



GUIDE TO APPEALS

Water, Sewerage, Pollution Control, Waste Disposal and Environmental Protection Legislation

THE PURPOSE OF THIS LEAFLET

This leaflet explains how to lodge an appeal to the Scottish Ministers against a decision made by a Scottish environmental authority under one of the Acts or Regulations listed in the section headed, *Relevant Legislation*. The leaflet also explains the way in which we handle such appeals to ensure that a case is fairly and independently assessed.

The legislation listed relate to the provision of water and sewerage services, the control of discharges to air or water, and waste disposal together with other related matters. A relevant authority may be Scottish Water, the Scottish Environment Protection Agency or one of the Scottish Councils.

The legislation sets out the duties and responsibilities of authorities and their clients/customers and each contains safeguards which allow certain decisions by authorities to be challenged through either the Courts or – in most cases – by appeal to the Scottish Ministers. Time limits for lodging appeals and making representations may be set in the legislation which may also outline appeal procedures in more detail.

As there are more than 100 procedures involving an appeal to the Scottish Ministers, this leaflet can only summarise how we go about ensuring that all parties obtain a fair opportunity to state their cases. You, or your advisers, should always read the relevant sections of the Acts and related Regulations to find out about any limitations placed on the scope for the Scottish Ministers to resolve the dispute and about any procedures you must comply with. You should also appreciate that a successful appeal does not necessarily

mean that you are exempt from the need to obtain approval for a project under other legislation (for example, planning permission).

The Scottish Government's Climate Change and Water Industry Directorate is responsible for handling appeals to the Scottish Ministers made under the legislation listed. In the Directorate, appeals are handled by independent officials in the Determinations Team, a specialist team of engineering and administrative staff experienced in handling such cases.

BROAD PRINCIPLES

Appeals to the Scottish Ministers are handled in a quasi-judicial procedure so that each party involved has a full and fair opportunity to make its case. Each case is considered on its own merits and decisions are reached only after carefully considering the arguments and balancing the evidence put forward by the parties and taking the particular circumstances of the case into account. One of the main principles for assessing a decision made by an authority is often whether that decision is so unreasonable that no reasonable authority could have made it. Another is that all relevant material has been considered and all irrelevant material has been excluded.

The questions which the Scottish Ministers can address and the extent of their powers to remedy a problem are set out in the relevant legislation. The Scottish Ministers cannot give an authoritative interpretation of legislation since this is for the Courts, and they cannot act where there is no specific statutory provision authorising them to do so. They cannot, for example, direct an authority to carry out a specific act unless the legislation says that they can. You should therefore be aware that there are constraints on the decision making process. You will find it helpful to read any parts of the legislation which detail the procedure relating to your dispute. You may also wish to consider whether seeking professional advice would be appropriate.

Most cases are handled by written submission, but, under some legislation, either party may opt for a hearing. In other cases, some may go to a hearing or public inquiry depending on the significance and complexity of the issues involved. Details of how these procedures operate are given below.

THE TIME AND THE COST INVOLVED

You will normally have to meet your own expenses including the cost of employing any professional advisers or representatives but, if a public inquiry is held, the Reporter may in certain circumstances make a recommendation regarding award of

expenses. If the issue is straightforward you may be able to put your case forward yourself or with the help of friends, but in many cases professional advice may be appropriate. The length of time it takes to reach a decision depends on factors such as the method of handling the case (by written submissions, public local inquiry or hearing) and the complexity of the issues involved. Remember, cases which come to appeal are, by their nature, contentious and frequently very complicated.

WRITTEN SUBMISSIONS

The written submission procedure is usually a simpler and cheaper method of reaching a decision than holding a public inquiry or hearing. To start the procedure you will be asked to state your case in writing, quoting the relevant legislation under which the appeal is being made, and to provide any other relevant documents. The relevant authority against whose decision you are appealing will then be given the opportunity to make its submission and to comment on your case. You will in turn be given a further opportunity to comment on its submission. This procedure will be repeated until you or the authority decides to make no further comment or until no new substantive issues are being put forward, so it can obviously take some time. During the procedure you also have the opportunity to ask the authority questions. In some cases objectors or supporters of the proposal may also have a chance to make representations.

If a site inspection is considered to be desirable, you and officials from the relevant authority will be given the opportunity to attend. You may point out any relevant features but neither you nor the authority officials may make representations on the merits of the case to the Government's representative.

The length of time taken to reach a conclusion depends mainly on the number of exchanges of correspondence which take place and the speed with which each party responds. In a small number of procedures the Scottish Ministers have powers to set a response time if they wish. However in the interest of natural justice each party is given a reasonable time to consider the other's case and this may vary according to the circumstances. However, should you feel that speed is of the essence and that your interests are being prejudiced by the other party's delay, you are free to include this in your representations.

To ensure that there is no administrative delay we have set targets for responding. These are to acknowledge your initial response within 5 working days of receipt, respond to subsequent letters within 7 working days of receipt and for complex cases to

issue a decision within 20 weeks of final submissions in 90% of cases, and within 10 weeks for less complex cases.

PUBLIC LOCAL INQUIRY/HEARING

In some cases the legislation gives the parties an opportunity to request a hearing or a public inquiry, which must then be held. In exceptional cases where significant or complex issues are involved, the Scottish Ministers may decide that a public inquiry is the only way to resolve a dispute fairly.

Where an inquiry or hearing is to be held, the arrangements have to be made some time in advance and you and the authority will be consulted about the date. The inquiry or hearing will be arranged by The Scottish Government Directorate for Planning and Environmental Appeals and will be conducted by a Reporter with no more formality than is necessary for it to be run efficiently. You may conduct your own case and do not need to be professionally represented. As an inquiry will be a **public** local inquiry, notice of the date, time and place has to be given in a local newspaper. Members of the public can attend to watch the proceedings and third parties, such as objectors, can take part. Hearings, on the other hand normally involve only the parties to the case and are less formal than inquiries. The Reporter will usually have looked at any site involved prior to the inquiry or hearing. If any further inspection is required you and the authority will be entitled to accompany the Reporter on the visit.

After an inquiry or hearing has been held the Reporter usually submits a report to the Scottish Ministers giving a recommended decision. The report is carefully considered and the final decision is taken by or on behalf of the Scottish Ministers. The Reporter may also make a recommendation regarding award of expenses.

The Scottish Ministers and the main parties normally meet their own expenses. However, if one side believes that it has been caused unnecessary expense by the unreasonable behaviour of the other side it may in some cases ask for full or partial recompense of its own expenses. Determination of an appeal may also be delegated to a Reporter, where the relevant legislation permits.

The Government's aim is to reach a decision on the issues and to inform the parties by writing to them within 20 weeks of receiving the Reporter's report in 90% of cases, and within 10 weeks for less complex cases.

WITHDRAWAL OF REPRESENTATIONS

You may ask to withdraw your representations at any time before the decision is issued. It is unlikely that you will be allowed to reinstate them once withdrawn, so you should be sure that this is what you want to do. You should let the Scottish Government know of your decision as quickly as possible particularly if a Reporter has been appointed and an inquiry or hearing has been arranged, since you may be liable for the authority's costs if you leave your withdrawal too late.

CONFIDENTIALITY

The background and reasons for the Scottish Ministers' decision are normally given in the decision letter addressed to you. Directions to authorities are given in a separate letter addressed to the authority. Each party is also given copies of the other's letter. Copies may also be given to others who made representations. However, in some cases, such as appeals under regulation 22 of the Pollution Prevention and Control (Scotland) Regulations 2000, decision letters will be placed on SEPA's public register. As recipients of the Scottish Ministers decision you are free to make whatever use of it you wish.

ADVICE ON PROCEDURES AND COMPLAINTS

Contact names and phone numbers of the staff handling your case are given in the Government's letters. Staff can give information on the administrative procedures involved in a case and will deal with routine enquiries on progress. However, as a matter of principle and in order to maintain impartiality, they cannot discuss the details of a particular case or give advice to the parties. If you think your case is not being dealt with properly and in accordance with the procedures outlined in this leaflet you may wish to write to The Head of Climate Change and Water Industry Directorate, Scottish Government, 1-H (Bridge), Victoria Quay, Leith, Edinburgh, EH6 6QQ.

STATUS OF DECISIONS

Once a decision has been given it is usually final unless provision is made in the appropriate Act for the Scottish Ministers to revoke their decision or for an appeal to be taken to the Sheriff. Subsequent discussion is not appropriate and in most cases the only right of challenge is through the Court of Session.

RELEVANT LEGISLATION INCLUDES:

Coast Protection Act 1949
Flood Prevention (Scotland) Act 1961
Sewerage (Scotland) Act 1968
Water (Scotland) Act 1980
Control of Pollution (Amendment) Act 1989
Water Environment (Controlled Activities) (Scotland) Regulations 2005
Environment Protection Act 1990
Part I, Integrated Pollution Control
Part II, Waste on Land
Environmental Protection (Applications, Appeals and Registers) Regulations 1991
Natural Heritage (Scotland) Act 1991
Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991
Control of Pollution (Silage, Slurry and Agricultural Fuel Oil), Scotland Regulations 1991
Clean Air Act 1993
Waste Management Licensing Regulations 1994
Environment Act 1995
Pollution, Prevention and Control Act 1999
Pollution, Prevention and Control (Scotland) Regulations 2000
The Greenhouse Gas Emissions Trading Scheme Regulations 2003

All available from the Stationery Office or through your local library

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