



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART II

#### WATER RESOURCES MANAGEMENT

### CHAPTER II

#### ABSTRACTION AND IMPOUNDING

##### *Consideration of licence applications*

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

- (1) [<sup>F1</sup>Subject to subsection (1A) below,] the [<sup>F2</sup>appropriate agency] shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from any rights which, at the time when the application is determined by the [<sup>F2</sup>appropriate agency], are protected rights for the purposes of this Chapter.

[<sup>F3</sup>(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.]
- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the [<sup>F2</sup>appropriate agency], in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.

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*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Section 39. (See end of Document for details)*

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<sup>F4</sup>(3) .....

(4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—

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

in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in [<sup>F5</sup>(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].

(5) For the purposes of subsection (2) above the [<sup>F2</sup>appropriate agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—

- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
- (b) that decision has not been quashed or reversed.

#### **Textual Amendments**

- F1** Words in s. 39(1) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(2)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))
- F2** Words in ss. 33A–45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with [Sch. 7](#))
- F3** S. 39(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(3)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))
- F4** S. 39(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 16(4), 105(3), **Sch. 9 Pt. 1**; S.I. 2005/968, art. 2(c)(n)
- F5** Words in s. 39(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(5)**, 105(3); S.I. 2005/968, art. 2(c)

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

- C1** S. 39 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(4)**

**Changes to legislation:**

There are currently no known outstanding effects for the Water Resources Act 1991, Section 39.