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| Circulation: | Water.abstraction@Defra.gov.uk | Ref: | JWCR251121 |
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Changes to the regulatory framework for abstraction and impounding licensing in England: Moving into the Environmental Permitting Regulations regime

The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life. Our trade association is the largest farming organisation in the UK, providing a strong and respected voice for the industry and employing hundreds of staff to support the needs of NFU members locally, nationally, and internationally. The NFU champions British agriculture and horticulture, to campaign for a stable and sustainable future for our farmers and growers.

The NFU does not believe that the environmental permitting regime is a good fit for abstraction licensing and is concerned about the potential implications that this move will have for its members, whose businesses are often heavily dependent on access to a secure supply of water. The majority of environmental permitting focuses on regulating activities which cause emissions to the environment whereas abstraction involves taking water – an essential input for agricultural and horticultural production - from the environment. Therefore, the environmental impacts are quite different and the manner in which the activity needs to be regulated is also different. The fact that there is a need to lift so much of the existing abstraction licensing regime into environmental permitting demonstrates that the regime is not a good fit for this activity. Furthermore, as we will explain in more detail below, the NFU does not believe that the environmental permitting concept of a “site” is applicable to abstraction because the impacts of abstraction need to be considered at a water body or catchment level, not at an individual farm/business level. Consequently, the NFU urges government to reconsider this proposal. **We believe that there are significant benefits to retaining a separate, bespoke regime for regulating abstraction activities.**

The NFU is particularly concerned that the move to environmental permitting, with permits being reviewable at potentially any time, significantly reduces the certainty of long-term access to water, creating doubt regarding the very future of some farming businesses. Coupled with the absence of compensation for any future variations, this could have a significant impact on agricultural businesses, because the lack of certainty around access to water, and therefore business viability, may impact on their ability to make long-term investments or to obtain finance to enable those investments to happen. This is particularly the case for those businesses who hold permanent abstraction rights, which currently benefit from compensation rights if they are revoked or varied. These licences have a value in their own right, and the loss of these historic rights is also likely to impact on land values, which are the main asset of many farming businesses. So, the impacts on these businesses will be significant, especially in view of the abstraction changes brought in under the Environment Act 2021.

The NFU is also concerned that environmental permitting could result in significant cost increases for farmers compared to those which apply in relation to abstraction licensing. The vast majority of existing abstraction licences are held by agricultural businesses, which are small/medium sized businesses. Therefore, the increased costs associated with this proposal could have a significant and disproportionate impact on the farming sector. The coming years will be a challenging time for the farming industry arising from the phasing out of the Basic Payment Scheme (BPS) and the impacts of changes to the UK's international trading relationships feeding through into the marketplace. The increased costs of the environmental permitting regime, coupled with the reduced certainty regarding the future security of access to water, could be very difficult for farmers to absorb at this time.

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The NFU is extremely disappointed that this consultation is taking place before the relevant statutory instrument is drafted. As it stands the NFU, and other stakeholders, are effectively responding to this consultation “blind” to the technical details under which the proposals will operate. It would have greatly assisted industry to see the draft Regulation in order to fully understand the proposals and the impacts that they will have on the sector. The NFU urges government to share the draft Regulation with industry prior to it being laid before Parliament so that any unintended consequences resulting from the drafting can be addressed.

The NFU believes that the transition to environmental permitting must be framed so that it enables innovation rather than acts as a barrier to it. Future pressures such as climate change and housing growth will lead to significant changes in the way that water is managed. New opportunities to manage water sustainably through, for example the sharing, trading and aggregation of abstractions will be essential for farm businesses and for food production.

The NFU believes that continued engagement with Defra and the Environment will be essential to develop farm-specific guidance on the technical issues that will inevitably arise from environmental permitting. Stakeholder engagement led by the Environment Agency in the years leading up to the consultation has been useful in identifying potential operational obstacles that may arise from environmental permitting, and these arrangements should continue.

Notwithstanding the fact that the NFU does not consider that environmental permitting is the right tool for regulating abstraction, the NFU will however address the questions within the consultation in order to set out the NFU’s views and concerns in those areas. This is because we believe that the needs of the farming sector must be considered in the event that the move to environmental permitting does happen.

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

Agree

As set out above, the NFU does not believe that abstraction should be transitioned into environmental permitting. However, in the event that abstraction is moved into environmental permitting, the NFU believes that it is important that there is a **managed transition** which allows businesses sufficient time to adapt to the new requirements arising from the environmental permitting regime. Many agricultural businesses will need to make some changes in order to comply fully with the requirements of the environmental permitting regime, such as the ‘operator’ definition, and time must be allowed for those changes to be made in order to avoid causing significant disruption to the farming sector.

The NFU understands the logic behind time limited licences (TLL) becoming transitional (or converted) permits, and since there will be a presumption that a permit *will* be issued on the same terms as the expiring licence, then in many instances that approach may work well. However, the NFU is concerned about the complexity of the transitional arrangements, so robust and thorough guidance for industry will be essential to ensure that abstractors understand the transitional arrangements and the implications for their businesses. The NFU is also concerned that for abstractions with an **early abstraction licensing strategy (ALS) review date**, the transitional period may be too short for businesses to be able to adapt. Consequently, the NFU would encourage government to consider extending the transitional period so that permits will only be subject to *periodic review* at the end of the first *post-2028 ALS six-yearly cycle*. The year 2028 will then be consistent with the implementation date for the abstraction provisions in the Environment Act 2021.

On the wider point of periodic review of permits, we believe that where permits are reviewed, **permit holders should be given six years’ notice (one complete ALS cycle) before any changes are implemented as a result of the review.** This grace period will give farm businesses precious time to adapt and prepare for those changes; it is consistent with notice of sustainability reductions commonly

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given to water companies through the water resources management planning process; and was a key element of the original abstraction reform proposals.

For permanent (non-TLL) licences, the NFU supports the principle of them becoming transitional permits and continuing to operate on the same terms, with existing compensation rights. However, as will be set out further below, the NFU does have some concerns about some of the practicalities as well as some of the trigger events for the move to full environmental permitting.

One of the issues that is likely to be challenging for the agricultural sector is the **definition of ‘operator’** in environmental permitting. It is common for the abstraction licence to be held by the landowner, who will usually remain consistent for long periods of time, but for the actual abstraction to be carried out by the tenant or a licensee who is growing crops on the land and who may only have a short (in some cases annual) period of occupation of the land. It would be undesirable and impractical to change the licence holder due to the short duration of many occupations and the practicalities of frequent transfers. This is a very important practical point. The NFU, therefore, fully supports the proposal that the operator definition should not apply to transitional permits. The NFU is concerned about the suggestion that only an ‘operator’ would be able to exercise certain functions in relation to a transitional permit, such as applying to vary a transitional permit. The NFU believes that the exception from the need to satisfy the operator definition should apply in all circumstances, including when applying to vary a transitional permit.

The NFU is also concerned about the fact that a **move into full environmental permitting following certain trigger events** could result in some licence holders having less time to prepare for the move from a transitional permit to a full permit. This is particularly concerning as permanent licences will only move over following triggering events, and the consequences of getting things wrong in those situations could compound the already significant loss of those permanent abstraction rights. If it was the case that any licence variation requested by the abstractor would trigger transition to a full permit, then this could result in the unintended consequence of constraining innovation and greater sustainability (because the abstractor may decide not to make the change in order to keep their existing licence).

The details of the transitional arrangements and the triggering events for the move to environmental permitting will be critical for those who hold abstraction licences. Consequently, the **NFU is concerned that the consultation is taking place without the draft Regulation**, which will set out the transitional arrangements in detail. The NFU believes that further industry engagement before those Regulations are laid before Parliament will be critical to ensure that any unintended consequences of those arrangements can be addressed.

The NFU is concerned that the consultation suggests that in-progress applications would be determined under the Environmental Permitting Regulations, as this would move the bar part way through the process, which is unfair to the applicant who would have prepared their application on the basis of the current abstraction licensing requirements. It could also incentivise the Environment Agency to delay making decisions on these applications in order to ensure that the farmer is issued with a full permit rather than a transitional permit. As an alternative, the **NFU suggests a cut-off date for applications under the existing abstraction licensing regime**, so that applicants know at the outset which criteria they have to meet (for example, does the “operator” definition apply?) and can prepare their applications accordingly. Key dates during the transition should focus on actions by the abstractor (application dates) rather than actions by the regulator (determination).

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

Disagree

The NFU is concerned to ensure that farmers will not be disadvantaged by changes part-way through the process, so it is important that the principles applied do not become less favourable as a result of any regime change during transition.

Where the decision being appealed is made before the move to environmental permitting (before 1 January 2023 on the basis of the timeline set out in the consultation), the permit holder must be issued with a transitional permit, and not a full environmental permit at the end of the appeal process. This ensures that permit holders are not disadvantaged by the change of procedure and ensures that there is no delay in dealing with appeals in order to issue a full permit as opposed to a transitional one. As mentioned above, some elements of environmental permitting, such as the operator requirement, will require some businesses to make changes, and the NFU is concerned that the issuing of a full permit, as opposed to a transitional permit, could therefore cause problems for some businesses as the goals/requirements change part way through the appeal.

The NFU does not object to the alignment of procedures, provided that there is no disadvantage to the permit holder. So, for example, where there is a difference between the timeframes for the permit holder to take action, that period must not be reduced part way through the process. Similarly, the grounds on which an appeal can be brought and the basis on which the appeal is determined cannot be changed to the detriment of the permit holder part way through, and all appeals must continue to be determined on the basis of the grounds and principles in place at the time the appeal was submitted.

3. Do you agree with the proposed approach to groundwater investigation consents transitioning into Environmental Permitting Regulations? Please provide the reasons for your response where applicable

Not sure/I don't have an opinion

Groundwater investigation consents will usually be temporary and issued in situations where a degree of uncertainty is inevitable. It is important to ensure that these consents are dealt with in an effective and proportionate manner.

Allowing groundwater investigation consents to remain valid until they expire seems sensible. However, the NFU is concerned that the inability to vary or extend a transitional groundwater consent could have disproportionate implications due to the costs associated with applying for new permits. The NFU would welcome further consideration of how variations and extensions to groundwater investigation consents can be dealt with in a practical and proportionate manner.

4. Do you agree with the proposed approach to transitional abstraction permits with a time limit? Please provide the reasons for your response where applicable

Disagree

As mentioned above, the NFU does not believe that environmental permitting is appropriate for abstraction and is concerned about the implications that this move will have for its members. However, if the move does occur, we do support the adoption of a transitional period which will allow sufficient time for businesses to plan for the changes they need to make in order to be fully compliant with environmental permitting requirements. The NFU believes that, as a minimum, time limited abstraction licences should be able to run for their full duration before having to transition fully into environmental permitting, although in some cases we believe that more time should be allowed for this transition as explained further below.

Security of access to water is critical for many farming businesses and the NFU is extremely concerned about the move from a fixed cycle of licence renewals to a regime where permits can be reviewed at any time, potentially with limited notice to the permit holder. Without access to water, farmers simply may not

be able to continue their businesses, so it is important that the regime allows time for businesses to identify and implement alternative arrangements for access to water, and/or to review their business plans/cropping cycles. With that in mind, the NFU would like to see the review process incorporate the following key elements:

1. **At least six years notice should be given before any regulator-initiated variations to an Environmental Permit take effect**, especially where the effect of those changes would be to reduce the volume of water which could be abstracted under the permit. This period ties in with the current ALS cycles and ensures that businesses have time to plan for their future
2. Permits which authorise only winter and/or high flow abstractions (for example, those for filling on-farm reservoirs) are currently subject to less frequent review due to the lower environmental risks associated with these activities. As these projects involve significant capital investments, this longer-term security is critical to the ability of farmers to invest in these projects. **The 24-year review cycle for winter and/or high flow abstractions permits should, therefore, be retained going forwards.**
3. **The minimum duration of a transitional permit should be twelve years**, as this ensures that businesses have sufficient time to plan for and adapt to any changes they need to make as a result of the move to environmental permitting. As mentioned above, farmers who hold abstraction licences are usually small/medium businesses and require time to be able to plan for and make any changes.

Where a decision is taken to vary a permit as a result of a review, sufficient notice must be given to allow the business to make alternative arrangements. Constructing farm reservoirs or identifying alternative water sources takes time, so we would suggest a minimum of six years notice (one complete ALS cycle) is given before any variation is introduced.

The NFU has a number of other key concerns:

- **The limited information available** regarding some important aspects of the proposal, such as a definitive view on how 'site' will be considered in an abstraction context, as this makes it more difficult to assess the likely impacts for our members.
- **The approach to 'operator', and in particular the need for a transitional permit holder to satisfy this definition** in order to apply to vary their transitional permit, which we believe is inappropriate as they do not need to satisfy the operator definition to hold a transitional permit.
- **The approach to new authorisations, which will be issued initially as fixed term licences.** Some of these activities, such as **Transfer Licences** for on-farm wetlands and environmental sites, will generally be relatively low risk, and the applications for the authorisations will have been determined relatively close to the date on which the activities will transition into Environmental Permitting. The NFU is concerned that abstractors holding these authorisations will potentially find themselves faced with the need to apply for a new environmental permit soon after their consent has been issued, and that this environmental permit could then be subject to further review shortly after being issued. The NFU believes that it is important for a proportionate approach to be taken to these new permits.
- **The proposals for new authorisation time limited licences** (all applications for which must be determined by December 2022) which will then not benefit from any presumption that the terms of the licence will be transferred into the following permit on expiry. This is contrary to the position for other (non-new authorisation) time limited licences where the presumption of 'no change' during the transition to a full permit is offered. Defra has previously recognised that abstraction activities such as **trickle irrigation are lawful** and has presented the message to trickle irrigators that, in recognition of this, the move into the abstraction licensing regime will be as simple as possible in acknowledging that historic practices can continue. The proposal implied in the

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consultation that the regulator could use the permitting regime to further change the conditions of abstraction trickle irrigation will be poorly received by the horticultural sector.

- As will be explained further below, the NFU is also concerned about whether **all elements of environmental permitting, in particular the concepts of “operator” and “site” are appropriate for abstraction licensing**. Consequently, the NFU believes that there is merit in retaining (and tweaking if necessary) the existing approach to abstraction licensing, rather than trying to fit abstraction and impounding into an existing regulatory regime which has been designed for other, very different, purposes.
- The fee structure for applications relating to Environmental Permitting.** Abstraction is a relatively straight forward activity compared to some of the complex processes regulated through environmental permitting. Therefore, the NFU would like to see a proportionate fee structure in place for abstraction and impounding activities within the environmental permitting regime to ensure that the costs are proportionate.

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

Agree

6. 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?

Disagree

By their very nature, groundwater investigation activities will be short-term and will be required when there is a degree of uncertainty around the environmental impacts of the activity. Whilst the NFU understands the need for these activities to be regulated in some way, applying for an environmental permit, with all of the associated requirements and costs, is likely to be disproportionate to both the environmental benefits and the benefits to the applicant in many cases. For that reason, the NFU believes it is likely to be more appropriate and proportionate to operate a separate system for issuing groundwater investigation consents outside of the full environmental permitting regime.

In the event that these activities are brought within the environmental permitting regime, it is important that this is carried out in a manner which is proportionate, and which reflects the temporary nature of the activity. This means that the content of the application, the associated fees, and the permit conditions should all be reviewed to ensure that they are appropriate for the activity being authorised under these permits.

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

Agree

Whilst the NFU agrees with the broad categories of activities to be adopted for the purpose of classifying abstraction and impounding activities, the NFU does have concerns about the inclusion of water transfer activities in the environmental permitting regime. Water transfers are activities that have no, or at worst minimal, environmental impact and they tend to be historic activities that have been commonplace for decades. Until very recently, these were exempt activities and did not need an abstraction licence due to their very low environmental impacts. They have been brought into the licensing regime through the New Authorisations programme on the premise that the (extremely high) application charge of £1500 will be

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a ‘one off’ payment. This was presented to the industry as a requirement to formally register the activity because it requires no ongoing determination or enforcement activity. In those circumstances, it seems unfair, to say the least, that these ‘registrations’ of the transfer of water should be burdened with ongoing administrative costs embedded within the environmental permitting regime. The NFU would, therefore, urge government to reconsider its approach to these activities, and ensure that they are classified as either excluded or exempt activities.

8. 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 activity with the permit holder’s permission?

Disagree

The NFU agrees that the ability for a person who is not the permit holder to carry out an abstraction activity with the permit holder’s authorisation should be retained. However, the NFU would ideally like to see this retained in relation to full environmental permits as well as transitional permits. In the agricultural sector, there are often complex arrangements in place concerning access to land and water and the NFU is concerned about the potential issues associated with implementing the operator requirement in this respect.

In the farming sector, it is very common for abstraction licences to be held by one party with another individual in fact carrying out the abstraction activity on the ground. For example, the abstraction licence may be held by a landowner, who then authorises a tenant, licensee or contractor to abstract water to be used to grow crops. The ability for these types of arrangement to continue is critical, especially in sectors where growers typically have short-term licences/tenancies to grow specialist crops as part of a crop rotation cycle. It would be disproportionate to have to transfer the environmental permit from occupier to occupier in these circumstances, so ensuring that there is a mechanism to enable the existing arrangements to continue with minimal disruption will be critical for the sector.

In the event that the operator requirement does apply to full environmental permits, the NFU believes that it is important that the transitional arrangements are clear and that holders of transitional permits are able to vary and/or transfer their permits whether or not they satisfy the definition of “operator”; and those abstractors should face minimal administrative barriers.

In relation to full environmental permits, the operator requirement should be implemented in a manner which enables a permit holder to authorise a third party to abstract, provided that they can demonstrate that they have control over the abstraction activity. Assurances to this effect have been given throughout the stakeholder engagement process as the proposals have been developed, because it is widely recognised that arrangements in the agricultural sector are often complex. In the event that the requirement for the permit holder to be the operator is implemented in relation to abstraction, clear guidance will be needed to explain how the complex, multi-party arrangements which often exist in the agricultural sector can be accommodated, and what evidence is likely to be required to demonstrate that a permit holder has sufficient control to satisfy the definition of operator. The NFU would welcome the opportunity to work with government to develop this guidance to ensure that it meets the needs of the agricultural sector.

Given the limited nature of the activities which will be authorised under an abstraction/impounding permit, the NFU agrees that competence tests should not be a requirement.

9. Do you agree with our proposal to adopt the Environmental Permitting Regulations provisions relating to offsite permit conditions for abstraction and impounding activities?

Disagree

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The NFU does not believe that there is a need for off-site monitoring activities within the abstraction and impounding regime. This power does not currently exist within the abstraction licensing regime, and the consultation does not provide any explanation of how this power would be used or why it is needed in the context of abstraction and impounding licensing. In the absence of a clearly identified need, the NFU does not consider that there is any benefit for including this requirement in the abstraction regime.

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

Disagree

The NFU agrees with the broad categories of permits, and with the proposal that it should be possible to have excluded and exempt activities within the abstraction and impounding regime.

The NFU agrees that activities which are not currently regulated, such as the ability to abstract up to 20 cubic metres per day, should be treated as excluded activities and fall outside the scope of the permitting regime.

However, as set out above, the NFU believes that previously exempt activities of water transfer should also be treated as excluded or exempt activities as the costs associated with bringing these activities fully into the environmental permitting regime greatly exceed the limited environmental benefits this will deliver – because transfers are a non-consumptive operation and subsequent abstractions of transferred water will be separately regulated.

The NFU has no strong views on the format of permits, provided that they are clear and that it is easy for permit holders to understand the content of their permit and the requirements associated with it. Where this results in terminology changes, it is important that guidance is available for permit holders to explain the new terminology so that this does not cause undue concern or confusion.

The NFU strongly opposes the proposal to transfer the application of Water Resources Act section 57 (s.57) spray irrigation restrictions into the environmental permitting regime. S.57 restrictions uniquely impact spray irrigation practices and are therefore an unfair measure imposed on the farming community. They were historically justified as a measure to control the environmental impact of highly consumptive abstraction, but they are now an outmoded method of regulatory control. Indeed, the original proposals for abstraction reform proposed removing sector-specific S.57 to be replaced by the general application of ‘hands off flow’ constraints for all licences, not just one category of licence (spray irrigation). As is explained in the consultation, there are other tools which can be used to restrict abstraction as part of the environmental permitting regime, and the NFU believes that those tools would provide an adequate system for limiting water consumption and that it is time to move away from the outdated approach under s.57.

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

No. Since abstraction and impounding activities are site-specific, in terms of type of abstraction and any impact on local ecology, it is hard to imagine how any set of generic, re-defined conditions could be applied.

12. 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

The imposition of the EMS requirement on a relatively large number of small businesses will be a significant challenge for the sector and for the regulator, which the NFU believes will be disproportionate to the environmental benefits delivered by the requirement. The NFU is concerned about the costs and administrative burdens associated with moving abstraction licensing into the environmental permitting regime, at what is already a challenging and uncertain time for the sector and believes that it is important to ensure that the implementation is proportionate and that the impacts on the sector are limited.

In the event that an EMS is to be required, it must be implemented in a proportionate manner which is appropriate for the nature of the activities being authorised under these permits. For example, the consultation refers to EMS being linked to demonstrating operator competence, which we agree should not be a component of abstraction regulation. This suggests that the EMS requirement would need to be reviewed and implemented in a manner which is appropriate to these specific activities. Clear and comprehensive guidance regarding the content and format of these documents will be necessary, and a detailed communication plan will be needed to ensure that farmer and grower abstractors understand what they need to do.

The NFU is concerned about the potential for ‘regulation creep’ arising from the introduction of EMS. This is because abstraction licensing applies to the activity of *abstraction* whilst the EMS could be applied to various elements of water use after the water has been abstracted from the environment. The NFU believes that farmers and growers have a role to play in using water more sustainably and efficiently, but these are matters for the adoption of voluntary good practice measures and not the expansion of the regulatory framework surrounding abstraction.

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

Disagree

Mapping of irrigated land that benefits from an abstraction licence is not currently a requirement of abstraction licensing regulation, beyond recording the location of the point of abstraction and we see no benefit in creating maps and plans in the transition to EPR. The location of the abstraction point is fundamental because it dictates the impact of abstraction on the environment (and the impact on existing derogated rights) and so it is logical that the abstraction point should be recorded in the permit; a national grid reference number should continue to suffice for that purpose. With this in mind, the NFU questions whether the concept of “site” is appropriate when regulating abstraction and believes that there is considerable merit in retaining the current approach of basing abstraction licensing on a single point of abstraction.

While the NFU can see that there are potential benefits of being able to include multiple points of abstraction on a single permit, in reality this may be difficult to achieve (and will rarely be of interest to small businesses). Farmers will manage their agricultural units as a whole, considering their water supply and needs across their holding. So, from the farmer’s perspective, the agricultural holding may be the “site”. However, when permitting abstraction, the Environment Agency is likely to be focused on the catchment or hydrologically linked areas. Hence the Environment Agency’s approach to site may not be the same as the farmer’s approach. For that reason, if “site” is to be a feature of abstraction licensing it is important that it is clearly defined and that there are consistent criteria which can be used for identifying the boundaries of a site. We reiterate that we remain very concerned that the Government is pressing ahead with plans to move abstraction into environmental permitting when such fundamental issues as these are unresolved and where there is no clear way forward. The NFU believes that it is important that

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these issues are resolved before the Regulation is drafted, so that consideration can be given to whether it is necessary to define key terms in the Regulation, or even disapply them in the case of abstraction and impounding activities.

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

Whatever approach is taken, the NFU's overarching concern is that the principles are clear, consistent and easy to apply. Abstractors must be able to easily identify the extent of their site for abstraction purposes.

The NFU believes that the key location for abstraction activities is the point of abstraction, and it is essential that any regulation of abstraction activities through the environmental permitting regime is confined to that point of abstraction, as is currently the case through the abstraction licensing regime.

If the term "site" is to be applied in the context of abstraction licensing, its use should be confined to determining whether multiple abstraction points can be regulated through a single permit. If "site" is to be used in that way, the NFU believes that the key criteria should be a hydrological link between the abstraction points as this will determine whether there is a connection between the impacts of the different abstraction points from an environmental perspective. The current abstraction catchments could be a starting point for defining site for these purposes as these catchments are known and understood by abstractors.

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

Not sure/I don't have an opinion

This could be of benefit to some abstractors, but the NFU is concerned that it could create confusion by bringing the concept of "site" into the regulation of abstraction activities in a manner that is not currently applied. The NFU is concerned about the lack of clarity about how this would work in practice and around how decisions would be made.

16. 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?

Not sure/I don't have an opinion

As mentioned above, the NFU is concerned about the approach to defining site, and the lack of detail around these proposals in the consultation document. Whilst the NFU can see merit in having a single permit for multiple points of abstraction, the NFU is also concerned about the potential for unintended consequences and added complexity. For example, if a single permit covered abstraction points in two separate catchments, how would periodic reviews work? Would the different points be reviewed at the same time as other activities in their respective catchments, meaning the same permit could be reviewed multiple times, or would the permit be reviewed as a whole meaning some points are out of line with the rest of their catchment?

17. 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 impounding activity to be actioned upon the receipt of a joint application?

Agree

The receipt of a joint application to transfer an environmental permit for abstraction or impounding activities seems to be a sensible approach. The NFU would support the adoption of a deemed acceptance policy in order to reduce the administrative burden, whilst enabling the Environment Agency to intervene in appropriate situations.

In relation to transitional permits, it is important that the transferor does not have to satisfy the operator requirement. As the operator definition is not applicable to current abstraction licensing, some licence holders will have to review their situation before transitioning fully into environmental permitting and in some cases it may be necessary to transfer the permit to the operator in order to comply with environmental permitting requirements. It is essential that the regulatory regime facilitates these changes so that businesses can adapt to the new regime with minimal disruption.

However, the NFU does not agree with the proposal regarding the surrender/revocation of an abstraction licence, and in particular the proposal that the Environment Agency would have to provide "technical input" into the process before the surrender takes effect. In the case of abstraction, once the activity ceases there is unlikely to be any significant environmental impact regardless of whether the equipment associated with the activity is removed or not. In the case of abstraction, this proposal simply adds to the administrative burden for both the permit holder and the Environment Agency for no clear benefit and should not be adopted.

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

Disagree

The NFU has no objection to the principle of periodic reviews for what are currently time-limited abstraction licences. The timeframes for these reviews should be linked to the current review and renewal cycles for the relevant catchment to reduce the impact of these changes on the ground.

However, water is a vital input for food production and a secure supply of water is essential for the provision of food and agricultural goods in the quantity and quality demanded by the consumer. It follows that any regulatory measure that reduces the certainty of access to water will have a major impact on small family businesses and, ultimately, on our ability to reach desired levels of food security in the UK. Therefore, the NFU is strongly opposed to the proposal to bring in individual reviews for abstraction licences, which could result in specific permits being reviewed more frequently and/or out of line with other permits within the relevant catchment.

The NFU is also concerned about the move from permanent licences, which are a valuable asset to a business, to a reviewable permit with no compensation rights. This is a significant change for the business concerned and would greatly reduce the security of its long-term water supply. Whilst the NFU appreciates that there are limited situations where this change will happen, it is still a significant concern for the agricultural sector, particularly where investments have been made/financed on the basis of that long-term secure supply.

As previously stated, we have a series of requests to make on 'reviewable' permits, including that:

1. No regulator-initiated variation should take effect in relation to any licence or permit without six years' notice (one complete ALS cycle), particularly if the effect of this change would be to reduce the volume of water which can be taken. This is essential for business certainty, and to allow time for businesses to adapt, and was a fundamental element of the abstraction reform proposals.

2. For time limited licences expiring within six years of the EPR implementation date (currently 2023), transition into full permits should be postponed until the second ALS six yearly cycle, not the first, to give small farm businesses the opportunity to adapt to the change.
3. Permits for reservoirs (winter and/or high flow abstractions) should be periodically reviewed every 24 years to reflect the fact that they have no/very low environmental impacts.
4. Defra is bringing previously exempt ‘new authorisations’ into the licensing regime by confronting those pursuing lawful activities with a licence application and determination process. We do not agree that those new licences should almost immediately face review – and potentially further change to the detriment of the business – so soon after the initial determination.

The NFU would like to see these requests incorporated into the regulatory regime, so that they are firmly and consistently integrated into the approach taken to managing abstraction in the future.

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

Disagree

The NFU believes that abstraction licensing reviews should be based on a fixed, periodic review cycle so that businesses have the long-term security they need to be able to plan for, and invest in, the future.

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

In the agricultural sector, permit reviews should be:

- for high and medium risk abstractions, every 12 years (two 6-year abstraction licensing strategy cycles), and reviews should be made
- for low-risk activities such as winter/high flow reservoirs and non-consumptive abstractions such as water cress production and fish farming. every 24 years (four 6-year cycles)

This timetable will minimise disruption to the sector and will be familiar to many abstractors.

The permit holder should be notified in advance of any review and should be provided with regular updates and full disclosure of information which is taken into account as part of the review. There should also be an opportunity for the permit holder to feed into the review process.

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

Disagree

The NFU is concerned about the potential impacts of suspension notices on agricultural businesses as access to water is fundamental to the ability to grow crops and produce food. Removing this access, potentially at short notice, at critical points in the growing cycle could have severe detrimental impacts on agricultural businesses.

22. Do you agree with the proposal to use the term ‘harm to the environment’ and the definition proposed?

Disagree

The NFU agrees that pollution is not an appropriate term for use in the context of abstraction as it doesn't encompass the types of impact that are likely to occur. The fact that it is necessary to incorporate alternative terms in order to accommodate abstraction into environmental permitting further supports our view that the environmental permitting regime is not the right tool for regulating abstraction as it is very different to the types of activity for which the regime was designed. The NFU agrees that "harm to the environment" is likely to be a more appropriate measure than "pollution" to determine whether action is required in the context of abstraction.

However, suspending an abstraction licence is a very severe step to take and could have catastrophic impacts on the business. Therefore, the NFU is concerned that the bar for environmental harm has been set very low, particularly in relation to the inclusion in the definition of "otherwise adversely affect the protection and enhancement of the environment". Given that permit holders will have paid significant sums of money to obtain their permits and those permits are subject to periodic reviews, the NFU believes that the bar for suspending a permit should be higher and should be based on "serious" or "significant" harm to the environment. In particular, the NFU questions whether impacts on "enhancement" to the environment should be taken into account when considering the very draconian step of suspending an abstraction licence.

The NFU is also concerned about the degree of certainty which would be required when considering whether an activity "may" cause harm to the environment. In view of the fact that the suspension of a permit could have significant impacts for the permit holder, the NFU believes that it should be the harm identified that should be more likely than not to occur, and that the assessment of this should be based on credible scientific evidence.

The NFU is also concerned that the definition of harm to the environment would be set in guidance, rather than in the Regulation itself. This will be an important term and it is crucial that the definition is clear and consistent. Therefore, the NFU believes that the definition should be set out in the legislation, to remove any potential future ambiguity or uncertainty regarding its meaning

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

Yes

As mentioned above, it is important that the definition of environmental harm clearly provides for there to be a robust scientific basis to support the assertion that harm to the environment may be caused by the activities.

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

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

It is important that there is a tool available for those who are in breach of the requirement to hold an environmental permit for impounding works, but the NFU has no strong views on how this should be achieved.

25. 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?

Disagree

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The NFU is concerned about the proposal to move from the use of stop notices to suspension notices due to the loss of the ability to claim compensation if the power is used unreasonably. The use of a suspension notice could have severe impacts on the business concerned and it is right that the permit holder should be able to obtain compensation if that power is exercised unreasonably.

The NFU has no strong views on the other measures, although it seems sensible to retain the same range of options as currently apply under the abstraction and impounding regime whilst avoiding duplication.

26. Do you agree with the proposal to set the maximum prison term for an indictable offence at two years rather than five years?

Agree

The NFU agrees with the proposal to limit the maximum sentence for offences relating to abstraction and impounding activities to two years, rather than adopting the five years which applies for other indictable offences under the Environmental Permitting Regulations. This is more closely aligned with the current penalties and is a proportionate sanction in the context of abstraction and impounding.

As mentioned above, the arrangements around access to land and water in the agricultural sector are often complex. The NFU would welcome some clarity around how enforcement and sanctions would be applied in the context of a transitional permit, where the permit holder will not have to satisfy the operator requirement.

Throughout the stakeholder discussions, the NFU has been repeatedly reassured that the intention is that existing arrangements with a landowner holding a permit and a tenant/licensee carrying out the abstraction will be able to continue, provided there is an appropriate chain of control in place. However, the enforcement regime associated with environmental permitting is largely directed at the operator named in the permit, and often in the agricultural sector the operator may have oversight and a degree of control but may not be the person on the ground who is directly responsible for the breach. Given the complexity of access to water in the agricultural sector, the NFU would welcome further consideration about how the complex multi-party arrangements which exist in the agricultural sector can be properly accommodated in the environmental permitting regime, with enforcement directed at the individual responsible for the breach.

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

Disagree

In the agricultural sector, the majority of abstraction licences are held by individuals or small/medium sized businesses, and the correspondence details will usually also be the farmer's home address. As a result, the NFU is concerned about the potential increase in the amount of information published regarding abstraction rights. The NFU is concerned that this information could be used by those wishing to disrupt farming activities and/or target those involved in certain types of activities.

28. 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

It is important that the regime is implemented in an appropriate and proportionate manner and requiring online advertising only for the majority of licences should be sufficient to bring them to the attention of those with an interest in the issue, whilst helping to reduce costs for the applicant.

29. 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

In circumstances where there are no appreciable environmental impacts, public participation would serve no useful purpose. Consequently, the NFU agrees with the proposal to dispense with this requirement in these situations to reduce unnecessary burdens on permit holders.

30. 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?

Agree

The NFU agrees that it is sensible to align the position regarding consultation with that which is applicable to other processes within environmental permitting, provided that the process remains transparent and accessible to permit holders/applicants.

31. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for vesting and the six months notification period?

Disagree

The NFU agrees that provision should be made regarding the vesting of a permit/transitional permit after the death of the permit holder. The NFU also considers that it is important that there is a clear and consistent framework to cover the vesting of permits following bankruptcy as access to water will often have implications for the value of the land associated with those rights.

Where a transitional permit vests, it is important that the compensation rights are retained not just when the permit vests in the personal representatives, but also when it is subsequently transferred to the new permit holder following the administration of the estate.

In the agricultural sector, many abstractors will be small-medium family businesses and the death of the permit holder will be a difficult and stressful time for the family. The NFU is concerned that reducing the period of time for notifying the Environment Agency of a vesting from 15 months to six months could have a very serious detrimental effect in the agricultural sector, where the 15-month time frame is often difficult to meet due to the complex arrangements that need to be unravelled. The consequences of failed vestings can be very severe, particularly where there are permanent rights involved, so the NFU is strongly opposed to any reduction of this timeframe.

In the event that the timeframes are reduced, the NFU agrees that there should be a transitional period to cover situations where the death occurs shortly before the move to Environmental Permitting, but also that consideration should be given to extending these arrangements to cover all transitional permits, regardless of when the vesting occurs. The messaging associated with transitional permits talks about

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retaining existing rights, and minimising disruption, hence such a significant reduction in the vesting period directly conflicts with these aims. Also, as licences will not be reissued when they become transitional permits, there is a real risk that the personal representatives may not be aware of the reduced timeframes for notifying the Environment Agency of a vesting, increasing the risk of the deadline being missed.

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

Disagree

We agree that farmer abstractors should strive to improve their performance in sustainable, efficient water use, by driving down demand where possible and by forward planning to mitigate against the potential impacts of drought risk. We also agree that it is important to plan ahead and future proof businesses where it is possible to do so.

The regulated activity in this case is the act of abstracting water; the activity for which the water is used (in the agricultural sector, this may be the growing of crops or provision of drinking water for livestock) is not a regulated activity.

Agriculture is by its very nature heavily dependent on, and influenced by, climate conditions. When planning for climate change, farmers will have to consider all aspects of their business, and it would be inappropriate to separate out consideration of future water use and availability from the wider considerations the business will have to address.

The NFU is concerned that requiring the Environmental Management System (EMS) to cover climate change adaptation measures would effectively expand the EMS beyond the scope of the abstraction activity to cover other elements of the farming activity on the land which are not covered by the regulatory regime. As a result, this would be effectively expanding the requirements of the environmental permitting regime beyond the scope of abstraction and impounding and into the wider aspects of the farming business.

The NFU is concerned that this requirement could become disproportionately burdensome for the small/medium businesses which have to implement the requirements, without delivering any significant environmental benefits. For this reason, the NFU also strongly believes that the content of the EMS must be limited to areas which are directly related to the abstraction/impounding activity, and not expanded to other, unregulated, aspects of the farming business.

The NFU has broader concerns about the requirements of the EMS potentially being disproportionate to the environmental benefits delivered through the systems in the case of abstraction and impounding. The NFU considers that the requirements should be streamlined to ensure that the burdens imposed are not unreasonably burdensome for abstractors. In view of this, and taking into account the fact that operator competence is not being incorporated into the abstraction and impounding regime, the Environmental Management System should be limited to:

- a maintenance checklist and maintenance records
- an accident management plan
- any necessary operating instructions
- a way of recording any complaints, pollution incidents or breaches of the permit conditions, and the actions have taken to deal with any such breach.

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

As mentioned above, the NFU does not agree that climate change mitigation should be a feature of the abstraction regime.

34. 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

Protected rights are an important and well-established component of the abstraction regime and it is right that those protected rights should be retained.

35. 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

Security of access to water is fundamental for many businesses, and those who hold a protected right or engage in a lawful activity need to have confidence in their ability to rely on these activities. Therefore it is right that the concept of protected rights and lawful uses should be carried over to environmental permitting in relation to abstraction and impounding activities to ensure that new activities do not conflict with existing protected rights and lawful uses.

36. 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 an activity and the Environment Agency considers they have applied for the wrong type of activity?

Agree

This seems a sensible proposal as it reduces the chances of an application being rejected on the basis that the wrong type of activity has been applied for and ensures that any permit ultimately granted is suitable for the activity to be undertaken.

It is important that the applicant is notified of the proposal and has the chance to challenge the decision if they consider that the Environment Agency has wrongly concluded that they applied for the wrong type of activity. This enables the situation to be rectified without the application process being restarted if there has been a misunderstanding or incorrect decision.

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

Unsure/don't have an opinion

The NFU does not agree that abstraction licensing should be moved into the environmental permitting regime. However, if that move does occur, the NFU has no specific concerns regarding the adoption of

the environmental permitting application process, provided the fees and administration associated with the application are proportionate.

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

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

39. 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

40. 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?

Disagree

The NFU is opposed to the transition of abstraction licences into the Environmental Permitting Regulations and is strongly opposed to the suggestion that permanent abstraction rights could be replaced by a reviewable Environmental Permit in any situation. These permanent rights are a valuable asset for the business as they provide long-term security regarding access to water, and the NFU does not believe that these permanent rights should be removed from licence holders without compensation being payable.

The NFU agrees that for permanent licences that are to become transitional permits, it should be possible for certain variations and changes to be made without triggering the move to a full Environmental Permit. It is important that these changes can be made by the holder of a transitional permit without the need for that person to satisfy the environmental permitting definition of "operator" as not all holders of transitional permits will meet that criterion, and it would be wrong to exclude some permit holders from the ability to make changes to their permit on the basis of criteria that are not applicable to their permit.

The NFU believes that it should be possible to transfer a transitional permit without triggering a move to full environmental permitting as there will be no environmental impact resulting from a change of permit holder. Transfers will not always be made by free choice (for example, they may be associated with land sales) but the loss of the transitional permit, with all of the associated rights, may be significant for the business/individual holding the permit.

It is important that there is clarity around what changes will and will not trigger a move from a transitional permit to a full permit so that the permit holder can consider all of their options and make an informed decision regarding how to proceed. In the agricultural sector, the move from a transitional permit to a full permit may have other significant implications, for example if changes are needed to accommodate environmental permitting concepts such as "operator", and these changes may not always be straightforward to implement due to the complexity of the arrangements in place.

41. 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