

Water Resources (Jersey) Law 2007

Gazette policy & background for abstraction & impounding licences

1. Policy and guidance introduction

As the practical application of the Water Resources (Jersey) Law 2007 (“the Law”) has developed it has been deemed necessary to formalise a policy for common situations in which water resources abstraction or impounding licence applications would or would not be “Gazetted” (i.e. publishing details of the application in the Jersey Gazette).

This guidance has been produced:

- (1) So that the applicant is aware of the factors taken into account which determine whether an application is published in the Jersey Gazette, including the implications of varying their application (i.e. losing the licence’s Transitional Arrangements status); and
- (2) To provide internal guidance for colleagues, historical background and a framework for “Gazetting” with practical examples.

2. Legislative requirements to Gazette a water resources licence application

Part 2, Article 8: Public notice of proposals: When an application for the grant or variation of a water resources licence is received, or should the regulator propose to vary a licence of the regulator’s own motion, the regulator is required to publish details of the application/variation in the Jersey Gazette and make a copy of the proposal available for inspection (both now on gov.je). See Part 2, Article 8 for full details.

However, in Part 2, Article 8 Paragraph 3, it is stated that *“if the regulator is satisfied on reasonable grounds that the activity to which the proposal relates is not likely to have any appreciable adverse effect on a source of supply or on fauna or flora that are dependent on a source of supply, the regulator need not comply with paragraph (2).”* Paragraph 2 details the requirement to publish licence applications in the Jersey Gazette.

3. Licences issued under “Transitional Arrangements”

- It should be noted that in accordance with Schedule 2 of the Law, “Transitional Arrangements for Water Resources Licences”, a publication in the Jersey Gazette was not required for abstraction or impounding licence applications submitted under the Transitional Arrangements.
- A licence issued under the Transitional Arrangements (TA) was granted if the abstraction or impoundment was lawful, had historically occurred before the introduction of the Law and was for the quantities abstracted historically. Essentially, this constituted a licence of “historic right” (see Schedule 2 for full details).
- It was necessary to apply for licences under the Transitional Arrangements during 2009, for the licences to be granted and come into force on 1 January 2010.
- The abstraction quantities specified on water abstraction licences issued under TA were commonly based on ‘best estimates’ of historic abstraction provided by the licence applicants, as no records of historic abstraction quantities were available.
- Licences issued under the TA remained in force for a period of 5 years (to 31 December 2014), at which time it was necessary to assess each licence (based on abstraction records

provided by the licensee as specified in each licence) and reissue for a further period, not exceeding 10 years.

- It should also be noted that in some surface water catchments, abstraction licences will have been granted to abstract at multiple locations along the course of the stream system. Where this exists, there is an abstraction priority system based on the age of the licences, i.e. TA licences are oldest and have first priority where the water supply is inadequate to allow simultaneous abstraction from all licensed sources of supply.
- If TA licences (for surface or groundwater sources) are formally varied following an application by the Licensee, they will typically lose their TA status, although the 'historic right' to abstract must still be recognised.

4. Licences issued under 'standard procedures'

- Abstraction licence applications submitted after the 2009 TA deadline (as specified in Schedule 2 of the Law), were assessed and granted to commence on various dates in 2010 and subsequent years.
- It was assumed that these abstractions were in effect 'new' abstractions and that no 'historic rights' were associated with such licences, even if abstraction had occurred at some time before the licensing requirement of the Law came into force on 1 January 2010.
- The abstraction quantities specified on such water abstraction licences were commonly based on 'best estimates' provided by the licence applicants.
- All new licence applications are subject to a full assessment (see section 6 below).
- Such licences are issued for durations of up to 10 years. Where licences are issued for a shorter period, justification will be included in the licence assessment.
- Where multiple licenced abstractions are present along a stream the priority of a given licence to abstract will be determined by the effective date as written on the licence document.

5. Licence expiry & the "renewal phase"

Typically, an abstraction licence period will not exceed 10 years (see Part 3, Article 17 for exceptions). Impounding licences have no expiry. When an abstraction licence expires there is no renewal provision contained within the Law. The end of the existing licence period has practically been known as the "renewal phase" Abstraction data records and other relevant factors are then used to justify the requested maximum volumes of water to be abstracted per 24 hour period, and total annual abstraction. Any significant increases or changes to the existing licence have historically required the licence to be Gazetted at this phase, unless it can be demonstrated that:

- (1) the original abstraction volumes applied for were wholly inadequate 'best estimates' and/or;
- (2) the conclusion of the hydrogeologists' technical assessment of the licence at the renewal phase was in accordance with Part 2, Article 8, Paragraph 3 (Gazette exemptions).

6. Technical assessments of the new or variation application

A technical assessment of licence applications will continue to be conducted for;

- new licence applications;
- all expired licences prior to re-issue; and
- applications to vary an existing licence (e.g. to increase the specified maximum abstraction quantity)

This assessment currently includes abstraction history, geology, potential impact on any nearby SSI's, hydrology & hydrogeology, potential impact on any nearby existing licenced & registered abstractions, changes to the use of the abstracted water and any other potential

impacts of the proposed licenced abstraction. A consultant hydrogeologist supports such assessments as technical knowledge is required to review/assess possible impacts.

Assessments will also continue to serve as a historic record of the factors which determined a licence application, amongst other important reasons.

7. Common situations in which applications will or will not be Gazetted

a. Will not be Gazetted:

- Where the licence was issued under the Transitional Arrangements and actual abstraction data demonstrates that the licenced abstraction maxima should be amended. This includes situations where there have been no substantial site changes over time or no process or equipment changes (such as a more powerful pump) which have caused the increase since the licence was granted. This effectively “corrects” the original licenced quantities (which were originally based on ‘best estimates’) to reflect actual abstraction quantities; or
- If the licence which is due to expire and is to be renewed requires an increase in the licenced daily abstraction maxima which does not exceed 10% of their current daily licenced abstraction quantity (if it is considered that no detrimental impact on other nearby licences or the aquatic environment is likely to occur); or
- If the annual licenced abstraction quantity increases or decreases but the daily licenced quantity is to stay the same, (unless increasing the annual quantity is considered likely to have a detrimental effect on abstraction under a downstream existing licence); or
- If a new replacement borehole is drilled (e.g. a replacement to the existing licenced borehole) and where the new source is located close to the original source and the maximum abstraction specified on the licence will remain unchanged.

b. Will be Gazetted:

- Generally, all new Water Resources abstraction & impounding licence applications will be Gazetted; or
- If a Licensee applies to vary a licence to increase the maximum abstraction quantities or to increase the abstraction period(s) specified on the licence; or
- If the licence which is due to expire and is to be renewed requires a significant increase in the licenced daily abstraction maxima which exceeds 10% of their current daily licenced abstraction quantity; or
- If the applicant wishes to add another groundwater or surface water source onto the same licence. Groundwater sources on the same licence should generally be no more than 300 m apart from each other in the case of primary aquifers (e.g. unconsolidated sand) or 100 m in the case of secondary aquifers (e.g. fractured bedrock aquifers). Sources exceeding this separation will require their own new licence, if granted. However, it will always be necessary to assess the separation of sources that may be permitted under a single licence, taking local site conditions and the presence of other nearby water sources into account. In the case of surface water sources, multiple abstraction points that are located within the same surface water catchment and used by the same Licensee may be included on the same licence. However, the maximum abstraction quantity specified on the licence will apply

to abstraction from all points irrespective of whether abstraction is from only a single point at a given time or from all points simultaneously.

- Where the Regulator has received reports that neighbouring registered or licenced private water supplies have been demonstrably impacted by the existing licenced source.
- If the area surrounding or downstream of the abstraction is considered ecologically sensitive.
- (Where a TA licence is later Gazetted, this infers that a formal variation application is required. In this instance note that the licence will lose its TA status and the date of the application to vary the licence will apply to priority abstraction status).

However, the Regulator has the right to use their discretion and invoke Part 2, Article 8, Paragraph 3, and not Gazette an application if extenuating circumstances apply or if circumstances arise that are not directly applicable to the above list.

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