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Consultation on Proposals for Time Limiting of Water Abstraction Licences

May 2009



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



defra
Department for Environment
Food and Rural Affairs

Department for Environment, Food and Rural Affairs

Nobel House

17 Smith Square

London SW1P 3JR

Telephone 020 7238 6000

Website: <http://www.defra.gov.uk>

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Information about this publication and further copies are available from:

Defra
Water Resources Policy
Area 2C
Ergon House
Horseferry Road
London SW1P 2AL
Tel: 020 7238 4468

Email: consultation.tll@defra.gsi.gov.uk

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Basic Information

Who this consultation is aimed at

1. This consultation has been sent to a wide range of stakeholders – the list can be found at <http://www.defra.gov.uk/corporate/consult/water-abstraction/index.htm> - but responses are welcome from anyone with an interest in the abstraction of water and its impact on the environment.

Scope of the consultation

2. This consultation document and accompanying consultation Impact Assessment (IA) set out the views of central Government and the Welsh Assembly Government. References to “the Government” in this consultation are to the shared views of each Government.

The purpose of this consultation exercise

3. This consultation document and consultation Impact Assessment (Annex A) form the basis of a 12 week consultation exercise which aims to seek views from all stakeholders with an interest in water abstraction. The proposals in this consultation document apply to England and Wales only.
4. This document explains our proposals for time limiting water abstraction licences. We invite your contributions and comments. We will consider all responses in the development of any future legislative changes that may be necessary.
5. References and supporting background papers are provided as footnotes throughout the text.

How to contribute

6. You are welcome to comment on all aspects of our proposals but there are some specific issues on which we would particularly value your input. These are presented as specific questions throughout the document and are also summarised at the end of the Executive Summary.
7. This consultation follows central Government’s criteria for consultation, which can be viewed at following link:
<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>
8. The consultation Impact Assessment is included in Annex A and your views are also sought on this document.
9. The closing date for written responses to this consultation is **4 August 2009**. If you envisage difficulties in meeting this deadline, please contact the person named below, who will do their best to accommodate you.
10. Responses to this consultation should be sent by 4 August 2009 to:

Email: consultation.tll@defra.gsi.gov.uk

or the following postal address:

Sujata Sinha
Defra
Area 2C, Ergon House,
Horseferry Road
London, SW1P 2AL

11. Respondents representing Welsh interests or operating in Wales should send their responses to the following email or postal address and also copy their response to Defra:

E-mail to: water.consultations@wales.gsi.gov.uk

Olwen Minney
Water Management Team
Climate Change and Water Division
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Confidentiality

12. In line with Defra's and the Welsh Assembly Government's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR and the Welsh Assembly Government Publications Centre, Welsh Assembly Government, Cathays Park, Cardiff, CF10 3NQ. The information they contain may also be published in a summary of responses.
13. **If you do not consent to this, you must clearly request that your response be treated confidentially.** Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which Defra or the Welsh Assembly Government will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
14. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or email requests (020 7238 6575, defra.library@defra.gsi.gov.uk). Copies can also be obtained from the Welsh Assembly Government Publications Centre (029 2082 3683, assembly-publications@wales.gsi.gov.uk). Wherever possible, personal callers should give the library 24 hours' notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

Comments about this consultation process

15. Any comments or complaints about the consultation process itself should be addressed to Defra's Consultation Coordinator, Room 7C Nobel House, 17 Smith Square, London SW1P 3JR.

Next steps

16. Following the 12 week consultation period there will be a Government response to consultation feedback which will be published on the Defra website: www.defra.gov.uk. A link will also be placed on the Welsh Assembly Government website www.wales.gov.uk. Any changes to primary legislation that flow from this consultation are expected to be taken forward in the [Floods and Water Management Bill](#) which is being consulted on separately.

Executive Summary

The situation today

The Environment Agency is the regulatory body responsible for managing water resources in England and Wales. The competing demands for water and the needs of the environment are managed and balanced through the abstraction licensing system.

Abstraction licences have historically been granted without a time limit. In *Taking Water Responsibly*¹, the Government signalled to the Environment Agency that it should plan to convert most water abstraction licences to time limited status, and that negotiated voluntary agreement should be sought wherever possible, with particular attention to areas of water stress. Since then the Environment Agency has developed incentives to encourage voluntary conversion to time limited status, and has introduced measures to time limit all new abstraction licences. Despite these measures, currently only 20% of all abstraction licences are time limited.

Why do we need to change policy?

The Government believes there is a need to ensure that water resources are allocated efficiently in order to cope with the anticipated impacts of climate change and to achieve water quality objectives, as set out in *Future Water*² and the Welsh Assembly Government's *Strategic Policy Position Statement on Water*³. The nature of the water environment is likely to change in the future due to shifts in rainfall distribution, demands for water and use of land. It is essential that we are able to sustain water resources and protect the natural environment, especially biodiversity, habitats and water quality, amid changing circumstances. This is not only to meet the requirements of EU Directives and other legislation, but for people to enjoy the natural environment now and in the future.

The licensing regime as it stands does not allow the Environment Agency to readily alter licensed volumes and conditions, or to reallocate licences. The Environment Agency's *Catchment Abstraction Management Strategy (CAMS)* reviews provide information about existing and indicated future environmental harm relating to water abstraction, so that measures can be taken to ensure that the environmental and water quality objectives of a body of water are met. Time limiting all water abstraction licences would enable the Environment Agency to respond to these assessments in future decades by allowing licences to be amended and adapted in response to changing conditions, therefore ensuring that abstraction is sustainable, and the environment is adequately protected.

What are the policy objectives of mandatory time limiting of abstraction licences?

¹ *Taking Water Responsibly* - Government decisions following consultation on changes to the water abstraction licensing system in England and Wales, DETR and Welsh Office, March 1999

² [Future Water](#) – The UK Government's water strategy for England, Defra, February 2008

³ [Welsh Assembly Government's Strategic Policy Position Statement on Water](#)

The policy objectives are to:

- enables the Environment Agency to review licences on expiry in light of any changed circumstances since the licence was originally granted. This includes tests to demonstrate the continued environmental sustainability of the licence, continued justification of need and efficient use of water. If these tests are not met, then there is potentially scope to reduce the licensed volumes.
- provide an efficient regulatory framework that includes administratively simple mechanisms by which the Agency can change licensed volumes or conditions, for large numbers of licences if necessary.
- ensure a sufficient period of notice of licence changes is given to abstractors.
- allow the costs of uncertainty and of the potential and actual loss of licensed water volumes to be borne by those who are contributing to environmental damage according to the principle that the polluter or impacter pays (i.e. instead of the cost of compensation spread across all abstractors through increasing charges, the cost is only borne by those affected by changes).

Proposed Options

This consultation document presents three options for proposing the time limiting of existing abstraction licenses. These are **'do nothing'** and two mandatory time limiting options. The mandatory time limiting options are **targeted time limiting** using existing legislative powers and **universal time limiting** using new legislative powers. All of these options are explained fully in this document for consideration.

'Do nothing'

The first option in the consultation is **'do nothing'**, i.e. no change to the present position, which relates to continued use of the existing regime. The current regime relies on existing license holders to voluntarily convert to time limited status, which does not allow the Environment Agency to manage abstractions sustainably. Therefore, this option does not meet the policy objectives of the UK Government and the Welsh Assembly Government.

Targeted time limiting

Consideration of the costs and benefits of mandatory targeted time limiting using existing legislative powers has concluded that this option would be time consuming and inefficient to implement, and may not therefore meet our policy objectives. Using the targeted approach to time limiting could leave England and Wales with the risk of potentially much larger costs for maintaining Good Ecological Status of water bodies, as required under the Water Framework Directive. This is because the cost of implementing targeted time limiting using current legislative powers would increase in proportion to the number of licences targeted for time limiting. Current data on the number of non time-limited licences located in over abstracted or over licensed catchments in England and Wales is 6,226 licences, or 28% of all abstraction licences.

Although there are many disadvantages of this option, only those licences which have been targeted would be converted to time limited status. Those abstraction licenses which are in areas where water resources are sustainable and are not significantly impacted by environmental change, could continue unaltered.

Universal time limiting

The option of mandatory universal time limiting through new legislation, provides an administratively efficient and timely approach to meet our policy objectives, and is consistent with the principle that the polluter, or in this case the agent impacting on the environment, pays.

This option would achieve a better environmental outcome from 2021 onwards. Time limiting all abstraction licenses provides a mechanism to deal with future changes in water availability in a sustainable manner.

Overall, the option of time limiting all abstraction licenses through new legislative powers would give much greater flexibility to adapt to change than voluntary conversion through the current licensing regime or targeted time limiting using existing legislative powers.

In February 2008, the Chancellor, Secretary of State for Environment, Food and Rural Affairs and the Minister for Environment, Sustainability and Housing, one of the Welsh Ministers, commissioned Professor Martin Cave to undertake a Review of Competition and Innovation in Water Markets in England and Wales. The final Cave report, which was published in April, includes the following recommendation with regard to abstraction licences:

- In order to balance protecting the environment against competing extractive uses of water and to facilitate greater competition, Cave recommends that the Environment Agency should take forward a more risk based approach to allocating abstraction licences. This would consider the likelihood of allocated licences being under-utilised or utilised at different times.

The UK Government and Welsh Assembly Government are currently considering the recommendations outlined in the final Cave report.

The details of how time limiting should be implemented will be considered in light of consultation responses and any further information gathered during the consultation period.

Consultation Questions

Consultation questions are asked through this document. To aid you in responding, a complete list of the questions asked is presented below, referenced by the section of this document in which it appears.

Section 3 – Rationale for change to policy

Q1 Do you agree with our assessment of the pressures on water resources and the rationale for time limiting? We would welcome your comments on these issues.

Section 4 – Option 1 – ‘Do Nothing’

Q2 Do you agree with the limitations? Are there other consequences of the “Do Nothing” option?

Section 6 – Option 2 – Mandatory Targeted Time Limiting

Q3 If you agree that targeted time limiting (using existing legislative powers) is the right option, which of the criteria would you support and why?

Q4 Are there any other options that you think should be considered for targeted time limiting?

Q5 What are your views on implementing targeted time limiting of abstraction licences through new legislative powers?

Q6 How do you think mandatory targeted time limiting would affect an abstractor with a licence which is not time limited, in particular:

- i. those abstractors with Long Duration Licences
- ii. small and medium sized business abstractors

Section 7 – Option 3 – Mandatory Universal Time Limiting

Q7 Are there any other options that you think should be considered for universal time limiting?

Q8 How do you think mandatory universal time limiting would affect an abstractor with an abstraction licence which is not time limited, in particular:

- i. those abstractors with Long Duration Licences
- ii. small and medium sized business abstractors

Q9 Since there is limited information available to assess the impacts of time limiting on small and medium sized businesses that may be impacted, we are seeking the views of those affected in groups such as agriculture, fish farming and private water supplies, in order to prepare a more complete assessment. Therefore we would welcome case studies to demonstrate how such

businesses would be affected by the proposed policy changes in terms of business, financial, administrative and other costs.

Section 8 – Options for implementation timescales

- Q10 If there are known unsustainable licences in the Restoring Sustainable Abstractions Programme that have not been dealt with by the time they reach their new expiry date, how do you think we should deal with their applications for a replacement licence?
- Q11 Which method of expiry date selection do you prefer and why?
- Q12 How should we deal with licences that have time limited variations?

Section 9 – Comparison of options

- Q13 Which is your preferred option for mandatory time limiting, targeted time limiting using existing powers (s52) or universal time limiting through legislative change? Why is this your preferred option?
- Q14 Which option for time limiting is more likely to enable the environmental impacts of water abstraction to be managed and reduced?

1. The Current Abstraction Licensing system

Background

1.1. The Environment Agency is the regulatory body responsible for managing water resources in England and Wales. The competing demands for water and the needs of the environment are managed and balanced through the abstraction licensing system.

1.2. Abstraction licences have historically been granted without a time limit. All such licences are expressed to “remain in force until revoked”. Nevertheless, whilst no licence holder should expect to hold an abstraction licence in perpetuity, many abstractors without time limits will have had this expectation.

1.3. In Taking Water Responsibly, the UK Government signalled to the Environment Agency that it should plan to convert most water abstraction licences to time limited status, and that negotiated voluntary agreement should be sought wherever possible, with particular attention to areas of water stress. In October 2001 the Environment Agency introduced a national policy to time limit all new abstraction licences. The Water Act 2003 converted this policy into a legal requirement and introduced initiatives to encourage voluntary conversion of existing licences to time limited status.

1.4. The Welsh Assembly Government’s Environment Strategy for Wales sets out its commitment for water resources to be managed sustainably, meeting the needs of society without causing damage to the environment. The Environment Strategy for Wales looks for water to be used efficiently across all sectors and uses the volume of water extracted from the environment as one of the indicators to measure this.

1.5. Sustainable abstraction, as measured through the water availability status in catchments, is one of the chosen indicators of the extent to which UK Government are adapting to climate change (as stated in Public Service Agreement 27 (“PSA 27”) on leading the global effort to avoid dangerous climate change announced on 9th October 2007⁴). This indicator captures efforts to reduce demand and use water efficiently, and long term planning to ensure resilience of water supply. The achievement and maintenance of sustainable abstraction requires that policy is adaptable to changing climatic conditions and measures can be implemented to reduce demand and use water efficiently, and allow long-term planning to ensure resilience of water supply.

1.6. The Government believes there is a need to ensure that water resources are allocated efficiently in order to cope with the anticipated impacts of climate change, increasing population and demand pressures, and to achieve water quality objectives, as set out in Future Water and the Welsh Assembly Government’s Strategic Policy Position Statement on Water. There is a case for all abstraction licences to be given a time limit. The nature of the water environment is likely to change in the future due to shifts in rainfall distribution, demands for water and use

⁴ See link http://www.hm-treasury.gov.uk/pbr_csr07_psaenvironment.htm

of land. Time limiting all licences would enable the Environment Agency to regularly assess, through the Catchment Abstraction Management Strategy process (described below), the pressures in each catchment, and respond to those assessments in future decades by amending and adapting abstraction licences, as needed to protect the environment.

1.7. The All Party Parliamentary Water Group undertook an inquiry and issued its report 'The Future of the UK Water Sector'⁵. This report builds on Future Water, and highlights the need to increase water efficiency within the water supply system 'by pressure to reduce leakages (Ofwat) and limit abstractions (Environment Agency) and time limiting all abstraction licences (which would require legislation)'. The recently published Cave review of competition and innovation in the water sector⁶ also highlights the benefits of time-limiting abstraction licences.

1.8. Approximately 6,052 of licences which are not currently time limited in England, and 174 of licences which are not currently time limited in Wales, are situated in over-licensed or over-abstracted catchments.

Overview of current abstraction licensing system

1.9. An abstraction licence with a time limit has both a start date and an expiry date⁷. If an abstractor wishes to continue abstracting after the expiry date they need to re-apply to the Environment Agency for a licence. All existing abstraction licences that are not time limited are expressed to "remain in force until revoked".

Types of Abstraction licence

1.10. Subject to certain limited exceptions, no person may abstract water other than in accordance with the terms of a licence granted by the Environment Agency⁸. Water can be abstracted from inland waters including rivers, lakes, canals and reservoirs, or from underground strata, and is abstracted for many uses including public water supply, agriculture and industry.

1.11. Following the Water Act 2003 there are now three types of abstraction licences:

- A full licence allows abstraction from a single source of supply for a period of 28 days or more.
- A transfer licence allows abstraction from one source of supply to another, with no intervening use, for a period of 28 days or more.
- A temporary licence allows abstraction for a period of less than 28 consecutive days.⁹

1.12. The scope of this consultation is limited to full and transfer licences, and does not extend to temporary licences because such licenses are inherently time limited already.

⁵ The Future of the UK Water Sector. All Party Parliamentary Water Group, 2008

⁶ <http://www.defra.gov.uk/environment/water/industry/cavereview/>

⁷ Section 46(5), Water Resources Act 1991 as amended by Section 19(4) Water Act 2003

⁸ Section 24, Water Resources Act 1991⁸

⁹ Section 24A, Water Resources Act 1991, inserted by Section 1, Water Act 2003

1.13. Impoundment licences do not currently have time limits. Such licences do not pose the same risks as abstraction licences with regard to sustainable water management. Moreover, due to the large structures that would need to be removed if a new application for licence was not made on expiry of the existing licence, there are currently no plans to introduce time limiting to impoundment licences. For these reasons impoundment licences are outside of the scope of this consultation and are not considered further.

Protected Rights

1.14. The ‘first come – first served’ principle has been at the heart of abstraction licensing since it began following the Water Resources Act 1963. A “protected right” embodies this principle. It is a right to abstract water and carries with it a duty for the Environment Agency not to grant a licence that would derogate from it, without the consent of the licence holder. The different types of “protected right” are set out in section 39A of the Water Resources Act 1991 (as amended by section 17 Water Act 2003).

1.15. Historically the right to take water has been linked with the use or ownership of land, and abstraction licences are widely regarded as if they are property rights. Parliament decided that to modify or revoke an abstraction licence compensation would be paid to the licence holder in certain circumstances. This is reflected in the compensation provisions included in the Water Resources Act 1991¹⁰. Under the current system no compensation is payable to an abstractor if their time limited licence expires, nor for the non-grant of a licence, but compensation may be payable if the licence is modified or revoked (whether on the initiative of the Environment Agency or not) pursuant to a direction by the Secretary of State or Welsh Ministers¹¹, while the licence remains in force.

Mechanisms to modify Abstraction Licences

1.16. Abstraction licences can be modified at the request of the licence holder¹². Applications to vary licences are treated in a similar way to those for new licences, though reductions in licence quantity are subject to a more streamlined process. Where the Environment Agency, Secretary of State or Welsh Ministers wish to modify an abstraction licence, the Water Resources Act 1991, sections 52-54, can be used. In these circumstances the licence holder is given notice of the change and given the opportunity to appeal the decision, and may be able to make a claim for compensation.

Restoring Sustainable Abstraction Programme

1.17. Following Taking Water Responsibly, the Government instructed the Environment Agency to use its powers to revoke damaging licences. The Restoring Sustainable Abstraction (RSA) Programme was set up by the Environment Agency

¹⁰ Section 61, Water Resources Act 1991

¹¹ Section 61, Water Resources Act 1991 and Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)

¹² Section 51, Water Resources Act 1991

in 1999 to identify and catalogue those sites which may be at risk of environmental damage from abstraction.

1.18. The RSA programme is a way of prioritising and progressively examining and resolving these concerns. As part of this programme, the Environment Agency has been investigating sites that are affected by the EC Habitats Directive, Sites of Specific Scientific Interest and local sites. This programme identifies the licence changes that are needed to address risks of environmental damage, and the licence is subsequently modified. This is implemented using the powers outlined above, either voluntarily by the licence holder, or by the Environment Agency.

Catchment Abstraction Management Strategies

1.19. Catchment Abstraction Management Strategies (CAMS) were developed following Taking Water Responsibly. CAMS provide a framework to assess resource availability and to produce a licensing strategy which aids the sustainable management of water resources on a catchment scale.

1.20. Each CAMS area has been given a Common End Date (CED), which is the expiry date for all new licences granted in that area. These run on a 12 year rolling programme. When a CED is reached all the applicable licences will be due for re-application. CAMS provides tools to deal with these multiple re-applications in one go. The Environment Agency will normally grant licences whose duration coincides with a CED.

1.21. CAMS also provides an additional framework for managing river abstractions through Hands-off Flow Conditions, which are licence conditions that require abstraction to cease once river flow falls below a specified threshold. CAMS manages these conditions for new licences on a tiered basis. The more abstraction licenses there are in a catchment, the more restrictive the conditions applied to new licences become. This ensures that the environmental impact of new abstractions is managed and protected rights are not derogated.

Water Framework Directive

1.22. The Water Framework Directive¹³ was transposed into UK law in 2003¹⁴ and aims to provide an integrated approach to protecting and enhancing our water environment. Implementation of the Directive is through River Basin Management and involves identification of bodies of water and setting environmental objectives for them. Member States must aim to reach good chemical and ecological status in all surface and groundwater bodies by 2015, although where costs would be disproportionate or where it is not technically feasible to achieve the objectives by 2015, the Directive allows Member States to work on a longer timescale (to 2021 or 2027) or to set lesser objectives, provided certain conditions are met. There is a legal requirement that there should be no deterioration in the status of water bodies except under exceptional circumstances.

¹³ [Directive 2000/60/EC](#) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

¹⁴ [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(as amended\)](#)

1.23. Article 11(5) of the Water Framework Directive makes provision for examination and review of relevant permits where monitoring indicates the environmental objectives of a body of water are not likely to be achieved. The Environment Agency will use CAMS to contribute to the implementation of the Directive, e.g. through water resource assessments, alignment of CAMS environmental flow indicators with new UK water resource standards.

Long duration licences

1.24. A long duration licence is a full licence with a duration of more than the standard duration of 12 years. Taking Water Responsibly forms the basis of policies regarding these licences and specifies that under normal circumstances an application for such a licence needs to meet the following four tests in order to be granted:

1. The lifetime of the infrastructure is inseparably associated with the licence will extend over the desired period of validity, and
2. There will be a continued need for the service or product associated with the infrastructure throughout the desired period of validity, and
3. The fullest possible appraisal of likely changes in environmental and economic circumstances that may have a bearing on the acceptability of the abstraction over the desired period of validity has been carried out and shows no significant concerns, and
4. The infrastructure development contributes to sustainable development.

1.25. The Water Act 2003 made it a requirement to apply a Minimum Value Condition to any full licence over 12 years¹⁵. The Minimum Value Condition is a quantity which the licence volume can be reduced by, if notice is served, without a liability to compensation arising.

1.26. The enforcement of Minimum Value Conditions was discussed in the Environment Agency's Time Limiting Arrangements (TLA) for Water Abstraction Licensing Consultation Document and TLA Consultation Response Document¹⁶. In this consultation it became clear that the use of Minimum Value Conditions could be a disincentive to licence holders to convert to time limited status as it increased the uncertainty associated with the abstraction. As an outcome of the consultation the Environment Agency stated that they would probably use this power infrequently.

1.27. Abstractors have the opportunity to apply for long duration licences if they are eligible under the four tests outlined above. Examples of essential services that are reliant on abstraction licences include drinking water supply, power generation and the minerals industry. Given that planning and investment in these sectors is undertaken over long timescales, a long duration licence is considered more appropriate to manage these activities.

¹⁵ Section 46(2A) Water Resources Act 1991, inserted by section 19 Water Act 2003

¹⁶ Time Limiting Arrangements for Water Abstraction Licensing: Consultation Document. Environment Agency, September 2005.

1.28. The use of long duration licences, where appropriate, will ensure that the drive to increase the proportion of our power generation from renewable energy sources, for example sustainable hydropower schemes, is not hindered by mandatory time limiting. Most hydropower schemes are, however, small scale and can be adequately dealt with using a standard 12 year duration licence.

Changes on Expiry

1.29. When a time limited licence reaches its expiry date the licence holder applies to the Environment Agency to continue the abstraction. This process provides the mechanism to review licences in the light of any changed circumstances since they were originally granted and is regarded as an 'Environmental MOT'. The Environment Agency applies a presumption of grant, which means that if the three tests (detailed below) are met, and there are no other legal obstacles, a new licence will be issued. This means that the Environment Agency does not have to consider the impact of that abstraction on protected rights that have become established after the original licence was granted¹⁷.

1.30. The three tests an abstraction must meet are:

1. Continued environmental sustainability: the Environment Agency or the licence holder will assess any environmental sustainability issues including any changes in circumstances since it was issued.
2. Continued justification of need: the authorised licence quantities will be assessed for reasonableness given the abstraction purpose. Past abstraction records will be used in addition to best practice information. A licence that has not been used for a significant period of time can still be renewed if the licence holder can demonstrate that there is a continued need for the water, e.g. for emergency use, or crop rotation.
3. Efficient use of water: Licence holders are required to demonstrate that they will use abstracted water efficiently.

1.31. If these three tests are met, the majority of applications will be granted on similar terms to the original licence. If the three tests are not met the Environment Agency would consider further changes needed to enable the licence to be issued.

1.32. Future challenges such as climate change are likely to increase the number of catchments within which the first test of continued environmental sustainability is not easily met. When this situation arises the Environment Agency will review local circumstances and potential impacts on abstractors and develop an approach to solve the problem. The Environment Agency will consult licence holders, and has a policy of aiming to give at least six years' notice (linked to the CAMS planning cycle) of not re-granting a licence or re-granting replacement licence on more restrictive terms.

¹⁷ Section 39(1A) Water Resources Act 1991 as inserted by section 16 Water Act 2003.

Existing Time Limited Licences

1.33. Currently 20% of abstraction licences across England and Wales are time limited. The distribution by Environment Agency Region¹⁸ is shown below:

| Region | Percentage currently time limited (%) |
|-------------------------|---------------------------------------|
| Anglian | 29 |
| Midlands | 14 |
| North-East | 31 |
| North-West | 17 |
| South-West | 11 |
| Southern | 9 |
| Thames | 23 |
| Wales | 13 |
| Regional average | 20 |

1.34 The Impact Assessment (Annex A) provides a breakdown of the number of abstraction licences in force by purpose (2006/2007 figures), although this does not provide an indication of the number of licence holders. The data suggests that spray irrigation is the sector with the largest proportion of abstraction licences. Annex A also provides a breakdown of the number of non-water company licences held by the Environment Agency's main breakdown of sectors (agriculture, amenity, environmental, production of energy, water supply – non water companies; industrial commercial and public services); and also provides a further breakdown of number of licences in the industrial, commercial and public services sector.

1.35 Data on estimated licensed and actual abstraction volumes from all surface and groundwater sources is also provided in the Impact Assessment, and highlights that based on the most recent figures in 2006, the electricity supply industry was licensed to abstract 60% of the total volumes of licensed abstraction, followed by water supply companies which were licensed to abstract approximately 20% of total licensed volumes. Fish farming, spray irrigation, agriculture and private water supplies collectively accounted for less than 1% of the total volume of abstraction which is licensed.

1.36 The Water Act 2003 has removed the need for licences to be held by those who abstract at a rate of less than 20 cubic metres of water a day¹⁹. This has been particularly beneficial to the agricultural sector and other small to medium size enterprises, and will not change as a result of the proposals to time limit abstraction licences. Only those licensed to abstract more than 20 cubic metres of water in any twenty-four hour period, and have a licence without a time limit, would be affected by the proposals to time limit abstraction licences.

¹⁸ Figures from a snapshot from the Environment Agency June 2008.

¹⁹ Section 27 Water Resources Act 1991, as substituted by section 6, Water Act 2003.

2. Pressures on Water Resources

2.1 Climate change is one of the biggest challenges we face when considering the long term management of water resources. It will affect the amount and distribution of rainfall, the demands for water and the use of land - all of which can contribute to additional pressures on water resources and possible water shortages.

2.2 As a result, the nature of the water environment is likely to change. The best current science indicates that by the 2050s average winter flows are expected to increase slightly, but for some areas, particularly in the west of England and in Wales, average summer flows are expected to be drastically reduced by between 50 and 80%. The Environment Agency's recently published Water Resource Strategy²⁰, has modelled how potential changes in rainfall could affect average river flows across England and Wales, and shows that by 2050 river flows in winter may increase by 10 to 15%. However, river flows in the late summer and early autumn could reduce by over 50%, and as much as 80% in some places. These patterns could result in a drop in total annual average river flow of up to 15% (for further details see background data in the Impact Assessment - Annex A). The period where our groundwater resources are replenished is expected to be shorter and resources could become much more vulnerable. We expect that there will be greater variability and what we know as an extreme event today may become more frequent in the future.

2.3 A changing water environment would, in turn, affect where plants and animals can survive and the quality of their habitats. The rate and scale of change would affect different species in different ways as they try and adapt to changing habitats. Climate change is also expected to affect the demand for water. Irrigated agriculture in the UK could move northwards and westwards. It may become widespread in much of England and Wales and by 2050 we could have irrigation needs higher than those currently experienced in some southern and central European countries.

2.4 Water supply infrastructure which was designed to cope with the past and present climate may not be adequate for the future. The reliability of existing reservoirs, groundwater abstractions and river intakes may change. Some infrastructure, critical to the provision of water supplies may be more vulnerable to flooding.

2.5 One of the biggest pressures on water resources is the increase in population, which has risen at a faster rate over the past 10 years than the previous 20 across England and Wales as a whole and is forecast to increase at an even greater rate over the next quarter of a century²¹. The Environment Agency's publication entitled 'Water Resources in England and Wales – current state and future pressures'²² highlights that by 2021, the total population of England and Wales is expected to grow by an extra 10 million people, an increase of 18% from 2006. We could be faced with population movement caused by climate change - both within England

²⁰ See link <http://publications.environment-agency.gov.uk/pdf/GEHO0309BPKX-E-E.pdf>

²¹ Reference: *Water Resources in England and Wales - current state and future pressures*. Environment Agency, December 2008.

<http://www.environment-agency.gov.uk/research/library/publications/100582.aspx>

²² <http://www.environment-agency.gov.uk/research/library/publications/100582.aspx>

and Wales and from other countries. Additional water demands from the global movement of goods and services could compound these pressures.

2.6 It is expected that the negative environmental impacts and water shortages as a result of water abstraction may increase significantly to 2050 and beyond because of climate change, population and demand pressures.

3. Rationale for policy change

3.1 The Environment Agency manages water abstraction licensing because the market cannot allocate licences to the most efficient uses and account of negative environmental impacts. The current system of licensing does not account of negative externalities (i.e. negative environmental impacts) in the price of water abstraction. Environmental impacts of water abstraction are expected to increase in future decades with climate change and increased pressures on water demand.

3.2 Currently abstractors taking water at over-abstracted points are creating (the risk of) environmental harm, in part because the value or cost of the harm is external to their licence conditions and pricing. This represents a flaw in the current regulatory system that time limiting should help to address. It is not considered feasible in the near term to price environmental externalities into licence fees, and administrative cost recovery remains the rationale behind abstraction licence charges.

3.3 There are few ways for the Environment Agency to respond to challenges to water resources because most abstraction licences are not time limited. This limits the Environment Agency's flexibility to amend licences where monitoring indicates that the environmental and water quality objectives of a body of water are not being met, and may increase the likelihood of impacts to water quality and the risk of environmental damage to habitats. Therefore, the current licensing regime does not allow the Environment Agency to react to environmental impacts rapidly, as each alteration to a license using existing powers (under section 52 of the Water Resources Act 1991) can take up to two years owing to appeals.

3.4 In their recently published Water Resources Strategy for England and Wales, the Environment Agency raises the importance of being able to respond flexibly to the uncertainty and pressures of climate change. The Strategy highlights the need to have a mechanism in place to help adapt to these pressures, and to allow justifiable changes to licences to be made without triggering compensation claims which may not be affordable, and without overloading the appeals system. The Environment Agency believes that all existing permanent abstraction licences should be converted to time limited status.

3.5 Therefore, a change is proposed to enable the Environment Agency to internalise this particular market failure. The proposals for time limiting existing abstraction licences would enable the Environment Agency to periodically alter licence conditions as necessary to reflect these externalities, and meet environmental objectives in a cost effective way. This would enable the Environment Agency to make periodic widespread changes to abstraction licence conditions designed to modify abstraction behaviour so that damaging behaviour is reduced, and environmental objectives and standards are met. By contrast, very limited licence interventions and modifications are currently possible with no change to policy (as set out under Option 1 'Do Nothing' below). This is likely, therefore, to do very little to help our ability to manage supply and demand for water at a catchment scale and to adapt to pressures such as climate change and population increase.

3.6 Section 53 of the Water Resources Act 1991 allows licence holders to appeal changes to their licence. However, new legislation to time limit all existing licences would provide an efficient regulatory framework by which the Environment Agency can change abstraction licences after a sufficient period of notice to affected abstractors. It would also allow the costs of uncertainty and of the potential and actual loss of licensed water volumes to be borne by those who are contributing to environmental damage, that the polluter or impacter, pays (i.e. without compensation that is funded out of all abstraction licence fees, so spreading the cost across all abstractors).

3.7 Under the current licensing system, licence trading in catchments which are over abstracted or over licensed are sometimes subject to the Environment Agency adding new conditions or reducing the overall quantity to help return abstraction to sustainable levels, especially if old, unused licences ('sleeper' licences) are reactivated. This is a disincentive to trading and would be needed less if all licences were time limited. Time limiting all licences would promote more trading because beneficial competitive access to water abstraction rights would increase with new entrants able to access rights through freer licence trading. Once the Environment Agency has the opportunity to make changes to all and any time limited licences, it will not need to intervene at the point of trading to add conditions or cut volumes.

3.8 There are three proposed policy options set out below. The first option is to 'Do Nothing' and would involve use of voluntary measures to encourage time limiting of existing abstraction licences. The second proposed option is targeted time limiting using existing legislative powers under sections 52- 54 of the Water Resources Act 1991; and the third proposed option is universal time limiting using new legislative powers.

Q1 Do you agree with our assessment of the pressures on water resources and the rationale for time limiting? We would welcome your comments on these issues.

4. Option 1 - 'Do Nothing'

4.1 The first option considered in this consultation is to 'do nothing', i.e. no change to the present position, which relates to continued use of the existing licensing regime. This is the baseline for assessing the impacts of the other proposed options. The main mechanism for assigning a time limit under this baseline option is to encourage existing licence holders to voluntarily convert to time limited status through the measures detailed below.

Incentives for voluntary conversion - already implemented

Right to compensation

4.2 The Water Act 2003²³ removes the right to compensation if the Environment Agency modifies or revokes non-time limited licences that are causing serious environmental damage from 15th July 2012. However, time limited licence holders retain the right to compensation after this date if the modification or revocation occurs before the expiry date, and if the licence is not deemed to be causing serious environmental damage. This may only act as an incentive to a small number of abstractors.

Simplified re-application process and reassurance

4.3 The Water Act 2003 brought in a number of changes to the re-application process to make it simpler and less of a burden on the abstractor.

4.4 On re-application for a licence, the Water Resources Act 1991 (as amended)²⁴ allows limited extension of validity of an original licence while the replacement licence is being determined. This ensures that the licence holder is still able to abstract if the Environment Agency takes longer than normal to determine their application.

4.5 When an application is received on the same terms, the Environment Agency does not have to consider the impact of that abstraction on protected rights that have become established after the original licence was granted²⁵. This upholds the historic order in which licences were granted and gives reassurance to licence holders that they will not be disadvantaged due to newer abstractions.

4.6 The Water Resources (Abstraction and Impounding) Regulations 2006, give an exemption from advertising for re-applications on the same terms²⁶. This results in a simpler process for the abstractor, and a smaller administrative burden for the Environment Agency.

4.7 The changes improve the re-application process but do not offer any significant incentives for conversion. They are however of great benefit to existing time limited licences as the burden associated with re-application is reduced.

²³ Section 27 Water Act 2003

²⁴ Section 46A Water Resources Act 1991 as inserted by section 20 Water Act 2003

²⁵ Section 39(1A) Water Resources Act 1991 as amended by section 16 Water Act 2003

²⁶ Section 37A Water Resources Act 1991 as inserted by Section 14 Water Act 2003 and implemented through Water Resources (Abstraction and Impounding) Regulations (April 2006).

4.8 Removal of need to advertise conversion - through the introduction of discretion with regard to advertising²⁷, the Environment Agency does not need to advertise applications if it is satisfied that there will be no appreciable effect on other water users (lawful uses and protected rights) or the environment. To ease the conversion process applications by licence holders to convert their licence to time limited status will not need to be advertised.

No application fee on conversion to time limited status

4.9 As conversion to time limited status is seen as a minor variation there is also no application fee. As with simplifying the re-application process (above) this does not offer a great incentive for conversion to time limited status, but it makes a simpler and less onerous process.

4.10 Conversion of Environment Agency licences - the Environment Agency is in the process of converting all of its own abstraction licences to time limited status to lead by example. However, because the Environment Agency is not a profit making organisation, the risks involved are different to most businesses, and this is unlikely to encourage many abstractors to follow suit.

Long duration licences

4.11 The basis of long duration licences to encourage voluntary conversion is that any converted licence could be given a time limit of greater than 12 years. The expiry dates would be tied to the CAMS Common End Dates and the licence would not have to meet the four tests usually required to obtain a long duration licence. A licence holder who can meet the four tests, may apply (on conversion) to have a long duration licence that was linked to business need rather than a CAMS Common End Date.

4.12 Any long duration licence granted as a result of voluntary conversion to time limited status could be given a Minimum Value Condition equal to the authorised quantity. This removes one of the main disadvantages to the licence holder of a long duration licence.

4.13 This option is not very effective as an incentive for conversion because it follows similar principles to those used to issue new licences within 6 years of the next CAMS Common End Date (the skipping common end date principle) and it only applies to the first time limited licence. On re-application a standard 12 year licence would be the norm, unless the four tests for a Long Duration Licence are met.

Communication and assurances

4.14 The Environment Agency needs to build trust with abstractors and provide reassurance regarding how re-applications will be dealt with. The Environment Agency's Time Limiting Arrangements Consultation²⁸ and the latest interim update of Managing Water Abstraction give a clear message that the presumption of grant for applications on the same terms would be upheld. The Environment Agency views the re-application process as an "Environmental MOT". It is expected that the

²⁷ Section 37A Water Resources Act 1991 as inserted by Section 14 Water Act 2003 and implemented through Water Resources (Abstraction and Impounding) Regulations (April 2006).

²⁸ Time Limiting Arrangements for Water Abstraction Licensing: Consultation Document. Environment Agency, September 2005.

majority of re-applications for the same terms would be granted and the process has been simplified.

4.15 However, abstractors have not been convinced by these messages to date, primarily because the current CEDs for time limited licences have yet to be reached. The presumption of grant will have more credibility once it has been demonstrated on a large scale.

4.16 There are also mixed messages regarding granting a new licence on the same terms as the CAMS process looks to review Hands off Flow conditions to adapt to changing resources. Additional conditions such as flow conditions added to an abstraction licence are considered separately to the main licence conditions (such as abstraction point, source and quantities). The presumption of grant on the same terms relates to the main licence conditions, and any changes to Hands Off Flows can be set or adjusted by the Environment Agency as a condition of the grant of a new licence.

Voluntary conversion to date

4.17 The viable options for conversion have already been implemented and have not given a significant increase in time limited licences. Removing the effect of deregulation in 2005, by only looking at abstraction over 20 cubic metres per day, the proportion of licences with time limits has increased by 6.1%²⁹ since 2000. Most of this increase is believed to be attributed to natural turnover, i.e. new applications and revocations at the request of the licence holder. Very few, if any, licences have been converted voluntarily. Figure 1 below summarises the proportion of time limited abstraction licences in England and Wales from 2000 to 2008, and a detailed breakdown of this data is provided in Annex B:

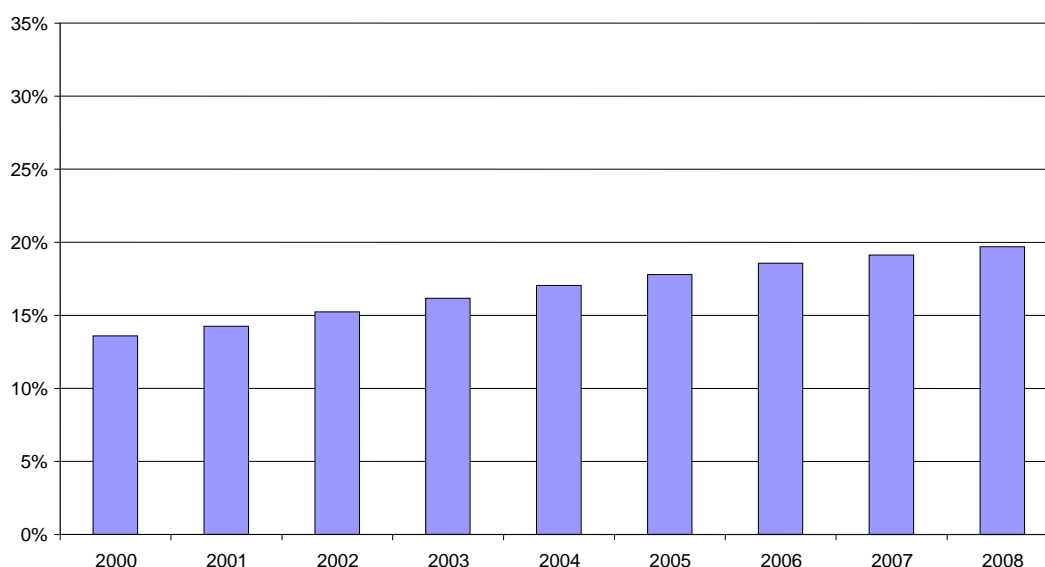


Figure 1 (Figure from the Environment Agency): Data for live abstraction licences on 1st April in each year over the deregulation threshold of 20 cubic metres per day.

²⁹ From 13.6% on 1st April 2000 to 19.7% on 1st April 2008. Data from the Environment Agency.

4.18 It should be noted that licences without time limits are more likely to be older unused 'sleeper' licences. The Impact Assessment (Annex A) provides estimated and actual abstraction volumes from all surface and groundwater sources by purpose from 1990 -2006. Based on the most recent figures from 2006, only 48% of the licensed volumes from these sources in England and Wales was actually abstracted. There are many reasons why such a large proportion of licensed volumes are not used. These include sleeper licences, headroom (i.e. extra capacity for extreme situations), and abstraction that is dependent on weather conditions (for example rainfall) or crop rotation.

4.19 Currently there is very little incentive for these licence holders to convert to time limited status and open their licences up to a review every 12 years. However, if reductions in abstraction within a catchment were needed, the Environment Agency has the power under the current Water Act 2003³⁰ to revoke licences that have not been used for over 4 years, without compensation. Unused licences are therefore currently at risk of revocation without compensation. The addition of a time limit does not in these circumstances change the risks to the abstractor. There are many legitimate reasons why a licence may not be used for such a period of time, for example crop rotation, and where this is the case a licence is very unlikely to be revoked by the Environment Agency. However, licence holders are also very unlikely to revoke their licences because it may be used in future for back-up supply.

4.20 The current licensing system applies time limits to all new full and transfer abstraction licences and, where appropriate, variations to licences. However, there has not been any significant increase in time limited licences through voluntary conversion. Therefore the evidence indicates that voluntary measures have not worked in significantly increasing the number of time limited licences.

Limitations of current policy

4.21 The incentives to encourage voluntary conversion of existing licences to time limited status have already been implemented, and very few, if any, existing licences have been converted through these measures.

4.22 The current licensing regime is familiar and generally well understood by licence holders. Licence holders who are not time limited also have the benefit of a secure licence which will not expire, therefore providing certainty for licence holders. However, this has implications on the Environment Agency's ability to manage abstractions sustainably at a catchment level. Whilst the CAMS process provides a framework to assess resource availability and to produce a licensing strategy, current policy does not enable catchment wide measures to be taken to manage water resources. Time limiting all licences would enable the EA to respond to CAMS assessments in future decades by allowing periodic reviews of all licences within a catchment and amendments to licence conditions to be made, as needed to protect the environment.

4.23 The current licensing regime, which relies on existing licence holders to voluntarily convert to time limited status, does not allow the Environment Agency to

³⁰ Section 61(4) Water Resources Act 1991 as amended by section 25 (2) Water Act 2003.

readily alter licence conditions because most licences are not time limited. Licences without time limits are not subject to the Environment Agency's three tests, required on expiry of a time limited licence and re-application for a new licence, to determine continued environmental sustainability; continued justification of need and efficient use of water. Therefore, the Environment Agency has limited flexibility to make the changes needed to adapt to future challenges (such as the impacts of climate change) and manage water resources effectively. Furthermore, whilst licence holders can abstract water at a relatively low cost, and without the need to spend time and money re-applying for their licences periodically, they have less incentive to use water efficiently because they are not subject to these three tests on application for a new licence. As a result abstractors with licences without time limits are not given strong signals about the social, environmental and economic costs of their actions.

4.24 The current licensing regime relies on the Restoring Sustainable Abstraction programme to address abstractions that are considered to be causing (or at risk of causing) environmental damage. Changes to licences will either be made voluntarily or by using powers under sections 52-54 of the Water Resources Act 1991. However, the current legal process for amending or revoking abstraction licences is bureaucratic and slow, as a case for change would need to be made for each abstraction licence individually. For example, the appeal process can take around two years and would be labour intensive and costly for both the Environment Agency, and also for abstractors who would need to appeal to the Secretary of State or Welsh Ministers and potentially to make a case to the Lands Tribunal.

4.25 The Welsh Assembly Government's Environment Strategy for Wales sets out its commitment for water resources to be managed sustainably, meeting the needs of society without causing damage to the environment. The Environment Strategy for Wales looks for water to be used efficiently across all sectors and uses the volume of water extracted from the environment as one of the indicators to measure this.

4.26 As stated in PSA 27, the achievement and maintenance of sustainable abstraction, as measured through the water availability status in catchments, requires that policy is adaptable to changing climatic conditions. Therefore, the 'Do Nothing' option would compromise our ability to meet the PSA 27 target of adapting to climate change through policy which enables sustainable abstraction. There is currently limited opportunity to reassess the pressures on each catchment alongside the demand for water on a regular basis, using the latest climate change information and with a view to ensuring that the environment is adequately protected.

4.27 Beneficial competitive access to water abstraction rights will remain very limited under current policy. New entrants may find it impossible to access rights as licence trading will remain unattractive, in part because the Environment Agency may go on intervening at the point of trading. For instance the Environment Agency may add new conditions or reducing quantities, as one element of its approach to promote licence sustainability.

4.28 The current licensing regime would not enable full implementation of the Water Framework Directive because there is limited flexibility to amend licences where CAMS indicates that the environmental and water quality objectives of a body

of water are not being met as a result of abstraction pressures. This may increase the likelihood of impacts to water quality and the risk of environmental damage to habitats. The Government aims to comply in a timely manner with all EU legislation to which it is a signatory, so the “Do Nothing” option is not acceptable.

4.29 In summary, the ‘Do Nothing’ option is not viable because this would hamper our ability to meet the requirements of relevant EU Directives, to deliver the PSA target on sustainable abstraction and to respond to pressures such as climate change and population increase. Time limiting of existing abstraction licences would enable the Environment Agency to respond to CAMS assessments in future decades by allowing licences to be amended and adapted to ensure that water abstraction is sustainable, and the environment is adequately protected. However, voluntary measures (i.e. the Do Nothing option) have not worked in increasing the number of time limited licences.

Q2 Do you agree with the limitations? Are there other consequences of the “Do Nothing” option?

5. Benefits of Mandatory Time Limiting of Abstraction Licences

Public Service Agreements in England

5.1 Increasing the number of time limited licences would allow more sustainable management of water resources. This will help the Welsh Assembly Government deliver its commitments in the Environment Strategy for Wales and central Government with progress towards the Public Service Agreements (PSA) in England announced by the Chancellor of the Exchequer in October 2007:

Delivery Agreement 27:

Leading the global effort to avoid dangerous climate change

Delivery Agreement 28:

Secure a healthy natural environment for today and the future

5.2 The water availability status of the Environment Agency's Catchment Abstraction Management Strategies (CAMS) is an indicator of the proportion of areas with sustainable abstraction of water for both PSA delivery agreements. This indicator provides a measure of Government progress on adaptation to climate change by looking at progress in one area of policy - the increase in the proportion of areas which have sustainable abstraction of water. Time limiting abstraction licences provides a mechanism to deal with future challenges affecting water availability in catchments in a sustainable and equitable manner.

Flexibility to adapt to change

5.3 Time limiting abstraction licences would provide the flexibility to adapt and amend licences, as required to meet environmental and water quality objectives, equitably and in the public interest. For example, if a reduction in abstraction is needed in a catchment, it would be better to reduce a large number of licences at the CED by a small amount (for example amending a flow condition), rather than impose larger changes (for example a reduction in volume) to individual licences at less frequent intervals. The risk of large impacts on individual licence holders would be reduced if all licences were time limited.

Promoting water efficiency

5.4 As highlighted in an inquiry undertaken by the All Party Parliamentary Water Group entitled The Future of the UK Water Sector, time limiting all abstraction licences will help to encourage water efficiency. If every licence was time limited then all abstractors would need to demonstrate the three tests of environmental sustainability, justification of need, and efficient use of water at the point of re-application for a new licence. This encourages good practice and gives abstractors the potential to manage future additional needs for water within their existing licence quantities.

Water Rights Trading and Allocation of Water

5.5 Abstraction rights can be transferred or apportioned within the current licensing regime. Abstraction licence trading is where an abstractor gives part or all of their water rights to another abstractor. These trades are usually for a specified period of time, and are different to when a property is sold and the associated abstraction licence is transferred to the new owner. The greatest demand for trading occurs in areas where water is in short supply.

5.6 Time limiting should facilitate more trading. Currently, licence trading in catchments which are over abstracted or over licensed are sometimes subject to the Environment Agency adding new conditions or reducing the overall quantity to help return abstraction to sustainable levels, especially if old, unused licences ('sleeper' licences) are reactivated. This is a disincentive to trading and would be needed less if all licences were time limited. Beneficial competitive access to water abstraction rights would increase with new entrants able to access rights through free licence trading, because, once the Environment Agency has the opportunity to make changes to all and any time limiting licences, it will not need to intervene at the point of trading to add conditions or cut volumes.

5.7 Ofwat has recently released a consultation on competition in providing new water mains³¹. In February 2008, the Chancellor, Secretary of State for Environment, Food and Rural Affairs and the Minister for Environment, Sustainability and Housing, one of the Welsh Ministers, commissioned Professor Martin Cave to undertake a Review of Competition and Innovation in Water Markets in England and Wales.

5.8 The aim of the Review is to recommend changes to the legislative and regulatory framework of the water industry in England and Wales, in order to increase the efficient use of water and deliver benefits to consumers and the environment, through greater competition and innovation.

5.9 The final Cave report, which was published in April includes the following recommendation with regard to abstraction licences:

- In order to balance protecting the environment against competing extractive uses of water and to facilitate greater competition, Cave recommends that the Environment Agency should take forward a more risk based approach to allocating abstraction licences. This would consider the likelihood of allocated licences being under-utilised or utilised at different times.

5.10 Time limiting of abstraction licences would enable the Environment Agency to review licences on expiry in light of any changed circumstances since the licence was originally granted. This includes tests to demonstrate the continued environmental sustainability of the licence, continued justification of need and efficient use of water. If these tests are not met, then there is potentially scope to

³¹ Competition in providing new water mains and service pipes: Guidance to companies – version 3.0. – consultation paper, Ofwat, August 2008

reduce the licensed volumes. This in turn would lead to greater opportunities for new entrants to compete for water because more water can be freed up.

5.11 Cave has also highlighted that time limiting of all abstraction licences would help deliver environmental benefits, but states that the UK and Welsh Government will need to consider the duration of these licences and how licences will be reissued in order to deliver quicker wins for the environment whilst minimising regulatory uncertainty which could affect incentives to make investments with long payback periods.

5.12 The details of how time limiting should be implemented will be considered in light of consultation responses and any further information gathered during the consultation period.

5.13 The UK Government and Welsh Assembly Government are currently considering the recommendations outlined in the final Cave report.

Options for Mandatory Time Limiting

5.14 The proposed options for time limiting existing abstraction licenses would be **mandatory targeted time limiting** using existing legislative powers (Option 2) or **mandatory universal time limiting** using new legislative powers (Option 3). The merit of other possible routes to implementation are also discussed under each option.

6. Option 2 - Mandatory Targeted Time Limiting

6.1 This option proposes adding time limits to abstraction licences using a targeted approach through existing legislative powers, rather than time limiting all licences at once.

6.2 The sub-section below briefly describes the criteria that could be used to target licences through new legislative powers and explains why this is not the preferred route for implementing targeted time limiting.

Targeted time limiting using new legislative powers

6.3 The implementation of targeted time limiting through new legislative powers would require criteria for targeting to be defined in legislation. The criteria that could be used for targeting are varied:

6.4 Climate change scenarios could be used to make predictions at a catchment scale and target licences accordingly. However, setting this criteria in legislation would not provide the flexibility to adapt criteria, as current predictions are likely to change as science improves with time.

6.5 CAMS assessments could be used to identify over-abstracted or over-licensed catchments which should be targeted. To implement this through new legislation would require CAMS areas to become statutory by defining in legislation. Selected criteria from CAMS assessments could be defined in new legislation, so that for instance, catchments that are over-abstracted or over-licensed could be targeted. However, as detailed below, there are already mechanisms in place within the current licensing regime to deal with environmentally damaging abstractions using existing powers and the Restoring Sustainable Abstraction Programme. Existing mechanisms are therefore in place to modify licences that have the greatest environmental risk.

6.6 Bodies of water which have not met or are failing to maintain the requirements of the Water Framework Directive could be used as criteria for targeting, as discussed further below. This criteria would be reactive to current and foreseen problems, but, as previously stated, there are existing powers and mechanisms in place for dealing with unsustainable abstraction which pose environmental risk. Setting this criteria in legislation would not provide mechanisms for long term planning to ensure resilience of water supply, and proactively maintaining sustainable abstraction within a catchment.

6.7 Criteria for targeting could be set according to abstraction use. In the future, as water becomes more scarce, there may be a shift to prioritise certain activities above others. Targeting abstractors with lower priority purposes to convert to time limited could give flexibility to re-allocate resources to higher value uses. However, setting this criteria in legislation would lead to issues relating to the equitable treatment of licence holders, and would potentially generate inequity for businesses that rely on abstraction, because conversion to time limited status potentially introduces an additional business risk. Targeting specific activities means that certain stakeholders are being penalised and, as opposed to 'spreading the burden'

across all licences holders. Furthermore, as detailed below, legislative powers already exist to target licences on a case by case basis.

6.8 Setting criteria in legislation could effectively remove our flexibility to review criteria over time to reflect changing priorities, since amending targeting criteria that is set in legislation could be a lengthy process. Furthermore, legislative powers and mechanisms already exist to target abstractions on a case by case basis. For these reasons, the option of implementing targeted time limiting using new legislative powers has not be considered further at this stage. However, the feasibility of targeting through new legislative powers will be considered further in light of consultation responses and any additional information gathered during the consultation period.

6.9 This option will therefore cover the use of existing provisions under Section 52 of the Water Resources Act 1991 (as amended by Water Act 2003).

6.10 In *Taking Water Responsibly* the Government proposed that the Environment Agency should draw up a plan to convert licences to time limited status over a 15 year period, where the costs are justified. Areas of water stress were identified as a priority. The criteria that could be used to target licences through existing legislative powers are detailed below, and is followed by consideration of the costs and benefits of this option.

Criteria for Targeting Licences

Climate Change

6.11 Recent climate change scenarios could be used to predict which catchments could be at the highest risk of a reduction in water resource availability in the future (see Annex A). This research indicates that catchments which have a low groundwater baseflow component are at particular risk (parts of Wales, the south-west and north-west).

6.12 Although these scenarios can be used to make predictions at the catchment scale, the changes we are expecting are likely to occur over large parts of England and Wales. We could target our time limiting based on current predictions, but these are likely to change as science improves with time. Targeted time limiting of 'at risk' areas would apply a time limit 12 years into the future, and only on application for a new licence could adjustments to the abstraction be made. The length of time it would take to implement this approach means that we would not be able to respond to new climate change predictions within appropriate timescales, and therefore this approach does not give the flexibility needed to deal with the uncertainties of climate change.

6.13 This criteria could be implemented using existing provisions under sections 52-54 of the Water Resources Act 1991 (as amended by Water Act 2003) for the Environment Agency, (on its own initiative or under direction from the Secretary of State or Welsh Ministers), to modify an abstraction licence.

CAMS Water Availability Status

6.14 The second approach to consider for targeted time limiting is to introduce time limits for all licences within over abstracted or over licensed catchments. In England there are 6,052 non-time limited licences which are in over-licensed or over-abstracted catchments that would have a time limit applied under this option. For Wales approximately 174 non time-limited licences in over-licensed or over-abstracted catchments which would have a time limit applied under this option.

6.15 The Environment Agency assesses the water resources that are available for abstraction through CAMS. CAMS consider how much freshwater resource is reliably available, how much water the environment needs and the amount of water already licensed for abstraction. This shows the Environment Agency where water is potentially available for abstraction. The Environment Agency has recently completed the first cycle of 119 CAMS, which has for the first time provided a comprehensive baseline for all catchments in England and Wales.

6.16 The results show that there are considerable pressures on water resources throughout England and Wales, not just in the drier South East and Eastern England. The Environment Agency's water resources availability maps are provided in the Impact Assessment (Annex A), and show that there are many catchments where there is no water available for abstraction at low flows. In addition, some catchments are over licensed or over-abstracted, and the Environment Agency highlights that a sustainable abstraction regime needs to be restored.

6.17 There are already mechanisms in place within the current licensing regime to deal with environmentally damaging abstractions using existing powers and the Restoring Sustainable Abstraction Programme. Targeting according to resource availability also deals with current issues, rather than adapting to future challenges. This approach to addressing risks of environmental damage as a result of abstraction is reactive to known problems, as opposed to being proactive in maintaining sustainable abstraction within a catchment and adapting to future challenges. Water availability is therefore not considered to be an effective targeting criteria in the long term, as it does not represent an improvement to current policy.

6.18 As described above, there are existing mechanisms in place to modify licences that have the greatest environmental risk.

Water Framework Directive

6.19 The hydrological regime is a supporting element to a body of water achieving 'Good Ecological Status'. Bodies of water have been identified where Ecological Flow Indicators are not being met, and abstraction could contribute to them currently failing to meet 'Good Ecological Status' or deteriorating in the future. Using existing legislative powers under sections 52-54 of the Water Resources Act 1991, targeted time limiting of licences within these bodies of water could provide a mechanism to implement measures identified to make improvements. This targeting approach could help to maintain the status of water bodies as required under the Water Framework Directive, by providing a mechanism to review licences where monitoring indicates the environmental objectives of a body of water are unlikely to be maintained.

6.20 The use of water resources, in particular over-abstraction, lowers river flows, which can threaten the survival of flora and fauna dependent upon those waters, as well as reducing dilution rates and so making chemical or nutrient pollution more of a problem. Work is underway to establish the programme of measures for water bodies in the UK.

6.21 Indications about the current status of water bodies for WFD purposes are that 23% of water bodies³² are achieving good status. This, as well as the existing data from CAMS (which identifies approximately 6,226 licences, or 28% of all abstraction licences, are in over-licensed or over-abstracted catchments), would suggest that a significant proportion of licences would need to be monitored and possibly targeted for time limiting so that required amendments to licence conditions can be made for WFD purposes.

Abstraction use

6.22 This approach would involve targeting time limiting according to abstraction purpose. This could be achieved using existing powers under sections 52-54 of the Water Resources Act 1991. In the future, as water becomes more scarce, there may be a shift to prioritise certain activities above others. Targeting abstractors with lower priority purposes to convert to time limited could give flexibility to re-allocate resources to higher value uses.

6.23 Targeting time limiting according to abstraction purpose and prioritising certain activities above others as water becomes scarce would lead to issues relating to the equitable treatment of licence holders. For instance this would potentially generate inequity for businesses that rely on abstraction, because conversion to time limited status potentially introduces an additional business risk.

6.24 Conversion of all licences without time limits to time limited status would be a more effective way of re-allocating water to priority uses in future if the need for this arises.

Environmental Risk

³² <http://www.environment-agency.gov.uk/research/planning/33106.aspx>

6.25 All existing abstraction licences have been included in the Conservation (Natural Habitats &c) Regulations 1994 Review of Consents. This has identified licences that pose a risk to sites designated under the Habitats Regulations. These licences and other existing licences considered unsustainable are being dealt with through the Restoring Sustainable Abstraction Programme. Existing mechanisms are therefore in place to modify licences that have the greatest environmental risk.

6.26 The Environment Agency has developed a set of rules for screening abstraction licence applications and assigning them a risk score. This is based on a number of factors, including proximity to other abstractors, designated habitats and abstraction purpose and volume. This methodology could be adapted to determine what risk current licences without time limits pose to the environment, and those deemed high risk could be targeted for time limiting.

Assigning Dates to Licences

6.27 Under Option 2 there are two possible approaches to assigning expiry dates to licences. The first is using a fixed date, which would then converge with CAMS Common End Dates on re-application; the second is using the existing policy of allocating expiry dates in line with the CAMS Common End Dates for each catchment. Introducing a single fixed time limit (i.e. applying the same expiry date to all time limited licences) would result in significant variability between the duration of abstraction licences granted on their first re-application. Some licences would have a very short duration (as little as 6 years, based on current policy). This would be an unwelcome administrative burden for abstractors because they may be required to renew their licences after a relatively short period. The preferred option, therefore, would be to apply expiry dates in line with the CAMS CED.

6.28 The expiry dates added to existing licences without time limits therefore could range from 31/03/2022 to 31/03/2030. This would fit with introducing time limiting after the start of the third cycle of River Basin Management Planning (2021) to allow abstractors a reasonable period in which to adjust. On expiry the second set of licences issued would continue in line with CAMS CEDs, generally 12 years in duration. An illustration of the time lines for each of the options is provided in the Impact Assessment (Annex A).

Implications of Targeted Time Limiting

General implications of time limiting abstraction licences

6.29 An abstractor may see his licence as representing a discounted volume of water that he can abstract from now into the future. Even assuming the licence exists in perpetuity, he may consider that the future volumes are somewhat less certain than today's. The discounted water volume may therefore include a downward "certainty adjustment" reflecting slight risks about the duration of the licence and the certainty of the abstraction volume in future. However, when the licence is converted to time limited, the certainty adjustment increases significantly, as the time frame over which volumes are assured is now only 12 years, and significantly less weight

and reliability can be placed on volumes and licence conditions beyond that. The abstractor will factor in the possibility of changes being made to his licence every 12 years, reducing the value of his discounted volume of water into the future. This reduction represents the cost to an abstractor of being converted to a time limited licence.

6.30 As well as the cost of reducing the certain licence time frame to 12 years, there will be additional costs to abstractors of any changes to volumes or conditions that are subsequently made to their licences, after a periodic review. Abstractors will respond in different ways to changed licence conditions, according to their business activities, industry competitiveness, the significance of water to their processes and cost base, their financial and profit performance, and so on. Some abstractors will be able to respond by changing products or processes or improving their water use efficiency, some will seek alternative water sources from grey or rain water, or will abstract elsewhere, invest in storage facilities, transport, or buy in water, even relocate the business. Some abstractors will face new costs which they pass on to customers, some will absorb the costs without passing them on, and some may go out of business, unable to operate with higher costs.

6.31 Moving from a licence without a time limit to time limited status would involve extra costs to the abstractor to re-apply for a licence on expiry of the existing licence. Additional time would also be needed to provide evidence to demonstrate efficient use of water and assessment of environmental sustainability issues, as required in the Environment Agency's tests for granting a new licence. However, this would apply to all abstractors, and would promote best practice and good management.

Specific implications of targeted time limiting

6.32 Abstractors who have a time limit imposed may have a **competitive disadvantage** to those which remain in force with no end date because of greater regulatory uncertainty. The time limited abstractor will also have additional costs to reapply for a licence, and additional time needed for record keeping to demonstrate their continued need for the water and water efficiency. However, other abstractors would face uncertainty over whether their licence would be targeted in future; but once a licence is time limited under this option, this uncertainty is removed and the abstractor can plan in the same way as newer abstractors who have existing time limited licences.

6.33 Targeted time limiting may not provide the mechanisms for comprehensive, periodic management of water resources at a catchment level, and adaptability to climate change in a timely and efficient way. This would have implications on environmental and water quality objectives, and our ability to meet PSAs on the achievement and maintenance of sustainable abstraction, as measured through the water availability status in catchments.

6.34 The targeted approach would carry a **significant administrative burden** for both licence holders and the Environment Agency. Although a group of licences could be targeted for time limiting, a case for change would need to be made for each abstraction licence individually, and each would be assessed on its own merits.

The use of section 52 powers would be a slow and burdensome process, and could potentially take two years per licence changed. This would be very labour intensive for the Environment Agency, both for technical and legal staff time, and also for abstractors who would need to appeal to the Secretary of State or Welsh Ministers and potentially to make a case to the Lands Tribunal. The cost and time associated with this are significant, for all parties.

6.35 This option would place a large **financial burden** on the Environment Agency and therefore licence holders because of potentially high cost recovery burdens. Compensation may be payable under section 61 of the Water Resources Act 1991 to an abstractor whose licence has been mandatorily time limited, or whose time limited licence is granted again upon expiry with changed conditions. Section 61 also sets out criteria to be used in assessing compensation for licence holders, and covers expenditure, loss or damage which is directly attributable to the revocation or variation to the licence. The likelihood and the basis of for compensation has not been tested through appeals to date. Compensation would be funded out of all abstraction licence fee charges collected by the Agency. Compensation is therefore not a new cost arising under this Option, but is a re-distribution of cost from the abstractor who bears the initial loss, to all licence fee payers. All licence fee payers contribute to compensate the abstractor whose abstractions have caused, or are expected to cause, significant environmental damage - which has triggered the Agency to convert the licence or amend its conditions.

6.36 Using the targeted approach to time limiting (Option 2) will leave England and Wales with the **risk of potentially much larger costs for maintaining the Good Ecological Status of water bodies required under WFD**. The costs of implementing Option 2 would increase in proportion to the number of licences targeted for time limiting. As detailed in the accompanying Impact Assessment (Annex A), currently we estimate that the monetary cost of targeting between 5-10% of the total number of licences without a time limit will cost a similar amount to universal time limiting (Option 3), which would time limit all licences.

Benefits of Targeted Time Limiting

6.37 The targeting approach could help to maintain the requirements of the Water Framework Directive, by providing a mechanism to review licences where monitoring indicates the environmental objectives of a body of water are unlikely to be maintained (although the associated costs would potentially be high). Targeted time limiting of licences within these water bodies could provide a mechanism to implement measures identified to make improvements in water quality.

6.38 Increasing the number of time limited licences would help Government make progress towards more sustainable management of water resources. Abstractors with time limited licences would need to demonstrate the three tests of environmental sustainability, justification of need, and efficient use of water at the point of re-application for a new licence. This encourages good practice and gives abstractors the potential to deal with future additional needs for water within their existing licence quantities.

6.39 The powers to implement this option already exist, so no legislative changes are needed. The approach could be regularly reviewed (for example every 6 years) to account for any environmental changes or legislative and regulatory changes. This provides a mechanism to ensure that water resources management is adaptable to climate change.

6.40 Although there are many disadvantages of this option for abstractors (see above), only some licences would be converted to time limited status- those abstraction licenses in areas where water resources are sustainable and no environmental change occurs, could continue unaltered for a significant period of time.

Consultation Questions:

Q3 If you agree that targeted time limiting (using existing legislative powers) is the right option, which of the criteria would you support and why?

Q4 Are there any other options that you think should be considered for targeted time limiting?

Q5 What are your views on implementing targeted time limiting of abstraction licences through new legislative powers?

Q6 How do you think mandatory targeted time limiting would affect an abstractor with a licence which is not time limited, in particular:

- i. those abstractors with Long Duration Licences**
- ii. small and medium sized business abstractors**

7. Option 3 - Mandatory Universal Time Limiting

7.1 This option would involve introducing mandatory time limiting for all existing abstraction licences without a time limit.

7.2 Implementing universal time limiting using existing legislative powers was not considered as an option. There are currently over 16,000 abstraction licences without time limits that would need to be modified to include a time limit. Using the powers under sections 52-54 of the Water Resources Act 1991 is a long and burdensome process. Each licence change could take approximately two years to complete, involving an appeal and Lands Tribunal hearing. Legal proceedings can be time consuming and expensive, with no guarantee of success. If sections 52-54 are used then compensation may be payable. This increases the cost of the licence change, and the time taken in the appeals process. Funds to pay compensation would need to be recovered by the Environment Agency using the abstraction charges scheme. Converting 16,000 licences will significantly increase charges for all abstractors. Given the high administrative and financial burdens, and lack of flexibility needed to deal with climate change efficiently, or within appropriate timescales, this option for implementation does not merit detailed analysis and will not be considered further in this consultation.

7.3 This option therefore assumes implementation through new legislative powers. The mechanism for imposing time limiting through new legislation will need to be considered following this consultation.

Implications of universal time limiting of abstraction licences

General implications of time limiting abstraction licences

7.4 An abstractor may see his licence as representing a discounted volume of water that he can abstract from now into the future. Even assuming the licence exists in perpetuity, he may consider that the future volumes are somewhat less certain than today's. The discounted water volume may therefore include a downward "certainty adjustment" reflecting slight risks about the duration of the licence and the certainty of the abstraction volume in future. However, when the licence is converted to time limited, the certainty adjustment increases significantly, as the time frame over which volumes are assured is now only 12 years, and significantly less weight and reliability can be placed on volumes and licence conditions beyond that. The abstractor will factor in the possibility of changes being made to his licence every 12 years, reducing the value of his discounted volume of water into the future. This reduction represents the cost to an abstractor of being converted to a time limited licence.

7.5 As well as the cost of reducing the certain licence time frame to 12 years, there will be additional costs to abstractors of any changes to volumes or conditions that are subsequently made to their licences, after a periodic review. Abstractors will respond in different ways to changed licence conditions, according to their business activities, industry competitiveness, the significance of water to their processes and

cost base, their financial and profit performance, and so on. Some abstractors will be able to respond by changing products or processes or improving their water use efficiency, some will seek alternative water sources from grey or rain water, or will abstract elsewhere, invest in storage facilities, transport or buy in water, or even re-locate the business. Some abstractors will face new costs which they pass on to customers, some will absorb the costs without passing them on, and some may go out of business, unable to operate with higher costs.

7.6 Moving from a licence without a time limit to time limited status would involve extra costs to the abstractor to re-apply for a licence on expiry of the existing licence. Additional time would also be needed to provide evidence to demonstrate efficient use of water and assessment of environmental sustainability issues, as required in the Environment Agency's tests for granting a new licence. However, this would apply to all abstractors, and would promote best practice and good management.

Specific implications of universal time limiting

7.7 Universal time limiting may place higher (business) costs on those abstractors with large fixed assets that are intended to operate (and be funded) over long periods of time, e.g. water companies' abstractions for public water supplies. There is limited information available to assess what the impacts of time limiting would be to Long Duration licence holders.

7.8 This option carries with it some administrative and cost implications for the Environment Agency in relation to the need to notify all abstractors of the change to their licence.

7.9 Licence holders would not be able to appeal against having a time limit applied, although they would be eligible to appeal the expiry date itself, for example in favour of a longer duration licence.

Benefits of universal time limiting

7.10 This option would achieve a better environmental outcome from 2021 onwards. The ability to adapt to future challenges such as climate change, and manage water resources effectively is greater because more (potentially all) licences are available for modification, without compensation, with 6 years notice from the Environment Agency of changes effective from when an expiry date is applied (in line with their current policy for notice of change to licence holders).

7.11 Time limiting all abstraction licences provides a mechanism to deal with future changes in water availability in catchments in a sustainable manner. CAMS is an indicator of the proportion of areas with sustainable abstraction of water for PSA delivery agreements 27 and 28 announced in October 2007. This indicator provides a measure of Government progress on adaptation to climate change by looking at progress in one area of policy - the increase in the proportion of areas which have sustainable abstraction of water. Universal time limiting would provide a mechanism for the comprehensive, periodic management of water resources at a catchment level in response to CAMS reviews of existing and indicated future environmental harm, so that measures can be taken to ensure that the environmental and water quality objectives of a body of water are met. Therefore, this option could help to

maintain the requirements of the Water Framework Directive, by providing a mechanism to implement measures identified to make improvements where monitoring indicates the environmental objectives of a body of water are unlikely to be maintained.

7.12 Time limiting all licences would provide the flexibility to manage the challenges of climate change and increasing demand for water equitably and in the public interest. For example, if a reduction in abstraction is needed in a catchment, it might be better to reduce a large number of licences on expiry by a small amount (for example amending a flow condition), rather than impose larger changes to individual licences (for example a reduction in volume) at less frequent intervals. The risk of large impacts on individual licence holders would be reduced if all licences were time limited.

7.13 This option is consistent with the principle that the polluter, or the agent impacting on the environment, pays, as any loss or cost imposed by licence changes is borne solely by the abstractor affected, whose activity can be assumed to be causing, or risking, significant environmental damage - the trigger for the Environment Agency's amendment of licence conditions. (This is in contrast with Option 2 where the cost faced is re-distributed to all licence fee payers via the general funding of compensation).

7.14 As highlighted in the inquiry undertaken by the All Party Parliamentary Water Group entitled The Future of the UK Water Sector, time limiting all abstraction licences will help to encourage water efficiency. If every licence was time limited then all abstractors would need to demonstrate the three tests of environmental sustainability, justification of need, and efficient use of water at the point of re-application for a new licence. This encourages good practice and gives abstractors the potential to deal with future additional needs for water within their existing licence quantities.

7.15 It could be argued that time limiting all licences would reduce the risk of large impacts on individual licence holders. For instance, if reductions are needed to the amount of water abstracted in several catchments, universal time limiting would allow a large number of licences to be reduced on expiry by a small amount, rather than imposing large changes to individual licences at less frequent intervals.

7.16 Overall, the option of time limiting all abstraction licences through new legislative powers (Option 3) would give much greater flexibility to adapt to change than voluntary conversion through the current licensing regime (Option 1) or targeted time limiting using existing powers under sections 52-54 of the Water Resources Act 1991 (Option 2).

Consideration of impacts to business

7.17 A significant number of small firms that abstract water at rates of less than 20 cubic metres a day have already been removed from licence control by provisions in the Water Act 2003. This has been particularly beneficial to the agricultural sector

and other small to medium size enterprises. This will not change as a result of the proposals to time limit abstraction licences.

7.18 Only those small to medium size enterprises who are licensed to abstract more than 20 cubic metres of water a day and have a licence without a time limit are affected by time limiting abstraction licences.

7.19 While the administrative costs are mostly per licence, the impact of time limiting and licence changes on small businesses may be greater than on large businesses, if they are less able to respond in practical or financial terms, or are less able to pass on any increased costs in their prices. There is limited information available to assess the impacts of time limiting on the remaining small and medium sized businesses. Since Government policy seeks to minimise impacts of policy change to smaller businesses, **this Consultation is seeking the views of smaller businesses that may be affected (e.g. groups such as agriculture, fish farms) in order to prepare a more complete assessment of the impacts to small and medium sized businesses.**

7.20 The Environment Agency already takes a risk based approach as a means of demonstrating water efficiency. This takes account of the amount of the licensed quantity so that smaller abstractors should be less burdened.

7.21 When considering what changes need to be made to resolve environmental problems, the Environment Agency will, for example, take into account costs and benefits. This would include looking at the impact on individual businesses, and the wider social, environmental and economic costs and benefits. That may mean that the Environment Agency may steer away from making changes that would seriously affect the viability of an individual business, if there is a better way of achieving the same end, depending on the individual circumstances.

7.22 Public Water Supply (PWS) companies have a detailed long term planning process in place (Water Resources Management Plans); the ability to move water from one place to another through their distribution infrastructure; and a formal mechanism through Ofwat's price review process for secure funding. For these reasons PWS companies are able to adapt to changing circumstances.

7.23 Other sectors generally do not have these provisions in place, and are usually reliant on water from a single source or a small number of sources. Any changes to abstraction licences under time limits would normally involve a long lead-in time of at least six years, giving companies time to adapt. It is worth noting that the lead-in time would be significantly longer than other permitting regimes, e.g. water discharge consents which can be amended at any time, subject to a four year period between changes.

7.24 The Environment Agency has indicated that PWS abstractions are proportionately more likely than other sectors to be implicated in environmental problems - this is shown by the compensation estimates provided by the Environment Agency for the Restoring Sustainable Agriculture programme: £350 million for public water supply for Habitats Directive sites alone; and £240 million for other abstractors, plus the non-Habitats Directive element of PWS abstractions.

Consultation Questions

Q7 Are there any other options that you think should be considered for universal time limiting?

Q8 How do you think mandatory universal time limiting would affect an abstractor with an abstraction licence which is not time limited, in particular:

- i. those abstractors with Long Duration Licences
- ii. small and medium sized business abstractors

Q9 Since there is limited information available to assess the impacts of time limiting on small and medium sized businesses that may be impacted, we are seeking the views of those affected in groups such as agriculture, fish farming and private water supplies, in order to prepare a more complete assessment. **Therefore we would welcome case studies to demonstrate how such businesses would be affected by the proposed policy changes in terms of business, financial, administrative and other costs.**

8. Options for implementation timescales

River Basin Management Planning third cycle

8.1 As stated in Future Water there is a genuine case for all abstraction licences to be given a time limit within the third cycle of River Basin Management Planning, covering the period 2021-2027. This time frame would give abstractors a long lead-in time to the change, ensuring a balance between the needs of the licence holder and those of society and the environment. It also reduces the risk that licence changes through the Restoring Sustainable Abstraction programme would still be outstanding when a licence expires. Therefore, under this option existing abstraction licences without time limits would be given an expiry date in the range 2021 to 2027.

Earlier Implementation

8.2 Climate change and population growth may require action to introduce mandatory time limiting before 2021. If this is the case, postponing mandatory time limiting until the third cycle of the River Basin Management Planning timetable may not bring in the changes soon enough. An alternative option could be to bring the proposals forward by one river basin planning cycle (i.e. 6 years earlier). This approach carries a risk that the Restoring Sustainable Abstraction Programme may not have completed licence changes by the time expiry dates are reached. If this is the case there is a risk to abstractors that when they re-apply on expiry, their licence will not pass the sustainability test and the licence change needed to rectify this will be made without payment of compensation.

Assigning Expiry Dates within Option 3

8.3 Within Option 3 there are two possible approaches to assigning expiry dates to licences. The first is using a fixed date, which then converges with a CAMS Common End Date; the second is using the existing policy of allocating expiry dates in line with the CAMS Common End Dates for each catchment from the outset. Further details of these approaches are provided below, and are supported by illustrations provided in the accompanying Impact Assessment (Annex A). For ease of discussion it is assumed below that the implementation timescale chosen is the third cycle of River Basin Management Planning (2021 to 2027), however these options could equally be applied 6 years earlier.

8.4 **Single Fixed expiry date** - Introducing a single fixed time limit (i.e. applying the same expiry date) to all existing licences without time limits would be equitable, and simple to implement in legislation. However long-duration licences may still be needed, for Water Company abstractions for example. To align with the third cycle of River Basin Management Planning, an expiry date of 2021 could be introduced for the majority of licences, and 2027 for those eligible for a long duration licence.

8.5 On expiry, future licences would be issued in line with current policy, to the next CAMS Common End Date, and the licences would then follow the standard 12 yearly review. Currently the year 2021 is not a Common End Date for any of the catchments in England and Wales. This means that the second set of licences would need to be converged to the CAMS CEDs after 2021 which range from 31/03/2027

to 31/03/2038. The third set of licences issued would then continue in line with CAMS CEDs, generally 12 years in duration. Each Long Duration Licence application would be considered on a case by case basis to determine the future expiry dates.

8.6 Converging the licences to the CAMS CED would result in significant variability between the duration of abstraction licences that would be granted on their first re-application. Some licences would have a very short duration (as little as 6 years, based on current policy). This would be an unwelcome administrative burden for abstractors because they may be required to renew their licences after a relatively short period. Conversely, if the CED is chosen in the first instance, licence holders would only need to renew once in that period (as depicted in Figure 2 below).

8.7 This option would require most licences to be changed twice in the run up to the CAMS CEDs after 2021, therefore incurring double the administration costs for the Environment Agency and the abstractors. It would also involve two peaks in work, firstly the review of all 16,000 licences at the same time (prior to 2015) to allow sufficient notice of any tweaks to conditions needed. Secondly the applications for new licences on expiry of these same licences in 2021. This would create an exceptionally large administrative burden for the Environment Agency. Long Duration Licences would be considered on slightly different timescales.

8.8 There are also separate issues regarding how to deal with licences that are currently partially time limited (for example due to variations for licence trading or monitoring)..

8.9 **Align with CAMS Common End Dates** - Time limits could be applied in line with CAMS Common End Dates (with allowances made for licences that are currently partially time limited). The current method for reviewing time limited licences involves all expiry dates within a catchment being set to a single Common End Date. These Common End Dates are on a rolling 12 year programme, for example a catchment with a Common End Date of 31st March 2010 would have 31st March 2022 as the next in the cycle.

8.10 This method of allocating expiry dates is well established and there is already a framework in place to manage it. The CAMS Common End Dates do not exactly match the third cycle of the River Basin Management Planning period 2021 to 2027; only 50% of catchments have a Common End Date in this period. Under this approach the expiry dates added to existing licences without time limits therefore would range from 31/03/2022 to 31/03/2030. On expiry the second set of licences issued would continue in line with CAMS CEDs, generally 12 years in duration. Again, Long Duration Licence applications would be considered separately.

8.11 This is the most logical method given how time limited abstractions are managed. However, CAMS Common End Dates are set in policy, not legislation. Therefore, end dates applicable to each licence would need to be included in a schedule in the enabling legislation. It is undesirable to put the CAMS areas and Common End Dates into legislation as this would remove some of the flexibility we already have to merge CAMS where we need to.

8.12 An alternative could be for the legislation to include provisions for an expiry date to be applied to each licence that was 2021, unless a later date is determined by the Environment Agency. This could be done to align the dates with the CAMS Common End Dates as far as possible, whilst taking into account licences which may need a longer duration. This would avoid the need for a lengthy schedule listing each licence and the new expiry date, and would allow partially time limited licences to be dealt with easily at the outset.

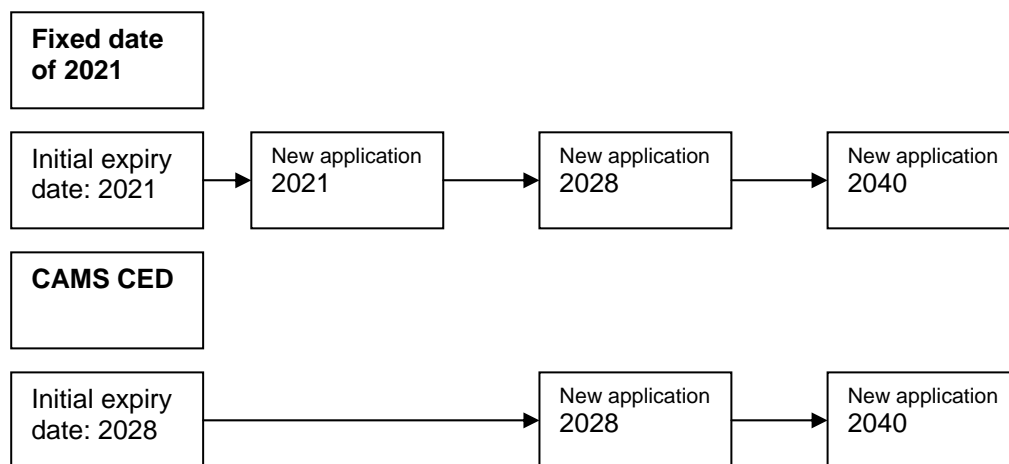


Figure 2: Comparison of applications needed by abstractors for the fixed date and CAMS Common end date approaches

- 8.13 The key benefits of the CAMS CED approach over the use of fixed dates are:
- It gives the Environment Agency scope to take into account special circumstances (for example partially time limited licences) when assigning expiry dates. Any licence holder who can justify needing a long duration licence can always voluntarily convert prior to the change if they wished.
 - It reduces the number of re-applications of each licence, therefore ensuring there is only the minimum administration needed (as depicted in Figure 2).
 - As expiry dates are in line with CAMS from the outset- no convergence is needed and this removes the risk of some licence holders getting a very short duration licence (as little as 6 years) when the initial licence expires.

For these reasons the CAMS CED approach is considered more effective and efficient than using fixed dates.

Partially time limited licences

8.14 A number of existing licences have time limited variations, i.e. a part of the licence has an expiry date. This could have arisen for several reasons, including licence trading and monitoring requirements to check the change in abstraction is sustainable. These variations would need to be checked against the new expiry date in case there are implications for monitoring that has been agreed, or if that part of the licence has a longer duration than the proposed new expiry date. For example, if a public water supply licence has increased its volume in recent years, the base

licence may be without a time limit, but the upwards variation may have a long duration time limit.

8.15 For those variations which are time limited purely because they are new (and are issued in line with all new applications), time limiting the base licence should not cause a problem if the expiry date selected is the CAMS Common End Date, because the expiry date for the variation would also be the CAMS Common End Date. If a fixed date is selected, then the variation is likely to come up at re-application at a different time to the rest of the licence.

8.16 Those licence variations that have arisen as a result of water rights trading usually involve the sale of water rights from one abstractor to another. Applying a time limit to the whole licence would not present a financial problem for the abstractor if the expiry date was the same as, or later than, the expiry date of the variation. However, if the new date was earlier than the variation, the licence holder who had bought the rights to the water is introduced to a risk that changes may occur on re-application. This is a risk that would not have been apparent when the trade took place. The Environment Agency would need to review each licence to check time limiting the whole licence does not impact on the trade (for example if the proposed new expiry date for the whole licence is earlier than the expiry date on the traded part of the licence).

8.17 Applying an expiry date to a whole licence which has a short duration variation for monitoring purposes should not have an impact because the variation would expire before the base licence, so any sustainability issues can be addressed at that point.

Consultation Questions:

Q10 If there are known unsustainable licences in the Restoring Sustainable Abstractions Programme that have not been dealt with by the time they reach their new expiry date, how do you think we should deal with their applications for a replacement licence?

Q11 Which method of expiry date selection do you prefer and why?

Q12 How should we deal with licences that have time limited variations?

9. Comparison of Options 2 and 3

9.1 Option 3 provides the mechanisms to be proactive in maintaining sustainable abstraction within a catchment. This aligns with the requirements of PSA 27, which requires the achievement and maintenance of sustainable abstraction through policy that is adaptable to changing climatic conditions, so that measures can be implemented to reduce demand and use water efficiently, and allow long term planning to ensure resilience of water supply. Option 2 would be more reactive in its approach to addressing risks of environmental damage as a result of abstraction.

9.2 Option 3 would give flexibility needed to adapt to climate change within appropriate timescales, whereas Option 2 would require the use of sections 52-54 powers which would be a slow and burdensome process, and could potentially take two years per licence changed.

9.3 Option 3 is consistent with the principle that the polluter, or the agent impacting on the environment, pays, as any loss or cost imposed by licence changes is borne solely by the abstractor affected, whose activity can be assumed to be causing, or risking, significant environmental damage - the trigger for the Agency's amendment of his licence conditions. This is in contrast with Option 2 where the cost faced is re-distributed to all licence fee payers via the general funding of compensation.

9.4 Option 3 would allow time limiting to be introduced without significant administrative burden, whereas Option 2 would carry significant administrative burden for both abstractors and the Environment Agency.

9.5 Option 3 would provide the flexibility to manage the challenges highlighted above equitably and in the public interest. For example, if a reduction in abstraction is needed in a catchment, it might be better to reduce a larger number of licences at the CED by a small amount, rather than impose larger changes to individual licences at less frequent intervals (Option 2). The risk of large impacts on individual licence holders would be much smaller if all licences were time limited.

9.6 Option 3 would be a fairer and more equitable method of time limiting all abstraction licences. Unlike Option 2, the change would be applied across the board. This means that no licence holder would be at a competitive disadvantage to another as a result of this change. Similarly, Option 3 would incur lower costs to businesses if all abstractors face smaller cuts to their licensed volumes, as opposed to Option 2 where cuts would not be evenly distributed and targeted businesses would therefore be more likely to incur higher business costs.

9.7 Option 2 would bring abstractors an uncertainty about whether time limiting would be applied to their licences in the future. Under Option 3, however, this uncertainty is removed and the abstractor can plan in the same way as newer abstractors who have existing time limited licences.

9.8 Option 3 would **promote more trading**. Currently, licence trading in catchments which are over abstracted or over licensed are sometimes subject to the Environment Agency adding new conditions or reducing the overall quantity to help

return abstraction to sustainable levels, especially if old, unused licences ('sleeper' licences) are reactivated. This is a disincentive to trading and would be needed less if all licences were time limited. Beneficial competitive access to water abstraction rights would increase with new entrants able to access rights through freer licence trading, because, once the Environment Agency has the opportunity to make changes to all and any time limited licences, it will not need to intervene at the point of trading to add conditions or cut volumes.

9.9 The chief benefit of Option 3 is that higher environmental standards can be maintained (compared to Option 1 - Do Nothing). However, the extent of any environmental deterioration post-2021 is not predictable and we are not able to describe those future environmental conditions in detail, nor the benefits that the Option will deliver. Moreover there is limited data available from research studies that can be applied to indicate the welfare value to society of achieving higher environmental standards. The major benefit of Option 3 is therefore not quantified at this stage.

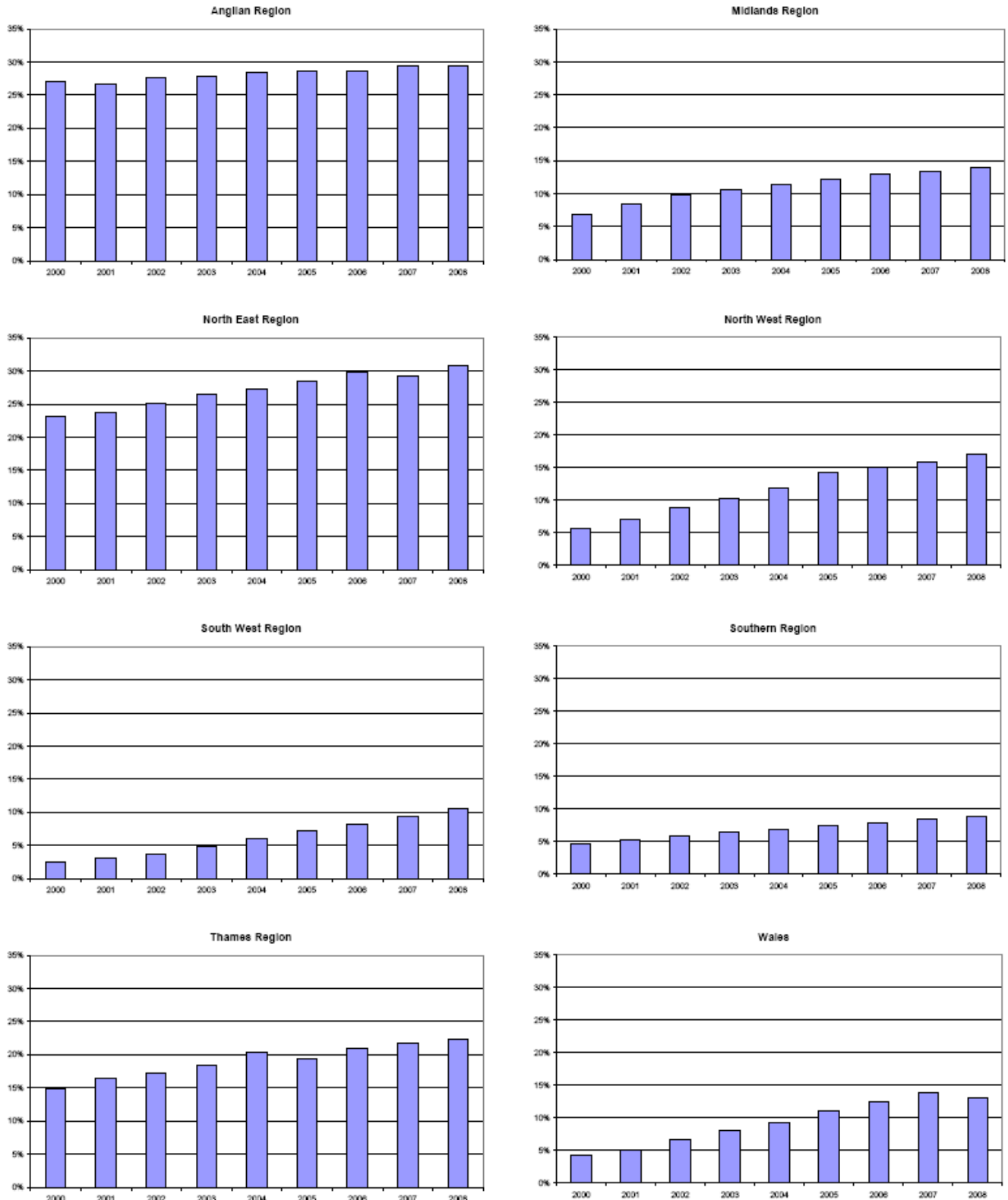
9.10 The details of how time limiting should be implemented will be considered in light of consultation responses and any further information gathered during the consultation period.

Consultation Question

- Q13 Which is your preferred option for mandatory time limiting, targeted time limiting using existing powers (s52) or universal time limiting through legislative change? Why is this your preferred option?**
- Q14 Which option for time limiting is more likely to enable the environmental impacts of water abstraction to be managed and reduced?**

Annex B

Proportion of Time Limited Abstraction Licences within each Environment Agency Region



Figures from the Environment Agency. Data for live abstraction licences on 1st April in each year over the deregulation threshold of 20 cubic metres per day.