

# Water Abstraction

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**14 May 2018**

## Overview

- The need for a licence
- Applications for a licence
- The role of the Secretary of State
- Major questions / practical issues

## The Types of Licence

There are various types of licence

- Full
- Transfer
- Temporary
- New abstraction (where abstraction previously exempt)
- Impoundment

(<https://www.gov.uk/guidance/water-management-apply-for-a-water-abstraction-or-impoundment-licence>)



## The Need for a Licence

- The licensing regime is found in Part II of the Water Resources Act 1991
- Legal authority is required in order to abstract water: WRA 1991 Act, s.24
- The source of authority is a licence from the Environment Agency

## Applications for a Licence (WRA s.37)

- The Environment Agency must publish notice of an application for a licence
- Those notices must be served upon water undertakers, the navigation authority, harbour authority or conservancy authority, and the drainage board
- The public may make representations to the Environment Agency
- No decision may be made during the period for giving representations

# Considerations of Applications (WRA s.38)



- The Environment Agency's ability to impose conditions on the grant of a licence is broad:
  - “the [Environment Agency] may grant a licence containing such provisions as the [Environment Agency] considers appropriate”
- The Agency may also refuse to grant a licence
- The Agency should have regard to “all relevant circumstances”

## Mandatory factors

- The Environment Agency must not grant a licence to derogate from protected rights, without the consent of the holder of those rights (s.39(1))
- Where the licence concerns abstraction from underground strata, the Environment Agency must have regard to the requirements of existing lawful uses of water (s.39(2))
- The Environment Agency must have regard to minimum acceptable flows (s.40)

## Amendment to Licence

- The Environment Agency may formulate proposals for revoking or varying a licence where it considers this appropriate
- Such proposals must be advertised, and notified to the licence-holder
- If the licence-holder objects to the proposals, then they must be referred to the Secretary of State for determination



## The Role of the Secretary of State

- The Secretary of State can call in applications for a licence
- An unsuccessful applicant for a licence may appeal against refusal to the Secretary of State
- The Secretary of State determines whether to vary a licence where the licence-holder objects
- If there remains a dispute between the parties, then this will be by hearing or inquiry (potential for settlement)

# Major Issues



- Habitats
- Water Framework Directive
- The supply duty upon water undertakers
- The statutory drought regime

## Habitats

- May be questions concerning adverse effects, and IROPI (Articles 6(3) and (4))
- Likely evidence required:
  - Ecological
  - Hydrological
  - (Potentially) economic
- See e.g. Catfield Fen inquiry, APP/WAT/15/316&317

## Water Framework Directive

- Prohibition on causing deterioration of status of body of surface water:  
WFD Art 4(1); C-461/13 *Bund für Umwelt und Naturschutz Deutschland eV v Germany*
- Art 4(6) permits temporary deterioration in cases of force majeure, or due to accident
- Art 4(7) provides for no breach of the Directive where the failure is the result of new modifications to physical characteristics of the body of water, or new sustainable human development activities, and certain conditions met

## The Supply Duty on Water Undertakers

- Water Industry Act 1991 s.37: general duty of water undertaker to develop and maintain an efficient and economical system of water supply
- The supply of water may constitute IROPI or a justification for temporary failure under Art 4(6) WFD

## The Statutory Drought Regime

- Particular problems arise in relation to abstraction in times of drought
- Question: should issues of drought be dealt with in licences, or via drought orders/permits?



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