

Response ID ANON-KVSY-JQZD-6

Submitted to Changes to the regulatory framework for abstraction and impounding licensing in England: Moving into the Environmental Permitting Regulations regime

Submitted on 2021-12-22 17:07:33

About you

What is your name?

Name:

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What is your organisation?

Organisation:

ADA (Association of Drainage Authorities)

Would you like your response to be confidential?

No

If you answered Yes to this question, please give your reason.:

Introduction

Benefits of moving abstraction and impounding into the EPR

About this consultation

Proposals

Proposal 1- Existing abstraction and impounding licences transitioning into the Environmental Permitting Regulations

Q1. Do you agree with the transitional arrangement proposals for licences transitioning into the Environmental Permitting Regulations?

Not sure/ don't have an opinion/ not applicable

Q2. Do you agree with the proposed approach to transitional (in progress) appeals, transitional (in progress) appeal periods and in progress enforcement?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response to Q1-2 where applicable.:

Proposal 2 - Groundwater investigation consents transitioning into the Environmental Permitting Regulations

Q3. Do you agree with the proposed approach to groundwater investigation consents transitioning into the Environmental Permitting Regulations?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 3 – Transitional abstraction permits with a time limit

Q4. Do you agree with the proposed approach to transitional abstraction permits with a time limit?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 4 - Previously exempt abstractions (New Authorisations)

Proposal 5 – Abstraction and impounding activities under the Environmental Permitting Regulations

Q5. Do you agree with the proposed water abstraction and water impounding activities?

Disagree

Q6. Do you agree with the proposal to introduce a groundwater investigation abstraction activity under the Environmental Permitting Regulations thereby requiring a permit for this activity rather than continuing with the current approach of issuing a consent?

Not sure/ don't have an opinion/ not applicable

Q7. Do you agree with the proposal to further categorise abstraction as set out above?

Disagree

Please provide the reason for your response to Q5-7 where applicable.:

ADA continues to oppose the regulation of water being transferred from a main river into an ordinary watercourse within an internal drainage district. Our members (Internal Drainage Boards) augment water within the lowland drainage network with water from main rivers. Transfers are to avoid environmental damage within lowland watercourses and wetlands, but also feed other water abstraction uses within the lowland that are either licenced directly by the Environment Agency or exempt. Therefore the charging regime for water transfers undertaken by IDBs remains a regulatory cost that risks greater environmental harm on fragile lowland watercourse systems and inhibits the effective coordination of water resources management in England's lowlands and needs to be reconsidered. In ADA's view moving the regulatory framework for abstraction and impounding licensing in England into the EPR regime presents a timely opportunity to make the transfer of water into an Internal Drainage District an activity registered as an exemption under Environmental Permitting Regulations, given the limited risks to the environment of the activity, its necessity to conserve and enhance the lowland environment, and the regulatory costs and barriers to cooperative working that transfer licences present to these smaller public authorities. In ADA's view registering an exemption under EPR would satisfy the need to register the site and circumstances of water transfer with the Environment Agency, without adding unnecessary further bureaucracy and cost to IDBs.

Proposal 6 – Operator and permit holder

Q8. Do you agree with the proposal to maintain, for transitional permits only, the ability for a person who is not the permit holder to lawfully carry out an abstraction under a permit with the permit holder's permission?

Agree

Please provide the reason for your response where applicable.:

Proposal 7 – Content and Form of a Permit

Q9. Do you agree with our proposal to adopt the Environmental Permitting Regulations provision relating to offsite permit conditions for abstraction and impounding applications?

Not sure/ don't have an opinion/ not applicable

Q10. Do you agree with the proposal to adopt the Environmental Permitting Regulations permit types, exclusions and exemptions for abstraction and impounding?

Disagree

Q11. Are there any abstraction or impounding situations that you think could satisfy the standard rules permit format?

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In ADA's view moving the regulatory framework for abstraction and impounding licensing in England into the EPR regime presents a timely opportunity to make the transfer of water into an Internal Drainage District an activity registered as an exemption under Environmental Permitting Regulations, given the limited risks to the environment of the activity, its necessity to conserve and enhance the lowland environment, and the regulatory costs and barriers to cooperative working that transfer licences present to these smaller public authorities. In ADA's view registering an exemption under EPR would satisfy the need to register the site and circumstances of water transfer with the Environment Agency, without adding unnecessary further bureaucracy and cost to IDBs.

Q12. Do you agree with the proposal to include an EMS requirement in all new Environmental Permitting Regulations permits for a water abstraction or water impounding activity?

Disagree

Please provide the reason for your response to Q9-12 where applicable.:

Reason for response to Q10. ADA continues to oppose the regulation of water being transferred from a main river into an ordinary watercourse within an internal drainage district. Our members (Internal Drainage Boards) augment water within the lowland drainage network with water from main rivers. Transfers are to avoid environmental damage within lowland watercourses and wetlands, but also feed other water abstraction uses within the lowland that are either licenced directly by the Environment Agency or exempt. Therefore the charging regime for water transfers undertaken by IDBs remains a

regulatory cost that risks greater environmental harm on fragile lowland watercourse systems and inhibits the effective coordination of water resources management in England's lowlands and needs to be reconsidered. Reason for response to Q12. The technical guidance is unclear on what would constitute an appropriate management system. Whilst ADA recognises the clear benefits of having environmental management systems in place, the regulator has provided insufficient guidance within the Technical Annex on management systems on how this will be properly considered within the regulatory regime for each activity and operator type. ADA would consider supporting this proposal in the future if sufficient proportionate guidance was provided that considered the specific needs of the various operators impacted.

Proposal 8 – Site and source of supply

Q13. Do you agree with the proposal to set out the principles to help determine the extent of a site within guidance?

Agree

Q14. What do you think that the principles should be to help determine the extent of a site within guidance?

Q14. What do you think that the principles should be to help determine the extent of a site within guidance?:

Water abstraction/transfer activities may occur over a multitude of locations, being able to group these activities under a single permit or exemption would be much more efficient, especially for public bodies that manage a multitude of sites within a defined geographic area (e.g. internal drainage district)..

Q15. Do you agree with the proposal to allow abstraction from more than one source of supply on a single permit?

Agree

Q16. Are there any circumstances where you think that abstraction activities for the same operation or site, but from different sources of supply, should not be on the same permit?

Q16. Are there any circumstances where you think that abstraction activities for the same operation or site, but from different sources of supply, should not be on the same permit? :

Please provide the reason for your response to Q13-16 where applicable.:

Proposal 9 – Variations, transfers, revocations and surrenders

Q17. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for the transfer (or partial transfer) of a permit for water abstraction or water impounding activity to be actioned upon the receipt of a joint application?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 10 – Appeals

Proposal 11 – Permit Review Process

Q18. Do you agree with the two types of review? If not, why?

Not sure/ don't have an opinion/ not applicable

Q18. Do you agree with the two types of review? If not, why?:

Q19. Do you think there should be any other review type? If so, what?

Not sure/ don't have an opinion/ not applicable

Q19. Do you think there should be any other review type? If so, what?:

Q20. How should the frequency of permit reviews be decided?

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Proposal 12 – Enforcement and suspension

Q21. Do you agree with the proposal to adopt the Environmental Permitting Regulations enforcement and suspension notices for abstraction and impounding activities?

Not sure/ don't have an opinion/ not applicable

Q22. Do you agree with the proposal to use the term 'harm to the environment' and the definition given?

Not sure/ don't have an opinion/ not applicable

Q23. Do you think there should be any additional points included in the definition?

Not sure/ don't have an opinion/ not applicable

Q24. Do you agree with the proposal to move the two existing notices for unlicensed impounding works into the Environmental Permitting Regulations?

Agree

Q25. Do you agree with the proposal to retain and bring across only fixed monetary penalties, variable monetary penalties and third party undertakings in relation to variable monetary penalties?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response to Q21-25 where applicable.:

Proposal 13 – Offences and Penalties

Q26. Do you agree with the proposal to set the maximum prison term for an indictable offence at 2 years rather than 5 years?

Not sure/ don't have an opinion/ not applicable

Do you agree with the proposal to set the maximum prison term for an indictable offence at 2 years rather than 5 years?:

Proposal 14 – Public Register

Q27. Do you agree with the proposal to adopt the approach to maintaining the public register when we have moved into the Environmental Permitting Regulations?

Agree

Q27. Do you agree with the proposal to adopt the approach to maintaining the public register when we have moved into EPR?:

Proposal 15 – Advertising and public participation

Q28. Do you agree with the proposal to move to online digital advertising for abstraction and impounding licence applications, except for High Public Interest applications which will require local newspaper advertisement as well as online advertising?

Agree

Q29. Do you agree with the proposal to dispense with public participation (advertising) where there would no appreciable adverse effect on the environment and other abstraction rights?

Agree

Q30. Do you agree with the proposal to move the current duty under legislation to consult with key organisations to guidance in the form of an agreement or memorandum with the key organisations?

Disagree

Please provide the reason for your response to Q28-30 where applicable.:

ADA supports the existing duty for the Environment Agency to notify any relevant statutory consultees (including Internal Drainage Boards and Statutory Water Undertaker (Water Company)). Within internal drainage districts, consultation with internal drainage boards has been critical to helping the Environment Agency ensure that applications do not inhibit the effective management of water levels conducted by IDBs, or cause harm to the lowland water environment. Knowledge from IDBs can be vital to the Environment Agency in identifying lowland systems that may become over-abstracted if licenced or licences modified. ADA would need to see much greater detail provided in the terms of such agreements or memorandums before supporting this approach and these would need to be ratified by all 112 IDBs. Therefore, ADA considers retaining the existing legal backstop is preferable at the current time.

Proposal 16 – Vesting and Bankruptcy

Q31. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for vesting and the 6 month notification period?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 17 – Climate change adaptation

Q32. Do you agree with the proposal to include climate change adaptation measures within the Environment Management System? If not, why not?

Disagree

Q31. Do you agree with the proposal to include climate change adaptation measures within the Environment Management System? If not, why not?:
ADA strongly agrees that climate change adaptation measures should be considered within management systems. However, the guidance provided is too vague and general. Without sufficient guidance and support this is an unfair burden upon abstractors. Further detail is needed on such support before this measure should be adopted.

Q33. What, if any, further conditions would you propose to be included in a permit to help mitigate climate change?

Q32. What, if any, further conditions would you propose to be included in a permit to help mitigate climate change?:

Proposal 18 – Protected rights, derogation and lawful use

Q34. Do you agree with the proposal to carry across into the Environmental Permitting Regulations the duty for the Environment Agency not to derogate from protected rights when considering a permit application or variation?

Agree

Q35. Do you agree with the proposal to include within the Environmental Permitting Regulations the duty for the Environment Agency to have regard to lawful uses when considering a permit application or variation?

Agree

Please provide the reason for your response to Q34-35 where applicable.:

Proposal 19 – Applying for a permit

Q36. Do you agree with the proposal to carry across into the Environmental Permitting Regulations the ability for the Environment Agency to serve a notice on an applicant, and the ability for the applicant to appeal, in circumstances where the applicant has applied for a licence and the Environment Agency considers they have applied for the wrong type of abstraction licence?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 20 – Permit applications by the Environment Agency

Q37. Do you agree with the proposal to adopt the Environmental Permitting Regulations approach to permit applications by the Environment Agency?

Disagree

Please provide the reason for your response where applicable.:

ADA considers that the EA's own licences should continue to be approved and signed off by an external body (Defra). This is particularly important with the recent removal of the exemption for licencing water transfers that the Environment Agency and other risk management authorities must undertake. Retaining Defra oversight would enable the department to continue to assess the purpose, practicality, functioning and cost of these regulations.

Proposal 21 – Canal & River Trust Provisions

Q38. Do you agree with the proposal to retain the existing provisions concerning the CRT when abstraction and impounding moves into the Environmental Permitting Regulations?

Agree

Please provide the reason for your response where applicable.:

Proposal 22 – Civil Remedies for loss or damage due to water abstraction

Proposal 23 – Fishing rights and Ecclesiastical property

Q39. Do you agree with the proposal to repeal the relevant sections of legislation relating to fishing rights and not to take them into the Environmental Permitting Regulations?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 24 – Compensation

Q40. Do you agree with our proposal to issue an Environmental Permitting Regulations permit to replace a transitional permit as a result of certain operator initiated variations and transfers/part transfers?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Proposal 25 – Discharge of functions

Proposal 26 – Civil liability and defences

Q41. Do you agree with our proposal to repeal the liability defences under sections 48 and 70 and not carry them across to the Environmental Permitting Regulations?

Not sure/ don't have an opinion/ not applicable

Please provide the reason for your response where applicable.:

Consultee Feedback on the Online Survey

Overall, how satisfied are you with our online consultation tool?

Neither satisfied nor dissatisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :