



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

##### *Consideration of licence applications*

#### **[<sup>F1</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;
  - (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,

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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.
- (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

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emergency purposes only, such longer period as the [F2appropriate 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.]

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**Textual Amendments**

- F1** 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](#))
- F2** 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](#))

**Changes to legislation:**

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