EXPLANATORY MEMORANDUM TO

THE WATER ABSTRACTION (TRANSITIONAL PROVISIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2022

2022 No. 1302

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Water Abstraction (Transitional Provisions) Regulations 2017 (SI 2017 No. 1047) (the "Transitional Regulations") in England, as amended by the Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (SI 2019 No.1455), to extend the period by the end of which the Environment Agency must give notification in writing of a decision on an application for a licence under the Transitional Regulations. The period is extended by six months to 30th June 2023.

2.2 The impacts of significant events during the determination period, most recently the drought in 2022, mean that the Environment Agency has had to redeploy significant resource in order to secure water supplies and prevent environmental harm. This has diverted resource from the application determination process under the Transitional Regulations and the Environment Agency will not be able to assess all the applications within the existing period. The remaining applications are complex and require adequate time to resolve issues and implement the mitigation required to prevent environmental impacts.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument products a practical effect) is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument amends the Transitional Regulations, which 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 came into force on the same date as the Transitional Regulations, limit or remove certain exemptions from the restriction on abstracting water in the 1991 Act.

6.2 Part 2 of, and the Schedule to, the Transitional Regulations set out the procedural requirements for making and determining certain licence applications. Regulation 4 provides that applications from persons other than the Environment Agency (the "appropriate agency") must be made in accordance with the Schedule to the Transitional Regulations, instead of the provisions in Part 2 of the Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641) ("the 2006 Regulations").

6.3 Paragraph 10(1) of Part 2 of the Schedule specifies that the appropriate agency must, by 31st December 2022, notify the applicant in writing of its decision on an application for a licence.

6.4 This instrument extends the period by the end of which a decision on an application for a licence must be made by the Environment Agency, by six months (until 30th June 2023).

6.5 The Transitional Regulations were previously amended by the Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (SI 2019 No.1455) to extend the deadline by which eligible abstractors in England who wish to continue abstracting had to apply for a licence, by six months, to 30th June 2020.

7. Policy background

What is being done and why?

7.1 The instrument extends the period in the Transitional Regulations that the Environment Agency has to determine applications for previously exempt abstraction by 6 months by amending the end date of that period from 31st December 2022 to 30th June 2023. This will allow the Environment Agency adequate time to consider the remaining licence applications.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 A number of significant abstractions were exempt from abstraction licensing control. This created an unfair playing field, allowing exempt abstractors to put pressure on the environment without control, while requiring licensed abstractors to take the burden of addressing these risks.

7.3 The Water Act 2003 and Environment Act 1995 included provisions to remove these abstraction licensing exemptions. The provisions were commenced on the 1st January 2018, alongside transitional provisions contained in the Transitional Regulations.

7.4 The Transitional Regulations included a five-year period to bring previously exempt abstractors into licensing control. Abstractors originally had two of the five years to prepare and submit an abstraction licence application. However, the Transitional Regulations were amended by the Water Abstraction (Transitional Provisions) (Amendment) (England) Regulations 2019 (SI 2019 No.1455) to extend the application deadline by six months, to 30th June 2020. The Environment Agency had what remained of the five-year period, until 31st December 2022, to determine the licence applications.

Why is it being changed?

7.5 The Environment Agency does not have adequate time to consider all the remaining complex licence applications before 31st December 2022. This is in part due to the impact of significant events during the determination period, such as the Environment Agency needing to focus its staff resource on mitigating the impacts of the drought in 2022.

What will it now do?

7.6 The Transitional Regulations are being amended to extend the period that the Environment Agency has to determine the remaining abstraction licence applications by six months, until the 30th June 2023.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No consolidation is required as a result of these changes.

10. Consultation outcome

10.1 No consultation has taken place regarding these changes which extend a deadline but do not represent a significant change in policy in relation to these categories of abstraction.

11. Guidance

11.1 No additional guidance is required as a result of these changes. The Environment Agency will ensure effective communication with those who have yet to have their applications determined.

12. Impact

12.1 There is no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because are no significant impacts. An Impact Assessment was prepared for the Water Abstraction (Transitional Provisions) Regulations 2017 can be found at: https://www.legislation.gov.uk/uksi/2017/1047/impacts.

13. Regulating small business

13.1 The legislation applies activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that no action is necessary as the regulations give affected small business more time to comply with a licence.

14. Monitoring & review

14.1 The Environment Agency regularly monitors and reviews the effectiveness of abstraction licensing and the administration of its abstraction licence determinations.

14.2 The instrument does not include a statutory review clause because it is a time limited regulation which will cease 12 months after commencement.

15. Contact

15.1 Katie Smith at the Department for Environment, Food and Rural Affairs Telephone: 020 8026 2653 email: Katie.Smith2@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Davide Minotti, Deputy Director for Water Services, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Pow at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.