 2 years would be difficult to justify as being a reasonable period to delay implementation of the benefits.

### **Non-Monetised Impacts**

- 6.73. As previously mentioned the current abstraction licensing system is being reviewed as the Government works to reform abstraction management. Control of water resources across a catchment will be essential for the reform of abstraction licensing to work effectively. As discussed we sought evidence to inform our decision on the length of the transitional period through consultation and have made a policy decision trading off between a reasonable transitional period for exempt abstractors versus delaying the benefits to other abstractors and the environment.
- 6.74. Three other types of benefit from New Authorisations have been identified but cannot be quantified or monetised. They are discussed qualitatively here.
- 6.75. Environmental and Natural Capital Benefits: a major part of the rationale for New Authorisations is to help maintain and improve the environmental status of water bodies. There will be benefit to curtailing abstractions at risk of causing serious damage to the environment, and also benefit from putting restrictions on water usage (through Hands-off-Flow conditions) that prevent environmental damage taking place at times of water scarcity.
- 6.76. The abstraction licensing system aims to ensure that groundwater and surface water resources are managed sustainably and with minimal impact on the environment. In order to maintain the biodiversity and ecosystem services associated with groundwater and freshwater systems, at least a minimum requirement of water must remain within these systems. Groundwater and surface water bodies that are over-abstracted do not meet their environmental flow requirements and thus the environmental quality may decline. This may be characterised by impacts on water quality and ecology.
- 6.77. There may be a number of ecosystem services affected through the impact of exempt abstractions on the environment. The total value of these ecosystem service is substantial for instance the annual value of ecosystem service flows related to water abstracted for public use is estimated to be £1.2billion/yr<sup>38</sup>. However it is difficult to monetise the environmental benefits here. The site-specific abstraction data necessary to assess the scale of damage and improvement in environmental flows or ecological status is limited. for instance, groundwater abstraction has very

complex interactions with surface flow levels. Any estimates of environmental benefit would need to link to specific water bodies on a case-by-case basis and substantial further evidence would be needed about specific exempt abstraction for which data is limited.

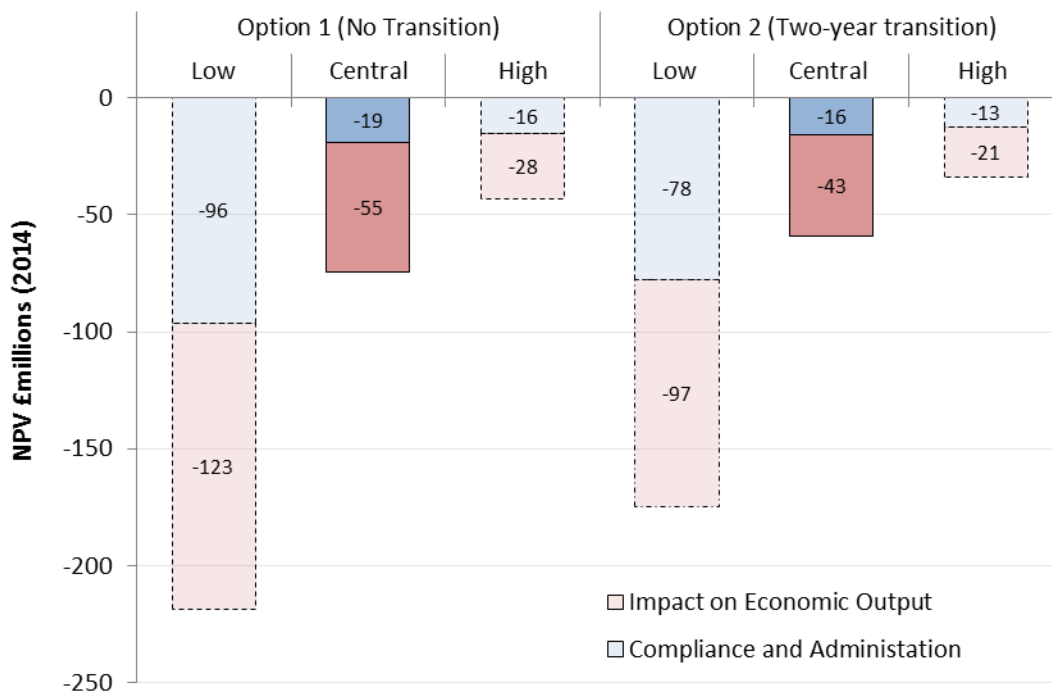
- 6.78. Levelling the playing field: Over-abstraction can reduce the availability of water for existing licence holders. The incentives faced by licence exempt abstractors are different to those of their licensed counterparts: the social cost of their actions diverges from their private cost.
- 6.79. Unlicensed abstractions that deplete water flows over a sustained period are deteriorating the water availability in water bodies. Gradually the existing baseline licensing system would reflect this with stronger abstraction restrictions imposed on abstractors in the licensing system but, relative to unlicensed abstractors, those that are licensed will incur higher associated costs. Bringing abstractions into licensing control will correct for this.
- 6.80. The monetised analysis includes an estimate of the benefit for existing licence holders in the agricultural sector from availability of additional water as unlicensed abstraction is controlled. There could also be some similar gains in other sectors and potentially overall a more efficient allocation of water amongst abstractors once all activities are brought within licence control. Finally there is an intangible benefit through the perception of greater even-handedness or fairness.
- 6.81. Costs of not having a transition period: The transitional arrangements are designed to let exempt abstractors gather information, to assess strategically their response to New Authorisations and to carry out any necessary investments; a longer transition would be associated with a more efficient long term outcome.
- 6.82. It has not been possible to model the benefit to abstractors of knowing in advance when restrictions will happen. In the ABM, it is possible that a small part of the differences in the results between the different transition periods could have arisen from aspects of the model that incorporate some element of these transitional gains:
- Modelled abstractors will observe more years of emerging climate with a longer transition period, so they can compare their production growth plans against the availability of water over a longer period (reservoir investment decisions for example are based over several years), and;
  - The optimum adaptation strategy can change depending on when the restrictions bite due to the modelling circumstances in that particular year.
- 6.83. In practice we might expect abstractors to be able to plan for and mitigate against the impacts of potential water restrictions. The other benefit of a longer transition is the delay to cost impacts on the affected sectors which have been captured in the analysis.



## 7. Conclusion

- 7.1. The overall costs of options 1 and 2 relative to the Base Line are illustrated in *figure 7.1*. It is worth noting that in all options most costs fall to the quarry and mining and the agriculture sectors because of the potential risk of serious environmental damage. Although we do not believe many abstractors are causing serious damage, however where they are, costs can be high. The agriculture sector would also face the costs due to hands off flow restrictions but these costs are distributed more evenly.
- 7.2. The costs of option 1 are the greatest mostly due to the immediate commencement date of environmental protection and the subsequent impact on business. Whereas for option 2, the transitional arrangements allow for two years of avoided costs to business and similarly delay delivery of environmental benefits from curtailing and restricting harmful abstractions and economic benefits to other abstractors. For both options, the combination of non-monetised benefits and requirements of EU law provide the justification for the monetised net costs. The choice between options 1 and 2 is a judgement made based on stakeholders views about practicality. Option 2 provides a reasonable transitional period that allows the regulator to carry out the new licensing and currently exempt abstractors to adapt their operations to comply with the licensing arrangements, while not unreasonably delaying benefits to the environment and other abstractors.

**Figure 7.1: Summary of monetised net impacts of New Authorisations for options 1 and 2**



## 8. One-In, Three Out and other regulatory impact considerations

- 8.1. This policy is out of scope because it is an EU requirement.
- 8.2. New Authorisations will meet the requirements of the European Union Water Framework Directive (WFD). WFD requires Member States to have: “controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status.”

### Small and medium sized business

- 8.3. Small and medium sized business that abstract water at rates of less than 20 cubic metres a day have already been removed from licence control by provisions in the Water Act 2003. This has been particularly beneficial to the agricultural sector and other small to medium size enterprises. This will not change as a result of the proposal to remove exempt area designations. Only those who abstract more than 20 cubic metres of water a day will need to apply for a licence.
- 8.4. The current exemptions may be perceived as being unfair to those small and medium sized business who do not benefit from them. Removing the exemptions will ensure fair and equal treatment to all business sectors and abstractors of the same category or class. This policy will remove exemptions that may previously have provided a competitive advantage.

### Minimum EU requirements

- 8.5. This proposal is the minimum required under WFD and involves no “gold plating”:
- The date proposed for implementation is beyond the deadline for the measure to be in place (which was December 2012);
  - The licensing system is considered the least-cost and most efficient way to help meet the WFD requirement on water abstraction. This was set out in the Cave review of competition and innovation in the water markets<sup>39</sup>, and is also set out in the abstraction reform impact assessment.
  - Defra and Welsh Government will direct that the level at which the regulator refuses to issue licences is at ‘serious damage’. Only targeting abstractions that are causing serious damage is seen as a cautious but necessary initial step to improving the status of water bodies. In addition, abstractors considered to be of low environmental impact will continue to remain exempt under the Water Act 2003.
  - The licences will be issued based on historic rates of abstraction to ensure currently exempt abstractors are given their fair allocation.
  - The scheme will also grant a transitional period that allows currently exempt abstractors sufficient time to submit their licence application. During this application and determination period, applicants will be able to continue abstracting water. Once brought into the licensing regime, all abstractors will be treated on the same-level playing field.
  - We are providing additional further licence exemptions in accordance with Better Regulation principles.

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<sup>39</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69162/cave-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69162/cave-review-final-report.pdf)

Option	Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as...
	Costs	Benefits	Net		
Option 1	4.5	0.8	-3.7	No	N/A
Option 2	3.7	0.7	-3.0	No	N/A

## Annex A: Policy Background

Understanding of environmental issues has developed significantly since the Water Resources Act 1963 created the current framework for abstraction licensing.

The debate about these and other abstraction licensing improvements began at a Water Summit in May 1997. This resulted in a review of the abstraction licensing system in place at the time. Following consultation, the then Government's decisions on abstraction licensing were published in Taking Water Responsibly in March 1999.

In November 2000, the then Government published a draft Water Bill for public consultation.

The then Government's response to the consultation was published in May 2002 and considered the questions and concerns raised by respondents on the proposals set out in the draft Bill. The Water Act 2003 contained those changes to improve the existing abstraction licensing system set out in the Water Resources Act 1991.

In parallel to the Water Act 2003 abstraction improvements, the European Union Water Framework Directive (WFD) was set up to help Member States manage their water resources effectively. The WFD requires each Member State to have in place a programme of measures designed to deliver "Good" water body status. To meet the objectives of the WFD, Government goes through an iterative process of first identifying issues within each of the water bodies, and then drawing up a programme of measures designed to tackle the identified environmental issues within each water body. One of the basic requirements in the initial tranche of programme of measures is to have in place prior authorisation and control of water abstraction and impoundments, except for those that have no significant impact on water status.

The Water Act 2003 included the provisions to remove remaining abstraction exemptions in England and Wales. These exempt abstractors may cause significant impacts on the environment and therefore jeopardise our ability to meet WFD requirements. The act allows us to retain or introduce new exemptions for abstractions which are low risk to the environment, eg abstractions of less than 20 cubic metres per day.

The removal of these exemptions were planned to be implemented as part of a wider package of measures introduced under the Water Act 2003. Significant benefits have been achieved through the commenced parts of this legislation, for example, the deregulation of over 20,000 low risk abstraction licences (compared to the 5,000 we expect to bring into the licensing system) and reduced advertising costs as part of the administrative process.

The Water Act 2003 allows us to make the transitional regulations that will govern the creation and determination of licence applications to bring exempt abstractions under licence control. Secondary legislation is also required to create low risk exemptions.

## Annex B: Profile of Currently Exempt Abstractors

- 1 Here we set out both the hydrological and environmental characteristics for each of the groups currently exempt from licensed abstraction. The following groups are currently exempt:
  - i) Quarries and Mining
  - ii) Trickle Irrigation
  - iii) Managed Wetland Systems
  - iv) Navigation and Ports
  - v) Land Drainage
  - vi) The Crown
  - vii) Exempt Geographical Areas.
- 2 In setting out hydrological and environmental characteristics for each group, it is worth considering the some of the differences in characteristics of abstraction source type: surface-water and ground-water.<sup>1</sup>
- 3 Surface-water is that consisted in rivers, lakes or wetlands. It is to a large extent renewable, mostly by the rainfall from the clouds, but also with waste-water resulting from the consumption of water by individuals and industry. Ground-water is water held underground in the soil or in pores and crevices in rock. By contrast ground-water holds more characteristics of being a non-renewable resource: while its stock is replenished the rate of renewal is considerable low.
- 4 Surface-water is considerably easier to obtain than ground-water but is in general of a lower quality. The quality problem is exacerbated by pollution from agricultural, urban and industrial waste. The supply of surface water is highly uncertain and may drop below subsistence levels during periods of drought.
- 5 All of these characteristics affect the decisions exempt abstractors take and the source of abstraction will have differing degrees of environmental and hydrological impact for each sector. Much of the information here has been sourced from an evidence project commissioned by Defra and produced by consultants HR Wallingford.<sup>2</sup>

### *Quarries and Mining*

- 6 The abstraction activities of Quarries and Mines relate to the process of dewatering – the process of removing water from a resource. It is necessary to remove water because hard rock quarries must be worked dry to allow stone to be cut. Sand and Gravel quarries are usually worked dry also; in this context dewatering acts to reduce operating costs as more of the extracted resource can be recovered if the material is worked dry. However these soft compounds can be worked wet if necessary; some are worked wet out of choice where dewatering is impractical or costly.
- 7 Dewatering applies to the access (or ingress) of ground-water, either locally or from a neighbouring watercourse, or from rainfall collected in quarries and mines.
- 8 Abstractions for the purpose of dewatering are anticipated to lower the stock of ground-water in the local vicinity; the abstracted water is typically discharged to surface-water systems. Subsequently these activities are unusually deemed to be non-consumptive overall, i.e. the abstracted water is discharged back to the water environment, usually to the most convenient watercourse. This practice however, usually results in a loss to the groundwater resource. There is some consumptiveness in that a small amount may be lost to evaporation.

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<sup>1</sup> See J. Dalhuisen (1999) for a more complete discussion on the characteristics of water.

<sup>2</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=More&Module=More&Location=None&Completed=0&ProjectID=18618>

- 9 Both surface-water and ground-water can be affected by this drawdown of water. It has the potential to influence water resources, surface water features and a number of environmental designations.<sup>3</sup>
- 10 Dewatering can affect water resources and subsequently its quality through working below the water table as well as the silting of watercourses from discharges. Where fragile ecosystems are concerned (e.g. wetlands), even small scale dewatering operations may have an impact.<sup>4</sup>
- 11 Finally, dewatering tends to run counter-seasonal to water shortages. For instance, in winter months or at times of high rainfall, it is common to observe higher dewatering volumes as both rainfall and groundwater volumes are higher. This seasonal pattern is site-specific and depends on factors such as geology, local climate and weather.

#### *Trickle Irrigation*

- 12 Trickle irrigation is where water falls by drop from a pipe near to the roots of plants. It is used mainly for horticulture (i.e. the cultivation of fruit and vegetables), particularly in glasshouse production, and in some cases for pot plants by farms for arable crops. The greatest proportion of water use is in the cultivation of soft fruits; water management here has a direct and sensitive impact on the quality of a high value product.
- 13 Constant abstractions can place pressure on the environment in water stressed locations. The timing and volume of water abstracted for trickle irrigation tends to be driven by the seasons – it is linked to specific crop growing seasons as well as local weather conditions. Crops grown in glass houses tends to be less seasonal and require more constant irrigation.
- 14 Unsustainable abstractions from agriculture can affect groundwater as well as surface water flows. This can be to prolong or worsen low flows that in turn may affect the ecological status of water bodies and have impact on licensed abstractors. Irrigation from groundwater pumping may reduce the flows from springs and impact on overall water levels. This can have a detrimental impact on groundwater fed wetlands in regions such as East Anglia.
- 15 For the agriculture and horticulture sector as a whole, where trickle irrigation is licensed but become constrained, a small reduction in water would lead to a large loss in crop value. A number of mitigation options may be available to the farm businesses (each with an associated cost). These mitigation options are highlighted in the report.

#### *Managed Wetland Systems*

- 16 Water meadows are areas of land either periodically inundated with water or areas over which water flows; these flows help to insulate from frost and act to deposit of nutrients and silt which encourage grass growth. More broadly most other managed wetland systems are in place to enhance the conservation of a local environmental feature.
- 17 The management of water flows to managed wetland systems for growing grass was historically a widespread agricultural practice but has declined due to changes in practice. Managed wetland systems are now recognised as an important habitat with high levels of biodiversity. Grants exist for managing wetland systems under the Countryside Stewardship scheme in England and Glastir

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<sup>3</sup> Smith, R.J., Johnson, K., and Stewart, R. (2009) the relationship between aggregate extraction, the hydrology of the surrounding landscape and Sites of Special Scientific Interest in England. Unpublished Report to Natural England for the Department of the Environment, Food and Rural Affairs. The Centre for Construction Innovation Northwest, University of Salford, Manchester

<sup>4</sup> Wheeler, B.D, Gowing, D.J.G, Shaw, S.C., Mountford, I.O. and Money, I.P. (2004) Ecohydrological Guidelines for Lowland Plant Communities (eds.) Brooks, A.W., José, P.V. and Whiteman, M. (Environment Agency, Anglian Region), Peterborough.

in Wales. The removal of exemption from licensing will mean land managers must seek a licence for the abstraction of water from a river to a managed wetland system.

- 18 The abstraction from a donor river for feeding a managed wetland system may result in depleted reaches and associated environmental impacts on the donor river. The managed wetland systems provide many services to ecosystems with regard to valuable habitat, water quality and value of natural landscape. There is considered to be a minimal loss of water resource.

#### *Navigation and Ports*

- 19 Ports, harbours and navigable canals are artificial constructions that connect to natural waterways, typically to improve the efficiency of passenger and freight transport. The water levels in impounding docks and canals have to be maintained for the assets to operate effectively; a consistent supply of water is required to maintain water levels. In most cases water is supplied from surface water, although is sometimes drawn from groundwater abstraction or water impounded in reservoirs as typically occurs in the case of canals.
- 20 In some cases the relevant authority may have an operating agreement for individual abstraction with the environmental regulator. This is an agreement to reduce water abstraction when the river flow is low. Canals may need greater amounts of water to maintain levels during dry years when evaporation increases. Water levels are typically only topped up during the summer boating season. The canal network requires water abstractions in order to maintain function. If an abstraction licence was not granted then a combination of demand management and mitigation would be needed (such as the repair of leakages on the network).
- 21 Harbours and Ports will be covered by a proposed exemption for saline abstractions below fixed tidal limits (i.e. that abstractions from saline waters will be exempt). There is no evidence that the freshwater abstraction used by port authorities is causing environmental problems. The risk of licence refusal is considered to be very low and is assumed in our analysis that no operators are refused a licence. It is expected that under hands-off-flow conditions, ports and harbours can respond to the reduction in freshwater abstraction by substituting for saline abstractions where economically viable. More extreme measures would be to impose temporary or permanent restrictions on ship size using impounded docks, or even the suspension/ cessation of dock services.

#### *Internal Drainage Boards*

- 22 Here we refer to the Internal Drainage Boards (IDBs) of England and Wales. An IDB is a local public authority that manages water levels and are located in areas with special drainage requirements either within the floodplains or in broad open areas (eg the fenlands). They are typically concentrated mainly in Cambridgeshire, Kent, Lincolnshire, Norfolk, Nottinghamshire, Somerset and Yorkshire. IDB's typically abstract water to redistribute to drainage channels. This for example includes activities such as irrigation, wet fencing and warping. In Wales, the functions of IDBs are carried out by Natural Resources Wales.
- 23 Each IDB has a Biodiversity Action Plan and holds a duty to further the conservation and enhancement of all designated environmental sites within their districts.
- 24 While of low-risk, any curtailment of abstractions by IDBs may affect third parties that are dependent on this activity. For instance, in IDBs with extensive agriculture, farms would be affected as water is currently being abstracted on their behalf. Large reductions in volumes abstracted would mostly impact on crop production (both quality and type of crop), reducing farm revenues.

- 25 The current exemptions for the Crown extends to land owned by the Ministry of Defence (MoD) and the Royal Parks.
- 26 The MoD abstracts water, generally in areas where there is no mains supply, for a number of uses that include drinking water for housing and barracks accommodation (domestic demand, making up 88% of water use), and for operational water (12%), e.g. for vehicle washing, cleaning and water for emergency fire-fighting supplies. The majority of these abstractions come from groundwater sources, with minimal abstractions from surface water. A number of abstractions are located in or adjacent to sensitive aquatic habitats with no readily available alternative water source. Licensing may have economic impacts for specific sites but is unlikely to result in large scale disruption of operations. Since the MoD abstractions support drinking water and sanitation uses, this high priority water use would be taken into account in licensing decisions and hence is felt likely that only a small number of licences (if any) would be refused.
- 27 The Royal Parks manages nine parks located in the London area, consisting of 5,000 acres of historic parkland. The largest volumes of water are abstracted during dry summers when other water sources, such as lakes, become unavailable. The Royal Parks is actively looking to increase sustainable development in the management of the parks and monitors their water usage. Our analysis assumes that under licensing, environmental regulators may issue hands off flow conditions. If there is the risk of serious environmental damage the Parks to be unable to irrigate during dry periods. There are likely to be mitigation measures (such as rainwater harvesting) that reduce any impacts of this constraint.

#### *Exempt geographical areas*

- 28 Exempt areas are those geographical areas where a general exemption has been given from the need for abstractions to be licensed. Abstractions in exempt areas are expected to be small and therefore individual abstractions are unlikely to have an environmental impact, although it is recognised that a number of these activities in the exempt areas may have a cumulative impact on the environment or impacts on the accessibility of nearby abstractors to water. Therefore, it is assumed for the purposes of this analysis that almost all of these abstractors are likely to be granted licences, although hands off flow conditions could be implemented if there is a risk of serious damage.
- 29 We nevertheless acknowledge the possibility that some such abstractions in these areas may be impacting the environment, or other abstractors' access to water, even in cases where the impact is such that serious damage provisions are not likely to apply. It is not however possible to assess these impacts without knowing the precise locations, associated activities and volumes abstracted. We therefore are unable to comment and determine the costs to the environment and other abstractors, although we would anticipate that they are likely to be localised to specific sites.



## Annex C: Agent Based Modelling

- 1 This annex gives further detail of abstraction behaviour used in our analysis. The model used is referred to as the 'Agent Based Model' (hereafter ABM) and where possible it is our preferred approach to assessment the full range of impacts.
- 2 The modelling here was developed by consultants Risk Solutions in support of the impact assessment on the abstraction reform. The full detail of the ABM model specification is covered in a supporting report published alongside abstraction reform impact assessment.<sup>5</sup> Nonetheless we recapture some of the high-level information here and set-out the few adjustments to the model done for this analysis.
- 3 The ABM is the integration of two interacting models: a hydrological model of river catchment areas combined with an 'agent based' behavioural model of water abstraction. Together they help to explore the effects of different policies concerning water abstraction and allow for the comparison of economic costs and benefits, and the environmental performance of each option.

## Annex D: Top-Down Assessment

- 1 The majority of our evidence is founded on a Defra research study into the scale and impact of New Authorisations; if not drawn upon directly in the analysis in the Impact Assessment, some of the study's findings will have underpinned input assumptions in the Agent Based Model.
- 2 This study was published by DEFRA in 2013 and was the result of work commissioned by consultants HR Wallingford and Vivid Economics.<sup>6</sup> The findings of the study then feed into our top-down analytical assessment. In particular estimates on the numbers of licences to be refused due to risk of serious damage, and what impact (qualitative or quantitative) will a Hands-off-Flow restriction have are used in our core assessment.
- 3 This work was commissioned to help contribute towards an evidence base where little-to-no information on exempt licence activities had existed previously. It has made possible the top-down analytical work to be completed.

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<sup>6</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=18618>

## Annex E: Compliance and Administration Costs

- 1 Note these costs are not NPV figures and are in 2008/09 prices as they originate from the original 2009 consultation on secondary legislation. They have been represented as 2014 prices in our final analysis. Orange estimates indicate uses of updated figures that have been revised down to 2008/09 prices.

<b>Transfer Licence</b>		<b>Cost</b>			<b>% of exempt abstractor costs occur to</b>			<b>Expected Cost</b>		
2008/09 Prices		Best	Low	High	Best	Low	High	Best	Low	High
<b>Cost Category</b>	<b>Frequency</b>	<b>Cost Best</b>	<b>Cost Low</b>	<b>Cost High</b>	<b>Coverage Best</b>	<b>Coverage Low</b>	<b>Coverage High</b>	<b>Expected Best</b>	<b>Expected Low</b>	<b>Expected High</b>
Metering/measurement	12 years	0	0	0	50%	50%	50%	0	0	0
time gathering data	12 years	182	91	910	100%	100%	100%	182	91	910
application fee	12 years	1309	1309	1309	100%	100%	100%	1309	1309	1309
advertising (newspaper)	One-off	350	300	400	5%	5%	5%	18	15	20
advertising (admin)	One-off	87	87	87	5%	5%	5%	4	4	4
environment report	One-off	5000	5000	5000	5%	0%	20%	250	0	1000
professional advice	One-off	1500	1500	1500	5%	0%	20%	75	0	300
annual charge	Annual	0	0	0	100%	100%	100%	0	0	0
Record keeping, etc..	Annual	0	0	0	100%	100%	100%	0	0	0

<b>Full Licence</b>		<b>Cost</b>			<b>% of exempt abstractor costs occur to</b>			<b>Expected Cost</b>		
2008/09 Prices		Best	Low	High	Best	Low	High	Best	Low	High
<b>Cost Category</b>	<b>Frequency</b>	<b>Cost Best</b>	<b>Cost Low</b>	<b>Cost High</b>	<b>Coverage Best</b>	<b>Coverage Low</b>	<b>Coverage High</b>	<b>Expected Best</b>	<b>Expected Low</b>	<b>Expected High</b>
Metering/measurement	12 years	400	400	5000	50%	50%	100%	200	200	5000
time gathering data	12 years	182	91	910	100%	100%	100%	182	91	910
application fee	12 years	118	118	118	100%	100%	100%	118	118	1309
advertising (newspaper)	One-off	350	300	400	5%	5%	5%	18	15	20
Advertising (admin)	One-off	87	87	87	5%	5%	5%	4	4	4
environment report	One-off	5000	0	5000	5%	0%	20%	250	0	5000
professional advice	One-off	2000	2000	2000	5%	0%	20%	100	0	2000
Annual charge	Annual	120	22	300	100%	100%	100%	36	22	36
Record keeping, etc..	Annual	102	102	102	100%	100%	100%	102	102	102

## Annex F: England and Wales Impact Disaggregation

- 1 Below is a rough breakdown of the net impact between England and Wales for options 1 and 2 (figures are £million NPV).

Option	Country	Low	Central	High
Option 1: No Transitional Arrangements	England	-204.7	-69.4	-40.2
	Wales	-14.2	-4.9	-3.0
	Total (E&W)	-218.9	-74.3	-43.2
Option 2: Two-Year Transitional Arrangement	England	-163.2	-55.1	-31.6
	Wales	-11.4	-3.9	-2.4
	Total (E&W)	-174.6	-59.0	-33.9

- 2 These figures have been derived by apportioning the total England & Wales impact between the two. Where possible, this was based on numbers of affected agents in each country taken from the HR Wallingford / Vivid Economics Evidence Study, we have made use of this in splitting out the combined England & Wales impact. Otherwise the impacts are apportioned by population. The table below sets this out by sector and type of impact.

	Impact on Economic Output	Compliance and Administration Cost
Quarries and Mining	Apportioned using the number of relevant abstractions. From the HR Wallingford/ Vivid Economics Evidence Study, an estimated 11% of all quarry and mining abstractions in England & Wales, are in Wales.	
Trickle Irrigation Farming	Apportioned using shares of the number of relevant abstractions in England and Wales. From the HR Wallingford / Vivid Economics Evidence Study, an estimated 1.6% of the trickle irrigation abstractions are in Wales.	
Ports	HR Wallingford / Vivid Economics Evidence Study indicates equal numbers of ports in England & Wales that could be affected by restrictions	Apportioned using the population shares of England and Wales.
Navigation	Apportioned using the population shares of England and Wales	Apportioned using the population shares of England and Wales.
The Crown (MoD and Royal Parks)	Royal Parks all in England. No effect on economic output for MoD.	Royal Parks all in England. MoD admin costs apportioned using population shares.
Managed Wetland Systems, Internal Drainage Boards, Road and Rail, Exempt Geographical Areas	No impact on economic output for these sectors	Apportioned using the population shares of England and Wales
Existing Licence Holders	Apportioned using the population shares of England and Wales	
Compensation payments	Apportioned using the population shares of England and Wales	

# SL(5)148 - The Water Abstraction and Impounding (Exemptions) Regulations 2017

## Background and Purpose

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These Regulations provide for exemptions from the restriction on abstraction and the restriction on impounding works in the Water Resources Act 1991 (c. 57).

## Procedure

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Negative

## Technical Scrutiny

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The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. These Regulations are made in English only (Standing Order 21.2(ix)). The Explanatory Memorandum states that the Regulations, being a composite Statutory Instrument, "apply to both England and Wales, and are subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable [by the Welsh Ministers] for these instruments to be made bilingually."

## Merits Scrutiny

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Implications arising from exiting the European Union

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The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. The definition of 'conservation site' in regulation 2 refers to a list provided to the European Commission. The footnote explains that the list is also available from the Welsh Government and DEFRA, so that the provision would not cease to work after the UK's departure from the EU. It may be desirable to amend the provision, but it would not be essential to do so unless and until it was thought appropriate to amend the list, since any new list would not be provided to the Commission. It would be appropriate for the Welsh Ministers and the Secretary of State to amend the provision using the powers relied upon to make these Regulations.
3. The Regulations also contain a number of references to the Conservation of Habitats and Species Regulations 2010. Those Regulations transposed Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') and will need to be reviewed for the UK's departure from the European Union. The references to the 2010 Regulations in the present Regulations will therefore also need to be reviewed at that stage.

## Government Response

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No government response is required.



**Legal Advisers**  
**Constitutional and Legislative Affairs Committee**  
**November 2017**



# Agenda Item 4.4

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## STATUTORY INSTRUMENTS

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**2017 No. 1012**

**WILDLIFE**

**COUNTRYSIDE**

**The Conservation of Habitats and Species Regulations 2017**

<i>Made</i>	- - - -	<i>30th October 2017</i>
<i>Laid before Parliament</i>		<i>31st October 2017</i>
<i>Laid before the National Assembly for Wales</i>		<i>31st October 2017</i>
<i>Coming into force</i>	- -	<i>30th November 2017</i>

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The Secretary of State is designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment, and the Welsh Ministers are designated(c) for those purposes in relation to the conservation of natural habitats and of wild fauna and flora.

The Secretary of State and the Welsh Ministers make these Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972 and paragraph 1A of Schedule 2 to that Act(d), and by section 307(3) and (5) of the Criminal Justice Act 2003(e).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State and to the Welsh Ministers that it is expedient for any reference in these Regulations to an Annex to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(f) to be construed as a reference to that Annex as amended from time to time.

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- (a) S.I. 2008/301.  
(b) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1); and the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.  
(c) S.I. 2002/248. The designation is subject to the exceptions set out in Schedule 2 to that Order. The functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).  
(d) Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28. It was amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule, and by S.I. 2007/1388.  
(e) 2003 c. 44. Section 307(3) and (5) was amended by S.I. 2011/1043.  
(f) OJ No. L 206, 22.7.1992, p.7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

## PART 1

### Introductory and General Provisions

#### Citation and commencement

**1.**—(1) These Regulations may be cited as the Conservation of Habitats and Species Regulations 2017.

(2) These Regulations come into force on 30th November 2017.

#### Extent

**2.**—(1) Except as provided in this regulation, these Regulations extend to England and Wales only.

(2) The following provisions also extend to Scotland—

- (a) regulation 3(8) (meaning of adjacent sea);
- (b) regulations 9 and 10 (duties relating to compliance with the Directive and wild bird habitat, respectively), in so far as those regulations apply in relation to the exercise of a function which relates to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998 (reserved matters)(a));
- (c) regulation 41(4) (national policy statement under Planning Act 2008(b));
- (d) Chapter 1 of Part 6 (assessment of plans and projects: general provisions), in so far as that Chapter applies in relation to plans and projects—
  - (i) which do not relate to a matter specified in Chapters 2 to 9 of that Part, and
  - (ii) which relate to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998);
- (e) in regulation 70 (grant of planning permission)—
  - (i) paragraph (1)(e)(ii) and (iii) (deemed grant of planning permission under section 57(2) and (2A) of the Town and Country Planning (Scotland) Act 1997(c) and section 5(1) of the Pipe-lines Act 1962(d));
  - (ii) paragraph 1(f) (variation of permission deemed to be granted under section 57(2) of the Town and Country Planning (Scotland) Act 1997), in so far as that paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)(e); and
  - (iii) paragraph (2) in so far as that paragraph relates to sub-paragraph (1)(e)(ii) or (iii), or (1)(f) of that regulation;
- (f) in regulation 71 (planning permission: duty to review), in paragraph (4)—
  - (i) sub-paragraph (b);
  - (ii) sub-paragraph (d) in so far as that sub-paragraph relates to a direction under section 57(2) of the Town and Country Planning (Scotland) Act 1997;
  - (iii) sub-paragraph (e) in so far as that sub-paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997;
 and paragraph (3) in so far as it relates to directions specified in those sub-paragraphs;
- (g) regulations 84, 85 and 86(2) (development consent under Planning Act 2008);

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(a) 1998 c. 46. Schedule 5 was amended by the Scotland Act 2012 (c. 11), section 10; the Energy Act 2013 (c. 32), Schedule 12, paragraph 72; the Scotland Act 2016 (c. 11), sections 40, 45, 47 and 50(1), (6) and (7); and by S.I. 2000/3252, 2002/1629, 2004/3329, 2014/1559 and 2015/1379.

(b) 2008 c. 29.

(c) 1997 c. 8. Section 57(2) was substituted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

(d) 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.

(e) Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013, section 21(5).

- (h) Chapter 4 of Part 6 (electricity);
  - (i) Chapter 5 of Part 6 (pipe-lines);
  - (j) regulation 103 (marine works) in so far as it applies to the granting of a licence under Part 2 of the Food and Environment Protection Act 1985(a);
  - (k) regulation 110 (national policy statements under Planning Act 2008), and regulations 105, 107 and 109 in so far as they apply in relation to a national policy statement by virtue of regulation 110;
  - (l) regulation 112 (marine policy statement), in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 105, 107 and 109 in so far as they apply to marine policy statements by virtue of regulation 112; and
  - (m) in Part 1 of Schedule 6 (consequential amendments to primary legislation)—
    - (i) sub-paragraphs (2) and (4) of paragraph 8 (amendment of section 123 of the Marine Act); and
    - (ii) sub-paragraph (1) of paragraph (5) in so far as it relates to sub-paragraph (2) and (4); and regulation 139 in so far as it relates to those provisions.
- (3) The following provisions also extend to Scotland in so far as they have effect in relation to the provisions specified in paragraph (2)—
- (a) regulations 1 (citation and commencement), 2 (extent), 3 (interpretation), 5 (nature conservation bodies), 7 (competent authorities) and 8 (European sites and European marine sites);
  - (b) Chapter 1 of Part 6 (assessment of plans and projects); and
  - (c) regulations 134, 135(3) and 138 (advisory role of the Joint Nature Conservation Committee, advisory role of Scottish Natural Heritage, notices, respectively).
- (4) The following provisions also extend to Northern Ireland—
- (a) regulations 9 and 10, in so far as those regulations apply in relation to the exercise of a function which relates to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998(b));
  - (b) Chapter 1 of Part 6, in so far as that Chapter applies in relation to plans and projects—
    - (i) which do not relate to a matter specified in Chapters 2 to 9 of that Part; and
    - (ii) which relate to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998);
  - (c) regulation 103, in so far as it applies in relation to a marine licence under Part 4 of the Marine Act in respect of anything done in the course of carrying on an activity which relates to a matter which is an excepted matter by virtue of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (defence of the realm etc.);
  - (d) regulation 112, in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 105, 107 and 109 in so far as they apply to marine policy statements by virtue of regulation 112; and
  - (e) in Part 1 of Schedule 6—
    - (i) sub-paragraphs (2) and (4) of paragraph 8;
    - (ii) sub-paragraph (1) of paragraph 8 in so far as it relates to sub-paragraphs (2) and (4); and regulation 139 in so far as it relates to those provisions.

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(a) 1985 c. 48. Part 2 was amended by the Environment Protection Act 1990 (c. 43), sections 146 and 147; the Petroleum Act 1998 (c. 17), Schedule 4, paragraph 20; the Food Standards Act 1999 (c. 28), Schedule 3, paragraph 16; the Energy Act 2008 (c. 32), Schedule 1, paragraph 2; the Marine Act, Schedule 8, paragraphs 2, 5 and 6; by S.I. 1999/1756; and by SSI 2011/202. It is prospectively amended by the Digital Economy Act 2017 (c. 30), Schedule 3, paragraphs 22 and 23, from a date to be appointed. By virtue of the amendments made by the Marine Act, Part 2 of the Food and Environment Protection Act 1985 only applies to the Scottish inshore region.

(b) 1998 c. 47.

(5) This regulation and regulations 1, 3, 5, 7, 8, 134 and 138 also extend to Northern Ireland in so far as they have effect in relation to the provisions specified in paragraph (4).

(6) Chapter 1 of Part 6 also extends to Northern Ireland in so far as it has effect for the purposes of regulation 103, to the extent that that regulation extends to Northern Ireland by virtue of paragraph (4)(c).

(7) The amendment of any enactment by regulation 139 and Part 2 of Schedule 6 (consequential amendments to secondary legislation) has the same extent as the enactment amended.

(8) The revocation of any enactment by regulation 140 and Schedule 7 (revocations) has the same extent as the enactment revoked.

## Interpretation

### 3.—(1) In these Regulations—

“the 1949 Act” means the National Parks and Access to the Countryside Act 1949(a);

“the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010(b);

“the Offshore Marine Conservation Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017(c);

“the appropriate authority” means the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (but see modifications of the meaning of that term in regulations 9(4) and 10(12)(a), and modifications of references to that term in regulations 69(1)(b), (3)(c), (5) and (8)(b), 97(6), 110(3)(b) and 112(3)(c)), and any person exercising any function of the Secretary of State or the Welsh Ministers;

“competent authority” is to be construed in accordance with regulation 7 (competent authorities);

“conservation” has the meaning given by Article 1(a) of the Habitats Directive (definitions);

“conservation status” and “favourable conservation status” have the meanings given by paragraphs (e) (in relation to habitats) and (i) (in relation to species) of Article 1 of the Habitats Directive;

“destroy”, in relation to an egg, includes doing anything to the egg which is calculated to prevent it from hatching, and “destruction” is to be construed accordingly;

“the devolved administrations” means the Welsh Ministers, the Scottish Ministers, and, in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;

“the Directives” means the Habitats Directive and the new Wild Birds Directive;

“enactment” includes a local enactment and an enactment contained in subordinate legislation, and “subordinate legislation” has the same meaning as in the Interpretation Act 1978(d);

“English inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to England;

“European marine site” has the meaning given by regulation 8(3) (European sites and European marine sites);

“European offshore marine site” means a European offshore marine site within the meaning of regulation 18 of the Offshore Marine Conservation Regulations (meaning of European offshore marine site);

“European site” has the meaning given by regulation 8;

“functions” includes powers and duties;

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(a) 1949 c. 97.

(b) S.I. 2010/490, as amended by S.I. 2011/603, 625, 2012/630, 2012/635, 637, 1927, 2013/755 (W. 90), 2015/377, 2020 and 2016/1154.

(c) S.I. 2017/1013.

(d) 1978 c. 30. See section 21 of that Act for the meaning of “subordinate legislation”.

“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>(a)</sup>;

“land” includes land covered by water;

“local planning authority” means, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the TCPA 1990;

“management agreement” means an agreement made, or having effect as if made, under regulation 20 (management agreements);

“the Marine Act” means the Marine and Coastal Access Act 2009<sup>(b)</sup>;

“marine area” means (subject to regulations 9(5) and 10(12)(b)) the English inshore region and the Welsh inshore region;

“Natura 2000” means the European network of special areas of conservation, and special protection areas under the old Wild Birds Directive or the new Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive (network of special areas of conservation: Natura 2000);

“natural habitats” has the meaning given by Article 1(b) of the Habitats Directive;

“nature conservation body” and “appropriate nature conservation body” have the meaning given by regulation 5 (nature conservation bodies);

“the new Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds<sup>(c)</sup>;

“Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland;

“officer”—

(a) in relation to a body corporate, means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, and

(b) in relation to an unincorporated body, means any member of its governing body or a chief executive, manager or other similar officer of the body;

“the old Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds<sup>(d)</sup>;

“priority natural habitat types” has the meaning given by Article 1(d) of the Habitats Directive;

“priority species” has the meaning given by Article 1(h) of the Habitats Directive;

“relevant authorities”, in relation to marine areas and European marine sites, is to be construed in accordance with regulation 6 (relevant authorities in relation to marine areas and European marine sites);

“relevant licensing body” has the meaning given by regulation 58 (relevant licensing body);

“research” includes inquiries and investigations;

“sample” means a sample of blood, tissue or other biological material;

“Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“sea” includes—

(a) any area submerged at mean high water spring tide, and

(b) the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide,

and any reference to an area of sea includes the bed and subsoil of the sea within that area;

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(a) OJ No. L 206, 22.7.1992, p.7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193).

(b) 2009 c. 23.

(c) OJ No. L 20, 26.1.2010, p.7, as last amended by Council Directive 2013/17/EU (OJ No L 158, 10.6.2013, p.193).

(d) OJ No. L 103, 25.4.1979, p.1; the old Wild Birds Directive was repealed by the new Wild Birds Directive.



“ship” means any vessel (including hovercraft, submersible craft and other floating craft) other than one which permanently rests on, or is permanently attached to, the seabed;

“site” has the meaning given by Article 1(j) of the Habitats Directive;

“site of Community importance” has the meaning given by Article 1(k) of the Habitats Directive;

“special area of conservation” has the meaning given by Article 1(l) of the Habitats Directive;

“specimen”—

(a) for the purposes of Part 7 (enforcement), means any animal or plant, or any part of, or anything derived from, an animal or plant; and

(b) for all other purposes has the meaning given by Article 1(m) of the Habitats Directive;

“statutory undertaker” means a person who is, or is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the TCPA 1990 (statutory undertakers);

“the TCPA 1990” means the Town and Country Planning Act 1990(a);

“the WCA 1981” means the Wildlife and Countryside Act 1981(b);

“Welsh inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Wales;

“wild bird” means a bird which is—

(a) a member of a species referred to in Article 1 of the new Wild Birds Directive (scope of the Directive); and

(b) wild.

(2) The area of sea referred to in sub-paragraph (a) of the definition of “sea” in paragraph (1) includes waters in any area—

(a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but

(b) into and from which seawater is caused or permitted to flow, whether continuously or from time to time.

(3) Terms not defined in paragraph (1) which are used in these Regulations and also in the Habitats Directive have the meaning they bear in that Directive.

(4) In these Regulations, any reference to an Annex to the Habitats Directive is a reference to that Annex to that Directive as amended from time to time.

(5) Subject to regulation 86(1) (which relates to the construction of provisions of Chapter 2 of Part 6 as one with the TCPA 1990), these Regulations apply to the Isles of Scilly as if the Isles were a county and the Council of the Isles were a county council.

(6) Except as provided by paragraph (7), for the purposes of these Regulations—

(a) any reference to England includes the English inshore region;

(b) any reference to Wales includes the Welsh inshore region;

(c) any reference to Scotland includes the Scottish inshore region;

(d) any reference to Great Britain includes the English inshore region, the Welsh inshore region and the Scottish inshore region;

(e) any reference to Northern Ireland includes the Northern Ireland inshore region; and

(f) any reference to the United Kingdom includes its internal waters and the English inshore region, the Welsh inshore region, the Scottish inshore region and the Northern Ireland inshore region.

(7) Paragraph (6) does not apply for the purposes of—

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(a) 1990 c. 8.

(b) 1981 c. 69.

- (a) in paragraph (1), the definitions of “English inshore region”, “Welsh inshore region”, “Scottish inshore region” and “Northern Ireland inshore region”;
- (b) paragraph (8); or
- (c) sub-paragraph (b) of the definition of “offshore marine area” in regulation 4(2).

(8) For the purposes of these Regulations—

- (a) the territorial sea adjacent to England is so much of the territorial sea adjacent to the United Kingdom as is not the territorial sea adjacent to Wales, the territorial sea adjacent to Scotland or the territorial sea adjacent to Northern Ireland;
- (b) “the territorial sea adjacent to Wales” is to be construed in accordance with article 6 of and Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 1999(a);
- (c) “the territorial sea adjacent to Scotland” is to be construed in accordance with article 3 of and Schedule 1 to the Scottish Adjacent Waters Boundaries Order 1999(b); and
- (d) “the territorial sea adjacent to Northern Ireland” is to be construed in accordance with article 2 of the Adjacent Waters Boundaries (Northern Ireland) Order 2002(c).

(9) Nothing in these Regulations is to be construed as excluding the application of the provisions of Part 1 of the WCA 1981 (wildlife) in relation to animals or plants also protected under Part 3, 4 or 5 of these Regulations.

#### **Plans or projects relating to offshore marine area or offshore marine installations**

4.—(1) Nothing in these Regulations requires an appropriate assessment of any plan or project so far as that plan or project is to be carried out on, in or in relation to any part of the sea in the offshore marine area, or on or in relation to an offshore marine installation.

(2) In paragraph (1)—

“offshore marine area” means—

- (a) any part of the seabed and subsoil situated in any area designated under section 1(7) of the Continental Shelf Act 1964 (exploration and exploitation of continental shelf)(d); and
- (b) any part of the waters within British fishery limits(e) (except the internal waters of, and the territorial sea adjacent to, the United Kingdom, the Channel Islands and the Isle of Man);

“offshore marine installation” means any artificial island, installation or structure (other than a ship) which is situated—

- (a) in any part of the waters in any area designated under section 1(7) of the Continental Shelf Act 1964; or
- (b) in any part of the waters in any area designated under section 84(4) of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production)(f).

#### **Nature conservation bodies**

5.—(1) Except as provided by paragraphs (2) to (4), in these Regulations—

- 
- (a) S.I. 1999/672, to which there are amendments not relevant to these Regulations. These provisions continue to have effect as if made under section 158(3) of the Government of Wales Act 2006 (c. 32), by virtue of paragraph 26(3) of Schedule 11 to that Act.
  - (b) S.I. 1999/1126.
  - (c) S.I. 2002/791.
  - (d) 1964 c. 29. Section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c. 23), Schedule 3, paragraph 1; and the Energy Act 2011 (c. 16), section 103. Areas have been designated under section 1(7) by S.I. 1987/1265 and 2013/3162.
  - (e) As defined by section 1 of the Fishery Limits Act 1976 (c. 86).
  - (f) 2004 c. 20. Section 84(4) was amended by the Marine Act, Schedule 4(1), paragraph 4(2). Areas have been designated under section 84(4) by S.I. 2004/2668 and S.I. 2013/3161 (which revoked S.I. 2004/2668).

- (a) “nature conservation body” means Natural England or the Natural Resources Body for Wales; and
- (b) “the appropriate nature conservation body” means—
  - (i) Natural England, in relation to England; or
  - (ii) the Natural Resources Body for Wales, in relation to Wales.

(2) In regulations 50 and 52, “nature conservation body” means Natural England, the Natural Resources Body for Wales or the Joint Nature Conservation Committee<sup>(a)</sup>.

(3) In a provision of Part 6 which extends to England and Wales only, “the appropriate nature conservation body” means—

- (a) in relation to an effect on a European offshore marine site, the Joint Nature Conservation Committee; and
- (b) otherwise—
  - (i) in relation to England, Natural England; and
  - (ii) in relation to Wales, the Natural Resources Body for Wales.

(4) In a provision of Part 6 which extends to Scotland or Northern Ireland, “the appropriate nature conservation body” means—

- (a) in relation to an effect on a European offshore marine site, the Joint Nature Conservation Committee; and
- (b) otherwise—
  - (i) in relation to England, Natural England;
  - (ii) in relation to Wales, the Natural Resources Body for Wales;
  - (iii) in relation to Scotland, Scottish Natural Heritage; and
  - (iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.

### **Relevant authorities in relation to marine areas and European marine sites**

**6.** For the purposes of these Regulations, the relevant authorities, in relation to a marine area or European marine site, are such of the following as have functions in relation to land or waters within or adjacent to that area or site—

- (a) a nature conservation body;
- (b) a county council, county borough council, district council or London borough council;
- (c) the Environment Agency;
- (d) the Marine Management Organisation;
- (e) a water undertaker or sewerage undertaker, or an internal drainage board;
- (f) a navigation authority within the meaning of the Water Resources Act 1991<sup>(b)</sup>;
- (g) a harbour authority within the meaning of the Harbours Act 1964<sup>(c)</sup>;
- (h) a lighthouse authority;
- (i) an inshore fisheries and conservation authority established under Part 6 of the Marine Act (management of inshore fisheries);
- (j) the River Tweed Commission<sup>(d)</sup>; and
- (k) a National Park authority.

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(a) The Joint Nature Conservation Committee was established by the Environment Protection Act 1990 (c. 43), section 128(4), and reconstituted by the Natural Environment and Rural Communities Act 2006 (c. 16), section 31 and Schedule 4.  
 (b) 1991 c. 57. See the definition of “navigation authority” in section 221(1).  
 (c) 1964 c. 40. See the definition of “harbour authority” in section 57(1).  
 (d) The River Tweed Commission was constituted by the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913).

### Competent authorities

7.—(1) For the purposes of these Regulations, “competent authority” includes—

- (a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(a)), government department, statutory undertaker, public body of any description or person holding a public office;
- (b) the Welsh Ministers; and
- (c) any person exercising any function of a person mentioned in sub-paragraph (a) or (b).

(2) In the following provisions (and as provided in regulation 69(3)(a)), “competent authority” includes the Scottish Ministers—

- (a) regulation 70(2), in so far as that paragraph relates to a deemed grant of planning permission under—
  - (i) section 57(2), (2A) and (2ZA) of the Town and Country Planning (Scotland) Act 1997(b), to which regulation 70(1)(e)(ii) and (f) relate; or
  - (ii) section 5(1) of the Pipe-lines Act 1962(c), to which regulation 70(1)(e)(iii) relates;
- (b) Chapters 4 and 5 of Part 6.

(3) In paragraph (1)—

“public body” includes—

- (a) the Broads Authority(d);
- (b) a joint planning board within the meaning of section 2 of the TCPA 1990 (joint planning boards)(e);
- (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972 (appointment of committees)(f);
- (d) a National Park authority; or
- (e) a local authority, which in this regulation means—
  - (i) 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, the sub-treasurer of the Inner Temple or the under treasurer of the Middle Temple;
  - (ii) in relation to Wales, a county council, a county borough council or a community council;

“public office” means—

- (a) an office under the Crown,
- (b) an office created or continued in existence by a public general Act or by legislation passed by the National Assembly for Wales, or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament or the National Assembly for Wales.

### European sites and European marine sites

8.—(1) Subject to paragraph (2), in these Regulations a “European site” means—

- (a) a special area of conservation;

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(a) 1975 c. 26.

(b) 1997 c. 8. Section 57(2) was substituted, and section 57(2ZA) was inserted, by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).

(c) 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.

(d) The Broads Authority was established by section 1 of the Norfolk and Suffolk Broads Act 1988 (c. 4).

(e) Section 2 was amended by the Local Government (Wales) Act 1994 (c. 19), section 19(1) and (4) and Schedule 18; and by the Environment Act 1995 (c. 25), Schedule 10, paragraph 32.

(f) 1972 c. 70. Section 102(1) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 16; and the Children Act 1989 (c. 41), Schedule 13, paragraph 31. It is prospectively amended by the Local Government and Housing Act 1989 (c. 42), Schedule 11, paragraph 25(a), from a date to be appointed.

- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive (list of sites of Community importance);
- (c) a site hosting a priority natural habitat type or priority species protected in accordance with Article 5(4) of the Habitats Directive (a site in respect of which consultation has been initiated under Article 5(1) of that Directive, during the consultation period or pending a decision of the Council under Article 5(3));
- (d) an area classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive (classification of special protection areas); or
- (e) a site which has been proposed to the European Commission under regulation 12, until such time as—
  - (i) the site is placed on the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
  - (ii) agreement is reached or a decision is taken pursuant to Article 4(2) of that Directive not to place the site on that list.

(2) In these Regulations, a reference to a European site—

- (a) in Part 6, is a reference to a European site in the United Kingdom; and
- (b) in any other provision of these Regulations, except where otherwise indicated, is a reference to a European site in England or Wales.

(3) In these Regulations a “European marine site” means a European site so far as consisting of marine areas.

#### **Duties relating to compliance with the Directives**

**9.**—(1) The appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

(2) Paragraph (1) applies, in particular, to functions under these Regulations and functions under the following enactments—

- (a) the Dockyard Ports Regulation Act 1865(a);
- (b) section 2(2) of the Military Lands Act 1900 (provision as to byelaws relating to the sea, tidal water or shore)(b);
- (c) Part 3 of the 1949 Act (nature conservation);
- (d) the Harbours Act 1964;
- (e) section 15 of the Countryside Act 1968 (areas of special scientific interest)(c);
- (f) Part 2 of the Control of Pollution Act 1974 (pollution of water)(d);
- (g) Part 1 (wildlife) and sections 28 to 28S and 31 to 35A of the WCA 1981 (which relate to sites of special scientific interest)(e);

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(a) 1865 c. 125.

(b) 1900 c. 56. Section 2(2) was amended by the Armed Forces Act 2011 (c. 18), section 24(1); and by S.R. & O. 1924/1370. The functions of the Commissioners of Woods are now exercisable by the Crown Estate Commissioners: SR & O 1924/1370; the Crown Estate Act 1956 (c. 73), section 1(1); and the Crown Estate Act 1961 (c. 55), section 1(1).

(c) 1968 c. 41. Section 15 was amended by the WCA 1981, section 72(8); the Environmental Protection Act 1990 (c. 43), Schedule 9, paragraph 4(2) and Schedule 16, Part 6; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), Schedule 12, paragraph 29(1) and (2); the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 48; the Environment (Wales) Act 2016 (anaw 3), Schedule 2, paragraph 2(1) and (3); and S.I. 2013/755 (W. 90).

(d) 1974 c. 40.

(e) Section 28 was substituted, and sections 28A to 28C and 28D to 28R were inserted, by the Countryside and Rights of Way Act 2000 (“the 2000 Act”), Schedule 9, paragraph 1 and Schedule 10, paragraph 1. Sections 28, 31 and 34 were repealed as regards Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6), Schedule 7, paragraph 4, and sections 28A to 28S do not extend to Scotland. Sections 28 to 28C and 28D to 28R were amended by the Natural Environment and Rural

- (h) the Water Resources Act 1991;
- (i) the Land Drainage Act 1991(a);
- (j) the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992 (conservation in the exercise of sea fisheries functions)(b);
- (k) the Natural Environment and Rural Communities Act 2006(c);
- (l) the Planning Act 2008;
- (m) the Marine Act, in particular any functions under Parts 3, 4, 5 and 6 of that Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively); and
- (n) the Natural Resources Body for Wales (Establishment) Order 2012(d), where the functions are exercised for purposes related to nature conservation.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.

(4) The reference in paragraph (1) to the appropriate authority—

- (a) to the extent that that paragraph applies in relation to Scotland, includes the Secretary of State exercising functions in relation to Scotland; and
- (b) to the extent that that paragraph applies in relation to Northern Ireland, includes the Secretary of State exercising functions in relation to Northern Ireland.

(5) In paragraph (1), “marine area” includes—

- (a) the Northern Ireland inshore region; and
- (b) the Scottish inshore region.

#### **Duties in relation to wild bird habitat**

**10.**—(1) Without prejudice to regulation 9(1), the appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

(2) Except in relation to the marine area, the Environment Agency, the Forestry Commissioners(e), local authorities, the Broads Authority and National Park authorities must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

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Communities Act 2006 (“the 2006 Act”), Schedule 11, paragraph 79. Sections 28, 28A, 28B and 28C were amended by the Marine Act, Schedule 13, paragraphs 2, 3, 5 and 6. Sections 28CA and 28CB were inserted by the Marine Act, Schedule 13, paragraphs 7 and 8. Section 28D was amended by the 2006 Act, section 56; and the Marine Act, Schedule 13, paragraph 9. Section 28E was amended by the 2006 Act, Schedule 11, paragraph 80; and the Environment (Wales) Act 2016, Schedule 2, paragraph 3(2). Section 28F was amended by the Planning (Wales) Act 2015 (anaw 4), Schedule 5, paragraph 5. Section 28G was amended by the 2006 Act, Schedule 11, paragraph 81. Section 28J was amended by the Environment (Wales) Act 2016, Schedule 2, paragraph 3(3). Section 28L was amended by the Planning (Wales) Act 2015, Schedule 5, paragraph 6. Section 28P was amended by the 2006 Act, section 55; and S.I. 2015/664. Section 28S was inserted by the 2006 Act, section 58(1). Section 31 was amended by the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the 2000 Act, Schedule 9, paragraph 3; the Constitutional Reform Act 2005 (c. 4), Schedule 9, paragraph 37; and the 2006 Act, section 55(5) and Schedule 11, paragraph 79. Section 32 was amended by the Agriculture Act 1986 (c. 49), section 20(1) to (3); the 2000 Act, Schedule 9, paragraph 4 and Schedule 16, Part 3; the 2006 Act, Schedule 11, paragraph 79; the Environment (Wales) Act 2016 (anaw 3), Schedule 2, paragraph 3(4); and S.I. 2011/1043. Section 33 was amended by the 2006 Act, Schedule 11, paragraph 82. Section 34 was amended by the Local Government Act 1985 (c. 51), Schedule 3, paragraph 7; the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 54(1); the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 65(3); the 2000 Act, section 78; the 2006 Act, Schedule 11, paragraph 83; and S.I. 2015/664. Section 34A was inserted by the 2006 Act, Schedule 11, paragraph 84, and was amended by S.I. 2013/755 (W. 90). Section 35 was amended by the 2006 Act, Schedule 11, paragraph 85; and the Marine Act, Schedule 13, paragraph 10. Section 35A was inserted by the Marine Act, Schedule 13, paragraph 11.

- (a) 1991 c. 59.
- (b) 1992 c. 36. Section 1 was amended by the Marine Act, section 11 and Schedule 22, Part 4; and by S.I. 1999/1820.
- (c) 2006 c. 16.
- (d) S.I. 2012/1903 (W. 230), to which there are amendments not relevant to these Regulations.
- (e) See section 1(1) of the Forestry Act 1967 (c. 10).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive (measures to maintain the population of bird species).

(4) Paragraph (1) applies, in particular, to—

- (a) functions under these Regulations;
- (b) functions under the following enactments—
  - (i) sections 17, 18, 20 and 21(6) of the 1949 Act (nature reserves)(a);
  - (ii) section 7 of the Natural Environment and Rural Communities Act 2006 (management agreements);
  - (iii) Parts 3, 4, 5 and 6 of the Marine Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively);
- (c) any function exercisable in relation to town and country planning.

(5) Paragraph (2) applies, in particular, to—

- (a) functions under these Regulations;
- (b) functions under the following enactments—
  - (i) sections 21 and 90 of the 1949 Act (nature reserves and local authority byelaws, respectively)(b);
  - (ii) sections 3 and 10 of the Forestry Act 1967 (management of forestry land, and applications for felling licence and decision of Commissioners thereon, respectively) (c);
  - (iii) sections 3 and 6 of the Norfolk and Suffolk Broads Act 1988 (the Broads Plan and byelaws, respectively)(d);
  - (iv) section 66 of the Environment Act 1995 (National Park Management Plans)(e);
  - (v) sections 38 and 39 of the Flood and Water Management Act 2010 (which relate to incidental flooding or coastal erosion)(f);
- (c) any function exercisable in relation to town and country planning.

(6) In section 123(3)(a) of the Marine Act (creation of network of conservation sites), as it applies in relation to the marine area(g), the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 124 of the Marine Act (report) applies in relation to that objective.

(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), appropriate account must be taken of economic and recreational requirements.

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(a) Sections 17, 18, 20 and 21(6) were amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), Schedule 11, paragraphs 15 to 17. Section 18 was amended by the Arbitration Act 1996 (c. 23), Schedule 4. Section 20 was amended by the Telecommunications Act 1984 (c. 12), Schedule 4, paragraph 28; the Water Act 1989 (c. 15), Schedule 25, paragraph 13; and the Communications Act 2003 (c. 21), of Schedule 17, paragraph 20.

(b) Section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 30; the Local Government (Scotland) Act 1973 (c. 65), Schedule 27, paragraph 100 and Schedule 29; the Local Government and Planning (Scotland) Act 1982 (c. 43), section 10; the 2006 Act, Schedule 11, paragraphs 15 and 19; the Environment (Wales) Act 2016 (anaw 3), Schedule 2, paragraph 1(4); and S.I. 2013/755 (W. 90). Section 90 was amended by the Countryside Act 1968 (c. 41), Schedule 5; the Local Government Act 1972, Schedule 17, paragraph 39; the Environmental Protection Act 1990 (c. 43), Schedule 8, paragraph 1(14); the 2006 Act, Schedule 11, paragraph 10(1); and S.I. 2013/755 (W. 90).

(c) 1967 c. 10. Sections 3 and 10 were amended by S.I. 1999/1747 and 2013/755 (W. 90). Section 3 was amended by S.I. 2017/524. Section 10 was amended by the Nature Conservation (Scotland) Act 2004 (asp 6), Schedule 7, paragraph 2.

(d) 1988 c. 4. Section 6 was amended by the 2006 Act, Schedule 11, paragraph 112(a).

(e) 1995 c. 25. Section 66 was amended by the 2006 Act, Schedule 11, paragraph 143; the Planning (Wales) Act 2015 (anaw 4), Schedule 2, paragraph 20; the Environment (Wales) Act 2016. Schedule 2, paragraph 6; and by S.I. 2013/755 (W. 90).

(f) 2010 c. 29. Sections 38 and 39 were amended by S.I. 2013/755 (W. 90).

(g) Section 123(3)(a) applies in relation to the “UK marine area”, which is defined in section 42 of the Marine Act in terms which include the area comprised in the marine area as defined in these Regulations.

(8) So far as lies within its powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).

(9) The appropriate authority must take any steps it considers necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the bodies mentioned in those paragraphs.

(10) After consultation with the appropriate nature conservation body, the appropriate authority must give guidance to the Environment Agency, the Forestry Commissioners, the Natural Resources Body for Wales, local authorities, the Broads Authority, National Park authorities and any other competent authority it considers appropriate—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of habitat for wild birds is sufficient; and
- (b) on the steps that it may be appropriate to take under paragraph (1) or (2).

(11) In exercising a function to which paragraph (1) or (2) applies, a body to which guidance has been given under paragraph (10) must have regard to that guidance.

(12) In this regulation—

- (a) references in paragraphs (1), (9) and (10) to the appropriate authority—
  - (i) to the extent that this regulation applies in relation to Scotland, include the Secretary of State exercising functions in relation to Scotland; and
  - (ii) to the extent that this regulation applies in relation to Northern Ireland, include the Secretary of State exercising functions in relation to Northern Ireland;
- (b) in paragraphs (1) and (2), “marine area” includes—
  - (i) the Northern Ireland inshore region; and
  - (ii) the Scottish inshore region; and
- (c) “local authority” has the same meaning as in regulation 7.

### **Review by appropriate nature conservation body**

**11.**—(1) The appropriate nature conservation body must, from time to time—

- (a) review the extent to which the objective in regulation 10(3) has been met, other than in relation to the marine area;
- (b) set out the conclusions of the review in a report, including any recommendations for further action; and
- (c) send the report to the appropriate authority.

(2) In carrying out the review, the nature conservation bodies must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.

(3) The nature conservation bodies may act together to fulfil the duty under paragraph (1).

## **PART 2**

### **Conservation of Natural Habitats and Habitats of Species**

#### *European sites*

### **Selection of sites eligible for identification as of Community importance**

**12.**—(1) On the basis of the criteria set out in Annex III (Stage 1) to the Habitats Directive, and relevant scientific information, the appropriate authority must propose a list of sites in England or



Wales which are eligible for identification as of Community importance, indicating with respect to each site—

- (a) which natural habitat types in Annex I to the Habitats Directive the site hosts; and
- (b) which species in Annex II to the Habitats Directive that are native to Great Britain the site hosts.

(2) For animal species ranging over wide areas, these sites must correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

(3) For aquatic species which range over wide areas, such sites are to be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction.

(4) The appropriate authority may propose modifications of the list in the light of the results of the surveillance referred to in Article 11 of the Habitats Directive (surveillance).

(5) The list, and any new site included in that list, must be transmitted to the European Commission together with information on each site including—

- (a) a map of the site,
- (b) its name, location and extent, and
- (c) the data resulting from application of the criteria specified in Annex III (Stage 1) to the Habitats Directive,

provided in a format established by the European Commission.

#### **Designation of special areas of conservation**

**13.**—(1) Once a site of Community importance in England or Wales has been adopted in accordance with the procedure laid down in Article 4(2) of the Habitats Directive (list of sites of Community importance), the appropriate authority must designate that site as a special area of conservation as soon as possible and no later than six years from the date of adoption of that site.

(2) The appropriate authority must establish priorities for the designation of sites in the light of—

- (a) the importance of the sites for the maintenance or restoration at a favourable conservation status of—
  - (i) a natural habitat type specified in Annex I to the Habitats Directive; or
  - (ii) a species specified in Annex II to the Habitats Directive;
 and for the coherence of Natura 2000; and
- (b) the threats of degradation or destruction to which the sites are exposed.

#### **Consultation as to inclusion of site omitted from the list**

**14.**—(1) Paragraph (2) applies where consultation is initiated by the European Commission in accordance with Article 5(1) of the Habitats Directive (procedure following omission of site hosting a priority natural habitat type or priority species) with respect to a site in England or Wales hosting a priority natural habitat type or priority species, and—

- (a) the appropriate authority and the European Commission agree, within the period of six months mentioned in Article 5(2) of the Habitats Directive, that the site should be selected as a site of Community importance; or
- (b) the European Council, acting on a proposal from the European Commission in pursuance of Article 5(2) of the Habitats Directive, decides that the site should be so selected in accordance with Article 5(3) of that Directive.

(2) Where this paragraph applies, for the purposes of these Regulations the site is to be treated as having been placed on the list referred to in the third sub-paragraph of Article 4(2) of the

Habitats Directive as from the date of the agreement referred to in paragraph (a) or the decision referred to in paragraph (b).

### **Classification of sites as special protection areas**

**15.**—(1) The appropriate authority must classify as special protection areas such sites in England and Wales as the authority considers necessary to ensure that the objective in paragraph (2) is met.

(2) The objective referred to in paragraph (1) is that those sites across the United Kingdom's territory which are most suitable in number and size for—

- (a) the conservation of the species listed in Annex 1 to the new Wild Birds Directive which naturally occur in that territory, and
- (b) the conservation of regularly occurring migratory species of birds not listed in Annex 1 which naturally occur in that territory,

are classified as special protection areas.

(3) The appropriate authority must make a decision as to the sites to be classified for the purpose mentioned in paragraph (1) only on the basis of relevant scientific information and—

- (a) in the case of a site to be classified for the purpose mentioned in paragraph (2)(a), on the basis of the criteria set out in Article 4(1) of the new Wild Birds Directive (classification of special protection areas); and
- (b) in the case of a site to be classified for the purpose mentioned in paragraph (2)(b), on the basis of the criteria set out in Article 4(2) of the new Wild Birds Directive.

(4) Where a site is classified under paragraph (1), the appropriate authority must provide information on that site to the Commission including—

- (a) a map or chart of the site;
- (b) its name, location and extent; and
- (c) the data resulting from application of the criteria set out in Article 4(1) or Article 4(2) of the new Wild Birds Directive.

(5) The information specified in paragraph (4) must be provided in such format as is established by the Commission.

(6) In this regulation “the United Kingdom's territory” means the United Kingdom and the offshore marine area (as defined in regulation 4(2)).

### **Notification of a proposal to classify a special protection area**

**16.**—(1) If the appropriate authority proposes to classify a site as a special protection area under regulation 15, the authority must give to the appropriate nature conservation body—

- (a) notice of that proposal; and
- (b) an accompanying statement of the reasons for that proposal.

(2) Where the appropriate nature conservation body is given notice of a proposal under paragraph (1), the body must give notice of that proposal and provide a copy of the appropriate authority's statement of reasons for that proposal to—

- (a) any of the following who in its opinion ought to be notified—
  - (i) competent authorities which exercise functions in relation to the site;
  - (ii) competent authorities which exercise functions in relation to an area adjacent to the site; and
  - (iii) every owner and occupier of the site;
- (b) such other persons as in its opinion ought to be notified; and
- (c) such other persons as the appropriate authority directs.

(3) A notice under paragraph (2) must specify the date (being not less than 12 weeks from the date of the giving of the notice) by which representations with respect to the proposal may be made to the appropriate nature conservation body.

(4) The appropriate nature conservation body must provide to the appropriate authority a report describing the representations duly made, if any, that it received about the proposal, or, where no such representations have been received, stating that fact.

(5) The appropriate authority must consider the report provided under paragraph (4).

(6) The appropriate authority may issue guidance to the appropriate nature conservation body for the purposes of its functions under this regulation, and the appropriate nature conservation body must have regard to that guidance in discharging any of those functions.

(7) The appropriate authority may vary or revoke a direction under paragraph (2)(c).

### *Register of European sites*

#### **Register of European sites**

**17.**—(1) A register of European sites, in an appropriate format, must be compiled and maintained by—

- (a) the Secretary of State, in relation to European sites in England; and
- (b) the Welsh Ministers, in relation to European sites in Wales.

(2) The registers must include—

- (a) special areas of conservation, as soon as they are designated by the appropriate authority;
- (b) sites of Community importance as soon as they are placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive, until they are designated as special areas of conservation;
- (c) any site hosting a priority natural habitat type or priority species in respect of which consultation is initiated under Article 5(1) of the Habitats Directive, during the consultation period or pending a Council decision under Article 5(3);
- (d) areas classified pursuant to Article 4(1) or (2) of the old Wild Birds Directive or the new Wild Birds Directive, as soon as they are classified by the appropriate authority; and
- (e) any site which has been proposed to the European Commission under regulation 12 until such time as regulation 8(1)(e)(i) or (ii) applies.

(3) The appropriate authority, in relation to the register for which that authority is responsible—

- (a) may amend any entry;
- (b) must remove any entry relating to a site which is no longer a European site; and
- (c) must keep a copy available for public inspection at all reasonable hours and free of charge.

(4) An entry in the register in respect of a European site other than a European marine site is a local land charge.

#### **Notification of changes to the register**

**18.**—(1) As soon as possible after including a European site in the register or amending an entry in the register, the appropriate authority must notify the appropriate nature conservation body and send to that body a copy of the new or amended entry.

(2) As soon as possible after removing an entry from the register, the appropriate authority must notify the appropriate nature conservation body.

(3) The nature conservation bodies must keep a copy of the register entries relating to European sites in their area available for public inspection at all reasonable hours and free of charge.

(4) In this regulation, and in regulation 19, “the register” means the register of European sites provided for by regulation 17.

**Notice to landowners and other bodies**

**19.**—(1) As soon as practicable after a nature conservation body receives notification under regulation 18 in relation to a European site, it must give notice to—

- (a) every owner or occupier of land within that site;
- (b) every local planning authority in whose area that site, or any part of it, is situated;
- (c) the Marine Management Organisation, if that site is a European marine site; and
- (d) such other persons as the appropriate authority may direct.

(2) Where, under paragraph (1), a nature conservation body gives notice to a person that a site has been included in the register, or that a register entry relating to a site has been amended, the nature conservation body must provide that person with a copy of the register entry.

(3) In paragraph (2), the register entry a copy of which must be provided to the person mentioned in that paragraph—

- (a) in the case of notice given under paragraph (1)(a), is the register entry (or that part of an entry) which relates to the land owned or occupied by that person; and
- (b) in the case of notice given under paragraph (1)(b), is the register entry (or that part of an entry) which relates to the land within that person’s area.

(4) The appropriate authority may give directions as to the form and content of notices under this regulation.

*Management agreements*

**Management agreements**

**20.**—(1) The appropriate nature conservation body may, for the purposes specified in paragraph (2), make an agreement (a “management agreement”) with a person who has an interest in—

- (a) land which forms part of a European site, or
- (b) land adjacent to such a site,

about the management or use of the land.

(2) A management agreement may be made for the purposes of the management, conservation, restoration or protection of the site, or any part of it.

(3) A management agreement may, in particular—

- (a) impose on the person who has an interest in the land obligations in respect of the use of the land;
- (b) impose on the person who has an interest in the land restrictions on the exercise of rights over the land;
- (c) provide for the carrying out of such work as may be expedient for the purposes of the agreement by any person or persons;
- (d) provide for any matter for which a management scheme relating to a site of special scientific interest provides (or could provide);
- (e) provide for the making of payments by either party to the other party or to any other person;
- (f) contain incidental and consequential provision.

(4) A management agreement is, unless the agreement otherwise provides—

- (a) binding on persons deriving title under or from the person with whom the appropriate nature conservation body makes the agreement; and

(b) enforceable by the appropriate nature conservation body against those persons.

(5) Paragraphs 1 to 3 of Schedule 2 to the Forestry Act 1967 (which makes provision for certain persons to enter into forestry dedication covenants)(a) apply to management agreements as they apply to forestry dedication covenants.

(6) In this regulation—

“interest in land” has the same meaning as in the 1949 Act; and

“management scheme” and “site of special scientific interest” have the same meanings as in Part 2 of the WCA 1981 (nature conservation, countryside and national parks).

### Existing agreements

**21.**—(1) For the purposes of these Regulations, any agreement made before 30th November 2017 in relation to land in England or Wales which on or after that date becomes land within a European site, or adjacent to such a site, being an agreement made under—

(a) section 16 of the 1949 Act (agreements for management of nature reserves)(b),

(b) section 15 of the Countryside Act 1968 (areas of special scientific interest)(c), or

(c) section 7 of the Natural Environment and Rural Communities Act 2006 (management agreements)(d),

has effect as from the date on which the land becomes land within a European site as if it were a management agreement entered into by Natural England or the Natural Resources Body for Wales (as the case may be) under regulation 20.

(2) Any other thing done or deemed to have been done under—

(a) any provision of Part 3 of the 1949 Act (nature conservation), or Part 6 of that Act (general, financial and supplementary) so far as it applies for the purposes of Part 3, or

(b) section 15 of the Countryside Act 1968,

in respect of any land prior to that land becoming land within a European site, or adjacent to such a site, continues to have effect as if done under the corresponding provision of these Regulations.

(3) Any reference in a relevant enactment to a nature reserve within the meaning of section 15 of the 1949 Act (meaning of “nature reserve”)(e) is to be construed as including a reference to a European site.

(4) In paragraph (3), “relevant enactment” means an enactment not contained in, or in an instrument made under, the 1949 Act or the WCA 1981.

### Certain payments under management agreements

**22.**—(1) This regulation applies where the appropriate nature conservation body offers to enter into a management agreement providing for the making of payments by it to—

(a) a person who has given notice under section 28E(1)(a) of the WCA 1981 (duties in relation to sites of special scientific interest)(f) or regulation 28(5)(a)(ii) or (b); or

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(a) 1967 c. 10. Paragraph 1 of Schedule 2 was amended by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), Schedule 4. Paragraph 3 of Schedule 2 was amended by the Endowments and Glebe Measure 1976 (1976 No. 4), Schedule 7; and the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1), Schedule 5, paragraph 14.

(b) Section 16 was amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 14; and the Environment (Wales) Act 2016 (anaw 3), Schedule 2, Part 1, paragraph 1(1) and (3).

(c) 1968 c. 41. Section 15 was amended by the WCA 1981, section 72(8); the Environmental Protection Act 1990 (c. 43), Schedule 9, paragraph 4(2) and Schedule 16, Part 6; the Countryside and Rights of Way Act 2000 (c. 37), section 75(3); the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraph 48; the Environment (Wales) Act 2016, Schedule 2, paragraph 2(1) and (3); and S.I. 2013/755 (W. 90).

(d) 2006 c. 16.

(e) Section 15 was substituted by the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraph 12.

(f) Section 28E was inserted by the Countryside and Rights of Way Act 2000, Schedule 9, paragraph 1; and subsection (1)(a) was amended by the Natural Environment and Rural Communities Act 2006, Schedule 11, paragraph 79.

- (b) a person whose application for a farm capital grant within the meaning of regulation 26 has been refused in consequence of an objection by that body.

(2) Subject to paragraph (3), such payments must be of such amounts as may be determined by the appropriate nature conservation body in accordance with guidance given by the appropriate authority.

(3) If the person with whom the agreement is to be made so requires within one month of receiving the offer, the determination of those amounts must be referred to an arbitrator to be appointed, in default of agreement, by the appropriate authority.

(4) Where the amounts determined by the arbitrator exceed those determined by the appropriate nature conservation body, that body must—

- (a) amend the offer so as to give effect to the arbitrator's determination; or
- (b) except in the case of an offer made to a person whose application for a farm capital grant has been refused in consequence of an objection by the appropriate nature conservation body, withdraw the offer.

### *Control of potentially damaging operations*

#### **Notification of potentially damaging operations**

**23.**—(1) This regulation and regulation 24 apply where a notification is in force under section 28 of the WCA 1981 (sites of special scientific interest)(a) in relation to land which is or forms part of a European site.

(2) The appropriate nature conservation body may, for the purpose of securing compliance with the requirements of the Directives, at any time vary the notification with respect to—

- (a) the flora, fauna or geological or physiographical features by reason of which the land is of special interest; or
- (b) any operations appearing to the appropriate nature conservation body to be likely to damage that flora or fauna or those features.

#### **Assessment of implications for European sites**

**24.**—(1) Where it appears to the appropriate nature conservation body that a notice of a proposal under section 28E(1)(a) of the WCA 1981 relates to an operation which is or forms part of a plan or project which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

it must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

(2) In the light of the conclusions of the assessment, it may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c).

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(a) Section 28 was substituted by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 9, paragraph 1, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 79; and the Marine Act, Schedule 13, Part 2, paragraph 2.

**Sites of special scientific interest which become European sites: duty to review**

**25.**—(1) This regulation applies where a consent for an operation has been given under section 28E(3)(a) of the WCA 1981(a) (or has effect as if given under that section(b)) in relation to land included in a site of special scientific interest which, after the date of that consent, becomes land within a European site.

(2) The appropriate nature conservation body must, as soon as reasonably practicable, review the consent and affirm, modify or withdraw it.

(3) Regulation 24 applies for the purposes of paragraph (2), as if—

- (a) the reference in regulation 24(1) to a notice of a proposal under section 28E(1)(a) of the WCA 1981 were a reference to a consent under section 28E(3)(a) of that Act; and
- (b) the reference to giving consent in regulation 24(2) were a reference to affirming that the consent should remain in force.

**Farm capital grants**

**26.**—(1) Where an application for a farm capital grant is made as respects expenditure incurred or to be incurred for the purpose of activities on land within a European site, the appropriate authority—

- (a) must, so far as may be consistent with the purposes of the grant provisions, exercise its functions so as to further the conservation of the protected features; and
- (b) where the appropriate nature conservation body has objected to the making of the grant on the ground that the activities in question have destroyed or damaged, or will destroy or damage, those protected features, must not make the grant except after considering the objection.

(2) Where in consequence of an objection by the appropriate nature conservation body, an application for a grant as respects expenditure to be incurred is refused on the ground that the activities in question will destroy or damage protected features, the appropriate nature conservation body must, within three months of its receiving notice of the appropriate authority's decision, offer to enter into a management agreement in the terms of a draft submitted to the applicant—

- (a) imposing restrictions as respects those activities; and
- (b) providing for the making by it of payments to the applicant.

(3) In this regulation—

“farm capital grant” means—

- (a) a grant under a scheme made under section 29 of the Agriculture Act 1970 (farm capital grants)(c); or
- (b) a grant under regulations made under section 2(2) of the European Communities Act 1972(d) to a person carrying on an agricultural business within the meaning of those regulations in respect of expenditure incurred or to be incurred for the purposes of or in connection with that business, being expenditure of a capital nature or incurred in connection with expenditure of a capital nature;

“grant provisions” means—

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(a) Section 28E(3)(a) was amended by the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 79.

(b) See paragraph 8(1)(b) of Schedule 11 to the Countryside and Rights of Way Act 2000 (c. 37).

(c) 1970 c. 40. Section 29 was amended by the Agriculture (Miscellaneous Provisions) Act 1976 (c. 55), section 15; the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; and the Statute Law (Repeals) Act 1986 (c. 12).

(d) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1); and the European Union (Amendment) Act 2008 (c. 7), Schedule 1(1), paragraph 1.

- (a) in the case of a grant described in paragraph (a) of the definition of “farm capital grant”, the scheme under which the grant is made and section 29 of the Agriculture Act 1970;
  - (b) in the case of a grant of a kind described in paragraph (b) of the definition of “farm capital grant”, the regulations under which the grant is made and the EU instrument in pursuance of which the regulations were made;
- “protected features”, in relation to a European site, means the flora, fauna, or geological or physiological features by reason of which the land is a European site.

#### *Special nature conservation orders*

#### **Power to make special nature conservation order**

**27.**—(1) The appropriate authority may, after consultation with the appropriate nature conservation body, make in respect of any land within a European site an order (a “special nature conservation order”) specifying operations (whether on land specified in that order or elsewhere and whether or not within the European site) which appear to the appropriate authority to be of a kind which, if carried out in certain circumstances or in a particular manner, would be likely to destroy or damage protected features.

(2) A special nature conservation order may be amended or revoked by a further order.

(3) Schedule 1 has effect with respect to the making, confirmation and coming into operation of special nature conservation orders and amending or revoking orders.

(4) A special nature conservation order specifying operations on land is a local land charge.

(5) If an order under paragraph (1) specifies any operation of a kind not carried out, or proposed to be carried out, on land within a European site, the order must specify the operation by reference to the place where it is being, or is proposed to be, carried out.

(6) In this regulation, and in regulation 28, “protected features” has the meaning given by regulation 26(3).

#### **Restriction on carrying out operations specified in order**

**28.**—(1) In respect of any land within a European site in respect of which a special nature conservation order is made, the appropriate authority may serve a notice (a “stop notice”) on any person carrying out, or proposing to carry out, any operation of a kind specified in that order which appears to the appropriate authority to be likely to destroy or damage protected features.

(2) The stop notice must specify—

- (a) details of the operation;
- (b) details of the European site to which the notice relates; and
- (c) the date on which the notice takes effect.

(3) Where the identity of a person carrying out, or proposing to carry out, the operation is not reasonably ascertainable, the appropriate authority may, instead of serving a stop notice, publish a notice in at least one local newspaper circulating in the area in which the land to which the notice relates is situated, and affix a copy or copies of the notice to some conspicuous object or objects on the land to which the notice relates.

(4) A person on whom a stop notice is served must not carry out on any land within a European site in respect of which a special nature conservation order is in force, or in the place by reference to which the operation is specified, any operation specified in the order, unless the notice condition specified in paragraph (5) and the consent condition specified in paragraph (6) are fulfilled.

(5) The notice condition is—

- (a) where the operation is carried out on land, that—
  - (i) the operation is carried out, or caused or permitted to be carried out, by the owner or occupier of the land, and



- (ii) after service of the stop notice, one of them has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out; and
  - (b) in any other case, that after service of the stop notice, the person proposing to carry out the operation has given the appropriate nature conservation body written notice of a proposal to carry out the operation, specifying its nature and where it is proposed to carry it out.
- (6) The consent condition is—
  - (a) that the operation is carried out with the written consent of the appropriate nature conservation body; or
  - (b) that the operation is carried out in accordance with the terms of a management agreement.
- (7) A consent under paragraph (6)(a) may be given—
  - (a) subject to conditions specified in the consent; and
  - (b) for a limited period so specified.
- (8) A person who, without reasonable excuse, contravenes paragraph (4) commits an offence and is liable (whether on summary conviction or on conviction on indictment) to a fine.
- (9) For the purposes of paragraph (8) it is a reasonable excuse for a person to carry out an operation if—
  - (a) the operation was an emergency operation particulars of which (including details of the emergency) were notified to the appropriate nature conservation body as soon as practicable after the commencement of the operation; or
  - (b) the operation was authorised by a planning permission granted on an application under Part 3 of the TCPA 1990 (control over development).
- (10) For the purposes of this regulation and regulations 29 and 30—
  - (a) a “stop notice” means a notice served under paragraph (1);
  - (b) references to the service of a stop notice are taken to mean (in an appropriate case) the publication and affixing of a notice under paragraph (3); and
  - (c) where a notice is published and affixed under paragraph (3), any person carrying out an operation specified in the notice is taken to be a person on whom a stop notice is served.

#### **Assessment of implications for European sites after service of stop notice**

**29.**—(1) Where it appears to the appropriate nature conservation body that an application for consent under regulation 28(6)(a) relates to an operation which is or forms part of a plan or project which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

it must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.

(2) In the light of the conclusions of the assessment, it may give consent for the operation only after having ascertained that the plan or project will not adversely affect the integrity of the site.

(3) Where the appropriate nature conservation body refuses consent, it must give reasons for its decision.

(4) A person on whom a stop notice is served may—

- (a) within two months of receiving notice of the refusal of consent, or
- (b) if no notice of a decision is received by that person, within three months of an application for consent being made,

by notice in writing to the appropriate nature conservation body require it to refer the matter as soon as possible to the appropriate authority.

(5) If, following a referral under paragraph (4), the appropriate authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (6), may be of a social or economic nature), the appropriate authority may direct the appropriate nature conservation body to give consent to the operation.

(6) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (5) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons which the appropriate authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest.

(7) Where the appropriate authority directs the appropriate nature conservation body to give consent under paragraph (5), the appropriate authority must secure that such compensatory measures are taken as are necessary to ensure that the overall coherence of Natura 2000 is protected.

(8) This regulation does not apply in relation to a site which is a European site by reason of regulation 8(1)(c).

### **Compensation for effect of stop notice**

**30.**—(1) Where the appropriate authority has served a stop notice on any person, the appropriate nature conservation body must pay compensation to any person who—

- (a) at the time at which the notice is served has an interest in affected relevant land; and
- (b) on a claim duly made to the appropriate nature conservation body, shows that the value of that interest is less than it would have been if the notice had not been served.

(2) No claim for compensation may be made in respect of an order unless the appropriate authority has given notice of the decision in respect of that order under paragraph 6(1) or (2) of Schedule 1.

(3) The amount of the compensation payable is the difference between the value of the interest and what that value would have been had a stop notice not been served.

(4) For this purpose—

- (a) an interest in land is to be valued at the time when the stop notice is served; and
- (b) where a person, by reason of having more than one interest in affected relevant land, makes more than one claim in respect of the same restriction having effect by virtue of the service of a stop notice, the various interests in respect of which that person claims compensation are to be valued together.

(5) Section 10 of the Land Compensation Act 1973 (mortgages, trusts of land and settlements)(a) applies in relation to compensation under this regulation as it applies in relation to compensation under Part 1 of that Act.

(6) For the purposes of assessing compensation under this regulation, the rules set out in section 5 of the Land Compensation Act 1961 (rules for assessing compensation on a compulsory acquisition)(b) have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

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(a) 1973 c. 26. Section 10 was amended by the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), Schedule 3, paragraph 13.

(b) 1961 c. 33. Section 5 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 15, paragraph 1; and by S.I. 2009/1307. It is prospectively amended by the Neighbourhood Planning Act 2017 (c. 20), section 32(1) and (2), from a date to be appointed.

(7) Interest is payable in relation to compensation, at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 (rate of interest after entry on land), from the date of the claim until payment.

(8) In the case of any dispute as to compensation—

- (a) the Upper Tribunal has the function of determining the dispute; and
- (b) section 4 of the Land Compensation Act 1961 (costs)(a) applies in relation to the determination, subject to any necessary modifications.

(9) In this regulation—

“affected relevant land” means land which forms part of an agricultural unit which comprises land to which the stop notice relates;

“agricultural unit” means land which is occupied by a person as a unit for agricultural purposes, including any dwelling or other building occupied by that person for the purpose of farming the land.

### Restoration orders

**31.**—(1) Where a person (“P”) is convicted of an offence under regulation 28(8), the court may, in addition to dealing with P in any other way, make an order (a “restoration order”) requiring P to carry out, within such period as may be specified in the order, such operations for the purpose of restoring the land to its former condition as may be so specified.

(2) A restoration order made on conviction on indictment is to be treated for the purposes of section 30 of the Criminal Appeal Act 1968 (restitution of property)(b) as an order for the restitution of property.

(3) In the case of a restoration order made by a magistrates’ court, the period specified in the order does not begin to run—

- (a) in any case until the end of the period for the time being prescribed by law for the giving of notice of appeal against a decision of a magistrates’ court; and
- (b) where notice of appeal is given within the period so prescribed, until determination of the appeal.

(4) At any time before a restoration order has been fully complied with, the court may, on the application of the person subject to the order, discharge or vary the order if it appears to the court that a change in circumstances has made compliance with the order impracticable or unnecessary.

(5) A person who fails without reasonable excuse to comply with a restoration order commits an offence and is liable on summary conviction to a fine.

(6) A person who continues to fail to comply with a restoration order, following conviction under paragraph (5), may be proceeded against for a further offence from time to time until the order is complied with.

(7) If, within the period specified in a restoration order, any operations specified in the order have not been carried out, the appropriate nature conservation body may enter the land and carry out those operations and recover from the person subject to the order any expenses reasonably incurred by it in doing so.

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(a) Section 4 was amended by S.I. 2009/1307.

(b) 1968 c. 19. Section 30 was substituted by the Criminal Justice Act 1988 (c. 33), Schedule 15, paragraph 28, and amended by the Constitutional Reform Act 2005 (c. 4), Schedule 9, paragraph 16(2).

*Byelaws*

**Power to make byelaws**

**32.**—(1) The appropriate nature conservation body may make byelaws for the protection of a European site under section 20 of the 1949 Act (byelaws for protection of nature reserves)(a).

(2) Such byelaws may, in particular, make the kinds of provision mentioned in this regulation, subject to regulation 33(1).

(3) Byelaws may—

- (a) provide for prohibiting or restricting the entry into, or movement within, the site of persons, vehicles, boats or animals;
- (b) prohibit or restrict the killing, taking, molesting or disturbance of living creatures of any description in the site, the taking, destruction or disturbance of eggs of any such creature, the taking of, or interference with, vegetation of any description in the site, or the doing of anything in the site which will interfere with the soil or damage any object in the site;
- (c) contain provisions prohibiting the depositing of rubbish and the leaving of litter in the site; and
- (d) prohibit or restrict, or provide for prohibiting or restricting, the lighting of fires in the site or the doing of anything likely to cause a fire in the site.

(4) Byelaws may prohibit or restrict any activity referred to in paragraph (3) within such area surrounding or adjoining the site as appears to the appropriate nature conservation body necessary for the protection of the site.

(5) Where entry into, or any activity within, the site or any such surrounding or adjoining area as is mentioned in paragraph (4) would otherwise be unlawful under byelaws made under this regulation, the byelaws may provide for the issue of permits authorising such entry or activity, on such terms and subject to such conditions as may be specified in the byelaws.

(6) Byelaws may be made so as to relate either to the whole or to any part of the European site, or of any such surrounding or adjoining area as is mentioned in paragraph (4), and may make different provision for different parts of the site.

(7) This regulation does not apply in relation to a European marine site (but see regulation 40 (European marine sites: byelaws and orders)).

**Byelaws: supplementary provisions**

**33.**—(1) Relevant byelaws must not interfere with—

- (a) the exercise by any person of a right vested in that person as owner, lessee or occupier of land in the European site, or in any such surrounding or adjoining area as is mentioned in regulation 32(4);
- (b) the exercise of any public right of way;
- (c) the exercise of any functions of statutory undertakers;
- (d) the exercise of any functions of an internal drainage board(b) or the Commissioners appointed under the Tweed Fisheries Act 1969(c); or
- (e) the provision of an electronic communications code network or the exercise of any right conferred by or in accordance with the electronic communications code on the provider of any such network.

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(a) Section 20 was amended by the Telecommunications Act 1984 (c. 12), Schedule 4, paragraph 28; the Water Act 1989 (c. 15), Schedule 25, paragraph 13; the Communications Act 2003 (c. 21), Schedule 17, paragraph 20(2); and the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 15(d).

(b) See section 1 of the Land Drainage Act 1991 (c. 59).

(c) 1969 c.xxiv.

(2) Sections 236 to 237 and 237A to 238 of the Local Government Act 1972 (procedure, etc., for, offences against and evidence of byelaws)(a) apply to all relevant byelaws as if the appropriate nature conservation body were a local authority within the meaning of that Act.

(3) In relation to relevant byelaws, the confirming authority for the purposes of section 236 of the Local Government Act 1972(b) is the appropriate authority.

(4) The appropriate nature conservation body may take such steps as may be necessary for the purpose of enforcing byelaws made by it.

(5) In this regulation and in regulations 34 and 35, “relevant byelaws” means byelaws under section 20 of the 1949 Act as it applies by virtue of regulation 32.

### Compensation for effect of byelaws

**34.**—(1) Where the exercise of any right vested in a person (“P”), whether by reason of P’s being entitled to any interest in land or by virtue of a licence or agreement, is prevented or hindered by the coming into operation of relevant byelaws, P is entitled to receive compensation from the appropriate nature conservation body.

(2) Any dispute arising on a claim for any such compensation is to be determined by the Upper Tribunal.

(3) For the purposes of any such reference to the Upper Tribunal, section 4 of the Land Compensation Act 1961 (costs) has effect with the substitution for references to the acquiring authority of references to the authority from whom the compensation in question is claimed.

(4) Rules (2) to (4) of the Rules set out in section 5 of that Act (rules for assessing compensation on a compulsory acquisition) apply to the calculation of any such compensation, in so far as it is calculated by reference to the depreciation of the value of an interest in land.

(5) In the case of an interest in land subject to a mortgage—

- (a) any such compensation in respect of the depreciation of that interest is to be calculated as if the interest were not subject to the mortgage;
- (b) a claim or application for the payment of any such compensation may be made by any person who when the byelaws giving rise to the compensation were made was the mortgagee of the interest, or by any person claiming under such a person, but without prejudice to the making of a claim or application by any other person;
- (c) subject to sub-paragraph (d), a mortgagee is not entitled to any such compensation in respect of that mortgagee’s interest as such; and
- (d) any compensation payable in respect of the interest subject to the mortgage must be paid to the mortgagee or, where there is more than one mortgagee, to the first mortgagee, and must in either case be applied by the mortgagee as if it were proceeds of sale.

### Continuation in force of existing byelaws

**35.** Any byelaws in force under section 20 of the 1949 Act in relation to land which on or after 30th November 2017 becomes land within a European site, or adjacent to such a site—

- (a) have effect as if they are relevant byelaws; and
- (b) are to be construed as if originally made as such byelaws (see also regulation 141(5)).

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(a) 1972 c. 70. Sections 236 and 238 were amended by the Local Government Byelaws (Wales) Act 2012 (anaw 2), Schedule 2, paragraph 9(3) and (5); by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 6, paragraphs 34 and 36; and by S.I. 2001/3719. Section 236 was amended by the Civil Aviation Act 1982 (c. 16), Schedule 15, paragraph 11; the Local Government Act 1985 (c. 51), Schedule 14, paragraph 31(1); the Water Act 1989 (c. 15), Schedule 27, Part 1; the Local Government (Wales) Act 1994 (c. 19), Schedule 15, paragraph 50; the Greater London Authority Act 1999 (c. 29), sections 76 and 166; and the Local Government and Public Involvement in Health Act 2007 (c. 28), section 129(2).

(b) See definition of “the confirming authority” in subsection (11).

*Powers of compulsory acquisition*

**Powers of compulsory acquisition**

**36.**—(1) The appropriate nature conservation body may acquire compulsorily any interest in land in a European site where it is satisfied that either of the conditions in paragraph (2) is met.

(2) The conditions are—

- (a) that, as respects that interest, it is unable to conclude a management agreement on terms appearing to it to be reasonable; or
- (b) where it has entered into a management agreement as respects such an interest, that a breach of the agreement has occurred which prevents or impairs the satisfactory management of the European site.

(3) Such a breach as is mentioned in paragraph (2)(b) is not to be treated as having occurred by virtue of any act or omission capable of remedy unless there has been default in remedying it within a reasonable time after notice given by the appropriate nature conservation body requiring that act or omission to be remedied.

(4) Any dispute arising as to whether there has been such a breach of a management agreement is to be determined by an arbitrator appointed by the Lord Chancellor.

(5) The power of compulsory acquisition conferred by paragraph (1) on the appropriate nature conservation body may be exercised in any particular case only after authorisation by the appropriate authority.

(6) The Acquisition of Land Act 1981<sup>(a)</sup> and the Compulsory Purchase Act 1965<sup>(b)</sup> apply in relation to the acquisition of any interest in land under paragraph (1).

(7) In this regulation, an “interest”, in relation to land, includes any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an interest in land or by virtue of a licence or agreement, and in particular includes sporting rights.

*European marine sites*

**Marking of site and advice by nature conservation bodies**

**37.**—(1) The appropriate nature conservation body may deposit or remove markers indicating the existence and extent of a European marine site.

(2) This power is exercisable subject to the obtaining of any necessary marine licence under Part 4 of the Marine Act or any approval required to be obtained from the appropriate authority<sup>(c)</sup> under article 26(2) of the Marine Licensing (Exempted Activities) Order 2011<sup>(d)</sup> or article 25(2) of the Marine Licensing (Exempted Activities) (Wales) Order 2011<sup>(e)</sup>.

(3) As soon as possible after a site becomes a European marine site, the appropriate nature conservation body must advise other relevant authorities as to—

- (a) the conservation objectives for that site; and
- (b) any operations which may cause deterioration of natural habitats or the habitats of species, or disturbance of species, for which the site has been designated.

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(a) 1981 c. 67.

(b) 1965 c. 56.

(c) For the purposes of regulation 37, the “appropriate authority” is defined in regulation 3(1) of these Regulations as the Secretary of State in relation to England and the Welsh Ministers in relation to Wales. The person responsible for granting approval under article 26(2) of the Marine Licensing (Exempted Activities) Order 2011 or article 25(2) of the Marine Licensing (Exempted Activities) (Wales) Order 2011 is the Secretary of State and Welsh Ministers respectively. (See definition of “licensing authority” in those Regulations).

(d) S.I. 2011/409, to which there are amendments not relevant to these Regulations.

(e) S.I. 2011/559 (W. 81), to which there are amendments not relevant to these Regulations.

### **Management scheme for European marine site**

**38.**—(1) The relevant authorities, or any of them, may establish for a European marine site a management scheme under which their functions (including any power to make byelaws) are to be exercised so as to secure compliance with the requirements of the Directives in relation to that site.

(2) Only one management scheme may be made for each European marine site.

(3) A management scheme may be amended from time to time.

(4) An authority which has established a management scheme under paragraph (1) must as soon as practicable thereafter send a copy of it to the appropriate nature conservation body.

### **Direction to establish or amend management scheme**

**39.**—(1) The appropriate authority may give directions to the relevant authorities, or any of them, as to the establishment of a management scheme for a European marine site.

(2) Directions may, in particular—

- (a) require conservation measures specified in the direction to be included in the scheme;
- (b) appoint one of the relevant authorities to co-ordinate the establishment of the scheme;
- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the appropriate authority is required before the scheme is established; and
- (e) require any relevant authority to supply to the appropriate authority such information concerning the establishment of the scheme as may be specified in the direction.

(3) The appropriate authority may give directions to the relevant authorities, or any of them, as to the amendment of a management scheme for a European marine site, either generally or in any particular respect.

(4) Any direction under this regulation must be in writing and may be varied or revoked by a further direction.

### **European marine sites: byelaws and orders**

**40.**—(1) The Marine Management Organisation may make byelaws for the protection of a European marine site in England under section 129 of the Marine Act (byelaws for protection of marine conservation zones in England).

(2) The Welsh Ministers may make orders for the protection of a European marine site in Wales under section 134 of that Act (orders for protection of marine conservation zones in Wales).

(3) The provisions of Chapter 1 of Part 5 of that Act (marine conservation zones) relating to byelaws under section 129 or orders under section 134 apply, with the modifications described in paragraph (4), in relation to byelaws made by virtue of paragraph (1) or (as the case may be) orders made by virtue of paragraph (2).

(4) The modifications are—

- (a) any reference to an MCZ is to be read as a reference to a European marine site;
- (b) in sections 129(1) and 134(1), the reference to furthering the conservation objectives stated for an MCZ is to be read as a reference to protecting a European marine site;
- (c) the reference in section 129(3)(c) to hindering the conservation objectives stated for an MCZ is to be read as a reference to damaging a European marine site.

### *Nature conservation policy in planning contexts*

#### **Nature conservation policy in planning contexts**

**41.**—(1) For the purposes of the relevant provisions, policies relating to the development and use of land or in respect of the conservation of the natural beauty and amenity of the land are to be

taken to include policies encouraging the management of features of the landscape of the kinds described in paragraph (3).

(2) In paragraph (1), the “relevant provisions” means—

(a) in relation to the development and use of land—

(i) section 17(3) of the Planning and Compulsory Purchase Act 2004 (local development documents)(a); and

(ii) section 62(2)(b) of that Act (local development plan); and

(b) in relation to the conservation of the natural beauty and amenity of the land—

(i) section 12(3A) of the TCPA 1990 (preparation of unitary development plan)(b);

(ii) section 31(3) of that Act (structure plans: continuity, form and content)(c); and

(iii) section 36(3) of that Act (local plans)(d).

(3) The features of the landscape referred to in paragraph (1) are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems of marking field boundaries) or their function as “stepping stones” (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.

(4) Where the Secretary of State considers it necessary, the Secretary of State must include in a national policy statement under Part 2 of the Planning Act 2008 (national policy statements)(e) policy that encourages the management of features of the landscape of the kinds described in paragraph (3).

## PART 3

### Protection of species

#### *Protection of animals*

#### **European protected species of animals**

42.—(1) Schedule 2 lists those species of animals listed in Annex IV(a) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of animal are to any of those species.

#### **Protection of certain wild animals: offences**

43.—(1) A person who—

(a) deliberately captures, injures or kills any wild animal of a European protected species,

(b) deliberately disturbs wild animals of any such species,

(c) deliberately takes or destroys the eggs of such an animal, or

(d) damages or destroys a breeding site or resting place of such an animal,

is guilty of an offence.

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(a) 2004 c. 5. Section 17(3) was amended by the Planning Act 2008 (c. 29), section 180(3)(b).

(b) Section 12(3A) was inserted by the Planning and Compensation Act 1991 (c. 34), paragraph 2(1) of Schedule 4, and was repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 9, but (in relation to England only) subject to transitional provisions contained in Schedule 8 to that Act.

(c) Section 31(3) was substituted by the Planning and Compensation Act 1991 (c. 34) (“the 1991 Act”), Schedule 4, paragraph 16, and was repealed by the Planning and Compulsory Purchase Act 2004 (c. 5) (“the 2004 Act”), Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(d) Section 36 was substituted by the 1991 Act, Schedule 4, paragraph 17, and was repealed by the 2004 Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(e) 2008 c. 29.



(2) For the purposes of paragraph (1)(b), disturbance of animals includes in particular any disturbance which is likely—

- (a) to impair their ability—
  - (i) to survive, to breed or reproduce, or to rear or nurture their young; or
  - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
- (b) to affect significantly the local distribution or abundance of the species to which they belong.

(3) It is an offence for any person—

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(4) Paragraph (3) applies to—

- (a) any live or dead animal or part of an animal—
  - (i) which has been taken from the wild, and
  - (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and
- (b) anything derived from such an animal or any part of such an animal.

(5) Paragraphs (1) and (3) apply regardless of the stage of the life of the animal in question.

(6) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the animal in question is presumed to have been a wild animal.

(7) In any proceedings for an offence under paragraph (3), where it is alleged that an animal or a part of an animal was taken from the wild, it is presumed, unless the contrary is shown, that that animal or part of an animal was taken from the wild.

(8) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

(9) Guidance as to the application of the offences in paragraph (1)(b) or (d) in relation to particular species of animals or particular activities may be published by—

- (a) the appropriate authority; or
- (b) the appropriate nature conservation body, with the approval of the appropriate authority.

(10) In proceedings for an offence under paragraph (1)(b) or (d), a court must take into account any relevant guidance published under paragraph (9).

(11) In deciding upon the sentence for a person convicted of an offence under paragraph (1)(d), the court must in particular have regard to whether that person could reasonably have avoided the damage to or destruction of the breeding site or resting place concerned.

#### **Protection of certain wild animals: defences**

**44.**—(1) A person (“P”) is not guilty of the offence under regulation 43(1)(a) of deliberately capturing a wild animal of a European protected species, or an offence under regulation 43(3)(a) or (b), if P shows that the act in question—

- (a) was in relation to an animal that had been disabled otherwise than by P’s unlawful act; and
- (b) was done solely for one or both of the purposes of—
  - (i) tending it and releasing it when no longer disabled; or
  - (ii) releasing it after it had been tended.

(2) A person (“P”) is not guilty of an offence under regulation 43(1)(a) or 43(3)(a) or (b) if P shows that the act in question—

- (a) was in relation to an animal that had been seriously disabled otherwise than by P’s unlawful act and that there was no reasonable chance of its recovering; and
- (b) was done solely for one or both of the purposes of—
  - (i) ending the animal’s life; or
  - (ii) disposing of it (otherwise than by sale or exchange) as soon as practicable after it was dead.

(3) A person is not guilty of the offence under regulation 43(1)(a) of deliberately injuring a wild animal of a European protected species if that person shows that this was done solely—

- (a) for the purpose of taking a sample by virtue of any of the sampling provisions; or
- (b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (11) (wherever the offence was committed).

(4) A person is not guilty of an offence under regulation 43(3)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—

- (a) investigating whether an offence specified in paragraph (11) was being or had been committed (wherever the offence was committed);
- (b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or
- (c) giving effect to an order under any of the forfeiture provisions.

(5) Subject to paragraph (6), a person who shows that the animal or part of the animal in question, or the animal or part of the animal from which the thing in question is derived, was lawfully taken from the wild is not guilty of an offence under regulation 43(3).

(6) The defence in paragraph (5) does not apply—

- (a) in respect of the offences in regulation 43(3)(a) and (b) if—
  - (i) the animal or part in question is an animal, or part of an animal, of a European protected species or of the species *Lacerta vivipara pannonica* (viviparous lizard) or *Lycaena dispar* (the large copper butterfly), or the thing in question is derived from such an animal; and
  - (ii) the animal, part or thing in question was in the defendant’s possession or control, or transported by the defendant, for the purpose of sale or exchange; or
- (b) in respect of the offences in regulation 43(3)(c) and (d), if the animal or part in question is an animal, or part of an animal, of any of the species referred to in sub-paragraph (a)(i), or the thing in question is derived from such an animal.

(7) For the purposes of paragraph (5) an animal, or part of an animal, is treated as having been lawfully taken from the wild if—

- (a) it was taken from the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or
- (b) it was taken from the wild elsewhere.

(8) A person is not guilty of an offence under regulation 43(3) if that person shows that the animal or part of the animal, or the animal from which the thing in question is derived—

- (a) is of a species listed in the second column of Schedule 3 and was from a population occurring in a country or area which is specified in respect of that species in the third column of that Schedule;
- (b) is of the species *Capra aegagrus* (wild goat) and was not from a naturally occurring population;
- (c) is of the subspecies *Ovis gmelini musimon* (European mouflon) and was not from a naturally occurring population in Corsica or Sardinia; or

- (d) is of the species *Coregonus oxyrhynchus* (houting) and either was from Finland or was not from an anadromous population.
- (9) The defences in paragraphs (1) to (4) do not apply where it is shown by the prosecution that the defendant's action did not satisfy the conditions in paragraph (10).
- (10) Those conditions are that—
- (a) there was no satisfactory alternative; and
  - (b) the action was not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- (11) For the purposes of paragraphs (3)(b) and (4)(a) and (b), the specified offences are—
- (a) an offence under any of the following sections of the WCA 1981—
    - (i) section 9 (protection of certain wild animals)(a);
    - (ii) section 11 (prohibition of certain methods of killing or taking wild animals)(b);
    - (iii) section 17 (false statements made for obtaining registration or licence etc.)(c); or
    - (iv) section 18 (attempts to commit offences etc.) which relates to an offence under section 9 or 11;
  - (b) an offence under any of the following provisions—
    - (i) regulation 43 (protection of certain wild animals: offences);
    - (ii) regulation 45 (prohibition of certain methods of capturing or killing wild animals);
    - (iii) regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); or
    - (iv) regulation 122 (attempts and possession of means of committing offence), where that offence relates to an offence under regulation 43 or 45;
  - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
  - (d) an offence under regulation 45 (protection of wild animals listed in Annex IV(a) to the Habitats Directive), 47 (prohibition of certain methods of capturing or killing wild animals) or 57 (false statements made for obtaining licence) of the Offshore Marine Conservation Regulations, an offence of attempting to commit an offence under regulation 45 or 47 of those Regulations, or an offence under regulation 71 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 45 or 47 of those Regulations.
- (12) For the purposes of any proceedings for an offence under regulation 43(3), the common names given in parentheses in paragraphs (6) and (8) are to be disregarded.

### **Prohibition of certain methods of capturing or killing wild animals**

- 45.**—(1) This regulation applies in relation to the capturing or killing of a wild animal—
- (a) of any of the species listed in Schedule 4 (which lists those species listed in Annex V(a) to the Habitats Directive, and to which Article 15 of that Directive applies, which have a natural range which includes any area of Great Britain); or
  - (b) of a European protected species, where the capturing or killing of such animals is permitted in accordance with these Regulations.
- (2) It is an offence to use for the purpose of capturing or killing any such wild animal—
- (a) any of the means listed in paragraph (3) or (4);

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(a) Section 9 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 12, paragraph 5(b); and by S.I. 2007/1843 and 2011/1043.

(b) Section 11 was amended by the Wildlife and Countryside (Amendment) Act 1991 (c. 39), section 2.

(c) Section 17 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 16, Part 4.

- (b) any form of capturing or killing from the modes of transport listed in paragraph (5); or
  - (c) any other means of capturing or killing which is indiscriminate and capable of causing the local disappearance of, or serious disturbance to, a population of any species of animal listed in Schedule 4 or any European protected species of animal.
- (3) The prohibited means of capturing or killing mammals are—
- (a) the use of blind or mutilated animals as live decoys;
  - (b) tape recorders;
  - (c) electrical and electronic devices capable of killing or stunning;
  - (d) artificial light sources;
  - (e) mirrors and other dazzling devices;
  - (f) devices for illuminating targets;
  - (g) sighting devices for night shooting comprising an electronic image magnifier or image converter;
  - (h) explosives;
  - (i) nets which are non-selective according to their principle or their conditions of use;
  - (j) traps which are non-selective according to their principle or their conditions of use;
  - (k) crossbows;
  - (l) poisons and poisoned or anaesthetic bait;
  - (m) gassing or smoking out; and
  - (n) semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.
- (4) The prohibited means of capturing or killing fish are—
- (a) poison; and
  - (b) explosives.
- (5) The prohibited modes of transport are—
- (a) aircraft; and
  - (b) moving motor vehicles.
- (6) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

#### *Protection of plants*

##### **European protected species of plants**

**46.**—(1) Schedule 5 lists those species of plants listed in Annex IV(b) to the Habitats Directive which have a natural range which includes any area in Great Britain.

(2) References in this Part to a “European protected species” of plant are to any of those species.

##### **Protection of certain wild plants: offences**

**47.**—(1) It is an offence deliberately to pick, collect, cut, uproot or destroy a wild plant of a European protected species.

(2) It is an offence for any person—

- (a) to be in possession of, or to control,
- (b) to transport,
- (c) to sell or exchange, or
- (d) to offer for sale or exchange,

anything to which this paragraph applies.

(3) Paragraph (2) applies to—

(a) any live or dead plant or part of a plant—

(i) which has been taken in the wild, and

(ii) which is of a species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV(b) to the Habitats Directive; and

(b) anything derived from such a plant or any part of such a plant.

(4) Paragraphs (1) and (2) apply regardless of the stage of the biological cycle of the plant in question.

(5) Unless the contrary is shown, in any proceedings for an offence under paragraph (1) the plant in question is presumed to have been a wild plant.

(6) In any proceedings for an offence under paragraph (2), where it is alleged that a plant or a part of a plant was taken in the wild, it is presumed, unless the contrary is shown, that that plant or part of a plant was taken in the wild.

(7) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

### **Protection of certain wild plants: defences**

**48.**—(1) A person is not guilty of the offence under regulation 47(1) of picking or cutting a wild plant of a European protected species if this was done solely—

(a) for the purpose of taking a sample by virtue of any of the sampling provisions; or

(b) for the purpose of taking a sample to be used in evidence in any criminal proceedings in respect of an offence specified in paragraph (6) (wherever the offence was committed).

(2) A person is not guilty of an offence under regulation 47(2)(a) or (b) if that person shows that the act in question was done solely for one or more of the purposes of—

(a) investigating whether an offence specified in paragraph (6) was being or had been committed (wherever the offence was committed);

(b) bringing, conducting, or giving evidence in, any criminal proceedings in respect of any such offence; or

(c) giving effect to an order under any of the forfeiture provisions.

(3) Subject to paragraph (4), a person who shows that the plant or part of the plant in question, or the plant or part of the plant from which the thing in question is derived, was lawfully taken in the wild, is not guilty of an offence under regulation 47(2).

(4) The defence in paragraph (3) does not apply—

(a) in respect of the offences in regulation 47(2)(a) and (b) if—

(i) the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant; and

(ii) the plant, part or thing in question was in the defendant's possession or control, or transported by the defendant, for the purpose of sale or exchange; or

(b) in respect of the offences in regulation 47(2)(c) and (d), if the plant or part in question is a plant, or part of a plant, of a European protected species, or the thing in question is derived from such a plant.

(5) For the purposes of paragraph (3) a plant, or part of a plant, is treated as having been lawfully taken in the wild if—

(a) it was taken in the wild in the European territory of a member State, being territory to which the TFEU applies, without contravention of the law of that member State and before the implementation date; or

(b) it was taken in the wild elsewhere.

- (6) For the purposes of paragraphs (1)(b) and (2)(a) and (b), the specified offences are—
- (a) an offence under any of the following sections of the WCA 1981—
    - (i) section 13 (protection of wild plants);
    - (ii) section 17 (false statements made for obtaining registration or licence etc.);
    - (iii) section 18 (attempts to commit offences etc.) which relates to an offence under section 13;
  - (b) an offence under any of the following provisions—
    - (i) regulation 47;
    - (ii) regulation 59, where that offence relates to the obtaining of a licence under regulation 55; or
    - (iii) regulation 122, where that offence relates to an offence under regulation 47;
  - (c) an offence under the 1997 Regulations or an offence of attempting to commit such an offence; or
  - (d) an offence under regulation 49 (offences relating to wild plants listed in Annex IV(b) to the Habitats Directive) or 57 (false statements made for obtaining licence) of the Offshore Marine Conservation Regulations, an offence of attempting to commit an offence under regulation 49 of those Regulations, or an offence under regulation 71 of those Regulations (possession of means of committing offence) which relates to an offence under regulation 49 of those Regulations.

*Interpretation of Part 3*

**Interpretation of Part 3**

**49.** In this Part—

“the 1997 Regulations” means the Control of Trade in Endangered Species (Enforcement) Regulations 1997(a);

“the forfeiture provisions” means—

- (a) section 21(6) of the WCA 1981 (penalties, forfeitures etc.)(b);
- (b) regulation 11 of the 1997 Regulations (forfeiture); or
- (c) regulation 128 of these Regulations;

“the implementation date” means—

- (a) where the relevant State became a member State before 10th June 1994, 10th June 1994, and
- (b) in any other case, the date on which the relevant State became a member State;

“relevant State” means (as the case may be) the State in whose territory—

- (a) the animal, or part of it, was taken from the wild; or
- (b) the plant, or part of it, was taken in the wild;

“the sampling provisions” means—

- (a) the following provisions of the WCA 1981—
  - (i) section 18C (Group 1 offences and licences: examining specimens and taking samples)(c)
  - (ii) section 18E (Group 2 offences: examining specimens and taking samples)(d); or

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(a) S.I. 1997/1372, amended by S.I. 2005/1674, 2007/2952, 2009/1773, and 2011/1043.

(b) Section 21(6) was amended by the Natural Environment and Rural Communities Act 2006 (c. 16) (“the 2006 Act”), Schedule 11, paragraph 73(1).

(c) Section 18C was inserted by the 2006 Act, Schedule 5, paragraph 1.

(d) Section 18E was inserted by the 2006 Act, Schedule 5, paragraph 1.

- (iii) section 19XA (constables' powers in connection with samples)(a);
  - (b) regulation 9(3) and (5) of the 1997 Regulations (powers of entry);
  - (c) regulation 119 and 120 of these Regulations; or
  - (d) regulation 63(2) of the Offshore Marine Conservation Regulations (powers relating to specimens);
- “the TFEU” means the Treaty on the Functioning of the European Union.

## PART 4

### Additional protection of habitats and wild animals and plants

#### *Surveillance and monitoring*

#### **Surveillance of conservation status of habitats and species**

**50.**—(1) The appropriate authority must make arrangements in accordance with paragraphs (4) to (6) for the surveillance of the conservation status of natural habitat types of Community interest and species of Community interest, and in particular priority natural habitat types and priority species.

(2) In respect of the arrangements made by the Secretary of State under paragraph (1), the Secretary of State must, from time to time—

- (a) consult the devolved administrations;
- (b) provide the devolved administrations with such information as the Secretary of State considers appropriate that has been derived from the surveillance which has been arranged; and
- (c) review those arrangements and, if appropriate, revise them.

(3) In respect of the arrangements made by the Welsh Ministers under paragraph (1), the Welsh Ministers must, from time to time—

- (a) consult the Secretary of State and the other devolved administrations;
- (b) provide the Secretary of State and the other devolved administrations with such information as the Welsh Ministers consider appropriate that has been derived from the surveillance which has been arranged; and
- (c) review those arrangements and, if appropriate, revise them.

(4) The appropriate nature conservation body must—

- (a) assess how and to what extent surveillance of the conservation status of each relevant habitat type and species is to be carried out, having regard to—
  - (i) whether a habitat or species is a priority natural habitat type or priority species; and
  - (ii) the conservation status of the habitat or species; and
- (b) advise the appropriate authority as to the need for such surveillance.

(5) The appropriate authority must ensure that the necessary surveillance is carried out on an ongoing basis.

(6) Surveillance for the purposes of this regulation may be carried out by—

- (a) a nature conservation body; or
- (b) any other person acting pursuant to, and in accordance with, an agreement with the appropriate authority or a nature conservation body.

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(a) Section 19XA was inserted by the 2006 Act, Schedule 5, paragraph 3, and amended by the Criminal Justice and Immigration Act 2008 (c. 4), Schedule 26, paragraph 7.

(7) In this regulation—

“natural habitat types of Community interest” has the meaning given by Article 1(c) of the Habitats Directive (interpretation);

“relevant habitat type or species” means a natural habitat type or species of Community interest;

“species of Community interest” has the meaning given by Article 1(g) of the Habitats Directive.

### **Protection of certain animals and plants from exploitation**

**51.**—(1) The appropriate authority must, as required in the light of information derived from surveillance arranged under regulation 50 or otherwise arranged for the purpose of Article 11 of the Habitats Directive (surveillance), ensure that measures are taken for the purpose specified in paragraph (2).

(2) The purpose is to ensure that—

(a) the taking in the wild of specimens of a species listed in Annex V to the Habitats Directive, and

(b) the exploitation of such specimens,

are compatible with the maintenance of that species at a favourable conservation status.

(3) Where measures are required under paragraph (1), the appropriate authority must make arrangements for surveillance for the purpose of establishing whether the taking in the wild of specimens of the species concerned, and the exploitation of specimens of that species, are compatible with the maintenance of that species at a favourable conservation status.

### **Monitoring of incidental capture and killing**

**52.**—(1) The appropriate authority must make arrangements in accordance with paragraphs (4) to (6) to establish a system to monitor the incidental capture or killing of animals of the species listed in Annex IV(a) to the Habitats Directive.

(2) In respect of the arrangements made by the Secretary of State under paragraph (1), the Secretary of State must, from time to time—

(a) consult the devolved administrations;

(b) provide the devolved administrations with such information as the Secretary of State considers appropriate that has been derived from the monitoring which has been arranged; and

(c) review those arrangements and, if appropriate, revise them.

(3) In respect of the arrangements made by the Welsh Ministers under paragraph (1), the Welsh Ministers must, from time to time—

(a) consult the Secretary of State and the other devolved administrations;

(b) provide the Secretary of State and the other devolved administrations with such information as the Welsh Ministers consider appropriate that has been derived from the monitoring which has been arranged; and

(c) review those arrangements and, if appropriate, revise them.

(4) The appropriate nature conservation body must, in relation to the species of animals listed in Annex IV(a) to the Habitats Directive which are found in England or Wales—

(a) identify the risks of incidental capture and killing to which those species are subject, and the activities which give rise to such risks;

(b) maintain a record of instances of incidental capture or killing of animals of those species of which the nature conservation body is aware as a result of the surveillance carried out under regulation 50, the monitoring carried out under this regulation or otherwise;



- (c) assess to what extent monitoring of incidental capture and killing is needed, having regard to—
    - (i) the risks identified under sub-paragraph (a);
    - (ii) the instances of incidental capture or killing recorded under sub-paragraph (b);
    - (iii) whether the species is a priority species; and
    - (iv) the conservation status of the species; and
  - (d) advise the appropriate authority as to the need for such monitoring.
- (5) The appropriate authority must ensure that the necessary monitoring of incidental capture and killing is carried out.
- (6) Monitoring for the purposes of this regulation may be carried out by—
- (a) a nature conservation body;
  - (b) any other competent authority;
  - (c) any other person acting pursuant to, and in accordance with—
    - (i) an agreement with the appropriate authority or a nature conservation body; or
    - (ii) a condition of a licence or other authorisation granted by a competent authority.

### **Protection from incidental capture and killing**

**53.**—(1) The appropriate authority must, as required in the light of information derived from monitoring arranged under regulation 52 or otherwise arranged for the purpose of Article 12(4) of the Habitats Directive (system to monitor incidental capture and killing), make arrangements for further research for, or ensure that conservation measures are taken for, the purpose specified in paragraph (2).

(2) The purpose is to ensure that any incidental capture or killing of animals of a species listed in Annex IV(a) to the Habitats Directive does not have a significant negative impact on that species.

### *Introduction of new species*

### **Introduction of new species from ships**

**54.**—(1) It is an offence for any person on board a ship in any relevant part of the marine area deliberately to introduce into that area, other than in accordance with paragraph (3), any live animal or plant of a kind having a natural range which does not include any area in Great Britain.

(2) For the purposes of paragraph (1), “relevant part” means any part where the introduction would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere).

(3) An introduction is in accordance with this paragraph if—

- (a) it resulted from a discharge of water carried as ballast and the discharge was necessary for the purpose of protecting the safety of any person or ship; and
- (b) all reasonably practicable steps were taken—
  - (i) to avoid its occurring in an area where it would give rise to a risk of prejudice to natural habitats within their natural range or a risk of prejudice to wild native flora or fauna (whether in the place of introduction or elsewhere); and
  - (ii) to minimise any risk of such prejudice.

(4) In any proceedings for an offence under this regulation, it is for the defendant to show that the introduction in question was in accordance with paragraph (3).

(5) The appropriate authority may issue guidance about steps which may be taken to avoid committing an offence under this regulation.

(6) In any proceedings for an offence under this regulation—

- (a) where the offence is alleged to have been committed in England, a court must have regard to any guidance issued by the Secretary of State under paragraph (5); and
- (b) where the offence is alleged to have been committed in Wales, a court must have regard to any guidance issued by the Welsh Ministers under paragraph (5).

(7) A person guilty of an offence under this regulation is liable (whether on summary conviction or on conviction on indictment) to a fine.

(8) Section 14 of the WCA 1981 (introduction of new species etc.)<sup>(a)</sup> does not apply in relation to any act which is an offence under this regulation.

## PART 5

### Licences

#### *Grant of licences*

#### **Licences for certain activities relating to animals or plants**

**55.**—(1) Subject to the provisions of this regulation, the relevant licensing body may grant a licence for the purposes specified in paragraph (2).

(2) The purposes are—

- (a) scientific or educational purposes;
- (b) ringing or marking, or examining any ring or mark on, wild animals;
- (c) conserving wild animals or wild plants or introducing them to particular areas;
- (d) protecting any zoological or botanical collection;
- (e) preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (f) preventing the spread of disease; or
- (g) preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or any other form of property or to fisheries.

(3) Regulations 43 (protection of certain wild animals: offences), 45 (prohibition of certain methods of capturing or killing wild animals) and 47 (protection of certain wild plants: offences) do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

(4) Subject to the provisions of this regulation, the relevant licensing body may grant a licence to permit the taking or the possession or control of certain specimens of any of the species or subspecies listed in Annex II(b) (other than any bryophyte) or Annex IV to the Habitats Directive notwithstanding that the licence is for a purpose not specified in paragraph (2).

(5) Regulations 43, 45 and 47 do not apply to anything done under and in accordance with the terms of a licence granted under paragraph (4).

(6) A licence under paragraph (4) may be granted only to such persons as are named in the licence.

(7) The relevant licensing body may grant a licence under paragraph (4) only if it is satisfied that the grant of the licence would be consistent with the restrictions in Article 16(1)(e) of the Habitats Directive (namely “under strictly supervised conditions, on a selective basis and to a limited extent” and “in limited numbers”).

(8) A licence under paragraph (4) must specify—

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<sup>(a)</sup> Section 14 was amended by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 16, Part 4; and by the Infrastructure Act 2015 (c. 7), sections 23(2) and 25(2).

- (a) the species or subspecies of animal or plant to which the licence relates;
- (b) the maximum number of specimens which may be taken or be in the possession or control of the person authorised by the licence, or which particular specimens may be taken or be in the possession or control of that person; and
- (c) the conditions subject to which the action authorised by the licence may be taken and in particular—
  - (i) the methods, means or arrangements by which specimens may be taken or be in the possession or control of the person authorised by the licence;
  - (ii) when or over what period the action authorised by the licence may be taken; and
  - (iii) where the licence authorises any person to take specimens, the area from which they may be taken.

(9) The relevant licensing body must not grant a licence under this regulation unless it is satisfied—

- (a) that there is no satisfactory alternative; and
- (b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

(10) A licence under this regulation which authorises any person to kill wild animals must specify the area within which and the methods by which the wild animals may be killed and must not be granted for a period of more than two years.

(11) Where the appropriate authority exercises any functions under this regulation (see regulation 58(3)), the appropriate authority must from time to time consult the appropriate nature conservation body as to the exercise of those functions, and must not grant a licence of any description unless the appropriate nature conservation body has advised as to the circumstances in which, in its opinion, licences of that description should be granted.

(12) Where the Marine Management Organisation exercises any functions under this regulation (see regulation 58(2)(a)), it must from time to time consult Natural England as to the exercise of those functions, and must not grant a licence of any description unless Natural England has advised as to the circumstances in which, in its opinion, licences of that description should be granted.

(13) It is a defence in proceedings for an offence under section 8(b) of the Protection of Animals Act 1911 (which restricts the placing on land of poison and poisonous substances)(a) to show that—

- (a) the act alleged to constitute the offence was done under and in accordance with the terms of a licence granted under this regulation; and
- (b) any conditions specified in the licence were complied with.

(14) In paragraph (2)(g) “livestock” includes any animal which is kept—

- (a) for the provision of food, skins or fur;
- (b) for the purpose of its use in the carrying on of any agricultural activity; or
- (c) for the provision or improvement of shooting or fishing.

### **Licences for the introduction of new species**

**56.**—(1) The relevant licensing body may grant a licence in relation to the introduction of new species from ships, but must not do so unless it is satisfied that the action authorised by the licence will not prejudice natural habitats within their natural range or wild native flora and fauna.

(2) Regulation 54 does not apply to anything done under and in accordance with the terms of a licence granted under paragraph (1).

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(a) 1911 c. 27.

### **Licences: general provisions**

**57.**—(1) This regulation applies in relation to a licence under regulation 55 or 56.

(2) A licence—

- (a) may be, to any degree, general or specific;
- (b) except where regulation 55(6) applies, may be granted either to persons of a class or to a particular person; and
- (c) may be subject to compliance with any specified conditions.

(3) For the purposes of a licence the definition of a class of persons may be framed by reference to any circumstances whatever including, in particular, their being authorised by any other person.

(4) A licence may be modified or revoked at any time by the authority which granted it, but is otherwise valid for the period stated in the licence.

(5) The relevant licensing body may charge for a licence such reasonable sum (if any) as it may determine.

#### *Relevant licensing body*

### **Relevant licensing body**

**58.**—(1) For the purposes of regulations 55, 56 and 57, “relevant licensing body” has the meaning given in this regulation.

(2) In the case of a licence granted under regulation 55(1) for a purpose specified in any of paragraph (2)(a) to (d) of that regulation, “relevant licensing body”, in relation to England, means—

- (a) so far as the licence relates to the restricted English inshore region, the Marine Management Organisation; and
- (b) otherwise, Natural England.

(3) In the case of a licence granted in relation to England under any of the provisions specified in paragraph (4), “relevant licensing body” means the appropriate authority.

(4) The provisions referred to in paragraph (3) are—

- (a) regulation 55(1), where the licence is granted for a purpose specified in any of paragraph (2)(e) to (g) of that regulation;
- (b) regulation 55(4); or
- (c) regulation 56.

(5) In the case of a licence granted in relation to Wales, “relevant licensing body” means the Natural Resources Body for Wales.

(6) In paragraph (2), “restricted English inshore region” means so much of the English inshore region as lies to seaward of mean low water mark;

#### *Offences*

### **False statements made for obtaining licence**

**59.**—(1) A person (“P”) commits an offence if, for the purposes of obtaining, whether for P or another, the grant of a licence under regulation 55 or 56, P—

- (a) makes a statement or representation, or supplies a document or information, which P knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or supplies a document or information, which is false in a material particular.

(2) A person guilty of an offence under this regulation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

#### **Offence of breaching licence condition**

**60.**—(1) It is an offence for a person to contravene or fail to comply with a licence condition.

(2) Paragraph (1) applies in relation to a licence under regulation 55 granted on or after 21st August 2007.

(3) A person (“P”) is not guilty of an offence under paragraph (1) if P shows that—

- (a) P took all reasonable precautions and exercised all due diligence to avoid commission of the offence; or
- (b) the commission of the offence was otherwise due to matters beyond P’s control.

(4) A person guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine, or to both.

## **PART 6**

### **Assessment of plans and projects**

#### **CHAPTER 1**

##### **General provisions**

##### *Introductory provisions*

#### **Interpretation of Part 6**

**61.**—(1) In this Part—

“the assessment provisions” means regulations 63 and 64;

“the review provisions” means regulations 65 and 66.

(2) In this Part, any reference to—

- (a) the giving or granting of any consent, permission or other authorisation (except in the heading to any regulation or in any reference to any such heading), or
- (b) directing that planning permission is deemed to be granted,

is to be taken, in relation to any consent, permission or authorisation which is capable of being varied or modified, to include a reference to its variation or modification.

#### **Application of provisions of Chapter 1**

**62.**—(1) The requirements of the assessment provisions and the review provisions apply—

- (a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions; and
- (b) subject to regulation 63(7)(c), in relation to all other plans and projects not relating to matters specified in Chapters 2 to 9.

(2) Supplementary provision is made by regulations 67 to 69.

*General provisions for protection of European sites and European offshore marine sites*

**Assessment of implications for European sites and European offshore marine sites**

**63.**—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

(7) This regulation does not apply in relation to—

- (a) a site which is a European site by reason of regulation 8(1)(c);
- (b) a site which is a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations; or
- (c) a plan or project to which any of the following apply—
  - (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a) (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply);
  - (ii) the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006(b);
  - (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017(c); or
  - (iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(d).

(8) Where a plan or project requires an appropriate assessment both under this regulation and under the Offshore Marine Conservation Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in the United Kingdom, provided that an assessment made for the purpose of this regulation and the Offshore Marine Conservation Regulations assesses the effects of the plan or project as a whole.

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(a) S.I. 2001/1754, amended by S.I. 2007/77, 1842, 2010/1513, 2015/1431, 2016/529, 912, 1042 and 2017/582.  
 (b) S.I. 2006/2522, amended by S.I. 2009/1307, 3264, 2010/1159, 2011/1043, 1824 and 2017/593.  
 (c) S.I. 2017/565 (W. 134).  
 (d) S.I. 2010/1228, amended by S.I. 2011/974, 2183, 2012/742, 2013/755 (W. 90), 2014/3306 and 2015/664.

(9) In paragraph (1) the reference to the competent authority deciding to undertake a plan or project includes the competent authority deciding to vary any plan or project undertaken or to be undertaken.

### **Considerations of overriding public interest**

**64.**—(1) If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons which the competent authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest.

(3) Where a competent authority other than the Secretary of State or the Welsh Ministers desires to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

- (a) identifying the matter on which an opinion is sought; and
- (b) accompanied by any documents or information which may be required.

(4) The appropriate authority—

- (a) may seek the opinion of the European Commission concerning the plan or project; and
- (b) where such an opinion is received, must send it to the competent authority.

(5) Where a competent authority other than the Secretary of State or the Welsh Ministers proposes to agree to a plan or project under this regulation notwithstanding a negative assessment of the implications for the site concerned—

- (a) it must notify the appropriate authority; and
- (b) it must not agree to the plan or project before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notifies it that it may do so.

(6) Without prejudice to any other power, the appropriate authority may give directions to the competent authority in any such case prohibiting it from agreeing to the plan or project, either indefinitely or during such period as may be specified in the direction.

### **Review of existing decisions and consents**

**65.**—(1) Where before the date on which a site becomes a European site or a European offshore marine site a competent authority has decided to undertake, or has given any consent, permission or other authorisation for, a plan or project to which regulation 63(1) would apply if it were to be reconsidered as of that date, the authority must, as soon as reasonably practicable—

- (a) review its decision or, as the case may be, the consent, permission or other authorisation; and
- (b) affirm, modify or revoke it.

(2) The authority must for that purpose make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and the provisions of regulation 63(2) to (4) and (8) apply, with the appropriate modifications, in relation to such a review.

(3) Subject to the provisions of Chapters 2 to 7, any review required by this regulation must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

(4) Nothing in this regulation affects anything done in pursuance of the decision, or the consent, permission or other authorisation, before the date mentioned in paragraph (1).

#### **Consideration on review**

**66.**—(1) The following provisions apply where a decision, or a consent, permission or other authorisation, falls to be reviewed under regulation 65.

(2) Subject as follows, the provisions of regulations 63(5) and (6) and 64 apply, with the appropriate modifications, in relation to the decision on the review.

(3) The decision, or the consent, permission or other authorisation, may be affirmed if it appears to the competent authority reviewing it that other action taken or to be taken by it, or by another authority, will secure that the plan or project does not adversely affect the integrity of the site.

(4) Where that object may be attained in a number of ways, the competent authority or authorities concerned must seek to secure that the action taken is the least onerous to those affected.

(5) The appropriate authority may issue guidance to competent authorities for the purposes of paragraph (3) as to the manner of determining which of different ways should be adopted for securing that the plan or project does not have any such effect, and in particular—

- (a) the order of application of different controls; and
- (b) the extent to which account should be taken of the possible exercise of other powers.

(6) The competent authorities concerned must have regard to any such guidance.

(7) Any modification or revocation of a decision, or a consent, permission or other authorisation, must be carried out under existing statutory procedures where such procedures exist, and if none exists, the appropriate authority may give directions as to the procedure to be followed.

#### **Co-ordination where more than one competent authority involved**

**67.**—(1) This regulation applies where a plan or project—

- (a) is undertaken by more than one competent authority;
- (b) requires the consent, permission or other authorisation of more than one competent authority; or
- (c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 63(1) or 65(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

(3) The appropriate authority may issue guidance to competent authorities for the purposes of regulations 63 to 66 as to the circumstances in which a competent authority may or should adopt the reasoning or conclusions of another competent authority as to whether a plan or project—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The competent authorities concerned must have regard to any such guidance.

(5) In determining whether a plan or project should be agreed to under regulation 64, a competent authority other than the Secretary of State or the Welsh Ministers must seek and have regard to the views of the other competent authority or authorities involved.

#### **Compensatory measures**

**68.** Where in accordance with regulation 64—



- (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or
- (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment,

the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

### Modifications of regulations 63 to 68 in certain cases

**69.**—(1) Where any provision of regulations 63 to 68 (a “general provision”) applies in relation to a provision specified in paragraph (2), that general provision applies with the following modifications—

- (a) any reference to the Welsh Ministers is omitted; and
- (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

(2) The provisions specified for the purposes of paragraph (1) are—

- (a) regulation 70(1)(e)(i) and (2) (grant of planning permission) in so far as those provisions relate to a direction given by the Secretary of State under section 90 of the TCPA 1990 (development with government authorisation)(a) that planning permission is deemed to be granted; and
- (b) regulations 84 and 85 (development consent under Planning Act 2008(b)).

(3) Where a general provision applies in relation to a provision specified in paragraph (4), that general provision applies with the following modifications—

- (a) any reference to a competent authority is taken to include the Scottish Ministers;
- (b) for any reference to the Welsh Ministers, substitute a reference to the Scottish Ministers; and
- (c) for any reference to the appropriate authority—
  - (i) in a case where the competent authority for the purposes of a provision specified in paragraph (4) is the Scottish Ministers, substitute a reference to the Scottish Ministers; and
  - (ii) in any other case, substitute a reference to the Secretary of State.

(4) The provisions specified for the purposes of paragraph (3) are—

- (a) in regulation 70—
  - (i) paragraph (1)(e)(ii) and (iii);
  - (ii) paragraph (1)(f), in so far as that paragraph relates to a direction under section 57(2ZA) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)(c); and
  - (iii) paragraph (2) in so far as that paragraph relates to paragraph (1)(e)(ii) and (iii), and (1)(f) of that regulation;
- (b) Chapter 4 (electricity); and
- (c) Chapter 5 (pipe-lines).

(5) Where a general provision applies in relation to regulation 103 (marine works), and confers a function on the appropriate authority, that provision applies with the following modifications—

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(a) Section 90 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 6, paragraph 12; the Environment Act 1995 (c. 25), Schedule 10, paragraph 32(4); the Transport and Works Act 1992 (c. 42), section 16(1); the Growth and Infrastructure Act 2013 (c. 27), section 21(1) to (3); and the Planning (Wales) Act 2015 (anaw 4), section 33(1) and (3). It is prospectively amended by the Wales Act 2017 (c. 4), section 39(13), and the Neighbourhood Planning Act 2017 (c. 20), Schedule 3, paragraph 5, from a date or dates to be appointed.

(b) 2008 c. 29.

(c) 1997 c. 8. Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013, section 21(5).

- (a) in a case to which paragraph (6) applies, for any reference to the appropriate authority, substitute a reference to the Welsh Ministers; and
  - (b) in any other case, for any reference to the appropriate authority, substitute a reference to the Secretary of State.
- (6) This paragraph applies where the function in question is exercisable in relation to—
- (a) any application to the Welsh Ministers for an authorisation in respect of marine works;
  - (b) any application to any other authority for—
    - (i) an authorisation in respect of marine works, the refusal of which gives rise to a right of appeal to the Welsh Ministers;
    - (ii) an authorisation in respect of marine works in relation to which the Welsh Ministers exercise any power of direction or call-in; or
    - (iii) an authorisation of harbour works which are, or are to be, carried out in relation to a fishery harbour in Wales under legislation of a kind mentioned in regulation 103(6)(c);
  - (c) the grant of any application of a kind mentioned in sub-paragraph (a) or (b); or
  - (d) harbour works which—
    - (i) are, or are to be, carried out in relation to a fishery harbour in Wales; and
    - (ii) are authorised by, and are, or are to be, carried out in accordance with, any legislation of a kind mentioned in regulation 103(6)(c).
- (7) In paragraph (6)—
- “authorisation” means any licence, consent or other approval;
- “marine works” and “harbour works” have the meanings given by regulation 103(5) and (7) respectively.
- (8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—
- (a) any reference to the Welsh Ministers is omitted; and
  - (b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.

## CHAPTER 2

### Planning

#### *Planning permission*

#### **Grant of planning permission**

**70.**—(1) The assessment provisions apply in relation to—

- (a) granting planning permission on an application under Part 3 of the TCPA 1990 (control over development);
- (b) granting planning permission on an application under section 293A of that Act (urgent Crown development)(a);
- (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section

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(a) Section 293A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 82(1), and amended by the Planning (Wales) Act 2015 (anaw 4), Schedule 2, paragraphs 8 and 9, and Schedule 4, paragraphs 1 and 17; and the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraph 34.

- 78 of that Act (right to appeal against planning decisions)(a) in respect of such an application;
- (d) granting planning permission under—
    - (i) section 141(2)(a) of that Act (action in relation to purchase notice); or
    - (ii) section 177(1)(a) of that Act (grant or modification of planning permission on appeals against enforcement notices)(b);
  - (e) directing under the following provisions that planning permission is deemed to be granted—
    - (i) section 90(1), (2) or (2A) of that Act (development with government authorisation);
    - (ii) section 57(2) or (2A) of the Town and Country Planning (Scotland) Act 1997 (development with government authorisation)(c); or
    - (iii) section 5(1) of the Pipe-lines Act 1962 (provisions with respect to planning permission concerning pipe-lines)(d);
  - (f) directing under section 90(2ZA)(a) or (b) of the TCPA 1990(e) or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997(f), in respect of a planning permission which is deemed to be granted under section 90(2) or section 57(2) (respectively) on varying a consent under section 36 or 37 of the Electricity Act 1989(g), that that permission, or any conditions subject to which it was granted, be varied;
  - (g) making—
    - (i) an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works)(h), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders) which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders); or
    - (ii) an order under paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of mineral working)(i), including an order made under that paragraph by virtue of paragraph 11 of that Schedule (powers in relation to orders under Schedule 9) which grants planning permission; or
  - (h) directing under the following provisions that, if an application is made for planning permission, it must be granted—
    - (i) section 141(3) of the TCPA 1990 (action in relation to purchase notice); or
    - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)(j).

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- (a) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2); the Planning and Compulsory Purchase Act 2004, sections 40(2)(e) and 43(2); the Planning Act 2008 (c. 29), Schedule 10, paragraphs 1 and 3 and Schedule 11, paragraphs 1 and 2; the Localism Act 2011 (c. 20), section 123(1) and (3), and Schedule 12, paragraphs 1 and 11; the Growth and Infrastructure Act 2013 (c. 27), Schedule 1, paragraphs 1 and 8; the Infrastructure Act 2015 (c. 7), Schedule 4, Part 2, paragraphs 2 and 12; the Planning (Wales) Act 2015, sections 45 and 47, and Schedule 7, paragraph 7; the Housing and Planning Act 2016, Schedule 12, paragraphs 1 and 21; and by S.I. 2014/2773.
  - (b) Section 177(1)(a) was substituted by the Planning and Compensation Act 1991, Schedule 7, paragraph 24(1)(a).
  - (c) 1997 c. 8. Section 57(2) was substituted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).
  - (d) 1962 c. 58. Section 5(1) was amended by S.I. 1999/742.
  - (e) Section 90(2ZA) was inserted by the Environment Act 1995 (c. 25), Schedule 10.
  - (f) Section 57(2ZA) was inserted by the Growth and Infrastructure Act 2013 (c. 27), section 21(5).
  - (g) 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93; by the Planning Act 2008, Schedule 2, paragraphs 31 and 32; by the Marine Act, section 12(7)(a) and (8); by the Energy Act 2016 (c. 20), section 78; and by S.I. 2006/1054; and is prospectively amended by the Wales Act 2017 (c. 4), section 39(7) to (11), and Schedule 6, Part 3, paragraph 47, from a date to be appointed. Section 36C of the Act, inserted by the Growth and Infrastructure Act 2013 (c. 27), section 20, provides for the variation of consents granted under section 36. Section 37 was amended by the Planning Act 2008, Schedule 2, paragraphs 31 and 33; and is prospectively amended by the Wales Act 2017, section 42 from a date to be appointed.
  - (h) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 6, and Schedule 7, paragraph 21; and the Planning (Wales) Act 2015 (anaw 4), section 33(1) and (4).
  - (i) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 15.
  - (j) 1990 c. 9.

(2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the planning permission were subject to conditions or limitations, grant planning permission, or, as the case may be, take action which results in planning permission being granted or deemed to be granted, subject to those conditions or limitations.

(3) Where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

(4) In paragraph (3), “outline planning permission” and “reserved matters” have the same meanings as in section 92 of the TCPA 1990 (outline planning permission)(a).

### **Planning permission: duty to review**

**71.**—(1) Subject to the following provisions of this regulation, the review provisions apply to any planning permission or deemed planning permission, unless—

- (a) the development to which it related has been completed;
- (b) it was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
- (c) it was granted for a limited period and that period has expired.

(2) The review provisions do not apply to planning permission granted or deemed to have been granted—

- (a) by a development order, local development order or neighbourhood development order (but see regulations 75 to 81);
- (b) by virtue of the adoption of a simplified planning zone scheme or of alterations to such a scheme (but see regulation 82); or
- (c) by virtue of the taking effect of an order designating an enterprise zone under paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zones)(b), or by virtue of the approval of a modified enterprise zone scheme (but see regulation 83).

(3) Planning permission deemed to be granted by virtue of a direction of a kind specified in paragraph (4) must be reviewed in accordance with Chapter 4, Chapter 5 or Chapter 6 (as the case may be) in conjunction with the review of the underlying authorisation, consent or order.

(4) Directions of a kind referred to in paragraph (3) are—

- (a) a direction under section 90(1) of the TCPA 1990 in respect of development for which an authorisation has been granted under section 1 of the Pipe-lines Act 1962 (pipe-line construction authorisations)(c);
- (b) a direction under section 5(1) of the Pipe-lines Act 1962;
- (c) a direction under section 90(1) of the TCPA 1990 in respect of development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 (consents required in relation to generating stations and overhead lines);

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(a) Section 92 was amended by the Planning (Wales) Act 2015 (anaw 4), section 36(1) to (6), and Schedule 4, paragraphs 1 and 10.

(b) 1980 c. 65. Paragraph 5 of Schedule 32 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 1, Part 1.

(c) 1962 c. 58. Section 1 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; by the Planning Act 2008 c. 29, Schedule 2, paragraphs 5 and 6; and by S.I. 1999/742 and 2007/1519.

- (d) a direction under section 90(2) of the TCPA 1990 or section 57(2) of the Town and Country Planning (Scotland) Act 1997 (which relate to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989);
- (e) a direction under section 90(2ZA)(a) or (b) of the TCPA 1990 or section 57(2ZA)(a) or (b) of the Town and Country Planning (Scotland) Act 1997 (which relate to the variation of a deemed grant of planning permission in relation to development for which a consent has been granted under section 36 or 37 of the Electricity Act 1989 and to the variation of conditions of any such deemed grant of planning permission); or
- (f) a direction under section 90(2A) of the TCPA 1990 (which relates to development in pursuance of an order under section 1 or 3 of the Transport and Works Act 1992 (orders as to railways, tramways or inland waterways)(a)).

(5) In the case of planning permission deemed to have been granted in any other case by a direction under section 90(1) of the TCPA 1990, the local planning authority must—

- (a) identify any such permission which it considers falls to be reviewed under the review provisions; and
- (b) refer the matter to the government department or person which made the direction.

(6) The department or person to whom a reference is made under paragraph (5)(b) must, if in agreement that the planning permission does fall to be so reviewed, review the direction in accordance with the review provisions.

(7) Except as otherwise expressly provided, the review provisions do not apply to planning permission granted or deemed to be granted by a public general Act of Parliament.

(8) Subject to paragraphs (3) to (6), where planning permission granted by the appropriate authority falls to be reviewed under the review provisions—

- (a) it must be reviewed by the local planning authority; and
- (b) the power conferred by section 97 of the TCPA 1990 (power to revoke or modify planning permission)(b) is exercisable by that local planning authority as in relation to planning permission granted on an application under Part 3 of that Act (control over development).

(9) In a non-metropolitan county in England the function of reviewing any such planning permission is to be exercised by the district planning authority unless it relates to a county matter (within the meaning of paragraph 1 of Schedule 1 to the TCPA 1990(c)), in which case it is exercisable by the county planning authority.

### **Planning permission: consideration on review**

**72.**—(1) In reviewing any planning permission or deemed planning permission under the review provisions, the competent authority must—

- (a) consider whether any adverse effects could be overcome by planning obligations under section 106 of the TCPA 1990 (planning obligations)(d) being entered into; and
- (b) if it considers that those effects could be so overcome, invite those concerned to enter into such obligations.

(2) So far as the adverse effects are not thus overcome, the authority must make such order as may be required under—

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(a) 1992 c. 42. Sections 1 and 3 were amended by the Planning Act 2008, Schedule 2, paragraphs 51, 52 and 53.  
 (b) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25.  
 (c) Paragraph 1 of Schedule 1 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 13.  
 (d) Section 106 was substituted by the Planning and Compensation Act 1991, section 12(1), and amended by the Greater London Authority Act 2007 (c. 24), section 33; the Planning Act 2008 (c. 29), section 174(1) and (2); the Growth and Infrastructure Act 2013 (c. 27), Schedule 2, paragraphs 1 and 3. It is prospectively amended by the Housing and Planning Act 2016, section 158(3), and is prospectively repealed by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 6, paragraphs 1 and 5, from a date or dates to be appointed.

- (a) section 97 of the TCPA 1990 Act (power to revoke or modify planning permission); or
- (b) section 102 of, or paragraph 1 of Schedule 9 to, that Act (orders requiring discontinuance of use etc.).

(3) Where the authority ascertains that the carrying out or, as the case may be, the continuation of the development would adversely affect the integrity of a European site or a European offshore marine site, it nevertheless need not proceed under the review provisions if and so long as it considers that there is no likelihood of the development being carried out or continued.

#### **Planning permission: effect of orders made on review**

**73.**—(1) An order under section 97 of the TCPA 1990 made pursuant to paragraph (2) of regulation 72 (planning permission: consideration on review) takes effect upon the service of the notices required by section 98(2) of that Act (procedure for section 97 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the appropriate authority determines not to confirm such an order—

- (a) the order ceases to have effect as from the time of that determination;
- (b) the permission revoked or modified by the order thereafter has effect as if the order had never been made;
- (c) any period specified in the permission for the taking of any action, being a period which had not expired prior to the date upon which the order took effect under paragraph (1), is extended by a period equal to that during which the order had effect; and
- (d) for any date specified in the permission as being a date by which any action should be taken (“the specified date”), not being a date falling before the date upon which the order took effect under paragraph (1), there is substituted such later date as postpones the specified date by a period equal to that during which the order had effect.

(3) An order under section 102 of, or paragraph 1 of Schedule 9 to, the TCPA 1990 made pursuant to regulation 72(2), in so far as it requires the discontinuance of a use of land or imposes conditions upon the continuance of a use of land, takes effect upon the service of the notices required by section 103(3) of that Act (confirmation of section 102 orders) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(4) Where the appropriate authority determines not to confirm any such order, the order ceases to have effect as from the time of that determination, and the use which by the order was discontinued or upon which conditions were imposed—

- (a) may thereafter be continued as if the order had never been made; and
- (b) is to be treated for the purposes of the TCPA 1990 as if it had continued without interruption or modification throughout the period during which the order had effect.

(5) An order under section 97 of that Act made in pursuance of regulation 72(2) does not affect so much of the development authorised by the permission as was carried out before the order took effect.

(6) An order under section 102 of or paragraph 1 of Schedule 9 to that Act made in pursuance of regulation 72(2) does not affect anything done before the site became a European site or European offshore marine site.

#### **Planning permission: compensation**

**74.**—(1) Where the appropriate authority determines not to confirm an order under section 97 of the TCPA 1990 which has taken effect under regulation 73(1), any claim for compensation under

section 107 of that Act (compensation where planning permission revoked or modified)(a) is limited to any loss or damage directly attributable to the permission being suspended or temporarily modified for the duration of the period between the order so taking effect and the appropriate authority's determination not to confirm the order.

(2) Where the appropriate authority determines not to confirm an order under section 102 of the TCPA 1990 (orders requiring discontinuance of use or alteration or removal of buildings or works) which has taken effect under regulation 73(3), any claim for compensation under section 115 of that Act (compensation in respect of orders under section 102) is limited to any loss or damage directly attributable to the effect of the order in suspending or imposing conditions on any right to continue a use of the land for the duration of the period between the order so taking effect and the appropriate authority's determination not to confirm the order.

(3) Paragraph (4) applies where—

- (a) compensation is payable in respect of—
  - (i) an order under section 97 of the TCPA 1990; or
  - (ii) any order mentioned in section 115(1) of that Act or to which that section applies by virtue of section 115(5); and
- (b) the order has been made pursuant to regulation 65 (review of existing decisions and consents).

(4) Where this paragraph applies, the authority liable to pay the compensation must refer the question as to the amount of the compensation to the Upper Tribunal for its determination, unless and to the extent that in any particular case the appropriate authority has indicated in writing that such a reference and determination may be dispensed with.

#### *General development orders*

#### **General development orders**

**75.** It is a condition of any planning permission granted by a general development order made on or after 30th November 2017, that development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

must not be begun until the developer has received written notification of the approval of the local planning authority under regulation 77 (approval of local planning authority).

#### **General development orders: opinion of appropriate nature conservation body**

**76.—**(1) Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body for its opinion as to whether the development is likely to have a relevant effect.

(2) The application must give details of the development which is intended to be carried out.

(3) On receiving such an application, the appropriate nature conservation body must consider whether the development is likely to have such an effect.

(4) Where it considers that it has sufficient information to conclude that the development will, or will not, have such an effect, it must notify the applicant and the local planning authority in writing of its opinion.

(5) If the appropriate nature conservation body considers that it has insufficient information to reach either of those conclusions, it must notify the applicant in writing indicating in what respects

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(a) Section 107 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 8 and Schedule 6, paragraph 13; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 28.

it considers the information insufficient, and the applicant may supply further information with a view to enabling it to reach a decision on the application.

(6) The opinion of the appropriate nature conservation body, notified in accordance with paragraph (4), that the development is not likely to have a relevant effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order.

(7) In this regulation and in regulation 77, “a relevant effect” means an effect of a kind mentioned in regulation 75(a).

#### **General development orders: approval of local planning authority**

**77.**—(1) An application to the local planning authority for approval, as mentioned in regulation 75, must—

- (a) give details of the development which is intended to be carried out; and
- (b) be accompanied by—
  - (i) a copy of any relevant notification by the appropriate nature conservation body under regulation 76; and
  - (ii) any fee required to be paid.

(2) For the purposes of its consideration of the application the local planning authority must assume that the development is likely to have a relevant effect.

(3) The authority must send a copy of the application to the appropriate nature conservation body and must take account of any representations made by it.

(4) If in its representations the appropriate nature conservation body states its opinion that the development is not likely to have a relevant effect, the local planning authority must send a copy of the representations to the applicant.

(5) The sending of the copy of the representations to the applicant under paragraph (4) has the same effect as a notification by the appropriate nature conservation body of its opinion under regulation 76(4).

(6) In any other case in which the application has been sent to the appropriate nature conservation body, the local planning authority must, taking account of any representations made by the appropriate nature conservation body, make an appropriate assessment of the implications of the development for the European site or European offshore marine site in view of that site’s conservation objectives.

(7) In the light of the conclusions of the assessment the local planning authority may approve the development only after having ascertained that it will not adversely affect the integrity of the site.

#### **General development orders: supplementary**

**78.**—(1) The local planning authority for the purposes of regulations 75 to 77 is the authority to which an application for approval under regulation 77 would fall to be made if it were an application for planning permission.

(2) The fee payable in connection with an application for such approval is £30.

(3) Approval required by regulation 75 is to be treated—

- (a) for the purposes of the provisions of the TCPA 1990 relating to appeals, as approval required by a condition imposed on a grant of planning permission; and
- (b) for the purposes of the provisions of any general development order relating to the time within which notice of a decision should be given, as approval required by a condition attached to a grant of planning permission.



*Special development orders*

**Special development orders**

**79.**—(1) A special development order may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.

(2) A special development order may not grant planning permission for development which is likely to have a significant effect on a European offshore marine site (either alone or in combination with other plans or projects).

(3) This regulation does not apply to a special development order made before 30th November 2017.

*Local development orders*

**Local development orders**

**80.** A local development order made on or after 30th November 2017 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.

*Neighbourhood development orders*

**Neighbourhood development orders**

**81.**—(1) A neighbourhood development order made on or after 30th November 2017 may not grant planning permission for development which—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects); and
- (b) is not directly connected with or necessary to the management of the site.

(2) This regulation applies in relation to England only.

*Simplified planning zones and enterprise zones*

**Simplified planning zones**

**82.**—(1) Where a simplified planning zone scheme is adopted or approved, that scheme is not to be taken to grant planning permission for development which (either alone or in combination with other plans or projects) is likely to have a significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site.

(2) This regulation does not apply to a simplified planning zone scheme adopted or approved (as the case may be) before 30th November 2017.

**Enterprise zones**

**83.**—(1) Where an order designating an enterprise zone is made, or where a modified enterprise zone scheme is approved, that order or scheme is not to be taken to grant planning permission for development which (either alone or in combination with other plans or projects) is likely to have a

significant effect on a European offshore marine site or (where the development is not directly connected with or necessary to the management of the site) on a European site.

(2) This regulation does not apply to an order designating an enterprise zone made, or to a modified enterprise scheme approved, before 30th November 2017.

*Development consent under Planning Act 2008*

**Grant of development consent**

**84.**—(1) The assessment provisions apply in relation to the making of an order granting development consent under the Planning Act 2008(a).

(2) Where those provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the order granting development consent included requirements under section 120 of the Planning Act 2008 (what may be included in order granting development consent)(b), make an order subject to those requirements.

**Development consent: review**

**85.**—(1) The review provisions apply to any order granting development consent under the Planning Act 2008 unless—

- (a) the development to which it related has been completed before the site becomes a European site or a European offshore marine site;
- (b) it included a requirement as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun; or
- (c) the development consent was granted for a limited period and that period has expired.

(2) In any such review of an order granting development consent, the competent authority must—

- (a) consider whether any adverse effects could be overcome by imposing requirements under paragraph 5(4)(c), (d) or (e) of Schedule 6 to the Planning Act 2008 (changes to, and revocation of, orders granting development consent); and
- (b) if it considers that those effects could be so overcome, impose those requirements by making such an order under paragraph 3(1) of Schedule 6 to that Act(c) as may be required.

*Interpretation of Chapter 2*

**Interpretation of Chapter 2**

**86.**—(1) This Chapter, except regulations 84 and 85, is to be construed as one with the TCPA 1990.

(2) In regulations 84 and 85, the terms “development” and “development consent” have the meanings given by the Planning Act 2008(d).

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(a) 2008 c. 29.

(b) Section 120 was amended by the Localism Act 2011 (c. 20), section 140 and Schedule 13, paragraphs 1 and 60.

(c) Paragraph 3(1) of Schedule 6 was amended by the Localism Act 2011, Schedule 13, paragraphs 1 and 72.

(d) See sections 31 and 32 for the definition of “development consent” and “development” respectively.

## CHAPTER 3

### Highways and roads

#### Construction or improvement of highways or roads

- 87.**—(1) The assessment provisions apply in relation to any plan or project—
- (a) by the appropriate authority or a strategic highways company to construct a new highway or to improve, within the meaning of the Highways Act 1980(a), an existing highway; or
  - (b) by a local highway authority to carry out within the boundaries of a road any works required for the improvement of the road.
- (2) The review provisions apply to any such plan or project as is mentioned in paragraph (1) unless—
- (a) the works were completed before 30th October 1994; or
  - (b) the works have been completed before the site became a European site or a European offshore marine site.
- (3) In paragraph (1)(a) “strategic highways company” means a company for the time being appointed under Part 1 of the Infrastructure Act 2015(b).

#### Cycle tracks and other ancillary works

- 88.** Section 3(10) of the Cycle Tracks Act 1984 (conversion of footpaths into cycle tracks)(c) is not to be taken to deem planning permission to be granted for development which—
- (a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and
  - (b) is not directly connected with or necessary to the management of the site,
- whether or not the development authorised by the permission has been begun.

## CHAPTER 4

### Electricity

#### Consents under Electricity Act 1989: application of assessment and review provisions

- 89.**—(1) The assessment provisions apply in relation to the granting of—
- (a) consent under section 36 of the Electricity Act 1989 (consent required for construction etc. of generating stations)(d) to construct, extend or operate a generating station in Great Britain; or
  - (b) consent under section 37 of that Act (consent required for overhead lines)(e) for an electric line to be installed or kept installed above ground.
- (2) Where in such a case the competent authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided

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(a) 1980 c. 66. See the definition of “improvement” in section 329(1).

(b) 2015 c. 7.

(c) 1984 c. 38. Section 3(10) was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 66.

(d) 1989 c. 29. Section 36 was amended by the Energy Act 2004 (c. 20), section 93; by the Planning Act 2008, Schedule 2, paragraphs 31 and 32; by the Marine Act, section 12(7)(a) and (8); by the Energy Act 2016 (c. 20), section 78; and by S.I. 2006/1054, and is prospectively amended by the Wales Act 2017 (c. 4), section 39(7) to (11), and Schedule 6, Part 3, paragraph 47, from a date to be appointed. Section 36C of the Act, inserted by the Growth and Infrastructure Act 2013 (c. 27), section 20, provides for the variation of consents granted under section 36.

(e) Section 37 was amended by the Planning Act 2008, Schedule 2, paragraphs 31 and 33; and is prospectively amended by the Wales Act 2017, section 42 from a date to be appointed.

if the consent were subject to conditions, the competent authority may grant consent subject to those conditions.

- (3) The review provisions apply to a consent mentioned in paragraph (1) unless—
- (a) in the case of a consent to construct or extend (whether or not also to operate) a generating station or a consent of a kind mentioned in paragraph (1)(b)—
    - (i) the works to which the consent relates were completed before the relevant date; or
    - (ii) the consent was granted subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun;
  - (b) in the case of a consent to operate (but not also to construct or extend) a generating station, the operation began before the relevant date; or
  - (c) in any case, the consent was for a limited period and that period has expired.

(4) Where the consent is to construct or extend, but also to operate, a generating station, the works, if not already completed when the generating station is first operated in reliance on the consent, are to be treated as completed at that date.

(5) In the case of a consent of a kind mentioned in paragraph (1)(b) for an electric line to be kept installed, the works to which the consent relates are to be treated for the purposes of paragraph (3)(a) as the works to which any consent for the installation of that line relates.

(6) Where on the review of such a consent, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the consent, the authority may vary the consent accordingly.

(7) In conjunction with the review of any such consent, the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

(8) In this regulation, “the relevant date” means the date on which the site became a European site or a European offshore marine site (as the case may be) or (if later) 30th October 1994.

### **Consents under Electricity Act 1989: procedure on review**

**90.**—(1) Where the competent authority decides in pursuance of regulation 89(3), (6) or (7) to revoke or vary a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, the authority must serve notice on the persons specified in paragraph (2), informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

- (2) The persons referred to in paragraph (1) are—
- (a) the person to whom the consent was granted or, as the case may be, in whose favour the direction was made;
  - (b) in the case of a consent under section 36 of the Electricity Act 1989, any other person proposing to operate the generating station in question; and
  - (c) any other person who in the authority’s opinion will be affected by the revocation or variation.
- (3) The competent authority must also serve notice on—
- (a) the relevant planning authority within the meaning of paragraph 2(6) of Schedule 8 to the Electricity Act 1989 (consents under sections 36 and 37 of that Act)(a), and
  - (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

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(a) Schedule 8 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 83(1); the Local Government (Wales) Act 1994 (c. 19), Schedule 6, paragraph 22 and Schedule 18; and the Environment Act 1995 (c. 25), Schedule 10, paragraph 30(1), (3) and (6) and Schedule 24.

(4) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (3).

(5) If within the specified period a person on whom notice was served under paragraph (1), or the relevant planning authority, so requires, the competent authority must, before deciding whether to proceed with the revocation or variation, give—

- (a) to that person or the relevant planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (3) was required to be served, an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

#### **Consents under Electricity Act 1989: effect of review**

**91.**—(1) The revocation or variation pursuant to regulation 89(3), (6) or (7) of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 90(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the competent authority decides not to proceed with the revocation or variation, the consent or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the consent or direction for the taking of any action, being a period which had not expired before the date on which the revocation or variation took effect, were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the consent or direction as being a date by which any action should be taken (“the specified date”), not being a date falling before the date on which the revocation or variation took effect, such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of a consent or direction pursuant to regulation 89(3), (6) or (7) does not affect anything done under the consent or direction before the revocation or variation takes effect.

#### **Consents under Electricity Act 1989: compensation**

**92.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 89(7), that permission is to be treated—

- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 97 of that Act (power to revoke or modify planning permission)(a); or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997(b) (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 65 of that Act (power to revoke or modify planning permission)(c).

(2) Where a consent under the Electricity Act 1989 is revoked or varied pursuant to regulation 89(3) or (6), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

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(a) Section 97 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 4 and Schedule 19, Part 1; and by the Housing and Planning Act 2016 (c. 22), Schedule 12, paragraphs 1 and 25(1) to (5).  
 (b) 1997 c. 8.  
 (c) Section 65 was amended by S.S.I. 2006/243.

- (a) the consent had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
- (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the competent authority decides not to proceed with the revocation or variation of a consent under the Electricity Act 1989 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the consent or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 91(1) and the competent authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority has indicated in writing that such a reference and determination may be dispensed with.

## CHAPTER 5

### Pipe-lines

#### **Authorisations under Pipe-lines Act 1962: application of assessment and review provisions**

**93.**—(1) The assessment provisions apply in relation to the granting of a pipe-line construction authorisation under the Pipe-lines Act 1962(a).

(2) Where in such a case the competent authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided by granting an authorisation for the execution of works for the placing of the proposed pipe-line along a modified route, the competent authority may, subject to the provisions of Schedule 1 to the Pipe-lines Act 1962 (applications for pipe-line construction authorisations)(b), grant such an authorisation.

(3) The review provisions apply to an authorisation mentioned in paragraph (1) unless—

- (a) the works to which the authorisation relates—
  - (i) were completed before 30th October 1994; or
  - (ii) have been completed before the site became a European site or a European offshore marine site (as the case may be); or
- (b) the authorisation was granted—
  - (i) subject to a condition as to the time within which the works to which it relates were to be begun and that time has expired without those works having been begun; or
  - (ii) for a limited period and that period has expired.

(4) Where, on the review of such an authorisation, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the plan or project would be avoided by a variation of the authorisation, the authority may vary it accordingly.

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(a) 1962 c. 58; see section 1, which relates to pipe-line construction authorisations. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraph 6; S.I. 1999/742; and 2007/1519. It was also amended, in relation to England and Wales, by the Criminal Justice Act 1982 (c. 48), sections 38 and 46 and, in relation to Scotland, by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289F and 289G.

(b) Schedule 1 was amended by the Petroleum Act 1987 (c. 12), section 25, and by S.I. 1992/449 and 1999/742.

(5) In conjunction with the review of any such authorisation the competent authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

**Authorisations under Pipe-lines Act 1962: procedure on review**

**94.**—(1) Where the competent authority decides in pursuance of regulation 93(3), (4) or (5) to revoke or vary an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, the authority must serve notice on the persons specified in paragraph (2) informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the authority.

(2) The persons referred to in paragraph (1) are—

- (a) the person to whom the authorisation was granted or, as the case may be, in whose favour the direction was made; and
- (b) any other person who in the authority’s opinion will be affected by the revocation or variation.

(3) The competent authority must also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(4) The competent authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (3).

(5) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the competent authority, must before deciding whether to proceed with the revocation or variation, give—

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (3) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the competent authority for the purpose.

**Authorisations under Pipe-lines Act 1962: effect of review**

**95.**—(1) The revocation or variation pursuant to regulation 93(3), (4) or (5) of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 94(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the competent authority decides not to proceed with the revocation or variation, the authorisation or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the authorisation or direction for the taking of any action, being a period which had not expired before the date on which the revocation or variation took effect, were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the authorisation or direction as being a date by which any action should be taken (“the specified date”), not being a date falling before the date on which the revocation or variation took effect, such later date as postpones the specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of an authorisation or direction pursuant to regulation 93(3), (4) or (5) does not affect anything done under the authorisation or direction before the revocation or variation takes effect.

**Authorisations under Pipe-lines Act 1962: compensation**

**96.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 93(5), that permission is to be treated—

- (a) for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 97 of that Act (power to revoke or modify planning permission); or
- (b) for the purposes of Part 4 of the Town and Country Planning (Scotland) Act 1997 (compensation for effects of certain orders, notices etc.), as having been revoked or modified by order under section 65 of that Act (power to revoke or modify planning permission).

(2) Where an authorisation under the Pipe-lines Act 1962 is revoked or varied pursuant to regulation 93(3) or (4), Part 4 of the TCPA 1990 or Part 4 of the Town and Country Planning (Scotland) Act 1997 (as the case may be) applies as if—

- (a) the authorisation had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of the TCPA 1990 or section 65 of the Town and Country Planning (Scotland) Act 1997; and
- (b) that Part provided that the competent authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the competent authority decides not to proceed with the revocation or variation of an authorisation under the Pipe-lines Act 1962 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the authorisation or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 95(1) and the competent authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal, or the Lands Tribunal for Scotland, unless and to the extent that in any particular case the competent authority has indicated in writing that such a reference and determination may be dispensed with.

CHAPTER 6

Transport and Works

**Orders under Transport and Works Act 1992: application of assessment and review provisions**

**97.**—(1) The assessment provisions apply in relation to the making of an order under section 1 (orders as to railways, tramways etc.) or 3 (orders as to inland waterways etc.) of the Transport and Works Act 1992(a).

(2) Where in such a case the appropriate authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided by making modifications to the proposals, the appropriate authority may make an order subject to those modifications.

(3) The review provisions apply to an order mentioned in paragraph (1) unless the works to which the order relates have been completed before the site became a European site or a European offshore marine site.

(4) Where, on the review of such an order, the appropriate authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out

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(a) 1992 c. 42; sections 1 and 3 were amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51, 52 and 53.



or, as the case may be, the continuation of the plan or project would be avoided by a variation of the order, the appropriate authority may vary it accordingly.

(5) In conjunction with the review of any such order the appropriate authority must review any direction deeming planning permission to be granted for the plan or project and may vary or revoke it.

(6) In relation to an order mentioned in paragraph (1) which has effect or would have effect in both England and Wales, any reference in this Chapter to the appropriate authority is taken to be a reference to the Secretary of State.

### **Orders under Transport and Works Act 1992: procedure on review**

**98.**—(1) Where the appropriate authority decides in pursuance of regulation 97(3), (4) or (5) to revoke or vary an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, the authority must serve notice on the persons specified in paragraph (2) informing them of the decision and specifying a period of not less than 28 days within which any person on whom the notice is served may make representations to the appropriate authority.

(2) The persons referred to in paragraph (1) are—

- (a) the person (if any) on whose application the order was made or, as the case may be, in whose favour the direction was made; and
- (b) any other person who in the authority's opinion will be affected by the revocation or variation.

(3) The appropriate authority must also serve notice on—

- (a) the local planning authority, and
- (b) the appropriate nature conservation body,

informing them of the decision and inviting their representations within the specified period.

(4) The appropriate authority must consider whether to proceed with the revocation or variation, and must have regard to any representations made in accordance with paragraph (1) or (3).

(5) If within the specified period a person on whom notice was served under paragraph (1), or the local planning authority, so requires, the appropriate authority must, before deciding whether to proceed with the revocation or variation of the order or direction, give—

- (a) to that person or the local planning authority (as the case may be), and
- (b) to any other person on whom notice under paragraph (1) or (3) was required to be served,

an opportunity of appearing before, and being heard by, a person appointed by the appropriate authority for the purpose.

### **Orders under Transport and Works Act 1992: effect of review**

**99.**—(1) The revocation or variation pursuant to regulation 97(3), (4) or (5) of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted takes effect upon the service of the notices required by regulation 98(1) or, where there is more than one such notice and those notices are served at different times, upon the service of the last such notice to be served.

(2) Where the appropriate authority decides not to proceed with the revocation or variation, the order or direction has effect again as from the time of that decision, and thereafter has effect as if—

- (a) any period specified in the order or direction for the taking of any action, being a period which had not expired before the date on which the revocation or variation took effect, were extended by a period equal to that during which the revocation or variation had effect; and
- (b) there were substituted for any date specified in the order or direction as being a date by which any action should be taken (“the specified date”), not being a date falling before the date on which the revocation or variation took effect, such later date as postpones the

specified date by a period equal to that during which the revocation or variation had effect.

(3) The revocation or variation of an order or direction pursuant to regulation 97(3), (4) or (5) does not affect anything done under the order or direction before the revocation or variation takes effect.

### **Orders under Transport and Works Act 1992: compensation**

**100.**—(1) Where a direction deeming planning permission to be granted is revoked or varied pursuant to regulation 97(5), that permission is to be treated for the purposes of Part 4 of the TCPA 1990 (compensation for effects of certain orders, notices etc.) as having been revoked or modified by order under section 97 of that Act (power to revoke or modify planning permission).

(2) Where an order under the Transport and Works Act 1992 is revoked or varied pursuant to regulation 97(3) or (4), Part 4 of the TCPA 1990 applies as if—

- (a) the order had been planning permission granted on an application under that Act and had been revoked or modified by order under section 97 of that Act; and
- (b) that Part provided that the appropriate authority was the person liable to pay any compensation provided for by that Part.

(3) Paragraph (2) does not confer any right to compensation for any expenditure, loss or damage for which compensation is payable by virtue of paragraph (1).

(4) Where the appropriate authority decides not to proceed with the revocation or variation of an order under the Transport and Works Act 1992 or a direction deeming planning permission to be granted, any claim for compensation by virtue of this regulation is limited to any loss or damage directly attributable to the order or direction ceasing to have effect or being varied for the duration of the period between the revocation or variation taking effect under regulation 99(1) and the appropriate authority's decision not to proceed with it.

(5) Where compensation is payable by virtue of this regulation, the question as to the amount of the compensation must be referred to and determined by the Upper Tribunal unless and to the extent that in any particular case the appropriate authority has indicated in writing that such a reference and determination may be dispensed with.

## CHAPTER 7

### Environmental Controls

#### **Environmental permits**

**101.**—(1) The assessment provisions apply in relation to the granting of an environmental permit under the Environmental Permitting (England and Wales) Regulations 2016(a).

(2) Where in such a case the competent authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the permit were subject to conditions, it may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) The review provisions apply to a permit described in paragraph (1).

(4) Where, on the review of such a permit, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, it may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, or affirming a permit on review, under regulation 64 (considerations of overriding public interest), the competent authority

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(a) S.I. 2016/1154.

must refer the matter to the appropriate authority which must determine the matter in accordance with that regulation and give directions to the competent authority accordingly.

### Abstraction and works authorised under water legislation

**102.**—(1) The assessment provisions apply in relation to the granting of an authorisation by virtue of—

- (a) the granting of a licence under Chapter 2 of Part 2 of the WRA (abstraction and impounding)(a);
- (b) the making of an order under section 27A of the WRA (variation of small quantity threshold)(b);
- (c) the making of regulations under section 33A of the WRA (power to provide for further exemptions)(c), where those regulations relate to—
  - (i) a prescribed geographical area;
  - (ii) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 of the WRA (restrictions on abstraction)(d)); or
  - (iii) prescribed inland waters (in the case of an exemption from the restriction on impounding works);
- (d) any consent given under paragraph (2);
- (e) the making of an order under section 73 of the WRA (power to make ordinary and emergency drought orders)(e) which has the effect of authorising—
  - (i) an abstraction or additional abstraction; or
  - (ii) a discharge or additional discharge;
- (f) the granting of a permit under section 79A of that Act (drought permits)(f);
- (g) any consent given under section 166 of the WIA (consents for certain discharges under section 165)(g) or section 164 of the WRA (consents for certain discharges under section 163)(h); or
- (h) the making of an order under section 167 of the WIA (compulsory works orders)(i) or section 168 of the WRA (compulsory works orders)(j).

(2) An exemption conferred by regulations under section 33A of the WRA, other than regulations referred to in paragraph (1)(c), does not apply in relation to any particular abstraction or impounding works unless the Environment Agency in relation to England or the Natural Resources Body for Wales in relation to Wales has given consent in writing to the abstraction or impounding works being carried out.

(3) Where, in relation to any plan or project authorised by any means referred to in paragraph (1)(a) to (h), the competent authority considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the authorisation were subject to conditions, it may grant the authorisation, or cause it to be granted, subject to those conditions.

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- (a) 1991 c. 57.
  - (b) Section 27A was inserted by the Water Act 2003 (c. 37), section 6(1); and amended by S.I. 2013/755.
  - (c) Section 33A was inserted by the Water Act 2003 (c. 37), section 9; and amended by S.I. 2013/755.
  - (d) Section 24 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128; and by S.I. 1996/593, 2013/755 and 2015/664.
  - (e) Section 73 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 128 and 139; and by S.I. 2013/755.
  - (f) Section 79A was inserted by the Environment Act 1995 (c. 25), Schedule 22, paragraph 140, and amended by the Water Act 2003 (c. 37), section 64(3) and Schedule 9, Part 3; and by S.I. 2013/755.
  - (g) 1991 c. 56; section 166 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 118; and by S.I. 2013/755.
  - (h) Section 164 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128; and by S.I. 2013/755.
  - (i) Section 167 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraph 50; and the Flood and Water Management Act 2010 (c. 29), section 41(1) and (2).
  - (j) Section 168 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 128.

(4) Where, by virtue of paragraph (1)(g), the assessment provisions apply in relation to the granting of an authorisation by virtue of a consent under section 166 of the WIA or section 164 of the WRA, the section in question has effect as if in each case in subsection (3)—

- (a) in paragraph (a), for “seven” there were substituted “fourteen”; and
- (b) the words from “and, subject to” to the end were omitted.

(5) The review provisions apply to any authorisation mentioned in paragraph (1)(a), (b), (c), (d) or (h).

(6) Where, on the review of any such authorisation, the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of the activities authorised by it would be avoided by a variation of the authorisation, it may vary it, or cause it to be varied, accordingly.

(7) In this regulation—

- “the WIA” means the Water Industry Act 1991(a);
- “the WRA” means the Water Resources Act 1991(b).

### Marine works

**103.**—(1) The assessment provisions apply in relation to the granting of a licence, consent or other approval for marine works.

(2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the licence, consent or other approval were subject to conditions or requirements, grant the licence, consent or other approval subject to those conditions or requirements.

(3) The review provisions apply to any licence, consent or other approval for marine works.

(4) Where, on the review of any such licence, consent or other approval the competent authority considers that any adverse effects on the integrity of a European site or a European offshore marine site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the licence, consent or other approval, it may vary it accordingly.

(5) In this regulation, “marine works” means—

- (a) any activity or proposed activity requiring—
  - (i) a marine licence under Part 4 of the Marine Act;
  - (ii) a licence under Part 2 of the Food and Environment Protection Act 1985 (deposits in the sea)(c);
  - (iii) an authorisation under the Aquatic Animal Health (England and Wales) Regulations 2009(d);
  - (iv) an approval or consent for harbour works under legislation falling within paragraph (6); or
- (b) harbour works authorised by, and carried out in accordance with, any legislation falling within paragraph (6).

(6) The legislation referred to in paragraph (5)(a)(iv) and (b) is—

- (a) a local Act;

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(a) 1991 c. 56.

(b) 1991 c. 57.

(c) 1985 c. 48. Part 2 was amended by the Environmental Protection Act 1990 (c. 43), sections 146 and 162 and Schedule 16, Part 8; and by the Marine Act 2009, section 112(1) and Schedule 8, paragraphs 2, 5 and 6. By virtue of these amendments, Part 2 of the Food and Environment Protection Act 1985 only applies to the Scottish inshore region. See section 322(1) for the definition of the “Scottish inshore region”.

(d) S.I. 2009/463.

- (b) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862(a) (power to Admiralty to retain authority over ports, etc. where dockyards, etc. are situate); or
- (c) an order made under section 14 (powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency etc.) or 16 (powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964(b).

(7) In paragraph (5)(a)(iv) and (b), “harbour works” means—

- (a) works involved in the construction of a harbour;
- (b) works involving the making of modifications to an existing harbour;
- (c) any dredging operation undertaken by or on behalf of a harbour authority within the meaning of the Harbours Act 1964(c); and
- (d) works involving the deposit of spoil from any such dredging operation.

### **Derogations in relation to nitrate pollution prevention legislation**

**104.**—(1) The assessment provisions apply in relation to the granting of a derogation under—

- (a) Part 8 of the Nitrate Pollution Prevention Regulations 2015(d); or
- (b) Part 3A of the Nitrate Pollution Prevention (Wales) Regulations 2013(e).

(2) Where the assessment provisions apply, the competent authority may, if it considers that any adverse effects of the plan or project on the integrity of a European site or a European offshore marine site would be avoided if the derogation were subject to conditions, grant the derogation, subject to those conditions.

## CHAPTER 8

### Land Use Plans

#### *Land use plans*

### **Assessment of implications for European sites and European offshore marine sites**

**105.**—(1) Where a land use plan—

- (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(3) The plan-making authority must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

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(a) 1862 c. 69. Section 9 was amended by SR & O 1921/1804.  
 (b) 1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56), Schedule 6, paragraphs 3 and 14 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), Schedule 3, paragraphs 1 and 2; the Planning Act 2008 (c. 29), Schedule 2, paragraphs 8, 9 and 10; and S.I. 2006/1177. Section 14 was additionally amended by S.I. 2009/1941. Section 16 was additionally amended by the Marine Act 2009, Schedule 21, paragraphs 1 and 2.  
 (c) See the definition of “harbour authority” in section 57(1).  
 (d) S.I. 2015/668. Part 8 was amended by S.I. 2016/1190.  
 (e) S.I. 2013/2506 (W. 245), Part 3A was inserted by S.I. 2015/2020 (W. 308).

(4) In the light of the conclusions of the assessment, and subject to regulation 107, the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge by the appropriate authority of its obligations under this Chapter.

(6) This regulation does not apply in relation to a site which is—

- (a) a European site by reason of regulation 8(1)(c), or
- (b) a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations (site protected in accordance with Article 5(4) of the Habitats Directive).

### **Assessment of implications for European site: neighbourhood development plans**

**106.**—(1) A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 105 or to enable it to determine whether that assessment is required.

(2) In this regulation, “qualifying body” means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the TCPA 1990 (authorisation to act in relation to neighbourhood areas)(a), as applied by section 38C of the 2004 Planning Act (supplementary provisions)(b).

(3) Where the competent authority decides to revoke or modify a neighbourhood development plan after it has been made, it must for that purpose make an appropriate assessment of the implications for any European site likely to be significantly affected in view of that site’s conservation objectives; and regulation 105 and paragraph (1) apply with the appropriate modifications in relation to such a revocation or modification.

(4) This regulation applies in relation to England only.

### **Considerations of overriding public interest**

**107.**—(1) If the plan-making authority is satisfied that, there being no alternative solutions, the land use plan must be given effect for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may give effect to the land use plan notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be).

(2) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (1) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) any other reasons which the plan-making authority, having due regard to the opinion of the European Commission, considers to be imperative reasons of overriding public interest.

(3) Where a plan-making authority other than the Secretary of State or the Welsh Ministers desire to obtain the opinion of the European Commission as to whether reasons are to be considered imperative reasons of overriding public interest, it may submit a written request to the appropriate authority—

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(a) Section 61F was inserted by the Localism Act 2011 (c. 20), Schedule 9, paragraphs 1 and 2. It is prospectively amended by the Neighbourhood Planning Act 2017 (c. 20), section 5, from a date to be appointed.

(b) Section 38C was inserted the Localism Act 2011 (c. 20), Schedule 9, paragraphs 5 and 7.

- (a) identifying the matter on which an opinion is sought; and
  - (b) accompanied by any documents or information which may be required.
- (4) The appropriate authority—
- (a) may seek the opinion of the European Commission concerning the plan; and
  - (b) where such an opinion is received, must send it to the plan-making authority.
- (5) Where a plan-making authority other than the Secretary of State or the Welsh Ministers propose to give effect to a land use plan under this regulation notwithstanding a negative assessment of the implications for the site concerned it must—
- (a) notify the appropriate authority; and
  - (b) not give effect to the land use plan before the end of the period of 21 days beginning with the day notified by the appropriate authority as that on which its notification was received, unless the appropriate authority notify it that it may do so.
- (6) Without prejudice to any other power, the appropriate authority may give directions to the plan-making authority in any such case prohibiting it from giving effect to the land use plan, either indefinitely or during such period as may be specified in the direction.

### **Co-ordination for land use plan prepared by more than one authority**

**108.**—(1) The following provisions apply where two or more local planning authorities prepare a joint local development document under section 28 (joint local development documents) or a joint local development plan under section 72 (joint local development plans) of the 2004 Planning Act(a).

(2) Nothing in paragraph (1) of regulation 105 requires a local planning authority to assess any implications of a joint local development document or plan which would be more appropriately assessed under that provision by another local planning authority.

(3) The appropriate authority may issue guidance to local planning authorities for the purposes of regulation 105(1) as to the circumstances in which a local planning authority may or should adopt the reasoning or conclusions of another local planning authority as to whether a joint local planning document or plan—

- (a) is likely to have a significant effect on a European site or a European offshore marine site; or
- (b) will adversely affect the integrity of a European site or a European offshore marine site.

(4) The local planning authorities concerned must have regard to any such guidance.

(5) In determining whether a joint local development document or plan should be adopted under regulation 107, a local planning authority must seek and have regard to the views of the other local planning authorities concerned.

### **Compensatory measures**

**109.** Where in accordance with regulation 107 a land use plan is given effect notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected.

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(a) Section 28 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20), Schedule 5, paragraphs 12 and 16; and the Neighbourhood Planning Act 2017 (c. 20), section 9(1) and (5) to (7). It is prospectively amended by the Localism Act 2011 (c. 20), Schedule 8, paragraphs 7 and 11, and Schedule 25, Part 16, from a date to be appointed.

*Planning Act 2008*

**National policy statements**

**110.**—(1) This Chapter applies—

- (a) in relation to a national policy statement under Part 2 of the Planning Act 2008 (national policy statements)(a) as it applies in relation to a land use plan, and
- (b) in relation to the Secretary of State when exercising powers under Part 2 of that Act as it applies in relation to a plan-making authority,

with the modifications specified in paragraphs (2) and (3).

(2) Any reference in this Chapter to giving effect to a land use plan, in relation to a national policy statement, is to be taken to be a reference to the designation of a statement as a national policy statement or an amendment of a national policy statement under Part 2 of the Planning Act 2008.

(3) Where this Chapter applies by virtue of paragraph (1)—

- (a) regulations 105(5), 107(3) to (6) and 108 do not apply; and
- (b) in regulation 109, the reference to the appropriate authority is taken to be a reference to the Secretary of State.

*Interpretation of Chapter 8*

**Interpretation of Chapter 8**

**111.**—(1) In this Chapter—

“the 1999 Act” means the Greater London Authority Act 1999(b);

“the 2004 Planning Act” means the Planning and Compulsory Purchase Act 2004(c);

“the 2005 Order” means the Planning and Compulsory Purchase Act 2004 (Commencement No. 3 and Consequential and Transitional Provisions) (Wales) Order 2005(d);

“land use plan” means—

- (a) the spatial development strategy under section 334 of the 1999 Act (the spatial development strategy);
- (b) a local development document as provided for in Part 2 of the 2004 Planning Act (local development) other than a statement of community involvement under section 18 of that Act (statement of community involvement)(e);
- (c) a local development plan as provided for in Part 6 of the 2004 Planning Act (Wales);
- (d) the Wales Spatial Plan under section 60 of the 2004 Planning Act (national development framework for Wales)(f);
- (e) an alteration or replacement of a structure plan, unitary development plan, local plan, minerals local plan, or waste local plan under Part 2 of the TCPA 1990 (development

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(a) 2008 c. 29.

(b) 1999 c. 29.

(c) 2004 c. 5.

(d) S.I. 2005/1229 (W.87) (C.56), amended by S.I. 2005/2722 (W.193) (C.110).

(e) Section 18 was amended by the Planning Act 2008 (c. 29), section 180(1) and (4) and Schedule 13; the Localism Act 2011 (c. 20), Schedule 12, paragraphs 27 and 28; and the Neighbourhood Planning Act 2017 (c. 20), sections 6(1) to (3) and 13(1) and (2).

(f) Section 60 was substituted by the Planning (Wales) Act 2015 (anaw 4), section 3; and amended by the Environment (Wales) Act 2016 (anaw 3), Schedule 2, Part 1, paragraph 8(1) and (2).



plans)(a) to the extent permitted by Schedule 8 to the 2004 Planning Act (transitional provisions); or

- (f) (in England) a neighbourhood development plan as defined in section 38A of the 2004 Planning Act (neighbourhood development plans)(b).

“plan-making authority” means—

- (a) the Mayor of London when exercising powers under section 341(1) or (2) of the 1999 Act (alteration or replacement);
- (b) an authority which, by virtue of Part 1 of the TCPA 1990 (planning authorities) or an order under section 29(2) of the 2004 Planning Act (joint committees), is a local planning authority;
- (c) the Secretary of State when exercising powers under—
- (i) section 21 or section 27 of the 2004 Planning Act (intervention by the Secretary of State, Secretary of State’s default power, respectively); or
  - (ii) section 19, section 35A(4) or section 45 of the TCPA 1990 (approval of a unitary development plan, calling in of proposal for approval by the Secretary of State, approval of proposals by the Secretary of State, respectively)(c) to the extent permitted by Schedule 8 to the 2004 Planning Act;
- (d) the Welsh Ministers when exercising powers under—
- (i) section 60(3), section 65 or section 71(4) of the 2004 Planning Act (national development framework for Wales, intervention by Assembly, Assembly’s default power, respectively); or
  - (ii) section 19 of the TCPA 1990 to the extent permitted by article 4 of the 2005 Order; or
- (e) (in England) the local planning authority when exercising powers under Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).
- (2) References in this Chapter to giving effect to a land use plan are to—
- (a) the approval, under section 21(9) or 27(4) of the 2004 Planning Act, of a local development document;
  - (b) the adoption, under section 23 of the 2004 Planning Act (adoption of local development documents), of a local development document other than a statement of community involvement under section 18 of that Act;
  - (c) the publication, under section 341 of the 1999 Act, of alterations of the spatial development strategy or a new spatial development strategy to replace it;
  - (d) the publication, under section 60 of the 2004 Planning Act, of a revision of the Wales Spatial Plan;
  - (e) the adoption, under section 67 of the 2004 Planning Act (adoption of local development plan), of a local development plan;
  - (f) the approval, under section 65(9) or 71(4) of the 2004 Planning Act, of a local development plan;
  - (g) the adoption, under section 35(1) (adoption of proposals), or approval under section 35A(4) of the TCPA 1990, of an alteration or replacement of a structure plan to the extent permitted by paragraph 2(2) of Schedule 8 to the 2004 Planning Act;

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(a) Sections 32 to 40 in Part 2 of the TCPA 1990 were substituted by the Planning and Compensation Act 1991 (c. 34), Schedule 4, paragraph; Part 2 of the TCPA 1990 was repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(b) Section 38A was inserted by the Localism Act 2011 (c. 20), Schedule 9, paragraphs 5 and 7.

(c) Section 35A was inserted by the Planning and Compensation Act 1991 (c. 34), Schedule 4, paragraph 17; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

- (h) the adoption, under section 15 (adoption of unitary development plans by local planning authority)(a) and that provision as applied by section 21(2) (alteration or replacement of unitary development plans)(b) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (i) the approval, under section 19 and that provision as applied by section 21(2) of the TCPA 1990, of an alteration or replacement of a unitary development plan to the extent permitted by paragraph 4 of Schedule 8 to the 2004 Planning Act;
- (j) the adoption, under section 43 (adoption of proposals)(c) or approval under section 45 of the TCPA 1990, of an alteration or replacement of a local plan, minerals local plan or waste local plan to the extent permitted by paragraph 9, 10 or 14 of Schedule 8 to the 2004 Planning Act;
- (k) the adoption, under section 15 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order;
- (l) the approval, under section 19 of the TCPA 1990, of a unitary development plan to the extent permitted by article 4 of the 2005 Order; or
- (m) (in England) the holding of a referendum in accordance with paragraph 12(4) of Schedule 4B to the TCPA 1990 (as applied by section 38A(3) of the 2004 Planning Act).

## CHAPTER 9

### MARINE POLICY STATEMENTS AND MARINE PLANS

#### Marine policy statement

**112.**—(1) Chapter 8 applies (with the modifications specified in paragraphs (2) and (3))—

- (a) in relation to a marine policy statement under Chapter 1 of Part 3 (marine planning) of the Marine Act as it applies in relation to a land use plan; and
- (b) in relation to a policy authority when exercising powers under Part 3 of that Act as it applies in relation to a plan-making authority.

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine policy statement, is to be taken to be a reference to the adoption and publication of a marine policy statement in accordance with Schedule 5 to the Marine Act or any amendment of a marine policy statement under section 47 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1)—

- (a) in regulation 105(2), after “the appropriate nature conservation body” insert “and the Joint Nature Conservation Committee”;
- (b) regulations 105(5), 107(3) to (6) and 108 do not apply; and
- (c) in regulation 109, for the reference to the appropriate authority substitute a reference to the policy authority.

(4) In this regulation “policy authority” means the Secretary of State or the Welsh Ministers.

#### Marine plan

**113.**—(1) Chapter 8 applies (with the modifications specified in paragraphs (2) and (3))—

- (a) in relation to a marine plan as it applies in relation to a land use plan; and

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- (a) Section 15(1) was substituted by the Planning and Compensation Act 1991, Schedule 4, paragraph 6; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.
  - (b) Section 21 was amended by the Planning and Compensation Act 1991, Schedule 4, paragraph 12 and Schedule 19; and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.
  - (c) Section 43 was amended by the Planning and Compensation Act 1991, Schedule 4, paragraph 19(1); and repealed by the 2004 Planning Act, Schedule 9, subject to transitional provisions contained in Schedule 8 to that Act.

(b) in relation to a marine plan authority when exercising powers under Part 3 of the Marine Act as it applies in relation to a plan-making authority.

(2) Any reference in Chapter 8 to giving effect to a land use plan, in relation to a marine plan, is to be taken to be a reference to the adoption and publication of a marine plan in accordance with Schedule 6 to the Marine Act or any amendment of a marine plan under section 52 of that Act.

(3) Where Chapter 8 applies by virtue of paragraph (1), regulations 105(5), 107(3) to (6) and 108 do not apply.

(4) In this regulation—

“marine plan” means a marine plan under Chapter 2 of Part 3 of the Marine Act;

“marine plan authority” has the meaning given by Part 3 of the Marine Act.

## PART 7

### Enforcement

#### *Wildlife inspectors*

##### **Wildlife inspectors**

**114.**—(1) In this Part, “wildlife inspector” means a person authorised in writing under this regulation by the appropriate authority (but see regulation 141(6)).

(2) An authorisation under paragraph (1) is subject to any conditions or limitations specified in it.

#### *Powers of entry*

##### **Powers of entry: constables**

**115.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (4), the constable may, for the purposes of exercising the powers conferred by regulation 118, or arresting a person in accordance with section 24 of the Police and Criminal Evidence Act 1984 (arrest without warrant: constables)(a) for such an offence, enter any premises other than a dwelling.

(2) A constable may—

- (a) be accompanied by any other person that the constable considers necessary; and
- (b) bring any equipment or materials that the constable considers necessary.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there are reasonable grounds for suspecting that an offence specified in paragraph (4) has been committed and that evidence of the offence may be found on any premises, the justice may by signed warrant authorise a constable to enter and search those premises for the purpose of obtaining that evidence.

(4) The offences specified for the purposes of this regulation are—

- (a) a species offence (see regulation 132);
- (b) an offence under regulation 54 (introduction of new species from ships);
- (c) an offence under regulation 59 (false statements made for obtaining licence); and
- (d) an offence under regulation 122(1) or (2).

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(a) 1984 c. 60; section 24 was substituted by the Serious Organised Crime and Police Act 2005 (c. 15), section 110(1).

**Powers of entry: wildlife inspectors**

**116.**—(1) A wildlife inspector may, at all reasonable hours, enter and inspect any premises other than a dwelling—

- (a) for the purpose of ascertaining whether a species offence is being or has been committed; or
- (b) for the purpose of verifying any statement or representation made, or document or information supplied, by an occupier of the premises in connection with an application for, or the holding of, a licence granted under regulation 55 (licences for certain activities relating to animals or plants).

(2) The power in paragraph (1) to enter and inspect premises includes power to board and inspect a ship within the marine area, subject to paragraphs (3) to (6).

(3) Paragraph (4) applies in relation to—

- (a) a third country ship;
- (b) a warship which is being used by the government of a State other than the United Kingdom (whether or not it is a third country ship); and
- (c) any other ship which is being used by the government of a State other than the United Kingdom for any non-commercial purpose.

(4) A wildlife inspector must not, in the exercise of the power in paragraph (1), board or inspect a ship to which this paragraph applies unless—

- (a) in the case of a third country ship (other than a ship which is being used as mentioned in paragraph (3)(b) or (c)), the United Kingdom is entitled under international law to exercise that power without the consent of the flag state; or
- (b) the Commissioners have given authority to exercise that power.

(5) The Commissioners must not give their authority under paragraph (4)(b) unless the flag state has consented to the United Kingdom exercising that power (whether generally or in relation to the ship in question).

(6) In giving their authority under paragraph (4)(b), the Commissioners must impose such conditions or limitations on the exercise of the power as may be necessary to give effect to any conditions or limitations imposed by the flag state.

(7) A wildlife inspector must, if requested to do so, produce a duly authenticated authorisation document before entering any premises.

(8) A wildlife inspector may be accompanied by a veterinary surgeon if the wildlife inspector has reasonable grounds for believing that such a person will be needed for the exercise of powers under regulation 120.

(9) In this regulation—

- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “flag state”, in relation to a ship, means the State whose flag that ship is flying or is entitled to fly;
- “third country ship” means a ship which—
  - (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
  - (b) is not registered in a member State.

**Powers of entry: other authorised persons**

**117.**—(1) A person authorised in writing by the appropriate nature conservation body may, at all reasonable hours, enter any land except a dwelling—

- (a) to ascertain whether a special nature conservation order should be made under regulation 27 (power to make special nature conservation order), whether a stop notice should be served under paragraph (1) of regulation 28 (restriction on carrying out operations

specified in order) or whether an offence under regulation 28(8) is being, or has been, committed on that land;

- (b) to ascertain the amount of any compensation payable under regulation 30 (compensation for effect of stop notice) in respect of an interest in that land; or
- (c) to affix a notice in accordance with regulation 28(3) or paragraph 2(5) of Schedule 1 (procedure in connection with special conservation orders).

(2) An officer of the Valuation Office or a person authorised in writing by the appropriate nature conservation body may enter any land for the purpose of surveying it, or of estimating its value, in connection with any claim for compensation under regulation 34 (compensation for effect of byelaws) in respect of that or any other land.

(3) A person authorised in writing by the authority having power to acquire land or an interest in land may enter that land for the purpose of surveying it in connection with the acquisition of that land or of any interest in that land, whether by agreement or compulsorily, in the exercise of any power conferred by these Regulations.

(4) A person authorised under this regulation must, if requested to do so, produce a duly authenticated authorisation document before entering any land.

(5) A person authorised under paragraph (1) may not demand admission as of right to any land which is occupied unless either—

- (a) 24 hours' notice of the intended entry has been given to the occupier; or
- (b) the purpose of the entry is to ascertain whether an offence under regulation 28(8) is being, or has been, committed on that land.

(6) A person authorised under paragraph (2) or (3) may not demand admission as of right to any land which is occupied unless at least 14 days' notice in writing of the intended entry has been given to the occupier.

*Powers of search etc.*

**Constables' powers of search, etc.**

**118.**—(1) If a constable suspects with reasonable cause that any person is committing or has committed an offence specified in paragraph (2), the constable may without warrant—

- (a) stop and search that person if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that person;
- (b) search or examine anything which that person may be using or which is in that person's possession if the constable suspects with reasonable cause that evidence of the commission of the offence is to be found on that thing; or
- (c) seize and detain, for the purposes of proceedings in relation to an offence specified in paragraph (2), anything which may be evidence of the commission of the offence or may be liable to be forfeited under regulation 128.

(2) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 54 (introduction of new species from ships);
- (c) an offence under regulation 59 (false statements made for obtaining licence); and
- (d) an offence under regulation 122(1) or (2).

*Powers in relation to specimens and samples*

**Powers in relation to samples: constables**

**119.**—(1) If a constable suspects with reasonable cause that a specimen found in the exercise of powers conferred by this Part is one in respect of which an offence specified in paragraph (5) is being or has been committed, the constable may require a sample to be taken from the specimen.

(2) If a constable suspects with reasonable cause that an offence specified in paragraph (5) is being or has been committed in respect of any specimen (“the relevant specimen”), the constable may require any person to make available for the taking of a sample any other specimen in that person’s possession or control which is alleged to be, or the constable suspects with reasonable cause to be, a specimen a sample from which will tend to establish the identity or ancestry of the relevant specimen.

(3) Where a sample from a live animal or plant is to be taken, any person who has possession or control of the animal or plant must give the person taking the sample such assistance as that person may reasonably require for that purpose.

(4) This regulation is subject to regulation 121.

(5) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); and
- (c) an offence under regulation 122(1) or (2).

**Powers in relation to specimens and samples: wildlife inspectors**

**120.**—(1) The powers conferred by this regulation are exercisable where a wildlife inspector has entered premises for a purpose mentioned in regulation 116(1)(a) or (b).

(2) The wildlife inspector, or accompanying veterinary surgeon, may—

- (a) for any such purpose, examine any specimen; and
- (b) subject to paragraph (3) and regulation 121, take a sample from it.

(3) No sample may be taken under paragraph (2) from a live animal or plant except for the purpose of establishing its ancestry or identity.

(4) The wildlife inspector may require an occupier of the premises to give such assistance as is reasonable in the circumstances for the purpose of—

- (a) making an examination under paragraph (2)(a); or
- (b) taking a sample under paragraph (2)(b).

(5) The wildlife inspector may take and remove from the premises a specimen which is not a live animal or plant, if there are reasonable grounds for believing that it is evidence of a species offence.

**Restrictions on taking samples from live specimens**

**121.**—(1) No sample may be taken by virtue of regulation 119 or 120 from a live animal except by a veterinary surgeon.

(2) No sample may be taken by virtue of those regulations from a live animal or plant unless the person taking it is satisfied on reasonable grounds that taking it will not cause lasting harm to the specimen.

*Offences*

**Attempts and possession of means of committing offence**

**122.**—(1) A person who attempts to commit an offence specified in paragraph (3) is guilty of an offence and punishable in the same manner as for that offence.

(2) A person who, for the purposes of committing an offence specified in paragraph (3), is in possession of anything capable of being used for committing such an offence, is guilty of an offence and punishable in the same manner as for that offence.

(3) The offences specified for the purposes of this regulation are—

- (a) a species offence; and
- (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants).

**Obstruction of persons exercising powers of entry under regulation 117**

**123.** A person who intentionally obstructs a person exercising powers under regulation 117 commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Obstruction in connection with constables' powers to take samples**

**124.**—(1) A person commits an offence if that person, without reasonable excuse, fails—

- (a) to make available any specimen in accordance with a requirement regulation 119(2); or
- (b) to give any assistance reasonably required under regulation 119(3).

(2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

**Offences in connection with wildlife inspectors' enforcement powers**

**125.**—(1) A person commits an offence if that person—

- (a) intentionally obstructs a wildlife inspector acting in the exercise of powers conferred by regulation 116 or 120(2) or (5); or
- (b) fails without reasonable excuse to give any assistance reasonably required under regulation 120(4).

(2) A person who, with intent to deceive, falsely pretends to be a wildlife inspector, commits an offence.

(3) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine.

(4) A person guilty of an offence under paragraph (2) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine, or to both; or
- (b) on conviction on indictment, to imprisonment not exceeding two years or to a fine, or to both.

*Codes of practice*

**Codes of practice**

**126.**—(1) The appropriate authority may—

- (a) issue a code of practice in connection with any of the provisions of regulations 114, 116, 120, 121, 124 and 125; and
- (b) revise or replace such a code.

- (2) In discharging any function under the regulations specified in paragraph (1)(a)—
- (a) a wildlife inspector authorised by the Secretary of State must have regard to any relevant provision of a code issued by the Secretary of State;
  - (b) a wildlife inspector authorised by the Welsh Ministers must have regard to any relevant provision of a code issued by them.
- (3) But a wildlife inspector's failure to have regard to any provision of a code does not make that inspector liable to criminal or civil proceedings.
- (4) A code—
- (a) is admissible in evidence in any proceedings; and
  - (b) must be taken into account by any court in any case in which it appears to the court to be relevant.

#### *Miscellaneous*

#### **Advice and assistance from nature conservation bodies**

**127.**—(1) The appropriate nature conservation body may advise or assist any constable or wildlife inspector in, or in connection with, enforcement action in relation to an offence specified in paragraph (2).

- (2) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); and
  - (c) an offence under regulation 122(1) or (2).

#### **Forfeiture**

- 128.**—(1) The court by which a person is convicted of an offence specified in paragraph (3)—
- (a) must order the forfeiture of any animal, plant or other thing in respect of which the offence was committed; and
  - (b) may order the forfeiture of any vehicle, animal, weapon or other thing which was used to commit the offence.
- (2) In paragraph (1)(b) “vehicle” includes any aircraft, hovercraft or boat.
- (3) The offences specified for the purposes of this regulation are—
- (a) a species offence;
  - (b) an offence under regulation 59 (false statements made for obtaining licence), where that offence relates to the obtaining of a licence under regulation 55 (licences for certain activities relating to animals or plants); and
  - (c) an offence under regulation 122(1) or (2).

#### **Proceedings for offences: venue and time limits**

**129.**—(1) For the purposes of conferring jurisdiction in any proceedings for the prosecution of an offence specified in paragraph (5), any such offence is deemed to have been committed in any place where the offender is found or to which the offender is first brought after the commission of the offence.

(2) Summary proceedings for such an offence may be commenced within the period of six months from the date on which the prosecutor first knows of evidence sufficient, in the prosecutor's opinion, to justify proceedings.



(3) But no such proceedings may be commenced more than two years after the commission of the offence.

(4) For the purposes of paragraph (2)—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which the prosecutor first knew of evidence sufficient to justify the proceedings is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

(5) The offences specified for the purposes of this regulation are—

- (a) a species offence;
- (b) an offence under regulation 54 (introduction of new species from ships);
- (c) an offence under regulation 59 (false statements made for obtaining licence); and
- (d) an offence under regulation 122(1) or (2).

#### **Offences by bodies corporate etc.**

**130.**—(1) If an offence under these Regulations committed by a body corporate (other than a limited liability partnership or a Scottish partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

(3) If an offence under these Regulations committed by a partnership (including a limited liability partnership and a Scottish partnership) is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under these Regulations committed by an unincorporated body (other than an unincorporated partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the body, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

- “officer” includes a person purporting to act as an officer;
- “partner” includes a person purporting to act as a partner.

#### **Application of criminal offences to the Crown**

**131.**—(1) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable, but the High Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission of the Crown which constitutes such a contravention.

(2) Notwithstanding paragraph (1), these Regulations apply to persons in the public service of the Crown as they apply to any other person.

*Interpretation of Part 7*

**Interpretation of Part 7**

**132.** In this Part—

“premises” includes land (including buildings), movable structures, vehicles, vessels, aircraft and other means of transport;

a “species offence” means an offence under—

- (a) regulation 43 (protection of certain wild animals: offences);
- (b) regulation 45 (prohibition of certain methods of capturing or killing wild animals);
- (c) regulation 47 (protection of certain wild plants: offences); or
- (d) regulation 60 (offence of breaching licence condition).

**PART 8**

**Final Provisions**

**Powers of drainage authorities**

**133.**—(1) Where the appropriate nature conservation body or any other person enters into an agreement with a drainage authority for the carrying out by that authority of any work on land in a European site, no limitation imposed by law on the capacity of the drainage authority by virtue of its constitution operates so as to prevent the authority carrying out the agreement.

(2) In paragraph (1) “drainage authority” means—

- (a) an internal drainage board<sup>(a)</sup>; or
- (b) the relevant environmental authority.

(3) In paragraph (2)(b), “the relevant environmental authority” means—

- (a) in relation to England, the Environment Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales.

**Advisory role of the Joint Nature Conservation Committee**

**134.**—(1) The Joint Nature Conservation Committee may provide advice or make representations to any competent authority in relation to—

- (a) any question as to whether that authority is obliged to carry out an appropriate assessment in relation to a European offshore marine site under these Regulations;
- (b) any appropriate assessment on which that authority is obliged to consult the Committee under these Regulations;
- (c) any application made pursuant to regulation 77 and sent to the Committee by that authority pursuant to regulation 77(3);
- (d) any decision of the Secretary of State in respect of which notice has been served on the Committee under regulation 90(3)(b) or 94(3)(b); and
- (e) any decision of the appropriate authority in respect of which notice has been served on the Committee under regulation 98(3)(b).

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(a) See section 1 of the Land Drainage Act 1991 (c. 59) for the meaning of “internal drainage board”.

(2) The Joint Nature Conservation Committee may undertake, commission or support (whether by financial means or otherwise) such research and scientific work as they consider is required for the purposes of providing advice or making representations under this regulation.

### **Advisory role of Natural England, the Natural Resources Body for Wales and Scottish Natural Heritage**

**135.**—(1) Natural England may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to England and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(2) The Natural Resources Body for Wales may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Wales and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

(3) Scottish Natural Heritage may—

- (a) provide advice and assistance, or make representations, to any competent authority on any matter which relates to Scotland and is connected with the discharge of the competent authority's functions under these Regulations; and
- (b) undertake, commission or support (whether by financial means or otherwise) such research and scientific work as it considers is required for the purposes of providing advice or assistance or making representations under sub-paragraph (a).

### **Research**

**136.**—(1) The appropriate authority must take such steps to encourage research and scientific work as it considers necessary—

- (a) having regard to the objectives in Article 2 (aims of the Directive), and the obligation in Article 11 (surveillance), of the Habitats Directive; and
- (b) for the purpose of the protection or management, and in relation to the use, of any population of wild birds.

(2) The appropriate authority must supply such information as it considers appropriate to the European Commission and, in the case of information supplied for the purposes of the Habitats Directive, to member States, to further the proper co-ordination of research carried out the European Commission or by member States for the purposes of the Directives.

(3) In deciding what steps to take under paragraph (1), the appropriate authority must have particular regard to the need for research and scientific work—

- (a) on the subjects listed in Annex V to the new Wild Birds Directive (subjects for research); or
- (b) which may be required to implement Articles 4 and 10 of the Habitats Directive (classification of special protection areas, research, respectively).

### **Local inquiries**

**137.**—(1) The appropriate authority may cause a local inquiry to be held for the purposes of the exercise of any of its functions under these Regulations.

(2) The provisions of section 250(2) to (5) of the Local Government Act 1972<sup>(a)</sup> (which relate to evidence and costs in inquiries) apply in relation to an inquiry held under this regulation.

### Notices

**138.**—(1) Any notice required or authorised to be served under these Regulations to any person may be given by—

- (a) delivering it to the person;
- (b) leaving it at the person's proper address; or
- (c) sending it by post to the person at that address.

(2) Any such notice may—

- (a) in the case of a body corporate, be served on an officer of the body;
- (b) in the case of a limited liability partnership, Scottish partnership or unincorporated partnership, be served on a partner or a person having the control or management of the partnership business; and
- (c) in the case of an unincorporated body other than an unincorporated partnership, be served on an officer of that body.

(3) For the purposes of this regulation and section 7 of the Interpretation Act 1978<sup>(b)</sup> (service of documents by post) in its application to this regulation, the proper address of any person on whom a notice is to be served is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a limited liability partnership or a Scottish partnership, the address of the registered or principal office of the partnership;
- (c) in the case of an unincorporated partnership or any other unincorporated body, the address of the principal office of the partnership or body;
- (d) in the case of a person on whom the notice is served in reliance on paragraph (2), the proper address of the body corporate, partnership or other unincorporated body in question; and
- (e) in any other case, the last known address of the person in question.

(4) If a person on whom a notice is to be served under these Regulations has specified an address for service of such a notice, that address is also to be treated, for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation, as that person's proper address.

(5) If the name or address of any occupier of premises on whom a notice is to be served under these Regulations cannot, after reasonable inquiry, be ascertained, the notice may be served by leaving it conspicuously affixed to a building or object on the premises.

(6) This regulation is subject to any provision of these Regulations, or to any direction given under these Regulations, which relates to the service of any notice under these Regulations.

(7) This regulation does not apply to the service of any notice required or authorised to be served under the Acquisition of Land Act 1981<sup>(c)</sup>, as applied by these Regulations (see regulation 36 (powers of compulsory acquisition)).

(8) In this regulation—

- (a) "body corporate" does not include a limited liability partnership or a Scottish partnership; and

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(a) 1972 c. 70; section 250 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; the Housing and Planning Act 1986 (c. 63), Schedule 12, Part 3; and the Statute Law (Repeals) Act 1989 (c. 43).

(b) 1978 c. 30.

(c) 1981 c. 67.

- (b) references to serving include references to similar expressions (such as giving or sending).

### Consequential Amendments

**139.** Schedule 6 (which makes amendments to legislation) has effect.

### Revocations

**140.** Schedule 7 (revocations) has effect.

### Transitional provisions

**141.**—(1) Any licence granted for any purpose by Natural England, the Countryside Council for Wales, the Natural Resources Body for Wales or the Marine Management Organisation before 30th November 2017 under regulation 53(1) or (4) or 54 of the 2010 Regulations (licences for certain activities relating to animals or plants, licences for the introduction of new species, respectively), or which immediately before that date has effect as if it were granted by any of those bodies under any of those provisions(a), is to have effect from that date as a licence granted for that purpose under regulation 55(1) or (4) or 56 of these Regulations, respectively.

(2) Any application for a licence made before 30th November 2017 under regulation 53(1) or (4) or 54 of the 2010 Regulations, or which immediately before that date is treated as made under any of those provisions(b), and which (in either case) is not determined or withdrawn before that date, is to be treated as an application made under regulation 55(1), or (4) or 56 of these Regulations, respectively.

(3) Any agreement previously entered into by Natural England, the Countryside Council for Wales or the Natural Resources Body for Wales under regulation 16 of the 2010 Regulations (management agreements), or having effect as if it had been entered into by any of those bodies under that provision(c), which is in force immediately before 30th November 2017 has effect as if it were a management agreement entered into by Natural England or the Natural Resources Body for Wales (as the case may be) under regulation 20 (management agreements) of these Regulations.

(4) Any management scheme previously established by any of the relevant authorities under regulation 36 of the 2010 Regulations (management scheme for European marine site)(d) which is in force immediately before 30th November 2017 has effect as if it were a management scheme established by the authority in question under regulation 38 (management scheme for European marine site) of these Regulations.

(5) Any byelaw—

- (a) made under section 20 of the 1949 Act as applied by virtue of regulation 30 of the 2010 Regulations (power to make byelaws)(e),
- (b) to which regulation 33 of those Regulations (continuation in force of existing byelaws) applies; or
- (c) made under regulation 38 of the 2010 Regulations (European marine sites: byelaws and orders)(f),

and which is in force immediately before 30th November 2017, has effect as if it were a byelaw made under section 20 of the 1949 Act (byelaws for protection of nature reserves) as applied by

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(a) See regulation 134(1) of the 2010 Regulations.

(b) See regulation 134(2) of the 2010 Regulations.

(c) See regulations 17 and 134(5) of the 2010 Regulations.

(d) Regulation 36(1) was amended by S.I. 2012/1927.

(e) Section 20 was amended by the Telecommunications Act 1984 (c. 12), Schedule 4, paragraph 28; the Water Act 1989 (c. 15), Schedule 25, paragraph 13; the Communications Act 2003 (c. 21), Schedule 17, paragraph 20(1) and (2); and the Natural Environment and Rural Communities Act 2006 (c. 16), Schedule 11, paragraph 15(d).

(f) Regulation 38(5) was revoked by S.I. 2012/1927.

virtue of regulation 32 (power to make byelaws), or under regulation 40 (European marine sites: byelaws and orders) of these Regulations, respectively.

(6) An authorisation of a wildlife inspector under regulation 108 of the 2010 Regulations (wildlife inspectors), is to have effect as if granted under regulation 114 of these Regulations (wildlife inspectors).

### **Review: England**

**142.**—(1) The Secretary of State, in relation to England, must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first review must be published before 30th November 2022.

(3) Subsequent reviews must be carried out at intervals of not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015<sup>(a)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the Directives are implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 33 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

30th October 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

25th October 2017

*Lesley Griffiths*  
Cabinet Secretary for Environment and Rural Affairs  
One of the Welsh Ministers

## **SCHEDULE 1**

Regulation 27(3)

### **Special Nature Conservation Orders: Procedure**

#### **Coming into operation**

**1.**—(1) An original order or a restrictive amending order takes effect on its being made.

(2) The appropriate authority must consider every such order, and the order ceases to have effect nine months after it is made unless—

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<sup>(a)</sup> 2015 c. 2; section 30(3) was amended by the Enterprise Act 2016 (c. 12), section 19.

- (a) that authority has previously given notice under paragraph 6 that the order has been considered and that it is not proposed to amend or revoke it; or
- (b) the order has been revoked.

(3) Subject to paragraphs 3(2) and 4(4), a revoking order, or an amending order which is not restrictive, does not take effect until confirmed by the appropriate authority.

(4) An amending or revoking order requiring confirmation is to be treated as being revoked if the appropriate authority gives notice under paragraph 6(2) that it is not to be confirmed.

### **Publicity for orders**

**2.**—(1) The appropriate authority must, where an order has been made, give notice setting out the order (or describing its general effect) and stating that it has taken effect or, as the case may be, that it has been made and requires confirmation.

(2) The notice must—

- (a) name a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours; and
- (b) specify the time (not being less than 28 days from the date of the first publication of the notice) within which, and the manner in which, representations or objections with respect to the order may be made.

(3) The notice must be given—

- (a) by publication in the London Gazette and at least one local newspaper circulating in the area in which the land to which the order relates is situated;
- (b) by serving an equivalent notice—
  - (i) on every owner and occupier of that land (subject to sub-paragraph (4)); and
  - (ii) on the local planning authority within whose area the land is situated.

(4) The appropriate authority may, in any particular case, direct that it is not necessary to comply with sub-paragraph (3)(b)(i).

(5) Where the appropriate authority gives a direction under paragraph (4) in the case of an order specifying any operation carried out, or proposed to be carried out, on any land—

- (a) in addition to publication the notice must be addressed to “The owners and any occupiers” of the land (describing it), describing details of the operation and the details of the European site to which the order relates; and
- (b) a copy or copies of the notice must be affixed to some conspicuous object or objects on the land.

### **Unopposed orders**

**3.**—(1) Where an order has taken effect immediately and no representations or objections are duly made in respect of it, or any so made are withdrawn, the appropriate authority must, as soon as practicable after considering the order, decide either to take no action on it or to make an order amending or revoking it.

(2) Where an amending or revoking order is made under sub-paragraph (1)—

- (a) it takes effect immediately;
- (b) it does not require confirmation; and
- (c) it is not necessary to consider any representation or objection made in respect of it.

(3) Where an order requiring confirmation (in accordance with paragraph 1(3)) is made and no representations or objections are duly made in respect of it, or any so made are withdrawn, the appropriate authority may confirm the order (with or without modifications).

### **Opposed orders**

4.—(1) If any representation or objection duly made with respect to an order is not withdrawn, the appropriate authority must, as soon as practicable (in the case of an order having immediate effect) or (in the case of an order requiring confirmation) before confirming the order—

- (a) cause a local inquiry to be held; or
- (b) afford any person by whom a representation or objection has been duly made and not withdrawn an opportunity of being heard by a person appointed by the appropriate authority for the purpose.

(2) On considering any representations or objections duly made and the report of any person appointed to hold the inquiry or to hear representations or objections, the appropriate authority—

- (a) if the order has already taken effect, must decide either to take no action on the order or to make an order amending or revoking it as appropriate in the light of the report, representations or objections; and
- (b) if the order requires confirmation, may confirm it (with or without modifications).

(3) The provisions of section 250(2) to (5) of the Local Government Act 1972 (which relate to evidence and costs in inquiries) apply in relation to an inquiry held under this paragraph.

(4) Where an amending or revoking order is made under sub-paragraph (2)(a)—

- (a) it takes effect immediately;
- (b) it does not require confirmation; and
- (c) it is not necessary to consider any representation or objection made in respect of it.

### **Restriction on power to amend orders or confirm them with modifications**

5. The appropriate authority may not, by virtue of paragraph 3(1) or 4(2), amend an order which has taken effect, or confirm any other order with modifications, so as to extend the area to which the order applies.

### **Notice of final decision on order**

6.—(1) The appropriate authority must, as soon as practicable after making an order under paragraph 3(1) or 4(2)(a), give notice—

- (a) setting out the order (or describing its effect) and stating that it has taken effect; and
- (b) naming a place in the area in which the land to which the order relates is situated where a copy of the order may be inspected free of charge at all reasonable hours.

(2) The appropriate authority must give notice of any of the following decisions as soon as practicable after making the decision—

- (a) a decision under paragraph 3(1) or 4(2)(a) to take no action on an order which has already taken effect;
- (b) a decision to confirm or not to confirm an order requiring confirmation under this Schedule.

(3) A notice under this paragraph of a decision to confirm an order must—

- (a) set out the order as confirmed (or describe its general effect) and state the day on which the order took effect; and
- (b) name a place in the area in which the land to which the order relates is situated where a copy of the order as confirmed may be inspected free of charge at all reasonable hours.

(4) Any notice under this paragraph must be given by publishing it in accordance with paragraph 2(3)(a) and serving a copy of it on any person on whom a notice was required to be served under paragraph 2(3)(b).



**Proceedings for questioning validity of orders**

7.—(1) This paragraph applies to any order which has taken effect and as to which the appropriate authority has given notice under paragraph 6(2) of a decision to take no action or to amend the order in accordance with paragraph 4 (“the relevant notice”).

(2) If any person is aggrieved by an order to which this paragraph applies and desires to question its validity on the ground that it is not within the powers of regulation 27 (power to make special nature conservation order), or that any of the requirements of this Schedule have not been complied with in relation to it, that person may within six weeks from the date of the relevant notice make an application to the High Court.

(3) On any such application the High Court may, if satisfied that the order is not within those powers or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of those requirements, quash the order, or any provision of the order, either generally or in so far as it affects the interests of the applicant.

(4) Except as provided by this paragraph, the validity of an order may not be questioned in any legal proceedings whatsoever.

**Interpretation**

8. In this Schedule—

“amending order” and “revoking order” mean, respectively, an order which amends, and an order which revokes, a previous order;

“order” means an order under regulation 27 (special nature conservation order);

“original order” means an order other than an amending or revoking order;

“restrictive”, in relation to an amending order, means extending the area to which a previous order applies.

**SCHEDULE 2**

Regulation 42(1)

**European Protected Species of animals**

<i>Common name<sup>(a)</sup></i>	<i>Scientific name</i>
Bats, Horseshoe (all species)	Rhinolophidae
Bats, Typical (all species)	Vespertilionidae
Butterfly, Large Blue	Maculinea arion
Cat, Wild	Felis silvestris
Dolphins, porpoises and whales (all species)	Cetacea
Dormouse	Muscardinus avellanarius
Frog, Pool	Rana lessonae
Lizard, Sand	Lacerta agilis
Moth, Fisher’s Estuarine	Gortyna borelii lunata
Newt, Great Crested (or Warty)	Triturus cristatus
Otter, Common	Lutra lutra
Snail, Lesser Whirlpool Ram’s-horn	Anisus vorticulus
Snake, Smooth	Coronella austriaca
Sturgeon	Acipenser sturio
Toad, Natterjack	Bufo calamita
Turtles, Marine	Caretta caretta
	Chelonia mydas
	Lepidochelys kempii
	Eretmochelys imbricata

<i>Common name<sup>(a)</sup></i>	<i>Scientific name</i>
	<i>Dermochelys coriacea</i>

<sup>(a)</sup> The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

### SCHEDULE 3

Regulation 44(8)(a)

#### Excluded populations of certain species

<i>(1)Common name<sup>(a)</sup></i>	<i>(2)Scientific name</i>	<i>(3) Excluded countries and areas</i>
Beaver, Eurasian	<i>Castor fiber</i>	Estonia, Finland, Latvia, Lithuania, Poland and Sweden
Hamster, Common (or Black bellied)	<i>Cricetus cricetus</i>	Hungary
Lynx, Eurasian	<i>Lynx lynx</i>	Estonia
Viper, Seoane's	<i>Vipera seoanni</i>	Spain
Wolf, Grey	<i>Canis lupus</i>	Bulgaria, Estonia, Greece north of the 39th parallel, Latvia, Lithuania, Poland, Slovakia, Spain north of the River Duero, and the reindeer management area in Finland as defined in paragraph 2 of Finnish Act No. 848/90 on 14th September 1990 on reindeer management <sup>(b)</sup>

<sup>(a)</sup> The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

<sup>(b)</sup> A copy of this Finnish Act can be obtained from the Wildlife Management Team, Natural Environment Policy Directorate, Defra, Horizon House, Deanery Road, Bristol BS1 5AH.

### SCHEDULE 4

Regulation 45(1)(a)

#### Animals which may not be captured or killed in certain ways.

<i>Common name<sup>(a)</sup></i>	<i>Scientific name</i>
Barbel	<i>Barbus barbus</i>
Grayling	<i>Thymallus thymallus</i>
Hare, Mountain	<i>Lepus timidus</i>
Lamprey, River	<i>Lampetra fluviatilis</i>
Marten, Pine	<i>Martes martes</i>
Polecat	<i>Mustela putorius</i> (otherwise known as <i>Putorius putorius</i> )
Salmon, Atlantic	<i>Salmo salar</i> (only in fresh water)
Seal, Bearded	<i>Erignathus barbatus</i>
Seal, Common	<i>Phoca vitulina</i>
Seal, Grey	<i>Halichoerus grypus</i>

<i>Common name<sup>(a)</sup></i>	<i>Scientific name</i>
Seal, Harp	Phoca groenlandica (otherwise known as Pagophilus groenlandicus)
Seal, Hooded	Cystophora cristata
Seal, Ringed	Phoca hispida (otherwise known as Pusa hispida)
Shad, Allis	Alosa alosa
Shad, Twaite	Alosa fallax
Vendace	Coregonus albula
Whitefish	Coregonus lavaretus

<sup>(a)</sup> The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

## SCHEDULE 5

Regulation 46(1)

### European Protected Species of plants

<i>Common name<sup>(a)</sup></i>	<i>Scientific name</i>
Dock, Shore	Rumex rupestris
Fern, Killarney	Trichomanes speciosum
Gentian, Early	Gentianella anglica
Lady's-slipper	Cypripedium calceolus
Marshwort, Creeping	Apium repens
Naiad, Slender	Najas flexilis
Orchid, Fen	Liparis loeselii
Plantain, Floating-leaved water	Luronium natans
Saxifrage, Yellow Marsh	Saxifraga hirculus

<sup>(a)</sup> The common name or names given in the first column of this Schedule are included by way of guidance only; in the event of any dispute or proceedings, the common name or names must not be taken into account.

## SCHEDULE 6

Regulation 139

### Consequential Amendments

#### PART 1

#### Primary Legislation

##### Harbours Act 1964

**1.** In Part 1 (orders made on application to the Secretary of State) of Schedule 3 to the Harbours Act 1964 (procedure for making harbour revision and empowerment orders)(**a**), in paragraph 1 (interpretation), in paragraph (j) of the definition of “sensitive area” as it has effect in England and Wales, for “the Conservation of Habitats and Species Regulations 2010 (see regulation 8)” substitute “the Conservation of Habitats and Species Regulations 2017 (see regulation 8)”.

(a) 1964 c. 40; paragraph (j) of the definition of “sensitive area” was substituted in relation to England and Wales by S.I. 2010/490.

### **Sea Fisheries (Shellfish) Act 1967**

2. In section 5F of the Sea Fisheries (Shellfish) Act 1967 (protection of marine environment: supplementary provision)(a), in subsection (1), in the definition of “European marine site”, for “the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (see regulation 8)” substitute “the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (see regulation 8)”.

### **Conservation of Seals Act 1970**

3. In section 10 of the Conservation of Seals Act 1970 (power to grant licences)(b), in subsection (4A), for “regulation 43 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 45 of the Conservation of Habitats and Species Regulations 2017”.

### **Highways Act 1980**

4. In section 105A of the Highways Act 1980 (environmental impact assessments)(c), in subsection (6)(i), for “the Conservation of Habitats and Species Regulations 2010 (see regulation 8)” substitute “the Conservation of Habitats and Species Regulations 2017 (see regulation 8)”.

### **Town and Country Planning Act 1990**

5. In Schedule 4C of the TCPA 1990 (community right to build orders)(d), in sub-paragraph (5) of paragraph 6 (development likely to have significant effects on environment etc), in paragraph (b) of the definition of “qualifying European site”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

### **Planning Act 2008**

6. In section 16 of the Planning Act 2008 (electric lines)(e), in subsection (4), in the definition of “European site”, for “the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490)” substitute “the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012)”.

### **Constitutional Reform Act 2005**

7. In Part 3 (Tribunal-related and other appointments: appointments by the Lord Chancellor) of Schedule 14 to the Constitutional Reform Act 2005 (the judicial appointments commission: relevant offices and enactments)(f), in Table 1, in the column entitled “enactment”, for the entry “Regulation 34(3) of the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490)” substitute “Regulation 36(4) of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012)”.

### **Marine and Coastal Access Act 2009**

8.—(1) The Marine Act is amended as follows.

(2) In section 123 (creation of network of conservation sites)(g), in subsection (9), for paragraph (a)(ii) of the definition of “European marine site” substitute—

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- (a) 1967 c. 83; section 5F was inserted by the Environment (Wales) Act 2016 (anaw 3), Part 5, section 75.
  - (b) 1970 c. 30; subsection (4A) was inserted in relation to England and Wales by S.I. 2007/1843 and amended by S.I. 2010/490.
  - (c) 1980 c. 66; section 105A was inserted by S.I. 1988/1241 and substituted by S.I. 1999/369. Subsection (6) was amended by 2010/490.
  - (d) 1990 c. 8; Schedule 4C was inserted by the Localism Act 2010 (c. 20), Schedule 11.
  - (e) 2008 c. 29; subsection (4) was substituted by S.I. 2013/1479.
  - (f) 2005 c. 4; the entry relating to regulation 34(3) of the Conservation of Habitats and Species Regulations 2010 was substituted in relation to England and Wales by S.I. 2010/490.
  - (g) Subsection (9) was amended by S.I. 2010/490.

“(ii) the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (see regulation 8), or”.

(3) In section 158 (byelaws: supplementary provision)(a), in subsection (6)(d), for “the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (see regulation 8)” substitute “the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (see regulation 8)”.

(4) In section 237 (enforcement of nature conservation legislation)(b), in subsection (2), for paragraphs (i) and (j) substitute—

“(i) regulations 43, 45, 47, 54, 59, 60 and 122(1) and (2) of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);

(j) any byelaws or orders made by virtue of regulation 32 or 40 of those Regulations.”

## PART 2

### Subordinate Legislation

#### **Public Gas Transporter Pipe-Line Works (Environmental Impact Assessment) Regulations 1999**

**9.**—(1) The Public Gas Transporter Pipe-Line Works (Environmental Impact Assessment) Regulations 1999(c) are amended as follows.

(2) In regulation 2 (interpretation), in sub-paragraph (i) of the definition of “sensitive area”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

(3) In regulation 3 (environmental statements), in paragraph (7), for “regulation 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 63 of the Conservation of Habitats and Species Regulations 2017”.

#### **Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999**

**10.** In regulation 3C of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (coordination)(d), for “regulation 21 or 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 24 or 63 of the Conservation of Habitats and Species Regulations 2017”.

#### **Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999**

**11.**—(1) The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999(e) are amended as follows.

(2) In regulation 9A (co-ordination), in paragraph (2), for “regulation 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 63 of the Conservation of Habitats and Species Regulations 2017”.

(3) In paragraph 1 (interpretation) of Schedule 2 (description of projects likely to have significant effects on the environment), in sub-paragraph (h) of the definition of “sensitive area”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

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(a) Subsection (6)(d) was amended by S.I. 2010/490.

(b) Subsection (2) was amended by S.I. 2010/490.

(c) S.I. 1999/1672, amended by S.I. 2017/582; there are other amending instruments but none is relevant.

(d) S.I. 1999/1783, amended by S.I. 2017/585; there are other amending instruments but none is relevant.

(e) S.I. 1999/2228 amended by S.I. 2017/592; there are other amending instruments but none is relevant.

### **Pipe-line Works (Environmental Impact Assessment) Regulations 2000**

**12.** In regulation 3 of the Pipe-Line Works (Environmental Impact Assessment) Regulations 2000 (grant of pipe-line construction authorisation by Secretary of State in respect of relevant pipe-line works)(a), in paragraph (7), for “regulation 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 63 of the Conservation of Habitats and Species Regulations 2017”.

### **Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001**

**13.** In regulation 3 of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (exercise of functions of the Secretary of State and the Oil and Gas Authority)(b)—

(a) in paragraph (1), for “the 2010 Regulations” substitute “the 2017 Regulations”;

(b) for paragraph (2) substitute—

“(2) In this regulation, the “2017 Regulations” means the Conservation of Habitats and Species Regulations 2017.”.

### **Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003**

**14.** In regulation 3C of the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (coordination)(c), for “regulation 21 or 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 24 or 63 of the Conservation of Habitats and Species Regulations 2017”.

### **Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006**

**15.**—(1) The Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006(d) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “the Habitats Regulations”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

(3) In regulation 3C (coordination of environmental assessments), for “regulation 21 or 61” substitute “regulation 24 or 63”.

(4) In regulation 17 (additional requirements relating to the Habitats Regulations), in paragraph (1),—

(a) for “regulations 41, 43 or 45” substitute “regulations 43, 45 or 47”;

(b) for “regulation 53” substitute “regulation 55”.

### **Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009**

**16.** In paragraph 5 (express authorisation) of Schedule 1 to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (damage to protected species, natural habitats and sites of special scientific interest)(e)—

(a) in the English language text, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;

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(a) S.I. 2000/1928, amended by S.I. 2007/1992 and 2017/582; there are other amending instruments but none is relevant.

(b) S.I. 2001/1754, amended by S.I. 2007/77, 2010/1513, 2016/912; there are other amending instruments but none is relevant.

(c) S.I. 2003/164, amended by S.I. 2017/583; there are other amending instruments but none is relevant.

(d) S.I. 2006/2522, amended by S.I. 2017/593; there are other amending instruments but none is relevant.

(e) S.I. 2009/995 (W.81), amended by S.I. 2015/1937 (W.291); there are other amending instruments but none is relevant.

- (b) in the Welsh language text, for “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

**Marine Management Organisation (Prescription of Powers to Fix Fees and Charges) Order 2010**

17. In the Schedule to the Marine Management Organisation (Prescription of Powers to Fix Fees and Charges) Order 2010 (table of prescribed powers to fix fees and charges)(a)—

- (a) in the first column—
- (i) for “The Conservation of Habitats and Species Regulations 2010” substitute “The Conservation of Habitats and Species Regulations 2017”;
  - (ii) for the entry “Regulation 55(5)” substitute “Regulation 57(5)”;
- (b) in the second column, in relation to the substituted entry “Regulation 57(5)”, for “regulation 53(1) for a purpose specified in any of sub-paragraphs (e) to (g) of paragraph (2) of that regulation, regulation 53(4) or regulation 54” substitute “regulation 55(1) for a purpose specified in any of sub-paragraphs (e) to (g) of paragraph (2) of that regulation, regulation 55(4) or regulation 56”.

**Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010**

18. In regulation 2 of the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 (interpretation)(b), in the definition of “European site”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

**Marine Strategy Regulations 2010**

19. In Schedule 2 to the Marine Strategy Regulations 2010 (enactments in relation to which duty in regulation 4 applies)(c), for the entry “The Conservation of Natural Habitats and Species Regulations 2010” substitute—

“The Conservation of Habitats and Species Regulations 2017”.

**Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010**

20. In Schedule 4 to the Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 (application of permitted development rights)(d)—

- (a) in paragraph 2, for “regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 75 of the Conservation of Habitats and Species 2017”;
- (b) in paragraph 3(a), for “regulation 61” substitute “regulation 63”.

**Marine Licensing (Exempted Activities) Order 2011**

21.—(1) The Marine Licensing (Exempted Activities) Order 2011(e) is amended as follows.

(2) In article 3 (interpretation), in the definition of “European site”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

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(a) S.I. 2010/603.  
 (b) S.I. 2010/1228, amended by S.I. 2009/1176, 2012/742 and 2013/755; there are other amending instruments but none is relevant.  
 (c) S.I. 2010/1627, to which there are amendments not relevant to these Regulations.  
 (d) S.I. 2010/2020.  
 (e) S.I. 2011/409, amended by S.I. 2013/526 and 2016/738.

(3) In article 26 (markers for European marine sites and marine conservation zones), in paragraph (1)(a), for “regulation 35(1) of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 37(1) of the Conservation of Habitats and Species Regulations 2017”.

### **Marine Licensing (Exempted Activities) (Wales) Order 2011**

**22.**—(1) The Marine Licensing (Exempted Activities) (Wales) Order 2011(a) is amended as follows.

(2) In article 3 (interpretation)—

- (a) in the English language text, in paragraph (a) of the definition of “European site”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
- (b) in the Welsh language text, in paragraph (a) of the definition of “safle Ewropeaidd” for “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

(3) In article 25 (markers for European marine sites), in paragraph (1)(a)—

- (a) in the English language text, for “regulation 35(1) of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 37(1) of the Conservation of Habitats and Species Regulations 2017”;
- (b) in the Welsh language text, for “rheoliad 35(1) o Reoliadau Cadwraeth Cynefinoedd a Rhywogaethau 2010 (gosod arwyddion I ddynodi bodolaeth a ffiniau safle morol Ewropeaidd o fewn ystyr “European marine site” yn y Rheoliadau hynny)” substitute “rheoliad 37(1) o Reoliadau Cadwraeth Cynefinoedd a Rhywogaethau 2017 (gosod arwyddion I ddynodi bodolaeth a ffiniau safle morol Ewropeaidd o fewn ystyr “European marine site” yn y Rheoliadau hynny”.

### **Marine Licensing and Coastal Access Act 2009 (Transitional and Savings Provisions) Order 2011**

**23.** In Part 1 of Schedule 2 to the Marine Licensing and Coastal Access Act 2009 (Transitional and Savings Provisions) Order 2011(b), omit paragraph 12 (the Conservation of Habitats and Species Regulations 2010).

### **Associated British Ports (Grimsby Riverside Ro-Ro Terminal) Harbour Revision Order 2011**

**24.**—(1) In article 20 of the Associated British Ports (Grimsby Riverside Ro-Ro Terminal) Harbour Revision Order 2011 (disapplication of the Habitats and Species Regulations)(c)—

- (a) in the heading, for “regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 75 of the Conservation of Habitats and Species Regulations 2017”;
- (b) in paragraph (1), for “Regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “Regulation 75 of the Conservation of Habitats and Species Regulations 2017”;
- (c) in paragraph (2)(a), for “regulation 61” substitute “regulation 63”.

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(a) S.I. 2011/559 (W.81), amended by S.I. 2013/755 (W.90); there are other amending instruments but none is relevant.  
 (b) S.I. 2011/603, to which there are amendments not relevant to these Regulations.  
 (c) S.I. 2011/950.



**The Town and Country Planning (Environmental Impact Assessment) Regulations 2011**

**25.** In regulation 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (interpretation)(a), in paragraph (1), in sub-paragraph (g) of the definition of “sensitive area”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

**Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012**

**26.** In the Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012(b), omit regulation 9 (amendments to the Conservation of Habitats and Species Regulations 2010).

**Neighbourhood Planning (General) Regulations 2012**

- 27.**—(1) The Neighbourhood Planning (General) Regulations 2012(c) are amended as follows.
- (2) In regulation 17 (submission of plan proposal to examination), in sub-paragraph (c)—
- (a) for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
  - (b) for “regulation 102A” substitute “regulation 106”.
- (3) In regulation 24 (submission of order proposal to examination), in sub-paragraph (d)—
- (a) for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
  - (b) for “regulation 61(2)” substitute “regulation 63(2)”.
- (4) In Schedule 2 (habitats)—
- (i) in paragraph 1, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
  - (ii) omit paragraphs 2 to 5.

**Hinkley Point Harbour Empowerment Order 2012**

**28.** In article 36 of the Hinkley Point Harbour Empowerment Order 2012 (disapplication of the Conservation of Habitats and Species Regulations)(d)—

- (a) in the heading, for “regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 75 of the Conservation of Habitats and Species Regulations 2017”;
- (b) in the words before sub-paragraph (a), for “Regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “Regulation 75 of the Conservation of Habitats and Species 2017”;
- (c) in sub-paragraph (a), for “regulation 61” substitute “regulation 63”.

**Brechfa Forest West Wind Farm Order 2013**

**29.** In Part 3 (requirements) of Schedule 1 to the Brechfa Forest West Wind Farm Order 2013 (authorised project)(e), in sub-paragraph (1) of paragraph 1 (definitions), in the definition of

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(a) S.I. 2011/1824, which has been revoked by S.I. 2017/571, subject to transitional provisions.  
 (b) S.I. 2012/635, to which there are amendments not relevant to these Regulations.  
 (c) S.I. 2012/637, amended by S.I. 2017/571; there are other amending instruments but none is relevant.  
 (d) S.I. 2012/1914.  
 (e) S.I. 2013/586, to which there are amendments not relevant to these Regulations.

“European Protected Species”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

### **Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013**

**30.** In Schedule 2 to the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 (requirements)(a), in sub-paragraph (5) of paragraph 5 (landscape and ecology), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Species and Habitats Regulations 2017.”.

### **The Natural Resources Body for Wales (Functions) Order 2013**

**31.** In the English and Welsh language texts of the Natural Resources Body for Wales (Functions) Order 2013(b), in Schedule 4, omit paragraphs 365 to 373 and the heading to those paragraphs (Conservation of Habitats and Species Regulations 2010).

### **Galloper Wind Farm Order 2013**

**32.** In Part 3 (requirements) of Schedule 1 (authorised project) to the Galloper Wind Farm Order 2013(c), in sub-paragraph (3) of paragraph 33 (European protected species), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Species and Habitats Regulations 2017.”.

### **Nitrate Pollution Prevention (Wales) Regulations 2013**

**33.**—(1) Regulation 13A of the Nitrate Pollution Prevention (Wales) Regulations 2013 (application for a derogation)(d) is amended as follows.

(2) In the words after paragraph (6)(b)—

- (a) in the English language text, for “regulation 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 63 of the Conservation of Habitats and Species Regulations 2017”;
- (b) in the Welsh language text, for “reoliad 61 o Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “reoliad 63 o Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

(3) In paragraph (15)(b)—

- (a) in the English language text, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
- (b) in the Welsh language text, for “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

### **Marine Licensing (Application Fees) Regulations 2014**

**34.** In the Schedule to the Marine Licensing (Application Fees) Regulations 2014 (application bands and maximum fees (“CAPS”))(e), in paragraph 2(3), in the definition of “European site”,

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(a) S.I. 2013/675, to which there are amendments not relevant to these Regulations.

(b) S.I. 2013/755 (W.90), to which there are amendments no relevant to these Regulations.

(c) S.I. 2013/1203, to which there are amendments not relevant to these Regulations.

(d) S.I. 2013/2506 (W.245), amended by S.I. 2015/2020 (W.308).

(e) S.I. 2014/615, to which there are amendments not relevant to these Regulations.

for “the Conservation of the Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014**

**35.** In Schedule 2 to the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (model clauses for petroleum exploration and development licences)(a), in paragraph 22A (prohibition on hydraulic fracturing in protected areas in England and Wales), in sub-paragraph (2)(a)(ii), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Rampion Offshore Wind Farm Order 2014**

**36.**—(1) The Rampion Offshore Wind Farm Order 2014(b) is amended as follows.

(2) In article 2 (interpretation), in the definition of “European Protected Species”, for “regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010” substitute “regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017”.

(3) In article 39 (procedure in relation to further approvals, etc.)—

- (a) in paragraph (1), in the definition of “competent authority”, for “the Conservation of Habitats and Species Regulations 2010/490” substitute “the Conservation of Habitats and Species Regulations 2017/1012”;
- (b) in paragraph (5), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014**

**37.** In Schedule 2 to the A556 (Knutsford to Bowden Improvement) Development Consent Order 2014 (requirements)(c), in paragraph 1 (interpretation), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Species and Habitats Regulations 2017; and”.

#### **Clocaenog Forest Wind Farm Order 2014**

**38.** In Part 3 (requirements) of Schedule 1 to the Clocaenog Forest Wind Farm Order 2014 (authorised project)(d), in paragraph 1 (definitions), in the definition of “European protected species”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014**

**39.** In Schedule 2 to the Central Bedfordshire Council (Woodside Link Houghton Regis) Development Consent Order 2014 (requirements)(e), in sub-paragraph (4) of paragraph 5 (landscape and ecology), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Species and Habitats Regulations 2017.”.

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(a) S.I. 2014/1686, amended by S.I. 2016/1029; there are other amending instruments but none is relevant.  
(b) S.I. 2014/1873, amended by 2015/1319; there is another amending instrument but it is not relevant.  
(c) S.I. 2014/2269, to which there is an amendment not relevant to these Regulations.  
(d) S.I. 2014/2441, to which there is an amendment not relevant to these Regulations.  
(e) S.I. 2014/2637, to which there is an amendment not relevant to these Regulations.

#### **Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014**

**40.** In article 16 of the Associated British Ports (Fisher Fleet Quay) Harbour Revision Order 2014 (disapplication of the Conservation of Habitats and Species Regulations)(a)—

- (a) in the heading, for “regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 75 of the Conservation of Habitats and Species Regulations 2017”;
- (b) in paragraph (1), for “Regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “Regulation 75 of the Conservation of Habitats and Species 2017”;
- (c) in paragraph (2)(a), for “regulation 61” substitute “regulation 63”.

#### **Able Marine Energy Park Development Consent Order 2014**

**41.**—(1) The Able Marine Energy Park Development Consent Order 2014(b) is amended as follows.

(2) In article 22 (authority to survey and investigate the land), in paragraph (6), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

(3) In Schedule 11 (requirements), in paragraph 31 (European protected species)—

- (a) in sub-paragraph (2), for “regulation 53 (licences for certain activities relating to animals or plants) of the Conservation of Habitats and Species Regulations 2010”, substitute “regulation 55 (licences for certain activities relating to animals or plants) of the Conservation of Habitats and Species Regulations 2017”;
- (b) in sub-paragraph (3), for “regulations 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2010” substitute “regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017”.

#### **Walney Extension Offshore Wind Farm Order 2014**

**42.** In Part 3 (requirements) of Schedule 1 to the Walney Extension Offshore Windfarm Order 2014 (authorised project)(c), in sub-paragraph (3) of paragraph 33 (European protected species), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Species and Habitats Regulations 2017.”.

#### **Keeping and Introduction of Fish (Wales) Regulations 2014**

**43.** In regulation 5 of the Keeping and Introduction of Fish (Wales) Regulations 2014 (keeping fish)(d), in paragraph 4(ii)—

- (a) in the English language text, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
- (b) in the Welsh language text, for “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

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(a) S.I. 2014/2933.

(b) S.I. 2014/2935 to which there are amendments not relevant to these Regulations.

(c) S.I. 2014/2950, to which there are amendments not relevant to these Regulations.

(d) S.I. 2014/3303 (W.336).

#### **Willington C Gas Pipeline Order 2014**

44. In Part 2 (requirements) of Schedule 1 to the Willington C Gas Pipeline Order 2014(a), in paragraph 1 (interpretation), in the definition of “European protected species”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015**

45. In regulation 5 of the Keeping and Introduction of Fish (England and River Esk Catchment Area) Regulations 2015 (keeping fish)(b), in paragraph (4)(b), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **A160/A180 (Port of Immingham Improvement) Development Consent Order 2015**

46. In Schedule 2 to the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 (requirements)(c), in paragraph 1 (interpretation), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Species and Habitats Regulations 2017; and”.

#### **Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015**

47. In Schedule 2 to the Cornwall Council (A30 Temple to Higher Carblake Improvement) Order 2015 (requirements)(d), in sub-paragraph (5) of paragraph 4 (construction environmental management plan), for “regulations 40 (European protected species of animals) and 44 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2010” substitute “regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017”.

#### **Dogger Bank Creyke Beck Offshore Wind Farm Order 2015**

48. In Part 3 (requirements) of Schedule 1 to the Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (authorised project)(e), in sub-paragraph (4) of paragraph 28 (European protected species: onshore) for “regulation 40 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 42 of the Conservation of Habitats and Species Regulations 2017”.

#### **Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015**

49. In the Schedule to the Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015(f), omit paragraph 45 (Conservation of Habitats and Species Regulations 2010).

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(a) S.I. 2014/3328, amended by S.I. 2015/1616; there is another amending instrument but it is not relevant.  
(b) S.I. 2015/10.  
(c) S.I. 2015/129, to which there are amendments not relevant to these Regulations.  
(d) S.I. 2015/147, to which there are amendments not relevant to these Regulations.  
(e) S.I. 2015/318, to which there are amendments not relevant to these Regulations.  
(f) S.I. 2015/377, to which there are amendments not relevant to these Regulations.

### **Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015**

**50.** In Schedule 2 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 (prescription of consents)(a), in the table in Part 1—

- (a) in the first column, for the entry “Conservation of Habitats and Species Regulations 2010” substitute “Conservation of Habitats and Species Regulations 2017”; and
- (b) in the second column, for the entry “A licence under regulation 53 (licences for certain activities relating to animals or plants)” substitute “A licence under regulation 55 (licences for certain activities relating to animals or plants)”.

### **Town and Country Planning (Development Management Procedure) (England) Order 2015**

**51.** In article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (interpretation)(b), in paragraph (b) of the definition of “qualifying European site”, for “the Conservation of Species and Habitats Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

### **Town and Country Planning (General Permitted Development) (England) Order 2015**

**52.** In article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (permitted development)(c), in paragraph (1), for “regulations 73 to 76 of the Conservation of Habitats and Species Regulations 2010” substitute “regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017”.

### **Nitrate Pollution Prevention Regulations 2015**

**53.** In regulation 37 of the Nitrate Pollution Prevention Regulations 2015 (determination of application)(d), in paragraph (5), for “regulation 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 63 of the Conservation of Habitats and Species Regulations 2017”.

### **Knottingley Power Plant Order 2015**

**54.** In Part 2 (requirements) of Schedule 1 to the Knottingley Power Plant Order 2015 (authorised development)(e), in sub-paragraph (5) of paragraph 24 (European protected species), for “regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010” substitute “regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017”.

### **Environmental Damage (Prevention and Remediation) (England) Regulations 2015**

**55.** In paragraph 5 of Schedule 1 to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (express authorisation of damage to protected species, natural habitats and sites of special scientific interest)(f), in sub-paragraph (e), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

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- (a) S.I. 2015/462, to which there are amendments not relevant to these Regulations.
  - (b) S.I. 2015/595, amended by S.I. 2017/571; there are other amending instruments but none is relevant.
  - (c) S.I. 2015/596, to which there are amendments not relevant to these Regulations.
  - (d) S.I. 2015/668, to which there are amendments not relevant to these Regulations.
  - (e) S.I. 2015/680, to which there are amendments not relevant to these Regulations.
  - (f) S.I. 2015/810, to which there are amendments not relevant to these Regulations.

### **White Moss Landfill Order 2015**

**56.** In paragraph 10 (European protected species) to Schedule 2 to the White Moss Landfill Order 2015 (requirements)(a), in sub-paragraph (2), for “regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010” substitute “regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017”.

### **Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015**

**57.** In Schedule 2 to the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 (requirements)(b)—

- (a) in paragraph 1(1) (interpretation), in the definition of “European protected species”, for “regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010”, substitute “regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017”;
- (b) in paragraph 25 (A1067 and Western Hall Road drainage), in sub-paragraph (2), for “the Conservation of Habitats and Species Regulations 2010”, substitute “the Conservation of Habitats and Species Regulations 2017”.

### **Poole Harbour (Works) Revision Order 2015**

**58.** In article 19 of the Poole Harbour (Works) Revision Order 2015 (disapplication of the Conservation of Habitats and Species Regulations)(c)—

- (a) in the heading, for “regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 75 of the Conservation of Habitats and Species Regulations 2017”;
- (b) in paragraph (1), for “Regulation 73 of the Conservation of Habitats and Species Regulations 2010” substitute “Regulation 75 of the Conservation of Habitats and Species Regulations 2017”;
- (c) in paragraph (2)(a), for “regulation 61” substitute “regulation 63”.

### **Preesall Underground Gas Storage Facility Order 2015**

**59.** In Schedule 9 to the Preesall Underground Gas Storage Facility Order 2015 (requirements)(d), in paragraph 1 (interpretation)—

- (a) for the definition of “the 2010 Regulations”, substitute—  
““the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017;”;
- (b) in the definition of “European protected species”, for “regulation 40 of the 2010 Regulations” substitute “regulation 42 of the 2017 Regulations”;
- (c) in the definition of “European site”, for “the 2010 Regulations” substitute “the 2017 Regulations”.

### **Progress Power (Gas Fired Power Station) Order 2015**

**60.** In paragraph 19 of Schedule 2 to the Progress Power (Gas Fired Power Station) Order 2015 (European protected species)(e), in sub-paragraph (3), for “regulations 40 and 44 of the

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(a) S.I. 2015/1317, to which there is an amendment not relevant to these Regulations.  
(b) S.I. 2015/1347, to which there is an amendment not relevant to these Regulations.  
(c) S.I. 2015/1390.  
(d) S.I. 2015/1561, to which there are amendments not relevant to these Regulations.  
(e) S.I. 2015/1570, to which there are amendments not relevant to these Regulations.

Conservation of Habitats and Species Regulations 2010” substitute “regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017.”

#### **Dogger Bank Teeside A and B Offshore Wind Farm Order 2015**

**61.** In Part 3 (requirements) of Schedule 1 to the Dogger Bank Teeside A and B Offshore Wind Farm Order 2015 (authorised project)(a), in sub-paragraph (4) of paragraph 35 (European protected species: onshore), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Ferrybridge Multifuel 2 Power Station Order 2015**

**62.** In Schedule 2 to the Ferrybridge Multifuel 2 Power Station Order 2015 (requirements)(b), in sub-paragraph (3) of paragraph 18 (construction environmental management plan), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2015**

**63.** In the English and Welsh language texts of the Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2015(c), omit regulation 7 (amendment of the Conservation of Habitats and Species Regulations 2010).

#### **A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016**

**64.** In Schedule 2 to the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 (requirements)(d), in paragraph 1 (interpretation), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017;”.

#### **Palm Paper Mill Generating Station Order 2016**

**65.** In Schedule 2 to the Palm Paper Mill Generating Station Order 2016 (requirements)(e), in sub-paragraph (6) of paragraph 14 (European protected species), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **Thorpe Marsh Gas Pipeline Order 2016**

**66.** In Part 2 (requirements) of Schedule 1 to the Thorpe Marsh Gas Pipeline Order 2016 (authorised development)(f), in paragraph 1 (interpretation), in the definition of “European protected species”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016**

**67.** In Schedule 2 to the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 (requirements)(g), in paragraph 1 (interpretation), for the definition of “European protected species” substitute—

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- (a) S.I. 2015/1592, to which there is an amendment not relevant to these Regulations.
  - (b) S.I. 2015/1832, to which there are amendments not relevant to these Regulations.
  - (c) S.I. 2015/2020 (W.308).
  - (d) S.I. 2016/73, to which there is an amendment not relevant to these Regulations.
  - (e) S.I. 2016/166, to which there are amendments not relevant to these Regulations.
  - (f) S.I. 2016/297, to which there are amendments not relevant to these Regulations.
  - (g) S.I. 2016/547, to which there are amendments not relevant to these Regulations.



““European Protected Species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017;”.

#### **Fal Fishery Order 2016**

**68.** In article 4 of the Fal Fishery Order 2016 (power to make regulations and to carry out fisheries management and development activities)(a), in paragraph (7)(a), for “regulation 8(4) of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 8(3) of the Conservation of Habitats and Species Regulations 2017”.

#### **York Potash Harbour Facilities Order 2016**

**69.** In article 16 of the York Potash Harbour Facilities Order 2016 (authority to survey and investigate the land)(b), in paragraph (6), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **River Humber Gas Pipeline Replacement Order 2016**

**70.** In Schedule 3 to the River Humber Gas Pipeline Replacement Order 2016 (requirements)(c), in sub-paragraph (2) of paragraph 19 (ecological surveys), for “regulation 53 (licences for certain activities relating to animals or plants) of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 55 (licences for certain activities relating to animals or plants) of the Conservation of Habitats and Species Regulations 2017”.

#### **Triton Knoll Electrical System Order 2016**

**71.** In Part 3 (requirements) of Schedule 1 to the Triton Knoll Electrical System Order 2016 (authorised project)(d), in sub-paragraph (4) of paragraph 20 (European protected species), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

#### **M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016**

**72.** In Part 1 (requirements) of Schedule 2 to the M4 Motorway (Junctions 3 to 12) (Smart Motorway) Development Consent Order 2016(e), in paragraph 1 (interpretation), for the definition of “European protected species” substitute—

““European protected species” has the same meaning as in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017; and”.

#### **Environmental Permitting (England and Wales) Regulations 2016**

**73.—**(1) The Environmental Permitting (England and Wales) Regulations 2016(f) are amended as follows.

(2) In Schedule 3 (exempt facilities and waste operations to which section 33(1)(a) of the 1990 Act does not apply: descriptions and conditions)—

(a) in Part 2 (exempt water discharge activities: descriptions and conditions), in sub-paragraph (3)(a) of paragraph 1 (vegetation management activities), for “the Conservation

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(a) S.I. 2016/716.

(b) S.I. 2016/772, to which there is an amendment not relevant to these Regulations.

(c) S.I. 2016/853, to which there are amendment not relevant to these Regulations.

(d) S.I. 2016/880, to which there are amendments not relevant to these Regulations.

(e) S.I. 2016/863, to which there are amendments not relevant to these Regulations.

(f) S.I. 2016/1154.

of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;

- (b) in Part 3 (exempt groundwater discharge activities: descriptions and conditions), in sub-paragraph (4) of paragraph 5 (open-loop ground source heating and cooling systems), in paragraph (a) of the definition of “groundwater-fed wetland”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
- (c) in Part 4 (exempt flood risk activities: descriptions and conditions), in sub-paragraph (4)(a) of paragraph 1 (general and interpretation), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

(3) In Schedule 10 (landfill), in sub-paragraph (2)(c)(i) of paragraph 2 (interpretation: general), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

(4) In Part 2 of Schedule 29, omit paragraph 34 (Conservation of Habitats and Species Regulations 2010).

### **Economic Growth (Regulatory Functions) Order 2017**

**74.** In Part 3 of the Schedule to the Economic Growth (Regulatory Functions) Order 2017 (regulatory functions to which section 108 of the Deregulation Act 2015 applies)(a), under the heading “Agriculture”, for “Conservation of Habitats and Species Regulations 2010” substitute “Conservation of Habitats and Species Regulations 2017”.

### **Town and Country Planning (Brownfield Land Register) Regulations 2017**

**75.** In regulation 14 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 (exemptions for certain types of land)(b), in paragraph (5), in the definition of “qualifying European site”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

### **Keuper Underground Gas Storage Facility Order 2017**

**76.** In Schedule 2 to the Keuper Underground Gas Storage Facility Order 2017(c), in sub-paragraph (4) of paragraph 21 (European protected species), for “regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010 (as amended)” substitute “regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017”.

### **Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017**

**77.**—(1) The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017(d) are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation)—

- (a) in the English language text, in the definition of “the Habitats Regulations”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”;
- (b) in the Welsh language text, in the definition of “y Reoliadau Cynefinoedd” for “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

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(a) S.I. 2017/267, as amended by S.I. 2017/595; there is another amending instrument but it is not relevant.

(b) S.I. 2017/403.

(c) S.I. 2017/433.

(d) S.I. 2017/565 (W.134).

- (3) In regulation 5 (thresholds), in paragraph (7)(c)—
- (a) in the English language text, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Habitats Regulations”;
  - (b) in the Welsh language text, for “Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “o’r Reoliadau Cynefinoedd”.
- (4) In regulation 16 (additional requirements relating to the Habitats Regulations)—
- (a) in paragraph (1)—
    - (i) in the English language text, for “regulations 41, 43 or 45” substitute “regulations 43, 45 or 47”;
    - (ii) in the Welsh language text, for “reoliadau 41, 43, neu 45” substitute “reoliadau 43, 45 neu 47”;
  - (b) in paragraph (2)—
    - (i) in the English language text, for “regulation 53” substitute “regulation 55”;
    - (ii) in the Welsh language text, for “reoliadau 53” substitute “reoliadau 55”.

**Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017**

**78.**—(1) The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017(a) are amended as follows.

- (2) In regulation 2 (interpretation), in paragraph (1)—
- (a) in the English language text, in the definition of “European site”, for “regulation 8(3) of the Conservation of Species and Habitats Regulations 2010” substitute “regulation 8(1) of the Conservation of Species and Habitats Regulations 2017”;
  - (b) in the Welsh language text, in the definition of “safle Ewropeaidd” for “reoliad 8(3) o Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “reoliad 8(1) o Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.
- (3) In regulation 26 (coordination of assessments), in paragraph (2)—
- (a) in the English language text, for “regulation 61 of the Habitats and Species Regulations 2010” substitute “regulation 63 of the Habitats and Species Regulations 2017”;
  - (b) in the Welsh language text, for “reoliad 61 o Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2010” substitute “reoliad 63 o Reoliadau Gwarchod Cynefinoedd a Rhywogaethau 2017”.

**Town and Country Planning (Environmental Impact Assessment) Regulations 2017**

**79.**—(1) The Town and Country Planning (Environmental Impact Assessment) Regulations 2017(b) are amended as follows.

- (2) In regulation 2 (interpretation), in paragraph (1), in the definition of “European site”, for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.
- (3) In regulation 27 (co-ordination), in paragraph (2), for “regulation 61 of the Habitats and Species Regulations 2010” substitute “regulation 63 of the Habitats and Species Regulations 2017”.

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(a) S.I. 2017/567 (W.136).

(b) S.I. 2017/571, to which there is an amendment not relevant to these Regulations.

**Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

**80.**—(1) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) are amended as follows.

(2) In regulation 26 (co-ordination), in paragraph (2), for “regulation 61 of the Habitats and Species Regulations 2010” substitute “regulation 63 of the Habitats and Species Regulations 2017”.

(3) In Schedule 3 (selection criteria for screening Schedule 2 development), in sub-paragraph (2) of paragraph (2) (location of development), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

**Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017**

**81.**—(1) The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017(b) are amended as follows.

(2) In regulation 8 (co-ordination of environmental impact assessment with Habitats Regulations assessment), in paragraph (2), for “regulation 61 of the Conservation of Habitats and Species Regulations 2010” substitute “regulation 63 of the Conservation of Habitats and Species Regulations 2017”.

(3) In Schedule 2 (development requiring screening if no EIA report provided), in sub-paragraph (g) of paragraph 4, (meaning of “sensitive area”), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

(4) In Schedule 3 (selection criteria for screening development), in sub-paragraph (c)(vi) of paragraph 2 (location of development), for “the Conservation of Habitats and Species Regulations 2010” substitute “the Conservation of Habitats and Species Regulations 2017”.

**SCHEDULE 7**

Regulation 140

**Revocations**

<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
The 2010 Regulations	2010/490	The whole Regulations except: <ul style="list-style-type: none"> <li>(a) regulations 1 to 3;</li> <li>(b) regulation 73 so far as it relates to planning permission granted by a general development order made before 30th November 2017;</li> <li>(c) regulation 77 so far as it relates to a special development order made before 30th November 2017;</li> <li>(d) regulation 78 so far as</li> </ul>

(a) S.I. 2017/572.

(b) S.I. 2017/580.

		it relates to a local development order made before 30th November 2017;
		(e) regulation 78A so far as it relates to a neighbourhood development order made before 30th November 2017;
		(f) regulation 79 so far as it relates to a simplified planning zone scheme adopted or approved before 30th November 2017;
		(g) regulation 80 so far as it relates to—
		(i) an order designating an enterprise zone made before 30th November 2017, or
		(ii) a modified enterprise zone scheme approved before that date;
		(h) regulation 132;
		(i) Schedule 6
The Conservation of Habitats and Species (Amendment) Regulations 2011	2011/625	The whole Regulations
The Conservation of Habitats and Species (Amendment) Regulations 2012	2012/1927	The whole Regulations except for:
		(a) regulations 1, 25 and 26; and
		(b) regulation 2, so far as it relates to regulations 25 and 26

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations consolidate the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) with subsequent amending instruments, and make minor modifications reflecting changes to related legislation.

These Regulations also implement aspects of the Marine and Coastal Access Act 2009 (c. 23) (“the Marine Act”).

These Regulations extend to England and Wales (including the adjacent territorial sea). They extend to Scotland (including the adjacent territorial sea), in respect of reserved matters. They also extend to Northern Ireland (including the adjacent territorial sea), in respect of excepted matters.

These Regulations transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No. L 206, 22.7.1992, p.7) (“the Habitats Directive”).

### **Part 1 – Introductory and general provisions**

Regulation 9 requires public bodies to exercise their nature conservation functions so as to comply with the Habitats Directive and the new Wild Birds Directive (as defined in regulation 3(1)). Regulation 10 imposes duties on public bodies in relation to wild bird habitats and regulation 11 requires nature conservation bodies to review and report on whether the obligations under regulation 10 have been met.

### **Part 2 – Conservation of natural habitats and habitats of species**

Regulations 12 to 19 make provision for the selection, designation (or, in the case of special protection areas, classification), registration and notification of sites to be protected under the Habitats Directive (“European sites”). Regulations 20 to 22 make provision for management agreements for European sites. Regulations 23 to 36 make provision in respect of European sites for (i) control of damaging operations, (ii) special nature conservation orders and restoration orders, (iii) byelaws and (iv) compulsory purchase. Regulations 37 to 40 make provision for the protection of European marine sites.

### **Part 3 – Protection of species**

Part 3 provides for the protection of certain wild animals and plants. In particular, regulation 43 makes it an offence, subject to exceptions, deliberately to capture, kill or disturb those animals or to trade in them. Regulation 45 prohibits the use of certain methods of capturing or killing wild animals. Regulation 47 makes it an offence, subject to exceptions, deliberately to pick, collect, cut or destroy those plants or to trade in them.

### **Part 4 – Additional protection of habitats and wild animals and plants**

Regulation 50 imposes a duty on the Secretary of State and Welsh Ministers to make arrangements for the surveillance of the conservation status of natural habitats and species protected under the Habitats Directive. Regulation 52 requires them to make arrangements to establish a system to monitor the incidental capture and killing of animals listed in Annex IV(a) to the Habitats Directive.

Regulation 54 makes it an offence deliberately to introduce from a ship into the sea new species that are not native to Great Britain.

### **Part 5 – Licences**

Part 5 provides for the licensing of certain activities relating to animals and plants. The offences under Part 3 do not apply to anything done in accordance with a licence. Regulation 59 makes it an offence to make a false statement or representation for the purposes of obtaining a licence. Regulation 60 makes it an offence to contravene or fail to comply with a licence condition.

### **Part 6 – Assessment of plans and projects**

Regulations 63 to 69 require the effect on a European site to be considered before the granting of consents or authorisations of a kind specified in regulations 70 to 104, including the grant of planning permission, plans or projects to construct or improve highways, consents under the Electricity Act 1989 (c. 29), authorisations under the Pipe-lines Act 1962 (c. 58), orders under the Transport and Works Act 1992 (c. 42), environmental permits, abstraction licences and marine works. Regulation 63 provides that a competent authority may not authorise a plan or project that may adversely affect the integrity of a European site, subject to the exceptions set out in regulation 64 (considerations of overriding public interest).

Chapter 8 of Part 6 sets out similar requirements in relation to land-use plans and national policy statements, and Chapter 9 of Part 6 similar requirements in relation to marine policy statements and marine plans.

#### **Part 7 – Enforcement**

Part 7 sets out the enforcement powers of wildlife inspectors and constables, including powers of entry, search and taking of samples. It also sets out certain further offences, including offences of obstruction in connection with the exercise of powers of entry and powers to take specimens and samples (regulations 123 to 125).

#### **Part 8 – Final provisions**

Regulations 134 and 135 contain provisions relating to the advisory role of the Joint Nature Conservation Committee, Natural England, the Natural Resources Body for Wales and Scottish Natural Heritage.

Regulation 139 and 140 and Schedules 6 and 7 contain amendments and revocations consequential on the consolidation. Regulation 141 contains transitional provisions.

An impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen. As regards Wales, the Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

## **Explanatory Memorandum to The Conservation of Habitats and Species Regulations 2017**

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Conservation of Habitats and Species Regulations 2017

Lesley Griffiths

Cabinet Secretary for Environment and Rural Affairs

31 October 2017



## **1. Description**

These Regulations consolidate and update the Conservation of Habitats and Species Regulations 2010 (the “Habitats Regulations 2010”). The Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations 2017”) transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive) and elements of Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”) in England, Wales and, to a limited extent, Scotland and Northern Ireland.

The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Directive lays down rules for the protection, management and exploitation of such habitats and species.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

The Habitats Regulations 2010 extend to England and Wales. These Regulations have been amended several times and in 2011 and 2012 on a composite basis by the Welsh Ministers and the Parliamentary Under Secretary of State for the Environment.

A single instrument, made compositely by the Welsh Ministers and Parliamentary Under Secretary of State, offers an effective and efficient mechanism for updating the Habitats Regulations 2010, maintains consistency, provides reassurance and understanding for stakeholders, and offers a single legislative framework for implementing the Habitats Directive across the two countries. This is particularly important in the context of cross-border sites such as the River Severn Special Area of Conservation. A single set of regulations recognises wildlife knows no borders.

A single set of regulations also provides coherence and clarity for meeting the UK’s international biodiversity commitments, avoids unnecessary potential costs associated with the risk of operating two separate systems in England and Wales; and aligns with the current approach for wild birds (the Wildlife and Countryside Act 1981 provides common protection for wild birds across England, Wales and Scotland)

Legislation which will apply simultaneously throughout England and Wales should also assist with enforcement issues and the accessibility and understanding for members of the public and others.

This instrument is therefore being made on a composite basis with the Parliamentary under Secretary of State for Defra.

The Committee will wish to note that the Habitats Regulations 2017 consolidate all the various amendments made to the Habitats Regulations 2010, in respect of England and Wales. The Habitats Regulations 2017 also introduce a small number of minor amendments designed to rectify obsolete references, such as (as regards England) amending references to “regional strategy”, and including references to the

River Tweed Commission as a relevant authority; and generally improving the clarity of drafting. Further detail is at section 4 below.

A 2012 review of the implementation of the Habitats Regulations 2010, covering England only, concluded that “in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained” The Habitats and Birds Directives have been comprehensively reviewed under the EU REFIT process. The review concluded in 2016 the Directives are fit for purpose but fully achieving their objectives and realising their full potential will depend on substantial improvement in their implementation.

These composite Regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid or made bilingually. Where the instrument makes consequential amendments to bilingual legislation, both Welsh and English text has been provided.

This statutory instrument is being made under section 2(2) of the European Communities Act 1972 Para 2(2) of Schedule 2 to the European Communities Act 1972 gives discretion as to which procedure the instrument be subject to. Given that this is consolidation and there is no substantive change in policy nor legal effect, it is considered appropriate for the Regulations to be subject to the negative procedure.

### **3. Legislative background**

The Habitats Regulations 2010, which are made under section 2(2) of the European Communities Act 1972, are the principal means by which the Habitats Directive is transposed for England and Wales and territorial seas.

Corresponding Regulations transpose the Habitats Directive in relation to Northern Ireland and Scotland.

The Habitats Regulations 2017 will continue to implement the Habitats Directive and certain elements of the Birds Directives in England and Wales.

The Habitats Regulations 2010 have been amended ten<sup>1</sup> times since they were last consolidated (in 2010). They are likely to remain in place for some time after the UK exits the EU. It would therefore be good practice to aid usability and clarity to consolidate the Habitats Regulations 2010.

### **4. Purpose & intended effect of the legislation**

The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Directive lays down rules for the protection, management and exploitation of such habitats and species.

The Habitats Regulations 2017 transpose the Habitats Directive and elements of the Birds Directive in England, Wales and, to a limited extent, Scotland and Northern Ireland.

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<sup>1</sup> 2011/603, 2011/625, 2012/630, 2012/635, 2012/637, 2012/1927, 2013/755, 2015/377, 2015/2020, 2016/1154.

In the period since the Habitats Regulations 2010 came into force, they have been amended by ten different Statutory Instruments. It would therefore make sense to consolidate these changes.

Consolidation would make the Habitats Regulations 2017 easier to follow and make any operability changes which may follow the UK's exit from the EU easier to understand.

In addition to consolidating the Habitats Regulations 2010, the Habitats Regulations 2017 make a number of minor amendments. These amendments do not involve new changes in policy, but reflect amendments to, and made by, other related legislation which have occurred since the Habitats Regulations 2010 were made. The amendments are set out below:-

- adds the River Tweed Commission as a Relevant Authority European sites and European marine sites.
- amends regulations 7 and 68<sup>2</sup> to include references to section 57(2A) of the Town and Country Planning (Scotland) Act 1997, which do not affect Wales
- removes references to 'regional strategies' and 'responsible regional authorities' to ensure consistency with planning laws in England following changes made by the Localism Act 2011.
- updates the provisions setting penalties for offences under the Regulations, taking into account the changes made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- corrects a previous omission by including a reference to regulation 61(8)<sup>3</sup> in regulation 63(2)<sup>4</sup>.
- updates regulations 68 and 69<sup>5</sup> (and related regulations), which deal with the review of planning permission, to take account of changes to Town and Country planning legislation made by the Growth and Infrastructure Act 2013;
- improves the drafting of regulation 69(2)(a)<sup>6</sup> to make it clearer that it refers to both local development orders and neighbourhood development orders, although the latter do not apply in Wales;
- corrects a previous error, amending regulation 71<sup>7</sup> by substituting references to regulation 69<sup>8</sup> for references to regulation 70(2)<sup>9</sup>;
- removes the now defunct reference to unitary development plans in the definition of "land use plan" in regulation 107<sup>10</sup>;
- with regard to England, updates the review provision.

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<sup>2</sup> Regulation 71 of the 2017 Regulations.

<sup>3</sup> Regulation 63(8) in the 2017 Regulations.

<sup>4</sup> Regulation 65(2) in the 2017 Regulations.

<sup>5</sup> Regulations 70 and 71 in the 2017 Regulations.

<sup>6</sup> Regulation 71(2)(a) in the 2017 Regulations.

<sup>7</sup> Regulation 73 in the 2017 Regulations..

<sup>8</sup> Regulation 71 in the 2017 Regulations.

<sup>9</sup> Regulation 72(2) in the 2017 Regulations.

<sup>10</sup> Regulation 111 in the 2017 Regulations.

In addition to the amendments listed above, all necessary consequential amendments arising as a result of the consolidation have been included, obsolete legislation revoked and references to obsolete legislation removed.

## **5. Consultation**

No formal public consultation was undertaken as these Regulations do not introduce new policy changes or additional regulatory burden. These Regulations consolidate changes to the Habitats Regulations 2010 and introduce a small number of minor amendments designed to rectify obsolete references or include previous omissions as set out at section 4 above.

## **6. Regulatory Impact Assessment (RIA)**

Having considered the Welsh Ministers' code of practice, a Regulatory Impact Assessment has not been prepared for these Regulations.

The Habitats Regulations 2017 contain no substantive changes to existing policies and procedures.

There is no impact on business, charities or voluntary bodies over and above that which arises from the Habitats Regulations 2010 (as amended).

There is no substantive impact on the public sector. There may be some minor impact on Government Departments and Agencies which provide guidance on the Habitats Regulations, in relation to the need to provide an update to the numbering of the Regulations within the guidance. There are no policy or other substantive changes in the Habitats Regulations 2017 and so no need for substantive new guidance.

# SL(5)149 - The Conservation of Habitats and Species Regulations 2017

## Background and Purpose

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These Regulations consolidate and update the Conservation of Habitats and Species Regulations 2010.

These Regulations transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") and elements of Directive 2009/147/EC on the conservation of wild birds ("the Birds Directive") in England, Wales and, to a limited extent, Scotland and Northern Ireland.

The objective of the Habitats Directive is to protect biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Habitats Directive lays down rules for the protection, management and exploitation of such habitats and species.

## Procedure

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Negative

## Technical Scrutiny

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One point is identified for reporting under Standing Order 21.2 in respect of these Regulations, in that they are not made in both English and Welsh (Standing Order 21.2(ix)).

These Regulations have been made as a composite instrument, meaning that these Regulations have been: (a) made by both the Welsh Ministers and the Secretary of State, and (b) laid before both the National Assembly for Wales and the UK Parliament. The Welsh Ministers considered it was not reasonably practicable for these Regulations to be made in English and Welsh.

However, where these Regulations make consequential amendments to bilingual legislation, those amendments are in English and Welsh (see, for example, paragraph 22 of Schedule 6). This shows that legislation containing Welsh language text can be (and is occasionally) laid before the UK Parliament.

## Merits Scrutiny

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One point is identified for reporting under Standing Order 21.3 in respect of these Regulations, in that they are of political or legal importance or give rise to issues of public policy likely to be of interest to the Assembly (Standing Order 21.3(ii)).

These Regulations are made under section 2(2) of the European Communities Act 1972. The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to these Regulations. The negative procedure has been chosen, which seems appropriate given the consolidating nature of these Regulations.

## Implications arising from exiting the European Union

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The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced.

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after



exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

For example, these Regulations make several references to the European Commission (such as requiring the agreement of the European Commission, supplying information to the European Commission and having regard to the opinion of the European Commission). At present, it is unclear how these references will work on and after exit day. Will the references be amended by the Welsh Ministers using their powers under the Bill to address deficiencies in retained EU law? Will these issues be addressed in a withdrawal agreement? Will these issues be addressed in a common United Kingdom environment framework?

With regard to the Habitats Directive and the Birds Directive, these Directives will not automatically form part of domestic law on and after exit day under the Bill. However, where a court or tribunal has recognised, before exit day, that an EU directive confers a right on an individual that the individual can rely on and enforce in law, then that right will form part of domestic law on and after exit day (see clause 4 of the Bill).

## Government Response

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No government response is required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**7 November 2017**



# Agenda Item 5

Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth  
Cabinet Secretary for Economy and Transport



Llywodraeth Cymru  
Welsh Government

Chair  
Mick Antoniw AM  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff  
CF99 1NA

15 November 2017

Dear Mick

I have laid a Statutory Instrument Consent Memorandum ('the memorandum') in relation to the Environmental Impact Assessment (Miscellaneous Amendments Relating to Harbours, Highways and Transport) Regulations 2017, which were laid in Parliament on 13 November 2017, by the Secretary of State for Transport. These Regulations cover England and Wales, and parts also cover Scotland. They come into force on 5 December 2017. These Regulations make amendments to the Harbours Act 1964 and the Highways Act 1980 in order to transpose Directive 2014/52/EU (The Environmental Impact Assessment Directive, or EIA Directive) as it applies to transport legislation.

The Directive:

- Confirms the inter-relationships between the EIA Directive and other environmental directives (e.g. Habitat Directive).
- Requires additional information to be included in the environmental statement (also referred to as the environmental impact assessment report), such as information about the impact on climate change, and population and human health.
- Increases the requirement for transparency within the EIA process, particularly in terms of the role of the Overseeing Organisation.
- Strengthens the requirements of the determination and screening processes.

These provisions are technical in nature, covering the procedural requirements of an EIA and clarifying elements of the existing regime. They do not amend the underlying policy behind the EIA, only the requirements for how EIAs are carried out. The amendments to primary legislation are set out in the memorandum.

I have laid the memorandum in accordance with the requirement under Standing Order 30A for 'a member of the Welsh Government...[to]...lay a memorandum (a statutory instrument consent memorandum) in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers'. I consider the Regulations to be a relevant statutory instrument as they make provision in relation to Wales amending primary legislation within the National Assembly's legislative competence, and are not matters which are incidental or

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

consequential to matters which are outside of the National Assembly's legislative competence. However, I do not intend to table a Statutory Instrument Consent Motion for debate.

The Regulations have been made by negative procedure. They were made before they were laid, and providing no Member of Parliament 'prays' against them they will come into force 21 days after being laid. It is for you to decide as a Committee whether to consider and report on the memorandum, as the responsible Committee referred to under Standing Order 30A. I have considered carefully whether to table a Statutory Instrument Consent Motion under SO 30A, to be debated after the 35 days allowed for scrutiny by the responsible Committee has elapsed. There is no requirement for the Welsh Government to do so, but normally we would table a motion to debate so that the Assembly can give its consent, or not, to the relevant provisions before the statutory instrument is made.

As the outcome of such a debate would not have practical effect, I have decided not to table a Statutory Instrument Consent Motion for a debate. Each case must be decided on its merits, and these amendments, though numerous, are all technical and operational in nature. They do not make amendments to policy in Wales, only how the EIAs are to be carried out. I do not think there is merit in holding a debate where the changes are technical in nature and where the outcome of the debate is unlikely to have a practical effect. It is of course still open to any Assembly Member to table their own memorandum and motion for a debate if they feel strongly that this should be debated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken', with a long, sweeping flourish above the name.

**Ken Skates AC/AM**

Ysgrifennydd y Cabinet dros yr Economi a Thrafnidiaeth  
Cabinet Secretary for Economy and Transport



## STATUTORY INSTRUMENT CONSENT MEMORANDUM

### THE ENVIRONMENTAL IMPACT ASSESSMENT (MISCELLANEOUS AMENDMENTS RELATING TO HARBOURS, HIGHWAYS AND TRANSPORT) REGULATIONS 2017

1. This Statutory Instrument Consent Memorandum is laid under Standing Order (“SO”) 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales (“Assembly”) if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Environmental Impact Assessment (Miscellaneous Amendments relating to Harbours, Highways and Transport) Regulations 2017 were laid before Parliament on 13 November 2017 and before the Assembly on 15 November 2017. The regulations can be found at:

<http://www.legislation.gov.uk/ukxi/2017/1070/contents/made>

#### Summary of the Regulations and their objective

3. The objective of the regulations is to transpose Directive 2014/52/EU, which amends Directive 2011/92/EU<sup>1</sup> on the assessment of the effects of certain public and private projects on the environment. This assessment is known as the Environmental Impact Assessment (‘EIA’).
4. The Directive:
  - Confirms the inter-relationships between the EIA Directive and other environmental directives (e.g. Habitat Directive).
  - Requires additional information to be included in the environmental statement (also referred to as the environmental impact assessment report), such as information about the impact on climate change, and population and human health.
  - Increases the requirement for transparency within the EIA process, particularly in terms of the role of the Overseeing Organisation.
  - Strengthens the requirements of the determination and screening processes.
5. These provisions are technical in nature, covering the procedural requirements of an EIA and clarifying elements of the existing regime. In many cases the existing legislation is likely to be sufficient to meet the requirements of the 2014 Directive, but a copy out approach has been

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<sup>1</sup> Throughout this document, ‘the EIA Directive’ refers to Directive 2011/92/EU as amended by Directive 2014/52/EU. ‘The 2014 Directive’ refers to Directive 2014/52/EU only, and ‘the 2011 Directive’ refers to Directive 2011/92/EU only. These terms will be used as necessary to illustrate the changes under 2014/52/EU that are required to be transposed, compared to the existing regulatory scheme required by Directive 2011/92/EU.

taken in all appropriate places in order to minimise the risk of failure to properly transpose. The practical impacts of the changes are minor, as EIAs in Wales are already being carried out with a regard to the 2014 Directive.

6. The Regulations cover England and Wales. Elements of the Regulations also apply in Scotland.

### **Relevant provision to be made by the Regulations**

7. Transposition of this Directive will not affect schemes which have already been determined (i.e. confirmation has been received that an EIA is required) and a scope of works has been requested. Article 3(1) of the 2014 Directive allows for such schemes to carry on under the un-amended provisions of the 2011 Directive. The following provisions will apply to new schemes which have not reached this point only.
8. The regulations cover areas within devolved competence and outside of devolved competence. It covers a range of transport related matters. The Highways Act 1980 is the only element which is entirely within the devolved competence of the National Assembly. The National Assembly has legislative competence over harbours which are used for fishing, for recreation, and/or for communication between places in Wales, though not all harbours in Wales. However, the Welsh Ministers are only designated to transpose the provisions of this Directive in relation to major transport schemes, which excludes fisheries harbours even though fisheries harbours are within the legislative competence of the National Assembly.
9. It is the view of the Welsh Government that the provisions described in paragraph (8) above fall within the legislative competence of the National Assembly for Wales in so far as they relate to harbours, highways and transport which are used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes, listed under paragraph 10 of Part 1, Schedule 7 to the Government of Wales Act 2006.

### Harbours Act 1964

10. Schedule 2 of the regulations copy out the definition of the EIA process into Schedule 3 of the Harbours Act, including the changes to terminology and that the assessment should be of likely significant effects of the project on the environment.
11. The regulations transpose the exemption for projects which have the response to civil emergencies or defence as their sole purpose, and the additional flexibility conferred in exceptional circumstances. The regulations set out when certain steps of the EIA process may be deferred.
12. The regulations transpose the requirement that when a project requires an EIA and an assessment under the Habitats Directive (Directive 92/43) or

the Birds Directive (Directive 2009/147) the authority that must ensure, where appropriate, that the relevant assessments are coordinated. The regulations transpose the projects for which an EIA is required and the type of information required or might be provided in an application by reference to the Directive.

13. The regulations amend the process for the scoping report, requiring that the Secretary of State must inform the applicant of their decision in writing within 90 days, unless exceptional circumstances apply. The regulations now add that where insufficient information has been provided the Secretary of State may write within 90 days requesting further information with subsequent impacts on the timescales for decisions.
14. The regulations transpose the type of information to be provided by a developer in order for a competent authority to screen a proposal, transpose the selection criteria by reference to the Directive, and include a copy out reference to 'authorities with local and regional competencies' alongside the existing consultation provisions.
15. The regulations make amendments to the requirements for documentation to be submitted for an application for a Harbour Revision Order. The regulations set out the minimum information that a developer must provide in their environmental statement as part of the assessment process in paragraph 8 of the Harbours Act. The regulations copy out that the competent authority must issue an opinion on the scope and level of detail of the information required in the statement, taking into account the information provided by the developer on the specific characteristics of the project and its likely impact on the environment.
16. The regulations update publication arrangements for notices, to make them available electronically within specified times.
17. The regulations set out the information which the Secretary of State must consider when making a decision on the environmental impact of a project, including provisions to ensure any necessary monitoring conditions are included in a project when appropriate.
18. The regulations insert a requirement in paragraph 19 that the Secretary of State must make a determination under that paragraph within a reasonable period of time, taking into account the nature and complexity of the application and proposed works, as well as any additional procedures required, from the date on which the Secretary of State has been provided with the environmental information provided. The regulations also update the provisions for the publication of that decision.

#### Amendments to the Highways Act 1980

19. The regulations amend Section 105A (1) of the Highways Act to refer to the amended Directives of 2011 and 2014, including the new definition of

“environmental impact assessment” included in the 2014 Directive. The amended section 105A sets out the procedures for determining whether an EIA is required for a highway project and the factors that must be taken into account in making that determination. The amendments to 105A clarify that the environmental factors that should be considered as part of the assessment should be the likely significant effects of the project on the environment. It also amends some of the terminology used.

20. Amendments to 105A also specify that where a project is subject to an assessment under the EIA Directive and under the Habitats or Birds Directives, where appropriate these assessments should be coordinated. Section 105A has been amended to set out the content of an environmental statement. Amendments to 105A also include the requirement for the developer to ensure that the environmental statement is prepared by competent experts, while the competent authority must ensure that it has, or has access to, sufficient expertise to examine the EIA report.
21. Amendments to Section 105B sets out procedures for making a determination on whether or not an EIA is required. Section 105B (1C) in the Highways Act 1980 will require the determination to be made as soon as possible and within 90 days. Amendments to 105B incorporate the requirement that the public should be informed about an application and the matters set out in Article 6(2) electronically. Amendments to this section set a 30 day minimum for public consultation on the environmental impact assessment report and a new minimum time frame for public consultations on the environment statement.
22. New Sections have been added to 105B to reflect the requirement that the competent authority’s reasoned conclusion must be integrated into any decision; that competent authorities must also ensure that any mitigation measures and, where appropriate, monitoring measures are identified in the consent; requires that the decision to grant development consent should also now include, where appropriate, monitoring measures; and that the competent authority takes any of the decisions referred to within a reasonable period of time.
23. Section 105B (6) of the Highways Act has been amended to implement the changes to article 9(1) of the 2011 Directive, regarding procedures and content for making known a decision whether or not to proceed with a project that is subject to an EIA.
24. Section 105C has been amended to include consultations on transboundary effects may be conducted through an appropriate joint body.
25. The regulations transpose the exemption for defence and civil emergencies projects and confer some additional flexibility in exceptional circumstances into new section 105E and 105F.

## **Why is it appropriate for the regulations to make this provision**

26. EIAs are required under EU law to be carried out for a range of developments. The EIA Directive has updated the EIA requirements, and must be transposed into UK law. The Directive affects a range of policy areas, including planning, agriculture, forestry and transport. This Statutory Instrument Consent Memorandum concerns the transport elements of transposition, the regulation for which is proposed to be made by the Secretary of State.
27. It is the view of the Welsh Government that it is appropriate to deal with these provisions in these regulations as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in Wales. These regulations amend primary legislation which applies in Wales and England, and it was not practical or proportionate to make separate Welsh regulations to make identical changes to the same pieces of primary legislation.
28. Additionally, the Welsh Ministers are not designated to transpose the provisions relating to harbours and therefore only part of these regulations could be transposed in Wales. The Wales Act 2017 will extend devolved competence over ports and harbours, though at this point the enabling legislation (the Harbours Act 1964 and the Highways Act 1980) will still apply on an England and Wales basis. This approach ensures a common approach to transposing the Directive across the UK, and will support a smooth transition to further devolution.
29. This Statutory Instrument Consent Memorandum relates to regulations laid in the UK Parliament under the negative procedure which automatically become law unless there is an objection from a member of either House of Parliament. If there is no such objection, the regulations would come into force on 5 December 2017.

## **Financial implications**

30. There are costs associated with carrying out EIAs, which are included within the budgets for individual projects. The new Directive has additional requirements for monitoring, which could lead to additional costs to confirm the validity of the measures put in place to reduce, minimise and offset the environmental effects. Approaches to implementation may also affect costs of individual projects, and these would need to be considered on a case by case basis. The transitional provision means that these regulations will not affect projects which are already underway.

**Ken Skates AM**  
**Cabinet Secretary for Economy and Transport**  
**15 November 2017**



Our ref: MA-L/FM/0729/17

Elin Jones AM  
Llywydd  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

9 November 2017

Dear Elin,

**Member in Charge, Government Bills**

I am writing to notify you of my authorisation, under Standing Order 24.4(ii), of the following members of the Government as Members in Charge of Government Bills

- Rebecca Evans AM, Minister for Housing and Regeneration, as the Member in Charge of the Abolition of the Right to Buy and Associated Rights (Wales) Bill.
- Rebecca Evans AM, Minister for Housing and Regeneration, as the Member in Charge of the Regulation of Registered Social Landlords (Wales) Bill.
- Vaughan Gething AM, Cabinet Secretary for Health and Social Services, as the Member in Charge of the Public Health (Minimum Price for Alcohol) (Wales) Bill.
- Kirsty Williams AM, Cabinet Secretary for Education, as the Member in Charge of the Additional Learning Needs and Educational Tribunal (Wales) Bill.

Yours sincerely

**CARWYN JONES**

Bae Caerdydd • Cardiff Bay  
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

**Rt Hon Alun Cairns MP**  
Secretary of State for Wales

**Mr Robin Walker MP**  
Parliamentary Under Secretary of State for Exiting the  
European Union

9 November 2017

Dear Secretary of State and Minister

**European Union (Withdrawal) Bill: Questions not reached on 6 November 2017**

Thank you for appearing at the meeting of the External Affairs and Additional Legislation Committee and the Constitutional and Legislative Affairs Committee on 6 November 2017.

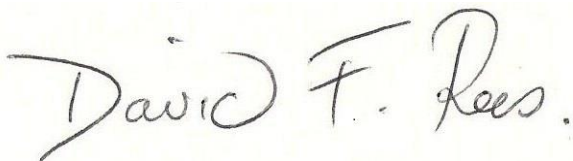
Following the above meeting, I am writing to seek your response to a number of questions that we were unable to reach in the time available.

The questions are enclosed with this letter.

I would be grateful for an early response to these questions, given that the Committee Stage of the Bill's passage through the House of Commons is due to begin next week.

I am copying this letter to members of the Constitutional and Legislative Affairs Committee and intend to publish it on the Assembly's website.

Yours sincerely



**David Rees AM**

Chair of the External Affairs and Additional Legislation Committee



## Questions not reached on 6 November 2017

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### Ministerial powers to make corrections

#### Question 1

Why does the European Union (Withdrawal) Bill ('the Bill') only provide Devolved Ministers with a power to correct EU-derived domestic legislation, whilst providing a broader power for UK Ministers to correct the entire body of EU retained law?

#### Question 2

In its open letter to Members of Parliament, the External Affairs and Additional Legislation Committee concluded that:

*"restricting the involvement of the Welsh Ministers and the Assembly to correcting only EU-derived domestic legislation in devolved areas makes for a less efficient exit process."*

The Committee's reasoning for this is:

*"Welsh Government and Welsh public bodies are responsible for implementing EU law in devolved areas, and have been for 20 years. They hold the knowledge that is required to make sensible corrections to EU law in devolved areas. If UK Ministers were to seek to make corrections in devolved areas, they would need to seek the expert input of the Welsh Government and Welsh public bodies before drafting such corrections. Enabling the Welsh Ministers and the Assembly to correct all aspects of EU-derived law in devolved areas is a more efficient, and constitutionally appropriate, approach to correcting EU-derived law in devolved areas."*

What is your response to this view?

### Concurrent powers

#### Question 3

Why do UK Ministers need concurrent powers to correct EU derived domestic legislation in Welsh devolved policy areas?

#### Question 4

The External Affairs Committee concluded that such powers are not constitutionally appropriate and that the Assembly should be accountable *"for scrutinising the legislation for which it is accountable to the electorate for delivering"*.

What is your response to this view?





### **Question 5**

Do you intend to table amendments to remove the UK Ministers' concurrent powers from the Bill, as suggested by External Affairs and Additional Legislation Committee?

### **Question 6**

If you do not intend to table amendments to remove these concurrent powers from the Bill, will you consider tabling amendments to provide duty to consult both the Assembly and Welsh Ministers on the face of the Bill?

## **Legislative consent**

### **Question 7**

Please explain why you do not believe that the Assembly's consent is required for Clauses 7 and 9 of the Bill.

### **Question 8**

Will the UK Government proceed with the Bill if it does not obtain the consent of the devolved legislatures?

### **Question 9**

Do you believe that you can obtain the consent of the Assembly without having accepted the Welsh Government's amendments?

### **Question 10**

If EU 'continuity bills' are introduced in Scotland and Wales, would the UK Government seek to challenge these in the Supreme Court or to revoke them by an Act of Parliament?

## **Scope of Ministerial powers**

### **Question 11**

Will you bring forward amendments to narrow the scope of the powers proposed for ministers?

### **Question 12**

Does the Bill allow for the term 'exit day' to be defined differently for different clauses in the Bill?

### **Question 13**

Why does the UK Government consider it appropriate for Ministers to have the power to amend the Bill itself (using the powers provided to them by Clause 17)?

### **Question 14**

Do you intend to table amendment to Clause 17 to restrict the power of UK Ministers to amend the Bill?



## Scrutiny procedures

### Question 15

Why doesn't the Bill allow the Assembly to determine its own procedures for the scrutiny of subordinate legislation arising as a consequence of the Bill?

### Question 16

Why didn't you consult the Assembly, prior to the Bill's introduction, about the scrutiny procedures for delegated legislation to be made by the Welsh Ministers?

### Question 17

Do you agree that scrutiny procedures set for Westminster by the Bill may not be suitable or operable in the devolved legislatures?

## Common policy frameworks

### Question 18

How will you ensure that discussions on common policy frameworks will be transparent and open to scrutiny by all UK legislatures?

### Question 19

What role will stakeholders have in the development and agreement of common policy frameworks and what consultation mechanisms will be put in place?

### Question 20

The JMC (EN) Communiqué from 16 October states: *"It will be the aim of all parties to agree [...]"*.

Does this allow scope for a common policy framework to be imposed by the UK Government in the event of one of the parties not agreeing?



# Agenda Item 8.1

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2017 No. 1058 (W. 271)**

## **AGRICULTURE, WALES**

### **The Agricultural Wages (Wales) Order 2017**

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order revokes and replaces, subject to some changes and a transitional provision, the Agricultural Wages (Wales) Order 2016. This Order applies as if it had come into force on 1 April 2017.

Part 2 of the Order provides that agricultural workers are to be employed subject to the terms and conditions set out in Parts 2 to 5 of the Order (article 3) and specifies the different grades and categories of agricultural worker (article 5 to 11).

Part 3 makes provision about the minimum rates of remuneration that must be paid to agricultural workers (article 12). Provision is made for accommodation offset allowance which may be deducted from an agricultural worker's remuneration (article 15). Provision is also made for dog allowance, on-call allowance, night work allowance and birth and adoption grants which do not form part of an agricultural worker's remuneration (article 16).

Part 4 provides that an agricultural worker is entitled to agricultural sick pay in the circumstances specified (articles 18 to 21). Provision is made about calculating the amount of agricultural sick pay that a worker is entitled to (article 22). A payment of statutory sick pay is to count towards an agricultural worker's entitlement to agricultural sick pay (article 23).

Part 5 makes provision about an agricultural worker's entitlement to time off. Provision is made about an agricultural worker's entitlement to rest breaks (article 28). Provision is also made specifying the agricultural worker's annual leave year and about agricultural worker's entitlement to annual leave, holiday pay and about payment in lieu of annual leave (articles 29 to 36). Provision about an agricultural worker's entitlement to be paid bereavement leave is made in articles 39 to 41.

Part 6 contains a revocation and a transitional provision.

The Regulatory Impact Assessment applicable to this Order is obtainable from the Welsh Government at: Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at [www.gov.uk](http://www.gov.uk).

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2017 No. 1058 (W. 271)**

**AGRICULTURE, WALES**

**The Agricultural Wages (Wales)  
Order 2017**

*Made* 2 November 2017

*Laid before the National Assembly  
for Wales* 2 November 2017

*Coming into force* 3 November 2017

The Agricultural Advisory Panel for Wales, in accordance with their functions under article 3(2)(b) of the Agricultural Advisory Panel for Wales (Establishment) Order 2016(1) have prepared an agricultural wages order in draft, consulted on the order and submitted it to the Welsh Ministers for approval.

The Welsh Ministers have approved the draft agricultural wages order in accordance with section 4(1)(a) of the Agricultural Sector (Wales) Act 2014(2).

The Welsh Ministers, in exercise of the powers conferred upon them by sections 3, 4(1) and 17 of the Agricultural Sector (Wales) Act 2014, make the following Order.

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**PART 2: Agricultural workers**

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(1) S.I. 2016/255 (W. 89).

(2) 2014 anaw 6.

5. Grade 2
6. Grade 3
7. Grade 4
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43. Revocation and transitional provision

SCHEDULE 1 — Awards and certificates of competence for Grade 2 workers

SCHEDULE 2 — Awards and certificates of competence for Grade 3 workers

SCHEDULE 3 — Awards and certificates of competence for Grade 4 workers

SCHEDULE 4 — Minimum rates of pay

SCHEDULE 5 — Annual leave entitlement

SCHEDULE 6 — Payment in lieu of annual leave

## PART 1 - PRELIMINARY

### **Title and commencement**

1.—(1) The title of this Order is the Agricultural Wages (Wales) Order 2017 and it comes into force on the day after it is made.

(2) Although this Order comes into force on the day after it is made, it applies as if it had come into force on 1 April 2017.

### **Interpretation**

2.—(1) In this Order—

“basic hours” (“*oriau sylfaenol*”) means 39 hours of work per week, excluding overtime, worked in accordance with either an agricultural worker’s contract of service or an apprenticeship;

“birth and adoption grant” (“*grant geni a mabwysiadu*”) means a payment that an agricultural worker is entitled to receive from their employer on the birth of their child or upon the adoption of a child and is payable—

(a) where the agricultural worker has given their employer a copy of the child’s Birth

Certificate or Adoption Order (naming the worker as the child's parent or adoptive parent) within 3 months of the child's birth or adoption; and

- (b) in circumstances where both parents or adoptive parents are agricultural workers with the same employer, to each agricultural worker;

“compulsory school age” (“*oedran ysgol gorfodol*”) has the meaning given in section 8 of the Education Act 1996(1);

“guaranteed overtime” (“*goramser gwarantedig*”) means overtime which an agricultural worker is obliged to work either under their contract of service or their apprenticeship and in respect of which the agricultural worker's employer guarantees payment, whether or not there is work for the agricultural worker to do;

“hours” (“*oriau*”) includes a fraction of an hour;

“house” (“*ty*”) means a whole dwelling house or self-contained accommodation that by virtue of the agricultural worker's contract of service the agricultural worker is required to live in for the proper or better performance of their duties and includes any garden within the curtilage of such a dwelling house or self-contained accommodation;

“night work” (“*gwaith nos*”) means work (apart from overtime hours) undertaken by an agricultural worker between 7 p.m. on one evening and 6 a.m. the following morning, but excluding the first two hours of work that an agricultural worker does in that period;

“on-call” (“*ar alwad*”) means a formal arrangement between the agricultural worker and their employer where an agricultural worker who is not at work agrees with their employer to be contactable by an agreed method and able to reach the place where they may be required to work within an agreed time;

“other accommodation” (“*llety arall*”) means any living accommodation other than a house which—

- (a) is fit for human habitation;
- (b) is safe and secure;
- (c) provides a bed for the sole use of each individual agricultural worker; and
- (d) provides clean drinking water, suitable and sufficient sanitary conveniences and washing facilities for agricultural workers in accordance with regulations 20 to 22 of the Workplace (Health, Safety and Welfare)

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(1) 1996 c. 56. Section 8 was amended by the Education Act 1997 (c. 44), section 52.



Regulations 1992(1) as if the accommodation was a workplace to which regulations 20 to 22 of those Regulations applied;

“overtime” (“*goramser*”) means—

- (a) in relation to an agricultural worker who began their employment prior to 1 October 2006, time that is not guaranteed overtime worked by the agricultural worker—
  - (i) in addition to an 8 hour working day;
  - (ii) in addition to the agreed hours of work in their contract of service;
  - (iii) on a public holiday,
  - (iv) on a Sunday; or
  - (v) in any period commencing on a Sunday and continuing to the following Monday up until the time that worker would normally start their working day;
- (b) in relation to all other agricultural workers, time that is not guaranteed overtime worked by the agricultural worker—
  - (i) in addition to an 8 hour working day;
  - (ii) in addition to the agreed hours of work in their contract of service; or
  - (iii) on a public holiday;

“output work” (“*gwaith allbwn*”) means work which, for the purposes of remuneration, is measured by the number of pieces made or processed or the number of tasks performed by an agricultural worker;

“qualifying days” (“*diwrnodau cymwys*”) means days on which the agricultural worker would normally be required to be available for work apart from any days on which the agricultural worker—

- (a) was taking annual leave;
- (b) was taking bereavement leave; or
- (c) was taking statutory maternity, paternity or adoption leave;

“sickness absence” (“*absenoldeb salwch*”) means the absence of an agricultural worker from work due to incapacity by reason of—

- (a) any illness suffered by the agricultural worker;
- (b) illness or incapacity caused by the agricultural worker’s pregnancy or maternity;
- (c) an injury that occurs to the agricultural worker at the agricultural worker’s place of work;

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(1) S.I. 1992/3004.

- (d) an injury that occurs to the agricultural worker when travelling to or from their place of work;
- (e) time spent by the agricultural worker recovering from an operation caused by an illness; or
- (f) time spent by the agricultural worker recovering from an operation in consequence of an injury suffered at their place of work or an injury suffered whilst travelling to or from their place of work,

but does not include any injury suffered by the agricultural worker when not at their place of work nor any injury suffered when the agricultural worker is not travelling to or from their place of work;

“travelling” (“*teithio*”) means a journey by a mode of transport or a journey on foot and includes—

- (a) waiting at a place of departure to begin a journey by a mode of transport;
- (b) waiting at a place of departure for a journey to re-commence either by the same or another mode of transport, except for any time the agricultural worker spends taking a rest break; and
- (c) waiting at the end of a journey for the purpose of carrying out duties, or to receive training, except for any time the agricultural worker spends taking a rest break;

“working time” (“*amser gweithio*”) means any period during which an agricultural worker is working at their employer’s disposal and carrying out activities or duties in accordance with either their contract of service or their apprenticeship and includes—

- (a) any period during which an agricultural worker is receiving relevant training;
- (b) any time spent travelling by an agricultural worker for the purposes of their employment but does not include time spent commuting between their home and their place of work;
- (c) any period during which an agricultural worker is prevented from carrying out activities or duties in accordance with their contract of service or their apprenticeship due to bad weather; and
- (d) any additional period which the employer and the agricultural worker agree is to be treated as working time,

and references to “work” (“*gwaith*”) are to be construed accordingly.

(2) In this article the reference to agricultural workers who began their employment prior to the 1 October 2006 includes agricultural workers—

- (a) whose contract terms have since been subject to any variation; or
- (b) who have since been employed by a new employer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006(1).

(3) References in this Order to a period of continuous employment are to be construed as a period of continuous employment computed in accordance with sections 210 to 219 of the Employment Rights Act 1996(2).

## PART 2 – Agricultural workers

### Terms and conditions of employment

3. An agricultural worker's employment is subject to the terms and conditions set out in this Part and Parts 3, 4 and 5 of this Order.

### Grades and categories of agricultural worker

4. An agricultural worker must be employed as a worker at one of the Grades specified in articles 5 to 9 or 10(1) or as an apprentice in accordance with the provisions in article 11.

### Grade 2

5. An agricultural worker who—
- (a) provides documentary evidence to an employer that they hold—
    - (i) one of the awards or certificates of competence listed in the tables in Schedule 1;
    - (ii) one National Vocational Qualification relevant to their work; or
    - (iii) an equivalent qualification; or
  - (b) is required to—
    - (i) work without supervision;
    - (ii) work with animals;
    - (iii) work with powered machinery; or
    - (iv) drive an agricultural tractor,

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(1) S.I. 2006/246.

(2) 1996 c. 18. Section 211 was amended by S.I. 2006/2408. Section 212 was amended by Schedules 4 and 12 to the Employment Relations Act 1999 (c. 26).

must be employed as a worker at Grade 2.

### **Grade 3**

**6.—(1)** An agricultural worker who has been employed in agriculture for an aggregate period of at least 2 years in the previous 5 years and who—

- (a) provides documentary evidence to an employer that they hold—
  - (i) one of the awards or certificates of competence listed in the tables in Schedule 2;
  - (ii) one National Vocational Qualification relevant to their work; or
  - (iii) an equivalent qualification; or
- (b) is designated as a team leader,

must be employed as a worker at Grade 3.

(2) For the purposes of this article, a “team leader” is responsible for leading a team of agricultural workers and for monitoring the team’s compliance with instructions given by or on behalf of their employer but is not responsible for disciplinary matters.

### **Grade 4**

**7.** An agricultural worker who—

- (a) provides documentary evidence to an employer that they hold a total of 8 qualifications which are either:
  - (i) awards or certificates of competence listed in the tables in Schedule 1;
  - (ii) National Vocational Qualifications relevant to their work; or
  - (iii) equivalent qualifications; or
- (b) provides documentary evidence to an employer that they hold 1 of the awards or certificates of competence listed in the tables in Schedule 3 or an equivalent qualification; and
- (c) who has either—
  - (i) been employed in agriculture for an aggregate period of at least 2 years in the last 5 years; or
  - (ii) been continuously employed for a period of at least 12 months or more by the same employer since obtaining the qualifications referred to in paragraphs (a) and (b),

must be employed as a worker at Grade 4.

### **Grade 5**

**8.** An agricultural worker who is required to have day to day responsibility—

- (a) for supervising the work carried out on the employer's holding;
- (b) for implementing management decisions; or
- (c) for managing staff,

must be employed as a worker at Grade 5.

### **Grade 6**

**9.** An agricultural worker who is required to have management responsibility—

- (a) for the entire of the employer's holding;
- (b) for part of the employer's holding which is run as a separate operation or business; or
- (c) for hiring and managing staff,

must be employed as a worker at Grade 6.

### **Continued Professional Development**

**10.—(1)** An agricultural worker who cannot be employed at one of the Grades 2 to 6 in accordance with the provision in articles 5 to 9 of this Order and who is not an apprentice in accordance with article 11 must be employed as a worker at Grade 1.

(2) An apprentice in the third year and any subsequent year of their apprenticeship is to be subject to the minimum rates of pay and other terms and conditions in this Order that apply to agricultural workers employed at Grade 2.

(3) An agricultural worker must—

- (a) maintain documentary evidence of qualifications and experience gained by them that is relevant to their employment; and
- (b) inform their employer if they have gained qualifications and experience that enables them to be employed at a different Grade.

### **Apprentices**

**11.—(1)** An agricultural worker is an apprentice employed under an apprenticeship if—

- (a) they are employed under either a contract of apprenticeship, an apprenticeship agreement within the meaning of section 32 of the Apprenticeships, Skills, Children and Learning Act 2009<sup>(1)</sup> or are treated as

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(1) 2009 c. 22.

employed under a contract of apprenticeship;  
and

- (b) they are within the first 12 months after the commencement of that employment under 19 years of age.

(2) An agricultural worker must be treated as employed under a contract of apprenticeship if they are engaged in Wales under Government arrangements known as Foundation Apprenticeships, Apprenticeships or Higher Apprenticeships.

(3) In this article “Government arrangements” means arrangements made under section 2 of the Employment and Training Act 1973(1) or under section 17B of the Jobseekers Act 1995(2).

## PART 3 – Agricultural minimum wage

### Minimum rates of pay

**12.**—(1) Subject to the operation of section 1 of the National Minimum Wage Act 1998(3), agricultural workers must be remunerated by their employer in respect of their work at a rate which is not less than the agricultural minimum wage.

(2) The agricultural minimum wage is the minimum hourly rate specified in the Table in Schedule 4 as being applicable to each grade of agricultural worker and to apprentices.

### Minimum rates of pay for overtime

**13.** Agricultural workers must be remunerated by their employer in respect of overtime worked at a rate which is not less than 1.5 times the agricultural minimum wage specified in article 12 of, and Schedule 4 to, this Order which is applicable to their grade or category.

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(1) 1973 c. 50. Section 2 was amended by section 25 of the Employment Act 1988 (c. 19) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19). Relevant functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) 1995 c. 18. Section 17B is repealed by section 147 of and Part 4 of Schedule 14 to the Welfare Reform Act 2012 (c. 5). The repeal has effect for certain purposes pursuant to S.I. 2013/983 and S.I. 2013/1511.

(3) 1998 c. 39.

### **Minimum rates of pay for output work**

**14.** Agricultural workers must be remunerated by their employer in respect of output work at a rate which is not less than the agricultural minimum wage specified in article 12 of, and Schedule 4 to, this Order which is applicable to their grade or category.

### **Accommodation offset allowance**

**15.—(1)** Where in any week an employer provides an agricultural worker with a house for the whole of that week, the employer may deduct the sum of £1.50 from the agricultural worker's minimum wage payable under article 12 of this Order for that week.

(2) Subject to paragraphs (3) and (4), where in any week an employer provides an agricultural worker with other accommodation, the employer may deduct the sum of £4.82 from the agricultural worker's minimum wage payable under article 12 of this Order for each day in the week that the other accommodation is provided to the worker.

(3) The deduction in paragraph (2) may only be made when the agricultural worker has worked for a minimum of 15 hours in that week.

(4) Any time during that week when the agricultural worker is on annual leave or bereavement leave must count towards those 15 hours.

### **Payments which do not form part of an agricultural worker's remuneration**

**16.** The following allowances and payments do not form part of an agricultural worker's remuneration—

- (a) a dog allowance of £7.72 per dog to be paid weekly where an agricultural worker is required by their employer to keep one or more dogs;
- (b) on-call allowance of a sum which is equivalent to two times the hourly overtime rate set out in article 13 of this Order;
- (c) a night work allowance of £1.46 for each hour of night work; and
- (d) a birth and adoption grant of £60.72 for each child.

### **Training costs**

**17.—(1)** Where an agricultural worker attends a training course with the prior agreement of their employer, the employer must pay—

- (a) any fees for the course; and
- (b) any travelling and accommodation expenses incurred by the agricultural worker attending the course.

(2) An agricultural worker who has been continuously employed at Grade 1 by the same employer for not less than 30 weeks is deemed to have received the approval of their employer to undertake training with a view to attaining the necessary qualifications required of a Grade 2 worker.

(3) Any training undertaken by an agricultural worker in accordance with paragraph (2), is to be paid for by the employer.

## **PART 4 – Entitlement to agricultural sick pay**

### **Entitlement to agricultural sick pay**

**18.** Subject to the provisions in this Part, an agricultural worker is entitled to receive agricultural sick pay from their employer in respect of their sickness absence.

### **Qualifying conditions for agricultural sick pay**

**19.** An agricultural worker qualifies for agricultural sick pay under this Order provided that the agricultural worker has—

- (a) been continuously employed by their employer for a period of at least 52 weeks prior to the sickness absence;
- (b) notified their employer of the sickness absence in a way previously agreed with their employer or, in the absence of any such agreement, by any reasonable means;
- (c) in circumstances where the sickness absence has continued for a period of 8 or more consecutive days, provided their employer with a certificate from a registered medical practitioner which discloses the diagnosis of the worker's medical disorder and states that the disorder has caused the agricultural worker's sickness absence.

### **Periods of sickness absence**

**20.** Any 2 periods of sickness absence which are separated by a period of not more than 14 days must be treated as a single period of sickness absence.

### **Limitations on entitlement to agricultural sick pay**

**21.—(1)** Agricultural sick pay will not be payable for the first 3 days sickness absence in circumstances where the duration of the sickness absence is less than 14 days.



(2) During each period of entitlement, the maximum number of weeks that an agricultural worker is entitled to agricultural sick pay is—

- (a) 13 weeks where the agricultural worker has been employed by the same employer for at least 12 months but not more than 24 months;
- (b) 16 weeks where the agricultural worker has been employed by the same employer for at least 24 months but not more than 36 months;
- (c) 19 weeks where the agricultural worker has been employed by the same employer for at least 36 months but not more than 48 months;
- (d) 22 weeks where the agricultural worker has been employed by the same employer for at least 48 months but not more than 59 months;
- (e) 26 weeks where the agricultural worker has been employed by the same employer for 59 months or more.

(3) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a fixed number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to the agricultural worker by the number of qualifying days worked each week.

(4) Where an agricultural worker works basic hours or, where applicable any guaranteed overtime, on a varying number of days each week, the maximum number of days of agricultural sick pay that the agricultural worker is entitled to is calculated by multiplying the maximum number of weeks relevant to that worker by the number of relevant days.

(5) The number of relevant days is calculated by dividing the number of qualifying days worked during a period of 12 months leading up to the period of sickness absence by 52.

(6) An agricultural worker's maximum entitlement to agricultural sick pay applies regardless of the number of occasions of sickness absence during any period of entitlement.

(7) Subject to paragraph (8), in this article, "a period of entitlement" is a period beginning with the commencement of a sickness absence and ending 12 months later.

(8) If the agricultural worker has a period of sickness absence which commences at any time during the period of entitlement described in paragraph (7), but which continues beyond the end of that period of entitlement, the period of entitlement must be extended so as to end on whichever of the following first occurs—

- (a) the date when the agricultural worker's sickness absence ends and the agricultural worker returns to work; or
- (b) the day on which the agricultural worker reaches the maximum entitlement to agricultural sick pay applicable to the 12 month period referred to in paragraph (7) (had it not been extended).

#### **Determining the amount of agricultural sick pay**

**22.**—(1) Agricultural sick pay is payable at a rate which is equivalent to the minimum hourly rate of pay prescribed in article 12 of, and Schedule 4 to, this Order as applicable to that grade or category of agricultural worker.

(2) The amount of agricultural sick pay payable to an agricultural worker is determined by calculating the number of daily contractual hours that would have been worked during a period of sickness absence.

(3) The number of daily contractual hours are determined—

- (a) in circumstances where an agricultural worker works a fixed number of hours each week by dividing the total number of hours worked during any week by the number of days worked in that week;
- (b) in circumstances where an agricultural worker works a varying number of hours each week, by applying the formula—

$$\frac{QH}{8}$$

DWEW

where for the purposes of this article:

**QH** is the total number of qualifying hours in the period, and

**DWEW** is the number of days worked each week by the agricultural worker when taken as an average during a period of 8 weeks immediately preceding the commencement of the sickness absence.

(4) In this article “qualifying hours” are hours where—

- (a) the agricultural worker worked basic hours or guaranteed overtime;
- (b) the agricultural worker took annual leave or bereavement leave;
- (c) the agricultural worker had sickness absence qualifying for agricultural sick pay under this Order; or

- (d) the agricultural worker had sickness absence not qualifying for agricultural sick pay under this Order; and

“qualifying days” are any days within the period on which there were qualifying hours relating to the agricultural worker.

(5) For the purposes of calculations under this article, where an agricultural worker has been employed by their employer for less than 8 weeks, account must be taken of qualifying hours and qualifying days in the actual number of weeks of the agricultural worker’s employment with their employer.

#### **Agricultural sick pay to take account of statutory sick pay**

**23.** An amount equal to any payment of statutory sick pay made in accordance with Part XI of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> in respect of a period of an agricultural worker’s sickness absence may be deducted from that worker’s agricultural sick pay.

#### **Payment of agricultural sick pay**

**24.** Agricultural sick pay must be paid to the agricultural worker on their normal pay day in accordance with either their contract of service or their apprenticeship.

#### **Employment ending during sickness absence**

**25.—**(1) Subject to paragraph (2), if during a period of sickness absence, either an agricultural worker’s contract of service or their apprenticeship is terminated or the agricultural worker is given notice that either their contract of service or their apprenticeship is to be terminated, any entitlement which the agricultural worker has to agricultural sick pay continues after that contract ends as if the agricultural worker was still employed by their employer, until one of the following occurs—

- (a) the agricultural worker’s sickness absence ends;
- (b) the agricultural worker starts work for another employer; or
- (c) the maximum entitlement to agricultural sick pay in accordance with article 21 is exhausted.

(2) An agricultural worker whose contract has been terminated is not entitled to any agricultural sick pay after the end of their employment in accordance with

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(1) 1992 c. 4.

paragraph (1) if the agricultural worker was given notice that their employer intended to terminate their contract of service or their apprenticeship before the period of sickness absence commenced.

#### **Overpayments of agricultural sick pay**

**26.**—(1) Subject to the provisions of paragraph (2), if an agricultural worker who is entitled to agricultural sick pay under this Part is paid more agricultural sick pay than their entitlement, their employer can recover the overpayment of such agricultural sick pay by deduction from that agricultural worker's wages.

(2) If an overpayment of agricultural sick pay under this Order is deducted as mentioned in paragraph (1), the employer must not deduct more than 20% of the agricultural worker's gross wage unless notice has been given to terminate the employment or the employment has already been terminated in which case more than 20% of the agricultural worker's gross wage may be deducted by the employer from payment of the agricultural worker's final wages.

#### **Damages recovered for loss of earnings**

**27.**—(1) This article applies to an agricultural worker whose entitlement to agricultural sick pay arises because of the actions or omissions of a person other than their employer and damages are recovered by the agricultural worker in respect of loss of earnings suffered during the period in respect of which the agricultural worker received agricultural sick pay from their employer.

(2) Where paragraph (1) applies—

- (a) the agricultural worker must immediately notify their employer of all the relevant circumstances and of any claim and of any damages recovered under any compromise, settlement or judgment;
- (b) all agricultural sick pay paid by the employer to that agricultural worker in respect of the sickness absence for which damages for loss of earnings are recovered must constitute a loan to the worker; and
- (c) the agricultural worker must refund to their employer a sum not exceeding the lesser of—
  - (i) the amount of damages recovered for loss of earnings in the period for which agricultural sick pay was paid; and
  - (ii) the sums advanced to the agricultural worker from their employer under this Part by way of agricultural sick pay.

## PART 5 – Entitlement to time off

### Rest breaks

**28.**—(1) An agricultural worker who is aged 18 or over and who has a daily working time of more than 5 and a half hours is entitled to a rest break.

(2) The rest break provided for in paragraph (1) is an uninterrupted period of not less than 30 minutes and the agricultural worker is entitled to spend it away from their workstation (if they have one) or other place of work.

(3) Subject to paragraph (4), the provisions relating to rest breaks as specified in paragraphs (1) and (2) do not apply to an agricultural worker where—

- (a) due to the specific characteristics of the activity in which the agricultural worker is engaged, the duration of their working time is not measured or predetermined;
- (b) the agricultural worker's activities involve the need for continuity of service or production;
- (c) there is a foreseeable surge of activity;
- (d) the agricultural worker's activities are affected by—
  - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of their employer;
  - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
  - (iii) an accident or the imminent risk of an accident; or
- (e) the employer and agricultural worker agree to modify or exclude the application of paragraphs (1) and (2) in the manner and to the extent permitted by or under the Working Time Regulations 1998<sup>(1)</sup>.

(4) Where paragraph (3) applies and an agricultural worker is accordingly required by their employer to work during a period which would otherwise be a rest break—

- (a) the employer must, unless sub-paragraph (b) applies, allow the agricultural worker to take an equivalent period of compensatory rest; and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the agricultural worker's employer must afford them such protection as

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(1) S.I. 1998/1833.

may be appropriate in order to safeguard the agricultural worker's health and safety.

**Annual leave year**

**29.** The annual leave year for all agricultural workers is the period of 12 months beginning on 1 October and ending on 30 September.

**Amount of annual leave for agricultural workers with fixed working days employed throughout the annual leave year**

**30.**—(1) An agricultural worker who is employed by the same employer throughout the annual leave year is entitled to the amount of annual leave prescribed in the Table in Schedule 5.

(2) Where an agricultural worker works their basic hours and, where applicable any guaranteed overtime, on a fixed number of qualifying days each week, the number of days worked each week for the purposes of the Table in Schedule 5 is that fixed number of days.

**Amount of annual leave for agricultural workers with variable working days employed throughout the annual leave year**

**31.**—(1) Where an agricultural worker works their basic hours on a varying number of days each week, the number of days worked each week for the purposes of the Table in Schedule 5, is to be taken as an average of the number of qualifying days worked each week during the period of 12 weeks immediately preceding the commencement of the agricultural worker's annual leave and that average number of qualifying days must, where appropriate, be rounded to the nearest whole day.

(2) At the end of the annual leave year the employer must calculate the agricultural worker's actual entitlement for the purposes of the Table in Schedule 5, based upon the number of qualifying days worked each week, taken as an average of the number of qualifying days worked each week during the annual leave year (i.e. over a period of 52 weeks) and the average number of qualifying days must be, where appropriate, rounded to the nearest whole day.

(3) If at the end of the annual leave year, the agricultural worker has accrued but untaken holiday entitlement, the agricultural worker is entitled to carry forward any accrued but untaken holiday to the following annual leave year in accordance with article 33(3) of this Order or the agricultural worker and the employer may agree to a payment in lieu of any accrued but untaken holiday in accordance with article 36 of this Order.

(4) If at the end of the annual leave year, the agricultural worker has taken more holiday days than they were entitled to under this Order, based on the average number of qualifying days worked per week (calculated in accordance with paragraph (2)), the employer is entitled to deduct any pay for holiday days taken in excess of the agricultural worker's entitlement or, in the alternative, deduct the holiday days taken in excess of the agricultural worker's entitlement from their entitlement for the following annual leave year (provided any such deduction does not result in the agricultural worker receiving less than their statutory annual leave entitlement under regulations 13 and 13A of the Working Time Regulations 1998).

**Amount of annual leave for agricultural workers employed for part of the leave year**

**32.**—(1) An agricultural worker employed by the same employer for part of the annual leave year is entitled to accrue annual leave at a rate of 1/52nd of the annual leave entitlement specified in the Table in Schedule 5 for each completed week of service with the same employer.

(2) Where the amount of annual leave accrued in a particular case includes a fraction of a day other than a half day, that fraction is to be—

- (a) rounded down to the next whole day if it is less than half a day; and
- (b) rounded up to the next whole day if it is more than half a day.

**Timing of annual leave**

**33.**—(1) An agricultural worker may take annual leave to which they are entitled under this Order at any time within the annual leave year subject to the approval of their employer.

(2) An agricultural worker is not entitled to carry forward from one leave year to the next leave year any untaken annual leave entitlement without the approval of their employer.

(3) Where an employer has agreed that an agricultural worker may carry forward any unused annual leave entitlement, the balance carried forward may only be taken in the leave year to which it is carried forward.

(4) During the period from 1 October to 31 March in any annual leave year an employer may require an agricultural worker to take up to 2 weeks of their annual leave entitlement under this Order and may direct that the worker takes one of those 2 weeks of annual leave on days in the same week.

(5) During the period from 1 April to 30 September in any annual leave year an employer must permit an

agricultural worker to take 2 weeks of the worker's annual leave entitlement under this Order in consecutive weeks.

(6) For the purpose of this article, 1 week of an agricultural worker's annual leave is equivalent to the number of days worked each week by the agricultural worker as determined in accordance with articles 30 and 31.

### **Holiday pay**

**34.**—(1) An agricultural worker is entitled to be remunerated in respect of each day of annual leave taken by them.

(2) The amount of holiday pay to which an agricultural worker is entitled under paragraph (1) is to be determined by dividing the agricultural worker's weekly wage as determined in accordance with paragraph (3), or as the case may be paragraph (4), by the number of qualifying days worked each week by that agricultural worker.

(3) Where the agricultural worker's normal working hours under either their contract of service or apprenticeship do not vary (subject to paragraph (4)), the amount of the agricultural worker's weekly pay for the purposes of paragraph (2) is the agricultural worker's normal weekly pay payable by the employer.

(4) Where the agricultural worker's normal working hours vary from week to week, or where an agricultural worker with normal working hours (as in paragraph (3)) works overtime in addition to those hours, the amount of the agricultural worker's normal weekly pay for the purposes of paragraph (2) is calculated by adding together the amount of the agricultural worker's normal weekly pay in each of the 12 weeks immediately preceding the commencement of the worker's annual leave and dividing the total by 12.

(5) For the purposes of this article "normal weekly pay" means—

- (a) the agricultural worker's basic pay under their contract of service or apprenticeship; and
- (b) any overtime pay and any allowance paid to the agricultural worker on a consistent basis.

(6) Where an agricultural worker has been employed by their employer for less than 12 weeks, account must be taken only of weeks in which pay was due to the agricultural worker.

(7) For the purposes of paragraph (2), the number of qualifying days worked is determined in accordance with the provisions in articles 30 and 31 of this Order.

(8) Any pay due to an agricultural worker under this article must be made no later than the agricultural worker's last working day before the commencement



of the period of annual leave to which the payment relates.

### **Public holidays and bank holidays**

**35.**—(1) This article applies where a public holiday or bank holiday in Wales falls on a day when an agricultural worker is normally required to work either under their contract of service or their apprenticeship.

(2) An agricultural worker required by their employer to work on the public holiday or bank holiday is entitled to be paid not less than the overtime rate specified in article 13.

(3) An agricultural worker who is not required by their employer to work on the public holiday or bank holiday is to have the balance of their accrued annual leave for that leave year under this Order reduced by 1 day in respect of the public holiday or bank holiday on which the agricultural worker is not required to work.

### **Payment in lieu of annual leave**

**36.**—(1) Subject to the conditions in paragraph (2), an agricultural worker and their employer may agree that the agricultural worker is to receive payment in lieu of a day of the agricultural worker's annual leave entitlement.

- (2) The conditions referred to in paragraph (1) are—
- (a) the maximum number of days for which an agricultural worker can receive a payment in lieu of annual leave during any annual leave year is prescribed in the Table in Schedule 6;
  - (b) a written record is to be kept by the employer of any agreement that an agricultural worker will receive payment in lieu of a day's annual leave for a minimum of 3 years commencing at the end of that annual leave year;
  - (c) in circumstances where the agricultural worker does not work on a day as agreed in accordance with paragraph (1), that day is to remain part of the agricultural worker's annual leave entitlement;
  - (d) payment in lieu of annual leave is to be paid at a rate which comprises both the overtime rate specified in article 13 and holiday pay calculated in accordance with article 34 as if the day for which a payment in lieu of annual leave is made is a day on which the agricultural worker is taking annual leave.

### **Payment of holiday pay on termination of employment**

**37.**—(1) Where an agricultural worker's employment is terminated and the agricultural worker

has not taken all of the annual leave entitlement which has accrued to them at the date of termination, the agricultural worker is entitled in accordance with paragraph (2) to be paid in lieu of that accrued but untaken annual leave.

(2) The amount of payment to be made to the agricultural worker in lieu of each day of their accrued but untaken holiday as at the date of termination is to be calculated in accordance with article 34 as if the date of termination was the first day of a period of the agricultural worker's annual leave.

### **Recovery of holiday pay**

**38.**—(1) If an agricultural worker's employment terminates before the end of the annual leave year and the agricultural worker has taken more annual leave than they were entitled to under the provisions of this Order or otherwise, their employer is entitled to recover the amount of holiday pay which has been paid to the agricultural worker in respect of annual leave taken in excess of their entitlement.

(2) Where under paragraph (1) an employer is entitled to recover holiday pay from an agricultural worker, the employer may do so by means of a deduction from the final payment of wages to the agricultural worker.

### **Bereavement leave**

**39.**—(1) An agricultural worker is entitled to paid bereavement leave in circumstances where the bereavement relates to a person in Category A or Category B.

(2) For the purposes of paragraph (1), persons in Category A are—

- (a) a parent of the agricultural worker;
- (b) a son or daughter of the agricultural worker;
- (c) the agricultural worker's spouse or civil partner; or
- (d) someone with whom the agricultural worker lives as husband and wife without being legally married or someone with whom the agricultural worker lives as if they were in a civil partnership.

(3) For the purposes of paragraph (1), persons in Category B are—

- (a) a brother or sister of the agricultural worker;
- (b) a grandparent of the agricultural worker; or
- (c) a grandchild of the agricultural worker.

(4) Bereavement leave for the purposes of paragraph (1) is in addition to any other leave entitlements under this Order.

### **Determining the amount of bereavement leave**

**40.**—(1) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person within Category A is—

- (a) 4 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer; or
- (b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (2).

(2) Subject to paragraph (6), the amount of an agricultural worker's entitlement to bereavement leave following the death of a person within Category A is to be calculated according to the following formula—

$$\frac{\text{DWEW}}{5} \times 4$$

5

(3) The amount of bereavement leave to which an agricultural worker is entitled following the death of a person in Category B is—

- (a) 2 days where the agricultural worker works their basic hours on 5 days or more each week for the same employer; or
- (b) where the agricultural worker works their basic hours on 4 days a week or less for the same employer, the number of days calculated in accordance with paragraph (4).

(4) Subject to paragraph (6), where this article applies the amount of an agricultural worker's entitlement to bereavement leave following the death of a person within Category B is to be calculated according to the following formula—

$$\frac{\text{DWEW}}{5} \times 2$$

5

(5) For the purposes of the formula in paragraphs (2) and (4), DWEW is the number of days worked each week by the agricultural worker calculated in accordance with article 30 or 31 (as appropriate).

(6) Where the calculation in either paragraph (2) or (4) results in an entitlement to bereavement leave of less than 1 day, the entitlement is to be rounded up to one whole day.

(7) In circumstances where an agricultural worker has more than one employment (whether with the same employer or with different employers), paid bereavement leave may be taken in respect of more than one employment but must not exceed, in respect of any one occasion of bereavement, the maximum amount of bereavement leave specified for a single employment in this article.

#### **Amount of pay for bereavement leave**

41. The amount of pay in respect of bereavement leave is to be determined in accordance with the provisions in article 34 as if the first day of the agricultural worker's bereavement leave was the first day of that worker's annual leave.

#### **Unpaid leave**

42. An agricultural worker may, with their employer's consent, take a period of unpaid leave.

### **PART 6 – Revocation and transitional provision**

#### **Revocation and transitional provision**

43.—(1) The Agricultural Wages (Wales) Order 2016(1) (“the 2016 Order”) is revoked.

(2) An agricultural worker employed as a worker at a Grade or as an apprentice but not as a flexible worker, and subject to the terms and conditions prescribed in the 2016 Order or any previous Orders continue to be employed in that Grade or as an apprentice and are, from the date this Order comes into force, subject to the terms and conditions prescribed in this Order.

(3) In this article “previous Orders” means the Agricultural Wages (England and Wales) Order 2012 and every order revoked by article 70 of that Order.

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(1) S.I. 2016/107 (W. 53).

*Lesley Griffiths*  
Cabinet Secretary for Environment and Rural Affairs,  
one of the Welsh Ministers  
2 November 2017

## SCHEDULE 1

Articles 5 and 7

AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 2  
WORKERS

## Tables

Award Code	Awarding Organisation	Level	Title
600/7421/8	ABC	Level 1	Level 1 Award In Practical Countryside Skills
600/7388/3	ABC	Level 1	Level 1 Award In Practical Horticulture Skills
600/7423/1	ABC	Level 1	Level 1 Certificate In Practical Countryside Skills
600/7389/5	ABC	Level 1	Level 1 Certificate In Practical Horticulture Skills
600/7424/3	ABC	Level 1	Level 1 Diploma In Practical Countryside Skills
500/9700/3	ABC	Level 1	Level 1 Award in Practical Countryside Skills
500/9854/8	ABC	Level 1	Level 1 Award in Practical Horticulture Skills
600/5890/0	NOCN	Level 1	Level 1 Award in Horticulture
600/5891/2	NOCN	Level 1	Level 1 Certificate in Horticulture
601/0156/8	NOCN	Level 1	Level 1 Award in Vocational Studies (Horticulture)
601/0157/X	NOCN	Level 1	Level 1 Certificate in Vocational Studies (Horticulture)
500/6256/6	City & Guilds	Level 1	Level 1 Award in Land-based Studies
500/6713/8	City & Guilds	Level 1	Level 1 Award in Work-Based Agriculture
500/6708/4	City & Guilds	Level 1	Level 1 Award in Work-Based Horticulture
500/6712/6	City & Guilds	Level 1	Level 1 Award in Work-Based Land-based Operations
500/6257/8	City & Guilds	Level 1	Level 1 Certificate in Land-based Studies
500/6752/7	City & Guilds	Level 1	Level 1 Certificate in Work-Based Agriculture
500/6659/6	City & Guilds	Level 1	Level 1 Certificate in Work-Based Horticulture
500/6660/2	City & Guilds	Level 1	Level 1 Certificate in Work-based Land-Based Operations
500/6268/2	City & Guilds	Level 1	Level 1 Diploma in Land-based Studies
500/6761/8	City & Guilds	Level 1	Level 1 Diploma in Work-Based Agriculture

500/6709/6	City & Guilds	Level 1	Level 1 Diploma in Work-Based Horticulture
500/6711/4	City & Guilds	Level 1	Level 1 Diploma in Work-based Land-based Operations
600/5587/X	City & Guilds	Level 1	Level 1 Award in Practical Horticulture Skills
600/5611/3	City & Guilds	Level 1	Level 1 Certificate in Practical Horticulture Skills
600/5612/5	City & Guilds	Level 1	Level 1 Diploma in Practical Horticulture Skills
500/9128/1	RHS	Level 1	Level 1 Award in Practical Horticulture
601/0613/X	RHS	Level 1	Level 1 Introductory Award in Practical Horticulture
601/0554/9	RHS	Level 2	Level 2 Certificate in the Principles of Plant Growth, Propagation and Development
601/0355/3	RHS	Level 2	Level 2 Certificate in the Principles of Horticulture
500/9635/7	ABC	Level 2	Level 2 Award in Practical Horticulture Skills
501/1411/6	ABC	Level 2	Level 2 Certificate in Arboriculture
500/9633/3	ABC	Level 2	Level 2 Certificate in Practical Horticulture Skills
603/0159/4	NOCN	Level 2	Level 2 Award for the Safe Worker
500/7689/9	City & Guilds	Level 2	Level 2 Award in Safe Working in Agriculture and Production Horticulture
500/6938/X	City & Guilds	Level 2	Level 2 Award in Work-based Agriculture
500/6871/9	City & Guilds	Level 2	Level 2 Award in Work-based Horticulture
500/8584/0	City & Guilds	Level 2	Level 2 Certificate in Agriculture
500/8552/9	City & Guilds	Level 2	Level 2 Certificate in Forestry and Arboriculture
500/8577/3	City & Guilds	Level 2	Level 2 Certificate in Horticulture
500/0677/6	City & Guilds	Level 2	Level 2 Certificate in Land-based Technology
500/6939/1	City & Guilds	Level 2	Level 2 Certificate in Work-based Agriculture
500/6816/7	City & Guilds	Level 2	Level 2 Certificate in Work-based Horticulture
500/8590/6	City & Guilds	Level 2	Level 2 Extended Certificate in Agriculture
500/8587/6	City & Guilds	Level 2	Level 2 Extended Certificate in Forestry and Arboriculture
500/8582/7	City & Guilds	Level 2	Level 2 Extended Certificate in Horticulture
501/0683/1	City & Guilds	Level 2	Level 2 Extended Certificate in Land-based Technology
600/4671/5	City & Guilds	Level 2	Level 2 Award in Agricultural Tractor Driving and Related Operations

600/4883/9	City & Guilds	Level 2	Level 2 Award in Compact Tractor Driving and Related Operations
600/4957/1	City & Guilds	Level 2	Level 2 Award in Sit Astride All Terrain Vehicle Handling
600/4689/2	City & Guilds	Level 2	Level 2 Award in the Safe Use of Pedestrian Controlled Mowers
600/4690/9	City & Guilds	Level 2	Level 2 Award in the Safe Use of Ride-on Self Propelled Mowers
600/4670/3	City & Guilds	Level 2	Level 2 Award in the Safe Use of Tractor Mounted Mowers
500/7693/0	City & Guilds NPTC	Level 2	Level 2 Award in Agriculture Machine Maintenance
500/7697/8	City & Guilds NPTC	Level 2	Level 2 Award in Basic Stockmanship and Welfare
600/6303/8	City & Guilds NPTC	Level 2	Level 2 Award in Branch Removal and Crown Breakdown using a Chainsaw
600/6160/1	City & Guilds NPTC	Level 2	Level 2 Award in Chainsaw Maintenance
600/6161/3	City & Guilds NPTC	Level 2	Level 2 Award in Chainsaw Maintenance and Cross-cutting
600/6428/6	City & Guilds NPTC	Level 2	Level 2 Award in Cross-cutting Timber Using a Chainsaw
600/6162/5	City & Guilds NPTC	Level 2	Level 2 Award in Felling and Processing Trees up to 380mm
600/6619/2	City & Guilds NPTC	Level 2	Level 2 Award in Ground Based Chainsaw Operation
500/7889/6	City & Guilds NPTC	Level 2	Level 2 Award in Off Road Driving
600/6417/1	City & Guilds NPTC	Level 2	Level 2 Award in Safe Use of a Powered Pole Pruner
600/6435/3	City & Guilds NPTC	Level 2	Level 2 Award in Supporting Colleagues Undertaking Off-Ground Tree Related Operations
600/0803/9	City & Guilds NPTC	Level 2	Level 2 Award in the Long Distance Transport of Animals by Road- Attendant
600/0307/8	City & Guilds NPTC	Level 2	Level 2 Award in the Long Distance Transport of Animals by Road – Driver
601/5141/9	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Self Propelled, Mounted, Trailed Horizontal Boom Sprayers
601/5142/0	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Variable Geometry Boom or Broadcast Sprayers
601/5143/2	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pelleted or Granular Pesticides Using Mounted or Trailed Applicators
601/5144/4	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Boat Mounted Equipment
601/5145/6	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides using Pedestrian Hand Held Equipment
601/5146/8	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides from the Air
601/5147/X	City & Guilds	Level	Level 2 Award in the Safe Mixing and



	NPTC	2	Transferring of Pesticides
601/5148/1	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticide Mists, Fogs and Smokes
601/5149/3	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Dipping of Plant Material in Pesticides
601/5150/X	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Treatment of Seeds with Pesticides
601/5151/1	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides to Plant Material During a Continuous Flow Process
601/5153/3	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Sub Surface Application of Liquid Pesticides
601/5153/5	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Application of Pesticides Using Specialist Equipment
500/7692/9	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Use of Sheep Dip
601/8781/5	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe and Responsible Use of Veterinary Medicines
600/0306/6	City & Guilds NPTC	Level 2	Level 2 Award in the Transport of Animals by Road (Short Journeys)
600/6620/9	City & Guilds NPTC	Level 2	Level 2 Award in Tree Climbing and Rescue
100/2000/7	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Operation of Dumper Truck
100/2001/9	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Use of Abrasive Wheel Machinery
100/2103/5	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Use of Plant Machinery
100/1733/1	City & Guilds NPTC	Level 2	Level 2 Certificate of Competence in the Safe Use of Turf Maintenance Equipment
601/2259/6	City & Guilds NPTC	Level 2	Level 2 Award in the Safe Use of Aluminium Phosphide for Vertebrate Pest Control
600/6453/5	IMIAL	Level 2	Level 2 Certificate in Land-based Technology
600/6774/3	IMIAL	Level 2	Level 2 Extended Certificate in Land-based Technology
501/1740/3	Lantra Awards	Level 2	Level 2 Award in Animal Transport by Road – Long Journey Attendant
501/1739/7	Lantra Awards	Level 2	Level 2 Award in Animal Transport by Road – Long Journey Driver
501/1738/5	Lantra Awards	Level 2	Level 2 Award in Animal Transport by Road – Short Journey
600/5699/X	Lantra Awards	Level 2	Level 2 Award in Chainsaw Maintenance
600/5701/4	Lantra Awards	Level 2	Level 2 Award in Chainsaw Maintenance and Cross-cutting
600/5700/2	Lantra Awards	Level 2	Level 2 Award in Cross-cut Timber Using a Chainsaw
600/5703/8	Lantra Awards	Level 2	Level 2 Award in Felling and Processing Trees up to 380mm
600/5717/8	Lantra Awards	Level 2	Level 2 Award in Remove Branches and Breakdown Crowns Using a Chainsaw (QCF)
500/7449/0	Lantra Awards	Level 2	Level 2 Award in Safe Working in Agriculture and Production Horticulture

600/5709/9	Lantra Awards	Level 2	Level 2 Award in Supporting Colleagues Undertaking Off Ground Tree Related Operations
600/8391/8	Lantra Awards	Level 2	Level 2 Award in the Safe Use of Aluminium Phosphide for Vertebrate Pest
600/5708/7	Lantra Awards	Level 2	Level 2 Award in Using a Powered Pole Pruner
600/6729/9	Lantra Awards	Level 2	Level 2 Certificate in Land-based Activities
601/5977/7	Lantra Awards	Level 2	Level 2 Award in the Safe Use of Pesticides
601/6562/5	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Hand Held Equipment (QCF)
601/6562/5X	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Hand Held Equipment (QCF) (without Safe Use)
601/6565/0	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Granular Equipment (QCF)
601/6565/0X	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Granular Equipment (QCF) (without Safe Use)
601/6563/7	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Vehicle Mounted Boom Sprayer Equipment (QCF)
601/6563/7X	Lantra Awards	Level 2	Level 2 Award in the Safe Application of Pesticides using Vehicle Mounted Boom
600/8391/8	Lantra Awards	Level 2	Level 2 Award in the Safe Use of Aluminium Phosphide for Vertebrate Pest Control (QCF)
500/9933/4	Pearson BTEC	Level 2	Level 2 Certificate in Agriculture
500/9932/2	Pearson BTEC	Level 2	Level 2 Extended Certificate in Agriculture
501/0122/5	Pearson BTEC	Level 2	Level 2 Extended Certificate in Horticulture
600/4507/3	Pearson Edexcel	Level 2	Level 2 Certificate in Work-based Horticulture
501/0207/2	RHS	Level 2	Level 2 Certificate in Practical Horticulture
500/8295/4	RHS	Level 2	Level 2 Certificate in the Principles of Garden Planning, Establishment and Maintenance

Competence (Nos)	Title
CU 5.2. (T5021690)	Establishing and maintaining effective working relationship with others (Level 2)
CU 9.2. (J5021449)	Plan and maintain supplies of physical resources within the work area (Level 3)

## SCHEDULE 2

Article 6

AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 3  
WORKERS

## Tables

Award Code	Awarding Organisation	Level	Title
500/8575/X	City & Guilds	Level 2	Diploma in Agriculture
500/8718/6	City & Guilds	Level 2	Diploma in Forestry and Arboriculture
500/8576/1	City & Guilds	Level 2	Diploma in Horticulture
501/0678/8	City & Guilds	Level 2	Diploma in Land-based Technology
500/6231/1	City & Guilds	Level 2	Diploma in Work-based Agriculture
500/6205/0	City & Guilds	Level 2	Diploma in Work-based Horticulture
501/0302/7	City & Guilds	Level 2	Diploma in Work-based Land-based Engineering Operations
600/7616/1	City & Guilds	Level 2	Diploma in Trees and Timber
601/2331/X	HABC	Level 2	Diploma in Work-Based Horticulture
600/6775/5	IMIAL	Level 2	Diploma in Land-based Technology
601/0608/6	IMIAL	Level 2	Diploma in Work-based Land-based Engineering Operations Power Equipment
600/5109/7	IMIAL	Level 2	Diploma in Work-based Land-based Engineering Operations
500/9547/X	Pearson BTEC	Level 2	Diploma in Agriculture
500/9934/6	Pearson BTEC	Level 2	Diploma in Horticulture
600/3577/8	Pearson Edexcel	Level 2	Diploma in Work-based Land-based Engineering Operations
601/0356/5	RHS	Level 2	Diploma in the Principles and Practices of Horticulture

Competence (Nos)	Title
CU 5.2. (T5021690)	Establishing and maintaining effective working relationship with others (Level 2)
CU 9.2. (J5021449)	Plan and maintain supplies of physical resources within the work area (Level 3)

## SCHEDULE 3

Article 7

## AWARDS AND CERTIFICATES OF COMPETENCE FOR GRADE 4 WORKERS

## Tables

Award Code	Awarding Organisation	Level	Title
500/8487/2	City & Guilds	Level 3	Diploma in Agriculture
500/8564/5	City & Guilds	Level 3	Diploma in Forestry and Arboriculture
500/8384/3	City & Guilds	Level 3	Diploma in Horticulture
501/0681/8	City & Guilds	Level 3	Diploma in Land-based Technology
500/6224/4	City & Guilds	Level 3	Diploma in Work-based Agriculture
500/6255/4	City & Guilds	Level 3	Diploma in Work-based Horticulture
501/0399/4	City & Guilds	Level 3	Diploma in Work-based Land-based Engineering Operations
500/8490/2	City & Guilds	Level 3	Extended Diploma in Agriculture
500/8720/4	City & Guilds	Level 3	Extended Diploma in Forestry and Arboriculture
500/8401/X	City & Guilds	Level 3	Extended Diploma in Horticulture
501/0682/X	City & Guilds	Level 3	Extended Diploma in Land-based Technology
500/8388/0	City & Guilds	Level 3	Subsidiary Diploma in Agriculture
500/8724/1	City & Guilds	Level 3	Subsidiary Diploma in Forestry and Arboriculture
500/8385/5	City & Guilds	Level 3	Subsidiary Diploma in Horticulture
501/0694/6	City & Guilds	Level 3	Subsidiary Diploma in Land-based Technology
600/6048/7	City & Guilds	Level 3	90-Credit Diploma in Agriculture
600/5946/1	City & Guilds	Level 3	90-Credit Diploma in Forestry and Arboriculture
600/6115/7	City & Guilds	Level 3	90-Credit Diploma in Horticulture
600/5945/X	City & Guilds	Level 3	90-Credit Diploma in Land-based Technology
601/7448/1	City & Guilds	Level 3	Level 3 Advanced Technical Certificate in Agriculture
601/7452/3	City & Guilds	Level 3	Level 3 Advanced Technical Diploma in Agriculture (540)
601/7451/1	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Agriculture (720)
601/7459/6	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Agriculture (1080)
601/7507/2	City & Guilds	Level 3	Level 3 Advanced Technical Certificate in Forestry and Arboriculture
601/7517/5	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Forestry and Arboriculture (1080)
601/7453/5	City & Guilds	Level 3	Level 3 Advanced Technical Certificate in Horticulture

601/7456/0	City & Guilds	Level 3	Level 3 Advanced Technical Diploma in Horticulture (540)
601/7455/9	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Horticulture (720)
601/7454/7	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Horticulture (1080)
601/7463/8	City & Guilds	Level 3	Level 3 Advanced Technical Extended Diploma in Land-Based Engineering (1080)
600/6970/3	City & Guilds	Level 3	Diploma in Work-based Trees and Timber
600/7794/3	IMIAL	Level 3	Diploma in Land-based Technology
600/7796/7	IMIAL	Level 3	Extended Diploma in Land-based Technology
600/7795/5	IMIAL	Level 3	Subsidiary Diploma in Land-based Technology
600/5128/0	IMIAL	Level 3	Diploma in Work-based Land-based Engineering
500/8240/1	Pearson BTEC	Level 3	Diploma in Agriculture
500/9449/X	Pearson BTEC	Level 3	Diploma in Forestry and Arboriculture
500/8336/3	Pearson BTEC	Level 3	Diploma in Horticulture
500/8301/6	Pearson BTEC	Level 3	Extended Diploma in Agriculture
500/9448/8	Pearson BTEC	Level 3	Extended Diploma in Forestry and Arboriculture
500/8266/8	Pearson BTEC	Level 3	Extended Diploma in Horticulture
500/8242/5	Pearson BTEC	Level 3	Subsidiary Diploma in Agriculture
500/9451/8	Pearson BTEC	Level 3	Subsidiary Diploma in Forestry and Arboriculture
500/8351/X	Pearson BTEC	Level 3	Subsidiary Diploma in Horticulture
600/3550/X	Pearson Edexcel	Level 3	Diploma in Work-based Land-based Engineering
601/7189/3	RHS	Level 3	Diploma in the Principles and Practices of Horticulture
601/8097/3	RHS	Level 3	Diploma in Horticultural Practice
600/2788/5	City & Guilds	Level 4	Certificate in Work-based Agricultural Management
600/2842/7	City & Guilds	Level 4	Diploma in Work-Based Agricultural Business Management
600/2132/9	Pearson BTEC	Level 4	HNC Diploma in Horticulture
601/5485/8	Agored Cymru	Level 4	Certificate in Work-based Horticulture
601/5484/6	Agored Cymru	Level 4	Diploma in Work-based Horticulture
603/0320/7	RHS	Level 4	Diploma in Horticultural Practice

Competence (Nos)	Title
CU 5.2. (T5021690)	Establishing and maintaining effective working relationship with others (Level 2)
CU 9.2. (J5021449)	Plan and maintain supplies of physical resources within the work area (Level 3)

**SCHEDULE 4**

Article 12

**MINIMUM RATES OF PAY**

**Table**

<b>Grade or category of worker</b>	<b>Minimum hourly rate of pay</b>
Grade 1 worker under compulsory school age	£3.34
Grade 1 worker (16 – 24 years of age)	£7.06
Grade 1 worker (aged 25+)	£7.51
Grade 2 worker	£7.54
Grade 3 worker	£8.22
Grade 4 worker	£8.82
Grade 5 worker	£9.34
Grade 6 worker	£10.09
Year 1 Apprentice	£3.78
Year 2 Apprentice (aged 16-17)	£4.05
Year 2 Apprentice (aged 18-20)	£5.60
Year 2 Apprentice (aged 21-24)	£7.05
Year 2 Apprentice (aged 25+)	£7.50

**SCHEDULE 5**

Articles 30 and 31

**ANNUAL LEAVE ENTITLEMENT**

**Table**

<b>Number of days worked each week by an agricultural worker</b>	More than 6	More than 5 but not more than 6	More than 4 but not more than 5	More than 3 but not more than 4	More than 2 but not more than 3	More than 1 but not more than 2	1 or less
<b>Annual leave entitlement (days)</b>	38	35	31	25	20	13	7.5

**SCHEDULE 6**

Article 36

**PAYMENT IN LIEU OF ANNUAL LEAVE**

**Table**

<b>Maximum number of annual leave days that may be paid in lieu</b>							
<b>Days worked each week</b>	More than 6	More than 5 but not more than 6	More than 4 but not more than 5	More than 3 but not more than 4	More than 2 but not more than 3	More than 1 but not more than 2	1 or less
<b>Maximum number of annual leave days under this Order that may be paid in lieu</b>	10	7	3	2.5	2.5	1.5	1.5

## **Explanatory Memorandum to the Agricultural Wages (Wales) Order 2017**

This Explanatory Memorandum has been prepared by the Department of Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agricultural Wages (Wales) Order 2017. I am satisfied the benefits justify the likely costs.

**Lesley Griffiths AM**  
**Cabinet Secretary for the Environment and Rural Affairs**

2 November 2017



## 1. Description

The Agricultural Wages (Wales) Order 2017 (“the 2017 Order”) makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. The 2017 Order revokes and replaces the Agricultural Wages (Wales) Order 2016<sup>1</sup> (“the 2016 Order”) with some changes which include increases to the 2016 pay levels for agricultural workers.

The Agricultural Advisory Panel for Wales (the Panel) is an independent advisory body which was established under Section 2 (1) of the Agricultural Sector (Wales) Act 2014 (the 2014 Act) by the Agricultural Advisory Panel for Wales (Establishment) Order 2016 (the Panel Order) on 1 April 2016.

The Panel Order sets the number of Panel members at seven; two representatives from UNITE the Union, one representative from the Farmers’ Union of Wales, one representative from National Farmers Union Cymru and three independent members, including an independent Chair. The independent members and Chair are selected via the Public Appointment process.

Article 3(2) of the Panel Order sets out the Panel’s functions. One of the key functions of the Panel is to review agricultural wages and prepare agricultural wages orders in draft, to consult upon them and subsequently submit them to the Welsh Ministers for approval. In accordance with Section 4(1) of the 2014 Act, the Welsh Ministers have the power to a) approve and make the order by Statutory Instrument, or b) refer the order back to the Panel for further consideration.

Panel members have reviewed the current level of wages and other agriculture related allowances and benefits and agreed to increase wages for agricultural workers. The panel conducted a targeted consultation on the new proposed rates for the draft 2017 Order in the autumn of 2016.

At present, agricultural workers’ wages in Wales are subject to the rates specified by the 2016 Order, except for minimum rates in the Order which fall below the UK National Minimum Wage (NMW) and National Living Wage (NLW) levels. On 1 April 2016, the UK Government introduced the NLW for all workers aged 25 and over. This meant all Grade 1 workers aged 25 and above had to be paid at least the NLW of £7.20 per hour until the NLW increased to £7.50 on 1 April 2017.

The intention of the Panel was to have the new Order in force on 1 April, the same date the NLW and NMW increases took effect. The Panel’s aim was to align the agricultural minimum wage (AMW) increase with NLW and NMW changes, avoiding employers and employees having to cope with with a

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<sup>1</sup> The Agricultural Wages (Wales) Order 2016 came into force on 26 February 2016 and was the first wages order made under the 2014 Act. Section 4(2) of the Act provided the Welsh Ministers with the power to introduce a wages order as an interim measure, before the Panel was established.

transitional period during which the NLW/NMW would override the AMW levels in Wales. However, the 1 April coming into force date was not achieved.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

Breaching the 21 day rule is proposed to ensure the 2017 Order comes into force on the day after it is made. This will minimise the time taken to bring the new AMW rates into force.

A breach of the 21 day rule is thought necessary and justifiable in this case on the basis it will reduce the time taken to bring into force uplifted agricultural wage rates, thereby minimising the time period some agricultural workers in Wales will be subject to the UK NMW and NLW levels, rather than the uplifted AMW rates.

Giving retrospective effect to the 2017 Order would recompense those agricultural workers who had expected an increase in their hourly wage from 1 April 2017, as was proposed in the Panel's targeted consultation of autumn 2016.

Any further delay would further penalise those agricultural workers who are currently being paid lower rates of pay than they would have anticipated receiving from 1 April 2017.

## **3. Legislative background**

The 2017 Order is made pursuant to sections 3, 4(1) and 17 of the 2014 Act.

Section 3(1) provides an agricultural wages order is an order making provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. In particular, pursuant to section 3(2), an agricultural wages order may include provision specifying (among other things) the minimum rates of remuneration to be paid to agricultural workers.

Section 3(3) provides an agricultural wages order may specify different rates and make different provision for different descriptions of agricultural worker.

Section 4(1) stipulates the Welsh Ministers may, after receiving a draft agricultural wages order from the Panel, approve and make the order.

Section 17(1) provides that any power of the Welsh Ministers to make an order is exercisable by statutory instrument and includes power to make transitional provision.

Pursuant to section 17(3) of the 2014 Act the 2017 Order is subject to the negative procedure.

#### **4. Purpose & intended effect of the legislation**

The statutory AMW regime in Wales safeguards employment conditions and allowances unique to the agricultural sector. It recognises and rewards qualifications and experience through a six grade career structure and provides remuneration rates for each grade and category of worker.

Given the distinct nature of agricultural employment, including seasonality, dominance of casual employment and the use of on-farm accommodation, it is considered desirable to have a separate system of wage setting and employment provisions. This was previously managed by the Agricultural Wages Board (AWB) for England and Wales until its abolition (without reference to the Welsh Government) by the UK Government on 25 June 2013. The Panel carries out similar functions to the AWB by reviewing wages and other employment conditions of agricultural workers in Wales. In addition, the Panel's remit includes promoting skills and career development in the agricultural sector.

The 2017 Order ensures the Welsh agricultural sector operates in accordance with provisions that are in step with current economic conditions, including increased cost of living and changes to the NMW and NLW level.

The 2017 Order will replace the 2016 Order and increase the 2016 minimum pay levels for all categories and grades of agricultural workers in Wales. The Panel agreed to put forward a 1.2% increase to the pay rates of Grades 3-6 and Grade 1 workers of compulsory age (aged 13-16). The rates of Grade 1 and Grade 2 were set in the context of the NLW and NMW increase. As a result of the increases to national wage levels applying from April 2017, Grade 1 workers aged 16-20 will receive 5.05% increase, with Grade 1 workers aged 21-24 receiving an increase of 0.14% and those 25 and above will have their hourly wages uplifted by 0.13 %. The increase to Grade 2 workers' rates is approximately 2% for workers aged 16-24 and approximately 0.5% for workers aged 25+. The following table contains the rates of the 2016 and 2017 Orders for comparison:

<b>Grade or Category of Worker</b>	<b>Minimum Hourly Rate 2016</b>	<b>Minimum Hourly Rate 2017</b>
Grade 1 worker of compulsory school age (13-16)	£3.30	£3.34
Grade 1 worker (16 – 24 years of age)	(for ages 16-20) £6.72  (for ages 21-24) £6.72 until 1 October 2016 £6.95 from 1 October 2016 – 31 March 2017	£7.06 (NMW, (Year 21-24) +1p)
Grade 1 worker (aged 25+)	£6.72 until 1 April 2016 £7.20 from 1 April 2016 – 31 March 2017	£7.51 (NLW + 1p)
Grade 2 worker	£7.39	£7.54 (NLW + 4p)
Grade 3 worker	£8.12	£8.22
Grade 4 worker	£8.72	£8.82
Grade 5 worker	£9.23	£9.34
Grade 6 worker	£9.97	£10.09

The increase to the UK National Minimum Wage and the UK National Living Wage rates on 1 April impacted on the wages of some farm workers in Wales. The table below summarises the changes in respect of agricultural workers employed at Grades 1 and 2

Grade	Minimum Hourly Rate from 1 April 2017
Grade 1: 25 and over:	£7.50
Grade 1: 21-24:	£7.05
Grade 1: 16-20:	£6.72
Grade 2 (aged 25 and over)	£7.50

All other categories and grades of workers are currently subject to the rates specified by the 2016 Order.

The AMW regime rewards qualifications and experience in agriculture through a six grade career structure. Since the introduction of the NMW in 1999, the hourly pay of Grade 1 workers has traditionally been set at, or just above, the NMW. On 1 April 2016, the UK Government introduced the NLW for all workers aged 25 and above. The revised AMW levels have to take into consideration the NLW increase and this is reflected in the rates set for the lower Grade workers (Grade 1 and Grade 2) in the new order.

Grade 1 is seen as a transitional Grade within the AMW regime. The statutory provisions allow Grade 1 workers to gain the necessary qualifications to move to Grade 2 following 30 weeks of continuous employment, at the expense of their employer. The differential between Grade 1 and Grade 2, and the subsequent higher grades, provides an incentive for the further up-skilling of the agricultural workforce and helps set clear career paths for those employed in agriculture.

The AMW regime contains provisions for apprentices who undertake training under government approved apprenticeship schemes. These provisions support succession, skills development and skills retention within the industry, all of which are crucial for the future success of agriculture in Wales. Attractive rates offered to apprentices can help the sector to become a viable and appealing career choice.

The statutory provisions within the AMW regime provide hourly remuneration for apprentices, depending on age and the year of their programme. The following table provides the rates set in the 2017 Order in comparison to the rates specified by the 2016 Order:

<b>Category of apprentice</b>	<b>2016 rates</b>	<b>2017 rates</b>
Year 1 Apprentice	£3.78	£3.78
Year 2 Apprentice (aged 16-17)	£3.90	£4.05
Year 2 Apprentice (aged 18-20)	£5.30	£5.60
Year 2 Apprentice (aged 21-24)	£6.70	£7.05
Year 2 Apprentice (aged 25+)*	£6.70 (until 31 March 2016) £7.20 (1 April 2016-31 March 2017)	£7.50

\*Categorised as Year 2 Apprentice (aged 21 and over) in 2016 Order

The AMW regime offers a wide range of additional benefits and agriculture related allowances. Some of these benefits are linked to the appropriate basic pay rates, such as overtime rates and on-call allowance. These provisions acknowledge the seasonal nature of agricultural work, for example many workers are required to work above their contracted hours during busy periods. The 2017 Order will maintain overtime rates at 1.5 times above the applicable basic rates – this will apply to all workers and apprentices. The On-call allowance will be specified as the equivalent to two hours of overtime pay at the rate applicable to the worker's grade.

The AMW regime also provides for a number of additional agriculture related benefits and allowances, including dog and housing allowance and birth and adoption grants.

Dog and housing allowances recognise workers often require a dog to carry out their duties and that agricultural workers often live on farm in tied accommodation.

Housing allowance sets the weekly amount permitted to be deducted from the worker's minimum pay where a house is provided. The housing allowance in the 2017 Order will continue to be set at the same level as in the 2016 Order, where in any week an employer provides an agricultural worker with a house for the whole of that week, they may deduct the sum of £1.50 from their minimum wage payable or £4.82 for 'other accommodation'.

The Panel agreed a 1.2% increase to other agriculture related allowances contained within the AMW regime. As a result, the dog allowance rate, which was specified at £7.63 in the 2016 Order, will be set at £7.72 from 1 April 2017.

In line with the 1.2% increase, birth and adoption grants will also increase from £60 per child to £60.72 per child in the new Order.

Night work supplement within the AMW regime is applicable to work undertaken between 7pm of an evening and 6am the next morning and is payable on top of the worker's applicable hourly rate. Night work supplement does not apply for the first two hours of night work. The 2017 Order will increase the night work supplement from £1.44 per hour to £1.46, again representing an overall 1.2% increase.

The Panel agreed to introduce some additional minor changes to the current AMW regime and the 2016 Order. In particular, the Panel agreed to amend the provision related to the calculation of holiday pay in the new order to ensure it includes allowances paid to the worker on a consistent basis, including overtime.

The 2017 Order also incorporates a rolling 12 week reference period for calculating holiday entitlement as this would be a more practical reference period for both employers and workers.

A more substantial change in the 2017 Order will affect the provision for flexible workers. The Panel agreed to abolish this category as this provision is considered to be discriminatory on the basis it offers higher hourly pay rates to full time workers than to part time workers. In the expert view of the Panel, the flexible workers provision is outdated and obsolete. Any existing flexible agricultural workers, as defined within the 2016 Order, will continue on their existing terms and conditions until the written agreement with their employer comes to an end.

The 2017 Order includes updated schedules of applicable awards and certificates of competence which help determine the Grade of the worker. The revised schedules reflect changes to the educational framework and the titles of certificates.

The introduction of the 2017 Order is in line with a number of the goals of the Wellbeing of Future Generations Act. In particular, it contributes to the development of a more prosperous, resilient and equal Wales by setting fair wages for agricultural workers and supporting skills and careers within the sector, enabling employees to learn and progress

Ensuring fair wages for agricultural workers and supporting rural communities is of vital importance within the context of the Welsh Government's Tackling Poverty agenda. The specific goals of the Tackling Poverty agenda include raising household incomes, improving the skills base of young people and helping families in poorer communities. Providing higher hourly wages for agricultural workers will have the capacity to support families by increasing their household income (to the extent this is not offset by reduction in employment or working hours). The provisions for apprentices and training - in particular the Order specifies employers must pay the cost of agreed training and the provision which allows Grade 1 workers to acquire the necessary qualifications to move to a higher grade at the expense of the employer following a continuous employment of 30 weeks - within the new order will assist young

people to gain skills and qualifications, which can improve their job prospects in the future.

## **5. Consultation**

See Section 10 below.

## **6. Regulatory Impact Assessment (RIA)**

For the purpose of the RIA, the impact is considered for a 12 month period. The RIA was prepared in advance of the anticipated coming into force date of 1 April 2017. Since the intention is for the provisions of the Order to be backdated to 1 April, the RIA is still considered to represent a best estimate of the likely impact of the Order between 1 April 2017 and 31 March 2018. The RIA is structured as follows:

*6.1: Summary of proposals made by, and objectives of, the Agricultural Wages (Wales) Order*

*6.2: Summary of Options 1 and 2*

*6.3: Summary findings from the evidence base and literature review*

*6.4: Costs and benefits*

*6.5: Conclusion*

Annexes linked to the RIA are:

*Annex A: Supporting Calculations*

*Annex B: Calculations of Employment Effect*

*Annex C: Competition Assessment*

### **6.1: Summary of proposals made by, and objectives of, the Agricultural Wages (Wales) Order**

In summary, the Agricultural Wages (Wales) Order will:

- Increase minimum hourly pay by around 1.2% for Grade 3-6 of agricultural workers.
- Increase minimum pay for Grade 1 workers (age 25+) to £7.51 per hour.
- Increase minimum pay for Grade 2 workers to £7.54.
- Specify minimum rates for apprentices in the second year of their apprenticeship programme aged 16-18 as £4.05, 18-20 as £5.60 per



hour, for apprentices aged 21-24 as £7.05 and apprentices aged 25+ as £7.50

- Increase minimum pay for young workers (aged 13-16) to £3.34 per hour.
- Increase night work supplement to £1.46 per hour.
- Maintain overtime rate as 1.5 above the applicable basic rate of workers.
- Change on-call allowance to a one-off payment equivalent to two times the hourly overtime rate.
- Increase dog allowance at £7.72 per dog.
- Maintain housing allowance at £1.50 per week for a house and no more than £4.82 per day for other type of accommodation.
- Increase birth and adoption grant to £60.72 per child.
- Maintain the structure and provisions of the AMW regime, including provisions for training costs, employment at a grade, progression to a different Grade, output work, holiday and other leave, holiday pay, agricultural sick pay, rest breaks, provisions for travelling and bad weather
- Update the schedule of relevant qualifications and training which determines the appropriate grade of workers

The main objectives of the Agricultural Wages (Wales) Order 2017 are:

- To encourage the development and retention of necessary skills in the sector
- To help the professionalisation of the industry
- To support the entry of young workers
- To provide fair wages to workers and support economic growth in rural communities across Wales in the context of the Tackling Poverty agenda.

## **6.2: Summary of Options 1 and 2**

### **Option 1 – Do Nothing**

This is the baseline policy option to maintain the minimum wage rates for agricultural workers at 2016 levels in accordance with the provisions of the Agricultural Wages (Wales) Order 2016. In addition, the 2014 Act provides provisions which mean hourly wage rates cannot be below the statutory UK NMW. In the baseline scenario, the minimum wage rates are adjusted to the 2017 NMW rates where the rates in AWO 2016 would fall below the NMW from April 2017. The costs and benefits will be measured against this baseline policy option.

An important context to this baseline is it maintains the long standing and well-known AMW regulatory regime (preserved by the 2014 Act) for relevant agricultural workers, which safeguards employment conditions and allowances unique to the agricultural sector. The AMW regime recognises and rewards qualifications and experience through a six grade career structure and provides

remuneration rates for each grade and category of worker. Having a separate system of wage setting and employment provisions was justified on the basis of the distinct nature of agricultural employment, including seasonality, dominance of casual employment and the use of on-farm accommodation. This system was previously managed by the Agricultural Wages Board (AWB) using Agricultural Wages Orders (AWO). The final wages order issued by the AWB in 2012 (prior to its abolition) was replaced by the AWO 2016 in February 2016 to ensure the agricultural sector in Wales operated under provisions which would be in step with changes in economic conditions, until the Panel was set up and able to commence its work. The previous regulatory impact assessment suggested the benefits of AWO 2016 include:

- Assisting the effective functioning of the agricultural sector by supporting the existence of a well-trained and skilled workforce which in turn can increase productivity and efficiency.
- Ensuring wage progression for agricultural workers and supporting rural communities - which is an issue of importance within the context of the Welsh Government's Tackling Poverty agenda - through effects on household incomes and improving the skills base of agricultural workers.
- Support agricultural workers and apprentices to gain skills and qualifications, that may improve their job prospects in the future.

The AMW regime also sets rates for young workers under the age of 16 and apprentices as part of a minimum wage rate structure intended to support entry and development of an appropriately skilled workforce. Having attractive minimum wage rates for these categories of workers can help encourage the younger generation to choose a career in agriculture.

Retaining these identified benefits of having an AMW regime is likely to be particularly important when skill shortage is a prevalent issue for the agriculture sector. More generally, as stated during the passing of the Agricultural Sector (Wales) Bill, the benefits of the AMW regime include:

- *It provides a structure to reward skill and experience and maintains a balanced and well-functioning sector in Wales.*
- *It recognises that the agricultural sector is different from other sectors and acknowledges the nature of seasonal work by having special provisions for overtime rates and night work supplement, and safeguards the succession of skilled workers by specifying provisions for apprentices and trainees.*
- *It helps farmers and farm workers to specify the terms and conditions of their employment and avoid potential disputes and the need for lengthy negotiations with individuals.*

It is important to note the baseline option represents a situation where the AMW regime exists. Therefore, the costs and benefits of policy alternatives relative to this baseline do not include the benefits or costs associated with the existence of the AMW regime. Instead, it is an assessment of additional costs and benefits of AWO 2017 relative to the AWO 2016 scenario which also takes account of the NMW/NLW changes from April 2017.

## Option 2 – Implementing the new Order.

This is the policy alternative, which would involve replacing the current Order (2016) with a new Order (2017). The new order includes all the recommendations from the Agricultural Advisory Panel for Wales. In particular, the new order includes the following key changes to the minimum rates for different categories of workers (see Table 1).

Table 1: Summary of proposed changes to the minimum wage rates by grade

Grade or category of worker	AWO (2016)	AWO (2017)
Grade 1 worker under compulsory school age	£3.30	£3.34
	£6.72 until 1 October 2016; £6.95 from 1 October 2016	£7.06 (NMW highest rate +1p)
Grade 1 worker over compulsory school age (16-24)	£7.05 (current NMW) from 1 April 2017	
	£6.72 until 1 April 2016; £7.20 from 1 April 2016	£7.51 (NLW+1p)
Grade 1 work (aged 25+)	£7.50 (current NLW) from 1 April 2017	
Grade 2 worker	£7.39	£7.54 (NLW+4p)
Grade 3 worker	£8.12	£8.22
Grade 4 worker	£8.72	£8.82
Grade 5 worker	£9.23	£9.34
Grade 6 worker	£9.97	£10.09
Year 1 Apprentice	£3.78	£3.78
Year 2 Apprentice (aged 16-17)	£3.90	£4.05 MW (under 18)
Year 2 Apprentice (aged 18-20)	£5.30	£5.60 NMW (development rate)
Year 2 Apprentice (aged 21 -24)	£6.70	£7.05 NMW (highest rate)
Year 2 Apprentice (aged 25+)	£6.70	£7.50 NLW

- **Grade 1 worker under compulsory school age**

The pay rate for Grade 1 workers under compulsory school age will increase to by 1.2% to £3.34 in the proposed AWO 2017. Young workers aged between 13 and 16 are only allowed to work part time, specifically 12 hours per week during term time and 25 hours per week during school holidays. However, as there is no data on the number of workers within this category, it is not possible to quantify the changes in total labour costs or earnings.

- **Grade 1 worker over compulsory school age (16-24)**

Grade 1 workers aged 16-20 have been subject to AMW as set by the 2016 Order. The hourly rate for these workers will increase from £6.72 to £7.06, a rise of 5.05% from April 2017.

The hourly minimum wage rate for Grade 1 workers aged between 21 and 24 was £6.72 within AWO 2016 and increased to the national minimum rate of £6.95 from October 2016, with an additional increase to £7.05 from 1 April 2017. In the proposed AWO 2017, this will change to £7.06 (NMW plus 1p). The proposed rate represents 0.14% increase from the rate which has applied since April 2017.

As there is currently no comprehensive data on the age composition of relevant agricultural workers or on the extent to which actual wage rates are dispersed above the minimum, the impacts on wage costs or earnings of the changes in minimum wage rates for Grade 1 workers aged between 16-24 cannot be quantified but it is assumed the number of workers in this category is small and therefore the impact will be small.

- **Grade 1 workers (aged 25+) and Grade 2-6 workers**

The proposed changes in the AWO (Wales) 2017 will see an increase in the minimum wage rate by 0.13 % for Grade 1 workers (over 25), 2% for Grade 2 workers and 1.2% for workers of Grade 3-6.

Under option 1, the increases in NMW/NML would effectively amalgamate Grades 1 and 2 for workers over the age of 25. Given Grade 1 is considered to be a transitional grade with the right to appropriate training to reach Grade 2 after 30 weeks, it is assumed the number of workers over the age of 25 in Grade 1 will be small. Data is not available on the number of workers over 25 in each grade, however, the change in policy would reduce any financial incentive to move from Grade 1 to Grade 2 for these workers. Younger workers (i.e. Grade 1 under the age of 25) would, however, still have a financial incentive to up-skill to move from Grade 1 to Grade 2. Given Grade 1 is considered to be a transitional grade with the right to appropriate training to reach Grade 2 after 30 weeks, we assume the number of workers over the age of 25 in Grade 1 will be small (on a full-time or part-time basis).

There are no statistics on the number of agricultural employees by grade for Wales. Based the data collected by Defra on Farm Labour and Wage Statistics in England and Wales in 2012<sup>2</sup> provides estimates on farm labour by grade, the proportion of hours worked by Grade 1 workers (on full time or part time basis) accounted for approximately 5% of the total hours worked by all Grade1-6 agricultural workers. As such the effects of the impact of diminishing differences of minimum wage rates between Grade 1 and Grade 2 workers

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<sup>2</sup> Defra Farm Labour and Wage Statistics, 2012. Available online: <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>

under option 1 is expected to be minimal on up-skilling between grades. However, there are large numbers of casual workers at Grade 1 (18% of the total number of workers, 16% of total hours worked), the increase in Grade 1 minimum wage rate would have a relatively big impact on wage costs/earnings.

Traditionally, the AWB maintained a pay differential between Grade 1 and 2 at around 10% in order to underline the transitional nature of Grade 1 (initial Grade) and encourage workers' entry to Grade 2 (standard Grade).

Within the proposal of AWO 2017, the difference between the minimum wage rates for Grade 1 (over 25) and Grade 2 becomes smaller compared to those in AWO 2012 and AWO 2016 (see T). In AWO 2017, the proposed minimum wage rates for Grade 2 workers are only 0.4% higher<sup>3</sup> than Grade 1 workers aged 25 and above.

**Table 2: Hourly Wages Rates by Grade in AWO 2012, 2016 and 2017**

Grade	Hourly Wage Rates			% Paid above the previous grade		
	2012	2016	2017	2012	2016	2017**
Grade 1 worker (aged 25+)	6.21	£7.2	£7.51	-	-	-
Grade 2 worker	6.96	£7.39*	£7.54	12%	10%	<b>0.4%</b>
Grade 3 worker	7.66	£8.12	£8.22	10%	10%	9%
Grade 4 worker	8.21	£8.72	£8.82	7%	7%	7%
Grade 5 worker	8.7	£9.23	£9.34	6%	6%	6%
Grade 6 worker	9.4	£9.97	£10.09	8%	8%	8%

Source: Hourly wage rates are from AWO 2012, AWO 2016 and the AWO 2017 proposal. Percentage paid above the previous grade are calculated from minimum hourly wage rates.

Note: \* changed to £7.50 from April 2017.

\*\*2017 figures reflect changes in NMW/NLW from April 2017.

This change means the minimum wage rate differentials (3p difference under option 2) between Grade 1 and Grade 2 workers will be small, which may lead to reduced incentives for Grade 1 workers to up-skill so as to progress to Grade 2 although some workers may still be incentivised to pursue training to reach even higher grades.

The hourly minimum wage rate for Grade 1 workers aged between 16 and 24 will increase to £7.06 under AWO 2017, representing an increase of 0.14% for ages 21-24 from the rate since April 2017 and 5.05%, from April 2016, for workers aged 16-20. This is a higher percentage increase than that in Grade 1 workers aged above 25. Therefore, it is anticipated the potential impact on grade progression will be minimal.

<sup>3</sup> The wage rates compared also reflects changes in NMW/NLW rates from April 2017.

The changes in costs and benefits for Grade 1 (aged 25+) to Grade 6 workers are estimated using data from Farm Labour and Wage Statistics (Defra, 2012)<sup>4</sup>, which were based on Defra's costings model and the hours worked per week collected from the Earnings & Hours survey, run by Defra's Economics and Statistics Programme. The hours were broken down into basic and overtime, and the calculation of the wage costs reflected this. Although the data is dated, it represented the only available source of information which contains a breakdown by grade of workers.

- **Year 1 (Y1) and Year 2 (Y2) Apprentice**

The hourly pay rate for Y1 Apprentice in AWO 2017 will remain the same as in AWO 2016 and there will be no change in wage costs to agricultural businesses/earnings of Y1 apprentices if the number of Y1 and Y2 apprentice workers (i.e. hours paid) remains the same. However, with increases in most of the other grades, this might be seen as a discouragement for workers to engage in agricultural work.

Minimum hourly rates in AWO 2017 for Year 2 apprentices aged 16 plus are equivalent to the national minimum wage rates for the relevant age groups.

According to 2015 data, there were around 200 apprentices in agriculture in Wales. The increase of apprentice rates under the new wages order will affect the existing and new apprentices. However, given the limited number of agricultural apprentices in Wales, the impact is expected to be small.

- **Changes in other provisions**

In addition to the changes in minimum wage rates for different types of agricultural workers, there are a few other changes in overtime pay, holiday pay and other allowances, which are listed in Table 3 below.

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<sup>4</sup> Available at:

<http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>

**Table 3: Changes to other categories and provisions**

Type	AWO 2016	AWO 2017
Reference period for calculation holiday entitlement	Where an agricultural worker works their basic hours and, where applicable any guaranteed overtime,  on a varying number of days each week, the number of days worked each week for the purposes of the Table in Schedule 5, is to be taken as an average of the number of qualifying days worked each week during the period commencing on the start date of the annual leave year and ending the day before the commencement of the agricultural worker's annual leave.	A rolling 12 week reference period for calculating the holiday entitlement of Agricultural Workers with variable hours (Article 31(3) of the 2016 Order).  q31 (1) Where an agricultural worker works their basic hours on a varying number of days each week, the number of days worked each week for the purposes of the Table in Schedule 5, is to be taken as an average of the number of qualifying days worked each week during a period of 12 weeks and that average number of qualifying days shall, where appropriate, be rounded to the nearest whole day
Overtime	1.5 times the agricultural minimum wage specified in article 13 and Schedule 4	1.5 times the agricultural minimum wage specified in article 12 and Schedule 4
On-call allowance	On-call allowance is set as the sum of two hours of overtime pay	Making on-call allowance a one-off payment equivalent to two times the hourly rate;
<b>Other provisions</b>		
Dog allowance	£7.63	£7.72*
Night allowance	£1.44	£1.46*
Birth and adoption grants	£60.00	£60.72*

\* represents a 1.2% increase

Apart from the overtime pay for Grade 1-6 workers, the benefits and costs related to other changes are either negligible or cannot be quantified due to lack of data. These changes are:

- **The method for calculating the holiday entitlement of Agricultural Workers changing to a rolling 12 week reference period.**

This represents a change in method for calculation of holiday entitlement. It is hard to quantify the costs and benefits associated with it. The time required for making such adjustments should be covered within the one hour estimate (which is discussed in the administrative cost section) of admin time borne by the farm businesses.

- **Clarifying the on-call allowance as a one-off payment equivalent to two times the hourly rate**

Within AWO 2016, the on-call allowance of a sum is equivalent to two times the hourly overtime rate. The AWO 2017 will provide clarification on this provision to ensure it is understood as a one-off payment.

- **Dog allowance; Night allowance; Birth and adoption grants.**

The rates for dog allowance, night allowance and birth and adoption grants will have an increase of 1.2% in AWO 2017 to the rates in AWO 2016. However, the costs and benefits of these changes cannot be quantified due to lack of data.

- **Summary of quantification of wage costs/earnings**

Due to the unavailability of data, the breakdown by grade is not available for many of the worker groups. Therefore, only the costs and benefits associated with Grade 1-6 agricultural workers were estimated for both basic pay and overtime pay in the RIA (the number of workers in each grade were estimated based on data from Farm Labour and Wage Statistics (Defra, 2012)). As this was not Wales-specific data and represented the labour structure by grade of workers for England and Wales, the assumption was made that the labour structure in Wales was similar to the overall estimate made by Defra in its survey. The changes in costs or benefits related to other categories of workers are expected to be very small due to small number of people involved in those categories, which include Grade 1 workers aged between 16-24 and Year 2 Apprentice. There are no changes in minimum wage rates for Year 1 Apprentice (£3.78/hour).

In terms of enforcement costs, it is anticipated administrative costs accruing to the Welsh Government would be broadly similar under AWO 2017 option as the Welsh Government is already enforcing the AMW regime which has been preserved under the 2014 Act.

- **Enforcement cost**

In the Welsh context, the government enforcement costs associated with the 2014 Act for enforcing the provisions of the AWO 2012 was estimated at around £3,000 per year in the previous RIA of AWO 2016. This was based on a reactive enforcement mechanism, meaning the Welsh Government would investigate any claims of potential underpayment and if necessary, issue enforcement notices. The enforcement costs were based on the assumptions there are two cases per year to investigate. Each case requires four days of input at an Executive Officer level (£122/day), five days of input at Higher Executive Officer (HEO) level (£163/day) and half a day of input at Grade 7 (£274). It is anticipated the enforcement costs of the proposed AWO 2017 would largely remain the same at £3,000 per year assuming there still will be two cases to investigate each year.

The cost of establishing and running the Agricultural Advisory Panel was considered separately in the RIA which accompanied the Agricultural Advisory Panel for Wales (Establishment) Order 2016. Again, this cost would largely remain the same for AWO 2017 estimated at between £6,300 (assuming a



minimum of three meetings a year) and £75,600 per year (assuming a maximum of 36 meeting per year)<sup>5</sup>.

- **Administrative cost**

In addition to the cost of compliance, there will be a cost to farm businesses for adjusting to the requirements of the new AWO and changes in associated calculations in Wales.

Employers will need to be familiar with both the Welsh AWO provisions and UK labour legislation (for example, in relation to the NMW) to ensure workers are being correctly remunerated.

It is assumed each employer would need one hour<sup>6</sup> to familiarise themselves with the new Order and make adjustments to pay rates and other provisions. Based on data from the Office for National Statistics (ONS)' Annual Survey of Hours and Earnings (2016)<sup>7</sup>, it is assumed the average cost per hour of a farmer's time is £10.84 (figure for all employees in the agriculture, forestry and fishing industry, excluding overtime pay). The median value of agricultural labour cost from the same source was £9.17 per hour. Inclusion of non-wage labour costs, such as employer's national insurance and pension contributions would serve to increase such cost estimates. In addition, the hourly rate used here is an average/median value for all farm workers. In reality, however, those whose time is involved are likely to be the farmer owners or farm business managers whose wage rates are likely to be at the higher end of the wage rate distribution.

According to ONS statistics on business population by region and by sector, there are 14,490 businesses in agriculture, forestry and fishing sector in Wales in 2016 with 3,170 businesses being employers<sup>8</sup>. The administrative costs to farm businesses are therefore estimated at £34.5k for Wales. If using the median value for the labour cost (£9.17 per hour), the total administrative cost to farm businesses is estimated at £29k. The estimated cost would be higher if the wage rates for farm managers/owners were used and non-wage costs were reflected in the rates.

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<sup>5</sup> Source: Welsh Government (2016). THE AGRICULTURAL ADVISORY PANEL FOR WALES (ESTABLISHMENT) ORDER 2016-Explanatory Memorandum Incorporating the Regulatory Impact Assessment. Available at: [www.assembly.wales/laid%20documents/sub-ld10544-em/sub-ld10544-em-e.pdf](http://www.assembly.wales/laid%20documents/sub-ld10544-em/sub-ld10544-em-e.pdf)

<sup>6</sup> This is consistent with the estimates used in the RIA of abolishment of AWB by Defra and the RIA of the Act 2014.

<sup>7</sup> Estimates for 2016 of paid hours worked, weekly, hourly and annual earnings for UK employees by gender and full/part-time working by 2 digit Standard Industrial Classification 2007. Industry (2 digit SIC) - ASHE: Table 4.6a. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/industry2digitsicshetable4>

<sup>8</sup> Table 21 Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry section in Wales, start 2016 within statistics on BUSINESS POPULATION ESTIMATES FOR THE UK AND REGIONS 2016. Available at: <https://www.gov.uk/government/statistics/business-population-estimates-2016>.

### 6.3: Summary findings from the evidence base and literature review

In this RIA, we have reviewed the evidence presented in the previous RIA of AWO 2016 and considered additional literature where relevant. Our conclusion is the key points made in the previous RIA on the minimum wage impacts are still valid, which are summarised as follows. However, it should be noted the evidence was focused on the impact of minimum wages while the economic evidence on the effects of the multi-grade minimum wage structure (i.e. multiple wage floors) is rather limited.

- *Employment:* Provided minimum wage levels are set cautiously, their negative effect on employment levels within affected sectors can be minimised. Some evidence has been found for a reduction in hours worked, but this is not conclusive. There is also evidence suggesting the introduction of the minimum wages was associated with an increase in labour productivity. On balance, the evidence suggests there are limited effects of the introduction of the minimum wages on employment. This is especially the case where the minimum wage rates have been set incrementally within context of economic/labour market conditions.
- *Wage rates and structure:* If minimum wages are set above current market rates, they act to raise the wage floor, tending to compress the wage structure by raising the wages of the lowest paid relative to others. The effect may be transmitted up the pay structure, leading to wage rises for those being paid more than the statutory minimum, although the extent to which this has taken place has varied across different minimum wage regimes.
- *In-work poverty:* Minimum wages tend to benefit the lowest-earning working households, thus having some positive impact on in-work poverty. This positive impact, however, may not necessarily positively impact on low earning households. Overall, the impact of minimum wages on poverty is very small. The Institute for Fiscal Studies<sup>9</sup> has found the National Living Wage will raise household incomes by less than 1% on average, even for poorer households.

*Company level impacts:* Research suggests firm responses to involuntary increases in wage costs can include increasing prices, increasing labour productivity<sup>10</sup>, accepting reduced profits, organisational changes (such as tighter human resource practices, increased performance standards at work, and better management practices), efficiency wage<sup>11</sup> and training responses (increasing training provisions to employees). However, the relationships between company level responses and the pay structure with multiple minimum wage levels are an under-explored area within the literature.

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<sup>9</sup> Institutes for Fiscal Studies (IFS), 2016. Living Standards, Poverty and Inequality in the UK: 2015-16 to 2020-2. IFS Report R114.

<sup>10</sup> Research on labour productivity growth in general tends to demonstrate linkages between the NMW and productivity that are positive but not statistically significant. [Source: David Metcalf, 'Why has the British National Minimum Wages had Little or No Impact on Employment?'. Journal of Industrial Relations, Vol 50:3, pp. 489-512 (pp. 501-502).]

<sup>11</sup> The efficiency wages are based on the notion that wages do not only determine employment but also affect employees' productive behaviour or quality. Under certain conditions, it is optimal for employers to set compensation above the market clearing level in order to recruit, retain or motivate employees.

## 6.4: Costs and benefits

This section assesses the potential costs and benefits for both policy options. However, significant limitations exist across data and methodology. Specifically, disaggregated up to date data for Wales are not always available and few methodologies exist to demonstrate the relationship between employment, business performance of the agricultural sector and minimum wages. As a result, some impacts cannot be quantified with any degree of accuracy. The quantification was focused on the impact on wage costs/earnings for Grade 1-6 agricultural workers where disaggregated data are most available. However, the distribution by grade of workers was based on a Defra study undertaken in 2012 which contained non Wales-specific data. The impact on other categories of workers or the impacts of changes in other allowances generally affect very small groups of workers and the impacts are expected to be minimal. Due to lack of detailed data on these groups, the impacts of changes related to them were not estimated. However, the administrative costs to the farmers are estimated for their time to familiarise themselves with and make adjustments in accordance to AWO 2107. Where estimates are provided, they are indicative, with Appendix A containing the detailed calculations of how these estimates were derived.

In terms of minimum wage rate changes, the Agricultural Wages (Wales) Order 2017 represents a rise of 1-2% rise for agricultural workers within Grade 2-6. The most significant changes in pay rates are for Grade 1 agricultural workers, which represent a 12% increase from the AWO 2016 level at April 2016. If taking account of the increase in NMW in October 2016 which has brought the pay rate to £7.2 per hour, the increase represents 8% for the average AWO 2016 rate for Grade 1 workers. This affects over 3,800 (23%)<sup>12</sup> workers in this Grade (with three quarters of whom being casual workers) out of the 16,700 paid agricultural workers in Wales in 2015.

As a result, this RIA takes the following approach to assessing each option:

- **Option 1:** Baseline option.
- **Option 2:** Provides more detailed estimates as to the impact of changes in minimum wage levels for Grades 1 to 6, aiming to calculate additional impacts which directly relate to Option 2.

### **Option 1: Do nothing**

This is the baseline option and the costs and benefits associated with this 'do nothing' option are only estimated to measure the difference between this option and the policy alternative.

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<sup>12</sup> Calculated based on the number of agricultural workers in Wales and distribution by grade of workers from Defra's estimates in 2012.

**Option 2: Introducing Agricultural Wages (Wales) Order 2017 to replace AWO 2016 and link agricultural minimum wage levels with NMW rises for Grade 1 and 2 workers.**

*1: Impact on Employment*

Standard neo-classical theory predicts minimum wage floors (above market clearing levels) will reduce labour demand (reducing employment levels or hours), but to date the large number of studies examining the employment impacts of the NMW suggest labour demand has remained broadly unchanged despite this legislated rise in earnings for the lowest paid<sup>13</sup>. This is consistent with the findings from the literature review in the previous RIA of AWO 2016 for Wales.

In the previous RIA, employment effect was estimated using a minimum wage elasticity of -0.19 (an average value from the literature).

The agricultural labour force in Wales during 2015 totalled 58,319 people, with 16,700 of these being employed as farm workers (see in Table 7 Appendix A). No data are available as to the proportion of the total in each grade in Wales. However, such data are available for the UK as a whole for 2012 from Defra, based on existing data, historic data and assumptions. These can be combined with the 2015 data for the total agricultural labour force in Wales to give rough estimates of workforce grade composition (see in Table 8 Appendix A). These suggest that some 3,859 workers may be within Grade 1, 9,256 workers within Grade 2 and some 3,539 workers within other grades (3-6).

Given this, an application of the mean elasticity estimate -0.19 suggested that there would be a reduction in employment of less than 20 farm workers<sup>14</sup> (see Table 15 in Appendix B for detailed calculations). It should be noted that these minimum pay rate increases are not the full difference between AWO 2016 and AWO 2017; instead, it has taken account of forthcoming increases in NMW and NLW from April 2017. If using the median value of elasticity coefficient -0.03, the reduction in employment would be negligible at three people (see Table 16 at Appendix B).

In terms of reductions to hours worked, some evidence suggests it is likely some farm businesses will seek to absorb higher labour costs through reducing the number of hours worked in addition to other effects on employment, although this cannot be estimated with any degree of accuracy.

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<sup>13</sup> Riley, R. and Bondibene, C. (2015). Raising the Standard: Minimum Wages and Firm Productivity. National Institute of Economic and Social Research.

<sup>14</sup> The number of workers reduced =  $0.19 * 0.13\% * 3859(\text{Grade } 1) - 0.19 * 0.5\% * 9257(\text{Grade } 2) - 0.19 * 1.1\% * 3539(\text{Grade } 3-6) = 17$

## 2: Earnings

In 2012, Defra published a labour force model which was used to calculate gross wage costs at a UK level. The estimated additional costs of the proposed pay rate increases for each worker type (full time, part time and casual) have been calculated by multiplying the increase per hour for the respective grades, the number of hours worked per week, the number of weeks worked per year and the number of workers in the industry (not adjusted to taking account of non-wage labour costs). There are separate costings for basic and overtime. As disaggregated data by grade of workers for Wales were not available, the cost estimates are based on these 2012 UK assumptions combined with 2015 agricultural labour force data for Wales (see Table 7 to Table 10 in Appendix A) of changes in gross annual wage costs for Option 2 relative to the baseline option. These estimates are also provided in Table 4 which suggests the changes in costs for Option 2 are estimated at £1.2million with the largest impact from Grade 2 workers. Although the basis used to estimate the number of workers in each grade, the number of hours worked per week and the number of weeks worked per year is partly relying on data from Defra cost model which is dated back to 2012, it still represents the best estimates which are available for calculating the additional labour costs as a result of pay rate rises.

The changes in AWO 2017 also include changes in holiday pay calculations, on call allowances and other allowances. These have not been calculated as:

- (a) data are not generally available;
- (b) the changes will only have minimal cost implications; and,
- (c) the scale of impact is unlikely to be significant in overall terms.

It should also be noted the difference in minimum wage rates between Option 1 and 2 are note the full difference between AWO 2016 and AWO 2017, it also takes account of forthcoming statutory NMW and NLW from April 2017.

**Table 4:** Estimated changes in annual wage costs, waged agricultural workforce, Wales 2015 (a-c)

Grade	Full-time (£)		Part-time (£)	Casual (£)		Total (£)
	Basic pay	Overtime pay	Basic pay	Basic pay	Overtime pay	
1	£5,644	£1,331	£6,965	£7,824	£12,843	£34,606
2	£146,731	£34,612	£125,379	£48,948	£8,035	£436,018
3	£76,187	£17,972	£31,345	£0	£0	£125,504
4	£282,176	£66,562	£54,729	£0	£0	£403,466
5	£113,811	£26,847	£16,419	£0	£0	£157,076
6	£51,732	£12,203	£5,473	£0	£0	£69,408
<b>Total (£)</b>	<b>£676,282</b>	<b>£159,526</b>	<b>£240,309</b>	<b>£56,771</b>	<b>£93,190</b>	<b>£1,162,462</b>

Notes:

- (a) Data assumes that workers are earning no more than the hourly minimum.
- (b) Defra assumed that part-time workers do not work overtime.
- (c) Totals may not sum due to rounding.

Source: Authors' calculations

Option 2 may create a wages differential between Wales and England, potentially disadvantaging farmers who largely compete with producers based in England, as is the case for the dairy industry. More generally, this would affect actual wage rates/terms and mobility of labour and potentially increase to the cost base. This relative increase to the cost base may accentuate the degree to which decreases in profits/ hours worked, or increases in prices may take place. However, farmer businesses in Wales are generally price-takers with limited power to influence the price of their goods and there will be limited scope to pass on cost increases via price rises. Despite this, it is reasonable to conclude the increased cost base associated with Option 2 will have some negative impact on the sector's competitive positioning with those businesses located in England, but such impacts are likely to be relatively marginal in overall terms. Changes in market conditions may lead to structural changes within the sector rather than differences in wage rates, although other market conditions will also apply to farm businesses elsewhere.

As there are some uncertainties around the distribution of farm workers by grade, sensitivity analysis was carried out to test the impact on the results.

The distribution by grade was based on data from Defra that was non Wales-specific and has not been updated since 2012. Three tests were carried out varying the percentages for Grade 2, Grade 4 or Grade 5 full-time workers. Composition 1 is the baseline; composition 2 increasing Grade 2 workers by 10% and reducing Grade 4 workers by 10%; composition 3 increasing Grade 2 workers by 10% and reducing Grade 5 workers by 10%<sup>15</sup>. Composition 1 gives an estimate of £1.2million; Composition 2 yields a result of £1.19million; Composition 3 gives a result of £1.15 million. Collection of data on farm workers by grade in Wales would help improving accuracy of estimates.

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composition 1

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Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	39%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

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Composition 2

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Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	49%	63%	61%
Grade 3	9%	7%	
Grade 4	20%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

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composition 3

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Grade	Full-time	Part-time	Casual
Grade 1	6%	14%	39%
Grade 2	49%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	1%	3%	
Grade 6	5%	1%	

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<sup>15</sup> 10% is an arbitrary numbers. As the actual distribution by grade for Wales is not known, a 10% redistribution between grades was assumed and deemed to be big enough to test sensitivity.

### *3: Impact on prices, productivity and profitability*

As well as impacting on total wage costs and labour inputs, increases to the cost base caused by additional wage costs may be expected to impact on farm businesses – and three issues profits, prices and productivity are briefly discussed. The extent to which these outcomes will occur in relation to Option 2 depends on a broad range of factors affecting individual farm businesses. Existing literature is unclear on the linkages between minimum wages and these factors, which are therefore assessed qualitatively.

In relation to output prices, farms in Wales are generally price-takers with limited power to influence the price of their goods. While such influence will vary according to the type and nature of the product being sold, Welsh farmers are generally operating in a national or international market with relatively limited product differentiation. When combined with current market pressures, this means passing on cost increases via price rises seems unlikely, although farms in some sectors may be more likely than others to have a marginally greater ability to increase prices.

There is limited evidence as to the linkage between minimum wage structure and labour productivity on farms in Wales. The scope available to each farm to exploit productivity improvements will depend to a large extent on issues such as technology adoption, characteristics of the farm and farmer and any scope for economies of scale. Overall, there is insufficient evidence to assess the likely outcomes in terms of productivity implications.

In the absence of other adjustments, increased wage costs would be expected to put downward pressure on profits (reflecting the transfers to agricultural workers). In relation to profitability, there is great variation between farms in Wales and the extent of impacts will vary across farms.

#### *Cost: government enforcement*

It is considered the enforcement cost related to Option 2 would remain at similar levels with Option 1.

### **Benefits**

#### *1: Impact on Earnings*

Under the previously explained assumptions, the proposed changes in AWO 2017 minimum wage rates are estimated would raise total wages received by agricultural workers by some £1.2 million per annum. It should be noted these benefits are not related to the change between AWO 2016 and AWO 2017; instead, they relate to the changes in wage rates taking account of forthcoming increases in NMW and NLW from April 2017.



This sum can be expected to have further indirect impacts in terms of localised spending power, with a greater concentration within rural areas with a higher proportion of agricultural workers although this also depends on patterns of expenditure which would have taken place from farm businesses (given the transfers).

### *2: Impact on poverty including in-work poverty*

By raising the earnings floor, minimum wages might be expected to raise household income, all else being equal, with some potential impact on in-work poverty, although this could be offset by a reduction in hours worked/employment and, where relevant, could be dampened by the effects of the tax and benefits system whereby workers would pay more tax on increased pay and/or receive reduced benefits. The effect also depends on business and individual labour decisions.

Impact will vary depending on the proportion of the population in component wage jobs. The raising of minimum wage levels will have had some impact on in-work poverty by supporting the wages of the lowest paid workers. Although evidence is not available on the effects of multiple wage floors compared to single wage floors, the use of multiple minimal wage structure may accentuate impact on in work poverty, given that more workers will be affected than would be the case for a single wage floor. Putting this into the context of agricultural workers in Wales, of the 16,700 waged workers in agriculture within Wales in 2015, 4,638 (28%) were full time. The remaining 72% being part-time, seasonal or casual workers. The probability of in-work poverty is generally higher for part-time, seasonal or casual workers than full-time workers.

The most significant increase in the minimum wage rate is for Grade 1 workers. This could positively impact some 278 people on full time basis, 626 on part-time basis and 2,952 casual workers (see Table 10) in Appendix A. However, total impact on overall in-work poverty, and on rural poverty in general, will be limited due to the small number of people involved and the more uncertain impact on household poverty.

### *3: Impact on training and skills*

It is anticipated the AWO 2017 will continue to enabling up-skilling and a clearer career structure within the agricultural sector. It will contribute to developing and retaining skills across the entire agricultural sector.

Overall, the increase to agricultural minimum wage levels in Wales offers the opportunity to incentivise skills acquisition within the agricultural sector, potentially increasing the number of people receiving all types of training within the sector, and potentially enhancing the supply of skilled labour. As the minimum wage rates set out in AWO 2107 are higher than NMW/NLW and it maintains a privilege rate not universally enjoyed other sectors than agriculture, this should help to retain the employment and skills within the agricultural industry. The up-skilling impact is more related to the pay structure, which will be maintained under AWO 2017. However, the diminishing differences between

Grade 1 and Grade 2 workers may discourage up-skilling to Grade 2 but should not affect people of up-skilling to higher Grades. The potential increase in labour cost may to some extent negatively affect the provision of up-skilling by employers.

## 6.5: Conclusion

Potential costs and benefits for both policy options are considered and compared. However, significant limitations exist across data and methodology. Specifically, disaggregated up to date data for Wales are not always available and few methodologies exist to demonstrate the relationship between employment, business performance of the agricultural sector and minimum wages. As a result, some impacts cannot be quantified with any degree of accuracy. The quantification was focused on the impact on wage costs/earnings for Grade 1-6 agricultural workers where disaggregated data are most available. However, the distribution by grade of workers was based on Defra study in 2012 which was not Wales specific data. The impact on other categories of workers or the impact of changes in other allowances generally affect very small groups of workers and the impacts are expected to be minimal. Due to lack of detailed data on these groups, the impacts of changes related to them were not estimated. However, the administrative costs to the farmers are estimated for their time to familiarise themselves with and make adjustments in accordance to AWO 2107. It should also be noted the two policy scenarios are not the full difference between AWO 2016 and 2017; the differences in labour minimum wage rates also take account of the forthcoming changes in NMW and NLW from April 2017.

Potential costs which are additional for Option 2 are summarised as follows:

1. *Employment*: The proposed increases may lead to some less than 20 fewer agricultural jobs in Wales. Reductions in hours worked may take place, but cannot be quantified.
2. *Earnings*: The total transfer could be raised by some £1.2 million per annum. This is the estimate for additional earnings under AWO 2017 also taking account of changes in NMW/NLW from April 2017.
3. *Prices, productivity and profitability*: All else given, this is likely to put downward pressure on farm business profits, but with an unclear effect on productivity. Output price rises enabling margins to be maintained seem unlikely given the farm businesses are generally price-takers and there is limited pricing power of farm businesses. In terms changes in agricultural outputs, they are more directly affected by broader agricultural market conditions.
4. *Government enforcement*: It is likely administrative costs accruing to the Welsh Government would be broadly similar under both options as the Welsh Government is already enforcing the AWO regime which has been preserved under the 2014 Act assuming no changes in the volume of case work to investigate each year.

Potential benefits which are additional to Option 2 include:

1. *Earnings*: The proposed minimum wage rate changes are estimated to transfer some £1.2 million per annum to agricultural workers (from employers) (excluding the effects of non-wage labour costs) in terms of their total gross income, with potential impacts throughout the wages distribution associated with the differential minimum wage rates for the different grades.
2. *In-work poverty*: Option 2 would be expected to reduce in-work poverty to some extent (to the extent the higher hourly wage rates are not offset by reduced hours/employment), with a geographic focus on areas with a higher concentration of agricultural employment. However, this effect varies across businesses and individual labours depending on individual circumstances and decisions.
3. *Training and skills*: Uprating minimum wages throughout the grade structure and for all categories of workers, including apprentices, will provide greater incentives for workers to acquire skills and progress through the grade system. Compared to other industries, as the AWO 2017 minimum wage rates are higher than NMW and NLW and maintains a privilege rate not universally enjoyed other sectors than agriculture, this should help to retain the employment and skills within the agricultural industry. Option 2 would increase wages for all grades in line with previous arrangements under the AWO 2016. It is reasonable to conclude Option 2 could be more likely to support up-skilling within the sector, as well as potentially having a positive impact on efficiency. However, this up-skilling benefit is more related to the grade structure itself rather than the pay rates and also depends on the ability of the businesses to pay for further training after the increase in labour costs.

Overall, Option 2 provides an established and previously accepted approach to the setting of minimum wages and other aspects of the employment relationship. With wage rates increasing and linked to NMW (for Grade 1 and 2 workers), the AWO 2017 will benefit the waged workforce in terms of increasing earnings and supporting further up-skilling within the industry. However, this up-skilling benefit is more related to the grade structure itself rather than the pay rates and may be offset to some extent by the pressure from increases in labour costs for farm businesses

## **8. Sector impacts**

### *1: Impact on local government*

No evidence of significant differential impact.

### *2: Impact on voluntary sector*

No evidence of significant differential impact.

### *3: Impact on small businesses*

The increase in costs associated with pay and other amended terms and conditions will affect farm businesses, including small businesses in the sector. The minimum agricultural wage rates had been updated annually by AWB until 2013. Grade 1 workers' pay rates were adjusted between 2013 and 2015 in line with NMW. The pay rates were further raised in the AWO 2016. It is important to acknowledge though these rates only set statutory minimum wage levels and employers may pay higher wages to workers to reflect their skills and the level of responsibilities taken on farm.

According to the Office for National Statistics (see Table 5), there are 14,490 agricultural, forestry and fishing businesses in Wales and 22% are employer businesses. The figures for England were 102,905 and 39%. This suggests agriculture in Wales is dominated by small businesses (18% employing less than five employees) and the majority of businesses do not employ labour (78%). For smaller business with paid labour, the increases in labour costs as a result of increases in AMW may have a negatively impact on business profitability. ADAS carried out a study on the use of AWO for Welsh Government in early 2016 which involves a survey of 176 farm businesses which employed labour across different farm size and type. The study suggested the average labour cost (for paid labour) was around 18% of the total inputs and no statistically significant differences were found between different farm sizes.

**Table 5: Number of agricultural businesses by size band in England and Wales (2016)**

Agriculture, Forestry and Fishing	England		Wales	
	No. of businesses	%	No. of businesses	%
All businesses	102,905	100.0	14,490	100.0
All employers	40,210	39.1	3,170	21.9
With no employees (unregistered)*	4,540	4.4	670	4.6
With no employees (registered)*	58,155	56.5	10,650	73.5
1	13,840	13.4	1,350	9.3
2-4	17,855	17.4	1,325	9.1
5-9	5,425	5.3	360	2.5
10-19	1,910	1.9	110	0.8
20-49	820	0.8	20	0.1
50-99	215	0.2	5	0.0
100-199	85	0.1	0	0.0
200-249	20	0.0	0	0.0
250-499	25	0.0	0	0.0
500 or more	15	0.0	0	0.0

Source: ONS (2016) Business population estimates for the UK and regions 2016, Table 20 and Table 21.

Note: \* Businesses with no employees can either be 'registered' for VAT or PAYE or are 'unregistered'.

The majority of farms in Wales are small businesses and the policy has been developed to within this context. As a result, the impact of Option 2 is not expected to impose any additional or disproportionate impact on small businesses. The larger farms, dairy farms and horticultural businesses tend to use more paid labour than the smaller businesses or other farm types. It is therefore assumed there will only be a small number of small farm businesses which would be affected by labour cost increases.

#### 1. *Impact by sector*

The impact on different sectors may vary depending on the composition of cost base of the farm businesses. The Farm Business Survey data for Wales (2015-2016) suggests lowland dairy farms are potentially most affected by increases in pay rises as labour costs accounted for 22% of their total input while for the other livestock farms labour costs only accounted for 4-6% of their cost base (see Table).

**Table 6 : Labour cost as a percent of total input for farm businesses in Wales by sector (2015-2016)**

Farm type	Paid Labour (£)	Total input (£)	Share of labour cost
Hill Cattle and Sheep Farms	4,755	98,453	5%
Hill Sheep Farms	3,807	78,226	5%
Upland Cattle and Sheep Farms	3,445	79,647	4%
Lowland Cattle and Sheep Farms	3,235	67,421	5%
Hillland Upland Dairy Farms	14,134	249,849	6%
Lowland Dairy Farms	28,400	127,283	22%

Source: Calculated from Farm Business Survey (FBS) data for Wales (2015/2016)

Agricultural statistics for Wales suggests there are 2,079 lowland dairy farms in 2015. These farms are likely to be the most affected by the labour cost increases.

There is limited evidence as to labour productivity on farms in Wales. The scope available to each farm to exploit productivity improvements will depend to a large extent on issues such as technology adoption, characteristics of the farm and farmer and any scope for economies of scale. Overall, there is insufficient evidence to assess the likely outcomes in terms of productivity improvements.

In relation to profitability, there is variation between farms in Wales. Information on farm business income for 2015-16 suggests there is variation across the major farm types. For dairy farms, the average farm business income was around £33,000 and cattle and sheep farms in the Less Favoured Area (LFA) around 22,000<sup>16</sup>.

Research work by the Wales Rural Observatory suggests what these farm profit figures mean changes according to the farm size<sup>17</sup>. This survey is now rather dated, but the overall pattern of the results is still relevant.

It should be noted however, the profitability data of farm businesses should be interpreted in the context that the industry is currently heavily relying on public subsidies. According to the Farm Business Survey, 56% of all farms either made a loss or would have done so without subsidy in year 2015-16 (see Figure 1). The level of dependence varies between farm types. In 2015-16, around 60% of cattle & sheep (LFA) farms either made a loss or would have done so without subsidy, compared with around 50% cattle & sheep (lowland) farms and around 40% of dairy farms. Subsidy was a small component of farm

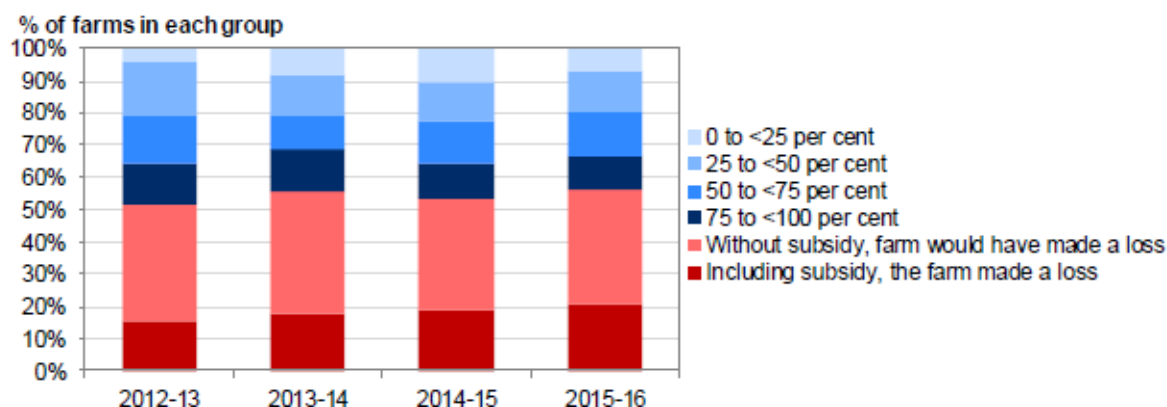
<sup>16</sup> Source: Welsh Government 2016. Statistics on Farm Incomes. Available at: <http://gov.wales/statistics-and-research/farm-incomes/?lang=en>. For dairy farms, there was a significant reduction (-53% from previous year) in farm business income in the year 2015-16 driven by a fall in milk price.

<sup>17</sup> Farm Household Income Survey, published by the Wales Rural Observatory [http://www.walesruralobservatory.org.uk/sites/default/files/SurveyFarmingHouseholdsWales2010\\_0.pdf](http://www.walesruralobservatory.org.uk/sites/default/files/SurveyFarmingHouseholdsWales2010_0.pdf)

business income (less than 25%) on 3% of cattle & sheep (LFA) farms, compared with 26% of dairy farms.<sup>18</sup>

As a wider context, this dependence on subsidy can leave farms vulnerable to changes to policy especially after Brexit.

**Figure 1: Variation in subsidies\* as a share of farm business income in Wales**



Source: Farm Business Survey Quoted in Statistics Release on Farm Incomes in Wales 2015-2016.

Note \*: subsidies include agri-environment payments and single farm payments.

In general terms, increases to the agricultural cost base will impact on farm income and profitability, but the extent of this cannot be accurately forecast. However, it is reasonable to assume the greater increase in cost base associated with AWO 2017 when compared to baseline will have more pronounced impacts.

## 9. Duties

### 1: Equality Impact Assessment

In 2013, some 16 % of all farm workers in the Welsh agriculture were female.<sup>19</sup> However, some 28 % of regular part time workers were female. Both options involve the retention of contractual protections, and there would not appear to be significant differences in their impacts on relative gender positioning within the agricultural labour market.

There is no evidence to suggest a significant differential impact on disabled people, or in relation to gender and gender reassignment, religion and belief and non-belief, sexual orientation, pregnancy and maternity or civil partnerships.

<sup>18</sup> Source: Farm Business Survey Quoted in Statistics Release on Farm Incomes in Wales 2015-2016. Available at: <http://gov.wales/statistics-and-research/farm-incomes/?lang=en>

<sup>19</sup> Welsh Government, Welsh Agricultural Statistics, 2012 and 2013 [online] <http://gov.wales/docs/statistics/2014/141113-welsh-agricultural-statistics-2012-2013-ency.pdf> pp. 56-57 [accessed on 11 June 2015], authors' calculations. No data available for salaried managers.

A full Equality Impact Assessment has been prepared.

### *2: The Welsh language*

The agricultural sector has economic and social importance in rural areas and high levels of Welsh language usage and proficiency. While both options will have some impact on employment totals and conditions in such areas, the differences in terms of language impact are likely to be small.

The full Welsh Language Impact Assessment has been prepared.

### *3: Sustainable Development*

As is the case for language impact, differences between the impacts of both options are likely to be relatively small in scale, and will depend on the mechanisms by which the sector absorbs any increases to its cost base.

## **10. Consultation**

The Panel undertook a targeted consultation, on the new proposed rates during the Autumn of 2016. Key stakeholders including the farming unions, UNITE, agricultural colleges and industry bodies were among those targeted. Two responses were received and these were discussed at a Panel meeting on the 24th of October. Following deliberations, no changes were adopted.

## **11. Competition Assessment**

Please see Annex C.

## **12. Post implementation review**

The Welsh Government will monitor the impact of the 2017 Order, and any subsequent orders proposed by the Panel, on the agricultural sector, in particular recording any changes in the number of workers, monitoring the number of workers attending training and the number of apprentices attending Welsh institutions. The Welsh Government will continue to have a dialogue with key stakeholders and collate feedback on the impact of the new legislation. A helpline number will continue to be operational in order to respond to queries related to the 2017 Order and the applicable provisions of the AMW regime. All of this information will help to assess the effectiveness of the order.

The implementation of the 2014 Act is presently being reviewed as part of the statutory requirement stipulated by the 2014 Act. Section 13 specifies that the Welsh Ministers must produce a report on the operation and effect of the Act as soon as practicable once three years of the Act receiving Royal Assent have



passed, which was the 30 July 2017. The report will contain information on the impact of the Act on agricultural workers, employers and the industry in general. The report will be laid before the National Assembly for Wales and published by the Welsh Government.

## APPENDIX A: Supporting Calculations for Cost and Benefit Estimates

### 1. Employment Data

**Table 7: Persons engaged in work on agricultural holdings, Wales (2015)**

Type of Labour	Number of people
Total farmers, partners, directors and spouses: (a)	
Full-time	19,307
Part-time ( b)	22,312
Total	<b>41,619</b>
Farm workers:	
Regular full-time (c)	4,638
Regular part-time (b) (c)	4,492
Seasonal or casual workers	7,570
Total farm workers	<b>16,700</b>
<b>Total labour force</b>	<b>58,319</b>

Source: Welsh Government, Welsh Agricultural Statistics, 2015 [online] <http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>

Note:

- (a) Figures are for main and minor holdings.
- (b) Part-time defined as less than 39 hours per week.
- (c) Includes salaried managers.

### 2. Earnings

**Table 8: Persons engaged in work on agricultural holdings, Wales (2015)**

Type of labour	No. of people	of 2015
Full-time	Regular full-time farm workers*	4,638 28%
Part-time	Regular part-time farm workers	4,492 27%
Casual	Seasonal or casual workers	7,570 45%
Total waged labour force		16,700 100%

Note: \* including salaried managers

Source: Figures for farm workers by type are from Welsh Government, Welsh Agricultural Statistics, 2015 [online] <http://gov.wales/statistics-and-research/welsh-agricultural-statistics/?lang=en>.

Percentages are Authors' calculations based on no. of workers in each category.

**Table 9: Profile of workers at each AWO grade (average %), UK (2007-2010)**

Grade	Full-time	Part-time (a)	Casual
Grade 1	6%	14%	39%
Grade 2	39%	63%	61%
Grade 3	9%	7%	
Grade 4	30%	11%	
Grade 5	11%	3%	
Grade 6	5%	1%	

Source: Defra Farm Labour and Wage Statistics, 2012. [online] <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf> , Table 12 on p.13.

Note: (a) Totals do not sum to 100% due to rounding.

Table 10 combines data from Table 8 and Table 9 to provide rough estimates of the number of full time, part-time and casual staff within each grade in Wales using employment data for year 2015.

**Table 10: Number of workers at each AWO grade, estimated for Wales 2015 (a)**

Grade	Full-time	Part-time	Casual
Grade 1	278	629	2,952
Grade 2	1,809	2,830	4,618
Grade 3	417	314	
Grade 4	1,391	494	
Grade 5	510	135	
Grade 6	232	45	
<b>Total</b>	<b>4,638</b>	<b>4,447</b>	<b>7,570</b>

Note: (a) Totals do not add up to 16,700 due to rounding in Table 9.

Table 11 provides Defra's estimates of the average hours worked by full time, part-time and casual staff.

**Table 11: Hours worked by worker type per week, UK, 2003 to 2010 average**

Worker type	Total hours worked	Basic hours	Overtime hours
full time	45.7	39	6.7
part time (a)	21.3	21.3	0
Casual	29.4	26.5	2.9

Source: Defra Farm Labour and Wage Statistics, 2012. [online] <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf> , Table 10 on p.12. Note: (a)

Assumed that part-time workers do not work overtime.

Table 12 summarises the number of weeks that each type of workers worked per year.

**Table 12: Number of weeks worked per year by different type of employment**

Worker type	No. of weeks worked at Basic hours	No. of weeks worked at overtime hours
full time	52	47.6
part time (a)	52	49.2
Casual	10	10

Source: Defra Farm Labour and Wage Statistics, 2012. [online] <http://webarchive.nationalarchives.gov.uk/20130123162956/http://www.defra.gov.uk/statistics/files/defra-stats-foodfarm-farmmanage-earnings-labour2012-120627.pdf>, Table 39 on p.36.

Table 13 provides the agricultural minimum wages set in the AWO 2016 and 2017 for the agricultural industry and the increases in wage rates by grade for both basic and overtime pay.

**Table 13: AWO hourly pay rates, 2016 and 2017**

Grade or category of worker	Basic pay 2016	Basic pay 2017	Basic pay increase	Overtime pay increase**
Grade 1 worker (aged 25+)	£7.50	£7.51	0.01	0.02
Grade 2 worker	£7.50*	£7.54	0.04	0.06
Grade 3 worker	£8.12	£8.22	0.09	0.14
Grade 4 worker	£8.72	£8.82	0.10	0.15
Grade 5 worker	£9.23	£9.34	0.11	0.16
Grade 6 worker	£9.97	£10.09	0.11	0.16

Source: UK Government, Agricultural Workers' Rights [online] <https://www.gov.uk/agricultural-workers-rights/pay-and-overtime>

Note: \*This is rate of NMW which will come into effect from April 2017.

\*\* Overtime pay levels are set at 1.5 times of basic rates.

Table 14 combines data in Table 8, Table 10 and Table 13 to provide a rough estimate of the additional labour costs per year for Option 2 relative to Option 1 in Wales across all grades for full time, part time and casual workers. The calculations for the additional wages costs were based on the number of workers in each grade by type (full time, part time and casual) multiplied by the increase per hour for the respective grades, the number of hours worked per week and the number of weeks worked per year.

**Table 14: Additional labour costs per year for Option 2.**

Grade	Full-time (£)		Part-time (£)		Casual (£)		Total (£)
	Basic	Overtime	Basic	Overtime	Basic	Overtime	
1	£5,644	£1,331	£6,965	£0	£7,824	£12,843	£34,606
2	£146,731	£34,612	£125,379	£0	£48,948	£8,035	£436,018
3	£76,187	£17,972	£31,345	£0	£0	£0	£125,504
4	£282,176	£66,562	£54,729	£0	£0	£0	£403,466
5	£113,811	£26,847	£16,419	£0	£0	£0	£157,076
6	£51,732	£12,203	£5,473	£0	£0	£0	£69,408
<b>Total (£)</b>	<b>£676,282</b>	<b>£159,526</b>	<b>£240,309</b>	<b>£0</b>	<b>£56,771</b>	<b>£93,190</b>	<b>£1,162,462</b>

## APPENDIX B: Calculations of Employment Effect

Wage elasticity of supply is the grade of influence on the supply of labour caused by a change of wages.

The formula for wage elasticity is: Wage elasticity equals change of supply of labour in percentage / change of wage in percentage. Therefore:

Change of supply of labour in percentage equals wage elasticity\*change of wage in percentage;

Absolute change in labour supply equals number of workers\*change of supply of labour in percentage (i.e. wage elasticity\*change of wage in percentage)

**Table 15: Change in labour supply assuming wage elasticity=-0.19**

	No. of workers (a)	Wage elasticity (b)	Change of wage in % (c)	Absolute changes in no, of workers (d) (d=a*b*c)
Grade 1 workers	3,859	-0.19	0.13%	-1
Grade 2 workers	9,257	-0.19	0.5%	-9
Grade 3 workers	3,539	-0.19	1.0%	-7
<b>Total</b>	-	-	-	<b>-17</b>

**Table 16: Change in labour supply assuming wage elasticity=-0.03**

	No. of workers (a)	Wage elasticity (b)	Change of wage in % (c)	Absolute changes in no, of workers (d) (d=a*b*c)
Grade 1 workers	3,859	-0.03	0.13%	-0.2
Grade 2 workers	9,257	-0.03	0.5%	-1.4
Grade 3 workers	3,539	-0.03	1.0%	-1.1
<b>Total</b>	-	-	-	<b>-2.7</b>

## APPENDIX C: The Competition Assessment

### Answers to the competition filter test

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

# SL(5)150 - The Agriculture Wages (Wales) Order 2017

## Background and Purpose

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The Order makes provision about the minimum rates of remuneration and other terms and conditions of employment for agricultural workers. It revokes and replaces the Agricultural Wages (Wales) Order 2016 with some changes which include increases to the 2016 pay levels for agricultural workers.

The Order was made on 2 November 2017 and came into force on 3 November 2017. By letter dated 2 November 2017, Jane Hutt, the then Leader of the House and Chief Whip notified the Presiding Officer that it had been necessary to breach the 21 day rule to ensure that there is no further delay in bringing uplifted agricultural wage rates into force.

## Procedure

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Negative.

## Technical Scrutiny

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The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. The definition of 'sickness absence' in article 2 contains the expression "illness or incapacity caused by the agricultural worker's pregnancy or maternity". The corresponding definition in the Welsh text of 'absenoldeb salwch' refers to "salwch neu analluedd a achosir am fod y gweithiwr amaethyddol yn feichiog neu'n fam". Whilst the English word 'maternity' implies being the mother of a young child, the Welsh 'bod yn fam' (*being a mother*) will apply for the rest of the mother's life. The Welsh word for 'maternity, 'mamolaeth', is used in the definition of 'diwrnodau cymwys' (qualifying days) in the same article. **[Standing Order 21.2(vii) – inconsistencies between the meanings of the Welsh and English texts]**
2. The English text of article 31(4) contains the expression 'the employer is entitled to deduct'. The corresponding Welsh text states 'mae gan y gweithiwr hawl i ddiwynnu' (*the worker is entitled to deduct*). It is clear from the context that the English text is correct. **[Standing Order 21.2(vii) – inconsistencies between the meanings of the Welsh and English texts]**
3. The Order has a coming into force date of 3 November 2017, however Article 1 (2) of the Order provides that the Order applies as if it had come into force in 1 April 2017. There is no power in the enabling legislation (the Agricultural Sector (Wales) Act 2014) for orders to have retrospective effect.

Paragraph 10 of the Explanatory Memorandum explains that the panel undertook a targeted consultation on the new proposed rates during the autumn of 2016.



The Explanatory Memorandum states that:-

*“The intention of the panel was to have the new Order in force on 1 April [2017], the same date the National Living Wage and National Minimum Wage increases took effect.....However, the 1 April coming into force date was not achieved.”*

The Explanatory Memorandum does not provide any further information as to the reason for the delay, however the letter from Jane Hutt, the then Leader of the House and Chief Whip dated 2 November 2017 which accompanies the Order states that:-

*“This is the first time the Panel prepared a draft wages order since its establishment on 1 April 2016 and there have been some difficulties in setting up the effective process for making new wages orders as required under the statutory procedures of the Agricultural Sector (Wales) Act 2014 and the Agricultural Advisory Panel for Wales (Establishment) Order 2016.”*

During the period 1 April 2017 to 2 November 2017 agricultural workers' wages in Wales were subject to the rates specified in the Agricultural Wages (Wales) Order 2016 except for minimum rates in the Order which fell below the UK National Minimum Wage and National Living Wage levels.

In a **statement** dated 5 April 2017, Lesley Griffiths, the then Cabinet Secretary for Environment and Rural Affairs said:-

*“I am grateful to the Panel for preparing a new wages order in draft and submitting it to me for approval. I have referred the draft Order back to the Panel for consideration and resubmission to me. Until any new wages order comes into force, agricultural workers in Wales will continue to be subject to the terms and conditions of the Agricultural Wages (Wales) Order 2016.”*

*The increase to the UK National Minimum Wage and the UK National Living Wage rates on 1 April impacts on the wages of some farm workers in Wales. The table below summarises the changes in respect of agricultural workers employed at Grades 1 and 2.*

<b>Grade</b>	<b>Minimum Hourly Rate from 1 April 2017</b>
Grade 1: 25 and over:	£7.50
Grade 1: 21-24:	£7.05
Grade 1: 16-20:	£6.72
Grade 2 (aged 25 and over)	£7.50





*All other categories and grades of workers will be subject to the rates specified by the Agricultural Wages (Wales) Order 2016. The rates for apprentices will also remain unchanged. "*

The greatest increase in pay rates concerns Grade 1 workers aged between 16-20. The minimum hourly rate for those workers has increased from £6.72 to £7.06 an increase of 5.05%.

As the Order has retrospective effect this and all other increases will be backdated to 1 April 2017. This means that employers of agricultural workers paying below the rates in the 2017 Order will be responsible for paying arrears.

Whilst it is recognised that retrospective legislation can in some circumstances be appropriate and desirable, it is not generally to be encouraged. It is not sufficiently clear within the Explanatory Memorandum why there has been a delay of over 7 months in laying this Order. It is not sufficiently clear within the Explanatory Memorandum why there has been a delay of over 7 months in laying this Order. It is not sufficiently clear within the Explanatory Memorandum why there has been a delay of over 7 months in laying this Order.

It is the view of the legal advisers to the Committee that this instrument engages Article 1 Protocol 1 of the European Convention on Human Rights ("A1P1") which provides as follows:-

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
- (2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*

The Committee is concerned that the Explanatory Memorandum does not address whether following the statement for the Cabinet Secretary for Environment and Rural Affairs on 5 April 2017, there was any further communication with employers of agricultural workers to make them aware that any increases in rates of pay would be backdated.

The Committee is unable on the information available to form a view on whether the Order is compatible with A1P1.

Section 81 of the Government of Wales Act 2006 provides that the Welsh Ministers have no power to make any subordinate legislation so far as it is incompatible with any of the Convention Rights.

**[Standing Order 21.2 (i) that there appears to be doubt as to whether it is intra vires; Standing Order (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority].**



## Merits Scrutiny

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Implications arising from exiting the European Union

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No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Government Response

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A government response is required.

### **Legal Advisers**

**Constitutional and Legislative Affairs Committee**

**November 2017**



Jane Hutt AC/AM  
Arweinydd y Tŷ a'r Prif Chwip  
Leader of the House and Chief Whip



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-L-LG-0691-17

Elin Jones AM  
Presiding Officer  
National Assembly for Wales

2<sup>nd</sup> November 2017

*Dear Elin,*

### **The Agricultural Wages (Wales) Order 2017**

In accordance with guidance I am notifying you that section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, which affords the rule that statutory instruments come into force at least 21 days from the date of laying, will be breached for the introduction of the above or Order. The Explanatory Memorandum is attached for your information.

### **Background**

The Agricultural Advisory Panel for Wales (the Panel) was established under the Agricultural Sector (Wales) Act 2014 on 1 April 2016. The Panel's remit includes reviewing wages and other employment conditions and support skills and career development in the agricultural sector.

At present, agricultural workers in Wales are subject to the rates specified by the Agricultural Wages (Wales) Order 2016 (2016 Order). The order came into force on 26 February 2016 and was the first wages order made under the 2014 Act. Section 4(2) of the Act provided the Welsh Ministers with the power to introduce a wages order, before the Panel was established.

The Panel agreed to increase wages to agricultural workers and consulted on the proposals in the autumn of 2016. The Panel's original timeline proposed to have the new Order in force on 1 April, the same date the UK National Living Wage (NLW) and National Minimum Wage (NMW) increases took effect. New wage rates for agricultural workers in Scotland and Northern Ireland came into force on this day as well.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Panel's aim was to align the agricultural minimum wage increase with NLW and NMW changes. However, the 1 April coming into force date was not achievable.

It was necessary to refer the Order back to the Panel for re-consideration which presented delays in bringing the new Order forward. Article 3(2) of the Agricultural Advisory Panel for Wales (Establishment) Order 2016, made under the Agricultural Sector (Wales) Act 2014, sets out the Panel's functions. The functions include preparing wages orders in draft and submitting these to the Welsh Ministers for approval. In accordance with Section 4(1) of the 2014 Act, the Welsh Ministers have the power to a) approve and make the order, or b) refer the order back to the Panel for further consideration.

The Panel proposed backdating all provisions within the 2017 Order. Giving retrospective effect to the 2017 Order would recompense those agricultural workers who had expected an increase in their hourly wage and allowances from the 1 April 2017.

This is the first time the Panel prepared a draft wages order since its establishment on 1 April 2016 and there have been some difficulties in setting up the effective process for making new wages orders as required under the statutory procedures of the Agricultural Sector (Wales) Act 2014 and the Agricultural Advisory Panel for Wales (Establishment) Order 2016.

Until the Agricultural Wages (Wales) Order 2017 comes into force, agricultural workers in Wales are subject to NLW/NMW levels which override some of the Agricultural Minimum Wage (AMW) levels in Wales. To minimise disruption and ensure workers are paid in accordance with the AMW rates agreed by the Panel, and above the UK NMW and NLW levels, it is proposed the Statutory Instrument will breach the 21 day rule.

A breach of the 21 day rule is thought necessary and justifiable in this case on the basis it will reduce any further delay in bringing uplifted agricultural wage rates into force, so minimising the time period agricultural workers in Wales continue to be subject to the UK NMW and NLW levels and 2016 Order rates, rather than the AMW rates set out in the Agricultural Wages (Wales) Order 2017.

An Explanatory Memorandum has been prepared and this has been laid, together with the Regulations, in Table Office.

A copy of this letter goes to Huw Irranca-Davies AM, Chair of the Constitutional and Legislative Affairs Committee and Chris Warner, Head of Policy and Legislation Committee Service.



**Jane Hutt AC/AM**

Arweinydd y Tŷ a'r Prif Chwip

Leader of the House and Chief Whip

# Agenda Item 11

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