



# Water Resources Act 1963

## 1963 CHAPTER 38

### PART IV

#### CONTROL OF ABSTRACTION AND IMPOUNDING OF WATER

##### *Revocation and variation of licences*

#### **42 Revocation or variation on application of holder of licence**

- (1) The holder of a licence under this Act may apply to the river authority to revoke the licence; and on any such application the river authority shall revoke the licence accordingly.
- (2) The holder of a licence under this Act may apply to the river authority to vary the licence; and the provisions of sections 28 and 29 and 38 to 41 of this Act shall apply (with the necessary modifications) to applications under this subsection, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Act:

Provided that, where the proposed variation is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods, sections 28 and 39 (4) of this Act shall not apply.

#### **43 Proposal by river authority to revoke or vary licence**

- (1) Where it appears to a river authority that a licence under this Act granted by the authority should be revoked or varied, the authority may formulate proposals for revoking or varying the licence.
- (2) Where, either in consequence of representations made to the Minister or otherwise, it appears to the Minister that a licence under this Act granted by a river authority ought to be reviewed, but no proposals for revoking or varying the licence have been formulated by the river authority under the preceding subsection, the Minister may, as he may consider appropriate in the circumstances.—

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- (a) direct the river authority to formulate proposals for revoking the licence, or
  - (b) direct the river authority to formulate proposals for varying the licence in such manner as may be specified in the direction.
- (3) Notice in the prescribed form of any proposals formulated under either of the preceding subsections shall be served on the holder of the licence and published in the London Gazette and at least once in each of two successive weeks in one or more newspapers (other than the London Gazette) circulating in the relevant locality; and, if the licence relates to an inland water, and the proposals provide for variation of that licence, a copy of the notice shall, not later than the date on which it is first published otherwise than in the London Gazette, be served on any navigation authority, harbour authority or conservancy authority having functions in relation to that inland water at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.
- (4) Any such notice as is mentioned in the last preceding subsection shall (in addition to any other matters required to be contained therein)—
  - (a) name a place within the relevant locality where a copy of the proposals, and of any map, plan or other document prepared in connection with them, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with the next following subsection, and
  - (b) state that, at any time before the end of that period, the holder of the licence may give notice in writing to the river authority objecting to the proposals, and any other person may make representations in writing to the river authority with respect to the proposals.
- (5) The period specified in a notice in pursuance of the last preceding subsection shall be a period beginning not earlier than the date on which the notice is first published in a newspaper other than the London Gazette, and ending not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette ; and a river authority shall not proceed with any such proposals before the end of the period so specified.
- (6) If before the end of that period the holder of the licence gives notice in writing to the river authority objecting to the proposals, the river authority shall refer the proposals to the Minister, with a copy of the notice of objection.
- (7) If no notice under the last preceding subsection is given before the end of the period mentioned in subsection (4) of this section, the river authority may proceed with the proposals; and, where the proposals are proposals for varying the licence, the provisions of subsections (2) to (7) of section 29 of this Act shall apply (with the necessary modifications) to any action of the river authority in proceeding with the proposals as they apply to the action of a river authority in dealing with an application for a licence.
- (8) Subject to the provisions of subsections (5) to (7) of this section, the river authority—
  - (a) if the proposals are for the revocation of the licence, may revoke the licence;
  - (b) if the proposals are proposals for varying the licence, may vary it in accordance with those proposals or, with the consent of the holder of the licence, may vary it in any other way.
- (9) In this section " the relevant locality " means the locality in which the place or places where the licence authorises water to be abstracted or impounded is or are situated.

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#### **44 Reference of proposals to Minister**

- (1) Where any proposals of a river authority under the last preceding section are referred to the Minister in accordance with subsection (6) of that section, the Minister shall consider the proposals and the objection of the holder of the licence, and any representations in writing relating to the proposals which were received by the river authority before the end of the period mentioned in subsection (4) of the last preceding section, and, subject to the next following subsection, shall determine whether—
  - (a) if the proposals were for the revocation of the licence, the licence should be revoked, or
  - (b) if the proposals were proposals for varying the licence, the licence should be varied as mentioned in subsection (8)(b) of the last preceding section.
- (2) Before determining under this section whether a licence should be revoked or varied, the Minister may, if he thinks fit, and shall, if a request is made by the holder of the licence or the river authority to be heard with respect to the proposals, cause a local inquiry to be held or afford to the holder of the licence and the river authority an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (3) A decision of the Minister under this section with respect to any proposals shall be final; and where the decision is that the licence should be revoked or varied, it shall include a direction to the river authority to revoke the licence, or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (4) The provisions of subsections (5) to (7) of section 29 of this Act shall apply in relation to any proposals referred to the Minister as mentioned in subsection (1) of this section as if in those provisions any reference to the river authority were a reference to the Minister and any reference to the application were a reference to the proposals.
- (5) In determining under this section whether a licence should be varied, and, if so, what direction should be given under subsection (3) of this section, the Minister shall consider whether any such direction would require the licence to be varied so as to authorise derogation from protected rights.
- (6) In subsections (5) to (7) of section 29 of this Act, as applied by subsection (4) of this section, any reference to " the preceding provisions " shall be construed as a reference to subsections (1) and (5) of this section.
- (7) Any reference in this section to authorising derogation from protected rights shall be construed in accordance with subsection (9) of section 41 of this Act.

#### **45 Special provisions as to spray irrigation**

- (1) The provisions of this section shall have effect where at any time—
  - (a) one or more licences under this Act are in force in relation to a source of supply in a river authority area, authorising water abstracted in pursuance of the licences to be used for the purpose of spray irrigation, or for that purpose together with other purposes, and
  - (b) by reason of exceptional shortage of rain or other emergency, it appears to the river authority that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) In so far as any such licence authorises water to be used for the purpose of spray irrigation, the river authority may serve a notice on the holder of the licence reducing,

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during such period as may be specified in the notice, the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply in question for use for that purpose, and, in relation to that period, the licence shall have effect subject to that reduction accordingly:

Provided that the river authority shall not serve such a notice in respect of abstraction of water from underground strata unless it appears to them that such abstraction is likely to affect the flow, level or volume of an inland water (not being an inland water falling within section 2(3) of this Act or an inland water comprised in an order under section 25 of this Act).

- (3) In the exercise of the power conferred by the last preceding subsection, in a case where there are two or more such licences in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the river authority, are not far distant from each other.—
- (a) the river authority shall not serve such a notice on the holder of one of the licences unless a like notice is served on the holders of the other licences in respect of the same period, and
  - (b) the reductions imposed by the notices on the holders of the licences shall be so calculated as to represent, as nearly as appears to the river authority to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.
- (4) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 42 to 44 of this Act.

#### **46 Compensation for revocation or variation of licence**

- (1) Where a licence is revoked or varied under section 44 of this Act, and it is shown that the holder of the licence—
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or variation, or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or variation,
- the river authority shall pay to him compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to any work, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to the last preceding subsection, no compensation shall be paid under this section in respect of any work carried out before the grant of the licence which is revoked or varied, or in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence:

Provided that this subsection shall not apply to a licence of right.

- (4) No compensation shall be payable under this section in respect of a licence to abstract water, if it is shown that no water was abstracted in pursuance of the licence during the period of seven years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.

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- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with the last preceding subsection, is subject to a mortgage—
  - (a) the compensation shall be assessed as if the interest were not subject to the mortgage ;
  - (b) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

#### **47 Application by owner of fishing rights for revocation or variation of licence**

- (1) Where a licence under this Act, not being a licence of right, authorises abstraction from an inland water in respect of which no minimum acceptable flow has been determined under Part III of this Act, then, at any time after the end of the period of one year beginning with the date on which the licence was granted but before such a minimum acceptable flow has been so determined, any person who is the owner of fishing rights in respect of that inland water may apply to the Minister for the revocation or variation of the licence.
- (2) Any application under this section made by a person as owner of fishing rights in respect of an inland water shall be made on the grounds that, in his capacity as owner of those rights, he has sustained loss or damage which is directly attributable to the abstraction of water in pursuance of the licence in question, and either—
  - (a) he is not entitled to a protected right under this Act in respect of that inland water, or
  - (b) the loss or damage which he has sustained in his capacity as owner of those rights is not attributable to any such breach of statutory duty as is mentioned in subsection (1) or subsection (2) of section 50 of this Act or is in addition to any loss or damage attributable to any such breach.
- (3) Where an application is made under this section, the applicant shall serve notice in the prescribed form on the river authority and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the Minister with respect to the application; and the Minister, in determining the

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application, shall take into account any representations in writing received by him from the river authority or from the holder of the licence within that period.

(4) On an application under this section, the Minister shall not determine that the licence in question shall be revoked or varied unless—

- (a) the grounds of the application, as mentioned in subsection (2) of this section, are established to his satisfaction, and
- (b) the Minister is satisfied that the extent of the loss or damage which the applicant has sustained, as mentioned in that subsection, is such as to justify the revocation or variation of the licence,

or if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused that loss or damage was wholly or mainly attributable to exceptional shortage of rain, or to an accident or other unforeseen act or event not caused by, and outside the control of, the river authority; and, where the Minister determines that the licence shall be varied, the variation shall be limited to that which, in the opinion of the Minister, is requisite having regard to that loss or damage.

(5) Subsections (2) and (3) of section 44 of this Act shall apply in relation to any matter required to be determined by the Minister under the last preceding subsection as they apply in relation to matters required to be determined by him under that section, but with the modification that an applicant under this section (as well as the holder of the licence) shall have the like rights to request a hearing, and to be heard, as the holder of the licence has under subsection (2) of that section.

(6) Section 46 of this Act shall have effect in relation to the revocation or variation of a licence under this section as it has effect in relation to the revocation or variation of a licence under section 44 of this Act.

(7) Where a licence is revoked or varied on an application under this section, the applicant shall be entitled to compensation from the river authority in respect of the loss or damage which he has sustained as mentioned in subsection (2) of this section.

(8) Where, on an application under this section for the revocation or variation of a licence, the Minister determines that the grounds of the application (as mentioned in subsection (2) of this section) have been established to his satisfaction, but that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly; and thereupon, unless within the period of six months from the date on which that certificate is granted either—

- (a) notice to treat for the acquisition of the fishing rights of the applicant, or of an interest in land which includes those rights, has been served by the river authority, or
- (b) an offer has been made by the river authority to the owner of those rights to acquire those rights (or, where they subsist only as rights included in an interest in land, to acquire that interest) on terms that the price payable shall be equal to (and shall, in default of agreement, be determined in like manner as) the compensation which would be payable in respect thereof if the rights or interest were acquired compulsorily by the river authority,

the owner of the fishing rights shall be entitled to compensation from the river authority.

(9) The amount of the compensation payable under the last preceding subsection in respect of any fishing rights shall be the amount by which the value of those rights (or, where they subsist only as rights included in an interest in land, the value of that interest) is

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depreciated by the operation of section 31(1) of this Act in relation to the licence to which the application related.

- (10) Any question of disputed compensation under subsection (7) or under subsections (8) and (9) of this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (11) In this section " fishing rights", in relation to an inland water, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in that water, where the right in question either constitutes an interest in land or is included in an interest in land or is exercisable by virtue of an exclusive licence granted for valuable consideration ; any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights; and any reference to a right included in an interest in land is a reference to a right which is exercisable only by virtue of, and as a right incidental to, the ownership of that interest.

#### **48 Revocation or variation of authorisation to impound under alternative statutory provision**

- (1) Where by virtue of an alternative statutory provision which is for the time being in force statutory water undertakers or other persons are authorised to obstruct or impede the flow of an inland water by means of impounding works (whether those works have already been constructed or not), the provisions of this Part of this Act and of section 103 thereof shall have effect (with the necessary modifications) as if any reference in those provisions to a licence under this Act, or to the holder of a licence under this Act, where the reference is to the revocation or variation of such a licence, included a reference to that authorisation, or to those undertakers or other persons, as the case may be. .
- (2) In this section " alternative statutory provision" has the meaning assigned to it by section 36 (3) of this Act, and " authorised" means authorised in whatsoever terms, and whether expressly or by implication, and " authorisation " shall be construed accordingly.