



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

##### *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>F1</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>F2</sup>, and provision for making such applications available for public inspection.]
- (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>F3</sup> . . . authorities)—
  - (a) notice of any such application will be given to such one or more National Park <sup>F3</sup> . . . authorities as may be determined in accordance with the regulations; and
  - (b) the matters to which the [<sup>F4</sup>appropriate agency] or, as the case may be, the Secretary of State is to have regard in dealing with the application will include

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any representations made by any such National Park <sup>F3</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>F5</sup>(5) . . . . .

#### Textual Amendments

- F1** 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](#))
- F2** 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](#))
- F3** 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.](#)
- F4** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F5** 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>F6</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 [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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 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 [<sup>F4</sup>appropriate agency] may, in particular, take evidence of a person's occupation of land to be evidence of his right of access to it.]

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- (4) Any reference in this section to a person who [<sup>F7</sup>will have a right of access to] land of any description—
- (a) includes a reference to a person who satisfies the [<sup>F4</sup>appropriate 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>F8</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>F4</sup>appropriate 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.

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#### Textual Amendments

- F4** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F6** 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\(3\)](#))
- F7** 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\(3\)](#))
- F8** 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\(3\)](#))

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

- C1** 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)**

### <sup>F9</sup>36 Application for combined abstraction and impounding licence.

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#### Textual Amendments

- F9** 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](#))

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### **[<sup>F10</sup>36A Applications: types of abstraction licence**

- (1) The [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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—
  - (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 [<sup>F4</sup>appropriate agency], whether the appeal relates to that part of the decision or not; and
  - (b) shall direct the [<sup>F4</sup>appropriate agency] to deal with the application, or applications, accordingly (which, if the [<sup>F4</sup>appropriate agency's] decision was made under paragraph (d) of subsection (1) above in relation to any such

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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

**F4** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

**F10** 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)

**C2** 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>F11</sup>37 Publication of application for licence.

- (1) The [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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 [<sup>F4</sup>appropriate 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,
- 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 [<sup>F4</sup>appropriate agency] with respect to the application at any time before the end of a period specified in the notice.

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- (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

- F4** Words in ss. 33A–45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F11** 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)

- C3** 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](#)
- C4** 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](#)
- C5** 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>F12</sup>37A Power to dispense with publication requirements

The Secretary of State may by regulations make provision for—

- (a) enabling the [<sup>F4</sup>appropriate agency]; or
- (b) him, in the case of applications referred to him in accordance with section 41 below,

to direct or determine that the requirements of subsections (1) and (2) of section 37 above may in any case (except where the [<sup>F4</sup>appropriate agency] is the applicant) be dispensed with, if in that case it appears to the [<sup>F4</sup>appropriate agency] (or, as the case may be, the Secretary of State) to be appropriate to do so.]

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#### Textual Amendments

- F4** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F12** 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](#))

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