

Changes to water abstraction licensing exemptions

Government response to the 2009 consultation and further consultation on implementing the abstraction elements of the Water Act 2003 (Jan 16)

Blueprint for Water coalition

The Blueprint for Water is a unique coalition of environmental, water efficiency, fisheries and angling organisations that is calling on the Government and its agencies to set out the necessary steps to achieve “sustainable water” by 2021. The Blueprint for Water is a campaign of Wildlife and Countryside Link. More information on www.blueprintforwater.org.uk

Summary

Blueprint members fully support the proposals to bring current exemptions into the abstraction licensing process. This will help the regulator to have a more complete picture of water use in each catchment and will help with wider work tackling the problem of abstractions that have the potential to cause damage to the environment now and in the future. The proposals will make the whole system fairer to all abstractors.

Blueprint for Water coalition strongly support the wider programme of abstraction reform as set out in the UK and Welsh Governments’ response to the 2013 consultation ‘*Making the most of every drop – a consultation on reforming the water abstraction management system*’. It is crucial that abstraction reform is laid out in primary legislation and delivered as soon as possible. If proposals adequately protect the environment then abstraction reform could form a valuable part of the 25 year plan for the environment. Reform of the system is highly necessary to create a fairer and more modernised approach, one that offers long term sustainability and resilience and adequately reflects the availability of water both spatially and temporally and adequately protects the environment.

Key points:

- We support the inclusion of Hands off Flow (HoF) limits for all New Authorisations in order to protect the environment and other abstractors at times of low flows. The environment needs to be protected in all catchments during low flows/droughts not just in catchments with over abstraction or over licensing issues. A Qn 95 should be a minimum HoF requirement in all catchments and 75% Qn99 will not adequately protect the environment
- We believe it should be possible to use local evidence where it exists to review and potentially amend the universal HoF to take into account local understanding of risk.
- We are concerned that focussing on HoF and environmental flow levels may not offer adequate protection to ensure there is enough water to maintain the condition of water dependent terrestrial designated areas (SPA, SSSI). We feel this issue requires further consideration and would like clarity over whether this should be adequately covered under any assessment of serious damage.
- We welcome proposals to specifically address New Authorisations that are causing serious damage.
- We believe it needs to be made clearer regarding when activities around managed wetlands are exempt or not.

Response to Specific Questions Posed in this Consultation

Q1. How long do you think the period applicable for the temporary construction abstraction exemption should be?

Four weeks

Three months

Six months

Longer than six months

Please explain the reasons for your answer above.

No response

Q2. The Impact Assessment at Annex D discusses the evidence for the proposal around planned abstractions. Please let us know of any other evidence you are aware of that should be considered in respect of planned abstractions?

No response

Q3. Do you agree with the Government's proposal to exclude from transitional arrangements compensation provisions for those who have plans to abstract in the future?

Please explain the reasons for your answer above.

Yes, we agree that any planned abstractions should be dealt with in the same way as any other new application and should not be part of the new authorisations process. If planned abstractions were included at this stage it would make it much more difficult for the regulator to ensure that the environment will not be over abstracted. The current proposal is also fairer to abstractors already in the license process who have plans to abstract in the future as both abstractors under licence and new authorisations will be given the same compensation arrangements.

Q4. What do you think are the main issues or challenges that might arise from excluding planned abstractions from the New Authorisations transitional arrangements?

What do you think are the main benefits?

It is a fairer system where abstractors are all treated the same. There is a risk that if new authorisations are allowed as planned abstractions within the transitional arrangements they may try and ensure that in the next two years they put in place planned increases in abstraction which they would not otherwise have considered. Abstractors already in the current system will not have the same opportunity.

In addition the consultation claims that moving exempt licenses into the system is environmentally neutral because the amount abstracted is already accounted for within the system. Including planned abstractions within the New Authorisations transitional arrangements will mean that this is no longer the case and there will be greater risks to the environment.

Q5. What other pieces of evidence do you think abstractors could use to meet the evidence requirements for applications?

If gravity movement of water across structures and between ditches within a drainage district to manage water levels is to be licensed then careful thought will need to be given to the evidence required to enable the transition as these activities are generally not measured. One piece of evidence that could be useful is the agreed (signed) Water Level Management Plan for that area. It

will be important to make clear to those making the application what metrics would be of use if direct volumes are not available in order for the applicants to provide suitable evidence.

Q6. Do you think putting basic universal HoFs on New Authorisations licences to protect the environment from damage caused by low river flows or drought is an effective control to protect against environmental damage?

We support the use of HoF restrictions for all New Authorisations. This not only helps to protect the environment but other abstractors as well. We believe that it is essential that all New Authorisations should have controls such as HoFs (or levels) to protect the environment from damage caused by low river flows or drought.

We believe that a HoF of Qn95 on New Authorisations is a minimum for all catchments not just over-abstracted or over-licensed catchments. We do not believe that a HoF limit of 75% of Qn99 will adequately protect the environment during times of low water availability. At this level environmental damage will already be occurring.

In some situations we do not believe that Qn95 will be adequate to protect the environment and local evidence should be used to indicate when an alternative is appropriate. For example there may be local evidence that indicates damage is caused at flows above the Qn95 in which case the alternative control level should be adopted as the HoF. At some locations there may be particularly sensitive times of the year, species or habitats or water quality concerns that require use of an alternative threshold locally. For example the environmental requirements of a spate river are very different to those of a groundwater river with a high base flow, and salmonid rivers require HoF's which protect migration and wetted areas for juvenile production. There needs to be a mechanism laid out whereby local alternative thresholds can be considered and determined.

For designated rivers, common standards monitoring guidance flow targets have been established to ensure protection of the European interest features, and these should be taken into account when setting locally-appropriate HoF levels. Catchment appropriate HoF are particularly important for managing water availability in catchments with water dependent terrestrial protected areas and ensuring these areas are not damaged by abstraction. A robust approach to identifying 'serious damage' should feed into ensuring appropriate values are set and should not only consider in-river habitat but also the impact on habitats dependent on water from the abstracted water body.

However, it is also essential that existing abstraction licences have similar provisions applied. We note that this is the intention as part of the wider abstraction reform proposals. It is critically important that this is brought in as soon as possible for a fair system that protects the environment. We would support proposals to apply HoF type controls universally for both existing and New Authorisation at the same time (and sooner than the 2020s).

Q7. Do you think a universal HoF of Qn95 on New Authorisations licences is the right level for licences in over-abstracted catchments?

Whilst we support the use of HoF for New Authorisations Qn95 should be the minimum HoF requirement. We believe that in some over-abstracted and over-licensed catchments implementing HoF at Qn95 flows is insufficient to adequately protect the environment and the interests of other water users. In addition many water bodies such as flashy upland streams typically used by spawning salmonids, would be damaged by setting such a low HoF. There are far tighter controls (Qn70, Qn50) already being applied by the regulators to manage the impacts of existing and new licenses in over-abstracted and over-licensed catchments and also and in low baseflow catchments, e.g. Hydro Good Practice Guidelines, table C – for Flashy rivers (Qn95:Qmean<0.1) HoF is Qn90. Although a step in the right direction a Qn95 HoF for New Authorisations will represent a low level of environmental protection and it should be regarded as such.

We welcome proposals to specifically address New Authorisations that are causing serious damage.

Q8. Do you think a universal HoF of 75% of Qn99 on New Authorisations licences is the right level in catchments that are not over abstracted?

We do not believe that a universal HoF of 75% of Qn99 on New Authorisations licences is the right level. The purpose of the HoF is to protect the environment from damage during periods of low flow and drought. 75% of Qn99 will not adequately protect the environment during low flow periods. Considering that for catchments where flow does not support Water Framework Directive objectives a HoF of Qn95 is to be implemented, it appears illogical that a HoF elsewhere of 75% of Qn99 could be sufficiently protective so as to avoid 'no deterioration' under the same directive. A flow of Qn95 has generally been taken as an appropriately protective threshold unless local evidence indicates an alternative is more appropriate. When flows fall to the threshold below which damage can result then HoF need to be initiated regardless of whether the catchment is over-abstracted, over-licensed or neither.

Q9. What do you think are the main issues or challenges that might arise from using basic universal HoFs? What do you think are the main benefits?

Please see our answers to the previous questions.

The science linking environmental response to flow / level change and to abstraction is complex and evolving. We believe it is important that additional hydrological, water quality and ecological data is collected before, during and after low flow events to improve our understanding of impacts of abstraction and the success or otherwise of control measures. This data would also be of value in any discussions around local alternatives to the universal Qn95. Collection of this data should be laid out in a Drought Monitoring Plan which sets out the what, where, how and by who with regards monitoring. We are aware that water companies develop and make use of such plans and recommend that this good practice is extended under the co-ordination of the Environment Agency (or NRW) to include other abstractors in drought prone catchments. This approach could be broadened out still further with the inclusion of additional information about wider drought management measures and actions (contact points, flow threshold triggers, monitoring, communications, resilience measures) to develop an agreed Drought Management Plan with the aim of improving resilience in drought prone catchments.

Given the need to protect the environment and ensure sustainable water resources for all abstractors in a fair system DEFRA and the regulator should consider their role in encouraging business resilience and to support abstractors and others to enable better use of water resources. For example through advice to farmers and planning authorities around on-farm water storage which could be used for when HoF are triggered.

Q10. Do you think there is an alternative approach that should be used to ensure environmental protection?

Please explain your response.

- Whilst we welcome the use of HoF or level controls to protect the environment we believe that it should be possible to amend any universal threshold based on local evidence of damage or significant concerns over the risk of damage. As highlighted above there needs to be a mechanism to facilitate this.

- Proposals under the new abstraction reforms encourage additional abstraction at times of high water levels such as for storage. We are concerned that there is no provision to ensure SSSI/SPA/SAC wetlands receive necessary high water flows and bank overflows.
- There is no current mechanism to ensure that habitats dependent on groundwater are protected from low water levels. It is important that groundwater systems are also protected. It might be that this has to be done on a case by case basis and should be considered at this stage as well as during the wider abstraction reform process.
- We are concerned that there are instances where previously-delivered habitat enhancement schemes on private land and existing Higher Level Stewardship schemes are dependent on currently exempt abstraction which might require bringing into the licensing system (for example creation & management of southern damselfly habitat). Such schemes may be currently unfunded or are unlikely to have factored in the cost of the licence and may therefore be abandoned. We would like to know how DEFRA and the EA could safeguard such valuable schemes.

Q11. Do you agree with the proposal to include volumes on transfer licences under New Authorisations? Please explain the reasons for your answer above.

We agree.

Q12. Do you agree with the intention of Government and the Regulator to use EIUC funds already collected, that are potentially no longer required for the completion of the Restoring Sustainable Abstraction programme, to fund any compensation that may result from the implementation of New Authorisations?

Please explain the reasons for your answer above.

We agree. It is important that the environment is adequately protected to ensure long term sustainable water management. As such it may be necessary to put in place control measures on New Authorisations that require compensation. It seems reasonable to use EIUC funds to do this as it is a logical extension of the Polluter Pays Principle to abstraction.

Q13. The Government expects the Regulator to raise and use funds collected through the EIUC from non-water company charge payers to pay any compensation identified under New Authorisations. Taking into consideration that there is unlikely to be additional Government money available, do you agree with this approach?

Please explain the reasons for your answer above.

We agree, see answer to Q12.

Q14. Can you suggest any alternative ways to fund compensation?

There may be instances where third party beneficiaries to reduced abstraction (eg riparian/fishery owners and NGO's such as Rivers Trusts) may be able to provide top up funding where EIUC is insufficient

Q15. Having read the Government response to the 2009 consultation on implementing the abstraction elements of the Water Act 2003 in Part I and taking account of the revised proposals in Part II, do you have any other comments about the overall policy approach to New Authorisations?

We support the overall policy approach to New Authorisations and the wider abstraction reform process.

Q16. Do you have any suggestions as to how we could implement the requirement for licensing control in a way that further reduces the burdens for abstractors, whilst achieving effective regulation?

- Allowing a New Authorisation to include multiple points of “abstraction” from the same source by the same organisation. Such a system would need to be able to respond to specific situations, especially for abstractions from groundwater that are adjacent to a sensitive groundwater dependant wetland. In these cases the proximity of the abstraction point can be important, even if it is part of a wider network abstracting from the same water body and the regulator may need to retain the ability to reduce or stop abstractions from a single point.
- A pragmatic and realistic expectation of the evidence needed to secure a New Authorisation where water movement is by gravity and unmeasured is needed.
- Clear guidance is needed particularly around the application requirements for currently unmeasured abstraction; what is exempt or requires a licence particularly regarding managed wetlands and drainage districts. Further clarity is also needed on how double counting/charging will be avoided where there is the IDB primary abstraction into the drainage district and then that same water is abstracted within the district by irrigators and others.

Q17. If there is anything else you would like to add to your response please include.

We understand the arguments behind limiting the qualifying period for New Authorisations to abstractions that have been used in the last four years. However, the volume of water needed to maintain environmental condition of habitats which require water level management can vary significantly year to year depending on prevailing and antecedent rainfall patterns. It is important that in setting a limit for the licence that an appropriate range of weather conditions are considered including wet, average, dry and drought years. We request that such information can be included for consideration in discussion between the regulator and an abstractor.

Further consideration is needed regarding abstraction to maintain favourable conservation status of protected areas during dry periods especially when HoF limits are applied. This may result in negatively impacting a protected area in order to maintain levels of undesignated downstream river.

In some situations a land manager has multiple abstractions on their land from different water sources and would therefore require several licences, the cost of which quickly adds up. Small businesses or NGOs could find this financially difficult. For example Hampshire Wildlife Trust have at least 5 transfer licences (possibly up to 10) that will be brought in under this scheme which will cost them at least £7500 possibly up to £15,000 which is financially significant for them. We seek clarity on how the regulator would deal with such a situation. There is a large difference between the one off fee of a non-consumptive abstraction (transfer licence) and a consumptive licence. Has DEFRA and the regulator considered whether this disparity disproportionately affects environmental delivery?

The consultation does not mention any proposals around groundwater management. It is important that as this process goes forward that it is made clear how DEFRA and the regulator plan to ensure sustainable abstraction of groundwater and adequate protection of the environment which relies on groundwater.

Blueprint for Water coalition

This consultation response is supported by the following 13 organisations:

- Amphibian and Reptile Conservation
- Angling Trust
- Buglife
- Friend of the Earth - England
- Institute of Fisheries Management
- Salmon & Trout Conservation UK
- RSPB
- The National Trust
- The Rivers Trust
- The Wildlife Trusts
- Woodland Trust
- Wildfowl & Wetlands Trust
- WWF - UK

Wildlife and Countryside Link

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