



Water Resources Act 1991

1991 CHAPTER 57

PART II

WATER RESOURCES MANAGEMENT

CHAPTER II

ABSTRACTION AND IMPOUNDING

Remedies and compensation in respect of infringement of protected rights etc.

60 Liability of the Authority for derogation from protected right

- (1) A breach of the duty imposed by subsection (1) of section 39 above (including that duty as applied by section 51(3) or 53(5) above) shall neither invalidate the grant or variation of a licence nor be enforceable by any criminal proceedings, by prohibition or injunction or by action against any person other than the Authority.
- (2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the Authority for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the Authority is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—
 - (a) the grant or variation of the licence shall, as between the Authority and the person entitled to those rights, have effect as a breach on the part of the Authority of a statutory duty not to authorise derogation from those rights; and
 - (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.

Status: This is the original version (as it was originally enacted).

- (4) Subsection (3) above shall be without prejudice to the duty of the Authority, to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.
- (5) In any action brought against the Authority in pursuance of this section it shall be a defence for the Authority to show that the fact, as the case may be—
- (a) that the abstraction of water authorised by the licence, as granted or varied by the Authority, derogated from the plaintiff's protected right; or
 - (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff's protected right,
- was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the Authority.
- (6) This section has effect subject to the provision made by Schedule 7 to this Act.
- (7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—
- (a) the abstraction of water; or
 - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time of the authorisation, are protected rights for the purposes of this Chapter.