



Water Resources Act 1991

1991 CHAPTER 57

PART II

WATER RESOURCES MANAGEMENT

CHAPTER II

ABSTRACTION AND IMPOUNDING

Consideration of licence applications

38 General consideration of applications.

(1) The [^{F1}appropriate agency] shall not determine any application for a licence under this Chapter before the end of the period specified [^{F2}in the notice referred to in section 37(4)(b)] above.

[^{F3}(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—

- (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
- (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.

(1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).

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- (1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.]
- (2) Subject to the following provisions of this Chapter, on any application to the [^{F1}appropriate agency] for a licence under this Chapter, the [^{F1}appropriate agency]—
- (a) may grant a licence containing such provisions as the [^{F1}appropriate agency] considers appropriate; or
 - (b) if, having regard to the provisions of this Chapter, the [^{F1}appropriate agency] considers it necessary or expedient to do so, may refuse to grant a licence.
- (3) Without prejudice to section 39(1) below, the [^{F1}appropriate agency], in dealing with any application for a licence under this Chapter, shall have regard to [^{F4}all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to]—
- (a) any representations in writing relating to the application which are received by the [^{F1}appropriate agency] 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 [^{F1}appropriate agency] to be reasonable requirements.
- [^{F5} and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the [^{F1}appropriate agency] under section 20C above.]
- [^{F6}(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if in relation to the application in question the requirements of section 37(1) above do not apply by virtue of section 37(6)(a) above or have been dispensed with by virtue of section 37A above.]

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F2** Words in s. 38(1) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(a)(i)**, 105(3); S.I. 2006/984, art. 2(i) (with [Sch. paras. 1, 2](#))
- F3** S. 38(1A)-(1C) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 15(2)**, 105(3); S.I. 2004/641, art. 3(d) (with [Sch. 3 paras. 2, 7](#))
- F4** Words in s. 38(3) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 15(3)**, 105(3); S.I. 2004/641, art. 3(d) (with [Sch. 3 paras. 2, 7](#))
- F5** Words in s. 38(3) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 31(2)**, 105(3); S.I. 2004/2528, art. 2(c) (with [Sch. para. 8](#))
- F6** S. 38(4) added (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(a)(ii)**, 105(3); S.I. 2006/984, art. 2(i) (with [Sch. paras. 1, 2](#))

Modifications etc. (not altering text)

- C1** S. 38 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(3)**

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

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

- (1) [^{F7}Subject to subsection (1A) below,] the [^{F1}appropriate agency] 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 [^{F1}appropriate agency], are protected rights for the purposes of this Chapter.

[^{F8}(1A) Subsection (1) above does not apply when—

- (a) the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- (b) the determination of an application is being concluded in accordance with subsection (1C) of that section.]

- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the [^{F1}appropriate agency], 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.

^{F9}(3)

- (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 [^{F10}(as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there].

- (5) For the purposes of subsection (2) above the [^{F1}appropriate agency] 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.

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F7** Words in s. 39(1) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(2)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)
- F8** S. 39(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(3)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)
- F9** S. 39(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(4)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2005/968, art. 2(c)(n)

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

F10 Words in s. 39(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(5)**, 105(3); S.I. 2005/968, art. 2(c)

Modifications etc. (not altering text)

C2 S. 39 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(4)**

[^{F11}39A Protected rights for the purposes of this Chapter

- (1) For the purposes of this Chapter, a right is a protected right if—
 - (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
 - (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
 - (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
 - (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
 - (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
 - (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.
- (2) A person who is in a position to carry out an abstraction of a quantity of water which—
 - (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
 - (b) also falls within subsection (4) or (5) below,
 shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.
- (3) The maximum quantity is the lower of the following—
 - (a) twenty cubic metres;
 - (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).
- (4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—
 - (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
 - (b) it is abstracted for use on that holding for either or both of the following purposes—
 - (i) the domestic purposes of the occupier’s household;
 - (ii) agricultural purposes other than spray irrigation.
- (5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.

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- (6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.
- (7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—
- (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
 - (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,
- and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.
- (8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—
- (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
 - (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.
- (9) The period referred to in subsection (8)(a) above is—
- (a) four years; or
 - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the ^[F1]appropriate agency] may determine on the application of the holder of the old licence.
- (10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.
- (11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.
- (12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.]

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F11** S. 39A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(1)**, 105(3); S.I. 2005/968, art. 2(d) (with Sch. 1 para. 2)

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[^{F12}39B Register of certain protected rights

- (1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the [^{F1}appropriate agency], of one or more registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.
- (2) The regulations may, in particular, provide for—
 - (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
 - (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
 - (c) the form and contents of the register, and its inspection by members of the public;
 - (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
 - (e) cases in which it is the duty of the [^{F1}appropriate agency] to include a protected right in the register without an application for inclusion having been made.
- (3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.
- (4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.
- (5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.
- (6) An order under subsection (3) above may be made only on the application of the [^{F1}appropriate agency]; but the Secretary of State may direct the [^{F1}appropriate agency] to make such an application.
- (7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.
- (8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.]

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F12** S. 39B inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 18, 105(3)**; [S.I. 2004/641](#), art. 3(f) (with Sch. 3 paras. 3, 7)

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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 [^{F1}appropriate agency], 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 [^{F1}appropriate agency], 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 [^{F1}appropriate agency] that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are [^{F13}not discrete waters],subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(g\)](#) (with Sch. 7)
- F13** Words in s. 40(4)(b) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 3](#); [S.I. 2017/1043](#), art. 2(g)

Modifications etc. (not altering text)

- C3** S. 40(1) applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), [Sch. 2 para. 8\(5\)](#)

Changes to legislation:

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