



# Water Act 2003

## 2003 CHAPTER 37

### PART 1

#### ABSTRACTION AND IMPOUNDING

##### *Applications for a licence*

#### **11 Who may apply for a licence**

- (1) Section 35 of the WRA (restrictions upon who may apply for abstraction licences) is amended as follows.
- (2) For subsections (2) and (3) there is substituted—
  - “(2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, as respects the place (or, if more than one, as respects each of the places) at which the proposed abstractions are to be effected, he satisfies the Agency that—
    - (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land contiguous to the inland waters at that place (or those places); and
    - (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).
  - (3) In relation to abstractions from underground strata, a person shall be entitled to make the application if he satisfies the Agency that—
    - (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of or comprising those underground strata; and
    - (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).

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(3A) The Agency may, in particular, take evidence of a person’s occupation of land to be evidence of his right of access to it.”

(3) In subsection (4)—

- (a) for “is the occupier of” there is substituted “will have a right of access to”, and
- (b) in paragraph (a), for “occupy” there is substituted “a right of access to”.

## **12 Abolition of combined licences**

Section 36 of the WRA (combined abstraction and impounding licences) shall cease to have effect.

## **13 Applications: types of abstraction licence**

(1) After section 36 of the WRA there is inserted—

### **“36A Applications: types of abstraction licence**

(1) The Agency may decide that—

- (a) an application for a full licence, a transfer licence or a temporary licence ought to be for one of the other types of licence;
- (b) a number of applications for licences (of any type or types) to abstract water from a particular source of supply ought to be treated as an application for a single such licence (of any type);
- (c) an application for a single licence (of any type) to abstract water from a particular source of supply ought to be treated as a number of applications for such licences (of any type or types); or
- (d) any such application as is referred to above ought to be accompanied by an application for revocation of an existing licence to abstract water.

(2) The Agency may arrive at the decision referred to in paragraph (a), (b), (c) or (d) of subsection (1) above on the basis of its assessment of any one or more of the following—

- (a) the likely effect of the abstraction (or abstractions) for which the applicant has applied for a licence (or licences);
- (b) the likely effect of that abstraction (or those abstractions) taken together with abstractions under any other licence held by the applicant, or abstractions which would be authorised under any other licence for which the applicant has applied;
- (c) any other prescribed matter.

(3) If the Agency does so decide, it shall serve a notice of its decision on the applicant; and, subject to subsections (4) to (8) below, shall deal with the application (or applications) accordingly (which, if the Agency made the decision referred to in paragraph (d) of subsection (1) above in relation to any application (or applications), means not publishing any notice under section 37 below, or taking any further step in connection with the application (or applications), until the application for revocation has been received).

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- (4) The applicant may by notice appeal to the Secretary of State against the decision, and shall serve a copy of any such notice on the Agency.
  - (5) That notice, and the copy of it, shall be served in such manner and within such period as may be prescribed.
  - (6) If the Agency serves a notice under subsection (3) above, it shall not publish any notice under section 37 below, or take any further step in connection with the application (or applications), before—
    - (a) the end of the period within which notice of an appeal may be served on the Secretary of State; or
    - (b) if notice of an appeal is so served, the appeal has been determined.
  - (7) The Secretary of State—
    - (a) may allow or dismiss the appeal, or vary any part of the decision of the Agency, whether the appeal relates to that part of the decision or not; and
    - (b) shall direct the Agency to deal with the application, or applications, accordingly (which, if the Agency’s decision was made under paragraph (d) of subsection (1) above in relation to any such application, and that decision is upheld, may mean not publishing any notice under section 37 below, or taking any further step in connection with the application, until the application for revocation has been received).
  - (8) Subsections (2) and (7) of section 44 below apply in relation to an appeal under this section as they apply in relation to an appeal under section 43 below.
  - (9) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).”
- (2) In section 41 of the WRA (Secretary of State’s power to call in applications), after subsection (2) there is added—
- “(3) An application may not be referred to the Secretary of State under this section—
- (a) if in relation to the application the Agency is still considering whether to make any such decision as is referred to in subsection (1) of section 36A above, or if it has made such a decision but has not yet served the notice referred to in subsection (3) of that section; or
  - (b) where the Agency has served a notice on the applicant under subsection (3) of that section, until the period for appealing under that section has expired or (if the applicant appeals) the appeal has been determined.”
- (3) In section 45 of the WRA (regulations with respect to appeals)—
- (a) in subsection (1), after “against decisions” there is inserted “of the Agency under section 36A above or”,
  - (b) after subsection (2) there is inserted—
- “(2A) Subsection (2) above does not apply in relation to appeals against decisions of the Agency under section 36A above.”

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- (4) In section 114 of the Environment Act 1995 (c. 25) (power of Secretary of State to delegate or refer in connection with appeals), in subsection (2)(a)(v), after “section” there is inserted “36A.”.

#### **14 Publication of application for licence**

- (1) For section 37 of the WRA (publication of application for licence) there is substituted—

##### **“37 Publication of application for licence**

- (1) The Agency shall publish a notice of an application for—
- (a) a full licence or a transfer licence; or
  - (b) a licence under this Chapter to obstruct or impede the flow of any inland waters by means of impounding works,
- in the prescribed way or (if no way is prescribed) in a way calculated to bring the application to the attention of persons who in the Agency’s view are likely to be affected by the licence.
- (2) Not later than the date on which that notice is first published, the Agency shall also serve a copy of it on the persons referred to in subsection (3) below (except the applicant, if the applicant is one of those persons).
- (3) Those persons are—
- (a) any water undertaker within whose area any proposed point of abstraction or impounding is situated;
  - (b) any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at any such proposed point; and
  - (c) the drainage board for any internal drainage district within which any such proposed point is situated,
- but paragraphs (b) and (c) above do not apply if the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters.
- (4) A notice for the purposes of the preceding provisions of this section shall—
- (a) be in the prescribed form and shall include any prescribed matters; and
  - (b) state that any person may make representations in writing to the Agency with respect to the application at any time before the end of a period specified in the notice.
- (5) The period referred to in subsection (4)(b) above—
- (a) begins on the date the notice referred to in subsection (1) above is first published as mentioned there; and
  - (b) shall not end before the end of the period of twenty-eight days beginning with that date.
- (6) The Secretary of State may make regulations providing for—
- (a) the requirements of subsection (2) above, or of both subsections (1) and (2) above, not to apply in prescribed cases;

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- (b) notices of applications to exclude prescribed classes of information, either generally or as respects prescribed classes of application.
- (7) In this section, “proposed point of abstraction or impounding”, in relation to an application for a licence referred to in subsection (1) above, means a place where a licence, if granted in accordance with the application, would authorise—
- (a) water to be abstracted; or
  - (b) the flow of inland waters to be obstructed or impeded by means of impounding works,
- (as the case may be).
- (8) This section is subject to section 37A below.”
- (2) After section 37 of the WRA there is inserted—

**“37A Power to dispense with publication requirements**

The Secretary of State may by regulations make provision for—

- (a) enabling the Agency; or
- (b) him, in the case of applications referred to him in accordance with section 41 below,

to direct or determine that the requirements of subsections (1) and (2) of section 37 above may in any case (except where the Agency is the applicant) be dispensed with, if in that case it appears to the Agency (or, as the case may be, the Secretary of State) to be appropriate to do so.”

- (3) The WRA is further amended as follows—
- (a) in section 38 (general consideration of applications)—
    - (i) in subsection (1), for “for the purposes of the application in accordance with section 37(5)” there is substituted “in the notice referred to in section 37(4)(b)”,
    - (ii) after subsection (3) there is added—

“(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if in relation to the application in question the requirements of section 37(1) above do not apply by virtue of section 37(6)(a) above or have been dispensed with by virtue of section 37A above.”,
  - (b) in section 42 (consideration of called-in applications), in subsection (3)(a), for “37(4)(b) and (6)(a)” there is substituted “37”,
  - (c) in section 43 (appeals to Secretary of State), in subsection (5), for “for the purposes of the application in accordance with section 37(5)” there is substituted “in any such notice as is referred to in section 37(4)(b)”,
  - (d) in section 66 (inland waters owned or managed by British Waterways Board), in sub-paragraph (ii) of subsection (2)(c), for the words from “subsection (1)” to the end of that sub-paragraph there is substituted “paragraphs (b) and (c), and the succeeding words, of subsection (3) of that section were omitted.”