



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

##### *Form, contents and effect of licences*

#### **46 Form and contents of licences.**

- (1) The Secretary of State may by regulations make provision as to the form of licences under this Chapter or of any class of such licences; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter.
- (2) [<sup>F1</sup>Every full licence under this Chapter shall, and any other licence under this Chapter to abstract water may, make— ]
  - (a) 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 Chapter; and
  - (b) 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.

[<sup>F2</sup>(2A) For the purposes of section 61(4A) below—

- (a) every full licence under this Chapter which is for a term exceeding twelve years shall; and

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- (b) any transfer licence under this Chapter which is for a term exceeding twelve years may, specify a minimum value for the quantity referred to in subsection (2)(a) above.]
- (3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.
- [<sup>F3</sup>(4) Every licence under this Chapter to abstract water shall also specify the purposes for which water abstracted in pursuance of the licence is to be used.
- (5) Every licence under this Chapter to abstract water shall state—
- (a) the date on which it takes effect; and
  - (b) the date on which it expires.
- (5A) Every licence under this Chapter to obstruct or impede any inland waters shall remain in force until revoked.]
- (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 (2) above 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 subsection (6) above 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 [<sup>F4</sup>, by different means or for different purposes ] .

#### **Textual Amendments**

- F1** Words in s. 46(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(2)**, 105(3); S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))
- F2** S. 46(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(3)**, 105(3); S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))
- F3** S. 46(4)(5)(5A) substituted for s. 46(4)(5) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 19(4)**, 105(3); S.I. 2004/641, art. 3(g) (with [Sch. 3 para. 7](#))
- F4** Words in s. 46(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(5)**, 105(3); S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))

#### **[<sup>F5</sup>46A Limited extension of abstraction licence validity**

- (1) If the condition in subsection (2) below is met, a full licence or a transfer licence whose term exceeded twelve months but whose expiry date (“the expiry date”) has passed shall be treated for all the purposes of this Act as not expiring until the date mentioned in subsection (4) below.

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- (2) The condition is that the [<sup>F6</sup>appropriate agency] receives, not later than the beginning of the period of three months ending on the expiry date (or such later date before the expiry date as the [<sup>F6</sup>appropriate agency] agrees), a valid application for a new licence—
- (a) for abstraction from the same point as the abstraction licensed by the expiring licence;
  - (b) whose holder would be the same as the holder of the expiring licence; and
  - (c) which would take effect immediately after the expiry date.
- (3) For the purposes of subsection (2) above, a “valid” application is one which complies with all the requirements of this Act in relation to the making of applications for licences of the type in question.
- (4) The date referred to in subsection (1) above is whichever is the later of—
- (a) if a new licence is granted (whether or not on the terms applied for), the date on which it takes effect;
  - (b) otherwise—
    - (i) except where the Secretary of State calls in an application under section 41 above, the expiry of the period for appealing under section 43 above, or if an appeal is brought, the date of its withdrawal; or
    - (ii) where the Secretary of State decides (under section 42 or 44 above) that no licence is to be granted, the date on which that decision is notified to the applicant.]

#### Textual Amendments

**F5** S. 46A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 20, 105(3)**; S.I. 2004/641, **art. 3(g)** (with [Sch. 3 paras. 2, 7](#))

**F6** Words in [s. 46A\(2\)](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 270(h)** (with [Sch. 7](#))

#### Modifications etc. (not altering text)

**C1** S. 46A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), **regs. 1(2), 17**

## 47 Holders of licence.

(1) Every licence under this Chapter <sup>F7</sup>... shall specify the person to whom the licence is granted.

[<sup>F8</sup>(2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters is the holder of the licence for the purposes of this Act, subject to sections 59A to 59C and 67 below.]

<sup>F9</sup>(3) .....

#### Textual Amendments

**F7** Words in [s. 47\(1\)](#) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(6), 105(3)**, **Sch. 9 Pt. 1**; S.I. 2006/984, **art. 2(j)** (with [Sch. para. 1](#))

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- F8** S. 47(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(2)(a)**, 105(3); S.I. 2006/984, art. 2(m) (with [Sch. para. 3](#))
- F9** S. 47(3) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(2)(b)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m) (with [Sch. para. 3](#))

#### 48 General effect of licence.

- (1) For the purposes of this Chapter a person who is for the time being the holder of a licence under this Chapter 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.
- (2) In any action brought against a person in respect of the abstraction of water from a source of supply [<sup>F10</sup>(other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply)], it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—
  - (a) that the water was abstracted in pursuance of a licence under this Chapter; and
  - (b) that the provisions of the licence were complied with.
- (3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—
  - (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
  - (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
  - (c) that the other requirements of the licence (if any) were complied with.
- (4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

#### Textual Amendments

- F10** Words in s. 48(2) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(2)**, 105(3) (with s. 24(3)(b)); S.I. 2004/641, art. 5 (with [Sch. 3 paras. 4, 7](#))

#### Modifications etc. (not altering text)

- C2** S. 48(1) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), art. 4(1)(3), [Sch. 1 paras. 7\(10\)](#), **8(3)**

#### [<sup>F11</sup>48A Civil remedies for loss or damage due to water abstraction

- (1) Subject to subsection (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.
- (2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.
- (3) Such a claim shall be treated as one in tort for breach of statutory duty.

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- (4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public, or would put public health or safety at risk.
- (5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.
- (6) Nothing in this section prevents or affects a claim for negligence or breach of contract.
- (7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage—
  - (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section);
  - (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59C(6) below) disapplying that duty; or
  - (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence,but without prejudice to the application of section 48 above.]

#### Textual Amendments

**F11** S. 48A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(1)**, 105(3) (with s. 24(3)(a)); S.I. 2004/641, art. 5 (with Sch. 3 paras. 4, 7)

#### Modifications etc. (not altering text)

**C3** S. 48A(1) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(1)**

**C4** S. 48A(1) excluded (21.8.2013) by [The Croxley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(2)**

**C5** S. 48A(1) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(2)** (with Sch. 8 para. 45)

**C6** S. 48A(5) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(4)**

**C7** S. 48A(5) excluded (21.8.2013) by [The Croxley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(5)**

**C8** S. 48A(5) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(5)** (with Sch. 8 para. 45)

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