



# Water Act 1989

## 1989 CHAPTER 15

### PART III

#### THE PROTECTION AND MANAGEMENT OF RIVERS AND OTHER WATERS

### CHAPTER II

#### WATER RESOURCES

#### *Drought etc.*

#### **131 General drought orders**

- (1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section and section 133 below, he may by order made by statutory instrument make such provision authorised by this section as appears to him to be expedient with a view to meeting the deficiency.
- (2) Subject to subsection (6) below, the power to make an order under this section in relation to any area shall not be exercisable except where an application is made to the Secretary of State—
  - (a) by the Authority; or
  - (b) by a water undertaker which supplies water to premises in that area.
- (3) An order made under this section on the application of the Authority may contain any of the following provisions, that is to say—
  - (a) provision authorising the Authority (or persons authorised to do so by the Authority) to take water from any source specified in the order subject to any conditions or restrictions so specified;
  - (b) provision authorising the Authority (or persons authorised to do so by the Authority) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;

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- (c) provision authorising the Authority to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the Authority is satisfied that the taking of water from that source seriously affects the supplies available to the Authority, any water undertaker or any other person;
  - (d) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the Authority, any water undertaker or sewerage undertaker or any other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (e) provision authorising the Authority to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including any sewerage undertaker or water undertaker.
- (4) An order made under this section on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to take water from any source specified in the order subject to any conditions or restrictions so specified;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Secretary of State to water undertakers generally as a purpose which may be specified by virtue of this paragraph in any order under this section;
  - (c) provision authorising the water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
  - (d) provision authorising the Authority to prohibit or limit the taking by any person of water from a source specified in the order if the Authority is satisfied that the taking of water from that source seriously affects the supplies available to the water undertaker;
  - (e) provision prohibiting or limiting the taking by the Authority of water from a source specified in the order if the taking of water from that source is determined, in accordance with provision made by the order, seriously to affect the supplies available to the water undertaker;
  - (f) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the water undertaker or any sewerage undertaker or other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (g) provision authorising the Authority to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including the company which applied for the order (whether in the capacity in which it made the application, in its capacity as a sewerage undertaker or in any other capacity).

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- (5) The following provisions apply where an order under this section contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—
- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
  - (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
    - (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
    - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
  - (c) the prohibition or limitation shall not come into operation until the expiration of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.
- (6) The Secretary of State may revoke or vary any direction given by him for the purposes of subsection (4)(b) above by a further direction for those purposes; but, where any purpose set out in such a direction will cease, by virtue of the variation or revocation, to be one which may be specified in an order under this section, the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke orders under this section, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.
- (7) The revocation or variation of a direction under subsection (6) above shall not affect the validity of anything done in pursuance of an order before the giving of the further direction or any obligation or liability accrued or incurred before the giving of the further direction.
- (8) Schedule 14 to this Act shall have effect with respect to the procedure on an application for an order under this section and with respect to the payment of compensation where such an order has been made.
- (9) The period for which—
- (a) an authorisation given by or under an order under this section;
  - (b) a prohibition or limitation imposed by or under any such order; or
  - (c) a suspension or modification effected by or under any such order,
- has effect shall expire before the end of the period of six months beginning with the day on which the order comes into operation unless that period of six months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power to amend the order; and that power shall not be exercised so as to extend that period of six months beyond the end of the period of one year beginning with that day.

## **132 Emergency drought orders**

- (1) If the Secretary of State—
- (a) is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened; and

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- (b) is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area,  
then, subject to the following provisions of this section and section 133 below, he may by order made by statutory instrument make such provision authorised by this section as appears to him to be expedient with a view to meeting the deficiency.
- (2) The power to make an order under this section in relation to any area shall not be exercisable except where an application is made to the Secretary of State—
- (a) by the Authority; or
  - (b) by a water undertaker which supplies water to premises in that area.
- (3) An order made under this section on the application of the Authority may contain any of the provisions which could be included, by virtue of subsection (3) of section 131 above, in an order under that section.
- (4) An order made under this section on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) any provision which could be included, by virtue of subsection (4) of section 131 above, in an order under that section, except provision authorised by paragraph (b) of that subsection;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for such purposes as the water undertaker thinks fit;
  - (c) provision authorising the water undertaker to supply water in its area or in any place within its area by means of stand-pipes or water tanks, and to erect or set up and maintain stand-pipes or water tanks in any street in that area.
- (5) The following provisions apply where an order under this section contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—
- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
  - (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
    - (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
    - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
  - (c) the prohibition or limitation shall not come into operation until the expiration of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.
- (6) Where powers have been conferred by an order under this section on any person—
- (a) the Secretary of State may give to that person such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
  - (b) it shall be the duty of that person to comply with any such direction; and
  - (c) where that person is a water undertaker or sewerage undertaker, the duty to comply with any such direction shall be enforceable under section 20 above by the Secretary of State.

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- (7) The giving of a direction under subsection (6) above in relation to any power shall not affect the validity of anything done in the exercise of that power before the giving of the direction or any obligation or liability incurred before the giving of the direction.
- (8) Any works to be carried out under the authority of an order under this section shall be included in the definition of emergency works in section 39(1) of the Public Utilities Street Works Act 1950.
- (9) Schedule 14 to this Act shall have effect with respect to the procedure on an application for an order under this section and with respect to the payment of compensation where such an order has been made.
- (10) The period for which—
  - (a) an authorisation given by or under an order under this section;
  - (b) a prohibition or limitation imposed by or under any such order; or
  - (c) a suspension or modification effected by or under any such order,has effect shall expire before the end of the period of three months beginning with the day on which the order comes into operation unless that period of three months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power to amend the order; and that power shall not be exercised so as to extend that period of three months beyond the end of the period of five months beginning with that day.

### **133 Provisions supplemental to powers conferred by sections 131 and 132**

- (1) Any drought order which—
  - (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.
- (2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.
- (3) Where a drought order made on the application of a water undertaker confers power on the Authority—
  - (a) to prohibit or limit the taking of water from any source; or
  - (b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,

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the Authority shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

- (4) Where—
- (a) any drought order confers power on the Authority to suspend or vary, or attach conditions to, any consent for the discharge of any effluent; and
  - (b) the Authority exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,
- the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.
- (5) A drought order may authorise the Authority or a water undertaker, subject to any conditions and restrictions specified in the order, to execute any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order and—
- (a) may authorise the Authority or that undertaker for that purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the execution and maintenance of the works; and
  - (b) may apply in relation to the execution of the works such of the provisions of Part IV of this Act as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.
- (6) The Secretary of State shall include in any drought order authorising the Authority or a water undertaker to enter any land provisions requiring the Authority or that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry.
- (7) A drought order may—
- (a) make provision corresponding to sections 178 and 179 below in relation to any provisions of the order authorising any person to enter any land;
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (c) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (8) Nothing in any drought order shall affect the right of the Authority, a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by the Authority or that undertaker if there had been no such interruption or diminution.

### **134 Offences against drought orders**

- (1) If any person—
- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction so imposed; or

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- (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,  
he shall be guilty of an offence under this section.
- (2) If any person—
- (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order; or
- (b) fails to allow some person authorised for the purpose by or under any such order to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,  
he shall be guilty of an offence under this section.
- (3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

### **135 Interpretation of provisions relating to drought orders**

- (1) In sections 131 to 134 above and Schedule 14 to this Act—
- “compensation water” means water which a water undertaker or the Authority is under an obligation to discharge—
- (a) in accordance with the provisions of a licence under the Water Resources Act 1963, into a source of supply (within the meaning of that Act); or
- (b) under any local statutory provision, into any river, stream, brook or other running water or into a canal;
- “drought order” means an order under section 131 or 132 above;
- “inland navigation” includes any canal or navigable river;
- “sewage effluent” and “trade effluent” have the same meanings as in Chapter I of this Part.
- (2) In sections 131 to 134 above and Schedule 14 to this Act—
- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.