



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

#### CHAPTER III

#### DROUGHT

#### **73 Power to make ordinary and emergency drought orders.**

[<sup>F1</sup>(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

- (a) a serious deficiency of supplies of water in any area, or
- (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then,], subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “ordinary drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(2) If the Secretary of State—

- (a) is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened; and
- (b) is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area,

then, subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “emergency drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(3) Subject to section 76(3) below, the power to make a drought order in relation to any area shall not be exercisable [<sup>F2</sup>unless] an application is made to the Secretary of State—

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- (a) by the [<sup>F3</sup>Agency]; or
  - (b) [<sup>F4</sup>except in the case of an ordinary drought order by virtue of subsection (1) above,]by a water undertaker which supplies water to premises in that area.
- (4) The power to make a drought order shall be exercisable by statutory instrument; and Schedule 8 to this Act shall have effect with respect to the procedure on an application for such an order.

#### Textual Amendments

- F1** Words in s. 73(1) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F2** Words in s. 73 substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(a)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F3** Word in s. 73 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** Words in s. 73 inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(b)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

#### 74 Provisions and duration of ordinary drought order.

- (1) An ordinary drought order made on the application of the [<sup>F5</sup>Agency] may contain any of the following provisions, that is to say—
- (a) provision authorising the [<sup>F5</sup>Agency] (or persons authorised to do so by the [<sup>F5</sup>Agency]) to take water from any source specified in the order subject to any conditions or restrictions so specified;
  - (b) provision authorising the [<sup>F5</sup>Agency] (or persons authorised to do so by the [<sup>F5</sup>Agency]) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
  - (c) provision authorising the [<sup>F5</sup>Agency] to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the [<sup>F5</sup>Agency] is satisfied that the taking of water from that source seriously affects the supplies available to the [<sup>F5</sup>Agency], any water undertaker or any other person;
  - (d) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the [<sup>F5</sup>Agency], any water undertaker or sewerage undertaker or any other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (e) provision authorising the [<sup>F5</sup>Agency] to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including any sewerage undertaker or water undertaker.
- (2) An ordinary drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to take water from any source specified in the order subject to any conditions or restrictions so specified;

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- (b) provision authorising the water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Secretary of State to water undertakers generally as a purpose which may be specified by virtue of this paragraph in any ordinary drought order;
  - (c) provision authorising the water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
  - (d) provision authorising the [<sup>F5</sup>Agency] to prohibit or limit the taking by any person of water from a source specified in the order if the [<sup>F5</sup>Agency] is satisfied that the taking of water from that source seriously affects the supplies available to the water undertaker;
  - (e) provision prohibiting or limiting the taking by the [<sup>F5</sup>Agency] of water from a source specified in the order if the taking of water from that source is determined, in accordance with provision made by the order, seriously to affect the supplies available to the water undertaker;
  - (f) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the water undertaker or any sewerage undertaker or other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (g) provision authorising the [<sup>F5</sup>Agency] to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including the company which applied for the order (whether in the capacity in which it made the application, in its capacity as a sewerage undertaker or in any other capacity).
- (3) The period for which—
- (a) an authorisation given by or under an ordinary drought order;
  - (b) a prohibition or limitation imposed by or under any such order; or
  - (c) a suspension or modification effected by or under any such order,
- has effect shall expire before the end of the period of six months beginning with the day on which the order comes into force, unless that period of six months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an ordinary drought order shall not be exercised so as to extend the period of six months mentioned in subsection (3) above beyond the end of the period of one year beginning with the day on which that order came into force.
- (5) Without prejudice to the following provisions of this Chapter, an ordinary drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

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#### Textual Amendments

- F5** Words in s. 74 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**

### 75 Provisions and duration of emergency drought order.

- (1) An emergency drought order made on the application of the [<sup>F6</sup>Agency] may contain any of the provisions which could be included, by virtue of section 74(1) above, in an ordinary drought order made on the application of the [<sup>F6</sup>Agency].
- (2) An emergency drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
  - (a) any provision which could be included, by virtue of subsection (2) of section 74 above, in an ordinary drought order made on the application of a water undertaker, except provision authorised by paragraph (b) of that subsection;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for such purposes as the water undertaker thinks fit;
  - (c) provision authorising the water undertaker—
    - (i) to supply water in its area, or in any place within its area, by means of stand-pipes or water tanks; and
    - (ii) to erect or set up and maintain stand-pipes or water tanks in any street in that area.
- (3) The period for which—
  - (a) an authorisation given by or under an emergency drought order;
  - (b) a prohibition or limitation imposed by or under any such order; or
  - (c) a suspension or modification effected by or under any such order,
 has effect shall expire before the end of the period of three months beginning with the day on which the order comes into force unless that period of three months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an emergency drought order shall not be exercised so as to extend the period of three months mentioned in subsection (3) above beyond the end of the period of five months beginning with the day on which that order came into force.
- (5) Where powers have been conferred by an emergency drought order on any person—
  - (a) the Secretary of State may give to that person such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
  - (b) it shall be the duty of that person to comply with any such direction; and
  - (c) where that person is a water undertaker or sewerage undertaker, the duty to comply with any such direction shall be enforceable under section 18 of the <sup>M1</sup>Water Industry Act 1991 by the Secretary of State.
- (6) The giving of a direction under subsection (5) above in relation to any power shall not affect—

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- (a) the validity of anything done in the exercise of that power before the giving of the direction; or
  - (b) any obligation or liability incurred before the giving of the direction.
- (7) Without prejudice to the following provisions of this Chapter, an emergency drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

#### Textual Amendments

**F6** Words in s. 75 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

**M1** 1991 c. 56.

## 76 Provisions of drought order restricting use of water.

- (1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—
- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
  - (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
    - (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
    - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
  - (c) the prohibition or limitation shall not come into operation until the end of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.
- (2) The Secretary of State may revoke or vary any direction given by him for the purposes of section 74(2)(b) above by a further direction for those purposes.
- (3) Where any purpose set out in a direction given for the purposes of section 74(2)(b) above will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in an ordinary drought order, the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.
- (4) The revocation or variation of a direction under subsection (3) above shall not affect either—

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- (a) the validity of anything done in pursuance of an order before the giving of the further direction; or
- (b) any obligation or liability accrued or incurred before the giving of the further direction.

## 77 Provisions of drought order with respect to abstractions and discharges.

- (1) Any drought order which-
  - (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.

- (2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.
- (3) Where a drought order made on the application of a water undertaker confers power on the [F7Agency]—
  - (a) to prohibit or limit the taking of water from any source; or
  - (b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,

the [F7Agency] shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

<sup>F8</sup>(4) .....

- (5) Where—
  - (a) any drought order confers power on the [F7Agency] to suspend or vary, or attach conditions to, any consent for the discharge of any effluent; and
  - (b) the [F7Agency] exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,

the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.

- (6) In this section—
  - “compensation water” means water which a water undertaker or the [F7Agency] is under an obligation to discharge—
    - (a) in accordance with the provisions of a licence under Chapter II of this Part into a source of supply; or

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(b) under any local statutory provision, into any river, stream, brook or other running water or into a canal;

and

“inland navigation” includes any canal or navigable river.

#### Textual Amendments

- F7** Words in s. 77 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**
- F8** S. 77(4) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 64(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 3(o)(z)

## 78 Works under drought orders.

- (1) A drought order may authorise the [<sup>F9</sup>Agency] or a water undertaker, subject to any conditions and restrictions specified in the order, to carry out any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order.
- (2) A drought order authorising the [<sup>F9</sup>Agency] or a water undertaker to carry out any works—
  - (a) may authorise the [<sup>F9</sup>Agency] or that undertaker for that purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the carrying out and maintenance of the works; and
  - (b) may apply in relation to the carrying out of the works such of the provisions of Part VII of this Act or Part VI of the <sup>M2</sup>Water Industry Act 1991 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.
- (3) The Secretary of State shall include in any drought order authorising the [<sup>F9</sup>Agency] or a water undertaker to enter any land provisions requiring the [<sup>F9</sup>Agency] or that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry.
- (4) Subject to subsection (3) above, a drought order may make any such provision in relation to provisions of the order authorising any person to enter any land as corresponds to provision having effect by virtue of section 173 below or to provision contained in Part II of Schedule 6 to the Water Industry Act 1991.
- (5) Any works to be carried out under the authority of an emergency drought order shall be included in the definition of emergency works in section 52 of the New Roads and Street Works Act 1991.
- (6) Until the coming into force of section 52 of the <sup>M3</sup>New Roads and Street Works Act 1991, subsection (5) above shall have effect as if the reference to that section were a reference to section 39(1) of the <sup>M4</sup>Public Utilities Street Works Act 1950; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this section).

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#### Textual Amendments

- F9** Words in s. 78 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** 1991 c. 56.  
**M3** 1991 c. 22.  
**M4** 1950 c. 39.

### 79 Compensation and charges where drought order made.

- (1) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.
- (2) Except as provided by Schedule 9 to this Act, neither the [<sup>F10</sup>Agency] nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.
- (3) Nothing in any drought order shall affect the right of the [<sup>F10</sup>Agency], a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by the [<sup>F10</sup>Agency] or that undertaker if there had been no such interruption or diminution.
- [<sup>F11</sup>(4) Where a water undertaker makes an application for a drought order, the Agency may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature)—
  - (a) in connection with any local inquiry held in respect of the application;
  - (b) in the exercise of the Agency's functions so far as their exercise is attributable to the application and (if the order is made) to the order,
 in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.
- (5) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (4) above.]

#### Textual Amendments

- F10** Words in s. 79 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**
- F11** S. 79(4)(5) added (1.4.2004) by Water Act 2003 (c. 37), **ss. 64(2)**, 105(3); S.I. 2004/641, art. 3(o) (with Sch. 3 para. 7)

### [<sup>F12</sup>79A Drought permits.

- (1) If the Agency is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section, it may, upon the application of a water undertaker which supplies water to premises in that area, issue to that undertaker a drought permit

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making such provision authorised by this section as appears to the Agency to be expedient with a view to meeting the deficiency.

- (2) A drought permit may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to which it is issued to take water from any source specified in the permit subject to any conditions or restrictions so specified;
  - (b) provision suspending or modifying, subject to any conditions specified in the permit, any restriction or obligation to which that undertaker is subject as respects the taking of water from any source.
- (3) A drought permit shall specify—
- (a) the day on which it comes into force; and
  - (b) the period for which, subject to subsections (4) and (5) below, any authorisation given, or suspension or modification effected, by the permit is to have effect.
- (4) Subject to subsection (5) below, the period for which—
- (a) an authorisation given by a drought permit, or
  - (b) a suspension or modification effected by such a permit,
- has effect shall expire before the end of the period of six months beginning with the day on which the permit comes into force.
- (5) At any time before the expiration of the period for which such an authorisation, suspension or modification has effect, the Agency may, by giving notice to the water undertaker to which the permit in question was issued, extend that period, but not so as to extend it beyond the end of the period of one year beginning with the day on which the permit came into force.
- (6) A drought permit which—
- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,
- shall not be issued without the consent of every navigation authority exercising functions over any or all of the parts of the canal or inland navigation in question which are affected by the permit.
- (7) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought permit as it has effect with respect to the procedure on an application for a drought order, but with the following modifications, that is to say—
- (a) with the substitution for any reference to a drought order of a reference to a drought permit;
  - (b) with the substitution for any reference to the Secretary of State of a reference to the Agency;
  - (c) with the omission of the reference to the Agency in the Table in paragraph 1;

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- (d) with the insertion, in paragraph 1(3)(c), of a requirement that the notice in question shall specify the address at which any objections are to be made to the Agency; and
- (e) with the omission—
  - (i) of paragraph 2(1)(a) and the word “either” immediately preceding it, and
  - (ii) of paragraph 2(6).

<sup>F13</sup>(8) .....

<sup>F14</sup>[ Where a water undertaker makes an application for a drought permit, the Agency may (8A) recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature) in the exercise of its functions so far as their exercise is attributable to—

- (a) the application;
- (b) (if the permit is issued) the permit,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(8B) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (8A) above.]

(9) Section 79 above and Schedule 9 to this Act shall apply in relation to drought permits and their issue as they apply in relation to ordinary drought orders and their making.

(10) A drought permit may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provisions as the Agency considers appropriate.

(11) In this section—

“compensation water” has the same meaning as in section 77 above;

“drought permit” means a drought permit under this section;

“inland navigation” has the same meaning as in section 77 above.]

#### Textual Amendments

**F12** S. 79A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 140** (with 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F13** S. 79A(8) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 64(3)(a), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 3(o)(z)

**F14** S. 79A(8A)(8B) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 64(3)(b), 105(3); S.I. 2004/641, art. 3(o) (with **Sch. 3 para. 7**)

## 80 Offences against drought order.

(1) If any person—

- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction [<sup>F15</sup>imposed by or under any drought order or by any drought permit]; or

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- (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,  
he shall be guilty of an offence under this section.
- (2) If any person—
- (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order [<sup>F16</sup>or drought permit]; or
- (b) fails to allow some person authorised for the purpose by or under any such order [<sup>F17</sup>or by virtue of any such permit] to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,
- he shall be guilty of an offence under this section.
- (3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

#### Textual Amendments

- F15** Words in s. 80(1)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F16** Words in s. 80(2)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F17** Words in s. 80(2)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 81 Interpretation of Chapter III.

In this Chapter—

- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

**Status:**

Point in time view as at 01/04/2004.

**Changes to legislation:**

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