

EA WATER RESOURCES



COMPENSATION GUIDELINES  
FOR CHANGES TO WATER  
ABSTRACTION LICENCES



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## 1. Introduction

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In March 1999, the Government published *Taking Water Responsibly*<sup>1</sup>. This required the Environment Agency to "draw up, in consultation with appropriate organisations, a written policy on its determination of compensation for the revocation or variation of abstraction licences".

Following consultation with relevant bodies during September 2000, this document sets out our guidelines for determining compensation payments arising from the revocation or variation of abstraction licences. It is important to note that provisions governing the revocation and variation of licences are already set out in existing legislation. This document does not aim to identify areas of legislation that should be reviewed, but sets out our approach to determining compensation payments within the provisions of current legislation, as outlined in Section 6.

The Department of Transport, Local Government and the Regions (DTLR) is currently undertaking a fundamental review of the laws and procedures relating to compulsory purchase and compensation. The Agency will comply with any relevant legislative changes arising from this. We will also develop or modify the guidance in this document in the light of decisions arising from relevant appeals or other case law.

This guidance is not intended to consider or deal with compensation issues that may arise as a result of proposals relating to competition or licence trading.

The technical assessment of licences considered to be causing environmental damage and the development of appropriate methodologies for doing this activity are also beyond the scope of this document. We have developed separate guidance for this purpose which will ensure that a consistent approach is taken to the identification, prioritisation and investigation of sites that may be impacted by abstraction.

We will also develop separate guidance to simplify the current licence application procedures wherever possible within the scope of the existing or future legislative framework.

<sup>1</sup> *Taking Water Responsibly – Government decisions following consultation on changes to the water abstraction licensing system in England and Wales*. DETR and Welsh Office (1999)

## 2. Background

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The Environment Agency (the Agency) has a number of statutory powers and duties aimed at protecting, conserving and enhancing the environment. Some of the duties relate to conservation sites that are of international importance for wildlife and the environment. Special Protection Areas (SPAs) are designated under the EC Directive on the Conservation of Wild Birds (1979) (The Birds Directive). The EC Directive on the Conservation of Natural Habitats and Wild Fauna and Flora (1992) (The Habitats Directive) provides protection to sites that are important habitats for other species. These are known as Special Areas of Conservation (SAC). In addition, the Agency has specific conservation duties towards nationally designated Sites of Special Scientific Interest (SSSI), which are areas of particular interest for their flora, fauna, geological or physiographical features. These are identified and protected under the Wildlife and Countryside Act 1981, as amended by the Countryside and Rights of Way Act 2000. Finally, a number of sites are also recognised for their local importance throughout England and Wales.

Since the early 1990s, there has been increasing concern that a number of important wetland sites have been affected by low flows or decreasing water levels as a result of the abstraction of water from surface and groundwater resources that support them.

In 1993, the National Rivers Authority (one of our predecessor organisations) published *Low Flows and Water Resources*<sup>1</sup>. This identified 40 sites potentially suffering from excessive abstraction and marked the start of a programme to alleviate low flows at many of those sites. Subsequently, a group of voluntary conservation organisations, under the umbrella name of Biodiversity Challenge, published *High and Dry*<sup>2</sup>, and in 1999 the Environment Agency and English Nature jointly published *Water Abstraction and Sites of Special Scientific Interest in England*<sup>3</sup>. This latter report considers a total of 358 wetland SSSIs and concentrates on the problems caused by abstraction. Further investigations will be undertaken at these sites over time and, where necessary, could lead to the variation or revocation of individual abstraction licences.

<sup>1</sup> *Low Flows and Water Resources*, National Rivers Authority (1993)

<sup>2</sup> *High and Dry*, Biodiversity Challenge (1996)

<sup>3</sup> *Water Abstraction and Sites of Special Scientific Interest in England*, English Nature and Environment Agency (1999)

We are currently reviewing all abstraction licences that are unsustainable and may be causing environmental damage. This is being undertaken as part of our Restoring Sustainable Abstraction Programme. It will identify any licence that needs to be varied, or possibly revoked, in order to mitigate the adverse environmental effects of abstraction and restore sustainable abstraction regimes.

In the longer term, we will investigate the remaining sites identified in the joint report published with English Nature, as part of a co-ordinated ongoing programme. We will undertake the work in conjunction with English Nature and the Countryside Council for Wales. Wherever possible, we will try to achieve solutions by a collaborative approach involving all interested parties. We welcome constructive involvement and positive contributions from all parties who have an interest in improving the environment.

In April 2001, we also started developing Catchment Abstraction Management Strategies (CAMS). These will provide the opportunity, for groups and individuals at a local level to contribute to the development of the licensing strategy to be adopted for the catchment. As well as providing information on the availability of water in a catchment, CAMS will also identify changes needed to the abstraction regime in the catchment to achieve the sustainable long-term use of water resources. These changes would be prompted by recognising adverse impacts on the environment caused by abstraction. As a result, the variation or revocation of individual licences or groups of licences may be required.

At present, abstraction licences may be granted with or without a time limit. However, with continuing increases in demand for water, changing environmental expectations and recent evidence of climate change, granting licences without a time limit is no longer considered a sensible option. The Government supported this view in *Taking Water Responsibly* and the proposal that all new licences will be time-limited was confirmed in the draft Water Bill published last year. From October 2001, there will be a presumption by the Agency against issuing abstraction licences without a time limit. Thus time limits will be applied to most new abstraction licences. In addition to this, most variations - other than those seeking a reduction in authorised volume or similar minor change - will be granted subject to a time limit on the varied part of the licence.

### 3. Impact of the proposed changes in the law relating to water resources

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As stated above, the Agency already has the power under existing legislation to vary or revoke abstraction licences and, where appropriate, to pay compensation to licence holders. These provisions are described in more detail in Section 5.

Among the proposals for changes in legislation, set out in *Taking Water Responsibly*, there are some that will affect the entitlement to compensation. The most significant of these is the proposal to remove, from July 2012, the right to compensation<sup>1</sup> if a licence granted without time limit is curtailed on the direction of the Secretary of State or the National Assembly for Wales (NAW) on the grounds that the abstraction is causing significant environmental damage. The Government's proposal to curtail the liability to pay compensation for environmentally damaging licences has now been published in clause 17 of the draft Water Bill.

It is also intended that legislation will be introduced, again as set out in the draft Water Bill, to control some abstractions that are currently exempt from licensing requirements. These include dewatering operations, abstractions for trickle irrigation, supplies for navigation purposes and land drainage augmentation schemes. The Agency will determine applications for these activities, but in some cases we may be unable to authorise all or part of the existing abstraction if it is considered to be causing environmental damage. Under proposed transitional arrangements, where a curtailment in abstraction results from an application for a new licence, and the Agency's decision is upheld on appeal, compensation may be payable to operators who are able to demonstrate financial loss.

Where a time-limited licence is granted under special circumstances for a longer period than normal for the catchment, the Government intends to give the Agency the power to include, at its discretion, a condition enabling the abstraction to be curtailed by a specified volumetric amount. This is set out in clause 15 of the

<sup>1</sup> Note: 'compensation' in this context does not mean, affect or include a curtailment of compensation water arrangements that may exist as part of the operating conditions of some licences.

draft Water Bill. In order to exercise the condition, we would need to provide at least six years' notice to the abstractor. It is proposed that the abstractor would have a right of appeal against the exercise of the condition when the notice is issued, but it is not intended that compensation would be payable under these circumstances.

Under current legislation, an application to reduce the authorised volume on an abstraction licence does not require advertising. In other cases, where a proposal by the licence holder to vary a licence would not cause the total licensed quantity to exceed 20 cubic metres per day, we have discretion to dispense with the advertising requirements. In *Taking Water Responsibly* the Government proposes that we will be given wider discretion to waive the advertising requirements for applications to vary existing licences. Although this proposal will not affect entitlement to compensation, it should simplify the application process for some licence holders. Therefore, subject to the necessary legislation being approved by Parliament, the discretion to waive advertising will be adopted in appropriate circumstances, such as those designed to achieve environmental improvement.

There are, however, no proposals to modify the existing provisions that relate to how compensation payments should be determined. As such, the new legislation should not affect the principles of determining compensation, as set out in Section 6.

## 4. Entitlement to compensation

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Table 1 overleaf outlines examples of the types of situation in which licence holders might query whether they are entitled to compensation. It is based on the assumption that there will be an end to the entitlement to compensation for non time-limited licences causing environmental damage after July 2012, that reasonable notice will be given, and that the other relevant proposals outlined in *Taking Water Responsibly* and the draft Water Bill will be approved by Parliament.

**Table 1: Examples of potential compensation situations**

Type of licence	Situation	Licence holder eligible to claim compensation		
		Current legislation	Future legislation	
			Before July 2012	After July 2012
<b>Permanent licences</b>	Revocation/variation of an existing permanent licence identified as damaging the environment.	✓	✓	✗
<b>Time-limited licences</b>	Notice of non-renewal of a time-limited licence is provided to the licence holder.	✗	✗	✗
	Notice of non-renewal of a time-limited licence is provided to the applicant, but on expiry of the licence, a new application is submitted and refused by the Agency. The applicant appeals against the Agency's decision and the Agency's decision is upheld.	✗	✗	✗
	Notice of non-renewal of a time-limited licence is provided to the applicant, but on expiry of the licence, a new application is submitted and refused by the Agency. The applicant appeals against the Agency's decision and the applicant's appeal is upheld.	✗	✗	✗
	A licence is varied or revoked by the Agency (irrespective of notice) prior to the expiry date of the licence, i.e. mid-term curtailment.	✓	✓	✓
	The Agency grants a licence under special circumstance for a longer period than normal for the catchment. The licence contains a curtailment condition and the Agency serves notice on the abstractor of its intention to enforce the condition.	✗	✗	✗
<b>Conversion of existing permanent licences to time-limited status</b>	A licence holder applies to the Agency to vary an existing permanent licence to time-limited status.	✗	✗	✗
	As part of the determination of an application by the licence holder to vary the terms of an existing permanent licence, the Agency applies a time limit to the varied element of the licence.	✗	✗	✗
<b>Unused licences</b>	A notice of revocation is served on a licence holder where a licence has not been used for a number of years. At present, compensation is not payable if a licence is revoked after seven years' non-use, but under the Government's proposals, this period will be reduced to four years.	✗	✗	✗
<b>Permanent or time-limited licences</b>	The Agency serves notice on a licence holder under the Environmental Licensing (Suspension and Revocation) Regulations 1996 for non-payment of charges. Under these circumstances, unless the charges are paid within a specified period, the licence may be revoked and no compensation is payable.	✗	✗	✗

## 5. The agency's approach to changing existing licences

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### Introduction

Two approaches are available to the Agency and licence holders to change existing licences. These are:

- change by agreement with the licence holder;
- change where there is no agreement with the licence holder and the Agency uses its powers to implement the proposed changes.

The two approaches are described in detail in the following two sections and are summarised as a process flowchart in Appendix 1.

Under existing legislation the Agency is only liable to pay compensation in the latter case where a licence holder can prove that they have incurred losses as defined in Section 61(1) of the Water Resources Act 1991. However where the change has been agreed with a licence holder we may make a voluntary offer of compensation to encourage a licence holder to vary or revoke their licence.

### Change by agreement (variation by the licence holder)

Since the first abstraction licences were granted in 1965, a number of licences that were damaging the environment have already been varied or revoked, by agreement with the licence holder. As a result of this, we have rarely exercised our powers to forcibly vary or revoke a licence. By working with licence holders, we have helped them to meet their needs following advice on sustainable alternatives. This may have included connection to a mains water supply, developing an alternative source of supply such as a new borehole, or constructing a winter storage reservoir to allow abstraction from a river during the winter when flows are generally higher. In some cases, the variation of an existing licence has been made possible through greater efficiency of water use.

Wherever possible, we intend to continue with this approach of changing licences by agreement with the licence holder. We would not normally be directly involved in implementing mitigation measures, but would, in future, consider contributing towards the costs necessarily incurred by the licence holder in carrying out these changes. Once the changes have been agreed, the licence holder would apply to the Agency to make the necessary changes to their licence.

The application would be made to the Agency in accordance with standard application procedures for abstraction or impoundment licences, or whatever simplified arrangements are permitted under the present legislation (or that may emerge as a result of proposals for legislative change). Under the existing legislation, if the application required advertising, the licence holder would need to advertise the proposal once in the *London Gazette*, and in at least one local newspaper on two consecutive weeks, before submitting the application to the Agency for determination. We would include the costs of advertising and the application fee for the licence, and any other relevant costs reasonably incurred, as part of the overall compensation package for the changes. The licence holder also has to serve notice of the application on the statutory water undertaker for the area. In the case of applications to abstract from inland waters, the notice should also be served on any navigation, harbour, conservancy authority or internal drainage board in the locality of the abstraction.

### Change without agreement (modification by the Agency)

Where it is not possible to agree a solution with the licence holder, the Agency has powers under the existing legislation to propose that changes be made to licences without the licence holder's consent. The procedure for doing this is contained in Sections 52, 53 and 54 of the Water Resources Act 1991, and is summarised below.

The Agency must set out its proposals in a formal notice. The notice, in a prescribed format, must be served on the licence holder and advertised.

As for other applications for new or varied licences, the current provisions are that the advertisement should be published in the *London Gazette* and at least one local newspaper on two consecutive weeks.

Where the proposal is to vary or revoke a licence under Section 52, the relevant statutory water undertaker will be notified by the Agency of all such applications as the proposal may affect a supply regime in which they have an interest. For applications to vary a licence to abstract from inland waters, the notice will also be served on any navigation, harbour, conservancy authority or internal drainage board in the locality of the abstraction.

The proposals, together with a map or plan, must be available for inspection by the public free of charge at all reasonable hours. Representations may be made concerning the Agency's proposal. They can be made either by the licence holder, who may object to the proposal, or by any other person who wishes to make representations with regard to the proposal if they are concerned that it may affect them or their water supply. All objections or representations must be made in writing to the Agency within 28 days as specified in the notice. We cannot revoke or vary the licence until the end of the period given for written representations.

If no objections are raised within the given period, then we may proceed with the proposal and revoke or vary the relevant licence.

If the licence holder objects then, under Section 54 of the Water Resources Act 1991, the Agency's proposal is automatically considered subject to appeal. In the case of proposals in England, it is referred to the Secretary of State for Environment, Food and Rural Affairs. In the case of proposals in Wales, the appeal is referred to the National Assembly for Wales (NAW). The Secretary of State or NAW will receive a copy of the proposal, the objection of the licence holder and any other representations made in writing to the Agency within the prescribed period.

It is then the responsibility of the Secretary of State or the NAW to determine the appeal. This will usually be done after a local hearing or public inquiry conducted by the Planning Inspectorate in England or Wales has been held. The responsibility for making the decision on an appeal under Section 54 normally rests with the Planning Inspectorate for appeals in England, or the NAW as appropriate. If the Agency's decision is upheld and an abstraction licence is varied or revoked, under current legislation the licence holder may be eligible for compensation from the Agency.

## Consideration of water company licences

Every five years under the periodic review of water company prices each water company submits an Asset Management Plan to OFWAT (Office of Water Services) for approval so that water company price limits can be set. The plans include a number of schemes for investigations into abstractions that may be damaging to the environment as well as schemes for replacement of, or modifications to, sources of abstraction that are damaging to the environment. The most recent round, AMP3, took effect in April 2000 and prices were set for 2000-5. In addition to this, a number of schemes are still ongoing from the previous round, AMP2. We are now entering the AMP4 process where prices will be set for the period 2005-10

In approving a water company's Asset Management Plan to restore sustainable abstraction, OFWAT may allow the company to pass the costs of implementing these schemes through to their customers if they are "consensus" schemes.

The Agency expects that the method of passing the costs of "consensus" schemes through to water company customers will continue to fund implementation of new schemes arising from the revocation or variation of a water company licence, where agreement has been reached between all parties. As a result, it is not currently anticipated that the guidelines for determining compensation set out in this document will generally apply to water company licences, under the AMP arrangements, where consensus has been reached.

In determining the need to revoke or vary any licence held by a statutory water undertaker, we will have particular regard to the duties imposed on them by virtue of the provisions of Parts II-IV of the Water Industry Act 1991<sup>1</sup>

<sup>1</sup> Section 15 Water Industry Act 1991

## 6. Payment of compensation

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### Introduction

This section sets out the details of the Agency's proposals for determining individual claims for compensation.

### Who is entitled to claim compensation?

Under the current rules relating to compulsory purchase and the payment of compensation, all persons having an interest in land, or having the power to sell and convey the land purchased, are entitled to compensation. However, in the revocation or variation of an abstraction licence, no land would normally be acquired by the Agency and therefore there would be no compulsory acquisition. It should be emphasised that an abstraction licence itself is not an interest in land, although in terms of the capital or rental value, it is recognised that the existence of an abstraction licence can substantially increase the value of that land associated with the licence.

The legal responsibility and relationship arising under an abstraction licence exists only between the Agency and the registered licence holder. Any claim for compensation by anyone other than the registered holder of a licence is a private matter between the licence holder and the party or parties concerned.

### The basis of compensation

The main areas of legislation governing compulsory purchase and compensation are the Land Compensation Act 1961 (as amended by the Planning and Compensation Act 1991) and the Compulsory Purchase Act 1965. In the case of the variation or revocation of a licence, it is unlikely that land would be acquired, but the licence holder may be entitled to the statutory payment of compensation as summarised later.

The legal basis on which compensation is paid for the variation or revocation of licences is set out in Section 61 of the Water Resources Act, 1991. Full details of this

section are contained in Appendix 2, for reference, but key points are also summarised below.

Section 61(1) states that where a licence is revoked or varied on the direction of the Secretary of State or NAW, as set out above, the licence holder may be entitled to compensation if he can show that he has:

- incurred expenditure carrying out work which is abortive as a result of the revocation or variation; or
- otherwise sustained loss or damage which is directly attributable to the revocation or variation of the licence.

If the licence holder can demonstrate any of these losses, then the Agency is required to pay compensation for that expenditure, loss or damage.

In the first instance, the Agency aims to agree the quantity of compensation with the licence holder. However, under Section 61(5), the Lands Tribunal will settle any disputes over the amount of compensation. This section of the Act also states that, in determining the compensation payment, the provisions of Section 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications. These provisions relate to the nature of a Lands Tribunal hearing and to the award of costs, and are considered in more detail under the dispute resolution section.

As mentioned above, compulsory acquisition of land would not normally feature in proposals for the variation or revocation of licences. However, Section 61(6) provides that the rules set out in Section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, be applied to assess compensation for loss or damage that consists of depreciation in the value of the land or interest concerned. These rules, as they stand, are summarised below:

1. No special allowance – "No special allowance shall be made on account of the acquisition being compulsory";
2. Willing seller – "The value of the land shall... be open market value";
3. Special suitability of the land – "The special suitability...shall not be taken into account";

4. Land used unlawfully – “An increase in value arising from an unlawful use shall not be taken into account”;
5. Equivalent reinstatement – “ Where land is devoted to a purpose with a limited market with no general demand, the compensation can be assessed as the reasonable cost of reinstatement”;
6. Disturbance – “ The provisions of rule 2 shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land”.

## The purpose of compensation

The basic principle of compensation is that of equivalence. This aims to ensure that the affected party is provided with an equivalent of their loss or is returned, so far as is reasonably possible, to the same position they were in before the compulsory action, in this case the variation or revocation of the licence.

Within statutory limits, the Agency aims to achieve equivalence, irrespective of whether a damaging licence is varied or revoked by agreement with the licence holder or without that agreement.

Adopting the principle of equivalence for both approaches (agreed change and non-voluntary change) should reassure licence holders who might otherwise think their interests might be better served by pursuing the non-voluntary change approach. This, in turn, should offer advantages both for licence holders and the Agency, in terms of avoiding the time and costs associated with the appeals process.

## Main heads of compensation claims

Compensation claims will typically include items for severance, injurious affection and/or disturbance. We recognise, however, that the scope of each claim will depend on the individual circumstances of each case, and will need to be assessed on that basis.

**Severance** is the effect on value of the claimant’s retained land, or interest arising from the land, or interest being acquired. Since the Agency would not normally acquire land or an interest in land in connection with the variation or revocation of a licence, this head of claim would not normally arise.

**Injurious affection** is the effect on value of the claimant’s land, or interest in land, arising directly as a consequence of the exercise of the Agency’s statutory powers; in this case through loss of, or changes to, the abstraction licence. Examples could include changes in cropping, stocking or production patterns, redundancy of directly related assets, buildings or equipment.

**Disturbance** covers all non-property losses, whether temporary or long-term. It includes all other losses that are a natural and reasonable consequence of the exercise of the Agency’s statutory powers; in this case through changes to the abstraction licence. Examples could include redundancy of staff or expenses incurred in disposing of redundant equipment. Further examples of the items that might be included under the generally applicable heading of disturbance are set out in Appendix 3. It should be noted that the list is not exhaustive and additional items may be considered, provided they satisfy the statutory criteria set out in Section 61(1) of the Water Resources Act 1991.

## Material considerations in determining compensation

In *Taking Water Responsibly*, the Government set out its preliminary view of a number of factors it saw as material considerations for determining compensation. These are set out below, together with the Agency’s view on how these factors should be taken into consideration. However, in putting forward this view, it should be emphasised that we are ultimately bound to comply with existing compensation law and any subsequent revision.

*The reasonable needs for water of the licence holder and the direct costs of making alternative arrangements to meet these needs.* In considering the need for revocation or variation, the Agency will take into account the existing historical pattern of abstraction and the efficiency of current water use. Therefore, where a licence holder has significant headroom above used quantities available on a licence, and there are no plans to increase abstraction, it is unlikely that we would consider licensing, as part of a replacement licence, or compensating for, a volume greater than the existing use, unless the licence holder can demonstrate an entitlement to compensation consistent with the principles of the Water Resources Act 1991. That is not to discount the necessary and justifiable resource need for headroom to exist in appropriate circumstances, but simply to acknowledge genuine loss

in assessing any compensation that may be payable. Where an alternative source of water is available and can be secured at reasonable cost, we will normally expect this course of action to be taken. This will mitigate the effects of the change to the licence and contribute towards sustainability.

*The period over which abstraction has been permitted prior to revocation taking effect.* The Agency does not consider this should be a determining factor for compensation. However, the future prospects for the licence holder, had revocation or variation not taken place, may be appropriate to take into account. We recognise that the revocation or variation of a licence could affect the value of land that is held with the licence, and this may also be an appropriate consideration.

*The scale and duration of return on investment inseparably associated with the abstraction to be revoked.* To the extent that this will have an effect on any claim for loss or damage, the Agency will have regard to the consequences of investment made by a licence holder during the period of the abstraction, in determining compensation.

*Comparability with other abstractions in the same catchment.* Although each compensation payment will be specific to individual circumstances, we will use an even-handed approach in dealing with curtailments where licence changes are similar.

*Prospects or assurances of replacement of the revoked licence with another of directly comparable, although time-limited, effect.* Where an existing licence is converted to time-limited status, with the presumption of renewal, our view is that this should not result in compensation for the conversion.

*The period of notice of revocation given to the licence holder.* In circumstances that would lead to an entitlement to compensation, our view is that by giving a reasonable period of notice (normally a minimum of six years), the licence holder will have an opportunity to seek alternative arrangements in consultation with us, and thus mitigate any losses. In turn, this will minimise a claim for compensation. In compensation law, claimants are generally expected to take all reasonable steps to mitigate their loss. In particular, any major infrastructure improvements or new equipment purchased following the notice, but prior to the determination of an application to vary or revoke the licence, would not be

considered for compensation. This is because the costs were incurred after service of the notice.

## **Extent of environmental damage**

Another material consideration that could be taken into account is the extent of environmental damage caused by the licence. Some organisations and individuals have stated that this should reduce the amount of compensation payable to the licence holder, while others consider that this should have no impact on compensation calculations.

At the time when Licences of Right were granted, following the implementation of the 1963 Water Resources Act, there was no provision in that Act for considering the impact of an abstraction on the environment. Licence holders, as well as those with licences granted since 1965, are all legally entitled to abstract within the terms and conditions of the licence issued by the Agency and its predecessor organisations. On that basis, our view is that the extent of environmental damage should not be a material consideration in determining compensation.

## **Curtailed trickle irrigation abstractions**

The use of water for trickle irrigation has increased significantly in the past ten years. At present, this use is exempt from licensing control. This has led to a number of schemes being implemented in areas where water resources are committed and there is a presumption against issuing further licences. In such areas, the Government considers that where new schemes have been implemented since its original consultation paper was published in June 1998, *The Review of the Water Abstraction Licensing System in England and Wales – Consultation Paper*<sup>1</sup>, this should be taken into account in determining the amount of compensation. The determination of any claim arising in this way would therefore reflect the notice of possible curtailment that abstractors were given, in the publication of the consultation proposals, and the subsequent confirmation of that view in *Taking Water Responsibly*.

<sup>1</sup> *The Review of the Water Abstraction Licensing System in England and Wales – Consultation Paper*. DETR and Welsh Office, June 1998

## Interest

At present there is no statutory requirement on the Agency to pay interest on compensation when a licence is revoked or varied. However, where there has been undue delay on our part in dealing with any claim for compensation, we may, at our complete discretion, pay an amount we consider appropriate to compensate the claimant for such late payment, but without admission of legal liability. Interest may be paid at the direction of the Lands Tribunal.

## Advance payments

In the absence of agreement on the amount of compensation to be paid, the Agency will, in most cases, pay 90 percent of its estimate of the compensation due in advance of the dispute being settled by the Lands Tribunal.

## Dispute resolution

Apart from the situation where a licence has been unused for more than the period set down in legislation (currently seven years) or a licence is revoked for non-payment of charges, and no compensation is therefore payable, the Lands Tribunal will settle any dispute as to the amount of compensation.

The Lands Tribunal will assess the evidence provided by the parties as the basis for determining the amount of compensation payable. It will not provide a claims negotiation service. Section 2 of the Land Compensation Act 1961 states that, unless otherwise directed by the Lands Tribunal, only one expert witness shall be heard from either side. However, where a claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side may be allowed.

## The DTLR review

DTLR is currently undertaking a review of the laws and procedures relating to compulsory purchase and compensation.

An interim report was published in January 1999 and a final report entitled *Fundamental Review of the Laws and Procedures Relating to Compulsory Purchase and*

*Compensation* was published in July 2000. The final report was subject to consultation and contains a number of important conclusions and recommendations relating to compulsory purchase procedures and the payment of compensation.

The formal Government response is not available yet, but the guidelines for assessing compensation used by the Agency will be reviewed at the appropriate time to take into account any legislative changes that are made as a result of the review. However, until such time as any changes are made to compensation provisions following the review, we are bound by the present statutory position.

## 7. Funding of compensation payments

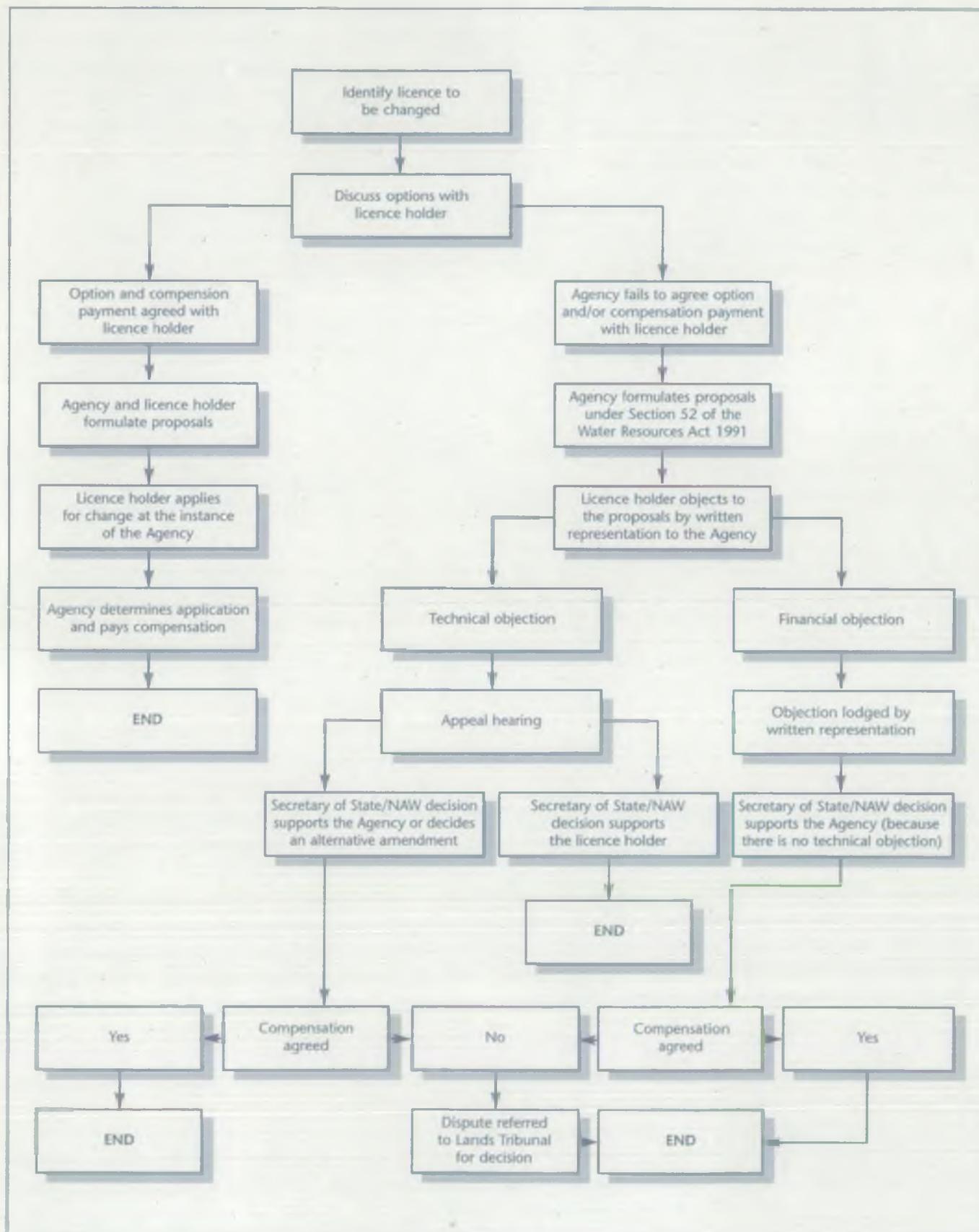
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Under Section 63(2) of the Water Resources Act 1991, if a licence is varied or revoked and compensation is payable by the Agency, the Secretary of State or NAW has the power to indemnify us (effectively, to underwrite the payment on our behalf). If this discretion were applied in all cases, compensation would effectively be funded from general taxation.

At present, the Government considers that compensation costs for the revocation or variation of abstraction licences are an essential component of the Agency's water resource management function, and as such they should be met through our Scheme of Abstraction Charges. This would result in all abstractors with chargeable licences funding the compensation payments.

# Appendix 1

Flowchart summary of the two approaches to securing changes to water abstraction licences



## Appendix 2

### Section 61, Water Resources Act 1991 – Determination of compensation

- (1) Where a licence is revoked or varied in pursuance of a direction under section 54 or 55 above and it is shown that the holder of the licence –
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or variation; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or variation,
- the Authority shall pay him compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to any work, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) above and Schedule 7 to this Act, no compensation shall be paid under this section –
- (a) in respect of any work carried out before the grant of the licence which is revoked or varied; or
  - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (4) No compensation shall be payable under this section in respect of a licence to abstract water, if it is shown that no water was abstracted in pursuance of the licence during the period of seven years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation by the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with subsection (6) above, is subject to a mortgage –
- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);
  - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

## Appendix 3

### Example heads of claim

#### Injurious affection

*Effect on the value of the claimant's land arising from the change to the abstraction licence. For example:*

- changes to cropping, stocking or production affecting the value of a holding
- value of buildings
- general operation of the holding and its effect on value
- redundant buildings
- redundant fixed equipment
- effect on the enterprise if it is reduced below optimum size
- move to alternative irrigation or production techniques
- infrastructure investment in marketing and distribution
- sporting value of land/fishing rights
- general damage to land
- general effect on amenity of land or premises

#### Disturbance

*Losses that are a natural and reasonable consequence of the change to the abstraction licence. For example:*

- staff redundancy
- reduction in sales and quality of products
- loss of business/loss of contracts/continuity of supply
- loss of crops, cultivations, pasture, manurial values
- damage to growing crops
- expenses incurred in moving stock
- expenses incurred in disposing of redundant equipment
- expenses incurred in moving business
- claimant's time properly spent dealing with variation or revocation
- temporary severance of water supply
- other statutory disturbance payments
- loss of profitability of land used for winter storage reservoir

#### Other costs

*For example:*

- professional fees.

# Notes

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