



Water Resources Act 1991

1991 CHAPTER 57

PART II

WATER RESOURCES MANAGEMENT

CHAPTER II

ABSTRACTION AND IMPOUNDING

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—

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- (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.
- (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.

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

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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
- (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—

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- (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.
- (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;

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- (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.
- (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 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

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- (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.

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.
- (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.