

New Authorisations Transitional Arrangements

Trickle and Spray irrigation FAQs - February 2019

We have received a number of queries relating to whether trickle irrigation can be added onto an existing licence which authorises spray irrigation and how this will work.

Why do I need to make an application to carry on with my trickle irrigation operation?

The exemption that previously applied to trickle (and various) other irrigation methods was removed with effect from 1st January 2018. It is now a legal requirement that you hold an abstraction licence which authorises use for trickle irrigation if you wish to continue using water for this purpose. Special transitional arrangements are in place to allow this to happen.

I have an existing licence for spray irrigation – why can't you just add trickle onto it?

We can add additional types of irrigation onto an existing licence but an application must still be made and determined in accordance with the new regulations so that the licence changes can be fully considered.

This doesn't seem very "light touch".

Government's consultation response makes it clear that "light touch" in relation to applications qualifying under the transitional arrangements means:

- Only removing exemptions for water use activities that have or might have significant environmental impacts. Several thousands of abstractions and impounding works with no significant impacts will remain exempt.
- Granting licences reflecting the volumes previously abstracted under the exemption (i.e. before 1st December 2018), although there may be cases where conditions are included to protect rivers at very low flows.

- Providing a considerable five-year transitional period from the date the exemptions ended: two years for abstractors to prepare and submit applications and three years for the Regulator to consider and determine applications. Abstractors can continue to take their existing historic volumes of water based on abstraction from 2011 to 2017 during this process.
- Allowing the Regulator flexibility to relax the requirements for volume limits on transfer licences (transfer licences are required to transfer water where there is no intervening use of the water) to avoid undue abstraction control costs on abstractors while still ensuring environmental protection;
- Allowing the Regulator to be flexible in the application of flow controls so that it can recognise the wider conservation values; and
- Allowing volume limits that better reflect business needs in dry periods by extending the qualifying period to include the dry weather in 2011.

Light touch does not mean that the changes can happen without an application being made that meets the standards contained within the regulations in order to make the application valid. This includes supplying sufficient evidence of historic abstraction volumes. We have streamlined the information requirements as much as possible and produced an evidence table to help applicants with this requirement.

It's all irrigation in one form or another so what's the issue?

The transitional process is designed to preserve existing entitlements where possible whilst being fair and equitable alongside existing licence holders. The policy is trying to ensure that, where possible, previously exempt abstractors are neither advantaged nor disadvantaged by these changes i.e. to maintain the "status quo".

A change in purpose is a fundamental change in the operation of a licence and may cause wider material considerations to be brought into the decision making process. These need to be fully considered and the amounts required may not be the same as on an existing licence which was issued on a different basis or justification.

There is no legal process to allow "add-ons", any licence changes need to go through the correct process, checks and procedures and, as a public body we need to ensure that we correctly follow the regulations that apply to us.

The environmental impact of a purpose change or addition is often more complex than it appears. A change or additional purpose of use may cause a change in location and volume of return, or result in the uptake of the unused element of a licence. These factors

could represent a deterioration risk under the Water Framework Directive and we need to fully assess the environmental implications before granting a change or variation.

We have a duty to secure the proper use of water resources and have regard to the reasonable needs of the applicant, particularly where existing licences have remained unused. Any application for water, even a change in purpose, must be fully justified through evidence to meet the requirements of the transitional regulations.

We need to be equitable with existing licence holders and need to ensure that we do not inadvertently allow licence holders in over-abstracted / over-licensed catchments to get access to water that would be unavailable or has been refused to new applicants or existing licence holders where current spray irrigation licences were granted on a different basis and justification.

Why are you making a distinction between spray irrigation and trickle irrigation?

Legally they are different, for example, s57 spray irrigation restrictions can be applied to spray irrigation but not trickle irrigation.

I want greater flexibility so I would like to be able to use all my entitlements for either spray irrigation or trickle irrigation.

The transitional arrangements are in place to preserve your existing entitlements based on the amount that you abstracted during the seven year qualifying period, and then allowing a light touch entry into regulation. Any greater need for flexibility or adjusting quantities between different purposes or adding additional quantities sits outside of this process and will need to be considered outside of the transitional arrangements through a separate application.

In line with Government expectations that we will help to minimise the burden of the licensing process on the applicant as far as possible, we have adopted the following procedure.

Where both a transitional application and a normal 'day job' application are required in relation to the same abstraction location and source of supply, we can accept a single application fee for both applications if we receive them at the same time or the applicant puts in the normal application soon after we advise them it is needed.

Therefore, if as part of a transitional application an applicant tells us that they wish to apply for a quantity greater than they have abstracted under a previous exemption, then the

extra volume is a planned element and we will treat it as a new application under the 2006 Regulations. If we have all the details that we need for the planned element on the transitional forms (point, purpose, means and so on) then we will not require the completion of an additional set of the normal application forms or an additional application fee. We will log it as an application under both sets of regulations and request separately any additional justification details for the extra volumes, in line with what we would expect for normal applications under the 2006 Regulations.

Note: Any changes or additions (including extra volumes) that are requested at the time that the transitional application is made, will be treated as “new water” and will be considered under the 2006 Regulations as would any other new applicant. This means that they may be subject to more stringent conditions than any historic abstraction considered under the transitional arrangements.

I already trickle irrigate under the previous exemption, can I make an application through the 2006 regulations rather than the transitional regulations so that I can get a licence quicker?

No. If you have been abstracting under the previous exemption, and wish to continue with the abstraction, then you must make a valid application under the transitional arrangement regulations.

What if I need additional water this year, within the transitional period?

This would be a planned abstraction for additional water over and above your existing entitlement and you will need to make an application ASAP through the 2006 Regulations, i.e. the conventional ‘day job’ route.

Can I transfer some of my existing licence onto a new trickle licence?

If by “new trickle licence” you mean for a trickle operation that has commenced after 1st January 2018, then yes, there are options to transfer quantities. We will need to discuss this on a case by case basis.

I currently have a licence for 10,000 m³ per annum for spray irrigation, but I have been using all my licence in recent years for trickle irrigation. Will I receive a licence for 10,000 m³ for each type of irrigation, i.e. 20,000 m³?

Where you have an unused licence then we need to ensure that when granting your trickle irrigation entitlement that we are securing the proper use of water resources. If you have not used your spray irrigation licence and have no reasonable need for spray irrigation

then we would seek a voluntary agreement for this to be reduced or revoked. If no voluntary agreement could be reached then we have powers under s52 of the Water Resources Act 1991 to make the necessary changes if we thought it appropriate to do so.

Alternatively, you could request that the quantities were amalgamated so that you had the flexibility to abstract for both spray irrigation and trickle irrigation within an overall limit of 10,000 m³. We would look on such requests favourably.

Why when aggregating several sources will the overall volume be reduced compared to the individual quantities combined?

If you require more than one licence in relation to the same operation, we usually aggregate the abstraction quantities across licences where your overall requirement is less than the individual total of the individual licences. If you operate in this way, each licence will have an individual abstraction limit linked to that purposes, but there will also be an overall limit on the total amount you can abstract under all licences that reflect your operational requirement. That total may be less than the sum of the individual abstraction limits.

When will my licence application be determined?

After January 2020 licences will be determined in the priority of greatest risk, e.g. those in failing water bodies in line with the CAMS Common End dates.

I'm a land owner with several tenants who trickle irrigate differing volumes of water each year on my land, depending on the sequence of their crop rotation. Will they/I need a different licence for each one?

If you hold the licence as an individual land owner, then this could cover several tenants who could operate under this licence with your permission in different years. You would be responsible for compliance with the licence conditions. If each individual tenant wanted their own licence they would need to apply individually for a licence.

