



Water Resources Act 1991

1991 CHAPTER 57

PART II

WATER RESOURCES MANAGEMENT

CHAPTER II

ABSTRACTION AND IMPOUNDING

Consideration of licence applications

38 General consideration of applications.

(1) The [^{F1}appropriate agency] shall not determine any application for a licence under this Chapter before the end of the period specified [^{F2}in the notice referred to in section 37(4)(b)] above.

[^{F3}(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).

Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Section 38. (See end of Document for details)

- (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 [F1appropriate agency] for a licence under this Chapter, the [F1appropriate agency]—
- (a) may grant a licence containing such provisions as the [F1appropriate agency] considers appropriate; or
 - (b) if, having regard to the provisions of this Chapter, the [F1appropriate agency] considers it necessary or expedient to do so, may refuse to grant a licence.
- (3) Without prejudice to section 39(1) below, the [F1appropriate agency], in dealing with any application for a licence under this Chapter, shall have regard to [F4all 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]—
- (a) any representations in writing relating to the application which are received by the [F1appropriate 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 [F1appropriate agency] to be reasonable requirements.
- [F5 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 [F1appropriate agency] under section 20C above.]
- [F6(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if 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

- F1** 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)
- F2** 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](#))
- F3** 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](#))
- F4** 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](#))
- F5** 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](#))
- F6** 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)

- C1** 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)**

Changes to legislation:

There are currently no known outstanding effects for the Water Resources Act 1991, Section 38.