



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

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

- C1** Chapter II of Part II excluded (1.4.1996) by [1995 c. 25, s. 6\(3\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)
- C2** Chapter II of Part II modified (18.12.1996) by [1996 c. 61, s. 52, Sch. 15 Pt. III para. 11](#)

##### *Restrictions on abstraction and impounding*

#### **24 Restrictions on abstraction.**

- (1) Subject to the following provisions of this Chapter and to any drought order under Chapter III of this Part, no person shall—
- (a) abstract water from any source of supply; or
  - (b) cause or permit any other person so to abstract any water,
- except in pursuance of a licence under this Chapter granted by the Authority and in accordance with the provisions of that licence.
- (2) Where by virtue of subsection (1) above the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Chapter, no person shall begin, or cause or permit any other person to begin—
- (a) to construct any well, borehole or other work by which water may be abstracted from those strata;

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- (b) to extend any such well, borehole or other work; or
  - (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,
- unless the conditions specified in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are—
- (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Chapter; and
  - (b) that—
    - (i) the well, borehole or work, as constructed or extended; or
    - (ii) the machinery or apparatus, as installed or modified,
 fulfils the requirements of that licence as to the means by which water is authorised to be abstracted.
- (4) A person shall be guilty of an offence if—
- (a) he contravenes subsection (1) or (2) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (5) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) The restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M1</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

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

**C3** S. 24(1) restricted (16.3.1992) by [Aire and Calder Navigation Act 1992 \(c. iv\), s. 17\(2\)](#)

**Marginal Citations**

**M1** 1963 c. 38.

**25 Restrictions on impounding.**

- (1) Subject to the following provisions of this Chapter and to any drought order under Chapter III of this Part, no person shall begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters unless—
- (a) a licence under this Chapter granted by the Authority to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;
  - (b) the impounding works will not obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and

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- (c) any other requirements of the licence, whether as to the provision of compensation water or otherwise, are complied with.
- (2) A person shall be guilty of an offence if—
- (a) he contravenes subsection (1) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (3) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) Subject to subsection (5) below, the restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M2</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.
- (5) Subject to subsection (6) below, the restriction on impounding works shall not apply to the construction or alteration of any impounding works, if—
- (a) the construction or alteration of those works; or
  - (b) the obstruction or impeding of the flow of the inland waters resulting from the construction or alteration of the works,
- is authorised (in whatsoever terms, and whether expressly or by implication) by virtue of any such statutory provision as at the coming into force of this Act was an alternative statutory provision for the purposes of section 36(2) of the Water Resources Act 1963.
- (6) The provisions of this Chapter shall have effect in accordance with subsection (7) below where by virtue of any such provision as is mentioned in subsection (5) above and is for the time being in force—
- (a) any water undertaker or sewerage undertaker to which rights under that provision have been transferred in accordance with a scheme under Schedule 2 to the <sup>M3</sup>Water Act 1989 or Schedule 2 to the <sup>M4</sup>Water Industry Act 1991; or
  - (b) any other person,
- is authorised (in whatsoever terms, and whether expressly or by implication) to obstruct or impede the flow of any inland waters by means of impounding works (whether those works have already been constructed or not).
- (7) Where subsection (6) above applies, the provisions of this Chapter shall have effect (with the necessary modifications), where the reference is to the revocation or variation of a licence under this Chapter, as if—
- (a) any reference in those provisions to a licence under this Chapter included a reference to the authorisation mentioned in that subsection; and
  - (b) any reference to the holder of such a licence included a reference to the undertaker or other person so mentioned.
- (8) In this Chapter “impounding works” means either of the following, that is to say—
- (a) any dam, weir or other works in any inland waters by which water may be impounded;

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- (b) any works for diverting the flow of any inland waters in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a) above.

**Marginal Citations**

- M2** 1963 c. 38.  
**M3** 1989 c. 15.  
**M4** 1991 c. 56.

*Rights to abstract or impound*

**26 Rights of navigation, harbour and conservancy authorities.**

- (1) The restriction on abstraction shall not apply to any transfer of water from one area of inland waters to another in the course of, or resulting from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.
- (2) The restriction on impounding works shall not apply to the construction or alteration of impounding works in the course of the performance by a navigation authority, harbour authority or conservancy authority of their functions as such an authority.

**27 Rights to abstract small quantities.**

- (1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding five cubic metres if it does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than five cubic metres is abstracted.
- (2) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres if the abstraction—
- (a) does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted; and
  - (b) is with the consent of the Authority.
- (3) The restriction on abstraction shall not apply to so much of any abstraction from any inland waters by or on behalf of an occupier of contiguous land as falls within subsection (4) below, unless the abstraction is such that the quantity of water abstracted from the inland waters by or on behalf of the occupier by virtue of this subsection exceeds twenty cubic metres, in aggregate, in any period of twenty-four hours.
- (4) Subject to section 28 below, an abstraction of water falls within this subsection in so far as the water—
- (a) is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
  - (b) is abstracted for use on that holding for either or both of the following purposes, that is to say—
    - (i) the domestic purposes of the occupier's household;
    - (ii) agricultural purposes other than spray irrigation.

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- (5) The restriction on abstraction shall not apply to the abstraction of water from underground strata, in so far as the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household, unless the abstraction is such that the quantity of water abstracted from the strata by or on behalf of that individual by virtue of this subsection exceeds twenty cubic metres, in aggregate, in any period of twenty-four hours.
- (6) For the purposes of this Chapter a person who is in a position to abstract water in such circumstances that, by virtue of subsection (3) or (5) above, the restriction on abstraction does not apply shall be taken to have a right to abstract water to the extent specified in that subsection.
- (7) In the case of any abstraction of water from underground strata which falls within subsection (5) above, the restriction imposed by section 24(2) above shall not apply—
  - (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (8) In this section “contiguous land”, in relation to the abstraction of any water from inland waters, means land contiguous to those waters at the place where the abstraction is effected.

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

C4 S. 27(4) modified (18.5.1992) by S.I. 1992/1096, arts. 3, 4, Sch.

**28 Curtailment of rights under section 27.**

- (1) The provisions of this section shall have effect where a person (“the occupier”) is entitled, by virtue of subsection (6) of section 27 above, to a protected right for the purposes of this Chapter by reason of his being the occupier of such a holding as is mentioned in subsection (4) of that section in relation to an abstraction falling within that subsection (“the holding”).
- (2) If it appears to the Authority that the occupier is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on part of the holding (“the relevant part”), but is not so entitled to abstract water for use on other parts of the holding—
  - (a) the Authority may serve on him a notice specifying the relevant part of the holding; and
  - (b) subject to the following provisions of this section, the notice shall have effect so as to require subsections (3) and (4) of section 27 above to be construed in relation to the holding as if the references in subsection (4) to use on the holding were references to use on the part of the holding specified in the notice.
- (3) Where a notice is served under subsection (2) above and the occupier objects to the notice on the grounds—
  - (a) that he is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on every part of the holding; or

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- (b) that he is so entitled to abstract water for use on a larger part of the holding than that specified in the notice,  
 he may, within such period (not being less than twenty-eight days from the date of service of the notice) and in such manner as may be prescribed, appeal to the court against the notice.
- (4) On any appeal under subsection (3) above, the court shall determine the matter in dispute and, in accordance with its decision, confirm, quash or vary the Authority's notice and—
- (a) where the court quashes a notice served under subsection (2) above, paragraph (b) of that subsection shall not have effect; and
- (b) where the court varies such a notice, that paragraph shall have effect, but with the substitution, for the reference to the part of the holding specified in the notice, of a reference to the part specified in the notice as varied by the court.
- (5) In this section—
- “the court” means the county court for the district in which the holding, or the part of the holding which is contiguous to the inland waters in question, is situated; and
- “entitled” (except in subsection (1) above) means entitled apart from this Chapter or any other statutory provision.

## **29 Rights to abstract for drainage purposes etc.**

- (1) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in the course of, or resulting from, any operations for purposes of land drainage.
- (2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within subsection (1) above) is necessary—
- (a) to prevent interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface); or
- (b) to prevent damage to works resulting from any such operations.
- (3) Where—
- (a) water is abstracted, in the course of any such operations as are mentioned in subsection (2) above, from any excavation into underground strata in a case in which the level of water in the underground strata depends wholly or mainly on water entering it from those strata; and
- (b) the abstraction is necessary as mentioned in that subsection,  
 the exemption conferred by that subsection shall apply notwithstanding that the water is used for the purposes of the operations.
- (4) In the case of any abstraction of water from underground strata which falls within subsection (1) or (2) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
- (b) to the installation or modification of machinery or other apparatus,  
 if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.

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- (5) In this section, “land drainage” includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea, and also includes warping and irrigation other than spray irrigation.

### **30 Notices with respect to borings not requiring licences.**

- (1) Where any person—
- (a) proposes to construct a well, borehole or other work which is to be used solely for the purpose of abstracting, to the extent necessary to prevent interference with the carrying out or operation of any underground works, water contained in underground strata; or
  - (b) proposes to extend any such well, borehole or other work,
- he shall, before he begins to construct or extend the work, give to the Authority a notice of his intention in the prescribed form.
- (2) Where a notice under subsection (1) above is given to the Authority by any person, the Authority may (subject to section 31 below) by notice to that person require him, in connection with the construction, extension or use of the work to which that person’s notice relates, to take such reasonable measures for conserving water as are specified in the notice.
- (3) The measures that may be specified in a notice under subsection (2) above shall be measures which, in the opinion of the Authority, will not interfere with the protection of the underground works in question.
- (4) Any person who contravenes subsection (1) above or fails to comply with a notice under subsection (2) above shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

### **31 Appeals against conservation notices under section 30.**

- (1) The person on whom a notice under section 30(2) above (“a conservation notice”) is served may, by notice to the Secretary of State, appeal to him against the conservation notice on either or both of the following grounds, that is to say—
- (a) that the measures required by the conservation notice are not reasonable;
  - (b) that those measures would interfere with the protection of the underground works in question.
- (2) Any notice of appeal against a conservation notice shall be served within such period (not being less than twenty-eight days from the date of service of the conservation notice) and in such manner as may be prescribed.
- (3) Before determining an appeal against a conservation notice, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the appellant and the Authority 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 appellant or the Authority to be heard with respect to the appeal.

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- (4) On an appeal against a conservation notice the Secretary of State may confirm, quash or vary the notice as he may consider appropriate.
- (5) The decision of the Secretary of State on any appeal against a conservation notice shall be final.
- (6) The Secretary of State may by regulations make provision as to the manner in which appeals against conservation notices are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.

### **32 Miscellaneous rights to abstract.**

- (1) The restriction on abstraction shall not apply to any abstraction by machinery or apparatus installed on a vessel, where the water is abstracted for use on that, or any other, vessel.
- (2) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply to the doing of anything—
  - (a) for fire-fighting purposes (within the meaning of the <sup>M5</sup>Fire Services Act 1947); or
  - (b) for the purpose of testing apparatus used for those purposes or of training or practice in the use of such apparatus.
- (3) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply—
  - (a) to any abstraction of water;
  - (b) to the construction or extension of any well, borehole or other work; or
  - (c) to the installation or modification of machinery or other apparatus,
 if the abstraction, construction, extension, installation or modification is for any of the purposes specified in subsection (4) below and takes place with the consent of the Authority and in compliance with any conditions imposed by the Authority.
- (4) The purposes mentioned in subsection (3) above are—
  - (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
  - (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work or any inland waters.

#### **Marginal Citations**

**M5** 1947 c. 41.

### **33 Power to provide for further rights to abstract.**

- (1) Any of the relevant authorities, after consultation with the other relevant authorities (if any), may apply to the Secretary of State for an order excepting any one or more sources of supply from the restriction on abstraction, on the grounds that that restriction is not needed in relation to that source of supply or, as the case may be, those sources of supply.



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- (2) An application under this section may be made in respect of—
- (a) any one or more areas of inland waters specified in the application or any class of inland waters so specified; or
  - (b) any underground strata described in the application, whether by reference to their formation or their location in relation to the surface of the land or in relation to other strata subjacent to that surface or partly in one way and partly in another;
- and an order may be made under this section accordingly.
- (3) For the purposes of this section—
- (a) the Authority is a relevant authority in relation to every source of supply; and
  - (b) a navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters is a relevant authority in relation to those inland waters.
- (4) If, in the case of any source of supply—
- (a) it appears to the Secretary of State, after consultation with the Authority, that the question whether the restriction on abstraction is needed in relation to that source of supply ought to be determined; but
  - (b) no application for an order under this section has been made,
- the Secretary of State may direct the Authority to make an application under this section in respect to that source of supply.
- (5) Schedule 6 to this Act shall have effect with respect to applications for orders under this section and with respect to the making of such orders; and the power to make any such order shall be exercisable by statutory instrument.
- (6) On the coming into force of an order under this section—
- (a) the restriction on abstraction and, in the case of any underground strata, the restriction imposed by subsection (2) of section 24 above shall cease to apply to any source of supply to which the order relates; and
  - (b) any licence granted under this Chapter which is for the time being in force shall cease to have effect in so far as it authorises abstraction from any such source of supply.

#### *Applications for a licence*

### **34 Regulations with respect to applications.**

- (1) Any application for a licence under this Chapter shall be made in such manner as may be prescribed, and shall include such particulars, and be verified by such evidence, as may be prescribed.
- (2) The Secretary of State may by regulations make provision as to the manner in which applications for the grant of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on such applications.
- (3) Without prejudice to the generality of subsection (2) above, provision shall be made by regulations under this section for securing that, in such circumstances as may be prescribed (being circumstances in which it appears to the Secretary of State that

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applications for licences under this Chapter would be of special concern to National Park planning authorities)—

- (a) notice of any such application will be given to such one or more National Park planning authorities as may be determined in accordance with the regulations; and
  - (b) the matters to which the Authority or, as the case may be, the Secretary of State is to have regard in dealing with the application will include any representations made by any such National Park planning authority within such period and in such manner as may be prescribed.
- (4) The preceding provisions of this section 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.
- (5) In this section “National Park planning authority” means a local planning authority whose area consists of, or includes, the whole or any part of a National Park.

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

**C5** S. 34 amended (*temp.*) (23.11.1995 until 31.3.1997) by 1995 c. 25, s. 78, Sch. 10 para. 34(2)(a) (with ss. 7(6), 115, 117, Sch. 8 para. 7); S.I. 1995/2950, art. 2

**35 Restrictions on persons who may make applications for abstraction licences.**

- (1) No application for a licence under this Chapter to abstract water shall be entertained unless it is made by a person entitled to make the application in accordance with the following provisions of this section.
- (2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, at the place (or, if more than one, at each of the places) at which the proposed abstractions are to be effected, either—
- (a) he is the occupier of land contiguous to the inland waters; or
  - (b) he satisfies the Authority that he has, or at the time when the proposed licence is to take effect will have, a right of access to such land.
- (3) In relation to abstractions from underground strata, a person shall be entitled to make the application if either—
- (a) he is the occupier of land consisting of or comprising those underground strata; or
  - (b) the following two conditions are satisfied, that is to say—
    - (i) the case is one in which water contained in an excavation into underground strata is to be treated as water contained in those strata by virtue of the level of water in the excavation depending wholly or mainly on water entering it from those strata; and
    - (ii) that person satisfies the Authority that he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of, or comprising, those underground strata.
- (4) Any reference in this section to a person who is the occupier of land of any description—

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- (a) includes a reference to a person who satisfies the Authority that he has entered into negotiations for the acquisition of an interest in land of that description such that, if the interest is acquired by him, he will be entitled to occupy that land; and
  - (b) without prejudice to the application of paragraph (a) above to a person who is or can be authorised to acquire land compulsorily, also includes any person who satisfies the Authority that by virtue of any enactment, the compulsory acquisition by that person of land of that description either has been authorised or can be authorised and has been initiated.
- (5) In subsection (4) above the reference to initiating the compulsory acquisition of land by a person is a reference to—
- (a) the submission to the relevant Minister of a draft of an order which, if made by that Minister in the form of the draft, will authorise that person to acquire that land compulsorily, with or without other land; or
  - (b) the submission to the relevant Minister of an order which, if confirmed by that Minister as submitted will authorise that person to acquire that land compulsorily, with or without other land.
- (6) In subsection (5) above “the relevant Minister”, in relation to the compulsory acquisition of land by any person, means the Minister who, in accordance with the enactment mentioned in subsection (4)(b) above, is empowered to authorise that person to acquire land compulsorily.

### **36 Application for combined abstraction and impounding licence.**

Where a licence under this Chapter is required by virtue of section 25 above for constructing or altering impounding works at a point in any inland waters, for the purpose of abstracting water from those waters at or near that point—

- (a) an application may be made to the Authority for a combined licence under this Chapter to obstruct or impede the flow of those inland waters by means of impounding works at that point and to abstract the water; and
- (b) the Authority shall have power (subject to the provisions of this Chapter as to procedure and as to the matters to be taken into account in dealing with applications for licences) to grant such a licence accordingly.

### **37 Publication of application for licence.**

- (1) The Authority shall not entertain an application for a licence under this Chapter to abstract water or to obstruct or impede the flow of any inland waters by means of impounding works or for a combined licence, unless the application is accompanied—
- (a) by a copy of a notice in the prescribed form; and
  - (b) by the prescribed evidence that the necessary notices of the application have been given.
- (2) Subject to subsection (3) below, the necessary notices of an application have been given for the purposes of subsection (1) above if—
- (a) the notice mentioned in paragraph (a) of that subsection has been published—
    - (i) in the London Gazette; and
    - (ii) at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality;

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and

- (b) a copy of that notice has been served, not later than the date on which it was first published as mentioned in paragraph (a)(ii) above—
  - (i) on any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at a proposed point of abstraction or impounding;
  - (ii) on the drainage board for any internal drainage district within which any such proposed point is situated; and
  - (iii) on any water undertaker within whose area any such proposed point is situated.
- (3) Where the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters, the giving of the necessary notices shall not for the purposes of subsection (1) above require the service of any copy of the notice mentioned in paragraph (a) of that subsection on any navigation authority, harbour authority, conservancy authority or drainage board.
- (4) A notice for the purposes of the preceding provisions of this section, in addition to containing any other matters required to be contained in that notice, shall—
  - (a) name a place within the relevant locality where a copy of the application, and of any map, plan or other document submitted with it, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (5) below; and
  - (b) state that any person may make representations in writing to the Authority with respect to the application at any time before the end of that period.
- (5) The period specified in a notice for the purposes of the preceding provisions of this section shall be a period which—
  - (a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and
  - (b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.
- (6) Where—
  - (a) an application for a licence under this Chapter to abstract water is made to the Authority; and
  - (b) the application proposes that the quantity of water abstracted in pursuance of the licence should not in any period of twenty-four hours exceed, in aggregate, twenty cubic metres or any lesser amount specified in the application,
 the Authority may dispense with the requirements imposed by virtue of the preceding provisions of this section if and to the extent that it appears to the Authority appropriate to do so.
- (7) In this section—
  - “proposed point of abstraction or impounding”, in relation to any application for a licence under this Chapter, means a place where a licence, if granted in accordance with the application, would authorise water to be abstracted or, as the case may be, would authorise inland waters to be obstructed or impeded by means of impounding works; and
  - “relevant locality”, in relation to an application for a licence under this Act, means the locality in which any proposed point of abstraction or impounding is situated.

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### *Consideration of licence applications*

#### **38 General consideration of applications.**

- (1) The Authority shall not determine any application for a licence under this Chapter before the end of the period specified for the purposes of the application in accordance with section 37(5) above.
- (2) Subject to the following provisions of this Chapter, on any application to the Authority for a licence under this Chapter, the Authority—
  - (a) may grant a licence containing such provisions as the Authority considers appropriate; or
  - (b) if, having regard to the provisions of this Chapter, the Authority considers it necessary or expedient to do so, may refuse to grant a licence.
- (3) Without prejudice to section 39(1) below, the Authority, in dealing with any application for a licence under this Chapter, shall have regard to—
  - (a) any representations in writing relating to the application which are received by the Authority before the end of the period mentioned in subsection (1) above; and
  - (b) the requirements of the applicant, in so far as they appear to the Authority to be reasonable requirements.

#### **39 Obligation to have regard to existing rights and privileges.**

- (1) The Authority shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—
  - (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 any rights which, at the time when the application is determined by the Authority, are protected rights for the purposes of this Chapter.
- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the Authority, in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.
- (3) For the purposes of this Chapter a right is a protected right if it is such a right as a person is taken to have by virtue of section 27(6) above or section 48(1) below; and any reference in this Chapter to the person entitled to such a right shall be construed accordingly.
- (4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—
  - (a) abstracting water; or
  - (b) so obstructing or impeding the flow of any such waters,in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in section 27(6) above or, as the case may be, section 48(1) below.

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- (5) For the purposes of subsection (2) above the Authority shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—
- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
  - (b) that decision has not been quashed or reversed.

#### **40 Obligation to take river flow etc. into account.**

- (1) Without prejudice to sections 38(3) and 39(1) above, subsection (2) or, as the case may be, subsection (3) below shall apply where any application for a licence under this Chapter relates to abstraction from any inland waters or to obstructing or impeding the flow of any inland waters by means of impounding works.
- (2) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time when no minimum acceptable flow for the inland waters in question has been determined under Chapter I of this Part, the Authority, in dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.
- (3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined under Chapter I of this Part, the Authority, in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—
  - (a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or
  - (b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.
- (4) Without prejudice to sections 38(3) and 39(1) above, where—
  - (a) an application for a licence under this Chapter relates to abstraction from underground strata; and
  - (b) it appears to the Authority that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor waters comprised in an order under section 33 above,
 subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

#### *Call-in of applications*

#### **41 Secretary of State's power to call in applications**

- (1) The Secretary of State may give directions to the Authority requiring applications for licences under this Chapter to be referred to him, instead of being dealt with by the Authority.
- (2) A direction under this section—
  - (a) may relate either to a particular application or to applications of a class specified in the direction; and

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- (b) may except from the operation of the direction such classes of applications as may be specified in the direction in such circumstances as may be so specified.

## **42 Consideration of called-in applications.**

- (1) Subject to the following provisions of this section and to section 46 below, the Secretary of State, on considering a called-in application—
  - (a) may determine that a licence shall be granted containing such provisions as he considers appropriate; or
  - (b) if, having regard to the provisions of this Act, he considers it necessary or expedient to do so, may determine that no licence shall be granted.
- (2) Before determining a called-in application, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or
  - (b) afford to the applicant and the Authority 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 or the Authority to be heard with respect to the application.
- (3) The provisions of sections 37, 38(1) and (3), 39(2) and 40 above shall apply in relation to any called-in application as if—
  - (a) any reference in those provisions to the Authority, except the references in sections 37(4)(b) and (6)(a) and 38(3)(a), were a reference to the Secretary of State; and
  - (b) any reference to section 39(1) above were a reference to subsection (4) below.
- (4) In determining any called-in application and, in particular, in determining what (if any) direction to give under subsection (5) below, the Secretary of State shall consider whether any such direction would require the grant of a licence which would so authorise—
  - (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 in question is given, are protected rights for the purposes of this Chapter.
- (5) Where the decision of the Secretary of State on a called-in application is that a licence is to be granted, the decision shall include a direction to the Authority to grant a licence containing such provisions as may be specified in the direction.
- (6) The decision of the Secretary of State on any called-in application shall be final.
- (7) In this section “called-in application” means an application referred to the Secretary of State in accordance with directions under section 41 above.

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*Appeals with respect to decisions on licence applications*

**43 Appeals to the Secretary of State.**

- (1) Where an application has been made to the Authority for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—
  - (a) the applicant is dissatisfied with the decision of the Authority on the application; or
  - (b) the Authority fails within the period specified in subsection (2) below to give to the applicant either—
    - (i) notice of the Authority’s decision on the application; or
    - (ii) notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.
- (2) The period mentioned in subsection (1)(b) above is—
  - (a) except in a case falling within paragraph (b) below, such period as may be prescribed; and
  - (b) where an extended period is at any time agreed in writing between the applicant and the Authority, the extended period.
- (3) A notice of appeal under this section shall be served—
  - (a) in such manner as may be prescribed; and
  - (b) within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
    - (i) the date on which the decision to which it relates was notified to the applicant; or
    - (ii) the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.
- (4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the Authority.
- (5) Where any representations in writing with respect to an application were made within the period specified for the purposes of the application in accordance with section 37(5) above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the Authority to serve a copy of the notice of appeal on each of the persons who made those representations.

**44 Determination of appeals.**

- (1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—
  - (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the Authority, 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 instance; and for the purposes of this section an appeal by virtue of section 43(1)(b) above shall be taken to be an appeal against a refusal of the application.
- (2) Before determining an appeal under section 43 above, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or



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- (b) afford to the applicant and the Authority 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 or the Authority to be heard with respect to the appeal.
- (3) The Secretary of State, in determining an appeal under section 43 above, shall take into account—
- (a) any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and
- (b) the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.
- (4) In determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—
- (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 in question is given, are protected rights for the purposes of this Chapter.
- (5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—
- (a) any reference in those provisions to the Authority, were a reference to the Secretary of State; and
- (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.
- (6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the Authority, as the case may be—
- (a) to grant a licence containing such provisions as may be specified in the direction;
- (b) to vary the licence so as to contain such provisions as may be so specified; or
- (c) to revoke the licence.
- (7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

#### **45 Regulations with respect to appeals.**

- (1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for

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licences under this Chapter would be of special concern to National Park planning authorities)—

- (a) notice of any appeal against the decision on such an application, will be served on any National Park planning authority who made representations falling within paragraph (b) of section 34(3) above; and
  - (b) the Secretary of State, in determining the appeal, will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.
- (3) Subsections (4) and (5) of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

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

**C6** S. 45 amended (*temp.*) (23.11.1995 until 31.3.1997) by 1995 c. 25, s. 78, Sch. 10 para. 34(2)(a) (with ss. 7(6), 115, 117, **Sch. 8 para. 7**); S.I. 1995/2950, **art. 2**

*Form, contents and effect of licences*

**46 Form and contents of licences.**

- (1) The Secretary of State may by regulations make provision as to the form of licences under this Chapter or of any class of such licences; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter.
- (2) Every licence under this Chapter to abstract water shall make—
  - (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Chapter; and
  - (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.
- (3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.
- (4) Every licence under this Chapter to abstract water, except a licence granted to the Authority, to a water undertaker or sewerage undertaker or to any person (not being a water undertaker) who proposes to abstract the water for the purpose of supplying it to others shall also specify the land on which, and the purposes for which, water abstracted in pursuance of the licence is to be used.
- (5) Every licence under this Chapter to abstract water shall state whether the licence is to remain in force until revoked or is to expire at a time specified in the licence.
- (6) Different provision may be made by the same licence with respect to any one or more of the following matters, that is to say—

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- (a) the abstraction of water during different periods;
- (b) the abstraction of water from the same source of supply but at different points or by different means;
- (c) the abstraction of water for use for different purposes;

and any such provision as is mentioned in subsection (2) above may be made separately in relation to each of the matters for which (in accordance with this subsection) different provision is made in the licence.

- (7) Nothing in subsection (6) above shall be construed as preventing two or more licences from being granted to the same person to be held concurrently in respect of the same source of supply, if the licences authorise the abstraction of water at different points or by different means.

#### **47 Holders of licence.**

- (1) Every licence under this Chapter to abstract water shall specify the person to whom the licence is granted.
- (2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters and, in the case of a licence to obstruct or impede any inland waters, no other person is the holder of the licence for the purposes of this Act.
- (3) This section has effect subject to sections 49, 50 and 67 below and to any power under this Chapter to vary licences.

#### **48 General effect of licence.**

- (1) For the purposes of this Chapter a person who is for the time being the holder of a licence under this Chapter to abstract water shall be taken to have a right to abstract water to the extent authorised by the licence and in accordance with the provisions contained in it.
- (2) In any action brought against a person in respect of the abstraction of water from a source of supply, it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—
  - (a) that the water was abstracted in pursuance of a licence under this Chapter; and
  - (b) that the provisions of the licence were complied with.
- (3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—
  - (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
  - (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
  - (c) that the other requirements of the licence (if any) were complied with.
- (4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

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### *Succession to licences*

#### **49 Succession to licences to abstract where person ceases to occupy the relevant land.**

- (1) This section applies to a case where the holder of a licence under this Chapter to abstract water (“the prior holder”) is the occupier of the whole of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used (“the relevant land”).
- (2) If—
  - (a) the prior holder dies or, by reason of any other act or event, ceases to be the occupier of the whole of the relevant land and does not continue to be the occupier of any part of that land; and
  - (b) either immediately after the death of the prior holder or the occurrence of that other act or event or subsequently, another person (“the successor”) becomes the occupier of the whole of the relevant land,

the prior holder shall cease (if he would not otherwise do so) to be the holder of the licence and the successor shall become the holder of the licence.
- (3) Where the successor becomes the holder of a licence under subsection (2) above, he shall cease to be the holder of the licence at the end of the period of fifteen months beginning with the date on which he became the occupier of the relevant land unless before the end of that period he has given to the Authority notice of the change in the occupation of the relevant land.
- (4) Where any person who becomes the holder of a licence by virtue of the provisions of this section gives notice to the Authority in accordance with those provisions, the Authority shall vary the licence accordingly.
- (5) Where, by virtue of the provisions of this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.
- (6) The preceding provisions of this section shall have effect without prejudice to any power to revoke or vary licences under this Chapter or to the powers conferred by section 50 below.

#### **50 Succession where person becomes occupier of part of the relevant land.**

- (1) The Secretary of State may by regulations make provision, in relation to [F<sup>1</sup>cases in which the holder of a licence under this Chapter to abstract water (“the prior holder”) is the occupier of the whole or part of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used (“the relevant land”)], for conferring succession rights, in such circumstances as may be specified in the regulations, on a person who becomes the occupier of part of the relevant land after—
  - (a) the death of the prior holder; or
  - (b) the occurrence of any other act or event whereby the prior holder ceases to be the occupier of the relevant land or of part of that land.
- (2) For the purposes of subsection (1) above succession rights are—
  - (a) a right to become the holder of the licence, subject to provisions corresponding to subsection (3) of section 49 above; or

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- (b) a right to apply for, and to the grant of, a new licence containing provisions (as to quantities of water and otherwise) determined, in accordance with the regulations made by the Secretary of State, by reference to the provisions of the original licence.
- (3) The Secretary of State may by regulations make provision for conferring on the prior holder, where he—
- (a) continues to be the occupier of part of the relevant land; but
- (b) ceases to be the occupier of another part of that land,
- a right, in such circumstances as may be specified in the regulations, to apply for, and to the grant of, a new licence containing such provisions as are mentioned in subsection (2)(b) above.
- (4) Regulations under this section may provide that the provisions of this Chapter shall have effect in relation—
- (a) to an application for a licence made by virtue of the regulations; or
- (b) to a person entitled to make such an application,
- subject to such modifications as may be specified in the regulations.
- (5) Where any person who becomes the holder of a licence by virtue of the provisions of any regulations under this section gives notice to the Authority in accordance with those provisions, the Authority shall vary the licence accordingly.
- (6) Where, by virtue of the provisions of any regulations under this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.
- (7) The preceding provisions of this section shall have effect without prejudice to the exercise of any power to revoke or vary licences under this Chapter.

#### **Textual Amendments**

- F1** Words in s. 50(1) substituted (retrospective to 1.12.1991) by 1995 c. 25, ss. 120(1), 125(3), Sch. 22 para. 135 (with ss. 7(6), 115, 117)

#### *Modification of licences*

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

- (1) The holder of a licence under this Chapter may apply to the Authority to revoke the licence and, on any such application, the Authority shall revoke the licence accordingly.
- (2) The holder of a licence under this Chapter may apply to the Authority to vary the licence.
- (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.

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- (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.

## **52 Proposals for modification at instance of the Authority or Secretary of State.**

- (1) Where it appears to the Authority that a licence under this Chapter should be revoked or varied, the Authority may formulate proposals for revoking or varying 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 Authority under subsection (1) above,
 the Secretary of State may, as he may consider appropriate in the circumstances, give the Authority a direction under subsection (3) below.
- (3) A direction under this subsection may—
  - (a) direct the Authority to formulate proposals for revoking the licence in question; or
  - (b) direct the Authority 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
  - (b) be published in the London Gazette and, at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality.
- (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 otherwise than in the London Gazette, 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.
- (6) A notice for the purposes of subsection (4) above, in addition to any other matters required to be contained in that notice, shall—
  - (a) name a place within the relevant locality where a copy of the proposals, and of any map, plan or other document prepared in connection with them, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (7) below; and

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- (b) state that, at any time before the end of that period—
  - (i) the holder of the licence may give notice in writing to the Authority objecting to the proposals; and
  - (ii) any other person may make representations in writing to the Authority with respect to the proposals.
- (7) The period specified in a notice for the purposes of subsection (6) above shall be a period which—
  - (a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and
  - (b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.
- (8) In this section “the relevant locality” means the locality in which the place or places where the licence authorises water to be abstracted or impounded is or are situated.

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

- (1) Subject to the following provisions of this section, where the Authority 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 Authority 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 Authority before the end of the period mentioned in subsection (2) above, the Authority may proceed with the proposals.
- (4) If the holder of the licence gives notice to the Authority objecting to the proposals before the end of the period mentioned in subsection (2) above, the Authority shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the Authority 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 Authority in proceeding with the proposals as they apply to the action of the Authority in dealing with an application for a licence.

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

- (1) Where any proposals of the Authority 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

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- (c) any representations in writing relating to the proposals which were received by the Authority 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 Authority 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 Authority 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—
- (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 Authority 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 Authority 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.

## **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.



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*Status: Point in time view as at 01/12/1991.*

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

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- (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
  - (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 Authority 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.

## **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 Authority 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 Authority 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 Authority to be heard with respect to the proposals.

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*Status: Point in time view as at 01/12/1991.*

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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 Authority.
- (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 Authority 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.

## **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 Authority that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) Subject to subsections (3) and (4) below, where this section applies the Authority 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 Authority shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the Authority that such abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor inland waters comprised in an order under section 33 above.

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- (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 Authority, are not far distant from each other—
  - (a) the Authority 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 Authority 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.

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

C7 S. 57 modified (18.5.1992) by S.I. 1992/1096, art.4

C8 S. 57(1)(2)(4) modified (18.5.1992) by S.I. 1992/1096, arts. 3, 4, Sch.

**58 Revocation of licence for non-payment of charges.**

- (1) If the charges payable in respect of a licence under this Chapter are not paid within twenty-eight days after notice demanding them has been served on the holder of the licence, the Authority may revoke the licence by the service of a notice of revocation on the holder of the licence.
- (2) A notice demanding the payment of any charges which is served for the purposes of subsection (1) above shall—
  - (a) state that the licence in question may be revoked if the charges are not paid within twenty-eight days after the service of the notice;
  - (b) set out the effect of revocation; and
  - (c) state that no compensation is payable in respect of a revocation under this section.
- (3) Revocation of a licence under this section—
  - (a) shall take effect at such time, not being a time before the end of the period of twenty-eight days after notice of revocation is served on the holder of the licence, as may be specified in that notice; and
  - (b) shall so take effect only if the charges in question are not paid before that time.
- (4) A notice of revocation served under this section shall—
  - (a) set out the reason for the revocation; and
  - (b) state that the revocation will take effect only if the charges in question are not paid before the time specified in the notice.

**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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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.

*Remedies and compensation in respect of infringement of protected rights etc.*

## **60 Liability of the Authority for derogation from protected right.**

- (1) A breach of the duty imposed by subsection (1) of section 39 above (including that duty as applied by section 51(3) or 53(5) above) shall neither invalidate the grant or variation of a licence nor be enforceable by any criminal proceedings, by prohibition or injunction or by action against any person other than the Authority.
- (2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the Authority for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the Authority is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—
- (a) the grant or variation of the licence shall, as between the Authority and the person entitled to those rights, have effect as a breach on the part of the Authority of a statutory duty not to authorise derogation from those rights; and
  - (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.
- (4) Subsection (3) above shall be without prejudice to the duty of the Authority, to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.
- (5) In any action brought against the Authority in pursuance of this section it shall be a defence for the Authority to show that the fact, as the case may be—
- (a) that the abstraction of water authorised by the licence, as granted or varied by the Authority, derogated from the plaintiff's protected right; or
  - (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff's protected right,
- 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 Authority.
- (6) This section has effect subject to the provision made by Schedule 7 to this Act.
- (7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—
- (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 of the authorisation, are protected rights for the purposes of this Chapter.

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## **61 Compensation where licence modified on direction of the Secretary of State.**

- (1) Where a licence is revoked or varied in pursuance of a direction under section 54 or 55 above and it is shown that the holder of the licence—
  - (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or variation; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or variation,the Authority shall pay him compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to any work, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) above and to Schedule 7 to this Act, no compensation shall be paid under this section—
  - (a) in respect of any work carried out before the grant of the licence which is revoked or varied; or
  - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (4) No compensation shall be payable under this section in respect of a licence to abstract water, if it is shown that no water was abstracted in pursuance of the licence during the period of seven years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the <sup>M6</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with subsection (6) above, is subject to a mortgage—
  - (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);
  - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

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### Marginal Citations

M6 1961 c. 33.

## 62 Compensation for owner of fishing rights applying under section 55.

- (1) Where a licence is revoked or varied on an application under section 55 above, the applicant shall be entitled to compensation from the Authority in respect of the loss or damage which he has sustained as mentioned in subsection (3) of that section.
- (2) Where, on an application under section 55 above for the revocation or variation of a licence, the Secretary of State determines—
  - (a) that the grounds of the application (as mentioned in subsection (3) of that section) have been established to his satisfaction; but
  - (b) that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly for the purposes of the following provisions of this section.
- (3) Unless within the period of six months from the date on which a certificate under subsection (2) above is granted either—
  - (a) notice to treat for the acquisition of the fishing rights of the applicant, or of an interest in land which includes those rights, has been served by the Authority; or
  - (b) an offer has been made by the Authority to the owner of those rights to acquire them on compulsory purchase terms or, where the rights subsist only as rights included in an interest in land, to acquire that interest on such terms, the owner of the fishing rights shall be entitled to compensation from the Authority.
- (4) The amount of the compensation payable under subsection (3) above in respect of any fishing rights shall be the amount by which—
  - (a) the value of those rights; or
  - (b) where they subsist only as rights included in an interest in land, the value of that interest, is depreciated by the operation of section 48(2) above in relation to the licence to which the application related.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the<sup>M7</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purposes of this section a right or interest is acquired on compulsory purchase terms if it is acquired on terms that the price payable shall be equal to and shall, in default of agreement, be determined in like manner as the compensation which would be payable in respect thereof if the right or interest were acquired compulsorily by the Authority.
- (7) Where—
  - (a) the Secretary of State, on an application under section 55 above, determines that the licence to which the application relates shall not be revoked or varied and grants a certificate under subsection (2) above; and

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- (b) notice to treat for the acquisition of the fishing rights to which the application related, or of an interest in land in which those rights are included, has been served by the Authority within the period of six months from the date on which that certificate is granted,

then, for the purpose of assessing compensation in respect of any compulsory acquisition in pursuance of that notice to treat, no account shall be taken of any depreciation of the value of the fishing rights, or of the interest in question, which is applicable to the operation, in relation to that licence, of section 48(2) above.

- (8) Subsections (5) and (6) of section 55 above shall apply for construing references in this section to fishing rights or to rights included in an interest in land as they have effect for construing such references in that section.

#### Marginal Citations

M7 1961 c. 33.

### 63 Secretary of State to indemnify Authority in certain cases.

- (1) Where—

(a) the Authority is liable under section 60 above to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Secretary of State; and

(b) the Authority pay to that person any sum in satisfaction of that liability,

then, whether an action for recovery of those damages has been brought or not, the Secretary of State may, if he thinks fit, pay to the Authority the whole or such part as he considers appropriate of the relevant amount.

- (2) If—

(a) proposals for revoking or varying the licence, in a case falling within subsection (1) above, are formulated by the Authority, or an application with respect to any licence is made under section 55 above;

(b) in consequence of those proposals or that application, the licence is revoked or varied; and

(c) compensation in respect of the revocation or variation is payable by the Authority under section 61 above,

the Secretary of State may, if he thinks fit, pay to the Authority the whole or such part as he considers appropriate of the relevant amount.

- (3) Where—

(a) the Secretary of State determines under section 55 above—

(i) that a licence granted in compliance with a direction given by the Secretary of State shall be revoked or varied; or

(ii) that a licence shall not be revoked or varied;

and

(b) in consequence of that determination, compensation is payable by the Authority under section 62 above,

the Secretary of State may, if he thinks fit, pay to the Authority the whole or such part as he considers appropriate of the relevant amount.

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

- (4) In this section “the relevant amount” means—
- (a) for the purposes of subsection (1) above, the amount of the sum paid by the Authority and, if an action has been brought against the Authority in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the Authority in connection with the action (including any costs of the plaintiff which the Authority was required to pay); and
  - (b) for the purposes of subsections (2) and (3) above, the amount of the compensation and, if any question relating to that compensation is referred to the Lands Tribunal, the amount of any costs reasonably incurred by the Authority in connection with that reference (including any costs of the claimant which the Authority is required to pay).

*Supplemental provisions of Chapter II*

**64 Abstracting and impounding by the Authority.**

- (1) The provisions of this Chapter shall have effect—
- (a) in relation to the abstraction of water by the Authority from sources of supply; and
  - (b) in relation to the construction or alteration by the Authority of impounding works,
- subject to such exceptions and modifications as may be prescribed.
- (2) Regulations under this section may, in particular, provide for securing—
- (a) that any licence required by the Authority in relation to the matters mentioned in subsection (1) above shall be granted (or be deemed to be granted) by the Secretary of State, and not be granted by the Authority;
  - (b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the Authority shall be deemed to be granted by the Secretary of State unless the Secretary of State requires an application for the licence to be made to him by the Authority; and
  - (c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the Authority shall give such notice of that fact as may be prescribed.
- (3) Without prejudice to the preceding provisions of this section, section 52 above shall not apply in relation to any licence which by virtue of any regulations under this section is granted or deemed to have been granted by the Secretary of State, except in accordance with regulations under this section.

**65 Licences of right.**

Schedule 7 to this Act shall have effect for the purposes of giving effect to provisions conferring an entitlement to licences under this Chapter and with respect to licences granted in pursuance of that entitlement or the entitlement conferred by section 33 of the <sup>M8</sup>Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the <sup>M9</sup>Water Act 1989.

**Marginal Citations**

**M8** 1963 c. 38.



*Status: Point in time view as at 01/12/1991.*

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

M9 1989 c. 15.

## 66 Inland waters owned or managed by British Waterways Board.

- (1) This section applies to all inland waters owned or managed by the British Waterways Board (“the Board”), except any such inland waters to which the Secretary of State may by order made by statutory instrument direct that this section shall not apply.
- (2) In respect of abstraction from any inland waters to which this section applies—
  - (a) no person other than the Board or a person authorised for the purpose by the Board may be given a consent for the purposes of section 27(2) above;
  - (b) no person other than the Board shall be entitled to apply for a licence under this Chapter;
  - (c) in relation to any application by the Board for a licence under this Chapter—
    - (i) section 35 above shall not apply; and
    - (ii) section 37 above shall apply as if subsection (1) of that section did not require the service of any copy of the notice mentioned in paragraph (a) of that subsection on any navigation authority, harbour authority, conservancy authority or drainage board.
- (3) Before making an order under subsection (1) above, the Secretary of State shall consult the Board and the Authority.

## 67 Ecclesiastical property.

- (1) Where the relevant land belongs to a benefice—
  - (a) an application for a licence under this Chapter may be made by the Church Commissioners if the benefice is for the time being vacant; and
  - (b) any reference in this Chapter to the applicant for a licence shall be construed—
    - (i) in relation to any time when the benefice in question is vacant, as a reference to the Church Commissioners; and
    - (ii) in relation to any time when there is an incumbent of the benefice, as a reference to that incumbent.
- (2) Where the relevant land belongs to a benefice, any licence under this Chapter shall provide that (notwithstanding anything in the preceding provisions of this Chapter) whoever is for the time being the incumbent of the benefice shall be the holder of the licence.
- (3) Where a licence under this Chapter provides as mentioned in subsection (2) above—
  - (a) the licence shall not be required to specify the person to whom the licence is granted; and
  - (b) the licence shall be deemed to be held by the Church Commissioners at any time when the benefice in question is vacant.
- (4) So much of any compensation falling to be paid under this Chapter as is payable—
  - (a) in respect of damage to land which is ecclesiastical property and to the owner of the fee simple in the land; or
  - (b) in respect of depreciation of the value of the fee simple in land which is ecclesiastical property,

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shall be paid (where the fee simple is vested in any person other than the Church Commissioners) to them, instead of to the person in whom the fee simple is vested.

(5) Any sums paid under subsection (4) above to the Church Commissioners with reference to any land shall—

- (a) if the land is not consecrated, be applied by them for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; and
- (b) if the land is consecrated, be applied by them in such manner as they may determine.

(6) Where—

- (a) the Church Commissioners are required, by virtue of subsection (3)(b) above, to pay any fee or other charge in respect of a licence under this Chapter; and
- (b) any moneys are then payable by the Commissioners to the incumbent of the benefice in question or subsequently become so payable,

the Commissioners shall be entitled to retain out of those moneys an amount not exceeding the amount of that fee or other charge.

(7) Where under any provision of this Chapter a document is required to be served on an owner of land and the land is ecclesiastical property, a copy of the document shall be served on the Church Commissioners.

(8) In this section —

“benefice” means an ecclesiastical benefice of the Church of England;

“ecclesiastical property” means land which—

- (a) belongs to a benefice;
- (b) is or forms part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject; or
- (c) is or forms part of a burial ground so subject;

and

“the relevant land”, in relation to a licence under this Chapter or an application for such a licence, means—

- (a) the land on which water abstracted in pursuance of the licence is to be, or is proposed to be, used; or
- (b) in the case of a licence for the purposes of section 25 above or an application for such a licence—
  - (i) the land on which any part of the impounding works is to be, or is proposed to be, constructed; or
  - (ii) in relation to an alteration of impounding works, the land on which any part of those works is situated or is to be, or is proposed to be, situated.

## **68 Provision for appeals and references to tribunal.**

(1) The Secretary of State may by order make provision for securing that, in such cases or classes of cases as may be specified in or determined under the order, appeals and references which in accordance with the provisions of this Chapter would, apart from the order, be appeals or references to the Secretary of State shall lie to a tribunal

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established in accordance with the provisions of the order, instead of being appeals or references to the Secretary of State.

- (2) An order under this section shall not apply to references in pursuance of directions under section 41 above.
- (3) The provisions of this Chapter relating to appeals or references to which an order under this section applies shall have effect, subject to such modifications as may be specified in the order, as they would have effect in relation to the like appeals or references if made to the Secretary of State.
- (4) Provision may be made by an order under this section for appeals or references to the tribunal to be heard and determined by one or more members of the tribunal.
- (5) If a tribunal is established in accordance with this section, the Secretary of State may pay to the members of the tribunal such remuneration, whether by way of salaries or by way of fees, and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as the Treasury may determine.
- (6) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## **69 Validity of decisions of Secretary of State and related proceedings.**

- (1) Except as provided by the following provisions of this section, the validity of a decision of the Secretary of State on—
  - (a) any appeal to the Secretary of State under this Chapter; or
  - (b) any reference to the Secretary of State in pursuance of a direction under section 41 above or in pursuance of section 53(4) above,shall not be questioned in any legal proceedings whatsoever.
- (2) If, in the case of any such appeal or reference, the Authority or the other party desires to question the validity of the decision of the Secretary of State on the grounds—
  - (a) that the decision is not within the powers of this Act; or
  - (b) that any of the requirements of, or of any regulations made under, this Chapter which are applicable to the appeal or reference have not been complied with,the Authority or, as the case may be, the other party may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this section.
- (3) On any application under this section, the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.
- (4) If the High Court is satisfied, on an application under this section—
  - (a) that the decision to which the application relates is not within the powers of this Act; or
  - (b) that the interests of the person making the application under this section have been substantially prejudiced by a failure to comply with any of the requirements mentioned in subsection (2)(b) above,the High Court may quash the decision.

*Status: Point in time view as at 01/12/1991.*

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

- (5) If an order is made establishing a tribunal under section 68 above, the preceding provisions of this section shall have effect in relation to any appeal or reference to that tribunal as they have effect in relation to an appeal or reference to the Secretary of State.
- (6) In this section—
- “decision” includes a direction; and
  - “other party” —
    - (a) in relation to an appeal, means the appellant;
    - (b) in relation to a reference in pursuance of a direction under section 41 above, means the applicant for the licence or, where that section applies by virtue of section 51(3) above, for the revocation or variation; and
    - (c) in relation to a reference in pursuance of section 53(4) above, means (subject, without prejudice to their application to the other provisions of this Chapter, to subsections (6) and (7) of section 25 above) the holder of the licence.

## 70 Civil liability under Chapter II.

Except in so far as this Act otherwise expressly provides and subject to the provisions of section 18 of the <sup>M10</sup>Interpretation Act 1978 (which relates to offences under two or more laws), the restrictions imposed by sections 24, 25 and 30 above shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of those restrictions;
- (b) affecting any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act; or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

### Marginal Citations

M10 1978 c. 30.

## 71 Modification of local enactments.

- (1) If it appears to the Secretary of State by whom an order is made under a provision of this Chapter to which this section applies that any local enactment passed or made before the relevant date—
- (a) is inconsistent with any of the provisions of that order; or
  - (b) requires to be amended or adapted, having regard to any of the provisions of that order,
- the Secretary of State may by order repeal, amend or adapt that enactment to such extent, or in such manner, as he may consider appropriate.
- (2) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient.

*Status: Point in time view as at 01/12/1991.*

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

- (3) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section applies to the following provisions of this Chapter, that is to say, sections 33, 66, 68 and 72(5).
- (5) In this section—
- “local enactment” means—
- (a) a local or private Act;
  - (b) a public general Act relating to London;
  - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
  - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme;
- “relevant date” means the date which was the second appointed day for the purposes of section 133 of the <sup>M11</sup>Water Resources Act 1963.
- (6) The provisions of this section shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

**Marginal Citations**

M11 1963 c. 38.

## 72 Interpretation of Chapter II.

- (1) In this Chapter—
- “derogate”, in relation to a protected right, shall be construed in accordance with section 39(4) above;
- “flow” shall be construed subject to section 23(3) above;
- “impounding works” has the meaning given by section 25(8) above;
- “licence”, in relation to the variation or revocation of a licence, shall be construed subject to section 25(6) and (7) above;
- “protected right” shall be construed in accordance with section 39(3) above;
- “the restriction on abstraction” means the restriction imposed by section 24(1) above;
- “the restriction on impounding works” means the restriction imposed by section 25(1) above;
- “spray irrigation” means (subject to subsection (5) below) the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray; and
- “statutory provision” means a provision (whether of a general or special nature) which is contained in, or in any document made or issued under, any Act (whether of a general or special nature).

*Status: Point in time view as at 01/12/1991.*

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

- (2) References in this Chapter to a watercourse shall not include references—
- (a) to any sewer or part of a sewer vested in—
    - (i) a sewerage undertaker;
    - (ii) a local authority or joint planning board;
    - (iii) the Commission for the New Towns or a development corporation for a new town;
    - (iv) a harbour board within the meaning of the <sup>M12</sup>Railway and Canal Traffic Act 1888;

or
  - (b) to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.
- (3) Any reference in this Chapter to the doing of anything in pursuance of a licence under this Chapter is a reference to its being done—
- (a) by the holder of such a licence; or
  - (b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,
- at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by this Chapter.
- (4) For the purposes of this Chapter land shall be taken to be contiguous to any inland waters notwithstanding that it is separated from those waters by a towpath or by any other land used, or acquired for use, in connection with the navigation of the inland waters, unless that other land comprises any building or works other than a lock, pier, wharf, landing-stage or similar works.
- (5) The Ministers may by order direct that references to spray irrigation in this Chapter, and in any other enactments in which “spray irrigation” is given the same meaning as in this Chapter, or such of those references as may be specified in the order—
- (a) shall be construed as not including spray irrigation if carried out by such methods or in such circumstances or for such purposes as may be specified in the order; and
  - (b) without prejudice to the exercise of the power conferred by virtue of paragraph (a) above, shall be construed as including references to the carrying out, by such methods or in such circumstances or for such purposes as may be specified in the order, of irrigation of any such description, other than spray irrigation, as may be so specified.
- (6) The power of the Ministers to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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

- C9 S. 72(2)(a) applied (with modifications) (4.6.1996) by S.I. 1996/1243, art. 18, Sch. 5 Pt. II para. 6(2)  
 (a)

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**Status:** Point in time view as at 01/12/1991.

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

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**Marginal Citations**

**M12** 1888 c. 25.

**Status:**

Point in time view as at 01/12/1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Water Resources Act 1991, chapter II.