

The Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland)

Aim

The aim of the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 is to protect the water environment and to secure efficient and sustainable water use. The EHS is responsible under the Water (Northern Ireland) Order 1999 for promoting the conservation of water resources and the cleanliness of water in waterways and underground strata. EHS is the licensing authority for Northern Ireland and the licensing system will be administered by the Water Management Unit of EHS.

Background & Legislative Drivers

On the 1st February 2007, the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 came into effect. The introduction of this legislation fulfils Northern Ireland's obligation to the European Commission under the Habitats and Water Framework Directives, establishing a water resource management, assessment and licensing regime.

EC Directive Requirements

The Habitats Directive requires member states to have a formal/legal method of assessing the potential impact of abstraction/impoundments on protected and sensitive sites (e.g. a wetland). A protected site is defined as one which has a European designation, for example, a Special Area of Conservation or a Special Protection Area. If any activity may have a significant impact on a protected site, it will be subject to further assessment and consent controls. At present the absence of such controls in Northern Ireland means that there is no way of identifying the cumulative effects of abstractions/impoundments on protected sites.

Article 11 of the Water Framework Directive requires that the programme of measures established by river basin plans should include controls over abstractions and impoundments. While the programme of measures does not have to be established until 2009, or become operational until 2012, the introduction of the scheme now will provide valuable information for the river basin planning process and enable businesses and the Department to plan ahead to meet the required Water Framework Directive standards.

Domestic Legislation

Some limited control of abstraction activities does exist in Northern Ireland but only under certain circumstances. Under planning legislation conditions may be placed on certain developments and they may require planning permission if the engineered infrastructure is deemed to be a development. An Environmental Impact Assessment (EIA) may therefore be triggered under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999.

Water management projects for agriculture which may not be deemed development under current planning legislation but would be likely to have a significant effect on the environment may require an EIA under the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005.

Under Article 20 and 21 of the Water (Northern Ireland) Order 1999 the Department have provision to:

- control, restrict or prohibit the abstraction of water from underground strata or waterways; and
- control, restrict or prohibit the construction or alteration of any impounding works.

However, these powers are not extensive enough to control damaging operations.

The introduction of the Abstraction and Impoundment (Licensing) Regulations will, however, provide a single and consistent environmental risk based approach that covers all abstraction and impoundment operations. These powers will help protect our water environment including protected species and dependent ecosystems and will help deliver efficient and sustainable water usage in Northern Ireland.

In association with these Regulations, under the terms of Article 21 of the Water (Northern Ireland) Order 1999, the Department propose to introduce a fees and charging scheme with effect from 1st April 2008. This will be a 'cost recovery' scheme. During the transitional period for the regulations i.e. 1st February 2007 to 31st January 2008 there will be no fees or charges for either new or existing abstraction and/or impoundment activities.

What is an Abstraction / Impoundment?

Within the Water (Northern Ireland) Order 1999 an abstraction is defined as follows:

“Abstraction” means the doing of anything whereby water is removed from a waterway or underground stratum”. This could be carried out by mechanical means such as a pump, through a pipe, by an intake or other engineering structures in a watercourse, or by any other type of works such as a borehole or well. This applies equally whether the water is permanently removed or if it is diverted temporarily from one part of the water environment to another.

There is a danger from an environmental perspective that over abstraction of a water body can lead to shortages of supply, increasing pollution through reduced dilution, as well as causing damage to habitats dependent on that water body.

Within the Water (Northern Ireland) Order 1999 an “impoundment” means either of the following:

- any dam, weir or other works in any waterway by which water may be impounded;
- any works for diverting the flow of any waterway in connection with the construction, alteration or operation of any dam, weir or other works falling within any dam or weir etc.

The effects of impoundments, which will be variable, depending on the size, design and operation, and the sensitivity of the location, also need to be taken into account. A poorly managed impoundment may impede migratory fish, deflect flow which may result in river bed or bank erosion or cause a build-up of sediment leading to changes in the river bed habitat.

The authorisation Process

Under the Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 there are two levels of authorisation, depending on the environmental risk:

i. Permitted Controlled Activities (PCA) *

This level of authorisation will apply to relatively simple activities which pose the lowest risk to the water environment. No interaction with the Department will generally be required, except in some instances where “notification” may be required. Operatives, however, must carry out their activities in accordance with the conditions for PCA.

ii. Licences

This level of authorisation will be used to control those activities posing the greatest risk to the environment.

When applications are received by the Department, the type of authorisation granted will be determined by the scale of the abstraction and the potential environmental impact of activity. The key determinant will be the volume of water abstracted; as below:

< 10m³ per day = authorisation is granted subject to activities complying with PCA conditions, no contact with the department is required.

10m³ – 20m³ per day = authorisation is granted subject to 'notification' to the Department, and compliance with the PCA conditions.

20m³ – 100m³ per day = authorisation is granted subject to submission of an application and the issue of a formal "simple" licence which may have conditions.

>100m³ per day = authorisation is granted subject to submission of an application and issue of a formal "complex" licence which may have conditions.

Authorisation for impoundments will be determined as follows:

- If an impoundment is not associated with an abstraction, does not control the water level upstream and does not create a height differential between the upstream and downstream water surfaces of more than 1 metre, then authorisation is granted as a PCA and no contact with the Department is required.
- In all other circumstances authorisation through formal licence is required for impoundments of water. The Department will consult with other agencies that have responsibility for fisheries legislation and the Habitats Regulations in Northern Ireland.
- Permitted Controlled Activities will apply to small scale activities which present minimal risk. A summary of the conditions which apply to low risk activities are summarised below:

- A means of demonstrating the volume abstracted
- Water leakage kept to a minimum
- No contamination or pollution
- Other water uses such as hydraulic tests on aquifers