



Water Act 2003

2003 CHAPTER 37

PART 1

ABSTRACTION AND IMPOUNDING

Claims and compensation

24 Claims arising out of water abstraction

(1) After section 48 of the WRA there is inserted—

“48A Civil remedies for loss or damage due to water abstraction

- (1) Subject to subsection (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.
- (2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.
- (3) Such a claim shall be treated as one in tort for breach of statutory duty.
- (4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public, or would put public health or safety at risk.
- (5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.
- (6) Nothing in this section prevents or affects a claim for negligence or breach of contract.

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- (7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage—
- (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section);
 - (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59C(6) below) disapplying that duty; or
 - (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence,
- but without prejudice to the application of section 48 above.”

- (2) In section 48 of the WRA (general effect of licence), in subsection (2), after “supply” there is inserted “(other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply)”.
- (3) In relation to loss or damage suffered before the coming into force of this section—
- (a) section 48A of the WRA inserted by subsection (1) of this section does not apply, and
 - (b) section 48 of, and paragraphs 1(2) and 2 of Schedule 7 to, the WRA continue to have effect as if subsection (2) of this section were not in force.

25 Compensation for modification of licence on direction of Secretary of State

- (1) Section 61 of the WRA (compensation where licence modified on direction of the Secretary of State) is amended in accordance with subsections (2) and (3).
- (2) In subsection (4), for “seven” there is substituted “four”.
- (3) After subsection (4) there is inserted—

“(4A) No compensation shall be payable under this section in respect of the variation of a full licence, or of a transfer licence which specifies a minimum value under section 46(2A) above, so as to reduce the quantity of water which the holder of the licence is authorised by the licence to abstract from the source of supply to which the licence relates if—

- (a) the ground for varying the licence is that the Secretary of State is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the licence relates;
- (b) the variation does not reduce the quantity of water which the holder of the licence is authorised by the licence to abstract to less than the minimum value specified in the licence under section 46(2A) above for the purposes of this subsection; and
- (c) the conditions set out in subsection (4B) below are satisfied.

(4B) Those conditions are that—

- (a) the licence was granted after the coming into force of section 19 of the Water Act 2003;
 - (b) the variation is made no sooner than the end of the period of six years beginning with the date on which the licence took effect; and
 - (c) the variation takes effect no sooner than the end of the period of six years beginning with the date of the variation.”
- (4) The amendment made by subsection (2) has effect in relation to the revocation or variation of a licence only if the period referred to in section 61(4) of the WRA during which no water was abstracted in pursuance of the licence began after the coming into force of that subsection.

26 Recovery of compensation from new licence-holder

After section 61 of the WRA there is inserted—

“61A Recovery of compensation from new licence-holder

- (1) This section applies where compensation has been paid under section 61 above to the holder of a licence (“licence A”) following its revocation, and—
- (a) the holder of licence A was a water undertaker;
 - (b) at the time of the revocation an application from a qualifying person for a licence to abstract water (“licence B”) was outstanding;
 - (c) if the Agency had granted licence B while licence A still had effect, the Agency would have been in breach of the duty imposed on it by section 39(1) above owed to the holder of licence A;
 - (d) the ground for revoking licence A was that the Agency was of the view that in the interests of greater efficiency in the use of water resources it would be better for licence B to be granted and licence A revoked; and
 - (e) the Agency proposes to grant licence B.
- (2) If this section applies, the Agency may (if licence B is granted) recover from the qualifying person the amount of the compensation referred to in subsection (1) above (or such lesser amount as the Agency determines).
- (3) Subsection (6) of section 41 of the 1995 Act (which confers powers to make schemes imposing charges) shall apply to the amount referred to in subsection (2) above as if it were a charge due and payable to the Agency in respect of the subsistence of licence B.
- (4) In this section, “qualifying person” means—
- (a) a water undertaker; or
 - (b) a person who has made an application for an appointment or variation replacing a company as a water undertaker under section 8 of the Water Industry Act 1991 which has not been determined.”

27 Withdrawal of compensation for certain revocations and variations

- (1) This section applies where—
- (a) a licence to abstract water is revoked or varied on or after 15th July 2012 in pursuance of a direction under section 54 or 56 of the WRA (which provide

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for the Secretary of State to direct the Environment Agency to revoke or vary a licence in certain circumstances);

- (b) the licence was granted before the coming into force of section 19 of this Act;
 - (c) the licence is one which is expressed to remain in force until revoked; and
 - (d) the ground for revoking or varying the licence is that the Secretary of State is satisfied that the revocation or variation is necessary in order to protect from serious damage—
 - (i) any inland waters,
 - (ii) any water contained in underground strata,
 - (iii) any underground strata themselves,or any flora or fauna dependent on any of them.
- (2) Where this section applies, no compensation is payable under section 61 of the WRA in respect of the revocation or variation of the licence.
- (3) Expressions used in sub-paragraphs (i), (ii) and (iii) of subsection (1)(d) are to be construed in accordance with section 221 of the WRA; and “waters”, in relation to a lake, pond, river or watercourse which is for the time being dry, includes its bottom, channel or bed.