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| Circulation: |  |  | Date: | 18 January 2016 |
|  |  | Ref: |  |
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**NFU/Defra discussion on ‘New Authorisations’ consultation**

**Present**

Tim Papworth (chair), Sarah Faulkner, John Hall, David Long, Paul Hammett, Amy Gray, Anthony Hopkins, Henry Chin, Peter Gwynne, Tim Place, Marion Regan

With Carol Skilling, Adrian Brookes and Hannah Le Pla (Defra)

**Introduction**

The aim of the meeting was to discuss Defra proposals to bring currently exempt activities such as trickle irrigation into the abstraction licensing system. A [Defra consultation](https://consult.defra.gov.uk/water/water-abstraction-licensing-exemptions/supporting_documents/Consultation%20Document%20%20New%20Authorisations.pdf) was published on 15 January. The deadline for responses is 8 April.

The main elements of the Defra proposals are:

* A light touch and risk based approach to issuing ‘New Authorisations’
* 20 m3 per day derogation remains for all users
* Licences to be issued to the overwhelming majority of trickle operators
* But where abstractions cause ‘serious damage’ there will be no licence issued with no compensation payable
* From the time of legislation coming into force, growers will have two years to apply and EA will then have three years to determine, so New Authorisations should be fully integrated into the current system by 2021
* Any compensation payable to rejected applications (other than serious damage) to be paid from EIUC fund
* Trickle licences to be subject to Hands off Flow constraints to protect low surface water flows

Defra confirmed that this exercise is to get the currently exempt activities into the current licensing system so that all licences together can then be subject to the long term Defra [Abstraction Reform](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492411/abstraction-reform-govt-response.pdf) proposals also published on 15 January.

**NFU comment**

*The soft fruit sector is a major success story for British horticulture. It has delivered increased availability of high quality produce over a longer growing season.*

*To continue to flourish, growers need secure access to water to grow fruit, and labour to harvest it.*

*Government’s* [*National Living Wage*](http://www.nfuonline.com/sectors/horticulture-potatoes/help-reduce-impact-of-living-wage-urges-nfu/) *proposals constitute a huge challenge for growers in respect of the latter, and so the Defra proposals to constrain water use come at a difficult time.*

*Trickle (drip) irrigation is a highly efficient method of water application to crops, and there is ample evidence to show how recent technological advantages have been actively employed by growers to drive down the volume of water used per tonne of crop. Efficient application techniques help to mitigate and minimise the environmental impacts of abstraction.*

*We have been promised a ‘light touch and risk based approach’ to the future licensing of trickle irrigation by Defra, and we are reassured that the regulatory hoops to be jumped through by the estimated 1,000 businesses that currently use trickle irrigation will be kept to a minimum.*

*The NFU submitted detailed comments to Defra’s last consultation and it is reassuring that many of our recommendations have been adopted, particularly those that recognise trickle irrigation as lawful operations. However, the challenge facing the agri-food sector lies in ensuring that producers are given a fair allocation of water for food production.*

*We understand that the licensing of currently exempt activities such as trickle irrigation is a necessary part of government’s long term proposals to reform the way that water is licensed and managed.*

*We therefore seek a government commitment though* [*Defra’s 25 year Farming and Food Plan*](http://www.nfuonline.com/news/latest-news/nfu-welcomes-defra-food-and-farming-plan/) *to deliver policies that link food security to water security; and that allocate a fair share of water to farmers and growers to produce our food. Instrumental in this approach will be the need to remove current planning and taxation barriers to the construction of storage reservoirs.*

*A particular constraint faced by a relatively high proportion of soft fruit businesses is that they do not meet the business turnover and/or employee number thresholds to meet the definition of a small or medium sized enterprise (SME). Therefore, they fail to quality for water management grants that may otherwise to help them adapt to the imposition of these new regulations.*

**Abstraction restrictions at low flows**

Arguably the most contentious of the Defra proposals is that the Environment Agency will have powers to apply environmental constraints to protect the environment at low flows or during drought conditions.

To do so, the Environment Agency will be able to include a generic condition such as ‘Hands off Flow’ (HoF) to transitional licences. These conditions will be consistent with conditions issued for other newly issued licences and consistent with Catchment Abstraction Management Strategies (CAMS).

In over-abstracted catchments where flow does not support WFD objectives a HoF would be set at Qn95[[1]](#footnote-1) (or a groundwater equivalent). For all other catchments where flow supports WFD objectives the condition would be set at 75% of Qn99.

**NFU comment**

*Trickle irrigated crops cannot withstand periods without access to water. There is significant evidence of major recent changes in the soft fruit sector to the use of coir-type substrates which have little or no water holding capacity; even short restrictions in water availability would have major crop growth and business impacts.*

*It seems that Defra is seeking to circumvent (or add to) existing drought restrictions that are uniquely applied to spray irrigation through the* [*Water Resources Act 1991 section 57*](http://www.legislation.gov.uk/ukpga/1991/57/section/57)*.*

*The issue for the soft fruit sector, which is overwhelmingly the dominant user of drip irrigation, is that current licensing exemptions mean there are no restrictions on abstraction at low flows. Even where the sector uses licensed abstraction, it is protected by* [*The Spray Irrigation (Definition) Order 1992*](file:///C%3A%5CUsers%5Cphammett%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CTemporary%20Internet%20Files%5CContent.Outlook%5C6W1VK2CN%5CThe%20Spray%20Irrigation%20%28Definition%29%20Order%201992%20.htm)

*This Order defines a range of irrigation activities that are not considered to be spray irrigation (and therefore cannot be restricted under Section 57). Those exempt activities include irrigation taking place:*

* *Within a building or other structure, whether fixed or mobile, used for the production of agricultural produce, being a building or structure which excludes from the plants growing in or under it water falling as rain (ie polytunnel or glasshouse)*
* *On land in the immediate vicinity of cloches, in or under which plants are growing, for the purpose of securing a supply of moisture to those plants*
* *In containers or pots in the open in which plants intended for sale are grown in such a way as to be unable to take moisture from the soil.*

*Since the case has already been made that specific horticultural activities should be exempt from low flow water restrictions, growers will clearly expect those exemptions to be transferred into the new regime.*

**Trickle irrigation from groundwater sources**

Whilst the proposed ‘Hands Off’ conditions focus on surface water, there is much less clarity on what – if any – constraints will be placed on groundwater abstraction at low aquifer levels. Groundwater is the dominant water source for the trickle irrigation sector and more clarity is needed on how this will be approached, particularly in environmentally protected areas.

**Licence refusal**

Where an application for a New Authorisation is refused or offered on inferior terms, then compensation *may* be payable (but see separate proposals in cases of ‘serious damage’).

It is proposed that surplus funds of Environmental Improvement Unit Charge (EIUC) levied against licensed abstractors (but not unlicensed trickle irrigators) will be used for this purpose.

**NFU comment**

*Whilst the ‘four year rule’ should be sufficient in most cases, special provision should be made to allow for valid applications from producers of crops with long (5-8 year) rotations.*

**Serious damage**

Section 27 of the Water Act 2003 gave the Environment Agency powers to assess whether an abstraction is causing ‘serious damage’ to the environment based on the principles of establishing the:

* Qualitative nature of the damage
* Extent and magnitude of the damage and
* Extent to which the damage is reversible and how long the recovery might take

It is proposed that the Environment Agency will take account of the serious damage provisions when determining New Authorisations which could lead to some application being subject to conditions or even refused.

It is estimated that 5% of trickle licence applications may be caught by environmental protection procedures.

**Planned abstractions**

Defra proposes that applicants will have to demonstrate that they have actually abstracted water from the source of supply at any time in the four years leading up to the removal of exemptions (legislated estimated to be late 2016).

Whilst it should be relatively straightforward for trickle irrigators to provide evidence of current use on which to base their volume application, Defra proposes that any ‘planned abstractions’ (for future use to meet business expansion) should be licensed through the normal licensing process as any other new application, rather than as part of the New Authorisations transition.

**NFU comment**

*In view of the well documented expansion of the soft fruit sector over the past 10 years, there are concerns that this could be a significant barrier to growth.*

1. ['Managing water abstraction' EA May 2013](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297309/LIT_4892_20f775.pdf) [↑](#footnote-ref-1)