

Applying time limits to new and varied abstraction licences.

Operational instruction LIT 11617

Issued 07/12/2017

What's this document about?

The Water Act 2003 made it law to include a time limit on all new, full and transfer abstraction licences.

Giving licences time limits:

- is an effective way of managing water resources
- allows us to deal with environmental uncertainty (such as climate change), the changing needs for water and efficient use
- contributes to our objective of safe, secure water supplies that are used efficiently to meet the needs of the public, business and the environment.

This Operational Instruction explains how to apply a time limit to a new or varied water abstraction licence. It covers the three types of time limit, when to apply them and when to use minimum value conditions.

Who does this apply to?

Applies to all staff involved in renewing time limited licences including:

- Area Environment Planning teams;
- Permitting Support teams;
- National Permitting Centre teams.

Contact for queries and feedback

- If you have any queries please contact [Helpdesk Services](#)

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Is a time limit required?

Table 1

Use the information in this table to decide if a time limit is required. If the answer is 'no' then you do not need to read further. If the answer is 'yes' or 'may be' then carry on to the next section on 'applying a time limit'.

Type of application	Time limit?
New abstraction licence (full or transfer)	Yes
New licence issued from an apportionment	Yes
Variation of an abstraction licence	Case by case assessment
New or varied impoundment licence	No
Reduction in licensed abstraction volumes (s51(4) Water Resources Act (WRA)1991)	No
Minor variation	No
Transfers and vestings	No, unless the licence is already time limited.

Applying a time limit

Types of time limit

There are three types of time limit:

- short duration
- normal duration
- long duration

An explanation of each type of time limit follows. Special rules apply for setting time limits for variations, apportionments, transfer and vestings. If you are dealing with one of these applications read the guidance before proceeding.

Short duration time limits

What are short duration time limits?

Set short duration time limits to end before the common end date for the catchment. Short duration licences do not carry a presumption of renewal. There is no minimum time limit for a short duration licence but the maximum is 6 years. Short duration licences may also be granted at renewal.

When can they be applied?

Examples of where it is appropriate to specify a short duration time limit are:

- the applicant requests it;
- there is uncertainty around the impact of the proposal and further monitoring / investigation is required;

- there is a need to secure investment for an alternative solution through the water company planning process (except where there is risk of damage to a Habitats Directive site or where deterioration in water body status would occur unless IROPI or a defence under the Water Framework Directive apply respectively).
- the proposal has a shorter life expectancy or planning horizon than the common end date for the catchment, supported through a business plan or similar;
- the applicant wants to use part of an under-utilised licence for an agreed period (for example as part of a water rights trade);
- the environmental risk or impact is acceptable within a set period but unknown/unacceptable over a longer period;
- future plans, for example water level management plans, change the amount of water available for abstraction, or where targets are set in the Environment Agency's plans or strategies;
- the demand for water is uncertain or might change;
- the Habitats Directive review of consents stage 4 implementation date differs from the common end date for the catchment;
- to coincide with the implementation of measures to achieve good ecological status or potential or to prevent deterioration in water body status under Water Framework Directive.

Applying a short duration time limit

To apply a short duration time limit follow the steps below:

Step	Action
1	Consider the factors listed above
2	Set an appropriate time limit (one to six years) with reference to the special rules for variations, apportionments, transfers and vestings.

Normal duration time limits

What are normal duration time limits?

A normal duration licence carries a presumption of renewal and can last anything from 6 to 18 years. 'A normal duration licence will always end on the next common end date – unless the common end date is less than six years away then the licence will 'skip' to the next common end date.

When can they be applied?

Apply a normal duration licence unless either the applicant has applied for and justified a long duration licence or a short duration licence is appropriate. A normal duration licence must:

- be environmentally sustainable;
- not cause or increase the risk of deterioration in ecological status / potential of the related water bodies;
- not compromise the implementation of measures to achieve Water Framework Directive objectives for the related water bodies;
- not have the capacity to impact on a site designated under the Habitats Directive.

Applying a normal duration time limit

To apply a short duration time limit follow the steps below:

Step	Action
1	Use the Abstraction Licensing Strategy document for the catchment concerned to identify the common end date and specify that date in the licence.
2	Set an appropriate time limit with reference to the special rules for variations and apportionments.

Skipping to the next common end date?

A normal duration licence carries a presumption of renewal and can last anything from 6 to 18 years. 'A normal duration licence will always end on the next common end date – unless the common end date is less than six years away then the licence will 'skip' to the next common end date.

To avoid granting short duration licences as the common end date is approached, you can skip to the next common end date when you are granting a licence less than 6 years from the approaching common end date. When you skip to the next common end date, you must take account of the following points:

- a skipped licence cannot exceed 18 years;
 - any licence granted for more than 12 years must include a [minimum value condition](#) although when skipping to the next common end date it is not necessary to meet the four tests for a long duration licence – the default approach in these cases is to set the minimum value condition to the licensed quantities;
 - you must be satisfied that the abstraction is sustainable, if not then the licence should be time limited to the approaching common end date or some other date to allow monitoring or further investigation work to be carried out.
-

Long duration time limits

What are long duration time limits?

The key features of long duration licences are:

- They can last up to a maximum of 24 years and in most cases should end on a common end date.
- Long duration licences carry a presumption of renewal.
- To be eligible for a long-duration licence, an applicant must satisfy four tests. The requirements for these tests are set out in external guidance note WR253.
- A long duration full licence will always require an MVC.
- MVCs are optional on transfer licences.
- If the applicant continues to meet the 4 tests, we may renew their licence with another Long Duration Licence.

- There is no constraint on the number of times a long duration licence can be granted.
- **!Important:** The government has consulted on proposed reforms to the abstraction licensing system. These reforms could affect the terms and duration of licences we grant now, so please consider whether or not the extra effort of applying for a LDL is worthwhile.

Applying a long duration time limit

To apply a long duration time limit follow the steps below:

Step	Action
1	Make sure that the applicant's business case demonstrates that their proposed abstraction will meet all four Government stated tests, outlined in WR253 .
2	If a long duration licence is justified, confirm the end date and set the minimum value condition.
3	Before granting or refusing a long duration licence, you must submit the recommendation and justification (supported by a draft licence, where appropriate, and supporting determination report) to the Sustainable Abstraction team in Environment and Business Directorate (send to Helpdesk Services).

!Environmental Impact Assessments

There are significant overlaps between test 3 (outlined in [WR253](#)) and the requirements of an Environmental Impact Assessment (EIA). This is because the types of projects/proposals that are likely to qualify for a long duration licence (in most cases, large-scale developments such as hydropower schemes, quarries, public water supply developments), are likely to require an EIA under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. An EIA may also be required under the Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 for relevant water management projects for agriculture, including irrigation projects.

What if...	Then....
An EIA is required	It is likely that applicants will be in a position to meet the requirements of this test. Use the report to check that the tests are met.
An EIA is not required	The applicant will still need to complete an environmental appraisal and economic assessment. You can find guidance on what should be included in a report in LIT 11077 Reports to accompany water resource applications and Water Resources Act 1991 .

Setting minimum value conditions

Minimum value conditions

The key features of the minimum value conditions are:

- MVCs state a value (expressed as a series of volumes or rates) to which the abstraction can be reduced to at a later date;
- a minimum value can be specified for any of the quantities specified on a licence (for example: annual, daily, hourly);
- the minimum value should be based on the risk the abstraction poses to the environment and should reflect sustainable abstraction at low flows;
- the minimum value needs to be the lowest value to which we would want to vary the authorised quantity;
- if a licence has an MVC because the common end date 'skipping' principle has been applied, then set the minimum value condition quantity to the licensed quantity.
- we can then apply to reduce the authorised quantity of water being abstracted to the minimum value, if we consider it necessary;
- this change can be made without compensation being paid to the licence holder;
- MVCs do not replace the need for 'self-destruct' conditions;
- we expect that the need to invoke MVCs will only occur in rare circumstances where there have been changes to the resource availability or environmental sustainability.

Setting the MVC quantity

Follow the steps below to set minimum value conditions:

Step	Action
1	Use the guidance in table 5 below to set a minimum value.
2	Compare options for different MVCs as part of the consideration of costs and benefits within the licence determination process (see LIT 12536 Determining water resources licence applications). Record the justification for the final values chosen in the determination report.
3	Make sure that you have set a MVC for: • all new full licences that you grant, of more than 12 years in length; • all licences that you give a longer duration time limit to, as a result of skipping to the next common end date; • all transfer licences that you grant, of more than 12 years in length that specify quantities
4	Before you make a final decision on the MVC quantities, write the applicant and ask them what the impact on their business will be if the MVC condition is invoked.

Applications involving

For abstractions that occur across the areas covered by two or more Abstraction Licensing Strategies, for instance inter-basin transfers, the

more than one common end date

common end date applied will depend on the circumstances of the abstraction. Use one of these approaches:

If...	Then...
the operation involves more than one licence,	it is not necessary for each licence to have the same common end date. Instead they can be linked by conditions.
the operation involves one licence but cuts across a number of catchments,	the common end date should be that of the licensing strategy where the abstraction takes place.
the operation involves more than one point of abstraction,	you are encouraged to split the licences into components and apply the appropriate common end date to each licence.

Applying time limits to variations

Why are there special rules?

Human Rights legislation requires that we can't take away a person's right to abstract water without giving notice and/or paying compensation. This means that we have to be careful about curtailing existing abstraction rights when a licence is varied. There are also specific rules on how licences are time limited in connection with Restoring Sustainable Abstraction (RSA). [Table 3](#) and [Table 4](#) below set out the rules you need to follow.

Important definitions

The **variation cuts across the whole licence** means the proposed variation fairly and reasonably relates to the effect and operation of the existing licence.

The **base licence** means the terms and conditions of the licence in force at the time the application to vary is made.

The **whole licence** means the terms and conditions of the base licence together with any variation.

Table 3

Special rules for applying time limits to variations.

Type of variation	Extent of time limit
Variation application made by the licence holder under s51(2) WRA 1991 not in connection with an RSA scheme.	Subject to the guidance in Table 4 , apply a time limit to the variation unless the variation cuts across the whole licence, in which case, time limit the whole licence.

Variation application made by the licence holder under s51(2) WRA 1991 to make voluntary changes to a licence to make it more environmentally sustainable in connection with an RSA scheme (includes water company PR09 funded changes).	Do not apply a time limit to the variation or the base licence.
Variation proposal made by the Environment Agency under s52 WRA 1991.	Apply a time limit to the whole licence.

Table 4

This table gives you advice on how to apply time limits to variations.

Type of variation	Time limit
Increase in quantities	Always apply a time limit to additional quantities.
Additional purpose (for example, add the purpose of evaporative cooling to a licence for an industrial purpose so that the licence authorises abstraction for both purposes)	Apply a time limit to the additional purpose where one or more of the following conditions are met: - the purpose has a higher loss category; - the additional purpose will result in an increase in actual abstraction in a water body where water is either not available for licensing or has restricted water available for licensing (for example, the additional purpose enables the abstractor to reactivate a 'sleepers licence' or take more water than they have previously needed); - there is a change in the location of use, location of return or volume of water returned which could pose a risk to the environment or other water users; - the additional purpose is linked to a specific quantity of water on the licence; - the additional use is required on a short-term basis.
Change in purpose (for example, change from private water supply to spray irrigation)	Apply a time limit to the whole licence where one or more of the following conditions are met: - the new purpose has a higher loss category; - the new purpose will result in an increase in actual abstraction in a water body where water is either not available for licensing or has restricted water available for licensing (for example, the additional purpose enables the abstractor to reactivate a 'sleepers licence' or take more water than they have previously needed); - there is a change in the location of use, location of return or volume of water returned which could pose a risk to the environment or other water users;

	the change of purpose is permanent
Additional abstraction point (including any associated change to the means of abstraction such as additional pumps, wells and boreholes, etc)	Apply a time limit to the additional point where one or more of the following conditions are met: - the additional point will result in an increase in actual abstraction in a water body where water is either not available for licensing or has restricted water available for licensing (for example, the more convenient location or yield of the additional abstraction point enables the abstractor to reactivate a 'sleeper licence' or take more water than they have previously needed); - there is a specific quantity of water allocated to the additional point; - the additional point has potential impacts not seen at the existing points; - the additional point is required on a short-term basis.
Replacement abstraction point (including any associated change to the means of abstraction such as replacement pumps, wells and boreholes, etc)	Apply a time limit to the whole licence where one or more of the following conditions are met: - the replacement point will result in increase in actual abstraction in a water body where water is either not available for licensing or has restricted water available for licensing (for example, the more convenient location or yield of the replacement abstraction point enables the abstractor to reactivate a 'sleeper licence' or take more water than they have previously needed); - the replacement point has potential impacts not seen at the existing abstraction point(s). !!Important An application to vary a licence will not be required if licence holder decommissions their existing borehole, then drills a replacement borehole to the same depth, diameter, target aquifer, construction details and within the same national grid reference to that on the existing licence. Where these requirements are not met, the licence holder will need to make an application to vary the licence. You will need to follow the guidance above for 'replacement abstraction points' to decide whether to apply a time limit to the licence. Where the existing borehole is not decommissioned, then follow the guidance for 'additional abstraction points'.
Change in season	- apply a time limit to the additional months where the variation is to extend the existing season; - apply a time limit to the whole licence where the season is being changed from summer to winter or from winter to summer.

Transfers, vestings and apportionments

Transfers and vestings

Licences that do not have time limit should be transferred or vested without a time limit as nothing changes in relation to the licence or its conditions apart from the licence holder on transfer or vesting which is done by notification. Where a licence already has a time limit, the same time limit must be included when you transfer the licence.

Apportioning a licence

A time limit consistent with our time limiting policy must be included on all licences created as a result of the apportionment, including the replacement for the original licence¹. The time limit will normally be the common-end date for the catchment.

Applicants can apply for a long-duration licence but they'll need to satisfy the four tests outlined in [WR253](#).

What if...	Then...
The original licence is not time limited	Apply a time limit to the replacement licences (including the replacement for the original licence).
The original licence is time limited	Follow the guidance in this document to apply a new time limit to the replacement licences (including the replacement for the original licence) unless there is some reason for using the time limit on the original licence. For example, the original licence is of a short duration and linked to a future sustainability review.

Invoking a MVC

The process for varying a licence to its minimum value (or an intermediate value) is through s52 of the WRA1991. Invoking MVCs needs to be done as part of RSA.

Step	Action
1	Identify the need to vary a licence as a result of processes like Abstraction Licensing Strategy updates or RSA.

¹ Amended Water Resources Act S59C(5) defines these as new licences and we are therefore obliged to time limit under S46c(5)

	Any changes that need to be made to abstraction quantities must be based on the need to protect the balance between abstraction and the environment.
2	Decide whether the abstraction needs to be reduced to its minimum value or an intermediate quantity and notify the licence holder.
3	Use the process contained in Section 52 WRA1991 to vary the licence (the licence holder has right of appeal). For further guidance on using Section 52 powers see LIT 13052 Restoring Sustainable Abstraction: licence change process - Section 52 changes .

Table 5

Consider the following issues when setting the minimum value

Issues likely to affect the minimum value

- whether the Abstraction Licensing Strategy for the catchment identifies how the minimum value should be determined;
- the minimum value is required in connection with measures to achieve good ecological status or potential or manage down the risk of future deterioration.
- the sensitivity of a site designated under the Habitats Directive;
- the size of the abstraction in proportion to the river flow/ aquifer properties;
- the net impact of the abstraction;
- the proportion of the authorised abstraction that is returned to the environment;
- the point of return;
- the extent to which the applicant/licence holder has built in some 'contingency' within their justification of need (for example, to take account of planned future expansion to their business);
- whether it would be appropriate to set a minimum value for the daily and instantaneous (or other) quantities already specified on the licence. For example, whilst a minimum value may be reasonable for the annual and daily quantities, the abstractor may not be able to pump at lower rates without significant investment (for example, pump replacement);
- the impact of the proposed reduction on the licence holder (for example, on the business/ employment);
- the cost effectiveness of water efficiency measures;
- the requirement on water companies to have guaranteed sources of water to meet their statutory duty to supply water. In particular, regard should be given to:

- any designation of the source as a *strategic source of supply*² under the competition regime;
- the impact on the supply demand balance (for further information please consult the River Basin Management Service);
- the long term investment requirements for industries, agriculture, commerce;
- the impact on levels required to operate a quarrying site.

² (Sections 66G and 66H of the Water Industry Act 1991, as amended by the Water Act 2003). For further information please see - Guidance: Internal and External Consultation on Competition in the Water Industry (you will need to request a copy of this archived material).

Related documents

Links

- [WR253 external guidance on long duration licences](#)
- [LIT 11619 Renewing time limited abstraction licences](#)
- [LIT 11104 Transferring, apportioning or vesting a water resources licence to a new holder](#)
- [LIT 11616 Time limiting abstraction licences](#)
- [LIT 11077 Reports to accompany water resource applications](#)
- [Water Resources Act 1991](#)
- [LIT 13052 Restoring Sustainable Abstraction: Licence change process - section 52 changes](#)
- [LIT 12536 Determining water resources licence applications](#)