

Changing Water Abstraction & Impoundment Licences

Background

We want to make sure that the amount of water being taken from rivers or out of the ground can be sustained without damaging the environment. Where it can't, we may need to adjust the amount of water that is being taken under the **Restoring Sustainable Abstraction (RSA) programme**.

This leaflet explains how those adjustments can be made when your abstraction or impoundment licence needs to be changed to protect the environment.

How will I know if my licence needs changing?

We carry out detailed investigations and consider possible options to balance the needs of the environment and water users. If our investigations show that your licence needs to be changed we will talk to you about this change and the best way for this to happen.

How can I change my licence?

The easiest way to change your licence is to apply voluntarily to vary it under Section 51 of the Water Resources Act 1991. We will explain how your licence needs to be changed and you will need to fill in a short form to say you want your licence to change in this way. We will then consider your application, and if satisfied with the proposals change your licence and issue the varied version to you.

If you vary your licence voluntarily we will not add a time limit to your licence, if it does not already have one. If you are reducing the quantities on your licence or revoking it entirely then you will benefit from reduced or cancelled abstraction charges.



You can appeal if you do not agree with the revised licence but you are unable to claim any compensation for the licence change.

How will the Environment Agency propose changes to my licence?

If you do not volunteer to change your licence then we will make a proposal to change it under Section 52 of the Water Resources Act 1991. Our proposals will include adding a time limit to your licence if it does not already have one. The Section 52 process can take a long time and is more complex. There are a number of steps involved in this process:

Step 1: We serve notice

We will serve notice of our proposed change to your abstraction or impoundment licence in writing and deliver this letter to you, in most cases in person. We also advertise details of the proposed licence change on our website and in a newspaper in the local area to the abstraction or impounding.



Step 2: You respond to our proposal

You have 28 days to respond in writing to our proposal. You have three options:

1. **no objection** – if you do not object then we will change your licence and issue it to you, this means you will not be able to claim compensation and the process ends;
2. **compensation only objection** – you agree to the change to your licence but you think you have a valid claim to compensation if the change goes ahead;
3. **technical and compensation objection** – you do not think the basis for changing your licence is correct and you think you have a valid claim to compensation if the change goes ahead.

What do I put in my objection letter?

You should include your name, address and licence number(s) and tell us which of the options for objection you are making. If you think option 3 is appropriate you should also tell us if you would like your case to be heard i.e. in person rather than in writing. Your case would be heard by means of either a hearing or inquiry (see Step 4 for more details).

Important! Remember you must get your response to us within 28 days. If we do not receive an objection letter from you, or it is late, we will change your licence as we proposed and you will not be entitled to compensation.

Step 3: Referral to the Secretary of State

When we have received your objection letter and the 28 day representation period has finished we will refer the case to the Secretary of State (SoS) within an additional 28 days.

Step 4: Secretary of State decides how to review your case

The Secretary of State will look at our proposal, your objection letter any representations and decide how the case will proceed. There are three options:

written representations – the case is decided using written evidence from you and us, for example your objection letter and our proposal information. This is most likely when you have a compensation only objection.

hearing – discussion of the case led by an inspector from the Planning Inspectorate, appointed by the Secretary of State. This will often include a site visit.

inquiry – longer, more formal discussion of the case with cross-examination and evidence taken under oath. An inquiry may be required if there is substantial interest in the case from third parties.

You will receive a letter telling you which of these methods your case will follow. If a hearing or inquiry is required it will give a date and venue which can be changed if required.

Step 5: Case is conducted

The case will be considered by one of the three methods listed in Step 4. You will need to provide your evidence in a statement of case explaining your objection to the licence change and your reasoning behind it. If a hearing or inquiry is chosen you will also need to provide your evidence in person. The evidence discussed will relate only to the licence change. For those who are eligible, compensation is not discussed at this stage.



Step 6: Direction given on how to change your licence

The Secretary of State will direct us to either:

- change the licence as we proposed;
- change the licence in a different way or
- not change the licence (the process would now stop).

They will write to you and to us with their final decision.

Step 7: Licence changed

Once we receive this letter we will follow the direction given, so if it is to change your licence we will make those changes and issue it to you as soon as possible. In some cases the changes may come into effect at a future date to give you time to adapt to the changes. If the change is to revoke your licence we will issue a notice of revocation. If the direction is not to change the licence then the process ends.

Step 8: Claiming compensation

If you are eligible, once you have received your amended licence or notice of revocation you can submit your claim for compensation in writing to us. You will need to explain why you have claimed that amount and show evidence of your calculations. We will review your claim and if necessary discuss and negotiate the amount of compensation that is appropriate for the impact of the licence change on your business. If we agree on a compensation sum this is paid to you and the process ends.

Can I claim compensation?

Not all licence holders are eligible to claim compensation under Section 61 Water Resources Act 1991. If you are eligible the basis of any compensation paid to you will be, as far as is reasonably possible, to provide you with a financial equivalent of your loss. This is so that, in effect, you are no worse or better off than you were before the licence change. Please see the separate leaflet Restoring Sustainable Abstraction: Compensation for more details.

Can I claim for my costs?

You are entitled to obtain professional advice, for example an agent, solicitor or valuer to help you prepare and support your compensation claim.

You will be able to claim back reasonable costs as part of your compensation claim.

What happens if we cannot agree on compensation?

We will make every effort to try and reach agreement on a compensation figure. If this is not possible we would try to resolve the matter through arbitration. If for any reason this is not successful the matter could be referred by you or us to the Upper Tribunal (Lands Chamber).

Step 9: Decision on compensation by the Upper Tribunal (Lands Chamber)

The Upper Tribunal is a formal judicial body and a hearing by the tribunal will involve additional costs –

<http://www.justice.gov.uk/tribunals/lands>, tel. 020 7612 9710. The tribunal will decide on the amount of compensation payable to you and how the costs incurred at the tribunal should be paid.

Their decision on compensation is final. An appeal against a decision made by the tribunal can only be made to the Court of Appeal. The compensation is then paid to you and the process ends.

How long will this process take?

In most cases we expect direction from the Secretary of State within 6-12 months after serving notice to you. If we cannot agree on compensation with



you then additional time will be needed when the case is referred to the Upper Tribunal (Lands Chamber).



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 7320 5650.

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. 024 7686 8555.

Alternatively, for agricultural licence holders please contact the Central Association of Agricultural Valuers (CAAV) - www.caav.org.uk, tel. 01452 831815.

Further information

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

