



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

#### *Consideration of licence applications*

#### **39 Obligation to have regard to existing rights and privileges**

- (1) The Authority shall not, except with the consent of the person entitled to the rights, grant a licence 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 any rights which, at the time when the application is determined by the Authority, are protected rights for the purposes of this Chapter.
- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the Authority, in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.
- (3) For the purposes of this Chapter a right is a protected right if it is such a right as a person is taken to have by virtue of section 27(6) above or section 48(1) below; and any reference in this Chapter to the person entitled to such a right shall be construed accordingly.
- (4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating

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*Status: This is the original version (as it was originally enacted).*

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from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—

- (a) abstracting water; or
- (b) so obstructing or impeding the flow of any such waters,

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 section 27(6) above or, as the case may be, section 48(1) below.

- (5) For the purposes of subsection (2) above the Authority shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—
  - (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
  - (b) that decision has not been quashed or reversed.