



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

#### *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.

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- (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 Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the Water Act 1989.

## **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—

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- (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,
- 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

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- (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 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.

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- (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.
- (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 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.

## **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,

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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.
- (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 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.

## **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).

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- (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 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.