



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

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

#### **60 Liability of the [F<sup>1</sup>Agency] 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 [F<sup>1</sup>Agency].
- (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 [F<sup>1</sup>Agency] for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the [F<sup>1</sup>Agency] 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 [F<sup>1</sup>Agency] and the person entitled to those rights, have effect as a breach on the part of the [F<sup>1</sup>Agency] 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.

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- (4) Subsection (3) above shall be without prejudice to the duty of the [F<sup>1</sup>Agency], 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 [F<sup>1</sup>Agency] in pursuance of this section it shall be a defence for the [F<sup>1</sup>Agency] 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 [F<sup>1</sup>Agency], 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 [F<sup>1</sup>Agency].
- (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.

#### Textual Amendments

- F1** Words in s. 60 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

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

- C1** S. 60 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [regs. 1\(2\), 23](#)

## 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 [F<sup>2</sup>56] 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 [F<sup>3</sup>Agency] 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—

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- (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 [<sup>F4</sup>four] 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.
- [<sup>F5</sup>(4A) No compensation shall be payable under this section in respect of the variation of a full licence, or of a transfer licence which specifies a minimum value under section 46(2A) above, so as to reduce the quantity of water which the holder of the licence is authorised by the licence to abstract from the source of supply to which the licence relates if—
  - (a) the ground for varying the licence is that the Secretary of State is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the licence relates;
  - (b) the variation does not reduce the quantity of water which the holder of the licence is authorised by the licence to abstract to less than the minimum value specified in the licence under section 46(2A) above for the purposes of this subsection; and
  - (c) the conditions set out in subsection (4B) below are satisfied.
- (4B) Those conditions are that—
  - (a) the licence was granted after the coming into force of section 19 of the Water Act 2003;
  - (b) the variation is made no sooner than the end of the period of six years beginning with the date on which the licence took effect; and
  - (c) the variation takes effect no sooner than the end of the period of six years beginning with the date of the variation.]
  - (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>M1</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);

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- (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.

#### Textual Amendments

- F2** Word in s. 61(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 6**; S.I. 2004/641, art. 3(y), **Sch. 2** (with **Sch. 3 para. 7**)
- F3** Word in s. 61 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **art. 3**
- F4** Word in s. 61(4) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 25(2)**, 105(3) (with s. 25(4)); S.I. 2004/641, art. 3(h) (with **Sch. 3 para. 7**)
- F5** S. 61(4A)(4B) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 25(3)**, 105(3); S.I. 2006/984, art. 2(n)

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

- C2** S. 61 modified (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 27(2)**, 105(3); S.I. 2004/641, art. 3(i) (with **Sch. 3 para. 7**)
- C3** S. 61 excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), **regs. 1(2)**, **24**

#### Marginal Citations

- M1** [1961 c. 33](#).

### [<sup>F6</sup>61A Recovery of compensation from new licence-holder

- (1) This section applies where compensation has been paid under section 61 above to the holder of a licence (“licence A”) following its revocation, and—
- (a) the holder of licence A was a water undertaker;
  - (b) at the time of the revocation an application from a qualifying person for a licence to abstract water (“licence B”) was outstanding;
  - (c) if the Agency had granted licence B while licence A still had effect, the Agency would have been in breach of the duty imposed on it by section 39(1) above owed to the holder of licence A;
  - (d) the ground for revoking licence A was that the Agency was of the view that in the interests of greater efficiency in the use of water resources it would be better for licence B to be granted and licence A revoked; and
  - (e) the Agency proposes to grant licence B.
- (2) If this section applies, the Agency may (if licence B is granted) recover from the qualifying person the amount of the compensation referred to in subsection (1) above (or such lesser amount as the Agency determines).
- (3) Subsection (6) of section 41 of the 1995 Act (which confers powers to make schemes imposing charges) shall apply to the amount referred to in subsection (2) above as if it were a charge due and payable to the Agency in respect of the subsistence of licence B.
- (4) In this section, “qualifying person” means—
- (a) a water undertaker; or

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- (b) a person who has made an application for an appointment or variation replacing a company as a water undertaker under section 8 of the Water Industry Act 1991 which has not been determined.]

#### Textual Amendments

- F6** S. 61A inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 26**, 105(3); S.I. 2004/2528, art. 2(a) (with [Sch. paras. 1, 8](#))

## 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 [F7Agency] 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 [F7Agency]; or
- (b) an offer has been made by the [F7Agency] 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 [F7Agency].
- (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>M2</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 [F7Agency].
- (7) Where—

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- (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
- (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 [F7Agency] 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.

#### Textual Amendments

**F7** Words in s. 62 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M2** 1961 c. 33.

### 63 Secretary of State to indemnify [F8Agency] in certain cases.

#### (1) Where—

- (a) the [F8Agency] 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 [F8Agency] 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 [F8Agency] 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 [F8Agency], 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 [F8Agency] under section 61 above,

the Secretary of State may, if he thinks fit, pay to the [F8Agency] 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

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- (ii) that a licence shall not be revoked or varied;
- and
- (b) in consequence of that determination, compensation is payable by the [F<sup>8</sup>Agency] under section 62 above, the Secretary of State may, if he thinks fit, pay to the [F<sup>8</sup>Agency] the whole or such part as he considers appropriate of the relevant amount.
- (4) In this section “the relevant amount” means—
- (a) for the purposes of subsection (1) above, the amount of the sum paid by the [F<sup>8</sup>Agency] and, if an action has been brought against the [F<sup>8</sup>Agency] in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the [F<sup>8</sup>Agency] in connection with the action (including any costs of the plaintiff which the [F<sup>8</sup>Agency] 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 [F<sup>8</sup>Agency] in connection with that reference (including any costs of the claimant which the [F<sup>8</sup>Agency] is required to pay).

#### Textual Amendments

- F8** Words in s. 63 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**Status:**

Point in time view as at 01/04/2006.

**Changes to legislation:**

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