



Water Act 2003

2003 CHAPTER 37

PART 1

ABSTRACTION AND IMPOUNDING

Restrictions on abstraction and impounding

1 Licences to abstract water

- (1) After section 24 of the Water Resources Act 1991 (c. 57) (in this Act referred to as the “WRA”) there is inserted—

“24A Abstraction licences

- (1) Each licence to abstract water shall be of one of the following three types—
- (a) a licence to abstract water from one source of supply over a period of twenty-eight days or more for any purpose (a “full licence”);
 - (b) a licence to abstract water from one source of supply over a period of twenty-eight days or more for the purpose of—
 - (i) transferring water to another source of supply; or
 - (ii) transferring water to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations (whether underground or on the surface),in either case without intervening use (a “transfer licence”);
 - (c) a licence to abstract water from one source of supply over a period of less than twenty-eight days (a “temporary licence”).
- (2) In this Act, a reference (however expressed) to a licence to abstract water is to be taken as a reference to all types of licence, unless it is clear that a different meaning is intended.”

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(2) In section 72 of the WRA (interpretation of Chapter 2), in subsection (1), in the appropriate places there is inserted—

““full licence” has the meaning given in section 24A above;”,

““temporary licence” and “transfer licence” have the meanings given in section 24A above.”

2 **Restrictions on impounding**

(1) Section 25 of the WRA (restrictions on impounding) is amended as provided in subsections (2) to (5).

(2) For subsection (1) there is substituted—

“(1) Subject to the following provisions of this Chapter and to any drought order or drought permit under Chapter 3 of this Part, no person shall—

(a) begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters; or

(b) cause or permit the flow of any inland waters which are not discrete waters to be obstructed or impeded at any point by means of impounding works,

unless (in either case) the conditions mentioned in subsection (1A) below are satisfied.

(1A) The conditions are—

(a) a licence under this Chapter granted by the Agency to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;

(b) the impounding works will not (or, as the case may be, do not) obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and

(c) any other conditions or requirements imposed by the provisions, as for the time being in force, of the licence (whether as to the provision of compensation water or otherwise) are complied with.”

(3) In subsection (2), the words “, in circumstances not constituting such a contravention,” are omitted.

(4) In subsection (5), for “shall not apply to the construction or alteration of any impounding works” there is substituted “shall not apply in respect of any impounding works”.

(5) After subsection (8) there is added—

“(9) In relation to impounding works, references to alteration include the removal or partial removal of those works, and cognate expressions shall be construed accordingly.”

(6) A licence which—

(a) has been granted in respect of particular impounding works, for the purposes of section 25 of the WRA, before the coming into force of subsection (2), and

(b) is in force,

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is to be taken to satisfy the condition referred to in section 25(1A)(a) of that Act, as inserted by subsection (2), in respect of those impounding works.

- (7) In section 64 of the WRA (abstraction and impounding by the Agency), for subsection (1)(b) there is substituted—
- “(b) in relation to—
- (i) the construction or alteration by the Agency of impounding works; and
 - (ii) the obstruction or impeding by the Agency of the flow of inland waters by means of impounding works.”
- (8) In section 67 of the WRA (ecclesiastical property), in the definition of “the relevant land” in subsection (8), in paragraph (b)(i), after “impounding works” there is inserted “is, or”.
- (9) In section 72 of the WRA (interpretation of Chapter 2), in subsection (1), in the definition of “the restriction on impounding works”, for “25(1)” there is substituted “25(1)(a) and (b)”.
- (10) Subject to section 3 of this Act, the amendments of the WRA made by this section apply (as regards any act or omission after this section comes into force) with respect to impounding works whenever constructed.

3 Existing impounding works

- (1) Except as provided in subsection (3), the restriction in section 25(1)(b) of the WRA (as substituted by section 2 of this Act) does not apply in respect of any existing unlicensed impounding works.
- (2) With respect to any existing unlicensed impounding works to which, but for subsection (1), that restriction would apply, the Environment Agency may serve a notice on any relevant person requiring him to apply for a licence.
- (3) If that person fails to apply for such a licence within—
- (a) the period of 28 days beginning with—
 - (i) the date of service of the notice, or
 - (ii) if an appeal is brought under subsection (4) and the appeal is dismissed, the date when the decision of the appropriate authority is notified to that person, or
 - (b) such extended period as may be agreed in writing between the Agency and that person,
- the restriction in section 25(1)(b) of the WRA applies in respect of the impounding works from the expiry of that period.
- (4) If the relevant person on whom a notice is served under subsection (2) is aggrieved by the service of that notice, he may by notice appeal to the appropriate authority.
- (5) The appropriate authority may by regulations make provision with respect to—
- (a) the manner in which notices of appeal under subsection (4) shall be served,
 - (b) the period within which such notices shall be served,
 - (c) the procedure on any such appeal.
- (6) Where an appeal is brought under subsection (4)—

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- (a) the appropriate authority may allow or dismiss the appeal or reverse or vary any part of the decision of the Agency, whether the appeal relates to that part of the decision or not, and
 - (b) the decision of the appropriate authority shall be final.
- (7) Subsections (4) to (6) are subject to section 114 of the Environment Act 1995 (c. 25) (delegation or reference of appeals).
- (8) On an application for a licence in respect of any existing unlicensed impounding works, section 39(1) of the WRA applies only to the extent that the obstruction or impeding of the flow of inland waters which would, if the licence were granted, be authorised by that licence is to differ in any material respect from that which was taking place at the time the application was made.
- (9) If a licence granted in respect of existing unlicensed impounding works is revoked or varied in the circumstances mentioned in section 61 of the WRA (compensation where licence modified on direction of the Secretary of State), subsection (3) of that section shall apply as if that licence had been granted when construction of the impounding works began and had remained in force since then.
- (10) Subsection (9) does not apply to a licence granted in respect of existing unlicensed impounding works if, before the effective date, there had occurred any contravention of section 25(1) of the WRA in respect of those impounding works.
- (11) Nothing in the preceding subsections affects the application of section 25(1)(a) of the WRA (as substituted by section 2 of this Act) to the alteration, after the effective date, of any existing unlicensed impounding works.
- (12) In this section—
- “the appropriate authority” means—
 - (a) in relation to Wales, the Assembly, and
 - (b) in relation to England, the Secretary of State,
 - “the effective date” means the date when section 2 of this Act comes into force,
 - “existing unlicensed impounding works” means unlicensed impounding works, the construction of which was begun before the effective date,
 - “licence” means a licence of the kind referred to in section 25 of the WRA,
 - “relevant person” means any person who appears to the Environment Agency to have responsibility in respect of the impounding works in question, and
 - “unlicensed impounding works” means impounding works (as defined in section 25(8) of the WRA) in respect of which—
 - (a) no licence or authorisation of the kind referred to in section 25 of that Act was in force immediately before the effective date, and
 - (b) no such licence has been granted since that date.
- (13) In section 114 of the Environment Act 1995 (power of Secretary of State to delegate or refer in connection with appeals), in subsection (2)(a), after paragraph (viii) there is inserted—
- “(ix) section 3 of the Water Act 2003,”.

4 Existing impounding works: works notices

- (1) Without prejudice to the Environment Agency’s power under subsection (2) of section 3, where it appears to the Agency to be necessary for—
 - (a) the protection of the environment, or
 - (b) the performance of its functions in connection with the management of water resources,the Agency may serve a works notice on any relevant person with respect to any existing unlicensed impounding works of the kind mentioned in subsection (2) of that section.
- (2) For the purposes of subsection (1), a works notice is a notice requiring the person on whom it is served to carry out such works or operations in relation to the impounding works as—
 - (a) appear to the Environment Agency to be required for the purposes mentioned in subsection (1)(a) or (b), and
 - (b) are specified in the notice.
- (3) The following provisions of the WRA apply in relation to works notices under this section as they apply in relation to notices referred to in those provisions—
 - (a) subsections (5) to (9) of section 25A (as inserted by section 30 of this Act), and
 - (b) sections 161B and 161C,including any power to make regulations or give directions, but references in those provisions to the Secretary of State shall be treated as references to the appropriate authority.
- (4) If a person on whom the Agency serves a notice under this section fails to comply with any of its requirements, he shall be guilty of an offence.
- (5) A person who commits an offence under subsection (4) shall be liable—
 - (a) on summary conviction, to a fine not exceeding £20,000,
 - (b) on conviction on indictment, to a fine.
- (6) If a person on whom a works notice has been served under this section fails to comply with any of its requirements, the Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it.
- (7) If the Agency is of the opinion that proceedings for an offence under subsection (4) would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (8) In this section, “the appropriate authority”, “existing unlicensed impounding works” and “relevant person” have the meanings given in section 3.

5 Rights of navigation, harbour and conservancy authorities

For section 26 of the WRA (rights of navigation, harbour and conservancy authorities) there is substituted—

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“26 Rights of navigation, harbour and conservancy authorities

- (1) Subject to subsection (2) below, the restriction on abstraction shall not apply to any transfer, without intervening use, of water from inland waters described in the first column of the Table below to inland waters described in the corresponding entry in the second column, if the transfer is in the course of, or results from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.

<i>Transfer from</i>	<i>Transfer to</i>
A water system of the authority's.	The same water system.
A water system of the authority's.	Inland waters not forming part of that water system.
A supply reservoir of the authority's.	A water system of the authority's with which that reservoir is connected.

- (2) Subsection (1) above shall not apply to a transfer of water from a water system to any inland waters outside that water system in order to—
- (a) empty a dry dock; or
 - (b) introduce into those inland waters all or part of a quantity of water to be abstracted from any connected inland waters in pursuance of a licence to do so granted under this Chapter.
- (3) The restriction on impounding works shall not apply to—
- (a) the construction or alteration of impounding works; or
 - (b) the obstruction or impeding of inland waters by means 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, unless the construction, alteration, obstruction or impeding affects any inland waters in relation to which the authority does not have functions.
- (4) In this section, references to—
- (a) an authority's water system are to a water system in relation to which the authority has functions;
 - (b) an authority's supply reservoir are to a reservoir—
 - (i) belonging to a navigation authority;
 - (ii) used for the purposes of supplying that navigation authority's water system; and
 - (iii) which does not discharge to any inland waters other than that water system.
- (5) For the purposes of this section, “water system” means the canals, the harbours, or the canals and harbours constituting the system in question—
- (a) together with the locks, docks, balancing reservoirs, weirs and other works associated with the system (other than any supply reservoir as described in subsection (4)(b) above); but

- (b) excluding any part of the system which consists of a navigable river or part of one.”

6 Rights to abstract small quantities

- (1) For section 27 of the WRA (rights to abstract small quantities) there is substituted—

“27 Rights to abstract small quantities

- (1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres in any period of twenty-four hours, if the abstraction does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted during the period.
- (2) In the case of any abstraction of water from underground strata which falls within subsection (1) above, the restriction imposed by section 24(2) above shall not apply—
 - (a) to the construction or extension of any well, borehole or other work; or
 - (b) to the installation or modification of machinery or other apparatus, if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (3) Where a person is authorised by a licence under this Chapter to carry on a particular abstraction operation (or series of operations), this section does not permit him to carry it on beyond the authorisation conferred by the licence.

27A Variation of small quantity threshold

- (1) The Secretary of State may by order made by statutory instrument provide that section 27(1) above is to have effect in relation to—
 - (a) a geographical area; or
 - (b) a class of inland waters; or
 - (c) a class of underground strata; or
 - (d) a class of inland waters or of underground strata within a geographical area,(in each case as specified in the order) as if for “twenty cubic metres” there were substituted another quantity specified in the order.
- (2) The Secretary of State shall not make such an order except upon the application of the Agency; but he may direct the Agency to make such an application.
- (3) Such an order may—
 - (a) make different provision in relation to the different paragraphs in subsection (1) above; and
 - (b) make different provision for different areas, waters or underground strata.
- (4) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (1) above and with respect to the making of such orders.

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- (5) An order under subsection (1) above which specifies a greater quantity than the one which previously had effect in relation to the area, waters or strata in question may make provision for a licence to abstract water granted under this Chapter—
 - (a) which is for the time being in force; but
 - (b) which by virtue of the order has become wholly or partly unnecessary, to cease to have effect, or to cease to have effect to the extent specified in the order.
- (6) An order under subsection (1) above may include provision for or in relation to the payment by the Agency of compensation, in cases specified in the order, to a person who—
 - (a) immediately before the making of an order under subsection (1) above, had been in a position to carry out an abstraction to which, by virtue of section 27(1) above, the restriction on abstraction did not apply;
 - (b) following the making of that order, requires a licence under this Chapter in order to carry out that abstraction; and
 - (c) has suffered loss or damage as a result of his having been—
 - (i) refused such a licence in respect of that abstraction; or
 - (ii) granted such a licence, but in respect of an abstraction of more limited extent than the one he had been in a position to carry out.
- (7) Paragraphs (e) and (f) of section 219(2) below apply in relation to orders under subsection (1) above as they apply to regulations made under this Act.
- (8) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) Section 28 of the WRA shall cease to have effect.

7 **Rights to abstract for drainage purposes, etc**

- (1) Section 29 of the WRA (rights to abstract for drainage purposes etc) is amended as follows.
- (2) After subsection (1) there is inserted—
 - “(1A) The restriction on abstraction shall not apply to any abstraction of water from inland waters within the district of an internal drainage board if—
 - (a) the abstraction is carried out by or on behalf of that board in connection with its functions;
 - (b) the water abstracted is transferred to another area of inland waters within the board’s district without intervening use; and
 - (c) the sole or main purpose of the transfer is to augment that other area of inland waters.”
- (3) For subsection (2) there is substituted—
 - “(2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within

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subsection (1) or (1A) above) is an emergency abstraction and the person abstracting the water complies with subsection (2B) below.

(2A) An abstraction of water is an emergency abstraction if, in the opinion of the abstractor, an emergency has arisen which makes the abstraction necessary to prevent immediate danger of interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface) or, in relation to such operations, to prevent an immediate risk—

- (a) to a human being of death, personal injury or harm to health;
- (b) of serious damage to works resulting from any such operations; or
- (c) of serious damage to the environment.

(2B) In the case of any emergency abstraction, the person abstracting the water shall before the end of the period of five days beginning with the date on which the abstraction started give notice to the Agency of—

- (a) the abstraction and of the source of supply in question; and
- (b) the reasons for the abstractor’s opinion that an emergency had arisen and that the abstraction was necessary.

(2C) The Agency may give notice to the person referred to in subsection (2B) above that in the Agency’s opinion an emergency had not arisen, or that the abstraction is not, or is no longer, necessary for any of the reasons set out in subsection (2A) above; and, if the Agency does so, the restriction on abstraction shall apply to the abstraction from the time when the notice is served (and, if applicable, the restriction imposed by section 24(2) above shall apply accordingly).”

(4) Subsection (3) is omitted.

(5) For subsection (5) there is substituted—

“(5) In this section, “land drainage”—

- (a) includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea; but
- (b) does not include warping, irrigation (including spray irrigation), or transferring water from one source of supply to another (whether with or without intervening use) solely or mainly in order to augment the latter.”

8 Amendments relating to section 7

(1) Subsections (2) to (6) make amendments to the WRA consequential on the amendments made by section 7.

(2) In section 21 (minimum acceptable flows)—

- (a) in subsection (9), the words from “and in that subsection” to the end are omitted,
- (b) after subsection (9) there is added—

“(10) In subsection (5) above, the reference to land drainage includes—

- (a) defence against water (including sea water), irrigation (other than spray irrigation), warping and the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse; and

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- (b) the provision of flood warning systems.”
- (3) Sections 30 (notices with respect to borings not requiring licences) and 31 (appeals against notices under section 30) shall cease to have effect.
- (4) In section 70 (civil liability under Chapter 2), for “24, 25 and 30” there is substituted “24 and 25”.
- (5) In section 199 (notice of mining operations which may affect water conservation)—
- (a) for subsections (2) and (3) there is substituted—
- “(2) Where a notice under subsection (1) above is given to the Agency by any person, the Agency may (subject to section 199A below) by notice to that person require him, in connection with the construction, extension or use of the work to which that person’s notice relates, to take such reasonable measures for conserving water as are specified in the notice.
- (2A) The measures that may be specified in a notice under subsection (2) above shall be measures which, in the opinion of the Agency, will not interfere with the winning of minerals.
- (3) Section 70 above shall apply to the restrictions imposed by this section as it applies to the restrictions imposed by sections 24 and 25 above.”,
- (b) in subsection (4), for “conservation notice given by virtue of” there is substituted “notice under”.
- (6) After section 199 there is inserted—

“199A Appeals against conservation notices under section 199

- (1) The person on whom a notice under section 199(2) above (“a conservation notice”) is served may, by notice to the Secretary of State, appeal to him against the conservation notice on either or both of the following grounds, that is to say—
- (a) that the measures required by the conservation notice are not reasonable;
- (b) that those measures would interfere with the winning of minerals.
- (2) Any notice of appeal against a conservation notice shall be served within such period (not being less than twenty-eight days from the date of service of the conservation notice) and in such manner as may be prescribed.
- (3) Before determining an appeal against a conservation notice, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
- (b) afford to the appellant and the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the appellant or the Agency to be heard with respect to an appeal.

- (4) On an appeal against a conservation notice the Secretary of State may confirm, quash or vary the notice as he may consider appropriate.
 - (5) The decision of the Secretary of State on any appeal against a conservation notice shall be final.
 - (6) The Secretary of State may by regulations make provision as to the manner in which appeals against conservation notices are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
 - (7) Section 69 above applies to a decision of the Secretary of State on any appeal to him under this section as it applies to a decision of his on an appeal to him under Chapter 2 of Part 2, taking the reference in subsection (2)(b) of that section to that Chapter as a reference to this section.
 - (8) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).”
- (7) In section 114 of the Environment Act 1995 (c. 25) (power of Secretary of State to delegate or refer in connection with appeals), in subsection (2)(a)(v), for “or 191B(5)” there is substituted “, 191B(5) or 199A”.

9 Power to provide for further exemptions

After section 33 of the WRA there is inserted—

“33A Power to provide for further exemptions

- (1) The Secretary of State may make regulations providing for further cases in which—
 - (a) the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions imposed by section 24 above); or
 - (b) the restriction on impounding works,shall not apply; and in this section such a case is referred to as an “exemption”.
- (2) The regulations may, in particular, make provision, in relation to an exemption—
 - (a) for the exemption to apply only for a prescribed period;
 - (b) for the exemption not to apply unless prescribed conditions are satisfied, or continue to be satisfied;
 - (c) for the Agency to be notified, or its consent obtained—
 - (i) before any particular abstraction operation or series of such operations begins; or
 - (ii) in connection with such an operation or series of operations relating to the abstraction of water in underground strata, before any other thing which is mentioned in section 24(2) above is done; or
 - (iii) before any impounding works are constructed or altered, in reliance on the exemption.

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- (3) The regulations may provide for an exemption to apply generally or to relate to—
- (a) a prescribed geographical area;
 - (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 above); or
 - (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works).
- (4) Subject to subsection (5) below, if regulations under this section provide for an exemption falling within subsection (1)(a) above, the regulations shall—
- (a) if appropriate, make provision for the exemption not to permit a person who is authorised by a licence under this Chapter to carry on an abstraction operation (or series of operations) to carry it on beyond the authorisation conferred by the licence; and
 - (b) make provision as to whether or not, in relation to any abstraction, the exemption provided for by the regulations is to be counted cumulatively with any other exemption which a person has by virtue of this section or section 27 above.
- (5) The regulations may make provision for a licence granted under this Chapter and which is for the time being in force to cease to have effect, or to cease to have effect to the extent specified in the regulations, if it authorises an activity which falls to any extent within the exemption provided for by the regulations.”

10 Orders under section 33 of the WRA, etc

- (1) The appropriate authority may by order revoke—
- (a) any order made under section 33 of the WRA (power to provide for further rights to abstract),
 - (b) any order made under any local or private Act which provides for any exception from—
 - (i) the restriction on abstraction (within the meaning of Chapter 2 of Part 2 of the WRA), or
 - (ii) that restriction and the one imposed by section 24(2) of the WRA,
 or for an exception which has the effect of such an exception.
- (2) An order of a kind referred to in paragraph (a) or (b) of subsection (1) is referred to below in this section as an “exception order”.
- (3) In this section, “the appropriate authority” means—
- (a) in relation to the revocation of an exception order which relates to inland waters or underground strata which are wholly in England, the Secretary of State,
 - (b) in relation to the revocation of an exception order which relates to inland waters or underground strata which are wholly in Wales, the Assembly,
 - (c) in relation to the revocation of an exception order which relates to inland waters or underground strata which are partly in England and partly in Wales—
 - (i) the Secretary of State, in relation to the English part,
 - (ii) the Assembly, in relation to the Welsh part,

and references in this section (however expressed) to the revocation of an exception order are to be construed accordingly.

- (4) Subject to subsection (3)(c), an order under this section may revoke the exception order either wholly, or only in relation to—
 - (a) any one or more areas of inland waters specified in the order under this section or any class of inland waters so specified, or
 - (b) any underground strata described in the order under this section in any way mentioned in section 33(2)(b) of the WRA or any other way.
- (5) An order under this section may make provision, subject to any conditions or limitations specified in the order—
 - (a) for the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions in section 24 of the WRA) to continue not to apply to an abstraction despite the revocation of the exception order,
 - (b) for a person to continue to be taken to have a right to abstract water, for the purposes of Chapter 2 of Part 2 of the WRA, to the same extent he was taken to do so under the exception order,
 - (c) for the payment by the Agency of compensation, in cases specified in the order, to any person who suffers loss or damage as a result of the revocation of the exception order.
- (6) If an order under this section provides as mentioned in subsection (5)(a), the order must also say whether or not the exemption so provided for is to be counted cumulatively with any other exemption which a person has by virtue of section 27 or 33A of the WRA.
- (7) If an order made under subsection (1)(b) revokes the exception order wholly, or wholly so far as it is not already revoked, the order under subsection (1)(b) may also repeal so much of the local or private Act as constitutes the power to make the exception order.
- (8) The procedure provided for by section 33 of and Schedule 6 to the WRA, or (as the case may be) any corresponding procedure provided for by the local or private Act in question, does not apply in relation to an order under this section.
- (9) The power of the Assembly to make an order by virtue of subsection (3)(b) or (c)(ii) of this section is to be treated as if it were a relevant transferred environmental function for the purposes of paragraph 6 of Schedule 3 to the Government of Wales Act 1998 (c. 38) (intervention in case of functions relating to water).
- (10) No order may be made under this section before the coming into force of section 6 of this Act.
- (11) Section 33 of the WRA shall cease to have effect; but (subject to the provisions of this section) any order under section 33 of the WRA which was in force immediately before its repeal shall continue in force despite the repeal.
- (12) In this section, “inland waters” and “underground strata” have the meanings given in section 221(1) of the WRA.

Applications for a licence

11 Who may apply for a licence

(1) Section 35 of the WRA (restrictions upon who may apply for abstraction licences) is amended as follows.

(2) For subsections (2) and (3) there is substituted—

“(2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, as respects the place (or, if more than one, as respects each of the places) at which the proposed abstractions are to be effected, he satisfies the Agency that—

- (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land contiguous to the inland waters at that place (or those places); and
- (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).

(3) In relation to abstractions from underground strata, a person shall be entitled to make the application if he satisfies the Agency that—

- (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of or comprising those underground strata; and
- (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).

(3A) The Agency may, in particular, take evidence of a person’s occupation of land to be evidence of his right of access to it.”

(3) In subsection (4)—

- (a) for “is the occupier of” there is substituted “will have a right of access to”, and
- (b) in paragraph (a), for “occupy” there is substituted “a right of access to”.

12 Abolition of combined licences

Section 36 of the WRA (combined abstraction and impounding licences) shall cease to have effect.

13 Applications: types of abstraction licence

(1) After section 36 of the WRA there is inserted—

“36A Applications: types of abstraction licence

(1) The Agency may decide that—

- (a) an application for a full licence, a transfer licence or a temporary licence ought to be for one of the other types of licence;

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- (b) a number of applications for licences (of any type or types) to abstract water from a particular source of supply ought to be treated as an application for a single such licence (of any type);
 - (c) an application for a single licence (of any type) to abstract water from a particular source of supply ought to be treated as a number of applications for such licences (of any type or types); or
 - (d) any such application as is referred to above ought to be accompanied by an application for revocation of an existing licence to abstract water.
- (2) The Agency may arrive at the decision referred to in paragraph (a), (b), (c) or (d) of subsection (1) above on the basis of its assessment of any one or more of the following—
 - (a) the likely effect of the abstraction (or abstractions) for which the applicant has applied for a licence (or licences);
 - (b) the likely effect of that abstraction (or those abstractions) taken together with abstractions under any other licence held by the applicant, or abstractions which would be authorised under any other licence for which the applicant has applied;
 - (c) any other prescribed matter.
- (3) If the Agency does so decide, it shall serve a notice of its decision on the applicant; and, subject to subsections (4) to (8) below, shall deal with the application (or applications) accordingly (which, if the Agency made the decision referred to in paragraph (d) of subsection (1) above in relation to any application (or applications), means not publishing any notice under section 37 below, or taking any further step in connection with the application (or applications), until the application for revocation has been received).
- (4) The applicant may by notice appeal to the Secretary of State against the decision, and shall serve a copy of any such notice on the Agency.
- (5) That notice, and the copy of it, shall be served in such manner and within such period as may be prescribed.
- (6) If the Agency serves a notice under subsection (3) above, it shall not publish any notice under section 37 below, or take any further step in connection with the application (or applications), before—
 - (a) the end of the period within which notice of an appeal may be served on the Secretary of State; or
 - (b) if notice of an appeal is so served, the appeal has been determined.
- (7) The Secretary of State—
 - (a) may allow or dismiss the appeal, or vary any part of the decision of the Agency, whether the appeal relates to that part of the decision or not; and
 - (b) shall direct the Agency to deal with the application, or applications, accordingly (which, if the Agency's decision was made under paragraph (d) of subsection (1) above in relation to any such application, and that decision is upheld, may mean not publishing any notice under section 37 below, or taking any further step in connection with the application, until the application for revocation has been received).

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- (8) Subsections (2) and (7) of section 44 below apply in relation to an appeal under this section as they apply in relation to an appeal under section 43 below.
- (9) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).”
- (2) In section 41 of the WRA (Secretary of State’s power to call in applications), after subsection (2) there is added—
 - “(3) An application may not be referred to the Secretary of State under this section—
 - (a) if in relation to the application the Agency is still considering whether to make any such decision as is referred to in subsection (1) of section 36A above, or if it has made such a decision but has not yet served the notice referred to in subsection (3) of that section; or
 - (b) where the Agency has served a notice on the applicant under subsection (3) of that section, until the period for appealing under that section has expired or (if the applicant appeals) the appeal has been determined.”
- (3) In section 45 of the WRA (regulations with respect to appeals)—
 - (a) in subsection (1), after “against decisions” there is inserted “of the Agency under section 36A above or”,
 - (b) after subsection (2) there is inserted—
 - “(2A) Subsection (2) above does not apply in relation to appeals against decisions of the Agency under section 36A above.”
- (4) In section 114 of the Environment Act 1995 (c. 25) (power of Secretary of State to delegate or refer in connection with appeals), in subsection (2)(a)(v), after “section” there is inserted “36A,”.

14 Publication of application for licence

- (1) For section 37 of the WRA (publication of application for licence) there is substituted—

“37 Publication of application for licence

- (1) The Agency shall publish a notice of an application for—
 - (a) a full licence or a transfer licence; or
 - (b) a licence under this Chapter to obstruct or impede the flow of any inland waters by means of impounding works,
 in the prescribed way or (if no way is prescribed) in a way calculated to bring the application to the attention of persons who in the Agency’s view are likely to be affected by the licence.
- (2) Not later than the date on which that notice is first published, the Agency shall also serve a copy of it on the persons referred to in subsection (3) below (except the applicant, if the applicant is one of those persons).
- (3) Those persons are—

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- (a) any water undertaker within whose area any proposed point of abstraction or impounding is situated;
- (b) any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at any such proposed point; and
- (c) the drainage board for any internal drainage district within which any such proposed point is situated,

but paragraphs (b) and (c) above do not apply if the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters.

- (4) A notice for the purposes of the preceding provisions of this section shall—
 - (a) be in the prescribed form and shall include any prescribed matters; and
 - (b) state that any person may make representations in writing to the Agency with respect to the application at any time before the end of a period specified in the notice.
- (5) The period referred to in subsection (4)(b) above—
 - (a) begins on the date the notice referred to in subsection (1) above is first published as mentioned there; and
 - (b) shall not end before the end of the period of twenty-eight days beginning with that date.
- (6) The Secretary of State may make regulations providing for—
 - (a) the requirements of subsection (2) above, or of both subsections (1) and (2) above, not to apply in prescribed cases;
 - (b) notices of applications to exclude prescribed classes of information, either generally or as respects prescribed classes of application.
- (7) In this section, “proposed point of abstraction or impounding”, in relation to an application for a licence referred to in subsection (1) above, means a place where a licence, if granted in accordance with the application, would authorise—
 - (a) water to be abstracted; or
 - (b) the flow of inland waters to be obstructed or impeded by means of impounding works,(as the case may be).
- (8) This section is subject to section 37A below.”

(2) After section 37 of the WRA there is inserted—

“37A Power to dispense with publication requirements

The Secretary of State may by regulations make provision for—

- (a) enabling the Agency; or
- (b) him, in the case of applications referred to him in accordance with section 41 below,

to direct or determine that the requirements of subsections (1) and (2) of section 37 above may in any case (except where the Agency is the applicant)

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be dispensed with, if in that case it appears to the Agency (or, as the case may be, the Secretary of State) to be appropriate to do so.”

- (3) The WRA is further amended as follows—
- (a) in section 38 (general consideration of applications)—
 - (i) in subsection (1), for “for the purposes of the application in accordance with section 37(5)” there is substituted “in the notice referred to in section 37(4)(b)”,
 - (ii) after subsection (3) there is added—
 - “(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if in relation to the application in question the requirements of section 37(1) above do not apply by virtue of section 37(6)(a) above or have been dispensed with by virtue of section 37A above.”,
 - (b) in section 42 (consideration of called-in applications), in subsection (3)(a), for “37(4)(b) and (6)(a)” there is substituted “37”,
 - (c) in section 43 (appeals to Secretary of State), in subsection (5), for “for the purposes of the application in accordance with section 37(5)” there is substituted “in any such notice as is referred to in section 37(4)(b)”,
 - (d) in section 66 (inland waters owned or managed by British Waterways Board), in sub-paragraph (ii) of subsection (2)(c), for the words from “subsection (1)” to the end of that sub-paragraph there is substituted “paragraphs (b) and (c), and the succeeding words, of subsection (3) of that section were omitted.”

Consideration of licence applications

15 General consideration of licence applications

- (1) Section 38 of the WRA (general consideration of licence applications) is amended as follows.
- (2) After subsection (1) there is inserted—
- “(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—
 - (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
 - (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.
 - (1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).
 - (1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded

accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.”

- (3) In subsection (3), after “regard to” there is inserted “all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to”.

16 Protection from derogation

- (1) Section 39 of the WRA (obligation to have regard to existing rights and privileges) is amended as provided in subsections (2) to (5).

- (2) In subsection (1), at the beginning there is inserted “Subject to subsection (1A) below,”.

- (3) After subsection (1) there is inserted—

“(1A) Subsection (1) above does not apply when—

- (a) the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- (b) the determination of an application is being concluded in accordance with subsection (1C) of that section.”

- (4) Subsection (3) is omitted.

- (5) In subsection (4), for “section 27(6) above or, as the case may be, section 48(1) below” there is substituted “(as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there”.

- (6) In section 42 of the WRA (consideration of called-in applications)—

- (a) in subsection (4), at the beginning there is inserted “Subject to subsection (4A) below,” and
- (b) after subsection (4) there is inserted—

“(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.”

- (7) In section 44 of the WRA (determination of appeals)—

- (a) in subsection (4), at the beginning there is inserted “Subject to subsection (4A) below,” and
- (b) after subsection (4) there is inserted—

“(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.”

17 Protected rights

- (1) After section 39 of the WRA there is inserted—

“39A Protected rights for the purposes of this Chapter

- (1) For the purposes of this Chapter, a right is a protected right if—

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- (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
 - (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
 - (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
 - (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
 - (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
 - (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.
- (2) A person who is in a position to carry out an abstraction of a quantity of water which—
- (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
 - (b) also falls within subsection (4) or (5) below,
- shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.
- (3) The maximum quantity is the lower of the following—
- (a) twenty cubic metres;
 - (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).
- (4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—
- (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
 - (b) it is abstracted for use on that holding for either or both of the following purposes—
 - (i) the domestic purposes of the occupier’s household;
 - (ii) agricultural purposes other than spray irrigation.
- (5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.
- (6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.

- (7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—
- (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
 - (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,
- and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.
- (8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—
- (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
 - (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.
- (9) The period referred to in subsection (8)(a) above is—
- (a) four years; or
 - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the Agency may determine on the application of the holder of the old licence.
- (10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.
- (11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.
- (12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.”
- (2) In section 72 of the WRA (interpretation of Chapter 2), in the entry for “protected right” in subsection (1), for “section 39(3)” there is substituted “section 39A”.

18 Register of certain protected rights

After section 39A of the WRA (inserted by section 17) there is inserted—

“39B Register of certain protected rights

- (1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the Agency, of

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one or more registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.

- (2) The regulations may, in particular, provide for—
- (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
 - (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
 - (c) the form and contents of the register, and its inspection by members of the public;
 - (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
 - (e) cases in which it is the duty of the Agency to include a protected right in the register without an application for inclusion having been made.
- (3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.
- (4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.
- (5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.
- (6) An order under subsection (3) above may be made only on the application of the Agency; but the Secretary of State may direct the Agency to make such an application.
- (7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.
- (8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.”

Form, contents and effect of licences

19 Form, contents and effect of licences

- (1) Section 46 of the WRA (form and contents of licences) is amended as provided in subsections (2) to (5).

- (2) In subsection (2), for the words before paragraph (a) there is substituted “Every full licence under this Chapter shall, and any other licence under this Chapter to abstract water may, make—”.
- (3) After subsection (2) there is inserted—
- “(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
 - (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.”
- (4) For subsections (4) and (5) there is substituted—
- “(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.”
- (5) In subsection (7), for “or by different means” there is substituted “, by different means or for different purposes”.
- (6) In section 47 of the WRA (holders of licence), in subsection (1), the words “to abstract water” are omitted.

20 Limited extension of abstraction licence validity

After section 46 of the WRA there is inserted—

“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.
- (2) The condition is that the 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 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.

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- (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.”

Modification of licences

21 Modification of licences

- (1) Section 51 of the WRA (modification of licence on application of licence holder) is amended as follows.
- (2) In subsection (1), after “Chapter” there is inserted “to abstract water”.
- (3) After subsection (1) there is inserted—
 - “(1A) The holder of a licence under this Chapter to obstruct or impede the flow of inland waters (an “impounding licence”) may apply to the Agency to revoke the licence and, on any such application, the Agency may revoke the licence accordingly.
 - (1B) The Agency may require conditions to be met to its satisfaction before revocation of the impounding licence takes effect, and those conditions may in particular include conditions—
 - (a) requiring the removal of all or part of the impounding works;
 - (b) as to the restoration of the site of the impounding works to a state which is satisfactory to the Agency;
 - (c) relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.
 - (1C) The person making an application under subsection (1A) above (“the applicant”) may by notice appeal to the Secretary of State if—
 - (a) he is dissatisfied with the decision of the Agency as to—
 - (i) whether his licence may be revoked; or
 - (ii) any conditions imposed by virtue of subsection (1B) above;
 or
 - (b) the Agency fails to give notice of its decision to the applicant within the prescribed period or within such extended period as may be agreed in writing between the Agency and the applicant.
 - (1D) The Secretary of State may by regulations make provision with respect to—

- (a) the manner in which notices of appeal under subsection (1C) above shall be served;
 - (b) the period within which such notices shall be served;
 - (c) the procedure on any such appeal.
- (1E) Where an appeal is brought under subsection (1C) above, the Secretary of State may—
 - (a) allow or dismiss the appeal or reverse or vary any part of the decision of the Agency, whether the appeal relates to that part of the decision or not; and
 - (b) may deal with the application as if it had been made to him in the first place.
- (1F) The decision of the Secretary of State on any appeal under subsection (1C) above shall be final.
- (1G) Subsections (1C) to (1F) above are subject to section 114 of the 1995 Act (delegation or reference of appeals).”
- (4) In section 114 of the Environment Act 1995 (c. 25) (power of Secretary of State to delegate or refer in connection with appeals), in subsection (2)(a)(v), after “43,” there is inserted “51,”.
- (5) The amendments made by this section apply (as regards any act or omission after this section comes into force) in respect of impounding licences, regardless of when the impounding works were constructed.

22 Proposals for modification at instance of Agency or Secretary of State

- (1) Section 52 of the WRA (proposals for modification of licences at the instance of the Agency or the Secretary of State) is amended as follows.
- (2) After subsection (1) there is inserted—
 - “(1A) In the case of a licence to obstruct or impede any inland waters, a variation may take the form of a requirement that the impounding works be modified in ways specified in the proposed new provision of the licence.”
- (3) In subsection (4), for paragraph (b) there is substituted—
 - “(b) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.”
- (4) In subsection (5), for “otherwise than in the London Gazette” there is substituted “as mentioned in subsection (4)(b) above”.
- (5) For subsection (6) there is substituted—
 - “(6) A notice for the purposes of subsection (4) above shall—
 - (a) include any prescribed matters; and
 - (b) state that, before the end of a period specified in the notice—
 - (i) the holder of the licence may give notice in writing to the Agency objecting to the proposals; and
 - (ii) any other person may make representations in writing to the Agency with respect to the proposals.”

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(6) For subsection (7) there is substituted—

“(7) The period referred to in subsection (6)(b) above—

- (a) begins on the date the notice referred to in subsection (4) above is first published as mentioned there; and
- (b) shall not end before the end of the period of twenty-eight days beginning with that date.”

(7) Subsection (8) is omitted.

Transfer and apportionment of licences

23 Transfer and apportionment of licences

(1) After section 59 of the WRA there is inserted—

“Transfer and apportionment of licences

59A Transfer of licence

(1) The following licences—

- (a) a full licence;
- (b) a transfer licence; or
- (c) a licence to obstruct or impede the flow of inland waters by means of impounding works,

may be transferred by the holder of the licence to another person (“the transferee”) in accordance with the following provisions of this section.

(2) The holder and the proposed transferee shall give notice (a “transfer notice”) to the Agency of their agreement that the licence should be transferred.

(3) The transfer notice shall include—

- (a) such information as the Agency reasonably requires; and
- (b) (in the case of the transfer of a full licence or of a transfer licence) a declaration by the proposed transferee that—
 - (i) he has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction; and
 - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),

and may specify the date on which the holder and the transferee wish the transfer to take effect.

(4) If the holder is a person in whom the licence has vested under section 59B below, a transfer notice shall be of no effect unless the notice required by section 59B(4) has been given.

(5) Subject to subsection (4) above, if the Agency receives a transfer notice which complies with the requirements of subsections (2) and (3) above, the Agency

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shall amend the licence by substituting the name of the transferee as holder of the licence.

- (6) The transfer shall take effect—
- (a) from the date on which the Agency amends the licence; or
 - (b) from the date specified in the transfer notice, if later.
- (7) Nothing in this section shall affect the liability of the holder of the licence for any failure by him, before the transfer took effect, to comply with any condition or requirement of that licence.
- (8) In this section—
- “point of abstraction” means a place where the licence authorises water to be abstracted from inland waters or (as the case may be) a place consisting of or comprising underground strata from which the licence authorises water to be abstracted; and
 - “right of access” means, in relation to a point of abstraction, a right of access to land of the kind referred to in subsection (2)(a) or, as the case may be, (3)(a) of section 35 above; and references to a person who will have such a right of access shall be construed in accordance with that section (including subsections (4) to (6)).

59B Vesting of licence on death or bankruptcy of holder

- (1) On the death of the holder of a licence under this Chapter, the licence shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representatives.
- (2) If a bankruptcy order is made against the holder of a licence under this Chapter, the licence shall be regarded for the purposes of any of the Second Group of Parts of the Insolvency Act 1986 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt’s estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the trustee in bankruptcy.
- (3) A person in whom a licence vests under this section shall become the holder of the licence, in place of the prior holder, from the date of the vesting.
- (4) Where a licence other than a temporary licence vests in any person under this section, that person shall give notice of that fact to the Agency not later than the end of the period of fifteen months beginning with the date of the vesting.
- (5) If—
- (a) a licence vests in any person under this section; but
 - (b) that person fails to give the notice required by subsection (4) above within the period mentioned there,
- the licence shall cease to have effect.

59C Apportionment of licence to abstract

- (1) The holder of a full licence or of a transfer licence (the “old licence”) may apply to the Agency for the division of the holder’s right to abstract water in accordance with the old licence and for the transfer—

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- (a) to another person of part, or to a number of other persons of parts not amounting to the whole; or
 - (b) to a number of other persons of parts amounting in all to the whole, of that right.
- (2) The holder of the old licence and any person proposing to carry on a part of the abstraction authorised by the old licence in place of the holder (a “successor”) shall give notice to the Agency of their agreement to the division and transfer (an “apportionment notice”).
- (3) The apportionment notice shall, in relation to the abstraction authorised by the old licence—
 - (a) specify, for each proposed successor, what quantity of water he proposes to abstract, and (if the holder of the old licence is to continue the abstraction in part) what quantity of water he proposes to abstract;
 - (b) specify the purpose or purposes for which those persons referred to in paragraph (a) above who would require a new licence granted under subsection (5) below would abstract water (being one or more of the purposes for which abstraction is authorised under the old licence);
 - (c) specify the point (or points) of abstraction from which it is proposed that the persons referred to in paragraph (a) above would abstract water (being one or more of the points from which abstraction is authorised under the old licence);
 - (d) include a declaration by each of those persons who requires a licence under this Chapter in order to carry on the abstraction that—
 - (i) he has, or at the time when the proposed grant to him of a new licence under subsection (5) below is to take effect will have, a right of access in relation to each such point of abstraction; and
 - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner); and
 - (e) include such other information as the Agency reasonably requires, and may specify the date on which the holder and the successor (or successors) wish the division and transfer (or transfers) to take effect.
- (4) The apportionment notice shall be accompanied by an application on the part of the holder of the old licence for its revocation.
- (5) Subject to subsection (9) below, if the Agency receives an apportionment notice and the application for revocation referred to in subsection (4) above, the Agency shall—
 - (a) revoke the old licence;
 - (b) if the holder is to continue the abstraction in part and a licence is required under this Chapter for that purpose, grant to the holder of the old licence a licence relating to that part of the abstraction; and
 - (c) grant to each successor who requires a licence under this Chapter in order to carry on his part of the abstraction a licence relating to that part of the abstraction.
- (6) Sections 34 to 45 above shall not apply to the grant of a new licence under subsection (5) above.

- (7) Subject to section 46 above and to any provision of regulations made under section 59D(1) below, each new licence to be granted under subsection (5) above shall be granted subject to provisions which correspond as nearly as practicable to those of the old licence in relation to the part of the abstraction to be authorised by the new licence.
- (8) The revocation of the old licence and the grant of the new licences shall take effect—
- (a) from the date on which the Agency revokes the old licence and grants the new ones; or
 - (b) from the date specified in the apportionment notice, if later.
- (9) The Agency shall not grant a new licence to the holder of the old licence or to a successor if, by virtue of an exemption, the restriction on abstraction would not apply to that part of the abstraction proposed in relation to him in the apportionment notice.
- (10) For the purposes of this Chapter, a person (whether the holder of the old licence or a successor) who proposes to carry on a part of the abstraction in the circumstances mentioned in subsection (9) above shall, if the old licence was a full licence, be taken to have the right to do so in relation to that part, subject to subsection (11) below.
- (11) For the purposes of this Chapter, a person shall cease to be taken to have a right, by virtue of subsection (10) above, to carry on an abstraction if—
- (a) during a period mentioned in subsection (12) below that person does not carry out any such abstraction; or
 - (b) following an order under section 27A(1) above or regulations under section 33A above, that person is granted a full licence in respect of abstraction from the same point.
- (12) The period referred to in subsection (11)(a) above is—
- (a) four years; or
 - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the Agency may determine on the application of the person in question.
- (13) For the purposes of section 39A above, a new licence granted under subsection (5) above shall be treated—
- (a) as if it had been granted at the time the old licence was granted; and
 - (b) as if it and any other new licence granted by virtue of the relevant apportionment notice had been granted in place of the old licence.
- (14) In this section—
- “exemption” means the disapplication of the restriction on abstraction under or by virtue of section 27 or 33A above; and
 - “point of abstraction” and “right of access” have the same meanings as in section 59A above.

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59D Apportionment of licence to abstract: supplementary

- (1) The Secretary of State may make regulations about the provisions to be contained in licences granted under section 59C above.
 - (2) Nothing in section 59C above shall affect the liability of the holder of the old licence for any failure by him, before the revocation of that licence took effect, to comply with any condition or requirement of that licence.
 - (3) If the holder of the old licence is a person in whom the old licence has vested under section 59B above, an apportionment notice shall be of no effect unless the notice required by section 59B(4) has been given.
 - (4) In this section, “apportionment notice” and “old licence” have the same meanings as in section 59C above.”
- (2) In section 47 of the WRA (holders of licence)—
- (a) for subsection (2) there is substituted—
 - “(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.”,
 - (b) subsection (3) is omitted.
- (3) In section 189 of the WRA (register of abstraction and impounding licences), in subsection (1)(b), for the words from “section 49” to the end there is substituted “section 59A, 59B or 59C above”.
- (4) Sections 49 and 50 of the WRA (which relate to the succession to licences to abstract water) shall cease to have effect.
- (5) Subsection (4) does not affect the succession to a licence to abstract water where the death or other act or event referred to in section 49(2)(a) or 50(1)(a) or (b) of the WRA occurred before the coming into force of that subsection, and section 49 of the WRA or (as applicable) any regulations under section 50 of the WRA which were in force immediately before the coming into force of subsection (4) are to continue to have effect in relation to such a case despite the repeal of the applicable section.

Claims and compensation

24 Claims arising out of water abstraction

- (1) After section 48 of the WRA there is inserted—

“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.

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- (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.
- (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.”

- (2) In section 48 of the WRA (general effect of licence), in subsection (2), after “supply” there is inserted “(other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply)”.
- (3) In relation to loss or damage suffered before the coming into force of this section—
 - (a) section 48A of the WRA inserted by subsection (1) of this section does not apply, and
 - (b) section 48 of, and paragraphs 1(2) and 2 of Schedule 7 to, the WRA continue to have effect as if subsection (2) of this section were not in force.

25 Compensation for modification of licence on direction of Secretary of State

- (1) Section 61 of the WRA (compensation where licence modified on direction of the Secretary of State) is amended in accordance with subsections (2) and (3).
- (2) In subsection (4), for “seven” there is substituted “four”.
- (3) After subsection (4) there is inserted—

“(4A) No compensation shall be payable under this section in respect of the variation of a full licence, or of a transfer licence which specifies a minimum value under section 46(2A) above, so as to reduce the quantity of water which the

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holder of the licence is authorised by the licence to abstract from the source of supply to which the licence relates if—

- (a) the ground for varying the licence is that the Secretary of State is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the licence relates;
- (b) the variation does not reduce the quantity of water which the holder of the licence is authorised by the licence to abstract to less than the minimum value specified in the licence under section 46(2A) above for the purposes of this subsection; and
- (c) the conditions set out in subsection (4B) below are satisfied.

(4B) Those conditions are that—

- (a) the licence was granted after the coming into force of section 19 of the Water Act 2003;
- (b) the variation is made no sooner than the end of the period of six years beginning with the date on which the licence took effect; and
- (c) the variation takes effect no sooner than the end of the period of six years beginning with the date of the variation.”

- (4) The amendment made by subsection (2) has effect in relation to the revocation or variation of a licence only if the period referred to in section 61(4) of the WRA during which no water was abstracted in pursuance of the licence began after the coming into force of that subsection.

26 Recovery of compensation from new licence-holder

After section 61 of the WRA there is inserted—

“61A Recovery of compensation from new licence-holder

- (1) This section applies where compensation has been paid under section 61 above to the holder of a licence (“licence A”) following its revocation, and—
 - (a) the holder of licence A was a water undertaker;
 - (b) at the time of the revocation an application from a qualifying person for a licence to abstract water (“licence B”) was outstanding;
 - (c) if the Agency had granted licence B while licence A still had effect, the Agency would have been in breach of the duty imposed on it by section 39(1) above owed to the holder of licence A;
 - (d) the ground for revoking licence A was that the Agency was of the view that in the interests of greater efficiency in the use of water resources it would be better for licence B to be granted and licence A revoked; and
 - (e) the Agency proposes to grant licence B.
- (2) If this section applies, the Agency may (if licence B is granted) recover from the qualifying person the amount of the compensation referred to in subsection (1) above (or such lesser amount as the Agency determines).
- (3) Subsection (6) of section 41 of the 1995 Act (which confers powers to make schemes imposing charges) shall apply to the amount referred to in subsection (2) above as if it were a charge due and payable to the Agency in respect of the subsistence of licence B.

- (4) In this section, “qualifying person” means—
- (a) a water undertaker; or
 - (b) a person who has made an application for an appointment or variation replacing a company as a water undertaker under section 8 of the Water Industry Act 1991 which has not been determined.”

27 Withdrawal of compensation for certain revocations and variations

- (1) This section applies where—
- (a) a licence to abstract water is revoked or varied on or after 15th July 2012 in pursuance of a direction under section 54 or 56 of the WRA (which provide for the Secretary of State to direct the Environment Agency to revoke or vary a licence in certain circumstances);
 - (b) the licence was granted before the coming into force of section 19 of this Act;
 - (c) the licence is one which is expressed to remain in force until revoked; and
 - (d) the ground for revoking or varying the licence is that the Secretary of State is satisfied that the revocation or variation is necessary in order to protect from serious damage—
 - (i) any inland waters,
 - (ii) any water contained in underground strata,
 - (iii) any underground strata themselves,or any flora or fauna dependent on any of them.
- (2) Where this section applies, no compensation is payable under section 61 of the WRA in respect of the revocation or variation of the licence.
- (3) Expressions used in sub-paragraphs (i), (ii) and (iii) of subsection (1)(d) are to be construed in accordance with section 221 of the WRA; and “waters”, in relation to a lake, pond, river or watercourse which is for the time being dry, includes its bottom, channel or bed.

Water resources management schemes

28 Water resources management schemes: other abstractors

After section 20 of the WRA there is inserted—

“20A Water resources management schemes: other abstractors

- (1) The Agency may enter into and maintain such arrangements with holders of abstraction licences other than water undertakers for securing the proper management or operation of—
- (a) the waters from which they have the right by virtue of their licences to abstract water; and
 - (b) any reservoirs, apparatus or other works which are used for the purposes of or in connection with their abstractions and which belong to them, are operated by them or are otherwise under their control,
- as the Agency from time to time considers appropriate for the purpose of carrying out its functions under section 6(2) of the 1995 Act.

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- (2) Without prejudice to the power of the Agency and any holder of an abstraction licence to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
 - (a) make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which the holder of the licence will use for the purposes of or in connection with his abstraction;
 - (b) contain provision requiring payments to be made by the Agency to the holder of the licence; and
 - (c) require the reference to and determination by the Secretary of State or the Water Services Regulation Authority of questions arising under the arrangements.
- (3) The Agency shall send a copy of any arrangements entered into by it under this section to the Secretary of State.
- (4) In this section, references to abstraction licences are to licences under Chapter 2 of this Part to abstract water.”

29 Water resources management schemes: referral to Secretary of State

- (1) After section 20A of the WRA (inserted by section 28) there is inserted—

“20B Water resources management schemes: referral to Secretary of State

- (1) This section applies where—
 - (a) the Agency has sought to enter into arrangements acceptable to it under section 20 or 20A above, but is satisfied that the other party is unwilling to enter into such arrangements or to do so on terms appearing to the Agency to be reasonable; or
 - (b) having entered into such arrangements, the Agency has sought to renew or vary them but is satisfied that the other party is unwilling to do so or to do so on terms appearing to the Agency to be reasonable.
- (2) Where this section applies, the Agency may refer to the Secretary of State the question (as the case may be)—
 - (a) whether such arrangements should be entered into, and if so, on what terms; or
 - (b) whether the arrangements should be renewed or varied (as the case may be), and if so, on what terms.
- (3) If the Secretary of State determines that arrangements should be entered into or (as the case may be) renewed or varied, such arrangements on the terms determined by the Secretary of State shall be enforceable—
 - (a) by civil proceedings by the Secretary of State for an injunction or for any other appropriate relief; and
 - (b) where the other party is a water undertaker, also under section 18 of the Water Industry Act 1991 (enforcement orders) by the Secretary of State.

- (4) The functions of the Secretary of State under subsection (2) above shall be treated for the purposes of section 114 of the 1995 Act (delegation or reference of appeals) as if they were functions to which paragraph (a) of subsection (1) of that section applied.”

Enforcement

30 Enforcement notices, and related procedures and offences

After section 25 of the WRA there is inserted—

“25A Enforcement notices

- (1) Subject to the following provisions of this section, where it appears to the Agency that a person is—
- (a) in breach of section 24(1) or (2) or section 25(1) above; or
 - (b) for the purposes of section 24 or 25 above a holder of a licence under this Chapter and has not complied with a condition or requirement imposed by the provisions, as for the time being in force, of that licence,
- the Agency shall be entitled to serve an enforcement notice on him if the condition in subsection (2) below is satisfied.
- (2) The condition is that it appears to the Agency that the breach or failure to comply is causing or is likely to cause significant damage to the environment.
- (3) An enforcement notice is a notice requiring the person on whom it is served—
- (a) to cease his breach of section 24(1) or (2) or section 25(1) above, or to comply with the condition or requirement in question; and
 - (b) to carry out any works or operations specified in the notice.
- (4) The works or operations which may be specified are works or operations which it appears to the Agency are appropriate for the purpose of remedying or mitigating the effects of the breach or failure to comply, and may include—
- (a) works or operations for the purpose, so far as it is reasonably practicable to do so, of restoring any affected waters, including any flora and fauna dependent on them, to their state immediately before the breach or failure to comply; and
 - (b) in the case of a breach of section 25(1) above, the removal of any unauthorised impounding works or the reversal of any unauthorised alteration to impounding works.
- (5) An enforcement notice must specify the periods within which the person on whom it is served must do each of the things specified in the notice.
- (6) Before serving an enforcement notice on any person, the Agency shall take reasonable steps to consult that person about the works or operations which are to be specified in the notice.
- (7) The Secretary of State may by regulations make provision for or in connection with—
- (a) the form or content of enforcement notices;

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- (b) requirements for consultation, before the service of an enforcement notice, with persons other than the person upon whom the notice is to be served;
 - (c) steps to be taken for the purposes of any consultation required under subsection (6) above or regulations made by virtue of paragraph (b) above;
 - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of an enforcement notice.
- (8) An enforcement notice is not invalid, or invalidly served, merely because of a failure to comply with subsection (6) above or with regulations made by virtue of subsection (7)(b) above.
- (9) The Secretary of State may, if he thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under this section.
- (10) In proceedings for any offence under section 24 or 25 above against a person upon whom an enforcement notice has been served, the following are not to be taken as evidence that he has committed the offence—
- (a) the fact that an enforcement notice has been served on him;
 - (b) the fact that he does not appeal against it;
 - (c) the fact that on an appeal against it the notice is confirmed (whether with or without modifications).

25B Rights of entry and appeals

Sections 161B and 161C below (including any power to make regulations) shall apply in relation to enforcement notices as they apply in relation to works notices under section 161A below.

25C Consequences of not complying with an enforcement notice

- (1) If a person on whom the Agency serves an enforcement notice fails to comply with any of its requirements, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable—
 - (a) on summary conviction, to a fine not exceeding £20,000;
 - (b) on conviction on indictment, to a fine.
- (3) If a person on whom an enforcement notice has been served fails to comply with any of its requirements, the Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it.
- (4) If the Agency is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.”

Miscellaneous

31 Bulk supplies

(1) After section 20B of the WRA (inserted by section 29 of this Act) there is inserted—

“20C Proposals for bulk supply arrangements

- (1) In the circumstances mentioned in subsection (2) below, the Agency may, in carrying out its functions under section 6(2) of the 1995 Act, propose to a qualifying person (within the meaning of section 40 of the Water Industry Act 1991) that he make an application under that section for a bulk supply of water from a water undertaker.
 - (2) The circumstances referred to in subsection (1) above are that it appears to the Agency that such a bulk supply is necessary in order to secure the proper use of water resources.
 - (3) The Agency shall not make such a proposal without first consulting the Water Services Regulation Authority.
 - (4) The Agency may include in its proposal the period for which, and terms and conditions on which, the Agency considers it appropriate that the bulk supply should be given.”
- (2) In section 38 of the WRA (general consideration of applications), in subsection (3), after paragraph (b) there is inserted—
- “and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the Agency under section 20C above.”

32 Visiting forces

Section 223 of the WRA (exemption of visiting forces from restrictions on abstraction etc) shall cease to have effect.

33 Application of certain water resources provisions to this Act

- (1) The relevant WRA provisions apply to (or in relation to) the following sections of this Act (the “applicable sections”) as they apply to (or in relation to) Part 2 or, as the case may be, Chapter 2 of Part 2 of the WRA—
 - (a) section 3 (existing impounding works),
 - (b) section 4 (existing impounding works: works notices), and
 - (c) section 10 (orders under section 33 of the WRA, etc).
- (2) Accordingly, in the relevant WRA provisions—
 - (a) references to Part 2 of, or to Chapter 2 of Part 2 of, the WRA are to be read as if the applicable sections were included in that Part or that Chapter,
 - (b) references to the related water resources provisions are to be read as if those provisions meant, in relation to the applicable sections, the relevant WRA provisions other than section 222 of the WRA, and

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- (c) references to the Secretary of State are to be read as references to the appropriate authority (as defined, in each case, in the applicable section in question).
- (3) The “relevant WRA provisions” are the following provisions of the WRA—
 - (a) section 120 (contributions between the Agency and certain other authorities),
 - (b) section 158 (works agreements for water resources purposes),
 - (c) section 201 (power to require information in respect of water resources functions), as substituted by section 70 of this Act,
 - (d) section 216 (enforcement: powers and duties),
 - (e) section 222 (Crown application), as in force immediately before the substitution made by paragraph 2(4) of Schedule 21 to the Environment Act 1995 (c. 25) and for so long as the substituted section 222 does not apply to Part 2 of the WRA.
- (4) Section 220 of the WRA (provisions relating to service of documents) applies to documents required or authorised by virtue of any of the applicable sections to be served on any person as it applies to documents required or authorised to be served by virtue of the WRA.
- (5) References in the WRA to the functions (generally) of the Environment Agency are to be read as including the Agency’s functions under the applicable sections.