



Water Resources Act 1991

1991 CHAPTER 57

PART II

WATER RESOURCES MANAGEMENT

CHAPTER II

ABSTRACTION AND IMPOUNDING

Modification of licences

51 Modification on application of licence holder

- (1) The holder of a licence under this Chapter may apply to the Authority to revoke the licence and, on any such application, the Authority shall revoke the licence accordingly.
- (2) The holder of a licence under this Chapter may apply to the Authority to vary the licence.
- (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.

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52 Proposals for modification at instance of the Authority or Secretary of State

- (1) Where it appears to the Authority that a licence under this Chapter should be revoked or varied, the Authority may formulate proposals for revoking or varying 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 Authority under subsection (1) above,
 the Secretary of State may, as he may consider appropriate in the circumstances, give the Authority a direction under subsection (3) below.
- (3) A direction under this subsection may—
 - (a) direct the Authority to formulate proposals for revoking the licence in question; or
 - (b) direct the Authority to formulate proposals for varying that licence in such manner as may be specified in the direction.
- (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
 - (b) be published in the London Gazette and, at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality.
- (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 otherwise than in the London Gazette, 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.
- (6) A notice for the purposes of subsection (4) above, in addition to any other matters required to be contained in that notice, shall—
 - (a) name a place within the relevant locality where a copy of the proposals, and of any map, plan or other document prepared in connection with them, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (7) below; and
 - (b) state that, at any time before the end of that period—
 - (i) the holder of the licence may give notice in writing to the Authority objecting to the proposals; and
 - (ii) any other person may make representations in writing to the Authority with respect to the proposals.
- (7) The period specified in a notice for the purposes of subsection (6) above shall be a period which—

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- (a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and
 - (b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.
- (8) In this section “the relevant locality” means the locality in which the place or places where the licence authorises water to be abstracted or impounded is or are situated.

53 Modification in pursuance of proposals under section 52

- (1) Subject to the following provisions of this section, where the Authority 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 Authority 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 Authority before the end of the period mentioned in subsection (2) above, the Authority may proceed with the proposals.
- (4) If the holder of the licence gives notice to the Authority objecting to the proposals before the end of the period mentioned in subsection (2) above, the Authority shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the Authority 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 Authority in proceeding with the proposals as they apply to the action of the Authority in dealing with an application for a licence.

54 Reference of modification proposals to the Secretary of State

- (1) Where any proposals of the Authority 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

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 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

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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 Authority and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the 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.

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 by him, within the period mentioned in subsection (4) of that section, from the Authority 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 Authority 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 Authority 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

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- (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 Authority.
- (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 Authority to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (7) A decision of the Secretary of State on an application under section 55 above shall be final.

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 Authority 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 Authority 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 Authority shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the Authority 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 Authority, are not far distant from each other—

- (a) the Authority 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 Authority to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.
- (5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

58 Revocation of licence for non-payment of charges

- (1) If the charges payable in respect of a licence under this Chapter are not paid within twenty-eight days after notice demanding them has been served on the holder of the licence, the Authority may revoke the licence by the service of a notice of revocation on the holder of the licence.
- (2) A notice demanding the payment of any charges which is served for the purposes of subsection (1) above shall—
- (a) state that the licence in question may be revoked if the charges are not paid within twenty-eight days after the service of the notice;
 - (b) set out the effect of revocation; and
 - (c) state that no compensation is payable in respect of a revocation under this section.
- (3) Revocation of a licence under this section—
- (a) shall take effect at such time, not being a time before the end of the period of twenty-eight days after notice of revocation is served on the holder of the licence, as may be specified in that notice; and
 - (b) shall so take effect only if the charges in question are not paid before that time.
- (4) A notice of revocation served under this section shall—
- (a) set out the reason for the revocation; and
 - (b) state that the revocation will take effect only if the charges in question are not paid before the time specified in the notice.

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.