

## SCHEDULES

### SCHEDULE 7

Sections 48, 55, 60, 61 and 65.

#### LICENCES OF RIGHT

##### *Applications for licences of right under paragraph 30 or 31 of Schedule 26 to the Water Act 1989*

- 1 (1) Paragraphs 30 and 31 of Schedule 26 to the Water Act 1989 shall continue to apply (notwithstanding the repeals made by the Water Consolidation (Consequential Provisions) Act 1991 but subject to the following provisions of this Schedule) in relation—
- (a) to any application made under either of those paragraphs which is outstanding immediately before the coming into force of this Act; and
  - (b) to any appeal against a determination made, on an application under either of those paragraphs, either before the coming into force of this Act or, thereafter, by virtue of paragraph (a) above;
- but for the purposes of any such application or appeal any reference in those paragraphs to a provision of the Water Resources Act 1963 which is re-enacted in this Act shall have effect, in relation to a time after the coming into force of this Act, as a reference to the corresponding provision of this Act.
- (2) Where an application for the grant of a licence by virtue of paragraph 30 or 31 of Schedule 26 to the Water Act 1989 has been made before the end of the period within which such an application was required to be made under that paragraph, then—
- (a) sections 24 and 48 of this Act and Part II of the Gas Act 1965 shall have effect, until the application is disposed of, as if the licence had been granted on the date of the application and the provisions of the licence had been in accordance with the proposals contained in the application; and
  - (b) for the purposes of those sections and Part II of the said Act of 1965 any licence granted on the application shall be treated as not having effect until the application has been disposed of.
- (3) For the purposes of this paragraph an application for the grant of a licence by virtue of paragraph 30 or 31 of Schedule 26 to the Water Act 1989 above shall be taken to be disposed of on (but not before) the occurrence of whichever of the following events last occurs, that is to say—
- (a) the grant, on the determination of the application by the Authority, of a licence the provisions of which are in accordance with the proposals contained in the application;
  - (b) the expiration, without a notice of appeal having been given, of the period (if any) within which the applicant is entitled to give notice of appeal against the decision on the application;
  - (c) the determination or withdrawal of an appeal against that decision;
  - (d) the grant, variation or revocation, in compliance with a direction given by the Secretary of State in consequence of such an appeal, of any licence;

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*Status: This is the original version (as it was originally enacted).*

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and in this sub-paragraph any reference to a decision includes a reference to a decision which is to be treated as having been made by virtue of any failure of the Authority to make a decision within a specified time.

- (4) Subject to the other provisions of this Schedule, any licence granted by virtue of this paragraph shall have effect as a licence under Chapter II of Part II of this Act; and, so far as necessary for the purposes of this paragraph, anything done under or for the purposes of a provision of the Water Resources Act 1963 applied by paragraph 30 or 31 of Schedule 26 to the 1989 Act, shall have effect as if that paragraph applied the corresponding provision of this Act and that thing had been done under or for the purposes of that corresponding provision.

*Section 48 of this Act*

- 2 Subsection (2) of section 48 of this Act shall not afford any defence to an action brought before 1st September 1992 if the licence referred to in that subsection is a 1989 Act licence of right; and there shall be no defence afforded to such an action by that subsection as applied by paragraph 1(2) above.

*Section 55 of this Act*

- 3 No application shall be made under section 55 of this Act (variation of licence on application of owner of fishing rights) in respect of any 1989 Act licence of right.

*Section 60 of this Act*

- 4 (1) Where the plaintiff in any action brought against the Authority in pursuance of section 60 of this Act (liability of the Authority for derogation from protected right) is entitled to a protected right for the purposes of Chapter II of Part II of this Act by reason only that he is the holder of, or has applied for, a licence of right, it shall be a defence for the Authority to prove—

- (a) that the plaintiff could have carried out permissible alterations in the means whereby he abstracted water from the source of supply in question; and
- (b) that, if he had carried out such alterations, the abstraction or, as the case may be, the obstruction or impeding of the flow of the inland waters authorised by the licence to which the action relates would not have derogated from his protected right for the purposes of that Chapter;

and subsection (3) of that section (liability of Authority for compliance with direction requiring derogation from protected rights) shall not apply to a direction given in consequence of an appeal against the decision of the Authority on an application for the grant of a 1989 Act licence of right.

- (2) In this paragraph “permissible alterations”—
- (a) in relation to a person who is the holder of a licence of right, means any alteration of works, or modification of machinery or apparatus, which would fulfil the requirements of the licence as to the means whereby water is authorised to be abstracted;
  - (b) in relation to a person who is not the holder of a licence of right, but to whose application for such a licence paragraph 1 above applies, means any alteration of works, or modification of machinery or apparatus, by means of which he abstracted water from the source of supply in question during the period of five years ending with 1st September 1989, being an alteration or

modification which would be within the scope of the licence if granted in accordance with the application.

*Section 61 of this Act*

- 5 (1) No compensation shall be payable under section 61 of this Act (compensation for revocation or variation of a licence) in respect of the revocation or variation of a 1989 Act licence of right if the revocation or variation is for giving effect to the decision of the court in an action in respect of which paragraph 2 above has effect or in any proceedings in consequence of such an action.
- (2) Nothing in section 61(3) of this Act (compensation not payable in respect of works etc. carried out before the grant of a licence) shall apply in relation to any licence of right.

*Licences of right*

- 6 (1) In this Schedule references to a licence of right are references to—
- (a) any 1989 Act licence of right, that is to say, a licence granted (whether or not by virtue of paragraph 1 above) under paragraph 30 or 31 of Schedule 26 to the Water Act 1989; or
  - (b) any licence which, having been granted in pursuance of an application under section 33 of the Water Resources Act 1963 (or in pursuance of an appeal consequential on such an application), has effect after the coming into force of this Act by virtue of sub-paragraph (2) below.
- (2) The repeal by the Water Consolidation (Consequential Provisions) Act 1991 of paragraph 29(4) of Schedule 26 to the Water Act 1989 shall not prevent any licence granted as mentioned in paragraph (b) of sub-paragraph (1) above from continuing (in accordance with paragraph 1 of Schedule 2 to that Act of 1991 and subject to the preceding provisions of this Schedule) to have effect after the coming into force of this Act as a licence under Chapter II of Part II of this Act.