



# 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.