



Consultation on Environment Agency Water Resources charges from 2017

Response and final decision

April 2017

We are the Environment Agency. We protect and improve the environment. Acting to reduce the impacts of a changing climate on people and wildlife is at the heart of everything we do.

We reduce the risks to people, properties and businesses from flooding and coastal erosion.

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We can't do this alone. We work with government, local councils, businesses, civil society groups and communities to make our environment a better place for people and wildlife.

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Foreword

In December 2016 we published our 'Consultation on Environment Agency Water Resources charges from 2017'. Following a review of the feedback received, we have made a final decision, and had this decision approved by the Secretary of State. We will replace our existing charges scheme with the revised Abstraction Charges Scheme 2017 on 1 April 2017.

This document provides a summary of the responses received during the consultation period, the rationale behind our final decision, and our reply to the key issues and concerns raised by consultees.

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Introduction

In December 2016 the Environment Agency published its 'Consultation on Environment Agency Water Resources charges from 2017' which proposed amendments to some of the charges contained in its Abstraction Charges Scheme 2016/17.

Purpose of this document

The purpose of this document is to summarise the responses received, provide our response to these responses, and confirm the final decision. This document also describes how we carried out the consultation, and who we consulted with.

Background

The consultation set out proposals to amend the annual subsistence charge in certain regional charging areas. The proposals were intended to meet our compensation liabilities in relation to addressing unsustainable abstraction, and to address the issue of high subsistence charges in the Northumbria regional charging area. We proposed that amendments would take effect from 1 April 2017.

Specifically we proposed:

- A decrease to the Northumbria Standard Unit Charge (SUC) accompanied by increasing the 'source factor' multiplier for abstractions supported by the Kielder Transfer Scheme (which we are calling the 'Kielder Factor')
- Ceasing collection of the Compensation Charge in the Anglian and Southern regional charging areas, and
- Increasing the existing collection rate of the Compensation Charge in the Thames regional charging area.

How we ran the consultation

The consultation ran from 13 December 2016 to 24 January 2017. It was a six week consultation period as the consultation scope was limited to one charging scheme, and comprised proposals to amend existing charges only. Due to this shorter than usual consultation period, we sought to engage with charge payers who would be adversely affected by our proposals, so they had sufficient time to consider them.

We emailed over 500 external stakeholders to announce the launch of the consultation and sent a reminder email two weeks before the closing date. We promoted the consultation locally with partners and stakeholders, and nationally with the trade associations representing our customers. Consultees were able to respond on-line or by post, and a contact number and address were provided in the event of queries. We ran the consultation in accordance with the criteria set out in the Cabinet Office's 'Consultation Principles' guidelines.

In total we received 18 responses. This is a little lower than the level of returns we are familiar with in respect of charging consultations. We believe the main reasons for this were:

- Two out of three of the proposals would result in lower charges for our customers. We tend to receive higher numbers of responses where we are proposing increased charges.
- Charges affected customers in specific geographical areas only.

Of these 18 responders however there were organisations and trade associations representing many hundreds of interested parties and charge payers.

The following table summarises the number of consultation responses by sector, and whether or not the consultee considered their organisation to be a Small or Medium-sized Enterprise.

Table 1: Number of responses from different sectors.

Sector	Number of responses	SME	Non-SME
Public Water Supply	4	0	4
Agriculture	4	3	1
Energy	1	0	1
Industry / commercial	2	0	2
Council	1	0	1
Other	6	2	4

The responses were fairly spread across the sectors.

We had a slightly better rate of response from small and medium-sized enterprises, than large enterprises, however the low numbers did not allow us to make meaningful comparisons between the two types of responders. Where a responder did not specify which category they fell into, we used our best judgement.

Key findings from the consultation

The consultation comprised 3 questions. We sought 'yes or no' answers to these, and then allowed responders to provide an open narrative where they wished to explain an answer, or elaborate further. The questions covered the proposals as follows:

- Question 1 related to the Kielder (supported source) Factor and the Northumbria SUC.
- Question 2 related to the Anglian and Southern Environmental Improvement Unit Charge (EIUC) rate.
- Question 3 related to the Thames EIUC rate.

The number of consultees responding, and whether or not they agreed with the proposals, are shown in the table below:

Table 2: Summary of responses to the 'yes or no' questions 1, 2 and 3

	Q1 Do you agree with the proposal to implement the Kielder Factor?	Q2 Do you support the proposal to reduce the EIUC to zero in Anglian and Southern regional charging areas?	Q3 Do you support the proposal to increase the Thames EIUC from 0.83 to 5.69 over the next 3 years?
Yes	5	9	4
No	4	2	4
Don't know, or no answer	9	7	10
Total	18	18	18

Overall, the support of, and opposition to, proposals were quite evenly matched. In the case of our proposal to introduce the Kielder Factor, and to increase the EIUC in the Thames regional charging area, the two sides were balanced.

A difference in opinion was more clearly marked in response to the proposal to reduce the EIUC to zero in Anglian and Southern regional charging areas; with the majority supporting the proposal.

For all three proposals however, the expressions of support and objection were small in absolute numbers, with the combined number of these opinions being equal to those who 'didn't know' or 'gave no answer' to the specific question.

Generally the sectors that agreed with proposals were the Public Water Supply companies (where they had licences in the regional charging areas affected). The industry, energy and commercial sectors made few specific comments on individual proposals, although some expressed strong opinions where they were adversely affected. The agriculture and 'other' sector categories had strong, but mixed opinions.

Summary of responses to each consultation question

This section summarises the responses received to each question in more detail. It reflects the 'yes or no' answers to the three questions and also summarises the key issues, and recurring themes raised, where we allowed responders to provide an open narrative. Not all responders kept to the consultation response format, or answered all the questions, but all were given full consideration, and are reflected in this document.

Comments relating to each of the questions are summarised under the headings below. Note that this summary focuses on key themes raised by responders, rather than listing every comment made.

Question 1: Do you agree with the proposal to implement the Kielder Factor?

There was no overall agreement amongst consultees regarding this proposal. Marginally more of the responders who answered this question were supportive than against, but given the fact that around 150 licence holders would be affected by this proposal, the numbers responding were not statistically significant. Most of the 9 responders that didn't answer were not located in Northumbria.

Table 3: Summary of responses to question 1

Answer to question 1	Number of responses
Yes	5
No	4
Don't know, or no answer	9
Total	18

In general the Public Water Supply companies supported the proposal, and in particular Northumbrian Water, who pay 95% of all the annual charge collected in the regional charging area. They considered this proposal to represent "a much fairer charging system, assuming the small number of other users who would see an increase to their charges have the opportunity to minimise them". Northumbrian Water explain that they are currently inhibited from relinquishing or reducing some of their licences (which operationally they could do) due to the disproportionate effect that this has on other licence holder charges.

One of the licence holders whose charges would increase with the proposal made a strong objection on the grounds of cost, and time to prepare for the change. They suggested that support should be given to businesses to become more water efficient and reduce consumption. They suggested charging on the basis of actual consumption rather than licenced volume as a means of reducing costs.

Other consultees from the industry and energy sectors made no comment on this proposal.

Consultees from the agricultural sector expressed mixed opinions on the proposal, as did those from the 'other' sector category. Some expressed concern that we should recover costs by means other than using Hands Off Flow licence conditions.

The National Farmers Union believe that the costs of maintaining the Kielder Water Transfer Scheme should be wholly recovered from the public supply sector, as non-public supply abstractions will have no effect on the river systems (because of the relatively small scale of the operations). They believe they should be excluded from the proposals. They suggest that there should be no 'Kielder factor' for licences that fall below a de minimis annual volume. Other

agricultural voices objected in principle to Hands Off Flow conditions as not representing a sustainable solution for small licence holders, due to the licences being too rigid. They support a right of licence holders to abstract water as and when they see fit, giving them flexibility to run a successful rural business.

Consultees asked that the Environment Agency work closely with abstractors to offer impartial advice on the best option for their licences to meet the individual needs of each business.

Question 2: Do you support the proposal to reduce the EIUC to zero in Anglian and Southern regional charging areas?

There was clear support for this proposal to reduce the EIUC rates. Those that did not provide an answer were not located in the two regions affected by the proposal.

Table 4: Summary of responses to question 2

Answer to question 2	Number of responses
Yes	9
No	2
Don't know, or no answer	7
Total	18

In general the Public Water Supply, industry and energy sectors supported this proposal, or provided no comment where they did not have licences in the regional charging areas.

Other consultees expressed a view that there was little detail in the consultation paper with regards to how much EIUC has already been collected, and how unused funds would be spent.

The agriculture sector supported this proposal unanimously. Those from the 'other' sector category had mixed views.

Some expressed an opinion that "under the current legislative and policy frameworks, the EIUC charging mechanism is vital to bringing about the licence changes needed to ensure sustainable levels of abstraction in every catchment across the country." Others questioned whether the current scheme is sufficiently ambitious.

Question 3: Do you support the proposal to increase the Thames EIUC from 0.83 to 5.69 (£/1000m³) over the next 3 years?

Responses to this proposal were balanced, but again low in absolute numbers. More responders did not provide a response, and again this was mostly due to them not being located in the Thames regional charging area affected by the proposal.

Table 5: Summary of responses to question 3

Answer to question 3	Number of responses
Yes	4
No	4
Don't know, or no answer	10
Total	18

In general the Public Water Supply sector supported this proposal (although in respect of this charge they are not directly affected by it) or they provided no comment where they did not have licences in the regional charging area. Some did not consider the increase to be disproportionate.

No comments were made from the industry or energy sectors.

The agriculture and 'other' sectors were marginally (by numbers) in objection to this proposal. Some were concerned as to the scale of the charge increases "with little or no justification" and called for the "cost of such protection [of the natural environment] to be borne by central government".

Some restated their opinion (as per the previous question) that EIUC is a vital mechanism to ensure sustainable levels of abstraction across the country. Again, others questioned whether the current scheme was ambitious enough.

Environment Agency's response

This section explains the Environment Agency's final decision on its charges, and our response to specific questions raised by responders.

Final decision

Following consideration of the consultation proposals and the responses received, the Secretary of State for Environment, Food and Rural Affairs has approved the proposed amendments to our charges.

The following changes to our Abstraction Charges Scheme will therefore be made, take effect and be published on GOV.UK, on 1 April 2017.

- *The Northumbrian SUC rate will be reduced from 29.64 to 16.66 (£/1000m³) from 1 April 2017.*
- *We will introduce a supported source factor multiplier of x9 ('Kielder Factor') for customers whose abstractions are supported by the Kielder Transfer Scheme and located within the rivers and aqueducts designated as supported by Kielder in schedule 1 of the abstraction charges scheme.*

These changes will ensure that we can meet our obligation under HM Treasury guidance to fully recover the costs of our regulatory service from our licence holders in the Northumbrian regional charging area. HM Treasury guidance requires us to seek costs from those licences that benefit from a particular service, which this change will do. The majority of charge payers in the Northumbrian regional charging area will benefit from a lower SUC rate. Of those few that will attract the new higher Kielder Factor most have indicated that they will accept a Hands Off Flow condition in their licence which will mean that the Kielder Factor will not apply.

We will also make the following changes:

- *The Anglian and Southern regional charging area EIUC rate will be reduced to zero from 1 April 2017.*
- *The Thames EIUC rate for the financial years 2017/18, 2018/19 and 2019/20 will be 2.3, 3.91 and 5.69 (£/1000m³) respectively.*

These charges will ensure that the Environment Agency meets its potential compensation liabilities in respect of the predicted compensation claims. This decision is made in the context of the Compensation charge (made up by the EIUC rate) being the only agreed mechanism by which we can fund this area of work. We will continue to review the rates of collection required to meet our forecast compensation liability each year.

- *We will waive collection of the EIUC in North West and South West regional charging areas in 2017/18 whilst further investigations are carried out.*

We were mindful of all the concerns expressed during the consultation process, however we did not consider that a sufficiently adverse reaction was received to any one proposal to give us cause to amend them.

We will reflect on the low response rate of the consultation and seek feedback from some of our consultees as to why they did not respond.

We will also make the following changes to our charging scheme:

- *The Dee and Wye SUC rates will be increased from 13.58 to 14.40 (£/1000m³) from 1 April 2017.*

These rates did not form part of our consultation but were consulted on by Natural Resources Wales (NRW) in October 2016. The Environment Agency and NRW have separate abstraction charging schemes. The charging areas they define are based on water catchments which do not exactly match the political border. The result is that there are three cross-border catchments (the Dee, Wye and the Severn) that feature in both charging schemes.

NRW have received approval to implement changes to charges affecting the Dee and Wye cross-border catchments. The charge increases will fund capital works associated with Section 20 Water Resources Act 1991 Reservoir Operating Agreements, as capital upgrades are required to reservoirs following safety inspections. To fund these works NRW is increasing their SUC from 13.58 to 14.40 (£/1000m³) in 2017/18. This increase will also apply to English abstractors in the Lower Dee and Wye catchments covered by our abstraction charges scheme.

Our response to key themes raised by consultees

We have provided responses under grouped themes, rather than for each of the consultation questions individually. This is to avoid repetition where similar comments were submitted in relation to various questions. The themes are grouped into the following categories:

1. Questions relating to the Kielder Factor proposal
2. Questions relating to the Compensation charge (EIUC factor) proposals
3. Questions related to the funding of hydromorphological solutions
4. Questions relating to the use of EIUC as the funding mechanism for any compensation liability arising from the proposals to end most current exemptions to abstraction licensing (the policy known as 'New Authorisations')

1. Questions relating to the Kielder Factor proposal

Does the introduction of the Kielder Factor set a precedent, giving the Agency the opportunity to set different multipliers in different regions?

Our response: The x9 multiplier will be introduced as an exception to the normal x3 supported source multiplier due to the unprecedented circumstances in the Northumbria regional charging area (because the alternative would be an increase of over 20% in the SUC in the Northumbria regional charging area). The Environment Agency is however currently reviewing its charging scheme structure (to increase cost reflectivity) and options for the cost recovery of transfer / augmentation schemes suitable for all regions will be addressed as part of that review.

Are there alternative solution to funding the costs not involving Hands Off Flow conditions?

Our response: We will explore the suggestion of having a de minimis licence flow that would not attract the supported source factor during our review of the charging scheme.

The justification for this is not sound, and there are more options open to recover costs and treat the agricultural abstractors in a fairer manner.

Our response: The proposal will reduce the abstraction charges paid by 99% of abstractors in Northumbria area (the vast majority of whom are agricultural) by 44%. We have individually consulted all of our agricultural abstractors who are supported by the Kielder Transfer Scheme. All of them have been offered Hands Off Flow conditions on their licences, which would mean that the Kielder Factor would not apply to their abstractions.

What will the mechanism be for imposing the Hands Off Flow during a release from Kielder? How much notice will be given to abstractors, and how much information will be given about the duration of the Hands Off Flow? For farmers and growers at the height of the crop growing season it is much easier to manage a forewarned situation. Will there be technical support available to licence holders making these changes?

Our response: We have individually contacted all of the agricultural abstractors who may be affected by the Kielder Factor and none of them have challenged our proposal. They are currently in the Wear and Tees catchments which would rarely require the Hands Off Flow to be applied; Hands Off flow has not applied since 2006 in the Wear, and 1991 in the Tees. We should be able to give a week's notice of a Hands Off Flow being applied. This is usually done by email but we have asked what method is best for each abstractor.

We are supporting all abstractors who request a Hands Off Flow, and have a standard wording agreed to ensure a smooth transition with our National Permitting Service.

Kielder Factor charges should be transparent so that licence holders can respond to them and adjust their business activities accordingly. This should include advance notice of times and dates of Kielder Factor charging, and real-time information regarding the water being abstracted, and the charges applicable.

Our response: The Kielder Factor will be applied to each abstraction licence from the supported reaches of the rivers Tyne, Wear and Tees unless it has a Hands Off Flow condition which has to be accepted for a minimum period of time. Abstractors cannot opt in and out of having such a licence condition during the year so, in that respect, they must take a long term view of what is best for them. Abstractors could explore alternative ways of avoiding Hands Off Flow conditions such as the use of storage reservoirs, or moving their abstraction to a nearby non-supported tributary.

All licence holders should have the ability to access water as and when they see fit. At an absolute minimum, licence holders must have the right to abstract when they deem it is critical for their businesses to do so.

Our response: The proposal does this but some abstractors may need to pay the Kielder Factor to ensure this freedom. The Environment Agency must balance water availability for others, and the environment, when issuing abstraction licences.

2. Questions relating to the Compensation charge (EIUC factor) proposals

"There is no information in the paper regarding how much compensation charge has already been collected."

"We would like to see a transparent monitoring regime in place that tracks progress on the financial aspects of the RSA programme."

Our response: We are unable to provide details on how much compensation charge has already been collected and paid out in compensation claims. There are currently 53 non water company licences remaining in the Restoring Sustainable Abstraction (RSA) programme and releasing this information could prejudice future compensation negotiations.

We review the compensation estimates on a regular basis and did so prior to our consultation. We carefully manage the collection of compensation funds with expected liability to ensure that we operate within financial rules agreed with HM Treasury. To release the information externally could breach commercial confidentiality; we cannot release this information at the risk of being able to identify abstractors and their compensation claims.

"Are there surplus funds collected in some of the regional accounts, and if so, when will any unused funds be repaid?"

"We do not know how the funds are invested, or the interest it is earning!"

Our response: Yes, some of the regional charging area accounts may have unused money in them by the end of the RSA programme and the Environment Agency is committed to repaying that money. We have communicated this intention to HM Treasury and are currently investigating the appropriate time to undertake this activity. We will not repay any unspent funds until we are sure that we can cover any future liabilities that may arise in the regional charging area.

The funds already collected are held by central government, and the Environment Agency is not earning interest on the balance.

"The Agency has yet to address non-water company over-abstraction, leading to the failure to achieve good status or potential under the Water Framework Directive."

"Do the Agency have funds to deal with WFD-driven reductions?"

"..the Environment Agency and the Secretary of State has a legal imperative to amend licences to address unsustainable abstraction if it is contributing to a failure to meet good ecological status. Under current law, some non-water company abstractors may be entitled to compensation if their licences are amended in this endeavour. Failure to set appropriate charges to enable those compensation payments and licence changes to be made, as outlined in this current consultation, strongly suggests that the UK has insufficient measures in place to meet the objectives of WFD and is therefore in breach of its legal obligations."

Our response: We are committed to taking action over cycle 2 (2015 to 2021) of the updated River Basin Management Plans (RBMPs) and making progress towards achieving sustainable catchments, prior to the reform of the abstraction licensing system. We will be working with water companies and other abstractors to ensure that the risk of failing to meet Water Framework Directive (WFD) objectives in future is reduced.

During cycle 2 of the updated RBMPs we are progressing towards the achievement of sustainable catchments, using a range of mechanisms. We are delivering this action without requiring specific additional funding, or incurring any compensation liabilities. Mechanisms include:

- a) Changes to the activities of abstractors in the water industry implemented through the National Environment Programme where compensation is not payable.
- b) Working with licence holders to make voluntary changes to their licences.
- c) Making compulsory changes to licences in surface water bodies where flows are over 60 per cent lower than natural flows, and where abstraction and flow are shown to be the cause of that water body failing to meet good ecological status. These changes are required to protect the water

environment from serious damage. If our proposal to change a licence for this reason is upheld by the Secretary of State (via section 52 of the Water Resources Act 1991) the licence holder is unable to claim compensation for that change.

d) Making non-licence or catchment based changes.

e) Working with the water companies and abstractors in other primary sectors to ensure that risk of failing to meet WFD standards in future is reduced.

Where a licence change is necessary to protect the water environment from serious damage, and we are unable to achieve voluntary agreement, we will seek to impose changes. Licences changed in order to protect the water environment from serious damage do not have a mechanism to claim compensation, so there is no compensation liability associated with these changes.

Can EIUC be extended to collect funds for reductions required to meet WFD?

Our response: We are required by government to consult on any proposals to change our Abstraction Charges Scheme. After three public consultations, it was decided in 2008 that the EIUC would be the funding mechanism to recover the costs of compensation under the RSA programme only. If in future we require funding to recover compensation for compulsory revocations or variations of licences with a WFD driver we would carry out a public consultation to propose how this should be funded.

If the Anglian and Southern EIUC were to be re-instated, would this apply to water company licences?

Our response: No, new legislation was passed in 2014. Section 58 of the new Water Act 2014 removed the right of water undertakers to claim compensation where a licence is modified or revoked on direction of the Secretary of State. This means that we no longer need to collect money from water companies to pay for compensation for any schemes progressed after the date the Act came into force.

"Compensation should be provided from central government and not by a levy on other abstractors who are by definition 'sustainable abstractors'."

Our response: After three public consultations, it was decided in 2008 that the EIUC would be the funding mechanism to recover the costs of compensation. Government are committed to the use of the Compensation charge (EIUC) as the mechanism for raising such funds.

3. Questions related to the funding of hydromorphological solutions

One consultee noted "the proposal not to continue to develop a funding mechanism for other sectors to implement hydromorphological measures to address the impacts of abstraction. This means that there will be no mechanism for other abstractors, and that the main funding mechanism will continue to be with water companies. We would like for all sectors to have funding mechanisms to implement hydromorphological [solutions] if an abstraction licence is confirmed as having an adverse impact on the environment."

"We would suggest that the case for the proposed change [to use EIUC to fund hydromorphological improvements] still applies to the 'very small number of licences' where hydrological improvements are the most cost effective solution."

Our response: Section 58 of the Water Act 2014 removed the right of water undertakers to claim compensation where a licence is modified or revoked on direction of the Secretary of State; they now fund improvements through the Price Review process. The introduction of this legislative change has significantly reduced the opportunities to use hydromorphological solutions to a very small number of licences. Instead of extending the scope of EIUC to fund hydromorphological measures we believe it is more effective to engage with local stakeholders to establish common ownership of problems and solutions, and build partnerships to implement actions at the local level. The aim of this "catchment based approach" is to balance environmental, economic and social demands and align funding and actions within river catchments to bring about long term improvements.

4. Questions relating to the use of EIUC to fund any compensation liability for ending most current exempt abstractions to licensing (the policy known as 'New Authorisations')

"It is not fair to compensate New Authorisation abstractors using EIUC, as they have made no contribution to the funds."

"Excess funds should be returned to those who contributed and not used to compensate non-contributors who are now being effected by further reforms. Compensation due to previously 'unlicensed' abstractors should come from central government funding."

Our response: The proposal to use the Compensation charge (EIUC) to fund any compensation liability for New Authorisations did not form part of this consultation. This proposal was made in a joint consultation published in January 2016 by UK and Welsh Governments, Environment Agency and Natural Resources Wales called 'Changes to water abstraction licensing exemptions'.

A summary of responses to the January 2016 consultation was published in September 2016 and our joint consultation response will be published later in 2017. This will include the decision on the proposal to use the Compensation charge for any New Authorisations compensation liability.

Annex

List of consultation participants

The following table lists the organisations that took part in the consultation. Individuals and anonymous responders are not included in this table.

Table 6: Organisations that took part in the consultation

Organisation
Northumbrian Water Limited
WWF-UK
Suffolk CC
Saferad
Southern Water Services
NALC
Angling Trust
BAWAG
Prologis UK Ltd
Anglian Water Services Ltd
L F Papworth Ltd
SCA Hygiene Products (UK) Ltd
Canal & River Trust
East Suffolk Water Abstractors Group
Thames Water
National Farmers' Union
ConocoPhillips Petroleum Co UK Ltd
Country Land and Business Association (CLA)

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