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# The Water Act 2003

## Modernising the Regulation of Water Resources



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# The Water Act 2003

## Modernising the Regulation of Water Resources

The Water Resources Act 1991 controls the abstraction and impounding of water. You generally need a licence to carry out these activities, although some activities are exempt. In November 2003 the Water Act 2003 was passed. This makes significant changes to the current legislation. The Environment Agency has produced this leaflet to briefly explain these changes.



### Why was the new Water Act introduced?

The droughts of the 1990's showed that existing legislation did not enable adequate management of water resources and protection of the environment. A Government review led to the publication in 1999 of *Taking Water Responsibly*. This signalled important changes, including a move towards time limited licences and the development of Catchment Abstraction Management Strategies (CAMS). The Water Act 2003 is a key element in this programme and makes significant changes to the licensing system.

### What will the Water Act 2003 achieve?

It will change the licensing system in six key areas:

- all small abstractions, generally under 20 cubic metres per day (m<sup>3</sup>/d), will not need a licence;
- dewatering of mines, quarries and engineering works, water transfers into canals and internal drainage districts, use of water for trickle irrigation and abstractions in some areas which are currently exempt will now need a licence to make sure that they are managed appropriately and that any impact on the environment can be dealt with;
- administration for making applications, transferring and renewing licences will be made simpler. This will also reduce barriers to the trading of water rights;

- the status of licences has changed significantly, as all abstractors now have a responsibility not to let their abstraction cause damage to others. From 2012, the Environment Agency will be able to amend or take away someone's permanent licence without compensation if they are causing serious damage to the environment;
- there will be an increased focus on water conservation. Water companies will have new duties to conserve water and all public bodies will need to consider how to conserve water supplied to premises. The Government has new responsibilities for monitoring and reporting progress in this area;
- water companies will need to develop and publish water resources management and drought plans. The Environment Agency will be able to encourage transfer of water resources between water companies and recover costs associated with drought orders and permits.

The key changes made by the Act and the groups affected are summarised overleaf. For more detailed information or interpretation, please refer to the Water Act itself or consult your legal adviser.

## Who will be affected by the new Water Act?

Many different sectors will be affected, but the main impact will be on the following:

- small abstractions (generally those under 20m<sup>3</sup>/day);
- dewatering operations for mining/quarrying/engineering works;
- water transfers for canals and harbours;
- transfers into internal drainage districts;
- agriculture (small abstractions/trickle irrigation);
- water industry.

## When will the Water Act be implemented?

The Water Act is being implemented in phases.

Some changes were introduced from April 2004. These are marked overleaf with an\*. Other changes will be introduced later; we currently expect most of them to come in during 2005/06.



## Existing licences

Many licences will be unaffected by the changes. The main changes for existing licence holders include:

- **small abstractions will no longer need a licence** – in most cases a standard threshold of 20 cubic metres per day (m<sup>3</sup>/d) will be applied. About 23,000 licence holders will no longer need a licence. The rights afforded to these licence holders will remain but will need to be registered to protect these rights in areas where a register is set up; (see **register of exempt protected rights**)
- **local exemption thresholds\*** – in some areas the standard deregulation threshold of 20m<sup>3</sup>/d may not be appropriate to protect the environment and a lower threshold may be set. In other areas a higher threshold may be set;
- **revocation of licences that have been not been used for four years\*** – if a licence is not used for four years (previously seven years) we can revoke it and not pay compensation. The shorter period only applies in cases where the period of non-use began after 1st April 2004. We will not use this power in cases where a period of non-use is part of the agreed need for a licence, e.g. emergency supply or periods when irrigation is not required;
- **end to compensation from 15th July 2012\*** – if an existing licence is causing serious damage to the local environment we may vary or revoke the licence. From the 15th July 2012 holders of permanent licences will not be entitled to compensation for any such change;
- **new provisions for third parties to pursue claims against abstractors** – if an abstraction causes loss or damage to another person, that person will have the legal right to claim damages against the abstractor. This provision only relates to loss or damage incurred after 1st April 2005 and removes the licence holder's existing defence provided by the abstraction licence;
- **powers to ask for information** – we now have stronger powers to require information about abstractions, impoundings and any related matters, as part of our water resources management activities;

- **extended powers of entry for water resources activities\*** – we now have greater powers in relation to our enforcement and inspection activities;
- **enforcement notices** – if an unlawful abstraction or impounding, or an activity that contravenes the conditions of a licence causes significant environmental damage, we will be able to issue an enforcement notice;
- **increase in magistrates' fines\*** – the maximum fine that can be imposed for each offence has been increased from £5,000 to £20,000;
- **water resources management arrangements** – we currently have the authority to make arrangements (often referred to as Section 20 arrangements) with water undertakers. The Water Act will allow us to make arrangements with other licence holders.

## Abstraction licence applications, variations and transfers

- There will be 3 types of licence:
  - **'temporary licences'** for water abstraction for any purpose over a period of less than 28 days. These will not have protected rights status.
  - **'transfer licences'** – for water abstraction to:
    - transfer water from one supply source to another (e.g. navigation and transfers into internal drainage districts),
    - transfer water within the same source for dewatering activities in connection with mining, quarrying, engineering works etc,
 in either case without intervening use. These will not have protected rights status.
  - **'full licences'** – for water abstraction for any other licensable use. These will have protected rights status. All existing licences after deregulation of small abstractions will automatically become 'full licences';

- **rights of access** – applicants must have a right of access to the abstraction point(s) to be able to submit a licence application;
- **applications to be accompanied by reports** – this largely reflects the current practice of submitting environmental reports;
- **revised advertising arrangements** – we will manage the advertising process and recover the costs from applicants. We will also have greater discretion to waive the requirement to advertise;
- **land\*** – licences will not have to specify the land on which abstracted water can be used. We will have discretion to specify land, where we think it is necessary;
- **purpose\*** – all licences will state what purpose the water will be used for;
- **start and end dates on licences\*** – it is now a legal requirement to record a start and end date on all new abstraction licences;
- **curtailment conditions** – for full licences lasting more than 12 years, a 'curtailment condition' will need to be included on the licence (this is optional in the case of transfer licences). This means that the Environment Agency can give the licence holder six years notice of the abstraction licence changing to a lower authorised quantity (as defined on the licence) without having to pay compensation. It will be for us to decide whether to issue such a notice;

- **simplified licence transfer (succession) arrangements** – existing and proposed new licence holders will both need to sign up to the transfer of a licence. Licensed volumes may be split between two or more parties. It will be up to the parties involved to agree on the apportionment, and for the Environment Agency to authorise the licences.

## Impoundings

- **impounding provisions** – several new provisions will be available for us to tackle problematic impoundings, for example on streams, lakes and ponds etc. Impounding licences will be needed for the life of any such works.



## Renewal of time limited licences

- **continuing period of validity of a time limited licence\*** – as long as an application to renew a time limited abstraction licence is received three months before it runs out, the existing licence will continue to be valid until the new licence is issued.
- **consideration of protected rights\*** – we no longer have to consider existing protected rights when dealing with an application to renew a licence on the same terms and conditions.

## Removal of exemptions

- **removal of exemptions** – you will need a transfer licence for:
  - dewatering of mines, quarries, tunnels, construction, road building etc.;
  - transfers for navigation, harbour and conservancy authorities;
  - land drainage purposes – including transfers into Internal Drainage Board districts, for water meadows, warping, wet fencing etc.

A full licence will be required for trickle irrigation.



- **removal of exempt area status** – there are several areas within which there is an exemption from the need for an abstraction licence. The Secretary of State or National Assembly of Wales may make an Order to cancel those exemptions and introduce licensing to these areas;
- **transitional arrangements** – these will apply to anyone abstracting before an exemption is removed and will be achieved through Regulations. These Regulations (which have to be approved by Parliament and the National Assembly of Wales) will give more detail on matters to be considered in deciding if licences can be granted for existing activities;
- **further exemptions** – there may be some water uses that will not have a significant effect on the environment or interfere with other abstractions. The Secretary of State or National Assembly of Wales may make Regulations, which provide exemption for further cases.

## Register of exempt protected rights

- **Register of exempt protected rights\*** – we have the power to apply to the Secretary of State or National Assembly of Wales for an Order which designates an area as one of compulsory registration. If a register is set up, those exempt abstractions not recorded on the register will not keep their protected right status;

This would apply both to those whose activities are currently exempt, and will remain so, as well as to those who currently hold licences that will become exempt under the new legislation.

## Water companies

- **water conservation\*** – Water companies now have a responsibility to include water conservation in their operations;
- **water resources management plans and drought plans** – water companies will be required by law to prepare, consult upon and publish water resources management plans and drought plans;
- **bulk supplies and re-allocation of resources** – we will have the power to propose to a water company that it applies to the new Water Services Regulation Authority for a bulk supply from another water company. We may also cancel a water company's abstraction licence to re-allocate that resource to another water company;
- **drought order and drought permit cost recovery\*** – we can recover any additional costs that we may incur from a water company that applies for an order or permit.

## What action do I need to take now?

In short – nothing, unless we advise you. If you need to take any action or a change affects your licence, we will write to you in good time. We will seek to ensure that those needing to apply for a new licence will be made aware through appropriate publicity at the relevant time.

The two key groups we will need to speak with are:

- **abstractors of small quantities of water for domestic or agricultural purposes** who may need to register a protected right but who will not need a licence;
- those people who, as a result of the changes, will need to apply for licences for activities that are exempt from control. These are mainly the **mining, quarrying and construction industries; navigation, harbour and conservancy authorities; Internal Drainage Boards and trickle irrigators.**

We will work with representative bodies of such groups to make sure that everyone fully understands the issues involved.

## Conclusion

The Water Act 2003 will significantly change how water abstraction and impoundment is regulated. It aims to improve protection of the environment and to provide a more flexible process of regulation. The changes will be implemented over a number of years. Between now and 2012, we need to resolve significant problem areas and achieve sustainable water resources management. Responsible abstractors who are committed to the sustainable use of precious water resources will want to achieve these changes too and work with us to deliver a better environment for future generations.

## Where can I get more information if I need it?

We want to help those people affected by the Water Act understand its impact and how changes will be managed.

**For more information:**

- log onto our web-site at – [www.environment-agency.gov.uk/subjects/waterres](http://www.environment-agency.gov.uk/subjects/waterres)
- email us at – [alr@environment-agency.gov.uk](mailto:alr@environment-agency.gov.uk)

- or write to us at the following address:

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Environment Agency,  
15-17 Lower Queen Street,  
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