

WATER ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Abstraction and Impounding

Sections 24 to 27 Claims and compensation

81. Provisions in sections 24 to 27 are devolved to the Assembly.

82.

Section 24: Claims arising out of water abstraction.

This section establishes a new statutory right of action against an abstractor, whether licensed or not, whose abstraction causes loss or damage to another person. It also removes the existing defence against civil actions in respect of licensed abstractions. This means that those persons who do not have protected rights or fishing rights and who have suffered loss or damage as a result of an abstraction may seek financial compensation for that loss or damage from the abstractor. The courts are not able to grant an injunction against a licence holder if that risks interrupting the public water supply, or putting public health or safety at risk. Bearing in mind the new statutory right of action, other civil claims (except for negligence or breach of contract) are now excluded.

83.

Section 25: Compensation for modification of licence on direction of Secretary of State.

The Agency has powers to revoke or vary any abstraction licence; its decision is subject to appeal to the Secretary of State. Currently, if a licence that has not been used for seven years is revoked or varied, then the holder is not entitled to compensation. This section reduces the period of non-use for this purpose to four years. The Agency would not be expected to revoke licences that are held for valid contingency planning reasons (so-called 'sleeper' licences).

84. For new licences, this section removes any entitlement to compensation if a licence is varied in order to protect water availability in the source of supply to which the licence relates. Compensation is not payable where a variation does not reduce the amount of water licensed to below the minimum amount specified in any licence. This provision only applies to a licence (of greater than 12 years duration) that has been granted after section 19 of this Act has come into force, where the variation takes effect twelve years or more after the licence was granted.

85.

Section 26: Recovery of compensation from new licence-holder.

The EA can already revoke a water undertaker's abstraction licence and grant a licence to another undertaker for water resources management reasons. In such circumstances,

*These notes refer to the Water Act 2003 (c.37)
which received Royal Assent on 20th November 2003*

this section allows the Agency to recover costs from the water undertaker granted the licence to compensate the undertaker whose licence was revoked.

86.

Section 27: Withdrawal of compensation for certain revocations and variations.

This section provides that, with effect from 15th July 2012, an existing abstraction licence without a time limit may be revoked or varied without compensation. This power is confined to cases where the Secretary of State is satisfied that it is necessary in order to protect any waters, channels or underground strata, or any flora and fauna dependent on them, from serious damage. The conservation agencies and the Government will consult on guidance to define such damage.