



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

##### Modifications etc. (not altering text)

- C1** Chapter II of Part II excluded (1.4.1996) by 1995 c. 25, s. 6(3) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- C2** Chapter II of Part II modified (18.12.1996) by 1996 c. 61, s. 52, Sch. 15 Pt. III para. 11
- C3** Pt. II Ch. II modified (22.3.2005) by Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005/927), Sch. 11 para. 11 (with art. 51)
- C4** Pt. II Ch. II modified (26.8.2005) by River Tyne (Tunnels) Order 2005 (S.I. 2005/2222), art. 1, Sch. 10 para. 14 (with arts. 45(1), 48, Sch. 10 paras. 21, 29)
- C5** Pt. II Ch. II modified (19.3.2007) by Ouseburn Barrage Order 2007 (S.I. 2007/608), art. 1, Sch. 6 para. 18 (with arts. 46-48, Sch. 6 paras. 17(5), 23)
- C6** Pt. II Ch. II modified (22.7.2008) by Crossrail Act 2008 (c. 18), Sch. 17 para. 11
- C7** Pt. II Ch. II modified (9.6.2009) by Nottingham Express Transit System Order 2009 (S.I. 2009/1300), arts. 1, 71(12) (with Sch. 13 para. 14(2), Sch. 14 para. 19, Sch. 16)
- C8** Pt. II Ch. II modified (20.7.2010) by The Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010/1721), art. 1, Sch. 11 para. 12
- C9** Pt. II Ch. II modified (27.8.2010) by The Llangollen and Corwen Railway Order 2010 (S.I. 2010/2136), art. 1(1), Sch. 4 para. 12
- C10** Pt. II Ch. II modified (1.9.2010) by The Port of Bristol (Deep Sea Container Terminal) Harbour Revision Order 2010 (S.I. 2010/2020), art. 1(2), Sch. 6 para. 11(1) (with arts. 18, 19)
- C11** Pt. II Ch. II modified (1.2.2011) by The River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41), art. 1, Sch. 10 para. 41(1) (with art. 51, Sch. 10 paras. 6885)

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

### *Restrictions on abstraction and impounding*

#### **24 Restrictions on abstraction.**

- (1) Subject to the following provisions of this Chapter and to any drought order [<sup>F1</sup>or drought permit] under Chapter III of this Part, no person shall—
- (a) abstract water from any source of supply; or
  - (b) cause or permit any other person so to abstract any water,
- except in pursuance of a licence under this Chapter granted by the [<sup>F2</sup>Agency] and in accordance with the provisions of that licence.
- (2) Where by virtue of subsection (1) above the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Chapter, no person shall begin, or cause or permit any other person to begin—
- (a) to construct any well, borehole or other work by which water may be abstracted from those strata;
  - (b) to extend any such well, borehole or other work; or
  - (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,
- unless the conditions specified in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are—
- (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Chapter; and
  - (b) that—
    - (i) the well, borehole or work, as constructed or extended; or
    - (ii) the machinery or apparatus, as installed or modified,
 fulfils the requirements of that licence as to the means by which water is authorised to be abstracted.
- (4) A person shall be guilty of an offence if—
- (a) he contravenes subsection (1) or (2) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (5) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding [<sup>F3</sup>£20,000] ;
  - (b) on conviction on indictment, to a fine.
- (6) The restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M1</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

#### **Textual Amendments**

- F1** By S.I. 1996/593, reg. 3, Sch. 2 para. 8 it is provided that the words “or drought permit” be substituted (1.4.1996) for the words following “drought order”

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- F2** Word in s. 24(1) substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F3** Word in s. 24(5)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 60(1), 105(3)** (with s. 60(2)); S.I. 2004/641, **art. 3(n)** (with Sch. 3 para. 7)

**Modifications etc. (not altering text)**

- C12** S. 24 excluded (15.1.2010) by The Eels (England and Wales) Regulations 2009 (S.I. 2009/3344), regs. 1(b), **21(1)** (with reg. 1(d))
- C13** S. 24(1) restricted (16.3.1992) by Aire and Calder Navigation Act 1992 (c. iv), **s. 17(2)**
- C14** S. 24(1) restricted (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 14 para. 15**

**Marginal Citations**

- M1** 1963 c. 38.

**[<sup>F4</sup>24A Abstraction licences**

- (1) Each licence to abstract water shall be of one of the following three types—
- (a) a licence to abstract water from one source of supply over a period of twenty-eight days or more for any purpose (a “full licence”);
  - (b) a licence to abstract water from one source of supply over a period of twenty-eight days or more for the purpose of—
    - (i) transferring water to another source of supply; or
    - (ii) transferring water to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations (whether underground or on the surface),in either case without intervening use (a “transfer licence”);
  - (c) a licence to abstract water from one source of supply over a period of less than twenty-eight days (a “temporary licence”).
- (2) In this Act, a reference (however expressed) to a licence to abstract water is to be taken as a reference to all types of licence, unless it is clear that a different meaning is intended.]

**Textual Amendments**

- F4** S. 24A inserted (1.4.2006) by Water Act 2003 (c. 37), **ss. 1(1), 105(3)**; S.I. 2006/984, **art. 2(a)** (with Sch. paras. 1, 2)

**25 Restrictions on impounding.**

- [<sup>F5</sup>(1)** Subject to the following provisions of this Chapter and to any drought order or drought permit under Chapter 3 of this Part, no person shall—
- (a) begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters; or
  - (b) cause or permit the flow of any inland waters which are not discrete waters to be obstructed or impeded at any point by means of impounding works,
- unless (in either case) the conditions mentioned in subsection (1A) below are satisfied.

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- (1A) The conditions are—
- (a) a licence under this Chapter granted by the Agency to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;
  - (b) the impounding works will not (or, as the case may be, do not) obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and
  - (c) any other conditions or requirements imposed by the provisions, as for the time being in force, of the licence (whether as to the provision of compensation water or otherwise) are complied with.]
- (2) A person shall be guilty of an offence if—
- (a) he contravenes subsection (1) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and<sup>F6</sup>...does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (3) A person who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding [<sup>F7</sup>£20,000] ;
  - (b) on conviction on indictment, to a fine.
- (4) Subject to subsection (5) below, the restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M2</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.
- (5) Subject to subsection (6) below, the restriction on impounding works [<sup>F8</sup>shall not apply in respect of any impounding works] , if—
- (a) the construction or alteration of those works; or
  - (b) the obstruction or impeding of the flow of the inland waters resulting from the construction or alteration of the works,
- is authorised (in whatsoever terms, and whether expressly or by implication) by virtue of any such statutory provision as at the coming into force of this Act was an alternative statutory provision for the purposes of section 36(2) of the Water Resources Act 1963.
- (6) The provisions of this Chapter shall have effect in accordance with subsection (7) below where by virtue of any such provision as is mentioned in subsection (5) above and is for the time being in force—
- (a) any water undertaker or sewerage undertaker to which rights under that provision have been transferred in accordance with a scheme under Schedule 2 to the <sup>M3</sup>Water Act 1989 or Schedule 2 to the <sup>M4</sup>Water Industry Act 1991; or
  - (b) any other person,
- is authorised (in whatsoever terms, and whether expressly or by implication) to obstruct or impede the flow of any inland waters by means of impounding works (whether those works have already been constructed or not).
- (7) Where subsection (6) above applies, the provisions of this Chapter shall have effect (with the necessary modifications), where the reference is to the revocation or variation of a licence under this Chapter, as if—
- (a) any reference in those provisions to a licence under this Chapter included a reference to the authorisation mentioned in that subsection; and

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- (b) any reference to the holder of such a licence included a reference to the undertaker or other person so mentioned.
- (8) In this Chapter “impounding works” means either of the following, that is to say—
- (a) any dam, weir or other works in any inland waters by which water may be impounded;
- (b) any works for diverting the flow of any inland waters in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a) above.
- [<sup>F9</sup>(9) In relation to impounding works, references to alteration include the removal or partial removal of those works, and cognate expressions shall be construed accordingly.]

#### Textual Amendments

- F5** S. 25(1)(1A) substituted for s. 25(1) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(2)**, 105(3) (with s. 2(10)); [S.I. 2006/984](#), art. 2(b) (with [Sch. para. 2](#))
- F6** Words in s. 25(2) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(3)**, 105(3), **Sch. 9 Pt. 1** (with s. 2(10)); [S.I. 2006/984](#), art. 2(b)(s)(ii) (with [Sch. para. 2](#))
- F7** Word in s. 25(3)(a) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 60(1)**, 105(3) (with s. 60(2)); [S.I. 2004/641](#), art. 3(n) (with [Sch. 3 para. 7](#))
- F8** Words in s. 25(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(4)**, 105(3) (with s. 2(10)); [S.I. 2006/984](#), art. 2(b) (with [Sch. para. 2](#))
- F9** S. 25(9) added (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(5)**, 105(3) (with s. 2(10)); [S.I. 2006/984](#), art. 2(b) (with [Sch. para. 2](#))

#### Modifications etc. (not altering text)

- C15** S. 25 excluded (15.1.2010) by [The Eels \(England and Wales\) Regulations 2009 \(S.I. 2009/3344\)](#), **regs. 1(b)**, **21(1)** (with [reg. 1\(d\)](#))
- C16** S. 25(1)(b) modified (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 3**, 105(3); [S.I. 2006/984](#), art. 2(c) (with [Sch. para. 2](#))

#### Marginal Citations

- M2** 1963 c. 38.  
**M3** 1989 c. 15.  
**M4** 1991 c. 56.

#### [<sup>F10</sup>25A Enforcement notices

- (1) Subject to the following provisions of this section, where it appears to the Agency that a person is—
- (a) in breach of section 24(1) or (2) or section 25(1) above; or
- (b) for the purposes of section 24 or 25 above a holder of a licence under this Chapter and has not complied with a condition or requirement imposed by the provisions, as for the time being in force, of that licence,
- the Agency shall be entitled to serve an enforcement notice on him if the condition in subsection (2) below is satisfied.
- (2) The condition is that it appears to the Agency that the breach or failure to comply is causing or is likely to cause significant damage to the environment.
- (3) An enforcement notice is a notice requiring the person on whom it is served—

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- (a) to cease his breach of section 24(1) or (2) or section 25(1) above, or to comply with the condition or requirement in question; and
  - (b) to carry out any works or operations specified in the notice.
- (4) The works or operations which may be specified are works or operations which it appears to the Agency are appropriate for the purpose of remedying or mitigating the effects of the breach or failure to comply, and may include—
- (a) works or operations for the purpose, so far as it is reasonably practicable to do so, of restoring any affected waters, including any flora and fauna dependent on them, to their state immediately before the breach or failure to comply; and
  - (b) in the case of a breach of section 25(1) above, the removal of any unauthorised impounding works or the reversal of any unauthorised alteration to impounding works.
- (5) An enforcement notice must specify the periods within which the person on whom it is served must do each of the things specified in the notice.
- (6) Before serving an enforcement notice on any person, the Agency shall take reasonable steps to consult that person about the works or operations which are to be specified in the notice.
- (7) The Secretary of State may by regulations make provision for or in connection with—
- (a) the form or content of enforcement notices;
  - (b) requirements for consultation, before the service of an enforcement notice, with persons other than the person upon whom the notice is to be served;
  - (c) steps to be taken for the purposes of any consultation required under subsection (6) above or regulations made by virtue of paragraph (b) above;
  - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of an enforcement notice.
- (8) An enforcement notice is not invalid, or invalidly served, merely because of a failure to comply with subsection (6) above or with regulations made by virtue of subsection (7) (b) above.
- (9) The Secretary of State may, if he thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under this section.
- (10) In proceedings for any offence under section 24 or 25 above against a person upon whom an enforcement notice has been served, the following are not to be taken as evidence that he has committed the offence—
- (a) the fact that an enforcement notice has been served on him;
  - (b) the fact that he does not appeal against it;
  - (c) the fact that on an appeal against it the notice is confirmed (whether with or without modifications).

#### **Textual Amendments**

**F10** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30, 105(3)**; [S.I. 2006/984](#), art. 2(o)

#### **Modifications etc. (not altering text)**

**C17** S. 25A excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

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**C18** Ss. 25A(5)-(9) applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 4(3)(a)**, 105(3); S.I. 2006/984, art. 2(d)

## **25B Rights of entry and appeals**

Sections 161B and 161C below (including any power to make regulations) shall apply in relation to enforcement notices as they apply in relation to works notices under section 161A below.

### **Textual Amendments**

**F10** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30**, 105(3); S.I. 2006/984, art. 2(o)

### **Modifications etc. (not altering text)**

**C19** S. 25B excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

## **25C Consequences of not complying with an enforcement notice**

- (1) If a person on whom the Agency serves an enforcement notice fails to comply with any of its requirements, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable—
  - (a) on summary conviction, to a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.
- (3) If a person on whom an enforcement notice has been served fails to comply with any of its requirements, the Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it.
- (4) If the Agency is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.]

### **Textual Amendments**

**F10** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30**, 105(3); S.I. 2006/984, art. 2(o)

### **Modifications etc. (not altering text)**

**C20** S. 25C excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

### *Rights to abstract or impound*

## **26 Rights of navigation, harbour and conservancy authorities.**

- (1) The restriction on abstraction shall not apply to any transfer of water from one area of inland waters to another in the course of, or resulting from, any operations carried out

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by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.

- (2) The restriction on impounding works shall not apply to the construction or alteration of impounding works in the course of the performance by a navigation authority, harbour authority or conservancy authority of their functions as such an authority.

**[F11]27 Rights to abstract small quantities.**

- (1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres in any period of twenty-four hours, if the abstraction does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted during the period.
- (2) In the case of any abstraction of water from underground strata which falls within subsection (1) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,
- if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (3) Where a person is authorised by a licence under this Chapter to carry on a particular abstraction operation (or series of operations), this section does not permit him to carry it on beyond the authorisation conferred by the licence.

**Textual Amendments**

**F11** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), **ss. 6(1)**, 105(3); [S.I. 2004/641](#), art. 3(a) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968](#), art. 2(a)

**27A Variation of small quantity threshold**

- (1) The Secretary of State may by order made by statutory instrument provide that section 27(1) above is to have effect in relation to—
- (a) a geographical area; or
  - (b) a class of inland waters; or
  - (c) a class of underground strata; or
  - (d) a class of inland waters or of underground strata within a geographical area,
- (in each case as specified in the order) as if for “twenty cubic metres” there were substituted another quantity specified in the order.
- (2) The Secretary of State shall not make such an order except upon the application of the Agency; but he may direct the Agency to make such an application.
- (3) Such an order may—
- (a) make different provision in relation to the different paragraphs in subsection (1) above; and
  - (b) make different provision for different areas, waters or underground strata.



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- (4) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (1) above and with respect to the making of such orders.
- (5) An order under subsection (1) above which specifies a greater quantity than the one which previously had effect in relation to the area, waters or strata in question may make provision for a licence to abstract water granted under this Chapter—
  - (a) which is for the time being in force; but
  - (b) which by virtue of the order has become wholly or partly unnecessary, to cease to have effect, or to cease to have effect to the extent specified in the order.
- (6) An order under subsection (1) above may include provision for or in relation to the payment by the Agency of compensation, in cases specified in the order, to a person who—
  - (a) immediately before the making of an order under subsection (1) above, had been in a position to carry out an abstraction to which, by virtue of section 27(1) above, the restriction on abstraction did not apply;
  - (b) following the making of that order, requires a licence under this Chapter in order to carry out that abstraction; and
  - (c) has suffered loss or damage as a result of his having been—
    - (i) refused such a licence in respect of that abstraction; or
    - (ii) granted such a licence, but in respect of an abstraction of more limited extent than the one he had been in a position to carry out.
- (7) Paragraphs (e) and (f) of section 219(2) below apply in relation to orders under subsection (1) above as they apply to regulations made under this Act.
- (8) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F11** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), [ss. 6\(1\), 105\(3\)](#); [S.I. 2004/641](#), [art. 3\(a\)](#) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968](#), [art. 2\(a\)](#)

## 28 Curtailment of rights under section 27.

- [<sup>F12</sup>(1) The provisions of this section shall have effect where a person (“the occupier”) is entitled, by virtue of subsection (6) of section 27 above, to a protected right for the purposes of this Chapter by reason of his being the occupier of such a holding as is mentioned in subsection (4) of that section in relation to an abstraction falling within that subsection (“the holding”).
- (2) If it appears to the [<sup>F13</sup>Agency] that the occupier is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on part of the holding (“the relevant part”), but is not so entitled to abstract water for use on other parts of the holding—
- (a) the [<sup>F13</sup>Agency] may serve on him a notice specifying the relevant part of the holding; and
  - (b) subject to the following provisions of this section, the notice shall have effect so as to require subsections (3) and (4) of section 27 above to be construed

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in relation to the holding as if the references in subsection (4) to use on the holding were references to use on the part of the holding specified in the notice.

(3) Where a notice is served under subsection (2) above and the occupier objects to the notice on the grounds—

- (a) that he is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on every part of the holding; or
- (b) that he is so entitled to abstract water for use on a larger part of the holding than that specified in the notice,

he may, within such period (not being less than twenty-eight days from the date of service of the notice) and in such manner as may be prescribed, appeal to the court against the notice.

(4) On any appeal under subsection (3) above, the court shall determine the matter in dispute and, in accordance with its decision, confirm, quash or vary the [<sup>F13</sup>Agency's] notice and—

- (a) where the court quashes a notice served under subsection (2) above, paragraph (b) of that subsection shall not have effect; and
- (b) where the court varies such a notice, that paragraph shall have effect, but with the substitution, for the reference to the part of the holding specified in the notice, of a reference to the part specified in the notice as varied by the court.

(5) In this section—

“the court” means the county court for the district in which the holding, or the part of the holding which is contiguous to the inland waters in question, is situated; and

“entitled” (except in subsection (1) above) means entitled apart from this Chapter or any other statutory provision.]

#### **Textual Amendments**

**F12** S. 28 repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 6(2), 105(3), [Sch. 9 Pt. 1](#); S.I. 2005/968, art. 2(a)(n)

**F13** Words in s. 28 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

## **29 Rights to abstract for drainage purposes etc.**

(1) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in the course of, or resulting from, any operations for purposes of land drainage.

(2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within subsection (1) above) is necessary—

- (a) to prevent interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface); or
- (b) to prevent damage to works resulting from any such operations.

(3) Where—

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- (a) water is abstracted, in the course of any such operations as are mentioned in subsection (2) above, from any excavation into underground strata in a case in which the level of water in the underground strata depends wholly or mainly on water entering it from those strata; and
  - (b) the abstraction is necessary as mentioned in that subsection,
- the exemption conferred by that subsection shall apply notwithstanding that the water is used for the purposes of the operations.
- (4) In the case of any abstraction of water from underground strata which falls within subsection (1) or (2) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,
- if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (5) In this section, “land drainage” includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea, and also includes warping and irrigation other than spray irrigation.

**<sup>F14</sup>30 Notices with respect to borings not requiring licences.**

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**Textual Amendments**

**F14** S. 30 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 8(3), 105(3), [Sch. 9 Pt. 1](#); S.I. 2006/984, art. 2(e)(s)(ii) (with savings in [Sch. paras. 4, 5](#))

**<sup>F15</sup>31 Appeals against conservation notices under section 30.**

.....

**Textual Amendments**

**F15** S. 31 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 8(3), 105(3), [Sch. 9 Pt. 1](#); S.I. 2006/984, art. 2(e)(s)(ii) (with savings in [Sch. paras. 4, 5](#))

**32 Miscellaneous rights to abstract.**

- (1) The restriction on abstraction shall not apply to any abstraction by machinery or apparatus installed on a vessel, where the water is abstracted for use on that, or any other, vessel.
- (2) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply to the doing of anything—
  - (a) for [<sup>F16</sup>extinguishing fires or protecting life and property in the event of fire]; or
  - (b) for the purpose of testing apparatus used for [<sup>F17</sup>either of] those purposes or of training or practice in the use of such apparatus.

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- (3) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply—
- (a) to any abstraction of water;
  - (b) to the construction or extension of any well, borehole or other work; or
  - (c) to the installation or modification of machinery or other apparatus,
- if the abstraction, construction, extension, installation or modification is for any of the purposes specified in subsection (4) below and takes place with the consent of the [<sup>F18</sup>Agency] and in compliance with any conditions imposed by the [<sup>F18</sup>Agency].
- (4) The purposes mentioned in subsection (3) above are—
- (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
  - (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work or any inland waters.

#### Textual Amendments

- F16** Words in s. 32(2)(a) substituted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(a\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F17** Words in s. 32(2)(b) inserted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(b\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F18** Words in s. 32 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

### <sup>F19</sup>33 Power to provide for further rights to abstract.

.....

#### Textual Amendments

- F19** S. 33 repealed with a saving (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 10(11), 105(3), [Sch. 9 Pt. 1](#); S.I. 2004/641, art. 3(c)(z)

### [<sup>F20</sup>33A Power to provide for further exemptions

- (1) The Secretary of State may make regulations providing for further cases in which—
- (a) the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions imposed by section 24 above); or
  - (b) the restriction on impounding works,
- shall not apply; and in this section such a case is referred to as an “exemption”.
- (2) The regulations may, in particular, make provision, in relation to an exemption—
- (a) for the exemption to apply only for a prescribed period;
  - (b) for the exemption not to apply unless prescribed conditions are satisfied, or continue to be satisfied;
  - (c) for the Agency to be notified, or its consent obtained—

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- (i) before any particular abstraction operation or series of such operations begins; or
  - (ii) in connection with such an operation or series of operations relating to the abstraction of water in underground strata, before any other thing which is mentioned in section 24(2) above is done; or
  - (iii) before any impounding works are constructed or altered, in reliance on the exemption.
- (3) The regulations may provide for an exemption to apply generally or to relate to—
  - (a) a prescribed geographical area;
  - (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 above); or
  - (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works).
- (4) Subject to subsection (5) below, if regulations under this section provide for an exemption falling within subsection (1)(a) above, the regulations shall—
  - (a) if appropriate, make provision for the exemption not to permit a person who is authorised by a licence under this Chapter to carry on an abstraction operation (or series of operations) to carry it on beyond the authorisation conferred by the licence; and
  - (b) make provision as to whether or not, in relation to any abstraction, the exemption provided for by the regulations is to be counted cumulatively with any other exemption which a person has by virtue of this section or section 27 above.
- (5) The regulations may make provision for a licence granted under this Chapter and which is for the time being in force to cease to have effect, or to cease to have effect to the extent specified in the regulations, if it authorises an activity which falls to any extent within the exemption provided for by the regulations.]

#### Textual Amendments

**F20** S. 33A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 9, 105(3)**; [S.I. 2004/641](#), **art. 3(b)** (with [Sch. 3 paras. 17](#))

### *Applications for a licence*

#### **34 Regulations with respect to applications.**

- (1) Any application for a licence under this Chapter shall be made in such manner as may be prescribed, and shall include such particulars, [<sup>F21</sup>be accompanied by such reports, ] and be verified by such evidence, as may be prescribed.
- (2) The Secretary of State may by regulations make provision as to the manner in which applications for the grant of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on such applications [<sup>F22</sup>, and provision for making such applications available for public inspection.]

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- (3) Without prejudice to the generality of subsection (2) above, provision shall be made by regulations under this section for securing that, in such circumstances as may be prescribed (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park<sup>F23</sup> . . . authorities)—
- (a) notice of any such application will be given to such one or more National Park<sup>F23</sup> . . . authorities as may be determined in accordance with the regulations; and
  - (b) the matters to which the [<sup>F24</sup> Agen cy] or, as the case may be, the Secretary of State is to have regard in dealing with the application will include any representations made by any such National Park<sup>F23</sup> . . . authority within such period and in such manner as may be prescribed.
- (4) The preceding provisions of this section shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

<sup>F25</sup>(5) . . . . .

#### Textual Amendments

- F21** Words in s. 34(1) inserted (1.10.2004) by [Water Act 2003 \(c. 37\), s. 105\(3\), Sch. 7 para. 2\(a\)](#); S.I. 2004/2528, art. 2(t)(i) (with [Sch. para. 8](#))
- F22** Words in s. 34(2) added (1.10.2004) by [Water Act 2003 \(c. 37\), s. 105\(3\), Sch. 7 para. 2\(b\)](#); S.I. 2004/2528, art. 2(t)(i) (with [Sch. para. 8](#))
- F23** Words in s. 34 repealed (1.4.1997) by [1995 c. 25, s. 120\(3\), Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, [Sch.](#)
- F24** Words in s. 34 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)
- F25** S. 34(5) repealed (1.4.1997) by [1995 c. 25, s. 120\(3\), Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, [Sch.](#)

### 35 Restrictions on persons who may make applications for abstraction licences.

- (1) No application for a licence under this Chapter to abstract water shall be entertained unless it is made by a person entitled to make the application in accordance with the following provisions of this section.
- [<sup>F26</sup>(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—

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- (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).
- (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.]
- (4) Any reference in this section to a person who [<sup>F27</sup>will have a right of access to] land of any description—
- (a) includes a reference to a person who satisfies the [<sup>F28</sup>Agency] that he has entered into negotiations for the acquisition of an interest in land of that description such that, if the interest is acquired by him, he will be entitled to [<sup>F29</sup>a right of access to ] that land; and
  - (b) without prejudice to the application of paragraph (a) above to a person who is or can be authorised to acquire land compulsorily, also includes any person who satisfies the [<sup>F28</sup>Agency] that by virtue of any enactment, the compulsory acquisition by that person of land of that description either has been authorised or can be authorised and has been initiated.
- (5) In subsection (4) above the reference to initiating the compulsory acquisition of land by a person is a reference to—
- (a) the submission to the relevant Minister of a draft of an order which, if made by that Minister in the form of the draft, will authorise that person to acquire that land compulsorily, with or without other land; or
  - (b) the submission to the relevant Minister of an order which, if confirmed by that Minister as submitted will authorise that person to acquire that land compulsorily, with or without other land.
- (6) In subsection (5) above “the relevant Minister”, in relation to the compulsory acquisition of land by any person, means the Minister who, in accordance with the enactment mentioned in subsection (4)(b) above, is empowered to authorise that person to acquire land compulsorily.

#### Textual Amendments

- F26** S. 35(2)(3)(3A) substituted for s. 35(2)(3) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(2)**, 105(3); S.I. 2006/984, **art. 2(f)** (with [Sch. paras. 67\(3\)](#))
- F27** Words in s. 35(4) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(3)(a)**, 105(3); S.I. 2006/984, **art. 2(f)** (with [Sch. paras. 67\(3\)](#))
- F28** Words in s. 35 substituted (subject to other provisions of the amending Act) (1.4.1996) 1995 c. 25, s. 120, **Sch. 22 para. 128** (with **ss. 7(6)**, 115, 117); S.I. 1996/186, **art. 3**
- F29** Words in s. 35(4)(a) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(3)(b)**, 105(3); S.I. 2006/984, **art. 2(f)** (with [Sch. paras. 67\(3\)](#))

#### Modifications etc. (not altering text)

- C21** S. 35 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), **reg. 1(2)**, **Sch. 2 para. 8(1)**

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**F30 36 Application for combined abstraction and impounding licence.**

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**Textual Amendments**

**F30** S. 36 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 12, 105(3), [Sch. 9 Pt. 1](#); S.I. 2006/984, art. 2(g)(s)(ii) (with [Sch. paras. 1, 2](#))

**[F31 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).
- (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—



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- (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).]

#### Textual Amendments

**F31** S. 36A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(1)**, 105(3); S.I. 2006/984, **art. 2(h)** (with [Sch. para. 7](#))

#### Modifications etc. (not altering text)

**C22** S. 36A excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), **reg. 1(2)**, **Sch. 2 para. 8(2)**

### [<sup>F32</sup>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,

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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;
  - (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.]

#### **Textual Amendments**

**F32** S. 37 substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(1)**, 105(3); S.I. 2006/984, art. 2(i) (with [Sch. paras. 12](#))

#### **Modifications etc. (not altering text)**

**C23** S. 37(1)(2) excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [reg. 1\(2\)](#), **Sch. 2 para. 3**

**C24** S. 37(1)(2) applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [reg. 1\(2\)](#), **Sch. 2 para. 2**

**C25** S. 37(1)(2) excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [regs. 1\(2\)](#), 7

#### **[<sup>F33</sup>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,

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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.]

#### Textual Amendments

**F33** S. 37A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(2)**, 105(3); S.I. 2006/984, **art. 2(i)** (with [Sch. paras. 1, 2](#))

### *Consideration of licence applications*

#### **38 General consideration of applications.**

(1) The [<sup>F34</sup>Agency] shall not determine any application for a licence under this Chapter before the end of the period specified [<sup>F35</sup>in the notice referred to in section 37(4)(b)] above.

[<sup>F36</sup>(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.]

(2) Subject to the following provisions of this Chapter, on any application to the [<sup>F34</sup>Agency] for a licence under this Chapter, the [<sup>F34</sup>Agency]—

- (a) may grant a licence containing such provisions as the [<sup>F34</sup>Agency] considers appropriate; or
- (b) if, having regard to the provisions of this Chapter, the [<sup>F34</sup>Agency] considers it necessary or expedient to do so, may refuse to grant a licence.

(3) Without prejudice to section 39(1) below, the [<sup>F34</sup>Agency], in dealing with any application for a licence under this Chapter, shall have regard to [<sup>F37</sup>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]—

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- (a) any representations in writing relating to the application which are received by the [<sup>F34</sup>Agency] before the end of the period mentioned in subsection (1) above; and
- (b) the requirements of the applicant, in so far as they appear to the [<sup>F34</sup>Agency] to be reasonable requirements.

[<sup>F38</sup> and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the Agency under section 20C above.]

[<sup>F39</sup>(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply 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.]

#### Textual Amendments

- F34** Words in s. 38 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F35** Words in s. 38(1) substituted (1.4.2006) by Water Act 2003 (c. 37), **ss. 14(3)(a)(i)**, 105(3); S.I. 2006/984, **art. 2(i)** (with **Sch. paras. 1, 2**)
- F36** S. 38(1A)-(1C) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 15(2)**, 105(3); S.I. 2004/641, **art. 3(d)** (with **Sch. 3 paras. 2, 7**)
- F37** Words in s. 38(3) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 15(3)**, 105(3); S.I. 2004/641, **art. 3(d)** (with **Sch. 3 paras. 2, 7**)
- F38** Words in s. 38(3) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 31(2)**, 105(3); S.I. 2004/2528, **art. 2(c)** (with **Sch. para. 8**)
- F39** S. 38(4) added (1.4.2006) by Water Act 2003 (c. 37), **ss. 14(3)(a)(ii)**, 105(3); S.I. 2006/984, **art. 2(i)** (with **Sch. paras. 1, 2**)

#### Modifications etc. (not altering text)

- C26** S. 38 applied (with modifications) (1.4.2006) by Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641), **reg. 1(2)**, **Sch. 2 para. 8(3)**

### 39 Obligation to have regard to existing rights and privileges.

- (1) [<sup>F40</sup>Subject to subsection (1A) below,] the [<sup>F41</sup>Agency] shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—
  - (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
 as to derogate from any rights which, at the time when the application is determined by the [<sup>F41</sup>Agency], are protected rights for the purposes of this Chapter.

[<sup>F42</sup>(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.]

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(2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the [<sup>F41</sup>Agency], in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.

<sup>F43</sup>(3) .....

(4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—

- (a) abstracting water; or
- (b) so obstructing or impeding the flow of any such waters,

in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in [<sup>F44</sup>(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].

(5) For the purposes of subsection (2) above the [<sup>F41</sup>Agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—

- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
- (b) that decision has not been quashed or reversed.

#### Textual Amendments

**F40** Words in s. 39(1) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(2)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))

**F41** Words in s. 39 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120](#), **Sch. 22 para. 128** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **art. 3**

**F42** S. 39(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(3)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))

**F43** S. 39(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 16\(4\)](#), 105(3), **Sch. 9 Pt. 1**; S.I. 2005/968, [art. 2\(c\)\(n\)](#)

**F44** Words in s. 39(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(5)**, 105(3); S.I. 2005/968, [art. 2\(c\)](#)

#### Modifications etc. (not altering text)

**C27** S. 39 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [reg. 1\(2\)](#), **Sch. 2 para. 8(4)**

### [<sup>F45</sup>39A Protected rights for the purposes of this Chapter

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

- (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;

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- (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.
- (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.

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- (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.]

#### Textual Amendments

**F45** S. 39A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(1), 105(3)**; [S.I. 2005/968](#), **art. 2(d)** (with [Sch. 1 para. 2](#))

#### [<sup>F46</sup>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.

*Status: Point in time view as at 01/03/2012.*

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- (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.]

#### **Textual Amendments**

**F46** S. 39B inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 18, 105(3)**; [S.I. 2004/641](#), art. 3(f) (with [Sch. 3 paras. 3, 7](#))

#### **40 Obligation to take river flow etc. into account.**

- (1) Without prejudice to sections 38(3) and 39(1) above, subsection (2) or, as the case may be, subsection (3) below shall apply where any application for a licence under this Chapter relates to abstraction from any inland waters or to obstructing or impeding the flow of any inland waters by means of impounding works.
- (2) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time when no minimum acceptable flow for the inland waters in question has been determined under Chapter I of this Part, the [<sup>F47</sup>Agency], in dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.
- (3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined under Chapter I of this Part, the [<sup>F47</sup>Agency], in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—
  - (a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or
  - (b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.



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- (4) Without prejudice to sections 38(3) and 39(1) above, where—
- (a) an application for a licence under this Chapter relates to abstraction from underground strata; and
  - (b) it appears to the [<sup>F47</sup>Agency] that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor waters comprised in an order under section 33 above,
- subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

#### Textual Amendments

**F47** Words in s. 40 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C28** S. 40(1) applied (1.4.2006) by Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641), reg. 1(2), **Sch. 2 para. 8(5)**

### *Call-in of applications*

#### **41 Secretary of State's power to call in applications**

- (1) The Secretary of State may give directions to the [<sup>F48</sup>Agency] requiring applications for licences under this Chapter to be referred to him, instead of being dealt with by the [<sup>F48</sup>Agency].
- (2) A direction under this section—
- (a) may relate either to a particular application or to applications of a class specified in the direction; and
  - (b) may except from the operation of the direction such classes of applications as may be specified in the direction in such circumstances as may be so specified.
- [<sup>F49</sup>(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.]

#### Textual Amendments

**F48** Words in s. 41 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F49** S. 41(3) added (1.4.2006) by Water Act 2003 (c. 37), **ss. 13(2), 105(3)**; S.I. 2006/984, **art. 2(h)** (with **Sch. para. 7**)

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C29** S. 41 applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), [Sch. 2 para. 8\(5\)](#)

**42 Consideration of called-in applications.**

- (1) Subject to the following provisions of this section and to section 46 below, the Secretary of State, on considering a called-in application—
  - (a) may determine that a licence shall be granted containing such provisions as he considers appropriate; or
  - (b) if, having regard to the provisions of this Act, he considers it necessary or expedient to do so, may determine that no licence shall be granted.
- (2) Before determining a called-in application, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or
  - (b) afford to the applicant and the [<sup>F50</sup>Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [<sup>F50</sup>Agency] to be heard with respect to the application.
- (3) The provisions of sections 37, 38(1) and (3), 39(2) and 40 above shall apply in relation to any called-in application as if—
  - (a) any reference in those provisions to the [<sup>F50</sup>Agency], except the references in sections [<sup>F51</sup>37 ] and 38(3)(a), were a reference to the Secretary of State; and
  - (b) any reference to section 39(1) above were a reference to subsection (4) below.
- (4) [<sup>F52</sup>Subject to subsection (4A) below,] in determining any called-in application and, in particular, in determining what (if any) direction to give under subsection (5) below, the Secretary of State shall consider whether any such direction would require the grant of a licence which would so authorise—
  - (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,

as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [<sup>F53</sup>(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) Where the decision of the Secretary of State on a called-in application is that a licence is to be granted, the decision shall include a direction to the [<sup>F50</sup>Agency] to grant a licence containing such provisions as may be specified in the direction.
- (6) The decision of the Secretary of State on any called-in application shall be final.
- (7) In this section “called-in application” means an application referred to the Secretary of State in accordance with directions under section 41 above.

*Status: Point in time view as at 01/03/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

#### Textual Amendments

- F50** Words in s. 42 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F51** Word in s. 42(3)(a) substituted (1.4.2006) by Water Act 2003 (c. 37), **ss. 14(3)(b)**, 105(3); S.I. 2006/984, **art. 2(i)** (with **Sch. paras. 1, 2**)
- F52** Words in s. 42(4) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 16(6)(a)**, 105(3); S.I. 2004/641, **art. 3(e)** (with **Sch. 3 para. 7**)
- F53** S. 42(4A) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 16(6)(b)**, 105(3); S.I. 2004/641, **art. 3(e)** (with **Sch. 3 para. 7**)

#### Modifications etc. (not altering text)

- C30** S. 42 applied (with modifications) (1.4.2006) by Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641), **reg. 1(2)**, **Sch. 2 para. 7**

### *Appeals with respect to decisions on licence applications*

#### **43 Appeals to the Secretary of State.**

- (1) Where an application has been made to the [<sup>F54</sup>Agency] for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—
- the applicant is dissatisfied with the decision of the [<sup>F54</sup>Agency] on the application; or
  - the [<sup>F54</sup>Agency] fails within the period specified in subsection (2) below to give to the applicant either—
    - notice of the [<sup>F54</sup>Agency's] decision on the application; or
    - notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.
- [<sup>F55</sup>(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]
- (2) The period mentioned in subsection (1)(b) above is—
- except in a case falling within paragraph (b) below, such period as may be prescribed; and
  - where an extended period is at any time agreed in writing between the applicant and the [<sup>F54</sup>Agency], the extended period.
- (3) A notice of appeal under this section shall be served—
- in such manner as may be prescribed; and
  - within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
    - the date on which the decision to which it relates was notified to the applicant; or
    - the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.
- (4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the [<sup>F54</sup>Agency].

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- (5) Where any representations in writing with respect to an application were made within the period specified [F56; in any such notice as is referred to in section 37(4)(b)] above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the [F54 Agency] to serve a copy of the notice of appeal on each of the persons who made those representations.

#### Textual Amendments

- F54** Words in s. 43 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F55** S. 43(1A) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 134** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F56** Words in s. 43(5) substituted (1.4.2006) by Water Act 2003 (c. 37), **ss. 14(3)(c)**, 105(3); S.I. 2006/984, **art. 2(i)** (with **Sch. paras. 1, 2**)

#### Modifications etc. (not altering text)

- C31** S. 43: power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- C32** S. 43 restricted (1.3.2012) by The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (S.I. 2003/164), regs. 1(1), **8(4)**
- C33** S. 43(1)(a) modified (1.4.2005) by The Water Act 2003 (Commencement No. 4, Transitional Provisions and Savings) Order 2005 (S.I. 2005/968), **art. 4(1)(3)**, **Sch. 1 para. 5(5)**

## 44 Determination of appeals.

- (1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—
- (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the [F57 Agency], whether the appeal relates to that part of the decision or not; and
  - (b) may deal with the application as if it had been made to him in the first instance; and for the purposes of this section an appeal by virtue of section 43(1)(b) above shall be taken to be an appeal against a refusal of the application.
- (2) Before determining an appeal under section 43 above, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the applicant and the [F57 Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [F57 Agency] to be heard with respect to the appeal.
- (3) The Secretary of State, in determining an appeal under section 43 above, shall take into account—
- (a) any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and
  - (b) the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.

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- (4) [<sup>F58</sup>Subject to subsection (4A) below,] in determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [<sup>F59</sup>(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—
- (a) any reference in those provisions to the [<sup>F57</sup>Agency], were a reference to the Secretary of State; and
  - (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.
- (6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the [<sup>F57</sup>Agency], as the case may be—
- (a) to grant a licence containing such provisions as may be specified in the direction;
  - (b) to vary the licence so as to contain such provisions as may be so specified; or
  - (c) to revoke the licence.
- (7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

#### Textual Amendments

- F57** Words in s. 44 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F58** Words in s. 44(4) inserted (1.4.2004) by **Water Act 2003 (c. 37)**, **ss. 16(7)(a)**, 105(3); S.I. 2004/641, **art. 3(e)** (with **Sch. 3 para. 7**)
- F59** S. 44(4A) inserted (1.4.2004) by **Water Act 2003 (c. 37)**, **ss. 16(7)(b)**, 105(3); S.I. 2004/641, **art. 3(e)** (with **Sch. 3 para. 7**)

## 45 Regulations with respect to appeals.

- (1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions [<sup>F60</sup>of the Agency under section 36A above or ] on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for

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licences under this Chapter would be of special concern to National Park <sup>F61</sup> . . . authorities)—

- (a) notice of any appeal against the decision on such an application, will be served on any National Park <sup>F61</sup> . . . authority who made representations falling within paragraph (b) of section 34(3) above; and
- (b) the Secretary of State, in determining the appeal, will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.

[<sup>F62</sup>(2A) Subsection (2) above does not apply in relation to appeals against decisions of the Agency under section 36A above.]

- (3) Subsections (4) <sup>F61</sup> . . . of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

#### Textual Amendments

- F60** Words in s. 45(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(3)(a)**, 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))
- F61** Words in s. 45 repealed (1.4.1997) by [1995 c. 25, s. 120\(3\)](#), **Sch. 24** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F62** S. 45(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(3)(b)**, 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))

#### *Form, contents and effect of licences*

#### 46 Form and contents of licences.

- (1) The Secretary of State may by regulations make provision as to the form of licences under this Chapter or of any class of such licences; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter.
- (2) [<sup>F63</sup>Every full licence under this Chapter shall, and any other licence under this Chapter to abstract water may, make— ]
  - (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Chapter; and
  - (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.

[<sup>F64</sup>(2A) For the purposes of section 61(4A) below—

- (a) every full licence under this Chapter which is for a term exceeding twelve years shall; and
- (b) any transfer licence under this Chapter which is for a term exceeding twelve years may,

specify a minimum value for the quantity referred to in subsection (2)(a) above.]

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- (3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.
- [<sup>F65</sup>(4) Every licence under this Chapter to abstract water shall also specify the purposes for which water abstracted in pursuance of the licence is to be used.
- (5) Every licence under this Chapter to abstract water shall state—
- (a) the date on which it takes effect; and
  - (b) the date on which it expires.
- (5A) Every licence under this Chapter to obstruct or impede any inland waters shall remain in force until revoked.]
- (6) Different provision may be made by the same licence with respect to any one or more of the following matters, that is to say—
- (a) the abstraction of water during different periods;
  - (b) the abstraction of water from the same source of supply but at different points or by different means;
  - (c) the abstraction of water for use for different purposes;
- and any such provision as is mentioned in subsection (2) above may be made separately in relation to each of the matters for which (in accordance with this subsection) different provision is made in the licence.
- (7) Nothing in subsection (6) above shall be construed as preventing two or more licences from being granted to the same person to be held concurrently in respect of the same source of supply, if the licences authorise the abstraction of water at different points [<sup>F66</sup>, by different means or for different purposes ] .

#### Textual Amendments

- F63** Words in s. 46(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(2)**, 105(3); S.I. 2006/984, [art. 2\(j\)](#) (with [Sch. para. 1](#))
- F64** S. 46(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(3)**, 105(3); S.I. 2006/984, [art. 2\(j\)](#) (with [Sch. para. 1](#))
- F65** S. 46(4)(5)(5A) substituted for s. 46(4)(5) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 19(4)**, 105(3); S.I. 2004/641, [art. 3\(g\)](#) (with [Sch. 3 para. 7](#))
- F66** Words in s. 46(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(5)**, 105(3); S.I. 2006/984, [art. 2\(j\)](#) (with [Sch. para. 1](#))

#### [<sup>F67</sup> 46A Limited extension of abstraction licence validity

- (1) If the condition in subsection (2) below is met, a full licence or a transfer licence whose term exceeded twelve months but whose expiry date (“the expiry date”) has passed shall be treated for all the purposes of this Act as not expiring until the date mentioned in subsection (4) below.
- (2) The condition is that the Agency receives, not later than the beginning of the period of three months ending on the expiry date (or such later date before the expiry date as the Agency agrees), a valid application for a new licence—

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- (a) for abstraction from the same point as the abstraction licensed by the expiring licence;
  - (b) whose holder would be the same as the holder of the expiring licence; and
  - (c) which would take effect immediately after the expiry date.
- (3) For the purposes of subsection (2) above, a “valid” application is one which complies with all the requirements of this Act in relation to the making of applications for licences of the type in question.
- (4) The date referred to in subsection (1) above is whichever is the later of—
- (a) if a new licence is granted (whether or not on the terms applied for), the date on which it takes effect;
  - (b) otherwise—
    - (i) except where the Secretary of State calls in an application under section 41 above, the expiry of the period for appealing under section 43 above, or if an appeal is brought, the date of its withdrawal; or
    - (ii) where the Secretary of State decides (under section 42 or 44 above) that no licence is to be granted, the date on which that decision is notified to the applicant.]

#### Textual Amendments

**F67** S. 46A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 20**, 105(3); S.I. 2004/641, art. 3(g) (with [Sch. 3 paras. 2, 7](#))

#### Modifications etc. (not altering text)

**C34** S. 46A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 17

## 47 Holders of licence.

- (1) Every licence under this Chapter <sup>F68</sup>... shall specify the person to whom the licence is granted.
- [<sup>F69</sup>(2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters is the holder of the licence for the purposes of this Act, subject to sections 59A to 59C and 67 below.]
- <sup>F70</sup>(3) .....

#### Textual Amendments

**F68** Words in s. 47(1) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 19(6), 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))

**F69** S. 47(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(2)(a)**, 105(3); S.I. 2006/984, art. 2(m) (with [Sch. para. 3](#))

**F70** S. 47(3) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 23(2)(b), 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m) (with [Sch. para. 3](#))



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## 48 General effect of licence.

- (1) For the purposes of this Chapter a person who is for the time being the holder of a licence under this Chapter to abstract water shall be taken to have a right to abstract water to the extent authorised by the licence and in accordance with the provisions contained in it.
- (2) In any action brought against a person in respect of the abstraction of water from a source of supply [<sup>F71</sup>(other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply)], it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—
  - (a) that the water was abstracted in pursuance of a licence under this Chapter; and
  - (b) that the provisions of the licence were complied with.
- (3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—
  - (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
  - (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
  - (c) that the other requirements of the licence (if any) were complied with.
- (4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

### Textual Amendments

**F71** Words in s. 48(2) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(2), 105(3)** (with s. 24(3)(b)); [S.I. 2004/641, art. 5](#) (with [Sch. 3 paras. 4, 7](#))

### Modifications etc. (not altering text)

**C35** S. 48(1) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), [art. 4\(1\)\(3\)](#), [Sch. 1 paras. 7\(10\)](#), **8(3)**

## [<sup>F72</sup>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.

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- (6) Nothing in this section prevents or affects a claim for negligence or breach of contract.
- (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.]

**Textual Amendments**

**F72** S. 48A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(1)**, 105(3) (with s. 24(3)(a)); S.I. 2004/641, art. 5 (with Sch. 3 paras. 4, 7)

**Modifications etc. (not altering text)**

**C36** S. 48A(1) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(1)**

**C37** S. 48A(5) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(4)**

*Succession to licences*

**F73** **49 Succession to licences to abstract where person ceases to occupy the relevant land.**

.....

**Textual Amendments**

**F73** S. 49 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(4)(5)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m)(s)(ii) (with Sch. para. 3)

**F74** **50 Succession where person becomes occupier of part of the relevant land.**

.....

**Textual Amendments**

**F74** S. 50 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **s. 23(4)(5)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m)(s)(ii) (with Sch. para. 3)

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### *Modification of licences*

#### **51 Modification on application of licence holder.**

- (1) The holder of a licence under this Chapter [<sup>F75</sup>to abstract water] may apply to the [<sup>F76</sup>Agency] to revoke the licence and, on any such application, the [<sup>F76</sup>Agency] shall revoke the licence accordingly.
- [<sup>F77</sup>(1A) The holder of a licence under this Chapter to obstruct or impede the flow of inland waters (an “impounding licence”) may apply to the Agency to revoke the licence and, on any such application, the Agency may revoke the licence accordingly.
- (1B) The Agency may require conditions to be met to its satisfaction before revocation of the impounding licence takes effect, and those conditions may in particular include conditions—
- (a) requiring the removal of all or part of the impounding works;
  - (b) as to the restoration of the site of the impounding works to a state which is satisfactory to the Agency;
  - (c) relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.
- (1C) The person making an application under subsection (1A) above (“the applicant”) may by notice appeal to the Secretary of State if—
- (a) he is dissatisfied with the decision of the Agency as to—
    - (i) whether his licence may be revoked; or
    - (ii) any conditions imposed by virtue of subsection (1B) above; or
  - (b) the Agency fails to give notice of its decision to the applicant within the prescribed period or within such extended period as may be agreed in writing between the Agency and the applicant.
- (1D) The Secretary of State may by regulations make provision with respect to—
- (a) the manner in which notices of appeal under subsection (1C) above shall be served;
  - (b) the period within which such notices shall be served;
  - (c) the procedure on any such appeal.
- (1E) Where an appeal is brought under subsection (1C) above, the Secretary of State may—
- (a) allow or dismiss the appeal or reverse or vary any part of the decision of the Agency, whether the appeal relates to that part of the decision or not; and
  - (b) may deal with the application as if it had been made to him in the first place.
- (1F) The decision of the Secretary of State on any appeal under subsection (1C) above shall be final.
- (1G) Subsections (1C) to (1F) above are subject to section 114 of the 1995 Act (delegation or reference of appeals).]
- (2) The holder of a licence under this Chapter may apply to the [<sup>F76</sup>Agency] to vary the licence.
- [<sup>F78</sup>(2A) An application may not be made under subsection (2) above to convert an abstraction licence of one type into an abstraction licence of a different type.]

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- (3) Subject to subsection (4) below, the provisions of sections 37 to 44 above shall apply (with the necessary modifications) to applications under subsection (2) above, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Chapter.
- (4) Where the variation proposed in an application under subsection (2) above is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods—
- (a) sections 37 and 38(1) above shall not apply by virtue of subsection (3) above; and
  - (b) sections 43 and 44 above, as applied by that subsection, shall have effect as if subsection (5) of section 43 and paragraph (a) of section 44(3) were omitted.

#### Textual Amendments

- F75** Words in s. 51(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(2), 105(3)** (with s. 21(5)); S.I. 2006/984, art. 2(k)
- F76** Words in s. 51 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); S.I. 1996/186, art. 3
- F77** S. 51(1A)-(1G) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(3), 105(3)** (with s. 21(5)); S.I. 2006/984, art. 2(k)
- F78** S. 51(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 4**; S.I. 2006/984, art. 2(s)(i)

#### Modifications etc. (not altering text)

- C38** S. 51 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [regs. 1\(2\), 18](#)

## 52 Proposals for modification at instance of the <sup>F79</sup>Agency] or Secretary of State.

- (1) Where it appears to the <sup>F79</sup>Agency] that a licence under this Chapter should be revoked or varied, the <sup>F79</sup>Agency] may formulate proposals for revoking or varying the licence.
- <sup>F80</sup>(1A) In the case of a licence to obstruct or impede any inland waters, a variation may take the form of a requirement that the impounding works be modified in ways specified in the proposed new provision of the licence.]
- (2) Where—
- (a) it appears to the Secretary of State (either in consequence of representations made to the Secretary of State or otherwise) that a licence under this Chapter ought to be reviewed; but
  - (b) no proposals for revoking or varying the licence have been formulated by the <sup>F79</sup>Agency] under subsection (1) above,
- the Secretary of State may, as he may consider appropriate in the circumstances, give the <sup>F79</sup>Agency] a direction under subsection (3) below.
- (3) A direction under this subsection may—
- (a) direct the <sup>F79</sup>Agency] to formulate proposals for revoking the licence in question; or
  - (b) direct the <sup>F79</sup>Agency] to formulate proposals for varying that licence in such manner as may be specified in the direction.

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- (4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence shall—
- (a) be served on the holder of the licence; and
  - <sup>F81</sup>(b) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.]
- (5) If—
- (a) a licence with respect to which any proposals are formulated under this section relates to any inland waters; and
  - (b) the proposals provide for variation of that licence,
- a copy of the notice for the purposes of subsection (4) above shall, not later than the date on which it is first published [<sup>F82</sup>as mentioned in subsection (4)(b) above], be served on any navigation authority, harbour authority or conservancy authority having functions in relation to those waters at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.
- <sup>F83</sup>(6) A notice for the purposes of subsection (4) above shall—
- (a) include any prescribed matters; and
  - (b) state that, before the end of a period specified in the notice—
    - (i) the holder of the licence may give notice in writing to the Agency objecting to the proposals; and
    - (ii) any other person may make representations in writing to the Agency with respect to the proposals.]
- <sup>F84</sup>(7) The period referred to in subsection (6)(b) above—
- (a) begins on the date the notice referred to in subsection (4) 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.]
- <sup>F85</sup>(8) .....

#### Textual Amendments

- F79** Words in s. 52 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F80** S. 52(1A) inserted (1.4.2006) by **Water Act 2003** (c. 37), **ss. 22(2)**, 105(3); S.I. 2006/984, art. 2(1)
- F81** S. 52(4)(b) substituted (1.4.2006) by **Water Act 2003** (c. 37), **ss. 22(3)**, 105(3); S.I. 2006/984, art. 2(1)
- F82** Words in s. 52(5) substituted (1.4.2006) by **Water Act 2003** (c. 37), **ss. 22(4)**, 105(3); S.I. 2006/984, art. 2(1)
- F83** S. 52(6) substituted (1.4.2006) by **Water Act 2003** (c. 37), **ss. 22(5)**, 105(3); S.I. 2006/984, art. 2(1)
- F84** S. 52(7) substituted (1.4.2006) by **Water Act 2003** (c. 37), **ss. 22(6)**, 105(3); S.I. 2006/984, art. 2(1)
- F85** S. 52(8) repealed (1.4.2006) by **Water Act 2003** (c. 37), **ss. 22(7)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(1)(s)(ii)

#### Modifications etc. (not altering text)

- C39** S. 52 applied (with modifications) (1.4.2006) by **Water Resources (Abstraction and Impounding) Regulations 2006** (S.I. 2006/641), regs. 1(2), **19(1)**
- C40** S. 52(4)-(8) applied (with modifications) (1.3.2012) by **The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003** (S.I. 2003/164), regs. 1(1), **14**, 15

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### 53 Modification in pursuance of proposals under section 52.

- (1) Subject to the following provisions of this section, where the [F86Agency] has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—
  - (a) if the proposals are for the revocation of the licence, revoke the licence; and
  - (b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.
- (2) The [F86Agency] shall not proceed with any proposals formulated under section 52 above before the end of the period specified, in accordance with subsection (7) of that section, for the purposes in relation to those proposals of subsection (6) of that section.
- (3) If no notice under subsection (4) below is given to the [F86Agency] before the end of the period mentioned in subsection (2) above, the [F86Agency] may proceed with the proposals.
- (4) If the holder of the licence gives notice to the [F86Agency] objecting to the proposals before the end of the period mentioned in subsection (2) above, the [F86Agency] shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the [F86Agency] proceeds with any proposals under subsection (3) above and the proposals are proposals for varying the licence, the provisions of sections 38(3), 39(1) and (2) and 40 above shall apply (with the necessary modifications) to any action of the [F86Agency] in proceeding with the proposals as they apply to the action of the [F86Agency] in dealing with an application for a licence.

#### Textual Amendments

**F86** Words in s. 53 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

#### Modifications etc. (not altering text)

**C41** S. 53 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [19\(2\)](#)

### 54 Reference of modification proposals to the Secretary of State.

- (1) Where any proposals of the [F87Agency] with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—
  - (a) the proposals;
  - (b) the objection of the holder of the licence; and
  - (c) any representations in writing relating to the proposals which were received by the [F87Agency] before the end of the period mentioned in subsection (2) of that section,
 and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.

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- (2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the holder of the licence and the [F87 Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the [F87 Agency] to be heard with respect to the proposals.
- (3) In determining under this section whether a licence should be varied and, if so, what directions should be given under subsection (5) below, the Secretary of State shall consider whether any such direction would require such a variation of the licence as would so authorise—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction is given, are protected rights for the purposes of this Chapter.
- (4) The provisions of sections 39(2) and 40 above shall apply in relation to any proposals referred to the Secretary of State in accordance with section 53(4) above as if in those provisions—
- (a) any reference to the [F87 Agency] were a reference to the Secretary of State;
  - (b) any reference to the application were a reference to the proposals; and
  - (c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.
- (5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the [F87 Agency] 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.
- (6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

#### Textual Amendments

**F87** Words in s. 54 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

#### Modifications etc. (not altering text)

**C42** S. 54 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [19\(3\)](#)

## 55 Application for modification of licence by owner of fishing rights.

- (1) Subject to the following provisions of this section and to Schedule 7 to this Act, where a licence under this Chapter authorises abstraction from any inland waters in respect of which no minimum acceptable flow has been determined under Chapter I of this

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Part, any person who is the owner of fishing rights in respect of those inland waters may apply to the Secretary of State for the revocation or variation of the licence.

- (2) No application shall be made under this section in respect of any licence except at a time after the end of the period of one year beginning with the date on which the licence was granted but before a minimum acceptable flow has been determined in relation to the waters in question.
- (3) Any application under this section made by a person as owner of fishing rights in respect of any inland waters 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 for the purposes of this Chapter in respect of those inland waters; 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 (2) or (3) of section 60 below or is in addition to any loss or damage attributable to any such breach.
- (4) Where an application is made under this section in respect of any licence, the applicant shall serve notice in the prescribed form on the [<sup>F88</sup>Agency] 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 Secretary of State with respect to the application.
- (5) In this section and section 56 below “fishing rights”, in relation to any inland waters, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in those waters, where the right in question—
  - (a) constitutes or is included in an interest in land; or
  - (b) is exercisable by virtue of an exclusive licence granted for valuable consideration;
 and any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights.
- (6) In this section 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.

#### Textual Amendments

**F88** Word in s. 55 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C43** S. 55 applied (with modifications) (1.4.2006) by Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641), regs. 1(2), **20(1)**

## 56 Determination of application under section 55.

- (1) The Secretary of State, in determining any application under section 55 above in respect of any licence, shall take into account any representations in writing received



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- by him, within the period mentioned in subsection (4) of that section, from the [F89Agency] or from the holder of the licence.
- (2) Before determining on an application under section 55 above whether a licence should be revoked or varied the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the applicant, the holder of the licence and the [F89Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant, the holder of the licence or the [F89Agency] to be heard with respect to the proposals.
- (3) Subject to subsections (4) and (5) below, on an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied unless—
- (a) the grounds of the application, as mentioned in subsection (3) of that section, are established to his satisfaction; and
  - (b) he 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.
- (4) On an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused the loss or damage which the applicant has sustained, as mentioned in subsection (3) of that section, 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 [F89Agency].
- (5) Where the Secretary of State determines, on an application under section 55 above, that a licence shall be varied, the variation shall be limited to that which, in the opinion of the Secretary of State, is requisite having regard to the loss or damage which the applicant has sustained as mentioned in subsection (3) of that section.
- (6) Where the decision of the Secretary of State on an application under section 55 above in respect of any licence is that the licence should be revoked or varied, the decision shall include a direction to the [F89Agency] 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.
- (7) A decision of the Secretary of State on an application under section 55 above shall be final.

#### **Textual Amendments**

**F89** Words in s. 56 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### **Modifications etc. (not altering text)**

**C44** S. 56 applied (with modifications) (1.4.2006) by **Water Resources (Abstraction and Impounding) Regulations 2006** (S.I. 2006/641), regs. 1(2), **20(2)**

*Status: Point in time view as at 01/03/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

## 57 Emergency variation of licences for spray irrigation purposes.

- (1) This section applies where at any time—
- (a) one or more licences under this Chapter are in force in relation to a source of supply 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 [F90Agency] that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) Subject to subsections (3) and (4) below, where this section applies the [F90Agency] may serve a notice on the holder of any of the licences reducing, 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 for use for the purpose of spray irrigation; and, in relation to that period, the licence shall have effect accordingly subject to that reduction.
- (3) The [F90Agency] shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the [F90Agency] that such abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor inland waters comprised in an order under section 33 above.
- (4) In the exercise of the power conferred by this section in a case where there are two or more licences under this Chapter in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the [F90Agency], are not far distant from each other—
- (a) the [F90Agency] shall not serve a notice under this section 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 [F90Agency] 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.
- (5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

### Textual Amendments

**F90** Words in s. 57 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### Modifications etc. (not altering text)

**C45** S. 57 modified (18.5.1992) by S.I. 1992/1096, **art. 4**

**C46** S. 57(1)(2)(4) modified (18.5.1992) by S.I. 1992/1096, **arts. 3, 4, Sch.**

*Status: Point in time view as at 01/03/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

#### Textual Amendments

**F91** S. 58 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 136, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(xxix)**

### 59 Regulations with respect to modification applications.

- (1) The Secretary of State may by regulations make provision as to the manner in which applications for the revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications.
- (2) Subsection (1) above shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

#### *[<sup>F92</sup>Transfer and apportionment of licences*

#### Textual Amendments

**F92** Ss. 59A-59D and cross-heading inserted (1.4.2006) by **Water Act 2003 (c. 37), ss. 23(1), 105(3); S.I. 2006/984, art. 2(m)** (with **Sch. para. 3**)

### 59A Transfer of licence

- (1) The following licences—
  - (a) a full licence;
  - (b) a transfer licence; or
  - (c) a licence to obstruct or impede the flow of inland waters by means of impounding works,may be transferred by the holder of the licence to another person (“the transferee”) in accordance with the following provisions of this section.
- (2) The holder and the proposed transferee shall give notice (a “transfer notice”) to the Agency of their agreement that the licence should be transferred.
- (3) The transfer notice shall include—
  - (a) such information as the Agency reasonably requires; and
  - (b) (in the case of the transfer of a full licence or of a transfer licence) a declaration by the proposed transferee that—
    - (i) he has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction; and
    - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),and may specify the date on which the holder and the transferee wish the transfer to take effect.

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- (4) If the holder is a person in whom the licence has vested under section 59B below, a transfer notice shall be of no effect unless the notice required by section 59B(4) has been given.
- (5) Subject to subsection (4) above, if the Agency receives a transfer notice which complies with the requirements of subsections (2) and (3) above, the Agency shall amend the licence by substituting the name of the transferee as holder of the licence.
- (6) The transfer shall take effect—
  - (a) from the date on which the Agency amends the licence; or
  - (b) from the date specified in the transfer notice, if later.
- (7) Nothing in this section shall affect the liability of the holder of the licence for any failure by him, before the transfer took effect, to comply with any condition or requirement of that licence.
- (8) In this section—
 

“point of abstraction” means a place where the licence authorises water to be abstracted from inland waters or (as the case may be) a place consisting of or comprising underground strata from which the licence authorises water to be abstracted; and

“right of access” means, in relation to a point of abstraction, a right of access to land of the kind referred to in subsection (2)(a) or, as the case may be, (3)(a) of section 35 above; and references to a person who will have such a right of access shall be construed in accordance with that section (including subsections (4) to (6)).

**Modifications etc. (not altering text)**

C47 S. 59A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 21

**59B Vesting of licence on death or bankruptcy of holder**

- (1) On the death of the holder of a licence under this Chapter, the licence shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representatives.
- (2) If a bankruptcy order is made against the holder of a licence under this Chapter, the licence shall be regarded for the purposes of any of the Second Group of Parts of the Insolvency Act 1986 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt’s estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the trustee in bankruptcy.
- (3) A person in whom a licence vests under this section shall become the holder of the licence, in place of the prior holder, from the date of the vesting.
- (4) Where a licence other than a temporary licence vests in any person under this section, that person shall give notice of that fact to the Agency not later than the end of the period of fifteen months beginning with the date of the vesting.
- (5) If—

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- (a) a licence vests in any person under this section; but
  - (b) that person fails to give the notice required by subsection (4) above within the period mentioned there,
- the licence shall cease to have effect.

### **59C Apportionment of licence to abstract**

- (1) The holder of a full licence or of a transfer licence (the “old licence”) may apply to the Agency for the division of the holder’s right to abstract water in accordance with the old licence and for the transfer—
  - (a) to another person of part, or to a number of other persons of parts not amounting to the whole; or
  - (b) to a number of other persons of parts amounting in all to the whole,of that right.
- (2) The holder of the old licence and any person proposing to carry on a part of the abstraction authorised by the old licence in place of the holder (a “successor”) shall give notice to the Agency of their agreement to the division and transfer (an “apportionment notice”).
- (3) The apportionment notice shall, in relation to the abstraction authorised by the old licence—
  - (a) specify, for each proposed successor, what quantity of water he proposes to abstract, and (if the holder of the old licence is to continue the abstraction in part) what quantity of water he proposes to abstract;
  - (b) specify the purpose or purposes for which those persons referred to in paragraph (a) above who would require a new licence granted under subsection (5) below would abstract water (being one or more of the purposes for which abstraction is authorised under the old licence);
  - (c) specify the point (or points) of abstraction from which it is proposed that the persons referred to in paragraph (a) above would abstract water (being one or more of the points from which abstraction is authorised under the old licence);
  - (d) include a declaration by each of those persons who requires a licence under this Chapter in order to carry on the abstraction that—
    - (i) he has, or at the time when the proposed grant to him of a new licence under subsection (5) below is to take effect will have, a right of access in relation to each such point of abstraction; and
    - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner); and
  - (e) include such other information as the Agency reasonably requires,and may specify the date on which the holder and the successor (or successors) wish the division and transfer (or transfers) to take effect.
- (4) The apportionment notice shall be accompanied by an application on the part of the holder of the old licence for its revocation.
- (5) Subject to subsection (9) below, if the Agency receives an apportionment notice and the application for revocation referred to in subsection (4) above, the Agency shall—
  - (a) revoke the old licence;

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- (b) if the holder is to continue the abstraction in part and a licence is required under this Chapter for that purpose, grant to the holder of the old licence a licence relating to that part of the abstraction; and
  - (c) grant to each successor who requires a licence under this Chapter in order to carry on his part of the abstraction a licence relating to that part of the abstraction.
- (6) Sections 34 to 45 above shall not apply to the grant of a new licence under subsection (5) above.
- (7) Subject to section 46 above and to any provision of regulations made under section 59D(1) below, each new licence to be granted under subsection (5) above shall be granted subject to provisions which correspond as nearly as practicable to those of the old licence in relation to the part of the abstraction to be authorised by the new licence.
- (8) The revocation of the old licence and the grant of the new licences shall take effect—
  - (a) from the date on which the Agency revokes the old licence and grants the new ones; or
  - (b) from the date specified in the apportionment notice, if later.
- (9) The Agency shall not grant a new licence to the holder of the old licence or to a successor if, by virtue of an exemption, the restriction on abstraction would not apply to that part of the abstraction proposed in relation to him in the apportionment notice.
- (10) For the purposes of this Chapter, a person (whether the holder of the old licence or a successor) who proposes to carry on a part of the abstraction in the circumstances mentioned in subsection (9) above shall, if the old licence was a full licence, be taken to have the right to do so in relation to that part, subject to subsection (11) below.
- (11) For the purposes of this Chapter, a person shall cease to be taken to have a right, by virtue of subsection (10) above, to carry on an abstraction if—
  - (a) during a period mentioned in subsection (12) below that person does not carry out any such abstraction; or
  - (b) following an order under section 27A(1) above or regulations under section 33A above, that person is granted a full licence in respect of abstraction from the same point.
- (12) The period referred to in subsection (11)(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 person in question.
- (13) For the purposes of section 39A above, a new licence granted under subsection (5) above shall be treated—
  - (a) as if it had been granted at the time the old licence was granted; and
  - (b) as if it and any other new licence granted by virtue of the relevant apportionment notice had been granted in place of the old licence.
- (14) In this section—
  - “exemption” means the disapplication of the restriction on abstraction under or by virtue of section 27 or 33A above; and

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“point of abstraction” and “right of access” have the same meanings as in section 59A above.

**Modifications etc. (not altering text)**

**C48** S. 59C applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 22

**59D Apportionment of licence to abstract: supplementary**

- (1) The Secretary of State may make regulations about the provisions to be contained in licences granted under section 59C above.
- (2) Nothing in section 59C above shall affect the liability of the holder of the old licence for any failure by him, before the revocation of that licence took effect, to comply with any condition or requirement of that licence.
- (3) If the holder of the old licence is a person in whom the old licence has vested under section 59B above, an apportionment notice shall be of no effect unless the notice required by section 59B(4) has been given.
- (4) In this section, “apportionment notice” and “old licence” have the same meanings as in section 59C above.]

*Remedies and compensation in respect of infringement of protected rights etc.*

**60 Liability of the [F93 Agency] for derogation from protected right.**

- (1) A breach of the duty imposed by subsection (1) of section 39 above (including that duty as applied by section 51(3) or 53(5) above) shall neither invalidate the grant or variation of a licence nor be enforceable by any criminal proceedings, by prohibition or injunction or by action against any person other than the [F93 Agency].
- (2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the [F93 Agency] for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the [F93 Agency] is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—
  - (a) the grant or variation of the licence shall, as between the [F93 Agency] and the person entitled to those rights, have effect as a breach on the part of the [F93 Agency] of a statutory duty not to authorise derogation from those rights; and
  - (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.
- (4) Subsection (3) above shall be without prejudice to the duty of the [F93 Agency], to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.
- (5) In any action brought against the [F93 Agency] in pursuance of this section it shall be a defence for the [F93 Agency] to show that the fact, as the case may be—

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- (a) that the abstraction of water authorised by the licence, as granted or varied by the [<sup>F93</sup>Agency], derogated from the plaintiff's protected right; or
- (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff's protected right,

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 [<sup>F93</sup>Agency].

- (6) This section has effect subject to the provision made by Schedule 7 to this Act.
- (7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—
  - (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
 as to derogate from rights which, at the time of the authorisation, are protected rights for the purposes of this Chapter.

#### **Textual Amendments**

**F93** Words in s. 60 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

#### **Modifications etc. (not altering text)**

**C49** S. 60 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [23](#)

## **61 Compensation where licence modified on direction of the Secretary of State.**

- (1) Where a licence is revoked or varied in pursuance of a direction under section 54 or [<sup>F94</sup>56] above 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 [<sup>F95</sup>Agency] shall pay 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 subsection (2) above and to Schedule 7 to this Act, no compensation shall be paid under this section—
  - (a) in respect of any work carried out before the grant of the licence which is revoked or varied; or
  - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (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



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the period of [<sup>F96</sup>four] 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.

[<sup>F97</sup>(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.]

(5) Any question of disputed compensation under this section shall be referred to and determined by the [<sup>F98</sup>Upper Tribunal] ; and in relation to the determination of any such compensation the provisions of [<sup>F99</sup>section] 4 of the <sup>M5</sup>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 subsection (6) above, 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);
- (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.

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

#### **Textual Amendments**

- F94** Word in s. 61(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 6**; S.I. 2004/641, art. 3(y), **Sch. 2** (with **Sch. 3 para. 7**)
- F95** Word in s. 61 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with **ss. 7(6)**, 115, 117); S.I. 1996/186, **art. 3**
- F96** Word in s. 61(4) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 25(2)**, 105(3) (with s. 25(4)); S.I. 2004/641, art. 3(h) (with **Sch. 3 para. 7**)
- F97** S. 61(4A)(4B) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 25(3)**, 105(3); S.I. 2006/984, art. 2(n)
- F98** Words in s. 61(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 228(a)** (with **Sch. 5**)
- F99** Word in s. 61(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 228(b)** (with **Sch. 5**)

#### **Modifications etc. (not altering text)**

- C50** S. 61 modified (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 27(2)**, 105(3); S.I. 2004/641, art. 3(i) (with **Sch. 3 para. 7**)
- C51** S. 61 excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), **regs. 1(2)**, **24**

#### **Marginal Citations**

- M5** [1961 c. 33](#).

### **[<sup>F100</sup>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.]

*Status: Point in time view as at 01/03/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

### Textual Amendments

**F100** S. 61A inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 26, 105(3); S.I. 2004/2528, art. 2(a) (with [Sch. paras. 1, 8](#))

## 62 Compensation for owner of fishing rights applying under section 55.

- (1) Where a licence is revoked or varied on an application under section 55 above, the applicant shall be entitled to compensation from the [<sup>F101</sup>Agency] in respect of the loss or damage which he has sustained as mentioned in subsection (3) of that section.
- (2) Where, on an application under section 55 above for the revocation or variation of a licence, the Secretary of State determines—
  - (a) that the grounds of the application (as mentioned in subsection (3) of that section) have been established to his satisfaction; but
  - (b) that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly for the purposes of the following provisions of this section.
- (3) Unless within the period of six months from the date on which a certificate under subsection (2) above 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 [<sup>F101</sup>Agency]; or
  - (b) an offer has been made by the [<sup>F101</sup>Agency] to the owner of those rights to acquire them on compulsory purchase terms or, where the rights subsist only as rights included in an interest in land, to acquire that interest on such terms, the owner of the fishing rights shall be entitled to compensation from the [<sup>F101</sup>Agency].
- (4) The amount of the compensation payable under subsection (3) above in respect of any fishing rights shall be the amount by which—
  - (a) the value of those rights; or
  - (b) where they subsist only as rights included in an interest in land, the value of that interest,  
is depreciated by the operation of section 48(2) above in relation to the licence to which the application related.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the [<sup>F102</sup>Upper Tribunal] ; and in relation to the determination of any such compensation the provisions of [<sup>F103</sup>section] 4 of the <sup>M6</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purposes of this section a right or interest is acquired on compulsory purchase terms if it is acquired 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 right or interest were acquired compulsorily by the [<sup>F101</sup>Agency].
- (7) Where—
  - (a) the Secretary of State, on an application under section 55 above, determines that the licence to which the application relates shall not be revoked or varied and grants a certificate under subsection (2) above; and

*Status: Point in time view as at 01/03/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

- (b) notice to treat for the acquisition of the fishing rights to which the application related, or of an interest in land in which those rights are included, has been served by the [F101 Agency] within the period of six months from the date on which that certificate is granted,

then, for the purpose of assessing compensation in respect of any compulsory acquisition in pursuance of that notice to treat, no account shall be taken of any depreciation of the value of the fishing rights, or of the interest in question, which is applicable to the operation, in relation to that licence, of section 48(2) above.

- (8) Subsections (5) and (6) of section 55 above shall apply for construing references in this section to fishing rights or to rights included in an interest in land as they have effect for construing such references in that section.

#### Textual Amendments

- F101** Words in s. 62 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F102** Words in s. 62(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 229(a)** (with Sch. 5)
- F103** Word in s. 62(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 229(b)** (with Sch. 5)

#### Marginal Citations

- M6** 1961 c. 33.

### 63 Secretary of State to indemnify [F104 Agency] in certain cases.

(1) Where—

- (a) the [F104 Agency] is liable under section 60 above to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Secretary of State; and
- (b) the [F104 Agency] pay to that person any sum in satisfaction of that liability,
- then, whether an action for recovery of those damages has been brought or not, the Secretary of State may, if he thinks fit, pay to the [F104 Agency] the whole or such part as he considers appropriate of the relevant amount.

(2) If—

- (a) proposals for revoking or varying the licence, in a case falling within subsection (1) above, are formulated by the [F104 Agency], or an application with respect to any licence is made under section 55 above;
- (b) in consequence of those proposals or that application, the licence is revoked or varied; and
- (c) compensation in respect of the revocation or variation is payable by the [F104 Agency] under section 61 above,

the Secretary of State may, if he thinks fit, pay to the [F104 Agency] the whole or such part as he considers appropriate of the relevant amount.

(3) Where—

- (a) the Secretary of State determines under section 55 above—
- (i) that a licence granted in compliance with a direction given by the Secretary of State shall be revoked or varied; or

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

- (ii) that a licence shall not be revoked or varied;  
and
- (b) in consequence of that determination, compensation is payable by the [F104 Agency] under section 62 above,  
the Secretary of State may, if he thinks fit, pay to the [F104 Agency] the whole or such part as he considers appropriate of the relevant amount.
- (4) In this section “the relevant amount” means—
- (a) for the purposes of subsection (1) above, the amount of the sum paid by the [F104 Agency] and, if an action has been brought against the [F104 Agency] in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the [F104 Agency] in connection with the action (including any costs of the plaintiff which the [F104 Agency] was required to pay); and
- (b) for the purposes of subsections (2) and (3) above, the amount of the compensation and, if any question relating to that compensation is referred to the [F105 Upper Tribunal], the amount of any costs reasonably incurred by the [F104 Agency] in connection with that reference (including any costs of the claimant which the [F104 Agency] is required to pay).

#### Textual Amendments

**F104** Words in s. 63 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F105** Words in s. 63(4)(b) substituted (1.6.2009) by *The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009* (S.I. 2009/1307), art. 1, **Sch. 1 para. 230** (with Sch. 5)

#### *Supplemental provisions of Chapter II*

#### **64 Abstracting and impounding by the [F106 Agency].**

- (1) The provisions of this Chapter shall have effect—
- (a) in relation to the abstraction of water by the [F106 Agency] from sources of supply; and
- [F107](b) in relation to—
- (i) the construction or alteration by the Agency of impounding works;  
and
- (ii) the obstruction or impeding by the Agency of the flow of inland waters by means of impounding works,]
- subject to such exceptions and modifications as may be prescribed.
- (2) Regulations under this section may, in particular, provide for securing—
- (a) that any licence required by the [F106 Agency] in relation to the matters mentioned in subsection (1) above shall be granted (or be deemed to be granted) by the Secretary of State, and not be granted by the [F106 Agency];
- (b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the [F106 Agency] shall be deemed to be granted by the Secretary of State unless the Secretary of State requires an application for the licence to be made to him by the [F106 Agency]; and

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- (c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the [<sup>F106</sup>Agency] shall give such notice of that fact as may be prescribed.
- (3) Without prejudice to the preceding provisions of this section, section 52 above shall not apply in relation to any licence which by virtue of any regulations under this section is granted or deemed to have been granted by the Secretary of State, except in accordance with regulations under this section.

#### Textual Amendments

- F106** Words in s. 64 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F107** S. 64(1)(b) substituted (1.4.2006) by Water Act 2003 (c. 37), **ss. 2(7), 105(3)** (with s. 2(10)); S.I. 2006/984, **art. 2(b)** (with **Sch. para. 2**)

#### 65 Licences of right.

Schedule 7 to this Act shall have effect for the purposes of giving effect to provisions conferring an entitlement to licences under this Chapter and with respect to licences granted in pursuance of that entitlement or the entitlement conferred by section 33 of the <sup>M7</sup>Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the <sup>M8</sup>Water Act 1989.

#### Marginal Citations

- M7** 1963 c. 38.  
**M8** 1989 c. 15.

#### 66 Inland waters owned or managed by British Waterways Board.

- (1) This section applies to all inland waters owned or managed by the British Waterways Board ("the Board"), except any such inland waters to which the Secretary of State may by order made by statutory instrument direct that this section shall not apply.
- (2) In respect of abstraction from any inland waters to which this section applies—
- <sup>F108</sup>(a) .....
- (b) no person other than the Board shall be entitled to apply for a licence under this Chapter;
- (c) in relation to any application by the Board for a licence under this Chapter—
- (i) section 35 above shall not apply; and
- (ii) section 37 above shall apply as if [<sup>F109</sup>paragraphs (b) and (c), and the succeeding words, of subsection (3) of that section were omitted.]
- (3) Before making an order under subsection (1) above, the Secretary of State shall consult the Board and the [<sup>F110</sup>Agency].

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### Textual Amendments

- F108** S. 66(2)(a) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), Sch. 7 para. 7, **Sch. 9 Pt. 3**; S.I. 2006/984, art. 2(s)(i)
- F109** Words in s. 66(2)(c)(ii) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(d)**, 105(3); S.I. 2006/984, art. 2(i) (with [Sch. paras. 1, 2](#))
- F110** Word in s. 66 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **art. 3**

## 67 Ecclesiastical property.

- (1) Where the relevant land [<sup>F111</sup>is vested in the incumbent of a benefice][<sup>F112</sup>or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land]—
- (a) an application for a licence under this Chapter may be made by the [<sup>F113</sup>Diocesan Board of Finance for the diocese in which the land is situated] if the benefice is for the time being vacant; and
- (b) any reference in this Chapter to the applicant for a licence shall be construed—
- (i) in relation to any time when the benefice in question is vacant, as a reference to the [<sup>F113</sup>Diocesan Board of Finance for the diocese in which the land is situated]; and
- (ii) in relation to any time when there is an incumbent of the benefice, as a reference to that incumbent.
- (2) Where the relevant land [<sup>F114</sup>is vested in the incumbent of a benefice][<sup>F112</sup>or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land], any licence under this Chapter shall provide that (notwithstanding anything in the preceding provisions of this Chapter) whoever is for the time being the incumbent of the benefice shall be the holder of the licence.
- (3) Where a licence under this Chapter provides as mentioned in subsection (2) above—
- (a) the licence shall not be required to specify the person to whom the licence is granted; and
- (b) the licence shall be deemed to be held by the [<sup>F115</sup>Diocesan Board of Finance for the diocese in which the land is situated] at any time when the benefice in question is vacant.
- (4) So much of any compensation falling to be paid under this Chapter as is payable—
- (a) in respect of damage to land which is ecclesiastical property and to the owner of the fee simple in the land; or
- (b) in respect of depreciation of the value of the fee simple in land which is ecclesiastical property,
- shall be paid (where the fee simple is vested in any person other than the [<sup>F116</sup>Diocesan Board of Finance for the diocese in which the land is situated]) to [<sup>F117</sup>it], instead of to the person in whom the fee simple is vested.
- (5) Any sums paid under subsection (4) above to the [<sup>F118</sup>Diocesan Board of Finance] with reference to any land shall—
- (a) if the land is not consecrated, be applied by [<sup>F118</sup>it] for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would

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- be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; and
- (b) if the land is consecrated, be applied by [F118;it][F118] as if the land had been sold under the Pastoral Measure 1983].
- (6) Where—
- (a) [F119]a Diocesan Board of Finance is] required, by virtue of subsection (3)(b) above, to pay any fee or other charge in respect of a licence under this Chapter; and
- (b) any moneys are then payable by the [F120]Board] to the incumbent of the benefice in question or subsequently become so payable,
- the [F120]Board] shall be entitled to retain out of those moneys an amount not exceeding the amount of that fee or other charge.
- (7) Where under any provision of this Chapter a document is required to be served on an owner of land and the land is ecclesiastical property, a copy of the document shall be served on the [F121]Diocesan Board of Finance for the diocese in which the land is situated].
- (8) In this section —
- “benefice” means an ecclesiastical benefice of the Church of England;
- “ecclesiastical property” means land which—
- (a) belongs to a benefice;
- (b) is or forms part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject; or
- (c) is or forms part of a burial ground so subject;
- and
- “the relevant land”, in relation to a licence under this Chapter or an application for such a licence, means—
- (a) [F122]the land to which an applicant for a licence to abstract water is required by section 35 above to have a right of access; or]
- (b) in the case of a licence for the purposes of section 25 above or an application for such a licence—
- (i) the land on which any part of the impounding works [F123;is, or] is to be, or is proposed to be, constructed; or
- (ii) in relation to an alteration of impounding works, the land on which any part of those works is situated or is to be, or is proposed to be, situated.

#### Textual Amendments

- F111** Words in s. 67(1) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F112** Words in s. 67(1)(2) inserted (1.4.2006) by [Water Act 2003 \(c. 37\), s. 105\(3\), Sch. 7 para. 8\(2\)](#); S.I. 2006/984, art. 2(s)(i)
- F113** Words in s. 67(1) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F114** Words in s. 67(2) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(b\)](#); 2006 No. 2, Instrument made by Archbishops



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- F115** Words in s. 67(3) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(a)**; 2006 No. 2, Instrument made by Archbishops
- F116** Words in s. 67(4) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(a)**; 2006 No. 2, Instrument made by Archbishops
- F117** Word in s. 67(4) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(c)**; 2006 No. 2, Instrument made by Archbishops
- F118** Words in s. 67(5) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(d)**; 2006 No. 2, Instrument made by Archbishops
- F119** Words in s. 67(6)(a) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(e)**; 2006 No. 2, Instrument made by Archbishops
- F120** Words in s. 67(6) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(f)**; 2006 No. 2, Instrument made by Archbishops
- F121** Words in s. 67(7) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(a)**; 2006 No. 2, Instrument made by Archbishops
- F122** Words in s. 67(8) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 8(3)**; S.I. 2006/984, art. 2(s)(i)
- F123** Words in s. 67(8) inserted (1.4.2006) by Water Act 2003 (c. 37), **ss. 2(8), 105(3)** (with s. 2(10)); S.I. 2006/984, art. 2(b) (with Sch. para. 2)

**F124** 68

#### Textual Amendments

- F124** S. 68 repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 138, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

### 69 Validity of decisions of Secretary of State and related proceedings.

- (1) Except as provided by the following provisions of this section, the validity of a decision of the Secretary of State on—
  - (a) any appeal to the Secretary of State under this Chapter; or
  - (b) any reference to the Secretary of State in pursuance of a direction under section 41 above or in pursuance of section 53(4) above,shall not be questioned in any legal proceedings whatsoever.
- (2) If, in the case of any such appeal or reference, the [<sup>F125</sup>Agency] or the other party desires to question the validity of the decision of the Secretary of State on the grounds—
  - (a) that the decision is not within the powers of this Act; or
  - (b) that any of the requirements of, or of any regulations made under, this Chapter which are applicable to the appeal or reference have not been complied with,the [<sup>F125</sup>Agency] or, as the case may be, the other party may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this section.
- (3) On any application under this section, the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.
- (4) If the High Court is satisfied, on an application under this section—

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- (a) that the decision to which the application relates is not within the powers of this Act; or
  - (b) that the interests of the person making the application under this section have been substantially prejudiced by a failure to comply with any of the requirements mentioned in subsection (2)(b) above,
- the High Court may quash the decision.

<sup>F126</sup>(5) .....

(6) In this section—

“decision” includes a direction; and

“other party” —

- (a) in relation to an appeal, means the appellant;
- (b) in relation to a reference in pursuance of a direction under section 41 above, means the applicant for the licence or, where that section applies by virtue of section 51(3) above, for the revocation or variation; and
- (c) in relation to a reference in pursuance of section 53(4) above, means (subject, without prejudice to their application to the other provisions of this Chapter, to subsections (6) and (7) of section 25 above) the holder of the licence.

#### **Textual Amendments**

**F125** Words in s. 69 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F126** S. 69(5) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 138, Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

## **70 Civil liability under Chapter II.**

Except in so far as this Act otherwise expressly provides and subject to the provisions of section 18 of the <sup>M9</sup>Interpretation Act 1978 (which relates to offences under two or more laws), the restrictions imposed by sections [<sup>F127</sup>24 and 25] above shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of those restrictions;
- (b) affecting any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act; or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

#### **Textual Amendments**

**F127** Words in s. 70 substituted (1.4.2006) by **Water Act 2003 (c. 37), ss. 8(4), 105(3)**; S.I. 2006/984, **art. 2(e)** (with **Sch. paras. 4, 5**)

#### **Marginal Citations**

**M9** 1978 c. 30.

*Status: Point in time view as at 01/03/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Chapter II. (See end of Document for details)*

## 71 Modification of local enactments.

- (1) If it appears to the Secretary of State by whom an order is made under a provision of this Chapter to which this section applies that any local enactment passed or made before the relevant date—
  - (a) is inconsistent with any of the provisions of that order; or
  - (b) requires to be amended or adapted, having regard to any of the provisions of that order,the Secretary of State may by order repeal, amend or adapt that enactment to such extent, or in such manner, as he may consider appropriate.
- (2) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient.
- (3) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section applies to the following provisions of this Chapter, that is to say, sections 33, 66, 68 and 72(5).
- (5) In this section—

“local enactment” means—

  - (a) a local or private Act;
  - (b) a public general Act relating to London;
  - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
  - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme;

“relevant date” means the date which was the second appointed day for the purposes of section 133 of the <sup>M10</sup>Water Resources Act 1963.
- (6) The provisions of this section shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

### Marginal Citations

M10 1963 c. 38.

## 72 Interpretation of Chapter II.

- (1) In this Chapter—

“derogate”, in relation to a protected right, shall be construed in accordance with section 39(4) above;

“flow” shall be construed subject to section 23(3) above;

[<sup>F128</sup>“full licence” has the meaning given in section 24A above;]

“impounding works” has the meaning given by section 25(8) above;

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“licence”, in relation to the variation or revocation of a licence, shall be construed subject to section 25(6) and (7) above;

“protected right” shall be construed in accordance with [F129 section 39A] above;

“the restriction on abstraction” means the restriction imposed by section 24(1) above;

“the restriction on impounding works” means the restriction imposed by section [F130 25(1)(a) and (b)] above;

“spray irrigation” means (subject to subsection (5) below) the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray; and

“statutory provision” means a provision (whether of a general or special nature) which is contained in, or in any document made or issued under, any Act (whether of a general or special nature).

[F128 “temporary licence” and “transfer licence” have the meanings given in section 24A above.]

- (2) References in this Chapter to a watercourse shall not include references—
- (a) to any sewer or part of a sewer vested in—
    - (i) a sewerage undertaker;
    - (ii) a local authority or joint planning board;
    - (iii) the [F131 new towns residuary body] or a development corporation for a new town;
    - (iv) a harbour board within the meaning of the <sup>M11</sup>Railway and Canal Traffic Act 1888;
  - or
  - (b) to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

[F132(2A) In subsection (2)(a)(iii) “new towns residuary body” means—

- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008; and
- (b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.]

- (3) Any reference in this Chapter to the doing of anything in pursuance of a licence under this Chapter is a reference to its being done—
- (a) by the holder of such a licence; or
  - (b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by this Chapter.

- (4) For the purposes of this Chapter land shall be taken to be contiguous to any inland waters notwithstanding that it is separated from those waters by a towpath or by any

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other land used, or acquired for use, in connection with the navigation of the inland waters, unless that other land comprises any building or works other than a lock, pier, wharf, landing-stage or similar works.

- (5) The Ministers may by order direct that references to spray irrigation in this Chapter, and in any other enactments in which “spray irrigation” is given the same meaning as in this Chapter, or such of those references as may be specified in the order—
- (a) shall be construed as not including spray irrigation if carried out by such methods or in such circumstances or for such purposes as may be specified in the order; and
  - (b) without prejudice to the exercise of the power conferred by virtue of paragraph (a) above, shall be construed as including references to the carrying out, by such methods or in such circumstances or for such purposes as may be specified in the order, of irrigation of any such description, other than spray irrigation, as may be so specified.
- (6) The power of the Ministers to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F128** Words in s. 72(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 1(2)**, 105(3); S.I. 2006/984, art. 2(a) (with [Sch. paras. 1, 2](#))
- F129** Words in s. 72(1) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(2)**, 105(3); S.I. 2005/968, art. 2(d) (with [Sch. 1 para. 2](#))
- F130** Words in s. 72(1) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(9)**, 105(3) (with s. 2(10)); S.I. 2006/984, art. 2(b) (with [Sch. para. 2](#))
- F131** Words in s. 72(2)(a)(iii) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 60(2)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)
- F132** S. 72(2A) inserted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 60(3)**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6-13)

#### Modifications etc. (not altering text)

- C52** S. 72(2)(a) applied (with modifications) (4.6.1996) by S.I. 1996/1243, art. 18, **Sch. 5 Pt. II para. 6(2)(a)**

#### Marginal Citations

- M11** 1888 c. 25.

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