



# 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 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.

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### **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.
- (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

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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.