

**Horticultural Trades Association (HTA) response to
Environment Agency consultation:
“Changes to the regulatory framework for abstraction and
impounding licensing in England Moving into the
Environmental Permitting Regulations Regime”**

Introduction

The Horticultural Trades Association (HTA) is the trade body for the UK gardening and horticulture industry, representing garden retailers, plant and tree growers, domestic landscapers, and manufacturers of garden products. ‘Ornamental’ horticulture is a sector that makes a significant contribution to our environment, supplying the plants and trees that play a crucial role in tackling climate change and carbon reduction. The horticultural industry underpins almost half of the goals set out in the Government’s 25-year environment plan.

Industry value

The industry is worth over £28bn to GDP, supports around 674,000 jobs and generates £6.3bn in tax revenues. UK plant and tree production is worth around £1.6bn, supporting over 31,000 jobs. According to the Oxford Economics/Foresight Factory report, [Growing a Green Economy](#) by 2030 the industry can deliver a £13bn boost to the UK economy, supporting an extra 39,000 new jobs – with UK plant and tree growers contributing £2.4bn of this and an extra 7,000 jobs¹. Gardening and horticulture play a significant role in the nation’s mental and physical wellbeing, making a hugely positive impact on people’s lives. From 2019 to 2020, 3 million more people took up gardening, nearly half of who are under 45. 30 million people now garden regularly making it the UK’s most popular hobby.

Background

Water is an essential resource on which horticulture businesses rely to produce the millions of trees and plants it does every year. These trees and plants in turn contribute to the support and growth of green spaces, biodiversity throughout the UK and the mitigation of the effects of climate change. If businesses were to lose their water supply, the results would be catastrophic, for both the industry, and the country.

The HTA actively encourages its members, particularly its grower members, to use water as efficiently as possible, through the work of the HTA’s Sustainability Roadmap. Water is a key focus area of the roadmap, and we aim for the industry to have an aggregate 40% increase in the use of water from non-mains sources such as rainwater and run-off capture, and an

¹ Oxford Economics and Foresight Factory, ‘Growing a Green Economy: The importance of ornamental horticulture and landscaping to the UK’, Ornamental Horticulture Roundtable Group, September 2021. <https://hta.org.uk/uploads/assets/a4e1bad2-866b-4623-aa33ef712689d52a/Industry-growth-report-OHRG.pdf>

aggregate 25% increase in the proportion of HTA members using water efficiency measures, such as automated irrigation systems. We have produced guidance and provided business examples of drip and trickle irrigation being used which reduces wastage of water, as well as water run-off recapture, and the use of onsite reservoirs. We are encouraging our members to apply for government funding for greater water efficiency within their businesses. This includes funding towards reservoir construction through the Farming Transformation Fund Water Management grant², and for investment in water efficient technology, such as rainwater harvesting, through the Farming Equipment and Technology Fund³. Together, this will reduce the pressure horticultural businesses place on the mains water system, and reduce the amount of water abstracted through rivers, streams, and boreholes.

Executive Summary

The HTA support the proposal to move from abstraction licenses to permits with implementation in 2023 and agree with the principle of moving the abstraction of water regulations into the Environmental Permitting Regulations (EPR). There are 4 main points made in this response in relation to the proposals. Those points are:

1. Charges for permit applications should be variable and proportionate to the level of change that is required. We suggest the idea of fee variation is explored based upon the level of change that is required/requested to a permit, including renewals and variations. For example, minor amendments, instigated by the operator, such as a name change, should not attract a full fee. Reapplications should not be charged for when the wrong type of application is erroneously made.
2. Clear advice should be provided by the Environment Agency to assist licence holders through the transition and the effect those changes will have on their operations.
3. There must be a provision under future Environmental Permitting Regulations for the continued exemption of container grown and protected crops under a Section 57 Drought Order. This would allow for spray, drip, and trickle irrigation activity via abstraction to continue under specifically listed conditions.
4. Where abstraction activity occurs on rented land, both the landowner and the tenant should have adequate indemnity from penalty if it is the other party at fault for the breach in permit. There needs to be help and advice given to permit operators when renting, perhaps around wording a responsibility clause in tenancy agreements.

We are keen to continue to work with the Environment Agency, Defra, and government on this issue to continue to find a solution that works for all, while protecting and enhancing our environment.

² <https://www.gov.uk/guidance/farming-transformation-fund-water-management-grant--2>

³ <https://www.gov.uk/guidance/farming-equipment-and-technology-fund-round-1-manual>

HTA Response to Consultation

Proposal 1- Existing abstraction and impounding licences transitioning into the Environmental Permitting Regulations

Q1. Do you agree with the transitional arrangement proposals for licences transitioning into the Environmental Permitting Regulations?

Q2. Do you agree with the proposed approach to transitional (in progress) appeals, transitional (in progress) appeal periods and in progress enforcement?

HTA Response to Proposal

HTA agree in principle to both questions, this means all current licences are transferred to permit with same wording and will remain so until they expire or are varied by the operator or the regulator. HTA recommend potential issues, such as a tenant's responsibility, be discussed further so there is no disadvantage to a permit holder who has a tenant abstracting.

Proposal 2 - Groundwater investigation consents transitioning into the Environmental Permitting Regulations

Q3. Do you agree with the proposed approach to groundwater investigation consents transitioning into the Environmental Permitting Regulations (EPR)?

HTA Response to Proposal

HTA neither agree nor disagree that the groundwater investigation consent process be brought into the EPR, however there must be a change to the charging process, to lessen its impact upon permit holders. Charges should be proportionate, particularly when there was no charge previously for groundwater investigation. HTA would recommend that more than one groundwater investigation consent could be brought into one charge which lasts for a certain period of time, or a certain number of investigations. While new investigations would need consent, the charge would be covered and permit holders would have certainty of investment.

Proposal 3 – Transitional abstraction permits with a time limit

Q4. Do you agree with the proposed approach to transitional abstraction permits with a time limit?

HTA Response to Proposal

HTA agree with the proposal to carry over the existing time limits from licences to ensure less complication for licence holders, but we would like to see a charging scheme variation for those that have to renew soon after being transferred, as new costs would be unexpectedly high.

Proposal 4 - Previously exempt abstractions (New Authorisations)

HTA Response to Proposal

HTA neither agree nor disagree with this position but would like to see a charging scheme variation when one or more activity of the transitional permit would have continued to be valid for a longer time-period, but the permit holder is required to apply for a new full permit only due to one activity expiring.

Proposal 5 – Abstraction and impounding activities under the Environmental Permitting Regulations

Q5. Do you agree with the proposed water abstraction and water impounding activities?

Q6. Do you agree with the proposal to introduce a groundwater investigation abstraction activity under the Environmental Permitting Regulations thereby requiring a permit for this activity rather than continuing with the current approach of issuing a consent?

Q7. Do you agree with the proposal to further categorise abstraction activities as set out above?

HTA Response to Proposal

HTA neither agree nor disagree with the principle of the proposal, but as mentioned in Proposal 1 response, there needs to be a means of transferring responsibility for proper use, e.g., when business on rented land.

Proposal 6 – Operator and permit holder

Q8. Do you agree with the proposal to maintain, for transitional permits only, the ability for a person who is not the permit holder to lawfully carry out an abstraction under a permit with the permit holder’s permission?

HTA Response to Proposal

HTA, while agreeing with maintaining the current arrangements, would recommend EA offer guidance around these types of arrangements. This would ensure potential for issues to arise around compliance and costs be dealt with arbitrarily. Also, that costs do not become onerous. The goal, after all, is to ensure abstracters have access to sufficient water to meet their needs while ensuring water resources are managed with environmental principles in mind.

Proposal 7 – Content and Form of a Permit

Q9. Do you agree with our proposal to adopt the Environmental Permitting Regulations provision relating to offsite permit conditions for abstraction and impounding applications?

Q10. Do you agree with the proposal to adopt the Environmental Permitting Regulations permit types, exclusions and exemptions for abstraction and impounding?

Q11. Are there any abstraction or impounding situations that you think could satisfy the standard rules permit format?

Q12. Do you agree with the proposal to include an Environmental Management Plan requirement in all new Environmental Permitting Regulations permits for a water abstraction or water impounding activity?

HTA Response to Proposal

HTA neither agree nor disagree with these proposals, however the EA should provide guidance to licence/permit holders on requirements of an Environmental Management Plan if this is required as part of a future permit.

Proposal 8 – Site and source of supply

Q13. Do you agree with the proposal to set out the principles to help determine the extent of a site within guidance?

Q14. What do you think that the principles should be to help determine the extent of a site within guidance?

Q15. Do you agree with the proposal to allow abstraction from more than one source of supply on a single permit?

Q16. Are there any circumstances where you think that abstraction activities for the same operation or site, but from different sources of supply, should not be on the same permit?

HTA Response to Proposal

HTA would recommend that the EA clarify certain aspects and costs implications of moving to one permit, e.g. what will happen if one aspect of a permit is refused, will the operator need to reapply, or will that part simply be removed. However, the HTA agrees in principle with these proposals.

Proposal 9 – Variations, transfers, revocations and surrenders

Q17. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for the transfer (or partial transfer) of a permit for water abstraction or water impounding activity to be actioned upon the receipt of a joint application?

HTA Response to Proposal

HTA strongly recommend there is provision in future EPs for exemption of container grown crops and protected crops to allow them to water via abstraction, regardless of drought orders being in place or not. This is in case the drought legislation changes in the future; the exemption is already in place for crops that cannot take moisture from the soil or any other means. Any changes to spray irrigation Drought Orders needs to include provision for the exemption of container grown crops and crops grown under protection and continue to do so for drip and trickle irrigation if these should be brought into the scope of a drought order in future. These exemptions are vital to ensure that these crops do not die, the loss of what

amounts to a cash crop would push a huge proportion of our member businesses into insolvency. This would also reduce the UK's capacity to produce plants and trees needed for tree the planting and urban greening goals envisaged in Defra's 25 Year Environment Plan.

Proposal 10 – Appeals

HTA Response to Proposal

HTA would encourage that an appeals process is clear and easily accessible by all and provides permit holder the right to appeal, and in the event of the EA stating a non-compliance has occurred, this should be available for permit holders.

Proposal 11 – Permit Review Process

Q18. Do you agree with the two types of review? If not, why?

Q19. Do you think there should be any other review type? If so, what?

Q20. How should the frequency of permit reviews be decided?

HTA Response to Proposal

HTA take no issue with the types of review but would recommend that EA consider another kind of review where an operator wishes to move to more resilient method of water collection i.e., rainwater harvesting, and asks for one themselves in order to obtain the right kind of permit. There should be a cost reduction in order to encourage more environmentally friendly methods of water use, and to move away from abstraction where it is appropriate and viable.

Proposal 12 – Enforcement and suspension

Q21. Do you agree with the proposal to adopt the Environmental Permitting Regulations enforcement and suspension notices for abstraction and impounding activities?

Q22. Do you agree with the proposal to use the term 'harm to the environment' and the definition proposed?

Q23. Do you think there should be any additional points included in the definition?

Q24. Do you agree with the proposal to move the two existing notices for unlicensed impounding works into the Environmental Permitting Regulations?

Q25. Do you agree with the proposal to retain and bring across only fixed monetary penalties, variable monetary penalties and third-party undertakings in relation to variable monetary penalties?

HTA Response to Proposal

HTA neither agree nor disagree with these proposals. Positive enforcement notices giving permission for 'put and take' temporary abstractions in times of irrigation difficulty should be retained. In addition, there should be clear guidance for abstractors who accidentally

exceed their permit limit, and should not receive a penalty, but be able to rectify any mistake, especially if no damage has been caused. However, with the exemptions for container grown stock, protected crops and trickle irrigation, ornamental growers in principle should not be unduly affected.

Proposal 13 – Offences and Penalties

Q26. Do you agree with the proposal to set the maximum prison term for an indictable offence at 2 years rather than 5 years?

HTA Response to Proposal

HTA neither agree nor disagree with this proposal

Proposal 14 – Public Register

Q27. Do you agree with the proposal to adopt the approach to maintaining the public register when we have moved into the Environmental Permitting Regulations?

HTA Response to Proposal

HTA neither agree nor disagree with this proposal

Proposal 15 – Advertising and public participation

Q28. Do you agree with the proposal to move to online digital advertising for abstraction and impounding licence applications, except for High Public Interest applications which will require local newspaper advertisement as well as online advertising?

Q.29 Do you agree with the proposal to dispense with public participation (advertising) where there would no appreciable adverse effect on the environment and other abstraction rights?

Q30. Do you agree with the proposal to move the current duty under legislation to consult with key organisations to guidance in the form of an agreement or memorandum with the key organisations?

HTA Response to Proposal

HTA neither agree nor disagree with this proposal, although would recommend there are set times when the advertisement does not need to be placed – for e.g. a name change on a permit. This should be clearly understood by permit holders.

Proposal 16 – Vesting and Bankruptcy

Q31. Do you agree with the proposal to adopt the Environmental Permitting Regulations provisions for vesting and the 6-month notification period?

HTA Response to Proposal

HTA believe a blanket approach of 6 months is too short a length of time. There are times when a more compassionate approach should be taken, e.g. if there is no proof of death to

make a name change, and if there are such extenuating circumstances then there should be a provision/process in place for this to extend the time required for vesting.

Proposal 17 – Climate change adaptation

Q32. Do you agree with the proposal to include climate change adaptation measures within the Environment Management System? If not, why not?

Q33. What, if any, further conditions would you propose to be included in a permit to help mitigate climate change?

HTA Response to Proposal

HTA agrees that climate change adaptation measures should be included within the Environmental Management System, as climate change will affect abstractors in the future. However, we do not agree that there should be an extra fee, as this would add more cost to permit holders. It is also not clear what the fee would be used for, if the fund would be publicly transparent, and ring fenced for adaptation measures and other climate change mitigation effects. Any fund should not be used for compensation payments.

Proposal 18 – Protected rights, derogation and lawful use

Q34. Do you agree with the proposal to carry across into the Environmental Permitting Regulations the duty for the Environment Agency not to derogate from protected rights when considering a permit application or variation?

Q35. Do you agree with the proposal to include within the Environmental Permitting Regulations the duty for the Environment Agency to have regard to lawful uses when considering a permit application or variation?

HTA Response to Proposal

HTA agree with this proposal, as long as the effects on permit holders do not differ from the current arrangements.

Proposal 19 – Applying for a permit

Q36. Do you agree with the proposal to carry across into the Environmental Permitting Regulations the ability for the Environment Agency to serve a notice on an applicant, and the ability for the applicant to appeal, in circumstances where the applicant has applied for an activity and the Environment Agency considers they have applied for the wrong type of activity?

HTA Response to Proposal

HTA neither agrees nor disagrees with the proposal but would ask that the EA provide clarification that when an application is made for the wrong kind of permit, it would simply be amended before being granted or denied, and not require a new application at full cost. There should be no extra fee for reapplying.

Proposal 20 – Permit applications by the Environment Agency

Q37. Do you agree with the proposal to adopt the Environmental Permitting Regulations approach to permit applications by the Environment Agency?

HTA Response to Proposal

HTA agree with this proposal.

Proposal 21 – Canal & River Trust Provisions

Q38. Do you agree with the proposal to retain the existing provisions concerning the CRT when abstraction and impounding moves into the Environmental Permitting Regulations?

HTA Response to Proposal

HTA neither agree nor disagree with this proposal.

Proposal 22 – Civil Remedies for loss or damage due to water abstraction

HTA Response to Proposal

HTA neither agree or disagree with this proposal.

Proposal 23 – Fishing rights and Ecclesiastical property

Q39. Do you agree with the proposal to repeal the relevant sections of legislation relating to fishing rights and not to take them into the Environmental Permitting Regulations?

HTA Response to Proposal

HTA neither agree nor disagree with this proposal.

Proposal 24 – Compensation

Q40. Do you agree with our proposal to issue an Environmental Permitting Regulations permit to replace a transitional permit as a result of certain operator-initiated variations and transfers/part transfers?

HTA Response to Proposal

We would strongly recommend that information and advice is issued by EA in order to explain these complex proposals, including a robust definition of serious damage.