



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

##### *Modification of licences*

#### **51 Modification on application of licence holder.**

- (1) The holder of a licence under this Chapter [<sup>F1</sup>to abstract water] may apply to the [<sup>F2</sup>appropriate agency] to revoke the licence and, on any such application, the [<sup>F2</sup>appropriate agency] shall revoke the licence accordingly.
- [<sup>F3</sup>(1A) The holder of a licence under this Chapter to obstruct or impede the flow of inland waters (an “impounding licence”) may apply to the [<sup>F2</sup>appropriate agency] to revoke the licence and, on any such application, the [<sup>F2</sup>appropriate agency] may revoke the licence accordingly.
- (1B) The [<sup>F2</sup>appropriate agency] may require conditions to be met to its satisfaction before revocation of the impounding licence takes effect, and those conditions may in particular include conditions—
- (a) requiring the removal of all or part of the impounding works;
  - (b) as to the restoration of the site of the impounding works to a state which is satisfactory to the [<sup>F2</sup>appropriate agency];
  - (c) relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.
- (1C) The person making an application under subsection (1A) above (“the applicant”) may by notice appeal to the Secretary of State if—

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- (a) he is dissatisfied with the decision of the [F<sup>2</sup>appropriate agency] as to—
    - (i) whether his licence may be revoked; or
    - (ii) any conditions imposed by virtue of subsection (1B) above; or
  - (b) the [F<sup>2</sup>appropriate agency] fails to give notice of its decision to the applicant within the prescribed period or within such extended period as may be agreed in writing between the [F<sup>2</sup>appropriate agency] and the applicant.
- (1D) The Secretary of State may by regulations make provision with respect to—
- (a) the manner in which notices of appeal under subsection (1C) above shall be served;
  - (b) the period within which such notices shall be served;
  - (c) the procedure on any such appeal.
- (1E) Where an appeal is brought under subsection (1C) above, the Secretary of State may—
- (a) allow or dismiss the appeal or reverse or vary any part of the decision of the [F<sup>2</sup>appropriate agency], whether the appeal relates to that part of the decision or not; and
  - (b) may deal with the application as if it had been made to him in the first place.
- (1F) The decision of the Secretary of State on any appeal under subsection (1C) above shall be final.
- (1G) Subsections (1C) to (1F) above are subject to section 114 of the 1995 Act (delegation or reference of appeals).]
- (2) The holder of a licence under this Chapter may apply to the [F<sup>2</sup>appropriate agency] to vary the licence.
- [F<sup>4</sup>(2A) An application may not be made under subsection (2) above to convert an abstraction licence of one type into an abstraction licence of a different type.]
- (3) Subject to subsection (4) below, the provisions of sections 37 to 44 above shall apply (with the necessary modifications) to applications under subsection (2) above, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Chapter.
- (4) Where the variation proposed in an application under subsection (2) above is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods—
- (a) sections 37 and 38(1) above shall not apply by virtue of subsection (3) above; and
  - (b) sections 43 and 44 above, as applied by that subsection, shall have effect as if subsection (5) of section 43 and paragraph (a) of section 44(3) were omitted.

#### Textual Amendments

- F1** Words in s. 51(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(2)**, 105(3) (with s. 21(5)); S.I. 2006/984, art. 2(k)
- F2** Words in s. 51 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)
- F3** S. 51(1A)-(1G) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(3)**, 105(3) (with s. 21(5)); S.I. 2006/984, art. 2(k)

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**F4** S. 51(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 4](#); [S.I. 2006/984](#), art. 2(s)(i)

**Modifications etc. (not altering text)**

**C1** S. 51 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **18**

**52 Proposals for modification at instance of the [F5 appropriate agency] or Secretary of State.**

(1) Where it appears to the [F5 appropriate agency] that a licence under this Chapter should be revoked or varied, the [F5 appropriate agency] may formulate proposals for revoking or varying the licence.

[F6(1A) In the case of a licence to obstruct or impede any inland waters, a variation may take the form of a requirement that the impounding works be modified in ways specified in the proposed new provision of the licence.]

(2) Where—

(a) it appears to the Secretary of State (either in consequence of representations made to the Secretary of State or otherwise) that a licence under this Chapter ought to be reviewed; but

(b) no proposals for revoking or varying the licence have been formulated by the [F5 appropriate agency] under subsection (1) above,

the Secretary of State may, as he may consider appropriate in the circumstances, give the [F5 appropriate agency] a direction under subsection (3) below.

(3) A direction under this subsection may—

(a) direct the [F5 appropriate agency] to formulate proposals for revoking the licence in question; or

(b) direct the [F5 appropriate agency] to formulate proposals for varying that licence in such manner as may be specified in the direction.

(4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence shall—

(a) be served on the holder of the licence; and

[F7(b) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.]

(5) If—

(a) a licence with respect to which any proposals are formulated under this section relates to any inland waters; and

(b) the proposals provide for variation of that licence,

a copy of the notice for the purposes of subsection (4) above shall, not later than the date on which it is first published [F8 as mentioned in subsection (4)(b) above], be served on any navigation authority, harbour authority or conservancy authority having functions in relation to those waters at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.

[F9(6) A notice for the purposes of subsection (4) above shall—

(a) include any prescribed matters; and

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- (b) state that, before the end of a period specified in the notice—
- (i) the holder of the licence may give notice in writing to the [F5appropriate agency] objecting to the proposals; and
  - (ii) any other person may make representations in writing to the [F5appropriate agency] with respect to the proposals.]

[F10(7) The period referred to in subsection (6)(b) above—

- (a) begins on the date the notice referred to in subsection (4) above is first published as mentioned there; and
- (b) shall not end before the end of the period of twenty-eight days beginning with that date.]

[F11(8) . . . . .

#### Textual Amendments

- F5** Words in s. 52 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)
- F6** S. 52(1A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(2)**, 105(3); S.I. 2006/984, art. 2(1)
- F7** S. 52(4)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(3)**, 105(3); S.I. 2006/984, art. 2(1)
- F8** Words in s. 52(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(4)**, 105(3); S.I. 2006/984, art. 2(1)
- F9** S. 52(6) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(5)**, 105(3); S.I. 2006/984, art. 2(1)
- F10** S. 52(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(6)**, 105(3); S.I. 2006/984, art. 2(1)
- F11** S. 52(8) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(7)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(1)(s)(ii)

#### Modifications etc. (not altering text)

- C2** S. 52 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(1)**
- C3** S. 52(4)-(8) applied (with modifications) (1.3.2012) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2003 \(S.I. 2003/164\)](#), regs. 1(1), **14**, 15

### 53 Modification in pursuance of proposals under section 52.

- (1) Subject to the following provisions of this section, where the [F12appropriate agency] has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—
  - (a) if the proposals are for the revocation of the licence, revoke the licence; and
  - (b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.
- (2) The [F12appropriate agency] shall not proceed with any proposals formulated under section 52 above before the end of the period specified, in accordance with subsection (7) of that section, for the purposes in relation to those proposals of subsection (6) of that section.
- (3) If no notice under subsection (4) below is given to the [F12appropriate agency] before the end of the period mentioned in subsection (2) above, the [F12appropriate agency] may proceed with the proposals.

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Modification of licences. (See end of Document for details)*

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- (4) If the holder of the licence gives notice to the [F12appropriate agency] objecting to the proposals before the end of the period mentioned in subsection (2) above, the [F12appropriate agency] shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the [F12appropriate agency] proceeds with any proposals under subsection (3) above and the proposals are proposals for varying the licence, the provisions of sections 38(3), 39(1) and (2) and 40 above shall apply (with the necessary modifications) to any action of the [F12appropriate agency] in proceeding with the proposals as they apply to the action of the [F12appropriate agency] in dealing with an application for a licence.

#### Textual Amendments

**F12** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C4** S. 53 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(2)**

## 54 Reference of modification proposals to the Secretary of State.

- (1) Where any proposals of the [F12appropriate agency] with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—
  - (a) the proposals;
  - (b) the objection of the holder of the licence; and
  - (c) any representations in writing relating to the proposals which were received by the [F12appropriate agency] before the end of the period mentioned in subsection (2) of that section,and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.
- (2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or
  - (b) afford to the holder of the licence and the [F12appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the [F12appropriate agency] to be heard with respect to the proposals.
- (3) In determining under this section whether a licence should be varied and, if so, what directions should be given under subsection (5) below, the Secretary of State shall consider whether any such direction would require such a variation of the licence as would so authorise—

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Modification of licences. (See end of Document for details)*

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- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction is given, are protected rights for the purposes of this Chapter.
- (4) The provisions of sections 39(2) and 40 above shall apply in relation to any proposals referred to the Secretary of State in accordance with section 53(4) above as if in those provisions—
- (a) any reference to the [<sup>F12</sup>appropriate agency] were a reference to the Secretary of State;
  - (b) any reference to the application were a reference to the proposals; and
  - (c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.
- (5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the [<sup>F12</sup>appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

#### **Textual Amendments**

**F12** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

#### **Modifications etc. (not altering text)**

**C5** S. 54 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(3)**

## **55 Application for modification of licence by owner of fishing rights.**

- (1) Subject to the following provisions of this section and to Schedule 7 to this Act, where a licence under this Chapter authorises abstraction from any inland waters in respect of which no minimum acceptable flow has been determined under Chapter I of this Part, any person who is the owner of fishing rights in respect of those inland waters may apply to the Secretary of State for the revocation or variation of the licence.
- (2) No application shall be made under this section in respect of any licence except at a time after the end of the period of one year beginning with the date on which the licence was granted but before a minimum acceptable flow has been determined in relation to the waters in question.
- (3) Any application under this section made by a person as owner of fishing rights in respect of any inland waters shall be made on the grounds that, in his capacity as owner of those rights, he has sustained loss or damage which is directly attributable to the abstraction of water in pursuance of the licence in question and either—
- (a) he is not entitled to a protected right for the purposes of this Chapter in respect of those inland waters; or

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Modification of licences. (See end of Document for details)*

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- (b) the loss or damage which he has sustained in his capacity as owner of those rights is not attributable to any such breach of statutory duty as is mentioned in subsection (2) or (3) of section 60 below or is in addition to any loss or damage attributable to any such breach.
- (4) Where an application is made under this section in respect of any licence, the applicant shall serve notice in the prescribed form on the [<sup>F12</sup>appropriate agency] and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the Secretary of State with respect to the application.
- (5) In this section and section 56 below “fishing rights”, in relation to any inland waters, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in those waters, where the right in question—
- (a) constitutes or is included in an interest in land; or
- (b) is exercisable by virtue of an exclusive licence granted for valuable consideration;
- and any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights.
- (6) In this section any reference to a right included in an interest in land is a reference to a right which is exercisable only by virtue of, and as a right incidental to, the ownership of that interest.

#### Textual Amendments

**F12** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(i\)](#) (with Sch. 7)

#### Modifications etc. (not altering text)

**C6** S. 55 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [20\(1\)](#)

## 56 Determination of application under section 55.

- (1) The Secretary of State, in determining any application under section 55 above in respect of any licence, shall take into account any representations in writing received by him, within the period mentioned in subsection (4) of that section, from the [<sup>F12</sup>appropriate agency] or from the holder of the licence.
- (2) Before determining on an application under section 55 above whether a licence should be revoked or varied the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
- (b) afford to the applicant, the holder of the licence and the [<sup>F12</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant, the holder of the licence or the [<sup>F12</sup>appropriate agency] to be heard with respect to the proposals.



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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Modification of licences. (See end of Document for details)*

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- (3) Subject to subsections (4) and (5) below, on an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied unless—
- (a) the grounds of the application, as mentioned in subsection (3) of that section, are established to his satisfaction; and
  - (b) he is satisfied that the extent of the loss or damage which the applicant has sustained, as mentioned in that subsection, is such as to justify the revocation or variation of the licence.
- (4) On an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused the loss or damage which the applicant has sustained, as mentioned in subsection (3) of that section, was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [<sup>F12</sup>appropriate agency].
- (5) Where the Secretary of State determines, on an application under section 55 above, that a licence shall be varied, the variation shall be limited to that which, in the opinion of the Secretary of State, is requisite having regard to the loss or damage which the applicant has sustained as mentioned in subsection (3) of that section.
- (6) Where the decision of the Secretary of State on an application under section 55 above in respect of any licence is that the licence should be revoked or varied, the decision shall include a direction to the [<sup>F12</sup>appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (7) A decision of the Secretary of State on an application under section 55 above shall be final.

**Textual Amendments**

**F12** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

**Modifications etc. (not altering text)**

**C7** S. 56 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **20(2)**

**57 Emergency variation of licences for spray irrigation purposes.**

- (1) This section applies where at any time—
- (a) one or more licences under this Chapter are in force in relation to a source of supply authorising water abstracted in pursuance of the licences to be used for the purpose of spray irrigation, or for that purpose together with other purposes; and
  - (b) by reason of exceptional shortage of rain or other emergency, it appears to the [<sup>F12</sup>appropriate agency] that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.



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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Modification of licences. (See end of Document for details)*

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- (2) Subject to subsections (3) and (4) below, where this section applies the [F12appropriate agency] may serve a notice on the holder of any of the licences reducing, during such period as may be specified in the notice, the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply for use for the purpose of spray irrigation; and, in relation to that period, the licence shall have effect accordingly subject to that reduction.
- (3) The [F12appropriate agency] shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the [F12appropriate agency] that such abstraction is likely to affect the flow, level or volume of any inland waters which are [F13not discrete waters].
- (4) In the exercise of the power conferred by this section in a case where there are two or more licences under this Chapter in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the [F12appropriate agency], are not far distant from each other—
  - (a) the [F12appropriate agency] shall not serve a notice under this section on the holder of one of the licences unless a like notice is served on the holders of the other licences in respect of the same period; and
  - (b) the reductions imposed by the notices on the holders of the licences shall be so calculated as to represent, as nearly as appears to the [F12appropriate agency] to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.
- (5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

**Textual Amendments**

**F12** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

**F13** Words in s. 57(3) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 5**; [S.I. 2017/1043](#), art. 2(g)

**Modifications etc. (not altering text)**

**C8** S. 57 modified (18.5.1992) by [S.I. 1992/1096](#), art. 4

**C9** S. 57(1)(2)(4) modified (18.5.1992) by [S.I. 1992/1096](#), arts. 3, 4, **Sch.**

**F14** 58

**Textual Amendments**

**F14** S. 58 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 136](#), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3(xxix)

**59 Regulations with respect to modification applications.**

- (1) The Secretary of State may by regulations make provision as to the manner in which applications for the revocation or variation of licences under this Chapter are to be

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**Changes to legislation:** *There are currently no known outstanding effects for the Water Resources Act 1991, Cross Heading: Modification of licences. (See end of Document for details)*

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dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications.

- (2) Subsection (1) above shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

**Changes to legislation:**

There are currently no known outstanding effects for the Water Resources Act 1991, Cross  
Heading: Modification of licences.