

## **Defra, Welsh Government, Environment Agency, Natural Resources Wales Changes to water abstraction licensing exemptions in England and Wales: New Authorisations**

### **Background to CIWEM**

CIWEM is the leading independent Chartered professional body for water and environmental professionals, promoting excellence within the sector. The Institution provides independent comment on a wide range of issues related to water and environmental management, environmental resilience and sustainable development.

CIWEM welcomes the opportunity to respond to Defra, the Welsh Government, the Environment Agency and Natural Resources Wales on their intended approach to remove most exemptions from water abstraction licensing and bring these abstractions under licensing control (New Authorisations). In formulating this evidence, we have utilised the expertise of our Members within CIWEM's Water Resources technical panel.

### **Summary**

Most current water abstractions are licensed. However some activities are exempt. This consultation considers licensing most of the currently exempt water abstractions. CIWEM welcomes the licensing of most of the current exempt licences as this enables water resources licensing to be much more comprehensive and effective.

The main activities currently exempt are abstractions for navigation and abstractions for irrigation other than spray irrigation, (which in the UK is almost entirely trickle irrigation).

Navigation abstractions (from sources close to the canal network, for purposes of maintaining water levels in it) are generally for limited quantities and have been happening for around two hundred years.

Abstractions for irrigation are largely for trickle (or drip) irrigation of high value and horticulture crops. Such irrigation is a highly effective and efficient method of crop irrigation, in terms of crop yields. It is required to meet supermarket quality standards and is for food that would generally otherwise need to be imported. Farmers and growers use less than 2% of total water abstracted, on average, but a significantly higher percentage at the height of the growing season, and in dry and drought years in particular.

Global climate change means that the UK may need to increase its domestic food and water security to offset potential disruption of food imports from countries that face even more extreme weather events than us. Policies should link water security and food security.

CIWEM believes that constraints on the abstraction of water from surface and ground water bodies need to be applied to protect the environment where and when that protection is needed. Fixed 'hands off flow' (HoF) conditions applied to all abstraction points sources on the same basis are unlikely to be efficient or effective, and a more targeted, site-needs based approach is deemed necessary.

CIWEM suggests that abstraction constraints on new authorisations should be determined by regard to the interests and case of all users, both existing and new. If further reductions to abstractions are needed because a catchment is over-abstracted then these should be delivered by making adjustments to all abstractions, and not solely to an abstraction which is the subject of a new authorisation.

### **Answer to consultation questions**

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

CIWEM does not have a view on this question.

2. 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?

Evidence on planned abstractions for agriculture should include the amount of agricultural produce it would provide. Should there be concern about the impact of the planned abstraction on the water environment then the environmental impact of alternative sources of that produce, including such items as the CO<sub>2</sub> in the transportation of the alternative produce should be taken into consideration.

3. 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.

CIWEM does not have a view on this question.

4. 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?

CIWEM does not have a view on this question.

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

The consultation includes examples of suitable evidence as including meter readings, pump ratings, invoices for equipment, photographs of infrastructure, business receipts and contracts. The provision of a Statutory Declaration signed by a suitably qualified professional could usefully be added to the list as part of a range of evidence sources as evidence that abstraction has taken place.

Although the 'four year rule' should be sufficient in many cases, there can be great variability of rainfall and crop water needs. Also the rotation of crops to maintain soil fertility can mean large variations in crop water requirements from year to year. Thus provision should be made within the legislative process to cater for different circumstances. Applicants should be given the opportunity to provide evidence of peak use from earlier years to cater for abstractions in peak periods and in drought conditions and other variable situations.

6. 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?

This approach would bring additional regulatory control to previously exempt abstractors that many existing licence holders do not experience. This does not align with the statements that refer to the exempt abstractions already being an integral feature in the catchment water balance and to ensure that the transitional arrangements receive a light touch in terms of regulatory burden. Given that many abstractions for navigation purposes pre-date the Water Resources Act, 1963 they are arguably some of the most established operations.

On the other hand, existing abstraction permissions have led to the significant problem of over-abstraction and over-licensing which the Restoring Sustainable Abstraction programme is in process of attempting to rectify. CIWEM believes that the licensing of abstractions from previously exempt users needs to be managed in a way that does not prejudice the needs of those against other licensed users, but which also does not prejudice the restoration of sustainable abstraction permission nationwide.

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

CIWEM suggests that abstraction constraints on new authorisations should be determined by regard to the interests and case of all users, both existing and new. If further reductions to abstractions are needed because a catchment is over-abstracted then these should be delivered by making adjustments to all abstractions, and not solely to an abstraction which is the subject of a new authorisation.

8. 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 the inclusion of a universal HOF on new authorisations in catchments that are not over abstracted or over-licensed is justified.

9. In any event, we consider that the adoption of such a low level of protection for the environment that a value of 75% of Qn99 would provide would be completely insufficient in any situation. 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 note our responses to questions 7 and 8 above. We consider a simple HOF control on abstraction to be too crude, too insensitive (to variations in the situation) and too rigid.

10. Do you think there is an alternative approach that should be used to ensure environmental protection? Please explain your response.

Please see our responses to previous questions.

CIWEM believes that environmental protection needs to be secured through considering all abstractions within the catchment, both licensed and unlicensed and sharing the burden of achieving reductions amongst all abstractors. Any other approach will treat abstractors applying for new authorisations less favourably than existing licensed abstractors.

Abstractions for navigation purposes typically support another waterbody under WFD, and therefore environmental protection needs to be considered for both the donor and recipient waterbody.

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

CIWEM does not have a view on this question.

12. 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.

CIWEM believes that EIUC funds collected from particular sectors should be used to fund for actions in relation to that sector alone, and not used elsewhere. Should surplus EIUC funds exist, they should be repaid pro-rata to those who delivered them.

13. 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.

CIWEM does not have a view on this question.

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

CIWEM does not have a view on this question.

15. 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?

CIWEM remains concerned that new authorisations will be issued on the basis of abstraction over the four years prior to commencement of the regulations. The level of abstractions are very dependent on rainfall conditions, some abstractions will only be made during periods of severe drought, and four years is simply not a long enough period of time to reflect the different conditions which can occur.

CIWEM is of the view that abstractors may be unable to obtain licences for some sources which although they may not have used them in some time are critical in times of drought and that there is potential for valuable capital assets to be rendered worthless.

CIWEM considers that it would be more sensible for applications to reflect "reasonable future need" or at the very least to take account of abstraction made over a longer time period where such abstraction can be evidenced.

Notwithstanding the points made above, CIWEM believes that abstraction permissions must be controlled to avoid the risk of damage to the environment, and that suitably precautionary measures should be taken to ensure so.

### Serious damage

'Serious damage' provisions were not introduced until 2012 and so were not part of the earlier consultation on New Authorisations. These provisions allow the Environment Agency to revoke or vary abstractions which are causing serious damage, with no compensation payable.

Because the principles of serious damage are untested, the legal process for dealing with New Authorisations will need to be clear and transparent and in accordance with section 27 of the Water Act 2003. For example, there must be recourse to the Secretary of State in all cases to determine that abstraction changes are necessary to protect the environment from serious damage.

16. 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?

CIWEM does not have a view on this question.

17. If there is anything else you would like to add to your response please include it here.

CIWEM welcomes the proposal to extend the exemption for dry docks which abstract and return water to the same water system to all operators. It agrees that these have no significant environmental impact and as a consequence do not require regulation through an abstraction licence.

CIWEM notes that the drafting of regulations with respect to serious damage provide that whether or not there is "serious damage" and hence eligibility for compensation, these may be determined by the Environment Agency or Natural Resources Wales. This is in contrast to the usual situation under section 27 of the Water Act 2003 which provides that the Secretary of State must be satisfied that changes are necessary to protect from serious damage for the entitlement to compensation to be removed. CIWEM suggests that the transitional regulations should be consistent with section 27 of the Water Act 2003 in this respect.

CIWEM believes that the inclusion of draft Statutory Directions that will be issued to the Regulator should have been part of the consultation to provide a complete picture of how the implementation of the new authorisations will be achieved.