



# Water Act 2003

## 2003 CHAPTER 37

### PART 1

#### ABSTRACTION AND IMPOUNDING

##### *Consideration of licence applications*

#### **15 General consideration of licence applications**

(1) Section 38 of the WRA (general consideration of licence applications) is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—

- (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
- (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.

(1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).

(1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.”

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- (3) In subsection (3), after “regard to” there is inserted “all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to”.

## **16 Protection from derogation**

- (1) Section 39 of the WRA (obligation to have regard to existing rights and privileges) is amended as provided in subsections (2) to (5).
- (2) In subsection (1), at the beginning there is inserted “Subject to subsection (1A) below,”.
- (3) After subsection (1) there is inserted—
- “(1A) Subsection (1) above does not apply when—
- (a) the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- (b) the determination of an application is being concluded in accordance with subsection (1C) of that section.”
- (4) Subsection (3) is omitted.
- (5) In subsection (4), for “section 27(6) above or, as the case may be, section 48(1) below” there is substituted “(as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there”.
- (6) In section 42 of the WRA (consideration of called-in applications)—
- (a) in subsection (4), at the beginning there is inserted “Subject to subsection (4A) below,” and
- (b) after subsection (4) there is inserted—
- “(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.”
- (7) In section 44 of the WRA (determination of appeals)—
- (a) in subsection (4), at the beginning there is inserted “Subject to subsection (4A) below,” and
- (b) after subsection (4) there is inserted—
- “(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.”

## **17 Protected rights**

- (1) After section 39 of the WRA there is inserted—

### **“39A Protected rights for the purposes of this Chapter**

- (1) For the purposes of this Chapter, a right is a protected right if—

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- (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
  - (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
  - (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
  - (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
  - (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
  - (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.
- (2) A person who is in a position to carry out an abstraction of a quantity of water which—
- (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
  - (b) also falls within subsection (4) or (5) below,
- shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.
- (3) The maximum quantity is the lower of the following—
- (a) twenty cubic metres;
  - (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).
- (4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—
- (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
  - (b) it is abstracted for use on that holding for either or both of the following purposes—
    - (i) the domestic purposes of the occupier’s household;
    - (ii) agricultural purposes other than spray irrigation.
- (5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.
- (6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.

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- (7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—
- (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
  - (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,
- and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.
- (8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—
- (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
  - (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.
- (9) The period referred to in subsection (8)(a) above is—
- (a) four years; or
  - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the Agency may determine on the application of the holder of the old licence.
- (10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.
- (11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.
- (12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.”
- (2) In section 72 of the WRA (interpretation of Chapter 2), in the entry for “protected right” in subsection (1), for “section 39(3)” there is substituted “section 39A”.

## **18 Register of certain protected rights**

After section 39A of the WRA (inserted by section 17) there is inserted—

### **“39B Register of certain protected rights**

- (1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the Agency, of

one or more registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.

- (2) The regulations may, in particular, provide for—
  - (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
  - (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
  - (c) the form and contents of the register, and its inspection by members of the public;
  - (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
  - (e) cases in which it is the duty of the Agency to include a protected right in the register without an application for inclusion having been made.
- (3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.
- (4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.
- (5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.
- (6) An order under subsection (3) above may be made only on the application of the Agency; but the Secretary of State may direct the Agency to make such an application.
- (7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.
- (8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.”