

Restoring Sustainable Abstraction: Compensation

Background

As part of the Restoring Sustainable Abstraction (RSA) programme, the Environment Agency can make proposals to change or revoke an abstraction or impoundment licence under Section 52 of the Water Resources Act 1991 (WRA91). If the licence holder objects then the case is referred to the Secretary of State who will decide whether to accept, reject or vary these proposals. If the decision is to vary or revoke the licence, compensation may be available to the licence holder.

If your licence does need changing, this leaflet explains who is entitled to compensation, what you may be compensated for and how to make a claim if you are eligible.



All claims for compensation must be made in accordance with Section 61 WRA91.

This leaflet only applies if the Environment Agency is proposing to change your licence under Section 52 WRA91.

How will the Environment Agency propose to change my licence?

If our investigations show that your abstraction or impoundment licence is causing or could potentially cause environmental damage, we may decide that your licence needs changing. We will work with you to agree the best way to change your licence but, if you do not wish to change it voluntarily, we will propose to do this under Section 52 WRA91. You may be eligible for compensation under certain circumstances (see 'Who is not eligible for compensation' below). Any compensation must be for proven loss or damage directly related to the licence change.

If you object to our proposals, you may be entitled to financial compensation.

What is the aim of compensation?

The compensation paid to eligible licence holders, as far as is reasonably possible, provides you with a financial equivalent of your loss. In effect, to put you in a position no worse or better off than you were before the licence change.

Who is not eligible for compensation?

Not all licence holders are eligible to claim compensation.

The law specifies that you will **not** be eligible for compensation if:

- no abstraction has taken place for a period of four years ending on the date on which notice of our proposals was served on you (under Section 52 WRA91);

- the licence change is necessary in order to protect from serious damage (this can include future serious damage). This applies to non-time limited licences changed after 15 July 2012 which meet serious damage criteria;
- the licence was granted after 1 April 2006;

Additionally, there are further conditions on the payment of compensation and the identity of the proposed recipient(s):

- Only the licence holder can claim compensation. We are unable to make payments to third parties. The only exception to this is if the land or property affected by the licence change is subject to a mortgage.
- Compensation can only be paid if it can be directly attributed to a change in the abstraction licence.

What can I claim compensation for?

Any compensation claim must include evidence of the financial loss or damage caused to you by the licence change.

A claim may include one or more of the following four types of loss:

Mitigation measures: you can claim for the cost of adapting your business or interests to minimise the impact of the changed or revoked licence. These costs must be reasonable and proportionate and agreed with us. This may include cost of a surveyor for related investigation work and for preparing and negotiating a claim. It is your duty to take any reasonable mitigation measure that can reduce the loss or damage to your business or interest.

Loss of profit: If it is not possible to minimise or overcome the effect of the licence change you may claim for any proven loss of business related to the reduction in water compared to that available under the terms of the abstraction licence before the change.

Loss of land value: This may be an additional element of the claim if you own the land and can prove a reduction in property value beyond the loss of profit stated above.

Asset value losses: The residual value (taking into account the age and condition) of any asset which is made redundant as a direct result of the licence change may be claimed. Such claims cannot be made for any equipment or asset purchased before the start date of the original abstraction licence.

You may also include reasonable costs for independent professional advice to help you produce your compensation claim and discuss it with us.



When can I submit my claim?

Once we have proposed to change your licence and you have objected to our proposal, we will refer the case to the Secretary of State / Welsh Ministers. They will then give us a direction on whether or not to change your licence. We expect their decision within 6-12 months.

If the Secretary of State's / Welsh Ministers' decision is to proceed with the change, we will modify your licence or issue a notice of revocation as soon as possible. This will be effective immediately or will give an effective date when the changes begin.

You must submit your claim for compensation in writing to us within six years of the date the modified licence / notice of revocation is issued. This is regardless of the effective date of any changes. You must also provide evidence to support your claim.



What evidence do I need to support my claim?

When a claim is submitted, you must also provide written evidence and clear calculations of your financial losses in support of the claim. Your claim must be consistent with the following principles:

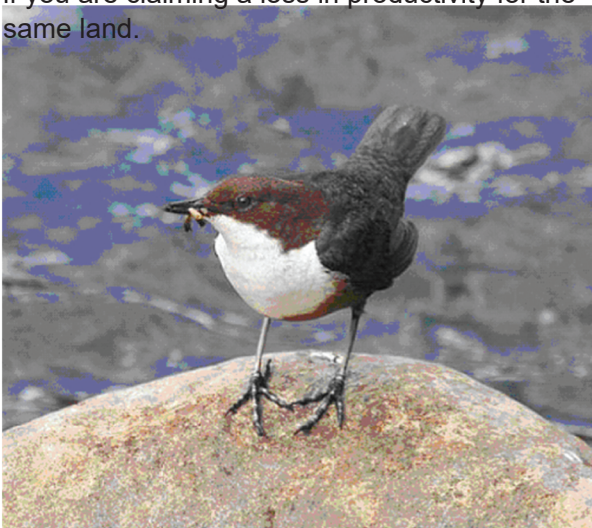
Equivalence: Your claim must restore you to the same financial position as before the licence change, not give you extra money or leave you out of pocket.

Causation: Any loss must be directly attributable to the licence change. For example, loss of profit must be as a direct result of the difference in water availability due to the licence change. It may not take into account factors such as national or local economic trends.

Remoteness: Damage or loss should be directly related to, or arising from, the licence change and be foreseeable (not too remote from the licence change).

Reasonableness: The impacts and the mitigation measures that your claim relates to must be reasonable. In other words, similar to that incurred by a reasonable person in the same position as you.

You must not 'double count' any loss: For example you cannot claim for loss in land value if you are claiming a loss in productivity for the same land.



How will we agree the compensation sum to be paid?

Once we receive your claim we will:

- review your evidence to confirm and agree that the figures are a reasonable reflection of the loss caused to you by the licence change;
- discuss any difference between your claim and what we consider to be reasonable in order to reach an agreed compensation figure;
- once a figure is agreed we will pay the compensation to you.

We recommend that you use a land agent or surveyor to prepare your claim and discuss the value of the claim with us. Reasonable professional fees to do this work may be included as part of your claim.

If we cannot agree on an amount the claim can be referred to arbitration. We will do everything we can to reach reasonable agreement. However, ultimately where there is no agreement claims can be referred to the Upper Tribunal (Lands Chamber) by you or us. This is a formal judicial body with significant additional costs involved - <http://www.justice.gov.uk/tribunals/lands>

A tribunal will decide on the amount of compensation you are entitled to and how the costs incurred at the Tribunal are to be paid. The compensation is then paid to you once the Tribunal has made its decision.

The Tribunal's decision is final. An appeal against a decision made by the Tribunal can only be made to the Court of Appeal.



Where can I go for help?

If you have queries about the licence change itself please contact your local Area Environment Agency office.

Remember we cannot act as your agent. We suggest that you seek independent professional advice and possibly representation in relation to any compensation claim.

To find a solicitor contact the Law Society of England and Wales - www.lawsociety.org.uk, tel. 020 7242 1222.

If you do not have a land agent or surveyor who advises you on your business activities the Royal Institution of Chartered Surveyors (RICS) will be able to provide a list of appropriate contacts: www.rics.org, tel. 0870 333 1600 . Alternatively, for agricultural licence holders please contact the Central Association of Agricultural Valuers (CAAV) - www.caav.org.uk, tel. 01594 832979.

Further information

If you have any questions about this leaflet please email AntValleyWR@environment-agency.gov.uk

