

**THE DRAFT WATER ABSTRACTION &
IMPOUNDMENT (LICENSING)
REGULATIONS (NORTHERN IRELAND)
2006**

SUMMARY OF RESPONSES

November 2006

Further copies of this report can be obtained from:

Mr David Mason
Department of the Environment
Environmental Policy Division
12th Floor
River House
48 High Street
Belfast
BT1 2AW

Or alternatively through
E-mail: david.mason@doeni.gov.uk

Fax: 028 90 257300
Text phone: 028 90 540642

This document can also be accessed through the Departments website at:
<http://www.doeni.gov.uk>

CONTENTS

Introduction

Consultation Period

Publication and Distribution

Responses

1. Introduction

- 1.1 On 8 May 2006 the Department of the Environment published its consultation document on the proposed Abstraction and Impoundment (Licensing) Regulations which are intended to transpose two EC Directives, namely the Habitats and Water Framework Directives. The full text of the consultation document is available on the Department's website at: www.doeni.gov.uk
- 1.2 The purpose of the Regulations is to introduce a legislative structure to control water abstractions and impoundments in Northern Ireland in order to protect the water environment and to secure efficient and sustainable water use.

2. Consultation Period

- 2.1 The consultation period ran from 8 May 2006 to 4 August 2006.

3. Publication and Distribution

- 3.1 The Department invited responses from a range of organisations and individuals including MP's, MLA's, MEP's, local councils, health trusts, academic and professional institutions, farming and business organisations. The document was also published on the Department's website and publicised through press notices.

4. Responses

- 4.1 The consultation closed on 4 August 2006 although late responses were accepted up to 11 August 2006. Approximately 350 organisations and individuals were consulted and 23 responses were received, 15 of which were generally supportive of the proposed scheme. A list of respondents is attached at Annex A.

4.2 Views were sought on 8 specific consultation points:

- Do you consider that the proposed Regulations will provide an effective means of protecting the water environment?
- Are there any other abstraction/impoundment activities that should be exempted from the Regulations?
- Are the limits set out in Schedule 1 for Permitted Controlled Activities reasonable?
- Do you have any comments on the licensing process?
- Are the time-limits for processing applications reasonable?
- Have you any comments on the provisions relating to the variation or revocation of licences?
- Do you consider the enforcement provisions are reasonable and effective?
- Have you any other comments on particular aspects of the proposed Regulations or the regime generally?

4.3 Several common themes were identified from the responses received and these are detailed below along with the Department's response.

Exemptions

- (i) It was suggested by several consultees that all non-consumptive users of water, such as hydro power stations and fish farms, should be exempt from the regulations. It was also felt that fish farms and small fish hatcheries were already adequately regulated through the Discharge Consent regime.
- (ii) Households abstracting water for their own use and impoundments which support wildlife habitats or which collect run-off from roofs or sites were also suggested for exemption.
- (iii) Environmental groups felt that all abstractions needed to be registered in order to assess cumulative effects and that the

impact of exempt activities should be recorded and appraised.

Department's Response

- (i) The exemptions in the proposed Regulations are very limited. They apply only to the use of water for firefighting or the testing and training in the use of firefighting equipment or to a licensed supplier of electricity who is acting in accordance with an authorisation from DOE which will have taken account of the environmental effects of the abstraction. To provide a blanket exemption for non-consumptive activities would be to assume that these have no environmental effects. This may not be the case, for example, in relation to a stretch of river between the abstraction and discharge points. However, the Department recognises the need to assimilate the proposed controls with the discharge consent regime and will seek to do this through the proposed charging scheme.
- (ii) In order to reduce the Regulatory burden and to lessen any associated costs the Department is advocating an environmental risk based approach for implementation. For abstractions falling between 10 and 20 cubic metres per day registration is required, and for abstractions greater than 20 cubic metres a licence must be applied for. This approach is consistent with the rest of the UK and will both establish a robust regulatory system and a mechanism to assess the cumulative effects of lower abstracted volumes. It is envisaged that the vast majority of households abstracting water for their own use will not be directly affected by the regulations as they will fall below the threshold of 10 cubic metres per day. As such they will not be required to have any direct contact with the Department.

- (iii) In response to representations made we propose to exempt from the Regulations the abstraction of water by vessels where the water is used on that or any other vessel.

In view of the limited nature of the exemptions it would be impractical to record or monitor these activities.

Licences

- (i) Some responses suggested that the duration of a licence should reflect the life of the assets/investment and that there should be a presumption for renewal of the licence. The time-limiting of licences was also seen as a potential threat to the long-term sustainability of some businesses.
- (ii) The need for adequate periods of notice before a licence is revoked or modified was also emphasised.
- (iii) Others felt that the abstraction limits for Permitted Controlled Activities should be raised and that abstraction that did not involve consumption of water (hydro-power, fish farming, dewatering of quarries) should be considered as a PCA rather than require a licence.

Department's Response

- (i) In light of representations made concerning the duration of licences the Department now proposes to change the modification provision. This change will give the Department discretionary power to modify licences where this is considered necessary on environmental grounds. As a result the Department now proposes to remove the requirement to issue licences for a defined period of time. A licence will remain in place until such times as it is considered necessary to modify its conditions, if this circumstance should arise.

- (ii) The Department recognises the need to give adequate periods of notice should a licence have to be modified or revoked. It is therefore proposed that in operating the licensing system the Department will seek to give a minimum of six years notice, or a shorter period where this is agreed with the licence holder.
- (iii) The abstraction limits are considered to strike a sensible balance, taking account of environmental risk, and are in line with the regulatory systems in place in the rest of the UK. In operating the system the Department will seek to grant “simple” licences for abstractions that are within the range 20 to 100 cubic metres per day. The assessment of these types of abstractions should be relatively straightforward and as such the conditions attached to the licence should be limited.

Charges

There was some criticism of the proposal to levy fees for licences. Some respondents were totally opposed to the imposition of charges while others emphasised the need for these to be imposed in the least burdensome manner so as to minimise the impact on small businesses in particular. Some suggested that any charging scheme should contain incentives to maximise efficient water use and reward good compliance.

Department's Response

In line with government policy the Department proposes to establish a ‘cost recovery’ scheme for the proposed Abstraction and Impoundment (Licensing) Regulations. The detail of the scheme will be subject to a separate public consultation. It is proposed that the scheme will have a scale of charges that takes into account a number of factors such as whether or not water is being returned to the environment, the scale of the activity, the sensitivity of the environment at the point of

abstraction, the level of control and management of the activity and the adherence to 'best practice'. This approach should ensure that activities having a low impact on a water body will incur a lower charge. The Department through this legislation will promote sustainable water usage and positive environmental management which will benefit the environment and may result in financial savings for many operators. The Department will consider the use of incentives in the 'fees and charges' consultation.

General

The other major points raised were –

- (i) that the proposed scheme should not interfere with property rights without provision for compensation where a licence is varied or revoked,
- (ii) how the information in the register would be made available
- (iii) that there should be a right of appeal available to third parties,
- (iv) that guidance needed to be put in place to ensure that the scheme operates efficiently.

Department's Response

- (i) In drafting the proposed Regulations the Department has given full consideration to the requirements of the European Convention on Human Rights and the Human Rights Act 1998. The Department is completely satisfied that the Regulations are lawful and that there is no absolute requirement in law to make provision for compensation for the regulation of rights to abstract or impound water.
- (ii) As is the case for other environmental Regulations a public register will be established for the Abstraction and Impoundment (Licensing) Regulations which will be managed

by Environment and Heritage Service (EHS) staff. The public register will be available for inspection during normal working hours at the Agency's premises in Lisburn, requests for a copy or copies of specific licence/s will be catered for, although depending on the size of the information request an administrative fee may be applicable. In the future EHS intends to work towards an electronic system which will include 'public registries'.

- (iii) The Department is satisfied that the Regulations contain sufficient safeguards to ensure that representations made by third parties are considered. Third parties will also have the option of seeking a judicial review of any decision made by the Department where they feel that such a decision is unlawful.

- (iv) The Department will be providing guidance notes in support of the new Regulations. Information produced will be designed to raise awareness of the new requirements and will highlight the obligations for abstractors. Detailed notes will be provided to assist applicants in completing licence / registration forms and 'best practice' guidance will also be produced which will be regularly updated as knowledge develops in this area. As part of this process EHS plans to seek comment on the 'draft' guidance from key stakeholder groups.

ANNEX A

List of Respondents

1. Eastern Health & Social Services Board
2. Southern Health & Social Services Board
3. The Consumer Council
4. Craigavon Area Hospital Trust
5. Upperlands Community Hydro-Electric Ltd
6. The Northern Ireland Branch of the British Hydropower Association
7. Mr W Ross
8. Armagh City & District Council
9. Confederation of British Industry Northern Ireland
10. World Wildlife Fund Northern Ireland
11. Council for Nature Conservation & The Countryside
12. Quarry Products Association Northern Ireland
13. Aqua Culture Initiative
14. The Ulster Angling Federation
15. The RSPB
16. The Lough Neagh & Lower Bann Advisory Committees
17. Dr P Howsam, Cranfield University
18. Water Service
19. Omagh District Council
20. Ulster Farmers Union
21. Craigavon Borough Council
22. DCAL
23. Royal County Down Golf Club.

