

SCHEDULE 1

Article 4

ABSTRACTION LICENSING AND PROTECTED RIGHTS: TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation

1.—(1) In this Schedule—

- (a) “abstraction licence” means a licence under Chapter 2 of Part 2 of the WRA to abstract water;
- (b) “the Agency” means the Environment Agency;
- (c) “called-in application” means an application for an abstraction licence referred to the Secretary of State or the Assembly (as the case may be) under section 41 of the WRA (Secretary of State’s power to call in applications) (including that section as applied by section 51(3) of the WRA (modification on application of licence holder));
- (d) “licensed relevant abstraction” means a relevant abstraction which, immediately before the commencement of section 6 (rights to abstract small quantities) in accordance with this Order, is authorised by an abstraction licence;
- (e) “relevant date” means 1st April 2005;
- (f) “relevant abstraction” means an abstraction which—
 - (i) immediately before the coming into force of section 6 in accordance with this Order, is an abstraction to which the restriction on abstraction applies; and
 - (ii) after that coming into force, is an abstraction to which the restriction on abstraction does not apply;
- (g) “relevant application” means an application for an abstraction licence, or for the variation of such a licence, that relates (wholly or in part) to a relevant abstraction and that—
 - (i) was received by the Agency before 1st April 2005; and
 - (ii) not finally disposed of before that date;
- (h) “restriction on abstraction” means the restriction imposed by section 24(1) of the WRA (restriction on abstraction); and
- (i) “the Succession Regulations” means the Water Resources (Succession to Licences) Regulations 1969(1).

(2) For the purposes of this Schedule, an application shall be considered to have been finally disposed of when—

- (a) the application is withdrawn;
- (b) in the case of a called-in application, the application has been determined under section 42 of the WRA (consideration of called-in applications) (including that section as applied by section 51(3) of the WRA (modification on application of licence holder)); or
- (c) in the case of any other application, the Agency has given notice to the applicant of its decision on the application, or has failed to do so within the period referred to in section 43(2) of the WRA (appeals to the Secretary of State) (including that section as applied by section 51(3), subject to the modifications in section 51(4), of the WRA), and—
 - (i) the period within which notice of appeal against that decision or failure may be given has ended without any such notice having been given; or

(1) S.I. 1969/976.

- (ii) notice of appeal against that decision or failure has been given and the appeal has been withdrawn or determined.

(3) Any reference in this Schedule to a regulation is a reference to a regulation in the Succession Regulations.

Protected rights

2.—(1) Until such time as section 23 (transfer and apportionment of licences), in so far as it inserts section 59C of the WRA (apportionment of licences to abstract), is fully in force, section 39A of the WRA (protected rights for the purposes of Chapter 2 of Part 2), as inserted by section 17, shall have effect as if—

- (a) in subsection (1), paragraph (d); and
- (b) in subsection (6), the reference to that paragraph,

were omitted.

(2) Until such time as section 1 (licences to abstract water) is fully in force, section 102(3) (specific transitional and transitory provisions) shall have effect as if the reference to a full licence were a reference to an abstraction licence.

Relevant applications

3.—(1) An abstraction to which a relevant application relates shall be treated, until that application is finally disposed of, as if the amendments made by section 6, so far as it comes into force in accordance with this Order, had not been made.

(2) For the purposes of the application of section 102(3) in relation to a relevant licence, a relevant application and any relevant licence granted pursuant to it shall be treated as if section 102(2) applied to them immediately after the application is finally disposed of.

(3) For the purposes of sub-paragraph (2), a “relevant licence” means an abstraction licence arising from the final disposal of a relevant application.

Relevant applications: duty on Agency to inform applicants of transitional arrangements

4. The Agency shall by 1st June 2005 serve notice in writing on every person who has made a relevant application stating that—

- (a) abstractions such as that to which the application (wholly or in part) relates are, but for transitional arrangements, no longer abstractions to which the restriction on abstraction applies;
- (b) had a licence been granted in relation to the application before 1st April 2005—
 - (i) the holder of that licence would have been taken to have a right to abstract water to the extent authorised by that licence; and
 - (ii) that right would have been a protected right for the purposes of Chapter 2 of Part 2 of the WRA; and
- (c) by virtue of paragraphs 1 and 3 of this Schedule—
 - (i) unless the application (or any appeal) is withdrawn, the restriction on abstraction will continue to apply to the abstraction to which the application relates until that application is finally disposed of;
 - (ii) consideration of that application will continue; and
 - (iii) any decision to grant a licence will have effect only for the purpose of determining the extent of the applicant’s protected right.

Aggregated abstractions

5.—(1) For the purposes of this paragraph—

- (a) “relevant person” means the holder of a licence authorising a licensed relevant abstraction;
- (b) “related exempt abstraction” means an abstraction which, immediately before the relevant date—
 - (i) a relevant person is making or is in a position to make;
 - (ii) is from the same source of supply as that person’s licensed relevant abstraction;
 - (iii) forms part of a continuous operation, or of a series of operations, with that licensed relevant abstraction; and
 - (iv) is an abstraction to which the restriction on abstraction does not apply by virtue of section 27(3) or (5) of the WRA (rights to abstract small quantities); and
- (c) “aggregated abstraction” means—
 - (i) a licensed relevant abstraction and its related exempt abstraction taken together; and
 - (ii) in relation to which, as from the relevant date, the restriction on abstraction would, but for the remaining provisions of this paragraph, apply.

(2) Any aggregated abstraction shall be treated, before 1st April 2008, as if the amendments made by section 6, so far as it comes into force in accordance with this Order, did not apply to it.

(3) The Agency shall, before 1st April 2008, grant a licence to each person who satisfies the Agency that, immediately before the relevant date, he was making or in a position to make an aggregated abstraction.

(4) The licence shall authorise, with effect from 1st April 2008, the abstraction of a quantity of water not exceeding the quantity capable of being lawfully abstracted by the aggregated abstraction.

(5) Section 43(1)(a) of the WRA (appeals to the Secretary of State) shall have effect in relation to a licence granted in accordance with sub-paragraph (3) as if that licence had been granted on an application to the Agency.

Succession to entire abstraction licence authorising a relevant abstraction

6.—(1) For the purposes of sub-paragraph (2), “relevant licence” means a licence authorising a licensed relevant abstraction that—

- (a) immediately before the relevant date, is held, by virtue of section 49(2) of the WRA⁽²⁾ (succession to licences to abstract where person ceases to occupy the relevant land), by a successor who has given notice under section 49(3) of the WRA; and
- (b) has not been varied in accordance with section 49(4) of the WRA.

(2) For the purposes of the application of section 102(3) in relation to a relevant licence, that licence shall be treated as if section 102(2) applied to it immediately after the licence is varied in accordance with section 49(4) of the WRA.

(3) For the purposes of sub-paragraphs (4) and (5), “relevant licence” means a licence authorising a licensed relevant abstraction in relation to which, before the relevant date, the precondition mentioned in paragraph (a) of section 49(2) of the WRA is satisfied, but either—

- (a) no person has become a successor to the licence before the relevant date; or
- (b) any person who becomes a successor to the licence before the relevant date has not, before the relevant date, given notice under section 49(3) of the WRA.

(2) Section 49 was amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 128.

Status: This is the original version (as it was originally made).

(4) Subject to sub-paragraph (5), an abstraction authorised by a relevant licence shall be treated, before 1st July 2006, as if the amendments made by section 6, so far as it comes into force in accordance with this Order, did not apply to it.

(5) If, in relation to a relevant licence, a successor, before 1st July 2006, gives notice to the Agency under section 49(3) of the WRA, sub-paragraph (4) shall cease to apply in relation to that licence when it is varied in accordance with section 49(4) of the WRA.

(6) For the purposes of the application of section 102(3) in relation to a licence referred to in sub-paragraph (5), that licence shall be treated as if section 102(2) applied to it immediately after the licence was varied in accordance with section 49(4) of the WRA.

Succession to part of abstraction licence authorising relevant abstraction

7.—(1) For the purposes of this paragraph, “relevant licence” means a licence authorising a licensed relevant abstraction in relation to which a precondition mentioned in paragraph (a) or (b) of section 50(1) of the WRA (succession where person becomes occupier of part of the relevant land) is satisfied before the relevant date.

(2) Sub-paragraph (3) applies to a relevant licence in relation to which—

- (a) no person has become a successor before the relevant date; or
- (b) any person who, by virtue of regulation 4(1), becomes a successor to the licence before the relevant date has not, before the relevant date, given notice under regulation 4(2).

(3) Subject to sub-paragraph (4), an abstraction authorised by a licence to which this sub-paragraph applies shall be treated, before 1st July 2006, as if the amendments made by section 6, so far as it comes into force in accordance with this Order, did not apply to it.

(4) If, in relation to a licence to which sub-paragraph (3) applies, a successor, before 1st July 2006, gives notice to the Agency under regulation 4(2), sub-paragraph (3) shall cease to apply in relation to that licence from the date that notice is given.

(5) For the purposes of the application of section 102(3) in relation to a relevant licence to which sub-paragraph (3) has ceased to apply by virtue of sub-paragraph (4), that licence shall be treated as if section 102(2) applied to it immediately after notice under regulation 4(2) is given.

(6) For the purposes of the application of section 102(3) in relation to a licence which comes to be held, by virtue of regulation 4(3)(b), by the person who was the original holder, that licence shall be treated from the time when it comes to be so held by that person as if section 102(2) applied to it.

(7) If, in relation to a licence to which sub-paragraph (3) applies (“the original licence”), a successor, before 1st July 2006, makes an application under regulation 5 for a new licence—

- (a) sub-paragraph (3) shall cease to apply; but
- (b) the original licence shall be treated, before the relevant time, as if the amendments made by section 6, so far as it comes into force in accordance with this Order, did not apply to it.

(8) For the purposes of sub-paragraph (7), “relevant time” means whichever is the later of—

- (a) the day after the day on which the application for the new licence is finally disposed of; or
- (b) the day after the day on which any related application under regulation 6 is finally disposed of.

(9) Except as provided by paragraph (10), a new licence shall have no effect.

(10) A new licence shall have effect for the purposes of sections 48(1) (which relates to protected rights) and 189 (register of abstraction and impounding licences) of the WRA.

Succession to part of abstraction licence authorising abstraction other than a relevant abstraction

- 8.—(1) For the purposes of this paragraph—
- (a) “relevant licence” means a licence—
 - (i) authorising an abstraction which, both immediately before and immediately after the relevant date, was subject to the restriction on abstraction; and
 - (ii) in relation to which—
 - (aa) a precondition mentioned in paragraph (a) or (b) of section 50(1) of the WRA is satisfied before the relevant date; and
 - (bb) a person, before 1st July 2006, makes an application under regulation 5;
 - (b) “part licence” means a new licence that—
 - (i) is granted, in accordance with regulation 5 or 6, in relation to a relevant licence; and
 - (ii) relates to a relevant abstraction.
- (2) Except as provided by paragraph (3), a part licence shall have no effect.
- (3) A part licence shall have effect for the purposes of sections 48(1) and 189 of the WRA.

Application of section 189 of the WRA to certain applications

9. Section 189 of the WRA, and any regulations having effect under that section, shall apply in relation to any licence referred to in paragraph 6(2), 6(6), 7(5) or 7(6) as if it were a licence under Chapter 2 of Part 2 of the WRA.