EXPLANATORY MEMORANDUM TO

THE WATER ABSTRACTION (TRANSITIONAL PROVISIONS) REGULATIONS 2017

2017 No. 1047

THE WATER ABSTRACTION AND IMPOUNDING (EXEMPTIONS) REGULATIONS 2017

2017 No. 1044

THE WATER ABSTRACTION (REVOCATIONS ETC.) (ENGLAND) ORDER 2017

2017 No. 1046

AND

THE WATER ABSTRACTION (SPECIFIED ENACTMENTS) REGULATIONS 2017

2017 No. 1042

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instruments

2.1 This is a single explanatory memorandum for a group of instruments which together implement the abstraction elements of the Water Act 2003, which end abstraction licence exemptions. They provide:

- transitional arrangements for the application for, and determination of, abstraction licences to bring previously exempt abstractions under licence control;
- exemptions for abstraction activities that have insignificant impacts on the water environment, which would otherwise become licensable;
- for the removal of some area based exemptions from abstraction licensing; and
- modifications to the Environment Agency's and the Natural Resources Body for Wales' usual considerations of minimum acceptable flows and existing rights and privileges in their determinations of these licence applications.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As these instruments are subject to the negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 These instruments together implement the abstraction elements of the Water Act 2003. The Water Act 2003 introduced a number of changes to 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 Water Act 2003 also gave powers under section 33A of the Water Resources Act 1991 to enable the Secretary of State to make regulations providing for further cases for exemptions from the restriction on the abstraction or impounding of water. The changes in the Water Act 2003 will be brought into effect at the same time as these instruments come into force.

4.2 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. In order to end most area-based exemptions from abstraction licensing, the Water Abstraction (Revocations etc.) (England) Order 2017 will revoke Orders made under section 33 of the Water Resources Act 1991 or similar provisions. The Water Abstraction (Specified Enactments) Regulations 2017 specify enactments in the Water Resources Act 1991 so that nothing in those provisions can prevent the grant of an abstraction licence. The Water Abstraction and Impounding (Exemptions) Regulations 2017 will provide for some further exemptions from the licensing restrictions under the Water Resources Act 1991.

5. Extent and Territorial Application

5.1 The extent of these instruments is England and Wales.

5.2 The territorial application of these instruments is England and Wales except the Water Abstraction (Revocations etc.) (England) Order 2017 which applies to England only.

6. European Convention on Human Rights

6.1 Thérèse Coffey has made the following statement regarding Human Rights:

"In my view the provisions of the Water Abstraction (Revocations etc.) (England) Order 2017 are compatible with the Convention rights."

6.2 As the other instruments are subject to negative resolution procedure and do not amend primary legislation no statement is required.

7. Policy background

What is being done and why

7.1 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.

7.2 The Water Act 2003 and Environment Act 1995 included provisions to remove these licensing exemptions.

7.3 Removing the exemptions will improve the Environment Agency's and the Natural Resources Body for 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 established in 2000 to make sure that EU Member States manage their water resources.

7.4 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, including some rivers close to the borders of Scotland; and
- the majority of abstractions covered by Crown and visiting forces exemptions.

7.5 We will keep exemptions for abstraction where there are no significant impacts which would 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;
- abstraction of water with a high saline content from underground strata in the Cheshire basin (part of an existing exemption given to the former Mersey and Weaver River Authority in 1968);
- impounding works constructed by or on behalf of Internal Drainage Boards to exercise their functions within their appointed area;

- 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.

7.6 A five-year transitional period to determine all abstraction licence applications is provided for. Abstractors have two years to prepare and submit an application. The Environment Agency or the Natural Resources Body for Wales have up to three years to determine licences. Abstractors can continue taking water during this period.

8. Consultation outcome

8.1 Following the Water Act 2003 there were two consultations in 2009 and 2016 about removing these exemptions from abstraction licensing. Both consultations sought views from abstractors including those abstractors whose abstraction will become licensable. Views were also sought from those who have an interest in the water environment but do not abstract. Both consultations lasted three months and had 41 and 86 responses respectively.

- 2009 consultation - 29 April 2009 to 22 July 2009: http://webarchive.nationalarchives.gov.uk/20091118114121/http://www.defra.gov.uk/corporate/consult/water-act/index.htm
- 2016 consultation - 15 January 2016 to 7 April 2016: https://www.gov.uk/government/consultations/water-abstraction-licensing-changes-to-exemptions-in-england-and-wales

8.2 In general, licensed abstractors and those with an interest in the water environment have generally welcomed the policy. The abstractors whose exemptions are ending, were concerned about the business impacts.

8.3 As a result of the 2009 consultation responses and the concern about the business impacts, we developed and 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 Body for Wales considered that abstraction may cause serious environmental damage. Licences may also be issued with conditions to protect rivers at low flows. In the 2016 consultation, we also extended the licence application period from a year to the current two-year period.

8.4 As a result of the 2016 consultation we have amended the policy approach further to reduce business impacts. The approach we expect the Environment Agency or Natural Resources Body for Wales to take when licensing will now 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 they 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.

9. Guidance

9.1 The Environment Agency and Natural Resources Body for Wales, who are responsible for abstraction licensing in England and Wales respectively, will produce suitable guidance and application forms for the abstractors affected.

10. Impact

10.1 The monetised costs on business, charities or voluntary bodies are £74 million net present value (NPV), due to administration and compliance costs of licensing, and impact on the economic output of the exempt abstractors. Economic output costs fall largely to those causing serious environmental damage. Monetised benefits to existing agricultural licence holders are around £15 million NPV. This represents a monetised equivalent annual net direct cost to business of £3.0 million. The stream of non-monetised benefits from enhanced natural capital and to licensed abstractors will grow to be significant given the increasing pressures from climate change and population growth.

10.2 The impact on the public sector is estimated to be a NPV of -£0.4 million.

10.3 An Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to minimise regulatory burdens on small businesses.

11.2 Small businesses 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 enterprises. This will not change as a result of the exemptions ending. Only those who abstract more than 20 cubic metres of water a day will need to apply for a licence.

11.3 The exemptions may be perceived as being unfair to those small sized businesses 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.

12. Monitoring & review

12.1 In England and Wales, the Environment Agency and Natural Resources Body for Wales respectively regularly monitor and review the effectiveness of their abstraction licensing regimes.

13. Contact

13.1 Adrian Brookes at the Department for Environment, Food and Rural Affairs Telephone: 020 8026 2653 or email: adrian.brookes@defra.gsi.gov.uk can answer any queries regarding the instruments.