



# Water Resources Act 1963

## 1963 CHAPTER 38

### PART IV

#### CONTROL OF ABSTRACTION AND IMPOUNDING OF WATER

##### *General provisions as to abstraction of water*

#### **23 General restrictions**

- (1) Subject to the following provisions of this Part of this Act, as from the end of the period of three months beginning with the second appointed day (in this Act referred to as " the initial period ") no person shall abstract water from any source of supply in a river authority area, or cause or permit any other person so to abstract any water, except in pursuance of a licence under this Act granted by the river authority and in accordance with the provisions of that licence.
- (2) Where by virtue of the preceding subsection the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Act, no person shall after the end of the initial period begin, or cause or permit any other person to begin, to—
  - (a) construct any well, borehole or other work whereby water may be abstracted from those strata, or
  - (b) extend any such well, borehole or other work, or
  - (c) instal or modify any machinery or apparatus whereby additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,

unless the abstraction of the water, or the additional quantities of water, as the case may be, is authorised by a licence under this Act, and the well, borehole or work as constructed or extended, or the machinery or apparatus as installed or modified, fulfils the requirements of that licence as to the means whereby water is authorised to be abstracted.

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- (3) Subject to the provisions of Part X of this Act with respect to the Water Act 1958, the restrictions imposed by this section shall have effect notwithstanding anything in any other enactment contained in any Act passed before the passing of this Act, or in any statutory provision made or issued, whether before or after the passing of this Act, by virtue of such an enactment.

## **24 Exceptions from general restrictions**

- (1) The restriction imposed by subsection (1) of the last preceding section does not apply to any abstraction of a quantity of water not exceeding one thousand gallons, if it does not form part of a continuous operation, or of a series of operations, whereby in the aggregate more than one thousand gallons of water are abstracted.
- (2) The restriction imposed by subsection (1) of the last preceding section does not apply to any abstraction from an inland water by or on behalf of an occupier of land contiguous to that water at the place where the abstraction is effected, in so far as the water—
- (a) is abstracted for use on a holding consisting of that land with or without other land held therewith, and
  - (b) is abstracted for use on that holding for either or both of the following purposes, that is to say, the domestic purposes of the occupier's household and agricultural purposes other than spray irrigation:

Provided that, where under section 55 of this Act it is so determined, this subsection shall apply as if any reference to use on such a holding as is mentioned in this subsection were a reference to use on the relevant part of such a holding as determined under that section.

- (3) The restriction imposed by subsection (1) of the last preceding section does not apply to the abstraction of water from underground strata, in so far as the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.
- (4) The restriction imposed by subsection (1) of the last preceding section does not apply to any abstraction of water from a source of supply—
- (a) in the course of, or resulting from, any operations for purposes of land drainage, or
  - (b) in so far as the abstraction (where it does not fall within the preceding paragraph) is necessary to prevent interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface) or to prevent damage to works resulting from any such operations ;
- and where in the course of any such operations as are mentioned in paragraph (b) of this subsection water is abstracted from an excavation to which section 2(2)(b) of this Act applies, and the abstraction is necessary as mentioned in paragraph (b) of this subsection, the exemption conferred by this subsection shall apply notwithstanding that the water is used for the purposes of the operations.
- (5) In the case of any abstraction of water from underground strata which falls within subsection (3) or subsection (4) of this section, the restriction imposed by subsection (2) of the last preceding section does not apply to the construction or extension of any well, borehole or other work, or the installation or modification of machinery or other apparatus, for the purpose of abstracting the water.

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- (6) The restriction imposed by subsection (1) of the last preceding section does not apply to any transfer of water from one inland water to another in the course of, or resulting from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the performance of their functions as such an authority.
- (7) The restriction imposed by subsection (1) of the last preceding section does 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.
- (8) The restrictions imposed by the last preceding section do not apply to the doing of anything for fire-fighting purposes (within the meaning of the Fire Services Act 1947) or for the purpose of testing apparatus used for those purposes or of training or practice in the use of such apparatus.
- (9) The restrictions imposed by the last preceding section do not apply to the abstraction of water, or to the construction or extension of any well, borehole or other work, or the installation or modification of machinery or other apparatus, if it is for the purpose—
  - (a) of ascertaining the presence of water in any underground strata or the quality or quantity of any such water, or
  - (b) 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 water,and it is carried out with the consent of the river authority and in compliance with any conditions imposed by that authority.

## **25 Power to provide further exceptions**

- (1) Any of the relevant authorities, after consultation with the other relevant authorities (if any), may apply to the Minister for an order excepting any one or more sources of supply in a river authority area from the restriction imposed by section 23(1) of this Act, on the grounds that the restriction so imposed is not needed in relation to that source of supply or those sources of supply, as the case may be.
- (2) An application under this section may be made in respect of—
  - (a) any one or more inland waters specified in the application, or any class of inland waters so specified, or
  - (b) any underground strata described in the application, whether by reference to their formation or their location in relation to the surface of the land or in relation to other strata subjacent to that surface or partly in one way and partly in another,

and an order may be made under this section accordingly :

Provided that any one order under this section shall be limited to one river authority area and shall not extend to any source of supply outside that area.

- (3) For the purposes of this section—
  - (a) a river authority is a relevant authority in relation to all sources of supply in their area;
  - (b) a navigation authority, harbour authority or conservancy authority having functions in relation to any inland water is a relevant authority in relation to that inland water.

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- (4) Before applying to the Minister for an order under this section, the applicant authority shall consult the Water Resources Board, and may then submit to the Minister a draft order together with a statement of any observations made by the Board with respect to the application.
- (5) Part I, and, where applicable, Part IV, of Schedule 7 to this Act shall have effect in relation to any application under this section, as if—
- (a) any reference to a draft statement were a reference to a draft order, and any reference to the approval of a statement were a reference to the making of an order,
  - (b) any reference to an inland water to which the draft statement relates were a reference to a source of supply to which the draft order relates, and
  - (c) paragraph 4 (g) of that Schedule were omitted.
- (6) In relation to any application under this section made by a relevant authority other than a river authority, the provisions of Schedule 7 to this Act applied by the last preceding subsection shall have effect subject to the following further modifications, that is to say:—
- (a) except in paragraphs 9 and 16 of that Schedule, any reference to the river authority, unless the reference is to the river authority area, shall be construed as a reference to the applicant authority ;
  - (b) in paragraph 9 of that Schedule, the first reference to the river authority shall be construed as a reference to the applicant authority, and the second such reference shall be construed as a reference to the river authority and the applicant authority ;
  - (c) the river authority shall be included among the bodies on whom, under paragraph 4 of that Schedule, a copy of the notice is required to be served.
- (7) If, in the case of a source of supply in a river authority area.—
- (a) it appears to the Minister, after consultation with the river authority and the Water Resources Board, that the question whether the restriction imposed by section 23 (1) of this Act is needed in relation to that source of supply ought to be determined, but
  - (b) no application for an order under this section has been made,
- the Minister may direct the river authority to submit to him a draft order under this section with respect to that source of supply.
- (8) Part I, and, where applicable, Part IV, of Schedule 7 to this Act shall have effect in relation to any draft order submitted to the Minister in pursuance of the last preceding subsection, subject to the modifications specified in subsection (5) of this section and to the further modification that paragraph 8 of that Schedule shall apply in relation to any objection received by the Minister from the river authority as it applies in relation to an objection received by him from a person on whom a notice is required by that Schedule to be served.
- (9) On the coming into operation of an order under this section—
- (a) the restriction imposed by subsection (1) of section 23 of this Act (and, in the case of any underground strata, the restriction imposed by subsection (2) of that section) shall cease to apply to any source of supply to which the order relates, and

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- (b) any licence granted under this Act which is for the time being in force shall cease to have effect in so far as it authorises abstraction from any such source of supply.

## **26 Protected rights to abstract water**

- (1) For the purposes of the following provisions of this Part of this Act—
  - (a) a person who is for the time being the holder of a licence under this Act 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;
  - (b) a person who is in a position to abstract water in such circumstances that, by virtue of section 24 (2) or section 24 (3) of this Act, the restriction imposed by section 23 (1) of this Act does not apply thereto shall be taken to have a right to abstract water to the extent specified in section 24 (2) or section 24 (3) of this Act, as the case may be ;

and " protected right under this Act" means such a right as a person is taken to have by virtue of this subsection, and any reference to the person entitled to such a right shall be construed accordingly.

- (2) Any reference in this Act to abstracting water so as to derogate from a protected right under this Act is a reference to abstracting water 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 paragraph (a) or paragraph (b) of the preceding subsection, as the case may be.

## **27 Who may apply for a licence**

- (1) Subject to the following provisions of this Part of this Act as to licences of right, no application for a licence under this Act 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.
- (2) In relation to abstractions from an inland water, a person shall be entitled to make such an application if, at the place (or, if more than one, at each of the places) at which the proposed abstractions are to be effected, either—
  - (a) he is the occupier of land contiguous to that inland water, or
  - (b) he satisfies the river authority that he has, or at the time when the proposed licence is to take effect will have, a right of access to such land.
- (3) In relation to abstractions from underground strata, any person who is the occupier of land consisting of or comprising those underground strata shall be entitled to make such an application.
- (4) Any reference in this section to a person who is the occupier of land of any description includes a reference to a person who satisfies the river authority 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 occupy that land.

## **28 Publication of application for licence**

- (1) A river authority shall not entertain an application for a licence under this Act to abstract water, other than a licence of right, unless it is accompanied by a copy of a notice in the prescribed form, and by the prescribed evidence—

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- (a) that the notice has been 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, and
  - (b) where the licence applied for is for abstraction from an inland water, that a copy of the notice has, not later than the date on which it was first published (otherwise than in the London Gazette) as mentioned in the preceding paragraph, been served on any navigation authority, harbour authority or conservancy authority having functions in relation to that inland water at any proposed point of abstraction, and on any internal drainage board within whose district any proposed point of abstraction is situated.
- (2) Any such notice as is mentioned in the preceding subsection shall (in addition to any other matters required to be contained therein)—
- (a) name a place within the relevant locality where a copy of the application, and of any map, plan or other document submitted with it, 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 the next following subsection, and
  - (b) state that any person may make representations in writing to the river authority with respect to the application at any time before the end of that period.
- (3) The period specified in a notice in pursuance of the last preceding subsection shall be a period beginning not earlier than the date on which the notice is first published in a newspaper other than the London Gazette, and ending 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; and a river authority shall not determine any such application as is mentioned in subsection (1) of this section before the end of the period so specified.
- (4) In this section "relevant locality ", in relation to an application for a licence under this Act, means the locality in which any proposed point of abstraction is situated, and " proposed point of abstraction " means a place where a licence, if granted in accordance with the application, would authorise water to be abstracted.

## **29 Determination by river authority of application for licence**

- (1) The provisions of this section shall have effect where application is made to a river authority for a licence under this Act to abstract water, other than a licence of right.
- (2) The river authority shall not grant a licence authorising the abstraction of water so as to derogate from any rights which, at the time when the application is determined by the river authority, are protected rights under this Act.
- (3) Without prejudice to the last preceding subsection, the river authority, in dealing with the application, shall have regard to—
- (a) any representations in writing relating to the application which are received by them before the end of the period mentioned in subsection (2) of the last preceding section, and
  - (b) the requirements of the applicant, in so far as they appear to the river authority to be reasonable requirements.
- (4) In the following provisions of this section " the preceding provisions " means the provisions of subsections (2) and (3) of this section.

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- (5) Where the application relates to abstraction from an inland water, and is made at a time when no minimum acceptable flow for that inland water has been determined under this Act, the river authority, in dealing with the application, shall (without prejudice to the preceding provisions) have regard to the considerations by reference to which, in accordance with section 19(5) of this Act, a minimum acceptable flow for that inland water would fall to be determined.
- (6) Where the application relates to abstraction from an inland water, and is made at a time after a minimum acceptable flow for that inland water has been determined under this Act, the river authority, in dealing with the application, shall (without prejudice to the preceding provisions) have regard to the need to secure that the flow at any control point will not be reduced below the minimum acceptable flow at that point, or (if it is already less than that minimum acceptable flow) will not be further reduced below that minimum acceptable flow.
- (7) Where the application relates to abstraction from underground strata—
  - (a) the river authority shall (without prejudice to the preceding provisions) have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes, and
  - (b) if it appears to them that the proposed abstraction is likely to affect the flow, level or volume of an inland water (not being an inland water falling within section 2(3) of this Act or an inland water comprised in an order under section 25 of this Act), subsection (5) or subsection (6) of this section, as the case may be, shall apply (without prejudice to the preceding provisions or to paragraph (a) of this subsection) as if the application related to abstraction from that inland water.
- (8) Subject to the preceding subsections, and to the following provisions of this Act, on any application to a river authority for a licence under this Act, other than a licence of right, the river authority—
  - (a) may grant a licence containing such provisions as they consider appropriate, or
  - (b) if, having regard to the provisions of this Act, they consider it necessary or expedient to do so, may refuse to grant a licence.

### **30 Matters to be specified in licences**

- (1) Every licence under this Act to abstract water—
  - (a) shall make 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 Act, and
  - (b) shall make 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.
- (2) Every such licence shall indicate the means whereby water is authorised to be abstracted in pursuance of the licence, by reference either to specified works,

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machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.

- (3) Every such licence, except a licence granted to a river authority, or to water undertakers (whether statutory or not) for the purposes of their undertaking as water undertakers, shall also specify the land on which, and the purposes for which, water abstracted in pursuance of the licence is to be used.
- (4) Every such licence shall specify the person to whom the licence is granted.
- (5) Every such licence shall state whether the licence is to remain in force until revoked or is to expire at a time specified in the licence.
- (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 (1) of this section 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 the last preceding subsection 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 or by different means.

### **31 Effect of licence**

- (1) Subject to the following provisions of this section, in any action brought against a person in respect of the abstraction of water from a source of supply, it shall be a defence for him to prove that the water was abstracted in pursuance of a licence under this Act, and that the provisions of the licence were complied with.
- (2) The preceding subsection shall have effect without prejudice to the transitional provisions contained in section 56(5) of this Act
- (3) Nothing in subsection (1) of this section shall exonerate a person from any action for negligence or breach of contract.
- (4) Subject to—
  - (a) the next following section, and
  - (b) any power under this Act to vary licences,the person to whom a licence under this Act to abstract water is granted is for the purposes of this Act the holder of the licence.
- (5) Where, in accordance with the provisions contained in a licence in pursuance of paragraph (b) of subsection (1) of the last preceding section, or in pursuance of that paragraph as modified by subsection (6) of that section, it has been determined what quantity of water is to be taken—
  - (a) to have been abstracted during any period from a source of supply by the holder of the licence, or



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(b) to have been so abstracted at a particular point or by particular means, or for use for particular purposes,  
that determination shall, for the purposes of any proceedings under this Act, be conclusive evidence of the matters to which it relates.

## **32 Succession to licences to abstract water**

- (1) Where the holder of a licence under this Act to abstract water (in this section referred to as " the original holder ") is the occupier of the whole of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used (in this section referred to as " the relevant land "), and either, being an individual, he dies, or by reason of any other act or event the original holder, whether an individual or not, ceases to be the occupier of the whole of the relevant land and does not continue to be the occupier of any part of that land, and (either immediately after his death or the occurrence of that other act or event or subsequently) another person (in this section referred to as " the successor ") becomes the occupier of the whole of the relevant land.—
  - (a) the original holder (except where, being an individual, he has died) shall cease to be the holder of the licence, and
  - (b) the successor shall become the holder of the licence.
- (2) Where the preceding subsection applies, the successor shall cease to be the holder of the licence at the end of the period of one month beginning with the date on which he became the occupier of the relevant land unless before the end of that period he has given to the river authority notice of the change in the occupation of the relevant land.
- (3) Provision may be made by regulations under this Act for conferring on a person who, after the death of the original holder or the occurrence of any other act or event whereby the original holder ceases to be the occupier of the relevant land or of part of that land, becomes the occupier of part of the relevant land, a right in such circumstances as may be specified in the regulations—
  - (a) to become the holder of the licence, subject to provisions corresponding to the last preceding subsection, or
  - (b) to apply for, and to the grant of, a new licence containing provisions (as to quantities of water and otherwise) determined in accordance with the regulations by reference to the provisions of the original licence,or for conferring on the original holder, where he continues to be the occupier of part of the relevant land but ceases to be the occupier of another part of that land, a right, in such circumstances as may be specified in the regulations, to apply for, and to the grant of, a new licence as mentioned in paragraph (b) of this subsection.
- (4) Any regulations made in pursuance of the last preceding subsection may provide that, in relation to an application for a licence made by virtue of the regulations, or to a person entitled to make such an application, the provisions of this Part of this Act shall have effect subject to such exceptions and modifications as may be specified in the regulations.
- (5) Where an order under section 9 or section 23 of the Water Act 1945 provides for the transfer of, or the constitution of a joint board or joint committee to carry on, exercise or perform, any undertaking, rights or functions of the holder of a licence under this Act to abstract water, the order shall also provide for the transfer of the licence; and where such a licence is transferred by virtue of any such order, or by virtue of any other statutory provision, or is included in any sale or lease under section 122 of the Public

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Health Act 1936, the person to whom it is transferred, sold or leased shall become (in the case of such a transfer, to the extent specified in the statutory provision in question, and, in the case of a lease, for the period of the lease) the holder of the licence for the purposes of this Act.

- (6) Where any person who becomes the holder of a licence by virtue of the provisions of this section or of regulations made thereunder gives notice to the river authority in accordance with those provisions, or any person who becomes the holder of a licence by virtue of the last preceding subsection notifies the river authority that he has become the holder of the licence, the river authority shall vary the licence accordingly ; and where, by virtue of the provisions of this section or of any such regulations a person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.
- (7) The preceding provisions of this section shall have effect without prejudice to the exercise of any power to revoke or vary licences under this Part of this Act.

### *Licences of right*

## **33 Entitlement to licence of right**

- (1) Where a person—
- (a) by virtue of any statutory provision in force on the second appointed day, other than an order under the Water Act 1958, is entitled to abstract water from a source of supply in a river authority area, or
  - (b) has, otherwise than by virtue of a statutory provision, abstracted water from such a source of supply at any time within the period of five years ending with the second appointed day,
- he shall, on application made to the river authority under this section before the end of the initial period, be entitled to the grant of a licence under this Act.
- (2) In sections 34 and 35 of this Act, any reference to the predecessors of an applicant—
- (a) in relation to a case falling within subsection (1)(a) of this section, is a reference to persons, other than the applicant, who abstracted water from the source of supply in question by virtue of the statutory provision referred to in that paragraph, and
  - (b) in any other case, is a reference to any person who was the predecessor in title of the applicant.
- (3) For the purposes of this section, and of sections 34 and 35 of this Act, no account shall be taken of any water abstracted in contravention of section 14 (5) of the Water Act 1945 (which restricts the abstraction of underground water in areas to which that section is applied).
- (4) Where, in a case falling within subsection (1)(a) of this section, there are in force on the second appointed day two or more separate statutory provisions (other than orders under the Water Act 1958) whereby the same person is entitled to abstract water from the same source of supply at different points or by different means, subsections (1) to (3) of this section, and the next following section, shall have effect separately in relation to each of those statutory provisions, and the applicant shall be entitled to two or more licences under this section accordingly:

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Provided that this subsection shall have effect subject to any regulations made in accordance with the next following subsection.

- (5) Provision may be made by regulations under this Act for securing that where, on any application under this section, it appears to the river authority—
- (a) that the applicant would, apart from the regulations, be entitled to two or more licences under this section, by reason that he was entitled to abstract water by virtue of two or more separate statutory provisions in force on the second appointed day, whether those statutory provisions relate to different sources of supply or to abstraction from the same source of supply but at different points or by different means, and
  - (b) that those sources of supply, or those different points or different means, as the case may be, have been, or are intended to be, used by the applicant in conjunction with each other (whether simultaneously or as alternatives or otherwise), and
  - (c) that it is expedient that (instead of two or more licences) there should be granted to the applicant one licence under this section providing for them to be so used in pursuance of the licence,

the river authority may determine that a licence shall be granted in accordance with paragraph (c) of this subsection; and any such regulations may provide that, in relation to a licence so granted, the provisions of section 30 of this Act and of the next following section shall have effect subject to such exceptions and modifications as may be specified in the regulations.

- (6) In this section " separate statutory provision " does not include a statutory provision which only amends or varies a previous statutory provision; but any reference in this or the next following section to a statutory provision (except where the reference is to the coming into operation thereof) shall, in relation to a statutory provision which has been amended or varied, be construed as a reference to that provision in the form in which it is for the time being in force.
- (7) Any licence granted in pursuance of an application under this section, or in pursuance of an appeal consequential upon such an application, is referred to in this Act as a " licence of right".

### **34 Licences of right for statutory users**

- (1) The provisions of this section shall have effect where an application under the last preceding section is made in a case falling within subsection (1)(a) of that section; and in this section—
- (a) " the relevant statutory provision " means the statutory provision by virtue of which the applicant is entitled to abstract water as mentioned in that paragraph, and
  - (b) " the relevant period " means the period of five years ending with the second appointed day or the period beginning with the coming into operation of the relevant statutory provision and ending with that day, whichever is the shorter.
- (2) Subject to the following provisions of this section, the provisions of the licence, including those relating to the quantity of water authorised to be abstracted, shall be such as appear to the river authority to correspond as nearly as may be to those of the relevant statutory provision, and may, if the river authority think fit, be expressed by reference to that statutory provision.

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- (3) If the relevant statutory provision does not specify or otherwise limit the quantity of water authorised to be abstracted, any quantity specified in the licence as a quantity of water authorised to be abstracted in pursuance of the licence during a period or periods so specified shall, subject to the following provisions of this section, be determined by reference to the requirements of the applicant, as indicated by (and not, except by virtue of the next following subsection, to be taken to exceed) the quantities of water proved to the reasonable satisfaction of the river authority to have been abstracted from the source of supply in question by the applicant or his predecessors from time to time during the relevant period by virtue of the relevant statutory provision.
- (4) In determining any quantity to be specified in the licence, in a case falling within the last preceding subsection, the river authority shall have regard to the terms of the relevant statutory provision and to such of the following matters as are proved to their reasonable satisfaction (in addition to the quantities of water proved to have been abstracted as mentioned in the last preceding subsection) that is to say—
- (a) the seasons of the year during which the quantities of water abstracted during the relevant period, as mentioned in the last preceding subsection, were so abstracted;
  - (b) the extent to which the abstraction of water has during the relevant period been, or is intended to be, limited to special occasions when, by reason of accident or other emergency, there has been, or may be, a temporary deficiency of water from other sources of supply;
  - (c) the extent to which works, machinery or apparatus authorised by the relevant statutory provision were reasonably provided by the applicant or his predecessors in anticipation of future requirements.
- (5) In any case falling within subsection (3) of this section, the provision made by the licence as to the quantity of water authorised to be abstracted shall be such as will not permit the abstraction of water in excess of the quantity shown to the reasonable satisfaction of the river authority to be capable of being abstracted by means of either or both of the following, that is to say—
- (a) works, machinery or apparatus which were constructed or installed before the second appointed day, or were in the course of being constructed or installed on that day, and
  - (b) any other works, machinery or apparatus the construction or installation of which was authorised by the relevant statutory provision,
- not being (in either case) works, machinery or apparatus provided or authorised to be provided for use only in the event of an accident or other emergency involving a total or partial failure of other works, machinery or apparatus.

### **35 Licences of right for non-statutory users**

- (1) The provisions of this section shall have effect where an application under section 33 of this Act is made in a case falling within subsection (1)(b) of that section ; and in this section " the relevant period " means the period of five years ending with the second appointed day or the period beginning with the date on which the applicant or his predecessors began to abstract water from the source of supply in question and ending with the second appointed day, whichever is the shorter.
- (2) Subject to the following provisions of this section, any quantity specified in the licence as a quantity of water authorised to be abstracted in pursuance of the licence during a period or periods so specified shall be determined by reference to the requirements

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of the applicant, as indicated by (and not, except by virtue of the next following subsection, to be taken to exceed) the quantities of water proved to the reasonable satisfaction of the river authority—

- (a) to have been abstracted from the source of supply in question by the applicant or his predecessors from time to time during the relevant period, and
- (b) to have been so abstracted for use on the land on which, and for the purposes for which, water abstracted in pursuance of the licence is authorised by the licence to be used:

Provided that paragraph (b) of this subsection shall not apply in the case of a licence granted to water undertakers for the purposes of their undertaking as water undertakers.

- (3) In determining any quantity to be specified in the licence, the river authority shall have regard to such of the following matters as are proved to their reasonable satisfaction (in addition to the quantities of water proved to have been abstracted as mentioned in the last preceding subsection) that is to say—
  - (a) the seasons of the year during which the quantities of water abstracted during the relevant period, as mentioned in the last preceding subsection, were so abstracted;
  - (b) the extent to which the abstraction of water has during the relevant period been, or is intended to be, limited to special occasions when, by reason of accident or other emergency, there has been, or may be, a temporary deficiency of water from other sources of supply;
  - (c) the extent to which works, machinery or apparatus were reasonably provided by the applicant or his predecessors in anticipation of future requirements.
- (4) Any provision made by the licence as to the quantity of water authorised to be abstracted shall be such as will not permit the abstraction of water in excess of the quantity shown to the reasonable satisfaction of the river authority to be capable of being abstracted by means of works, machinery or apparatus which were constructed or installed before the second appointed day, or were in the course of being constructed or installed on that day, not being works, machinery or apparatus provided for use only in the event of an accident or other emergency involving a total or partial failure of other works, machinery or apparatus.
- (5) Where the purposes specified in the licence as the purposes for which water abstracted in pursuance of the licence is to be used consist of or include spray irrigation, then, unless it is proved to the reasonable satisfaction of the river authority either—
  - (a) that the applicant or his predecessors has before the passing of this Act abstracted water from the source of supply in question for the purpose of spray irrigation, or
  - (b) that before the passing of this Act the applicant or his predecessors began to construct a reservoir for the storage of water to be abstracted from that source of supply and used for the purpose of spray irrigation, and that reservoir was completed and brought into use for that purpose before the second appointed day,

subsection (2) of this section shall not apply, and subsection (5) or subsection (7) (as the case may require) of section 29 of this Act shall apply in relation to the application as if it were an application for a licence other than a licence of right, and as if, in those subsections, any reference to " the preceding provisions " were a reference to subsections (3) and (4) of this section.

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### *Control of impounding*

#### **36 General restriction on impounding works**

- (1) Subject to the following provisions of this section, no person shall after the end of the initial period begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in an inland water in a river authority area (not being an inland water falling within section 2 (3) of this Act) unless—
  - (a) a licence under this Act granted by the river authority to obstruct or impede the flow of that inland water at that point by means of impounding works is in force, and
  - (b) the impounding works will not obstruct or impede the flow of the inland water except to the extent, and in the manner, authorised by the licence, and
  - (c) any other requirements of the licence, whether as to the provision of compensation water or otherwise, are complied with.
- (2) The restriction imposed by the preceding subsection does not apply to the construction or alteration 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 water resulting from the construction or alteration of the works,is authorised (in whatsoever terms, and whether expressly or by implication) by virtue of an alternative statutory provision which is for the time being in force.
- (3) In the last preceding subsection " alternative statutory provision " means a statutory provision which is not contained in, or made or issued under, this Act or the Water Act 1958, and is or was passed, made or issued either—
  - (a) before the end of the initial period, whether before or after the passing of this Act, or
  - (b) after the end of that period, but in pursuance of an application made to the Minister before the end of that period, whether before or after the passing of this Act.
- (4) The restriction imposed by subsection (1) of this section does 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.
- (5) Subject to subsections (2) to (4) of this section, and to the provisions of Part X of this Act with respect to the Water Act 1958, the restriction imposed by subsection (1) of this section shall have effect notwithstanding anything in any other enactment contained in any Act passed before the passing of this Act or in any statutory provision made or issued, whether before or after the passing of this Act, by virtue of such an enactment.
- (6) In this Part of this Act " impounding works" means either of the following, that is to say—
  - (a) any dam, weir or other works in an inland water whereby water may be impounded, and
  - (b) any works for diverting the flow of an inland water in connection with the construction or alteration of any dam, weir or other works falling within the preceding paragraph,

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and in section 26(2) of this Act the first and second references to abstracting water shall be construed as including references to obstructing or impeding the flow of an inland water by means of impounding works.

### **37 Provisions as to licences under s. 36**

- (1) Subject to the following provisions of this section, the person to whom a licence under the last preceding section is granted, and no other person, is for the purposes of this Act the holder of the licence.
- (2) In any action brought against a person in respect of any obstruction or impeding of the flow of an inland water at any point by means of impounding works, it shall be a defence for him to prove that the flow was so obstructed or impeded in pursuance of a licence under this Act, and in the manner specified in that licence, and to an extent not exceeding the extent so specified, and that any other requirements of the licence were complied with:  

Provided that nothing in this subsection shall exonerate a person from any action for negligence or breach of contract.
- (3) Where a licence under the last preceding section is required for constructing or altering impounding works at a point in an inland water, for the purpose of abstracting water therefrom at or near that point.—
  - (a) an application may be made to the river authority for a combined licence under this Act to obstruct or impede the flow of the inland water by means of impounding works at that point and to abstract the water, and
  - (b) the river authority (subject to the provisions of this Part of this Act as to procedure and as to the matters to be taken into account in dealing with applications for licences) may grant such a licence accordingly.
- (4) Section 32 (5) of this Act shall apply to a licence under the last preceding section, or to a combined licence granted in accordance with the last preceding subsection, as it applies to a licence which relates only to the abstraction of water.
- (5) Subject to the preceding provisions of this section, the provisions of sections 28 and 29 of this Act shall have effect in relation to applications for licences under the last preceding section (including a combined licence in so far as it is to be a licence under that section) as they have effect in relation to applications for licences to abstract water, as if any reference to abstracting water were a reference to obstructing or impeding the flow of an inland water by means of impounding works.

#### *Minister's powers in relation to applications for licences*

### **38 Reference of applications to Minister**

- (1) The Minister may give directions requiring applications for licences under this Act, other than licences of right, to be referred to him instead of being dealt with by river authorities.
- (2) A direction under this section—
  - (a) may be given either to a particular river authority or to river authorities generally, and

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- (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Before determining an application referred to him under this section, the Minister may, if he thinks fit, and shall, if a request is made by the applicant or the river authority to be heard with respect to the application, cause a local inquiry to be held or afford to the applicant and the river authority an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (4) The decision of the Minister on any application referred to him under this section shall be final; and where the decision is that a licence is to be granted, it shall include a direction to the river authority to grant a licence containing such provisions as may be specified in the direction.

### **39 Appeal against decision of river authority**

- (1) Where an application is made to a river authority for a licence under this Act, and the applicant is dissatisfied with the decision of the river authority on the application, he may by notice in writing under this section appeal to the Minister.
- (2) Any notice under this section shall be served within such time (not being less than twenty-eight days from the date on which the decision to which it relates was notified to the applicant) and in such manner as may be prescribed, and the applicant shall within that time serve a copy of the notice on the river authority.
- (3) Where an appeal is brought under this section, the Minister, subject to the following provisions of this Part of this Act, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the river authority, whether the appeal relates to that part thereof or not, and may deal with the application as if it had been made to him in the first instance,
- (4) Where any representations in writing with respect to the application were made within the period mentioned in section 28(2) of this Act, the Minister, before determining the appeal, shall require the river authority to serve a copy of the notice of appeal on each of the persons who made those representations ; and the Minister, in determining the appeal, shall take into account any further representations in writing received by him from those persons within a prescribed period.
- (5) Before determining an appeal under this section, the Minister may, if he thinks fit, and shall, if a request is made by the applicant or the river authority to be heard with respect to the appeal, cause a local inquiry to be held or afford to the applicant and the river authority an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (6) The decision of the Minister on any appeal under this section shall be final; and where the decision is that a licence is to be granted or to be varied or revoked, it shall include a direction to the river authority to grant a licence containing, or vary the licence so as to contain, such provisions as may be specified in the direction, or to revoke the licence, as the case may be.

### **40 Appeal in default of decision of river authority**

Where an application is made to a river authority for a licence under this Act, then unless within such period as may be prescribed, or within such extended period as may



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at any time be agreed upon in writing between the applicant and the river authority, the river authority either—

- (a) give notice to the applicant of their decision on the application, or
- (b) give notice to him that the application has been referred to the Minister in accordance with directions given under section 38 of this Act,

the provisions of the last preceding section shall apply in relation to the application as if the licence had been refused by the river authority, and as if notification of their decision had been received by the applicant at the end of the prescribed period or at the end of the said extended period, as the case may be.

#### **41 Provisions supplementary, to ss. 38 to 40**

- (1) The provisions of this section shall have effect in relation to—
  - (a) applications referred to the Minister under section 38 of this Act;
  - (b) appeals to the Minister under section 39 of this Act where the application to the river authority was for a licence other than a licence of right; and
  - (c) appeals to the Minister under section 39 of this Act where the application to the river authority was for a licence of right.
- (2) In relation to any application referred to the Minister as mentioned in paragraph (a) of the preceding subsection, the provisions of subsections (1) and (3) of section 28 and of subsection (3) and subsections (5) to (7) of section 29 of this Act shall apply as if in those provisions, except in section 29 (3) (a), any reference to the river authority were a reference to the Minister.
- (3) In determining any application referred to him under section 38 of this Act, and, in particular, in determining what (if any) direction to give under subsection (4) of that section, the Minister shall consider whether any such direction would require the grant of a licence so as to authorise derogation from protected rights.
- (4) Subject to the provisions of subsections (2) and (3) of this section and of section 30 of this Act, on any such application the Minister—
  - (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.
- (5) In relation to any such appeal as is mentioned in paragraph (b) of subsection (1) of this section—
  - (a) the provisions of subsection (3) (with the omission of paragraph (a)) and of subsections (5) to (7) of section 29 of this Act shall apply as if in those provisions any reference to the river authority were a reference to the Minister; and
  - (b) in determining the appeal, and, in particular, in determining what (if any) direction to give under section 39 (6) of this Act, the Minister shall consider whether any such direction would require the grant or variation of a licence so as to authorise derogation from protected rights.
- (6) In relation to any such appeal as is mentioned in paragraph (c) of subsection (1) of this section, section 33 (4) and (5) and section 34 of this Act, or section 35 of this Act, as the case may be, shall apply as if any reference to the river authority were a reference to the Minister.

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- (7) The provisions of this section shall have effect without prejudice to section 38 (3) and section 39 (4) and (5) of this Act.
- (8) In subsections (5) to (7) of section 29 of this Act, as applied by any enactment contained in this section, any reference to " the preceding provisions " shall be construed as a reference to—
  - (a) subsection (3) of that section as so applied, and
  - (b) subsection (3) or subsection (5)(b) of this section, as the case may be.
- (9) References in this section to section 39 of this Act include references to the provisions of that section as applied by section 40 of this Act; and any reference in this section to authorising derogation from protected rights is a reference to authorising the abstraction of water, or, as the case may be, authorising the flow of an inland water to be obstructed or impeded by means of impounding works, so as to derogate from rights which, at the time when the direction in question is given, are protected rights under this Act.

#### *Revocation and variation of licences*

### **42 Revocation or variation on application of holder of licence**

- (1) The holder of a licence under this Act may apply to the river authority to revoke the licence; and on any such application the river authority shall revoke the licence accordingly.
- (2) The holder of a licence under this Act may apply to the river authority to vary the licence; and the provisions of sections 28 and 29 and 38 to 41 of this Act shall apply (with the necessary modifications) to applications under this subsection, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Act:

Provided that, where the proposed variation is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods, sections 28 and 39 (4) of this Act shall not apply.

### **43 Proposal by river authority to revoke or vary licence**

- (1) Where it appears to a river authority that a licence under this Act granted by the authority should be revoked or varied, the authority may formulate proposals for revoking or varying the licence.
- (2) Where, ether in consequence of representations made to the Minister or otherwise, it appears to the Minister that a licence under this Act granted by a river authority ought to be reviewed, but no proposals for revoking or varying the licence have been formulated by the river authority under the preceding subsection, the Minister may, as he may consider appropriate in the circumstances.—
  - (a) direct the river authority to formulate proposals for revoking the licence, or
  - (b) direct the river authority to formulate proposals for varying the licence in such manner as may be specified in the direction.
- (3) Notice in the prescribed form of any proposals formulated under ether of the preceding subsections shall be served on the holder of the licence and published in the London Gazette and at least once in each of two successive weeks in one or more newspapers

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(other than the London Gazette) circulating in the relevant locality; and, if the licence relates to an inland water, and the proposals provide for variation of that licence, a copy of the notice 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 that inland water at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.

- (4) Any such notice as is mentioned in the last preceding subsection shall (in addition to any other matters required to be contained therein)—
- (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 the next following subsection, and
  - (b) state that, at any time before the end of that period, the holder of the licence may give notice in writing to the river authority objecting to the proposals, and any other person may make representations in writing to the river authority with respect to the proposals.
- (5) The period specified in a notice in pursuance of the last preceding subsection shall be a period beginning not earlier than the date on which the notice is first published in a newspaper other than the London Gazette, and ending 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 ; and a river authority shall not proceed with any such proposals before the end of the period so specified.
- (6) If before the end of that period the holder of the licence gives notice in writing to the river authority objecting to the proposals, the river authority shall refer the proposals to the Minister, with a copy of the notice of objection.
- (7) If no notice under the last preceding subsection is given before the end of the period mentioned in subsection (4) of this section, the river authority may proceed with the proposals; and, where the proposals are proposals for varying the licence, the provisions of subsections (2) to (7) of section 29 of this Act shall apply (with the necessary modifications) to any action of the river authority in proceeding with the proposals as they apply to the action of a river authority in dealing with an application for a licence.
- (8) Subject to the provisions of subsections (5) to (7) of this section, the river authority—
- (a) if the proposals are for the revocation of the licence, may revoke the licence;
  - (b) if the proposals are proposals for varying the licence, may vary it in accordance with those proposals or, with the consent of the holder of the licence, may vary it in any other way.
- (9) 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.

#### **44 Reference of proposals to Minister**

- (1) Where any proposals of a river authority under the last preceding section are referred to the Minister in accordance with subsection (6) of that section, the Minister shall consider the proposals and the objection of the holder of the licence, and any representations in writing relating to the proposals which were received by the river

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authority before the end of the period mentioned in subsection (4) of the last preceding section, and, subject to the next following subsection, shall determine whether—

- (a) if the proposals were for the revocation of the licence, the licence should be revoked, or
  - (b) if the proposals were proposals for varying the licence, the licence should be varied as mentioned in subsection (8)(b) of the last preceding section.
- (2) Before determining under this section whether a licence should be revoked or varied, the Minister may, if he thinks fit, and shall, if a request is made by the holder of the licence or the river authority to be heard with respect to the proposals, cause a local inquiry to be held or afford to the holder of the licence and the river authority an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.
- (3) A decision of the Minister under this section with respect to any proposals shall be final; and where the decision is that the licence should be revoked or varied, it shall include a direction to the river 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.
- (4) The provisions of subsections (5) to (7) of section 29 of this Act shall apply in relation to any proposals referred to the Minister as mentioned in subsection (1) of this section as if in those provisions any reference to the river authority were a reference to the Minister and any reference to the application were a reference to the proposals.
- (5) In determining under this section whether a licence should be varied, and, if so, what direction should be given under subsection (3) of this section, the Minister shall consider whether any such direction would require the licence to be varied so as to authorise derogation from protected rights.
- (6) In subsections (5) to (7) of section 29 of this Act, as applied by subsection (4) of this section, any reference to " the preceding provisions " shall be construed as a reference to subsections (1) and (5) of this section.
- (7) Any reference in this section to authorising derogation from protected rights shall be construed in accordance with subsection (9) of section 41 of this Act.

#### **45 Special provisions as to spray irrigation**

- (1) The provisions of this section shall have effect where at any time—
- (a) one or more licences under this Act are in force in relation to a source of supply in a river authority area, 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 river authority that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) In so far as any such licence authorises water to be used for the purpose of spray irrigation, the river authority may serve a notice on the holder of the licence 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 in question for use for that purpose, and, in relation to that period, the licence shall have effect subject to that reduction accordingly:

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Provided that the river authority shall not serve such a notice in respect of abstraction of water from underground strata unless it appears to them that such abstraction is likely to affect the flow, level or volume of an inland water (not being an inland water falling within section 2(3) of this Act or an inland water comprised in an order under section 25 of this Act).

- (3) In the exercise of the power conferred by the last preceding subsection, in a case where there are two or more such licences in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the river authority, are not far distant from each other.—
  - (a) the river authority shall not serve such a notice 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 river 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.
- (4) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 42 to 44 of this Act.

#### **46 Compensation for revocation or variation of licence**

- (1) Where a licence is revoked or varied under section 44 of this Act, 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 river authority shall pay to 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 the last preceding subsection, no compensation shall be paid under this section in respect of any work carried out before the grant of the licence which is revoked or varied, or in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence:

Provided that this subsection shall not apply to a licence of right.

- (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 the period of seven 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.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.

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- (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 the last preceding subsection, 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); and
  - (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.

#### **47 Application by owner of fishing rights for revocation or variation of licence**

- (1) Where a licence under this Act, not being a licence of right, authorises abstraction from an inland water in respect of which no minimum acceptable flow has been determined under Part III of this Act, then, at any time after the end of the period of one year beginning with the date on which the licence was granted but before such a minimum acceptable flow has been so determined, any person who is the owner of fishing rights in respect of that inland water may apply to the Minister for the revocation or variation of the licence.
- (2) Any application under this section made by a person as owner of fishing rights in respect of an inland water 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 under this Act in respect of that inland water, 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 (1) or subsection (2) of section 50 of this Act or is in addition to any loss or damage attributable to any such breach.
- (3) Where an application is made under this section, the applicant shall serve notice in the prescribed form on the river 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 Minister with respect to the application; and the Minister, in determining the application, shall take into account any representations in writing received by him from the river authority or from the holder of the licence within that period.
- (4) On an application under this section, the Minister shall not determine that the licence in question shall be revoked or varied unless—

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- (a) the grounds of the application, as mentioned in subsection (2) of this section, are established to his satisfaction, and
  - (b) the Minister 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,
- or if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused that loss or damage 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 river authority; and, where the Minister determines that the licence shall be varied, the variation shall be limited to that which, in the opinion of the Minister, is requisite having regard to that loss or damage.
- (5) Subsections (2) and (3) of section 44 of this Act shall apply in relation to any matter required to be determined by the Minister under the last preceding subsection as they apply in relation to matters required to be determined by him under that section, but with the modification that an applicant under this section (as well as the holder of the licence) shall have the like rights to request a hearing, and to be heard, as the holder of the licence has under subsection (2) of that section.
  - (6) Section 46 of this Act shall have effect in relation to the revocation or variation of a licence under this section as it has effect in relation to the revocation or variation of a licence under section 44 of this Act.
  - (7) Where a licence is revoked or varied on an application under this section, the applicant shall be entitled to compensation from the river authority in respect of the loss or damage which he has sustained as mentioned in subsection (2) of this section.
  - (8) Where, on an application under this section for the revocation or variation of a licence, the Minister determines that the grounds of the application (as mentioned in subsection (2) of this section) have been established to his satisfaction, but that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly; and thereupon, unless within the period of six months from the date on which that certificate 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 river authority, or
    - (b) an offer has been made by the river authority to the owner of those rights to acquire those rights (or, where they subsist only as rights included in an interest in land, to acquire that interest) 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 rights or interest were acquired compulsorily by the river authority,the owner of the fishing rights shall be entitled to compensation from the river authority.
  - (9) The amount of the compensation payable under the last preceding subsection in respect of any fishing rights shall be the amount by which the value of those rights (or, where they subsist only as rights included in an interest in land, the value of that interest) is depreciated by the operation of section 31(1) of this Act in relation to the licence to which the application related.
  - (10) Any question of disputed compensation under subsection (7) or under subsections (8) and (9) of this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections

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2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.

- (11) In this section " fishing rights", in relation to an inland water, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in that water, where the right in question either constitutes an interest in land or is included in an interest in land or is exercisable by virtue of an exclusive licence granted for valuable consideration ; any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights; and 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.

#### **48 Revocation or variation of authorisation to impound under alternative statutory provision**

- (1) Where by virtue of an alternative statutory provision which is for the time being in force statutory water undertakers or other persons are authorised to obstruct or impede the flow of an inland water by means of impounding works (whether those works have already been constructed or not), the provisions of this Part of this Act and of section 103 thereof shall have effect (with the necessary modifications) as if any reference in those provisions to a licence under this Act, or to the holder of a licence under this Act, where the reference is to the revocation or variation of such a licence, included a reference to that authorisation, or to those undertakers or other persons, as the case may be. .
- (2) In this section " alternative statutory provision" has the meaning assigned to it by section 36 (3) of this Act, and " authorised" means authorised in whatsoever terms, and whether expressly or by implication, and " authorisation " shall be construed accordingly.

#### *Enforcement of restrictions and protected rights*

#### **49 Penalties**

Any person who contravenes section 23 (1), section 23 (2) or section 36 (1) of this Act, or who (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 a licence under this Act of which he is the holder, shall be guilty of an offence and shall, on conviction on indictment or on summary conviction, be liable to a fine:

Provided that an offence under this section shall not be punishable on summary conviction by a fine exceeding one hundred pounds.

#### **50 Right of action against river authority**

- (1) A breach of the duty imposed by section 29 (2) of this Act, or by that subsection as applied by any other provision of this Part of this Act, shall not invalidate the grant or variation of a licence; and that duty shall not be enforceable by any criminal proceedings or by prohibition or injunction, but shall be enforceable, at the suit of any person entitled to a protected right under this Act, by an action against the river authority (but not against any other person) for damages for breach of statutory duty.



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- (2) Where under any provision of this Part of this Act a river authority are directed by the Minister to grant or vary a licence, then (without prejudice to the duty of the river authority, as between that authority and the Minister, to comply with that direction) if the licence as granted or varied in compliance with the direction authorises derogation from protected rights—
- (a) the grant or variation of the licence shall, as between the river authority and the person entitled to those rights, have effect as a breach on the part of the river authority of a statutory duty not to authorise derogation from those rights;
  - (b) the preceding subsection shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 29 (2) of this Act; and
  - (c) the duty of the river authority to comply with the direction of the Minister shall not afford any defence in an action brought in pursuance of that subsection as applied by the last preceding paragraph:

Provided that this subsection shall not apply to a direction given in consequence of an appeal against the decision of the river authority on an application for the grant of a licence of right.

- (3) In any action brought against a river authority in pursuance of subsection (1) of this section (including that subsection as applied by the last preceding subsection) it shall be a defence for them to prove that the fact that the abstraction of water (or, as the case may be, the obstruction or impeding of the flow of the inland water) authorised by the licence, as granted or varied by the river authority, derogated from the protected right under this Act of the plaintiff 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 river authority.
- (4) Where the plaintiff in any such action is entitled to a protected right under this Act by reason only that he is the holder of, or has applied for, a licence of right, it shall be a defence for the river authority to prove—
- (a) that the plaintiff could have carried out permissible alterations in the means whereby he abstracted water from the source of supply in question, and
  - (b) that, if he had carried out such alterations, the abstraction (or, as the case may be, the obstruction or impeding of the flow of the inland water) authorised by the licence to which the action relates would not have derogated from his protected right under this Act.
- (5) In the last preceding subsection " permissible alterations "—
- (a) in relation to a person who is the holder of a licence of right, means any alteration of works, or modification of machinery or apparatus, which would fulfil the requirements of the licence as to the means whereby water is authorised to be abstracted ;
  - (b) in relation to a person who is not the holder of a licence of right, but has applied for one as being entitled to it by virtue of section 33(1)(a) of this Act, means any alteration of works, or modification of machinery or apparatus, which he is empowered to make by virtue of a statutory provision in force on the second appointed day; and
  - (c) in relation to a person who is not the holder of a licence of right, but has applied for one as being entitled to it by virtue of section 33(1)(b) of this Act, means any alteration of the works, or modification of the machinery or apparatus, by means of which he abstracted water from the source of supply in question during the period of five years ending with the second appointed day, being

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an alteration or modification which would be within the scope of the licence if granted in accordance with the application.

- (6) In this section any reference to authorising derogation from protected rights shall be construed in accordance with section 41(9) of this Act.

## **51 Minister may indemnify river authority in certain cases**

- (1) Where under the last preceding section a river authority are liable to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Minister, whether an action for recovery of those damages has been brought or not, and the river authority pay to that person any sum in satisfaction of that liability, the Minister may, if he thinks fit, pay to the river authority the whole or such part as he considers appropriate of—
- (a) the amount of that sum, and
  - (b) if an action has been brought against the river authority in respect of that liability, the amount of any costs reasonably incurred by the river authority in connection with the action, including any costs of the plaintiff which they were required to pay.
- (2) If, in a case falling within the preceding subsection, the river authority formulate proposals for revoking or varying the licence in question, and in consequence of those proposals the licence is revoked or varied and compensation in respect of the revocation or variation is payable by the river authority under section 46 of this Act, the Minister may, if he thinks fit, pay to the river authority the whole or such part as he considers appropriate of—
- (a) the amount of that compensation, and
  - (b) if any question relating to that compensation is referred to the Lands Tribunal, the amount of any costs reasonably incurred by the river authority in connection with that reference, including any costs of the claimant which they are required to pay.
- (3) Where under section 47 of this Act—
- (a) the Minister determines that a licence shall be revoked or varied, and in consequence of that determination compensation is payable by a river authority in respect of the revocation or variation of the licence, or
  - (b) the Minister determines that a licence shall be revoked or varied, and in consequence of that determination compensation is payable by the river authority under subsection (7) of that section in a case where the licence was granted in compliance with a direction given by the Minister, or
  - (c) the Minister determines that a licence shall not be revoked or varied, and in consequence of that determination compensation is payable by a river authority under subsection (8) of that section,

the last preceding subsection shall have effect in relation to that compensation as it has effect in relation to compensation payable in the circumstances mentioned in the last preceding subsection.

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### *Supplementary provisions*

#### **52 Abstraction and impounding of water by river authorities**

- (1) In relation to the abstraction of water by river authorities from sources of supply in their areas, and in relation to the construction or alteration by river authorities of impounding works in their areas, the provisions of this Part of this Act shall have effect subject to such exceptions and modifications as may be prescribed by regulations made under this Act.
- (2) Any such regulations may in particular provide for securing—
  - (a) that any licence required by a river authority in relation to the matters mentioned in the preceding subsection shall be granted (or be deemed to be granted) by the Minister and not granted by the river authority;
  - (b) that, in such cases and subject to such conditions as may be prescribed by the regulations, any licence so required by a river authority shall be deemed to be granted by the Minister unless the Minister requires an application for the licence to be made to him by the river authority; and
  - (c) that where a licence is deemed to be granted as mentioned in the last preceding paragraph, the river authority shall give such notice of that fact as may be prescribed by the regulations.

#### **53 Register of applications and licences**

- (1) Every river authority shall keep, in such manner as may be prescribed by regulations made under this Act, a register containing such information as may be so prescribed with respect to applications made to that authority for the grant, revocation or variation of licences, including information as to the way in which such applications have been dealt with, and also containing such information as may be so prescribed with respect to persons becoming the holders of licences by virtue of section 32 of this Act or regulations made under that section.
- (2) Every such register kept by a river authority shall also contain such information as may be prescribed with respect to applications made by the river authority in accordance with regulations made under the last preceding section, and with respect to licences granted or deemed to be granted, and licences revoked or varied, in accordance with regulations made under that section.
- (3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

#### **54 General regulations relating to licences**

- (1) Any application for a licence under this Act shall be made in such manner as may be prescribed by regulations under this Act, and shall include such particulars, and be verified by such evidence, as may be so prescribed.
- (2) Provision may be made by regulations under this Act as to the manner in which applications for the grant, revocation or variation of licences under this Act, and appeals against decisions on such applications, are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of, or decisions on, such applications or appeals.

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- (3) Without prejudice to the generality of the last preceding subsection, provision shall be made by regulations under this Act for securing that in such circumstances as may be prescribed, being circumstances in which it appears to the Minister that applications for licences under this Act, other than licences of right, would be of special concern to National Park planning authorities.—
- (a) notice of any such application will be given to such one or more National Park planning authorities as may be determined in accordance with the regulations;
  - (b) the matters to which the river authority or the Minister, as the case may be, is to have regard in dealing with the application will include any representations made by any such National Park planning authority within such period and in such manner as may be prescribed ; and
  - (c) on any appeal against the decision on the application, notice of the appeal will be served on any National Park planning authority who made representations falling within the last preceding paragraph, and, in determining the appeal, the Minister will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.

In this subsection "National Park planning authority " means a local planning authority whose area consists of or includes the whole or part of a National Park.

- (4) Provision may also be made by regulations under this Act as to the form of licences under this Act or of any class of such licences.
- (5) Subsections (1) to (4) 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 Part of this Act; and any regulations made under this section shall have effect subject to any such express provision.

## **55 Curtailment of certain protected rights**

- (1) The provisions of this section shall have effect where a person (in this section referred to as " the occupier ") is entitled to a protected right (under this Act by virtue of section 26(1)(b) thereof by reason of his being the occupier of such a holding as is mentioned in section 24 (2) of this Act (in this section referred to as " the holding ")).
- (2) If it appears to the river authority that the occupier is entitled, as against other occupiers of land contiguous to the inland water in question, to abstract water therefrom for use on part of the holding, but is not so entitled to abstract water for use on other parts of the holding.—
- (a) the river authority may serve on him a notice in writing specifying the first mentioned part of the holding, and
  - (b) subject to the following provisions of this section, the notice shall have effect as a determination under this section, and the part specified in the notice shall be the relevant part of the holding for the purposes of the proviso to section 24 (2) of this Act.
- (3) Where a notice is served under the last preceding subsection, 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 water in question, to abstract water therefrom for use on every part of the holding, or

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- (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 time (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 such appeal the court shall determine the matter in dispute, and either confirm, quash or vary the river authority's notice in accordance with its decision.
- (5) Where the court quashes a notice served under subsection (2) of this section, paragraph (b) of that subsection shall not have effect; and 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.
- (6) 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 water in question, is situated, and " entitled " (except in subsection (1) of this section) means entitled apart from this Act or any other statutory provision.

## **56 Transitional provisions for purposes of Part IV**

- (1) Where an application for a licence under this Act is made before the end of the initial period, then, until the application has been disposed of, the following provisions of this Part of this Act, that is to say—
- (a) if the application is for a licence to abstract water, other than a licence of right, sections 23, 31 and 49 of this Act;
  - (b) if the application is for a licence of right, those sections and section 26 of this Act; and
  - (c) if the application is for a licence to obstruct or impede the flow of an inland water by means of impounding works, section 36, subsections (1) and (2) of section 37 and section 49 of this Act,
- shall have effect as if the licence had been granted on the date of the application and the provisions of the licence had been in accordance with the proposals contained in the application; and for the purposes of those provisions of this Part of this Act any licence granted on the application shall be treated as not having effect until the application has been disposed of.
- (2) Where, in pursuance of an application made (whether before or after the passing of this Act) before the end of the initial period, a statutory provision—
- (a) comes into operation after the second appointed day, and
  - (b) apart from this Act, would authorise a person to do anything which is restricted by section 23 of this Act,
- the river authority, on the application of that person, shall grant to him a licence under this Act to abstract water, containing such provisions as appear to the river authority to correspond as nearly as may be to those of that statutory provision.
- (3) Sections 27 to 29 and section 54 (3) of this Act shall not have effect with respect to applications made to a river authority under the last preceding subsection, but—
- (a) section 34 (3) to (5) and section 41 of this Act shall have effect in relation to any such application, or to an appeal against the decision on such an application, as if it were an application for a licence of right, and

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- (b) section 50 (2) of this Act shall not apply to any direction given in consequence of such an appeal.
- (4) Section 47 of this Act shall not apply to a licence granted in pursuance of an application under subsection (2) of this section.
- (5) Subsection (1) of section 31 of this Act shall not afford any defence to an action brought before the end of the relevant transitional period if the licence referred to in that subsection is a licence of right granted to a person as being entitled to it by virtue only of section 33(1)(b) of this Act; and that subsection as applied by subsection (1) of this section shall not afford any defence to such an action if the application in question was made by a person as being entitled to a licence of right by virtue only of the said section 33(1)(b).

In this subsection " the relevant transitional period", in relation to a licence granted by a river authority, means the period beginning with the second appointed day and ending with the coming into operation of a charging scheme prepared by that river authority under Part V of this Act.

- (6) No compensation shall be payable under section 46 of this Act in respect of the revocation or variation of a licence of right, if the revocation or variation is for giving effect to the decision of the court in an action in respect of which the last preceding subsection has effect or in any proceedings in consequence of such an action.
- (7) For the purposes of this section an application shall be taken to be disposed of on (but not before) the occurrence of whichever of the following events last occurs, that is to say—
  - (a) on the determination of the application by the river authority, a licence is granted and the provisions of that licence are in accordance with the proposals contained in the application;
  - (b) on a reference of the application to the Minister under section 38 of this Act, the Minister refuses to grant a licence;
  - (c) the period (if any) within which the applicant is entitled to give notice of appeal against the decision on the application expires without such a notice having been given;
  - (d) an appeal against that decision is determined or withdrawn ;
  - (e) in compliance with a direction given by the Minister in consequence of such an appeal or (in the case of an application referred to the Minister under section 38 of this Act) in consequence of a decision of the Minister on the application, the river authority grants, varies or revokes a licence under this Act;and in this subsection any reference to a decision includes a reference to a decision which is to be treated as having been made by virtue of section 40 of this Act.