

04 January 2023

Nadia De Longhi
Head of Regulation and Permitting
Natural Resources Wales

BY EMAIL sroc@cyfoethnaturiolcymru.gov.uk

Dear Nadia,

NATURAL RESOURCES WALES REGULATORY FEE AND CHARGE PROPOSALS CONSULTATION RESPONSE

This response has been prepared by Envireau Water. We are a specialist water resources management consultancy, with a history of providing expert technical and regulatory guidance regarding water resources in the UK since 1998. We are frequently involved in the negotiation and design of permits and licences which challenge both established science and policy. We also work with many of the sectors who stand to be affected by proposals to change regulatory fees and charges. We have based our comments upon this extensive experience and expertise.

Our main area of interest lies within the water resources charging scheme (Appendix 8), and we have provided specific answers on the following pages to the questions posed and make some general comments below.

As with all consultation documents, it is hard to disagree with the generality of the approach to licensing and permitting charging, and it is a truism that the existing system does not reflect the cost of processing and determining applications. However, there are some significant failings in the detail of the approach being put forward by Natural Resources Wales:

- The application charge structure is based on an analysis of the time taken by Natural Resources Wales to determine applications, multiplied by the average number of applications received per year. This overestimates costs and builds in the internal inefficiency of the system. The application charging scheme must not be structured and designed in such a way as to support fiscal inefficiency within Natural Resources Wales.
- The timing of this consultation, and proposed implementation of changes in April 2023, means that companies have not budgeted for significant changes in application fees in their 2023 fiscal year. This disproportionately impacts on certain industries, such as quarrying, which make regular full and variation applications for transfer and full abstraction licences. Final charges should be published before April 2023 for implementation in April 2024, to allow for budgeting by the applicants.
- Transfer licence application costs do not take account of their non-consumptive nature. The environmental impact of transfer licences is neutral (other than very minor local impacts) and is not discharge volume

related. Excessive charges are unnecessary and will have a disproportionate impact on certain industries such as mining and quarrying, and the renewable energy sector.

- The proposed charging scheme is too uncertain and expensive for applicants. Natural Resources Wales must be encouraged to be fiscally efficient, and this will only be achieved by having a cost burden and working within fixed fees. If charges are required in exceptional circumstances for complex applications and licences, a fixed fee should be negotiated and agreed with the applicant, and Natural Resources Wales forced to comply with it. There also must be an independent forum that can review and enforce appropriate charges. The proposed charging structure pushes the regulator into the commercial world, and the fact of the commercial world is that fiscal inefficiency is not paid for by the 'customer'. Natural Resources Wales should not be the regulator and banker (gamekeeper and poacher), and this was one of the fundamental reasons why the Water Resources Act and Water Industry Act were introduced.

Yours faithfully,



James Dodds MSc CGeol FGS

Director, Water Management Specialist

NATURAL RESOURCES WALES REGULATORY FEE AND CHARGE PROPOSALS CONSULTATION RESPONSE

Questions & Responses

Responses are provided below to the questions that are particularly relevant to Envireau Water. Where a question is not listed and responded to, we either have no information to provide, or no view that would materially affect the consultation.

Generic Questions

5. To what extent do you agree or disagree that NRW's regulatory services should be paid for by those who use them and not by the taxpayer or other charge payers?

We agree that this is the fairest way to apply charges.

6. Having considered our consultation documents and supporting information, to what extent do you agree or disagree with NRW's proposed charging structure?

We do not agree with the proposed charging structure, on the basis that it is derived from an analysis of time spent by Natural Resources Wales on historic application determinations. The analysis does not take account of inefficiency, and lack of expertise and experience in the staff. Such an approach will therefore grossly overestimate the time input. The charge must be based on the time it should take, and not on the analysis of historic data with inefficiency built into it.

Businesses are captive to the charges set by Natural Resources Wales, as there is nowhere else to go to obtain a permit or licence. At the level of the proposed charging, it is critical that Natural Resources Wales deliver a service which meets its statutory obligations and provides the applicant with a high-quality experience, including access to experienced and expert staff who can engage in open discussion and negotiation. Natural Resources Wales is currently failing in these objectives across the EPR application determination space, where application fees are already higher than those proposed for water resources applications. Therefore, the cause of failure cannot be cost recovery but must be systemic. The systemic problems should be corrected before application costs are increased.

We therefore are concerned that the proposed charging scheme will not deliver an adequate service and provide licences/permits within an adequate timescale. At the level of the costs being proposed, there must be a straightforward way for applicants to challenge the application fee during the determination process and get full or near-full discounts where Natural Resources Wales fails to meet its statutory or internal performance criteria.

Water Resources Permits

26. To what extent do you agree or disagree with our proposals for water resources?

Advertising administration charge

We agree with the proposal to keep the advertising administration charge at £100, with customers paying for the whole advert in English and Welsh.

Application charge

We disagree with the new add-on charge of £917 where a Habitats Regulations/Risk Assessment is required, as this is a statutory duty of the regulator. In complex cases, the regulator should discuss the scope of assessment with the applicant, and the applicant should then be able to draft an assessment which the regulator can sign up to.

We disagree that the full charge of £6,327 for a new bespoke licence should apply to new transfer licences, as there is no consideration for the consumptiveness of the abstraction. Low consumptive-use abstractions by definition have a low environmental impact, and therefore should be easier and quicker to determine than full surface water or groundwater abstraction licences. We also disagree that this charge should fully apply to temporary licences, as this will disproportionately impact businesses where shorter duration licences are more common, for instance in the quarrying sector.

We agree that a fee should be charged for applications for groundwater investigation consents.

As previously discussed, the proposed charges are grossly overestimated due to their derivation from historical data with inefficiency built in. Discounts should be applied to straightforward and/or high-quality applications, which will be faster to determine and increase regulator efficiency. An alternative to discounts would be a fast-track route for high quality applications leading to early determination, rather than the present system where high-quality applications get stuck in a queue behind poor-quality applications.

Applications to vary a licence

We agree that an increased fee should be charged for licence variation and renewal applications. However, for variations and 'different terms renewals', it is unclear and uncertain what the criteria is for an application being defined as a 'simple' or 'full' variation/renewal, and why the charge for a 'full' application is over three times larger than the charge for a 'simple' application.

Applications for variations imposed by Natural Resources Wales must remain free.

Proposals for waivers

We agree with continuing to waive charges for: change of contact details; transfer of a licence holder; variation of a licence to reduce the quantity of water authorised to be abstracted; and applications to revoke an abstraction or impoundment licence.

Multiactivity discounts

We agree with the proposal to apply a discount to the application charge where an application is being made for more than one activity, and those activities are reasonably considered to be part of the same operation. This will take account of the fact that a lot of the information in the first application will be duplicated, and that the same amount of work is therefore not required compared to when considering two unrelated applications.

Returned and withdrawn applications

We agree that 10% of the charge should be retained for applications that are returned by the regulator or withdrawn by the applicant before the duly made stage, and that a higher proportion of the charge should be retained for applications withdrawn by the applicant after reaching the duly made stage.

Pre-Application Advice

28. To what extent do you agree or disagree with our proposals for pre-application advice?

We agree that basic pre-application advice continue to be provided free of charge, which includes advice on water availability, HoF requirements and fish/eel requirements for water resources licence applications. We disagree, however, that further pre-application advice should be chargeable. This will stifle important discussions and negotiation with the regulator early in the process which, if engaged in an open manner, significantly increases the efficiency of the application process, and avoids applicants incurring large fees for un-realistic applications. Pre-application engagement should be encouraged, not resisted.

The charge rate of £125/hr for pre-application advice builds upon the fiscal inefficiency of the charging structure. For example, within the consulting sector, the average charge rate applied in preparing an application, and undertaking the technical analysis to justify and support any impact assessment, would be in the order of £60-70/hr, with higher rates only achieved by consultants with 15+ years' experience. The proposed approach results in grossly inflated charges.