

Department for Environment, Food and Rural Affairs

Water Bill

Environmental Permitting Framework

November 2013

This is one of a series of briefing notes on the Water Bill. This note explains in detail the proposed extension of the Environmental Permitting Framework. Further detail on the Water Bill can be found in other briefing notes.

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What is the Environmental Permitting Framework?

The Environmental Permitting framework (the “EP framework”) is designed to reduce the administration necessary to apply for consents, and to ensure regulators are able to take an efficient, risk-based approach to assessing applications thus reducing burdens and costs to industry. It allows applicants that would otherwise require several permits for activities falling under various regulations on a single site to complete a single application, and to be issued with one permit.

The framework came in to force in 2007, when the Environmental Permitting Regulations brought 41 separate sets of regulations controlling activities harmful to the environment and human health under one framework. A number of new permitting systems were brought into the framework in 2010.

Since then there have been a number of public commitments to further expand the framework, including the Penfold Review, Farming Task Force Review, Red Tape Challenge and the UK Government’s 2011 White Paper “Water for Life” each committing to include three new regimes: water abstraction and impoundment licences, flood defence consents and fish pass approvals. More detail about what these regimes do can be found in the Annex.

Our impact assessment estimates that business, regulators and consultees across England and Wales will save in the region of £6.55 million over ten years from the integration of these three additional consenting regimes.

Environmental Permitting and the Water Bill

The current EP framework only includes regimes that address environmental pollution. They were transferred to the EP framework through the existing powers in the Pollution Prevention and Control Act 1999. However, as the three new regimes to be integrated within the EP framework do not relate to environmental pollution – relating instead to water resources, fish passage and flood defence – new enabling powers are required through the Water Bill.

The Water Bill allows for the creation of new regulations which will detail how these regimes will be integrated in to the EP framework, rather than setting this out on the face of the Bill. It uses a power which is sometimes referred to as a Henry VIII power, because it enables primary legislation to be amended by secondary legislation. This is necessary to ensure that the new regimes – which are currently set out in primary legislation – can be integrated in to the EP framework, which is in secondary legislation. This is therefore not a novel approach, and the clauses broadly replicate the powers in the Pollution Prevention and Control Act 1999 used for previous extensions of the EP framework. The Water Bill

therefore includes the same procedural safeguards as presently exist in the 1999 Act, such as the requirement for parliamentary scrutiny and a full consultation process with stakeholders.

When will the detail of these regimes be decided?

Not yet. The EP powers taken in the Water Bill are enabling powers; that is, they are only intended to provide for the continued expansion of the EP framework and not for any other changes to the policy relating to abstraction, flood defence or fish passage.

The detail of how these regimes will work under the EP framework will be developed in full consultation with stakeholders. The UK Government's current policy intention is to mirror the substantive requirements of the existing regimes, although there may be some minor amendments to ensure consistency with the EPR framework. However, no final decisions have been made and will be subject to the outcome of consultation.

This will be after the Bill gains Royal Assent, as part of the process for developing the regulations provided for by the Water Bill. The Government currently anticipates consulting on draft regulations for flood defence consents and fish passage approvals in late 2014 or early 2015, with a view to submitting the regulations to Parliament in 2015. The transfer of the water abstraction and impounding licensing regime is likely to be later to help manage other changes that are planned for this regime.

We expect the new regulations to follow the same format as those created for previous developments of the EP framework. In the interim, draft regulations for the transfer of the flood defence consenting regime in to the EP framework will be made available by late 2013 to give an indication of how the new powers would be applied.

ANNEX: Description of the affected regimes

Water abstraction and impoundment licences

An abstraction licence is generally needed for taking water from sources of supply including rivers, lakes, canals and underground sources, though there are some exceptions. An impounding licence is needed before the construction or alteration of any structure such as a weir or dam in a river that impedes the flow of water, and for the continued operation of that structure.

The abstraction regulation for rivers and groundwater that we have now are not flexible enough to cope with future challenges. Changing weather means some areas will have less water. Others will see increased demand as the population grows.

The UK Government is committed to introducing a reformed water abstraction regulation system in England able to promote resilient economic growth while protecting the environment in a manner which is fair and adaptable to future uncertainty at a reasonable cost. The Welsh Government is committed to ensuring sustainable management of water resources in Wales, including considering options for the future management of the abstraction regulation system in Wales.

Flood defence consents

Flood defence consents are required by those wishing to carry out certain works in or near main rivers¹. Construction works or maintenance can cause flooding and/or environmental damage if poorly executed, and can also impact on broad flood risk management aims in a locality.

Fish passage approvals

Fish passage approvals and notices are required to ensure that fish passes and screen structures installed to modify or by-pass obstructions which restrict the free movement of fish through rivers are suitable for the job. Obstructions such as dams, and water intakes can prevent fish accessing stretches of rivers including important spawning grounds, and can cause direct mortality (e.g. where fish come into contact with unscreened turbine blades).

¹ Main rivers are determined by the Secretary of State/ Welsh Ministers and designated by being marked as such on a main river map

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